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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

)
Amendment of Parts 2 and 90 of the)
Commission's Rules to Provide for the)
Use of 200 Channels Outside the)
Designated Filing Areas in the)
896-901 MHz and the 935-940 MHz Bands)
Allotted to the Specialized Mobile)
Radio Pool)

PR Docket No. 89-553

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)
Implementation of Section 309(j))
of the Communications Act -)
Competitive Bidding)

PP Docket No. 93-253

)
Implementation of Sections 3(n) and 322)
of the Communications Act)

GN Docket No. 93-252

To: The Commission

**REPLY COMMENTS
OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association ("PCIA"),¹ pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. §1.415, respectfully submits its Reply Comments in response to the

¹PCIA is an international trade association created by the merger of the National Association of Business and Educational Radio, Inc. ("NABER") and PCIA to represent the interests of both commercial mobile radio service (CMRS) and private mobile radio service (PMRS) users and businesses involved in all facets of the personal communications industry. PCIA's Federation of Councils include: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, PCIA is the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, 800 MHz General Category frequencies for Business eligibles and conventional SMR systems, and for the 929 MHz paging frequencies.

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Comments filed responsive to the Commission's Second Report and Order and Second Notice Further Notice of Proposed Rule Making ("2nd R&O") in the above-captioned proceeding.²

In its initial Comments, PCIA stated that it has reviewed the Commission's proposed auction methodology and does not in general object to the Commission's proposal.³ However, PCIA stated that it wished to review the Comments filed by other parties to determine whether any additional issues were presented which would warrant a review of PCIA's position.

In reviewing the Comments of other parties, two sets of Comments presented worthwhile ideas which should be considered by the Commission. Specifically, Pro Tech Mobile Communications, Inc. ("Pro Tech") and RAM Mobile Data USA Limited Partnership ("RMD") discuss the prospect that incumbent licensees will be severely disadvantaged by the Commission's auction proposal. RMD points out

²The deadline for filing Reply Comments was extended by Order of the Chief, Commercial Wireless Division, DA 95-1174, released May 26, 1995.

³PCIA did file a Petition for Reconsideration regarding certain specific aspects of the Report & Order portion of the Commission's action relating to 900 MHz SMR incumbent loading rules and MTA licensee construction requirements. It should also be noted that PCIA's position regarding the auctioning of 900 MHz SMR licenses in this proceeding should not be confused with its position in PR Docket No. 93-144 regarding 800 MHz SMR systems. Unlike the Commission's auction proposals regarding largely-licensed 800 MHz SMR spectrum, the Commission proposes to auction spectrum in this proceeding that is not significantly licensed across the country. In this proceeding, unlike the 800 MHz SMR spectrum, an auction appears to be a viable mechanism to accomplish licensing of relatively "clean" spectrum, provided such auctions happen soon. Further licensing delays will exacerbate the difficulties which 900 MHz SMR operators have faced by being unable to expand the coverage of their systems.

in its Comments that the Commission in this and other proceedings (prior to the Commission receiving auction authority) has consistently favored giving existing licensees on Part 90 frequencies the first opportunity to seek expansion.⁴ Pro Tech suggests that incumbent licensees of constructed systems be awarded MTA licenses for their operational channels without an auction proceeding, provided the licensee currently serves to 25% of more of the MTA population.

PCIA agrees with the concerns expressed by RMD and Pro Tech. As discussed in Pro Tech's Comments, the Commission's initial auction proposal has the potential to severely impact the operational status of incumbent licensees in smaller MTAs. Therefore, PCIA supports the Pro Tech proposal and recommends that it be adopted by the Commission.⁵

The Pro Tech proposal is sound because the incumbent would be awarded the MTA license only where the incumbent already covers such a significant portion of the MTA that the licensee remaining portion of the MTA would find it difficult, if not impossible, to meet the Commission's construction requirements.

⁴RMD Comments at 3. See also, 47 C.F.R. §90.611(d); Memorandum Opinion and Order, PR Docket No. 86-404, 54 FR 4029 (1989).

⁵Pro Tech's proposal is also consistent with PCIA's proposal in the 800 MHz SMR wide-area proceeding (PR Docket No. 93-144). In that proceeding, PCIA recommended that existing licensees in the geographic area be permitted to modify their licenses to become geographic licensees prior to the Commission permitting non-incumbents to file applications.

The Conference Agreement in the Legislative History in the Omnibus Budget Reconciliation Act of 1993 ("OBRA") stated a **requirement** that the Commission "... continue to use engineering solutions, negotiations, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing procedures."⁶ The Legislative History also recites this requirement.⁷ This Congressional mandate is reflected in Section 309(j)(6)(E) of the Act. Section 309(j)(3) **requires** the Commission to test alternative methodologies to avoid mutually exclusive applications and thereby avoid auctions. Pro Tech has proposed a "threshold qualification" which protects existing licensees and avoids some mutually exclusive applications which would impact incumbents. It is PCIA's belief that the Pro Tech proposal satisfies the OBRA requirements and is therefore permissible.

Should the Commission reject Pro Tech's proposal, PCIA agrees with RMD that bidding credits for non-incumbent applicants on encumbered blocks should be limited.⁸ The Commission should ensure that non-incumbent applicants do not bid in an auction against an incumbent licensee with "cheaper dollars". Specifically, the Commission should preclude a non-incumbent applicant from receiving a larger bidding credit than the incumbent licensee, such as a

⁶House Conf. Rep. No. 103-213, supra at p. 1174.

⁷Id. at p. 585.

⁸RMD Comments at 5.

minority applicant (25% credit) bidding against an incumbent small business (10% credit).

III. CONCLUSION

WHEREFORE, the Personal Communications Industry Association respectfully requests that the Commission act in accordance with the views expressed herein.

Respectfully submitted,

**PERSONAL COMMUNICATIONS
INDUSTRY ASSOCIATION**

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Date: June 12, 1995

CERTIFICATE OF SERVICE

I, Sarah Locke, a secretary in the law office of Meyer, Faller, Weisman & Rosenberg, P.C. hereby certify that I have on this 12th day of June, 1995 sent via hand delivery, a copy of the foregoing "Reply Comments of the Personal Communications Industry Association" to the following:

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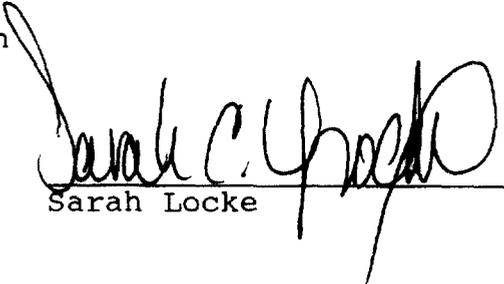
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