

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20544

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20544

In the Matter of)	
)	
Amendment of the Commission's)	ET Docket No. 95-183
Rules Regarding the 37.0-38.6 GHz and)	
38.6-40.0 GHz Bands)	
)	
Implementation of Section 309(j) of the)	
Communications Act — Competitive)	PP Docket No. 93-253
Bidding, 37.0-38.6 GHz and 38.6-40.0 GHz)	

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COMMENTS OF RAND McNALLY & COMPANY

Rand McNally & Company ("RMC") hereby submits the following comments in response to the Notice of Proposed Rule Making and Order released on December 15, 1995, in the above-referenced proceeding (the "Notice"). In the Notice, the Commission proposes to permit a range of mobile service providers (including PCS and cellular licensees) to use the 37-40 GHz band for fixed point-to-point microwave operations that would provide communications infrastructure, such as "backhaul" and "backbone" links, for their respective networks. The Commission further proposes a channeling plan in the 37 GHz band based on 50 MHz blocks, service areas in the 37-40 GHz band based on Basic Trading Areas ("BTAs"), and licensing by competitive bidding if mutually exclusive applications are filed.¹

As the Commission recognized in the Notice, RMC is the copyright owner of the MTA/BTA Listings (which includes the BTAs), embodied in its Trading Area System MTA/BTA Diskette, and graphically represented in its Commercial Atlas & Marketing Guide (the "MTA/BTA Map").² The Notice points out that RMC entered into a license agreement with the Personal Communications Industry Association ("PCIA") concerning use of the MTA/BTA Listings and asks whether this agreement covers the proposed use of the 37-40 GHz band by prospective licensees.³

Under the PCIA agreement, RMC licensed use of its MTA/BTA Listings for use in connection with the following services:

¹ Notice at ¶ 1.
² Id. at ¶ 23.
³ Id.

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- (i) 2 GHz broadband PCS, as authorized in GEN Docket 90-314 or any successor proceedings;
- (ii) 900 MHz narrowband PCS, as authorized in GEN Docket No. 90-314 and ET Docket 92-100 or any successor proceedings;
- (iii) 800 MHz wide-area Specialized Mobile Radio Services ("SMR") or Expanded Mobile Service Providers, as authorized in PR Docket No. 93-144 or any successor proceedings; and
- (iv) Local Multipoint Distribution Services, as authorized in CC Docket No. 92-297 or any successor proceedings.

In RMC's view, the PCIA license agreement does not cover the Commission's proposed use of the 37-40 GHz band. First, the instant proceeding is separate from those identified in the PCIA agreement and, moreover, cannot be considered a successor proceeding to any of the proceedings listed in the agreement. Second, even if the PCIA agreement did cover use of the 37-40 GHz band for those services identified in such agreement (an interpretation of the agreement that RMC rejects), the Notice provides that licensees in a number of other services would also be permitted to make use of the 37-40 GHz band. These licensees, including cellular licensees, are not covered by the PCIA agreement.

That said, RMC is willing to license use of the MTA/BTA Listings for the 37-40 GHz band on reasonable terms so that all parties affected by and interested in the instant Commission proceeding may lawfully make use of such listings. In this regard, RMC notes that, in addition to the PCIA license agreement, RMC has entered into similar license agreements with the American Mobile Telecommunications Association for use of the MTA/BTA Listings in connection with the 900 MHz SMR service and with the Wireless Cable Association International, Inc. for use of the MTA/BTA Listings in connection with the MDS service.

In light of the fact that the Commission's proposed use of the MTA/BTA Listings for the 37-40 GHz band is not covered by an existing license agreement with RMC, RMC urges the Commission to: (1) make plain to all interested parties that the MTA/BTA Listings have not been licensed for this proceeding under the PCIA license agreement or any other agreement; (2) encourage potential 37-40 GHz BTA license grantees to seek a copyright license from RMC; and (3) make clear to

interested parties that unless a grantee obtains such a license (whether pursuant to a blanket license agreement or other negotiated agreement), it may neither make unfettered use of the MTA/BTA Listings nor rely on a grant of a BTA-based license from the Commission as a defense to any claim of copyright infringement brought by RMC against it. Such action is consistent with the approach the Commission took when adopting MTA/BTA-based service areas for other communications services (*e.g.*, 900 MHz SMR, MDS).

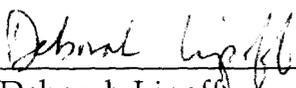
The MTA/BTA Listings represent a significant investment on RMC's part and, in this regard, we urge the Commission to take the affirmative steps summarized in the preceding paragraph to safeguard these copyright rights. If the interested parties to this proceeding are unwilling to enter a license agreement with RMC for use of the MTA/BTA Listings, the Commission should select alternative geographic boundary definitions for service areas.

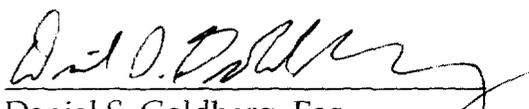
In sum, while the MTA/BTA Listings are not now covered by an existing license agreement for use in accordance with the proposals in the Notice, RMC's experience licensing these listings in the context of other Commission proceedings leads RMC to believe that a comparable licensing arrangement can be achieved in the instant proceeding. To facilitate this end, and to preserve RMC's valuable intellectual property, RMC urges the Commission to: (1) make plain to all interested parties that the MTA/BTA Listings have not been licensed for this proceeding, (2) encourage potential 37-40 GHz BTA license grantees to seek a copyright license from RMC, and (3) make clear to interested parties that unless a grantee obtains such a license, it may neither make use of the MTA/BTA Listings nor rely on a grant of a BTA-based license from the Commission as a defense to any claim of copyright infringement brought by RMC against it. Such action is consistent with the Commission's approach in other proceedings involving the

MTA/BTA Listings and, moreover, is warranted in the instant proceeding.

Respectfully submitted,

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