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

In the Matter of	)	
	)	
Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band	)	PR Docket No. 93-144 RM-8117, RM-8030 RM-8029
	)	
Implementation of Section 3(n) and 322 of the Communications Act Regulatory Treatment of Mobile Services	)	GN Docket No. 93-252
	)	
Implementation of Section 309(j) of the Communications Act - Competitive Bidding 800 MHz SMR	)	PP Docket No. 93-253

To: The Commission

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COMMENTS

Respectfully submitted,

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SUMMARY

The Personal Communications Industry Association ("PCIA"), through its counsel, hereby respectfully files its Comments in response to the Second Further Notice of Proposed Rule Making ("2nd FNPRM") issued by the Federal Communications Commission ("FCC") in the above-captioned proceeding. In these Comments, PCIA will focus on the issues addressed by the Commission in the 2nd FNPRM portion of the combined document.

As PCIA has stated to the Commission in numerous filings and ex parte meetings, it does not believe that the Commission has the authority to auction this spectrum. Further, PCIA has repeatedly stated its opposition to mandatory relocation. However, the Commission has made its decision and decided to auction the Upper 200 Channels. Further, the Commission has proposed to auction the lower 80 and General Category Frequencies. Therefore, these Comments are intended to suggest rules to protect incumbent licensees to the maximum extent possible while providing geographic licensees with the maximum benefit from their licenses. PCIA's Comments are being filed with the express understanding that the Association reserves its rights to continue to oppose auctioning 800 MHz spectrum in any other forum.

PCIA believes that the Commission should create specific rules concerning mandatory relocation of Upper 200 Channel licensees. Significant detail at this time will minimize disputes once the relocation process begins. PCIA's specific suggestions are attached hereto as Appendix A.

PCIA suggests that the Commission refrain from auctioning the lower 80 SMR and 150 General Category Pool frequencies. Without mandatory relocation, there is little value in auctioning spectrum which is so heavily crowded with existing users. However, should the Commission elect to utilize auctions in this spectrum, PCIA supports the Commission's proposal to limit participation in lower channel auctions. However, as detailed herein, PCIA believes that incumbent licensees, regardless of size, must be able to participate in auctions for spectrum that they currently occupy.

PCIA recommends that the Commission enable existing licensees to convert their existing licenses to geographic licenses in the Lower 80 SMR and 150 General Category Pools. If the Commission seeks to create channel blocks, PCIA supports the Commission's proposal for the Lower 80 SMR Pool frequencies to utilize the same five (5) channel blocks as provided for in the current rules. For the General Category channels, PCIA suggests the use of smaller channel blocks, no larger than fifty (50) channels each.

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To: The Commission

COMMENTS

The Personal Communications Industry Association ("PCIA")[1], through its counsel, hereby respectfully files its Comments in response to the Second Further Notice of Proposed Rule Making ("2nd FNPRM") issued by the Federal Communications Commission ("FCC") in

[1] PCIA is the only international trade association representing 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.

the above-captioned proceeding.[2] In these Comments, PCIA will focus on the issues addressed by the Commission in the 2nd FNPRM portion of the combined document.

I. BACKGROUND

A. Summary Of PR Docket No. 93-144 Report And Order

The First Report and Order establishes technical and operational rules for new licensees in the upper 10 MHz block with service areas defined by the U.S. Department of Commerce Bureau of Economic Areas (EAs), and defines the rights of incumbent SMR licensees already operating or authorized to operate on these channels. The Eighth Report and Order establishes competitive bidding rules for the upper 10 MHz block. In the 2nd FNPRM the FCC set forth proposals for new licensing rules and auction procedures for the "lower 80" SMR and General Category channels.

Three decisions in the First Report and Order are relevant to PCIA's Comments with regard to the 2nd FNPRM proposals regarding comparable facilities and licensing in the "lower 80" and General Category frequencies:

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[2] First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making, FCC 95-501, released December 15, 1995. These Comments are timely filed, as the deadline for submitting Comments was extended by order of the Acting Chief, Commercial Wireless Division, on January 16, 1996 pursuant to a request from PCIA. DA 86-18, released January 16, 1996. As of this date, the Commission's combined decision has not yet appeared in the Federal Register. PCIA intends to file a Petition for Reconsideration of the First Report and Order challenging certain aspects of the decision at the appropriate time.

1. Reallocation of General Category Channels

In the First Report and Order, the FCC reallocates the General Category channels, consisting of 150 contiguous 25 kHz channels, to the 800 MHz SMR service.[3] The Commission states that a review of its licensing records indicates that the overwhelming majority of General Category channels are used for SMR, as opposed to non-SMR services. In fact, the Commission states that its licensing records indicate that there are three times as many SMR licensees in the General Category channels as any other type of Part 90 licensee.[4]

2. Elimination of Inter-Category Sharing by SMR Systems

The FCC also eliminated inter-category sharing by SMRs into the Business and Industrial/Land Transportation Pools. The FCC stated that by prohibiting SMR eligibility on the Pool Channels it would relieve much of the pressure on such frequencies. The FCC also concluded that non-SMR licensees no longer will be eligible for SMR channels, including the General Category channels.[5]

3. Partial Lifting of 800 MHz Application Freeze

Third, the Commission partially lifted its freeze on acceptance of new applications for the SMR Category and General Category channels to permit potential EA applicants to relocate

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[3] Report and Order, supra at 8.

[4] Id. at 73.

[5] It should be noted that the Commission did not address the status of SMR licenses which already utilize Business and Industrial/Land Transportation Pool frequencies.

incumbents out of the upper 10 MHz block of 800 MHz SMR spectrum.[6] Relocation would be permitted during this period provided that: (1) the potential EA applicant and relocating incumbent are unaffiliated; (2) the incumbent relocates without changing its original 22 dBu service contours; (3) both the incumbent and the potential EA applicant certify that they are unaffiliated and that the application is for the sole purpose of relocating an incumbent to other channels in the 800 MHz band; and (4) the application is accepted for filing prior to release of the Public Notice announcing the auction for the upper 10 MHz block and establishing a date for filing of FCC Form 175 ("short-term") applications.[7]

B. Second Further Notice of Proposed Rule Making

In the 2nd FNPRM, the Commission has requested comments on a number of issues. Most of the issues relate to the definition of "comparable facilities" and what methods should be used to license the "lower 80" SMR Pool channels and General Category Pool frequencies.

1. Upper 200 Channel Block Issues

a. Mandatory Relocation from the Upper 200 Channels

In the First Report and Order, the Commission decided that mandatory relocation procedures would apply in the Upper 200

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[6] Id. at 46.

[7] Id. at 47.

Channel Band after a voluntary period.[8] In the 2nd FNPRM, the Commission tentatively concluded that, for purposes of the mandatory negotiation period, an offer by an EA licensee to replace an incumbent's system with comparable facilities constitutes a good faith offer. [9]

The FCC created a two-phase mandatory relocation mechanism under which there is a fixed one-year period for voluntary negotiations between EA licensees and incumbents and a two-year period for mandatory negotiations.[10] Under this mechanism, if an EA licensee and an incumbent licensee fail to reach an agreement by the conclusion of the mandatory negotiation period, then the EA licensee may request involuntary relocation of the incumbent's systems provided that it: (i) guarantees payment of all costs of relocating the incumbent to comparable facilities: (2) completes all activities necessary for placing the new facilities into operation, including engineering and frequency coordinations, if necessary; and (3) builds and tests the incumbent's new system.[11]

The FCC will require EA licensees to notify incumbents operating on frequencies included in their spectrum block of their intention to relocate such incumbents within 90 days of the release of the Public Notice commencing the voluntary negotiation period.[12]

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[8] Id. at 73.

[9] id. at 125.

[10] Id. at 8.

[11] Id. at 48.

[12] Id.

If an incumbent does not receive timely notification of relocation, the EA licensee loses the right to require that incumbent to relocate.[13] The incumbent licensee who has been notified of intended relocation will be able to require that all EA licensees negotiate with such licensee together.[14]

Similar to its approach in the broadband PCS context, the FCC seeks comments in the 2nd FNPRM in PR Docket No. 93-144 on how responsibilities for relocation should be shared by all EA licensees benefitting from relocation of the same incumbents and the definition of "comparable facilities."

i. Distributing Relocation Costs Among EA Licensees

The FCC proposes to require EA licensees to share the relocation costs on a pro rata basis (based on the actual number of the incumbent's channels located in the EA licensees' respective spectrum blocks), unless all such licensees agree to a different cost-sharing arrangement.[15]

The FCC tentatively concluded that premium payments should not be reimbursable, and that "actual relocation costs" would include, but not be limited to: SMR equipment; towers and/or modifications/ back-up power equipment; engineering costs; installation; system testing; FCC filing costs; site acquisition and civil works; zoning

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[13] Id.

[14] Id.

[15] ID. at 120.

costs; training; disposal of old equipment; test equipment; spare equipment; project management; and site lease negotiation.[16]

b. **Relocation Guidelines -- Comparable Facilities**

The FCC proposes that by "comparable facilities," a relocated incumbent would: (a) receive the same number of channels with the same bandwidth; (b) have its entire system relocated, not just those frequencies desired by a particular EA licensee; and, (c) once relocated, have a 40 dBu service contours that encompasses all of the territory covered by the 40 dBu contours of its original system.[17] The FCC tentatively concluded that an EA licensee's relocation obligations to an incumbent will not require the EA licensee to replace existing analog equipment with digital equipment when there is an acceptable analog alternative that satisfies the comparable facilities definition.[18] In the event that an incumbent still wishes to obtain digital equipment under these circumstances, the FCC believes that the incumbent should be required to bear the additional costs associated with such an upgrade of its system.[19]

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[16] Id.

[17] Id. at 124.

[18] Id. at 125.

[19] Id.

C. Resolution of Relocation Disputes

The FCC encourages parties to use expedited alternative dispute resolution ("ADRII) procedures, such as binding arbitration or mediation.[20] The FCC also seeks comments on whether either the industry trade associations or the FCC's Compliance and Information Bureau should be designated as arbiters for such disputes.[21]

d. Disaggregation of Spectrum Blocks in the Upper 200 Channels

The FCC tentatively concluded that EA licensees should be permitted to disaggregate their spectrum blocks.[22] Disaggregation is defined as assigning discrete portions of the spectrum licensed to a geographic licensee. The assignee would receive a separate EA license to operate on the disaggregated channels throughout the EA.

e. Partitioning in the Upper 200 Channels

The Commission tentatively concluded that the partitioning option should be extended to SMR licensees generally rather than limited to rural telephone companies. Partitioning is defined as assigning geographic portions of the EA license on geopolitical boundaries. The assignee would receive a separate EA license to operate on the channels throughout the partitioned area.[23]

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[20] Id. at 120.

[21] Id. at 121.

[22] Id. at 117.

[23] Id. at 118.

2. Licensing of other 800 MHz SMR Channels

The Commission tentatively concluded that the Lower 80 and General Category 800 MHz SMR channels should be licensed on a geographic basis with EA service areas.[24] The Commission proposed to license the lower 80 channels in five-channel blocks.[25] The Commission proposed to license the General Category channels in channel blocks of 120 channels, 20 channels and 10 channels per geographic licensing area.[26]

a. Coverage Requirements

The FCC proposes to apply the same coverage requirements as the upper 200 channels to lower 80 and General Category geographic area licensees.[27] The FCC also proposes that lower 80 and General Category licensees be able to satisfy their coverage requirements by meeting a "substantial service" standard, like that adopted in the broadband PCS 10 MHz blocks and 900 MHz SMR services.[28]

The FCC also tentatively concluded that the geographic area lower 80 and General Category licensees should be responsible for meeting their coverage requirements, regardless of the extent to which their service areas are occupied by co-channel incumbents.[29] The FCC proposes to require the geographic area licensees for the

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[24] Id. at 128.

[25] Id. at 130.

[26] Id.

[27] Id. at 134.

[28] Id. at 135.

[29] Id.

lower 80 and General Category channels to satisfy their coverage requirements directly.

b. Relocation of General Category and Lower 80 Incumbents

The FCC tentatively concluded that there should be no mandatory relocation plan for these frequencies and that incumbents should be allowed to continue to operate under their existing site-specific authorizations, with geographic area licensees require to provide co-channel interference protection to all constructed and operating systems within their license area.[30] The Commission proposed to provide incumbent licensees operational flexibility within their currently authorized 22 dBu interference contours.[31]

c. Geographic Licenses for General Category And Lower 80 INcumbent Licenses

The FCC proposes to allow SMR incumbents operating on the Lower 80 SMR and General Category channels to have their licenses reissued if they are not the successful bidder for the geographic area license which includes the area in which they are currently operating. Under this procedure, which will be granted post-auction upon the request of the incumbent, an incumbent may convert its current multiple site licenses to a single license, authorizing operations throughout the contiguous and overlapping 22 dBu contours of the incumbent's previously authorized sites.

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[30] Id.

[31] Id. at 136.

d. **Co-channel Protection for General Category And Lower 80 Incumbents**

With respect to incumbent co-channel facilities, the FCC proposes to retain the level of protection afforded under its existing rules.[32] Thus, a market-area licensee would be required either to locate its stations at least 113 km (70 mi) from the facilities of any incumbent or to comply with the co-channel separation standards set forth in its short-spacing rule if it seeks to operate stations located less than 113 km (70 mi) from an incumbent licensee's facilities. with respect to adjacent market-area licensees, the FCC proposes that market-area licensees, the FCC proposes that market-area licensees provide interference protection either by reducing the signal level at their service area boundary, or negotiating some other mutually acceptable agreement with all potentially affected adjacent licensees.[33]

e. **Competitive Bidding Rules for Lower 80 and General Category 800 MHz SMR Channels**

Given its successful experience in conducting simultaneous multiple round auctions, the FCC proposes to use this competitive bidding methodology for the lower 80 and General Category channels as well.[34]

As in the case of other auctionable services, the FCC proposes to require participants for the lower 80 and General Category

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[32] Id. at 137.

[33] Id. The Commission did not discuss the California sites which receive by rule different protection.

[34] Id. at 141.

auction to tender in advance to the Commission a substantial upfront payment as a condition of bidding.[35] For services that are licensed by simultaneous multiple round auction, the FCC has established a standard upfront payment formula of $0.02 per activity unit for the largest combination of activity units a bidder anticipates bidding on in any single round of bidding.[36]

f. **Eligibility for Designated Entity Provisions**

The FCC proposes to establish two small business definitions: to obtain the 10 percent bidding credit, an applicant would be limited to $15 million in average gross revenues for the previous three years; to obtain the 15 percent credit, the applicant would be limited to $3 million in gross revenues for the previous three years.[37] The FCC also proposes to make the small business bidding credit available on all lower 80 and General Category Channels that are licensed on a market-area basis.[38]

g. **Eligibility for General Category and Lower 80 Channels Geographic Licenses**

The Commission proposed to adopt size restrictions for entities applying for geographic area licenses for remaining SMR channels (including the General Category) by designating them as

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[35] Id. at 142

[36] Id. at 143.

[37] Id. at 161.

[38] Id. at 166.

an "entrepreneurs' block," with eligibility limitations based on gross revenues and total assets.[39]

h. **Auction Methodology**

The Commission proposed to award geographic area licensees for the lower 80 channels through a simultaneous multiple round auction with 16 five-channel blocks in each EA and regional EA groupings for competitive bidding purposes. The Commission proposed to employ market-by-market stopping rules for the Lower 80 SMR channels and simultaneous stopping rules for the General Category licenses.[40]

II. COMMENTS

These Comments must be reviewed in conjunction with PCIA's previously filed Ex Parte Comments of September 29, 1995. Many of PCIA's recommendations and suggestions in these Comments were also reflected in the Ex Parte Comments.

PCIA must reiterate that these Comments should not be taken to imply that PCIA supports the Commission's intention to auction any 800 MHz SMR spectrum. As PCIA has stated to the Commission in numerous filings and ex parte meetings, PCIA does not believe that the Commission has the authority to auction this spectrum.[41] Further, PCIA has repeatedly stated its opposition to mandatory relocation. However, the Commission has made its decision and decided to auction the Upper 200 Channels. Further, the Commission

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[39] Id. at 168.

[40] Id. at 143.

[41] See, for example, ex parte filing of PCIA dated June 6, 1995.

has proposed to auction the Lower 80 SMR and 150 General Category frequencies. Therefore, these Comments are intended to suggest rules to protect incumbent licensees to the maximum extent possible while providing geographic licensees with the maximum benefit from their licenses. PCIA's Comments are being filed with the express understanding that PCIA reserves its rights to continue to oppose auctioning 800 MHz spectrum in any other forum.

It is crucial that 800 MHz licensees know what the new rules will be on the Lower 80 SMR and 150 General Category frequencies before the Commission conducts any auction of the Upper 200 channels and before any relocation occurs. Without such knowledge, it is impossible for incumbent licensees in all portions of the 800 MHz spectrum to know whether to bid on spectrum, whether to attempt to aggregate spectrum in the lower bands, or whether to accept the consequences of being a "relocatee".

A. Policies Governing the Retuning of Incumbent SMR Licenses

As the Commission is learning from the microwave/PCS experience, specificity as to what relocation means, what costs must be paid, and what procedures must apply is critical to the success of this proceeding.[42]

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[42]As stated previously, PCIA does not support mandatory relocation in this proceeding where auction winners who are direct competitors to incumbents can involuntarily relocate incumbent licensees in a situation where no new radio service has been created. Nevertheless, reconsideration of that decision is properly placed in a separate filing which is not yet due to be filed with the Commission. See, note 2, infra.

In its ex parte comments, PCIA presented a detailed "Incumbent SMR Bill Of Rights" to protect incumbent operators. PCIA is pleased that the Commission has incorporated a number of its suggestions into the 2nd FNPRM.[43] However, PCIA believes that it is vital that the Commission detail each and every aspect of the rights of incumbent systems to avoid any misunderstanding or confusion once the relocation process begins. Therefore, PCIA has attached hereto as Appendix 1 PCIA's proposed Incumbent Bill of Rights. The appendix identifies what ideas have already been incorporated by the commission. The agency should seriously consider adopting all the concepts suggested therein.

B. Single Relocation of Incumbent Facilities

PCIA supports the commission's decision that incumbent licensees will not be required to undergo multiple relocations. Where the incumbent system spans multiple EAs, the incumbent should not be subject to different auction winners re-tuning different parts of its system over different time periods.

There is a significant difference between re-tuning a microwave system and re-tuning an SMR system. In re-locating a microwave system, different paths can be re-tuned at different times, provided a complete path from end-to-end is maintained.

In the case of SMR systems, each and every mobile unit in a **contiguous, interactive** system must be re-tuned at the same time,

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[43]For example, the Commission incorporated PCIA's suggestions concerning: (1) the same number of channels for re-tuned licensees; (2) equal system performance; (3) seamless transition, including duplicate backbone; (4) notification; and (5) relocation options.

unless a redundant backbone is constructed. EVERY mobile unit in a fleet must be reprogrammed at the same time, in order to permit the fleet to talk to each other. Thus, an entire company will be without its radios for a period of time while the re-tuning is accomplished. Even when the fleet is given new radios there will still be a disruption of service as the process where units are installed and/or replaced in vehicles takes a significant amount of time and labor. This represents a significant hardship to customers, who may be inclined to discontinue service with the incumbent licensee if there are multiple re-tunings. There is therefore an inherent danger in this process which is not evident in microwave re-tuning.

At the same time, the Commission should ensure that the process does not penalize auction winners unnecessarily, and in the process discourage smaller businesses from participating in the auction. Specifically, a single re-tuning should be required for all portions of the system which are truly inter-active with mobile units programmed and operating on each portion of the system. In other words, an auction winner in a New York EA should not be required to re-tune mobile units in Los Angeles. Such a requirement would result in the inability of any small business to participate in the auction, because relocation would be cost prohibitive for the auction winner.

C. General SMR Rules and Policies

PCIA has stated previously that the General Category Pool channels and the remaining 80 channels in the SMR Pool should initially be available for retuned incumbents with no auctions.[44] Since: (1) it is the commission's intention that much of this spectrum will be for re-tuned SMR licensees from the Upper 200 Channel Block; (2) virtually all of this spectrum is already licensed; and (3) the Commission does not intend to have mandatory relocation of incumbent licensees in the Lower 80 SMR and 150 General Category Pool frequencies, holding an auction in this band is extremely counter-productive to the Commission's purpose in this proceeding.

Nevertheless, licensees in the General Category and Lower 80 SMR Pools should themselves be able to obtain geographic licenses by "clearing off" channels on a channel-by-channel basis in the respective pools. In this manner, a relocated SMR licensee, or an incumbent, can obtain a geographic license without an auction.

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[44]In a written ex parte document filed by PCIA, PCIA documented to the Commission the extensive use of GC and Business Radio Pool channels by private licensees. PCIA suggested that those findings should discourage the Commission from even considering allocations of that spectrum exclusively for SMR use. In deciding to re-allocate the General Category Pool for the SMR Service, the Commission stated its belief that an overwhelming number of General Category licensees were SMR systems. This may be true, however PCIA believes that the Commission must focus on **where** such SMR licensees are licensed. Specifically, much of the SMR licensing on General Category frequencies is ESMR systems in rural areas (and most likely not constructed because of extended implementation requests) and conventional SMR systems licensed through application mills (and again not constructed). PCIA suggests that the Commission review General Category licensing in the major urban areas, where PCIA believes it will find that the majority of licensing is by non-SMR systems.

This provides a significant incentive to incumbents in the Upper 200 Channels to be willing to be re-located quickly. Further, by licensing in this manner, the Commission can maintain open eligibility for the General Category frequencies, thus reducing a significant amount of opposition to the Commission's desire to initiate geographic licensing in the 800 MHz bands.

It is important that the Commission retain open eligibility for General Category frequencies. There are a significant number of non-SMR licensees utilizing General Category frequencies for a variety of purposes, including public safety, airline operations, etc. The number of "clear" General Category frequencies is very small. Thus, there is little sense in reallocating the band in order to hold an auction of limited value, when giving existing licensees the ability to convert their licenses to geographic licenses would provide many licensees with much needed flexibility, while reducing the Commission's licensing burden.

At a minimum, the Commission should delay the imposition of auctions until: (1) all relocation of Upper 200 Channel licensees has occurred; (2) all construction dates for incumbent systems has passed; (3) unconstructed channels have been recovered; and (4) incumbent licensees have had the opportunity to convert their licenses to geographic licenses.[45] At that time, the Commission,

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[45]In this regard, the Commission's partial lifting of the application freeze is perfectly suited to accomplishing this task. The only modification needed to the Commission's application acceptance criteria is to permit applicants to modify their licenses to request geographic licenses in the Lower 80 SMR and General Category Pools.

if it so desires, could auction truly unoccupied channels from spectrum recovered from non-constructing licensees.

If the Commission immediately implements auctions in the Lower 80 SMR and General Category Pool channels, there will be a significant problem for Upper 200 Channel licensees who may be re-tuned. It is important that re-tuned licensees have the opportunity to obtain geographic licenses for the channels to which they are re-tuned. However, if an Upper 200 Channel licensee is going to be re-tuned, but does not know where until after any auction in the lower pools, the licensee would be unable to participate in a lower pool auction for the channels to which the system will be re-tuned.

In addition, the Commission should not auction the lower pool channels until all construction dates have lapsed for the lower channels. If the auction is held while some extended implementation authorizations remain outstanding, auction participants will not be able to determine whether incumbent systems will be constructed, and whether the channel will be available for construction by the auction winner. This will negatively impact auction participation.

Similarly, if construction dates have not lapsed for all systems on the auctioned spectrum, potential bidders will be unable to determine the value of the spectrum if there is no ability to involuntarily relocate the incumbent. Therefore, if the Commission elects to auction this spectrum, the auction must occur after relocation and construction of incumbent systems.

D. Lower 80 SMR and General Category Channel Blocks

PCIA supports the Commission's proposal to license the Lower 80 SMR Pool channels in the same five (5) channel blocks which are generally granted under existing Rules. This should facilitate a smoother transition to geographic licensing in this band.

For the General Category frequencies, however, PCIA believes that the Commission has selected channel blocks which are too large if the Commission elects to auction these channels. Ideally, as stated previously, incumbent licensees should first have the opportunity to convert their existing licenses to geographic licenses. As a result, the license process avoids auctions for much of the spectrum.

Should the Commission elect to use auctions in the General Category Pool, smaller channel blocks should still be used. Without mandatory relocation, applicants will need the ability to be more selective in which channels are requested. For example, a particular incumbent may find that the incumbent's current spectrum is split throughout the various channel blocks, necessitating bidding on all blocks for channels that the incumbent does not want. Applicants should have the ability to apply for their own channel blocks, and smaller channel blocks will facilitate that process. Although the ability to obtain contiguous channels is desireable, the blocks should be no larger than fifty (50) channels, and ten or twenty channels would be better.

E. Lower 80 SMR and General Category Eligibility

The Commission has proposed to adopt size restrictions for entities applying and participating in an auction for Lower 80 SMR and General Category channels, and the Commission has asked for comments on the appropriate restrictions.

The Commission's proposal creates several difficult problems. If the bands for which the restrictions are proposed were vacant, some restrictions would be easy to adopt. However, in this instance there are many incumbent licensees, some of whom may not be eligible under any proposed restriction. PCIA does not believe that the Commission should in any way preclude incumbent licensees from participating in an auction of channels for which they are currently licensed.

PCIA supports the concept of the entrepreneur's block in the General Category and Lower 80 SMR channels for entities with gross revenue under $15 million. In particular, the Lower 80 SMR channels, assigned in five channel blocks with one MHz channel spacing, present a good opportunity for existing licensees (and licensees retuned to this part of the spectrum) to obtain a geographic license for channels which they already occupy.

Should the Commission adopt a limitation for either block, the Commission should continue to permit an incumbent licensee to bid on the block of channels for which they are an incumbent in that EA.[46] Further, any limitation should be for purposes of the auction

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[46]For systems near an EA border, incumbency would be defined as the location of the transmitter site plus a thirty-five (35) mile radius from that point. Thus, an incumbent with a constructed