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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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
	)	DOCKET FILE COPY ORIGINAL
Implementation of Section 309(j) of the Communications Act - Competitive Bidding 800 MHz SMR	)	PP Docket No. 93-253

To: The Commission

REPLY COMMENTS

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

[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.

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Communications Commission ("FCC") in the above-captioned proceeding.

I. BACKGROUND

The initial Comments received by the Commission can be grouped into three categories. First, the concept of auctioning of Lower 80 and 150 General Category channels was universally opposed.[2] Second, parties submitted to the Commission numerous suggestions concerning the definition of "comparable spectrum".[3] Finally, a number of users and users groups objected to the Commission's decision to reallocate the 150 General Category frequencies for SMR use.[4][5]

II. COMMENTS

A. Industry Agreement On Lower SMR And General Category Channels

PCIA is pleased that many participants in this proceeding now support a proposal initially presented to the Commission by PCIA in January of 1995. Specifically, there now appears to be

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[2]See, for example, Comments of United States Sugar Corporation at 13.

[3]See, for example, Comments of Digital Radio, L.P.

[4]See, for example, Comments of General Motors Research at 4; Association of Public-Safety Communication Officials-International, Inc. at 2.

[5]Southern Companies ("Southern") also presented the Commission with a significant discussion questioning the Commission's authority to auction this spectrum. Comments of Southern at 6. PCIA has on several occasions presented the Commission with an analysis to support PCIA's contention that the Commission is without authority to auction 800 MHz spectrum. See, for example, Ex Parte Comments of PCIA filed October 29, 1995. Thus, PCIA fully supports the Comments filed by Southern, but PCIA recognizes that the Commission has heretofore rejected any suggestion that Congress did not intend 800 MHz spectrum to be auctioned.

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agreement in the SMR industry that the Commission should allow a conversion of incumbent licensees from site specific licenses to geographic licenses on a channel-by-channel basis in the Lower 80 SMR and 150 General Category frequencies.[6] While it is unfortunate that agreement on this licensing methodology could not have been arrived at sooner, it is now clear that a licensing plan can be created to solve the licensing problems of both the Commission and licensees.

Although each group has a slightly different view of how the conversion should take place, the universal agreement that there should first be a conversion without auction should persuade the Commission to abandon its attempts to auction this spectrum, at least for encumbered spectrum. The Commission has now been presented with ample evidence that auctioning the Lower 80 SMR and 150 General Category frequencies is unworkable and would result in an inability for operators to compete in the wireless marketplace.

PCIA believes that adoption of PCIA's channel conversion plan will also serve to satisfy non-SMR incumbent licensees. Specifically, PCIA's plan enables the Commission to maintain open eligibility on 150 General Category channels and would permit non-SMR incumbent licensees to obtain geographic licenses without significant cost. In sum, PCIA's plan serves everyone's needs in that: (1) auction winners on the upper 200 SMR channels can offer

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[6]See, Comments of Nextel Communications, Inc. ("Nextel") at 12; American Mobile Telecommunications Association, Inc. ("AMTA") at 19; SMR Won at 10; E. F. Johnson at 8; Pittencrief Communications, Inc. at 8.

geographic licenses on lower channels to upper 200 SMR channel incumbent licensees; (2) incumbent licensees on the Lower 80 SMR and 150 General Category frequencies can obtain geographic licenses through voluntary negotiations with co-channel licensees; (3) non-SMR licensees may maintain access to spectrum; and (4) licensees and the Commission will be relieved of a significant licensing burden.

On this basis, PCIA urges the Commission to reconsider its proposal to auction spectrum for the Lower 80 SMR and 150 General Category frequencies and adopt PCIA's channel conversion plan.[7]

B. **Comparable Spectrum Considerations**

The Commission has been presented with a plethora of Comments on the definition of "comparable spectrum".[8] For the most part, the Comments focus on many of the same issues and there seems to be much agreement on most provisions. Many of the proposals seem to track PCIA's proposal. One issue which bears further discussion is the concept of requiring an auction winner to convert all of an incumbent's frequencies, instead of having the option of re-tuning a portion of the frequencies in the system.[9]

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[7]PCIA would find acceptable a licensing methodology which would utilize auctions for any frequencies which are truly unencumbered throughout the geographic area, either because there are no current licensees or the Commission recovers all licenses on the frequency in the market because of failure to meet construction deadlines.

[8]See, for example, Comments of Council of Independent Communication Suppliers ("CICS") at 4.

[9]See, for example, Comments of Industrial Communications and Electronics at 4.

PCIA agrees that an incumbent should only be relocated one time, and that the relocation should be for all of the channels which the auction winner(s) intends to relocate. However, further exploration of requiring all of the channels to be retuned must be examined. Certainly, the complete system should be retuned where all of the incumbent system's channels in a geographic area technologically would no longer be compatible without a complete changeout. However, where there is no technological reason for relocating all of the system's channels, there does not appear to be the need to require a complete changeout.

Some smaller auction winners may not have the ability to relocate all of the channels in the EA licensed to a larger incumbent. Instead, PCIA recommends that the auction winner have the ability to retune some of the channels, and partition the license to provide the incumbent with a geographic license on the remaining frequencies. Thus, PCIA proposes that the Commission have an "either\or" requirement, giving auction winners the option of relocating all of the system's channels, or partitioning the geographic license on a channel-by-channel basis for those channels for which the auction winner does not desire to retune the incumbent's system.

C. Who Performs The Re-tuning Of Incumbent Systems?

Genesee Business Systems, Inc. ("Genesee") recommends that the Commission mandate that the re-tuning only be performed by the licensee.[10] Genesee raises legitimate concerns with the ability of

[10]Comments of Genessee at 2.

the auction winner to spoil the relationship of the incumbent and the customer. Such concerns were not present in the PCS proceeding. During the voluntary negotiating period, the incumbent licensee could demand this provision. However, during the mandatory period, there may be an opportunity for an incumbent to unreasonably delay the re-tuning. Therefore, PCIA suggests that incumbents and auction winners negotiate during the mandatory relocation period who will perform the re-tuning, and, if such negotiations do not prove productive, the Commission can then specify that the re-tuning be performed by a third party acceptable to both parties.

III. CONCLUSION

For the foregoing reasons, PCIA urges the Commission to modify its proposed rules for 800 MHz licensing consistent with the views expressed herein.

Respectfully submitted,

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