



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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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 Sections 3(n) and 332 of)
the Communications Act Regulatory Treatment)
of Mobile Services)

GN Docket No. 93-252

Implementation of Section 309(j) of the)
Communication's Act -- Competitive Bidding)

PP Docket No. 93-253

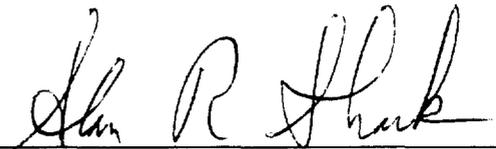
To: The Commission

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**PETITION FOR RECONSIDERATION
OF EIGHTH REPORT AND ORDER**

Respectfully submitted,

**AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.**

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March 18, 1996

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), in accordance with Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully requests reconsideration of two aspects of the Eighth Report and Order in the above-entitled proceeding.¹ The Association believes that the regulatory framework adopted in the First Report and Order portion of this consolidated proceeding is generally sound. In conjunction with the proposal detailed in the March 1, 1996 Joint Reply Comments of this Association, SMR Won, and Nextel Communications, Inc. ("Consensus Position"), the licensing approach adopted in the First Report and Order reasonably balances the interests of various segments of the diverse Specialized Mobile Radio ("SMR") service industry. Moreover, AMTA is convinced that this industry cannot afford any further delay in its ability to expand its systems' capacity and coverage, its service offerings and, most critically, its subscriber base. Commission consideration of the matters raised herein relating to the competitive bidding provisions adopted for the "upper" 200 SMR channels should not impede the agency's efforts to take those actions necessary to implement the licensing provisions adopted in the First Report and Order.

I INTRODUCTION

AMTA is a nationwide, non-profit trade association dedicated to the interests of the specialized wireless communications industry. The Association's members include trunked and conventional 800 MHz and 900 MHz SMR operators, licensees of wide-area SMR systems, and

¹ First Report and Order, Eight Report and Order, and Second Further Notice of Proposed Rule Making, PR Docket No. 93-144, FCC 95-501 (released December 15, 1995) ("Order").

commercial licensees in the 220 MHz band. These members provide commercial wireless services throughout the country. Many of them are vitally interested in all aspects of the 800 MHz regulatory environment generally, and in the Commission's decisions regarding the future licensing of the upper 200 SMR channels in particular. Thus, the Association and its members have a significant interest in the outcome of this proceeding.

II DISCUSSION

A. BACKGROUND

The instant action is the initial decision in a proceeding expected to fundamentally restructure the licensing framework that has governed the 800 MHz SMR industry during its first twenty years. The First Report and Order replaces the current site- and frequency-specific licensing process with a geographic-based system for the upper 200 SMR channels comparable to those used in other, competitive Commercial Mobile Radio Services ("CMRS").²

Specifically, in that portion of its decision, the Commission determined to designate that spectrum for wide-area SMR licensing, to assign channels in blocks of 120, 60 and 20 channels within geographic areas designated as EAs³, to award those licenses pursuant to competitive bidding procedures, and to permit the mandatory relocation of incumbents in that band to comparable 800 MHz spectrum at the expense of the EA license winner.

AMTA does not seek reconsideration of any aspect of that decision, although, again, it urges the Commission to adopt the Consensus Position relating to the licensing of the "lower"

² Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI Section 6002(b), 107 Stat. 312, 392 (1993).

³ See, "Final Redefinition of the BEA Economic Areas," 60 Red. Reg. 31,114 (Mar. 10, 1995).

80 SMR channels and the 150 General Category frequencies as an appropriate balancing of the interests of all segments of the 800 MHz SMR industry. However, as detailed below, the Association does ask the FCC to reconsider two matters relating to the competitive bidding provisions that will govern the award of the upper 200 channel EA licenses.

B. THE COMMISSION SHOULD ADOPT SMALL BUSINESS BIDDING CREDITS FOR THE UPPER 200 CHANNEL EA AUCTIONS.

In the Order, the Commission determined that "special provisions for small businesses are appropriate for the 800 MHz SMR service because build-out of an EA license may require a significant amount of capital." Notice at ¶ 248. The agency also noted that "...small entities may be disadvantaged in their efforts of acquiring 800 MHz SMR licenses if required to bid against existing large companies." *Id.* The FCC has responded to these concerns in two ways. First, it has adopted tiered installment payment schedules like those applied in the 900 MHz SMR auction procedures.⁴ Second, in the companion Second Further Notice of Proposed Rule Making, the FCC has proposed to designate the lower 80 SMR and 150 General Category frequencies as an "entrepreneurs' block", and to exclude entities of an as yet undetermined economic size from bidding in the auctions for that spectrum. Notice at ¶ 249.

AMTA agrees with the Commission's assessment of the difficulties encountered by small businesses when seeking spectrum through the competitive bidding process. Not surprisingly, auction experience to date demonstrates that large, heavily capitalized applicants are likely to prevail when licenses are awarded by competitive bidding. The installment payment provisions adopted by the FCC do not "level the economic playing field" for auction participants of

⁴ See, 47 C.F.R. § 90.910.

significantly disparate economic size, but they are highly valuable tools in better balancing the ability of such parties to compete successfully. Therefore, AMTA endorses that aspect of the FCC's decision.

Additionally, however, AMTA requests the Commission to reconsider its decision not to award bidding credits to small businesses participating in the upper 200 channel auctions. In its Reply Comments on the Further Notice of Proposed Rule Making in this proceeding, the Association recommended that bidding or other appropriate preferences should be granted to existing SMR operators seeking spectrum to expand their current operations.⁵ The Commission has not granted such a preference despite the fact that many small SMR businesses currently operate in this band and would have substantial interest in bidding at least on the 20 channel block if they had any reasonable expectation of prevailing against what are likely to be extremely well-funded competitors. Bidding credits equal to those already approved for the 900 MHz SMR competitive bidding process would enhance the likelihood that the 800 MHz auctions provide a meaningful opportunity even for smaller industry participants.⁶

Thus, AMTA recommends that the Commission again adopt a "tiered" small business bidding credit for these EA licenses. Very small businesses with average gross revenues no greater than \$3 million for the preceding three years should receive a fifteen percent (15%) bidding credit, while businesses with average gross revenues between \$3 million and \$15 million would be entitled to a ten percent (10) bidding credit.

Small business bidding credits are appropriate in this band, irrespective of any future

⁵ See AMTA Reply Comments at ¶ 64, dated March 1, 1995.

⁶ See, 47 C.F.R. § 90.810.

determination to designate some or all of the lower 80 SMR and 150 General Category spectrum as an Entrepreneurs' Block as proposed in the Order. As an initial matter, a lower channel Entrepreneurs' Block designation would be of little or no value to an upper 200 channel incumbent seeking to acquire control of his existing frequencies throughout the EA. Further, as detailed in the Consensus Position, the Entrepreneurs' Block may be limited only to certain portions of that spectrum. Thus, AMTA recommends that the FCC adopt small business bidding credits like those available to 900 MHz competitive bidding applicants.

C. THE PRESENCE OF INCUMBENT LICENSEES SHOULD NOT BE REFLECTED IN THE AUCTION UPFRONT PAYMENTS.

The Order states that the FCC intends to consider the presence of incumbent licensees in its calculation of population coverage for each channel block in each EA which, in turn, will be reflected in the upfront payment for each license. Order at ¶ 202. In AMTA's opinion, the Commission need not, and indeed should not, use differing EA block upfront payments to signal the heavy degree of incumbency on these channels. The very large number of authorizations involved, the fact that incumbency levels are expected to change up until the very last moments before release of the EA auction Public Notice, the fact that the three blocks in each EA include different number of frequencies, and the resource intensive nature of that project all dictate against this approach.

The Association recognizes that the Commission has a responsibility to identify to prospective bidders the heavily encumbered nature of this spectrum. The issue is not whether potential applicants should be made aware of this fact, but how that information can best be disseminated. In AMTA's opinion, the upfront payment approach in the Order is likely to prove both extraordinarily resource-consuming for the FCC's staff, and, ultimately, misleading for

applicants that assume that such information is fully accurate.

The experience with this approach was not entirely positive at 900 MHz, a band with only a handful of incumbent licensees in each geographic area and in which channel blocks of equal size were auctioned within each area. Inaccuracies in the FCC's licensing records, ongoing frequency exchanges by incumbents, and continued processing of Finder's Preferences were among the factors that contributed to what AMTA considers to be the worst possible situation -- applicants are led to believe that the upfront payments are based on accurate incumbency calculations on which they may rely, but they are not. This problem will be substantially worse at 800 MHz because of the vastly greater number of incumbents and the FCC's decision to partially lift the current licensing freeze to permit pre-auction frequency exchanges under certain circumstances. Notice at ¶¶ 75-6.

In practical terms, AMTA's members are less likely than the general public to be misled by erroneous upfront payment calculations because of their depth of knowledge in this area. Indeed, inaccuracies might work to their competitive advantage. Nonetheless, the Association urges the Commission to abandon this concept. Prospective bidders will be better served by being advised that this band is very heavily encumbered, by being provided either with a list of those incumbents or information as to how that information may be obtained from the FCC, and by being alerted to the fact that this information may change and should be reassessed periodically.

III CONCLUSION

For the reasons described herein, AMTA urges the Commission to reconsider those matters detailed above.

CERTIFICATE OF SERVICE

I, Jacqueline Lynch a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 18th day of March, 1996, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing Reply Comments to the following:

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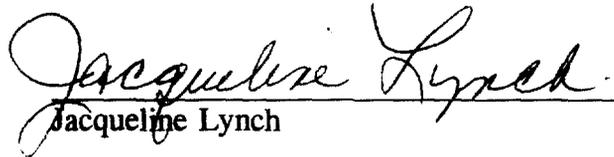
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