

RECEIVED

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

OCT 21 1996

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, RM-8887

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

COMMENTS

The Personal Communications Industry Association ("PCIA")<sup>1</sup>, through its counsel and pursuant to Public Notice released by the Federal Communications Commission ("FCC") on October 4, 1996, hereby respectfully submits its Comments on the Petition for Rule

<sup>1</sup>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.

047

Making filed by the American Mobile Telecommunications Association, Inc. ("AMTA") on September 30, 1996.<sup>2</sup>

I. BACKGROUND

AMTA has proposed that the Commission permit an entity to acquire a partitioned 900 MHz SMR geographic area license or a disaggregated 900 MHz SMR channel block. AMTA's proposal would require the "Partitionee" or "Disaggregatee" to be solely responsible for meeting the construction requirements in its area on its authorized frequencies, with a Partitionee/Disaggregatee acquiring its license within the first three years of the MTA license grant being subject to the same construction requirement as any MTA licensee.

In the event a small or very small business-qualified MTA licensee seeks to partition or disaggregate some of its capacity, AMTA proposes that the Partitionee/Disaggregatee pay the pro rata portion of any outstanding obligations to the Federal Treasury associated with the MTA license being partitioned or disaggregated if the acquiring party is qualified as a small or very small business. It is AMTA's proposal that the proportional value of the license would be determined by applying against the winning bid the percentage of the population in the geographic area partitioned or the percentage of the spectrum disaggregated.

Under the AMTA plan, the new licensee would receive a new call sign with the same expiration date as the original MTA license.

---

<sup>2</sup>DA 96-1654, released October 4, 1996. The Commission incorporated AMTA's Petition into the ongoing proceeding in PR Docket No. 93-144 because of the similarity of issues.

The new licensee would also enjoy a preference in a comparative renewal proceeding if the new licensee has provided "substantial" service to its partitioned area during its past license term and has complied substantially with applicable Commission rules, policies and the Communications Act.

## II. COMMENTS

PCIA has long supported the ability of a geographic licensee to partially assign a portion of the geographic area or channel block for which they are licensed. This process greatly enhances the ability of smaller operators to participate in the auction process. In addition, this partial assignment mechanism also increases the ability of licensees to negotiate with incumbent, site-specific licensees to achieve desirable licensing situations for both licensees.

On this basis, PCIA supports AMTA's proposal. Further, PCIA supports the Commission's inclusion of the proposal in PR Docket No. 93-144. The Commission is correct that there is a similarity of issues between disaggregation/partitioning in 800 MHz and 900 MHz. However, the ability to disaggregate and/or partition a license is even more critical at 800 MHz, because the spectrum blocks are larger and there are many more incumbent licensees.

PCIA also supports the details which AMTA has presented with regard to the manner in which the process should work. However, PCIA would like the Commission to consider an expansion to one of AMTA's proposals.

AMTA has proposed that the proportional value of the license would be determined by applying against the winning bid the percentage of the population in the geographic area partitioned or the percentage of the spectrum disaggregated. PCIA believes that the process of making this percentage determination might bog down the assignment process, as the assignor and assignee would need to wait for the Commission to confirm the applicants' original percentage determination. The possibility of Commission disagreement with the applicants would lead to uncertainty in structuring business deals. Further, specious Petitions to Deny could be filed by third parties which do not agree with the proportional value.

Therefore, PCIA believes that the Commission should permit licensees to make the initial decision as to the proper proportional value of spectrum assigned and such determination should be given the benefit of the doubt. The Commission should only intervene during the assignment process where there is clearly an egregious mis-judgment of proportional value.<sup>3</sup> Should the Commission adopt such a standard, the marketplace will be able to more easily work to structure transactions and there will be less Commission review of transactions and fewer frivolous Petitions to Deny.<sup>4</sup>

---

<sup>3</sup>The incentive to mis-proportion the value of the block being assigned is very real where the assignor is a small business but the assignee is not so qualified.

<sup>4</sup>It should be noted that PCIA's discussion herein regarding proportional values relates only to the current proceeding and is applicable solely to SMR systems in the 900 MHz and 800 MHz bands,

III. CONCLUSION

For the foregoing reasons, PCIA urges the Commission to modify its proposed rules for 900 MHz licensing consistent with the views expressed herein.

Respectfully submitted,

**PERSONAL COMMUNICATIONS  
INDUSTRY ASSOCIATION**

By: Mark J. Golden  
Mark J. Golden  
Vice President, Industry Affairs  
Personal Communications  
Industry Association  
500 Montgomery Street  
Suite 700  
Alexandria, Virginia 22314-1561  
(703) 739-0300

By: Alan S. Tilles  
Alan S. Tilles, Esquire  
David E. Weisman, Esquire  
Meyer, Faller, Weisman and  
Rosenberg, P.C.  
4400 Jenifer Street, N.W.  
Suite 380  
Washington, D.C. 20015  
(202) 362-1100

Date: October 21, 1996

---

as well as CMRS systems in the 220 MHz band.

**CERTIFICATE OF SERVICE**

I, Ruth A. Buchanan, a secretary in the law office of Meyer, Faller, Weisman and Rosenberg, P.C. hereby certify that I have on this 21st day of October, 1996 sent via first class mail, postage prepaid, a copy of the foregoing Comments to the following:

Elizabeth R. Sachs, Esquire  
Lukas McGowan Nace & Gutierrez, Chartered  
1111 19th Street, N.W., Suite 1200  
Washington, D.C. 20036

  
\_\_\_\_\_  
Ruth A. Buchanan