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December 20, 1996

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Ex parte meeting
IB Docket No. 95-91

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Dear Mr. Caton:

American Mobile Radio Corporation ("AMRC") is submitting this letter to reflect a meeting that occurred December 17, 1996 between AMRC and Commission staff. The Commission was represented by Rosalee Chiara, Diane Conley, Kathleen O'Brian Ham, Joseph Heaps, John Stern, and D'wana Speight. AMRC was represented by Scott R. Flick, of Fisher Wayland Cooper Leader & Zaragoza, and the undersigned.

The substance of the meeting concerned the licensing procedures to be used for satellite Digital Audio Radio Service ("DARS") systems. AMRC strongly opposes the use of auctions to license such systems and urges the Commission to make every possible effort to avoid the mutual exclusivity that could lead to the use of auctions.

Auctions are inappropriate for the licensing of satellite systems by domestic administrations, since satellite systems are inherently international in nature. The international nature of satellites was recognized by the Commission in the DISCO proceedings. In the case of satellite DARS, the Industry Advisory Committee recently accepted a paper in preparation for WRC-97 that proposes to create a Region 2 allocation for DARS in the band at issue in this proceeding.

The Strategic Policy Research study of satellite auctioning, submitted to the Commission earlier this year by the Satellite Industry Association, elaborates on the public harms that would be created by the use of auctions to license satellite systems. Among other things, the study describes how auctions in the U.S. are likely to lead to sequential auctions in other countries, a process that would be inefficient and add incalculable costs and risks to the deployment of new systems.

There is a legal impediment to auctioning satellite DARS licenses, since the Commission does not have authority under Section 309(j)(2)(A) to use auctions to award licenses for anything other than subscription services. AMRC and other applicants have indicated that they are likely

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to use their systems to provide a free broadcast service supported by advertising revenues. AMRC believes that the viability and success of satellite DARS is based in large part on its ability to operate in this manner. If the Commission were to prohibit the use of satellite DARS to provide a broadcast service in order to permit an auction, the Commission would destroy the systems' viability.

The Commission should not use auctions to allocate spectrum between terrestrial and satellite systems. Even if the auctions are for nationwide access to the spectrum, it would be rare that a potential satellite system operator could afford to bid as much as a terrestrial system operator. The potential customer base for satellite services is typically much smaller than that for terrestrial services. Nonetheless, satellites play a critical role in providing distance insensitive service. Moreover, a satellite system's access to spectrum is conditioned on an international frequency coordination process.

The DARS applicants have all spent a great deal of time and resources on the development of their systems. It would be unfair to the applicants and bad public policy for the Commission to discourage this kind of innovation and entrepreneurial effort by deciding at this late date to impose additional costs by either opening a new cut-off for applications or conducting auctions.

Instead of auctions, the Commission should focus on eliminating any mutual exclusivity that may exist among the current group of applicants. This includes fully exploring and providing an opportunity for settlement among the applicants or the sharing of the spectrum by various systems. The Commission certainly should not do anything that would make the elimination of mutual exclusivity more difficult, such as accepting additional applications or setting a deadline for a voluntary settlement. If the Commission does set any deadline for settlement, it should provide the applicants at least ninety days from the issuance of any such order, in order to provide the minimum sufficient time for parties to reach an understanding on the meaning of any new rules, develop new business plans, and negotiate with the other applicants.

Very truly yours,



Lon C. Levin

cc: Rosalee Chiara
Diane Conley
Kathleen O'Brian Ham
Joseph Heaps
Nancy Markowitz
John Stern
D'wana Speight
Amy Zoslov
Parties of record in this proceeding