Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of	)	
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Amendment of Part 1 of the	)	
Commission's Rules--	)	WT Docket No. 97-82
Competitive Bidding Proceeding	)	

To: The Commission

COMPU-DAWN'S COMMENTS ON THE NOTICE OF PROPOSED RULE MAKING

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Compu-DAWN, Inc., ("Compu-DAWN") hereby submits the following comments in response to the Notice of Proposed Rulemaking ("Notice") adopted by the Commission in the above-captioned proceeding. Compu-DAWN strongly supports the Commission's proposal to establish uniform auction procedures that are flexible enough to apply to any service and that streamline the competitive bidding process. In addition, these procedures should be creatively designed using market-based incentives to serve the public interests in a diverse communications industry and advanced public safety services. Compu-DAWN, in this spirit, urges the Commission to structure its auction rules to help private entities compete to meet the immediate and expanding spectrum and service needs of police, fire, emergency, medical and other public safety agencies.

I. SUMMARY AND INTRODUCTION

Compu-DAWN is a small company that is primarily engaged in designing, developing, licensing, installing and servicing computer software products and systems for law enforcement and other public safety agencies. These products greatly enhance

emergency public safety dispatch and communications systems. By permitting voiceless dispatch, instantaneous roadside access to local, state and national criminal databases, pre-planing for emergency or disaster situations, and photo transmissions in the field,[1] these systems have been praised for putting another cop on the beat for each officer that is equipped with Compu-DAWN's system. These mobile systems, now at work in more than 55 public safety agencies have the additional advantage of being able to operate on virtually any frequency under 1 GHz and to inter-operate across frequencies and agencies using different hardware systems.

Congress and the Commission have long recognized the important role of public safety services and the need for adequate spectrum to provide these services. That need has never been so urgent, as recently documented by the widely respected Public Safety Wireless Advisory Committee ("PSWAC")[2]: "Unless immediate measures are taken to alleviate spectrum shortfalls and promote interoperability, Public Safety Agencies will not be able to adequately discharge their obligation to protect life and property in a safe, efficient, and cost effective manner." Appealing to Congress, Michael Amarosa, New York City's Deputy Police Commissioner for Technological Development, embraced PSWAC's recommendations: "Public safety communications is at a critical juncture. . . In an era

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[1] These photo transmissions allow officers in the field to, among other things, create line-ups, find missing persons, verify signatures and study mug shots.

[2] In 1995, at the direction of Congress, the Commission and the National Telecommunications and Information Administration ("NTIA") created PSWAC, directing it to evaluate the wireless communications needs of federal, state, and local public safety agencies through the year 2010, and to make recommendations regarding those needs. PSWAC brought together more than 500 representatives of the public safety community in a massive collaborative effort and delivered a comprehensive 75-page report in September 1996. *See* Final Report of the Public Safety Wireless Advisory Committee, September 11, 1996 (hereafter "PSWAC Final Report").

where radio spectrum is being auctioned for billions of dollars, public safety faces the true threat of being left behind from the innovation and progress now pervading communications."[3]

Public safety spokespeople have, by and large, focused on obtaining additional allocations for public safety entities (defined in Part 90 of the Commission's rules). Yet the PSWAC Report emphasizes the need for increased public safety use of commercial services. Indeed, Compu-DAWN's experience suggests that commercial entities substantially devoted to public safety services can make large contributions to public safety very efficiently. Compu-DAWN believes that the acquisition of FCC licenses would greatly enhance its ability to develop and provide public safety support services to the nation's police, fire, and other emergency service agencies. With such licenses, it could offer seamless, end-to-end service at a reasonable price and with few of the interoperability problems that currently make public safety operations inefficient.

Public safety entities use commercial services to a limited extent now. But these services are not offered competitively; the frequencies may not be dedicated and cannot be depended on to be available for the long term. By encouraging companies to dedicate private frequencies for public safety services and support services, the Commission would create a more competitive arena, and as a result, ensure a better product for public safety agencies at a better price. The difficulty, of course, is that the provision of public safety services and support services is so far less remunerative than other uses of a given band that

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[3] Statement of Michael Amarosa, Deputy Police Commissioner, Technological Development, New York City Police Department, before the House Telecommunications Subcommittee on February 12, 1997 (hereafter "Amarosa Statement"), at 4.

few, if any, entities could afford to dedicate spectrum for public safety uses. However, substantial bidding credits would make it possible for Compu-DAWN and other public safety service and support providers to offer these services more reliably, efficiently and widely.

Compu-DAWN proposes that entities that dedicate at least 75% of their capacity for public safety purposes should be eligible for 50% bidding credits in any auction of suitable spectrum and should be required to sustain their commitment for public safety. Such credits would further Congress' vision of broad participation in spectrum auctions[4] as well as the public interest in more capable public safety communications systems.

II. THE PUBLIC SAFETY COMMUNITY HAS AN URGENT NEED FOR SPECTRUM AND SERVICES

The efficient functioning of public safety agencies is vital to the safety and welfare of the citizens they serve; effective communications are, in turn, essential to public safety functions.[5] Over the last year, however, the Administration,[6] the Commission,[7]

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[4] In the Omnibus Budget Reconciliation Act of 1993, Congress authorized the FCC to award licenses by competitive bidding for certain spectrum-based services. Budget Act, Pub. L. No. 103-66, Title VI, § 6002(b), 107 Stat. 312 (1993). In authorizing the use of auctions, Congress directed the Commission to "promote economic opportunity for a wide variety of applicants. . .." 47 U.S.C. § 309(j)(4)(C)(ii).

[5] Amarosa Statement, at 4 ("[G]rave decisions regarding the health and welfare of our citizens are made by public safety professionals on a daily basis all across the country. Evolving, radio-based technologies and the existence of effective spectrum management, combined with spectrum availability, are crucial to these professionals' efficient discharge of their duties as first responders and as life savers.").

[6] In the first week in February, Attorney General Janet Reno announced President Clinton's concern for public safety spectrum needs and his recommendation that 24 MHz from the television channels 60-69 be reserved for public safety use. *See Statement by Attorney General Janet Reno on Proposal to Set Aside Commercial Frequencies for Public Safety Use*, February 6, 1997.

[7] See *The Development of Operational, Technical, and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010*, WT Docket No. 96-86, *Notice of Proposed Rule Making*, 11 FCC Rcd 12460 (rel. April 10, 1996)

members of Congress,[8] the public safety community, and non-public-safety users of spectrum have unanimously agreed that the public safety community faces serious challenges with respect to communications and spectrum usage.

The PSWAC Final Report, which lays out the challenges faced by the public safety community and suggests possible solutions, has been widely endorsed by both the private sector and government policymakers.[9] PSWAC concluded that 2.5 MHz of spectrum are needed immediately, an additional 25 MHz will be needed within five years, and as much as 70 additional MHz will be needed by 2010.[10] Deputy Police Commissioner Michael Amarosa highlighted this and other PSWAC recommendations in recent testimony before the House Telecommunications Subcommittee.[11] Chairman Hundt agreed, approving

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("Public Safety NPRM").

[8] In light of the near-unanimous consensus that public safety users need more spectrum, Senator McCain has recently proposed legislation to reserve channels 60-69 for public safety use. *See* S. 255, The Law Enforcement and Public Safety Telecommunications Empowerment Act, as introduced in the United States Senate on February 4, 1997. Noting that "state and local agencies responsible for law enforcement and public safety have inadequate spectrum, the bill would amend the Communications Act of 1934 "to provide for the reallocation and auction of a portion of the electromagnetic spectrum to enhance law enforcement and public safety telecommunications." *Id.*, Section 2(6).

[9] This landmark report has already become the central document in today's re-thinking of government spectrum policy. For instance, it played an influential role in a January 1997 White Paper written by Gregory L. Rosston and Jeffrey S. Steinberg of the FCC, Gregory L. Rosston & Jeffrey S. Steinberg, Using Market-Based Spectrum Policy to Promote the Public Interest (January 1997) (hereafter "White Paper"), which paper has itself been called by Chairman Hundt "the single best summary of desirable spectrum policy," and one that "should generally and specifically guide the Commission's decisions." Statement of Reed Hundt, Chairman of the FCC, before the House Telecommunications Subcommittee on February 12, 1997 (hereafter "Hundt Statement"), at 3.

[10] PSWAC Final Report, at ¶ 2.2.1.

[11] *See* Amarosa Statement. Amarosa, who spoke on behalf of the City of New York, as well as a variety of organizations with an interest in public safety spectrum usage, including the Association of Public Safety Communications Officials International and the National League of Cities, had also helped lead the final effort to draft the PSWAC report.

the PSWAC report, and noting the urgent need for more spectrum for public safety uses.[12] Many comments filed this winter by interested parties in the advanced digital television proceeding pending before the Commission[13] cited the PSWAC Report, and confirmed the need for additional public safety spectrum.[14]

As Chairman Hundt has observed, however, additional spectrum will not solve *all* of the problems faced by the public safety community.[15] PSWAC expresses a concern over "hampered interoperability"[16] among public safety operations and describes how public safety officials in different agencies and different jurisdictions are limited in their ability to communicate with each other.[17] PSWAC cites a variety of explanations for this problem, including incompatible radio equipment,[18] the inability (or sometimes failure) of public

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[12] *See* Hundt Statement, at 31-32.

[13] *See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, MM Docket No. 87-268, *Sixth Further Notice of Proposed Rulemaking*, 11 FCC Rcd 10968 (rel. August 14, 1996) ("DTV NPRM").

[14] *See, e.g.,* Comments of Association of Public Safety Communications Officials, at 11-12, 15-16; Ericsson, at 9-10; International Association of Chiefs of Police, at 1-2; Motorola, at 5-6; UTC, at 6; City of Mesa, Arizona, at 3; California Department of General Services Telecommunications Division, at 6-7; International Municipal Signal Association & International Association of Fire Chiefs, at 4-6.

[15] Hundt Statement, at 33 (Additional spectrum "is only the first step in improving our public safety communications. . . . In the long run, we must take several steps to make sure that public safety officers have access to the best equipment and the most advanced services.").

[16] Compu-DAWN's system alleviates the *day-to-day, mutual aid* and *task force* interoperabilty concerns raised by PSWAC. PSWAC Final Report, at ¶ 2.1.5. Indeed, Compu-DAWN's system fills a critical need in emergency situations such as the bombing of the World Trade Center by allowing public safety agencies to communicate with each other effectively and thereby respond to the crisis immediately and efficiently.

[17] PSWAC Final Report, at ¶ 2.1.4.

[18] PSWAC Final Report, at 2 (Executive Summary).

safety agencies to implement available technological advances,[19] and inadequate funding.[20]

Solutions to these operational problems facing public safety must also be sought. Public safety agencies *must* make their use of spectrum more efficient[21] by availing themselves of emerging technologies.[22] The development of affordable technologies (and applications thereof) tailored to public safety usage, should be encouraged and helped to compete in the marketplace against non-public safety applications.[23] This will require a genuine partnership between public safety agencies and commercial entities that provide public safety technologies like Compu-Dawn.[24]

PSWAC predicted that public safety agencies will increase their use of commercial services in the future.[25] Noting the "changing role of commercial services in

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[19] *See e.g.*, PSWAC Final Report, at ¶ 2.2.13 ("The availability of efficient and effective radio technologies is necessary for Public Safety agencies to protect the lives and property of the country's citizens in a safe and economical manner.").

[20] *See* PSWAC Final Report, at ¶ 1.5 ("Equipment is old and funding for new equipment is often scarce."); ¶ 2.1.8 ("Interoperability (or the lack thereof) is often affected by non-technical factors including reluctance to adopt new approaches and funding limitations.").

[21] *See* Reply Comments of Broadcasters Caucus in the DTV NPRM, at 27 (noting that many broadcasters have long felt public safety needs could be addressed through technological improvements and greater efficiency).

[22] *See* Hundt Statement, at 34 (noting that public safety agencies need new equipment and upgraded, more efficient systems). Compu-DAWN's systems operate on ready-made equipment and can be implemented cheaply and quickly.

[23] *See* PSWAC Final Report, at ¶ 2.5 (use of commercial systems as a reasonable alternative for public safety agencies will depend on their being available at affordable costs).

[24] *See* White Paper, at 15 (concluding that the public interest is "best served when public and private enterprises produce economically efficient types and quantities of public goods").

[25] PSWAC Final Report, at ¶ 4.3.25.

supporting Public Safety communications," PSWAC properly concluded that public safety agencies should utilize commercial services that fill their needs and that commercial service providers should provide a "market basket of products based on those requirements."[26] So far, the market for public safety services is not competitive and has not yielded sufficiently stable or reliable services. As the recent White Paper points out, the marketplace alone has not been able to generate the incentives needed for a workable partnership between commercial services and public safety agencies.[27] Commercial service providers presently lack incentives to develop technology and applications tailored to public safety usages. They also lack the ability to market such technology and applications at a price that public safety agencies can afford to pay. This is *precisely* where the Commission can, and should, step in.[28] In this proceeding, the Commission has the opportunity to use the power of the marketplace to provide incentives for much-needed partnerships between commercial services and public safety agencies.

We believe that the Commission should craft auction rules to (1) nurture more competition in the provision of public safety services and support services so as to meet

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[26] PSWAC Final Report, at ¶ 2.3.

[27] Use of the market forces in the competitive bidding process to facilitate a partnership between commercial services and public safety would further the spectrum policy goals laid out by the White Paper, and endorsed by Chairman Hundt before the House of Representatives. Speaking of the fact that the "public safety community needs to work more closely with commercial providers to see how commercial providers may be able to serve public safety needs," Chairman Hundt said "more can be done." Hundt Statement, at 35. He noted and applauded Commission efforts to encourage this process, and drew the necessary link between auctions and improvements in public safety communications. *Id.*

[28] PSWAC agrees that the Commission "should monitor the market and *undertake targeted intervention* to correct for significant market failures, where necessary, to ensure competitive conditions or advance significant public interest goals." White Paper, at 24 (emphasis added).

public safety's needs for additional spectrum as well as additional efficiency and (2) allay the fears of some public safety agencies that by contracting with private entities, they will lose control or sacrifice reliability of service. Bidding credits that attach to particular uses of the auctioned spectrum could achieve these goals. For example, an entity like Compu-DAWN could take advantage of bidding credits to acquire the spectrum to provide the additional 2.5 MHz that public safety agencies need immediately without any *new* public safety allocations. This 2.5 MHz, or some other amount of spectrum, could be used interoperably with existing allocations. In return for the credit, the entity would have to structure its business so as to provide stable and continuous service to public safety entities.

III. THE COMMISSION SHOULD ENSURE ENTITIES LIKE COMPU-DAWN MAY OBTAIN SPECTRUM AT AUCTION TO PROVIDE NEEDED PUBLIC SAFETY SERVICES

Compu-DAWN is acutely aware of the public safety community's needs for additional spectrum. Since 1983, Compu-DAWN has been providing public safety software applications to law enforcement, fire departments and emergency management systems.[29] Currently, Compu-DAWN provides valuable public safety services to more than 55 law enforcement and public safety agencies primarily located in New York State.[30] Compu-DAWN is expanding its service to other states and through the bidding process to establish

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[29] Compu-DAWN's mobile product AMO™ (Alecs 2000™ Mobile Online) provides emergency response drivers with interactive direct access to headquarters as well as local, state and national crime information databases. Compu-DAWN's system also brings users a full range of advanced solutions: transmission of photos, text-to-speech, voice command recognition that converts to data, mapping and automatic vehicle locating services. *See* Description of Compu-DAWN, attached hereto as Exhibit A. Compu-DAWN's communications partners include IBM, GTE, Bell Atlantic/Nynex and AT&T.

[30] *See* Letter dated February 2, 1997 from the Garden City Police Department to the Long Island Research Institute, attached hereto as Exhibit B.

wireless networks for public safety agencies nationwide. Using its own state-of-the-art software applications, Compu-DAWN will employ a sufficient number of dedicated re-usable narrow-band channels for a public safety network. These applications will be combined with low-cost, commercially available, off-the-shelf hardware, such as notebook computers and data transceivers, and will include applications such as computer-aided dispatching, computer interfacing with local, state and national crime information databases, advanced mobile on-line radio computing, automatic vehicle location, records management and photo-image database systems.[31/]

Controlling project variables which would otherwise hamper the ability of a single agency to provide similar services, Compu-DAWN can provide a total solution to individual public safety agencies in an abbreviated time frame, responding in emergency situations with secure, reliable and effective support. There are roughly 21,860 police agencies in the United States and over 35,000 fire departments that need reliable communications systems to conduct their operations. A mere 20% of these public safety agencies are computerized. Compu-DAWN's modular systems transform the workings of these agencies. And Compu-DAWN is equipped to handle the gamut of public safety concerns, including security, prioritization of channel capacity, software application and computer hardware issues, system integration, system and component cost issues, and various operational issues. One of the most salient features of Compu-DAWN's system is that it is frequency-agile and permits public safety officials in different agencies and different jurisdictions to communicate with each other, regardless of what frequencies they use. By

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[31/] *See* Exhibit A.

entering the spectrum market, Compu-DAWN and its competitors will be able to use their expertise in designing systems to also satisfy the spectrum needs of a variety of agencies at the local, state and national levels.

IV. THE COMMISSION SHOULD AWARD BIDDING CREDITS TO ELIGIBLE PUBLIC SAFETY SERVICE AND SUPPORT PROVIDERS

The Commission must consider how best to promote the public interest by ensuring that public safety services are abundant, sophisticated, efficient and equipped to handle every type of emergency and life-threatening situation.[32] Bidding credits for small businesses open the door somewhat to entities desiring to provide public safety services and support services by participating in the competitive bidding process.[33] But the small business credits, designated for one public interest, are not sufficiently adept at satisfying a distinct public interest in public safety services. Some entities that might provide such services may not qualify for small business credits but, if given an incentive, would provide the necessary public safety support services at reasonable rates. More commonly, the public safety bidding credits would provide opportunities for entities like Compu-DAWN that *do* qualify for small business credits but, even so, would have difficulty competing against those

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[32] The Commission has an obligation in all of its spectrum allocation proceedings to consider the impact of its decisions on the safety of life and property, 47 U.S.C. § 151, and Congress has affirmed that "radio services which are necessary for the safety of life and property deserve more consideration in allocating spectrum than those services which are more in the nature of convenience or luxury." S. Rep. No. 191, 97th Cong., 2d Sess. 14 (1981), reprinted in U.S.C.A.N. 2237, 2250.

[33] *See e.g., In re Rulemaking to Amend Parts 1, 2, 21, 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Services and for Fixed Satellite Services, Second Report and Order, Order on Reconsideration and Fifth Notice of Proposed Rulemaking*, FCC 97-82 (March 11, 1997); *In re Amendment of Part 90 for the Use of the 220-222 MHz Frequency Band by the Private Land Mobile Radio Service, Third Report & Order and Fifth Notice of Proposed Rulemaking*, FCC 97-57 (February 19, 1997).

planning to offer more remunerative and varied services. In addition, the requirements attached to the public safety credits would instill confidence in the public safety community that the services provided on spectrum bought at auction will be consistently available for the long term. Offering incentives and opportunities to invest in public safety services will provide crucial assistance to the public safety community through flexible and commercial means. In accordance with this objective, Compu-DAWN urges the Commission to designate public safety service and support providers[34] as entities eligible for 50% bidding credits in this rulemaking process.

In the recent Wireless Communications Service ("WCS") proceeding, the Commission sought comment on whether "the Commission [should] offer bidding credits to commercial providers who propose to provide these types of [public safety] services."[35] Ultimately, noting the technical configuration and the financial resources that a 2.3 GHz system would require, the Commission found the WCS spectrum was not useful in meeting the public safety community's spectrum requirements.[36] Despite receiving comments that supported the use of bidding credits for entities with specific plans for satisfying public safety needs on a wholesale basis,[37] the Commission did not discuss the desirability of public

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[34] Compu-DAWN supports the definitions of public safety service provider and public safety support provider set forth by PSWAC and proposed by the Commission in its Public Safety NPRM.

[35] *See Amendment to the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS")*, GN Docket No. 96-228, *Notice of Proposed Rulemaking*, FCC 441, 61 FR 59048 (rel. November 17, 1996) ("WCS NPRM").

[36] *See Amendment of The Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS")*, GN Docket No. 96-228, *Report and Order*, FCC 97-50 (rel. February 19, 1997) ("WCS Order"), at 39-41.

[37] *Id.*, at 39.

safety bidding credits. The Commission has an opportunity in this proceeding to revisit the issue. If bidding credits are built into Part 1 of the Commission's rules, credits can be implemented as appropriate in each auction. Entities like Compu-DAWN can provide reliable support services on bands below 1 GHz. Because Compu-DAWN and its competitors can also offer support services on one band that can then be integrated with existing public safety operations on a distant band, there are few constraints on the aggregation of public safety spectrum. In light of this flexibility, the Commission should consider adopting public safety bidding credits in its general auction rules.

To establish the bidding credits suited to public safety service and support providers, the Commission needs to: (1) define eligible public safety service and support providers ("PSSPs"); (2) describe the nature of the bidding credits for such PSSPs; (3) outline the criteria used to ensure PSSPs maintain the provision of public safety and support services.

A. Public Safety Service and Support Providers

Compu-DAWN urges the Commission to adopt a uniform definition for PSSPs applicable to all services. PSSPs should be defined as public safety service providers[38] or public safety support providers[39] *that derive or plan to derive at least 75% of their average*

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[38] Public Safety Service Providers include "governmental and public entities or those non-governmental, private organizations, which are properly authorized by the appropriate governmental authority whose primary mission is providing Public Safety Services." PSWAC Final Report, at ¶ 4.3.2.1.2; Public Safety NPRM, at ¶ 24.

[39] Public Safety Support Providers include "governmental and public entities or those non-governmental, private organizations which provide essential public services that are properly authorized by the appropriate governmental authority whose mission is to support Public Safety services. This support may be provided either directly to the public or in support of Public Safety services providers." PSWAC Final Report, at ¶ 4.3.2.1.3; Public Safety NPRM, at ¶ 24.

annual gross revenues[40] *from serving public safety*. This definition is based on the existing PSWAC definition, but is stiffened to ensure that the spectrum is really used to meet public safety needs, while still providing sufficient flexibility to permit commercial services on excess capacity.

1. Commercial Entities

Given the urgent need for the commercial provision of public safety support services -- designated PSSPs should include commercial entities.[41] It is vital that the Commission recognize the unique capabilities of commercial systems and their importance to the future development of public safety services. Indeed, encouraging commercial entities to devote valuable spectrum to public safety uses is the only efficient way to serve immediate public safety requirements.

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[40] The definition proposed herein is applicable to entities that bid for spectrum. Federal, state and local public safety governmental entities are included in this definition to the extent relevant, although Compu-DAWN does not believe such entities should or would participate in competitive bidding.

[41] The Commission defines "public safety facility" for purposes of Section 94.59 of the Commission's Rules as "Part 94 facilities currently licensed on a primary basis under the eligibility requirements of Section 90.19, Police Radio Service; Section 90.21, Fire Radio Service; and Subpart C of Part 90, Special Emergency Radio Services." Compu-DAWN agrees with the proposal in the Public Safety NPRM that the Commission should modify its approach to public safety services by encompassing the broadest array of the responsibilities and functions performed by public safety agencies and non-governmental organizations. *See* Public Safety NPRM, at ¶ 10. Recently, the Commission expanded on its definition of public safety in the consolidation of the PLMR Services to include in the public safety pool those non-governmental entities that obtain a statement of support from the governmental entity having legal jurisdiction over the area served. *See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Polices of the Private Land Mobile Services*, PR Docket 92-235, *Second Report and Order*, FCC 97-61 (rel. March 12, 1997).

2. Public Safety as Primary Purpose

The Commission currently employs a "majority-use" standard to define "public safety facilities."[42] To ensure that any bidding credit is judiciously used, Compu-DAWN proposes a more exacting standard for PSSPs. Specifically, we suggest that the Commission adopt minimum threshold gross revenue requirements, mandating that applicants demonstrate that they do or will receive at least 75% of their average annual gross revenues[43] from providing public safety services or public safety support services to law enforcement and other public safety agencies. This benchmark is necessary to ensure that only those entities seriously committed to public safety receive financial advantages in the competitive bidding process.

B. Bidding Credits

The availability of bidding credits for public safety service providers and public safety support providers is consistent with the Commission's obligations under Section 309(j) to "to promote economic opportunity for a wide variety of applicants . . . ." More importantly, a public safety bidding credit of 50% would further the public interest by ensuring that the public safety community has access to the most reliable, efficient and effective technologies commercial services provide.

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[42] The Rules require that a "majority of communications" carried by "public safety facilities" be "used for police, fire or emergency medical services operations involving the safety of life and property." 47 C.F.R. § 94.59.

[43] Recognizing the Commission's use of average annual gross revenues is the defining term upon which the auction rules for several services are based, the Notice seeks comment on the proper definition of average annual gross revenues for use in general auction rules. Compu-DAWN supports using the definition of average annual gross revenues adopted in the Commission's broadband PCS rules but realizes the Commission may ultimately adopt a different definition. The Commission should apply the 75% benchmark to average annual gross revenues as defined in these proceedings.

The bidding credit is required because PSSPs have, in essence, just three customers in each community -- the police department, the fire department and emergency response servers. Yet PSSPs compete with companies that have a potentially much larger consumer base as well as virtually unrestricted commercial use of spectrum.[44] The 50% bidding credit, which would augment any available small business credit, is necessary to enable PSSPs such as Compu-DAWN to obtain spectrum rights. Indeed, the bidding credit proposal outlined by Compu-Dawn is wholly consistent with present spectrum policy -- that of using the *marketplace* to influence private parties to take steps that are for the greater good.[45]

C. Commission Oversight

The Commission must establish rules to determine PSSP eligibility for bidding credits and to ensure that PSSPs maintain their eligibility status.

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[44] For example, in Nassau County, there are a total of 2,129 police, fire and emergency vehicles. Typically, public safety users pay $50 per vehicle per month to utilize a system like Compu-DAWN's. Thus, assuming every public safety vehicle has a mobile component and that there is only one vendor serving them, which is a stretch, an entity such as Compu-DAWN could generate a maximum of $1,277,400 in gross revenues a year by supporting all public safety services in a market. This figure is minimal as compared to the revenues earned by other commercial users of spectrum in the same market of over 1 million people.

[45] This is what Chairman Hundt calls the "third way" of spectrum management. Statement at 7. "Spectrum policy," he argued, "should serve the public by facilitating the services that are desirable for public purposes." Hundt Statement at 3. Indeed, "innovative uses should be encouraged by relying on market-based policies." Hundt Statement at 7. *See also* Hundt Statement at 12 ("Congress and the FCC need to affirm a new paradigm of spectrum policy that relies on market techniques for commercial uses of spectrum.").

Compu-DAWN suggests that the Commission require each PSSP applicant to certify, through the applicant's chief financial officer or its equivalent,[46] that at least 75%[47] of its average annual gross revenues is generated from providing public safety services or public safety support. It is likely that some applicants will be unable to satisfy the 75% average annual gross revenue requirement at the time of auction,[48] but they nonetheless should be encouraged to compete in the public safety market. Thus, Compu-DAWN suggests that bidding credits be available to those eligible entities that certify to a present intention to satisfy the Commission's eligibility rules within a two-year period.

To ensure that PSSPs maintain their public safety commitment, Compu-DAWN proposes that applicants initially bid for a seven-year license, with seven-year renewable terms. During the initial seven-year period after a PSSP begins operations, the Commission should require the PSSP to submit annual audited financial statements[49] establishing that it receives at least 75% of its average annual gross revenues from providing

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[46] On balance, Compu-DAWN believes it is unnecessary for applicants to submit detailed financial statements at the time of the auction. The Commission should consider, in the alternative, certification from a public safety coordinating committee to the effect that the applicant is or will be committed to public safety at the levels required by the auction rules.

[47] The first priority of a PSSP should be to satisfy the needs of the public safety community. At times, this might mean that 100% of a PSSP's revenues will come from providing public safety services and at other times possibly only 30%. To establish an applicant's commitment to public safety and thus, its entitlement to a bidding credit, however, the Commission needs to establish an initial threshold. The government and the commercial entity should share the financial burdens related to the downward fluctuation of public safety demands.

[48] For example, new businesses may not yet have revenues. In addition, existing businesses may decide to change their operations to qualify for the public safety bidding credit.

[49] Of course, any proprietary information should be protected.

public safety services or support to the public safety community.[50] If a PSSP falls below the 75% threshold in any of the first seven years, there should be a rebuttable presumption that the PSSP is not satisfying the public safety needs of the community of license. At this point, the Commission should notify the PSSP that its license will be revoked unless, within a specified time period, the PSSP submits a statement from the relevant public safety service coordinator[51] that the community does not have public safety needs that the PSSP could be, but is not, satisfying. Failing this, the PSSP should be required to relinquish its license to one or more governmental public safety operators in the community of license.

If, in any of the first seven years, a PSSP falls below the 75% revenue threshold but demonstrates that it is satisfying the public safety needs of the community of license, the Commission should permit the PSSP to retain its license. However, at the end of the seven years, the PSSP should be obligated to pay for the cumulative portion of the spectrum (assessed by average annual gross revenues) that it used for commercial, non-public safety use in excess of 25%. Compu-DAWN suggests that the fee the PSSP licensee pays should be devised so that the licensee bears some of the risk of overestimating the public safety needs in a community, but not all. One approach toward implementing this concept is to define X as the percentage of the PSSP's average annual gross revenues from providing

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[50] Those applicants awarded bidding credits based on certification of a present intention to satisfy the Commission's eligibility criteria should be required, in addition to providing financial statements, to certify their continuing intent to satisfy the Commission's revenue obligations. Once the 75% threshold is reached, the seven-year maintenance period should commence and these entities need only submit annual audited financial statements demonstrating they meet the revenue requirements.

[51] Compu-DAWN understands that there may need to be some fine-tuning in defining the appropriate public safety service coordinator to submit such a statement. In addition, due process protections must inhere in the license review and recision process.

commercial, non-public safety services in excess of 25% averaged out over the initial seven-year period. The PSSP could be required to pay, at the end of the seven-year period, 1/2*X* of the difference between the undiscounted auction price (minus any other applicable bidding credits) and the auction price discounted for public safety.[52] Under this scenario, the PSSP and the government split the risk of insufficient (i.e. less than 75% of average annual gross revenue) demand for public safety services in the market. The PSSP alone bears the risk that the demand for public safety services will contribute more than 75% of the revenue stream.

After the first seven years, it should not be necessary for PSSPs to submit annual audited financial statements. Instead, regardless of the composition of the PSSP's revenue stream, the PSSP should be able to retain its license so long as the PSSP is satisfying the public safety obligations of the community of license. Thus, every seven years, the PSSP licensee should have an expectancy of renewal, for a successive seven-year term, unless it appears that the community of license has public safety needs that the PSSP licensee could be, but is not, satisfying. The PSSP should be required to submit a yearly statement from the relevant public safety coordinator with respect to the PSSP's satisfaction of public safety needs.

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[52] Congress has recognized the validity of these types of pay-back arrangements. 47 U.S.C. § 336(e) requires that to the extent broadcasters offer "ancillary and supplementary services" (i.e., non-broadcast subscription services) in addition to advanced television services for which a channel was assigned, "the Commission shall establish a program to assess and collect from the licensee" payment that shall "(A) be designed (i) to recover for the public a portion of the value of the public spectrum resource made available for such commercial use, and (ii) to avoid unjust enrichment through the method employed to permit such uses of that resource; (B) recover for the public an amount that . . . equals but does not exceed (over the term of the license) the amount that would have been recovered had such services been licensed pursuant to the provisions of section 309(j) of this Act . . .; and (C) be adjusted by the Commission from time to time in order to continue to comply with the requirements of this paragraph."

The above approach alleviates concerns raised by commenters in the WCS proceeding that commercial public safety providers lack the incentive to make spectrum available for public safety uses on a continuing, stable basis.[53] In addition, requiring entities to obtain limited-term licenses, satisfy specific revenue requirements, and, as appropriate, pay for spectrum fees, provides the necessary guidance to maximize public safety use of the spectrum. At the same time, allowing private businesses to utilize excess capacity flexibly promotes the Commission's spectrum management goals of encouraging commercial investment in developing markets.

V. CONCLUSION

The Commission has an obligation to ensure, through the competitive bidding process, that the spectrum is used in a manner that promotes the public interest. Currently, local, state and national public safety agencies are in desperate need of additional radio spectrum and more advanced and efficient technologies. It is critical that public safety agencies and commercial entities work closely together to improve public safety spectrum usage, and it is highly appropriate for the Commission to use the present proceeding to provide incentives for the necessary partnerships. Compu-DAWN urges the Commission to

[53] *See* WCS Order, at ¶ 72.

extend its bidding credit policies to serve the current spectrum and service demands of the public safety community.

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Exhibit A

Compu-DAWN, Inc.

Data Access & Wireless Network

compu DAWN