

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

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Amendment of Part 90 of the Commission's	)	PR Docket No. 93-144
Rules to Facilitate Future Development of	)	RM-8117, RM-8030,
SMR Systems in the 800 MHz Frequency Band	)	RM-8029
	)	
Implementation of Sections 3(n) and 322 of	)	GN Docket No. 93-252
the Communications Act -- Regulatory	)	
Treatment of Mobile Services	)	
	)	
Implementation of Section 309(j) of the	)	PP Docket No. 93-253
Communications Act - Competitive Bidding	)	
	)	

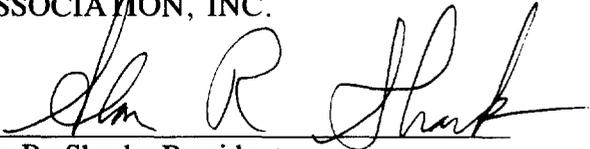
To: The Commission

**PETITION FOR RECONSIDERATION OF THE  
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.  
ON THE MEMORANDUM OPINION AND ORDER ON RECONSIDERATION**

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS  
ASSOCIATION, INC.

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September 2, 1997

1. The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), in accordance with Section 1.429 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully requests reconsideration of the FCC's decision on reconsideration to eliminate installment payment provisions from its rules relating to the auctioning of the upper 200 channels in the 800 MHz Specialized Mobile Radio ("SMR") band.<sup>1</sup> The Commission's decision to eliminate this small business incentive in favor of larger bidding credits, and its taking this action less than ninety days prior to the deadline for applicants to notify the Commission of their intent to participate in the auction, prejudices the interests of prospective small business interests.

2. In the earlier Report and Order in this proceeding<sup>2</sup>, the Commission made the following findings:

We conclude 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.... We further believe that small entities may be disadvantaged in their efforts of acquiring 800 MHz SMR licenses if required to bid against existing large companies. For instance, if one of more of these big firms targets a market for strategic reason, there is almost no likelihood that it could be outbid by a small business. Report and Order at ¶ 248.

It addressed this problem in the upper 200 channel auction by adopting provisions for tiered installment payments for small businesses, reasoning that:

As we have noted previously, allowing installment payments reduces the amount of private financing needed by prospective small business licensees and therefore mitigates the effect of limited access to capital by small businesses. Id.

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<sup>1</sup> Memorandum Opinion and Order on Reconsideration, PR Docket No. 93-144, FCC 97-224 (rel. July 10, 1997) ("MO&O" or "Order").

<sup>2</sup> First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, PR Docket No. 93-144, 11 FCC Rcd 1463 (1995) ("Report and Order").

3. Nonetheless, on reconsideration the Commission has rejected its previous findings and has dropped its provisions for an upper 200 channel installment payment plan.<sup>3</sup> MO&O at ¶ 130. Moreover, it has eliminated the option despite its disagreement with the reasoning advanced by Nextel Communications, Inc. ("Nextel"), the only party that submitted a Petition for Reconsideration of that provision. The FCC specifically rejects Nextel's assertions that installment payments encourage speculation and warehousing of spectrum, but concludes, nevertheless, that "installment payments may not always serve the public interest." Id.

4. The FCC's determination that the public interest may not always be served by the availability of installment payments may be accurate, although the only support offered in the MO&O is the statement that:

The Commission has found, for example, that obligating licensees to pay for their licenses as a condition of receipt requires greater financial accountability from applicants. Id.

The Commission does not conclude, nor could it based on the record to date, that the use of installment payments necessarily leads to a lack of financial accountability on the part of licensees. The rules provided for such payments in the 900 MHz SMR auction, and AMTA is unaware of any significant problems encountered by the FCC -- or by the public whose interest presumably is being protected -- in respect to the financial accountability of those licensees. The Association assumes that any such difficulties would have been referenced in support of the

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<sup>3</sup> The Commission has adopted provisions for small business bidding credits on reconsideration in response to requests to do so from AMTA and other petitioners. Order at ¶ 127. While AMTA is pleased that the FCC has responded favorably to the Association's request in that respect, it did not, and still does not, consider bidding credits and installment payments substitutable alternatives to promote small business auction participation. Each is a distinct and essential vehicle in providing for meaningful small business opportunities in an auction environment.

decision to eliminate the option for the 800 MHz SMR upper 200 channel auction. The failure to point to any specific adverse results indicates that the process worked relatively smoothly in that service. More importantly, the FCC's own analysis supports a finding that the use of installment payments played at least some part in promoting successful small business participation in the 900 MHz SMR auction process.<sup>4</sup>

5. The unstated, but underlying, explanation for the FCC's recent distaste for installment payment provisions likely is the conundrum the Commission finds itself facing because of problems with certain PCS C Block auction winners. However, AMTA urges the FCC not to permit a single, unsatisfactory experience to taint the entire installment payment process. It is not possible to know what the outcome of that auction might have been had installment payment provisions not been available. To the extent both participants and the financial community purportedly miscalculated the level of investment that could be supported in that service, some parties might have bid more than they were capable of paying even without an installment payment option. In that case, the FCC still would need to determine how to address a successful bidder's failure to meet its financial obligations. Simply the timing, but not the substance, of the issue would be different.

6. The Commission's decision to reverse its earlier decision and eliminate the installment payment option is particularly troubling in light of the timing of that decision. Parties planning to participate in the upper 200 channel auction would have formulated their business plans during the more than eighteen months since the Report and Order was adopted on the assumption that

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<sup>4</sup> Public Notice, The FCC's 900 MHz Specialized Mobile Radio Auction Closes, DA 96-586 (rel. Apr. 15, 1996).

installment payments would be available. They now have less than ninety days to revise their plans before the deadline for filing their short-form applications. To the extent that they must find other financing for their prospective acquisitions, they unquestionably have been disadvantaged by the Commission's eleventh hour reversal of its position. Since that reversal is, by the FCC's own admission, not based on the record in this proceeding, it should be reconsidered and the installment payment plan reinstated immediately so that the auction may proceed as scheduled with appropriate provisions to promote small business participation.

7. For the reasons detailed above, AMTA urges the Commission to reconsider its Memorandum Opinion and Order in this proceeding consistent with the recommendations contained herein.

**CERTIFICATE OF SERVICE**

I, Linda J. Evans, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this September 2, 1997, caused to be hand carried a copy of the foregoing Petition for Reconsideration to the following:

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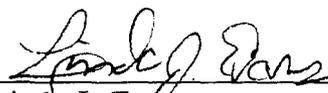
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\*Via Hand Delivery September 3, 1997

  
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