

SEP 12 1997

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

To: The Commission

**COMMENTS
ON
RESERVE PRICES AND MINIMUM OPENING BIDS**

The Personal Communications Industry Association ("PCIA")¹, through its counsel, hereby respectfully submits the following Comments in response to the Commission's Public Notice of September 5, 1997, in the above-captioned proceeding.²

¹ 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 Mobile Wireless Communications Alliance, the Site Owners and Managers Association, the Association of Communications Technicians, and the Private System Users Alliance. In addition, PCIA is the FCC-appointed frequency coordinator for the Business Radio Service, the 800 and 900 MHz Business Pools, 800 MHz General Category frequencies, and for the 929 MHz paging frequencies.

² "Comment Sought On Balanced Budget Provisions Calling For Reserve Prices Or Minimum Opening Bids In FCC Auctions", DA 97-1933, released September 5, 1997.

I. BACKGROUND

The Commission has proposed to set minimum opening bids in the upcoming 800 MHz auctions. The first 800 MHz auction is scheduled to begin on October 28, 1997 for the so-called "Upper" 10 MHz of SMR Spectrum. The Commission has proposed to set a minimum opening bid of no less than the value of the upfront payment amounts specified in the Public Notice released August 6, 1997 for that auction. The smallest upfront payment established in the Public Notice was \$2,500.

Alternatively, the Commission has requested comment as to whether the upfront payment amount should be designated as a reserve price. A reserve price, whether published or unpublished, is an absolute minimum price below which the item will not be sold at an auction.

II. COMMENTS

Initially, it should be noted that PCIA is extremely concerned with the Commission's late-notice in announcing its intention to impose minimum opening bid requirements in this auction. The proximity of the Public Notice to the due date for applications for the auction, as well as the one week period for submitting comments, means that neither the Commission or the industry will have an adequate opportunity to consider this incredibly important issue.³

³ As a result, of the limited time for consideration of this issue, it should be noted that PCIA's comments related only to the auction of licenses in the 800 MHz band. After more thorough consideration, PCIA reserves the right to change any or all of its views on this issue in subsequent auctions for other services. Further, PCIA is concerned that any decision which the Commission may make regarding this issue for the 800 MHz band may have precedential effect with regard to other upcoming auctions. Since the Commission will clearly have insufficient time to consider this issue prior to the first 800 MHz auction, PCIA requests that the Commission provide adequate Public Notice and permit sufficient time for comment whenever the Commission considers the imposition of minimum opening bids and/or reserve pricing in future auctions.

For its part, the Commission has failed to include in the Public Notice any rationale whatsoever for the imposition of minimum bids, other than the fact that it has the authority to do so. However, PCIA notes that the Commission also has the authority not to use minimum bidding pursuant to the Balanced Budget Act of 1997, and PCIA hopes that the Commission will give thoughtful and thorough consideration to PCIA's Comments before adopting this unnecessary requirement.

PCIA believes that the use of minimum opening bids is extremely inappropriate in this auction. PCIA believes that the proposal is another example of what PCIA President Jay Kitchen described at PCIA's PCS '97 meeting as lack of coherent vision for spectrum policy. As PCIA has pointed out repeatedly to the Commission in the past three years, the Commission is offering in this auction extremely encumbered spectrum. The 800 MHz frequencies involved in this auction have been constructed throughout the country and have already have been licensed to cover far more geographic area than any prior FCC spectrum auction. This means that the use of minimum bids is not only inappropriate, but counterproductive to the Commission's obligation to manage the radio spectrum.

The use of minimum opening bids means that incumbent licensees will be forced to pay substantial fees for spectrum on which they already have operating systems and for which there is no competing bidder. Specifically, the use by the Commission of an "all" box on the Form 175 means that every license will automatically become mutually exclusive, despite the fact that in many cases an incumbent licensee covers 100% of the geographic market being licensed and no competing bidder could possibly construct any system to meet

the Commission's construction requirements. For these reasons, PCIA adamantly opposes the use of minimum opening bids for the 800 MHz band auctions.

Ironically, PCIA's Specialized Mobile Radio Alliance had reluctantly agreed to the Commission's use of auctions in this band, as the members' analysis concluded that geographic licenses for heavily encumbered spectrum would most likely not be contested, and therefore should not represent a significant cost for incumbent licensees. However, the Commission's proposal artificially inflates the cost for incumbent licensees without any reason. For this reason, PCIA implores the Commission not to change the rules at this late date.

Although it may be argued that many uncontested licenses could be obtained for a minimum upfront price of \$2,500, these markets are very rural, and in actuality represent the only markets where actual bidding for spectrum should occur. The rural areas are the only areas which are not heavily encumbered, and therefore legitimate bidders could bid on true "white-space". However, in urban areas, incumbent licensees with no competing bidders will have to pay hundreds of thousands of dollars for a single license where the incumbent already serves 100% of the market. Even more importantly, the service area of a single license often crosses EA boundaries and frequency blocks. Thus, many licensees will need to purchase licenses in more than one EA merely to cover their incumbent system. Therefore, a single licensee in a major urban area may have to spend millions of dollars for uncontested spectrum which they have already fully built-out.

There is no valid rationale for the use of minimum bidding or even reserve pricing in this particular auction. PCIA therefore believes that the Commission should not impose

these auction methodologies in the 800 MHz band, and PCIA implores the Commission not to change its rules so close to the auction, when companies have already spend countless dollars and endless hours analyzing the possibility of participating in this auction and providing the Commission with voluminous comments regarding licensing in this band. The Commission's alteration of the "rules of the game" at this late stage will cause severe disruption to the business plans of incumbent licensees, and is contrary to the Balanced Budget Act of 1997's requirement that the Commission ensure that, in the scheduling of any competitive bidding, an adequate period of time be permitted after the issuance of bidding rules, to permit parties to have sufficient time to develop business plans and assess market conditions.

III. CONCLUSION

For the foregoing reasons, PCIA urges the Commission not to adopt minimum opening bid or reserve price requirements for 800 MHz licensing consistent with the views expressed herein.

Respectfully submitted,

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