

*Original*

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of )  
 )  
An Allocation of Spectrum )  
For the Private Mobile Radio Services )

RM-9267

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Supplemental Comments of the Land Mobile  
Communications Council**

The Land Mobile Communications Council (LMCC), in reply to the Comments and Reply Comments received by the Commission in response to the *Public Notice* released April 30, 1998,<sup>1</sup> hereby respectfully submits these Supplemental Comments to its own Petition for Rule Making.<sup>2</sup>

**I. Introduction**

1. The LMCC is a non-profit association of organizations representing virtually all users of land mobile radio systems, providers of land mobile services, and manufacturers of land mobile radio equipment. The LMCC acts with the consensus, and on behalf, of the vast majority of public safety, business, industrial, private, commercial, and land transportation radio users on several frequency bands regulated by the Federal Communications Commission (Commission). Membership includes the following organizations:

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<sup>1</sup> *Public Notice*, Office of Public Affairs Reference Operations Division Petitions for Rulemaking Filed, Report No. 2272 (rel. April 30, 1998).

<sup>2</sup> See In the Matter of An Allocation of Spectrum for the Private Mobile Radio Services, Petition for Rule Making Submitted by the Land Mobile Communications Council, RM-9267, filed April 22, 1998 (LMCC Petition).

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List A B C D E

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- American Association of State Highway and Transportation Officials (AASHTO)
- American Automobile Association (AAA)
- American Mobile Telecommunications Association, Inc. (AMTA)
- American Petroleum Institute (API)
- American Trucking Associations, Inc. (ATA)
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- Central Station Alarm Association (CSAA)
- Forest Industries Telecommunications (FIT)
- Forestry-Conservation Communications Association (FCCA)
- Industrial Telecommunications Association, Inc. (ITA)
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- International Association of Fire Chiefs (IAFC)
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- International Municipal Signal Association (IMSA)
- International Taxicab and Livery Association (ITLA)
- Manufacturers Radio Frequency Advisory Committee (MRFAC)
- National Association of State Foresters (NASF)
- Personal Communications Industry Association (PCIA)
- Telecommunications Industry Association (TIA)
- UTC, the Telecommunications Association (UTC)

## **II. Background**

2. On April 22, 1998, the LMCC filed the above-mentioned Petition for Rule Making requesting an allocation of spectrum for the private mobile radio services. This Petition was the product of a collaborative effort among the member associations of the LMCC whose constituents are the many distinct entities that employ private wireless systems for the protection of life and property, and for the management and efficiency of their businesses.

3. The Petition details the broad policy objectives that should be pursued with regard to responsible spectrum management and outlines effective methods for the

allocation and assignment of spectrum for the private land mobile radio services. To demonstrate the critical spectrum needs of the private wireless community, the LMCC supported its Petition by a study of the channels available to a new applicant in the bands most heavily used by the private wireless industry.<sup>3</sup> The report demonstrated that, in each of the top 10 cities, no channels are available for assignment in the 470-512 MHz, the 800 MHz, and the 900 MHz bands. As a consequence, there are few, and in certain bands absolutely no options available for industrial, transportation, and business entities who require dedicated internal communications to accommodate their expanding business needs and enhance the safety of their employees.

4. Just as importantly, the LMCC viewed this Petition as not simply a vehicle for requesting an allocation of new spectrum, but also as an invitation for the Commission to open a dialogue with one of its oldest and largest constituencies.<sup>4</sup> Although the Commission placed the Petition on *Public Notice* in April and the pleading cycle ended in July, there has been, to date, no action on the Petition. The LMCC believes that the record compiled provides a solid foundation for the Commission to *begin* the rule making process. Thus, the LMCC urges the Commission to act expeditiously to initiate the process of allocating additional spectrum to the private mobile radio services (PMRS).

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<sup>3</sup> LMCC Petition at Appendix B.

<sup>4</sup> Comments of the Manufacturers Radio Frequency Advisory Committee at 3 ("The Commission should view the LMCC Petition . . . as an effort to open a dialogue on the long-term needs of the private radio users . . .") (MRFAC Comments); Comments of the National Telecommunications Information Administration at 1 ("The petition filed by the LMCC offers the Commission an opportunity to consider innovative approaches to spectrum management in the area of private radio services.") (NTIA Comments).

### III. Discussion

**A. The record supports the premise that a discussion of the spectrum needs of the private wireless industry is warranted.**

5. There were many filings in response to the Commission's *Public Notice*. Few of those commenting quarreled with the fundamental principle of the Petition: there is a need for a discussion of the character and spectrum needs of the PMRS industry.<sup>5</sup> Even the most vocal critics of the spectrum bands proposed by the LMCC Petition for allocation to the PMRS industry did not dispute that a public dialogue regarding a PMRS allocation needs to be held. For instance, while ARINC objected to the LMCC's proposed use of the 960-1215 MHz band, it acknowledged that "the LMCC's Petition should be granted and an inquiry into spectrum for private land mobile systems initiated . . ." <sup>6</sup> Moreover, the American Radio Relay League, Inc. (the League) noted that:

The League need not and does not dispute that the Commission has not addressed the concerns of non-public safety PMRS licensees in recent spectrum allocation decisions that provide substantial additions to CMRS allocations. That, however, is not directly relevant to the specific allocation proposals made in the Petition. It is, rather, a separate issue that the Commission should undertake in a future proceeding addressing the broader issue of spectrum efficiency and needs of PMRS users.<sup>7</sup>

6. The LMCC appreciates the League's concern regarding the proposed allocation of the 420-450 MHz band for PMRS use and does not take issue with those concerns.

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<sup>5</sup> See LMCC Petition at ii; see also Comments of GKL Construction Company at 1 ("a meaningful dialogue must commence among the telecommunications leadership regarding the state of the private wireless industry"); Comment of Milwaukee 2-Way, Inc. at 1 ("The fast action by the FCC in seeking a public dialogue is commendable.").

<sup>6</sup> Comments of the Aeronautical Radio, Inc. at 2 (ARINC Comments).

<sup>7</sup> See Comments of the American Radio Relay League, Inc. at 3 (League Comments).

Rather, the LMCC emphasizes that the League is mistaken in its belief that the spectrum needs of the PMRS community can be tabled until a “future proceeding.” The League itself recognizes that the spectrum needs of the PMRS industry have taken a back seat to CMRS allocations.<sup>8</sup> Moreover, as demonstrated by the Comments filed in this proceeding, the PMRS industry has an immediate and pressing need for additional spectrum.<sup>9</sup> If this need is not addressed, it could have a destructive impact on the continued competitiveness of American industries and the delivery of products and services to the American public.

**B. The objections to the Petition do not negate the need for immediate relief.**

7. The LMCC does not dispute that Comments were received in opposition to the Petition. The vast majority of them, however, addressed the narrow issue of the spectrum bands which the Petition identified for potential use or shared use by the PMRS industry. The 420-450 MHz band, for example, was vigorously defended by the amateur radio community,<sup>10</sup> and the 960-1215 MHz band was defended by aeronautical interests.<sup>11</sup>

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<sup>8</sup> *Id.* at 20 (“Indeed, the League would tend to agree that the PMRS industry has not captured the Commission’s attention in recent years, due to a Commission focus on CMRS providers and spectrum auctions.”).

<sup>9</sup> See Comments of Central Communications, Inc. at 1 (“[W]e have found it increasingly difficult to provide our customers adequate communications systems due to the shortage of uncongested frequencies in our area;”); Comments of Milbank Communications at 1 (“In many instances, we are unable to provide private two-way systems to customers who derive a benefit from such a system due to the fact that we are unable to locate a suitable radio frequency.”); Comments of the Personal Communications Industry Association at 2 (“[W]hile the need for internal use spectrum has escalated, the spectrum actually available for such use has shrunk dramatically.”); and Comments of Tosco Corporation at 2 (“[P]rimary bands in the VHF and UHF bands have not been available to use for many years because of the heavy demands from other companies in our operational areas.”).

<sup>10</sup> See, e.g., League Comments; Comments of the Charleston Amateur Radio Society, Inc.; Comments of the Madison County Emergency Management Agency; and Comments of the

8. It is not our purpose here to take issue with those Commenters objecting to the specific bands proposed in the Petition. Instead, we emphasize that the Petition makes the undisputed point that the PMRS industry is in dire need of a new spectrum allocation. If the Commission determines that the bands previously identified by the Petition are not appropriate for a new PMRS allocation, then other bands must be identified. Therefore, it is essential that the Commission *begin* the public dialogue on this matter in order to identify the most appropriate bands for allocation to the PMRS industry.

**C. Benefits of Refarming.**

9. Some of the commenters maintain that the LMCC Petition is premature, arguing that the benefits of refarming have yet to be realized and any claim that the efficiencies of refarming will not be substantial is mere conjecture.<sup>12</sup> The LMCC does not dispute that refarming will provide *some* relief to the spectrum shortage.<sup>13</sup> Through refarming, the private wireless industry will be able to, in certain non-urban areas, facilitate the integration of trunking and technological advances by putting more and more users on the limited amount of spectrum currently allocated for private wireless use.

10. Unfortunately, refarming will only provide *limited* relief as the demand for private

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Western Intertie Network.

<sup>11</sup> See, e.g., ARINC Comments at 2; Comments of the Boeing Company at 2; NTIA Comments at 2; and MRFAC Reply Comments at 2.

<sup>12</sup> See Comments of DiPaola Timber Corporation at 1; League Comments at 8; and Reply Comments of the Los Angeles Repeater Association at 3.

<sup>13</sup> See LMCC Petition at 15-16.

wireless spectrum is simply too great.<sup>14</sup> There are currently 275,000 companies using 10 million private radios to keep their operations running smoothly.<sup>15</sup> As new technological advances have emerged, the demand for private wireless frequencies has increased and there is no evidence that this trend will not continue.<sup>16</sup>

**D. Many possibilities for allocations exist.**

11. The LMCC notes that several of the bands proposed in the Petition received little or no opposition: 1390-1400 MHz, 1427-1432 MHz, and 1670-1675 MHz. Moreover, in order to facilitate an open discussion on the most appropriate bands for allocation for PMRS use, the LMCC would also like to propose some additional spectrum bands for possible PMRS use. For example, a portion of the 746-806 MHz band and the 1710-1755 MHz band have recently been allocated for commercial use. Any portions of these bands would be ideal for use by the PMRS industry and the LMCC strongly suggests that the Commission explore whether any segment of these bands could be allocated for PMRS use. Further, NTIA has issued an open invitation to the Commission to work together "in identifying sharing possibilities, if appropriate, between PMRS and Federal operations in the mixed-use bands transferred under OBRA-93 and BBA-97."<sup>17</sup> The LMCC encourages

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<sup>14</sup> *Accord* Comments of Tosco Corporation at 2 ("Refarming will help, but there will still be a need for new spectrum to cover the increasing wireless requirements of an ever expanding population.").

<sup>15</sup> LMCC Petition at 3.

<sup>16</sup> In fact, since 1968, the number of PMRS licenses has increased by over 400 percent. See "Methods for Assigning Licenses for Newly Allocated Spectrum for Private Wireless Communications," Nathan Associates Inc. (July 1995).

<sup>17</sup> See NTIA Comments at 3.

the Commission to accept this invitation from NTIA and begin the process of determining appropriate bands for possible PMRS use in some of the spectrum already turned over to the Commission.

**E. The Balanced Budget Act of 1997.**

12. It is the LMCC's belief that an open dialogue with the private wireless industry will also be beneficial to the Commission in implementing the Balanced Budget Act of 1997.<sup>18</sup> While the Balanced Budget Act of 1997 expands the Commission's auction authority, it also identifies certain entities that are deemed exempt from auctions.<sup>19</sup> This definition includes:

[P]rivate internal radio services used by State and local governments and non-government entities and including emergency road services provided by not-for-profit organizations, that --

- (i) are used to protect the safety of life, health, or property; and
- (ii) are not made commercially available to the public . . .<sup>20</sup>

13. In the Conference Report accompanying the Balanced Budget Act of 1997, the Conferees noted that:

[T]he exemption from competitive bidding authority for "public safety radio services" includes "private internal radio services" used by utilities, railroads, metropolitan transit systems, pipelines, private ambulances, and volunteer fire departments. Though private in nature, the services offered by these entities protect the safety of life, health, and property and are not made commercially available to the public.<sup>21</sup>

Because the Conferees made the point of including examples of several types of services

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<sup>18</sup> See Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 (1997).

<sup>19</sup> 47 U.S.C. § 309(j)(2)(A)(1997).

<sup>20</sup> *Id.*

<sup>21</sup> See H.R. Rep. No. 105-217 at 572 (1997)

that use private wireless radios, it is clear that Congress intended the auction exemption to apply to other services in addition to "emergency road services."

14. Consequently, in implementing the Balanced Budget Act of 1997, the Commission is faced with the task of identifying which private wireless services are auction exempt. From the LMCC's perspective, this task can only be achieved after a comprehensive discussion of the nature and characteristics of the PMRS industry. The LMCC Petition provides the Commission with an ideal opportunity to further the important and long over-due dialogue which was initiated with the recent adoption of the *Notice of Proposed Rule Making* implementing the Balanced Budget Act of 1997.<sup>22</sup>

**F. Alternatives to auctions.**

15. As part of the implementation of the Balanced Budget Act of 1997, the Commission must not only determine which private wireless entities are auction exempt, it must determine whether or not the auctioning of private wireless spectrum is in the public interest.

16. In drafting the Balanced Budget Act of 1997, Congress recognized this fact and once again emphasized that the Commission has an obligation to continue to use engineering solutions and other means to avoid mutual exclusivity in application and licensing proceedings.<sup>23</sup> In the Conference Report accompanying the Balanced Budget Act of 1997, the Conferees noted their concern that:

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<sup>22</sup> See Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Notice of Proposed Rule Making*, FCC 99-52, rel. March 25, 1999 (*BBA NPRM*).

<sup>23</sup> See 47 U.S.C. § 309(j)(6)(E).

the Commission might interpret its expanded competitive bidding authority in a manner that minimizes its obligations under section 309(j)(6)(E), thus overlooking engineering solutions, negotiations, or other tools that avoid mutual exclusivity.<sup>24</sup>

The LMCC believes that the Conferees included this language as instruction to the Commission that, while Congress expanded the Commission's auction authority, the Commission nonetheless has an obligation to consider ways to avoid mutual exclusivity before even considering initiating an auction. Moreover, the LMCC believes that any attempt to artificially create mutual exclusivity where it would not otherwise exist other than through forced methods, would be inconsistent with the Congressional directive that the Commission avoid mutual exclusivity if at all possible.

17. The private wireless industry is unique in that it employs "shared use" of the spectrum, *i.e.*, the industry applies engineering techniques by licensing multiple licensees on the same frequency within a given geographic area. This approach is consistent with Congress' directive to maximize efficient use of the electromagnetic spectrum. Thus, it is the LMCC's position that auctions are an inappropriate license assignment mechanism for the private wireless industry, and would eliminate the industry's ability to promote efficient use of the private wireless spectrum.

18. Nonetheless, the LMCC suggests that if the Commission allocates new spectrum for private wireless use, an alternative mechanism needs to be devised to promote spectrum efficiency for use of this valuable commodity. While the LMCC supports economic-based reimbursement mechanisms as the *quid pro quo* for new spectrum, it would strongly oppose any such measures for existing spectrum allocations. Application

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<sup>24</sup> See H.R. Rep. No. 105-217 at 572 (1997).

of an economic-based reimbursement mechanism on existing licenses would amount to the imposition of a new tax on American business and industry without any corresponding benefit. The LMCC also emphasizes that it does *not* support reimbursement of any kind for use of the spectrum by state and local government licensees. The LMCC notes that the Commission, in the *BBA NPRM*, has recently begun to address the issue of an economic-based reimbursement mechanism for bands that are used for other than commercial purposes.<sup>25</sup> The LMCC believes that an appropriate economic-based reimbursement mechanism could be tailored to meet the unique needs of private wireless users while also recovering some portion of the value of any newly-allocated private wireless spectrum. The term “economic-based reimbursement mechanism” as used herein refers to efficiency-based spectrum user fees not tied to any specific auction revenues. While a portion of the 746-806 MHz band and the 1710-1755 MHz band<sup>26</sup> have been allocated for commercial use and the Commission is required to assign this spectrum through economic means under the express language of the 1997 Balanced Budget Act, the LMCC is confident that it could work with the Commission to develop an appropriate reimbursement mechanism. To that end, the LMCC pledges to work with the Commission to develop an economic-based reimbursement mechanism -- *i.e.*, a periodic payment for the use of a given amount of spectrum in a given area -- to recover some portion of the

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<sup>25</sup> See *BBA NPRM* at ¶ 76 (“Another method for introducing market-based incentives and encouraging greater spectrum efficiency in the private radio service bands is to implement market-based user fees as an alternative, or in conjunction with, competitive bidding.”).

<sup>26</sup> The LMCC suggests these bands for potential allocation to the private wireless industry. See para. 11, *supra*.

value of this spectrum.<sup>27</sup> Since the amount of spectrum and the areas of geographic coverage needed by private wireless users is much less than that of commercial users and the same frequencies will be used by multiple licensees, the LMCC believes that, under these circumstances, an economic-based reimbursement mechanism would be a much more efficient licensing tool than auctions for the proposed allocation of new spectrum to the private wireless industry and welcomes the opportunity to work with the Commission in the Balanced Budget Act proceeding to develop this reimbursement mechanism.<sup>28</sup>

#### **IV. Conclusion**

19. The record established by the Commission in response to the LMCC's Petition clearly demonstrates that there would be benefit in beginning a rule making proceeding. As elucidated herein, there are many issues which could be, and should be, explored in a public dialogue. Accordingly, the LMCC strongly urges to the Commission to begin this

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<sup>27</sup> This approach has recently been supported by the Congressional Budget Office which stated that the imposition of a fee for the use of the spectrum would reduce congestion in the affected bands, force more efficient use of the spectrum, and provide a method of compensation for use of spectrum that is not auctioned. The report further notes that the administrative burden of collecting such a fee is unlikely to be significant and volunteers the frequency advisory committees as potential administrators of any collection system. See CBO Memorandum, "Two Approaches for Increasing Spectrum Fees," at pp. 36-37 (released November 1998).

<sup>28</sup> The LMCC will expand on these points in its comments on the *BBA NPRM*.

dialogue as expeditiously as possible.

Respectfully Submitted,

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*Paul B. Najarian*

Paul B. Najarian, President



Date: April 20, 1999

## CERTIFICATE OF SERVICE

I, Laura L. Smith, do hereby certify that on the 20th day of April 1999, I forwarded to the parties listed below a copy of the foregoing Supplemental Comments of the Land Mobile Communications Council, by first-class mail, postage pre-paid:

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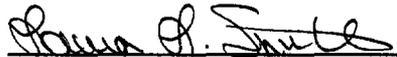
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