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In the Matter of)
)
 Implementation of Sections 309(j))
 and 337 of the Communications Act)
 of 1934 as Amended)
)
 Promotion of Spectrum Efficient)
 Technologies on Certain)
 Part 90 Frequencies)
)
 Establishment of Public Service)
 Radio Pool in the Private Mobile)
 Frequencies Below 800 MHz)
)

WT Docket No. 99-87

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

COMMENTS OF THE
 INTERNATIONAL ASSOCIATION OF FIRE CHIEFS, INC.
 AND THE
INTERNATIONAL MUNICIPAL SIGNAL ASSOCIATION

The International Municipal Signal Association ("IMSA") and the International Association of Fire Chiefs, Inc. ("IAFC"), by their attorneys and pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission, hereby respectfully submit these comments in response to the Notice of Proposed Rulemaking (Notice) released by the Commission on March 25, 1999 in the above-

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captioned proceeding.^{1/} IAFC/IMSA urge the Commission to (1) exempt from auction all spectrum currently allocated to the Public Safety Radio Pool; (2) provide that non-governmental entities engaged in public safety activities (e.g., volunteer fire and/or rescue departments) are eligible for auction-exempt public safety spectrum; (3) maintain a separate and distinct frequency pool for the current Public Safety Radio Services vis-a-vis any non-government auction-exempt category of entities which the Commission may create; and (4) introduce procedures consistent with Congressional intent for public safety entities seeking unassigned spectrum pursuant to Section 337(c) of the Act.

I. INTRODUCTION

IMSA is a non-profit organization dedicated to the development and use of electrical signaling and communications systems in the furtherance of public safety. IMSA members include representatives of federal, state, county, city, township and borough governmental bodies, and representatives of governmental bodies from foreign nations. Organized in 1896, IMSA is the oldest organization in the world dedicated to the activities pertaining to electrical engineering, including the Public Safety use of radio technology. IMSA and the IAFC are recognized as the frequency coordinating committee for the Fire Radio Service and the Emergency Medical Radio Service and, in conjunction with the Personal Communications Industry Association, constitute the recognized coordinating committee for the Special Emergency Radio Service.

^{1/} 64 Fed. Reg. 23571 (May 3, 1999).

IAFC is a voluntary, professional membership society. Its membership, comprised of approximately 12,000 senior Fire Service officials, is dedicated to the protection of life and property throughout the United States and abroad. IAFC is the major national professional association representing the interests of senior management in the Fire Service. The Fire Service is the largest provider of emergency response medical service in the United States.

II. COMMENTS

The FCC's Notice seeks to implement Section 309(j) of the Communications Act of 1934, as amended. Section 309(j) requires the Commission to use competitive bidding to resolve mutually exclusive initial license applications unless a specific exemption applies. Significantly, one such exemption is for "public safety radio services, including private internal radio services used by State and local governments and non-government entities . . . that (i) are used to protect the safety of life, health, or property; and (ii) are not made commercially available to the public." In the Notice, the FCC tentatively concluded that the "public safety radio services" excluded from auction by Section 309(j) should include, at a minimum, all of the Private Land Mobile Radio Services that are currently assigned to the Public Safety Radio Pool, which is comprised of those services formerly housed in the Public Safety Radio Services and the Special Emergency Radio Service. Notice at ¶27.

IAFC/IMSA agree with the Commission's tentative conclusion that all spectrum currently allocated to the Public Safety Radio Pool should be exempt from auction. Furthermore, IMSA/IAFC agree that "public safety radio services" referenced in Section 309(j) is a broader category than the explicit definition of "public safety services" contained in Section 337 of the Communications Act, which determines eligibility for licensing in the 24 MHz of spectrum reallocated for public safety spectrum. Accordingly, IAFC/IMSA believe that some spectrum not currently allocated to the Public Safety Radio Pool could be exempt from auction so long as its primary use is the protection of life, health or property.

In the context of the Section 309(j) definition of "public safety radio services," IMSA/IAFC believe that the much broader definition of "public safety radio services" includes those non-governmental organizations ("NGOs") such as volunteer fire and/or rescue departments which are engaged in public safety activities. These NGO volunteer fire and/or rescue departments inherently fit the definition of "public safety radio services", *i.e.*, non-government entities . . . that (i) are used to protect the safety of life, health, or property; and (ii) are not made commercially available to the public. Accordingly IAFC/IMSA urges the Commission to include volunteer fire and/or rescue departments for eligibility in the "public safety radio services."

IMSA/IAFC further urge the Commission to assure that the eligibility requirements adopted by the FCC for exemption from spectrum auction do not impact upon frequency pool eligibility. The Commission has drawn necessary and appropriate

distinctions between "first responders" and other users of the private mobile radio services. Notwithstanding the Commission or Congressional recognition that entities other than governmental and related NGO entities operate facilities bearing upon the safety of life and property, and employ communications systems to further those ends, Congress' auction-exemption was not intended to revise the eligibility requirements for the Public Safety Radio Pool. Accordingly, IAFC/IMSA urge the Commission to preserve current eligibility criteria for the Public Safety Radio Pool and to create a record in this proceeding of the Commission's intention to maintain the integrity of the Public Safety services. Accordingly, auction-exempt entities should be eligible for licensing only on those frequencies for which those entities were eligible prior to designation as "auction-exempt."

As noted by the Commission, providers of Public Safety services may obtain spectrum without engaging in competitive bidding through Section 337(c). Notice at ¶54. Section 337(c)(1) requires the Commission to grant applications if the eligible applicant demonstrates that: (1) no other spectrum allocated to public safety services is immediately available to satisfy the requested use; (2) the requested use will not cause harmful interference to other spectrum users entitled to protection from harmful interference; (3) the use of the unassigned frequency for the provision of public safety services is consistent with other public safety allocations in that geographic area; (4) the unassigned frequency has been allocated for its present use for at least two years; and (5) granting the application is in the public interest.

While the Commission always enjoys the inherent power to waive its regulations to grant license applications which do not conform to eligibility or technical requirements of the rules, Congress in the Balanced Budget Act saw fit to adopt a special provision encouraging waiver of applications by Public Safety entities for authority on frequencies not normally assigned to the Public Safety Radio Services. The criteria established by Congress reflect a common sense approach to the licensing of out-of-service frequencies. What is notable about Section 337(c) is that Congress is reflecting its intent that waiver to enable out-of-service frequency assignments, where necessary to meet public safety communications needs, must be granted. Implicitly, Congress was reflecting the policies that frequencies which have not been used within the intended service for a reasonable period of time should not be preserved for possible future use in comparison to satisfying pressing public safety needs for channel access, and that channels also should not be preserved for future auction potential where there are current public safety requirements which are unfulfilled.

In discussing Section 337(c), the Commission expresses a tentative conclusion that an eligible entity must specify the spectrum it seeks to use, rather than applying for "any" unassigned spectrum and requiring the Commission to locate and select an appropriate frequency. IMSA/IAFC accepts this tentative conclusion.

On the other hand, the Commission states that "If any of the five criteria is unfulfilled, the application will not be granted." IAFC/IMSA note that certain of the five criteria specified by Congress are more subjective than other of the factors to be

considered. For example, whether other public safety spectrum is "immediately available" to satisfy the desired use, whether the requested use will cause harmful interference to other spectrum users entitled to protection from harmful interference and whether the unassigned frequencies which have been allocated to their present use for at least two years are reasonable objective criteria. Whether use of the unassigned frequency is "consistent with other public safety allocations in that geographic area" inherently may be a subjective factor, since consistency with other public safety allocations may or may not be relevant to the application and the proposed operation. Whether grant of the application is "in the public interest" is the most subjective of any of the factors.

IMSA/IAFC submit that for use requested by a public safety entity, if other spectrum allocated to the public safety services is immediately unavailable to satisfy the requested use, and where the requested use will not cause harmful interference to those entitled to protection from harmful interference, the Congressional direction to grant such waivers effectively should be deemed a presumption that the public interest would be served by granting authority to the public safety entity. Accordingly, the Commission should take a broad view of its mandate to grant service waivers under Section 337(c) of the Act.

The Commission further poses the issue of whether public safety agencies should be eligible under Section 337 to apply for licenses identified by the Commission as subject to auction. This issue relates to the requirement that the frequency must have

been allocated for its present use for at least two years. Auction is a licensing means, not an allocation action. Accordingly, to the extent frequencies have been unused for at least two years, the fact that the Commission thereafter identifies the frequency as subject to auction should not impinge upon the ability of a public safety user to seek license authority for such vacant channels.

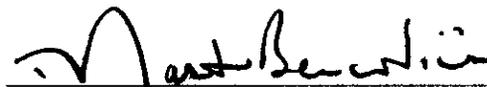
III. CONCLUSION

WHEREFORE, THE PREMISES CONSIDERED, the International Municipal Signal Association and the International Association of Fire Chiefs respectfully urge the Federal Communications Commission to act in a manner fully consistent with the views expressed herein.

Respectfully submitted,

**INTERNATIONAL MUNICIPAL SIGNAL
ASSOCIATION AND INTERNATIONAL
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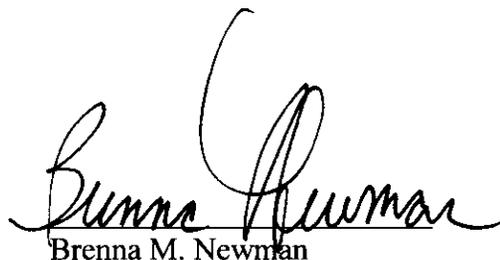
Attorneys for International Municipal Signal
Association and International Association of
Fire Chiefs, Inc.

Dated: August 2, 1999

CERTIFICATE OF SERVICE

I, Brenna M. Newman, a legal secretary at the Law firm of Keller and Heckman LLP, hereby certify that on this 2nd day of August 1999, a copy of the foregoing Comments of the International Association of Fire Chiefs, Inc. and the International Municipal Signal Association were sent first-class mail mail, postage prepaid to the following:

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