

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

In the Matter of)	
)	
Service Rules for the 746-764 and)	WT Docket No. 99-168
776-794 MHz Bands, and Revisions of)	
Part 27 of the Commission's Rules)	

**Reply Comments of the Industrial Telecommunications
Association, Inc.**

1. On June 3, 1999, the Commission released a *Notice of Proposed Rule Making* proposing to establish new service rules for the licensing of the 746-764 and 776-794 MHz bands (hereinafter referred to as the "746-806 MHz bands") under Part 27 of the rules.¹ On July 19, 1999, the Industrial Telecommunications Association, Inc. (ITA) and other interested parties filed comments. Now, ITA submits these "Reply Comments" in order to further clarify its views to the Commission.

A. Spectrum Allocation.

2. The Balanced Budget Act of 1997 directs the Commission to assign 36 MHz of spectrum in the 746-806 MHz band for "commercial use to be assigned by competitive bidding pursuant to section 309(j)."² Several commenters, including ITA, suggested that a portion of this spectrum be allocated for private wireless use.³ ITA

¹ In the Matter of Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Notice of Proposed Rule Making*, FCC 99-97, released June 3, 1999 (*Notice*).

² See Section 337 of the Communications Act, 47 U.S.C. § 337, as added by § 3004 of the Balanced Budget Act of 1997, Pub. L.No. 105-33, 111 Stat. 251 (1997).

³ See Comments of Intek Global Corp. at 6 (the Commission should guard against adopting any rules that might foreclose the ability of the private mobile service providers from utilizing at least a portion of the spectrum in the 746-764 MHz and 776-794 MHz bands); Comments of MRFAC, Inc. at 3 (the spectrum at issue is ideally suited to private mobile uses since it is close to the spectrum newly-allocated

reiterates that the Commission should make a portion of the 746-806 MHz band available for private wireless use. As clearly demonstrated in the Petition for Rule Making filed by the Land Mobile Communications Council last April,⁴ the private wireless industry has a critical need for additional spectrum. 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.⁵

3. Congress as well, in enacting the Balanced Budget Act of 1997, recognized the spectrum needs of the private wireless community and directed the Commission to “consider the need to allocate spectrum for shared or exclusive use by private wireless services in a timely manner.”⁶ Allocating a portion of the 746-806 MHz band for private wireless use would certainly be one step towards satisfying this Congressional directive.

B. Assignment Mechanism.

4. In an ideal world, ITA would urge the Commission to assign this spectrum allocation via the “traditional” licensing processes, *i.e.*, using the existing private wireless licensing mechanisms. Auctions, after all, are an inappropriate licensing mechanism for the private wireless industry because this industry licenses spectrum

for public safety); Comments of Motorola, Inc. at 13 (an allocation by the FCC of a portion of this spectrum for the private mobile radio services is consistent with the Congressional requirement to allocate the spectrum for “commercial use”); Comments of United Telecom Council at 3 (UTC strongly supports allocations of a portion of this spectrum for private wireless users).

⁴ 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).

⁵ LMCC Petition at 11.

⁶ See H.Rept. 105-217 at 575 (1997).

through engineering solutions and the spectrum is shared in a geographical area by multiple users. When licensed on a site-by-site basis and properly coordinated, private wireless applications rarely, if ever, generate mutual exclusivity. Since there is no mutual exclusivity between private wireless applicants, there would no need to consider competitive bidding as a licensing mechanism for an allocation in the 746-806 MHz band – and the Commission could assign the spectrum via the existing private wireless licensing mechanisms.

5. Unfortunately, it appears that the Commission has little discretion with respect to the licensing mechanism to be used for assigning a spectrum allocation in the 746-806 MHz band. The constraints placed on the type of use and the explicit directive that the Commission allocate the 36 MHz via “competitive bidding” effectively eliminates the Commission’s spectrum management alternatives for this band. While it is clear that the private wireless industry would benefit from an allocation in the 746-806 MHz band, we feel compelled to acknowledge that competitive bidding may be the licensing mechanism the Commission is forced to use in this particular band.⁷

C. Band Manager.

6. If the Commission does, in fact, make a determination that competitive bidding is the licensing mechanism it must use in this band, ITA strongly urges the Commission to use a “band manager” to distribute spectrum for private wireless use. As explained in ITA’s Comments to this proceeding, the Commission is faced with the unique opportunity to make a portion of the 746-806 MHz band available for private

⁷ While we see no alternative to competitive bidding as an assignment methodology for the 746-806 MHz band, we would be adamantly opposed to any attempt to use competitive bidding as a licensing mechanism in existing private wireless bands or for new private wireless spectrum located in any other band.

wireless use in order to satisfy some of the spectrum needs of the private wireless community. In so doing, the Commission may be forced to use a licensing mechanism that is simply not appropriate for the private wireless community. Thus, the Commission must create a “new” class of licensee who could purchase the spectrum via competitive bidding and, in turn, distribute the spectrum exclusively for private wireless use.

7. Some would have the Commission believe that the needs of the private wireless industry could be met through commercial services. While we have no objections to the Commission allocating a portion of the 746-806 MHz band for commercial use, we do not believe that a commercial provider can satisfy the unique needs of the private wireless industry nor is it likely that any commercial provider will market a product or service suitable for private wireless use in the near future. As the Wireless Telecommunications Bureau itself acknowledged, “in many cases, PMRS [private mobile radio service] users represent a thin and unique market that CMRS [commercial mobile radio service] providers have little incentive to invest in to serve; there is usually not enough of a return involved to justify the capital investment to serve one or a few PMRS customers.”⁸

8. We believe that by distributing the spectrum for use by the private wireless industry through a “band manager,” the Commission would achieve its often stated goals of promoting efficient use of the spectrum, increasing corporate productivity, enhancing the safety and welfare of employees, and improving the delivery of goods and services to the American public. Thus, we ask that the Commission consider an allocation strictly for private wireless use to be assigned via a “band manager.”

⁸ *PRMS Land Mobile Services: Background*, Wireless Telecommunications Bureau Staff Paper at 23-24 (rel. Dec. 18, 1996).

9. ITA, in its Comments to this proceeding, presented the Commission with three potential “band manager” scenarios. Under one scenario, the Commission could re-characterize the existing frequency advisory committees as “band managers” and have them assume a greater spectrum management role. In addition to the current responsibilities of frequency advisory committees (*i.e.*, collecting regulatory fees, reviewing applications, ensuring data accuracy, completing coordinations, and electronically submitting the application), the “band manager” could assume additional administrative duties such as verifying construction and issuing call signs/licenses. Unfortunately, given the restrictions on type of use and licensing mechanism currently mandated for the 746-806 MHz band, this scenario is not available at this time.

10. Under a second scenario, the “band manager” could act as a broker between a commercial provider and private wireless licensees, if a commercial provider -- who has excess capacity – desires to partition and/or disaggregate the excess capacity for private wireless use. The likelihood of success of this option appears minimal, because we have yet to see this type of partitioning and disaggregation.

11. The third scenario outlined by ITA in its Comments, however, presents a workable solution to the Commission’s dilemma of how to allocate and assign spectrum in the 746-806 MHz band for private wireless use. The “band manager” could bid for the spectrum at auction and, if successful, would provide spectrum for private wireless use. Under this approach, the Commission would need to limit participation in this auction *only* to those entities willing to partition, disaggregate, or sub-lease spectrum *strictly* for private wireless use. We are not, in any way, advocating that the “band manager” be a telecommunications service provider. Although the “band manager”

would generate revenues through the partitioning, disaggregation, or sub-leasing of the spectrum to compensate for the costs associated with managing the use of the spectrum, they would not qualify as a telecommunications service provider as they would not be offering customer-based services to anyone. Instead, the “band manager” would be akin to a frequency advisory committee – one that manages and promotes efficient use of the spectrum allocated for private wireless use.

12. We believe that this approach would be in the public interest as it would facilitate the distribution of spectrum for private wireless use. As we have stated in the past, private wireless use of the spectrum ensures the safety of employees, enhances productivity and operations, and contributes to the continued growth and vibrancy of the American public through the provision of essential goods and services, such as safe transportation, medicines, medical telemetry products, and emergency road-side services – just to name a few.

D. Interference.

13. One of the obstacles facing the Commission is the potential for interference with the newly-allocated public safety spectrum. ITA believes that allocating a portion of the 746-806 MHz band for private wireless use via a “band manager” would alleviate many of the concerns voiced by the public safety community. Commercial providers offer wide-area geographic services to large segments of the population and need extended operating areas. In many instances, this could cause unacceptable interference with public safety systems operating on adjacent channels.⁹

⁹ In fact, as we noted in our Comments, there have *already* been documented instances where public safety licensees have experienced interference from commercial providers. See Comments of the Industrial Telecommunications Association, Inc. at 13.

14. Private wireless licensees, on the other hand, use campus systems, ribbon configurations, and localized services and can be “coordinated around” public safety systems. The private wireless community currently shares spectrum with the public safety users. This arrangement has worked well and we see no reason why an adjacent allocation in the 746-806 MHz band would not also work. We believe that an adjacent allocation will enable the Commission to protect the public safety community from unacceptable interference, while continuing to maximize efficient use of this valuable and scarce. Thus, ITA suggests that the Commission allocate that portion of the 746-806 MHz band immediately adjacent to the public safety spectrum for private wireless use.

E. Band Plan.

15. ITA further urges the Commission to allocate no less than 12 MHz of the total 36 MHz for private wireless use. In recent years, the spectrum needs of the private wireless industry have taken a back seat to commercial allocations. As clearly demonstrated by the Comments to the LMCC’s Petition for Rule Making, the private wireless industry has an immediate and pressing need for additional spectrum.¹⁰ If this need is not addressed, it could have a destructive impact on the continued

¹⁰ 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.”).

competitiveness of American industries and the delivery of products and services to the American public.¹¹

16. While an allocation of 12 MHz of spectrum will in no way satisfy the long-term spectrum needs of the private wireless industry, it will certainly provide *some* relief from the spectrum shortage currently facing this often over-looked industry. We do, however, strongly encourage the Commission to consider allocating spectrum exclusively for private wireless use as requested by the LMCC in its petition and assigning that spectrum via the traditional licensing mechanism currently in place for the private wireless community.

17. ITA suggests that the Commission consider allocating the 12 MHz of spectrum on a nationwide basis as private wireless systems, unlike commercial systems, do not adapt to geographically defined areas of operation. Moreover, we believe that a nationwide allocation will further the Commission's goal of promoting efficient use of the spectrum because licensees will not have artificial boundaries with which to contend. In addition, we recommend that the Commission allocate this nationwide spectrum in two 3 MHz bands bordering the public safety allocation (for a total of 12 MHz of spectrum) strictly for private wireless use and distribution via a "band manager." We believe that making spectrum potentially available for multiple "band managers" will further competition in the marketplace and ultimately result in lower costs to the licensee and better services to the public. We are convinced that competition between "band managers" would encourage operating efficiency, superior service, continuous assessment of marketplace concerns, fast and courteous service, and competitively priced services. We also believe that a choice between multiple "band

¹¹ See LMCC Supplemental Comments in RM-9267, filed April 20, 1999.

managers” would provide the necessary checks and balances against abuse and ensure neutrality on the part of the “band manager.”¹²

F. Conclusion.

18. ITA believes that the record in the proceeding supports an allocation of spectrum in the 746-806 MHz band for the private wireless community. Moreover, since the Commission may be constrained as to the type of use and licensing mechanism used for the 746-806 MHz band, ITA suggests that the Commission allocate no less than 12 MHz of spectrum nationwide in two 3 MHz blocks bordering the public safety allocation (on both sides of the 746-806 MHz band) for distribution via a “band manager.”

Respectfully Submitted,

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Date: August 13, 1999

¹² We do, however, suggest that if only one “band manager” bids for the spectrum at auction, the Commission not limit the availability of spectrum to that one “band manager” to 6 MHz. Instead, the Commission should permit that one entity to purchase and distribute the entire 12 MHz for private wireless use. The Commission will, in this way, ensure that the private wireless industry receives some small measure of the spectrum it desperately needs.

Certificate of Service

I, Laura L. Smith, do hereby certify that on the 13th day of August 1999, I forwarded to the parties listed below a copy of the foregoing Reply Comments of the Industrial Telecommunications Association, Inc. by first-class mail, postage pre-paid:

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