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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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)
)
 Applications of Nextel Communications, Inc.)
 and Associated Rule Waiver Request of)
 47 C.F.R. §§ 90.617(c) and 90.619(b))

WT Docket No. 99-87

RM-9332

DA 99-1431

**REPLY COMMENTS OF THE
CALIFORNIA STATE AUTOMOBILE ASSOCIATION**

The California State Automobile Association (“Cal State”), by its attorneys and pursuant to Section 1.415(c) of the Commission’s Rules, hereby submits reply comments in the above-captioned proceeding, relating to the implementation of Sections 309(j) and 337 of the Communications Act of 1934 (“Communications Act”), as amended by the Balanced Budget Act of 1997 (“Balanced Budget Act”).¹ In brief, Cal State agrees with the vast majority of commentors who support the continued use of site-based licensing for private radio users and who recognize that auctions are not appropriate for any future licensing of radio spectrum that is already crowded with incumbents. Moreover, Cal State supports comments filed by the American Automobile Association (“AAA”) which highlight the exemption from auctions that Congress expressly provided for not-for-profit

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organizations that offer emergency road services. As discussed below, this exemption is critical for emergency road service providers in highway-dependent state such as California. To implement this exemption, Cal State supports the creation of a separate pool for “Public Safety Radio Services” that are not already members of the Public Safety Pool. Cal State also requests that a portion of any future allocation of private radio spectrum be set aside for the Public Safety Radio Services.

I. Preliminary Statement:

Cal State is a not-for-profit organization that has been providing emergency road services for nearly one hundred years. Over the course of a year, Cal State responds to over 3 million emergency road service calls from motorists facing a wide variety of problems, many of which endanger the safety of drivers and their passengers. Relying on the efficient use of its radios and the private radio spectrum, Cal State quickly dispatches towing operations to the scene of motor vehicle accidents or breakdowns, so that road hazards can be cleared before secondary collisions can occur. Cal State also assists motorists who are stranded or involved in accidents and transports them from roads and highways where they may otherwise be vulnerable to harm from high-speed vehicles or crime. Without question, Cal State’s prompt response to roadside emergencies saves lives. Congress has highlighted the need for prompt emergency roadside assistance, citing to a study which shows that, “while deaths from motor vehicle crashes have been declining in recent years, deaths at the scene prior to emergency medical care have doubled in the past 20 years, totaling more than 20,000 per year.”² Another report, prepared by Shell Oil Company in cooperation with the American Red Cross, the Federal

¹ Pub. L. No. 105-33, Title III, 111 Stat. 251 (1997).

Highway Administration, the National Crime Prevention Council, and the National Institute for Automotive Service Excellence, indicates that nearly 3,000 people die each year while waiting for help on roadway shoulders and medians.³ These findings demonstrate that the public has a compelling need for the auto emergency services provided by Cal State and other AAA-affiliated auto clubs.

State and local public safety agencies also rely upon the emergency road services performed by Cal State. Police departments, 911 operators, and other public service agencies regularly call upon Cal State for assistance because they know that it can respond quickly in these situations. To facilitate these communications, the telephone numbers of Cal State's dispatch centers have been programmed into many public safety and highway patrol databases and speed dialing systems. If the services provided by Cal State were not available, these government agencies would be compelled to devote their own resources to rescuing stranded motorists and clearing automotive hazards. In heavily populated areas, a single vehicle breakdown can also create severe traffic jams that paralyze commuters, wasting thousands of man-hours that the workforce must spend sitting in traffic. Such traffic jams also contribute to air pollution, a problem which is particularly acute in certain portions of the state.

With these points in mind, Cal State provides below its reply to comments on the Commission's *Notice of Proposed Rulemaking*,⁴ addressing issues relating to the "public safety radio services" exemption, particularly as it applies to emergency road services.

² H.R. Rep. No. 105-768, pt. 1, at 10 (1998).

³ Shell Oil Company, Breakdown, <http://www.countonshell.com>, 1 (1999).

⁴ Implementation of Sections 309(j) and 337 of the Communications Act of 1934, as amended, *Notice of Proposed Rulemaking*, WT Docket No. 99-87, FCC 99-52 (rel. March 25, 1999) ("NPRM").

II. Congress Intended that the Spectrum Presently Allocated to the Automobile Emergency Radio Services be Exempt from Auction

As the comments of AAA aptly demonstrate, Congress has recognized the valuable public safety service provided by emergency road services by including an exemption from auctions for radio services used by not-for-profit organizations that offer emergency road services such as the American Automobile Association (AAA).⁵ The Commission is also aware of the public safety function of AAA auto clubs, concluding in a recent rulemaking that “automobile emergency road services have a significant quasi-public safety component involving safety on the nation’s highways.”⁶ These public safety considerations support the adoption of special protections for auto emergency radio operations.

Recognizing the important public safety features of automobile emergency services, both Congress and the FCC have taken measures designed to protect and promote auto club operations. To ensure that auto clubs can continue to provide reliable emergency road services to the public, Congress expressly exempted from the Commission’s auction authority all licenses issued “for public safety radio services, including private internal radio services used by State and local governments and not-for-profit organizations.”⁷ Congress explained in the Conference Report that “[t]his service exemption also includes radio services used by not-for-profit organizations that offer emergency road services, such as the American Automobile Association. The Senate

⁵ See Comments of American Automobile Association (“AAA Comments”) at 2, *citing* H.R. Rep. No. 105-217, at 572 (1997).

⁶ Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Services and Modify the Rules Governing Them, Second Memorandum Opinion and Order, FCC 99-68, at para. 16 (rel. April 13, 1999) (hereinafter “*Second Memorandum Opinion and Order*”).

⁷ Budget Act, § 3002(a)(2)(A).

included this particular exemption in recognition of the valuable public safety service provided by emergency road services.”⁸ The Commission has acknowledged this mandate, and has returned to AAA the exclusive authority to coordinate former Automobile Emergency Radio Service (“AERS”) frequencies, basing this decision on its consideration of “the exceptionally large number of service calls handled by emergency road service providers, the fact that a significant percentage of those calls – 30 percent – involves threats to person or property, the imperative need for safety on the nation’s highways and the importance that the Congress has placed on the role of emergency road services in the 1997 Balanced Budget Act.”⁹

III. The Private Radio Industry Overwhelmingly Disapproves of Auctions

AAA and an overwhelming majority of commentators representing a wide range of private spectrum users disapprove of the use of auctions for the licensing of private radio spectrum.¹⁰ The Balanced Budget Act did expand the Commission’s competitive bidding authority, but at the same time it unequivocally stated that this expanded authority may only be exercised *consistent with the Commission’s obligation under Section 309(j)(6)(E) to avoid mutual exclusivity*.¹¹ Because the frequency coordination process and site-by-site licensing have been successfully used for decades to avoid mutual exclusivity and ensure the efficient and intensive use of private radio spectrum, there is no reason to overturn a licensing scheme that works and upon which thousands of diverse licensees –

⁸ H.R. Report 105-217, at 572 (1997).

⁹ *Second Memorandum Opinion and Order* at para. 18.

¹⁰ See e.g., AAA Comments at 5-6; Comments of the Land Mobile Communications Council (“LMCC Comments”) at 3-5; Comments of Personal Communications Industry Association (“PCIA Comments”) at 2-4; Comments of SCANA Corporation (“SCANA Comments”) at 8-9; Comments of American Petroleum Institute (“API Comments”) at 12-14.

¹¹ H.R. Report 105-217, at 572 (1997).

including auto clubs – have developed radio systems that are uniquely tailored to fit their needs. Because auto clubs and other exempt entities may be licensed throughout the entire private land mobile spectrum, Cal State agrees with SCANA Corporation that intermingling of exempt and non-exempt licensees makes it impossible to administer auctions while maintaining the viability of the Public Safety Radio Services, as intended by Congress.¹²

IV. The Auction Exemption Applies to Former AERS Spectrum *and* Non-AERS Spectrum Allocated to Auto Emergency Radio Services

Cal State agrees with AAA that Congress' mandate included in the Balanced Budget Act of 1997 prohibits the Commission from using an auction mechanism to license former AERS frequencies, or frequencies outside of the former AERS that are used by AAA and other non-profit auto emergency users. The AERS frequencies are so heavily used in urban areas that Cal State has been forced to obtain licenses in different private land mobile frequency bands, including the 800 MHz and 900 MHz Conventional Business Radio Services. Since it is evident, considering the language of the Balanced Budget Act and the accompanying Conference Report, that Congress intended to protect AAA auto club operations on both AERS frequencies and non-AERS frequencies, the Commission may not auction frequencies outside of the former AERS channels that are used by AAA or other not-for-profit emergency road service providers. In this regard, Cal State joins with AAA in urging the Commission to eliminate the 2-watt power restriction on eight of the thirty frequencies now designated for shore-to-vessel communications and designate AAA as the sole coordinator of those frequencies.¹³

¹² SCANA Comments at 19.

¹³ Supplemental Comments of the American Automobile Association to WT Docket No. 98-182 and PR Docket No. 92-235 (filed August 26, 1999) ("AAA Supplemental Comments") at 2.

These channels potentially can be paired with Emergency Road Service channels and would help alleviate the shortage of private radio spectrum faced by Cal State and other auto clubs.

V. The Commission Should Create a Public Service Radio Pool, and Include AERS Frequencies Within this Third Pool, if it Decides to Auction Licenses for Non-Exempt Services

While site-based licensing works well for today's quasi-public safety services, including auto clubs such as Cal State, there are public safety dangers associated with licensing other entities on frequencies used by auto clubs. As noted above, Cal State agrees with the overwhelming majority of commentors who have demonstrated that the Commission should keep its current private radio licensing scheme. However, Cal State understands that the FCC may feel compelled to conduct auctions when new spectrum – spectrum that is free of incumbent users – is allocated to the private radio services. In this instance, the Commission will need to separate auctionable frequencies in the Industrial/Business Pool from exempt Public Safety Radio Service channels. Cal State therefore supports AAA and other commentors that are in favor of creating a third pool to protect applicants that provide quasi-public safety services and are entitled to apply for frequencies in former Auto Emergency, Power, Petroleum and Railroad services.¹⁴

As noted by AAA, specific mention of that in the legislative history of the Balanced Budget Act, and the Commission's own decision that AAA should be granted coordination parity with the power, petroleum and railroad industries support the inclusion of the AERS frequencies in any new Public Service Radio Pool.¹⁵ Moreover,

¹⁴ Joint Comments of the American Petroleum Institute ("API") the Association of American Railroads ("AAR") and the United Telecom Council ("UTC") (hereinafter the "Critical Infrastructure Industry ("CII") Joint Comments; API Comments at 9; AAA Comments at 8.

¹⁵ *Id.* at Note 13.

Cal State agrees with AAA that Public Safety entities will have access to an additional 24 MHz of spectrum allocated by the Balanced Budget Act and therefore should not need to use frequencies allocated to quasi-public safety entities such as AAA.¹⁶ If additional spectrum is allocated for private radio services in the future, Cal State agrees with AAA that some portion of that allocation should be set aside for the Public Service Radio Pool.¹⁷

VI. The Commission Should Not Permit Inter-Service Sharing Between Private and Commercial Mobile Radio Systems

Cal State is concerned about the impact that interservice sharing between private and commercial mobile radio systems may have in the private internal radio services. Cal State therefore agrees with commentors that urge the Commission not to allow Nextel or others to integrate PMRS channels into a CMRS system.¹⁸ Commercial operators have numerous spectrum bands available to them, and may take advantage of policies and rules which promote the partitioning and disaggregation of CMRS spectrum. The Commission must not allow the scarce private spectrum that is available to be siphoned off for commercial uses. The Commission has just licensed numerous commercial providers in every part of the country, through a spate of auctions in the Personal Communications Services (“PCS”), Specialized Mobile Radio (“SMR”) and 220 MHz bands. Spectrum that is allocated for private internal-use systems must be preserved.

¹⁶ *Id.* at 9.

¹⁷ AAA Comments at 9-12

¹⁸ AAA Comments at 12-13; API Comments at 20-22; .

VII. Conclusion

Cal State respectfully requests that the FCC implement the exemption from auctions that Congress intended for auto clubs and otherwise continue the use of site-based licensing for private radio spectrum that is crowded with incumbents. Any future allocation of private radio spectrum should include additional spectrum for Public Safety Radio Services, including auto clubs. Moreover, the Commission should not permit inter-service sharing or otherwise allow CMRS licensees, such as Nextel, to integrate scarce private radio channels into their commercial systems.

Respectfully Submitted,

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