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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of) DOCKET FILE COPY ORIGINAL
)
Implementation of Sections 309(j)) WT Docket No. 99-87 /
and 337 of the Communications Act)
of 1934, as Amended)
)

PETITION FOR RECONSIDERATION OR CLARIFICATION OF THE
AMERICAN AUTOMOBILE ASSOCIATION

The American Automobile Association (AAA) 1/, by its attorneys,
hereby submits its petition for reconsideration or clarification in the above-
referenced matter. 2/ Specifically, AAA asks that the FCC clarify, or grant its
petition for reconsideration of, its ruling that section 309(j)(2)(A) exempts only
certain blocks of spectrum, rather than classes of spectrum users from auction. The
FCC should effectuate congressional intent by confirming that AAA and all private
radio spectrum users that fall squarely within the congressional exemption are
auction-exempt, regardless of the spectrum band or bands they use to provide their
critical services.

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1/ AAA is the nation's leading provider of emergency road services and is the
FCC-designated exclusive frequency coordinator of the Emergency Road Service
channels.

2/ *Implementation of Sections 309(j) and 337 of the Communications Act of 1934,
as amended, Report & Order and Notice of Proposed Rulemaking, WT Docket No.
99-87, FCC 00-403 (rel. Nov. 20, 2000) ("Balanced Budget Act Report & Order").*

I. THE PLAIN LANGUAGE OF SECTION 309(J)(2)(A) EXPRESSLY PREVENTS THE FCC FROM AUCTIONING SPECTRUM PRESENTLY USED BY AAA FOR ITS PROVISION OF EMERGENCY ROAD SERVICES

Although the Balanced Budget Act of 1997 generally expanded the FCC's authority to assign licenses through competitive bidding when mutually exclusive applications have been filed, Congress specifically exempted AAA from this process.^{3/} Congress exempted "licenses" issued "for public safety radio services, including private 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." ^{4/} Congress explained in the accompanying 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 (AAA). The Senate included this particular exemption in recognition of the valuable public safety service provided by emergency road services." ^{5/}

^{3/} P.L. 105-33, Title III, 111 Stat. 251 (Aug. 5, 1997).

^{4/} 47 U.S.C. § 309(j)(2)(A).

^{5/} H.R. Report 105-217 at 572. *See also* Letter from U.S. Senators Byron L. Dorgan and Conrad Burns, to William Kennard, Chairman, Fed. Comm. Comm'n (Feb. 17, 1998) ("Dorgan & Burns Letter"). "This exemption was provided because Congress recognized the unique nature of emergency road services offered by non-public entities [such as AAA] and the important public safety function these entities provide." *Id.*

Congress expressly indicated its intention that the statutory exemption from auctions apply broadly to particular "radio services," including those used by not-for-profit emergency road service providers. This exemption prevents the FCC from auctioning either spectrum presently allocated to the former Auto Emergency Radio Services ("AERS") channels or any other private radio spectrum licensed to and used by AAA and its member clubs for the provision of essential emergency services (including spectrum that is outside of the AERS frequencies).

II. THE FCC HAS CREATED AN INAPPROPRIATE DISTINCTION THAT COULD RENDER THE CONGRESSIONAL EXEMPTION MEANINGLESS

In its *Balanced Budget Act Report & Order*, the FCC correctly determined that the statutory exemption for public safety services applies to "services designated for non-commercial use by entities . . . that provide essential services to the public at large and that need reliable internal communications in order to prevent or respond to disasters or crises affecting their service to the public." ^{6/} The FCC also properly decided that "a radio service used by for-profit entities providing emergency road services" is outside of the scope of the congressional exemption. ^{7/} The FCC appears to have made an unnecessary and

^{6/} *Balanced Budget Act Report & Order* at ¶ 64.

^{7/} *Id.* at ¶71.

inappropriate distinction, however, by stating that the congressional exemption applies only to "blocks of spectrum, not classes of users[.]" 8/

Nowhere did Congress suggest that the auction exemption should be narrowly limited to discrete spectrum blocks or allocations. Rather, the express language Congress chose for Section 309(j)(2)(A) -- "licenses . . . for public safety radio services, including private internal radio services used by . . . emergency road services" -- suggests that Congress intended to very broadly cover all licenses for private internal radio services used by these entities. 9/ Congress used the word "services" broadly, referring to both the "services" offered by the spectrum licensees and the associated private radio spectrum (and frequencies) the licensees hold and use. Indeed, if Congress had intended "services" to mean a discrete, specific allocation of spectrum granted to a certain entity for a specific use, it would have indicated this intent by a more narrow choice of words. 10/ Moreover, the exemption broadly refers to licenses used by certain types of users, including those

8/ *Id.* at ¶ 66, ¶71, n.196.

9/ 47 U.S.C. § 309(j)(2)(A). *See also* Dorgan & Burns Letter. "As you know, Congress provided for a specific exemption for emergency road services from spectrum auctions under the Balanced Budget Act of 1997." *Id.* In their letter to Chairman Kennard, Senators Dorgan and Burns also used the word "services" in a broad context.

10/ Because Congress has spoken plainly and directly, its intent is evident from the specific words it has chosen. The agency "must give effect to the unambiguously expressed intent of Congress." *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984).

providing emergency road services, rather than particular bands of spectrum set aside for public safety radio services.

Secondly, in an era when spectrum is managed on a "crisis-by-crisis" basis,^{11/} it has been necessary for AAA and its member clubs to obtain and use private radio spectrum that is outside of the former AERS band. Given the severe shortage of private radio spectrum,^{12/} the Commission has granted to AAA and its member clubs additional private radio spectrum located outside of the former AERS channels. In granting these licenses, the FCC has understood that AAA would be using the spectrum to further its mission of providing emergency automobile services for its members. In fact, AAA uses all of its private radio licenses, no matter where located, for the sole purpose of providing emergency services to its members. AAA has documented its ongoing requirement for additional private radio spectrum, which it needs in order to better serve its members. ^{13/}

^{11/} See e.g., Pablo T. Spiller and Carlo Cardilli, *Towards a Property Rights Approach to Communications Spectrum*, 99 Yale J. on Reg. 53. "FCC regulation of the spectrum today is characterized by a patchwork of distinct, and analytically contradictory administrative regimes for different technologies." *Id.* at 59.

^{12/} Bennett Z. Cobb, Spectrum Guide: Radio Frequency Allocations in the United States, 30 MHz – 300 GHz, New Signals Press (1995) at 15. "With the explosive growth in business and public-safety mobile communications, demand for private radio channels is significantly greater than the supply." *Id.* See also Principles for Promoting the Efficient Use of Spectrum by Encouraging the Development of Secondary Markets, Policy Statement, FCC 00-401 (rel. Dec. 1, 2000). "Increasing spectrum requirements for public safety and for national defense systems, satellite services, private users, amateur radio, and the dramatically growing interest in accessing the Internet are compounding the shortages of spectrum." *Id.* at ¶3.

^{13/} For example, AAA has requested that the Commission eliminate the 2-watt power restriction on eight Dockside Channels, and thereby enable AAA to use this

By attempting to distinguish the specific private radio spectrum "blocks" used by public safety radio services from the private radio "licenses" assigned to providers of public safety radio services, the FCC has unnecessarily created a distinction that, if not clarified, could render the congressional exemption meaningless. Instead, Congress expressly granted certain private radio licensees who provide critical public services, such as AAA and its member clubs, a broad exemption from spectrum auctions.

III. SECTION 309(J)(2)(A) PREVENTS THE FCC FROM SUBJECTING AAA TO FUTURE AUCTIONS OF PRIVATE WIRELESS SPECTRUM

Section 309(j)(2) states that the FCC's competitive bidding authority "shall not apply" to emergency road services provided by not-for-profit organizations. With this language, Congress expressed its intent that AAA, a not-for-profit emergency road service provider, is exempt from future auctions of private wireless spectrum.

As a result of this exemption, the Commission will have to ensure that AAA and other not-for-profit emergency road service providers are eligible to receive additional spectrum, if and when needed, without participating in auctions.

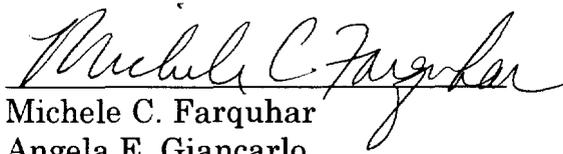
private radio spectrum more efficiently by allowing expansion of its digital voice and data communications in many American cities. *See* Dec. 14, 2000 Reply Comments of the American Automobile Association, *1998 Biennial Regulatory Review -- 47 C.F.R. Part 90 - Private Land Mobile Radio Services*, Report & Order and Further Notice of Proposed Rulemaking, WT Docket No. 98-182 (rel. July 12, 2000).

IV. CONCLUSION

In light of the foregoing analysis, the FCC should clarify, or grant AAA's petition for reconsideration of, its ruling that Section 309(j)(2)(A) exempts only certain blocks of spectrum, rather than types of spectrum users, from spectrum auctions. The FCC should confirm that AAA and all private radio spectrum users that fall squarely within the congressional exemption are indeed auction exempt, regardless of the private radio spectrum band or bands used to provide their critical services. This result is necessary to effectuate congressional intent to recognize the "unique nature of emergency road service offered by non-public entities and the important public safety function these entities provide." 14/

Respectfully submitted,

**AMERICAN AUTOMOBILE
ASSOCIATION**



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14/ Dorgan & Burns Letter.

CERTIFICATE OF SERVICE

I, Patricia A. Green, do hereby certify that on the 1st day of February, 2001, I forwarded to the parties listed below a copy of the foregoing Petition for Reconsideration or Clarification of the American Automobile Association, by hand delivery, unless otherwise indicated:

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