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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of)	
)	
Service Rules for the 746-764 and 776-794 MHz Bands, and)	WT Docket No. 99-168
Revisions to Part 27 of the Commission's Rules)	
(Television Channels 60-69)	
)	
Reallocation and Service Rules for the 698-746 MHz Spectrum Band)	GN Docket No. 01-74
(Television Channels 52-59))	
)	
Auction of Licenses in the 747-762 and 777-792 MHz)	DA 02-260
Bands Scheduled for June 19, 2002)	Report No. AUC 02-31-A (Auction No. 31)
)	
Auction of Licenses in the 698-746 MHz Band)	DA 02-563
Scheduled for June 19, 2002)	Report No. AUC 02-44-B (Auction No. 44)

To: The Commission

**COMMENTS ON APPLICATION FOR REVIEW OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.**

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.

By: 

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May 3, 2002

The American Mobile Telecommunications Association, Inc. (“AMTA” or “Association”), in response to the Federal Communications Commission (“FCC” or “Commission”) Public Notice of April 26, 2002¹, respectfully submits its comments in support of the April 24, 2002 Application for Review filed by the Cellular Telecommunications & Internet Association (“CTIA”). AMTA joins numerous parties representing a broad range of telecommunications interests in urging the Commission to postpone Auction Nos. 31 and 40. The significance of the Commission’s decision on this matter cannot be overstated: its outcome could fundamentally affect the short- and long-term public safety communications capabilities of this nation. The auctions must be postponed until the FCC first discharges its core responsibility of promoting the safety of life and property and the national defense.²

The Commission has before it an Application for Review filed by CTIA asking for full Commission review of the April 3, 2002 letter decision from the Wireless Telecommunications Bureau (“Bureau”) not to delay the auctions in question. While the Bureau’s decision relied upon the seeming intent of Congress at that time, it has become increasingly apparent in recent weeks that this issue should be revisited.³

¹*Public Notice*, Pleading Cycle Established for Oppositions to Applications for Review of Wireless Telecommunications Bureau April 10, 2002 Letter, D.A. 02-857, Regarding Schedule for Auction Nos. 31 and 44, DA 02-971 (rel. April 26, 2002)

²AMTA recognizes that the current auction schedule is responsive to statutory requirements the agency is not able to modify or waive. Nonetheless, the Association believes compelling arguments already have been presented that the FCC has discretion to determine that those statutory directives conflict with and are overridden by the Commission’s overarching spectrum management responsibilities, consistent with Section 309(j)(3)(E)(ii) of the Communications Act. *See, CTIA Application for Review* at pp. 5-6.

³For example, not only has does the Administration budget include an auction delay, legislation now has been introduced in the House of Representatives, and has attracted 52 co-sponsors, that would direct the FCC to postpone these auctions. *See, Auction Reform Act of*

There are two complementary rationales that compel reconsideration of the timing of Auction Nos. 31 and 40. First, as highlighted in CTIA's initial request for postponement of the auctions, and in letters from a variety of commercial operators and equipment suppliers, a delay will best serve the key objective of sound spectrum management. The FCC, indeed the entire Federal Government, is actively engaged in a broad review of how best to deploy our nation's limited spectrum resources. The issues raised in such an analysis are necessarily complex, involving matters of national defense, global interoperability and the migration from a primarily analog to digital telecommunications environment. It is imperative that the Commission retain its entire arsenal of spectrum inventory as it considers these far-reaching issues. Auctioning the "Upper 700 MHz" and "Lower 700 MHz" spectrum at this juncture would unnecessarily limit the FCC's options on these matters of significant national concern. Moreover, the level of uncertainty regarding potential additional allocations for broadband commercial operations, in conjunction with the unresolved issue of when analog broadcasters will vacate these bands, will have a chilling effect on auction participation at this time, reducing the likelihood that this spectrum will be acquired by those that would put it to its highest, best use.

Second, in addition to the broader issue of overall spectrum management, the spectrum at issue herein potentially will play a key role in addressing a specific, highly time sensitive issue involving the communications capabilities of our nation's public safety entities. As the Commission is aware, the issue of interference to 800 MHz public safety systems from cellularized systems operating both within that band and in adjacent bands has prompted the FCC

2002, at Sec. 2(3).

to initiate a rule making proceeding in which it is exploring potential solutions to that growing problem.⁴ One possible approach being explored by a number of parties is the assignment of some or all of the to-be-auctioned Upper 700 MHz spectrum for an exclusive public safety allocation which would be added to the existing public safety allocation in the 700 MHz band.

AMTA recognizes that the 700 MHz band presents unique challenges for public safety or other potential users. The incumbency of this spectrum by UHF television broadcasters without a definitive date for migrating off the band to their new digital allocations is a significant problem, although one the Administration and the Congress seemingly may be prepared to address. There also are very significant financial and logistical issues that must be resolved before the 700 MHz band can be considered a viable home for short-term or long-term public safety operations. However, should the FCC proceed with these auctions as scheduled, it will foreclose the opportunity even to consider this spectrum as an ingredient in public safety interference resolution.

AMTA urges the Commission to respond affirmatively to the recommendations of a broad coalition of telecommunications entities, and to recent Congressional actions, by postponing the current June 19, 2002 auction date. AMTA's many members operating in the 800 MHz band, a band in which the Commission is considering significant, costly frequency realignments in response to the public safety interference problem, uniquely would be disserved by a Commission failure to preserve all potential spectrum solutions to that problem. In light of recent requests for

⁴*Notice of Proposed Rule Making*, WT Docket 02-55, FCC 02-81 (rel. March 15, 2002).

postponement from representatives of the public safety community⁵, the FCC's course should be clear. The Upper 700 MHz and Lower 700 MHz auctions must be delayed while the Commission considers the appropriate role of this spectrum in discharging its public safety and other spectrum management responsibilities.

⁵See Comments of APCO and NEMA.

CERTIFICATE OF SERVICE

I, Linda J. Evans, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this May 3, 2002 caused to be mailed, first-class, postage prepaid, a copy of the foregoing Comments to the following:

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