

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

In the Matter of )  
 )  
Spectrum Policy Task Force Seeks Public ) ET Docket No. 02-135  
Comment On Issues Related To Commission's )  
Spectrum Policies )

**REPLY COMMENTS  
OF  
THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association, Inc. ("PCIA"), through counsel and pursuant to the Commission's Public Notice of June 6, 2002,<sup>1</sup> hereby respectfully submits its Reply Comments in the above-captioned proceeding.

**I. BACKGROUND**

PCIA is an international trade association representing the interests of both commercial mobile radio service ("CMRS") and private mobile radio service ("PMRS") users and businesses involved in all facets of the personal communications industry. PCIA's Federation of Councils includes: the Mobile Wireless Communications Alliance, the Site Owners and Managers Association, and the Private System Users Alliance. In addition, PCIA is the FCC-appointed frequency coordinator for the Business/Industrial Radio Service and for the 929 MHz paging frequencies.

---

<sup>1</sup>DA 02-1311, released June 6, 2002.

In this proceeding, the Commission seeks comment on a wide variety of spectrum policy issues. For the Private Radio Services governed by Part 90 of the Commission's Rules, it is another occasion to revisit the assignment methodologies, which have been used over the decades to allocate spectrum, that have become the lifeblood of American business and public safety services. In this regard, it is appropriate that the Commission incorporate the comments and its findings in WT Docket No. 99-87,<sup>2</sup> as well as the "White Paper" issued by the Wireless Telecommunications Bureau in 1996.<sup>3</sup>

## **II. COMMENTS**

### 1. Market-Oriented Allocation and Assignment Policies

The Commission must recognize that its spectrum assignment policies for the Part 90 services have, to date, been quite successful as they take into account that a variety of communication needs can best be met by having a variety of licensing/service options available. While it sometimes may be appropriate to adjust certain aspects of its allocation policies, for the most part, the Commission has a mechanism in place that is sufficiently flexible to meet most telecommunications needs.

---

<sup>2</sup>*Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, Memorandum Opinion And Order, WT Docket No. 99-87, FCC 02-82, released April 18, 2002.*

<sup>3</sup>Wireless Telecommunications Bureau, Private Land Mobile Radio Services: Background (Dec. 18, 1996) ("PLMR White Paper").

However, the Commission must continue to recognize that the telecommunications marketplace is imperfect. Specifically, there is a difference between competitive service offerings and having a variety of service options available. The commercial wireless marketplace has evolved into a marketplace where spectrum is often bought with the expectation of acquisition of the buyer. In other words, the prices paid for spectrum in auctions held by the Commission are often justified not by how many customers can be served at what price, but rather what price the investors may expect (and how soon) from a buy-out of the company. As a result, the Commission's auctions for newly-allocated spectrum have thus far resulted in a series of similar networks that, from a customer point-of-view, are essentially the same –with each configured to serve the greatest number of potential consumers at the least cost possible.

While this model serves the business-to-consumer segment of the market very well, there is a significant portion of the marketplace for which this model does not work. Public safety entities, entities with public safety-type communications needs, large corporations (particularly in the manufacturing business), users with campus-style communications needs, and specialized communications users often cannot have their communications needs met by services optimized for the lowest-common consumer denominator. Recent Commission proceedings have presented ample opportunity for these entities to detail how their communications needs cannot be met by consumer networks;<sup>4</sup> therefore, those details will not be re-documented here. However, in sum it can be said that there are certain types of customers (i.e. campus systems, emergency systems and ribbon

---

<sup>4</sup>See, for example, WT Docket No. 99-87, and the initial comments filed in this proceeding by the American Petroleum Institute.

systems) that cannot effectively utilize or confidently rely upon consumer-style systems designed to cover the areas of greatest population.

For example, when consumer networks build out huge infrastructures designed to meet consumer needs with licenses costing billions of dollars, these networks are subject to the whims of the consumer and Wall Street. As a result, bankruptcies happen (sixty-three telecommunications companies since 2000), and/or networks are reconfigured to serve incompatible equipment.

The following hypothetical scenario illustrates the unfortunate outcome and risk associated with the former. When bankruptcy shut down the TSR Wireless paging network, had a public safety agency had been relying solely on TSR for its communications needs (a more likely possibility if TSR operation was two-way), that agency would now be without communications, period. Or, had TSR operated facilities for airlines, the entire air carrier system would be shut down.

The following actual scenario illustrates the unfortunate outcome and risk associated with networks being reconfigured to serve incompatible equipment. In this case, a carrier network was sold, and the purchaser elected to reconstruct the system with incompatible equipment. Since the Commission's decision in PR Docket No. 93-144, giving "Upper 200" SMR EA licensees the right to relocate incumbent operators, many incumbents sold their authorizations instead of being relocated. Shortly after closing on the transactions, the network purchaser terminated analog service and required any existing customers who wished to remain on the system to change to its iDEN service. While the termination of analog service was perfectly within the purchaser's rights and probably made sound business sense, in some cases customers with service needs that could not be met by the purchaser were left seeking alternative service, with stranded investment. Public safety agencies and other entities with limited budgets (which often constitute a significant portion of an

SMR system's customer base) shared this reality as a direct consequence of the Commission's action in PR Docket No. 92-235.

In its initial Comments, the National Trade Cooperative Association ("NTCA") recommended that the Commission auction spectrum in smaller geographic portions. While this solution may be effective for carrier auctions in rural areas, it would still be insufficient for most non-carrier situations. This is because most non-carriers do not have uniform, geopolitical service areas. Thus, virtually any sub-division made by the Commission would be arbitrary when applied to this group. Further, division of auctioned areas into very small pieces will lead to an auction which is virtually impossible to administer for either the Commission or applicants.

Recently, the Commission has tried to address this marketplace imbalance, while still auctioning spectrum, by creation of the "Band Manager." Unfortunately, the concept is still new, and it is too early to evaluate its success. The Commission adopted PCIA's proposal that the Commission require a Band Manager to lease the predominant portion of its spectrum to users.<sup>5</sup> However, the Commission did not adopt a similar provision in its second foray into authorizing Band Managers.<sup>6</sup> In the current marketplace environment, there is no economic incentive for an auction winner to artificially constrain its economic potential by leasing a portion of its spectrum and depriving itself of flexibility to meet consumer demand. Therefore, without a leasing requirement, the Band Manager concept is unlikely to succeed.

---

<sup>5</sup>47 C.F.R. §27.603(c).

<sup>6</sup>*Amendments to Parts 1, 2, 27 and 90 of the Commission's Rules to License Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands, Report and Order*, WT Docket No. 02-8, FCC 02-152 (2002) at para. 41.

It is on these bases that PCIA strongly urges the Commission to continue its policy of utilizing a variety of allocation mechanisms to meet the needs of different types of users. Further, the Commission can significantly aid the ability of users to make the most effective use of spectrum and increase the rapidity of introduction of new technologies by responding quickly to proposed rule changes supported by the industry. For example, it is the opinion of a large portion of the land mobile industry that the true spectrum efficiencies envisioned by the Commission in PR Docket No. 02-235, wherein the Commission “re-farmed” spectrum in the 150 MHz and 450 MHz bands, will not happen until and unless the Commission requires incumbent licensees to utilize narrowband (i.e. 12.5 kHz) equipment. Almost two years have passed since the Commission requested comments on this issue,<sup>7</sup> but a decision has not yet been issued.

## 2. Interference Protection

The Commission has asked for Comments as to whether there needs to be more explicit protections from harmful interference. Although additional clarification on these issues would certainly be helpful, PCIA believes that rapid enforcement of those rules and policies already present must be the Commission’s first priority. In the 800 MHz proceeding, for example, the Commission

---

<sup>7</sup>*Establishment of Public Service Radio Pool in the Private Mobile Frequencies Below 800 MHz, Petition for Rule Making of The American Mobile Telecommunications Association, Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 99-87, 15 FCC Rcd 22709 (2002) at para. 9.

is considering long-term solutions to interference occurring in the band.<sup>8</sup> However, the Commission has not, as yet, taken definitive action to ensure that debilitating interference being experienced today is immediately eliminated. In fact, the Commission's Notice Of Proposed Rule Making in WT Docket No. 02-55 makes no mention whatsoever of responsibility for curing interference.

The Commission's first priority must be resolution of interference when it occurs. PCIA recommends that the Commission have personnel specifically delegated to interference resolution, with authority to take steps to evaluate the situation and issue orders as necessary. Further, the industry can certainly do more to aid the Commission in this task. In this regard, PCIA has made specific recommendations to the Land Mobile Communications Council (of which PCIA is a member) to adopt interference resolution procedures to more quickly resolve interference conflicts.

Finally, the Commission asks whether rules should be adopted for regulating interference which are based upon economics, and not purely technical issues. Although the Commission does not specify what it believes "economic balancing" would encompass, this proposal greatly concerns PCIA. While "efficient interference management" based upon "economic balancing" might be appropriate for situations in which both parties are commercial carriers wherein utilization of spectrum is their business, this model is entirely inappropriate for land mobile communications wherein the users/licensees represent the complete panoply of American business, each with differing needs. The result of such an economic theory is the subjective valuing of one business over another, which has no place in interference management. It is this mental model that has led to

---

<sup>8</sup>WT Docket No. 02-55.

the current public safety vs. critical infrastructure vs. private wireless debate, a debate that has only hindered the resolution of critical issues, including interference.

### **III. CONCLUSION**

WHEREFORE, the premises considered, it is respectfully requested that the Commission consider the adoption of rules and policies in accordance with the Comments submitted herein.

PERSONAL COMMUNICATIONS  
INDUSTRY ASSOCIATION, INC.

By: Alan S. Tilles, Esquire

Its Attorney

Shulman, Rogers, Gandal, Pordy & Ecker, P.A.  
11921 Rockville Pike, Third Floor  
Rockville, Maryland 20852  
(301-230-5200)

Date: July 23, 2002