

TESTIMONY OF ROBERT RYAN
MULTIPLE ADDRESS SYSTEM APPLICANT
GLEN ELLYN, ILLINOIS

BEFORE THE COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

ON H.R.2701, THE "JUSTICE FOR MAS
APPLICANTS ACT OF 1999"

NOVEMBER 3, 1999

Testimony before the Judiciary Committee

Thank you for this opportunity. Members of the Committee, my name is Bob Ryan. I am a retiree. In fall of 1991, I saw an opportunity to supplement my upcoming retirement income, by becoming a partner with the FCC in its program to develop the Multiple Address System -- or MAS -- spectrum. MAS wireless technology permits (for example) faster credit card verification, at lower cost.....one of many applications.

To secure favorable odds, my two partners and I applied for 100 of the top US markets. Our costs were \$ 28,000 which included \$ 15,500 in FCC fees. The remainder was engineering and legal costs. Over 1,000 applicants filed more than 50,000 applications.

Rather than probe the unseemly twists & turns of this program now, I will simply note that the authority to launch this program could have produced a May '92 start. Further, the Omnibus Budget Reconciliation Act of '93 projected authority forward. Action was never taken. It has still not been taken these many years later. The valuable MAS plan was torpedoed by its own sponsor -- the FCC. All MAS Applications were summarily dismissed on September 17, 1998. The Public Interest has been abused in this matter. HR 2701 can help redress this issue. I request your support.

May I call your attention to seven points ----

First, Partners from the Private Sector, acting in response to FCC initiatives, make

possible the great achievements of the FCC ---- such as today's Cellular Phone System.

Second, Private Sector Partners have followed detailed FCC rule making, met tight filing windows and paid the fees specified. Having met the standards set, these FCC partners have every right to expect the FCC to follow its own rules and precedents.

Third, FCC rule making for the MAS was precedent setting. FCC required fast build out of CPs awarded within a very short time frame....one year. It prevented early sale of market(s) awarded. It appealed to serious builder / operators....discouraged speculators.

Fourth, MAS rules were finalized in late '91. Applications were filed and the fees were paid as of Feb. '92. Even if delayed several months, these lotteries could have been held and a national build-out completed before the end of December, 1993. It did not happen. IT STILL HASN'T HAPPENED.. Public Interest has been poorly served.

Fifth, A subsequent larger program, IVDS, emerged and was fast tracked by the FCC. IVDS moved rapidly. Lotteries were scheduled -- and actually held for 9 of the top 10 markets by mid '93. At that point, the new Hundt FCC was able to hold up the IVDS process. -- and was, subsequently, able to convert other IVDS markets to the favored auction process. The still newer PCS program was also converted to an auction process. However, even heavy duty lobbying that occurred was unable to convert the earlier MAS program. MAS was protected by the time honored principle of grandfathering.

Sixth, The Hundt FCC reaction was to back-shelf MAS. It gathered dust for years.

Page 3 -

After highly regarded Commissioners Barrett & Quello retired, the FCC did try one more time, in April 1997, using the open formal comment process. The effort failed.

Seventh, The FCC gave up its fully public approach. It went "back door" using another established tradition, the rider bill, to obtain the abusive authority it needed. The rider was successfully attached to the Balanced Budget Act of 1997. A full year later, in October '98, the MAS Applications were summarily dismissed. A rebate of "the fees only" was allowed -- about 55% of an applicant's original cost at the start of 1992.

There was no plan to make applicants whole....after what became seven years of delay.

That is a brief tracking of the sorry history of the MAS program. The facts are more fully developed in the material filed today with the Committee.

There follow four conclusions to be drawn from the public record ---

1 - The FCC, whether intentionally or otherwise, has failed to fulfill its fiduciary responsibilities to the MAS Applicants.

2 - Given deceitful and improper handling of the MAS Applications and so many years of time delay, a return of "fees only" is insufficient compensation. The Applicants should be made whole. Another issue -- aside from clearly negotiable costs -- is loss of opportunity.

3 - While it would, no doubt, be unfair to characterize these events as a conspiracy, the FCC displayed an uncommon "will to resist" implementation of this clearly

grandfathered program. Evidence is all over the public record. Further, the FCC utterly ignored the significant financial damage it was doing to Applicants.

4 - It must also be recognized that abuse of MAS Applicant rights is just part of a larger abuse issue : Abuse of the Public Interest by delaying MAS service for more than six years (and counting) beyond a readily achievable national build-out before '94.

The FCC's handling of the MAS matter is not in the proud tradition of that Commission. To wrap up, again, I request the support of members for HR 2701. It can bring justice to hundreds of MAS Applicants across the country, and send an important message to all government agencies and commissions.

Thank you for your time. Questions are welcome --- time permitting.

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October 28, 1999

Members of the Judiciary Committee
House of Representatives
2138 RHOB
Washington, DC 20515

Re. HR 2701 Attachments--background & analysis of the FCC 's MAS Dismissal Order.

This letter and its attachments will introduce material that should be on file for such time as any opponents of HR 2701 may elect to challenge its merit. The most logical and recent support for any challenge would be the language of the FCC Formal Order dated Sept. 17, 1998 -- which dismissed the MAS applications. The point of contest would be whether the MAS applicants were treated unfairly by the FCC.

Let me pull two sentences from my memo to Counsel Joseph Gibson.. "Writers of this document did an exceptional job of mixing fact and fable. It reads in a way that seems plausible and responsible." IT IS MISLEADING. My Attachment A deconstructs the misconstruction created by the author(s) of this formal commission order.

Attachment A fills in gaps, makes corrections of fact and provides elaboration as well as insight into how the Commission went about pursuing its narrow goals.

I found truth, factors not noted, true but misleading statements, incomplete points, some exaggeration, agency arrogance, posturing to create a false image and open abuse. Any person who finds they are undecided on the matter of HR 2701 would be well served to have access to both attachments.

I have tracked the formal language of the Commission Order in developing my points. Attachment B is a copy of the actual language of the formal Commission Order.

It is not essential that any Congressperson examine this material now. Yet, the time will come (maybe sooner than later) when referring to these attachments can save a lot of time....and provide important insight



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April 1, 1999

Joseph Gibson

ATTACHMENT A

from

Bob Ryan

Re. a deconstruction of the FCC misconception of the history and reality of MAS.

This is the background story that may soon become important as defenders of the FCC policy decisions respond to legitimate questions, as to whether there actually was any unfairness involved in the treatment of the MAS applicants.

The most likely document to be used by defenders, in an effort to brush aside challenges, is the language of the formal FCC order (dated Sept. 17, 1998) in which the FCC did formally dismiss the original 1992 MAS applications. I am supplying an attachment which is the formal language of that Commission order. I have underlined certain of the sentences which are particularly relevant to what follows.

The writers of this document did an exceptional job of mixing fact and fable. It reads in a way that seems plausible and responsible. Unfortunately, this is a document that includes misleading information, certain less than truthful statements, some playing with sequences and a total ignoring of the fact that the conversion of FCC programs to auctions was a feature of the Clinton campaign in 1992. In other words, The entire FCC program structure was to be converted from "random selection" (lotteries) to FCC auctions.

There is certainly nothing wrong with having a different philosophy and converting to that philosophy as rapidly as possible. The new administration did exactly that. The new communications act allowed the administration to stop lotteries which had not been finalized by July 26 of '93. They were able to stop the IVDS lotteries in which nine of the ten top markets were already lotteried and protected. All the other IVDS markets were converted to auction -- as was the entire PCS program which followed IVDS.

THE CRUNCH POINT FOR MAS APPLICANTS IS THE FACT THAT MAS WAS A COMPLETED PROGRAM, READY TO GO BEFORE THE IVDS PROGRAM. BUT CLINTONITES WANTED THIS GRANDFATHERED PROGRAM FOR THE AUCTION PROCESS, TOO. THEY COULD NOT GET IT DONE --- THEN.

Now lets proceed to the Commission Order and see how the words change the facts !

- # 1 - TRUE. "In 1989, the Commission set aside forty channel pairs in the 932-941 MHz band" for what is now the Multiple Address System (MAS) Service. Applications were to be mutually exclusive.
- # 2 - NOT NOTED. Rule making was completed in the Fall of '91. Filing windows were set and completed by February of '92. The Fees were paid at that time.
- # 3 - TRUE BUT MISLEADING. "...over 50,000 applications were submitted". The implication is that there were 50,000 applicants. Actually, each market applied for by each applicant was counted as an application. Technically, this is true, but it is equally true that most applicants applied for 50 or more markets. Our group did apply for 100 markets...as did many others. Actually there were less than 1,000 applicants. **WHY IS THIS SIGNIFICANT ?** When it suits their purpose (as in responses to me and, at least one time, to Henry Hyde), the FCC tries to show that MAS was something on a huge scale -- very complicated. This helps the FCC justify why they need another way to go. ie. auctions. **IT IS A FACT THAT THE MAS IS ONE OF THE SMALLER PROGRAMS.** It is not on a scale of earlier Cellular lotteries. It was not on a scale with the IVDS program.
- # 4 - INCOMPLETE. "On August 10, 1993, the Omnibus Budget Reconciliation Act of 1993 added Section 309 (J)....Under the 1993 Budget Act, Section 309 (J) **permitted** the Commission, for certain classes.....,to employ competitive bidding procedures....".

Comment : There was a very heavy duty lobbying campaign built up to support the FCC position on auctions during this period. It was only partially successful. The use of the word "permitted" (for certain classes) is not the same as "authorized to proceed with an auction concept across all classes". But it was a "foot in the door".

The Commission then undertook an elaborate strategy to redefine the nature of the various classes of service. For example, it defined MAS (as) ..part of the POFM (operational fixed microwave) service. The commission elaborated that the MAS did not qualify (since it was) not primarily subscriber based and, therefore, should not be subject to competitive bidding. **They elected to lose, temporarily, in exchange for being able to narrowly redefine the nature of MAS service.**

Later, MUCH LATER, they used the narrowed definition of MAS as a specific reason for dismissing the MAS applications in the Sept. 17 '98 Commission Order.

Note - See Attachment B, Page 2, under 3. (second paragraph). The casual use of a word : **Subsequently,.....to describe an elapsed time period of 5 1/2 years.**

- # 5 - EXAGGERATION. The FCC cites (in its Order) "Because of the overwhelming interest in commercial operation of MAS facilities and the substantial number of applications filed for the 932-941 MHz band, the Commission was concerned ---

The facts are that (a) MAS was and is one of the least known, least understood of the products in the FCC stable. (b) The 800+ applicants to build out these systems is not "substantial" by FCC standards. Neither was the 50,000 total of all market applications. **This language in the FCC Order is grossly misleading.**

THE FCC HAS CAUSE TO BE CONCERNED FOR OTHER REASONS, THE MAS SYSTEMS WOULD HAVE BEEN ALLOCATED, BUILT OUT AND IN SERVICE BEFORE THE END OF 1994....but the FCC refused to issue the lists that were available and set the process in motion under the Omnibus Budget Act of 1993. They chose to hold out until they could devise a way to do it by auction.

- # 6 - AGENCY ARROGANCE. Having stonewalled the interests of the country and the rights of the applicants for four additional years and --- flying in the face of its own formal comment process to obtain endorsement for its MAS Notice -----

The 1997 process proceeded as follows --- The Commission had adopted its own MAS Notice --- proposing to (1) streamline the MAS service rules. (2) license most MAS channels by geography. (3) award mutually exclusive licenses by competitive bidding. (4) dismiss the pending (1992) MAS applications -- with the newest reason being the "proposed" changes to the MAS service rules.

The open formal comment process followed. "Formal comments" forthcoming were overwhelmingly against the proposed MAS Notice. It was noted that "use of the lotteries was permissible" under the Communications Act (actually, it was use of the auctions that was permissible --- see # 4 above from the FCC Order. Note- see Attachment B, Page 2--"3." (first paragraph). Auctions were permitted.

- # 7 - FCC found it could not win "out in the open". No more openness. A new strategy. A rider was passed in the Balanced Budget Act of 1997 which provided necessary abusive authority to dismiss applications out of hand and, even, to avoid provision for appropriate "grandfathering". **But it did not prohibit grandfathering, it merely "did not provide for it".**

- # 8 - OPEN ABUSE. The Commission states under Section III of its Formal Order..... Discussion -- in paragraphs 5 and 6 -- as follows -----

- * The 1997 Balanced Budget Act eliminated the possibility of using lotteries by terminating the Commission's statutory authority to use lotteries.
- * The 1997 Act has terminated our statutory authority to use lotteries, with no provision for grandfathering.

8 - (continued)

WORTHY OF NOTE. The FCC language, in its Formal Order creates a posture of being "forced to proceed as they have" by the elimination of their statutory authority to do otherwise.

This is supremely cynical. It is the FCC (and its cooperating lobbyists) who have been holding up the implementation of this program since they obtained partial authority in 1993. They could / should have proceeded then...and did not. Now that the "back door" rider gives them the abusive authority they wanted all along, they choose to blame the legislation. Rediculous !

COMMENT. There is no FCC program that fully qualifies for grandfathering except MAS. (other than a few still unserved Cellular markets). The obtaining of this abusive authority, by the FCC, with a rider on a much more important piece of legislation, is certainly not without precedent.

It is, nonetheless, thoroughly reprehensible and totally unworthy of an agency with such a proud and honorable tradition as the FCC.

While I am tempted to summarize my conclusions, I will forego that exercise. Anyone who is enough into this matter to even read this far already has the essence of the story.

I hope the availability of these counterpoints to the language in the FCC Formal Order dated Sept. 17, 1998 will be of use to someone....and I expect it will.

Best Regards,

A handwritten signature in black ink, appearing to read "Bob Ryan", with a long horizontal flourish extending to the right.

Bob Ryan

In the Matter of Amendment of the Commission's Rules
Regarding **Multiple Address Systems**

WT Docket No. 97-81; File Nos. A00001-A50772

FEDERAL COMMUNICATIONS COMMISSION

13 FCC Rcd 17954; 1998 FCC LEXIS 4879; 13 Comm. Reg. (P & F)
606

RELEASE-NUMBER: DA 98-1889

September 17, 1998 Released; Adopted September 17, 1998

ACTION: [**1] ORDER

JUDGES:

By the Chief, Public Safety and Private Wireless Division

OPINIONBY: TERRY

OPINION:

[*17954] I. INTRODUCTION

1. By this Order, we dismiss all pending **Multiple Address System** (MAS) n1 applications for use of the 932-932.5/941-941.5 MHz bands (932/941 MHz band), which were filed in anticipation of the Commission awarding licenses for these channels through random selection or **lottery**. As discussed in further detail below, we take this action as a result of the **Balanced Budget Act** of 1997, n2 which, among other things, terminated the Commission's authority to use **lotteries** to select among competing mutually exclusive applicants for initial licenses or construction permits.

- - - - -Footnotes- - - - -

n1 MAS is a point-to-multipoint, multipoint-to-point service licensed under Parts 22 and 101 of the Commission's Rules, 47 C.F.R. Parts 22 and 101. Part 22 refers to the service as point-to-multipoint. See 47 C.F.R. § 22.621.

n2 Pub. L. No. 105-33, 111 Stat. 251 (1997) (Balanced Budget Act).

- - - - -End Footnotes- - - - -

II. BACKGROUND

2. In 1989, the Commission allocated the forty 12.5-kilohertz channel [****2**] pairs in the 932/941 MHz band currently designated for MAS use by both Federal Government and non-Federal Government entities. n3 By Public Notice, the Commission announced that it would open five two-day filing windows in early 1992 where all applications would be treated as if they were filed at the same time. n4 The Public Notice provided that applications acceptable for filing would be assigned a number and that a random drawing of the assigned numbers

would be conducted for the purpose of "ranking" the applications in [*17955] order to determine channel assignment. n5 If a channel could not be assigned to an applicant because of a prior assignment to a higher ranked applicant, the "lower ranked" application would be set aside to be dismissed. n6 The process was to continue until all the applications were either assigned a channel or dismissed. n7 The applications at issue are, therefore, mutually exclusive. n8 In response to the series of filing windows, over 50,000 applications were submitted.

-Footnotes-

n3 Amendment of the Parts 1, 21, 22, 74, and 94 of the Commission's Rules to Establish Service and Technical Rules for Government and non-Government Fixed Service Usage of the Frequency Bands 932-935 MHz and 941-944 MHz, GN Docket No. 82-243, Second Report and Order, 4 FCC Rcd 2012 (1989). [**3]

n4 Revised Filing Window for Point-to-Multipoint Channels in the 900 MHz Government/non-Government Fixed Service, Public Notice, DA 91-1422, 6 FCC Rcd 7242 (rel. Nov. 27, 1991).

n5 Public Notice, 6 FCC Rcd at 7244; In the Matter of Amendment of Parts 1, 21, 22, 74, and 94 of the Commission's Rules to Establish Service and Technical Rules for Government and non-Government Fixed Service Usage of the Frequency Bands 932-935 and 941-944 MHz GN Docket No. 82-243, Memorandum Opinion and Order, 5 FCC Rcd 1624, 1625-26 (1990) (MAS MO&O).

n6 Public Notice, 12 FCC Rcd at 7244; MAS MO&O, 5 FCC Rcd at 1626.

n7 Id.

n8 See 47 C.F.R. § 101.45(a). "The Commission will consider applications to be mutually exclusive if their conflicts are such that the grant of one application would effectively preclude . . . grant of one or more of the other applications." Id.

-End Footnotes-

3. On August 10, 1993, the Omnibus Budget Reconciliation Act of 1993 n9 added Section 309(j) to the Communications [**4] Act of 1934, as amended. n10 Under the 1993 Budget Act, Section 309(j) permitted the Commission, for certain classes of radio licenses, to employ competitive bidding procedures to choose among mutually exclusive applications for initial license grants or authorizations. As a result, the Commission commenced a proceeding to examine whether licenses for various radio services should be distributed by competitive bidding. n11 In that context, the Commission determined at that time that MAS, part of the Private Operational Fixed Microwave (POFM) service, n12 did not qualify as primarily subscriber-based, [*17956] and therefore should not be subject to competitive bidding. n13 Thus, the Commission decided that it would not be appropriate to use competitive bidding for the award of the POFM licenses for which the 50,000-plus applications were pending, even in the event of mutual exclusivity. n14 Subsequently, the Commission undertook a preliminary examination of the pending applications and ascertained that the vast majority (apparently over 95 percent) were filed by applicants seemingly proposing to use their licenses principally to provide subscriber-based services. n15

-Footnotes-

n9 Pub L. No. 103-66, Title VI, § 6002(a), 107 Stat. 312, 387 (1993) (1993 Budget Act). [**5]

n10 47 U.S.C. § 309(j) (1993).

n11 See In the Matter of Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, Notice of Proposed Rule Making, 8 FCC Rcd 7635 (1993) (Competitive Bidding NPRM).

n12 The former Part 94 of the Commission's Rules had contained the rules for POFM service. Part 94 eligibles were persons (individuals, partnerships, associations, joint stock companies, trusts, or corporations), governmental entities, or agencies eligible to provide Private Operational Fixed Service under Parts 80, 87, or 90, or entities proposing to provide such service to POFM eligibles, e.g. on a private carrier basis. The POFM service includes any use of microwave frequencies other than for common carrier purposes (which were governed by then-Part 21). Effective August 1, 1996, however, the Commission consolidated the service rules for fixed microwave operations, e.g., Parts 21 and 94 of the rules, into a single Part 101. See In the Matter of Reorganization and Revision of Parts 1, 2, 21 and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services, WT Docket No. 94-148; Amendment of Part 21 of the Commission's Rules for the Domestic Public Fixed Radio Services, CC Docket No. 93-2, Report and Order, 11 FCC Rcd 13,499 (1996). [**6]

n13 See Competitive Bidding NPRM, 8 FCC Rcd at 7659-60. The Commission stated that, pursuant to 47 U.S.C. § 309(j)(2)(A), in order for a license to be subject to competitive bidding, "the licensee must receive compensation for providing transmission or reception capabilities to subscribers." In the Matter of Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, Second Report and Order, 9 FCC Rcd 2348, 2352 (1994) (Competitive Bidding Second Report and Order). Consequently, the Commission excluded "non-subscriber-based" services from competitive bidding. Id.

n14 Competitive Bidding NPRM, 8 FCC Rcd at 7660 n.156; Competitive Bidding Second Report and Order, 9 FCC Rcd at 2354 n.25.

n15 Amendment of the Commission's Rules Regarding **Multiple Address Systems**, WT Docket No. 97-81, Notice of Proposed Rule Making, 12 FCC Rcd 7973, 7978 (1997) (MAS Notice).

-End Footnotes-

4. Because of the overwhelming [**7] interest in commercial operations of MAS facilities and the substantial number of applications filed for the 932/941 MHz band, the Commission was concerned that the analysis made in the Competitive Bidding proceeding might have been inaccurate. As a result, in February 1997, the Commission adopted the MAS Notice to reexamine current and future uses of, and demand for, MAS spectrum. n16 In the MAS Notice, the Commission proposed to streamline the MAS service rules, increase technical and operational flexibility for MAS licensees, license most MAS channels by geographic area, and award

mutually exclusive licenses by competitive bidding. n17 To effectuate its new licensing approach effectively, the Commission also proposed to dismiss the pending MAS applications for the 932/941 MHz band without prejudice to refiling under whatever new licensing rules are ultimately adopted. n18

-Footnotes-

n16 Id. at 7974-75.

n17 See Id. at 7975.

n18 Id. at 7997-98.

-End Footnotes-

[**8]

III. DISCUSSION

5. In the MAS Notice, the Commission proposed to dismiss the pending MAS applications for the 932/941 MHz band as a result of its proposed changes to the MAS service rules. n19 Notwithstanding the Commission's proposal, when the MAS Notice was adopted, the Commission's use of lotteries was still permissible. Consequently, the Communications Act, at that time, did not preclude the possibility of a final decision in this docket that random selection procedures be used to select among the pending 50,000 MAS applications for the 932/941 MHz band. Subsequently, the 1997 Balanced Budget Act eliminated that possibility by terminating the Commission's statutory authority to use lotteries. Section 3002(a) of the 1997 Balanced Budget Act states that, with limited exceptions not applicable to this proceeding, "the [*17957] Commission shall not issue any license or permit using a system of random selection under this subsection after July 1, 1997." n20 As discussed supra, the processing rules for these MAS applications are predicated on conducting random selection to determine the order in which we would process the applications. Clearly, we no longer have statutory authority to proceed [**9] with this random selection. Additionally, Section 309(j) of the 1997 Balanced Budget Act expanded the Commission's authority -- and statutory mandate -- to use competitive bidding to select licensees from among mutually exclusive applications for any initial license. n21 There are no exemptions for pending mutually exclusive applications. n22

-Footnotes-

n19 MAS Notice, 12 FCC Rcd at 7997-98.

n20 Balanced Budget Act § 3002(a)(2)(B)(5), codified at 47 U.S.C. § 309(i)(5) (1997).

n21 Balanced Budget Act § 3002(a)(1)(A)(1)-(2), amending 47 U.S.C. § 309(j) (1997).

n22 Section 3002(a) "repeals the Commission's **lottery** authority for all applications other than for licenses for non-commercial educational and public **broadcast** stations as defined in section 397(6) of the Communications Act." Conference Report on H.R. 2015, Balanced Budget Act of 1997, H.R. Conf. Rep. No.

105-217, 143 Cong. Rec., H6173 (daily ed. July 29, 1997) (emphasis added).

- - - - -End Footnotes- - - - -

[**10]

6. Because the Commission is without authority to process these pending mutually exclusive applications pursuant to the rules and requirements under which they were filed, namely, random selection procedures, we conclude that the applications must be dismissed. Further, because we conclude that this result is unambiguously compelled by statute, this decision may be made pursuant to delegated authority, with no further notice and comment. n23 Rather than wait for the adoption of final MAS service rules in this docket, we believe that it is in the public interest to dismiss the applications at this time. The 1997 Balanced Budget Act has terminated our statutory authority to use lotteries, with no provision for grandfathering, and as a result, maintaining these applications in a pending status would only delay their inevitable dismissal. The applicants will have the opportunity to refile applications for MAS service under new service rules that are fully compliant with the 1997 Balanced Budget Act. n24 Thus, we believe that [*17958] the public interest would be best served by not subjecting these applicants to any further delay in the final disposition of their applications, particularly when **[**11]** Congress already has acted on the broader issue of the Commission's use of **lotteries.**

- - - - -Footnotes- - - - -

n23 We have determined that the directives of Congress and the public interest will be served by the dismissal of the subject applications. The due and timely execution of the Commission's responsibilities would be unnecessarily impeded by a time consuming notice and comment period. Accordingly, we will not conduct a notice and comment proceeding regarding dismissal of the subject applications. See *National Customs Brokers and Forwarders Association of America, Inc. v. U.S.*, 59 F.3d 1219, 1223 (Fed. Cir. 1995).

n24 Applicants can apply to the Office of Managing Director of the Federal Communications Commission for the refund of filing fees. See 47 C.F.R. § 1.1113. Section 1.1113(a) of the Commission's rules provides, in relevant part, as follows --
The full amount of any fee submitted will be returned or refunded, as appropriate, in the following circumstances:

- (1) When no fee is required for the application or other filing.
- (2) When the fee processing staff or bureau/office determines that an insufficient fee has been submitted within 30 calendar days of receipt of the application or filing and the application or filing is dismissed.
- (3) When the application is filled by an applicant who cannot fulfill a prescribed age requirement.
- (4) When the Commission adopts new rules that nullify applications already accepted for filing, or new law or treaty would render useless a grant or other positive disposition of the application.
- (5) When a waiver is granted in accordance with this subpart. . . .

(6) When an application for new or modified facilities is not timely filed in accordance with the filing window as established by the Commission in a public notice specifying the earliest and latest dates for filing such applications.

- - - - -End Footnotes- - - - -

[**12]

IV ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that, as of the adopted date of this Order, pursuant to Section 309(i)(5) of the Communications Act of 1934, 47 U.S.C. § 309(i)(5), as amended by the Balanced Budget Act of 1997, Pub. L. No. 105-33, Ill Stat. 251 (1997), all pending MAS applications for use of the 932-932.5/941-941.5 MHz bands (File Nos. A00001-A50772) ARE DISMISSED without prejudice.

8. IT IS FURTHER ORDERED that no new applications for use of the 932/941 MHz bands will be accepted for filing until the Commission or the Wireless Telecommunications Bureau, acting under delegated authority, announces new filing procedures.

9. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

D'wana R. Terry

Chief, Public Safety and Private Wireless Division

Wireless Telecommunications Bureau