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

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

PR 92-17  
RM 7827

In the Matter of )  
 )  
Amendment of Section 90.631 )  
of the Commission's Rules and )  
Regulations Concerning Loading )  
Requirements for 900 MHz )  
Trunked SMR Stations )

RM-

To: The Commission

PETITION FOR RULE MAKING  
OF THE  
NATIONAL ASSOCIATION OF BUSINESS  
AND EDUCATIONAL RADIO, INC.

The National Association of Business and Educational Radio, Inc. ("NABER") by its attorneys, respectfully submits, pursuant to Section 1.401 of the Commission's Rules, 47 C.F.R. §1.401, a Petition for Rule Making which seeks to amend Section 90.631 of the Commission's Rules to relax the loading requirements for 900 MHz trunked SMR Systems.

I. BACKGROUND

NABER is a national, non-profit, trade association headquartered in Alexandria, Virginia, that represents the interests of large and small businesses that use land mobile radio communications as an important adjunct to the operation of their businesses and that hold thousands of licenses in the private land mobile radio services. NABER has five membership sections representing Users, Private Carrier Paging licensees, Radio Dealers, Technicians and Specialized Mobile Radio operators. NABER's membership comprises over 6,000 of these businesses and

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service providers holding thousands of licenses in the private land mobile services.

For the past 19 years, NABER has been the recognized frequency coordinator in the 450-470 MHz and 470-512 MHz bands for the Business Radio Service. NABER is also the Commission's recognized frequency coordinator for the 800 MHz and 900 MHz Business Pools, 800 MHz "old" conventional channels for Business eligibles and conventional SMR Systems, and for the 929 MHz paging frequencies. In its Report and Order in PR Docket No. 83-737, the Commission designated NABER as the frequency coordinator for all Business Radio Service frequencies below 450 MHz and, in a joint effort with the International Municipal Signal Association ("IMSA") and the International Association of Fire Chiefs ("IAFC"), the Special Emergency Radio Service frequencies.

**A. 900 MHz Loading Requirements**

In 1986, the Commission initiated a proceeding in which the Commission reviewed the value of loading standards for both 800 MHz and the newly released 900 MHz trunked SMR channels.<sup>1</sup> In that proceeding, NABER stressed the importance of loading standards to the growth of the SMR industry and recommended that the Commission continue its loading requirements. However, in its April 3, 1987 Reply Comments in the proceeding, NABER suggested that for the 900 MHz channels the Commission establish the following loading standards:

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<sup>1</sup>Notice of Proposed Rule Making, PR Docket No. 86-404, 1 FCC Rcd 809 (1986).

For the major urban markets, seventy percent (70%) loading requirement after each five (5) year license term, and seventy percent (70%) loading in order to obtain additional channels. Licensees in the five (5) largest urban areas (New York, Los Angeles/San Diego, Chicago/Milwaukee, Washington/Baltimore and San Francisco/Sacramento) would be required to loaded to twenty percent (20%) of authorized capacity after three (3) years of the initial license term. For all other areas, a mobile loading requirement of forty percent (40%) after each five (5) year license term, with forty percent (40%) mobile loading required to expand the system. **Additionally, the Commission should grant a one time exception which would require 900 MHz licensees in the major urban areas to load their systems only to fifty percent (50%) after the first five (5) year license term. (emphasis added).**

In the proceeding, the Commission decided to require seventy percent (70%) loading after the initial five year license term for all 900 MHz systems in Waiting List Areas.<sup>2</sup>

**B. Application Filing And Processing At 900 MHz**

During 1987, the Commission opened "filing windows" during which time applicants could file applications for 900 MHz trunked SMR facilities in fifty (50) Designated Filing Areas ("DFAs"). The DFAs, which were based on county boundaries, roughly corresponded to urban areas. In response, the Commission was inundated with hundreds of thousands of applications, some of which were filed by applicants with no knowledge of land mobile radio or the SMR Service.

The Commission conducted lotteries to assign licenses in the DFAs. Since many of the licenses were awarded to applicants which had no real desire to construct and operate the stations, there was

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<sup>2</sup>Report and Order, PR Docket No. 86-404, 64 RR 2d 1042 at para. 67.

a substantial period of time during which purchased and/or management agreements were negotiated between licensees and land mobile operators. On the whole, most of the 900 MHz channels in the top major urban areas have been constructed through consolidation by the principal operators in such markets through ownership and management agreements.<sup>3</sup>

C. Construction Of 900 MHz Systems

In addition to the delays in construction of 900 MHz systems due to the consolidation of the markets, there have been substantial delays in the effective provision of service to users of 900 MHz systems as a result of equipment difficulties. Although there were equipment difficulties experienced with the initial 800 MHz systems, the difficulties at 900 MHz have been more severe.

At 800 MHz, many of the initial systems were constructed in the conventional mode, while many of the equipment difficulties were due to the implementation of trunking logic. Thus, while the "bugs" were being worked out on trunked systems, conventional systems were able to begin operation and flourished. At 900 MHz, many of the equipment "bugs" have been due to the narrower channel bandwidth compared to all previously constructed land mobile equipment. In this regard, there have been equipment difficulties with both repeaters and antennas. While equipment problems were

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<sup>3</sup>The Commission has found that a substantial number of the licenses issued in markets below the Top 10-15 major urban areas have not been constructed, as some licensees found that the value of 900 MHz channels in markets where 800 MHz channels are available is de minimis.

being corrected, the provision of customer service was significantly slowed.

**D. Assignment Pattern Of 900 MHz SMR Frequencies**

As discussed previously, the Commission allocated and released the 900 MHz trunked SMR frequencies in the DFAs only. The Commission is still attempting to determine the most efficient method to allocate the 900 MHz frequencies in the "Phase II" markets. Although it would seem (based upon the Commission's experience with the lower Phase I markets) that the Phase II markets are areas where there would be little interest in 900 MHz systems, there is in fact a significant need for 900 MHz SMR spectrum in many Phase II areas, especially Phase II areas which border Phase I areas or an in between two Phase I markets.

As an example, Delaware was not a Phase I area. However, there is a significant need for 900 MHz spectrum in the Delaware area. First, the Delaware DFA, since it is adjacent to the Baltimore/Washington, New York/New Jersey and Philadelphia DFAs, many users have a need for wide area systems. Second, the location of Delaware between these markets has resulted in few 800 MHz trunked SMR service in Delaware, creating additional demand for 900 MHz trunked service in the area.

In addition, the DFA allocation method deprived areas immediately surrounding the Phase I markets from an assignment of spectrum. However, these adjacent areas are locations where many mobile users in the DFA area have communications needs. Even within the DFA, the Commission's assignment policy has prevented

the reuse of 900 MHz within the DFA where the DFA is large enough to support more than one assignment. As a result, 900 MHz SMR operators have a disadvantage compared to 800 MHz systems, as 900 MHz wide-area systems could not be established. This has slowed the loading on 900 MHz systems as users have opted to obtain service from wide-area 800 MHz systems, even though such systems have significantly more congestion.

**E. Impact Of Economic Recession**

The difficulties in loading 900 MHz SMR Systems discussed above has come at a time that the country is undergoing a substantial economic recession. Thus, while 900 MHz SMR Operators have made a significant investment in equipment, the loading of the systems has been much slower than anticipated, and it can be expected that many operators will not meet their loading requirements without a significant change in the Commission's Rules, the economy or in the operator's business. It is NABER's view that channel take-backs in such instances will not serve the purpose of the Commission's loading rules, which is to ensure that spectrum does not lay fallow and is not hoarded.

**F. Possible Results Of Approaching 900 MHz Loading Dates**

The first 900 MHz loading dates will occur in 1992. Since the Commission is not accepting 900 MHz SMR applications at this time (and may not by the time some of the loading dates occur), some 900 MHz SMR systems technically may not be subject to channel recovery, pursuant to Section 90.631(b) of the Commission's Rules. However,

it is generally assumed that such systems will be required to meet mobile loading requirements.

900 MHz SMR operators have a significant investment in their systems. Since there will not be any compatible spectrum released by the Commission to be added to loaded 900 MHz systems, it is vital to each operator that it retain authority for its complete complement of 10 channels. Therefore, it can be expected that some system operators will substantially reduce the price of the mobile radios and service below the operator's cost in order to preserve their spectrum. This will cause a severe disruption in the marketplace, particularly the 800 MHz market, where users will be moved to 900 MHz, draining revenue from 800 MHz systems (some of which have met their loading deadlines). There is no public benefit from this event, as 800 MHz and 900 MHz users are merely swapped from system to system, instead of increased spectrum efficiency which the systems were designed to provide.

The alternative for 900 MHz system operators is the loss of channels (which were never "warehoused"). This will result in less spectrum efficiency for the operational systems, with a similar effect on users. Further, the recent 220 MHz lottery activity demonstrates the overwhelming desire of speculators to "play in the game" of allocation of channels and therefore any new re-release of taken-back 900 MHz channels would result in a lottery and ultimately a further delay in frequencies getting into the hands of operators as such operators are required to "pay again" for the same spectrum they just lost. Accordingly, there is little public

interest in taking back channels in markets where there is little available spectrum to hold a subsequent lottery, allowing other speculators to attempt to gain a license which may never be constructed and/or loaded.

## II. PETITION FOR RULE MAKING

Although NABER continues to believe in the value and usefulness of loading requirements, it is NABER's view that the Commission should recognize the unique circumstances which exists with respect to the 900 MHz Phase I licensees. NABER believes that the need for loading relief at 900 MHz is an interim decision to prevent disruptions to SMR operators who will be able to load their systems within the next few years. Therefore, NABER offers the following recommendation to prevent the disruption of both the 800 MHz and 900 MHz marketplaces:

NABER requests that the Commission extend the loading date for all 900 MHz trunked SMR Systems by two years.<sup>4</sup> This will permit 900 MHz operators to recover from the economic and technical difficulties described above and load their systems in a sensible and orderly manner. Further, in order to ensure that spectrum is not being hoarded or warehoused by licensees, NABER suggests that 900 MHz systems in the eight (8) largest urban areas be subjected

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<sup>4</sup>The Commission should review its this policy as the new loading deadlines approach in order to determine whether the deadlines should be revised further.

to a twenty percent (20%) loading standard at the end of the initial five year term (20 mobile units per channel).<sup>5</sup>

NABER believes that the extension of the loading date will have an additional benefit for the Commission. In this regard, the extension would allow the Commission to release Phase II spectrum without having to consider how the reassignment of Phase I frequencies is to be made. That is, it is anticipated that Phase II frequencies at 900 MHz will have to be applied for based upon where the existing Phase I 900 MHz systems are located. If the loading date is extended for Phase I, Phase II applicants could engineer around the existing sites without having to concern themselves with the reassignment pattern of Phase I applicants assigned after a channel take-back. Therefore, there will be an administrative savings for the Commission and Phase II spectrum will be able to assigned expeditiously.

It must be understood that the failure to load 900 MHz SMR Systems has not been the result of spectrum hoarding. Rather, the failure to sell radios for such systems has been as a result of the unforeseen circumstances discussed above. Although financially able operators have the capability to "subsidize" and undertake extraordinary tactics to protect their systems, it would only serve to further present economic dislocations. Therefore, the Commission's extension of mobile loading where there is already a substantial consolidation of a market will not prevent a

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<sup>5</sup>In addition, the Commission should continue to rigorously enforce its construction rules.

reallocation to a new or more able SMR operator, but only extract a penalty due to economic developments beyond anyone's control.

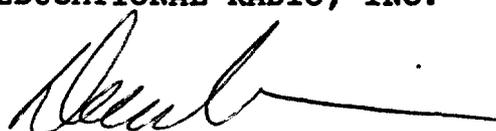
Because the loading date for 900 MHz systems is rapidly approaching, and SMR operators must shortly make decisions as to the manner in which they will pursue loading their systems, it is vital that the Commission initiate a rule making quickly in this matter. Therefore, NABER requests that the Commission expeditiously consider this Petition for Rule Making and immediately issue a Notice of Proposed Rule Making seeking to extend the loading deadline for 900 MHz trunked SMR Systems.

### III. CONCLUSION

WHEREFORE, the National Association of Business and Educational Radio, Inc. respectfully requests that the Commission adopt a Notice of Proposed Rule Making and amend Section 90.267 of its rules consistent with this Petition.

Respectfully submitted,

**NATIONAL ASSOCIATION OF BUSINESS  
AND EDUCATIONAL RADIO, INC.**

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