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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Amendment of Part 90 of the)
Commission's Rules and Regulations)
to Replace Section 90.655 End User)
Licensing Requirements with an SMR)
Certification Procedure)

RM-

PRM92 PR

To: The Commission

PETITION FOR RULEMAKING

Respectfully submitted,

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SUMMARY

The American Mobile Telecommunications Association, Inc. ("AMTA"), requests that the Commission modify its requirement that end users of SMR systems hold their own licenses for mobile and control stations. Instead, AMTA proposes that the SMR operator be authorized for both the base station facility, as it currently is, and for all of the units operated by customers of its system. This modification is consistent with the Commission's licensing procedures for private carrier systems below 800 MHz. In addition, AMTA recommends that the loading on an SMR system be certified based on the operators billing records and that this loading certification continue to be required at any loading deadline, or at any time that the operator requests additional channels or an additional system within forty miles.

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association") (previously the American SMR Network Association, Inc.), pursuant to Section 1.401(a), 47 C.F.R. §1.401(a), of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully requests that the FCC modify its regulations regarding the issuance of authorizations for end users of Specialized Mobile Radio ("SMR") Service systems. AMTA proposes that the Commission eliminate the existing scheme of end user licensing and substitute self-certification procedures for SMR licensees and the end users of their systems.

I. INTRODUCTION

AMTA is a nationwide, non-profit trade association whose voting membership is comprised exclusively of SMR licensees. Its members provide primarily trunked radio communications service to large numbers of end users. AMTA members submit, on behalf of their end users, thousands of applications yearly to the FCC seeking authorization to employ their SMR facilities. As such, AMTA is uniquely positioned to propose measures to streamline the Commission's regulatory requirements regarding the licensing of these systems.

As the Commission will recall, AMTA petitioned for elimination of SMR end user licensing in 1989.^{1/} Its request was dismissed in May, 1990 on the basis that information provided by end user authorizations was needed to carry out vital Commission

^{1/} Amendment of Part 90 of the Commission's Rules to Modify Application Requirements for End Users of Specialized Mobile Radio Systems, RM-6755, filed April 20, 1989.

licensing functions.^{2/} The dismissal also noted that concerns had been raised by the few commenting parties regarding the impact the proposal might have on the FCC's licensing process.^{3/}

AMTA is convinced that the concerns expressed in 1989 are not outweighed by the vital need to streamline regulatory processes which has been articulated clearly by the current administration. The economic realities of 1992 are dramatically different from the situation even two years ago. The movement toward wide-area, networked SMR systems makes the current licensing structure increasingly archaic, as does the sunset provision, whereby loading deadlines will not even be applicable to SMR systems initially licensed after June 1, 1993. 47 C.F.R. §90.631(b). The time is right to replace SMR end user licensing with a system more appropriate to today's environment.

II. BACKGROUND

Section 90.655 of the Commission's rules, 47 C.F.R. §90.655, provides that "[A]ll end users of conventional or trunked Specialized Mobile Radio systems must be licensed for any associated control points, control stations and mobile radio

^{2/} Order, RM-6755, DA90-680 (released May 10, 1990).

^{3/} Id. The parties expressing these concerns included Telocator and CTIA, neither of which is qualified to address the administrative aspects of this licensing scheme and both of which have interests which could be viewed as antithetical to the SMR industry. The objections raised by SIRSA, API and Motorola may no longer be applicable and, in any event, should be addressed in the context of a rule making proceeding, not used as the basis for dismissal of the instant Petition.

stations and only licensed end users are authorized to use those systems." Temporary licensing procedures allow end user applicants to begin operation on a system upon submission of their applications to the FCC.^{4/}

According to the FCC's records, there are many thousands of trunked and conventional SMR operators providing service to over one million end user mobile and control units. The processing of individual end user license applications imposes a heavy burden on the Commission's Private Radio Bureau staff at a time when its personnel and budgetary resources are continually strained by the requirements of an expanding radio service environment.^{5/} In AMTA's opinion, the benefit which the Commission and the SMR industry receives from this end user licensing scheme is not commensurate with the effort required to process the applications.^{6/} Implementation of AMTA's proposal will enable the Commission to continue making reasonable evaluations of SMR

^{4/} See 47 C.F.R. §90.657 (1988).

^{5/} According to unofficial information provided by the Systems and Procedures Branch of the Private Radio Bureau in Gettysburg, Pennsylvania, approximately ninety percent of all applications received relating to SMR 800 MHz operations are applications to license end users on SMR systems.

^{6/} The main benefit in licensing end users is the system loading information obtained. Loading information has been used by to the FCC to determine whether SMR licensees have fulfilled their loading requirements and whether there is a need to allocate additional frequencies to the SMR service. Loading information has also proved useful to other members of the SMR industry who desire to know the nature of the marketplace in which they provide services.

channel utilization without requiring the filing and processing of end user license applications.

III. AMTA PROPOSES TO LICENSE SMR OPERATORS FOR THEIR END USERS' UNITS AND REQUIRE SMR CERTIFICATION OF THOSE UNITS

Since the creation of the trunked SMR industry almost two decades ago, the Commission has evaluated SMR system usage based on the number of mobile and control station licensed to end users authorized to operate on each system. 47 C.F.R. §90.631(a). This calculation is performed whenever a system reaches a loading deadline, when frequencies are proposed to be added to a system, or when an additional system is requested within forty miles. While radio services such as Domestic Public Land Mobile review actual channel occupancy to determine usage, the SMR regulatory structure is premised on an assumption that a specified number of units utilizes, on average, a predictable amount of a channel's available capacity.

AMTA's proposal to replace the current method of counting customer mobile and control station units with a billing certification program would in no way alter either the unit of measurement currently used to evaluate system usage or the points at which a licensee would be required to demonstrate satisfactory loading. SMR operators would be required to document the number of mobiles and controls for which revenue was being collected on a system to satisfy a five year loading deadline, to add frequencies to the system, or to justify another system in the

market. The only modification proposed is the use of an SMR certification of system billing records to document the number of units rather than counting units licensed directly to individual end users.

Contrary to concerns raised by certain parties in response to AMTA's 1989 Petition, the Association is convinced that adoption of its proposal would only improve the integrity of the loading information provided to the FCC. SMR licensees have the most accurate information regarding system usage and the greatest disincentive against providing less than fully correct loading data. The end user licensee, on whom the FCC currently relies, typically signs an application prepared by someone else and lacks sufficient knowledge regarding FCC requirements to review that document critically. Some have only the vaguest understanding that they hold FCC authorizations and typically, the FCC has elected not to impose penalties on end user licensees even if the information provided prove incorrect.

By contrast, the SMR operator recognizes that the provision of inaccurate information to the FCC could, if discovered, result not only in very substantial fines,^{1/} but could form the basis for the loss of all FCC licenses. While it is, of course, possible that some SMR licensee might elect to run that risk,

^{1/} The Commission has recently adopted a very aggressive forfeiture policy which has been applied liberally to Mass Media and Common Carrier licensees.

the current system allows that same scofflaw to prepare and file for its customers similarly inaccurate information, then shift the blame to the user for the error. AMTA would not presume that its proposal eliminates the possibility of false loading claims. However, its adoption would place the full legal responsibility for the information where it belongs -- squarely on the SMR licensee.

AMTA proposes the certification of billing records as documentation of loading as reasonable, if less than perfect, evidence of actual system usage. It recommends that the criterion be units for which invoices are sent and payment is received since a bill for non-existent service can be generated relatively easily. As with the current system, there may be instances in which the SMR will wish to make a showing regarding the propriety of including particular customers or specific radios which seemingly fail to meet the FCC's test. These situations will presumably be handled on case-by-case basis as they are today.

The Association does have one further suggestion regarding units which may properly be counted toward system loading. The current licensing scheme allows mobiles to operate on multiple SMR facilities, but prohibits so called "double counting" whereby the same radio is credited toward loading more than a single facility. As the SMR industry moves toward integration of metropolitan, regional and even trans-regional networks, the

Association is not convinced that the existing policy retains validity. Units are increasingly capable of operating on multiple systems and are so equipped when needed to satisfy legitimate communications requirements. This maturation of the SMR industry's service offerings has been endorsed by the Commission.^{8/} The current theory assumes that because a mobile can only use one system at any one time, it should only be credited toward a single system. In fact, a unit with roaming or networking capability may consume significantly greater channel capacity on a distributed basis than does a single site radio used only infrequently. Recognizing that the entire concept of loading based on unit count is at most a reasonable approximation of actual frequency utilization, AMTA recommends that radios be eligible for loading credit if they are capable of operating on the system, are billed for using the system, and make payment for the service provided.

IV. THE ELIMINATION OF END USER LICENSING IS NOW APPROPRIATE

In proposing the replacement of end user licensing with an SMR certification procedure, AMTA recognizes that the Commission has previously rejected proposals to deregulate this area. The Commission in 1982 issued a decision in a rule making proceeding

^{8/} Fleet Call, Inc., 6 FCC Rcd 1533, Recon. Dismissed, 6 FCC Rcd 6989 (1991).

which declined to implement fleet licensing of SMR systems.^{9/} The primary goal of the proceeding was the elimination of unnecessary burdens on applicants, including the delay experienced by prospective users of SMR facilities who could not begin operating until the FCC had processed their applications and issued licenses. The proceeding presented the Commission with a choice between temporary licensing of end users, thereby allowing them on the air more quickly, and fleet licensing, which would have eliminated end user licensing. The Commission chose the more limited relief of temporary licensing because it was expected to ease the burdens on end users without requiring a fundamental change in the SMR licensing structure.

Four years later, in its Memorandum Opinion and Order, In the Matter of Amendment of Part 90 of the Commission's Rules to Modify Application Requirements for End Users of Specialized Mobile Radio Systems, RM-5125, FCC 86-231, released May 12, 1986, the Commission again declined to institute a rule making proceeding to implement fleet licensing for SMR systems. The Commission cited as its rationale the added responsibility which would be imposed on the SMR operator in seeing that the facilities were used only by Part 90 eligibles and that the system's uses were permissible under Part 90 of the Commission's rules.

^{9/} Report and Order, PR Docket No. 79-335, 89 FCC 2d 638 (1982).

Times have changed, and considerations important ten, six or even two years ago may not be compelling today. The Commission chose to take the interim step of temporary licensing to relieve end user burdens at a time when customers in a developing SMR industry were required to file applications for their initial authorization and to reflect assignments or modifications of the associated SMR licenses. AMTA's 1989 request was denied because the Commission still found the end user information derived from that scheme to be valuable for the FCC's purposes. Today, SMR operators are willing and should be required to assume the responsibility for the operation of the backbone system and associated customer units. The Commission faces an ongoing struggle to carry out its statutory mandate in the face of continually shrinking resources. Thus, the interests of all parties would be served by adoption of the instant proposal.

V. SMR OPERATORS WOULD CONTINUE TO BE CLASSIFIED AS PRIVATE CARRIERS

Elimination of end user licensing will not alter the legal status of an SMR system as a private carrier. Private land mobile radio services are defined in Section 3(gg) of the Communications Act, 47 U.S.C §153, as a "mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users

over designated areas of operation." In 1982 Congress enacted Section 331(c)(1) of the Communications Act, 47 U.S.C. §332, to clarify the distinction between private carriers and common carriers. As described in Section 331(c)(1), the test for distinguishing between private land mobile and common carrier services is whether a licensee resells for profit a common carrier's telephone exchange services or facilities.^{10/} Unless an SMR resells for profit exchange services or facilities of a common carrier, its status as a private carrier is on firm legal ground.^{11/}

^{10/} Section 331(c)(1) provides

For purposes of this section, private land mobile service shall include service provided by specialized mobile radio, multiple licensed radio dispatch systems, and all other radio dispatch systems, regardless of whether such service is provided indiscriminately to eligible users on a commercial basis, except that a land station licensed in such service to multiple licensees or otherwise shared by authorized users (other than a nonprofit, cooperative station) shall not be interconnected with a telephone exchange or interexchange service or facility for any purpose, except to the extent that (A) each user obtains such interconnection directly from a duly authorized carrier; or (B) licensees jointly obtain such interconnection directly from a duly authorized carrier.

Also see, Paul Kelley d/b/a American Teltronix, Second Memorandum Opinion and Order, 5 FCC Rcd 1955 (1990).

^{11/} See Report and Order, In the Matter of Amendment of Part 90, Subparts M and S, of the Commission's Rules, PR Docket No. 86-404, 3 FCC Rcd 1838, paras. 19-25 (1988), aff'd Memorandum Opinion and Order, PR Docket No. 86-404, 4 FCC Rcd 356 (1989).

Although common carriers have traditionally held the only license for their systems, that arrangement does not define their status as common carriers. AMTA's plan may have characteristics similar to those used in the licensing of common carriers. Nonetheless, these characteristics do not affect an SMR's private carrier designation under the test described above.

The Commission already has a precedent for allowing a private carrier to hold the entire authorization for and take full responsibility for its own and its customers' communications activities. Section 90.179 of the Commission's rules, 47 C.F.R. §90.179, permits licensees of facilities below 800 MHz to share use of stations with one party holding the license for all mobile and control units which operate on the system. In proceedings regarding this rule, the Commission specifically rejected requiring end user coordination and licensing, stating "[c]oordination and licensing of the end users is not the essential feature of private carriers but rather the making available of a service to customers with private communications requirements."^{12/}

VI. CONCLUSION

AMTA proposes the elimination of end user licensing to reduce the Commission's application processing workload. SMR

^{12/} See Memorandum Opinion and Order, In the Matter of Frequency Coordination in the Private Land Mobile Radio Services, PR Docket 83-737, 61 RR 2d 148, 159 (1986).

system loading information would instead be obtained by certification of billing records at any loading deadline, or whenever an applicant sought to acquire additional frequencies or an additional system. Elimination of end user licensing would not alter the status of SMRs as private carriers, which status is determined exclusively by the issue of the resale of exchange services or facilities of a common carrier. For the reasons stated above, AMTA requests that the Commission initiate a Notice of Proposed Rule Making in accordance with the views expressed herein.

CERTIFICATE OF SERVICE

I, M.A. Spinks, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify, that I have on this 9th day of March, 1992, caused to have hand delivered a copy of the foregoing Petition for Rulemaking to the following:

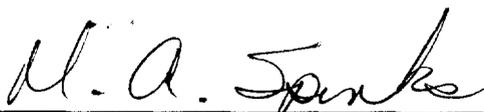
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