

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 Section 90.631 )  
of the Commission's Rules and ) PR Docket No. 92-17  
Regulations Concerning Loading ) RM-7827  
Requirements for 900 MHz )  
Trunked SMR Stations )

To: The Commission

COMMENTS  
OF THE  
SPECIAL INDUSTRIAL RADIO SERVICE ASSOCIATION, INC.

The Special Industrial Radio Service Association, Inc. ("SIRSA"), pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("Commission"), respectfully submits these Comments in response to the Notice of Proposed Rule Making ("Notice") adopted by the Commission on January 30, 1992 in the above-styled proceeding.<sup>1/</sup>

I. PRELIMINARY STATEMENT

1. The Special Industrial Radio Service Association, Inc., a non-profit association organized under

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<sup>1/</sup> Notice of Proposed Rule Making (FCC 92-40), PR Docket No. 92-17, released February 18, 1992, 57 Fed. Reg. 6570 (February 26, 1992).

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the laws of the District of Columbia, is the Commission's certified frequency coordinator for the Special Industrial Radio Service and the Industrial/Land Transportation 800/900 MHz frequency "pools." SIRSA also coordinates channels from the general access pool for those entities (a) eligible to become Industrial/Land Transportation licensees, (b) wishing to expand trunked systems, or (c) consolidating conventional systems into a trunked system. SIRSA coordinates in excess of 6,000 applications per year on behalf of applicants seeking Commission authority to operate radio stations on frequency assignments allocated to the Special Industrial Radio Service and the enumerated 800/900 MHz frequency "pools."

2. SIRSA enjoys the support of a membership that includes more than 12,000 licensed two-way land mobile radio communications users and the following trade associations:

- Alliance of Motion Picture and Television Producers
- American Iron Ore Association
- American Mining Congress
- Associated Builders & Contractors, Inc.
- Florida Citrus Processors Association
- Florida Fruit & Vegetable Association
- National Aggregates Association
- National Agricultural Aviation Association
- National Food Processors Association
- National Propane Gas Association
- National Ready-Mixed Concrete Association
- National Utility Contractors Association
- New England Fuel Institute
- Petroleum Equipment Suppliers Association
- United States Telephone Association

3. This proceeding was initiated by the Commission in response to a Petition for Rule Making filed by the National Association of Business and Educational Radio, Inc. ("NABER") in which the petitioner sought a two-year extension in the five-year loading deadline for 900 MHz systems. SIRSA, together with the Telephone Frequency Advisory Committee ("TELFAC") and the Council of Independent Communication Suppliers ("CICS") submitted a letter to the Commission on November 8, 1991 supporting adoption of the relief proposed by NABER. We also requested in that letter that the Commission expand the scope of the proposed relief by providing a similar extension to licensees in the 900 MHz Industrial/Land Transportation pool. However, the Commission has proposed only to provide the relief sought by NABER for the 900 MHz Specialized Mobile Radio (SMR) systems licensed prior to June 30, 1989. In light of the very narrow relief proposed, SIRSA is pleased to have this opportunity to remind the Commission of its broader responsibility to all 900 MHz licensees faced with essentially identical challenges.

4. We again urge the Commission to expand its proposed relief to 900 MHz Industrial/Land Transportation systems. Contrary to the opinion expressed in the Notice, the situation of 900 MHz Industrial/Land Transportation

licensees is not "vastly" different than from the economic and technical difficulties experienced by the typical 900 MHz SMR licensee.

## II. BACKGROUND

5. The Commission allocated ten megahertz of 900 MHz spectrum to the Private Land Mobile Radio Services in 1986.<sup>2/</sup> Five megahertz of the allocation was dedicated for SMR use. The remaining 5 MHz was divided equally between the Industrial/Land Transportation and Business pools. However, the channels allocated to the SMR service, unlike the other two service pools, were only made available for assignment initially in 50 designated metropolitan markets. The Commission limited the availability of this spectrum to these 50 areas to expedite the processing of the applications for the new authorizations to provide the needed additional communication capacity in these major urban areas.

6. The Commission defined the 50 metropolitan areas for processing purposes. The 50 Designated Filing

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<sup>2/</sup> See Report and Order, (FCC 86-333) Gen. Docket No. 84-1231, Gen. Docket No. 84-1233, and Gen. Docket No. 84-1234, 2 FCC Rcd. 1825 (1986).

Areas (DFAs) were established to expedite the initial application phase for the SMR channels.<sup>3/</sup> For the most part, the DFAs encompassed the most densely populated areas of the nation's metropolitan markets. Nevertheless, many 900 MHz SMR licensees have argued that these limited areas artificially constrained the development of the 900 MHz SMR service.

7. Based on this restriction, the economic recession, and the difficulties encountered initially with the 900 MHz equipment, NABER filed a Petition for Rule Making asking the Commission to amend Section 90.631(b) of the rules to allow 900 MHz SMR licensees an additional two years to reach their mandated loading level.<sup>4/</sup> The

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<sup>3/</sup> Public Notice (No. 0539), Private Land Mobile Application Procedure for Spectrum in the bands 896-901 MHz and 935-940 MHz.

<sup>4/</sup> Section 90.631(b) requires trunked systems to have a minimum of 70 mobile units per channels licensed and operating on the system at the end of its initial license term. Failure to meet this loading requirement results in recovery of any channel not loaded to 100 mobile units when the system is located in a geographic area in which all channels are assigned. The Commission takes the position that no DFA has any unassigned channels, even though in many cities channels have been recovered by the Commission due to a failure to construct. This position is contrary to its position in regard to 800 MHz channels, where channels recovered by the Commission and unassigned to a specific licensee are considered to be available and further channel recoveries are not conducted in the applicable geographic area.

Commission deemed the factors enumerated in NABER's petition to be unique to the 900 MHz SMR service, and has proposed to amend Section 90.631(b) to permit 900 MHz SMR systems licensed prior to June 30, 1989, an additional two year period in which to meet the required loading of 70 mobile units per channel.

### III. COMMENTS

8. SIRSA supports adoption of the Commission's proposed rule change to extend the loading requirements for 900 MHz SMR systems. However, we take serious issue with the Commission's attitude which, at best, was cavalier toward the recommendation of SIRSA, TELFAC and CICS to provide similar relief to 900 MHz Industrial/Land Transportation system licensees. Two of the three "unique" factors justifying the Commission's action in connection with the 900 MHz SMR systems are equally applicable to 900 MHz Industrial/Land Transportation systems.

9. Difficulties with the 900 MHz equipment were not unique to only equipment provided to the SMR licensees. There is no "different" equipment supplied to the Industrial/Land Transportation systems than to the SMR systems. Thus, Industrial/Land Transportation licensees

experienced the same difficulties in implementing viable system infrastructures as did the SMR licensees.

10. The second "unique" factor was the economic recession which resulted in less interest by end users to operate on 900 MHz SMR systems. However, the economic recession also affected Industrial/Land Transportation licensees in a similar manner. The Notice fails to recognize that users of the Industrial/Land Transportation systems also must attract "customers" to justify capital expenditures to implement a new system and to support the employee base that will utilize the land mobile system.

11. At the time the 900 MHz channels were first available for assignment, few, if any, businesses were concerned about an economic decline. Generally, businesses were profitable and were expanding. The Industrial/Land Transportation applicants receiving grants of the 900 MHz channels had every intention of constructing and fully implementing these systems. However, in a matter of months the economy began a gradual decline -- business growth was reduced and, in fact, was forecasted to be a "negative" growth in 1991. Businesses were "trimming" and feeling the pinch of a reduced spending by the consumer. Consequently, while the 900 MHz SMR operators were unable to market the

mobiles to the end user, the same "end users" were failing to spend in other areas which reduced the amount of funds available for capital investments by Industrial/Land Transportation licenses, such as purchases of mobile units to integrate into 900 MHz systems.

12. Finally, the Commission stated that the 900 MHz SMR loading problems are different from those encountered by the Industrial/Land Transportation systems because the Industrial/Land Transportation applicants were not restricted in the geographic areas in which the systems could be located. As indicated previously, the Commission sought to relieve the lack of communication capacity in the major metropolitan markets in an expeditious fashion by making the allocated 900 MHz SMR spectrum available only in the top 50 metropolitan markets. Those 900 MHz applicants who decided to participate in the lottery were fully aware of the restrictions on the use and location of these systems. Further, there is nothing to prevent a 900 MHz SMR operator from constructing a wide area system. Certain additional risks are associated with such construction, i.e., secondary status for other than one transmitter

constructed inside the DFA. However, this same type of risk is also associated with wide area 800 MHz systems.<sup>5/</sup> The geographic restrictions were well known to 900 MHz SMR applicants and these risks should not now be employed as a basis for exclusive relief to the detriment of similarly situated licensees.

#### IV. CONCLUSION

13. The Commission has failed to offer sufficient justification to extend the mobile loading period for 900 MHz SMR systems on the one hand, and discriminate against 900 MHz Industrial/Land Transportation systems on the other hand. The Commission is establishing a difference without a distinction in the treatment of 900 MHz systems in the SMR pool and the Industrial/Land Transportation pool. The reasons cited by the Commission as being unique to the 900 MHz SMR systems are equally applicable to the Industrial/Land Transportation systems. Accordingly, SIRSA requests the Commission to adopt rule changes to provide similar relief from the loading requirements for 900 MHz

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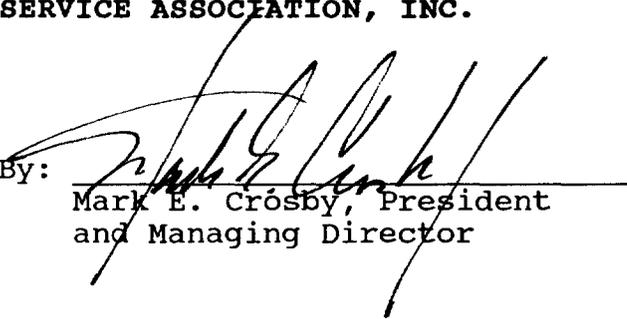
<sup>5/</sup> Unless sufficient loading is available to obtain primary status for numerous base stations based on "aggregate loading." See Memorandum Opinion and Order, In re Request of Fleet Call, Inc. (FCC 91-56), 6 FCC Rcd 1533 (1991).

Industrial/Land Transportation systems licensed prior to  
June 30, 1989.

**WHEREFORE, THE PREMISES CONSIDERED,** the Special  
Industrial Radio Service Association, Inc. respectfully  
requests that the Federal Communications Commission act in a  
manner fully consistent with the recommendations made in  
these Comments.

Respectfully submitted,

**SPECIAL INDUSTRIAL RADIO  
SERVICE ASSOCIATION, INC.**

By: 

Mark E. Crosby, President  
and Managing Director

Of counsel:

Wayne V. Black  
Terry J. Romine  
Keller and Heckman  
1001 G Street, N.W.  
Suite 500 West  
Washington, D.C. 20001  
(202) 434-4100

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