

ORIGINAL

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

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)

PR Docket No. 92-17
RM-7827

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To: The Commission

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Federal Communications Commission
Office of the Secretary

COMMENTS OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

Respectfully submitted,

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The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), pursuant to Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, 47 C.F.R. §1.415, respectfully submits its comments in the above-entitled proceeding.^{1/} The Commission has proposed to extend for two years the loading requirement applicable to 900 MHz trunked Specialized Mobile Radio ("SMR") Service systems licensed on or before June 30, 1989. AMTA supports the FCC's recognition of the inhibitory aspects of the multi-phased licensed scheme unique to 900 MHz SMR systems and the unprecedented economic downturn during the past several years. The Association urges the FCC to provide the regulatory relief proposed. In addition, AMTA recommends that the Commission either incorporate in this proceeding or, if necessary, in a Further Notice, rules which would permit the inter-category sharing of 900 MHz channels by fully loaded SMR licenses in accordance with the provisions of FCC Rule Section 90.621(g)(2). 47 C.F.R. §90.621(g)(2).

I. INTRODUCTION

AMTA is a nationwide non-profit trade association whose voting membership consists exclusively of SMR licensees. These members operate primarily trunked systems throughout the country utilizing both 800 MHz and 900 MHz frequencies. Because all SMR systems represented within AMTA have been or will be subject to

^{1/} Notice of Proposed Rule Making, PR Docket 92-17, FCC 92-40 (released February 18, 1992) ("Notice").

the Commission's loading rules, the Association has a direct interest in the outcome of this proceeding.

II. BACKGROUND

Trunked SMR systems are authorized to operate on frequencies in both the 800 MHz and 900 MHz bands. 47 C.F.R. §90.603 et seq. The first 800 MHz facilities were licensed in the late 1970s and the industry developed at an exponential rate throughout the next decade. In the mid-1980s, in response to the already evident, intensive demand for SMR and individual 800 MHz systems in urban markets, as well as the FCC's projections regarding future private land mobile requirements into the next century, the FCC made available for both SMR and non-commercial applicants additional spectrum at 900 MHz.^{2/} A multi-phase licensing scheme was adopted for SMR systems whereby facilities were authorized only in designated counties deemed to constitute the top fifty markets. SMR licensees within these Designated Filing Areas ("DFAs") were selected by lottery. Their applications were processed on a market by market basis, and the majority of systems in each geographic area were granted within a time span of only months, weeks or even days.

All of the licenses in the top ten urban areas were granted between September, 1987 and November, 1988, with the vast majority issued between September, 1987 and March, 1988.^{3/} Thus,

^{2/} Report and Order, Docket 84-1233, 2 FCC Rcd 1825 (1986).

^{3/} The top ten markets are New York, Los Angeles, Chicago, San Francisco, Houston, Dallas, Miami, Baltimore/Washington, Boston and Philadelphia.

these systems will begin to reach loading deadlines by September of this year, at which time frequencies not loaded to seventy units per channel could be recovered for reassignment to another applicant.^{4/} 47 C.F.R. §90.631. The Commission has now proposed to extend by two years the loading deadline for all 900 MHz SMR systems granted on or before June 30, 1989 with no interim bench mark requirement.^{5/}

AMTA supports a 900 MHz SMR loading deadline extension for the reasons described infra. However, it urges the Commission to implement inter-category sharing rules for 900 MHz SMR systems so that those licensees who satisfy the FCC's loading requirements will have an opportunity to expand their systems, thereby maintaining a satisfactory quality of service for end user customers.

III. DISCUSSION

AMTA approaches any proposal to relax regulations intended to promote optimal use of spectrum resources with certain reservations. The Commission's consistent application of a "use it or lose it" philosophy has, on balance, served both SMR

^{4/} Because the FCC has not yet initiated its second phase of 900 MHz SMR licensing, no applications have been accepted for recovered channels within the DFAs or for systems outside the DFA boundaries. Under the current interpretation of the FCC's rules, channels are recovered for insufficient loading only if they can be reassigned to a waiting list applicant.

^{5/} There was a substantial delay in authorizing 900 MHz SMR systems in DFAs along the Canadian border while treaty negotiations between the countries were finalized. Should the FCC subsequently determine that those later-granted systems were also inhibited by the licensing scheme adopted, AMTA assumes that the Commission will propose providing them with similar relief.

operators and the customers on their systems. The reassignment after some reasonable period of time of underutilized or totally unused frequencies to new entrepreneurs or to those who have justified expansion capacity has resulted in intensive channel utilization in areas of greatest spectrum demand. While other channel assignment approaches might have produced equally satisfactory results, the current rules are known to have worked.

Nonetheless, the Association recognizes that certain unanticipated factors have uniquely retarded 900 MHz SMR growth. The Commission has noted the effect of its multi-phase licensing scheme which limited 900 MHz SMR systems to artificially defined markets. The DFAs established in 1986 do not necessarily include counties of greatest recent growth in the designated metropolitan areas. Thus, during a period wherein 800 MHz SMRs, cellular systems and other potential competitors have moved increasingly toward networking and wide-area coverage, 900 MHz SMR operators have been precluded from selecting freely from among sites in each market. In fact, the DFA limitations have forced all to locate their facilities in an unnecessarily confined geographic area, thereby further intensifying competition even for those users who could be satisfied with DFA-wide coverage. There is no question that this licensing scheme has inhibited 900 MHz SMR market development. The Commission's decision not to authorize 900 MHz systems outside the DFAs, even existing systems wishing to relocate to serve documented user demand, some five years after

licenses were first issued could not have been anticipated by those who invested in 900 MHz systems.

900 MHz SMR systems faced significant technical challenges as well. Type accepted equipment was still being developed when this spectrum was made available. The narrower frequency bandwidth and sequential channel assignments required creative solutions to antenna pattern, combining and site compatibility difficulties. While none of these problems proved insurmountable, they unquestionably delayed the market development of 900 MHz SMR offerings.

It is also beyond debate that many of these systems were placed in operation just as the nation descended into an ever-worsening recession which even now shows few signs of improvement. It is difficult to imagine a less felicitous time to have begun marketing a land mobile radio system as growth in both the building construction and service industries essentially came to a standstill. AMTA agrees with the FCC that early 900 MHz licensees knew, or should have known, that the market was intensively competitive. It is difficult, however, to charge them with responsibility for recognizing the incipient sharp economic downturn which has only recently been acknowledged by the Federal Government itself.

AMTA is convinced that unique, unanticipated factors have inhibited the ability of certain 900 MHz SMR licensees to market their systems. For these reasons, the Association endorses the instant proposal. AMTA is persuaded that those who have made the

very substantial economic investment required to construct a 900 MHz trunked SMR system should be given the regulatory relief proposed. Because the Commission has not permitted the establishment of 900 MHz waiting lists, it is not clear that the current rules would even permit the recovery of underloaded channels.^{6/} Any recovered spectrum could remain unassigned and unavailable for use by qualified customers for some period of time while waiting list applications were accepted, reviewed, ranked by lottery or some other process, and then granted. Further delays would result as licensees made arrangements to finance and construct these newly authorized facilities. Although AMTA continues to believe that full spectrum utilization typically serves the public interest, it is convinced that the two-year extension proposed by the FCC is the optimal method of achieving that objective under these circumstances.

AMTA has already detailed the unique factors which impeded 900 MHz SMR development in many markets and which support the FCC's proposal. There are certain systems in some of the largest markets, however, which have already satisfied the Commission's loading requirements or which are expected to do so before their deadlines. Not surprisingly, those systems are in the areas of greatest spectral deficiency such as Los Angeles, New York, Chicago and Miami. Since approval of the instant proposal would delay for two years any possible SMR channel recoveries in those

^{6/} See F.N. 4, supra.

very markets, loaded system will be unable to expand unless they have access to additional spectrum resources.

For that reason, AMTA urges the FCC to reconsider the current prohibition against inter-category sharing at 900 MHz between the SMR and the Business and Industrial/Land Transportation Pools. The original proposal to permit SMR inter-category access beginning May 6, 1990 was delayed, pending completion of the Commission's Phase II 900 MHz proceeding.^{7/} The FCC determined that sharing was premature until that proceeding was resolved, but noted that the rule making was expected to be completed shortly. It has now been almost two years since that decision was reached. There is no indication that the second phase of 900 MHz SMR licensing will be addressed soon, or this issue otherwise resolved.

AMTA recommends that the Commission's rules be modified to permit 900 MHz inter-category sharing by fully loaded SMRs under the same provisions which govern these arrangements at 800 MHz. 47 C.F.R. §90.621(g)(2). Business and Industrial/Land Transportation eligibles have had access to their Pool frequencies for over five years. There has been ample opportunity for them to secure the spectrum needed to satisfy their requirements.^{8/} It is now appropriate, therefore, for unused frequencies to be made available to SMRs which have loaded

^{7/} Report and Order, PR Docket No. 87-213, 67 RR 2d 1473 (1990).

^{8/} It is indeed possible that no inter-category channels remain available in Los Angeles and other markets in which demand for spectrum is uniformly high across user categories.

their systems to capacity and who would otherwise be unable to accommodate system growth. To the extent that this proposed change requires further notice and comment, AMTA urges the Commission to initiate the necessary proceeding expeditiously.

IV. CONCLUSION

AMTA supports the Commission's proposal to extend for two years the loading requirements for 900 MHz SMR systems granted on or before June 30, 1989. This limited relief is appropriate in light of the difficulties encountered by legitimate system operators due to the FCC's multi-phase licensing scheme and the debilitating nationwide recession. The Association also recommends that the FCC take appropriate action to authorize 900 MHz inter-category sharing by SMRs so that those systems which have satisfied the Commission's requirements may continue to serve customers in areas of high spectrum demand. AMTA respectfully requests that the Commission adopt rules consistent with the Comments 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 11th day of March, 1992, caused to have hand delivered a copy of the foregoing **Comments** to the following:

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