

FCC MAIL SECTION

Before the  
Federal Communications Commission  
Washington, D.C. 20554

PR Docket No. 92-17

DISPATCH

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-7827

**REPORT AND ORDER**

Adopted: July 22, 1992;

Released: August 4, 1992

By the Commission:

**I. INTRODUCTION**

1. This *Report and Order* amends Part 90 of the Commission's Rules to grant Specialized Mobile Radio (SMR) licensees in the 896-901/935-940 MHz (900 MHz) band limited relief from the loading requirements of Section 90.631(b) of the Rules, 47 C.F.R. § 90.631(b). Specifically, we extend the deadline for loading all 900 MHz SMR systems by granting all qualified licensees that have not met our loading requirements a two-year license renewal at the end of their initial license period. We relieve these licensees from our loading requirements until the expiration of the two-year period.

**II. BACKGROUND**

2. We authorize trunked systems on the basis of a loading criterion of 100 mobile stations per channel. If at the end of five years a trunked system is not loaded to a level of 70 mobiles per channel and all channels in the licensee's service category are assigned within its geographic area, authorization for channels not loaded to 100 mobile stations per channel cancels automatically.<sup>1</sup>

3. In 1987, we began licensing the 399 channels in the 900 MHz band, following procedures established in Gen. Docket No. 84-1233<sup>2</sup> and a November 4, 1986 Public Notice entitled "Private Land Mobile Application Procedures for Spectrum in the 896-901 MHz and 935-940 MHz

Bands. Two hundred of these channels were set aside for SMR operations. To expedite 900 MHz SMR service to areas most in need, we accepted applications only within designated filing areas (DFAs) encompassing the 50 top markets in the country.

4. We have granted licenses for SMR systems in all DFAs except San Diego, California, where no licenses have been granted pending negotiations with Mexico on the use of these channels. Many licensees have failed to construct and place their systems in operation within the one-year period prescribed by Sections 90.631(e) and (f) of our Rules; their authorizations have cancelled automatically and their channels have been recovered. Licensees that have completed construction and placed their stations in operation within the required one year are now subject to the loading requirements of Section 90.631(b).<sup>4</sup>

5. On February 18, 1992, we released a *Notice of Proposed Rule Making (Notice)*<sup>5</sup> proposing limited relief from our loading requirements for 900 MHz SMR licensees.<sup>6</sup> Noting that our multi-phase licensing scheme was designed to expedite licensing in the major metropolitan areas, we expressed concern that this scheme may have placed 900 MHz SMR licensees at a competitive disadvantage to 800 MHz licensees, by making it difficult to develop the types of wide-area and regional systems characteristic of current, competitive (800 MHz) SMR offerings. We concluded that the circumstances justified limited relief from our loading standards and proposed a two year renewal for qualified 900 MHz licensees, with loading requirements not enforced until the expiration of this two-year period. Our proposed relief was limited to licenses granted during the first two years of licensing when, we concluded, difficulties in establishing the new service were greatest.

6. Seven comments were filed in response to the *Notice*, all favoring the proposed limited relief.<sup>7</sup> One commenter, NABER, asks that relief be extended to all 900 MHz SMR licensees, rather than just those licensed during the first two years. A second, SIRSA, seeks relief from our loading standards for 900 MHz Industrial/Land Transportation system licensees as well. AMTA, finally, asks that we permit inter-category sharing at 900 MHz between the SMR and the Business and Industrial/Land Transportation pools.

**III. DISCUSSION**

7. Based on the record before us, we will extend relief from the requirements of Section 90.631(b) to all current 900 MHz SMR licensees for a two-year period. Our multi-phase licensing scheme has limited 900 MHz SMR systems to artificially defined markets and has precluded a free selection of sites in each market. As a result, licensees have been unable to develop the kind of wide-area services

<sup>1</sup> Section 90.631 of the Commission's Rules, 47 C.F.R. § 90.631.

<sup>2</sup> Report and Order, Docket 84-1233, 2 FCC Rcd 1825 (1986).

<sup>3</sup> Private Land Mobile Application Procedures for Spectrum in the 896-901 MHz and 935-940 MHz Bands, 1 FCC Rcd 543 (1986).

<sup>4</sup> All licensees authorized after June 1, 1993, however, will not be subject to this condition. See § 90.631(b).

<sup>5</sup> Notice of Proposed Rule Making, PR Docket No. 92-17, 7 FCC Rcd 1400 (1992).

<sup>6</sup> The National Association of Business and Educational Radio,

Inc. (NABER) had filed a petition for rule making (RM-7827) to extend the loading deadline for certain 900 MHz licensees by two years.

<sup>7</sup> Comments in this proceeding were due on March 11, 1992, and reply comments on March 23, 1992. Comments were filed by Advanced Mobilecomm, Inc.; American Mobile Telecommunications Association, Inc. (AMTA); Fleet Call, Inc.; Millicom Radio Telephone Company, Inc.; National Association of Business and Educational Radio, Inc. (NABER); Special Industrial Radio Service Association, Inc. (SIRSA); and U.S.

expected by today's private radio customers.<sup>8</sup> The constraints of our licensing policies have placed 900 SMR licensees at a competitive disadvantage to at least 800 MHz SMR licensees in designing and marketing their systems. It is appropriate to provide them additional time to load their systems under these circumstances.

8. We will, therefore, as of the effective date of this Report and Order, process the license renewal applications of 900 MHz SMR licensees as follows. Licensees that have met the loading requirements of Section 90.631(b) at the end of the initial five-year license term may apply for and be granted a standard five-year license renewal. Those that have not, may request and be granted a two-year license renewal. At the end of this time period, such licensees will be subject to the channel recovery provisions of Section 90.631(b).

9. Our original proposal limited relief to systems licensed on or before June 30, 1989. We reasoned that the difficulties of establishing new systems were greatest during the first two years of licensing, and that subsequent licensees would have had the benefit of previous licensees' experiences. NABER questions our reasoning, expressing concern that this limitation would be unfair to later licensees who, in NABER's opinion, face the same difficult conditions as did licensees with earlier grants. Further, NABER argues, our proposal could result in licensees in larger markets, where demand might be greater, having later loading dates than licensees in smaller markets.<sup>9</sup>

10. We will adopt NABER's suggestion. The scope of relief here is purely a matter of discretion; no legal or factual constraints compel one course over the other. We have examined the record in this light and, finding no strong reason to limit the number of licensees entitled to relief, conclude that extending relief to all current 900 MHz SMR licensees is the more equitable course of action. We will not, as originally proposed, limit relief to licensees granted during the first two years of 900 MHz SMR licensing.

11. We reject the other suggested modifications to our proposal, however. Our *Notice* specifically considered and declined to adopt a proposal by SIRSA to extend relief to licensees in the 900 MHz Industrial/Land Transportation pool. There, we stated that such licensees do not compete for customers and should only apply for enough channels to satisfy their actual needs.<sup>10</sup> SIRSA attempts here to equate Industrial/Land Transportation licensees with 900 MHz SMR licensees, by citing common problems with equipment acquisition and economic recession.<sup>11</sup> Such problems are, however, endemic to any new service offering and are not sufficiently unusual to justify special treatment. What is "unique" is the licensing scheme adopted for 900 MHz SMR licensees, and the effect of this scheme on their competitive position vis-a-vis other providers of commercial land mobile service. Industrial/Land Transportation licensees were not subject to the geographic limitations of SMR licensing and thus they do not share this burden.

12. AMTA's request for inter-category sharing at 900 MHz between the SMR and the Business and Industrial/Transportation pools<sup>12</sup> is dismissed as beyond the scope of this proceeding. This issue is best considered in connection with the issue of SMR access to the 900 MHz band as a whole.<sup>13</sup>

#### IV. CONCLUSION

13. We adopt rules in this proceeding that provide limited relief from our loading requirements for 900 MHz SMR licensees. The record clearly indicates that these licensees have been disadvantaged competitively by our licensing scheme for their frequencies. The record also supports the relief proposed and adopted.

#### V. FINAL REGULATORY FLEXIBILITY ANALYSIS

##### Need and purpose of this action:

14. The Commission is adopting this *Report and Order* to provide limited relief for 900 MHz SMR licensees who have been disadvantaged by our multi-phase licensing scheme for their frequencies. This scheme has limited the licensees' ability to design and market systems competitive with other SMR offerings. This action provides additional time to load the systems, in recognition of these difficulties.

##### Summary of the issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis:

15. No comments addressed our Initial Regulatory Flexibility Analysis.

##### Significant alternatives considered and rejected:

16. None.

#### VI. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED that, pursuant to the authority of Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), Part 90 of the Commission's Rules, 47 C.F.R. Part 90, IS AMENDED as set forth in the Appendix.

18. IT IS FURTHER ORDERED that this *Report and Order* will be effective thirty days after publication in the *Federal Register*.

19. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

20. For information regarding this *Report and Order*, contact Myra G. Kovey, Private Radio Bureau, at (202) 632-6497.

Mobilenet. No reply comments were filed.

<sup>8</sup> See, e.g., AMTA Comments at 3-5; Fleet Call Comments at 3-5.

<sup>9</sup> NABER Comments at 4-5.

<sup>10</sup> Notice, *supra*, 7 FCC Rcd at 1401.

<sup>11</sup> SIRSA Comments at 6-8.

<sup>12</sup> AMTA Comments at 6-8.

<sup>13</sup> Accord Report and Order, PR Docket No. 87-213, 67 RR 2d 1473, 1485-86 (1990).

## FEDERAL COMMUNICATIONS COMMISSION



Donna R. Searcy  
Secretary

**APPENDIX**

47 C.F.R. Part 90 is amended as follows:

1. The authority citation for Part 90 reads as follows:

**Authority: Sections 4, 303, 331, 48 Stat. 1066, 1082, as amended; 47 U.S.C. § 154, 303, and 332, unless otherwise noted.**

2. Section 90.631 is amended by revising paragraph (b), and by adding a new paragraph (i), to read as follows:

**§ 90.631 Trunked systems loading, construction, and authorization requirements.**

\* \* \* \* \*

(b) Each applicant for a trunked system shall certify that a minimum of 70 mobiles for each channel authorized will be placed in operation within five years of the initial license grant. Except as provided in paragraph (i) of this section, if at the end of five years a trunked system is not loaded to the prescribed levels and all channels in the licensee's category are assigned in the system's geographic area, authorization for channels not loaded to 100 mobiles per channel cancels automatically. If a trunked system has channels from more than one category, General Category channels are the first channels considered to cancel automatically. All licensees who are authorized initially before June 1, 1993, and are within their original license term or are within the term of a two-year authorization granted in accordance with paragraph (i) of this section are subject to this condition. A licensee that has had authorized channels cancelled due to failure to meet the above loading requirements will not be authorized to obtain additional channels to expand that same system for a period of six months from the date of cancellation.

\* \* \* \* \*

(i) For SMRS category trunked systems licensed in the 896901/935-940 MHz band, if at the end of the initial five-year license term the licensee of such a trunked system has not satisfied the loading requirements of paragraph (b) of this section, the licensee requesting renewal of its license will be granted a renewal for only a two-year period. Regardless of the date of grant of the two-year renewal, the licensee will be required to comply fully with the minimum requirements set forth in paragraph (b) of this section at the end of the two-year renewal term.