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

In the Matter of	)	
	)	
Amendment of Part 90	)	PR Docket 92-210
of the Commission's Rules	)	
Governing Extended	)	
Implementation Periods	)	

TO: The Commission

COMMENTS
of
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.

By: Alan R. Shark

Alan R. Shark, President
1835 K Street N.W., Suite 203
Washington, D.C. 20006

Of Counsel:

Elizabeth R. Sachs, Esq.
Lukas, McGowan, Nace & Gutierrez
1819 H Street, N.W., Suite 700
Washington, D.C. 20006
(202) 857-3500

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List A B C D E

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, respectfully submits its comments in the above-entitled proceeding.[1] The instant Notice proposes to modify the FCC's current "extended implementation" provisions, 47 C.F.R. §90.629, to include eligible Specialized Mobile Radio ("SMR") Service systems, to extend the implementation period from three to five years, to eliminate any fleet-size requirement, and to eliminate the annual reporting requirement. AMTA supports the Commission's desire to minimize regulatory burdens on licensees and to promote the implementation of technically advanced, complex, spectrally efficient systems. Notice ¶1. It suggests, however, that a modified approach would satisfy those objectives while ensuring that valuable spectrum is not permitted to lie fallow for unnecessarily extended periods.

I. INTRODUCTION

AMTA is a nationwide, non-profit trade association dedicated to the interests of the SMR industry. The Association's members operate primarily trunked SMR systems throughout the country. Among those member are SMR applicants referenced in the Notice which have requested extended construction periods to implement technically innovative, wide-area system. Notice ¶3. In addition, the inter-category sharing rules permit qualified SMR

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[1] Notice of Proposed Rule Making, PR Docket No. 92-210, released October 13, 1992 ("Notice").

licensees to expand their systems with non-SMR spectrum. 47 C.F.R. §90.621(g). To the extent that such spectrum has been assigned to an extended implementation, a so-called "slow growth", licensee, it is not available for expansion of overloaded trunked systems. Thus, AMTA has a significant interest in supporting the adoption of rules which properly balance the promotion of advanced technology system approaches with the need to ensure the timely implementation of valuable spectrum.

II. DISCUSSION

There can be little question that the current rules providing for extended implementation schedules have been instrumental in the more widespread adoption of highly efficient trunked technology by non-commercial licensees. The FCC properly recognized that certain applicants requiring broad geographic coverage, and therefore multiple base station facilities, and those public safety entities subject to multi-year funding and construction schedules might be unable to satisfy the stringent one year construction requirement governing 800 MHz and 900 MHz trunked systems.[2/] 47 C.F.R. §90.631(e). While AMTA believes that some licensees accorded extended implementation status have been less than properly diligent in meeting their construction

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2/ The eight-month conventional station construction requirement may also be extended by the issuance of a slow growth grant, but conventional system extension requests are relatively uncommon. 47 C.F.R. §90.633(c).

benchmarks, the Association is satisfied that the slow growth provisions, as currently established, serve a useful purpose.

The instant Notice, while laudable in its objectives, includes certain modifications in those rules which AMTA believes may prove counter-productive to the implementation of technically advanced systems, or which are insufficiently rigorous in monitoring the progress of system implementation. Specifically, AMTA recommends that only SMR licensees proposing to reconfigure already constructed systems into more technically advanced system configurations be eligible routinely for slow growth status. The Association also recommends that applicants proposing new systems requiring extended implementation schedules continue to have a three, rather than five, year period to construct. Finally, AMTA suggests that the FCC clarify its proposed reporting requirements to specify under what circumstances the progress of slow growth licensees will be reviewed and their authorizations subject to the loss of channels for failure to satisfy their implementation schedules.

Currently, SMRs are excluded from eligibility to request extended implementation authorizations. The Notice now proposes to expand these provisions to include SMR applicants. In support of its recommendation, the FCC notes that an increasing number of SMR applicants have requested extended periods of time to implement technically innovative wide area systems, a need the Commission has found convincing. Notice ¶3. The FCC expects, by

its action, to facilitate the development of advanced technology SMR systems.

AMTA supports fully the FCC's desire to promote the introduction of technically innovative wide-area SMR systems. In fact, the Association has petitioned the Commission to adopt rules which would permit the licensing of such systems routinely, a petition which was recently placed on Public Notice.[3/] AMTA's so-called "Blueprint" expressly calls for the creation of wide-area block authorizations for SMRs proposing to implement advanced technologies, and recommends that such systems be granted more than the traditional one-year construction period. The Association applauds the FCC for moving promptly to request comments on the Blueprint, and encourages the Commission to use that proceeding, rather than the instant proposal, as the vehicle for establishing new extended implementation SMR systems on a routine basis.

One critical factor in AMTA's Blueprint proposal was the desire to balance the legitimate construction requirements associated with wide-area, technically advanced systems versus a concern that valuable spectrum not be warehoused. For that reason, the Association recommended that only licensees with already constructed facilities be permitted to participate in a wide-area authorization proposal in areas of relative spectrum

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3/ Request Amendment of the Commission's Rules Governing 800 MHz Specialized Mobile Radio Service Systems to Permit the Licensing of Wide-Area Block Authorizations, RM No. 8117, Public Notice, Report No. 1918 (November 20, 1992).

scarcity. Under the proposal, operators of constructed operational stations could be granted authorization to reconfigure those already operational frequencies throughout a specified geographic area over an extended period of time using advanced technologies, relief comparable to that accorded Fleet Call and its progeny pursuant to waivers.[4/] Extended construction periods are justified under those circumstances since the frequencies, by definition, have already been placed in operation and are serving users. Even then, AMTA recommended a certain level of "reconstruction" within five years to ensure that adequate progress is being made toward implementation of the advanced technology system.

The Blueprint takes a somewhat different approach in areas of more plentiful spectrum availability. There it recommends that previously unused frequencies be made available for wide-area authorizations, but proposes a more rigorous implementation schedule. A failure to meet the specified construction benchmark at the one-year mark results in the forfeiture of the entire authorization. In both urban and more rural areas, the Blueprint also proposes a licensing mechanism intended to ensure that all interested, qualified parties will have an equal opportunity to request wide-area authorizations. Those licensing schemes reward licensees not on the basis of the speed with which they can submit their filings, but on the quality of their proposals.

4/ See, e.g., In re Fleet Call, Inc., 6 FCC Rcd 1533 (1991).

The recommendation in the instant Notice appears to lack some of those vital safeguards. As the FCC is all too aware, it is sometimes impossible to distinguish qualified, sincere applicants from those with purely speculative intent. It is perhaps even more difficult to determine in advance whether genuinely committed applicants have the technical and financial resources to carry out their proposals, however well intentioned. It is for precisely those reasons that AMTA's Blueprint recommends more stringent qualification criteria for granting extended implementation, wide-area SMR authorizations. Without them, it is reasonable to assume that the Commission will find itself inundated with slow growth SMR proposals of varying, but on their face indistinguishable, quality which may collectively involve virtually all unassigned SMR spectrum in numerous geographic areas. The Association is not persuaded that the FCC currently has the resources to devote to the comparative evolution of these requests, if such an evaluation is even possible. Therefore, while the Association supports expansion of slow growth provisions to encompass the reconfiguration of systems in accordance with the test established in the Fleet Call proceeding, and encourages the Commission to consider on a case-by-case waiver basis proposals for extended construction periods such as that requested by American Mobile Data Communications, Inc.'s[5/], it recommends that the FCC consider the

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5/ 4 FCC Rcd 3802 (1989).

concept of extended implementation SMR systems generally in its action on AMTA's Blueprint proposal.

In addition, AMTA queries whether an across-the-board extension of the normal slow growth construction period from three to five years is necessary. That length of time may be appropriate when already constructed facilities are reconfigured using more advanced technologies, as demonstrated by the FCC's action in the Fleet Call proceeding.[6/] By contrast, five years may be unduly generous for applicants who are proposing systems for which equipment is readily available and for which no transition period is necessary. If the FCC's experience with non-commercial slow growth systems indicates that three years is generally inadequate, it would not be prudent to retain that requirement and process numerous extension requests. However, AMTA generally supports adoption of a realistically aggressive construction standard, consistent with legitimate requirements. It believes that such an approach is more likely to ensure timely spectrum utilization than is the suggestion in the Notice that applicants seek only the extended implementation period appropriate to their needs, an inherently subjective standard and one unduly susceptible to abuse.

Finally, AMTA suggest that the FCC clarify how it intends to monitor and enforce construction benchmarks without annual reporting requirements. Specifically, the Association is

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6/ In determining the reasonableness of that request, the FCC appropriately took into account the time frame in which the equipment being proposed would be made commercially available.

concerned that spectrum could be retained for up to four years after the normal one-year construction period without penalty to the licensee other than the loss of the channels which it failed to construct in accordance with its implementation schedule. There is little disincentive to warehousing spectrum if the penalty for doing so is only the loss of frequencies to which the licensee is not entitled and in which it has made no investment. The Association also fears that the FCC will be faced with numerous "hardship" cases in which licensees attempt to retain channels constructed after the date specified in the implementation schedule but before the FCC reviews system progress. It may prove particularly difficult to recover such spectrum from public safety entities which have already invested scarce tax dollars, in system implementation, however tardy. For this reason, AMTA recommends retention of the annual reporting requirement or further clarification of how the FCC intends to handle the situations described.

III. CONCLUSION

As the FCC has noted, there is a demonstrated, compelling need to adopt rules which promote the implementation of technically advanced, wide-area SMR systems. AMTA recommends that the extended implementation provisions under consideration in the instant Notice be modified only to the extent needed to authorize by rule the system reconfigurations approved by waiver for Fleet Call and its progeny. All other matters relating to

the development of such systems should be resolved in the context of AMTA's Blueprint proposal. Additionally, AMTA recommends that the FCC reconsider the proposed extension of slow growth construction periods from three to five years and the proposed elimination of the annual report requirement.

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 30th day of November, 1992, caused to have hand delivered a copy of the foregoing **COMMENTS** to the following:

Ralph Haller, Chief
Private Radio Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

Richard J. Shiben, Chief
Land Mobile and Microwave Division
Private Radio Bureau
Federal Communications Commission
2025 M Street N.W., Room 5202
Washington, D.C. 20554

Rosalind K. Allen, Deputy Chief
Rules Branch
Land Mobile and Microwave Division
Private Radio Bureau
Federal Communications Commission
2025 M Street N.W., Room 5126
Washington, D.C. 20554

Terry L. Fishel, Chief*
Land Mobile Branch
Licensing Division
Private Radio Bureau
Federal Communications Commission
1270 Fairfield Road
Gettysburg, PA 17325

Mr. Jay Kitchen*
NABER
1501 Duke Street
Alexandria, VA 22313

Mr. Mark Crosby*
ITA
1110 North Glebe Road
Arlington, VA 22201

* U.S. Mail

M.A. Spinks