

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554**

In the Matter of	)	
	)	
Amendment of Parts 1 and 22 of the	)	WT Docket No. 12-40
Commission's Rules with Regard to the	)	
Cellular Service, Including Changes in	)	
Licensing of Unserved Area	)	

To: The Secretary, Federal Communications Commission

**CRITICAL MESSAGING ASSOCIATION  
PETITION FOR RECONSIDERATION**

The Critical Messaging Association (CMA), by its attorney, respectfully petitions the Federal Communications Commission for reconsideration, in part, of its Third Report & Order (TR&O) in the captioned proceeding, FCC 18-92, adopted July 12, 2018, released July 13, 2018 and published at 83 Fed. Reg. 37760 (2 Aug. 2018). On reconsideration, CMA requests the Commission to reverse its erroneous interpretation that Section 90.168 of its rules applies to Part 22 licensees and requires them to submit annual EEO complaint reports irrespective of the deletion of Section 22.321(c) by the TR&O. In support of its petition, CMA respectfully states:

In the TR&O the Commission deleted Section 22.321(c) from its rules. CMA supported this proposed action and noted that the omnibus EEO reporting requirement in Section 1.815 of the rules applies only to carriers with 16 or more full time employees. CMA requested, therefore, that the Commission affirm that, upon deletion of Section 22.321(c), Part 22 licensees with fewer than 16 full time employees would no longer be required to file annual reports concerning EEO complaints.

Rather than affirm the effect of deleting Section 22.321(c) as interpreted by CMA, the TR&O advanced a novel interpretation of a similar rule section in Part 90, i.e., Section 90.168. The TR&O asserts, incorrectly, that “Section 90.168 states that it applies to *all* CMRS licensees (which includes the Part 22 PMS), and thus it entirely subsumes Section 22.321.” TR&O at Para. 14. (Emphasis in original).

Contrary to the TR&O’s claim, the scope of Section 90.168 is limited by the companion provisions of Section 90.1(b), which state, in relevant part: “This part [i.e., Part 90] states the conditions under which radio communications systems may be licensed and used *in the Public Safety, Industrial/Business Radio Pool, and Radiolocation Radio Services*.” (Emphasis added). CMRS stations in Part 90 are licensed and operated only in the Industrial/Business Radio Pool. Therefore, Section 90.168(c), when read together with Section 90.1(b), *actually* provides in relevant part that “Each [CMRS] licensee [*licensed in the Industrial/Business Radio Pool*], regardless of how many employees it has, shall submit an annual report to the Commission no later than May 31st of each year indicating whether any complaints regarding violations by the licensee or equal employment provisions of Federal, State, Territorial, or local law have been filed before anybody having competent jurisdiction.”

Contrary to the interpretation of the TR&O, Section 90.168 does *not* state that it applies to all CMRS licensees, and it does *not* subsume former Section 22.321(c). Under these circumstances, the Commission should reconsider and reverse its interpretation of Section 90.168 in the TR&O, and should acknowledge instead that Section 90.168 of its rules applies only to CMRS licensees in Part 90.

Respectfully submitted,

CRITICAL MESSAGING ASSOCIATION

By: s/Kenneth E. Hardman  
Kenneth E. Hardman

*Its Attorney*

5151 Wisconsin Avenue, NW, Suite 312  
Washington, DC 20016-4124  
Telephone: (202) 223-3772  
Facsimile: (202) 840-6499  
[kenhardman.law@gmail.com](mailto:kenhardman.law@gmail.com)

September 4, 2018