

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

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
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Amendment of Section 90.159(b) )  
of the Commission's Rules and )  
Regulations To Permit Conditional ) RM -  
Licensing For 470 MHz, 800 MHz )  
and 900 MHz Private Land Mobile )  
Radio Systems )

To: The Commission

PETITION FOR RULE MAKING  
OF THE  
NATIONAL ASSOCIATION OF BUSINESS  
AND EDUCATIONAL RADIO, INC.

The National Association of Business and Educational Radio, Inc. ("NABER"), pursuant to Section 1.401 of the Federal Communications Commission's Rules, 47 C.F.R. §1.401, hereby respectfully requests that the Commission institute a rule making seeking to modify Section 90.159(b) of the Commission's Rules to permit further temporary licensing of new stations in the Private Land Mobile Radio Service.<sup>1</sup> In support thereof, the following is shown:

BACKGROUND

On June 15, 1979, NABER filed a Petition for Rule Making with the Federal Communications Commission ("FCC" or the "Commission"), requesting that the Commission permit license applicants who were

<sup>1</sup>NABER is a national membership based trade association representing thousands of individuals and companies which use, sell, service and/or manufacture land mobile and fixed microwave equipment and facilities. NABER is also the certified frequency Advisory Committee for the Business Radio Service.

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add-on users to existing community repeaters in the Business Radio Service in the bands below 800 MHz to begin using their systems after receiving frequency coordination, and upon the filing of their license application with the FCC. In response to NABER's Petition, the Commission issued a Notice of Proposed Rule Making proposing to amend its rules to permit a form of "temporary" licensing for add-on users, to a previously licensed multiple licensed system. Notice of Proposed Rule Making, PR Docket No. 79-338, FCC 79-854, 45 FR 3349 (January 17, 1980) ("Notice"). In the Notice, the Commission stated that NABER's proposal was consistent with the Commission's earlier actions regarding the adoption of temporary licensing in the Personal Radio Service and in the Marine Radio Service. Notice, supra at p. 2; Personal (Citizen's Band) Radio Service, FCC 76-320, 41 FR 15849 (1976); Amendment of Parts 1, 2, 81 and 83, 70 FCC 2d 863 (1979). The Commission had also amended its rules in a similar fashion for Restricted Radio Telephone Operator's Permits. Temporary Radio Telephone Authorizations, 71 FCC 2d 1214 (1979).

The Commission adopted a system for temporary licensing for "add-on" users of multiple licensed mobile relay stations in its Report and Order, issued in PR Docket No. 79-338, 48 RR 2d 297 (1980). Under the Rules adopted, an applicant for a Business Radio station license utilizing an already authorized facility would be permitted to operate its radio station for a period of one hundred eighty (180) days, under a temporary permit, evidenced by a properly executed FCC license form, after the applicant received

frequency coordination and after mailing the application and coordination certification to the FCC. Such temporary licensing would not extend to sites which had not been given, where applicable, clearance from the Federal Aviation Administration or for certain systems near the Canadian border. The Commission's decision was affirmed by the United States Court of Appeals for the District of Columbia Circuit. Telocator Network of American v. Federal Communications Commission, No. 80-2181 (D.C. Cir. August 14, 1980).

On February 9, 1988, NABER requested that the Commission amend Section 90.159 to permit temporary licensing for new radio stations in the Business Radio Service which meet certain criteria. Such temporary authorization would extend only to license applicants for systems on a Business Radio Service frequency after the applicant completes in full the Commission's license application, and only after the application was reviewed by the coordinator and the applicant receives frequency coordination from NABER. Temporary licensing would be permitted after the frequency coordination of the submitted application is issued by NABER and the application, together with the coordination and the appropriate FCC fee, are deposited in the mail to the FCC.

In response to NABER's request (as well as a request from the Special Industrial Radio Service Association ("SIRSA")<sup>2</sup>, the Commission initiated PR Docket No. 88-567, 4 FCC Rcd 6325 (1989),

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<sup>2</sup>SIRSA subsequently changed its name to the Industrial Telecommunications Association ("ITA").

in which the Commission proposed to permit new systems on non-exclusive channels to operate under conditional authority. The proposal was ultimately adopted by the Commission. Report and Order, PR Docket No. 88-567, 4 FCC Rcd 8280 (1989).

The Commission and the user community have benefitted greatly from the implementation of conditional licensing for new systems on shared channels. Previously, there was tremendous pressure on the Commission to immediately process and issue routine licenses on shared channels as users could not wait many months before going on the air because of the severe impact on the user's business. As a result of the rule change, the Commission's Gettysburg Licensing Division has been able to adapt to changes in work flow, concentrating its efforts in the areas with the greatest backlog. Thus, the Commission's Gettysburg Licensing Division has been able to process more than 65,000 220 MHz applications, as well as common carrier and broadcast applications, without the additional of personnel.

NABER is unaware of any user or coordinator problems which have resulted from adoption of Section 90.159(b). Each user taking advantage of conditional licensing has been fully aware that the Commission may not ultimately grant the application and the ability for users to turn on their systems in two weeks has greatly benefitted the public. On channels shared among different services, coordination among the frequency advisory committees has been demonstrated to be a workable process to get users on the air quickly.

II. NABER REQUESTS THAT THE COMMISSION EXPAND SECTION 90.159(B)

Initially, the Commission elected not to permit conditional licensing for 470 MHz, 800 MHz and 900 MHz exclusive channels.

Limiting this program, at least initially, to applications for shared frequencies below 470 MHz would prevent potential disruption to the operations of existing licensees that have been granted exclusivity.<sup>3</sup>

It was the Commission's concern that conditional licensing only apply to "routine" applications, which are "virtually never challenged".<sup>4</sup> At the time, licensing for exclusive channels was anything but routine, with differences concerning issues ranging from co-channel separation to methodology for counting mobile loading. In addition, intercategory sharing by SMR Systems was still relatively new, and was not at that time causing delays in the Commission's work flow.

There are significant differences in the licensing processing since 1990. First, conditional licensing for new systems after frequency coordination has proven to be an efficient and effective means by which applicants can begin operation with little impact on spectrum management. This has in no small part been due to the advances in coordination methodologies which have been implemented by many frequency advisory committees.

Second, application methodology for exclusive channels has become more standardized. Clarification by the Commission as to

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<sup>3</sup>Notice of Proposed Rule Making, PR Docket No. 88-567, 4 FCC Rcd 6325 (1989) at para. 15.

<sup>4</sup>Report and Order, PR Docket No. 88-567, 4 FCC Rcd 8280 (1989) at para. 25.

the manner in which mobiles are counted,<sup>5</sup> standardization of co-channel separation methodology<sup>6</sup> and clarification of application procedures<sup>7</sup> has resulted in fewer objections to applications and fewer defective applications. In contrast, applications for shared channels have recently become less "routine", and more frequently "challenged", particularly for shared private carrier paging channels.

Third, the lack of available SMR Pool channels anywhere in the country has caused the now routine use of General Category, Business and Industrial/Land Transportation channels by SMR licensees seeking to increase capacity. As a result, the application for a small five (5) channel system operator, seeking to add one (1) General Category channel to its loaded system, is mired behind a que of applications for wide-area systems which is now routinely eight (8) months long, and in some areas is more than one (1) year. Previously, the Commission was processing 800 MHz applications within sixty (60) days. Now, despite the Commission's tremendous efforts to process more paper with fewer personnel, the processing line is four (4) times longer.

It is difficult, if not impossible, for a new user or a current user needing to expand a fully loaded system to wait to

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<sup>5</sup>Report and Order, PR Docket No. 92-79, FCC 92-359 (released August 31 1992).

<sup>6</sup>Report and Order, PR Docket No. 93-60, FCC 93-450, released October 8, 1993.

<sup>7</sup>Report and Order, PR Docket No. 90-481, FCC 91-339 (released November 21, 1991).

have their applications granted. In other cases, the Commission has issued dozens of Special Temporary Authorizations to existing users needing to move to different transmitter locations. This creates additional work for the Commission.

In this light, NABER requests that the Commission amend Section 90.159(b) of the Commission's Rules to permit conditional licensing for 470 MHz Business Category, 800 MHz Business Pool and 900 MHz Business Pool channels. The success of conditional licensing for new systems, and the current delays at the Commission, demonstrate that the rule change can work and is necessary. In PR Docket No. 88-567, the Commission specifically discussed the expansion of conditional licensing to exclusive frequencies if the implementation of Section 90.159(b) proved successful.<sup>8</sup>

NABER envisions expansion of conditional licensing as a similar process to the current rule. An applicant for an 800 MHz Business Pool channel, for example, currently begins operation immediately after the application has been coordinated by NABER and sent to the Commission. There should be little difference with the current procedure. However, NABER recommends that applications for waiver, or where the coordinator refuses to issue a coordination for the requested channel and the applicant requests that the application be sent to the Commission, be excluded from eligibility for conditional licensing.

Although the Commission may wish to explore expanding NABER's

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<sup>8</sup>Report and Order, PR Docket No. 88-567, supra at para. 25.

proposal to include other 470 MHz, 800 MHz and 900 MHz Pools, NABER recommends that the Commission refrain from permitting conditional operation on SMR Pool or 800 MHz General Category channels. The SMR Pool should be excluded as coordination for the SMR Pool is performed by the Commission, without prior review by any of the designated frequency advisory committees. As a result, applicants may not be aware of pending applications requesting the same channels in the same geographic region.<sup>9</sup> In addition, applicants may have filed applications for systems located in the Mexican or Canadian border regions, which require different channel groupings and other licensing restrictions. Thus, there is an increased likelihood that a requested system could interfere with other licensees. As discussed by NABER in its Comments in PR Docket No. 88-567, without independent third party review of the request prior to activation of the system, conditional licensing presents too many opportunities for problems.

Similarly, NABER does not recommend conditional licensing for 800 MHz General Category channels. At present, the Commission has declined to implement NABER's request that the Commission mandate "cross-coordination" of 800 MHz General Category channels by NABER,

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<sup>9</sup>Even applicants with access to the Commission's on-line computer system through ISI do not have current information on applications. There is approximately a three (3) week delay in the time that an application is received at the Mellon Bank in Pittsburgh before the application appears on the computer system. Further, many applications are filed with the Commission for the SMR Pool which do not request a specific frequency. Applicants requesting specific SMR Pool frequencies would not be able to determine if the Commission will allocate such frequencies to another, previously filed applicant whose application does not request specific frequencies.

ITA and APCO,<sup>10</sup> and ITA has refused NABER's request to implement such a procedure. As a result, conditional licensing of 800 MHz General Category channels has a potential for problems similar to the SMR Pool, with applicants for channels being unsure if another application has been filed for the channel through a different coordinating committee until the appearance of the applications in the Commission's data base, and in fact numerous problems have arisen.<sup>11</sup> However, should the Commission mandate such "cross-coordination", NABER believes that conditional licensing could also be applied to the 800 MHz General Category.

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<sup>10</sup>Report and Order, PR Docket No. 92-209, FCC 93-247 (released May 24, 1993) at para. 10.

<sup>11</sup>In addition, ITA has recently changed its coordination procedures and has sent applications which it has received which request 800 MHz Business Pool channels directly to the Commission without receiving NABER coordination. A request for coordination is then forwarded to NABER. Such applications clearly cannot be accorded conditional licensing. Already, the applications filed by ITA under this ad hoc procedure which it has adopted has resulted in multiple requests for the same Business Pool frequency being filed with the Commission.

**CONCLUSION**

**WHEREFORE,** the National Association of Business and Educational Radio, Inc. hereby respectfully requests that the Commission amend Section 90.159(b) of its rules in accordance with the views expressed herein.

Respectfully submitted,

**NATIONAL ASSOCIATION OF BUSINESS  
AND EDUCATIONAL RADIO, INC.**

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