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

GN Docket No. 93-252 ✓

May 17 4 37 PM '94

In the Matter of

Implementation of Sections 3(n) and 332
of the Communications Act

Regulatory Treatment of Mobile Services

ERRATUM

Released: May 12, 1994

1. This *Erratum* corrects the final rules in the *Second Report and Order* in the above captioned proceeding, FCC 94-31, which was released on March 7, 1994. The rules have been published correctly in the Federal Register.

2. The final rules are corrected to read as follows.

Adoption of Amendments

47 CFR parts 20, 22, 80, 90, and 99 are amended as follow:

PART 20--COMMERCIAL MOBILE RADIO SERVICES

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

1. Part 20 is added to read as follows:

PART 20 COMMERCIAL MOBILE RADIO SERVICES

Section	
20.1	Purpose.
20.3	Definitions.
20.5	Citizenship.
20.7	Mobile services.
20.9	Commercial mobile radio service.
20.11	Interconnection to facilities of local exchange carriers.
20.13	State petitions for authority to regulate rates.
20.15	Requirements under Title II of the Communications Act.

Section 20.1 Purpose.

The purpose of these rules is to set forth the requirements and conditions applicable to commercial mobile radio service providers.

Section 20.3 Definitions.

Commercial mobile radio service. A mobile service that is: (a)(1) provided for profit, *i.e.*, with the intent of receiving compensation or monetary gain;

(2) an interconnected service; and

(3) available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or

(b) the functional equivalent of such a mobile service described in paragraph (a) of this section.

Interconnection or Interconnected. Direct or indirect connection through automatic or manual means (by wire, microwave, or other technologies such as store and forward) to permit the transmission or reception of messages or signals to or from points in the public switched network.

Interconnected service. A service: (a) that is interconnected with the public switched network, or interconnected with the public switched network through an interconnected service provider, that gives subscribers the capability to communicate to or receive communication from all other users on the public switched network; or

(b) for which a request for such interconnection is pending pursuant to Section 332(c)(1)(B) of the Communications Act, 47 U.S.C. § 332(c)(1)(B). A mobile service offers interconnected service even if the service allows subscribers to access the public switched network only during specified hours of the day, or if the service provides general access to points on the public switched network but also restricts access in certain limited ways. Interconnected service does not include any interface between a licensee's facilities and the public switched network exclusively for a licensee's internal control purposes.

Mobile Service. A radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes:

(a) both one-way and two-way radio communication services;

(b) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation; and

(c) any service for which a license is required in a personal communications service under Part 24 of this chapter.

Private Mobile Radio Service. A mobile service that is neither a commercial mobile radio service nor the functional equivalent of a service that meets the definition of commercial mobile radio service. Private mobile radio service includes the following:

(a) Not-for-profit land mobile radio and paging services that serve the licensee's internal communications needs as defined in Part 90 of this chapter. Shared-use, cost-sharing, or cooperative arrangements, multiple licensed systems that use third party managers or users combining resources to meet compatible needs for specialized internal communications facilities in compliance with the safeguards of Section 90.179 of this chapter are presumptively private mobile radio services;

(b) Mobile radio service offered to restricted classes of eligible users. This includes the following services: Public Safety Radio Services; Special Emergency Radio Service; Industrial Radio Services (excluding Business Radio Services that offer customers for-profit interconnected services); Land Transportation Radio Services; and Radiolocation Services;

(c) 220-222 MHz land mobile service and Automatic Vehicle Monitoring systems (Part 90 of this chapter) that do not offer interconnected service or that are not-for-profit; and

(d) Personal Radio Services under Part 95 of this chapter (General Mobile Services, Radio Control Radio Services, and Citizens Band Radio Services); Maritime Service Stations (excluding Public Coast stations) (Part 80 of this chapter); and Aviation Service Stations (Part 87 of this chapter).

Public Switched Network. Any common carrier switched network, whether by wire or radio, including local exchange carriers, interexchange carriers, and mobile service providers, that use the North American Numbering Plan in connection with the provision of switched services.

Section 20.5 Citizenship.

(a) This rule implements Section 310 of the Communications Act, 47 U.S.C. § 310, regarding the citizenship of licensees in the commercial mobile radio services. Commercial mobile radio service authorizations may not be granted to or held by:

- (1) Any foreign government or any representative thereof;
- (2) Any alien or the representative of any alien;
- (3) Any corporation organized under the laws of any foreign government;
- (4) Any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country; or
- (5) Any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

(b) The limits listed in paragraph (a) of this section may be exceeded by eligible individuals who held ownership interests on May 24, 1993, pursuant to the waiver provisions established in Section 332(c)(6) of the Communications Act. Transfers of ownership to any other person in violation of paragraph (a) of this section are prohibited.

Section 20.7 Mobile services.

The following are mobile services within the meaning of Sections 3(n) and 332 of the Communications Act, 47 U.S.C. §§ 153(n), 332.

(a) Public mobile services (Part 22 of this chapter), including fixed operations that support the mobile systems, but excluding Rural Radio Service and Basic Exchange Telecommunications Radio Service (Subpart H);

(b) Private land mobile services (Part 90 of this chapter), including secondary fixed operations, but excluding fixed services such as call box operations and meter reading;

(c) Mobile satellite services (Part 25 of this chapter) including dual-use equipment, terminals capable of transmitting while a platform is moving, but excluding satellite facilities provided through a transportable platform that cannot move when the communications service is offered;

(d) Marine and aviation services (Parts 80 and 87 of this chapter), including fixed operations that support these marine and aviation mobile systems;

(e) Personal radio services (Part 95 of this chapter), but excluding Interactive Video and Data Service;

(f) Personal communications services (Part 24 of this chapter);

(g) Auxiliary services provided by mobile service licensees, and ancillary fixed communications offered by personal communications service providers;

(h) Unlicensed services meeting the definition of commercial mobile radio service in Section 20.3, such as the resale of commercial mobile radio services, but excluding unlicensed radio frequency devices under Part 15 of this chapter (including unlicensed personal communications service devices).

Section 20.9 Commercial mobile radio service.

(a) The following mobile services shall be treated as common carriage services and regulated as commercial mobile radio services (including any such service offered as a hybrid service or offered on an excess capacity basis to the extent it meets the definition of commercial mobile radio service, or offered as an auxiliary or ancillary service), pursuant to Section 332 of the Communications Act, 47 U.S.C. § 332:

- (1) Private Paging (Part 90 of this chapter), excluding not-for-profit paging systems that serve only the licensee's own internal communications needs;
- (2) Business Radio Services (Section 90.75 of this chapter) that offer customers for-profit interconnected service;
- (3) Land Mobile Systems on 220-222 MHz (Part 90 of this chapter), except services that are not-for-profit or do not offer interconnected service;
- (4) Specialized Mobile Radio services that provide interconnected service (Part 90 of this chapter);
- (5) Public Coast Stations (Part 80, Subpart J of this chapter);
- (6) Public Land Mobile Service (paging, mobile telephone, improved mobile telephone, trunked mobile, and 454 MHz air-ground services) (Part 22, Subpart G of this chapter);
- (7) Domestic Public Cellular Radio Telecommunications Service (Part 22, Subpart K of this chapter);
- (8) 800 MHz Air-Ground Radiotelephone Service (Part 22, Subpart M of this chapter);

(9) Offshore Radio Service (Part 22, Subpart L of this chapter):

(10) Any mobile satellite service involving the provision of commercial mobile radio service (by licensees or resellers) directly to end users, except that mobile satellite licensees and other entities that sell or lease space segment capacity, to the extent that it does not provide commercial mobile radio service directly to end users, may provide space segment capacity to commercial mobile radio service providers on a non-common carrier basis, if so authorized by the Commission;

(11) Personal Communications Services (Part 24 of this chapter), except as provided in paragraph (b) of this section;

(12) For-profit subsidiary communications services transmitted on subcarriers within the FM baseband signal, that provide interconnected service (47 CFR § 73.295 of this chapter); and

(13) A mobile service that is the functional equivalent of a commercial mobile radio service.

(i) A mobile service that does not meet the definition of commercial mobile radio service is presumed to be a private mobile radio service.

(ii) Any interested party may seek to overcome the presumption that a particular mobile radio service is a private mobile radio service by filing a petition for declaratory ruling challenging a mobile service provider's regulatory treatment as a private mobile radio service.

(A) The petition must show that:

(1) The mobile service in question meets the definition of commercial mobile radio service; or

(2) The mobile service in question is the functional equivalent of a service that meets the definition of a commercial mobile radio service.

(B) A variety of factors will be evaluated to make a determination whether the mobile service in question is the functional equivalent of a commercial mobile radio service, including: consumer demand for the service to determine whether the service is closely substitutable for a commercial mobile radio service; whether changes in price for the service under examination, or for the comparable commercial mobile radio service would prompt customers to change from one service to the other; and market research information identifying the targeted market for the service under review.

(C) The petition must contain specific allegations of fact supported by affidavit(s) of person(s) with personal knowledge. The petition must be served on the mobile service provider against whom it is filed and contain a certificate of service to this effect. The mobile service provider may file an opposition to the petition and the petitioner may file a reply.

The general rules of practice and procedure contained in Section 1.1 through Section 1.52 of this chapter shall apply.

(b) Licensees of a Personal Communications Service or applicants for a Personal Communications Service license proposing to use any Personal Communications Service spectrum to offer service on a private mobile radio service basis must overcome the presumption that Personal Communications Service is a commercial mobile radio service.

(1) The applicant or licensee (who must file an application to modify its authorization) seeking authority to dedicate a portion of the spectrum for private mobile radio service, must include a certification that it will offer Personal Communications Service on a private mobile radio service basis. The certification must include a description of the proposed service sufficient to demonstrate that it is not within the definition of commercial mobile radio service in Section 20.3. Any application requesting to use any Personal Communications Service spectrum to offer service on a private mobile radio service basis will be placed on public notice by the Commission.

(2) Any interested party may file a petition to deny the application within 30 days after the date of public notice announcing the acceptance for filing of the application. The petition shall contain specific allegations of fact supported by affidavit(s) of person(s) with personal knowledge to show that the applicant's request does not rebut the commercial mobile radio service presumption. The petition must be served on the applicant and contain a certificate of service to this effect. The applicant may file an opposition with allegations of fact supported by affidavit. The petitioner may file a reply. No additional pleadings will be allowed. The general rules of practice and procedure contained in Section 1.1 through Section 1.52 of this chapter and Section 22.30 of this chapter shall apply.

(c) Any provider of private land mobile service before August 10, 1993 (including any system expansions, modifications, or acquisitions of additional licenses in the same service, even if authorized after this date), and any private paging service utilizing frequencies allocated as of January 1, 1993, that meet the definition of commercial mobile radio service, shall, except for purposes of Section 20.5 (applicable August 10, 1993 for the providers listed in this paragraph), be treated as private mobile radio service until August 10, 1996. After this date, these entities will be treated as commercial mobile radio service providers regulated under this part.

Section 20.11 Interconnection to facilities of local exchange carriers.

(a) A local exchange carrier must provide the type of interconnection reasonably requested by a mobile service licensee or carrier, within a reasonable time after the request, unless such interconnection is not technically feasible or economically reasonable. Complaints against carriers under Section 208 of the Communications Act, 47 U.S.C. Section 208, alleging a violation of this section shall follow the requirements of Sections 1.711-1.734 of this chapter, 47 CFR §§ 1.711-1.734.

(b) Local exchange carriers and commercial mobile radio service providers shall comply with principles of mutual compensation.

(1) A local exchange carrier shall pay reasonable compensation to a commercial mobile radio service provider in connection with terminating traffic that originates on facilities of the local exchange carrier.

(2) A commercial mobile radio service provider shall pay reasonable compensation to a local exchange carrier in connection with terminating traffic that originates on the facilities of the commercial mobile radio service provider.

Section 20.13 State petitions for authority to regulate rates.

(a) States may petition for authority to regulate the intrastate rates of any commercial mobile radio service. The petition must include the following:

(1) Demonstrative evidence that market conditions in the state for commercial mobile radio services do not adequately protect subscribers to such services from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory. Alternatively, a state's petition may include demonstrative evidence showing that market conditions for commercial mobile radio services do not protect subscribers adequately from unjust and unreasonable rates, or rates that are unjustly or unreasonably discriminatory, and that a substantial portion of the commercial mobile radio service subscribers in the state or a specified geographic area have no alternatives means of obtaining basic telephone service. This showing may include evidence of the range of basic telephone service alternatives available to consumers in the state.

(2) The following is a non-exhaustive list of examples of the types of evidence, information, and analysis that may be considered pertinent to determine market conditions and consumer protection by the Commission in reviewing any petition filed by a state under this section:

(i) The number of commercial mobile radio service providers in the state, the types of services offered by commercial mobile radio service providers in the state, and the period of time that these providers have offered service in the state;

(ii) The number of customers of each commercial mobile radio service provider in the state; trends in each provider's customer base during the most recent annual period or other data covering another reasonable period if annual data is unavailable; and annual revenues and rates of return for each commercial mobile radio service provider;

(iii) Rate information for each commercial mobile radio service provider, including trends in each provider's rates during the most recent annual period or other data covering another reasonable period if annual data is unavailable;

(iv) An assessment of the extent to which services offered by the commercial mobile radio service providers the state proposes to regulate are substitutable for services offered by other carriers in the state;

(v) Opportunities for new providers to enter into the provision of competing services, and an analysis of any barriers to such entry;

(vi) Specific allegations of fact (supported by affidavit of person with personal knowledge) regarding anti-competitive or discriminatory practices or behavior by commercial mobile radio service providers in the state;

(vii) Evidence, information, and analysis demonstrating with particularity instances of systematic unjust and unreasonable rates, or rates that are unjust or unreasonably discriminatory, imposed upon commercial mobile radio service subscribers. Such evidence should include an examination of the relationship between rates and costs. Additionally, evidence of a pattern of such rates, that demonstrates the inability of the commercial mobile radio service marketplace in the state to produce reasonable rates through competitive forces will be considered especially probative; and

(viii) Information regarding customer satisfaction or dissatisfaction with services offered by commercial mobile radio service providers, including statistics and other information about complaints filed with the state regulatory commission.

(3) Petitions must include a certification that the state agency filing the petition is the duly authorized state agency responsible for the regulation of telecommunication services provided in the state.

(4) Petitions must identify and describe in detail the rules the state proposes to establish if the petition is granted.

(5) States have the burden of proof. Interested parties may file comments in support or in opposition to the petition within 30 days after public notice of the filing of a petition by a state under this section. Any interested party may file a reply within 15 days after the expiration of the filing period for comments. No additional pleadings may be filed. Except for Section 1.45, practice and procedure rules contained in Sections 1.42-1.52 of this chapter shall apply. The provisions of sections 1.771-1.773 of this chapter do not apply.

(6) The Commission shall act upon any petition filed by a state under this paragraph not later than the end of the nine-month period after the filing of the petition.

(7) If the Commission grants the petition, it shall authorize the state to regulate rates for commercial mobile radio services in the state during a reasonable period of time, as specified by the Commission. The

period of time specified by the Commission will be that necessary to ensure that rates are just and reasonable, or not unjustly or unreasonably discriminatory.

(b) States that regulated rates for commercial mobile services as of June 1, 1993, may petition the Commission under this section before August 10, 1994, to extend this authority.

(1) The petition will be acted upon by the Commission in accordance with the provisions of paragraphs (a)(1) through (a)(5) of this section.

(2) The Commission shall act upon the petition (including any reconsideration) not later than the end of the 12-month period following the date of the filing of the petition by the state involved. Commercial mobile radio service providers offering such service in the state shall comply with the existing regulations of the state until the petition and any reconsideration of the petition are acted upon by the Commission.

(3) The provisions of paragraph (a)(7) of this section apply to any petition granted by the Commission under this paragraph.

(c) No sooner than 18 months from grant of authority by the Commission under this section for state rate regulations, any interested party may petition the Commission for an order to discontinue state authority for rate regulation.

(1) Petitions to discontinue state authority for rate regulation must be based on recent empirical data or other significant evidence demonstrating that the exercise of rate authority by a state is no longer necessary to ensure that the rates for commercial mobile are just and reasonable or not unjustly or unreasonably discriminatory.

(2) Any interested party may file comments in support of or in opposition to the petition within 30 days after public notice of the filing of the petition. Any interested party may file a reply within 15 days after the time for filing comments has expired. No additional pleadings may be filed. Except for 1.45 of this chapter, practice and procedure rules contained in Sections 1.42-1.52 of this chapter apply. The provisions of Sections 1.771-1.773 of this chapter do not apply.

(3) The Commission shall act upon any petition filed by any interested party under this paragraph within nine months after the filing of the petition.

Section 20.15 Requirements under Title II of the Communications Act.

(a) Commercial mobile radio services providers, to the extent applicable, must comply with Sections 201, 202, 206, 207, 208, 209, 216, 217, 223, 225, 226, 227, and 228 of the Communications Act, 47 U.S.C §§ 201, 202, 206, 207, 208, 209, 216, 217, 223, 225, 226, 227, 228; part 68 of this chapter, 47 CFR Part 68; and sections 1.701-1.748, and 1.815 of this chapter, 47 CFR §§ 1.701-1.748, 1.815.

(b) Commercial mobile radio service providers are not required to:

(1) File with the Commission copies of contracts entered into with other carriers or comply with other reporting requirements, or with sections 1.781-1.814 and 43.21 of this chapter;

(2) Seek authority for interlocking directors (section 212 of the Communications Act);

(3) Submit applications for new facilities or discontinuance of existing facilities (Section 214 of the Communications Act).

(c) Commercial mobile radio service providers shall not file tariffs for interstate service to their customers, or for interstate access service. Sections 1.771-1.773 and Part 61 of this chapter are not applicable to interstate services provided by commercial mobile radio service providers. Commercial radio service providers shall cancel tariffs for interstate service to their customers and interstate access service.

(d) Nothing in this section shall be construed to modify the Commission's rules and policies on the provision of international service under Part 63 of this chapter.

PART 22--PUBLIC MOBILE SERVICE

2. The authority citation for Part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 303, unless otherwise noted.

3. Section 22.1 is amended by adding paragraph (g) to read as follows:

Section 22.1 Other applicable rule parts.

* * * * *

(g) Part 20 of this chapter which governs commercial mobile radio services which include the following services in this part:

(1) Public Land Mobile;

(2) Offshore Radio Service;

(3) Domestic Public Cellular Radio Telecommunications Service;

(4) 800 MHz Air-Ground Radiotelephone Service.

4. Section 22.13 is amended by removing paragraph (f).

5. Section 22.43 is amended by removing paragraph (b)(2).

6. Section 22.304 is removed.

PART 80--STATIONS IN THE MARITIME SERVICE

7. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

8. Section 80.3 is amended by removing paragraphs (g) through (k), by redesignating paragraphs (f), and (l) through (o) as (g), and (h) through (k), respectively, and by adding new paragraph (f) to read as follows:

Section 80.3 Other applicable rule parts of this chapter.

* * * * *

(f) Part 20 of this chapter which governs commercial mobile radio services which include Subpart J of this part (public coast stations).

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PART 90--PRIVATE LAND MOBILE RADIO SERVICE

9. The authority citation for Part 90 continues to read as follows:

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

10. Section 90.5 is amended by redesignating paragraphs (h) through (j) as paragraphs (i) through (k), respectively, and by adding a new paragraph (h) to read as follows:

Section 90.5 Other applicable rule parts.

* * * * *

(h) Part 20 of this chapter which governs commercial mobile radio service applicable to certain providers in the following services in this part:

- (1) Business radio service;
- (2) Private paging;
- (3) Land mobile service on 220-222 MHz;
- (4) Specialized Mobile Radio Service.

* * * * *

11. Part 99 is redesignated as Part 24 to read as follows:

PART 24--PERSONAL COMMUNICATIONS SERVICES

12. The authority citation for Part 24 continues to read as follows:

Authority: Secs. 4, 301, 302, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 301, 302, 303, and 332, unless otherwise noted.

13. In redesignated Part 24, Section 24.2 is amended by redesignating paragraphs (g) through (i) as paragraphs (h) through (j), respectively, and by adding a new paragraph (g) to read as follows:

Section 24.2 Other applicable rule parts.

* * * * *

(g) Part 20 of this chapter governs commercial mobile radio services.

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FEDERAL COMMUNICATIONS COMMISSION

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