

paging generally. For comparison, our narrowband PCS rules generally allow operation at 3500 watts ERP, but licensees must reduce their power levels in accordance with a prescribed formula at the borders of their service areas.⁸⁶ We seek comment on the feasibility of applying this approach to existing 900 MHz paging services also.

53. Finally, we seek comment on these alternatives as they affect our power limitations on mobile units. As noted above, the limits applicable to particular services vary from the 7-watt limit for cellular mobiles to the 100-watt limit for SMR mobiles. In general, we expect that Part 90 systems seeking to compete with cellular will use similar low-power technology to provide lightweight and easily portable mobiles to the end user. At the same time, users of traditional Part 90 systems may continue to need higher-power mobiles in order to obtain effective service. Accordingly, we seek comment on whether existing power limits for mobile units in Part 22 and Part 90 should be retained or conformed. Aside from any such action, however, we believe that all mobiles must comply with power limits dictated by applicable RF radiation standards, regardless of the service in which they are used. We therefore propose to apply the 1992 IEEE/ANSI standard to all CMRS and PMRS mobiles, as proposed in the *RF Radiation Notice*.⁸⁷

e. Modulation and Emission Requirements

54. Background. In some instances, our mobile services rules specify particular modes of transmission that may or may not be used by licensees. Part 22 licensees are generally subject to channeling, modulation and emission requirements under Subpart C.⁸⁸ Cellular licensees are also subject to specific emissions requirements,⁸⁹ but have the option to use any transmission mode provided that (1) interference to other cellular systems is not created, and (2) analog service is made available to all customers with analog equipment.⁹⁰ SMR systems at 800 and 900 MHz are expressly permitted to provide "digital or analog transmissions."⁹¹ Other Part 90 paging licensees are limited to using certain emission types specified in the rules.⁹² Part 90 also imposes restrictions on systems operating on shared channels (*e.g.*, digital voice emissions are not permitted on the

⁸⁶ See 47 CFR § 99.132(e). The 3500 watt ERP limit applies without an antenna height limitation, except that for stations located between 200 and 80 kilometers of the licensee's border, maximum power levels are reduced in accordance with the Table in Section 99.132(d).

⁸⁷ This proposal is subject to any modification of these standards that may be adopted in the *RF Radiation* proceeding.

⁸⁸ 47 CFR § 90.104(a)(1). Public Land Mobile licensees are automatically authorized to use the emission types listed in the rule or may request developmental authority to use other emission types. *Id.*, § 90.104(a)(4).

⁸⁹ *Id.*, § 90.907.

⁹⁰ *Id.*, § 22.930.

⁹¹ *Id.*, § 90.645.

⁹² See *id.*, § 90.207.

channels below 800 MHz except for systems operating in the Police, Fire and Power Radio Services).

55. Discussion. We seek comment on whether there is any continued need for emission restrictions of the type described above in services where frequencies are licensed on an exclusive basis. So long as licensees comply with other technical requirements designed to guard against co-channel interference, adjacent channel interference, and similar problems, we see no reason why our rules should limit the types of transmissions that may be used. Such an approach would also be consistent with our new PCS rules, which afford licensees system design flexibility and do not restrict licensees to any particular modulation or channel access technology. We note that by proposing to allow licensees greater flexibility in this area, we do not intend to modify or eliminate the requirement that cellular licensees provide analog service to customers with analog equipment. In addition, we believe that where services are licensed on a shared basis, existing emission restrictions should be retained in order to ensure that licensees do not engage in incompatible uses of common frequencies. We seek comment on these proposals.

f. Interoperability

56. Background. At the inception of cellular radio service, we adopted interoperability rules that require all cellular telephones to be capable of operating on all cellular channels and capable of successfully interacting with the base stations of all cellular radio service providers.⁹³ These rules were designed to protect cellular customers against incompatible equipment and to ensure that customers would have the ability to "roam" from one licensee's service area to another. We have subsequently liberalized these rules to allow the cellular industry to develop "alternative cellular technologies," provided these technologies allow interconnection with the public switched network consistent with certain technical specifications.⁹⁴ We have not imposed similar interoperability requirements on non-cellular Part 22 licensees, however, or on private radio services.

57. Discussion. We seek comment on whether any Part 90 CMRS licensees should be subject to mandatory interoperability requirements similar to those applicable to cellular licensees. For example, if we determine that wide-area SMR systems provide service that is substantially similar to cellular, based on our conclusion that the two services are in competition with each other, we must then decide whether they should be subject to similar rules ensuring that SMR customers have access to compatible equipment and the ability to use that equipment on any wide-area SMR system. We recognize that mandating uniform interoperability standards for various classes of CMRS equipment is potentially costly and could result in standards that do not reflect the rapid pace of development in mobile radio technology. In light of these considerations, we ask commenters

⁹³ This was accomplished by requiring manufacturers to build equipment in compliance with Office of Engineering and Technology Bulletin No. 53 (Cellular System Mobile Station - Land Station Compatibility Specification). *See Report and Order*, CC Docket No. 79-318, 86 FCC 2d 469 (1981), Appendix D; *see also* 47 CFR § 22.915(a).

⁹⁴ *See* 47 CFR § 22.930.

to address whether we should (1) establish interoperability standards intended to achieve interoperability among all classes of CMRS equipment; (2) establish such standards to achieve the narrower objective of promoting interoperability among different types of equipment used to provide the same type or class of CMRS service; or (3) maintain the *status quo* by retaining interoperability requirements for cellular equipment but refraining from any extension of these requirements to other classes of CMRS services. We ask commenters, in addressing these options, to assess the extent to which each approach would promote competition and access to the public switched network. In addition, we seek comment on other alternatives for encouraging the development of compatible equipment by CMRS providers if we decline to adopt interoperability standards.

2. Operational Rules

58. In addition to the technical rules discussed above, we believe it is appropriate to review our existing operational rules applicable to Part 90 and Part 22 services in order to ensure that reclassified private land mobile services are subject to operational rules comparable to the operational rules for substantially similar common carrier services. These rules define the Commission's requirements for mobile services in matters such as time to construct, channel loading and area coverage requirements, assignment and transfer of licenses, user eligibility, general licensee responsibility and system operation, and equal opportunity in employment. In each instance, we seek comment on whether implementing comparable regulation for similar services requires us to conform our existing Part 22 and Part 90 rules, and if so, how those rules should be conformed.

a. Construction Period and Coverage Requirements

59. Background. Both Part 90 and Part 22 require mobile service licensees to construct their facilities within a specified period following initial grant of a license. The maximum time to construct in each service typically depends on the geographic scope and technical complexity of systems in that service. Thus, licensees of mobile systems that are neither unusually complex, deployed throughout wide areas, nor subject to multi-year planning cycles must construct within a relatively short time period. For example, Part 22 generally allows Public Land Mobile Service licensees 12 months to construct common carrier mobile systems.⁹⁵ Most Part 90 licensees, including conventional SMR, local 220-222 MHz, Business Radio, and private paging licensees, must construct within 8 months,⁹⁶ although licensees of trunked systems are subject to a 12-month limit.⁹⁷

60. Services that are technically more complex and/or that will cover large geographic areas are typically afforded longer construction periods. In wide-area services such as cellular, nationwide

⁹⁵ 47 CFR § 22.43(a)(2). Offshore telephone stations must be constructed within 18 months. *Id.*

⁹⁶ *Id.*, §§ 90.155(a) (general); 90.495(c) (900 MHz paging); 90.633(c),(d) (conventional SMR); 90.725(f) (local 220 MHz).

⁹⁷ *Id.*, §§ 90.631(e),(f).

220 MHz, and PCS, we have adopted multi-year construction periods, which are usually combined with interim coverage requirements or benchmarks to ensure that licensees deploy their systems throughout their service areas on a phased basis.⁹⁸ Thus, cellular carriers in the top 90 markets were given five years to fill in their CGSA and were required to cover 75 percent of the CGSA within three years.⁹⁹ Licensees of 220 MHz nationwide commercial systems have 10 years to construct their systems, but must cover increasing percentages of their designated geographic area at two, four, and six years after the license grant.¹⁰⁰ Broadband PCS licensees must construct sufficient facilities to make service available to one-third of their service area population within five years, two-thirds of the population within seven years, and 90 percent of the population within 10 years.¹⁰¹

61. We have taken a somewhat different approach to construction periods for 800 and 900 MHz wide-area systems. Under our current rules, SMR licensees are presumptively subject to the 8-month limit for conventional systems and 12 months for trunked systems, but a licensee may obtain an extended construction period of up to five years by demonstrating that more time to construct is necessary due to the complexity, purpose, or coverage of the proposed facilities.¹⁰² On this basis, we have granted multi-year construction periods to most SMR licensees seeking to construct wide-area systems. We have recently adopted a similar extended implementation option for 929-930 MHz paging systems, which allows regional or nationwide licensees up to three years to construct provided they make a sufficient showing of need to the Commission and underwrite the proposed construction cost by means of a performance bond or escrow account.¹⁰³ Licensees

⁹⁸ See ¶ 67, *infra*.

⁹⁹ 47 CFR 22.43(c)(1). Cellular licensees in areas other than the top 90 markets are subject to shorter construction periods: licensees in markets 91-734 were required to construct at least one cell and begin providing service within 18 months, while licensees authorized to construct systems in unserved areas must complete all construction and begin providing service within 12 months. *Id.*, § 22.43(c)(2).

¹⁰⁰ *Id.*, § 90.725(a).

¹⁰¹ See *Broadband PCS Order*, ¶¶ 132-134. Similarly, our narrowband PCS rules require licensees to cover a specified minimum area or otherwise provide coverage to 37.5% of the population in their service areas within five years, and to cover a larger minimum area or reach 75% of the service area population within 10 years. See *Narrowband PCS Reconsideration Order*, ¶¶ 31-32.

¹⁰² 47 CFR §§ 90.629. Prior to 1993, extended implementation under this rule was available only to non-SMR licensees and was limited to three years. Beginning in 1991, however, the Commission granted several waiver requests by SMR licensees for extended construction periods of up to five years to build wide-area systems. See, e.g., *Fleet Call, Inc.*, 6 FCC Rcd 1533 (1991). Finally, in PR Docket 92-210, the Commission extended the applicability of to SMR applicants and increased the maximum allowable construction period from three to five years. *Report and Order*, Amendment of Part 90 of the Commission's Rules Governing Extended Implementation Periods, PR Docket No. 92-210, 8 FCC Rcd 3975 (1993).

¹⁰³ *900 MHz PCP Exclusivity Order*, ¶ 23. Several parties have sought reconsideration of the procedures established in the *900 MHz PCP Exclusivity Order* for obtaining extended construction authority in the 929-930 MHz band. We intend to proceed with reconsideration of the *Order* independently of the present rule making. As discussed further below, however, we also seek comment in the present rule making on whether our construction

of nationwide common carrier paging systems at 931-932 MHz must provide signaling to at least 15 SMSAs and build out their systems within two years.¹⁰⁴

62. Discussion. To ensure comparable treatment of substantially similar services, we believe a uniform "baseline" construction period should be applied to all CMRS licensees whose systems do not require an unusually long time to construct. In particular, we see no reason why Part 90 CMRS licensees should be limited to an 8-month period for construction of a standard base station while Part 22 licensees have 12 months to construct an identical station. We therefore propose to adopt a uniform 12-month construction period for CMRS licensees under both Part 22 and Part 90 except in those services where a longer time period is specifically authorized. We seek comment on this approach, which would apply, *inter alia*, to conventional and trunked SMR, paging, Business Radio, and local 220 systems. In addition, although such a step is not required to achieve comparable regulation of CMRS, we seek comment on whether the 12-month construction period should also be extended to PMRS licensees under Part 90. Rather than maintain the existing 8-month limit for some Part 90 licensees and not others, adopting a uniform period would arguably enhance administrative efficiency and simplicity in our regulation of all mobile services.

63. We further propose to require that licensees not only complete construction but also commence service by the end of this period. Part 90 currently requires stations to be constructed and "in operation" at the expiration of the construction period.¹⁰⁵ At least one mobile as well as one base station must be placed in operation to meet this requirement, except that trunked systems must have two operational mobiles (or one mobile and one control station).¹⁰⁶ Under Part 22, cellular licensees must provide "service to the public" by the end of the relevant construction period, but Public Land Mobile stations are required only to be constructed and "ready for operation."¹⁰⁷ We propose to amend our rules to require that CMRS licensees commence service to the public by the expiration of the relevant construction period. Unless otherwise specified, commencement of service would be defined as providing service to at least two third parties unaffiliated with the licensee.

64. With respect to wide-area SMR systems that require more than 12 months to construct, we seek comment on whether we should continue to require licensees to apply for extended implementation or whether we should adopt longer construction periods that apply automatically to such systems. In the *900 MHz Phase II Notice*, for example, we proposed to establish a 10-year construction period, with construction benchmarks at the fourth and sixth years for nationwide

rules should be revised for wide-area paging services generally. See ¶ 66, *infra*.

¹⁰⁴ 47 CFR § 22.527(b)(5).

¹⁰⁵ *Id.*, §§ 90.155(a); 90.631(e),(f); 90.633(c),(d).

¹⁰⁶ *Id.*, §§ 90.155(c), 90.631(f), 90.633(d).

¹⁰⁷ *Id.* §§ 22.43(a)(2), 22.43(c).

licensees and at the second and fifth years for regional licensees.¹⁰⁸ We believe this continues to be a viable approach under the new regulatory regime, and seek comment on whether such a timetable for 900 MHz licensees would further the goals of the statute.

65. With respect to 800 MHz SMR, however, we note that a 10-year construction period may not be appropriate, both because of the extensive construction of wide-area systems that is already under way and because 800 MHz licensees are not currently licensed in standard Commission-defined service areas.¹⁰⁹ At the same time, it is clear that requiring wide-area SMR licensees to affirmatively justify their construction timetables in order to obtain an extended implementation period constitutes a burden that is not imposed on cellular and PCS licensees. Accordingly, we seek comment on whether some other form of fixed construction period is feasible. For example, under the alternatives we have advanced for wide-area licensing at 800 MHz SMR (discussed at paras. 29-34, *supra*), licensees who self-designate as wide-area SMRs would be allowed to define their own service areas but would be subject to a five-year build-out deadline. After the expiration of this period, the licensee's service area would be redefined based on actual construction while unserved portions of the licensee's original area would be reclaimed by the Commission for relicensing. This approach would be similar to our construction requirements for cellular, and would arguably fulfill the goal of comparable regulation for substantially similar services. We seek comment on this approach.

66. We also seek comment on whether to revise our rules relating to construction of wide-area paging systems. Currently, our paging construction rules in both Part 22 and Part 90 provide for short construction periods because they are tied to the construction of individual stations rather than multi-station systems. Because many paging operators are constructing wide-area systems with multiple sites, however, adopting a longer construction period for these systems may be more efficient and practical. One alternative would be to adopt some form of extended implementation procedure for all paging services along the lines of the rules recently adopted for 929-930 MHz wide-area systems¹¹⁰ or our extended implementation rules in Part 90, Subpart S.¹¹¹ Another alternative would be to move towards Commission-defined service areas for all paging services (other than services on shared channels),¹¹² with appropriate construction periods based on the size

¹⁰⁸ See *900 MHz Phase II Notice*, ¶¶ 34-40. Under this proposal, nationwide licensees would be required to construct in at least 28 markets within four years, in 49 markets within six years, and in 70 markets within 10 years. Regional licensees would be required to construct facilities in 40% of their service area within two years and in all portions of their service area within five years.

¹⁰⁹ In the *800 MHz EMSP Notice*, we tentatively concluded that the construction period established for 220 MHz nationwide systems and proposed for 900 MHz systems should not be adopted at 800 MHz. *800 MHz EMSP Notice*, ¶ 39.

¹¹⁰ See *900 MHz Exclusivity Order*, ¶ 23; 47 CFR § 90.496. As noted above, we are proceeding separately with our reconsideration of this *Order*. See note 103, *supra*.

¹¹¹ See 47 CFR §§ 90.629.

¹¹² See ¶ 37, *supra*.

of the area to be served. We seek comment on these alternatives.

b. Loading Requirements

67. Background. To ensure that mobile service licensees make efficient use of spectrum and offer service to customers within their service area, our mobile service rules typically take one of two approaches. The first of these is service area coverage requirements, which are designed to ensure that service is available within a substantial portion of the licensee's service area by requiring the licensee's system to reach a minimum geographic area or a percentage of the service area population with a usable signal. As noted in our discussion of construction requirements above, coverage requirements of this type are typically used in conjunction with construction benchmarks in services where licensees have exclusive channel assignments over large service areas, such as cellular, 220 MHz nationwide, and PCS.¹¹³

68. The second approach is loading requirements, which are designed to prevent spectrum warehousing by requiring licensees to "load" their systems with a specified minimum number of users. Several Part 90 services subject to reclassification as CMRS are subject to such requirements. For example, SMR licensees must meet loading requirements in order to (1) obtain exclusive use of existing channels,¹¹⁴ (2) obtain additional channels,¹¹⁵ (3) serve areas within 40 miles of existing stations,¹¹⁶ and (4) avoid automatic cancellation of authorizations for unloaded channels at five-year renewal (this last requirement applies only to trunked SMR systems licensed on or prior to June 1, 1993).¹¹⁷ Similarly, Business Radio licensees in the 470-512 MHz band must load their systems to obtain exclusivity.¹¹⁸ Commercial licensees at 220 MHz and paging licensees at 929-930 MHz are not subject to loading requirements, although they must file loading reports at renewal.¹¹⁹ Part 22 does not impose loading requirements, although two-way non-cellular licensees must submit studies of airtime usage, referred to as "traffic loading," in order to obtain additional channels.¹²⁰

69. While we continue to use loading requirements in the above instances, it should be noted that we have proposed to eliminate many of these rules and that some loading requirements

¹¹³ See ¶ 60, *supra*.

¹¹⁴ 47 CFR §§ 90.631(a) (trunked systems); 90.633(a),(b) (conventional systems).

¹¹⁵ *Id.*, §§ 90.631(c) (trunked), 90.633(e) (conventional).

¹¹⁶ *Id.*, §§ 90.623(c) (conventional), 90.627(b) (trunked).

¹¹⁷ *Id.*, § 90.631(b).

¹¹⁸ *Id.*, § 90.313(a)(3).

¹¹⁹ *Id.*, §§ 90.127(e), 90.494(e), 90.737(c).

¹²⁰ *Id.*, § § 22.16, 22.516.

have previously been eliminated or streamlined.¹²¹ In the *Part 22 Rewrite Notice*, for example, we proposed to eliminate all traffic loading study requirements based on our tentative conclusion that loading is not a reliable indicator of efficient channel usage and that these studies are burdensome for licensees to prepare and for Commission staff to evaluate.¹²² Similarly, in our *800 MHz EMSP* and *900 MHz Phase II* proceedings, we have proposed to rely on construction and coverage requirements instead of loading standards for wide-area SMRs.¹²³ We have also relied on construction and coverage requirements and refrained from adopting loading requirements in 929-930 MHz paging and PCS.¹²⁴

70. Discussion. We first seek comment on the degree to which we should continue to use loading standards as a means of ensuring efficient spectrum use by CMRS licensees.¹²⁵ As noted above, we have already proposed to do away with loading requirements for some mobile services, and we have concluded in other instances that coverage requirements and construction timetables are sufficient to ensure efficient use of spectrum. In addition, if we conclude that a Part 90 service that is subject to loading requirements is "substantially similar" to a Part 22 service that is not required to meet such requirements, the statutory principle of comparable regulatory treatment arguably mandates either eliminating loading obligations for the former service or imposing them on the latter. Between the two alternatives, we are more inclined to eliminate loading requirements than to impose them, because our experience with loading suggests that spectrum warehousing can be adequately addressed by other means. In addition, we anticipate that in services where we now have authority to select licensees by auction, the need for loading standards will be reduced because licensees will have greater incentives to make efficient use of their authorizations.¹²⁶

71. We seek particular comment on this issue as it applies to our loading requirements for SMR licensees. To the extent that SMR systems are substantially similar to Part 22 services (or to PCS), they should arguably be subject to no loading requirements at all because such

¹²¹ See, e.g., *Report and Order*, Amendment of Part 90 of the Commission's Rules Pertaining to End User and Mobile Licensing Information, PR Docket No. 92-78, 7 FCC Rcd 6344 (1992) (streamlining procedures for reporting of loading information).

¹²² *Part 22 Rewrite Notice*, ¶ 16.

¹²³ *800 MHz EMSP Notice*, ¶¶ 19, 37; *900 MHz Phase II Notice*, ¶ 32 n.74.

¹²⁴ *PCP Exclusivity Order*, ¶ 26; *Narrowband PCS Order*, ¶¶ 36-37; *Broadband PCS Order*, ¶ 134. In our exclusive use overlay proposal in the *Refarming Notice*, however, we propose to use loading standards to identify licensees whose consent is required to designate a channel as exclusive. See *Refarming Notice*, Appendix A at 10.

¹²⁵ This proceeding does not address or propose to eliminate loading requirements currently applicable to Part 90 licensees operating non-commercial systems for internal use.

¹²⁶ See ¶¶ 119-128, *infra*.

requirements are not imposed on Part 22 or PCS licensees.¹²⁷ On the other hand, if we eliminate loading criteria for SMR licensees, we seek comment on whether alternative measures are necessary to protect against spectrum warehousing. For example, we currently require SMR licensees to demonstrate loading as a condition for obtaining additional blocks of frequencies.¹²⁸ If we eliminate this requirement, an alternative would be to place an overall cap on the number of frequencies that a licensee may acquire in a single area. Another alternative would be to limit initial frequency allocations and require that the licensee construct and provide service on existing channels before it can receive additional frequencies in the same area.

72. Similar issues are raised by the "40-mile rule," which requires SMR licensees to demonstrate loading in order to place base stations at less than 40-mile intervals.¹²⁹ In the 800 MHz EMSP and 900 MHz Phase II proceedings, we have proposed to eliminate this restriction so that wide-area licensees may construct systems in their service areas that utilize "cellular-type" low-power stations in close proximity to one another.¹³⁰ As in the case of cellular and PCS, we would rely on construction timetables and coverage requirements instead of loading requirements to ensure efficient spectrum use. We tentatively conclude that eliminating or modifying the 40-mile rule is consistent with the statutory objectives addressed in this rule making and would enhance the ability of wide-area SMR systems to compete with other broadband services. We seek comment on this tentative conclusion, and particularly on whether the 40-mile rule should be eliminated or modified for traditional as well as wide-area SMR systems. In the event that we eliminate the rule, however, we also seek comment on whether there should be any other restrictions or conditions on spacing of multiple SMR stations within the same region.

73. We also seek comment on whether to eliminate the automatic cancellation element of our SMR loading rules, which provides that if any channel of a trunked SMR system is not fully loaded five years from the date of initial licensing, the authorization for that channel cancels automatically.¹³¹ In 1988, we decided that a phase-out of this rule was justified in light of increased demand for SMR service, and we therefore amended the rule so that it would not apply to licensees

¹²⁷ Because no loading requirements currently exist for any common carrier service, we believe this rationale applies to both traditional and wide-area SMR systems classified as CMRS. In addition, assuming we decide that SMR licensees classified as CMRS providers should not be subject to loading requirements, we seek comment on whether it is either necessary or practical to retain such requirements for SMR licensees that remain classified as PMRS.

¹²⁸ 47 CFR §§ 90.631(c), 90.633(e).

¹²⁹ *Id.*, §§ 90.623(c), 90.627(b).

¹³⁰ See note 123, *supra*. In the 800 MHz EMSP Notice, we proposed to eliminate the rule with respect to EMSP systems but to retain it for traditional systems that do not elect EMSP status.

¹³¹ 47 CFR § 90.631(b).

granted authorizations after June 1, 1993.¹³² Since 1988, the SMR industry has expanded even more rapidly to the point that even applying the automatic cancellation rule to pre-June 1, 1993 licensees may no longer serve a useful purpose. We have recently received a petition from the American Telecommunications Association proposing to eliminate the rule.¹³³ For these reasons as well as for reasons of regulatory consistency, we propose to eliminate this element of our loading rules. We seek comment on this proposal.

c. User Eligibility

74. Background. The historical distinction between common carriage and private radio has led to entirely different approaches to user eligibility under Part 90 and Part 22. Because private radio services are dedicated to use by a defined group of eligible users, Part 90 sets forth specific limitations on who is eligible to use each service. In the case of those Part 90 services that are subject to reclassification as CMRS, these restrictions are relatively minor: the only persons not eligible to obtain service from an SMR, private paging, or 220 MHz licensee are foreign governments and their representatives;¹³⁴ Business Radio licensees also may not serve foreign governments or their representatives and are similarly restricted from serving government entities or individuals who do not have a business use for the service.¹³⁵ Nonetheless, these restrictions contrast with Part 22, which contains no user eligibility restrictions of any kind because such restrictions would conflict with the statutory obligation of all common carriers under Sections 201 and 202 of the Act to provide service upon reasonable request.

75. Discussion. Because Section 332(c)(1)(A) of the Act subjects all CMRS providers to the requirements of Sections 201 and 202, Part 90 licensees who are reclassified as CMRS must offer service to the public on a nondiscriminatory basis. In light of the statute, we do not believe that any potential user or class of users may or should be prohibited from obtaining service from a CMRS provider. In addition, we believe that retaining eligibility restrictions in Part 90 when no parallel restrictions exist in Part 22 would be inconsistent with Congress' goal of regulatory

¹³² *Report and Order*, Amendment of Part 90, Subparts M and S, of the Commission's Rules, PR Docket No. 86-404, 3 FCC Rcd 1838 (1988), ¶ 67.

¹³³ Petition for Rule Making, RM-8387, filed October 29, 1993. We incorporate the AMTA Petition into this docket. In addition, AMTA has requested that the Commission stay enforcement of the rule pending action on its petition. Request for Stay, filed October 29, 1993. We decline to implement such a general stay, but delegate authority to the Private Radio Bureau to entertain requests for temporary stay of Section 90.631(b) by SMR licensees whose authorizations would otherwise be cancelled during the pendency of this proceeding. See 47 CFR § 90.151. In addition, any licensee whose authorization has already been cancelled may request reconsideration within 30 days pursuant to Section 1.106(f).

¹³⁴ See 47 CFR §§ 90.115, 90.494(a) (900 MHz Paging), 90.645 (SMR), 90.733(a) (220 MHz).

¹³⁵ See *id.*, § 90.75(a). Business Radio licensees operating private carrier paging systems may serve individuals and government entities. See *Report and Order*, Amendment of the Commission's Rules to Permit Private Carrier Paging Licensees to Provide Service to Individuals, PR Docket No. 93-38, 8 FCC Rcd 4822 (1993).

symmetry. We therefore propose to eliminate all user eligibility limitations applicable to CMRS providers under Part 90, so that CMRS licensees in Part 90 services may serve the public without restriction. We seek comment on this proposal.

d. Permissible Uses

76. Background. Both Part 90 and Part 22 contain a variety of rules relating to the uses that may be made of particular types of mobile radio systems.¹³⁶ These rules are designed primarily to ensure that such systems are used for the purpose for which they were licensed. Thus, Part 22 specifies that all mobile units must communicate with and through base stations only,¹³⁷ and prohibits the concurrent licensing of base stations for any non-common carrier purpose,¹³⁸ although incidental or emergency non-common carrier use of Part 22 facilities is allowed under some circumstances.¹³⁹ Part 22 licensees are also prohibited from providing dispatch service.¹⁴⁰

77. Part 90 similarly requires mobile radio facilities to be used primarily for communication between base stations and mobile units, although other incidental or emergency uses are allowed,¹⁴¹ but private land mobile stations are prohibited from providing broadcasting or common carrier service.¹⁴² Part 90 licensees are also subject to rules requiring transmissions to be of minimum practicable duration and that communications relating to safety of life or property be given priority.¹⁴³ Finally, licensees on shared frequencies may only transmit communications that are

¹³⁶ See generally 47 CFR, Part 22, Subparts G and K; Part 90, Subpart N. We note that CMRS services provided over FM subcarrier channels are not subject to Part 22 rules or other rules regarding permissible uses of FM subcarrier systems. See *Second Report and Order*, ¶ 260. A variety of services may be offered through the use of FM subcarrier channels. See *id.*, ¶ 260, n. 524.

¹³⁷ 47 CFR §§ 22.509, 22.911.

¹³⁸ *Id.*, § 22.119. We have proposed to eliminate this rule in a separate proceeding. *Notice of Proposed Rule Making*, Amendment of Part 22 of the Commission's Rules to Delete Section 22.119 and Permit the Concurrent Use of Transmitters in Common Carrier and Non-Common Carrier Services, CC Docket No. 94-46, FCC 94-113, adopted May 13, 1994, (to be released).

¹³⁹ *Id.*, §§ 22.210, 22.308.

¹⁴⁰ *Id.*, §§ 22.529, 22.911. We intend to consider whether the dispatch prohibition should be retained or eliminated in an upcoming proceeding.

¹⁴¹ 47 CFR §§ 90.419 (general rule), 90.645 (SMR), 90.733 (220 MHz). Part 90 stations may generally transmit communications related to emergencies, civil defense, or imminent safety concerns. See *id.*, §§ 90.405, 90.407, 90.411, 90.417(a).

¹⁴² *Id.*, § 90.415.

¹⁴³ *Id.*, §§ 90.403(c),(d).

directly related to the activity that renders them eligible for a station license.¹⁴⁴

78. Discussion. Although the rules on permissible uses of Part 90 and Part 22 systems are similar in some respects (e.g., restrictions on fixed base-to-base communications), some of these rules appear to require modification to conform to the new regulatory structure and ensure comparable regulatory treatment of similar services. For example, the prohibition on provision of common carrier service by Part 90 licensees is clearly inappropriate for licensees that have been reclassified as CMRS providers under the statute and therefore will be treated as common carriers. We have also concluded in the *Second Report and Order* that certain mobile service providers should have the flexibility to offer both commercial and private service under a single license.¹⁴⁵ We therefore propose to eliminate the Part 90 prohibition on common carrier service as it applies to SMR, 220 MHz, Business Radio, and Part 90 paging services.

79. We also seek comment on whether other rules related to permissible communications are any longer relevant under the revised regulatory regime for mobile services. For example, we see no reason why Part 90 CMRS licensees should be subject to limits on the purpose of communications on their systems when such restrictions are not imposed on Part 22 licensees and appear to be inconsistent with the requirement that CMRS providers provide non-discriminatory service to the public.¹⁴⁶ Similarly, the limit on the duration of messages in Part 90 services has no Part 22 counterpart and could be an impediment to competition by Part 90 CMRS licensees with substantially similar Part 22 services. We therefore propose to eliminate these restrictions as they apply to Part 90 CMRS providers, except that we propose to retain the limit on message duration in the case of systems on shared spectrum because the rule helps to assure that all co-channel licensees have the maximum possible access to air time. We seek comment on these proposals and on any other possible changes that we should consider to our rules in this regard.

e. Station Identification

80. Background. Both Part 22 and Part 90 generally require licensees to transmit station call signs at regular intervals. Stations in the Public Land Mobile Service must transmit their call signs every 30 minutes unless such transmission would interrupt message traffic.¹⁴⁷ Licensees may also identify themselves by means of a telephone number or other designation in lieu of the station call sign.¹⁴⁸ Part 90 requires station identification with every transmission or at 15 minute intervals

¹⁴⁴ *Id.*, § 90.405(a).

¹⁴⁵ *Second Report and Order*, ¶ 115.

¹⁴⁶ We note that the *Refarming Notice* proposes to eliminate Section 90.405, relating to permissible communications, in its entirety. *Refarming Notice*, Appendix E.

¹⁴⁷ 47 CFR § 22.213(a).

¹⁴⁸ *Id.*, § 22.213(b)(1).

during continuous traffic,¹⁴⁹ except in the case of trunked SMR and local 220 MHz stations, which must identify themselves at 30 minute intervals.¹⁵⁰ Part 90 licensees may not use an alternative designation, although licensees on exclusive channels may transmit their call signs digitally.¹⁵¹ Finally, cellular licensees are exempt from all station identification requirements,¹⁵² as are 220 MHz nationwide licensees.¹⁵³

81. Discussion. Station identification rules are often necessary to ensure that both the Commission and other spectrum users can identify sources of interference. We have determined that station identification is not necessary in the case of cellular and nationwide 220 MHz systems, however, because licensees operating on exclusive channel blocks on a nationwide basis or in defined regions (*e.g.*, MSAs, RSAs) are readily identifiable through the Commission's licensing records or other publicly available information. We ask comment on whether station identification requirements for other mobile services should be eliminated on similar grounds. For example, there appears to be no need to require 900 MHz paging systems that have nationwide exclusivity to transmit their call signs. Similarly, eliminating the requirement may be feasible in the 900 MHz SMR band if we proceed with exclusive licensing in Commission-defined areas. In other services, however, station identification requirements may continue to be necessary because multiple licensees occupy common frequencies within a given geographic area (as is the case in the 800 MHz SMR band) and service areas are station-defined, making licensee identification by other means more difficult. We seek comment on this view.

82. To the extent that we conclude that station identification requirements continue to be necessary, we seek comment on whether other steps could be taken to make the requirement less burdensome without compromising its effectiveness in identifying sources of interference. For example, Part 22 paging and radiotelephone licensees and Part 90 paging and SMR licensees with multiple stations in their systems currently must identify each station by its individual call sign. In the *Part 22 Rewrite Notice*, we proposed to relax our Part 22 rules to allow licensees to use a single call sign for all stations in a system.¹⁵⁴ We have made a similar proposal for 800 MHz wide-area systems in the *800 MHz EMSP Notice*.¹⁵⁵ Accordingly, we propose to adopt a general rule that CMRS licensees operating multiple station systems may use a single call sign on a system-wide

¹⁴⁹ *Id.*, § 90.425(a).

¹⁵⁰ *Id.*, §§ 90.647(b), 90.735.

¹⁵¹ *Id.*, §§90.647(c), 90.745(d).

¹⁵² *Id.*, § 22.910.

¹⁵³ *Id.*, § 90.425(d)(8).

¹⁵⁴ *Part 22 Rewrite Notice*, Appendix A, proposed Section 22.313.

¹⁵⁵ *800 MHz EMSP Notice*, ¶ 31.

basis.¹⁵⁶ We also seek comment on whether all CMRS licensees on exclusive frequencies should be permitted to transmit call signs digitally, as is currently provided in Part 90.

f. General Licensee Obligations

83. Both Part 22 and Part 90 contain a variety of rules describing the general operational responsibilities of the licensee. These include rules on licensee management and control of station facilities,¹⁵⁷ posting of station licenses,¹⁵⁸ station inspections,¹⁵⁹ and responses to official communications.¹⁶⁰ On the whole, these rules appear to be quite similar, although minor variations between Part 90 and Part 22 exist. We therefore propose to retain these rules with minor modifications to eliminate inconsistency and redundancy.¹⁶¹ We seek comment on this approach, and on whether there are any other rules of this type that require revision to comply with the statutory goal of comparable regulation for substantially similar services.

g. Equal Employment Opportunities

84. Background. Under Part 22, all common carrier licensees and permittees are subject to the Commission's equal employment opportunity (EEO) rules, which require licensees to afford equal employment opportunities to all qualified persons regardless of race, color, religion, or national origin, to establish and maintain an EEO program and to file a report on the program with the Commission (licensees with fewer than 16 full-time employees are exempt from filing the report), to post EEO notices and take affirmative steps to recruit minority and female employees, to adopt nondiscriminatory practices in job placement, advancement, attainment of seniority, pay, fringe benefits, and overtime, and to submit an annual report to the Commission reporting any EEO

¹⁵⁶ The National Association for Business and Educational Radio (NABER) has specifically requested adoption of such a rule change with respect to private carrier paging systems. Letter from David Weisman to Ralph Haller, May 16, 1994. We incorporate NABER's request into the record and will address it as part of this proceeding.

¹⁵⁷ Part 90 licensees are responsible for proper operation of their stations, are expected to provide observations, servicing, and maintenance by certified persons as often as is necessary, and must have and maintain control over their authorized stations. See 47 CFR §§ 90.403, 90.433, 90.656. Public land mobile and cellular licensees must exercise effective operational control over all mobiles on their systems, and are responsible as well for mobiles temporarily associated with their systems. See *id.*, §§ 22.205, 22.912.

¹⁵⁸ *Id.*, §§ 22.201, 90.437.

¹⁵⁹ *Id.*, §§ 22.200, 90.411.

¹⁶⁰ *Id.*, §§ 22.302, 90.449.

¹⁶¹ In the *Refarming Notice*, we proposed to delete many of these rules in Part 90 on the grounds that they are redundant or unnecessary for most private land mobile licensees. See *Refarming Notice*, Appendix E. We seek comment on whether there is any public interest reason to retain these rules in the case of Part 90 licensees who provide CMRS offerings to the public or in the case of CMRS licensees generally.

complaints filed against the licensee.¹⁶² In addition, the rules require Part 22 licensees to retain EEO-related information for two years and make such information available for public inspection.¹⁶³ Part 90 licensees, on the other hand, are not subject to Commission-mandated EEO requirements of any kind.

85. Discussion. Our adoption of EEO rules in Part 22 was intended to ensure that all common carrier mobile radio licensees would be subject to specific EEO obligations as a condition of operation. Because Section 332 mandates that all CMRS providers are to be treated as common carriers under the Act, we believe that equivalent EEO requirements must now be extended to Part 90 licensees who are reclassified as CMRS providers. We also believe that uniform application of EEO rules to all CMRS providers is consistent with the principle of regulatory symmetry that underlies the statute. We therefore propose to apply the same EEO requirements to Part 90 CMRS licensees that are currently applicable to Part 22 licensees. We recognize that the imposition of these requirements will impose additional recordkeeping and reporting requirements on reclassified licensees, particularly those that are small businesses. We therefore ask whether the current exemption from filing requirements for licensees with fewer than 16 employees provides sufficient flexibility for small business licensees that would be newly subject to EEO rules, or whether other criteria should also be considered in deciding whether EEO reporting requirements should be imposed.

D. CMRS Spectrum Aggregation Limit¹⁶⁴

86. Background. As a result of our decisions in the PCS docket and the reclassification of formerly private services as CMRS in the *Second Report and Order*, the state of competition in the commercial mobile services marketplace is likely to undergo significant change in the next few years. First, we have dramatically increased the amount of spectrum available to CMRS providers. Until recently, the total spectrum allocated for terrestrial common carrier mobile services consisted of 50 MHz for cellular service and 8.74 MHz for non-cellular mobile services such as common carrier paging and IMTS.¹⁶⁵ With the recent allocation of 120 MHz of spectrum for licensed broadband and 2 MHz of spectrum for narrowband PCS, the amount of available spectrum for CMRS has increased by over 200 percent. In addition, over 28 MHz of spectrum is currently allocated to Part 90 services that are potentially subject to reclassification as CMRS, including 19

¹⁶² 47 CFR § 22.307.

¹⁶³ *Id.*

¹⁶⁴ The proposal set forth below was adopted on May 19, 1994 by reconsideration on our own motion. See note 17, *supra*.

¹⁶⁵ The total allocation for non-cellular terrestrial mobile service breaks down as follows: low-band paging, 640 kHz; high-band paging, 120 kHz; UHF paging, 1 MHz; high-band IMTS, 1.08 MHz; UHF IMTS, 1.3 MHz; 454 MHz air-ground, 600 kHz; and 800 MHz air ground, 4 MHz. This estimate includes spectrum in guard bands between channels, and does not include 470-512 MHz trunked, offshore radio telephone service or any fixed services. If air-ground services are excluded, the total amount of spectrum available for non-cellular services is 4.6 MHz.

MHz allocated to 800 and 900 MHz SMR services.¹⁶⁶

87. Second, our decisions are designed to foster the development of a diverse array of CMRS offerings, ranging from cellular-type voice service to interactive data networks to advanced paging systems. In the *Broadband PCS* proceeding, we seek to achieve this goal through the licensing of relatively large blocks of spectrum on a wide-area basis, combined with flexible technical rules that allow licensees to offer multiple services where technologically and economically feasible. We have also sought to promote flexibility and diversity in existing mobile services, e.g., by allowing cellular licensees to use alternative technologies, facilitating the development of wide-area SMR systems, and encouraging technical innovation in paging services.

88. Discussion. In seeking to expand and diversify the CMRS marketplace, we have recognized the potential for mobile services licensees to exert market power by aggregating large amounts of spectrum in a given geographic area. In the PCS proceeding, for example, we determined that broadband licensees should be limited to 40 MHz of PCS spectrum in any licensing area.¹⁶⁷ We also concluded that cellular licensees, who already have 25 MHz of spectrum in their licensing areas, should not be allowed to acquire more than 10 MHz of additional PCS spectrum in those areas where they already provide a significant amount of service. This limitation on PCS-cellular spectrum aggregation was imposed based on our determination that cellular licensees could otherwise be in a position to exercise undue market power in PCS geographic markets.¹⁶⁸

89. Aside from these and other service-specific restrictions,¹⁶⁹ however, there is no general cap on the amount of spectrum that an entity may use to provide CMRS. We therefore seek comment on whether there is a need for such a cap. Given the flexible regulatory environment that we have created for CMRS, we believe there may be some justification for this approach. In this environment, the ability to provide a diverse array of mobile services is largely a function of how much spectrum is available for use by the licensee. We are accordingly concerned that licensees with the ability to acquire large amounts of CMRS spectrum in a given area could acquire excessive market power by potentially reducing the numbers of competing providers, not only within specific

¹⁶⁶ The total amount of spectrum allocated to Part 90 services in which licensees are potentially subject to reclassification is 28.88 MHz, broken down as follows: 800 MHz SMR, 14 MHz; 900 MHz SMR, 5 MHz; 220 MHz, 1.55 MHz (excludes channels allocated solely for non-commercial uses); Business Radio (not including lower band paging), 420 kHz in the 150 MHz band and 6.625 MHz in the 450-470 MHz band; paging, 285 kHz below 470 MHz and 1 MHz in the 929-390 MHz band.

¹⁶⁷ *Broadband PCS Order*, ¶ 61.

¹⁶⁸ *Id.*, ¶¶ 105-106.

¹⁶⁹ In addition to the restriction on PCS-cellular aggregation, wireline telephone carriers are prohibited from holding a controlling interest in SMR base station licenses. See 47 CFR § 90.603(c). This is a service-specific eligibility restriction that would limit wirelines from acquiring SMR licenses for CMRS use. See also Letter from Ralph A. Haller, Chief, Private Radio Bureau, to Henry Goldberg (July 1, 1991)(indicating that non-controlling interest in an SMR license is permissible). We plan to reexamine this particular restriction on wireline participation in the SMR industry in an upcoming proceeding.

service categories but also in CMRS generally. To forestall the potentially anti-competitive consequences of spectrum aggregation in an evolving and diverse mobile services marketplace, it may be appropriate as a precaution to establish a spectrum cap that encompasses all CMRS services.

90. In raising this issue, we seek comment on how we should define the relevant product market for CMRS services. We believe that the manner in which we define the product market will have an important bearing on decisions we make regarding application of a spectrum cap. For example, in the *Second Report and Order*, we concluded that the record did not support treating all CMRS services as part of a single competitive market, although we did not rule out the possibility that such a view may be appropriate. Moreover, in this Further Notice, we have sought comment on whether particular CMRS services are competitive with one another, noting that the absence of competition may justify disparate technical and operational rules for such services. If we conclude that all CMRS services should be treated as part of a single competitive product market, then it could be argued that there is a strong basis for imposing a broad spectrum cap, applicable across all CMRS services, as a means of guarding against the exercise of undue market power in this single market. If we conclude, however, that CMRS consists of several discrete markets that do not compete with one another, it could be argued that an overarching spectrum cap is not justified because there is no danger that market power in one market will affect competition in another.

91. On the other hand, it may be advisable to consider a general cap even if we conclude that all CMRS does not constitute a single market for other purposes. For example, our analysis of whether CMRS services are "substantially similar," *supra*, turns on whether competition exists between licensees in individual service categories, *e.g.*, cellular and SMR, common and private carrier paging. For purposes of assessing the competitive effects of spectrum aggregation, however, our primary concern is that if we permit any licensee to acquire a large amount of spectrum relative to its competitors, we could potentially foreclose opportunities for others to compete in the same geographic area. Under this approach, individual CMRS services that do not compete directly with one another could arguably be viewed as sub-markets, and a licensee with sufficient spectrum in each sub-market could, as a result of its spectrum holdings, exercise market power in the general CMRS market. In addition, even if CMRS does not presently constitute a single market, the competitive structure of the marketplace may evolve over time so that CMRS licensees that offer different services now may eventually become competitors. We therefore request comment on whether the competitive consequences of allowing CMRS licensees to aggregate spectrum for multiple uses should be evaluated in the context of the CMRS industry as a whole. As we move forward with our new CMRS rules and introduce PCS into the mix of CMRS services, we intend to monitor the state of competition in the CMRS industry as a whole to ensure that along with diversity of service offerings, our rules promote competitive product and geographic markets for CMRS. Commenters are requested to comment on the state of competition in the CMRS industry generally and on the extent to which distinct product and geographic markets can be discerned.

1. General Spectrum Cap Alternatives

92. If we conclude, based on the above analysis, that some form of CMRS spectrum cap should be adopted, we tentatively conclude that the limit on spectrum aggregation should be

comparable to our existing limits on broadband PCS and PCS-cellular aggregation. As a practical matter, these existing restrictions already limit aggregation by licensees in services accounting for a substantial percentage of total CMRS spectrum. Applying a comparable limit to all CMRS would prevent any nullification of the objectives of the broadband PCS and PCS-cellular aggregation limits as a result of the acquisition by PCS or cellular licensees of spectrum in the remaining portion allocated to SMR, other Part 90 services subject to reclassification as CMRS, and Part 22 non-cellular services. Similarly, the cap would place non-cellular and non-PCS licensees on a comparable footing with cellular and PCS licensees in terms of their ability to aggregate CMRS spectrum.

93. Based on these factors, we believe that a CMRS spectrum cap should approximate the total amount of spectrum that can be held by a single licensee under our combined broadband and narrowband PCS allocations.¹⁷⁰ We therefore tentatively conclude that the 40 MHz limit on broadband PCS aggregation provides a reasonable basis for calculating a general CMRS cap, but that the CMRS cap should also be adjusted upward slightly to allow reasonable flexibility for PCS licensees and other existing mobile services providers to provide both broadband and narrowband services. We seek comment on this analysis, and particularly on what limitation on CMRS spectrum aggregation would provide licensees with enough flexibility to invest in and develop a range of CMRS services without allowing any one provider to acquire a disproportionate amount of CMRS spectrum in a particular area. Commenters should consider the competitive consequences of adjusting the cap either upwards or downwards.

94. We also seek comment on whether all CMRS spectrum should be included for purposes of calculating the cap. The combination of a flexible regulatory regime and rapidly evolving technologies may enable a licensee to use a given spectrum allocation for any one of a variety of services, some of which could compete with services provided by licensees in other frequency bands. For this reason, it could be argued that any CMRS spectrum held by an individual licensee should be "counted" towards the cap regardless of the particular service being provided. On the other hand, if we do not conclude that all CMRS services should be treated as part of a single competitive product market, we may wish to differentiate among the CMRS spectrum for purposes of a spectrum cap. The basis for that differentiation might be whether a particular CMRS service shares a relevant product market with services subject to a CMRS spectrum cap. We seek comment on this analysis.

95. In particular, we note several variables that could arguably have an impact on whether particular CMRS spectrum should be counted. For example, if we conclude that certain Part 90 CMRS services are not competitive with, and therefore not "substantially similar" to, other CMRS

¹⁷⁰ As noted above, broadband PCS licensees other than cellular entities in their own service areas are limited to 40 MHz of spectrum, while cellular licensees may combine their current 25 MHz allocation with a 10 MHz PCS block in their service areas. *See* ¶ 88, *supra*. In addition, narrowband licensees are limited to three paired or unpaired 50 kHz channels, which may total up to 300 kHz. *Narrowband PCS Order*, ¶ 34. The narrowband and broadband aggregation limits do not prohibit a single entity from being licensed up to these limits in both narrowband and broadband PCS.

services, it could be argued that acquisition of spectrum in these services does not raise the same competitive concerns as acquisition of CMRS spectrum in services that are competitive with one another. We therefore seek comment on whether such services should be excluded from the cap.

96. We also seek comment on whether the cap should be limited to broadband services, *i.e.*, cellular, broadband PCS, and SMR. Because these three services account for the lion's share of CMRS spectrum, it could be argued that only licensees in these services have the opportunity to acquire spectrum in amounts that could significantly affect competition. In addition, it could be argued that the manner in which CMRS spectrum is assigned to licensees should be considered in determining whether such spectrum is subject to a cap. For example, spectrum that is licensed on a non-contiguous channel-by-channel basis (*e.g.*, SMR) may impose constraints on the ability to provide an array of competitive CMRS services that do not exist where spectrum is licensed in contiguous blocks (*e.g.*, PCS). Similarly, we ask commenters to evaluate whether CMRS offered on shared spectrum, such as lower-band paging and Business Radio Service, should be included in the cap on the same basis as services provided on channels licensed on an exclusive basis. Because there are no limits to entry by CMRS providers on shared spectrum, it appears that use of shared spectrum should not adversely effect competition.

97. Aside from terrestrial CMRS, we seek comment on the treatment of satellite services in the context of a CMRS spectrum cap. We have previously indicated that certain satellite licensees offering mobile services may be regulated as CMRS.¹⁷¹ We therefore ask whether any or all satellite licensees offering CMRS services should be included in a CMRS spectrum cap. Such a cap could include both space station licensees providing CMRS to end users and earth station licensees accessing capacity on a satellite system to provide CMRS. We recognize that space stations essentially operate as "bent pipes" that permit the transmission of communications signals from one earth station to another (including mobile user transceivers). Individual users must arrange for access to the space segment through a separately authorized earth station licensee, who may or may not be the space segment licensee as well. We therefore request comment as to whether a spectrum cap may be properly applied to the space segment itself or should only be applied to the earth station licensee. In addition, if satellite CMRS providers are included in a spectrum cap, should the cap be applied in the mobile satellite service bands only and not in the fixed satellite bands?

98. In addition, we solicit comment on how to measure satellite spectrum for purposes of a cap. We note that space station systems licensed by the United States must be coordinated with foreign governments. After such coordination efforts, these satellite systems may have substantially less spectrum effectively available to them after international coordination than was originally

¹⁷¹ In the *Second Report and Order*, we indicated that to the extent a satellite space station licensee or other entity provides end users a service that meets the elements of our CMRS definition, or is the functional equivalent of CMRS, we would regulate the provision of service by the licensee or other entity as common carriage. See *Second Report and Order*, ¶ 109. See also *Notice of Proposed Rulemaking, Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/ 2483.5-2500 MHz Frequency Bands*, CC Docket No. 92-166, 9 FCC Rcd 1094, 1132-34 (1994) (tentatively concluding that mobile satellite service above 1 GHz may be offered as CMRS).

authorized by the Commission. We therefore ask commenters to consider whether we should subject satellite CMRS providers to the spectrum cap only upon completion of international coordination for the space segment they propose to use. Under this approach, licensees could be required to divest CMRS interests if they were over the cap once spectrum availability has been determined. Finally, if we conclude that mobile satellite service providers should be subject to a spectrum cap, we seek comment on how to define satellite service areas given the inherently nationwide scope of satellite-delivered services.¹⁷²

2. Application of Spectrum Cap

a. Geographic Areas

99. Assuming that we adopt a spectrum cap across a number of commercial mobile radio services or all CMRS, we seek comment on how to define the geographic service areas in which the cap would apply. One approach would be to impose the cap within MTAs, BTAs, or some other standardized geographic area, so that a CMRS licensee operating in the designated region would be limited in the amount of additional CMRS spectrum it could obtain within that region. We recognize that this proposed approach is complicated by the fact that some CMRS services are not licensed in standardized geographic areas. Nevertheless, using standardized areas for purposes of a spectrum cap appears likely to create less of an administrative burden than other approaches. We seek comment on this view, and particularly on the advantages and disadvantages of using standardized areas as opposed to alternative geographic definitions, *e.g.*, actual service areas.

100. Assuming we adopt standardized geographic areas as the basis for a spectrum cap, we seek specific comment on what area definition should be used. For example, we could apply the cap uniformly on an MTA basis or on a BTA basis. While use of an MTA standard is arguably simpler administratively, a BTA standard carries less risk of being overly restrictive in its effect on licensees. We also seek comment on whether alternatives exist for using more than one area definition, depending upon such factors as the licensing area definition used for the particular service at issue or the region of the country where the service is provided.¹⁷³ In particular, commenters are asked to address the question of what administrative rules and procedures would be required in cases in which individual CMRS licenses are held by a large number of individuals or entities.

¹⁷² While a satellite CMRS provider may decide to limit its marketing area to a particular portion of the country, mobile satellite transceivers are technically capable of operating anywhere in the satellite's signal range. We note that it would be difficult if not impossible to monitor the movement of such units. We also expect that the majority of satellite CMRS providers will take advantage of the nationwide coverage that can be provided by space segments to provide seamless nationwide service.

¹⁷³ For example, an MTA-based standard may be more appropriate for more densely populated areas, while a BTA-based approach might facilitate the development of seamless services in rural areas where the MTAs are quite large, and an MTA-only standard might thereby unduly restrict service acquisitions in a geographic region.

b. Attribution Standards

1) Ownership Percentage

101. We also seek comment on the percentage ownership interest that an individual or entity should be allowed to hold in a CMRS offering before it is attributed to that entity for purposes of a spectrum cap. We tentatively propose that all CMRS ownership interests of five percent or more be attributed to the holder of such interests for purposes of a spectrum cap, while CMRS ownership interests of less than five percent would not be considered.¹⁷⁴ We seek comment on whether the five percent attribution level will prevent excessive market concentration of CMRS offerings in a single entity. Commenters who believe the benchmark is too lenient or too restrictive should offer specific justifications for their position. Alternatively, we seek comment on establishing different attribution levels for specific CMRS offerings. For example, for purposes of determining whether holdings in a particular CMRS license apply toward the spectrum cap, we might consider a five percent ownership interest in a cellular entity relevant, but anything less than a 20 percent interest in a narrowband paging license irrelevant. Commenters should consider whether there is any basis for differentiating among CMRS licensees in this manner.¹⁷⁵

2) Service Area Overlap

102. In addition to ownership attribution, we seek comment on what amount of geographic overlap between CMRS interests should be considered significant enough to trigger application of a spectrum cap. In the *Broadband PCS Order*, for example, we determined that a cellular entity would be subject to eligibility restrictions in any PCS service area in which the cellular entity is already licensed to serve 10 percent or more of the population.¹⁷⁶ We believe a similar overlap analysis should be used if a CMRS spectrum cap is implemented. Depending on the relevant geographic area that is used (*see paras. 99-100, supra*), we propose that a CMRS licensee serving 10 percent or more of the population in a designated area should be subject to the spectrum cap in that area for purposes of further licensing. We solicit comment on the feasibility of such an approach and on whether there is a better mechanism for triggering the application of a spectrum cap in given geographic areas. We also seek comment on whether the 10 percent benchmark is an

¹⁷⁴ Our tentative proposal to use a five percent attribution standard is consistent with our PCS rules and with rules relating to ownership attribution in other contexts, such as broadcast cross-ownership and cable program access. *See Broadband PCS Order*, ¶ 61; *Narrowband PCS Reconsideration Order*, ¶ 25. *See also* 47 CFR § 73.3555 (five percent broadcast attribution standard); *Report and Order*, In the Matter of Implementation of Sections 12 and 19 of the Cable Television Consumer Protection Act of 1992 -- Development of Competition and Diversity in Video Programming Distribution and Carriage, MM Docket No. 92-265, 8 FCC Rcd 3359 (1993) (five percent standard used in cable program access rules).

¹⁷⁵ We observe that in the licensing of broadband PCS, an entity or individual that holds a 20 percent ownership interest in a cellular license is subject to cellular eligibility restrictions, whereas the 40 MHz cap on PCS spectrum aggregation by non-cellular entities applies to any entity that holds a five percent interest in a PCS license.

¹⁷⁶ *Broadband PCS Order*, ¶ 109.

appropriate measure for all CMRS services.

c. Designated Entities

103. Assuming that we adopt a general CMRS spectrum cap, we also ask whether the cap should apply equally to all licensees in affected services or whether we should apply a different standard for designated entities, *i.e.*, minorities and women, rural telcos, and small businesses, to ensure their full participation in the developing CMRS market.¹⁷⁷ In addition, if we were to raise the spectrum limit for some or all of these designated entities, commenters should consider whether any additional regulatory measures would be necessary to ensure that no undue concentration of market power occurs as a result. We also seek comment on whether to adopt attribution standards for designated entities different from those discussed above. For example, to encourage designated entity participation in CMRS, we could allow small businesses, rural telcos, minorities and women to invest in CMRS entities at a higher level than proposed above, *e.g.*, 35 percent, without triggering the spectrum cap. We seek comment on whether such a higher attribution standard for any or all of these designed entities would further their participation in CMRS services and complement our other efforts to promote their involvement in the provision of spectrum-based services¹⁷⁸

3. Other Issues

104. We also solicit comment on the application of the statutory transition period to use of a CMRS spectrum cap. Specifically, we ask whether "grandfathered" Part 90 licensees who will be treated as PMRS providers until August 10, 1996 should be subject to a CMRS spectrum cap before the expiration of the transition period. Under this approach, grandfathered licensees who exceed the cap during the transition period would be required at its conclusion to divest themselves of CMRS interests as necessary to comply with the cap. We seek comment on this proposal. If we adopt this approach, commenters should also consider whether divestiture should be required immediately upon expiration of the transition period or whether grandfathered licensees should have an additional grace period, *e.g.*, six months from the end of the transition period, in which to comply with a spectrum cap. More generally, we request comment on whether we should allow all CMRS licensees a period of time after acquiring a new license in which to divest themselves of CMRS interests in order to comply with a spectrum cap. This proposal would allow CMRS licensees to participate in competitive bidding for CMRS spectrum without first divesting themselves of sufficient CMRS interests to comply with a spectrum cap should they win an auction.

105. We seek comment on issues associated with enforcement of a spectrum cap. At a minimum, we will need to collect information from CMRS licensees concerning their ownership interests and possibly also their service areas to determine whether they are in compliance with a

¹⁷⁷ See *Second Report and Order*, Implementation of Section 309(j) of the Communications Act - Competitive Bidding, GN Docket No. 93-253, FCC 94-61 (adopted March 8, 1994, released April 20, 1994) (*Competitive Bidding Order*), ¶¶ 257-297.

¹⁷⁸ See *Competitive Bidding Order*, ¶¶ 229-230.

spectrum cap. We tentatively propose that any such data collection occur only when a CMRS licensee submits an application for (1) initial licensing or modification that would affect either the amount of spectrum or the geographic coverage authorized under the license, (2) renewal of its license, or (3) transfer of control or assignment of its license. We seek comment on this proposal. Commenters should also consider whether we need to implement any additional enforcement measures to ensure compliance with a spectrum cap.

E. Licensing Rules and Procedures

106. Finally, we turn to the issue of licensing rules for CMRS. Section 332 provides that CMRS providers are to be "treated as common carriers for purposes of [the] Act," except with respect to the provisions of Title II that have been forborne. Among other things, this means that all CMRS applications must comply with common carrier licensing procedures under Section 309 of the Act, which require applications to be placed on 30 days' public notice prior to grant and allow the filing of petitions to deny. In addition, all CMRS licensees and applicants must comply with the alien ownership restrictions in Section 310(a) and (b) of the Act.

107. A key consequence of regulatory reclassification is that these statutory requirements will apply to those existing licensees and future applicants on SMR, Business Radio, 220 MHz, or Part 90 paging frequencies who provide or propose to provide service that meets the CMRS definition. Although reclassification does not take effect until August 10, 1996 for "grandfathered" Part 90 licensees, *i.e.*, those licensed prior to August 10, 1993 or licensed on private paging frequencies, these requirements will apply to non-grandfathered CMRS licensees and new CMRS applicants under Part 90 upon the effective date of the rules adopted pursuant to this Further Notice.¹⁷⁹ We therefore propose the following measures to ensure that new CMRS applications under Part 90 comply with the statutory requirements for licensing of common carriers under Title III of the Act. In addition, we propose a mechanism for modifying the authorizations of existing Part 90 licensees that are subject to reclassification as CMRS upon the conclusion of this rule making or, in the case of grandfathered licensees, at the conclusion of the statutory transition period.

1. Application Forms and Procedures

108. Background. The Commission's current application forms and procedures in the mobile services differ depending on whether the applicant is seeking a license in a common carrier service regulated under Part 22 or a private land mobile service regulated under Part 90. All Part 22 applications are filed on Form 401 and are subject to common carrier licensing procedures, while all Part 90 applications are filed on Form 574 and are subject to private radio licensing procedures, which do not include a public notice requirement or formal petition to deny procedures. Under the

¹⁷⁹ The alien ownership restrictions of Section 310(a) and (b) are currently applicable to all CMRS providers, including Part 90 licensees who are otherwise grandfathered. Budget Act, § 6002(c)(2)(B). The Budget Act provides a procedure for the Commission to waive alien ownership restrictions in reclassified services for licensees with lawful alien ownership interests that existed prior to May 24, 1993. See *First Report and Order*, GN Docket No. 93-252, 9 FCC Rcd 1056 (1994). The deadline for the submission of waiver requests was February 10, 1994.

new definitions of CMRS and PMRS, however, licensees in certain Part 90 services have been reclassified as CMRS while others will remain private. In addition, we are about to commence licensing of PCS under these new definitions; although PCS is presumptively to be classified as CMRS, PCS applicants will be able to apply to provide PMRS service as well.¹⁸⁰ Therefore, we must establish new application procedures that provide for proper classification of each mobile service application under the new regulatory structure.

109. Discussion. As the basis for our revised application procedures, we propose to adopt a single unified application form that can be used by all CMRS and PMRS applicants in all terrestrial mobile services. The proposed form (tentatively designated as Form 600), which is attached as Appendix A to this Further Notice, would supersede both Form 401 and Form 574 in those services that currently use them. The form consists of a two-page main form and a series of supplemental schedules (A through F) designed for particular mobile service categories. The main form is designed to provide the Commission with basic information regarding the identity and qualifications of the applicant and the general nature of the application. The proposed schedules seek additional administrative and technical information in specific service categories similar to the information currently provided by applicants on Form 401 and Form 574.¹⁸¹

110. We believe that redesigning our mobile service application forms in this manner has several potential advantages. First, the use of a single, streamlined form to provide basic information will simplify the application process for applicants and enable the Commission to standardize the collection of licensing data. Second, providing separate schedules for service-specific technical information will ensure that applicants do not have to provide technical information that is redundant or irrelevant to their particular service. Finally, the modular design of the proposed form and schedules should facilitate electronic filing and automated entry of licensing information in all mobile services. We seek comment on these proposals and on the specific contents of the proposed Form 600 and supplemental schedules thereto.

111. We also propose to use proposed Form 600 to determine the regulatory classification of all mobile services. The proposed main form requires each applicant to indicate the service category in which the application is made and whether the proposed service meets the three "prongs" of the statutory definition of CMRS, *i.e.*, whether the applicant's service will be (1) provided for profit, (2) interconnected to the public switched network, and (3) available to the public. Based on the information provided, we propose to classify each application as CMRS or PMRS for licensing purposes. Thus, applications in mobile service categories that were classified

¹⁸⁰ *Second Report and Order*, ¶ 119.

¹⁸¹ Schedule A requests additional administrative information from applicants in existing Part 22 mobile services and PCS applicants. These applicants would also provide technical information on either Schedule B or C, depending on whether the service is based on individual channel assignment (*e.g.*, narrowband PCS, common carrier paging) or assignment of blocks of contiguous channels (*e.g.*, cellular, broadband PCS). Schedules D and E request administrative and technical information from applicants in Part 90 services (regardless of whether the applicant will be classified as CMRS or PMRS) as well as applicants in other private mobile services (*e.g.*, General Mobile Radio Service). Schedule F solicits antenna information from applicants whose antenna structures require FAA clearance.

as PMRS by the *Second Report and Order* (e.g., Public Safety, Land Transportation) will be uniformly classified as PMRS applications. Similarly, all applications in Part 22 mobile service categories will be treated as CMRS applications. In the case of SMR, 220-222 MHz, Business Radio, and Part 90 paging, however, the *Second Report and Order* provides that licensees may be classified either as CMRS or as PMRS depending on the nature of the services they provide. Therefore, applications in these service categories indicating that for-profit, interconnected service will be provided will be classified as CMRS applications subject to common carrier licensing procedures,¹⁸² while applications indicating that the proposed service is not-for-profit or is non-interconnected will be subject to PMRS licensing procedures.¹⁸³

112. We believe that requiring applicants to provide specific information regarding how the three prongs of the CMRS definition apply to their proposed services will help to ensure that our classification of mobile service applicants as CMRS or PMRS is accurate. First, this procedure provides an independent basis for verifying that the applicant's requested classification is consistent with the nature of the service proposed. Second, requiring specific information should act as a check against applicants attempting to misrepresent the proposed nature of their service in order to avoid CMRS classification. For example, if an applicant obtains a PMRS station class authorization by identifying its service as non-profit and then provides for-profit service, it would be in violation of its authorization and possibly subject to forfeiture, license revocation, and criminal penalties for misrepresentation.¹⁸⁴ We request comment on this approach.

2. Qualifying Information

113. Background. Our current licensing procedures require Part 22 applicants to provide certain qualifying information that is not required of Part 90 applicants. For example, because common carriers are subject to the alien ownership restrictions of Section 310(b) of the Act, Part 22 applicants must disclose any alien ownership or control.¹⁸⁵ In addition, Part 22 applicants must disclose whether they or any controlling party (1) has had an FCC license or permit revoked or application denied by the Commission, (2) has been found by a court to have monopolized radio communication, or (3) has been convicted of a felony.

¹⁸² Because we have determined that the eligibility rules for SMR, Business Radio, private paging, and 220 MHz commercial service allow licensees to provide service "to the public" as defined in the statute, applicants in these services who meet the "for-profit" and "interconnected service" prongs of the CMRS definition are automatically deemed to meet the "service to the public" prong as well.

¹⁸³ Until August 10, 1996, all applications for private paging frequencies and applications in the SMR, Business Radio, and 220 MHz services filed by entities previously licensed in the same service as of August 10, 1993 will be treated as PMRS applications. See *Second Report and Order*, ¶¶ 278-284.

¹⁸⁴ See 18 U.S.C. § 1001; 47 CFR §§ 1.744(d), 1.913(d). See also *Second Report and Order*, ¶ 47.

¹⁸⁵ Part 90 applicants are required only to certify compliance with Section 310(a), which bars foreign governments and their representatives from holding any Commission license. See Form 574, Certification No.4.