

immediately classified as CMRS carriers. In this limited situation, the transition to CMRS regulation will itself be the "extraordinary circumstances" justifying the continuation of the grandfathered STA.

**VIII. THE COMMISSION SHOULD ADOPT PART-22 STYLE TRANSFER REQUIREMENTS AND LIMITATIONS FOR CMRS SYSTEMS.**

Paragraphs 141-146 of the FNPRM request comment on the proper procedures for transferring control of or assigning CMRS licenses. For existing CMRS systems (e.g., non-PCS), the Commission should adopt rules which have worked well for its existing common-carrier services under Part 22 of the Rules.

Specifically, for all existing CMRS systems, the Commission should apply the policies now appearing in Section 22.40(a) of the rules, i.e., transfer-of-control and assignment applications are accepted at any time after licensing, but require a determination that the proposed transfer or assignment will not constitute trafficking or speculation unless the system has been constructed or (in the rare situation that the license was awarded by comparative hearing) has been in operation for one year. The Commission has found that this policy permits licensees to reshape their systems to provide more complex service offerings to their subscribers, a result which serves the public interest. The benefits of this policy should be extended to all local CMRS licensees.

For ESMR and all other wide-area CMRS systems, the Commission should generally adopt the policies now appearing in Section

22.40(b)(1) of the rules for unserved-area cellular systems, i.e., that the system must be operational for a period of one year before it can be assigned or transferred. However, the Commission should freely permit pro forma or involuntary transfers or assignments at any time; by definition, no trafficking or speculation can occur in those situations.<sup>26/</sup>

**IX. THE COMMISSION GENERALLY SHOULD DELAY THE EFFECTIVE DATE OF THE CMRS TRANSITION RULES UNTIL IT RESOLVES ISSUES RAISED IN THE PETITIONS FOR RECONSIDERATION OF ITS INITIAL RULES; THE ISSUES ARE TOO COMPLEX, AND THE RISKS TOO HIGH, FOR CMRS REGULATION TO BEGIN WITH RULES THAT ALMOST CERTAINLY WILL BE SUBJECT TO SUBSTANTIAL REVISION.**

Finally, PCC urges that the Commission generally delay the effective date of its CMRS transition rules adopted as a result of the FNPRM until it resolves the issues raised by the Petitions for Reconsideration of its initial rules. Rules which have a time-sensitive nature, such as those affecting construction deadlines, should be immediately effective.

Without a doubt, the rules adopted as a result of the FNPRM will be subject to numerous Petitions for Reconsideration. Also without a doubt, some of those Petitions will identify substantial, clearly defined issues which the Commission has incorrectly decided or new problems which the Commission has accidentally created. Like the broadband PCS proceeding (67 Petitions for

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<sup>26/</sup> Additionally, the Commission should freely permit transfers or assignments in situations in which the transfer or assignment is either beyond the control of the licensee (e.g., his or her death) or such that trafficking or speculation cannot be a motivation. Such exceptions are now listed in the subsections of Section 22.922(a) of the Rules.

Reconsideration producing a new channel allocation plan), the CMRS rulemaking is far too complex for the Commission to get all the major issues right in one order.<sup>27/</sup>

However, unlike most rulemakings, the Commission is changing -- dramatically changing -- the rules for an existing multi-billion dollar industry. This not the cellular rulemaking in 1982, or the PCS rulemaking today, in which the "industry" consists of potential entrants. Thus, the stakes are too high if the Commission were to create problems with its first order.

PCC is not suggesting that the Commission will act hastily or carelessly in adopting CMRS transition rules. Instead, PCC is merely asking the Commission to recognize the historical inevitability of corrections or improvements to its rules upon reconsideration. If the Commission does not suspend the effective date of the rules sua sponte, it likely will be forced to do so (as it did with the unserved-area cellular filings) when presented with a compelling industry petition at the last moment.<sup>28/</sup>

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<sup>27/</sup> This is perhaps the most complex rulemaking the Commission has undertaken. As subsidiary matters, it incorporates the complete record of the following additional rulemakings, each of which is a major rulemaking in its own right: Future Development of SMR Systems, 8 FCC Rcd 3950 (1993) (Notice of Proposed Rulemaking) ("800 MHz ESMP Notice") (incorporated by FNPRM, ¶32); 900 MHz SMR Systems, 8 FCC Rcd 1469 (1992) (First Report and Order and Further Notice of Proposed Rulemaking) ("900 MHz Phase II Notice") (incorporated by FNPRM, ¶34); Petition for Declaratory Ruling filed by SunCom Mobile & Data, Inc. (incorporated by FNPRM, ¶38); Petition for Rulemaking, RM-8387 (incorporated by FNPRM, ¶73 n.133); and Part 22 Rewrite Notice (incorporated by FNPRM, ¶131 n.229).

<sup>28/</sup> PCC is not requesting a stay of the rules to be adopted under the traditional four-prong test. Rather, PCC is requesting  
(continued...)

Section 6002(d)(3) of the Budget Act requires the Commission to "issue" its CMRS transition rules by August 10, 1994. However, like it did for the PCS rulemaking, Congress knew that such rules would be subject to reconsideration, revision, and appeal. The requirement of "issu[ance]" of the rules forces the Commission to take one important step toward regulatory parity -- but not to complete the journey by August 10. Thus, Congress reserved to the Commission the authority to determine when its issued rules will become effective.<sup>29'</sup>

Under the unique and compelling facts here, the Commission should delay the effective date of its CMRS transition rules until it resolves the issues raised by the Petitions for Reconsideration of its initial rules.

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<sup>28/</sup> (...continued)

the Commission to use its discretion to delay the effective date of the rules at least until it sees what issues are raised in the inevitable (and likely numerous) Petitions for Reconsideration of its decision, and then continue the stay until those issues (if substantial or troubling) are resolved.

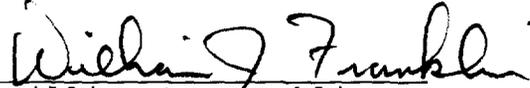
<sup>29/</sup> Indeed, if the CMRS rules are issued on August 10, they generally will not become effective until 30 days after publication in the Federal Register, i.e., well after August 10. Thus, Congress clearly did not intend that the rules have an August 10 effective date.

**CONCLUSION**

Accordingly, PCC Management Corp. respectfully requests the Commission to adopt rules (as set forth herein) which will facilitate the orderly development of 800 MHz SMR systems. The Commission should also delay the effective date of such rules until it has reconsidered its initial decisions.

Respectfully Submitted,

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