

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

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JUN 21 1994

In the Matter of

FEDERAL COMMUNICATIONS COMMISSION)
OFFICE OF SECRETARY)

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

GN Docket No. 93-252

Regulatory Treatment of Mobile Services)

To: The Commission

COMMENTS OF THE E.F. JOHNSON COMPANY

THE E.F. JOHNSON COMPANY

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SUMMARY

The Commission's Further Notice of Proposed Rule Making proposes a regulatory scheme that will dramatically impact current Part 90 licensees using 800 MHz, 900 MHz and 220 MHz systems. As one of the leading providers of land mobile radio systems, the E.F. Johnson Company ("E.F. Johnson" or the "Company"), respectfully urges the Commission's full consideration of its Comments as set forth herein.

The Commission's analysis to determine which services are "substantially similar" must include careful comparison of the operational and technical capabilities and limitations of the private radio services with those of existing common carrier services. E.F. Johnson agrees that wide area 800 MHz specialized mobile radio ("SMR") systems are substantially similar to cellular systems, and should therefore be subject to similar regulations. Local SMR systems and 220 MHz licensees, however, because of channel or spectrum limitations, cannot provide service which is substantially similar to wide area SMR, cellular or broadband personal communications services, and should therefore not be regulated in the same manner as those services.

Differences in the manner by which common carrier and most private radio systems are currently authorized -- e.g., the assignment of channels to a private radio licensee on a non-exclusive basis -- must be considered with respect to the adoption of new channel assignment and service rules for private radio licensees. Similar considerations must also be given in

connection with any proposal to revise co-channel interference protection rules and antenna height and transmitter power standards. The Commission should also require interoperability between equipment intended for the same type or class of service to ensure that consumers benefit from a competitive equipment market.

E.F. Johnson supports a uniform twelve-month construction period local CMRS systems, and a longer period of time for more complex systems. Wide area SMR licensees should, however, be required to justify the period of time required for construction, and demonstrate compliance with their construction schedules. The Company agrees that system loading requirements and the 40-mile rule are unnecessary, as market forces will force licensees to either fully load their system or sell the facility.

With respect to spectrum aggregation, E.F. Johnson strongly favors the imposition of a spectrum cap and supports the five-percent ownership attribution standard. Such limitations will encourage the participation of multiple providers of communications services.

In the area of licensing, the Company agrees with the imposition of the common carrier application fee for wide area systems, but believes that application fees applicable to local SMR operators should remain unchanged. The Company supports retention of the "first come, first served" process for determining mutual exclusivity in existing Part 90 services. However, where public policy considerations mandate acceptance of

applications for longer periods when a new service is initiated, E.F. Johnson supports the use of brief filing windows. In the case of 220 MHz applications, because the Commission has frozen the acceptance of applications for modifications and new facilities, existing licensees should be permitted to modify their licenses prior to the reopening the filing window to allow these licensees to continue operations at sites currently covered by Commission grants of special temporary authority.

E.F. Johnson supports the proposal that would allow CMRS licensees to commence construction prior to receiving an authorization, so that licensees are in better position to provide service to the public immediately after they receive a license. In addition, in cases where an applicant proposes to provide commercial and non-commercial service under the same license, the Commission should adopt procedures that would allow expeditious action on the non-commercial portion of the application.

Finally, E.F. Johnson believes that the FCC should require immediate reclassification only for those Part 90 licensees that received authorization after the August 10, 1993 grandfather period. All other licensees should be permitted to modify their authorizations within one year of the effective date of the new CMRS rules.

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The E.F. Johnson Company ("E.F. Johnson" or the "Company"), by its attorneys, pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission") hereby submits its Comments in response to the Further Notice of Proposed Rule Making ("Further Notice") adopted in the above-referenced proceeding^{1/} designed to provide a transition to a new regulatory scheme for mobile communications services.

I. INTRODUCTION

E.F. Johnson is a leading designer and manufacturer of radio communications and specialty communications products for commercial and public safety use. Founded over 70 years ago as an electronics components manufacturer, E.F. Johnson entered the radio communications equipment market in the late 1940's and is

^{1/} Further Notice of Proposed Rule Making, GN Docket No. 93-252, FCC 94-100 (released May 20, 1994).

one of the three largest providers of land mobile radio systems in the United States. It produces base stations, vehicular-mounted and portable transmitters that operate in various portions of the radio spectrum that are used by a variety of entities requiring communications capabilities. Among other frequency bands for which the Company manufactures products are the 800 MHz, 900 MHz and 220 MHz bands.^{2/}

This proceeding was initiated in order to comply with the Congressional directives contained in the Omnibus Budget Reconciliation Act of 1993 ("Budget Act").^{3/} The Budget Act impelled the Commission to amend the rules to ensure symmetrical regulatory treatment for competing mobile communications services. The Commission has already adopted a Second Report and Order^{4/} in this proceeding implementing the basic provisions of the new sections of the Communications Act added by the Budget Act. The Further Notice proposes modifications to the technical, operational and licensing rules governing existing mobile communications services. The Further Notice focuses particularly

^{2/} The Company recently announced plans to manufacture narrowband equipment for the 220 MHz band using Linear Modulation Technology ("LMT"). It expects to begin to manufacture and distribute 220 MHz products in the near future.

^{3/} Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, 107 Stat. 312 (1993).

^{4/} Second Report and Order, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, 9 FCC Rcd 1411 (1994), erratum, Mimeo No. 92486 (released March 30, 1994) ("Second Report and Order").

on those services licensed as private radio systems under Part 90 of the regulations that will now be classified as commercial mobile radio service ("CMRS") providers under the new regulatory scheme.

The Further Notice will have the most dramatic impact upon those entities employing the 800 MHz band. This spectrum is intensely employed today by specialized mobile radio ("SMR") providers and other users. In the future, many of these licensees will be characterized as CMRS and subject to a different regulatory structure. A significant percentage of 800 MHz licensees employ products that use the Company's LTR® signalling format. The Further Notice may affect these entities' ability to continue to use LTR® technology and their ability to provide efficient and cost-effective dispatch service. Moreover, the Further Notice proposes rules that will affect the manner in which 900 MHz and 220 MHz equipment is used. Finally, the Company supports a network of over 600 dealers nationwide, most of whom hold licenses for 220 MHz, 800 MHz and 900 MHz systems. The Company's dealers will also be dramatically affected by the new proposed regulatory structure. Accordingly, E.F. Johnson is pleased to have this opportunity to submit the following Comments in response to the Further Notice.^{5/}

^{5/} The Company's Comments do not address every aspect of the Further Notice. Because of the complexity of the proposal, it comments on only those elements which may have the greatest impact on current Part 90 licensees using 800 MHz, 900 MHz and 220 MHz systems.

II. COMMENTS

A. Comparison of Reclassified Part 90 Services and "Substantially Similar" Common Carrier Services

Because the Commission must impose a "symmetrical" regulatory scheme on similar services, it is required to determine which services are substantially similar. In performing this analysis, the Commission focuses on the services provided to end users and the extent to which the services meet substantially similar customer needs. Services that are expected to compete against each other will be presumed to be substantially similar.

E.F. Johnson supports the Commission's characterization of wide area 800 MHz SMR systems as substantially similar to cellular systems. It is well documented that these wide area 800 MHz SMR systems are designed in a fashion similar to cellular systems through frequency reuse techniques. Moreover, many wide area 800 MHz SMR providers have stated publicly that they intend to provide mobile telephone services directly competitive with those offered by cellular systems. Accordingly, all entities that have been issued authorizations under the now familiar wide area waiver requests^{6/} and that are issued authorizations for wide area systems in the future, either under waivers or as a

^{6/} See, e.g., Memorandum Opinion and Order, Fleet Call, Inc., 6 F.C.C. Rcd 1533, recon. dismissed, 6 FCC Rcd 6989 (1991); Letter from Richard J. Shiben, Chief, Land Mobile and Microwave Division, Private Radio Bureau, to George Hertz, President, Advanced MobileComm of New England, Inc. (April 13, 1992).

result of rules adopted in this proceeding, should be regulated in a fashion similar to cellular systems.^{1/}

"Local" SMR operators, while they may meet the criteria for CMRS providers, should not be regulated in the same fashion as wide area SMR or cellular systems. As the Company has noted in other proceedings^{2/}, there is a significant difference in the type of service that local SMR systems and wide area SMR systems are, or will be, capable of offering. Local SMR systems are authorized for a limited number of channels and consequently cannot employ frequency reuse techniques. It is the aggregation of sufficient spectrum that allows 800 Mhz wide area SMR providers to employ frequency reuse, creating the capacity that will enable them to offer services similar to those that are provided by cellular systems. Accordingly, both trunked and conventional local SMR systems should continue to be regulated as they are today with the modifications suggested herein, and as may be necessary to reflect their status as CMRS providers.

^{1/} Because of the method by which the Commission issued 900 MHz SMR systems, there are no wide area 900 MHz SMR systems today. In the event that the FCC, as a result of this or some other proceeding authorizes wide area 900 MHz SMR systems that meet the criteria for CMRS (interconnected mobile communications service offered to the public for a profit), they too should be regulated as cellular and wide area 800 MHz SMR systems. Accordingly, unless otherwise noted, the Company refers to all SMR systems that meet the criteria for wide area service as "wide area SMR" licensees.

^{2/} See, e.g., Comments of the E.F. Johnson Company, Notice of Proposed Rule Making, Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, 8 FCC Rcd 3950 (1993) ("800 MHz EMSP Notice").

Contrary to the Commission's suggestion, there is no evidence that local SMR systems are competitive with interconnected mobile telephone service ("IMTS") systems. The Commission states that services that can be expected to compete against each other will be presumed to be substantially similar. Today, local SMR licensees and IMTS systems operate in the same markets. While there may be technical similarities between the systems, consumers do not consider the two systems as competitive.

The Commission tentatively and correctly concludes that 220 MHz licensees will not offer services substantially similar to those provided by existing common carriers. The amount of spectrum allocated for any one local 220 MHz licensee is inadequate to offer service competitive with wide area SMR, cellular or broadband personal communications services ("PCS"). In addition, because of the limited amount of spectrum allocated to 220 MHz licensees and the small geographic area they are permitted to serve, it will be impossible for these licensees to offer a service that is competitive with narrowband PCS. 220 MHz licensees were issued five channels of 5 kHz each, to provide service from a designated site. Narrowband PCS licensees will be awarded more spectrum over a broader geographic area. Unlike wide area 800 MHz SMR systems, there is no evidence to suggest that the 220 MHz marketplace will encourage wide area, multiple frequency systems.

Further, it is premature to conclude that nationwide 220 MHz systems should be regulated in the same fashion as nationwide narrowband PCS systems. There are few commercial 220 MHz systems in operation today and no narrowband PCS systems operational. If, in the future, the systems evolve to serve the same set of customers, a similar regulatory structure might be appropriate. Until that time, the current regulatory scheme should remain in place.

In the Second Report and Order, the Commission concluded that some Business Radio systems, formerly operated as private carriers, should be reclassified as CMRS. E.F. Johnson agrees with the Commission's tentative conclusion that these systems provide services that are more similar to local SMR systems than to cellular systems.

B. Technical and Operational Rules

1. Technical Rules

Channel Assignments and Service Areas- Today, there are significant differences in the manner by which common carrier and most private systems are authorized. Many common carrier systems are licensed to provide service within an FCC-defined service area, while private systems are licensed-based upon an operating radius from their authorized transmitter sites. Moreover, common carriers are often authorized to employ many channels, with private system operators licensed initially for only a limited number of channels. These private licensees can generally only

secure the use of additional channels if they demonstrate sufficient use of their existing frequencies.

The Commission asks whether channel assignment rules for private radio licensees should, therefore, be revised to facilitate licensing on a wide-area, multi-channel basis comparable to cellular and broadband PCS. At 800 MHz, a conversion from today's wide area SMR structure to a cellular-like regulatory scheme is difficult because even within their own "footprint" areas, wide area 800 MHz SMR licensees may not be the exclusive licensee of a particular channel. The Commission cannot, therefore, issue licenses for geographically-defined areas covering the use of virtually any SMR channels, without taking into account the existing crowded landscape.

Nevertheless, to the extent that current 800 MHz wide area SMR licensees are the exclusive users of channels within their own footprint, the Company does not object to the adoption of rules that permit licensees flexibility to move channels within that footprint, without prior Commission approval. In this respect, wide area 800 MHz SMR licensees would be able to move "interior" sites for channels on which they are the exclusive licensee within their footprint area. However, if a wide area 800 MHz SMR licensee shares a channel within its footprint, any coverage areas that are adjacent to co-channel licensees must be considered "exterior" for purposes of channel movement and would require prior Commission approval.

Existing wide area 800 MHz SMR licensees should also be permitted to retain the use of all channels for which they are initially authorized, at all sites for which they are licensed. The Company recognizes that not all channels will ultimately be constructed at all sites because of engineering and capacity factors. However, to the extent permitted by co-channel use, wide area 800 MHz SMR licensees should retain the ability to move channels to any currently authorized site and need not be required to designate, at the end of their construction period, which channels are actually operational at each site.^{2/} The Company does not agree, however, that wide area 800 MHz SMR operators should be able to license a significant number of unconstructed channels, as envisioned by the 800 MHz EMSP Notice. Growth of wide area 800 MHz SMR systems should proceed in the manner currently permitted by the Commission's rules and procedures. Wide area 800 MHz SMR footprints should be licensee defined, as they are today, based upon the locations where the licensee has constructed operational channels.

The Commission notes that unlike the 800 MHz landscape, there is only a maximum of one licensee per channel per market

^{2/} Today, wide area SMR licensees may secure an authorization based on channels that are constructed at the time that their application for wide area service is submitted. If, at the end of the applicable construction period, each channel is not used at least once throughout the footprint area, unused channels should be surrendered.

using 900 MHz SMR spectrum.^{10/} It asks, therefore, whether it should proceed with its 900 MHz Phase II^{11/} proposal for wide area licensing. The Company does not object to permitting existing licensees to build out their current service area by expanding into the relevant Basic Trading Area ("BTA"). However, licensees should be required to serve a percentage of the population or geographic area within a specified time period, consistent with PCS, nationwide 220 MHz and similar rules. After current licensees are permitted to secure modified licenses to fill out their coverage areas, E.F. Johnson expects that the remaining spectrum would be subject to competitive bidding. The Company supports a spectrum cap in such an auction so that, in any case, one party is not able to control a majority of the channels in any market.

With respect to 220 MHz, the FCC questions whether it should change the channel assignment and service rules. It also notes that it has received a Petition for Declaratory Ruling from SunCom Mobile and Data, Inc. ("SunCom") asking permission to aggregate non-nationwide 220 MHz blocks on a regional basis. The

^{10/} In most markets, a significant percentage of the 900 MHz spectrum was recaptured, but not relicensed, by the Commission.

^{11/} First Report and Order and Further Notice of Proposed Rule Making, Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Band Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89-553, 8 FCC Rcd 1469 (1993) ("900 MHz Phase II").

SunCom Petition asks for Commission permission to build the proposed systems over an eight-year period.

The SunCom Petition should be dismissed. It is not based upon SunCom's current requirements, but on speculation alone. While the Commission has, in the past, provided licensees with additional time to construct facilities in a variety of circumstances, each FCC action was based upon the requesting party's then existing position as a licensee or spectrum manager. Moreover, even if SunCom demonstrated a current requirement for an extension of time to construct its facilities, an eight-year period to build the proposed facilities is inconsistent with Commission precedent for regional systems of this nature.

E.F. Johnson does not object to either the authorization of regional systems or extension of time to build systems in appropriate circumstances. As noted above, the authorization of wide area 800 MHz SMR systems is difficult because there may be many co-channel licensees in the same geographic area. Like the 800 MHz landscape, there may be more than one 220 MHz licensee licensed to use a block of channels in an area. It would be difficult, therefore, to authorize 220 MHz regional systems as SunCom suggests. Moreover, the Commission should only grant extensions of time to construct 220 MHz systems upon appropriate demonstrations of legitimate requirements. E.F. Johnson expects that because the 220 MHz industry is in its infancy, and thousands of local systems must be constructed by December 2,

1994^{12/}, the Commission will receive many requests to extend the current construction deadline. The Commission should respond favorably to those requests which demonstrate a bona fide effort to construct and operate the system in a timely fashion. Accordingly, while the issues raised by the SunCom Petition are meritorious in the abstract, the case it presents for relief is without merit and inconsistent with past Commission practices, and should, therefore, be denied.

Co-Channel Interference Protection- Today, a critical determinant of the nature of the co-channel protection rules is whether a service area is station-defined or Commission-defined. To the extent the Commission converts private systems from station-defined service areas to Commission-defined service areas, revision of the co-channel interference protection criteria might be appropriate.

However, as noted above, wide area 800 MHz SMR licensees often share use of their authorized channels with unaffiliated entities within their service areas. Accordingly, unlike cellular systems, wide area MHz SMR operators must be concerned with co-channel interference within their footprint area as well as outside their service area. Modification of the interference protection criteria for 800 MHz systems is, therefore, inappropriate.

^{12/} See, Order, Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, PR Docket No. 89-552, DA 94-276 (released March 30, 1994).

As noted above, the Commission only authorized one licensee per market per frequency block for 900 MHz SMR systems. If the Commission permits regional licensing of channels throughout a BTA, as suggested by the Company, it may be feasible for the Commission to modify the interference protection criteria to reflect differential requirements at interior and exterior sites.

Antenna Height and Transmitter Power Standards- The Commission asks whether existing antenna height and power limitations for substantially similar Part 90 and Part 22 services should be amended. In particular, it inquires as to whether cellular and wide area SMR rules for base station height and power should be conformed.

Wide area SMR operators should be required to conform their system configurations to those of cellular operators. Accordingly, they should be limited by the same antenna height and transmitter power restraints as cellular operators. The Commission has proposed to limit antenna height and power at the edge of a cellular provider's service area, but does not impose such limits on interior sites. A similar scheme for wide area 800 MHz SMR operators is not practical. As previously noted, wide area 800 MHz SMR operators share service boundaries with co-channel licensees within, as well as at, the boundaries of their footprint. Protecting co-channel licensees only at the boundaries would not ensure adequate protection.

The Commission should amend its regulations to permit greater antenna height and transmitter power for 220 MHz systems.

Those systems are likely to serve the same customers as are now serviced by local SMR systems. However, local SMR providers are permitted to operate at greater power and antenna height. Business Radio Systems that were formerly classified as private carrier systems, and that will now be regulated as CMRS should also be governed by the same antenna height and transmitter power limitations as local SMR systems.

E.F. Johnson concurs that mobile units operated in conjunction with wide area SMR systems should operate at the same power levels as cellular units. The proposed Commission rules governing radio frequency radiation exposure^{13/} mandate similar treatment for products serving similar markets. Because, as noted above, wide area SMR and cellular providers will serve the same market, similar treatment is appropriate.

Interoperability- When the Commission first authorized cellular service, it required equipment interoperability. Accordingly, in the Further Notice, the FCC states that if it decides that wide area SMR systems are substantially similar to cellular systems, it must then decide whether wide area SMR systems should be subject to similar rules concerning equipment compatibility. The Commission proposes three alternative approaches to interoperability requirements.

E.F. Johnson proposes that the Commission should require interoperability between equipment intended for the same type or

^{13/} Notice of Proposed Rule Making, Guidelines for Evaluating the Environmental Effects of Radio Frequency Radiation, ET Docket No. 93-62, 8 FCC Rcd 2849 (1993).

class of service. An essential element of common carrier service is its provision to any customer indiscriminately. Cellular service, landline telephone service and other forms of common carrier services are available to anyone on the same terms and conditions.

In the context of landline telecommunications, customers have long been able to subscribe to common carrier service regardless of the type of equipment the customer chooses. Without such freedom of choice, the service provider could otherwise impermissibly "tie" the provision of service to the purchase of equipment from a specific manufacturer. In addition to raising potential antitrust concerns, such a tie has been considered antithetical to the indiscriminate provision of service to the public.^{14/}

In the context of cellular service, applicable intellectual property rights were held by AT&T for the service configuration and customer equipment. AT&T made that technology available to all manufacturers, thereby promoting a thriving market for cellular equipment in which customers have many choices for equipment.

^{14/} Commission policy, as directed by the Federal Courts, have long rejected arguments that for reasons of network security or compatibility, customers must use equipment sold by the service provider. See, e.g., Hush-A-Phone Corporation v. U.S., 238 F.2d 266 (D.C. Cir, 1956) (any tariff prohibiting the use of customer-supplied devices that do not adversely affect the telephone system is unreasonable); Use of the Carterfone Device in Message Toll Telephone Service, 13 F.C.C.2d 420 (1968) (a tariff is unreasonable if it prohibits the use of "interconnecting devices" that do not adversely affect the telephone system).

In contrast, and has been widely reported in the trade press, the most prominent companies that intend to offer wide area 800 MHz SMR service, have stated that they will employ Motorola Integrated Radio Service ("MIRS") equipment. Motorola has not expressed a willingness, nor have these wide area 800 MHz SMR providers required Motorola, to license MIRS technology on commercially reasonable terms and conditions. There is, however, no logical or legal distinction between wireless common carrier telecommunications services and landline common carrier telecommunications services. In both instances, consumers must have the ability to choose the type of equipment that will operate on the network. Unless the Commission mandates interoperability, however, consumers will not enjoy the benefits of a competitive common carrier wide area 800 MHz SMR equipment market which they have, based upon Commission mandate, in the wireline and cellular markets.

The Company recognizes that requiring interoperability will necessitate arrangements between manufacturers for use of intellectual property rights with respect to a common air interface. While the process to secure these rights may be complex, E.F. Johnson expects that those rights could be made available on commercially reasonable terms and conditions.

2. Operational Rules

Construction and Coverage Requirements- The Commission proposes to adopt a "baseline" construction period of twelve (12) months for all local systems. It also proposes to extend the

twelve-month construction period to all private mobile radio services ("PMRS"). CMRS licensees would be required to commence service by the end of the twelve-month period to two (2) third parties unaffiliated with the licensee.

The Company supports a uniform twelve-month period for the construction of local CMRS systems, and a longer period of time for more complex systems.^{15/}In order to prevent spectrum hoarding, the Commission should require wide area SMR licensees to justify the period of time required for construction. These licensees should also be required to provide the Commission with regular implementation reports, demonstrating compliance with their construction schedules. Failure to meet the implementation schedules should result in the recapture of spectrum from the licensee.

Loading Requirements- The Commission questions whether it should continue to use loading requirements to ensure efficient spectrum use by CMRS licensees. It also asks whether it should eliminate the so called "40-mile rule", which prohibits licensees from securing SMR channels within 40 miles of a site at which they have an underloaded system.

E.F. Johnson agrees that compliance with loading requirements to retain channels should be eliminated. Spectrum hoarding can be effectively prevented by enforcing construction and operation regulations. The Commission should also eliminate

^{15/} As noted above, a further extension for construction of even local 220 MHz systems may be required, because of the need for all licensees to commence operations on one date.

the 40-mile rule. Initial license grants should, as noted above in the 900 MHz context, permit sufficient capacity for the provision of a commercially viable service without foreclosing opportunities for entry by competing licensees.^{16/} Additional channels would be available, regardless of whether a licensee loaded its current channels, to entities that construct their initial frequencies. Once a licensee constructs its channels are constructed, economic pressures will compel the licensee to either provide service to enough customers to load its system, or to sell the facility to another entity that can. Market forces, therefore, will ensure that all frequencies are employed by entities that will put the channels to their most intensive use.

Station Identification- Currently, there are no station identification requirements for cellular and nationwide 220 MHz systems. The Commission asks whether identification requirements should be eliminated for other systems as well. Station identification transmission plays an important role in helping to identify operators that are not in compliance with the Commission's regulations and is not burdensome to licensees. Certain of the Company's equipment is capable of automatically transmitting station identification. Equipment offered by other manufacturers have similar capabilities. While the Company supports reducing the administrative burden of multiple call

^{16/} To the extent additional channels are available for 800 MHz systems, a similar limitation should be imposed on initial licenses.

signs for operators in a single geographic area, the call sign requirement itself should be retained.

C. CMRS Spectrum Aggregation Limit

Other than several service specific restrictions, there is no general limit on the amount of spectrum that may be licensed to a single entity to provide CMRS services. The Commission seeks comment on whether there should be such a limit in order to promote competition in the provision of CMRS services.

E.F. Johnson strongly favors the imposition of a spectrum cap, so that consumers will have the benefit of multiple providers of communications services in a market. The spectrum limit should accord similar treatment to services which are substantially similar. Accordingly, spectrum for the provision of all broadband services (i.e., cellular, wide area SMR and broadband PCS) should be treated as interchangeable for purposes of applying the spectrum limit.

The Company supports the imposition of overall limits similar to those applicable to broadband PCS and cellular aggregation. Under this formulation, an entity could compete in the broadband PCS and cellular marketplace in a particular region but not in the wide area SMR market as well. Alternatively, an entity could choose to participate in the cellular and wide area SMR markets, but not in the broadband PCS market in that area. The imposition of a cap of this nature will foster ownership opportunities for small, local providers.

E.F. Johnson also supports the imposition of the spectrum cap in narrow geographic areas. It proposes that a licensee's provision of service in any BTA trigger attribution of all spectrum licensed to it in any contiguous geographic area. The fact that not all of a licensee's spectrum is actually deployed in a part of a BTA should not serve to increase a licensee's opportunity to secure additional spectrum in that part of the BTA.

Similarly, E.F. Johnson supports the Commission's proposed five-percent ownership attribution standard. An attribution standard of this nature will encourage broad investment in mobile communications services and prevent a single entity from exercising control over the provision of a variety of forms of CMRS in one market.

D. Licensing Rules and Procedures

1. Application Fees

The Commission proposes that all CMRS applicants pay the \$230 common carrier application fee. Although the Company agrees with the imposition of the \$230 fee for wide area SMR systems, it believes that local SMR operators should continue to pay the current \$35 fee.^{17/} In the alternative, the Company proposes the imposition of the \$230 fee only for new local SMR applications. The Commission notes that Public Land Mobile Stations currently are required to pay a fee of \$35 for minor

^{17/} The Company recognizes that in order to preserve regulatory symmetry, the Commission would reduce the application fees for existing, similarly-situated common carrier licensees.