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July 11, 1994

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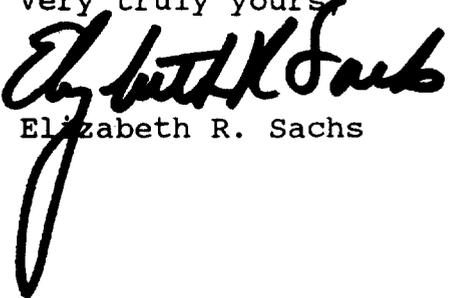
Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20036

Re: GN Docket No. 93-252  
Reply Comments on the Further Notice of  
Proposed Rulemaking  
American Mobile Telecommunications Association, Inc.

Dear Mr. Caton:

On behalf of the American Mobile Telecommunications Association, Inc., enclosed herewith please find its Reply Comments on the Further Notice of Proposed Rulemaking, GN Docket No. 93-252.

Kindly refer any questions or correspondence to the undersigned.

Very truly yours  
  
Elizabeth R. Sachs

ERS:cls

Enclosure

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

In the Matter of )  
)  
Implementation of Sections 3(n) and 332 ) GN Docket No. 93-252  
of the Communications Act )  
)  
Regulatory Treatment of Mobile Services )  
)

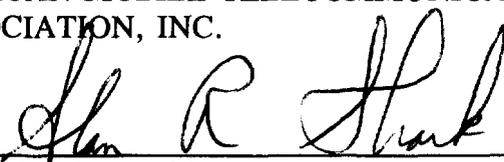
To: The Commission

**REPLY COMMENTS  
ON THE FURTHER NOTICE OF PROPOSED RULEMAKING**

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS  
ASSOCIATION, INC.

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July 11, 1994

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## SUMMARY

The instant Further Notice of Proposed Rule Making elicited comments from a wide variety of existing and reclassified CMRS operators. In general, the parties agreed that there was not substantial similarity between most reclassified Private Land Mobile services and existing common carrier offerings. Because no comparability was established for the traditional 800 MHz SMR, 900 MHz SMR or 220 MHz Commercial systems, the FCC is free to adopt optimal regulatory structures for each of these services.

Those who asserted that wide-area SMR service is substantially similar to cellular and broadband PCS ignored the fact that wide-area SMRs do not currently enjoy the unfettered use of a contiguous block of frequencies throughout a defined geographic area. As further explained herein, these services cannot be considered comparable for regulatory purposes unless and until this distinction is erased.

There was almost universal opposition to the FCC's proposed CMRS spectrum cap. The Commission's tentative recommendation to apply the 40 MHz limitation adopted specifically in the context of cellular/PCS cross-ownership concerns to the CMRS services generally, received virtually no record support, even from representative of the cellular and PCS industries. The comments in this proceeding demonstrate amply that adoption of such a rule would limit, rather than enhance, competition.

AMTA believes that both the traditional SMR and wide-area SMR portions of the

wireless marketplace satisfy important customer requirements. It recommends that the FCC balance the interests of these valuable industry segments to the greatest extent possible. Thus, AMTA proposes that the FCC adopt a regulatory approach that promises to serve the interests of both groups. The Association recommends that the FCC redesignate the 200 channels in the 861/865 MHz band currently assigned primarily to the SMR service generally, and make them available exclusively to wide-area SMR systems throughout an MTA. Wide-area licensees would be permitted to relocate co-channel stations operating on those frequencies to comparable replacement 800 MHz channels at the expense of the wide-area entity. The FCC would issue only a single wide-area license in each MTA, and would do so only after all wide-area applicants and licensees in that market had agreed on the entity to hold the license. Relocated traditional SMRs would enjoy the superior co-channel separation criteria available under the current rules, and would be less susceptible to interference from multiple co-channel, proximately located wide-area facilities.

The Comments in this proceeding generally supported adoption of an MTA-based licensing plan for 900 MHz SMR systems. There was also general agreement on the need to allow 220 MHz licensees to seek permanent system relocation before accepting applications from new entities, and to permit some level of spectrum aggregation that would permit the development of regional systems.

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), in accordance with Federal Communications Commission ("FCC" or "Commission") Rule Section 1.415, respectfully submits its Reply Comments in the above-entitled proceeding.<sup>1/</sup> AMTA believes that the volume and breadth of comments submitted in response to the FCC's proposed changes to the technical and operational rules governing reclassified Commercial Mobile Radio Service ("CMRS") systems underscores the significance of the instant proceeding to a broad variety of land mobile entities. Moreover, the virtually unanimous opposition to the FCC's proposal to adopt an across-the-board CMRS spectrum cap evidences an industry-wide conviction that such restrictions are unnecessary to promote a vigorous, competitive CMRS marketplace.

AMTA is pleased to note that the vast majority of those commenting on issues addressed in the Association's filing are in substantial agreement with the positions adopted by AMTA. The Reply Comments provided herein will be limited, therefore, to those matters wherein the record requires further information or clarification.

## **I. OVERVIEW**

1. The FCC proposal in the instant proceeding seeks input on possible modifications of technical and operational rules governing various Part 90 services which

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<sup>1/</sup> Further Notice of Proposed Rule Making, GN Docket No. 93-252 (adopted April 20, 1994, and released May 20, 1994) ("FNPR" or "Notice").

have been reclassified as CMRS in accordance with the 1993 legislative mandate.<sup>2/</sup> The Budget Act directed the FCC to classify all land mobile services as CMRS or Private Mobile Radio Service ("PMRS"). The Commission was further directed by Congress to adopt rules which would ensure that those heretofore private services reclassified as CMRS which were determined to be "substantially similar" to common carrier land mobile systems would be subject, to the extent practicable, to comparable regulatory schemes.

2. The Commission has already satisfied the first Congressional directive: it has reclassified all land mobile services as either CMRS or PMRS.<sup>3/</sup> It has now embarked on the second phase in which it must determine which heretofore private services are substantially similar to common carrier offerings; evaluate whether the regulatory environments in which these services operate should be revised to promote greater similarity and therefore enhanced competitive capability; and consider what other regulatory changes would promote the Congressional objective.

3. As noted in its earlier-filed Comments, AMTA supports the efforts of both Congress and the Commission to enhance regulatory symmetry. It is apparent from the record in this proceeding that this laudable objective is endorsed by all segments of the land mobile community. Moreover, there is greater than might be anticipated commonality of opinion on certain details relating to the FCC's proposal, given the

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<sup>2/</sup> Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, §6002(b)(2)(B), 107 Stat. 312, 392 (1993) ("Budget Act").

<sup>3/</sup> Second Report and Order, GN Docket No. 93-252, 9 FCC Rcd 1411 (1994) ("2nd R&O").

gamut of interests represented herein.

4. Most parties agreed that traditional 800 MHz SMR, 900 MHz SMR and 220 MHz commercial systems demonstrate no particular similarity to any existing common carrier services. Thus, the regulatory schemes governing them need not parallel those of any common carrier service.

5. Greater comparability was perceived among broadband PCS, cellular and wide-area SMR, at least on a prospective basis. Yet, even then, a number of parties recognized significant differences between the first two services and wide-area SMR; inherent differences in terms of spectrum quantity and frequency useability on a ubiquitous, geographic basis. Some parties, including AMTA, suggested that these distinctions warrant certain differences in regulatory structures.

6. The area which elicited the most consistent position among the commenting parties was the Commission's proposal to impose a 40 MHz across-the-board cap on ownership of CMRS facilities. Virtually all segments of the land mobile industry opposed this recommendation, including SMR, wide-area SMR, cellular, paging, satellite, and even prospective PCS participants. The FCC's suggestion was viewed as unnecessary to promote intensive competition in the CMRS marketplace, likely to inhibit investment in innovative service offerings, and administratively unmanageable in terms of the narrowly circumscribed ownership and geographic attribution parameters suggested in the Notice. The record on this aspect of the FCC's proposal is unequivocal: there is no record support for adoption of a CMRS spectrum cap.

## II. DISCUSSION

### A. NOT ALL CMRS SYSTEMS ARE SUBSTANTIALLY SIMILAR UNDER THE CONGRESSIONAL AND COMMISSION TEST

7. Congress has not directed the FCC to undertake an academic exercise of comparing and contrasting the regulatory structures of various reclassified CMRS services with those governing common carrier systems which might be considered substantially similar. Rather, Congress has mandated this analysis to effectuate a specific public policy objective: to ensure that otherwise comparable systems are not impeded in their ability to compete in the burgeoning wireless marketplace because of unnecessary regulatory impediments. The goal is enhanced competition, not a mechanistic alignment of regulatory schemes for its own sake. In conjunction with this objective, it is axiomatic that services at various stages of marketplace maturation should be regulated in a fashion which will enhance, not stifle, their competitive potential.

8. AMTA emphasized this facet of the Congressional directive in its Comments. Specifically, the Association suggested that customer perception and marketing approaches were significant, but not wholly determinative, factors in deciding whether services should be considered substantially similar.<sup>4/</sup> The size of the allocation under consideration, the frequency plan by which the available spectrum has been assigned, and the identity and number of entities already assigned the frequencies must be considered when evaluating the comparability, and thereby competitive potential, of various CMRS offerings.

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<sup>4/</sup> AMTA Comments ¶¶ 12-3, 18-24, 48-51.

9. As AMTA noted, the Commission is not developing a regulatory plan for an entirely new service in the instant proceeding. It does not have the freedom to establish de novo an optimal CMRS regulatory environment in which all services, and thus all potential competitors, would initiate service at the same time and with equivalent regulatory tools. Instead, the FCC must consider revising a variety of existing rule structures when doing so will enhance the competitive capabilities of existing services to the ultimate benefit of the wireless-using public. It is for that reason that Congress and the FCC seek to achieve regulatory symmetry, and it is that objective which must guide the FCC's decisions in the instant proceeding.

10. The majority of commenting parties agreed with the Association's assessment that not all reclassified CMRS services can be considered substantially similar to existing common carrier offerings; thus, regulatory realignment would be unnecessary for this particular purpose.<sup>5/</sup> This was true for the traditional 800 MHz SMR system, the 900 MHz SMR system, the 220 MHz commercial operation, and the Business Radio private carrier system below 512 MHz. The most obvious exceptions to this analysis were the private and common carrier paging services which are viewed by many as already substantially similar in critical respects, a subject on which AMTA takes no position.

11. Some parties to this proceeding identified wide-area SMR systems as being substantially similar to both cellular and broadband PCS, and on that basis proposed a

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<sup>5/</sup> See, Comments of National Association of Business and Educational Radio, Inc. ("NABER") pp. 6-10; E. F. Johnson Company ("EFJ") pp. 4-7; Geotek Communications, Inc. ("Geotek") pp. 2-4; United States Sugar Corp. pp. 5-7.

variety of regulatory revisions for that service.<sup>6/</sup> In that respect, they iterated a distinction drawn in the Notice between these so-called broadband services, and "narrowband" systems such as paging , narrowband PCS, 220 MHz and, presumably, all other reclassified CMRS and traditional common carrier land mobile services.

12. AMTA disagreed with adoption of that definitional delineation at this stage of the industry's development. The Association detailed the regulatory constraints that currently preclude even wide-area SMR systems from being classified properly as "broadband" CMRS.<sup>7/</sup> It noted the substantially greater spectrum allocations awarded to both cellular and broadband PCS. It described the heavily populated co-channel environment in which wide-area SMRs have endeavored to develop more geographically expansive systems employing frequency reuse to maximize intensive spectrum utilization, while protecting the service areas of co-channel licensees.<sup>8/</sup> It explained that the frequencies assigned to wide-area SMR systems could not be considered comparable to the exclusive spectrum allocated to cellular and broadband PCS unless and until those regulatory impediments were removed. Thus, AMTA took the position that although wide-area SMR service has the potential for competitive comparability with cellular and

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<sup>6/</sup> See, Comments of EFJ pp. 4, 8, 13; McCaw Cellular Communications, Inc. ("McCaw") pp. 22-30; Personal Communications Industry Association ("PCIA") pp. 5, 12; Sprint Corporation p. 4.

<sup>7/</sup> AMTA Comments ¶¶ 72-3.

<sup>8/</sup> AMTA Comments ¶¶ 32, 72-4.

broadband PCS, it cannot fully achieve that status under the existing regulatory scheme.<sup>9/</sup>

13. No party refuted that analysis. The Comments that classified wide-area SMR as substantially similar to other, indisputedly broadband services, simply failed to discuss these inherent, critical distinctions in overall spectrum resources and ubiquitous useability of frequencies throughout a given geographic area.<sup>10/</sup> It is not clear they would necessarily disagree with AMTA's assessment that the existing SMR regulatory structure precludes a determination that these services are substantially similar today. Rather, they may assume, as does AMTA, that appropriate rule changes will be implemented to permit greater competitive comparability among these offerings, despite the unalterably smaller spectrum allocation available to wide-area SMRs.<sup>11/</sup>

14. The Association urges the Commission to consider the relative market positions, and thereby market power, of reclassified CMRS services, particularly wide-area SMR systems, in making its final determinations in this proceeding. To the extent that enhanced marketplace competition is the overriding Congressional and agency

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<sup>9/</sup> AMTA also disagrees with those parties which propose that all CMRS systems be permitted to offer both PMRS and CMRS services. See, e.g. Comments of Cellular Telecommunications Industry Association ("CTIA") pp. 6-8 and PCIA p. 37, at least until the Congressional-mandated three-year transition period for reclassified systems has expired.

<sup>10/</sup> See, e.g., Comments of Vanguard Cellular Systems, Inc. ("Vanguard") pp. 2, 6-7; McCaw pp. 22-4; Nynex Corporation ("Nynex") p. 3; PCIA p. 5.

<sup>11/</sup> As noted in AMTA's Comments, both cellular operators in each market have been awarded 25 MHz of exclusive spectrum. Broadband PCS licensees will be permitted to acquire up to 40 MHz in a market. By contrast, the entire 800 MHz SMR allocation is only 14 MHz, and that spectrum is routinely shared by multiple licensees in a given geographic area.

objective, that goal will be advanced if the FCC's rules promote the maturation of more fully competitive systems along the lines recommended in AMTA's earlier-filed Comments and in the instant Reply.

**B. THE RECORD DOES NOT SUPPORT A CMRS SPECTRUM CAP**

15. The FNPR included a tentative proposal to establish a 40 MHz across-the-board cap on CMRS spectrum ownership. This aspect of the Notice was added on the FCC's own motion after the FNPR had been adopted at the Commission's Open Meeting. The Notice proposed to establish standardized geographic areas within which the cap would be imposed. It recommended that CMRS ownership interests of five percent or more would be attributable, and that a CMRS licensee serving ten percent or more of the population in a designated area would be subject to the cap in that area. FNPR ¶¶ 86-105.

16. AMTA strongly opposed that aspect of the FCC's proposal.<sup>12/</sup> The Association noted that there was no basis for applying to all CMRS services an ownership limitation specifically designed to ensure that the competitive potential of the nascent PCS services would not be subverted by cellular interests. These PCS/cellular ownership restrictions, which the FCC proposed to engraft on the entire CMRS marketplace, had been meticulously crafted to balance competitive considerations relating to those two specific industry segments. There was no articulated rationale for importing them in toto across the entire gamut of CMRS offerings, particularly in light of

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<sup>12/</sup> AMTA Comments ¶¶ 67-78.

expanding CMRS spectrum availability and competitive opportunities.

17. The Association further noted that adoption of such a cap would impede competition by potentially limiting available investment options for emerging service offerings and technologies. It would disadvantage disproportionately new entrants with more limited financial resources and a need to attract outside investors. This matter is particularly critical for the still embryonic wide-area SMR and just emerging PCS industries. Investment sources for capital intensive, sophisticated, high technology ventures tends to be limited, and is typically most readily available from entities with some previous, presumably positive, experience in comparable offerings. By potentially precluding these sources from funding new CMRS entrants, or even by creating uncertainty as to the permissibility of investing in various types of CMRS services for fear of violating an across-the-board cap, the FCC will have inadvertently awarded an advantage to already funded ventures that would prefer to maintain the status quo in the wireless marketplace and to a very small number of corporate behemoths with adequate internal resources. The result would be both a diminution of overall CMRS competition, and the creation of a CMRS marketplace populated by a very small number of dominant players. The Association is confident that this result would be unsatisfactory to both the Commission and the Congress which enacted the Budget Act.

18. More specifically, AMTA outlined the difficulties, indeed the inequities, of including wide-area SMRs should the Commission adopt a CMRS spectrum cap. The Association explained that these systems are entitled to the statutorily-mandated three-year transition period before they are to be subject to CMRS regulation. Until that

reclassification becomes applicable in August, 1996, they are to be regulated as non-CMRS, non-common carrier, private land mobile systems. Because they have been granted that transition period by Congress, not the FCC, they would not be subject to a CMRS spectrum cap until expiration of that period.

19. This discrepancy is not addressed in the FNPR. The Notice appears to assume that any CMRS spectrum cap could be applied even to reclassified services upon adoption. No distinction is drawn between those systems entitled to the three-year transition period and those which are already classified as common carriage, or CMRS. However, the Congressional intent is clear on this point: heretofore private land mobile systems reclassified as CMRS are not to become subject to CMRS-based regulation until the end of the transition period. It is not credible to assume that Congress would have intended this relief to include a variety of relatively modest, but statutory, common carrier requirements, yet denied it in the case of this novel, highly significant Commission proposal. Thus, whatever decision the FCC reaches on this subject, the result cannot affect reclassified CMRS systems until expiration of the transition period on August 10, 1996.

20. Moreover, even if a spectrum cap could be applied to the SMR service, the complex co-channel environment described above clearly supports a different approach to cellular and broadband PCS versus wide-area SMR service ownership issues. The frequencies assigned to these services are not fungible; SMR spectrum is not "clean," but is assigned on a random frequency-by-frequency, site-by-site basis that is totally dissimilar to the cellular and PCS licensing schemes. The Commission would be

required to develop some method of pro-rating wide-area SMR versus cellular and PCS spectrum, based on their overall frequency useability and channel capacity by virtue of assigned bandwidth, if it were to adopt a cap which included all three services.<sup>13/</sup>

21. Finally, AMTA identified a number of additional complexities in attempting to equate wide-area SMR with cellular or PCS spectrum for purposes of calculating a cap. Unlike the two latter services, wide-area SMR systems are not assigned specific geographic parameters. They have been developed on an incremental, site-by-site, frequency-by-frequency basis as individual applicants have been able to demonstrate the requisite station construction and system loading to qualify for wide-area authority. It would be a formidable task for the FCC to sort out in any rational fashion the geographic areas in which these disparate systems overlap, the necessary degree of geographic coverage or population overlap to warrant attribution, the relative weight to be attributed to exclusive cellular and PCS versus non-exclusive SMR frequencies within those areas, and the appropriate ownership attribution for each of these services. For all of these reasons, AMTA recommended that the FCC decline to adopt a CMRS spectrum cap in favor of the service specific ownership regulations which have demonstrated an ability to foster a robustly competitive wireless marketplace.<sup>14/</sup>

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<sup>13/</sup> The Notice itself appeared to anticipate including only the so-called broadband services in any CMRS spectrum cap. FNPR ¶ 96. While the FCC's proposal generally generated substantial opposition, even those few parties which supported a CMRS cap did not recommend inclusion of any other reclassified private service, such as traditional 800 MHz SMR, 900 MHz SMR, or 220 MHz commercial systems.

<sup>14/</sup> The Southern Company uniquely recommends adoption, not of a CMRS spectrum cap, but of a limit of 140 channels for wide-area SMR systems. This proposal is  
(continued...)

22. Virtually all commenting parties agreed with AMTA's position.<sup>15/</sup> Indeed, it is extraordinary for any Commission proposal to generate agreement, whether positive or negative, across such a broad range of industry segments. For example:

"Addressing first the general question whether the Commission should extend the spectrum caps previously imposed on cellular and PCS services to cover all CMRS services, Airtouch submits that to do so would be arbitrary and capricious and would lack any basis in economic theory, antitrust law or fact."

Comments of Airtouch, p. 6.

"[A]doption of a broad spectrum cap is neither necessary or appropriate"

Comments of Century, p. 2.

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<sup>14/</sup>(...continued)

predicated on a report entitled, Assessing Network Economics of SMR Services, prepared by Booz-Allen-Hamilton, Inc. in January, 1994. The very abbreviated Reply Comment period for this proceeding has not permitted the Association sufficient time to evaluate the report in detail. However, it is apparent that, among other deficiencies, that analysis assumes no differences between the frequencies used in wide-area SMR systems and those utilized by cellular operators, a predicate that AMTA has already demonstrated to be inaccurate.

<sup>15/</sup> See, e.g. Comments of Airtouch Communications ("Airtouch") pp. 6-20; American Mobile Satellite Corporation ("AMSC") pp. 8-14; BellSouth ("BellSouth") pp. 6-11; Century Cellunet, Inc. ("Century") pp. 1-3; Comcast Corporation ("Comcast") pp. 3-13; CTIA pp. 8-9; Dial Page, Inc. ("Dial Page") pp. 3-6; GTE pp. 18-21; McCaw pp. 10-16; Motorola, Inc. pp. 2-13; NABER pp. 37-8; Nextel Communications, Inc. ("Nextel") pp. 21-39; Nynex pp. 2, 5-9; OneComm Corporation ("OneComm") pp. 7-14; Pagemart, Inc. pp. 3-10; PCIA p. 9; Pittencrieff Communications, Inc. ("PCI") pp. 15-6; Roseville Telephone Company ("Roseville") pp. 3-4; Southwestern Bell Corporation ("SWB") pp. 6-8.

"The adoption of a uniform spectrum cap that applies to all CMRS providers . . . is without merit and will have a significant detrimental impact on the growth and competitiveness of the future wireless marketplace."

Comments of Comcast, pp. 1-2.

23. By contrast, support for the FCC's tentative recommendation to adopt a CMRS spectrum cap was notable for its paucity.<sup>16/</sup> Not surprisingly, the strongest proponent was American Personal Communications ("APC"), which has already been awarded a Pioneer's Preference for a PCS license in a major market. Its broadband PCS award is effective, and was obtained outside of the competitive bidding process by this well-funded organization. There is every reason for such a party to endorse any proposal which might limit its prospective competitors, impede their access to capital, or reduce their economies of scale or scope. The very fact that APC almost uniquely has enthusiastically embraced this proposal should cause the Commission to be wary about its likely anti-competitive ramifications.

24. The record on this aspect of the FCC's proposal is unequivocal. No segment of the existing or prospective CMRS industry supports adoption of a CMRS spectrum cap. The better approach to ensuring continued competition in an already broadly competitive wireless marketplace is to maintain the FCC's current practice of

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<sup>16/</sup> See, Comments of American Personal Communications ("APC") pp. 2-4 and EFJ pp. 19-20.

adopting appropriate ownership regulations in specific services.

**C. 800 MHz SMR SERVICE**

**1. Traditional SMR**

25. In its Comments, AMTA affirmed its conviction that the rules governing 800 MHz SMR systems, both "traditional" and "wide-area," must properly balance the interests of these two segments of the wireless marketplace.<sup>17/</sup> The traditional trunked SMR, loosely defined as one which offers dispatch and/or interconnected two-way service oriented to the business community from a higher-power and antenna height site(s) without automatic hand-off among sites, provides a wireless offering which is as valuable today as it was when the service was first created by the FCC.<sup>18/</sup> There is a substantial customer base which has opted for this service rather than cellular, paging, or any other of the myriad wireless offerings available today. It is impossible to predict with confidence to what extent these customers or prospective users with comparable communications requirements will continue to select traditional trunked SMR systems as the number of alternative offerings expands along with the range of services provided on each. Cellular has already evidenced an ability to attract a certain percentage of users who might otherwise have utilized traditional SMR service, as has the very initial Nextel "ESMR" offering in Los Angeles. PCS, both broadband and narrowband, will

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<sup>17/</sup> AMTA Comments ¶ 25.

<sup>18/</sup> Inquiry relative to the future use of the Frequency Band 806-960 MHz, Docket No. 18262, Second Report and Order, 46 FCC 2d 752 (1974), recon., 51 FCC 2d 945 (1975), aff'd, NARUC 1.

presumably have some impact as well in the longer-term future.

26. Thus, AMTA recognizes that there is and will continue to be some level of overlap in the customer bases of these various systems. Nonetheless, the Association remains convinced that the traditional trunked SMR provides a valuable, distinct service which should be preserved. For these reasons, AMTA recommended that the FCC eliminate all loading requirements for these systems, as well as the corollary 40-mile rule.<sup>19/</sup> Doing so will facilitate the efforts of trunked SMR operators to construct the spectrum they desire at the locations they deem optimal based on the actual needs of their customers without artificial regulatory restraints. This recommendation was echoed by a number of parties to this proceeding.<sup>20/</sup> It is apparent that this service is sufficiently mature for the Commission to rely on its proposed requirements regarding station construction and provision of service to the public to preclude spectrum warehousing.

27. Additionally, the Association is optimistic that the proposed licensing approach for wide-area SMR systems described below will result in reduced interference potential for traditional full-power systems. It will increase the likelihood that similarly configured systems with more comparable customer coverage patterns will be assigned on a co-channel basis. It will do so by decreasing the probability that full-power and antenna height stations will be isolated in a co-channel environment in which they are surrounded by the cellular-like configuration of a lower-power wide-area SMR system

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<sup>19/</sup> AMTA Comments ¶¶ 26-9.

<sup>20/</sup> See, e.g. Comments of PCI pp. 11-2; PCIA p. 7; NABER pp. 32-3; Geotek p. 21; RAM Mobile Data USA Limited Partnership ("RAM") p. 10.

with the concomitantly greater possibility of mobile-generated interference.

28. Finally, the migration proposal outlined below is also intended to discourage the continued activities of so-called "licensing mills" which have sorely taxed the resources of the FCC staff and have artificially depleted the spectrum resources available for the development of traditional trunked SMR systems. It is apparent that a significant number of these licenses were "sold" to an uninformed public on the basis that the systems would be constructed by and the authorizations purchased or managed by wide-area licensees. While it may be impossible to eliminate this practice entirely unless the Federal Trade Commission is successful in closing down all such enterprises or until there simply are no more frequencies to be awarded, even the uneducated public may be less easily duped if there is less commonality between the spectrum used for traditional versus wide-area systems.

## 2. Wide-Area 800 MHz SMR

29. In its Comments, the Association reaffirmed its commitment to developing a wide-area SMR licensing scheme which could attract broad industry support. It indicated that any such approach would likely include geographic authorizations issued on an MTA basis, rather than self-defined by each licensee. AMTA also noted that wide-area SMR spectrum could not be considered equivalent to cellular or PCS allocations unless and until the frequencies were "clear"; that is, until the channels were assigned exclusively to the wide-area licensee throughout the geographically-defined license area.<sup>21/</sup>

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<sup>21/</sup> AMTA Comments pp. 14-5.

30. The Association suggested that, unlike the Commission, it was not convinced that an approach comparable to the original AMTA Blueprint or the resulting FCC EMSP proposal had necessarily become obsolete. Both of those licensing structures included ingredients that promised to facilitate the further development of wide-area 800 MHz systems from both the industry's and the FCC's perspective. Each proposed a method whereby the FCC would be able to select among qualified, competing applicants for wide-area licenses in a defined market. Issuance of such authorizations would subsequently permit streamlined application processing that would enable the Commission to devote substantially fewer resources to the agency's administration of these systems. AMTA also indicated in its Comments that it would consider alternative approaches which it understood would be submitted by individual industry participants.<sup>22/</sup>

31. Nextel submitted such a proposal. In summary, Nextel recommended that the FCC create a 10 MHz block of the 200 contiguous frequencies from 861.0125/865.9875 MHz exclusively for wide-area SMR licenses on an MTA basis. Under Nextel's plan, existing full-power co-channel facilities in that band could be "retuned" to operate on other, comparable 800 MHz frequencies at the option and expense of the wide-area licensee. Nextel proposed that the migration associated with this retuning would be mandatory for non-wide-area licensees at the election of the wide-area operator, and that it should be accomplished within one year from the issuance of the wide-area authorization. Nextel also recommended that wide-area licensees not be precluded from including eligible spectrum from other portions of the 800 MHz band in

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<sup>22/</sup> AMTA Comments pp. 15-6.

their systems, without any right to require co-channel retuning, and assuming again that they identified sufficient, fungible spectrum to which co-channel licensees from the 861/865 MHz band could be moved. NABER stated that it generally supported the concept outlined by Nextel, although the draft proposal endorsed by NABER was modified somewhat in Nextel's filed Comments.<sup>23/</sup> As noted previously, AMTA took no position on Nextel's draft proposal.

32. The Association has now re-evaluated its Blueprint and the FCC's EMSP approaches, as well as Nextel's proposal and NABER's Comments thereon. At the recommendation of the Association's Digital Switched Networks Council ("Digital Council"), AMTA is persuaded that a wide-area licensing structure which includes a mechanism for creating clear 800 MHz spectrum will enable these systems to provide the effective competition to both cellular and PCS that the Commission and the Congress envisioned when the CMRS regulatory structure was adopted.

33. As noted above, the Association has also become convinced that the retuning proposed by Nextel, although not without significant cost and complexity, will ultimately produce a more compatible co-channel environment for both traditional high-power and lower-power wide-area SMR systems. It will enable those who wish to maintain more traditionally configured facilities to enjoy co-channel separation criteria that are more protective than have been applicable in recent years.<sup>24/</sup> The vast majority

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<sup>23/</sup> NABER Comments p. 14.

<sup>24/</sup> The FCC has modified its 800 MHz co-channel separation criteria almost annually for the last few years. Amendment of Part 90 of the Commission's Rules to Permit the  
(continued...)

of these stations in or anywhere near an urban area have already been short-spaced by both wide-area and other random licensees under co-channel separation standards that were substantially less protective than those applicable today. Stations that are moved to different frequencies under a retuning program would be entitled to the improved standards. They will also be less susceptible to the potential, cumulative interference effect which may result when a traditionally configured station is surrounded by multiple co-channel wide-area stations authorized under permissive separation criteria. In this respect, the proposal promises benefits for all segments of the SMR 800 MHz industry.

34. Therefore, as suggested by the Digital Council, AMTA proposes the following approach to licensing of 800 MHz wide-area SMR systems. First, authorizations should be issued on an MTA-wide basis. While the Association appreciates the attraction of allowing continued self-definition of systems, it is persuaded that the better approach is to create defined geographic boundaries. Geographically-defined systems will enable licensees to know with certainty from the outset within which specific area they are entitled to the use of all 200 channels in the 861/865 MHz band, within which area they may identify candidates for co-channel retuning, and within which area they may deploy frequencies in an optimal system configuration without a need to work around co-channel licensees. It will enable the FCC to streamline the licensing of

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<sup>24/</sup>(...continued)

Short-Spacing of Specialized Mobile Radio Systems Upon Concurrence From Co-Channel Licensees, PR Docket No. 90-34, 6 FCC Rcd 4929 (1991). Co-Channel Protection Criteria for Part 90, Subpart S Stations Operating Above 800 MHz, PR Docket No. 93-60, 8 FCC Rcd 7293 (1993). On balance, each recent revision has provided improved protection for the actual operating parameters of existing stations.

these systems along the lines used today in the cellular service with the concomitant reduction in use of agency resources. It is only by establishing geographically-bounded wide-area service areas that the FCC can begin to create the regulatory parity that will enable this service to become substantially similar to cellular and PCS.

35. AMTA further recommends that the FCC issue only a single 800 MHz wide-area SMR license in each MTA. Since Congress and the FCC have already determined that these systems will be competing with cellular, PCS, traditional SMR, and an expanding variety of other CMRS offerings, there can be no anti-competitive concern about the issuance of one license per MTA. In fact, the right to utilize 200 clear channels on an exclusive basis, and to share under current rules whatever other spectrum the licensee has acquired in that market, is precisely the regulatory relief that will enable these systems to compete effectively in that marketplace.

36. If there is only a single wide-area licensee or applicant with a granted or proposed station in the MTA, that entity would be awarded the authorization. That situation will be the exception, however, rather than the rule. AMTA's research indicates that there are two or more wide-area licensees or applicants in virtually every MTA in the country.<sup>25/</sup> In those cases, no wide-area license would be awarded until all parties had negotiated a settlement that would allow the FCC to issue a single authorization. Those negotiations might be resolved by the creation of a partnership or a joint venture. Alternatively, parties might agree reciprocally to relinquish positions in

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<sup>25/</sup> AMTA has reviewed information regarding these systems from the FCC's data base as of last week. It appears that there are already two to five 800 MHz SMR wide-area applications and/or authorizations in each MTA.