different markets or to accept some other compensation to permit the identification of a single entity as the license holder.

37. This approach is not unlike AMTA's original Blueprint or the FCC's EMSP proposal which contemplated a period of negotiation among qualified entities during which situations of mutual exclusivity might be resolved.[26] After expiration of that period, any remaining mutual exclusivity instances were to be addressed by random selection, competitive bidding, or some other method. This aspect of the EMSP proposal was not fully resolved, in part because it was recognized that wide-area 800 MHz SMR systems are themselves the reconfiguration of existing, operational stations. In some instances, they have been created by simply modifying existing, traditional, analog authorizations.[27] In all cases, the wide-area license is ancillary to and inextricably interrelated to the underlying analog stations, the frequencies of which are redeployed to create a wide-area system configuration.[28]

38. The instant proposal endeavors to eliminate mutual exclusivity problems and their attendant delays entirely by requiring all parties to come to mutual agreement before allowing any (or all) of them the right to exclusive use of clear 861/865 MHz frequencies throughout the MTA. This type of licensing scheme was used previously by the FCC in its assignment of Public Land Mobile Service frequencies in the 470-512

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[26] Notice of Proposed Rulemaking, PR Docket No. 93-144, 8 FCC Rcd 3950 (1993)("EMSP Notice").

[27] See, e.g. Advanced Radio Communication Services of Florida's original wide-area license.

[28] See, e.g., Fleet Call, Inc. Memorandum Opinion and Order, 6 FCC Rcd 1533, recon. dismissed, 6 FCC Rcd 6989 (1991).

MHz band.[29] The Association is optimistic that this "carrot" will be sufficient to ensure prompt resolution. Thus, the Association does not recommend adoption of a date certain by which resolution must be reached. In the interim, all parties, both wide-area and traditional, would continue to operate under the currently applicable FCC rules and policies.

39. As described above, AMTA recommends that the FCC include in the negotiation process all wide-area licensees and applicants within an MTA. All such requests would, of course, be required to comply with the FCC's existing standard for wide-area systems as articulated in the so-called Weisman letter.[30] The Association suggests that the Commission establish August 10, 1994, as the deadline for filing eligible requests. This date obviously coincides with the statutory deadline for reconciling the regulatory schemes for reclassified services deemed substantially similar to common carrier offerings. It also provides sufficient time for interested parties to prepare and submit those legitimate wide-area requests which have not already been filed. Because AMTA realizes that filing deadlines sometimes prompt the submission of less than fully qualified applications, the Association encourages the FCC to be rigorously vigilant in reviewing the adequacy of requests filed during this interim period. In particular, the FCC may wish to determine that an acceptable wide-area filing must propose the use of a significant number of discrete channels.

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[29] Memorandum Opinion and Order, Docket No. 21039, 47 RR2d 539 (1980).

[30] See, December 23, 1992 Letter from Ralph A. Haller, Chief, Private Radio Bureau, to David E. Weisman, Esq.

40. AMTA believes the instant proposal provides a unique opportunity for the Commission to enable the 800 MHz wide-area SMR service to achieve a reasonable level of regulatory parity with the more spectrum-rich cellular and PCS industries. This will enhance the competitive capability of these systems and, thereby, benefit the wireless-using public. At the same time, the Association believes that the traditional 800 MHz SMR must receive full compensation for migrating to different, but fully fungible frequencies, and must be satisfied that the replacement channels will provide comparable communications capability, an approach consistent with that mandated by the FCC in its PCS decision.[31/] Any and all costs of retuning must be paid by the wide-area licensee who elects to require migration of a co-channel system, and no system can be affected unless adequate replacement spectrum has been identified.

### D. 900 MHz SMR SERVICE

41. AMTA's Comments supported the FCC's proposal to adopt rules which would permit the further licensing of 900 MHz SMR systems. The Association noted that a number of operators had invested in the development of substantial, and even innovative, commercial offerings in this band, but were inhibited in their ability to expand these offerings because of now outdated regulatory restrictions.[32/] It suggested

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[31/] First Report and Order and Third Notice of Proposed Rulemaking, ET Docket No. 92-9, 7 FCC Rcd 6886 (1992); Second Report and Order, 8 FCC Rcd 6495 (1993); Third Report and Order and Memorandum Opinion and Order, 8 FCC Rcd 6589 (1993); Memorandum Opinion and Order, 9 FCC Rcd 1943 (1994), petition for further recon. pending.

[32/] AMTA Comments ¶ 37.

that the FCC adopt an MTA-based wide-area licensing framework which would allow existing licensees to expand their systems throughout an MTA before accepting applications for new systems that presumably would be awarded through competitive bidding procedures. It proposed following the model originally crafted by RAM in an earlier proceeding relating to this matter.[33/]

42. Several parties directly involved in development of the 900 MHz band took a similar position. The two major 900 MHz SMR service providers which addressed this matter in their comments, RAM and Geotek, both supported MTA-wide licensing. Both also recommended that existing licensees first be given the opportunity to build-out their systems throughout these areas, an opportunity denied to them under the current rules. One individual SMR licensee, Air Spectrum III, Inc., urged the FCC to adopt this approach.[34/] NABER also recognized the equity and pro-competitive benefits of adopting this licensing scheme.[35/]

43. AMTA believes that the record on this aspect of the FCC's proposal clearly supports adoption of an approach consistent with that recommended by RAM in the earlier 900 MHz proceeding, as modified by the view expressed by the above-identified parties in the instant proceeding.

### E. 220 MHz COMMERCIAL SERVICE

44. The FCC received a significant number of comments on its proposals

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[33/] AMTA Comments ¶¶ 38-40.

[34/] See Geotek Comments pp. 10-11; RAM Comments pp. 1-5.

[35/] NABER Comments pp. 21-2.

regarding the newly created 220 MHz service. All of the participating parties, including AMTA, agreed that this service does not resemble any existing common carrier offering, and that it is premature to anticipate the full range of offerings that will develop. However, even now, there are certain aspects of the 220 MHz service about which there appears to be general agreement regarding a need for modification.

45. First, as urged by AMTA in its Comments, the FCC should permit existing 220 MHz licensees to modify their authorizations before accepting applications for new systems. The Association's Comments described in detail the unusually difficult and lengthy development period for this band.[36/] The licensing process required interested parties to rush to submit their applications which then were not able to be processed for a number of years while various aspects of the allocation were reviewed by the FCC and the Court. By the time licenses were issued, a number of applicants had determined that their original site selection was not optimal. The FCC has been cooperative in issuing Special Temporary Authorizations ("STAs") which enable the stations to be built at the licensee's preferred location, but offer no assurance that they can be converted to permanent grants. If they cannot, the underlying license will be cancelled.

46. There is no support for such a result. No party to this proceeding has recommended that the FCC accept applications from existing and new 220 MHz entrants simultaneously once it begins accepting additional filings in this band. Rather, a number of parties recommended strongly that the process occur sequentially for precisely the

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[36/] AMTA Comments ¶¶ 55-7.

reasons described above.[37] AMTA encourages the FCC to adopt that position and to do so as expeditiously as possible so the industry may pursue system implementation with some degree of certainty.

47. AMTA has previously urged the FCC not to classify 220 MHz Commercial systems as CMRS.[38] However, to the extent that they are to be so categorized, some as early as August 10th of this year, the Association recommends that the FCC accelerate application of its proposed, twelve-month construction period for all CMRS services to 220 MHZ systems. Immediate application of that generally supported rule change to this nascent industry would further foster its robust development in a highly competitive marketplace.

48. Finally, there is general support for a 220 MHz regulatory structure which would permit a certain level of spectrum aggregation, and, thereby, the development of regional systems. A number of parties responded to the Petition for Declaratory Ruling submitted by SunCom Mobile & Data, Inc. ("SunCom") on which the FCC requested comments in the Notice. Their comments reflected an industry-wide effort to achieve a consensus position on this highly important matter, an effort in which SunCom itself was an active, productive participant. AMTA believes that substantial progress was made in achieving a commonality of position on this point, although individual parties have also recommended specific system parameters which they believe will best serve the

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[37] See. e.g. Comments of Simron, Inc. ("Simron") pp. 17-8; U.S. Mobilcom, Inc. ("U.S. Mobilcom") pp. 11-2; Comments of EFJ p. 23.

[38] See AMTA Petition for Reconsideration, GN Docket No. 93-252, filed May 19, 1994.

public interest. The Association continues to believe that the approach outlined in its Comments establishes a reasonable balance which will promote regional system development without unduly delaying overall industry growth and service to the public.[39/] It recommends adoption of that approach.

## F. LICENSING RULES AND PROCEDURES

49. The Comments in this proceeding expressed substantial agreement regarding the benefit of minimizing the administrative burdens associated with CMRS status, within the confines of statutory requirements. However, the number of issues relating to licensing rules and procedures, as well as their oftentimes complex inter-relationship, may have caused them to receive less than the necessary consideration, particularly in the context of this very broad, highly critical proceeding. Thus, while with one exception, AMTA does not disagree with positions taken by other parties, the Association intends to explore these matters in more detail during the pendency of this rule making.

50. AMTA does object to NABER's request to be designated as the frequency coordinator of the 856/60 MHz frequencies assigned primarily to the SMR service.[40/] While AMTA can appreciate why that organization would be pleased to act as the tollkeeper for yet another block of spectrum, that result would not serve the interests of the SMR community or the FCC.

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[39/] AMTA Comments ¶¶ 58-66.

[40/] NABER Comments pp. 20-21.

51. The ostensible rationale for NABER's proposal is that applications which have been certified by a frequency coordination organization can be processed at the Commission more quickly than those which have not undergone that review. Yet NABER's analysis fails to include in that application processing period the time the application remains with the coordinator which, like the FCC, is obliged to process requests in order of receipt, and which, also like the Commission, sometimes has months-long backlogs of applications. The applicant must not only wait for completion of the coordination, and then FCC, processes, but must pay a coordination fee as well which exceeds by a significant percentage the FCC's charge for processing the form.

52. Moreover, the Commission's successful efforts in recent years both to maintain and to make available to the public an updated data base would now enable applicants in certain bands, including both 800 MHz and 900 MHz, to determine frequency availability and certify the accuracy of that information along the lines of the procedures followed in the microwave services where no particular coordinator is designated by the FCC.[41/] All applicants in those services have access to the same information through FCC maintained records on which their certifications are based.

53. In fact, that process is already effectively in place for 800 MHz wide-area applicants. These parties provide the coordinator with a frequency-by-frequency, site-by-site co-channel analysis based on the then current FCC database. The coordinator then presumably verifies that the applicant has correctly identified all co-channel licensees and

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[41/] FCC Rule Section 21.100(d), 47 C.F.R. § 21.100(d). FCC Rule Section 94.15, 47 C.F.R. § 94.15.

applicants against the same FCC data base. The fact that the coordinator also knows of and takes into consideration applications it has recently forwarded to the FCC is significant only because the coordination process itself exists. If applicants were not required to use that system, their applications would be considered in order of receipt, just as microwave applications are. While AMTA does not believe that this proceeding is the appropriate vehicle for evaluating the utility of outside frequency coordination in these bands, this rule making also should not be used to extend this requirement to yet additional frequencies. NABER's suggestion should be rejected.

## III. CONCLUSION

54. For the reasons described, AMTA urges the Commission to proceed expeditiously to complete this phase of its transitional proceeding, consistent with the recommendations detailed herein.

## CERTIFICATE OF SERVICE

I, Cheri Skewis, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 11th day of July, 1994, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing Reply Comments to the following:

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