operating in these services. Aside from any possible action to conform the rules relating to mobiles and portables, we stated that we would apply the 1992 IEEE/ANSI standard for radiofrequency (RF) emissions to all CMRS and PMRS mobiles, as proposed in our *RF Radiation Notice*.[263]

148. A wide range of comments were received concerning cellular and SMR height and power limits, which currently allow SMR base stations to operate at higher power than cellular base stations. In general, SMR commenters oppose reducing SMR height and power limits to conform these rules to our cellular rules. These commenters argue that reducing SMR limits is not practical because traditional SMR systems do not utilize cellular-type configurations, and that conforming SMR systems to cellular standards would entail extensive and expensive equipment modification and site reconfigurations.[264] Cellular commenters argue that cellular and SMR height and power limits should be equivalent so that cellular systems are not at a competitive disadvantage with SMR operations. Some suggest that this should be accomplished by raising cellular antenna height and power limits to SMR standards,[265] while others suggest that SMR systems be made to conform to cellular standards.[266]

149. With respect to power limits for paging services, most commenters address the issue of conforming our Part 90 and Part 22 rules for 900 MHz paging services. PageNet and NABER support allowing all 900 MHz paging stations under Part 90 to operate at a maximum power of 3500 watts ERP, as is currently allowed under Part 22.[267] In the case of Part 90 paging and Business Radio services below 800 MHz, NABER opposes modifying height and power rules to conform to Part 22 because Part 90 licensees operate on shared channels.[268]

150. Only one commenter suggests the need to change our height and power requirements for commercial 220 MHz service. Simrom argues that if we conclude that 220 MHz service is substantially similar to 150 MHz common carrier mobile service, the antenna

---

[263] *Further Notice*, 9 FCC Rcd at 2874-75 (paras. 48-53). *See* Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, ET Docket No. 93-62, Notice of Proposed Rule Making, 8 FCC Rcd 2849 (1993) (*RF Radiation Notice*).

[264] NABER Comments at 26; US Sugar Comments at 12; Southern Comments at 10; Pittencrieff Comments at 9; RMR Comments at 14.

[265] McCaw Comments at 26; RAM Tech Comments at 8; PCIA Comments at 12.

[266] GTE Comments at 11; New Par Comments at 8.

[267] PageNet Comments at 22; NABER Comments at 27.

[268] NABER Comments at 27.

height limitation for the 220-222 MHz band should be increased from 150 meters to 305 meters to correspond to the Part 22 limit.[269]

151. Commenters present diverse opinions on the issue of conforming power limits for CMRS mobile and portable units. NABER opposes reducing the maximum power of SMR mobiles to conform to the more restrictive limit for cellular mobiles. NABER argues that because many SMR systems do not use a cellular configuration, their mobiles must operate at higher power in order to transmit to more distant base stations.[270] RMD asserts that to the extent that the power of mobile units is limited by ANSI/IEEE RF exposure standards and other considerations such as power consumption, output power should be limited to the amount necessary to operate systems to achieve high quality service.[271] Southwestern Bell advocates the establishment of equitable power limits for all CMRS mobiles at the time that we conclude the *RF Radiation* proceeding.[272]

**(2) *Discussion***

152. Although we sought comment on the possibility of simply equalizing the maximum power limits in pairs of comparable services, our conclusion that all CMRS carriers compete in a broader market of wireless service suggests a more global analysis. Both antenna height and transmitting power affect the service range, that is, the farthest distance from the transmitter where a satisfactory signal may be received. The field strength that is considered to provide satisfactory service, however, varies between the services, and this alone renders useless any simple ''comparison of the numbers'' in our power and antenna height rules. For example, noise-limited cellular service is considered satisfactory at 32 dB$\mu$V/m, whereas interference-limited SMR service is protected to 40 dB$\mu$V/m. From this, one might conclude that SMR base stations need 8 dB more transmitting power merely to have the same service range as cellular base stations, assuming equal antenna heights. Traditional SMRs, however, are more likely to employ the most favorable antenna sites available, and thus are more likely to have higher antennas. Also, despite the fact that the cellular power limit is 500 watts ERP, cellular systems rarely employ this much power. Instead, cellular base stations typically operate between 100 and 200 watts ERP at about 50 meters antenna height. This gives them a range of about 22 kilometers (14 miles). SMR systems are allowed 1000 watts ERP at 305 meters (1000 feet) and are considered to have a service range of about 32 kilometers (20 miles).

---

[269] Simrom Comments at 11.

[270] NABER Comments at 27.

[271] RMD Comments at 8.

[272] Southwestern Bell Comments at 11.

153. All of this raises the question of whether the goal of providing comparable technical regulation of substantially similar services requires us to tinker with the maximum power limits simply to make the numbers equal, especially since it is not clear that doing so would have any beneficial effect. We see no reason to reduce the maximum permissible transmitter power for SMR base stations to that permitted for cellular base stations. As the record indicates, many SMR systems require higher transmitter power than do cellular systems because they rely on widely spaced transmitters to provide coverage to their service areas. Reducing the maximum allowable power for such systems would merely increase the cost of providing the same level of service by requiring these licensees to construct more transmitters without any corresponding competitive benefit. Such a burden in fact could have an adverse effect on the development and growth of competition in the wireless marketplace.

154. We likewise decline to increase further the power limits currently applicable to cellular. We do not believe that these limits have placed cellular at a competitive disadvantage to SMR, as some commenters contend. In order to maximize the potential for frequency reuse, cellular systems rely on large numbers of closely spaced stations typically operating at power levels well below the upper limits prescribed by our current rules. Moreover, to the extent that SMR licensees are seeking to provide cellular-equivalent service, their systems rely on similar low power technology. Thus, raising cellular power limits is not necessary to enhance the technical efficiency or competitive potential of cellular service.

155. As we stated in the *Further Notice*, our Part 90 and Part 22 height and power rules applicable to 900 MHz paging are already highly similar. Commenters nevertheless highlight the fact that under then-current rules, all Part 22 paging licensees could operate at 3500 watts ERP under some circumstances while only nationwide licensees could do so under Part 90. We note, however, that the current height and power limits have only been recently adopted in both rule parts and could be subject to further change. Since comments in this proceeding were filed, we have amended our Part 22 rules in the *Part 22 Rewrite Order* to allow all 931 MHz paging licensees to operate stand-alone transmitters at 3500 watts.[273] The Part 90 rule allowing 929 MHz nationwide licensees to operate at 3500 watts was also adopted recently in the *900 MHz PCP Exclusivity Order*,[274] and we are now considering several petitions for reconsideration requesting that we apply the 3500 watt limit to some non-nationwide licensees as well. We therefore will defer further action on paging height and power limits until we are able to assess the results of our decisions in these other proceedings.

156. With respect to CMRS services below 800 MHz, we agree with NABER that height and power limits applicable to Part 90 services on shared channels should not be conformed to the somewhat higher maximum limits applicable to Part 22 services in the same

---

[273] *See* 47 CFR § 22.535(a).

[274] 8 FCC Rcd at 8324 (paras. 18-19).

frequency ranges. Allowing licensees on shared channels to operate at increased power could increase interference for stations operating on shared channels because of the many assignments already made on the assumption of lower power. We also decline to adopt any changes at this time to the maximum power limitations for licensees operating in the 220-222 MHz service. Most importantly, the record does not indicate any competitive disparity arising from our current rules.

157. Finally, for the reasons discussed above in relation to SMR and cellular base stations, we see no reason to conform our existing power limits for CMRS mobiles and portables. Although SMR mobiles may operate at up to 100 watts while cellular mobiles are limited to 7 watts, SMR mobile units must often use higher power in order to communicate with their base stations. In addition, cellular, SMR, and other CMRS licensees seeking to provide service based on lightweight portable units such as hand-held telephones will be limited to low-power technology regardless of our rules. We will therefore retain our existing mobile power limits for all CMRS services. In addition, however, we adopt our proposal from the *Further Notice* to apply the 1992 ANSI/IEEE RF emission guidelines to all CMRS and PMRS mobiles and portables. This is consistent with our recent decision to apply this standard to all mobiles in PCS,[275] and will ensure that all mobile radio services are subject to rigorous and consistent power limitations as to RF emissions.

**d. Emission Masks**

**(1) *Background and Pleadings***

158. To protect against adjacent channel interference, most mobile radio services operate under emission mask rules that restrict transmitter emissions on the spectrum adjacent to the licensee's assigned channel. We indicated in the *Further Notice* that because specific out-of-band emission limitations are dependent on such service-related factors as authorized bandwidth, channel spacing, and the likelihood that different licensees will operate on adjacent channels, substantial changes to these rules may not be practical or necessary.[276] For example, we noted that because adjacent SMR channels may be assigned to different licensees in a given area while adjacent cellular channels are assigned to the same licensee, it is logical that SMR transmitters should be subject to tighter emission standards than cellular transmitters. We also noted that some Part 22 and Part 90 services, such as 900 MHz paging, already operate under very similar out-of-band emission rules.[277] We therefore sought

---

[275] Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, Second Report and Order, 8 FCC Rcd 7700, 7778 (paras. 187-192) (1993) (*Broadband PCS Order*), *recon.*, Memorandum Opinion and Order, FCC 94-144, released June 13, 1994 (*Broadband PCS Reconsideration Order*), *further recon. pending.*

[276] *Further Notice*, 9 FCC Rcd at 2873 (para. 43).

[277] *Id.* (para. 44).

comment on whether any changes to our emission mask rules were necessary to eliminate inconsistent regulation of substantially similar services.

159. New Par states that the differences in licensing and channel allocations between SMR and cellular operations make it impractical either to tighten the emission standards for cellular or loosen them for SMRs. New Par further states that the stricter non-cellular emission mask appears necessary to protect adjacent channel operations, and that modification (tightening) of cellular rules, while potentially reducing interference within the cellular system, would be too expensive and burdensome to implement.[278] US Sugar offers similar arguments and indicates that it is impractical to compromise the standards for either service.[279] Comments were also received suggesting that when adjacent channels are authorized to a licensee for wider-bandwidth applications, that the emission mask provide for adjacent channel protection from the edge of the licensees authorized bandwidth.[280] Southern advocates maintaining existing emission masks for CMRS licensees because the specific emission limitations are dependent upon service-specific factors such as bandwidth and channel spacing.[281]

**(2) *Discussion***

160. Commenters on emission mask requirements uniformly agree that current emission masks applicable to the various CMRS services should be retained. These rules must necessarily be tailored to the specific bandwidth and channel spacing characteristics of the service in question. In some instances, such as 900 MHz paging, these characteristics allow uniform emission mask standards to be applied to both Part 22 and Part 90 licensees. In the case of SMR and cellular, however, differences in the usage of adjacent channels require the application of stricter emission mask standards to SMR systems than to cellular systems. We therefore decline to modify our out-of-band emission rules for any CMRS service.

161. We agree with commenters, however, that out-of-band emission rules, like co-channel interference rules, should apply only where emissions have the potential to affect the operations of other licensees. Thus, in cellular and PCS, where a licensee has exclusive use of a block of contiguous channels, we will apply out-of-band emission rules only to the extent necessary to protect operations outside of the licensee's authorized spectrum. We will also extend this approach to the channel blocks assigned to MTA-based SMR systems, except

---

[278] New Par Comments at 7.

[279] US Sugar Comments at 7.

[280] PCIA Comments at 14; PageNet Comments at 21.

[281] Southern Comments at 11.

to the extent that MTA licensees will also be required to provide adjacent channel protection to "interior" channels used by incumbent licensees.

### e. Modulation and Emission Requirements

#### (1) *Background and Pleadings*

162. In some instances, our current mobile service rules specify the particular types of emissions that may (or may not) be used by CMRS licensees. In Part 22, our rules authorize several commonly used emission types for every licensee, but require prior FCC approval of the use of other emission types. The *Further Notice* tentatively concluded that such restrictions are generally unnecessary for CMRS provided that licensees comply with applicable rules governing co-channel interference, adjacent channel interference, and similar problems. The *Further Notice* proposed to retain two types of emission restrictions, however: (1) the requirement that cellular licensees provide OST-53[282] compatible service to customers with appropriate equipment; and (2) emission restrictions applicable to CMRS licensees operating on shared channels.[283]

163. All commenters on this issue agreed that emission limitations should be eliminated in those services where licensees are assigned channels on an exclusive basis.[284] No specific comments were received on our proposal to retain existing requirements pertaining to OST-53 compatible analog cellular service or emission limitations for licensees on shared channels.

#### (2) *Discussion*

164. The record supports our tentative conclusion that emission limitations are unnecessary for CMRS services operating on exclusive channels because licensees in such services are subject to other applicable rules designed to guard against co-channel and adjacent channel interference. It is on this basis that we have refrained from adopting emission limitations in our new PCS rules, and we conclude that other CMRS licensees should be afforded similar technical flexibility by the elimination of rules that restrict the use of certain emission types. We will not, however, eliminate the requirement that cellular licensees provide OST-53 compatible service to customers with analog equipment. We note that this rule is actually an interoperability requirement and does not restrict the ability of cellular licensees to use other emission types, but simply ensures that customers will continue

---

[282] Office of Engineering and Technology Bulletin No. 53 (Cellular System Mobile Station - Land Station Compatibility Specification). *See Further Notice*, 9 FCC Rcd at 2875 (para. 56 n.93).

[283] *Further Notice*, 9 FCC Rcd at 2875 (para. 55).

[284] NABER Comments at 28; CTIA Comments at 3; McCaw Comments at 28; PageNet Comments at 23; Southern Comments at 11; Pittencrieff Comments at 10.

to have access to OST-53 compatible cellular service. We will also retain existing emission restrictions applicable to CMRS systems operating on shared channels, which are necessary to insure that licensees do not engage in incompatible uses of shared channels.

### f. Interoperability

#### (1) *Background and Pleadings*

165. In the *Further Notice*, we noted that cellular systems are subject to mandatory interoperability rules designed to ensure that all cellular equipment is compatible and that customers will have the ability to roam from one licensee's service area to another. We further noted, however, that these rules have been liberalized with respect to cellular and that we have not imposed similar requirements on other Part 22 services or on Part 90 services. In light of the statutory goal of establishing comparable regulatory requirements for competing CMRS services, the *Further Notice* sought comment on several options relating to interoperability: (1) establishing interoperability among all classes of CMRS equipment; (2) establishing such standards for equipment within particular classes or types of CMRS service; or (3) retaining cellular interoperability requirements but not extending such requirements to other CMRS services.[285]

166. Commenters generally oppose adopting any type of common interoperability standard for all CMRS. Some commenters contend CMRS providers will voluntarily adopt such standards if they consider them to be in the best interest of their particular service, as the paging industry has already done.[286] Other commenters assert that mandatory interoperability standards would cause mobiles and portables to be significantly costlier and bulkier because of the variety of operational modes that would be required.[287] With respect to specific services, SMR licensees generally agree that interoperability should not be required for SMR systems.[288] Geotek argues, for example, that there is no need to require interoperability at the handset level because it can be accomplished at the switching level within the public switched telephone network. Some commenters suggest, however, that the Commission should play an affirmative role in the development of CMRS interoperable technology. For example, PCC and Simrom propose that the Commission establish a 5-year deadline after which the Commission would not type accept non-interoperable 800 MHz

---

[285] *Further Notice*, 9 FCC Rcd at 2875-76 (para. 57).

[286] New Par Comments at 9; Ericsson Comments at 2-4; BellSouth Comments at 15; APC Comments at 4; PCIA Comments at 14; PageNet Comments at 24; Motorola Reply Comments at 2, 11-12.

[287] Pittencrieff Comments at 10; Southwestern Bell Comments at 12; NABER Comments at 28; RMD Comments at 9.

[288] RMD Comments at 9; Southern Comments at 10; US Sugar Comments at 13.

equipment. They claim that this approach will allow amortization of existing equipment while encouraging the industry to move expeditiously to a common air interface.[289]

(2) *Discussion*

167. Based on the record, we conclude that there is no need to adopt any new interoperability standards for CMRS at this time. Although we adopted mandatory interoperability requirements at the inception of cellular service, we believe that competition in the CMRS marketplace now provides sufficient incentives for CMRS licensees to develop interoperable technology, and we strongly encourage the industry to develop such standards on a voluntary basis. We are also concerned that mandating immediate interoperability in CMRS equipment could add significantly to equipment costs and could result in standards that do not take the pace of technological innovation into account. For these reasons, we have refrained from subjecting PCS to mandatory interoperability standards,[290] and we reach the same conclusion with respect to CMRS generally.

168. Although we have concluded that there is no immediate need for the establishment of interoperability standards, we will initiate an inquiry in the near future to examine this issue in greater detail. In this proceeding we will examine the question of whether the absence of mandatory standards has an adverse effect on competition and the ability of consumers to change service providers and to roam among the license areas of different service providers.

2. *Operational Rules*

a. **Construction Period and Coverage Requirements**

(1) *Background and Pleadings*

169. In the *Further Notice*, we sought comment on whether to amend our rules regulating time to construct and defining minimum scope of construction for CMRS licensees. In general, we noted that our rules distinguish between CMRS systems based on geographic scope and technical complexity. Thus, licensees of mobile systems that are not unusually complex, deployed throughout wide areas, or subject to multi-year planning cycles must construct within a relatively short time period: typically 12 months for Part 22 licensees and 8 months for Part 90 licensees (other than trunked SMR systems). Licensees constructing systems that are more complex and/or that will cover large geographic areas (*e.g.*, cellular, PCS) are typically afforded multi-year construction periods combined with interim coverage requirements or construction benchmarks to ensure that licensees deploy their systems throughout their service areas on a phased basis.

---

[289] PCC Comments at 7; Simrom Comments at 12.

[290] *Broadband PCS Reconsideration Order*, at paras. 162-165.

170. To ensure comparable treatment of substantially similar services, the *Further Notice* proposed to adopt a uniform "baseline" construction period for all CMRS licensees whose systems do not require an unusually long time to construct. Specifically, we proposed a uniform 12-month construction period for all non-cellular Part 22 systems as well as for conventional and trunked SMR, private paging, Business Radio, and local 220 MHz systems. In addition, although such a step was not required to achieve comparable regulation of CMRS, we sought comment on whether the 12-month construction period should also be extended to PMRS licensees under Part 90.[291] We further proposed to require that licensees not only complete construction but also commence service to the public by the end of this period, which we defined as providing service to at least two parties unaffiliated with the licensee.[292]

171. The *Further Notice* also sought comment on amending our construction rules with respect to wide-area CMRS systems licensed under Part 90 in order to make such rules comparable to the rules applicable to other wide-area CMRS licensees. With respect to wide-area SMR systems, we sought comment on whether we should continue to require licensees to apply for extended implementation or whether we should adopt longer construction periods that would apply automatically to such systems. We asked, for example, whether the 10-year construction period proposed in the *900 MHz Phase II Notice* continued to be a viable approach under the new regulatory regime. With respect to 800 MHz SMR, we noted that a 10-year construction period might be excessive because of the extensive construction of wide-area systems already under way and because 800 MHz licensees are not currently licensed in standard Commission-defined service areas. We therefore sought comment on whether some other form of fixed construction period would be feasible.[293]

172. The *Further Notice* also sought comment on whether to revise our rules relating to construction of wide-area paging systems. We observed that our current paging construction rules in both Part 22 and Part 90 provide for short construction periods because they are tied to the construction of individual stations rather than multi-station systems. Because many paging operators are constructing wide-area systems with multiple sites, however, we noted that a longer construction period for such systems might be more efficient and practical. Specifically, we sought comment on two alternatives: (1) adopting extended implementation procedures for all paging services similar to the rules recently adopted for 929-930 MHz wide-area systems, or (2) adopting Commission-defined service areas for all paging services (other than services on shared channels), with appropriate construction periods based on the size of the area to be served.[294]

---

[291] *Further Notice*, 9 FCC Rcd at 2876-77 (para. 62).

[292] *Id.* [illegible] para. 63).

[293] *Id.* [illegible]).

[294] *Id.* [illegible]).

173. Commenters generally support our proposal to adopt a uniform 12-month construction period for CMRS licensees with systems that do not require an unusually long time to construct.[295] NABER states that in some cases, the longer 12-month period for Part 90 licensees may alleviate the need for construction extension requests.[296] Simrom would have us apply the 12-month rule to all pending Part 90 system construction, so that such systems would all have an additional four months in which to construct.[297]

174. A number of commenters criticized our proposal that licensees should not only complete construction but also commence service to the public by the end of the construction period, particularly if we define commencement of service as providing service to at least two unaffiliated customers. Some paging licensees suggest that we should only require that the system be capable of operating.[298] Other parties argue that it should be sufficient for a licensee to demonstrate that its system is interconnected with the public switched network.[299] These commenters assert that a system may be legitimately ready for use without having any actual customers, and that requiring licensees to actually acquire customers effectively shortens the construction period.[300] They also argue that construction requirements are a sufficient deterrent to spectrum warehousing because they compel licensee investment that must be recovered through providing service, this making an independent service commencement requirement superfluous.[301]

---

[295] *See, e.g.*, Simrom Comments at 15-16; Pittencrieff Comments at 11; NYNEX Comments at 4; PCIA Comments at 15; E.F. Johnson Comments at 17; APACG Comments at 5; Motorola Reply Comments at 2, 12-13; Nextel Reply Comments at 36; *see also* AMTA Reply Comments at 26 (stating that if 220 MHz licensees are reclassified as CMRS, then those licensees should be afforded a 12-month construction period).

[296] NABER Comments at 29-30.

[297] Simrom Comments at 15.

[298] *See, e.g.*, Celpage Comments at 16-17; Metrocall Comments at 15-17; RAM Tech Comments at 15-17; Network Comments at 15-17.

[299] *See, e.g.*, PCIA Comments at 16 (recommending "that a license be deemed to have met this [service commencement] requirement if it has constructed the facilities and they are interconnected to the public switched telephone network (and thus available for service) *or* it is providing service to at least two unaffiliated parties")(emphasis in original); McCaw Comments at 28 (supporting a commencement of service definition that focuses on "the system's interconnection to the public switched telephone network and its capability to provide service"); McCaw Reply Comments at 11. *See also* PageNet Comments at 26; PageNet Reply Comments at 14; APACG Reply Comments at 5.

[300] *See, e.g.*, Celpage Comments at 16-17; *see also* PCIA Comments at 16; PageNet Comments at 26.

[301] *See, e.g.*, Celpage Comments at 16-17; Metrocall Comments at 15-17; RAM Tech Comments at 15-17; Network Comments at 15-17.

175. Most parties also agree that licensees should have longer than the standard 12-month construction period to construct large or complex CMRS systems.[302] PCIA suggests that the Commission could permit extended construction periods in return for commitments by licensees to develop networks capable of providing service to extended geographic areas.[303] Numerous commenters supported extended construction periods for wide-area SMR systems.[304] Pittencrieff suggests that the Commission allow wide-area SMR licensees five years to construct,[305] while other parties propose a 10-year period.[306] Still others would require SMR applicants to justify the specific period of time required for construction.[307] Nextel suggests that the Commission adopt coverage benchmarks.[308]

176. For wide-area paging, PageNet suggests construction deadlines be tied to the size of the paging system.[309] Other parties suggest construction deadlines based upon size of the market served by the paging system.[310] NABER and APACG propose requiring a licensee who seeks such extension to post a performance bond,[311] while RMR proposes using system forfeiture to enforce compliance.[312] Many parties also propose that 220 MHz licensees be

---

[302] *See, e.g.*, E.F. Johnson Comments at 17; APACG Comments at 5; AMTA Comments at 7; NABER Comments at 29-30; SEA Reply Comments at 4.

[303] PCIA Comments at 15.

[304] *See, e.g.*, Southern Comments at 13; Pittencrieff Comments at 11; RAM Tech Comments at 9; Geotek Comments at 19-20; CellCall Reply Comments at 11.

[305] Pittencrieff Comments at 11.

[306] RAM Tech Comments at 9; Geotek Comments at 19-20.

[307] E.F. Johnson Comments at 17 (proposing that such justification include providing implementation reports that demonstrate compliance with the construction schedule); *see also* NABER Comments at 31.

[308] Nextel Comments at 44 (proposing that the Commission adopt coverage benchmarks for wide-area SMR similar to those imposed upon PCS licensees).

[309] PageNet Comments at 26. PageNet suggests applying our extended implementation rules recently adopted in the *900 MHz PCP Exclusivity Order* to all wide-area systems, which it defines as systems with a minimum of 30 transmitters.

[310] *See, e.g.*, PCIA Comments at 10-11, 15; Celpage Comments at 18-19; Metrocall Comments at 17-18; RAM Tech Comments at 17-18; Network Comments at 17-18.

[311] *See* NABER Comments at 31; APACG Comments at 5.

[312] RMR Reply Comments at 11.

entitled to extended construction periods to construct regional networks.[313] AMTA proposes a three-year construction period for regional 220 MHz systems.[314] Some parties suggest that the extended construction period should provide for interim construction deadlines.[315] USM cautions that the need for extended construction periods must be balanced with the need to make 220 MHz service available quickly.[316]

**(2) *Discussion***

177. Except in the case of wide-area CMRS systems discussed below, we will establish a uniform 12-month period for constructing a standard base station in all Part 90 CMRS services.[317] This rule eliminates an obvious disparity between Part 90 and Part 22 and furthers the goal of comparable regulation for all substantially similar services. In addition, for reasons of administrative simplicity, we extend the 12-month construction requirement to PMRS licensees on SMR, 220 MHz, private paging, and Business Radio frequencies. We reject the suggestion of some parties, however, that we should also relax our existing rules with respect to obtaining extensions of the standard construction period.[318] Thus, extensions will only be granted if the licensee can demonstrate unique circumstances beyond its control that justify an extension.[319]

---

[313] *See, e.g.*, USM Comments at 8-9; AMTA Comments at 25-26; Simrom Comments at 13-15; RF Tech Reply Comments at 2.

[314] AMTA Comments at 26; *see also* RF Tech Reply Comments at 2.

[315] *See, e.g.*, USM Comments at 8-9; AMTA Comments at 25-27.

[316] USM Comments at 8 (arguing, therefore, that SunCom's proposal for an eight-year construction period would not meet this objective of rapid delivery of service). It should be noted, however, that SunCom has presented a modified proposal, which calls for a five-year construction schedule. SunCom Comments at 2.

[317] We retain the 18-month construction period for offshore telephone stations. *See* 47 CFR § 22.1035. To the extent not previously applicable, the 12-month construction period will apply to all applications pending or filed as of the effective date of these rules. *See, e.g.*, Amendment of Section 73.3525 of the Commission's Rules Regarding Settlement Agreements Among Applicants for Construction Permits, Report and Order, 6 FCC Rcd 85 (1990) (applying the settlement limitation to pending applications), *modified on other grounds on reconsideration,* 6 FCC Rcd 2901 (1991). Unless specifically stated otherwise, however, licenses granted prior to the effective date of the rules will continue to be subject to construction requirements in effect at the time of licensing.

[318] NYNEX Comments at 4; PCIA Comments at 15.

[319] *See, e.g.*, 47 CFR § 22.142(c). This rule provides that a Part 22 licensees will be granted construction period extensions only if the licensee shows that the failure to complete construction is due to causes beyond his or her control. No extensions will be granted for delays caused by lack of

(continued...)

178. We also will require Part 90 CMRS licensees to commence service to subscribers by the end of the construction period, with "service to subscribers" defined to mean provision of service to at least one party unaffiliated with, controlled by, or related to the providing carrier.[320] This requirement serves the interests of regulatory symmetry by imposing a uniform definition of service commencement on all CMRS services. We have recently adopted this same standard for all Part 22 services in the *Part 22 Rewrite Order.*[321] In addition, this definition of service to subscribers is similar to our current requirement that a cellular base station must provide service to the public within a specified time period,[322] and to our Part 90 requirement that stations be "placed in operation" by the conclusion of the construction period, which is defined to mean having at least one mobile (or, in the case of trunked SMR, two mobiles) in operation.[323] We disagree with commenters who contend that this requirement places an unnecessary burden on licensees or will shorten their actual time to construct. The requirement of securing one customer is hardly burdensome, and there is no evidence in the record to indicate that licensees cannot begin marketing their services prior to completing construction. We also disagree with commenters who assert that the requirement is superfluous or unenforceable. While costs incurred for auctions, construction, and interconnection will likely provide incentive to most licensees to commence service as quickly as possible, it remains possible that a licensee could choose to construct minimal

---

[319](...continued)
financing, lack of site availability, for the assignment or transfer of control of an authorization, or for failure to order equipment in a timely manner. If the licensee orders equipment within 90 days of the license grant, a presumption of diligence is created). *See also* Application of American Paging, Inc. (of Florida), File No. 24560-CD-MP/ML-85, Order on Reconsideration, 1 FCC Rcd 474 (Com.Car.Bur. 1986) (unavailability of antenna site due to stalled lease negotiations could not be characterized as circumstance beyond the licensee's control); *In re application of Puerto Rico Telephone Co.*, 7 FCC Rcd 5193 (Com.Car.Bur. 1992) (licensee's failure to order equipment in a timely fashion not sufficient grounds to permit an extension); 47 CFR § 90.151 (licensees will be granted waivers of Part 90 rules, including those rules regarding construction requirements, upon, *inter alia*, "a showing that unique circumstances are involved and that there is no reasonable alternative solution within existing rules"). Although the Part 22 and Part 90 rules on waivers are worded differently, we have interpreted them in a uniform manner. For purposes of clarification, we will adopt the more specific language of the Part 22 rule for all CMRS services.

[320] PMRS licensees in these services will continue to be subject to the existing Part 90 requirements for placing stations in operation, *i.e.*, they must place one (or, in the case of trunked SMR systems, two) mobiles in operation, but the mobiles need not be unaffiliated with the licensee. The existing Part 90 definition of "placed in operation" will also apply until August 10, 1996, to reclassified Part 90 CMRS licensees who are grandfathered under the provisions of the Budget Act.

[321] *Part 22 Rewrite Order,* at para. 33. 47 CFR § 22.99.

[322] 47 CFR § 22.43(c) (current rule).

[323] *See* 47 CFR §§ 90.155(a), 90.155(c).

facilities in order to warehouse spectrum rather than provide actual service. Thus, the service commencement requirement serves as an added safeguard against such behavior. In addition, we have not experienced undue enforcement problems with this type of requirement in the past and do not anticipate them here.

179. With respect to CMRS systems licensed on a wide-area basis, the record generally supports use of longer construction periods combined with interim coverage requirements to ensure that licensees begin providing service to portions of their service area before the construction period expires. This approach has been used for cellular service and recently adopted for both broadband and narrowband PCS. We now conclude that 800 and 900 MHz SMR systems licensed on an MTA basis should be subject to similar requirements, although these requirements will also be tailored to reflect certain circumstances that are unique to the SMR service.

180. At 800 MHz, we will seek further comment on construction requirements for MTA licensees in our Further Notice of Proposed Rule Making in PR Docket 93-144. Based on the record developed thus far, our preliminary view is that licensees who receive MTA-based authorizations should be subject to interim coverage requirements that are similar to those in the cellular and PCS rules. These rules, however, must account for the fact that MTA licensees may be required to provide co-channel protection to incumbent systems within their service area. We therefore will defer the issue of coverage requirements for consideration in our Further Notice in the Docket 93-144.

181. To the extent that we conclude in our follow-on proceeding in docket 93-144 that some 800 MHz SMR channels should continue to be licensed on a conventional station-by-station basis,[324] we intend to apply the standard 12-month construction period discussed above. In addition, we seek comment in that proceeding on whether we should cease accepting requests pursuant to Section 90.629 for extended construction authority on such channels. The purpose of our proposed MTA licensing plan described above is to replace this prior form of wide-area licensing and to reserve certain SMR channels for continued licensing on a site-by-site basis to accommodate local dispatch systems. We are concerned that continuing to grant extended implementation on these channels would undercut this goal and preempt other possible uses of the spectrum. This decision will not affect existing 800 MHz licensees who have previously received extended implementation authority, however. We will allow all such licensees to continue construction under their currently authorized construction timetables.

182. At 900 MHz, we are adopting construction requirements for MTA licensees similar to those established for other wide-area CMRS licensees such as cellular and broadband PCS and proposed for 800 MHz licensees. In the *900 MHz Phase II Notice*, we proposed that nationwide licensees would have ten years to construct, but that regional

---

[324] *See* para. 105, *supra.*

licensees be required to construct facilities in 40 percent of their service areas within two years of licensing and in all portions of their service area within five years. Because we are using MTAs as opposed to nationwide licensing for 900 MHz systems, we believe that the five year construction requirement is appropriate. We will revise the coverage elements of our original proposal, however, to establish coverage requirements based on population within the licensee's service area. Details of these requirements will be addressed in our final Report and Order in the 900 MHz Phase II proceeding. All non-MTA licensees will continue to be subject to their existing construction requirements.

183. With respect to paging services, the record supports the concept of allowing extended construction periods for CMRS wide-area paging systems, as we have done for 929-930 MHz private paging systems in the *PCP Exclusivity Order*. We are not prepared to implement such rules at this time, however. As discussed above and in our *Part 22 Rewrite Order*, we believe this issue requires further exploration in conjunction with the issue of implementing market-based licensing for CMRS paging generally. We will therefore defer changes to our existing rules for the time being.

184. We also defer the question of extended implementation for 220 MHz systems until we can undertake a fuller consideration of market-based licensing in that service. We recognize, however, that many existing non-nationwide 220 MHz licensees have immediate concerns regarding the pending December 2, 1994, construction deadline, due to the limited availability of 220 MHz equipment to meet pending orders. As some commenters have pointed out, 220 MHz technology is highly specialized and available from only a few manufacturers, making it difficult for licensees who have placed timely orders to receive equipment by that date.[325] Notwithstanding our deferral of the issue of extended implementation generally, therefore, we believe a short-term extension of our pending construction deadline for 220 MHz licensees is appropriate. We are therefore extending the December 2, 1994 deadline for construction to April 4, 1995, which should provide sufficient time for licensees who have placed timely equipment orders to construct their stations. This four-month extension gives these licensees approximately 12 months from the date of our original construction order to complete construction and commence operations, thus corresponding to the 12-month construction period we are adopting for all newly licensed CMRS providers under this Order.

**b. Loading Requirements**

**(1) *Background and Pleadings***

---

[325] *See* Letter from A. Shark, President, AMTA, to R. Haller, Chief, Private Radio Bureau, FCC, dated Aug. 4, 1994. The letter was submitted on behalf of the three manufacturers of 220 MHz equipment indicating that they are facing a significant backlog in meeting equipment orders.

185. As we observed in the *Further Notice*, loading requirements are one of the mechanisms we employ under our rules to ensure that mobile service licensees make efficient use of spectrum and offer service to customers within their service area.[326] Specifically, SMR licensees must meet mobile loading requirements in order to (1) obtain exclusive use of existing channels,[327] (2) obtain additional channels,[328] (3) serve areas within 40 miles of existing channels,[329] and (4) avoid automatic cancellation of authorizations for unloaded channels at renewal.[330] We generally have not imposed loading requirements on other Part 90 services, however.[331] In Part 22 we required traffic loading studies for applications requesting more than one channel for a new station, or one or more additional channels for an existing station in the paired spectrum designated for on-way or two-way mobile operations. This requirement has been eliminated in our *Part 22 Rewrite Order*.[332]

186. In the *Further Notice*, we sought comment on the degree to which we should continue to use loading standards as a means of ensuring efficient spectrum use by CMRS licensees. Noting that mobile loading requirements are not imposed on Part 22 licensees and that we had already proposed to eliminate traffic loading studies, we proposed to eliminate such requirements for those Part 90 services that we determine to be "substantially similar" to Part 22 services. Our proposal was premised on: (a) the Congressional goal of regulatory symmetry for substantially similar CMRS services; (b) the expectation that in services where licenses are awarded by auction, licensees will have greater incentives to use their authorizations efficiently; and (c) our conclusion, based on our experience, that spectrum warehousing concerns can be adequately addressed by other means, such as strict construction and coverage requirements. In this regard, we sought comment on alternative measures that could be used to protect against spectrum warehousing if we eliminated loading requirements as proposed.[333]

---

[326] *Further Notice*, 9 FCC Rcd at 2877 (para. 67).

[327] 47 CFR §§ 90.631(a) (trunked systems), 90.633(a), 90.633(b) (conventional systems).

[328] *Id.*, §§ 90.631(c) (trunked), 90.633(e) (conventional).

[329] *Id.*, §§ 90.623(c) (conventional), 90.627(b) (trunked).

[330] *Id.*, § 90.631(b) (applies only to trunked SMR systems initially licensed on or prior to June 1, 1993).

[331] *But see* 47 CFR § 90.313(a)(3) (requirement that Business Radio licensees in 470-512 MHz band load their systems to obtain exclusivity).

[332] *Part 22 Rewrite Order*, at para. 48.

[333] *Further Notice*, 9 FCC Rcd at 2878 (paras. 70-71).

187. The *Further Notice* also sought specific comment on whether to eliminate the various elements of our loading rules applicable to SMR licensees. We tentatively concluded that all loading requirements should be eliminated in the case of wide-area SMR systems, and that the absence of loading requirements for any Part 22 services suggested they should be eliminated for traditional SMR systems as well. We noted that elimination of the "40-mile rule" would make it easier for SMR licensees to cover their service areas with low power stations located in close proximity to one another. We also proposed to eliminate the use of loading as the basis for automatic cancellation of authorizations, noting that this aspect of our loading requirements has already been partially phased out and may no longer serve a useful purpose.[334] Finally, we sought comment on whether it would be either necessary or practical to retain loading requirements for SMR licensees that remain classified as PMRS if we eliminate them for all SMR licensees reclassified as CMRS.[335]

188. Commenters broadly support our proposal to eliminate the loading requirements applicable to those Part 90 services that are reclassified as CMRS.[336] Motorola asserts that this is an important step towards our goal of regulatory symmetry because Part 22 licensees are not subject to such requirements.[337] Some commenters also argue that loading requirements in fact have created competitive disadvantages for some Part 90 licensees.[338] Aside from regulatory symmetry concerns, many commenters argue that loading requirements no longer serve a valid purpose.[339] PageNet and PCIA, for example, contend

---

[334] *Id.* at 2879 (para. 73). In this regard, we incorporated a petition for rule making filed by AMTA on repeal of the automatic cancellation provision into this docket. Petition for Rule Making, RM-8387, filed Oct. 29, 1993.

[335] *Id.* at 2878-79 (paras. 71-73).

[336] APACG Comments at 11; AMTA Comments at 11; AMTA Reply Comments at 15; Brown Comments at 13; CellCall Reply Comments at 9; Celpage Comments at 19; Geotek Comments at 21; Geotek Reply Comments at 13; Metrocall Comments at 18; Motorola Reply Comments at 14; NABER Comments at 32; Network Comments at 18; Nextel Reply Comments at 45; NYNEX Comments at 4; PageNet Comments at 27; PCIA Comments at 17; PCIA Reply Comments at 13; Pittencrieff Comments at 11; RMD Comments at 10; RAM Tech Comments at 18; RMR Reply Comments at 13; WJG Comments at 7.

[337] Motorola Reply Comments at 14. *See also* Pittencrieff Comments at 11 (noting absence of channel aggregation restrictions for cellular and PCS licensees).

[338] NABER Comments at 32-33 (suggesting that rules penalize even those operators who genuinely attempted to load their systems despite the availability of significant spectrum in the same area); RMR Reply Comments at 13 (contending that rules hinder implementation and delivery of advanced services).

[339] AMTA Comments at 12; Brown Comments at 13; CellCall Reply Comments at 9; Motorola Reply Comments at 14; NABER Comments at 32-33; RMR Reply Comments at 13.

that loading requirements are unnecessary because spectrum warehousing no longer presents a significant threat in today's CMRS marketplace.[340] According to this view, existing competition in the marketplace creates sufficient incentives for licensees not to allow spectrum to lie fallow.[341]

189. Other commenters take the view that although spectrum warehousing continues to be a threat, it can be better addressed by means other than loading requirements.[342] In this connection, numerous commenters urge the Commission to adopt alternative measures to ensure efficient spectrum use.[343] The majority of these commenters advocate the adoption of construction benchmarks and coverage requirements[344] combined with our strict enforcement of such requirements.[345] New Par contends that such construction deadlines should be comparable to those with which cellular licensees must comply.[346] Brown recommends that 800 and 900 MHz SMRs seeking to acquire additional channels be subject to the same "objective need" standards applicable to Part 22 licensees.[347] APACG and WJG recommend reliance on the finder's preference program as a vehicle to identify spectrum that is not being utilized efficiently.[348]

---

[340] PageNet Comments at 27; PCIA Comments at 17.

[341] PageNet Comments at 27; PCIA Comments at 17; RMD Comments at 10. For example, AMTA opines that the threat of spectrum warehousing is further limited in the 800 MHZ SMR band because few unassigned channels remain; moreover, the remaining channels are in the most unpopulated areas. AMTA Comments at 13. *But see id.* at 13 n.8.

[342] APACG Comments at 11; CellCall Reply Comments at 10; RMD Comments at 10; WJG Comments at 7.

[343] AMTA Comments at 12-13; AMTA Reply Comments at 15; Cell Call Reply Comments at 10; Dial Page Reply Comments at 6; Geotek Comments at 21; NYNEX Comments at 4; Pittencrieff Comments at 11-12; Southern Comments at 7; Southern Reply Comments at 5-6.

[344] AMTA Comments at 12-13; AMTA Reply Comments at 15; CellCall Reply Comments at 10; Dial Page Reply Comments at 6; Geotek Comments at 21; NYNEX Comments at 4; Pittencrieff Comments at 11-12.

[345] Southern Comments at 7; Southern Reply Comments at 5-6.

[346] New Par Comments at 11-12.

[347] Brown Comments at 13-14.

[348] APACG Comments at 11; WJG Comments at 7. Moreover, WJG advocates the expansion of our finder's preference rules applicable to Part 90 services to public coast stations. We believe that WJG's proposal is beyond the scope of this proceeding; thus, at this time, we express no opinion as to the propriety of such action.

**(2) *Discussion***

190. We conclude that the record supports eliminating loading requirements for the future licensing of all Part 90 CMRS providers. Based on our view of existing and potential competition in the CMRS marketplace, we believe that continuing to impose mobile loading requirements on some CMRS providers but not others contravenes the Congressional goal of regulatory symmetry and could unfairly impair the ability of certain licensees to compete. We also conclude that the preferable means of achieving comparable regulation for all CMRS in this context is to eliminate loading requirements rather than expanding their use. We conclude that alternative measures discussed elsewhere in this Order will be sufficient to protect against spectrum warehousing in CMRS services. Specifically, we agree with those commenters who advocate a strong regulatory emphasis on construction timetables and coverage requirements in lieu of loading requirements.

191. Our conclusion that mobile loading requirements should be eliminated for CMRS is consistent with our course of action in other recent proceedings. In our recently adopted *Part 22 Rewrite Order*, for example, we eliminated all traffic loading study requirements based on our conclusion that traffic loading studies are not a reliable indicator of efficient channel usage and that these studies are burdensome both for licensees to prepare and for Commission staff to evaluate.[349] In narrowband and broadband PCS, we found minimum construction requirements sufficient to ensure spectrum efficiency in the absence of loading requirements.[350] Moreover, in considering whether to adopt loading requirements for services such as Part 90 paging, and 220 MHz service, we have concluded that loading is not a reliable indicator of efficient channel usage and that spectrum warehousing concerns can be adequately addressed by other means.[351] We believe these conclusions are applicable to CMRS services generally.[352]

---

[349] *Part 22 Rewrite Order*, at para. 48.

[350] Amendment of the Commission's Rules To Establish New Narrowband Personal Communications Services, GEN Docket No. 90-314, First Report and Order, 8 FCC Rcd 7162, 7168 (paras. 36-37) (1993) (*Narrowband PCS Order*), *recon.*, Memorandum Opinion and Order, 9 FCC Rcd 1309 (1994) (*Narrowband PCS Reconsideration Order*), *further recon.* Second Memorandum Opinion and Order, FCC 94-218, released Aug. 25, 1994; *Broadband PCS Order*, 8 FCC Rcd at 7754 (para. 134).

[351] *900 MHz PCP Exclusivity Order*, 8 FCC Rcd at 8327 (para. 26); *220 MHz Order*, 6 FCC Rcd at 2367 (para. 81). Similarly, in our *800 MHz EMSP* and *900 MHz Phase II* proceedings, we have proposed to rely on construction and coverage requirements instead of loading standards for wide-area SMRs. *800 MHz EMSP Notice*, 8 FCC Rcd at 3954, 3959 (paras. 19, 37); *900 MHz Phase II Notice*, 8 FCC Rcd at 1477 (para. 32 n.74).

[352] It should be noted, however, that this proceeding does not address or propose to eliminate loading requirements currently applicable to Part 90 services that are exclusively classified as PMRS.

(continued...)

192. The Part 90 service most affected by our elimination of loading requirements will be the SMR service. First, we agree with the vast majority of commenters that mobile loading requirements with respect to the 40-mile rule should be eliminated.[353] As PCC notes, the 40-mile rule served a significant regulatory purpose during the initial development of the SMR industry by preventing strategic manipulation of the Commission's licensing procedures to warehouse spectrum.[354] In the future, however, SMR licensing will largely be based on auctions of channel blocks in Commission-defined service areas. In addition, even to the extent that we continue to license some 800 MHz SMR systems on a station-by-station basis, we conclude that the 40-mile rule no longer serves its intended purpose, and could in fact hamper the industry's continued growth and competitive position with other CMRS licensees.

193. Second, we conclude that loading should no longer be a prerequisite for conventionally licensed SMR licensees to obtain additional channels.[355] As discussed above with regard to the 40-mile rule, we believe that this requirement also has outlived its regulatory purpose; rather, it could ultimately impose a competitive disadvantage upon those SMR licensees reclassified as CMRS. In this connection, we believe the preferable course of action is to adopt a standard comparable to that adopted in our *Part 22 Rewrite Order*.[356] Consequently, where SMRs continue to be licensed on a channel-by-channel basis, licensees will be required to complete construction and commence service to subscribers in an area before additional channels can be sought. Because this prerequisite is consistent with our additional channel policy adopted in the *Part 22 Rewrite Order*, we conclude that this action furthers our regulatory symmetry objective.

---

[352](...continued)
Thus, licensees on Business, Industrial, and Land Transportation channels above 800 MHz will continue to be subject to loading standards. Our conclusions here also do not preclude adoption of the proposal in the *Refarming Notice* proceeding to use loading standards on certain below-512 MHz channels to identify PMRS licensees whose consent is required to designate a channel as exclusive. *See* Replacement of Part 90 by Part 88 To Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, PR Docket No. 92-235, Notice of Proposed Rule Making, Appendix A, 7 FCC Rcd 8105, 8117 (1992)(*Refarming Notice*).

[353] *See, e.g.*, AMTA Reply Comments at 15; CellCall Reply Comments at 9-10; Dial Page Reply Comments at 6; PCC Comments at 9; RMD Comments at 10; RMR Reply Comments at 13; SMR Operators Reply Comments at 35.

[354] PCC Comments at 9-10.

[355] Loading requirements for channel aggregation purposes are also inapposite in the case of SMR channels licensed on an MTA basis because our competitive bidding procedures will govern the ability of applicants to aggregate channel blocks.

[356] *See Part 22 Rewrite Order*, at para. 49.

194. We conclude that elimination of the automatic cancellation element of our SMR loading rules is warranted at 800 MHz, but that it should be retained at 900 MHz to the limited extent it applies to incumbent non-MTA licensees. We agree with commenters that the 800 MHz SMR service has matured to the point where the continued enforcement of this rule no longer serves a public interest purpose.[357] At 900 MHz, however, the SMR market is significantly less mature, both because initial licensing occurred more recently than at 800 MHz and because 900 MHz systems operate in limited service areas. In addition, unlike our PCS and cellular rules, our original 900 MHz SMR rules did not require licensees to achieve significant coverage of their designated service areas in order to retain their authorizations. We therefore conclude that eliminating the cancellation requirement for these licensees could result in inefficient spectrum use in this band. Our decision to retain the cancellation requirement is limited in two respects, however. First, we have previously granted 900 MHz licensees who failed to load their systems after five years limited relief from the automatic cancellation requirement by granting such licensees a two-year renewal to make additional efforts to load their systems.[358] We will continue to apply this rule so that all incumbent 900 MHz licensees will have seven years from their initial authorization to meet the loading requirement. Second, an incumbent licensee who obtains an MTA-based 900 MHz license will be exempted from any previously applicable loading requirements for channels covered by the MTA authorization.

195. Finally, there is the issue of whether loading requirements should be eliminated for PMRS as well as CMRS SMR licensees. Although some commenters believe that only wide-area licensees should be relieved of loading obligations,[359] most commenters did not draw a distinction between SMR providers based on regulatory classification, and some commenters expressly support removing loading requirements for all SMR providers.[360] We conclude that the question of loading turns on the manner in which our licensing rules operate to prevent warehousing, not on the regulatory classification of individual licensees. It would also be impractical to eliminate loading requirements for CMRS providers on SMR channels while retaining them for PMRS providers on the same channels. Therefore, to the

---

[357] This decision applies to all 800 MHz SMR licensees, including any licensee who has previously requested or been granted a stay of the automatic cancellation requirement pending the disposition of this rule making. *See Further Notice,* 9 FCC Rcd at 2879 (para. 73 n. 133). Based on our disposition of this issue, we are also dismissing AMTA's Petition for Rule Making regarding the automatic cancellation rule as moot.

[358] Amendment of Section 90.631 of the Commission's Rules and Regulations Concerning Loading Requirements for 900 MHz Trunked SMR Stations, PR Docket No. 92-17, Report and Order, 7 FCC Rcd 4914 (1992).

[359] 8 FCC Rcd at 8324 (paras. 18-19).

[360] *See, e.g.*, RMR Reply Comments at 13 (arguing for elimination of rules for all SMR systems); PCC Comments at 9 (advocating elimination of 40-mile rule for all SMR systems).

extent that SMR providers are licensed on an MTA basis, we see no reason to impose loading requirements based on regulatory classification. Similarly, we conclude that all conventionally licensed SMR licensees -- whether PMRS or CMRS -- should have the flexibility to construct systems based on a network of transmitters spaced less than 40 miles apart, and that warehousing can be adequately prevented by strict enforcement of the 12-month construction requirement and the prohibition of a licensee's acquisition of additional channels in an area until existing channels are constructed and in operation.

**c. User Eligibility**

**(1) *Background and Pleadings***

196. The historical distinction between common carriage and private radio has resulted in entirely different approaches to user eligibility under Part 90 and Part 22. Because private radio services are dedicated to use by a defined group of eligible users, Part 90 sets forth specific limitations on who is eligible to use each service. In the case of those Part 90 services that are subject to reclassification as CMRS, these restrictions are relatively minor, as only foreign governments and their representatives are not eligible to obtain service from SMR, private paging, or 220 MHz licensees.[361] Business Radio licensees also may not serve foreign governments or their representatives and are also restricted from serving government entities or individuals who do not have a business use for the service.[362] Nonetheless, these restrictions contrast with Part 22, which contains no user eligibility restrictions of any kind because such restrictions would conflict with common carriers' statutory obligation, under Sections 201 and 202 of the Communications Act, to provide service upon reasonable request.

197. Because amended Section 332(c)(1)(A) subjects all CMRS providers to the common carrier requirements of Sections 201 and 202, Part 90 licensees who are reclassified as CMRS must offer service to the public that is not unjustly or unreasonably discriminatory. The *Further Notice* thus proposed to eliminate all user eligibility limitations applicable to

---

[361] Section 90.115 of the Commission's Rules restricts foreign governments or their representatives from obtaining a station authorization in any Part 90 radio service. Because our SMR, 220 MHz, and private paging rules limit licensees to providing service to Part 90 eligibles, Federal Government representatives, and private individuals, foreign governments and their representatives are also ineligible to obtain service from these providers. *See* 47 CFR §§ 90.494(a), 90.603(c), 90.645(b), 90.703(c), 90.733(a)(2).

[362] 47 CFR §§ 90.61, 90.75(a), 90.75(c)(10), 90.115. Section 90.75 generally limits Business Radio eligibility to persons engaged in commercial (or analogous non-profit) activities, except that Business Radio licensees on paging channels may provide paging service to private individuals or Federal Government representatives. *See* Amendment of the Commission's Rules To Permit Private Carrier Paging Licensees to Provide Service to Individuals, PR Docket No. 93-38, Report and Order, 8 FCC Rcd 4822 (1993).

CMRS providers licensed under Part 90 so that such licensees may serve the public without restriction.[363]

198. Most commenting parties agree that user eligibility restrictions should be eliminated for Part 90 CMRS providers.[364] Some of these parties argue that eliminating the restrictions will help achieve regulatory parity among various CMRS providers and will enable CMRS providers to offer service to the public on a non-discriminatory basis.[365] RMD urges the Commission to go further, and eliminate user eligibility restrictions for all SMR systems.[366] RMD also urges that we expressly eliminate user eligibility restrictions for representatives of foreign governments.[367]

199. Other parties disagree with the elimination of user eligibility restrictions.[368] AMTA argues generally that we should retain Part 90 user eligibility rules.[369] US Sugar argues that our proposed user eligibility rules, by requiring small CMRS providers to offer service to the public on a non-discriminatory basis, are impractical because the limited number of channels and the limited scope of available service will make it impossible to serve all who make reasonable requests for carriage.[370]

**(2) *Discussion***

200. We agree with the majority of commenters that user eligibility restrictions should be eliminated for CMRS providers licensed under Part 90. Eliminating these restrictions will help achieve regulatory parity among various CMRS providers and enable CMRS providers to offer service to the public on a non-discriminatory basis. Accordingly, we modify our existing user eligibility restrictions to the extent that they prevent SMR, private carrier paging, Business Radio, and commercial 220 MHz licensees from providing service to

---

[363] *Further Notice*, 9 FCC Rcd at 2879 (para. 75).

[364] *See, e.g.*, PageNet Comments at 27; Celpage Comments at 19; PCIA Comments at 18; Motorola Reply Comments at 2, 14-15.

[365] *See* Pittencrieff Comments at 12; PCIA Comments at 18.

[366] RMD Comments at 10.

[367] *Id.* (claiming that the underlying basis for that restriction "lost its meaning once other previously forbidden user categories," such as individuals and the Federal Government, "were eliminated").

[368] *See* AMTA Comments at 8; US Sugar Comments at 13.

[369] AMTA Comments at 8.

[370] US Sugar Comments at 13.

foreign governments and their representatives. In addition, we will remove the current Business Radio restriction on service to the Federal Government and individuals. We disagree with the claim of U.S. Sugar that the elimination of eligibility rules is impractical because the limited number of channels and the limited scope of available service will make it impossible for small CMRS providers to serve all who make reasonable requests for carriage. As we explained in the *CMRS Second Report and Order,* a service with low system capacity may nonetheless be available to the public.[371]

**d. Permissible Uses**

**(1) *Background and Pleadings***

201. The *Further Notice* addressed a variety of rules in Part 90 and Part 22 that limit the permissible uses of particular types of mobile radio systems licensed under each rule part. First, we noted that Part 22 and Part 90 contain similar rules requiring mobile radio facilities to be used primarily for communication between base stations and mobile units, although other incidental or emergency uses are allowed.[372] We also noted that Part 22 prohibited the concurrent licensing of base stations for any non-common carrier purpose,[373] while private land mobile stations are prohibited from providing broadcasting or common carrier service.[374] Part 90 licensees are also subject to rules requiring transmissions to be of minimum practicable duration and that communications relating to safety of life or property be given priority.[375] Finally, licensees on shared frequencies may only transmit communications that are directly related to the activity that renders them eligible for a station license.[376]

202. In the *Further Notice*, we tentatively concluded that while some restrictions on permissible uses of Part 90 and Part 22 systems (*e.g.*, restrictions on fixed base-to-base communications) did not require amendment or modification, other rules needed to be changed to conform to the new regulatory structure and ensure comparable regulatory

---

[371] *CMRS Second Report and Order,* 9 FCC Rcd at 1441-42 & n.144 (para. 69).

[372] 47 CFR §§ 22.509 (general Part 22 current rule); 22.911 (cellular current rule); 90.405 (general Part 90 rule), 90.645 (SMR), 90.733 (220 MHz). Part 22 and Part 90 stations may generally transmit communications related to emergencies, civil defense, or imminent safety concerns. *See* 47 CFR §§ 22.210 (current rule), 22.308 (current rule), 90.405, 90.407, 90.411, 90.417(a).

[373] 47 CFR § 22.119 (current rule). We have eliminated this rule in a separate proceeding. *Part 22 Rewrite Order,* at paras. 67-71.

[374] 47 CFR § 90.415.

[375] 47 CFR §§ 90.403(c), 90.403(d).

[376] 47 CFR § 90.405(a).

treatment of similar services. Specifically, we proposed to eliminate the Part 90 prohibition on common carrier service as it applies to SMR, 220 MHz, Business Radio, and Part 90 paging licensees, so that such licensees would be able to provide CMRS services. We also sought comment on whether other rules related to permissible communications are any longer relevant under the revised regulatory regime for mobile services. For example, we suggested eliminating Part 90 CMRS limits on purpose of communications and on the duration of messages, except that we proposed to retain the limit on message duration in the case of systems on shared spectrum because the rule helps to assure that all co-channel licensees have the maximum possible access to air time.[377]

203. Many parties support lifting Part 90 permissible use restrictions for CMRS providers licensed under this rule part.[378] Pittencrieff favors lifting these restrictions particularly for reclassified SMRs.[379] AMTA recommends eliminating permissible use restrictions for wide-area SMRs, although it proposes to retain existing rules for other Part 90 services.[380] Some parties favor retaining restrictions for shared, as opposed to exclusively used, channels to maximize available airtime.[381] API argues for retention of permissible use rules for PMRS, which are often shared assignments. API believes these rules are necessary to alleviate spectrum congestion in PMRS.[382]

204. Some parties cite additional use restrictions that they contend the Commission should revisit or clarify. AMTA asks that we delete Section 90.977(b) of our rules, which makes interconnection with the public switched network secondary to dispatch use for shared systems in the 806-824, 851-869, 896-901, and 935-940 MHz bands, as this restriction is no longer required by statute.[383] RMR objects to this change as harmful to existing licensees, and suggests instead that the requirement regarding shared payments for telephone service in Section 90.977(b)(2) not apply to CMRS. Finally, WJG asks that we permit public coast stations to provide land mobile radio service on a secondary basis.[384]

---

[377] *Further Notice*, 9 FCC Rcd at 2880 (paras. 78-79).

[378] *See, e.g.*, PageNet Comments at 27-28; US West Comments at 8-9; New Par Comments at 12.

[379] Pittencrieff Comments at 12.

[380] AMTA Comments at 8.

[381] NABER Comments at 33-34. *See also* PCIA Comments at 18-19; Celpage Comments at 19; Metrocall Comments at 19; Network Comments at 19; RAM Tech Comments at 18-19.

[382] API Comments at 8.

[383] AMTA Comments at 7.

[384] WJG Comments at 7-8.