

To suggest that this Commission advocates such a counter-intuitive and inverted hierarchy of licensees strains credulity. The NPRM must therefore be construed as proposing a prospective ban on extended implementation schedules while notifying interim incumbents that existing extensions will be cancelled under the permanent rules. Because incumbent authorization holders have had multiple opportunities since the NPRM's release to urge rejection of this proposal, Section 316(a)(1)'s due process requirements have been satisfied.

Conditional Nature of Interim Authorizations-- At the risk of stating the obvious, an "interim" authorization is just that. Though the title of the authorization more than adequately conveys its inherent limitations, the Commission has been clear on this point even prior to release of its NPRM. In 1992, when granting Teletrac waivers of Section 90.239(a) to locate animate and inanimate objects and serve individuals, the Commission stated:

Moreover, since Section 90.239 of our Rules is termed "interim provisions for operation of automatic vehicle monitoring systems," we further condition these waivers on the outcome of any future proceedings that would adopt permanent rules to govern AVM operations in this band.<sup>27/</sup>

Following release of the NPRM, the Commission inserted on the face of interim wideband authorizations the following condition:

This authorization is subject to the outcome of PR Docket 93-61 which will amend rules for automatic vehicle

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<sup>27/</sup> See Letter of Ralph A. Haller to John B. Richards, Esquire, dated June 15, 1992 (Exhibit 1).

monitoring systems. Rules may require license modification. (Emphasis added.)<sup>28/</sup>

In granting post-NPRM extended implementation schedules, the Commission utilized almost identical language giving to the licensee that the subject waiver was expressly conditional:

Bell also asked for waiver of Section 90.155. . . . The proposed implementation schedule to permit 20 months to construct and operate base facilities has been reviewed and is hereby approved.

Moreover, since Section 90.239 of our Rules is termed "interim provisions for operation of automatic vehicle monitoring systems," we further condition these waivers on the outcome of the current proceedings in PR Docket 93-61 which will adopt permanent rules to govern AVM operations in this band.<sup>29/</sup>

Having accepted interim wideband grants subject to their interim nature, AVM licensees cannot now claim that the Commission is barred from modifying their licenses to comport with this proceeding's outcome.<sup>30/</sup> Holders of interim wideband authorizations, or any other Commission authorization, are precluded from accepting the benefits of a Commission grant while simultaneously denying the conditions upon which the grant was

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<sup>28/</sup> Attached hereto as Exhibit 2 is SBMS's Radio Station License for WPDM 682, which contains the cited condition.

<sup>29/</sup> See Letter of Terry Fishel to Robert L. Hoggarth, dated October 5, 1993, which grants several interim AVM rule waivers and a waiver of Section 90.155 of the Rules to permit an extended implementation schedule, and contains the cited condition (Exhibit 3).

<sup>30/</sup> As discussed above, the NPRM specifically informed "all AVM licensees" to be aware that final rules in this proceeding may require "any licensee . . . to modify its operations." 8 FCC Rcd at 2507, n. 56 (emphasis added).

made.<sup>31/</sup> Accepting a license constitutes accession to all conditions thereon.<sup>32/</sup> Accordingly, MobileVision and Teletrac may not on the one hand accept the privileges of their interim licenses and on the other hand eschew the underlying terms.<sup>33/</sup>

Finally, it bears noting that the Report and Order which promulgated the existing AVM rules made plain that such rules were indeed "interim" or temporary, provisional and conditional-- as were any authorizations issued pursuant thereto.<sup>34/</sup> As Teletrac

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<sup>31/</sup> Capital Telephone Company, Inc. v. F.C.C., 498 F.2d 734, 740 (D.C. Cir. 1974); P & R Temmer v. F.C.C., 743 F.2d 918, 928 (1984).

<sup>32/</sup> P & R Temmer v. F.C.C., 743 F.2d at 928. In apparent defiance of these settled legal principles and the unequivocal NPRM language cited earlier ("all AVM licensees should be aware that final rules adopted may require any licensee . . . to modify its operations"), MobileVision's October 13 Letter (at 3) claims that licensees "already have license rights as well as time remaining to build out under their currently held licenses." By conveniently ignoring the express conditions attaching to those licenses, MobileVision seeks to marginalize and trivialize the instant rulemaking.

<sup>33/</sup> In its October 13 Letter, MobileVision takes the novel view that adopting SBMS's proposal to cut off all extended implementation schedules upon imposition of permanent AVM/LMS rules "would send the message that reliance on [Commission] licensing of spectrum is without meaning." Not so. Rather, as SBMS has demonstrated in detail, terminating extended implementation when permanent rules become effective is legally justified, and is inherent under the terms of Section 90.239 of the Rules. Moreover, such termination is warranted by express conditions in AVM licenses, waivers and the NPRM, while supported by equitable and policy considerations as well. By contrast, MobileVision's attempt to transform its interim extended implementation schedule into a permanent, infeasible right, if adopted by the Commission, would bestow on certain incumbents a multi-million dollar entitlement without any corresponding public benefit.

<sup>34/</sup> Report and Order in Docket No. 18302 (Car Locator Systems), 30 Rad. Reg. 2d (P&F) 1665, 1672 (1974) ("The Commission believes that with the impetus of these interim provisions, the next decade should see vehicle location methods as an essential adjunct to the  
(continued...)

stated in the Petition that prompted this docket, interim rules "simply because they are interim" foster uncertainty.<sup>35/</sup> Thus, interim licensees have been aware since 1974 that their authorizations were subject to modification, revocation and termination upon adoption of permanent rules in this proceeding.

B. Interim Authorization Holders Have No Equitable Claim To Extended Implementation

In sharp contrast to the SBMS position, both Teletrac and MobileVision contend that holders of authorizations for unfinished wideband AVM systems should be accorded a completely new three year implementation schedule commencing with the effective date of the order terminating this proceeding.<sup>36/</sup> Teletrac offers the following rationale for this proposal:

[L]icenses held today that are not yet constructed should not be arbitrarily withdrawn from the licensees. . . . Teletrac and others hold legal licenses from the Commission, licenses they have refrained from constructing given the uncertainty created by this

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<sup>34/</sup> (...continued)

successful operation of many land-mobile radiocommunication systems. . . . [W]e will seek significantly varietal results in terms of vehicle location accuracy, numbers of vehicles that can be accommodated . . . . We expect them to be able to more clearly define spectrum requirements and operational standards for AVM as appropriate for future Commission action.) (Emphasis added); see also 47 C.F.R. §90.239(e)(4) ("Pending development of further specific technical standards for AVM systems, the Commission, on a case-by-case basis, may impose additional appropriate technical requirements to assure efficient and effective frequency utilization.")

<sup>35/</sup> Teletrac Petition for Rulemaking (RM-8013), filed May 28, 1992, at 18.

<sup>36/</sup> Ex Parte Comments Of Airtouch Teletrac, filed August 12, 1994, at 6; Ex Parte Statement of MobileVision, L.P., filed August 12, 1994, at 5-6.

proceeding. Equity requires a uniform three year period for build out to allow licensees to construct the systems they are authorized to provide. (Emphasis added.)<sup>37/</sup>

Teletrac's explanation collapses under scrutiny. First, any cancellation of existing implementation schedules will hardly be arbitrary. To the contrary, the Commission may revoke these schedules pursuant to the notice and opportunity for comment provided by the NPRM and, even though unnecessary, by the express reservation of Commission power included on interim AVM licenses issued since the NPRM's release.

Second, the claim that this proceeding has created uncertainty contradicts statements by Teletrac in its Petition for Rulemaking (RM-8013), which instigated the NPRM. In that Petition, Teletrac alleges that the status quo under the interim rules is fostering uncertainty and that permanent rules "can provide the regulatory certainty to promote AVM's growth."<sup>38/</sup> Juxtaposing these two pleadings suggests that Teletrac believes it deserves special regulatory relief (in the form of a fresh implementation schedule) from a process which it initiated.

Even if the instant rulemaking has engendered uncertainty, it seems to have had no deterrence on Teletrac's proclivity for acquiring interim authorizations. A review of publicly available data reveals that in the twelve months from the date it filed its Petition for Rulemaking and for several months thereafter, a period

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<sup>37/</sup> Ex Parte Comments Of Airtouch Teletrac at 6.

<sup>38/</sup> Teletrac Petition For Rulemaking (RM-8013), filed May 28, 1992, at 18.

which includes release of the NPRM, Teletrac filed approximately 116 applications for new interim wideband AVM authorizations. Thus, the uncertainty which restrained Teletrac from constructing and its licensed systems had no similar inhibition on Teletrac's appetite for additional authorizations.

This incongruity, which is never resolved by Teletrac, has two possible explanations. Either Teletrac filed over one hundred applications for systems it had no present intention of constructing, or its claim of "uncertainty" is simply an ex post rationalization for the substantial additional time needed to save its existing authorizations. Stated differently, either Teletrac's filing binge was undertaken for purposes of frequency warehousing, and/or Teletrac was less than candid in blaming its failure to construct on the basis of "uncertainty."

In summary, the request by two incumbents for brand new three year extended implementation schedules has simply no support in equity. Moreover, granting such schedules will render the proposed wideband auctions insignificant and neutralize any public interest benefit associated therewith.

C. Extended Implementation Schedules Are Inconsistent With The Commission's Policy Objectives For Wideband AVM/LMS

Grandfathering existing implementation schedule extensions, or granting new three year extensions, as proposed by Teletrac and MobileVision, will subvert stated Commission policy goals for wideband AVM/LMS by:

- establishing wideband AVM/LMS as a monopoly or duopoly service in most major markets;

- undermining the numerous public interest benefits attending implementation of an auction selection process; and
- countenancing the evisceration of Section 90.155, a longstanding Commission rule of general applicability.

As the NPRM (at 2508) states with clarity, the Commission's two paramount policy objectives in this docket are: (1) maintaining an open and competitive marketplace; and (2) fostering continued development of AVM/LMS service. Grandfathering existing extended implementation schedules and/or granting new ones will frustrate both goals.

Establishing AVM/LMS As Monopoly Service-- As already mentioned, Teletrac and MobileVision already hold hundreds of interim AVM authorizations pursuant to extended implementation schedules. These authorizations cover the largest and most important markets in the nation. Grandfathering these authorizations and implementation periods will give Teletrac and MobileVision exclusive rights to AVM/LMS spectrum for a multi-year period, thereby transforming wideband AVM/LMS into a monopoly (or duopoly) service nationwide.<sup>39/</sup> Stating the obvious, this is the complete antithesis of the NPRM's open market ideal.<sup>40/</sup>

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<sup>39/</sup> Use of the term "grandfathering" in connection with MobileVision's and Teletrac's interim licenses is a misnomer. These operators do not seek preservation of their current status which is subject to frequency sharing. Rather, they seek the exclusive right, by building first in a market, to transform their interim licenses for shared spectrum into permanent exclusive authorizations.

<sup>40/</sup> Moreover, AVM/LMS spectrum can remain absolutely fallow during the grandfathered implementation period, at the end of which the  
(continued...)

Nullifying Benefits of Auctions-- Guaranteeing monopoly (or duopoly) status to Teletrac and/or MobileVision will obviate the need to select permanent wideband authorization holders by auction in hundreds of the largest markets. Thus, there will be no disincentive for spectrum warehousing, on the one hand; and no incentive to deploy that spectrum in its most productive use, thereby maximizing return on the capital expended to acquire the spectrum. For these reasons, grandfathering implementation schedules is incompatible with rapid delivery of wideband AVM/LMS services to the public.

Grandfathering extended construction schedules will also deprive the government of AVM/LMS auction proceeds, which may be substantial. The Commission will be deprived of current data signifying how the market values spectrum assigned through auction. Succinctly stated, grandfathering will replace the array of public interest benefits attainable through auctions with the inefficiencies and inequities associated with artificially-monopolized markets.

Evisceration of Section 90.155-- Finally, by grandfathering existing implementation schedules or granting new ones on the scale suggested by Teletrac and MobileVision-- i.e., for hundreds of their own interim authorizations, plus the substantially less

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<sup>40/</sup> (...continued)

licensee either files for a renewal of its lapsed implementation schedule or returns the authorization to the Commission. In either case, a new implementation schedule is assigned and valuable AVM/LMS bandwidth will remain dormant beyond the grandfathered period.

numerous interim authorizations held by other parties, including SBMS-- the Commission will be waiving the strict standard imposed by Section 90.155 without having established or applied "an appropriate general standard."<sup>41/</sup> Thus, a reviewing court may characterize this action as the product of "unbridled discretion or whim," whose ultimate result is evisceration of Section 90.155 by waivers.<sup>42/</sup> It is settled law that an agency must never tolerate evisceration of a rule by waivers.<sup>43/</sup>

IV- CONCLUSION

The above premises considered, the Commission should adopt permanent rules for assigning wideband AVM/LMS spectrum that incorporate all the views set forth herein.

Respectfully submitted,

SOUTHWESTERN BELL MOBILE SYSTEMS, INC.

By: Wayne Watts (ll)  
Wayne Watts  
V.P. & General Attorney

Southwestern Bell Mobile  
Systems, Inc.  
17330 Preston Road  
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Dallas, Texas 75252

By: Louis Gurman  
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Its Attorneys

Dated: November 8, 1994

<sup>41/</sup> WAIT Radio v. F.C.C., 418 F.2d 1153, 1159 (D.C. Cir 1969).

<sup>42/</sup> Id.

<sup>43/</sup> Id.

FCC MAIL FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554  
5 JUN 1992

JUN 9 7 44 AM '92

IN REPLY REFER TO:

7310-12

DISPATCHED BY

Mr. John B. Richards, Esq.  
Keller and Heckman  
1001 G Street, N.W.  
Suite 500 West  
Washington, D.C. 20001

Dear Mr. Richards:

This is in response to the November 4, 1991, Request for Rule Waiver (Request) submitted on behalf of your client, PacTel Teletrac (PacTel), as supplemented April 28, 1992. PacTel seeks a waiver of the permissible use restriction contained in Section 90.239(a) of the Commission's Rules, 47 C.F.R. § 90.239(a), so that it may use its licensed automatic vehicle monitoring (AVM) systems to track and locate animate and inanimate objects rather than being limited to tracking and locating vehicles. In addition, PacTel requests that 90.239(a) be waived to permit PacTel to offer AVM service to individuals. For the following reasons, PacTel is hereby granted both aspects of its waiver request.

PacTel is the licensee of 129 stations in the 904-912 MHz band on frequencies designated for AVM use. PacTel's AVM systems are licensed under Section 90.239(a) of the Commission's Rules. Although PacTel presently provides only automatic vehicle location services, it maintains that there is a demand for other location services, not involving vehicles, that would serve the public interest.<sup>1</sup> PacTel represents that these additional location services could be implemented without causing interference to primary users of the 902-928 MHz AVM band.

Read literally, 47 C.F.R. § 90.239(a) authorizes only the licensing of "automatic vehicle monitoring (AVM) systems that utilize nonvoice radio techniques to determine the location of vehicles." (Emphasis added). As such, this rule does not permit the expanded location services PacTel seeks to provide. Based on the representations made in PacTel's waiver request, however, we conclude that a waiver of this rule is warranted in the instant matter.

<sup>1</sup> Examples of these additional location services include tracking individuals in need of assistance such as joggers or small children, and property (boats, heavy construction equipment) location services.

Waiver of Part 90 rules is appropriate where "unique circumstances are involved and . . . there is no reasonable alternative solution within existing rules." 47 C.F.R. § 90.151. See also WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969). In combination, the following facts presented in PacTel's waiver request constitute unique circumstances warranting a waiver of Section 90.239(a) to permit PacTel to provide expanded location services: (1) PacTel's proposed operations are of a highly innovative technological nature, (2) waiver of Section 90.239(a) to permit PacTel to provide expanded location services will not undermine the underlying purpose of the restrictive language contained in the rule because, due to its unique wideband pulse ranging design, PacTel's system will not cause interference or a degradation in service to primary or other secondary users in the 902-928 MHz band, and (3) the public interest will be well served by provision of the type of service PacTel seeks to offer. Accordingly, PacTel is hereby granted a waiver of 47 C.F.R. § 90.239(a) to permit it to track and locate animate and inanimate objects, such as individuals and cargo, in addition to vehicles.

- As indicated, PacTel also seeks a waiver of Section 90.239(a) so that it may provide its tracking service directly to individuals. Generally, Part 90 licensees may only share the use of their licensed facilities with persons or entities that fall within various specific eligibility categories such as businesses, emergency organizations, land transportation entities and state and local government agencies. Individuals ordinarily are not eligible to share the facilities of a Part 90 licensee. See Report and Order, PR Docket No. 86-404, 3 FCC Rcd 1838, 1840 (1988). See also Report and Order, PR Docket No. 89-45, 6 FCC Rcd 542 (1991). In certain circumstances, however, we have amended our rules to permit expanded eligibility. See, e.g., Report and Order, PR Docket No. 89-45, 6 FCC Rcd at 543. The factors that we have relied on in prior instances in which we have expanded eligibility include (1) the licensee's ability to serve additional users without diminishing service quality, (2) the likelihood of a resultant increase in communications options, and (3) the likelihood of a resultant enhancement in spectrum efficiency. See Report and Order, PR Docket No. 86-404, 3 FCC Rcd at 1842. We find the presence of similar factors with respect to PacTel's location and tracking operations. Specifically, PacTel's location response system uses a wide band pulse technology that spreads transmitted energy across several megahertz of bandwidth, thereby reducing the amount of energy-per-hertz and interference to other services authorized in the band and enhancing the efficient use of spectrum. Manifestly, PacTel's system increases communications options by providing the public with a new, innovative service. Accordingly, PacTel is hereby granted a waiver of Section 90.239(a) of our Rules so that it may provide its service directly to individuals.

In summary, for the reasons listed above, PacTel's request for waivers of the permissible use and eligibility restrictions contained in 47 C.F.R. § 90.239(a) are hereby granted. These waivers are applicable to all of the licensed stations indicated in the attached Appendix and will be extended to all new license grants awarded to PacTel for the purpose of implementing PacTel's tracking and location service. Because the subject frequencies are available to Part 90 licensees on a secondary basis to Federal Government use, we condition these waiver grants on PacTel obtaining approval from the Interdepartment Radio Advisory Committee. Moreover, since Section 90.239 of our Rules is termed "interim provisions for operation of automatic vehicle monitoring systems," we further condition these waivers on the outcome of any future proceedings that would adopt permanent rules to govern AVM operations in this band.

Sincerely,

(s) Ralph A. Haller  
Chief, Private Radio Bureau

Enclosure

cc:  
Chief, Rules Branch  
Chief, PRB (2)  
Chief, LM&MD  
Licensing Division, Gettysburg, PA  
Chron  
File

KKINCAID:kk/kr-wp  
klncaid/teletracs

Federal Communications Commission  
Gaittysburg, PA 17325-7245

# RADIO STATION LICENSE

Licensee Name: SOUTHWESTERN BELL MOBILE SYSTEMS INC

Radio Service: RS RADIOLOCATION

License Issue Date: 931103

Call Sign: WPDM682

File Number: 9212346790

License Expiration Date: 981103

Frequency Advisory No:

Number of Mobiles by Category: Vehicular - \*\*\*\*\* Portable -\*\*\*\*\*Aircraft -\*\*\*\*\*Marine -\*\*\*\*\*Pager\*\*\*\*\*

931103N 35 1 2Z

SOUTHWESTERN BELL MOBILE SYSTEMS INC  
JONATHAN P RISO  
17330 PRESTON RD STE 100A  
DALLAS TX 75252

### Station Technical Specifications

FCC I.D.	Frequencies (MHz)	Station Class	No. of Units	Emission Designator	Output Power (Watts)	E.R.P. (Watts)	Ground Eleva	Ant. Hgt. To Top	Antenna Latitude	Antenna Longitude
1:	904.05000	LR	1	20K0F1D	125.000	300.000	816	265	42-03-57	088-14-36
	904.07500	LR	1	20K0F1D	125.000	300.000				
2:	904.05000	LR	1	20K0F1D	125.000	300.000	690	265	41-39-12	087-57-38
	904.07500	LR	1	20K0F1D	125.000	300.000				
3:	904.05000	LR	1	20K0F1D	125.000	300.000	735	414	41-48-26	088-16-07
	904.07500	LR	1	20K0F1D	125.000	300.000				
4:	904.05000	LR	1	20K0F1D	125.000	300.000	824	154	42-23-55	088-13-20
	904.07500	LR	1	20K0F1D	125.000	300.000				
5:	904.05000	LR	1	20K0F1D	125.000	300.000	702	340	42-08-18	087-58-58
	904.07500	LR	1	20K0F1D	125.000	300.000				
6:	904.05000	LR	1	20K0F1D	125.000	300.000	629	187	41-29-51	087-30-43
	904.07500	LR	1	20K0F1D	125.000	300.000				

TRANSMITTER	STREET ADDRESS	CITY	COUNTY	STATE
1:	1250 CONGDON AVE	ELGIN	COOK	IL
2:	13039 S DERBY RD	LEMONT	COOK	IL
3:	1950 E BILTER RD	AURORA	KANE	IL
4:	1300 JASPER DR	FOX LAKE	MCHENRY	IL
5:	BOEGER RD	ARLINGTON HEIGHTS	COOK	IL
6:	641 JOLIET ST	DYER	LAKE	IN

### PAINTING AND LIGHTING SPECIFICATIONS

SITE 1:	SEE ATTACHED FORM 715/715A PARAGRAPHS:	1 3 11 21 22
SITE 3:	SEE ATTACHED FORM 715/715A PARAGRAPHS:	1 3 4 13 21
SITE 5:	SEE ATTACHED FORM 715/715A PARAGRAPHS:	1 3 11 21 22
SITE 6:	SEE ATTACHED FORM 715/715A PARAGRAPHS:	1 3 11 21 22

CONTROL POINTS: 840 E STATE PKY SCHAUMBERG IL  
CONTROL POINT PHONE: 708-762-2000

SPECIAL COND: SEE ATTACHED #39, SP: THIS AUTHORIZATION IS SUBJECT TO THE OUTCOME OF PR DOCKET 93-61 WHICH WILL AMEND RULES FOR AUTOMATIC VEHICLE MONITORING SYSTEMS. FINAL RULES MAY REQUIRE LICENSE MODIFICATION.



FEDERAL COMMUNICATIONS COMMISSION

This authorization becomes invalid and must be returned to the Commission if the stations are not placed in operation within eight months, unless an extension of time has been granted. EXCEPTION: 900 MHz trunked and certain 900 MHz station licenses cancel automatically if not constructed within one year.

# Federal Communications Commission

1270 Fairfield Road  
Gettysburg, PA 17325-7245

OCT 05 1993

In Reply Refer To:  
7110-15

Robert L. Hoggarth  
Gurman, Kurtis, Blask & Freedman  
1400 Sixteenth Street, N.W., Suite 500  
Washington, DC 20036

Dear Mr. Hoggarth:

This is in response to the December 23, 1992, Request for Rule Waiver (Request) submitted on behalf of your client, Southwestern Bell Mobile Systems, Inc. (Bell). Bell seeks a waiver of the permissible use restriction contained in Section 90.239(a) of the Commission's Rules, so that it may use its proposed automatic vehicle monitoring (AVM) systems to track and locate animate and inanimate objects rather than being limited to tracking and locating vehicles. Bell also requests that 90.239(a) be waived to permit Bell to offer AVM service to individuals. In addition, Bell requests that 90.155 be waived to permit Bell additional time beyond the eight month period to construct and operate its systems.

Read literally, Section 90.239(a) authorizes only the licensing of "automatic vehicle monitoring (AVM) systems that utilize nonvoice radio techniques to determine the location of vehicles." As such, this rule does not permit the expanded location services Bell seeks to provide. Based on the representations made in Bell's waiver request, however, we conclude that a waiver of this rule is warranted.

Waiver of Part 90 rules is appropriate where "unique circumstances are involved and ... there is no reasonable alternative solution within existing rules." See Section 90.151. In combination, the following facts presented in Bell's waiver request constitute unique circumstances warranting a waiver of Section 90.239(a) to permit Bell to provide expanded location services: (1) Bell's proposed operations are of a highly innovative technological nature, (2) waiver of Section 90.239(a) to permit Bell to provide expanded location services will not undermine the underlying purpose of the restrictive language contained in the rule because, due to its unique design, Bell's Quiktrak System will not cause interference or degradation in service to primary or other secondary users in the 902-928 MHz band, and (3) the public interest will be well served by provision of the type of service Bell seeks to offer. Accordingly, Bell is hereby granted a waiver of Rule Section 90.239(a) to permit it to track and locate animate and inanimate objects, such as individuals and cargo, in addition to vehicles.

As indicated, Bell also seeks a waiver of Section 90.239(a) so that it may provide its tracking service directly to individuals. Generally, Part 90 licensees may only share the use of their licensed facilities with persons or entities that fall within various specific eligibility categories such as businesses, emergency organizations, land transportation entities and state and local government agencies. Individuals ordinarily are not eligible to share the facilities of a Part 90 licensee. In certain circumstances, however, we have amended our rules to permit expanded eligibility. The factors that we have relied on in prior instances in which we have expanded eligibility include (1) the licensee's ability to serve additional users without diminishing service quality, (2) the likelihood of a resultant increase in communications options, and (3) the likelihood of a resultant enhancement in spectrum efficiency. We find the presence of similar factors with respect to Bell's location and tracking operations. Specifically, Bell's location response system uses a wide band pulse technology that spreads transmitted energy across 2 megahertz of bandwidth, thereby reducing the amount of energy-per-hertz and interference to other services authorized in the band and enhancing the efficient use of spectrum. Bell's system increases communications options by providing the public with a new, innovative service. Accordingly, Bell is hereby granted a waiver of Section 90.239(a) of our Rules so that it may provide its service directly to individuals.

Bell also asked for waiver of Section 90.155. Automatic vehicle monitoring (AVM) systems are licensed under Section 90.239 of the Commission's Rules. Section 90.239(d)(4) requires the applicant to provide a plan to show the implementation schedule during the initial license term. Since AVM systems involve new technology and in many cases off-the-shelf equipment is not available, additional time is often required to construct them. The proposed implementation schedule to permit 20 months to construct and operate base facilities has been reviewed and is hereby approved. Additionally, the Commission will permit till the end of the initial license term to install 1500 mobile units. Grant of this request is in the public interest and consistent with previous similar requests. Further, the staff will assume all AVM stations to be licensed by Bell will follow the same schedule. If any station will not follow this schedule, it should provide the details for that station as part of the application filing for licensing.

The staff received various "letters of objection" which have been associated with the application filings for consideration. After reviewing the arguments presented, there appears to be insufficient evidence to warrant denying the requests. The proposed operation is consistent with previous requests which have been granted. Therefore, the staff is continuing processing of the applications toward grant.

In summary, for the reasons listed above, Bell's request for waivers of permissible use and eligibility restrictions contained in Section 90.239(a) are hereby granted. Bell's request for waiver to permit an extended implementation over the eight month period established in Section 90.155 is also hereby granted. These waivers are applicable to the proposed system to be licensed and will be extended to all new license grants awarded to Bell for the purpose of implementing Bell's tracking and location service. Because the subject frequencies are available to Part 90 licensees on a secondary basis to Federal Government use, we condition these waiver grants on Bell obtaining approval from the Interdepartment Radio Advisory Committee. Moreover, since Section 90.239 of our Rules is termed "interim provisions for operation of automatic vehicle monitoring systems," we further condition these waivers on the outcome of the current proceedings in PR Docket 93-61 which will adopt permanent rules to govern AVM operations in this band.

Sincerely,



for Terry L. Fishel  
Chief, Land Mobile Branch

cc: Jonathan Riso, Southwestern Bell Mobile Systems, Inc.  
John B. Richards, Esq., Keller and Heckman  
Marnie K. Sarver, Reed, Smith, Shaw & McClay

CERTIFICATE OF SERVICE

I, Jamie C. Whitney, a secretary with the law firm of Gurman, Kurtis, Blask & Freedman, Chartered, hereby certify that copies of the foregoing "Ex Parte Comments Of Southwestern Bell Mobile Systems, Inc." were hand delivered, this 9th day of November, 1994, to the following individuals:

Chairman Reed E. Hundt  
Federal Communications Commission  
1919 M Street, N.W.  
Room 814  
Washington, D.C. 20554

Commissioner Andrew C. Barrett  
Federal Communications Commission  
1919 M Street, N.W.  
Room 826  
Washington, D.C. 20554

Commissioner Rachelle B. Chong  
Federal Communications Commission  
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Room 844  
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Commissioner Susan Ness  
Federal Communications Commission  
1919 M Street, N.W.  
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Washington, D.C. 20554

Commissioner James H. Quello  
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Ruth Milkman  
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Jill M. Lockett  
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James R. Coltharp  
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