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

In the Matter of	)	
	)	
THIRD REPORT AND ORDER	)	
	)	
Implementation of Section 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
Regulatory Treatment of Mobile Services	)	
	)	
Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band	)	PR Docket No. 93-144
	)	
Amendment of Parts 2 and 90 of the Commissions's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Band Allotted to the Specialized Mobile Radio Pool	)	PR Docket No. 89-553
	)	

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To: The Commission

PETITION FOR RECONSIDERATION
AND
REQUEST FOR CLARIFICATION

Respectfully submitted,

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Filed: December 21, 1994

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SUMMARY

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association") respectfully requests limited reconsideration and clarification of the FCC's August 9, 1994, Third Report and Order in GN Docket No. 93-252. In that decision, the Commission completed the initial implementation of Sections 3(n) and 332 of the Communications Act of 1934 as amended by Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993. With the modifications and clarifications recommended herein, the Association can support fully the FCC's establishment of the basic regulatory framework for the Commercial Mobile Radio Service ("CMRS") and its establishment of comparable regulatory schemes for those services which are deemed to be "substantially similar".

AMTA supports the Congressionally-mandated concept of regulatory symmetry. However, as it has advised the Commission in other proceedings, AMTA is not persuaded that all of the FCC's decisions regarding the regulatory changes needed to implement that statute were, in fact, mandated by the legislation. For example, the Association has consistently urged the FCC to adopt a narrower definition of CMRS, one which would limit that classification to those systems which actually will be providing functionally equivalent services to the public and which will be competing in the marketplace.

The Association also urges the FCC to assess carefully whether the legislation supports the use of competitive bidding to select among mutually exclusive applicants in the 800 MHz band, at least those requesting "traditional" SMR systems. While it is clear

that Congress intended to allow the FCC to employ auction procedures in assigning licenses in new services, such as PCS, there is no such clear legislative directive for mature, heavily populated services such as 800 MHz SMR. The majority of such applications are from existing licensees seeking to expand their authorized frequencies at a particular site or to expand the geographic area in which they provide service. In the Association's opinion, these "modifications" of existing systems were not the applications for which competitive bidding procedures were intended. Thus, in addition to the reconsideration and clarification requested herein, AMTA urges the FCC to consider its statutory authority carefully before adopting auction procedures for existing services such as SMR.

The Association respectfully requests that the FCC reconsider its decisions regarding 900 MHz loading, the conversion of secondary 900 MHz sites to primary status, its definition of "initial" applications, and its station identification requirement. AMTA also requests that the Commission clarify those inconsistencies in the 3rd R&O as outlined in this Petition.

1. The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), pursuant to Section 1.429(a) of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations,[1] respectfully requests limited reconsideration and clarification of the FCC's August 9, 1994, Third Report and Order in GN Docket No. 93-252.[2] In that decision, the Commission completed the initial implementation of Sections 3(n) and 332 of the Communications Act of 1934[3] as amended by Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993.[4] With the modifications and clarifications recommended herein, the Association can support fully the FCC's establishment of the basic regulatory framework for the Commercial Mobile Radio Service ("CMRS") and its establishment of comparable regulatory schemes for those services which are deemed to be "substantially similar".

2. AMTA supports the Congressionally-mandated concept of regulatory symmetry. The Association is confident that the public will benefit from enhanced competition if functionally equivalent services are provided on a level regulatory playing field. It anticipates working closely with the FCC in formulating rules which will enable substantially similar CMRS services to compete actively and effectively in the burgeoning

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[1] 47 C.F.R. § 1.429(a).

[2] Third Report and Order, GN Docket No. 93-252, FCC 94-212, 9 FCC Rcd __ (Adopted August 9, 1994)("CMRS 3rd R&O", "3rd R&O" or "Order"), Erratum, 9 FCC Rcd ____ (1994).

[3] Communications Act of 1934, 47 U.S.C. §§ 151-713 ("Communications Act" or "Act").

[4] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI § 600(b), 107 Stat. 312, 392 (1993)("Budget Act").

wireless marketplace. In that respect, the FCC has properly categorized this proceeding as "transitional." The decisions reached herein establish the framework of rules that will govern these services into the next century. As such, it is a seminal and vitally important proceeding.

I. INTRODUCTION

3. AMTA is a nationwide, non-profit trade association dedicated to the interests of what heretofore had been classified as the private carrier industry. The Association's members include trunked and conventional 800 MHz and 900 MHz Specialized Mobile Radio ("SMR") operators, licensees of wide-area SMR systems, and commercial licensees in the 220 MHz band. These members provide commercial wireless services throughout the country, and represent the substantial majority of those private carriers whose systems have been reclassified as CMRS.

4. The Association participated actively in the legislative debate which resulted in the Budget Act, as well as in the earlier stages of this proceeding. From the outset, AMTA supported adoption of a statutory and regulatory structure which would permit a more symmetrical approach to regulating systems providing functionally equivalent services. The concept of a "level playing field" is one which has served the public well since it promotes full and fair competition.

5. In the CMRS Second Report and Order, the Commission, in response to a Congressional directive, reclassified land mobile systems based on a CMRS versus PMRS (Private Mobile Radio Service) delineation rather than the previous private versus

common carrier distinction.[5] In that Order, the FCC determined that SMR, 220 MHz, Private Carrier Paging, and Business Radio systems are permitted by FCC rule to provide services which would be classified as CMRS; that is, they are eligible to offer for-profit, interconnected service to the public.

6. To implement the CMRS-related amendments of the Communications Act, the Commission in the CMRS 3rd R&O modified its rules governing the Private Radio Services to ensure that private land mobile licensees reclassified as CMRS would be subject to technical requirements comparable to those governing providers of "substantially similar" common carrier services. Specifically, the CMRS 3rd R&O determined which reclassified services were "substantially similar" to existing common carrier services. It capped at 45 MHz the total amount of combined broadband personal communications services ("PCS"), cellular, and SMR spectrum in which an entity may have an attributable interest in any geographic area. It also attempted to craft consistent rules for licensing CMRS services, including reclassified services. It adopted a single, uniform application form for use by all CMRS and PMRS applicants in all terrestrial mobile services. Finally, it modified licensing rules for CMRS services consistent with the statutory requirements for Title III common carrier licensing.

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[5] Second Report and Order, GN Docket No. 93-252, 9 FCC Rcd 1411 (1994) ("CMRS 2nd R&O"), Erratum, 9 FCC Rcd 2156 (1994). Congress provided a three-year transition period for heretofore private systems that would be reclassified as CMRS. Budget Act at § 6002(c)(2)(B). The FCC determined in the CMRS 2nd R&O that the transition period would be available to those already authorized in a particular service as of the date of the legislation. CMRS 2nd R&O at ¶ 283.

II. ISSUES ON RECONSIDERATION/CLARIFICATION

7. As it has advised the Commission in other proceedings, AMTA is not persuaded that all of the FCC's decisions regarding the regulatory changes needed to implement that statute were, in fact, mandated by the legislation.[6] For example, the Association has consistently urged the FCC to adopt a narrower definition of CMRS, one which would limit that classification to those systems which actually will be providing functionally equivalent services to the public and which will be competing in the marketplace.[7]

8. The Association also urges the FCC to assess carefully whether the legislation supports the use of competitive bidding to select among mutually exclusive applicants in the 800 MHz band, at least those requesting "traditional" SMR systems. While it is clear that Congress intended to allow the FCC to employ auction procedures in assigning licenses in new services, such as PCS, there is no such clear legislative directive for mature, heavily populated services such as 800 MHz SMR. The majority of such applications are from existing licensees seeking to expand their authorized frequencies at a particular site or to expand the geographic area in which they provide service. In the Association's opinion, these "modifications" of existing systems were not

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[6] AMTA disagrees with the scope of the FCC's CMRS definition, and has urged that the Commission adopt a narrower interpretation. See AMTA Petition for Reconsideration, GN Docket No. 93-252, filed May 19, 1994.

[7] In this respect, the Association recommends that the FCC consider the view expressed by the Department of Justice regarding relevant CMRS marketplaces. See, United States of America v. Motorola, Inc., Final Judgment No. 94-2331 (D.C. Dist. Ct., Oct. 27, 1994).

the applications for which competitive bidding procedures were intended. Thus, in addition to the reconsideration and clarification requested herein, AMTA urges the FCC to consider its statutory authority carefully before adopting auction procedures for existing services such as SMR.

A. Technical and Operational Rules

1. Channel Assignment and Service Area/Treatment of Incumbent 900 MHz SMRs

9. In the 3rd R&O, the Commission articulated its general conclusions with respect to wide-area licensing at 900 MHz, but delayed issuing comprehensive rules for the service until the final 900 MHz Phase II order.[8] AMTA supports an expeditious completion of the 900 MHz wide-area licensing process.[9] However, the Association respectfully requests that the Commission reconsider several aspects of the decisions it reached regarding that service.

10. Several of AMTA's members are existing 900 MHz SMR licensees who have been developing new technology and providing innovative services to their customers for some time. During the suspension of expanded 900 MHz SMR licensing, many licensees assumed substantial business risk by applying for and constructing unprotected secondary sites to permit uninterrupted service coverage and to satisfy customer demand.

11. AMTA applauds the Commission's decision to afford primary status to

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[8] 3rd R&O at ¶ 113, n. 216.

[9] See First Report and Order and Further Notice of Proposed Rule Making, PR Docket No. 89-553, 8 FCC Rcd 1469 (1993) ("900 MHz Phase II Notice").

those secondary sites licensed prior to August 10, 1994.[10] However, some licensees had filed applications for sites which had been pending at the FCC prior to the August 10th cutoff, but which were granted sometime after that date. Without modification to the 3rd R&O's language, these necessary sites will not receive appropriate interference protection. AMTA respectfully submits that the public interest would be served by proving equivalent protection to these sites by modifying the text section of the 3rd R&O, and the future rule implementing that decision to include applications received by the FCC prior to August 10, 1994. This approach would be consistent with the Commission's decision to process all 800 MHz applications on the 280 800 MHz SMR category channels which were received by the close of business on August 9, 1994, the adoption date of this Order.[11]

12. Similarly, although the Commission decided that future 900 MHz MTA licensees must afford protection only to those 900 MHz sites licensed prior to August 10, 1994,[12] AMTA submits that the MTA licensee should also afford protection to subsequently granted sites for which applications were pending prior to August 10, 1994. Again, this approach would be consistent with the Commission's decision to process all applications for the 280 800 MHz SMR category channels as of the adoption date of the

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[10] 3rd R&O at ¶ 119. This decision is not articulated in the rules. The Association assumes that the Commission intends to include the provision in the regulations promulgated in the 900 MHz Phase II proceeding.

[11] Id. at ¶ 108.

[12] Id. This decision is not articulated in the rules. The Association assumes that the Commission intends to include the provision in the regulations promulgated in the 900 MHz Phase II proceeding.

Order.[13]

13. The 3rd R&O specified that no additional secondary sites will be authorized in the 900 MHz band.[14] AMTA submits that additional secondary sites outside Designated Filing Areas will continue to be needed to serve customer demands while 900 MHz wide-area regulations and licensing procedures are being adopted, licenses are being granted and systems are being implemented -- presumably a multi-year process. AMTA's existing 900 MHz SMR members are willing to construct those sites without any interference protection, and to deconstruct them should interference to wide-area facilities occur. Therefore, AMTA respectfully submits that applications for secondary sites continue to be accepted and processed, with the understanding that no interference protection will be provided for sites included in applications received by the FCC after the August 10, 1994 cutoff date.

2. Construction Period/Coverage Requirements

14. In the 3rd R&O, the Commission specified that it would address issues such as service area, definitions and channel assignment rules applicable to licensing of 220 MHz systems in a separate, future rule making proceeding.[15] AMTA assumes that, to the extent this Order appears to adopt certain rules governing that band, those changes will be incorporated in the rules adopted in that proceeding. For example, according to

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[13] Id.

[14] Id. at ¶ 119. Likewise, this decision is not articulated in the rules. The Association assumes that the Commission intends to include the provision in the regulations promulgated in the 900 MHz Phase II proceeding.

[15] Id. at ¶ 15.

the Order, both PMRS and CMRS 220 MHz systems will be subject to a twelve month construction deadline.[16] While new Rule Section 90.167 requires all CMRS operators, including 220 MHz, to provide service within twelve (12) months from the date of grant, no corresponding revision was made to Section 90.725(d).

15. Similarly, the Commission adopted construction requirements for 900 MHz MTA licensees and established converge requirements based on populations within the licensee's service area. It also authorized for 900 MHz MTA licenses a construction period of five years.[17] However, this Order did not include rule modifications reflecting these decisions. Instead, it stated that "[d]etails of these requirements will be addressed in our final Report and Order in the 900 MHz Phase II proceeding."[18]

16. AMTA submits that until the Commission adopts the further Orders for both the 220 MHz and 900 MHz bands, it would be premature for the Association to address these specific matters. The Association, therefore, reserves its right to petition for reconsideration of any of the rules in those Orders.

17. The Commission concluded that implementing wide area licensing on an MTA-based service area would be appropriate for 800 MHz SMR systems, and that such systems should be permitted to construct on any authorized channels at any location within their specified service areas.[19] However, given the impact that this proposal

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[16] Id. at ¶ 177.

[17] Id. at ¶ 182.

[18] Id.

[19] Id. at ¶¶ 97, 100.

would have on the industry, the Commission determined that further comments were necessary.[20] AMTA intends to address matters relating to the licensing of wide-area 800 MHz SMR systems in the context of that proceeding.[21]

3. Loading

a. Addition of Channels

18. The Order stated that loading is no longer a prerequisite for SMR licensees to obtain additional channels.[22] Instead, according to the text, SMRs need to complete construction and commence service to subscribers before additional channels can be obtained.[23] This requirement is consistent with the test for construction required of Part 90 CMRS licensees.[24] However, the Commission specifically exempts Part 90 PMRS licensees and grandfathered Part 90 CMRS licensees from this "service to subscribers" requirement.[25] Instead, they will continue to be governed by the existing requirements

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[20] Id. at ¶ 100.

[21] Further Notice of Proposed Rule Making, PR Docket No. 93-144, FCC 94-271, 9 FCC Rcd _____ (Released November 4, 1994).

[22] Id. at ¶¶ 190, 193, n.335; modified sections 90.631(c),(e).

[23] Id. at ¶ 193.

[24] According to the 3rd R&O, Part 90 CMRS licensees must 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. Id. at ¶ 178; new Rule Sections 90.167(a),(b).

[25] 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

under which system construction/operation can be satisfied with service to affiliated units. The Commission must clarify that a PMRS SMR licensee may obtain additional channels if constructed in accordance with the requirement applicable to it.

b. 900 MHz SMR Loading

19. AMTA fully supports the Commission's decision to eliminate loading requirements for Part 90 CMRS providers. The Commission, in the 3rd R&O, persuasively articulates a number of compelling reasons that support the complete abolishment of loading requirements:

> 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.[26]

20. Thus, AMTA submits that the FCC's construction and operation requirements provide the appropriate means for deterring speculators and for recovering any channels that are not used at 900 MHz, just as they do in other frequency bands for other services. A strong regulatory emphasis on construction timetables and coverage

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grandfathered under the provisions of the Budget Act. Id. at n.320. Old rule sections 90.631(f) and 90.633(d) are not modified.

[26] Id. at ¶ 190 (emphasis added).

standards will accomplish these objectives more effectively than would loading requirements and simultaneously promote regulatory symmetry among competing services.

21. AMTA fully supports the elimination of both the 40-mile rule and system loading requirements for all SMR systems. The Association has long recommended elimination of the five-year loading requirement which provides for the automatic cancellation of operational, but unloaded channels.[27] Properly constructed facilities should not be susceptible to channel recovery for failure to attract a predetermined, urban-oriented number of units per channel. It is reasonable to assume that all CMRS operators who invest in system implementation and operation have every incentive to provide a service which is desired by prospective customers in their particular area, and to attract as many of those customers as possible. The FCC is correct in its assumption that the marketplace is in the best position to define what type of service that might be, and what level of usage the system should provide. This is particularly true when the Commission has provided for a multiplicity of alternative CMRS providers.

22. The Commission's stated rationale for the retention of the 900 MHz SMR loading requirement is that the 900 MHz SMR service was more recently licensed than the 800 MHz SMR service and that, unlike PCS and cellular rules, the original 900 MHz SMR rules did not require licensees to achieve significant coverage of their "designated

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[27] 47 C.F.R. § 90.631(b). See AMTA Petition for Rule making, RM-8387, filed October 29, 1993, which the FCC has incorporated herein by reference.

service area" in order to retain their authorizations.[28] The Commission's arguments are specious.

23. Contrary to the Commission's assertion of the "maturity" of the 900 MHz SMR service, the majority of 900 MHz SMR stations affected by the loading requirements have been licensed longer than the 800 MHz SMR systems that were subject to loading requirements. The 800 MHz service has been in existence for over twenty years, but the 800 MHz loading requirements only apply to systems which were licensed for new or additional channels after September 1989 and prior to June 1, 1993. A number of 900 MHz systems, particularly in the top 10 Designated Filing Areas, were licensed, constructed, and placed in operation in 1987. Accordingly, those 800 MHz systems for which the loading rules have been eliminated, for the most part, were licensed more recently than the 900 MHz systems. Nor does the Commission discuss or rationalize how the even-more-recently licensed 220 MHz service, which has no loading requirements, but similar "designated service areas," can be distinguished from 900 MHz systems.

24. Further, as the Commission is well aware, 900 MHz SMR stations have no "designated service area" as does a station licensed under either PCS or cellular rules. The licensing of 900 MHz SMR stations, like that of 800 MHz SMR stations, 220 MHz stations, and 450 MHz private carrier stations, has traditionally been on a site-specific basis. Therefore, the construction of the station at the licensed site is sufficient to provide coverage to the station's "service area."

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[28] 3rd R&O at ¶ 194.

25. Additionally, the Commission's Rules have precluded 900 MHz SMR operators from providing significant coverage within Designated Filing Areas. These were identified solely to facilitate licensing of the 900 MHz SMR frequencies, not to identify an overall area to be served by each individual licensee. Therefore, the Commission's reliance on the failure of the 900 MHz SMR stations to provide wider coverage as a means to continue loading requirements is disingenuous; its Rules were specifically structured to prevent wider coverage.

26. Given these conclusions, there is no obvious way to reconcile the Commission's decisions to eliminate traffic loading studies for Part 22 licensees[29], decide not to adopt loading requirements for services such as Part 90 paging and 220 MHz[30], eliminate mobile loading requirements for 800 MHz SMRs[31] and yet retain mobile loading requirements for 900 MHz licensees.[32] The Commission conceded that "loading is not a reliable indicator of efficient channel usage and that spectrum warehousing concerns can be adequately addressed by other means."[33] Thus, the imposition of mobile loading requirements on one class of CMRS provider but not on others, by the Commission's own reasoning, contravenes the Congressional goal of regulatory symmetry and could unfairly impair the ability of 900 MHz licensees to

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[29] Id. at ¶ 191; Part 22 Rewrite Order at ¶ 48.

[30] Id. at ¶ 191.

[31] Id. at ¶¶ 192-195.

[32] Id. at ¶ 194.

[33] 3rd R&O at ¶ 191.

compete with other providers of commercial land mobile service. The Association has become convinced that the existing rules are no longer appropriate, and indeed unreasonably restrict the ability of traditional SMR operators to acquire sufficient spectrum in their preferred system configuration as dictated by customer needs.

c. **900 MHz SMR Loading Relief**

27. As described above, AMTA urges the Commission to reconsider its decision to apply loading requirements to 900 MHz licensees. If the Commission does not reconsider, then it should note that according to the text of the Order, an incumbent 900 MHz licensee who obtains an MTA-based 900 MHz license would be exempted from any previously applicable loading requirements for channels covered by the MTA authorization.[34] This relief is not reflected in the rules. The Association assumes that the Commission intends to include that provision in the regulations promulgated in the 900 MHz Phase II proceeding. AMTA also notes that these rules do not address how the FCC intends to consider 900 MHz systems whose loading deadlines arise before the MTA-wide licensee is selected. The Association assumes that the Commission, at a minimum, will stay any 900 MHz channel recoveries, on its own motion, until it can determine whether the licensee in questions acquires the MTA authorization.

4. Permissible Uses: Interconnection

28. The 3rd R&O stated that existing Part 90 rules that relegate interconnected service to secondary status, limit types of interconnection, or otherwise place conditions

[34] Id. at ¶ 194.

on the provision of interconnection will not be applicable to CMRS providers.[35] Accordingly, the Commission amended Rule Sections 90.476 and 90.483 to exclude CMRS providers explicitly.[36] AMTA requests that the Commission also modify Rule Section 90.477 to reflect this policy.[37]

5. Station Identification

29. AMTA respectfully requests that the FCC reconsider its new station identification requirement. In the 3rd R&O, the Commission concluded that CMRS licensees subject to identification requirements will be required to transmit their call signs sometime between five minutes before and five minutes after each hour.[38] However, most current SMR equipment is not equipped with a real time clock. Equipment which is currently in common use by most SMRs only has a timer to transmit the station ID every 30 minutes. Those real time clocks in use are programmed for billing purposes only. In order to comply with the new rules, software and hardware must be rewritten by the manufacturer to interface the real time clock with the station identification logic. In some equipment this rewrite could require a complete redesign of the equipment as there may not be enough memory available in the current microprocessors to accommodate the new code.

30. In equipment without a real-time clock, compliance with the new rules

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[35] Id. at ¶ 208.

[36] 47 C.F.R. §§ 90.476, 90.483.

[37] 47 C.F.R. § 90.477.

[38] 3rd R&O at ¶ 218; new rule Section 90.425(e)(2).

would require at a minimum the addition of a clock with backup battery as well as revision of the firmware. Most manufacturers do not have the desire or resources to implement this change in equipment that is not in current production, meaning the SMR operator would have to replace the equipment. Estimated costs, per system, for compliance are $300 to $3,500 for equipment with a clock and $800 to $3,500 for equipment without a clock.

31. If the Commission does not reconsider the imposition of this new station identification requirement, it should at the very least, clarify the requirement. For instance, it is unclear from the new rules which CMRS licensees are subject to the new requirement. It appears that the last sentence of new Section 90.425(e)(1)[39] conflicts with the last sentence of new Section 90.425(e)(2).[40] It is unclear whether the Commission intends for all CMRS stations, other than 929-930 MHz paging stations and MTA-based SMR licensees, to use the current published paragraphs (a) through (d) as required by subsection (1), or to identify as provided for in new Section 90.425(e)(2).[41]

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[39] Station Identification will not be required for 929.930 MHz nationwide paging licensees and MTA-based SMR licensees. All other CMRS stations will be required to comply with the station identification requirements of paragraphs (a) through (d) of this section. New Section 90.245(e)(1).

[40] CMRS stations subject to a station identification requirement will be permitted to use a single call sign for commonly owned facilities that are operated as part of a single system. The call sign must be transmitted each hour within five minutes of the hour, or upon completion of the first transmission after the hour. New Section 90.245(e)(2).

[41] CMRS stations granted exclusive channels may transmit their call signs digitally. The station licensee must provide the Commission with information sufficient to decode the digital transmission to ascertain the transmitted call sign. New Section 90.245(e)(3).

It appears from the discussion on Page 105 of the text of the 3rd R&O that the Commission intends for the on-the-hour requirement in section (2) to be followed.[42] If that is the case, then the last sentence of Item (1) should be deleted. It is also unclear whether grandfathered CMRS operators must comply with the new rule by January 2, 1995, or August 10, 1996.

32. If the Commission, when it created the new station identification rule, intended to also modify existing section 90.647(b), it should have done so explicitly. All (not just SMR) conventional systems are currently required to identify in accordance with 90.647(a)[43] which requires identification in accordance with 90.425. All (not just SMR) trunked systems are currently required to identify in accordance with 90.647(b), which requires transmission of the call sign once every 30 minutes on the lowest frequency in the trunk group.[44] There is no reference in the 3rd R&O to 90.647(b).

B. Licensing Rules and Procedures

1. Application Forms and Procedures

33. In the text of the Order, the Commission concluded that it will adopt a single form, Form 600, to be used by all CMRS and PMRS applicants instead of Form 574 and Form 401.[45] The Order did not discuss modifying the various other forms that have been traditionally used by applicants in the private radio service. Amended Rule

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[42] 3rd R&O at ¶ 218.

[43] 47 C.F.R. § 90.647(a).

[44] 47 C.F.R. § 90.647(b).

[45] Id. at ¶ 293.

Section 90.119(b), states, "Form 405-A shall be used to: (1) apply for license reinstatement or renewal if the reinstatement or renewal does not involve the modification of the station or system license." Existing Rule Section 90.199(b) states that the 405-A is used "when the licensee has not received renewal Form 574(R) in the mail from the Commission within sixty days of license expiration, and may be used to apply for reinstatement of an expired license (if the reinstatement does not involve the modification of the system or system license)." Since the Commission has retained the use of Form 574(R) for the renewal of an existing license and the reinstatement of an expired license,[46] clarification is required to explain when a licensee should use Form 405-A and when it should use Form 574(R).

34. The Order amended table B-1 found in Section 22.105 of the Rules to reflect the replacement of Form 401 by Form 600. However, the introductory clause of that section also needs to be amended in a similar fashion.

35. The Commission extended the requirement to file applications for CMRS on microfiche in addition to the paper application.[47] Section 22.105 of Part 22 of the Commission's rules sets forth the contents required for an acceptable application. No corresponding rule section is contained in Part 90. Those requirements should be detailed in Part 90, or Section 22.105 should be referenced as controlling those procedures.

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[46] See Amended Rule Section 90.119(e).

[47] Id. at ¶ 294.

2. Application Fees

36. The Commission amended FCC Section 1.1105, Schedule of Charges For Applications and Other Filings in the Public Mobile Service, to reflect the adoption of FCC Form 600. The fee amount for applications was not changed. The Commission did not, however, adopt corresponding revisions for FCC Section 1.1102, which governs the Private Radio Service. Because there was no change in the application fees for Part 22, and because the Commission decided to retain the current fee schedule for reclassified Part 90 licensees, AMTA assumes that the current fees will continue to apply to all licensees.[48]

37. On December 13, 1994, the Commission issued a Public Notice in which it announced that applications on Form 574 would still be accepted until April 2, 1994.[49] However, the Commission will begin accepting applications filed on Form 600 on January 2, 1994. Procedures for filing applications during this transition period were also outlined in the Public Notice. Applicants who elect to continue using Form 574 during the transition period between January 2 and April 2 "will be required to pay the

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[48] Effective July 18, 1994, the application fees for the private radio service were increased. The application fee associated with Form 574 was increased from $35.00 to $45.00. The application fee associated with Form 402 for the microwave service was increased from $155.00 to $180.00. In addition, the Commission began collecting regulatory fees for applications for new facilities, renewals and/or reinstatements. The regulatory fee for microwave services, 220 MHz services and services above 470 MHz is $16.00 per year per license. The regulatory fee for services below 470 MHz is $7.00 per year per license. AMTA assumes that the current regulatory fees will also be retained.

[49] Wireless Telecommunications Bureau Announces Schedule for Implementation of FCC Form 600, DA No. 94-1442 (Dec. 13, 1994).

application fee associated with the Form 600 for their particular service." The Public Notice implies that Form 600 requires a fee amount different from the current fees. If this is indeed the case, AMTA urges the Commission to clarify this issue prior to January 2, 1995.

3. Public Notice and Petition to Deny Procedures for CMRS Applications

38. AMTA requests that certain licensing procedure provisions for CMRS be clarified. Having determined in the Order that CMRS applications and major amendments would be subject to Public Notice prior to grant, the Commission concluded that Part 90 of the Rules required revision to incorporate the public notice and Petition to Deny procedures set forth in Part 22 of the Rules.[50] However, the same standards and procedures were not incorporated in Part 90. Section 22.130 specifies the contents and procedures for Petitions to Deny including the circumstances which may cause the Commission to dismiss such filings.[51] New Rule Section 90.163(e) is the corresponding rule adopted in the Order for the private land mobile radio services. Rule Section 90.163(e) does not make reference to mootness or settlement conferences.[52] The same standards and procedures as established in Part 22, should apply to Part 90 licensees.

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[50] Id. at ¶ 318.

[51] According to that rule, the Commission will dismiss a Petition to Deny "if the petition does not comply with the requirements of this section, if the issue raised becomes moot, or if the petitioner or his/her attorney fails to appear at a settlement conference pursuant to 22.135." § 22.130(c).

[52] (c) *Dismissal.* The Commission may, by letter, dismiss any petition to deny a major filing if the petition does not comply with the requirements of this section or § 90.161. The reason(s) for this dismissal must be stated in the letter. When a petition to deny is dismissed, any related responsive pleadings also are dismissed. § 90.163(c).

This would include the adoption of a separate Rule section for settlement conferences as found in Part 22.[53]

39. Rule Section 90.165(c)(4) and corresponding Rule Section 22.131(c)(4) state that the Commission may facilitate a settlement or may use comparative consideration hearings for the disposition of modification applications.[54] The use of the word "may" implies that the Commission could dispose of the applications by some other means. If other methods are available to the Commission, they should be set out in the rules. In adopting new Rule Sections 90.165(b) and 90.165(c), the Commission referenced new Rule Section 90.162 as the provision that permits the dismissal of defective applications. Since new Rule Section 90.162 specifies the procedures parties must follow when executing agreements to dismiss applications, amendments or pleadings, it appears that the Commission intended to reference new Rule Section 90.161 (Amendment or Dismissal of Applications).

4. Amendment of Applications and License Modification

a. "Initial Application" Definition

40. The 3rd R&O adopted the same definition of "initial application" for Part 22 and Part 90 services that it adopted previously for 931 MHz paging services in the Part 22 "rewrite".[55] This definition includes not only applications proposing transmitter

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[53] See § 22.135.

[54] See, Section 90.165(c)(4)(ii)(B), (c)(iii) and (c)(iv) and 22.131(c)(4)(ii)(B), (c)(iii) and (c)(iv).

[55] This conclusion may not be accurate in more rural areas where operators must typically use geographically dispersed towers or mountaintops, rather than buildings, to support their facilities.