locations anywhere on a new frequency, but applications proposing the location of a facility more than two kilometers from any existing facility licensed to the applicant and operating on the same frequency.[56] The Commission gave no specific rationale for this determination, but cited instead to the Part 22 Rewrite Order.[57] The Part 22 Rewrite Order asserted that a two kilometer distance should allow a licensee who loses its transmitter site to find another one nearby.[58]

41. AMTA requests that the Commission reconsider this extremely broad definition of initial application and instead return to its views as articulated in the FNPRM in this proceeding.[59] It was the FCC's tentative determination in that Further Notice that applications should not necessarily be subject to the competitive bidding procedures simply because the amendment would be classified as major for purposes of Section 309 of the Communications Act.[60] Although such applications are treated as "new" in that respect, the legislation implementing the auction rules did not intend that competitive bidding would be permitted "in the case of a . . . modification of the license."[61] As noted in the FNPR, Congress did not distinguish between major and

---

[56] 3rd R&O at ¶ 356, and proposed Rule § 90.165(d)(2)(iii), Erratum at 39.

[57] Part 22 Rewrite Order at ¶ 105.

[58] Report and Order, CC Docket No. 92-115, FCC 94-201, 9 FCC Rcd ____, ¶ 105 (adopted August 2, 1994).

[59] Further Notice of Proposed Rule Making, GN Docket No. 93-252, 9 FCC Rcd 2863 (1994)("FNPRM" or "Further Notice").

[60] FNPR at ¶ 132.

[61] H.R. Rep. No. 103-213, 103d Cong., 1st Sess. (1993) at 253.

minor modifications for this purpose. The Commission in that FNPR stated that the better approach would be to use competitive bidding "only in exceptional cases where a major modification would fundamentally alter the nature or scope of the licensees' system."[62]

42. AMTA submits that something more than a relocation of two kilometers does not alter necessarily the nature or scope of the service provided. (The only time a modification application should be classified as an initial application is when the relocation of the system is far enough to enable the licensee to serve a different community.) AMTA is confident that the FCC can handle those highly unusual situations on a case-by-case basis.

43. No matter what criteria is used to define initial applications, a modification application to relocate a station should not be considered an initial application if it can be demonstrated that the proposed modification will not expand the station's 22 dBμ contour, regardless of the distance between the original site and the proposed site.

44. AMTA requests clarification that the Commission is not altering its current policy with regards to the rights of an existing licensee. Thus, a station's original authorization will still be preserved in the event that a licensee requests a modification which is subsequently denied by the Commission. In addition, if a modification application of an existing system is filed and placed on public notice, an applicant filing a mutually exclusive application is obligated to provide adequate protection to the incumbent licensee's station as originally authorized. Thus under the new rules, a

---

[62] FNPRM at ¶ 132.

licensee is assured that its station as authorized continues to receive the same interference protection as it would if the licensee had not filed a modification application.

b. Classification of Filing As Major or Minor

45. The text of the Order specified that the classification of a filing as major or minor would be service specific for Part 90 CMRS providers, consistent with the approach taken with Part 22.[63] Section 22.123 has been modified to specify which filings would be considered major in the Paging and Radiotelephone Services (Section 22.123(e)), Rural Radiotelephone Service (Section 22.123(f)), Cellular Radiotelephone Service (Section 22.123(g)), Air-ground Radiotelephone service (Section 22.123(h)) and Offshore Radiotelephone service (Section 22.123(i).[64] By contrast, new Rule Section 90.164 only identifies which SMR Service filings would be considered major. It does not indicate which filings by 220 MHz, Private Carrier Paging, and Business Radio CMRS operators would be so classified. AMTA respectfully requests that the Commission remedy that omission.

5. Renewal Expectancy

46. Paragraph 386 of the Order specifically stated that every Part 90 licensee that is reclassified and treated as a CMRS carrier will be afforded a renewal expectancy when its current license term expires, provided it can make the appropriate showing.[65] Therefore, the rules should include a new Part 90 provision consistent with Rule Section

---

[63] Id. at ¶ 354, n.658.

[64] Part 22 Rewrite §§ 22.123(e)-(i).

[65] 3rd R&O at ¶ 386.

22.940. AMTA respectfully requests that the Commission remedy this omission.

6. Assignment of License and Transfer of Control

47. According to the Order, no request for authority to transfer any CMRS license not awarded by competitive bidding will be entertained until the facilities for which the license has been issued are constructed and placed in operation, or the Commission determines that the licensee is not "trafficking" in licenses.[66] The Commission also stated that the "incidental" exception (transfer of unbuilt stations if they are part of a bona fide sale of an ongoing business to which they are incidental) would be incorporated into the transfer provisions of Part 90.[67] However, the Commission did not incorporate an anti-trafficking provision or a corresponding "incidental" exception to that provision into Part 90. AMTA respectfully requests that the omission be remedied, and that the Commission clarify paragraph 393. Whether the anti-trafficking provision and "incidental" exception would apply only to Part 90 CMRS providers, or also to Part 90 PMRS providers is unclear.

48. Similarly, the text of the Order stated that there will be no "constructed station" or other holding requirements for a CMRS license acquired through competitive bidding.[68] That exception should be incorporated in Rule Section 90.609(b).

7. Rule Applicability

49. Certain Part 90 licensees reclassified as CMRS providers are

---

[66] Id. at ¶ 393.

[67] Id.

[68] Id. at ¶ 396.

"grandfathered" and are not required to comply with CMRS rules until August 10, 1996. Neither the text of the 3rd R&O nor the revised rules contained in Appendix B thereto are clear as to which of the revised rules will apply to grandfathered Part 90 licensees, other than persons holding paging-only licenses. The Commission notes that

> "[c]ompliance with the rules relating to applications and licensing of facilities on paging-only channels in the Business Radio Service (see § 90.75(c)(10)) and 929-930 MHz paging channels (see § 90.494(a),(b)) is not required prior to August 10, 1996."[69]

50. AMTA requests clarification that other grandfathered Part 90 licensees, not solely private carrier paging licensees, also are not required to comply with the application and licensing of facilities contained in Rule Section 90.160 through 90.169, or other rules that apply generally to CMRS, prior to August 10, 1996.

III. CONCLUSION

For the reasons described herein, 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 above.

---

[69] Note after § 90.159.

CERTIFICATE OF SERVICE

I, Cheri Skewis, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 21st day of December, 1994, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing Petition for Reconsideration and Request for Clarification to the following:

* Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, NW, Room 814
Washington, DC 20554

* Commissioner James H. Quello
Federal Communications Commission
1919 M Street, NW, Room 802
Washington, DC 20554

* Commissioner Andrew C. Barrett
Federal Communications Commission
1919 M Street, NW, Room 826
Washington, DC 20554

* Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, NW, Room 844
Washington, DC 20554

* Commissioner Susan Ness
Federal Communications Commission
1919 M Street, NW, Room 832
Washington, DC 20554

* Regina Keeney, Chief
Wireless Telecommunications Bureau
2025 M Street, NY, Room 5002
Washington, DC 20554

* Ralph Haller, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Room 5002
Washington, DC 20554

* Gerald Vaughan, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Room 5002
Washington, DC 20554

* Rosalind K. Allen, Acting Chief
Commercial Radio Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Room 5202
Washington, DC 20554

* David Furth, Acting Deputy Chief
Commercial Radio Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Room 5202
Washington, DC 20554

* Robret McNamara, Chief
Private Radio Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Room 5322
Washington, DC 20554

* John Cimko, Jr., Chief
Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
1919 M Street, NW, Room 644
Washington, DC 20554

* Kathleen Wallman, Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW, Room 500
Washington, DC 20554

* William E. Kennard, Esq.
General Counsel
Federal Communications Commission
1919 M Street, NW, Room 614
Washington, DC 20554

Robert S. Foosaner, Esq.
Larry Krevor, Esq.
Nextel Communications, Inc.
800 Connecticut Avenue, NW, Suite 1001
Washington, DC 20006

Mary Brooner, Esq.
Motorola, Inc.
1350 Eye Street, NW, Suite 400
Washington, DC 20005

Emmett B. Kitchen
President
PCIA/NABER
1501 Duke Street, Suite 200
Alexandria, VA 22314

Mark Crosby
President and Managing Director
ITA/CICS
1110 North Glebe Road, Suite 500
Arlington, VA 22201

Michael Carper, Esq.
Vice President & General Counsel
OneComm Corporation
4643 S. Ulster Street, Suite 500
Denver, CO 80237

Jeffrey R. Hultman
President, Director and CEO
Dial Page, Inc.
301 College Street, Suite 700
Greenville, SC 29603-0767

Cheri Skewis

Cheri Skewis

* Via Hand-Delivery