

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

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DEC 21 1994

In the Matter Of:)

Implementation of Sections 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)
Commission'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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**PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION
PETITION FOR RECONSIDERATION AND CLARIFICATION**

**PERSONAL COMMUNICATIONS
INDUSTRY ASSOCIATION**

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Dated: December 21, 1994

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SUMMARY

The Commission's Third Report and Order ("*Third R&O*") in this proceeding is the culmination of a monumental effort to harmonize two very disparate regulatory frameworks, and streamline the regulation of mobile services overall, within an expedited schedule.

While PCIA believes the Commission has accomplished this burdensome task in a considered and thorough manner, there are a few aspects of the order that PCIA believes require reconsideration. Specifically, to meet the Congressional goal of ensuring comparable and reasonable treatment for similarly situated carriers, PCIA believes the Commission should act on reconsideration to:

- Permit pre-authorization operation of mobile service facilities for all CMRS systems under blanket or conditional authorizations;
- Eliminate the five-year loading rule for 900 MHz SMR systems;
- Ensure comparable and reasonable treatment of carriers under the forfeiture schedule;
- Deem construction deadlines to be satisfied if facilities are available for service to the public;
- Permit the optional licensing of standby facilities;
- Accord paging operators additional flexibility under the emissions mask to operate adjacent channels as a wideband channel; and,
- Modify the 900 MHz SMR licensing policies to permit flexibility for carriers in providing service to the public.

With these limited changes, the Commission will better foster a competitive wireless market and increase carriers' flexibility to respond to changing customer needs.

PCIA also believes that limited procedural changes are needed to clarify or modify aspects of the *Third R&O*. Specifically, PCIA believes the Commission should specify the relevant effective date for each of the Part 90 rule changes to clarify how the grandfathering provisions will be applied; eliminate the requirement to supplement Form 574 filings with pages one and two of the main Form 600 until April 3, 1995, so carriers can obtain the form and familiarize themselves with the requirements of form; and, codify the renewal expectancy for all carriers. These alterations, as discussed below, will ease the transition to the new unified regulatory regime and ensure that all carriers fully understand their new obligations under the Commission's rules.

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**PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION
PETITION FOR RECONSIDERATION AND CLARIFICATION**

The Personal Communications Industry Association ("PCIA") herewith submits its petition for reconsideration and clarification of the Commission's Third Report and Order in the above-captioned docket.¹ Pursuant to statutory mandate, the *Third R&O* adopted

¹ Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252 (rel. Sept. 23, 1994) [*Third R&O*]. PCIA and the National Association of Business and Educational Radio, Inc. ("NABER") recently announced the decision to merge their two organizations and to operate under the PCIA name as a new legal entity. Pending final legal and regulatory approvals, the two organizations remain separate legal entities. This new PCIA is an international trade association created to represent the interest of both the commercial mobile radio service ("CMRS") and the private mobile radio service ("PMRS") communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio

(continued...)

modifications to Part 22 and 90 of the Commission's Rules to ensure comparable and reasonable regulatory treatment of similar services. Although the *Third R&O* succeeds at eliminating the great majority of competitive disparities between Part 22 and Part 90 licensees, as well as streamlining the regulation of mobile services overall, there remain a few areas where reconsideration is appropriate and necessary. In particular, PCIA suggests below a number of changes to ensure comparable and reasonable treatment of Part 22 and Part 90 licensees to further enhance competition in wireless services and provide more optimal flexibility to licensees to respond rapidly to customer needs.² PCIA also discusses a few procedural matters where clarification would greatly assist licensees in ensuring compliance with the Commission's rules.

¹(...continued)

Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

² PCIA will address in separate comments in PR Docket No. 93-144 issues related to the wide-area licensing of 800 MHz SMRs.

I. THE FCC SHOULD ADOPT CHANGES ON RECONSIDERATION TO ENSURE COMPARABLE AND REASONABLE TREATMENT OF SIMILAR COMMERCIAL MOBILE RADIO SERVICES

A. The Commission Should Permit Pre-Authorization Operation of Mobile Service Facilities Under Blanket or Conditional Authorizations

In response to the *Further Notice*, PCIA sought changes to conform the Part 22 rules governing pre-authorization operation with similar operational regulations in other parts of the Commission's Rules. In particular, PCIA argued that the Commission could utilize blanket STAs ("BSTAs"), as are currently used for the licensing of common carrier microwave stations under Part 21 of the Commission's Rules, to permit interim operation of uncontested facilities. Under Part 21 procedures, a licensee obtains a 6-month company-wide BSTA after a full qualifications review. This BSTA permits the licensee to operate any point-to-point microwave facilities after the application proposing the facilities is placed on public notice as accepted for filing. PCIA argued that the Commission should adopt similar BSTA procedures for Commercial Mobile Radio Service ("CMRS") operations, revised to permit operation 40 days after public notice to ensure that an application is uncontested.

Notwithstanding the strong record support for this proposal,³ the Commission declined to provide carriers with flexibility to engage in pre-authorization operation. The use of such procedures for common carrier microwave operations apparently has both limited the number of STA requests the staff is asked to process and afforded carriers greater flexibility

³ See, e.g., PCIA at 34-35; AirTouch/Arch at 13 (with provision for shut off by FCC); CTIA at 5-6; Celpage at 26-28; Metrocall at 27; NABER at 45; Network USA at 27; PageNet at 42-44; RAM Tech at 27; Southern at 13.

in initiating service from new facilities. The Commission, however, concluded that STAs for common carriers subject to Section 309(j) can only be granted in "rare" circumstances as a legal matter. This ignores, however, the Congressional requirement of achieving similar regulatory treatment for similar services, the precedent set by the processing of *common carrier* microwave authorizations under Part 21 of the rules, and the potential for developing a blanket licensing scheme derived from the FCC's authority to issue conditional authorizations.

Narrowband PCS carriers, for example, will offer services that are comparable to existing paging services upgraded with the use of the new 12.5 kHz "talk-back" channels. These licensees are governed by a blanket authorization process that allows them to deploy new facilities within their authorized service area without awaiting prior Commission approval. Absent some form of blanket authorization, existing paging carriers will be placed at a competitive disadvantage as compared to narrowband PCS operators solely due to regulatory disparities between different rule parts. This circumstance, particularly given the Commission's emphasis on competition in wireless services, where one set of competitors cannot respond effectively to customer needs and the other set can, meets the test "where a delay in operations would seriously prejudice the public interest."⁴ PCIA continues to believe that, in light of the competing statutory interests, permitting CMRS licensees (both Part 22 and Part 90) to engage in pre-authorization operation under a BSTA would be both publicly beneficial and legally permissible.

⁴ *Third R&O* at ¶383 (footnote omitted).

PCIA also notes, in any event, that the Commission's authority to issue conditional authorizations in the Part 90 services is different than with an STA. Conditional authorizations developed as a means of permitting licensees with pending applications for permanent authority to commence operation *after review of the application by a neutral third party, i.e., the frequency advisory committee.* Conditional authorization authority has existed in the Part 90 services since the 1970s. At every level, conditional authority has provided a significant benefit to the public by obviating the need for applicants to wait for the Commission to process an application. This is particularly important in a time of dwindling resources.

While Congress has stated that it envisions the issuance of STAs only in unique circumstances, conditional authority has never been specifically addressed. In the 1982 amendments to the Communications Act, Congress in fact recognized the value of elimination of licensing burdens that "may delay market entry and place an unnecessary administrative and financial burden on both the potential licensee and on the Commission."⁵ Further, Congress has encouraged the Commission to develop procedures that would permit applications to be "granted as quickly and expeditiously as possible."⁶ Conditional licensing was initiated for this precise reason, and the reclassification does not change the need or

⁵ H.R. Conf. Rep. No. 765, 97th Cong. 2d Sess. 47 (reprinted in 1982 U.S. Code Cong. and Admin. News 2261).

⁶ Amendment of Part 90 of the Commission's Rules To Implement a Conditional Authorization Procedure for Private Land Mobile Radio Service Stations, 4 FCC Rcd 8280, 8283 n.34 (1989) (citing Hearings on S. 1898 before a Subcommittee of the Committee on Interstate and Foreign Commerce, House of Representatives, 86th Cong., 2nd Sess., at 135 (April 12, 1960)).

value of conditional licensing and does not alter the Commission's statutory obligations regarding conditional licensing. Accordingly, PCIA urges the FCC on reconsideration to adopt a blanket licensing scheme for all CMRS operators, whether premised upon BSTA authority or conditional authority.

B. The Commission Should Eliminate the Five-Year Loading Rule for 900 MHz SMR Systems

In the *Third R&O*, the Commission eliminated loading requirements for Part 90 CMRS providers. The Commission found 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."⁷ The Commission, however, elected to retain the five-year loading requirement for 900 MHz SMR licensees.⁸ At 900 MHz, the Commission stated that 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."⁹

The treatment of 900 MHz SMR services in the *Third R&O* is contrary to the public interest and places such licensees on an uneven playing field versus other CMRS licensees. Although the 900 MHz SMR service is indeed newer, the primary reason for its "lack of

⁷ *Third R&O* at ¶190.

⁸ At the request of NABER, the Commission had previously extended the loading date of 900 MHz systems by two years. Amendment of Section 90.631 of the Commission's Rules and Regulations Concerning Loading Requirements for 900 MHz Trunked SMR Stations, 7 FCC Rcd 4914 (1992).

⁹ *Third R&O* at ¶194.

maturity" is the failure to conclude the 900 MHz "Phase II" proceeding. As a result, 900 MHz licensees have been unable to build systems where customers sought coverage¹⁰ and to develop networks to compete with other services.

Although retaining the loading rules may result in recovering more spectrum from initial licensees to assign to wide-area licensees in an auction, the Commission is statutorily precluded from premising its licensing policies on the potential revenue to be obtained from auctions. PCIA believes that legitimate licensees in the band who have invested seven years of capital and labor into the 900 MHz SMR business should not be forced to relinquish channels because they were not fully permitted to provide the service that the 900 MHz SMR allocation was designed. Consistent with the above views, PCIA respectfully requests that the Commission treat the 900 MHz SMR service in a similar manner to other reclassified carrier services and eliminate the five year loading requirement.

C. The Commission Should Ensure Comparable and Reasonable Treatment of Carriers Under the Forfeiture Schedule

During the initial comments on the *Further Notice*, PCIA raised the issue of conforming the forfeiture schedules for Part 22 and Part 90 licensees. As PCIA discussed in its comments and in a separate pending petition for reconsideration of the forfeiture rules,¹¹

¹⁰ Operators had the option of constructing secondary sites, but such construction was always with the understanding that such sites may be required by the Commission to be removed from service at any time. Therefore, while larger operators could afford to take significant capital risks by constructing secondary sites, most independents could not afford to take this risk.

¹¹ Telocator Petition for Reconsideration, FCC 91-217 (filed Sept. 9, 1991) at 3.

serious discrepancies currently exist with respect to the amount of the forfeitures to be paid by CMRS licensees. For Part 22 CMRS licensees, the maximum forfeiture is \$100,000 for each violation or each day of continuing violation (not to exceed \$1,000,000). For Part 90 CMRS licensees, the maximum forfeiture is \$10,000 for each violation or each day of continuing violation (not to exceed \$75,000). To achieve comparable and reasonable regulation, comparable forfeitures *must* be applied to all CMRS licensees. Unfortunately, the *Third R&O* completely fails to address the forfeiture guidelines.

As PCIA related in its pending petition regarding application of the forfeiture guidelines, the forfeiture schedules applicable to CMRS licensees should *not* be set at the current levels for common carrier licensees.¹² Under the Commission's forfeiture schedule, common carriers -- which include hundreds of paging operators with fewer than 1,000 customers -- are treated no differently than regional local exchange telephone companies with millions of customers. The failure to account for the size of the carrier under the forfeiture guidelines itself creates disparities in the treatment of carriers. PCIA accordingly urges the Commission to conform the forfeiture guidelines for CMRS carriers uniformly to the levels currently defined for PMRS.

¹² *Id.*

D. Construction Deadlines Should Be Deemed To Be Met If the Facilities Are Available for Service to Subscribers

Under the *Third R&O* rule modifications,¹³ a licensee is deemed to have complied with the construction requirements only if a new station is actually providing service to at least one subscriber who is unaffiliated with the carrier.¹⁴ The application of this rule, however, could have draconian effects for licensees and also is compounded by a number of uncertainties. For example, it is unclear when a control station is deemed "constructed," since control stations do not actually provide service to the public, but rather facilitate the provision of service to the public from other transmitters. Furthermore, since customers subscribe to systems and not individual transmitters, it is unclear how to determine whether a new transmitter extending the coverage of an existing system is "constructed." On the other hand, if it is assumed that a transmitter that extends the coverage of an existing system is serving subscribers for purposes of the construction rules, line drawing problems will arise with respect to what transmitters are considered to be "extending the coverage of an existing system."

On the whole, PCIA believes that returning to a definition of "constructed" that requires only that service be available to subscribers is appropriate. Specifically, PCIA

¹³ This issue also was addressed in the Commission's earlier Report and Order in the Part 22 Rewrite proceeding. Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, CC Docket No. 92-115 (Sept. 9, 1994) at ¶31-33. PCIA accordingly filed a petition for reconsideration addressing this issue in that docket as well. See Personal Communications Industry Association Petition for Reconsideration and Clarification, CC Docket No. 92-115 (filed Dec. 19, 1994).

¹⁴ See §§ 22.142, 22.99; *Third R&O* at ¶178.

recommends that a licensee be deemed to have met this requirement if it has constructed the facilities and they are interconnected to the public switched telephone network (and thus available for service).¹⁵ This proposal was also broadly supported in the record.¹⁶ As carriers noted, a definition of construction that does not require actual service to subscribers is administratively simple and has the benefit of being clear and well-understood with an existing body of interpretive precedent.

E. The Commission Should Permit the Optional Licensing of Standby Facilities

PCIA's original comments in the *Further Notice* proceeding noted that there are disparities in the regulations governing standby facilities that should be corrected. In particular, PCIA observed that the Part 22 rules provide for permissive authorization of standby facilities, while Part 90 rules do not.¹⁷ Given the apparent benefits of Part 22 licensees' ability to cut over rapidly to new facilities in the event of equipment failure or natural disaster, PCIA believes the CMRS rules should accommodate the optional licensing

¹⁵ See Telocator Comments, CC Docket No. 92-115 (filed Oct. 5, 1992) at 17, Attachment B, Proposed Rule § 22.99 (proposing to define "service to the public" as "the facilities authorized by the Commission have been constructed in accordance with the Commission's Rules and are either (1) actually providing service to customers or (2) if no customers are yet using the facilities, are fully capable of providing service within a reasonable period of time following a request by a representative of the Commission and are available to customers upon their request").

¹⁶ See, e.g., Celpage at 15-17; McCaw at 28; Metrocall at 15-17; NABER at 30-31; Network USA at 15-16; PageNet at 26; RAM Tech at 15-17.

¹⁷ Compare 47 C.F.R. §22.107 (1993) with 47 C.F.R. §§90.1-90.741 (1993).

of standby facilities for all CMRS operators. The *Third R&O* does not address this issue and does not adopt amendments to Part 90 authorizing the use of standby facilities.

PCIA continues to believe that achieving parity in this regard is meritorious and that changes to the rules should be adopted upon reconsideration. Specifically, PCIA suggests either adopting a rule based on Section 22.107 for reclassified Part 90 CMRS providers or, as PageNet has suggested, allowing both Part 22 and Part 90 licensees to construct standby facilities without a separate authorization.¹⁸ There are clear public interest benefits to permitting flexible use of standby facilities, regardless of the regulatory approach.

F. The Commission Should Accord Paging Operators Additional Flexibility Under the Emission Mask for Adjacent Channels

PCIA also suggested that the FCC could feasibly add to the flexibility of CMRS providers, as it has done in the narrowband PCS context, by altering the emission mask in cases where the same entity operates two or more adjacent channels. In the narrowband PCS rules, carriers operating aggregated adjacent channels must adhere to a predefined attenuation profile only where their operations are adjacent to a third party.¹⁹ In this manner, a narrowband PCS operator authorized on two adjacent 25 kHz channels is permitted to use the spectrum as a single 50 kHz channel with an occupied bandwidth of up to 45 kHz, rather than as two 25 kHz channels with an occupied bandwidth of only 40 kHz. As commenters noted, this approach offers greater spectral efficiency and more technical flexibility.²⁰

¹⁸ PageNet at 29.

¹⁹ See 47 U.S.C. §24.131 (1994).

²⁰ NABER at 26; Nextel at 40; PageNet at 20-21.

In the *Third R&O*, the Commission did agree with commenters 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."²¹ Thus, the Commission indicated that cellular, PCS, and MTA-based SMR systems would be required to adhere to out-of-band emissions limits "only to the extent necessary to protect operations outside of the licensee's authorized spectrum."²² Importantly, however, narrowband PCS licensees, as noted above, enjoy flexibility in this regard that is not extended to Part 22 and Part 90 paging systems. PCIA urges the Commission to rectify this disparity upon reconsideration by explicitly clarifying that paging licensees, in addition to cellular, PCS, and MTA-based SMR licensees, are required to adhere to emission mask limits only to the extent necessary to protect operations outside of their authorized spectrum.

G. The Commission Should Modify the 900 MHz SMR Licensing Policies To Permit Flexibility for Carriers in Providing Service to the Public

On December 9, 1994, PCIA filed an *ex parte* letter in support of the *ex parte* filings of Geotek Communications, Inc. ("Geotek") and RAM Mobile Data USA Limited Partnership's ("RMD") seeking Commission reconsideration of aspects of the *Third R&O*.²³ Specifically, PCIA supported: (1) revising the Commission's rules to protect the 900 MHz

²¹ *Third R&O* at ¶161.

²² *Id.*

²³ Geotek Communications, Inc. *Ex Parte*, GN Docket No. 93-252 (filed Dec. 2, 1994); RAM Mobile Data USA Limited Partnership *Ex Parte*, GN Docket No. 93-252 (filed Oct. 25, 1994).

operations of carriers that *applied for* authorizations by August 10, 1994, regardless of when such authority is actually granted; (2) continuing to accept and process new requests for 900 MHz SMR secondary sites outside of "Protected Areas," with the recognition that such sites will not be granted protected status; and, (3) interpreting "existing service area" for purposes of co-channel interference protection to extend to the boundary of the 900 MHz SMR designated filing areas ("DFAs"). For the reasons discussed below, the Commission should incorporate these revisions upon reconsideration.

First, PCIA supported reconsideration of the Commission's decision to require MTA licensees in the 900 MHz SMR band to afford protection to all incumbent licensee sites that were licensed prior to the August 10, 1994 cutoff date.²⁴ In particular, PCIA agreed with RMD and Geotek that such interference protection should include transmitter sites that were *applied for* -- rather than *licensed* -- prior to the August 10 deadline. As the Commission is aware, Geotek and RMD (and possibly other licensees) had filed applications well before the August 10 cutoff. Due to the tremendous backlog in processing 900 MHz SMR applications, however, such applications were not granted until after August 10. Under the rules adopted by the Commission in the *Third R&O*, these new systems will not receive interference protection without Commission action upon reconsideration. Affording protection to 900 MHz applications "in the pipeline" is consistent with the Commission's recent action with regard to pending applications for the 800 MHz SMR band, where the Commission decided

²⁴ *Third R&O* at ¶119.

to process such applications despite the initiation of a proceeding which seeks to fundamentally change the manner in which the Commission issues 800 MHz licenses.²⁵

Second, PCIA's letter supported the continued acceptance and processing of new requests for 900 MHz SMR secondary sites for sites outside of "Protected Areas," with the specific recognition that such sites will not be granted protected status. The Commission has traditionally permitted secondary sites, consistent with Section 90.7 of the Commission's Rules, provided that such stations do not cause interference to co-channel licensees. This policy should continue in order to enable operators to fulfill legitimate customer needs. Secondary sites are occasionally necessary to provide coverage in areas of weak signal due to terrain or other factors. If these facilities are not given protected status, they can be removed or altered when full service facilities are installed. The Commission can specifically condition authorizations for such facilities to indicate that they are not protected and are secondary.²⁶

Third, the *Third R&O* states that "incumbent systems are entitled to full co-channel interference protection for existing facilities, but are not allowed to expand beyond existing services areas."²⁷ In its *ex parte* letter, PCIA stated its belief that "existing service territories" should be defined by the DFA boundary for systems that have been constructed

²⁵ Amendment of the Commission's Rules To Facilitate Future Development of SMR Systems In the 800 MHz Frequency Band, FCC 94-271, PR Docket 93-144 (Nov. 4, 1994).

²⁶ The Commission implemented a similar procedure for the licensing of 2 GHz point-to-point fixed microwave after January 16, 1992. Redevelopment of the Spectrum To Encourage Innovation In the Use of New Telecommunications Technologies, 7 FCC Rcd 6886 (1992).

²⁷ *Third R&O* at ¶118.

within the DFA boundaries and that the Commission should provide that transmitter site locations constructed within the DFA boundaries can be moved within the DFA so long as the new transmitter locations do not expand the coverage area beyond the DFA boundaries.

II. CERTAIN PROCEDURAL ASPECTS OF THE THIRD R&O SHOULD BE CLARIFIED OR CODIFIED UPON RECONSIDERATION

A. The Commission Should Explicitly Specify the Effective Date of the Part 90 Rule Changes Under the Grandfathering Provisions

In the *Third R&O*, the Commission significantly altered the manner in which carriers previously regulated under Part 90 are governed. System licenses issued prior to August 9, 1993, have been given "grandfathered" status, and therefore certain rules do not apply until such licenses are regulated as CMRS. PCIA requests the Commission, upon reconsideration, to clarify the effective date of the changed regulations in light of the grandfathering provisions.

For example, the Commission adopted Section 90.425(e), at the request of PCIA, which requires station identification within five minutes of, or after, the hour. This section also gives operators the flexibility to use a single call sign for a system with multiple repeaters. While PCIA continues to believe that this rule serves a useful purpose and will ultimately benefit the land mobile industry, many of the hundreds of thousands of two-way repeaters in operation do not currently have the operational capability to transmit the station identification in sync with the clock hour.²⁸ While system upgrades are available, such

²⁸ Most paging transmitters have this capability, as it is often necessary to link a paging (continued...)

upgrades are expensive and take time to install. Only a fraction of repeaters will be able to comply with this rule by January 2, 1994. However, operators with multiple systems that are part of a wide-area network would like to be able to take advantage of the single call sign rule immediately.

There also are other rule sections that are unclear as to which systems they apply to and when. Therefore, PCIA respectfully requests that the Commission clearly specify which rule sections (and portions of rule sections) will take effect immediately and which rule sections take effect at the end of the grandfather period.

B. The Commission Should Further Modify Implementation of the New FCC Form 600

In this proceeding, a number of commenters urged the Commission to defer implementation of the proposed FCC Form 600.²⁹ As stated by McCaw, the form "has not received the review and analysis required to assess any potential problems with its preparation and processing in a range of services."³⁰ PCIA, for its part, requested that the Commission delay implementation of the form until such time as "potential applicants can be educated about its use."³¹ Notwithstanding this strong opposition to an immediate

²⁸(...continued)
transmitter with other transmitters for simulcast coverage, which requires timing mechanisms.

²⁹ See, e.g., PCIA at 24; McCaw at 31-32; AirTouch/Arch at 5-6; AMTA at 35, Celpage at 23-24; GTE at 13; Metrocall at 23-24; Network USA at 23-24.

³⁰ McCaw at 32.

³¹ PCIA at 24.

changeover to the new form, the *Third R&O* did not defer adoption of the Form 600, indicating that a delay in implementation of the form would "generate more confusion."³² In addition, the *Third R&O* states that "concerned parties will have sufficient lead time to familiarize themselves with the Form 600."³³

On November 4, 1994, PCIA requested that the Commission immediately reconsider its decision to implement FCC Form 600 on January 2, 1995 and stay the effective date of the new form until at least six months after the form has been finalized and the Commission is capable of accepting the form. PCIA stated that the unavailability of the Form 600, the need for applicants to become familiar with the Form 600, and the Commission's current inability to accept the form into its computer system necessitated a delay.

In response, the Commission issued a Public Notice on December 13, 1994. The Public Notice provided as follows:

- The effective date of the Form 600 remains January 2, 1995, as provided in the *Third R&O* in GN Docket No. 93-252. The Commission will begin accepting Form 600 applications on this date from all mobile services applicants who are eligible to use the form. (GMRS applicants will continue to use Form 574.)
- For 90 days after the effective date of the Form 600, *i.e.*, until April 2, 1995, applicants for mobile services other than Personal Communications Services (PCS) may submit applications on the form previously used for the service, *i.e.*, Form 401 or Form 574. Applicants who elect to file on the old forms during this transition period will be required to pay the application fee associated with the Form 600 for their particular service.

³² *Third R&O* at ¶293.

³³ *Third R&O* at ¶298 (footnote omitted).

- All applicants for narrowband and broadband PCS licenses filing "long form" applications on or after January 2, 1995 must do so on Form 600.
- Beginning on April 3, 1995, the Commission will discontinue accepting Form 401 and Form 574 from all mobile service applicants (except for GMRS applicants) and will require all such applications to be filed on Form 600.
- Applicants in the Business Radio, Specialized Mobile Radio, 220-222 MHz Land Mobile, and private paging services who elect to use the Form 574 during the 90-day transition period will be required to supplement the form with additional information from the Form 600 relating to the nature of their service for purposes of classification as Commercial Mobile Radio Service (CMRS) or Private Mobile Radio Service (PMRS). Applicants who are classified as PMRS on a "grandfathered" basis until August 10, 1996, must also provide this information for purposes of future reclassification. To fulfill this requirement, applicants must answer Questions 22 through 25 on the Form 600 main form and submit the main form as an attachment to the Form 574. In addition, applicants in these services who will be classified as CMRS (whether immediately or after August 10, 1996) must answer and submit Questions 30 through 33 on the Form 600 main form relating to alien ownership.

PCIA continues to be concerned about the requirement to supplement the Form 574 with pages one and two of the main Form 600 and requests that the FCC reconsider and eliminate this requirement through April 2, 1995, for the same rationale expressed in PCIA's Request for Stay. Less than two weeks before it takes effect, the complete form has still not been widely distributed.³⁴ Moreover, not enough applicants will be aware of the implementation procedures when they do take effect on January 2, 1995. PCIA continues to believe that the short transition period provided by the FCC and the new requirement to

³⁴ According to information provided by Commission staff today, the form is still not available for distribution by hand directly from the Commission. The alternative distribution methods offered by the Public Notice (including fax-on-demand, Internet, and attaching pages one and two to the Notice itself) are inadequate to ensure availability of the full or main Form 600 to all applicants who presently use the Form 574. This places a certain class of CMRS applicants at a disadvantage to other carriers in the same service classification.

provide supplemental information on the main Form 600 will create significant confusion throughout the industry, particularly among former private radio licensees.

As the largest frequency coordinating body in the land mobile industry, PCIA is making every effort to notify the industry about the Commission's Form 600 implementation period requirements. Modification of the FCC's Form 600 implementation plan by elimination of the requirement to supplement the Form 574 would significantly reduce industry confusion and ensure a much smoother transition to the new form.

C. The Commission Should Codify the Renewal Expectancy for All Mobile Radio Services

The *Third R&O* adopts a 10 year license term and renewal expectancy for all CMRS licensees.³⁵ The renewal expectancy criteria, which received the "unequivocally favorable" response of commenters, is codified for cellular carriers at Section 22.941 of the Commission's rules. Similar renewal expectancy policies are also codified for Personal Communications Service ("PCS") licensees at Section 24.16. This policy, however, is not specifically codified in the rules for paging and other classes of CMRS licensees other than cellular carriers. In the interest of uniformity, PCIA accordingly suggests recasting Section 22.145, titled "Renewal Application Procedures," by retitling the section "Renewal Applications," placing the existing text under a subsection (a), and including language similar to Section 24.16 under a new subsection (b).

³⁵ *Third R&O* at ¶386.

III. CONCLUSION

The Commission's *Third R&O* represents a milestone in the evolution of mobile radio services. This order at once reconciles two large bodies of rules to harmonize regulatory treatment of competitive carriers and implements needed changes to streamline regulation for all carriers. Consistent with the aspirations of the *Third R&O*, PCIA has recommended a number of further changes to provide a more competitive wireless marketplace and allow mobile service providers to be more responsive to their customers needs and demands. PCIA urges the Commission to adopt these limited changes upon reconsideration in this docket.

Respectfully submitted,

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