

FCC 94-331 Dec 20 2 36 PM '94

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)	
)	
Implementation of Sections 3(n) and 332)	GN Docket No. 93-252 ✓
of the Communications Act -- Regulatory)	
Treatment of Mobile Services)	
)	
Amendment of Parts 2 and 90 of the)	PR Docket No. 89-553
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)	

ORDER ON RECONSIDERATION

Adopted: December 21, 1994

Released: December 22, 1994

By the Commission:

1. On our own motion, pursuant to Section 1.108 of the Commission's rules, we reconsider one aspect of the service rules for the 900 MHz Specialized Mobile Radio ("SMR") band adopted in the *Third Report and Order* in GN Docket No. 93-252.¹ This change involves the continued granting of secondary site authorizations in the band pending implementation of new service and licensing rules for 900 MHz SMR systems.

2. In the *CMRS Order*, we adopted new licensing rules for the 900 MHz SMR band, dividing the 200 channels in the band into 20 blocks of 10 channels apiece and using Major Trading Areas (MTAs) to define the service area encompassed by each license.² We provided that in the event of mutually exclusive applications for MTA-based licenses, licensees would be selected by competitive bidding.³ We also recognized, however, that the 900 MHz band is

¹ *Third Report and Order*, Implementation of Sections 3(n) and 332 of the Communications Act -- Regulatory Treatment of Mobile Services, FCC 94-212 (adopted August 9, 1994; released September 23, 1994) (*CMRS Order*).

² *Id.*, ¶¶ 113-117.

³ *Id.*, ¶ 116.

already used by SMR systems that have been licensed in "Designated Filing Areas" (DFAs), corresponding to the top fifty major markets in the nation.⁴ The *CMRS Order* provided that such incumbent 900 MHz SMR systems would be "grandfathered" under the new rules, *i.e.*, incumbents would be afforded full co-channel interference protection for their existing facilities, but they would not be allowed to expand beyond their existing service areas unless they obtained the MTA license for the relevant geographic area and channels.⁵

3. As part of our decision to grandfather incumbent 900 MHz SMR systems, we recognized that some incumbents had been granted authorizations to construct facilities outside of their DFAs, enabling them to expand their systems or link facilities in different markets. Because the Commission discontinued primary site licensing outside the DFAs in 1986,⁶ these authorizations were granted on a secondary basis only, *i.e.*, the authorization did not entitle the licensee to protection from co-channel interference. In the *CMRS Order*, we concluded that 900 MHz secondary sites granted prior to August 10, 1994, should be afforded full co-channel protection by MTA licensees.⁷ We reasoned that although no protection had been promised for these sites originally, it would be highly disruptive to existing 900 MHz operations if incumbents were required to discontinue operation at secondary sites that had become integral parts of their systems.⁸ While electing to protect such sites, however, we concluded that no additional secondary site authorizations should be granted on 900 MHz SMR channels pending implementation of the new rules.⁹ Our concern in establishing this cut-off of additional licensing was that the 900 MHz band not be further contaminated in advance of MTA licensing.

4. In reviewing our decision to suspend granting of secondary site authorizations, we affirm the underlying goal of the *CMRS Order* to maximize the availability of spectrum to 900 MHz MTA licensees. We have concluded, however, that an outright prohibition on such authorizations goes further than necessary to accomplish this goal. First, the prohibition imposes a significant burden on 900 MHz incumbents who are presently building out systems

⁴ See *First Report and Order and Further Notice of Proposed Rulemaking* in PR Docket No. 89-553, ("900 MHz SMR Phase II Notice"), 8 FCC Rcd 1469, 1470 (1993).

⁵ *Id.*, ¶ 118.

⁶ See *Public Notice, "Private Land Mobile Application Procedures for Spectrum in the 896-901 MHz and 935-940 MHz Bands,"* November 4, 1986.

⁷ *Id.*, ¶ 119.

⁸ *Id.*

⁹ *Id.*

and seeking to provide service to consumers.¹⁰ We expect that many of these incumbents will seek and obtain MTA licenses under our new rules, which will give them greater flexibility to respond to customer demands in the long run. Because implementation of the new 900 MHz rules and selection of MTA licensees is still some months away, however,¹¹ suspending secondary site authorizations will inhibit system expansion in the interim and could thereby delay the availability of service to customers.

5. Second, granting authorizations on a secondary site basis in advance of MTA licensing will not contribute to spectrum contamination. By definition, such sites are not entitled to interference protection from other licensees in the band.¹² Thus, if we continue to grant secondary site authorizations in the 900 MHz band, 900 MHz MTA licensees will be under no obligation to provide interference protection to such sites, while secondary users will be required to discontinue any operations that interfere with an MTA-licensed system. Under these circumstances, the MTA licensing process is not compromised and no additional burden is placed on MTA licensees. The risk of operating without interference protection is instead placed solely on the licensee of the secondary site.

6. For the foregoing reasons, we have decided to allow licensing of secondary sites in the 900 MHz SMR band to resume. We emphasize that authorizations granted under this Order will be strictly secondary in nature, and that no licensee operating under such an authorization will be entitled to interference protection of any kind from the MTA licensee eventually authorized to operate on the same frequency in that area.¹³ By taking this action, we allow licensees to carry on with expansion of their systems if they so choose, but such licensees also assume the risk of operating without interference protection and being required to discontinue operations that cause interference to MTA licensees.¹⁴

¹⁰ Some 900 MHz licensees have indicated that their plans for system expansion have been delayed by the suspension of secondary site grants. *See, e.g., Ex Parte Presentation of RAM Mobile Data USA Limited Partnership in GN Docket 93-252, August 29, 1994, at 2-3.*

¹¹ We did not adopt final technical, operational, and licensing rules for the 900 MHz band in the *CMRS Order*. Instead, we indicated that such rules would be addressed in a subsequent order in PR Docket 89-553, the 900 MHz "Phase II" docket. *See CMRS Order*, ¶ 113 n.216, ¶ 116 n.220.

¹² *See* 47 C.F.R. § 90.7 (Definition of "secondary operation").

¹³ Of course, the secondary site licensee may obtain the MTA license, thereby ensuring protection for its site on the same basis as all other facilities encompassed by the MTA license.

¹⁴ The Commission will strictly enforce the no-interference policy regarding secondary operation, which is defined in 47 C.F.R. § 90.7.

7. Accordingly, IT IS ORDERED that secondary site authorizations may be granted to qualified applicants in the 900 MHz SMR service in accordance with the provisions of this Order.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary