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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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
	)	

To: The Commission

REPLY TO OPPOSITION
TO PETITION FOR RECONSIDERATION

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

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List A B C D E

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), in accordance with Section 1.429(g) of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, 47 C.F.R. § 1.429(g), respectfully submits its Reply to the Opposition to Petition for Reconsideration ("Opposition") filed by McCaw Cellular Communications, Inc. ("McCaw"). McCaw's description of the Congressional directive governing the conversion of heretofore private land mobile systems to Commercial Mobile Radio Service ("CMRS") status is inconsistent with the language of the statute and with any reasonable interpretation thereof.[1/] McCaw's suggestion that the FCC "can and should require compliance with all CMRS regulations for those grandfathered Part 90 licensees that benefit from the regulatory flexibility accorded to CMRS operators" is squarely at odds with the Congressionally-mandated transition period in that legislation and should be rejected. Opposition at p. 2.

I. THE ISSUE OF THE APPROPRIATE DEFINITION OF CMRS IS PROPERLY RAISED IN THIS STAGE OF THE PROCEEDING.

McCaw asserts that AMTA's request for reconsideration of the broad definition of CMRS adopted by the Commission is properly raised in the context of reconsideration of the Second Report and Order in this proceeding, but not in the instant stage of the rule making.[2/] Nonetheless, McCaw takes this opportunity to reaffirm its support for the FCC's rejection of the narrower CMRS definition recommended by the Association.

[1/] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b)(2)(B), 107 Stat. 312,392 (1993) ("Budget Act").

[2/] Second Report and Order, GN Docket No. 93-252, 93 FCC Rcd 1411 (1994), Erratum, 9 FCC Rcd 2156 (1994).

The Report and Order at issue herein is yet another step in a multi-stage Commission proceeding involving the implementation of a revised land mobile regulatory scheme consistent with the Congressional mandate set out in the Budget Act. Each aspect of this proceeding is inextricably tied to the FCC's determination regarding which systems are classified as CMRS and which as Private Mobile Radio Service ("PMRS"). Thus, although AMTA has previously requested reconsideration of a CMRS definition the Association considers substantially broader than dictated by the legislation, that same issue is properly addressed in the context of the decisions reached in the instant Order as well.

II. GRANDFATHERED CMRS LICENSEES ARE ENTITLED TO THE STATUTORILY-ESTABLISHED TRANSITION PERIOD.

In its Opposition, McCaw argues that "the [FCC] should require voluntary compliance with all CMRS regulations for those grandfathered Part 90 licensees that want to benefit from the regulatory flexibility accorded to CMRS operators before the expiration of the grandfathering period." Opposition at p. 5. It claims that this approach is essential to achieving the regulatory symmetry intended by Congress.

McCaw is incorrect. At the outset, AMTA must question how McCaw would have the Commission **require voluntary** compliance by grandfathered CMRS licensees. If the agency requires compliance, the regulatory obligation cannot be considered voluntary. If conformance is intended to be voluntary, it cannot be a requirement.

Moreover, the approach recommended by McCaw is entirely inconsistent with the transition path to CMRS crafted by Congress and clearly delineated in the Budget Act.

The Act provided a three-year transition, until August 10, 1996, for the conversion to CMRS status of heretofore private systems reclassified as CMRS. The legislation also obligated the FCC to complete within one year a proceeding conforming the technical and operational rules for the new CMRS service so that reclassified operators would have a two-year period to adjust their facilities and practices to this new regulatory structure. As stated by Congressman Edward Markey, then Chairman of the House Subcommittee on Telecommunications and Finance, "The intent of this transition period is to provide those whose regulatory status is changed as a result of this legislation a reasonable time to conform with the new regulatory scheme."[3/]

The approach suggested by McCaw would deny reclassified CMRS operators this period contrary to the intent of Congress. Under the interpretation advanced in the Opposition, the Commission would defer the effective date for the rule changes mandated by Congress to be completed within one year of the legislation until expiration of the transition period. The conversion to CMRS status and implementation of the conforming technical and operational rules would occur simultaneously.

McCaw's recommendation is flawed in two respects. First, as discussed above, it directly contradicts the unambiguous directives of Congress as to the timing of these aspects of the conversion process. A three-year grandfathered period was provided for the express purpose of facilitating the transition from one regulatory scheme to another. The Opposition would preserve the grandfather period for "only those offerings that were -- and remain -- purely private...." Opposition at FN 11. But those offerings are not

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[3/] 139 Cong. Rec. H6163 (August 5, 1993).

grandfathered at all since they will not be reclassified as CMRS. Under this approach, the transition structure defined in the legislation would be without effect, a result unsupported by the express language of the Budget Act, the accompanying legislative language, or any reasonable interpretation of legislative intent.

Moreover, McCaw's recommended approach assumes that the recently-adopted rule changes are invariably more flexible than those previously applied. However, Congress did not direct the Commission to adopt more flexible regulatory schemes, only to reconcile where appropriate the rules governing those services deemed substantially similar to one another. The result could be increased or reduced regulation as demonstrated by the rules adopted in this Order. In either case, the grandfather period was designed by Congress to facilitate a smooth transition to a new regulatory environment, an intention the Commission properly has effectuated.

For the reasons described above, AMTA urges the Commission to proceed expeditiously to complete this proceeding, consistent with the recommendations detailed herein.

CERTIFICATE OF SERVICE

I, Cheri Skewis, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 30th day of January, 1995, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing Reply to Opposition to Petition for Reconsideration to the following:

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