

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
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 the 935-940 MHz Bands)
Allotted to the Specialized Mobile)
Radio Pool)
)
Implementation of Section 309(j))
of the Communications Act -)
Competitive Bidding)
)
Implementation of Sections 3(n) and 322)
of the Communications Act)

PR Docket No. 89-553

DOCKET FILE COPY ORIGINAL

PP Docket No. 93-253

GN Docket No. 93-252

To: The Commission

**PETITION FOR PARTIAL RECONSIDERATION
OF THE
ADVANCED MOBILECOMM, INC.**

Advanced MobileComm, Inc. ("AMI"), pursuant to Section 1.106 of the Commission's Rules, 47 C.F.R. §1.106, respectfully requests that the Commission reconsider certain aspects of its Second Report and Order and Second Further Notice of Proposed Rule Making ("2nd R&O") in the above-captioned proceeding.¹

I. BACKGROUND

AMI has constructed and operated both regional and local 800 MHz and 900 MHz SMR systems in locations throughout the United States over the past decade. AMI's SMR systems have served thousands of users during that time. AMI also has participated

¹60 FR 22023 (May 4, 1995).

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extensively in FCC proceedings that have structured the SMR industry, and has been one of the leading proponents of the introduction of new spectrally-efficient technologies to enhance the capacity and capabilities of SMR systems.

In the San Diego area, AMI is presently the licensee of one 900 MHz trunked SMR system, and has applications pending for assignment of an additional five 900 MHz trunked SMR systems in the vicinity. AMI also manages an additional 900 MHz trunked SMR system in San Diego.

In the 2nd R & O the Commission adopted service rules for 900 MHz "Phase II" licenses. In addition, the Commission proposed rules for allocation of the licenses to be issued for Phase II. As detailed below, AMI has significant concerns with several rules adopted in the proceeding and requests reconsideration of these issues.

II. MTA CONSTRUCTION REQUIREMENTS SHOULD BE AMENDED

The Commission decided to require that MTA licensees cover two-thirds of the coverage of the MTA population at the end of the five year construction period.² The requirement is the same as the Commission's requirement in the Personal Communications Service ("PCS").

AMI is concerned that the Commission's requirement for 900 MHz MTA licensees may be too stringent and unworkable. First, incumbent licensees already cover a significantly populated area in many MTAs. Thus, the MTA licensee may have difficulty

²Id. at para. 40.

constructing a system which meets the construction requirement unless the MTA licensee has a relationship with the incumbent. In AMI's situation, if AMI wishes to obtain a Phase II license to expand its San Diego service offering, AMI will have to bid on licenses which require construction of systems to cover the population in Los Angeles, where all systems have been constructed by incumbents, and Las Vegas, which has little roaming crossover with San Diego.³ The Commission's construction requirement would mandate that AMI establish a relationship with the Los Angeles licensees in order to meet the coverage requirement, even though the equipment which each licensee has already constructed may be totally incompatible.

Similarly, AMI agrees with Geotek Communications, Inc. ("Geotek") and RAM Mobile Data USA Limited Partnership ("RAM") that the use of 900 MHz SMR systems is fundamentally different than PCS, which in this case warrants a different construction scheme.⁴ The primary use of 900 MHz SMR systems is for dispatch and dispatch-related functions. Although the Commission argues that there may be some MTA licensees that seek to provide ubiquitous wide-area service to the public,⁵ the fact is that the limited number of frequencies available to operators severely limits the feasibility of such a service offering. Successful 900 MHz SMR systems are (and will be) systems that are constructed not to meet the needs

³Las Vegas was not a "Phase I" DFA area.

⁴See, 2nd R & O, supra at para. 39.

⁵Id. at para. 41.

of the general public, but rather tailored to the business user. Therefore, construction patterns may not be similar to allocation or PCS roaming patterns in a particular MTA.

On this basis, AMI believes that the Commission should relax the coverage requirements for 900 MHz systems to require that MTA licensees must provide coverage to a smaller portion of the MTA. Alternatively, AMI would request that the Commission clarify that a showing of "substantial service" would be sufficient where there is a demonstration that the MTA licensee was not able to reach an agreement with an incumbent licensee. Further, with regard to Los Angeles and San Diego, some Los Angeles 900 MHz licensees are competitors with the San Diego 900 MHz licensees in San Diego (and vice versa), and therefore may be uncooperative in reaching service agreements.

III. SECONDARY SITE PROTECTION MUST BE CLARIFIED

As the result of several requests, the Commission decided to afford primary protection for 900 MHz secondary sites licensed on or before August 9, 1994, as well as sites for which applications were filed on or before that date.

AMI supports the Commission's decision. However, AMI believes that the Commission should clarify one aspect of this decision to prevent difficulties in the future. Specifically, the designation of secondary 900 MHz sites as primary sites raises the possibility of interference between the secondary sites and primary sites of incumbent licensees in adjacent markets. In some cases, the distance between the sites could be minimal, particularly in the

case of Los Angeles and San Diego co-channel systems. Therefore, AMI requests that the Commission clarify its decision to specify that such secondary sites are afforded primary protection **except** as they relate to the primary sites of co-channel incumbent licensees.⁶

IV. The Commission Should Eliminate The Five Year Loading Rules

In the Third Report and Order in GN Docket No. 93-252, the Commission eliminated loading requirements for Part 90 CMRS providers.⁷ 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 complete."⁸ However, the Commission elected to retain the five year loading requirement for 900 MHz SMR licensees.⁹ 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

⁶The Commission's clarification on protection between such sites should include a reaffirmation of the special requirements for transmitters south of 33°45' Latitude serving the Los Angeles DFA to protect subsequent grants in San Diego. See, Private Land Mobile Application Procedures For Spectrum In the 896-901 MHz and 935-940 MHz Bands, FCC Public Notice, released November 4, 1986 at pp. 7-8.

⁷Third Report and Order, GN Docket No. 93-252, 9 FCC Rcd 7988 (1994) ("Third Report and Order").

⁸Third Report and Order at para. 190.

⁹At the request of NABER, the Commission had previously extended the loading date of 900 MHz systems by two years. See, 47 C.F.R. §90.631(i). Report and Order, PR Docket No. 92-17, 8 FCC Rcd 4914 (1992).

and because 900 MHz systems operate in limited service areas".
Third Report and Order at para. 194.

The Personal Communications Industry Association ("PCIA"), the American Mobile Telecommunications Association ("AMTA") and other parties requested reconsideration of the Commission's decision.¹⁰ The reconsideration requests were based upon the fact that 900 MHz licensees have been unable to build systems where customers demanded coverage¹¹ and to develop networks to compete with other services.

In the 2nd R & O, the Commission elected to retain the loading rules for 900 MHz incumbent systems. The Commission's rationale for its decision is that incumbent licensees have already been granted an extension of time to load their systems and incumbents can now obtain MTA licenses if they were previously unable to provide sufficient system coverage.¹²

AMI requests that the Commission reconsider this decision. Although an incumbent licensee now potentially has the opportunity to obtain an MTA license, and thereby save the license from losing channels because of lack of loading, in reality few independent

¹⁰AMI is a constituent member of both PCIA and AMTA. Further, AMI's President is presently the Chairman of the Board of PCIA.

¹¹Operators 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 system managers such as AMI could afford to take significant capital risks by constructing secondary sites, many independents could not afford to take this risk. However, the Commission ultimately assigned primary status to such secondary locations.

¹²2nd R & O at para. 57.

operators will have an opportunity to participate in the Commission's auction. As the auction is presently envisioned, an incumbent licensee will need to bid on an extensive geographic area, which in the case of the Los Angeles MTA stretches from San Diego through Las Vegas, in order to retain the authorization. Many independent licensees do not have the desire or economic ability to participate in such an auction or to complete the system build-out over such a wide area. To require such incumbent licensees to pay for spectrum in areas where they do not wish to build in order to save their businesses cannot be considered to be in the public interest.

It must be stressed that the failure of many 900 MHz SMR operators to load their systems was in many cases not due to the inability of the licensee to adequately manage and load the facility, but a lack of timely action by the Commission. The inability to offer competing coverage as compared to 800 MHz systems, for example, severely crippled sales. It should be noted that in this proceeding the 900 MHz SMR industry is not arguing that the equipment didn't work, that the economy did not allow for purchase of new radios by customers, or that the licensees were the victims of application mills. Rather, the failure to expand this service to its potential is the result of the Commission's inability to begin licensing "Phase II" systems, six years after initiating the proceeding. It is clearly unfair to legitimate operators for the Commission to now take back channels when relief

from loading requirements has been granted to all the land mobile radio systems except 900 MHz systems.

The very limited geographic ability of 900 MHz SMR operators to serve their customers severely limited the growth of the systems. While the Commission states that obtaining an MTA license will free incumbents from their restraints, the relief is prospective only, and only for those operators which can afford to bid on channels.

Second, the Commission's action is contrary to the Omnibus Budget Reconciliation Act of 1993.¹³ Specifically, the Senate and House Amendments in the Legislative History precludes the Commission from granting "... any right to a licensee different from the rights awarded to licensees [within the same service] who obtained their license through assignment methods other than competitive bidding..."¹⁴

Under the Commission's proposal, the geographic licensee will obtain many more rights than incumbent licensees. The fact that MTA licensees will not be required to meet loading requirements is the most glaring example of differing license rights.¹⁵ For example, under the Commission's proposal, geographic licensees will obtain the rights to the spectrum held by an incumbent should the

¹³Pub. L. No. 103-66 (Budget Act), §6002(b), 107 Stat. 312 (1993).

¹⁴House Conf. Rep., supra at p. 1174.

¹⁵Id. at para. 57.

incumbent not be able to renew its authorization.¹⁶ Yet the incumbent does not obtain the rights to the geographic license if the MTA licensee fails. MTA licensees have an extended period to construct systems,¹⁷ and will have more flexibility in the location of transmitter sites.¹⁸ Clearly, the MTA license receives different rights that incumbent licensees, contrary to the expressed will of Congress.

V. CONCLUSION

WHEREFORE, the Advanced MobileComm, Inc. respectfully requests that the Commission act in accordance with the views expressed herein.

Respectfully submitted,

ADVANCED MOBILECOMM, INC.

By: David E. Weisman
David E. Weisman, Esquire

By: Alan S. Tilles
Alan S. Tilles, Esquire

Its Attorneys

Meyer, Faller, Weisman and
Rosenberg, P.C.
4400 Jenifer Street, N.W.
Suite 380
Washington, D.C. 20015
(202) 362-1100

Date: June 5, 1995

¹⁶2nd R & O, supra at para. 57.

¹⁷Id. at para. 38.

¹⁸Id. at para. 37.