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SUMMARY

The FCC has adopted a proposal detailing the circumstances in which it will permit the modification of 220 MHz authorizations. The American Mobile Telecommunications Association, Inc. ("AMTA") agrees with the FCC that speed and ease of implementation are essential ingredients in whatever 220 MHz modification proposal is adopted. However, it also is essential that the rules adopted recognize the competitive advances and other changed business conditions, such as lack of tower capacity, which have occurred during the four and one-half years since the applications were filed for the licenses in question.

AMTA's 220 MHz Council has determined that the FCC's modification proposal is unnecessarily restrictive. It appears likely to ensure that numerous systems will not be built, with the result that no service will be provided on that spectrum until the proposed 220 MHz auctions take place. AMTA's alternative approach allows for the prompt provision of service. At the same time, the Association's proposal eliminates any possibility of mutual exclusivity among applications and does not allow licensees to change the markets they intend to serve.

AMTA proposes a single filing window in which licensees may apply to relocate their facilities a maximum of one-half the distance over 120 km toward any co-channel licensee to a maximum of 35 km. Parties proposing modifications resulting in less than 120 km separation would be accepted only with the consent of the co-channel licensee(s). Any modification that did not meet that standard would be considered defective and dismissed outright. Licensees whose modification applications are granted would have a construction deadline four months from the modification date.

AMTA's proposal provides a fast and efficient method of processing modification requests with minimal use of scarce FCC resources. Once the filing window passes, the only changes permitted would be those that did not in any way alter the existing station contour.

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

In the Matter of

Amendment of Part 90 of the
Commission's Rules to Provide
for the Use of the 220-222 MHz Band
by the Private Land Mobile
Radio Service

PR Docket No. 89-552

Implementation of Sections 3(n) and 332
of the Communications Act

GN Docket No. 93-252

Regulatory Treatment of Mobile Services

COMMENTS

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), in accordance with Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully submits its comments in the above-entitled proceeding.^{1/} The 4th NPR proposes rules whereby incumbent 220 MHz operators (so-called "Phase I" licensees) would be permitted to modify their existing authorizations prior to implementation of a new regulatory structure for this band as proposed in the recently-adopted Second Memorandum Opinion and Order and Third Notice of Proposed Rule Making in this same proceeding.^{2/}

^{1/} Fourth Notice of Proposed Rulemaking, FCC 95-381, PR Docket No. 89-552 (Released Aug. 29, 1995) ("4th NPR" or "Order").

^{2/} Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking, FCC 95-312, PR Docket No. 89-552, RM-8506, Released Aug. 28, 1995) ("3rd NPR").

AMTA has urged the Commission to adopt 220 MHz modification rules for over a year. It has attempted to work with the agency to craft regulations that are equitable, easy to implement and responsive to the FCC's desire to auction licenses for 220 MHz geographic service areas, as proposed in the 3rd NPR. AMTA is eager to complete this regulatory process expeditiously so that the promise of narrowband two-way radio communications can mature into a developed, competitive wireless service.

Nevertheless, although the Association is gratified that the FCC has acknowledged Phase I licensees' relocation requirements, AMTA cannot support the instant proposal. Instead, it recommends adoption of the modified approach outlined below which it believes better balances the various considerations at issue in this proceeding.

I. INTRODUCTION

AMTA is a nationwide, non-profit trade association dedicated to the interests of the specialized wireless communications industry.^{3/} The Association's members include trunked and conventional 800 MHz and 900 MHz Specialized Mobile Radio ("SMR") Service operators, licensees of wide-area SMR systems, and commercial licensees in the 220 MHz band. These members provide commercial wireless services throughout the country

AMTA's 220 MHz Council ("Council") was formed in February, 1993. It includes representatives of the vast majority of Phase I licensees, 220 MHz network organizers and narrowband 220 MHz equipment suppliers. The Council is actively

^{3/} These entities had been classified as private carriers prior to the 1993 amendments to the Communications Act. See Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI § 6002 (b), 107 Stat. 312, 392 ("Budget Act").

involved in all aspects of the emerging 220 MHz marketplace, with particular emphasis on the critical regulatory arena. The Council has participated in numerous meetings with the FCC staff regarding the need for 220 MHz license modification provisions. Thus, AMTA and the Council have a direct, significant interest in the outcome of this proceeding.

II. BACKGROUND

As detailed in the instant Order and the 3rd NPR, the 220 MHz industry has an extensive, complex regulatory history. It was created in 1991 when the Commission dedicated this recently-reallocated spectrum "for the development of spectrally-efficient narrowband technology to afford this technology an opportunity to gain acceptance in the marketplace." 3rd NPR at ¶ 3.

Applications for 220 MHz systems were accepted in May, 1991; the FCC subsequently suspended the acceptance of additional filings that same month. The Commission began issuing licenses for the vast majority of these systems after completion of the random selection proceedings used to select among mutually exclusive applicants. However, the FCC several times extended the construction deadline for these systems in light of the legal challenge to the FCC's licensing processes, which was not resolved until March 18, 1994, when the industry reached a settlement with the complainants to create regulatory certainty.^{4/} No applications for new or modified stations have been accepted during this almost four and one-half year period since the

^{4/} Evans v. FCC, Case No. 92-137, (D.C. Cir. Mar. 18, 1994) (appeal of 220 MHz Second Reconsideration Order dismissed).

initial filing window.^{5/} Thus, unlike operators in all other FCC-licensed services, Phase I licensees have never been permitted to request modification or relocation of their facilities.

The prohibition against 220 MHz modifications has proved highly detrimental to the maturation of this service. A significant number of 220 MHz licensees have determined that their currently authorized sites are no longer available or are not optimal for the service to be provided. In some instances, the sites were available when originally selected, but subsequently have been filled by other users.^{6/} Other licensees have determined that alternative locations would be preferable to the ones identified in the applications submitted more than four years ago because of coverage or other routinely recognized business reasons. These licensees do not propose to change the **market** they intend to serve, but rather the site from which they will serve it.

The FCC has granted Special Temporary Authority ("STA") for such licensees to construct at modified locations, but that authority is conditioned on securing a permanent grant at the relocated site at some future date. Failure to do so will result in automatic license cancellation. Thus, constructing pursuant to an STA has posed a substantial risk from the outset since there was no assurance that a system could be

^{5/} The FCC has accepted applications to assign or transfer licenses for constructed facilities as long as no change is proposed in the technical parameters of the facility.

^{6/} Unlike applicants in other services, applicants for heretofore Private Land Mobile authorizations issued under Part 90 have not been subject to site availability requirements. There is no obligation to secure a reasonable assurance that the site proposed will be available. Memorandum Opinion and Order, FCC 92-234, 7 FCC Rcd 3965 (1992).

relocated permanently. This was particularly true in light of the FCC's avowed intention to replace the existing 220 MHz regulatory structure with a geographic-based licensing scheme wherein the auction winner would be entitled to all "white space" in the region - essentially the proposal set out in the 3rd NPR.

In AMTA's opinion, the 220 MHz licensee community could not reasonably have anticipated that their 1991 site selections would be immutable. They could not have predicted that the FCC, which routinely has permitted modifications of all other classes of licenses conditioned on protection to other licensees, would **not** adopt comparable procedures for the 220 MHz service. No such intention was announced by the agency at the time the applications were submitted. Under these circumstances, it is essential that the FCC adopt a reasonable relocation policy, one which balances the needs of the existing 220 MHz industry with the vision the Commission has articulated for the future of this band.

The construction dilemma faced by the 220 MHz community has been exacerbated by the unprecedented growth in wireless telecommunications services since the beginning of the decade. In particular, there has been an explosion in utilization of cellular, paging, and both SMR and ESMR systems, each of which has benefitted from an increasingly flexible (if not yet fully comparable) regulatory environment.^{7/}

The growth of these businesses, both in terms of capacity and geographic coverage, is a significant factor in the competitive environment in which Phase I

^{7/} Second Report and Order, GN Docket No. 93-252, 9 FCC Rcd 1418, (1994); Erratum, 9 FCC Rcd 2156 (1994) (providing for comparable regulation of substantially similar CMRS services).

licensees must operate. Had all of these services been "frozen" during the last four and one-half years, 220 MHz operators undoubtedly would find antenna space more readily available.^{8/} The towers and other facilities identified in their 1991 applications might still have capacity to accommodate 220 MHz systems. Moreover, had these competitive systems not expanded their coverage and increased their market penetration during this period, 220 MHz licensees would be developing their business strategies, including system coverage, based on the market conditions that existed when their applications were filed in 1991. Instead, the 220 MHz industry faces a substantially different, substantially more competitive environment.

AMTA is **not** suggesting that the public interest would have been served by restricting the expansion of all wireless services while the FCC first attempted to extract itself from a legal challenge to its 220 MHz licensing processes, and then considered how to restructure the band to accommodate geographic licensing and competitive bidding. However, competitive advances and other changed business conditions during this lengthy delay should be recognized in the Commission's 220 MHz modification proposal. In the Association's opinion, they have not been.

Therefore, AMTA has developed the alternative approach described infra. It endeavors to permit Phase I licensees sufficient flexibility to respond to real world

^{8/} Petition for Rulemaking filed by Cellular Telecommunications Industry Association Dec. 22, 1994 in the Matter of Amendment of the Commission's rules to Preempt State and Local Regulation of Tower Siting for Commercial Mobile Radio Service Providers, RM-8577, See Public Notice, Report No. 2052 (released Jan. 18, 1995); Facilitating Access to Federal Property for the Siting of Mobile Services Antennas, Exec. Order No. _____, 60 Fed. Reg. 42023, 3 C.F.R. ____, (Aug. 10, 1995).

business considerations while avoiding the possibility of mutual exclusivity and preserving the competitive potential of the proposed geographic-based 220 MHz licensees. It can be implemented with minimal government resources, and will serve the critical objective of delivering a vital service to the American public on a timely basis.

III. DISCUSSION

A. COMMISSION PROPOSAL

The Commission has proposed to allow 220 MHz licensees to modify their authorizations to locate base stations anywhere within their existing service area contours, so long as transmissions at their new station locations do not exceed a predicted field strength of 38 dBuV/m anywhere within this contour.^{9/} Order at ¶ 7. The Order suggests that licensees would be able to satisfy that limitation by reducing their power and/or antenna height. *Id.* Any resulting deficiencies in coverage could be addressed by adding an unlimited number of additional or "fill-in" transmitters, again as long as transmissions from such sites did not expand the existing contour.^{10/} Order at ¶ 10. Further, because of a concern that licensees might reduce their operating parameters to very low levels simply to meet construction requirements at a new location without violating the contour restriction, the FCC proposes that operations from a relocated base station result in the transmission of a predicted signal of 38 dBuV/m or more over at

^{9/} As discussed *infra*, this definition does not specify the parameters on which the contour would be calculated. Specifically, it does not state whether the contour would be calculated based on the authorized or maximum permissible effective radiated power ("ERP"). AMTA urges the FCC to permit 220 MHz licensees, like those in comparable services, to calculate contours based on the maximum permissible ERP.

^{10/} The same result of course could be accomplished by using directional antennae.

least fifty percent (50%) of the licensee's existing service area. Order at ¶ 19. Parties who utilize this modification provision will be given a further four month construction extension from the date of grant of the modified authorization. Order at ¶ 18.

In proposing this approach, the FCC has identified several considerations which must be addressed in any 220 MHz modification provision. For example, the agency is concerned that a less restrictive approach would increase the likelihood that modification applications will be mutually exclusive. Resolving such situations would expend agency resources at a time when they are sorely overtaxed, and might delay the proposed auctions for geographic service areas.^{11/} Order at ¶ 9. The Commission also wants to ensure that its decisions herein are consistent with the modification classifications already adopted in the omnibus Commercial Mobile Radio Service ("CMRS") proceeding.^{12/} For these reasons, the agency specifically declined to adopt more permissive approaches, for example permitting Phase I relocations of a specific, albeit minimal, distance such as 2 km or alternatives proposed by the Council in its discussions with the agency. Order at ¶ 8.

AMTA agrees with the FCC that the provision of 220 MHz service has been

^{11/} AMTA would note that the Commission has only recently adopted a Notice of Proposed Rule Making regarding the future licensing and auctioning of 220 MHz service. No record has been developed on this proposal as yet. Therefore, while the FCC's action in the instant proceeding should not foreclose otherwise available, attractive options recommended in the 3rd NPR, it is premature to assume that geographic licensing and competitive bidding procedures will be adopted since the public has not yet commented on those proposals.

^{12/} Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, Third Report and Order, 9 FCC Rcd 7988 at ¶¶ 370-373 (1994) ("CMRS Third R&O").

delayed for too long. The Association's members are eager to complete system construction so that this highly efficient dispatch alternative will be available to the American consumer. In this respect, AMTA concurs with the Commission that speed and ease of implementation are essential ingredients in whatever 220 MHz proposal is adopted.

However, AMTA is not convinced that the approach proposed in the Order will achieve that objective. Based on extensive discussions with its members, the Council has determined that permitting only modifications which do not in any way change the existing facility's contour is too restrictive to meet the needs of a significant number of licensees. The FCC's recommendation that fill-in transmitters can be used to correct deficiencies in coverage fails to recognize the very significant costs associated with operating the simulcast system such an approach would require. These additional, unnecessary expenses would prevent the 220 MHz service from retaining its low-cost quality which relies on the natural propagation characteristics of this band.

In AMTA's opinion, rather than promoting delivery of service, the FCC's approach appears likely to ensure that numerous systems will not be built. The result will be that **no** service will be provided on that spectrum until completion of the related proceeding involving the revised regulatory framework. While Chairman Hundt has announced that the auctions for 220 MHz geographic licenses have been scheduled for the third quarter of 1996, the FCC has not yet received public input on that proposal. Service which otherwise could be available in a matter of weeks or months will instead be denied for at least a year, under even the best case scenario.

The Association believes that the alternative approach outlined below will better effectuate the FCC's avowed objective of prompt provision of service. It will do so without permitting instances of mutual exclusivity and without allowing licensees to change the markets they intend to serve. It will not delay the issuance of geographic licenses, assuming the record supports adoption of that FCC proposal. For these reasons, AMTA urges the FCC to reconsider its decision and instead adopt the proposal herein.

B. AMTA PROPOSAL

AMTA proposes that licensees be permitted to relocate their facilities a maximum of one-half the distance over 120 km toward any co-channel licensee to a maximum of 35 km. Parties proposing modifications resulting in less than 120 km separation would be accepted only with the consent of the co-channel licensee(s), as evidenced in a letter submitted concurrently with the application. Any modification that did not meet that standard would be considered defective and dismissed outright. Consistent with the FCC's proposal, the Association recommends that a single filing window be opened for such modifications, and that licensees whose modification applications are granted have a construction deadline four months from the license modification date.

The Association's proposal is responsive to several important concerns. First, it eliminates any possibility of mutually exclusive applications. No party would be permitted to propose a relocation of more than one-half of the distance in excess of the required mileage separation between systems. Thus, if co-channel systems currently were separated by 140 km, each would be permitted to move up to 10 km in the

direction of the other. If both relocated the maximum distance, they still would be separated by 120 km. If only one moved that far, the separation would continue to be more than that required under the rules. Licensees with multiple co-channel systems would need to ensure that a proposed move met that standard in relation to each co-channel facility. Those with concurrence from one co-channel licensee to locate at less than the prescribed distance would still be required to maintain the necessary separation to any other co-channel operation. Applications filed during the modification window proposing moves that do not meet that requirement would be deemed defective and would be dismissed.^{13/} No time or FCC resources would be expended in resolving situations of mutual exclusivity.

Additionally, by limiting relocations to a maximum of 35 km, the Commission will ensure that licensees do not use this window as an opportunity to move their facilities into more densely populated areas, thereby reducing the value of this spectrum should it subsequently be auctioned. Those with licenses in and around the major metropolitan areas, for the most part, will be limited to relocations of substantially less than the maximum permitted. As in virtually every FCC-licensed service, all available 220 MHz spectrum is already assigned to some party's or parties' major markets. Licensees authorized to serve outlying areas will be precluded from relocating closer to

^{13/} If the FCC adopts this proposal, AMTA further recommends that licensees be permitted to relocate within their service area at any time as long as the move does not in any way change the existing 38 dBuV/m contour. Such changes would, of course, be considered minor and would not require public notice. Such a provision would provide 220 MHz operators with rights comparable to those already granted to 800 MHz and MMDS licensees. 47 C.F.R. § 90.621(b)(6); Report and Order, MM Docket No. 94-131 at ¶¶ 56-58 (Released June 30, 1995).

an urban core because they will be blocked by existing co-channel systems irrespective of the decision in this proceeding. However, AMTA's approach, unlike the FCC's, will permit the licensees already authorized to serve a particular market to do so on the most commercially reasonable basis.

For example, AMTA has reviewed the 220 MHz licensing situation in two sample markets: Boston and Philadelphia. The attached maps (Exhibits 1 and 2) depict a forty (40) mile circumference around the center coordinates of each city. The smaller, inner circles represent licensed 220 MHz stations. They demonstrate that virtually all of the local commercial frequencies already are licensed squarely within these urban centers. In Philadelphia, seventeen (17) of the twenty (20) available systems are located within the core downtown area. Eighteen (18) of the twenty (20) Boston systems are similarly located.^{14/} It is apparent, at least in these markets, that any desire to relocate is not an attempt to move closer toward an urban center, but merely to select the optimal site which may even be farther from downtown than the current location.

For purposes of the high-elevation, high-power systems used to provide the market-wide two-way service offered by 220 MHz systems, sites within reasonable proximity to the urban core often are considered comparable. Unlike cellular and other services designed to provide ubiquitous coverage to handheld, as well as mobile, units throughout a metropolitan area, "single stick" dispatch systems do not always prefer downtown sites. High elevation towers typically found in more outlying communities

^{14/} The remaining facilities are outside the forty (40) circumference, but would be precluded from moving in because of existing co-channel systems. Second Report and Order, GN Docket No. 93-252, 9 FCC Rcd 1418, ¶ 95 (1994).

often provide perfectly satisfactory coverage to the market being served with reduced site rental charges.

Thus, it is not the case that every 220 MHz licensee would elect to move closer to the urban core if permitted to do so. The two-way site selection process involves a balancing of various factors, including cost, coverage, quality of facility management and numerous technical considerations. Phase I licensees desiring to relocate their systems are attempting to find a useable site at a reasonable cost that will offer adequate coverage. Such sites are located throughout a typical metropolitan area, not concentrated in downtown hub areas.

Additionally, under AMTA's proposal, the small number of 220 MHz licensees in more rural areas will have the flexibility to select the best available site within the same general market area. In areas where neither buildings nor population are dense, sites are not always readily available. Licensees cannot simply "move across the street" if the licensed site is not longer available, or if they are dissatisfied with the facility owner's proposed arrangement or management capabilities. The ability to move up to 35 km will ensure that these licensees will not be at the mercy of tower owners who would know that 220 MHz licensees were effectively precluded from relocating, and thus must pay whatever rental charge is assessed. Under the FCC's proposal, the marketplace will not work properly. It will be skewed heavily in favor of antenna facility owners solely because of regulatory restrictions imposed on operators. That result is antithetical to this Commission's dedication to promoting full and fair marketplace activity.

Finally, the approach recommended herein will not create inconsistencies with the

FCC's definitions of major and minor modifications for CMRS services.^{15/} There is nothing in the FCC's rules or policies that prevents the agency from accepting major or minor modification applications for 220 MHz systems during a defined window period. Because these applications, by definition, will not be mutually exclusive with one another, the distinctions between these classes of modifications is not germane.

AMTA believes that the 220 MHz modification proposal described above satisfies the concerns identified by the FCC in the Order as well as the requirements of the incumbent 220 MHz industry. It provides a fast and efficient method of processing modification requests with minimal use of scarce FCC resources. Once this window of opportunity has passed, the only changes permitted would be those that did not in any way alter the existing station contour.^{16/}

AMTA also requests clarification of certain aspects of that proposal. First, for purposes of modifications that do not affect a station's contour, AMTA assumes that the existing contour will be calculated based on the maximum permissible power for the licensed antenna height as is the case in competitive services such as 800 MHz and 900 MHz SMR.^{17/} AMTA also requests clarification of the technical showings provided for in the Order. Order at ¶ 11. It appears that the Commission is willing to consider showings documenting that a theoretical expansion of the existing service contour would

^{15/} Of course, only those 220 MHz systems that are interconnected with the public switched telephone network will be classified as CMRS after the expiration of the statutory transition period.

^{16/} See n. 12, supra.

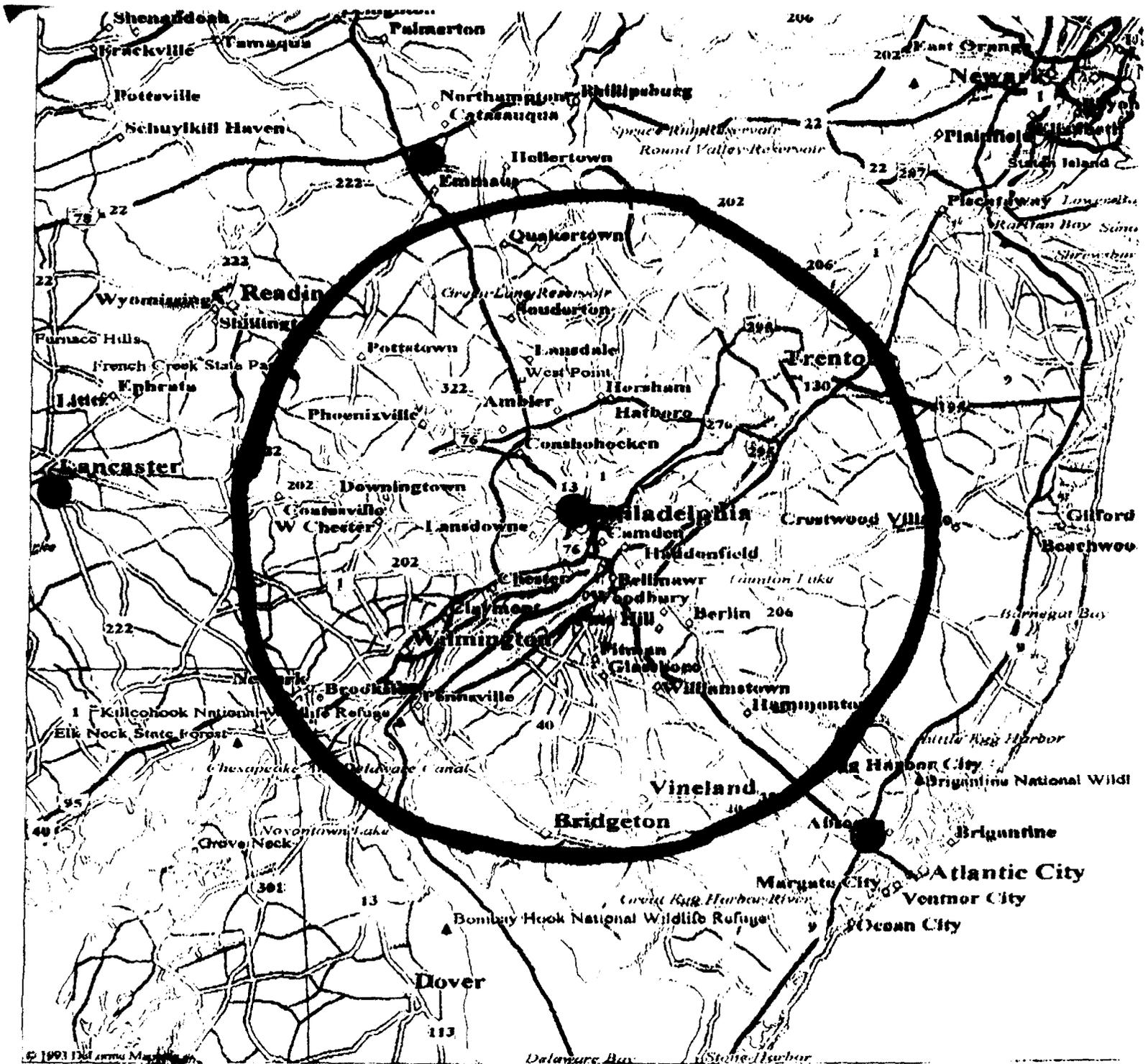
^{17/} All existing systems are assumed to operate with 1,000 watts ERP. 47 C.F.R. § 90.621(b)(4)(ii)(C)(Table) at n. 3.

actually be prevented because of intervening terrain. However, that aspect of the FCC's proposal requires further detail.

Finally, the Order raises issues regarding the protection to be afforded Phase I licensees by so-called Phase II licensees to be authorized in accordance with the rules adopted in response to the 3rd NPR. The Order appears to presume that geographic licensing and the other provisions proposed in the 3rd NPR will be adopted, and premises its protection proposal on that assumption. In AMTA's opinion, those matters should be resolved in the context of that rulemaking, rather than the instant proceeding. While the FCC's 220 MHz licensing revisions may be adopted in toto, it is premature to make that assumption and unnecessary to address that issue at this time. The appropriate protection for Phase I licensees should be resolved in conjunction with all other rules effectuating the fundamental restructuring of the 220 MHz licensing environment.

IV. CONCLUSION

For the reasons described herein, AMTA urges the Commission to adopt the modified 220 MHz modification proposal outlined above.



LEGEND

- City/Town
- Major City
- ★ State Capitol
- ◇ Town, Small City
- ◇ Large City
- ▲ Park
- ⌋ Interstate, Turnpike
- ⌋ US Highway
- State/Prov. Boundary
- Population Center
- Major Street/Road
- Interstate Highway
- State Route
- US Highway
- River
- Land Mass

Scale 1:1,000,000 (at center)

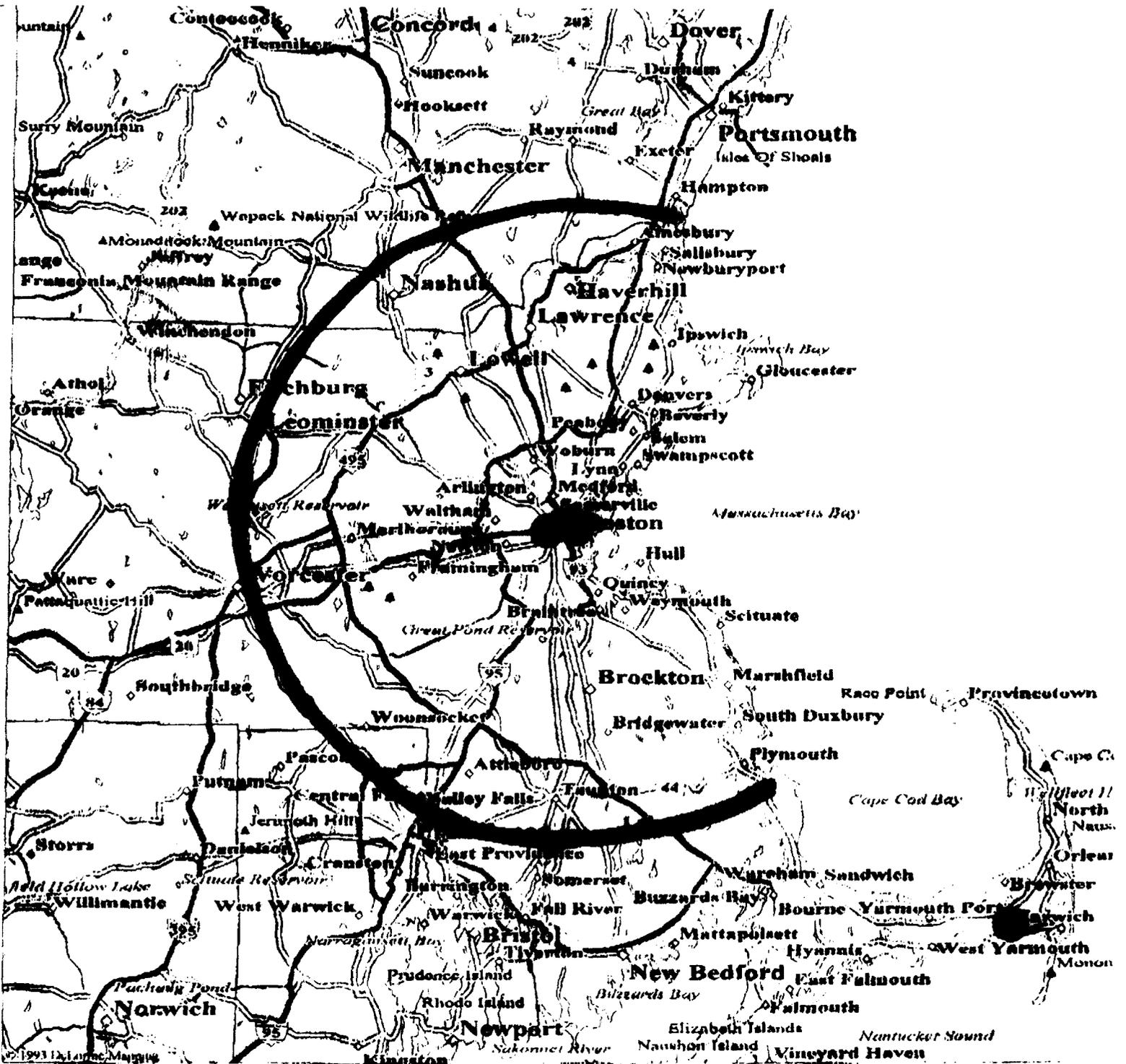
20 Miles

20 KM

US Mobil Comm Inc License Dispers

Mag 9.00

Tue Sep 12 11:29 30 1995



LEGEND		Scale 1:1,000,000 (at center)	USM Boston License Dispersion
○ Geo. Location	— State/Prov. Boundary	— 20 Miles	Mag 9.00
▲ State Capital	— Population Center	— 20 KM	Tue Sep 12 11:34:17 1995
◇ Town/Regional City	— Major Street/Road		
◊ Large City	— Interstate Highway		
▲ Hill	— State Route		
▲ Park	— US Highway		
⊕ Interstate, Turnpike	□ Land Mass		
⊕ US Highway	□ Open Water		

CERTIFICATE OF SERVICE

I, Cheri Skewis, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 13th day of September, 1995, caused to have hand delivered a copy of the foregoing Comments to the following:

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