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

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Amendment of Part 90 of the )  
Commission's Rules to Facilitate )  
Future Development of SMR Systems )  
in the 800 MHz Frequency Band )  
)  
Implementation of Sections 3(n) and 332 )  
of the Communications Act - )  
Regulatory Treatment of Mobile Services )  
)  
Implementation of Section 309(j) )  
of the Communications Act - )  
Competitive Bidding )

PR Docket No. 93-144  
RM-8117, RM-8030,  
RM-8029

GN Docket No. 93-252

PP Docket No. 93-253

To: The Commission

MOTION FOR EXTENSION OF TIME

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS  
ASSOCIATION, INC.

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January 11, 1996

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To: The Commission

**MOTION FOR EXTENSION OF TIME**

The American Mobile Telecommunications Association ("AMTA" or "Association"), pursuant to Section 1.46 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully requests that the Commission extend for sixty days the time period in which to file comments and to provide a thirty-day reply comment period in response to the Second Further Notice of Proposed Rule Making ("2nd FNPR") segment of the above-entitled proceeding.<sup>17</sup> The Association recognizes that much of the Specialized Mobile Radio ("SMR") service industry, and the Commission itself, are eager to finalize the matters addressed in this

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<sup>17</sup> First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making, PR Docket No. 93-144, released December 15, 1995 ("Order").

rule making. The SMR community already has been substantially, competitively disadvantaged because of the regulatory uncertainty in which it has existed for the past few years. Nonetheless, as described herein, the number and novelty of the issues raised in this phase of this unusually complex proceeding, as well as the extraordinary circumstances since the release of the Order, dictate the need for the extension requested.

AMTA is a nationwide, non-profit trade association dedicated to the interests of the specialized wireless communications industry. The Association's members include trunked and conventional 800 MHz and 900 MHz SMR operators, licensees of wide-area SMR systems, and commercial licensees in the 220 MHz band. These members provide commercial wireless services throughout the country. Many of them are vitally interested in all aspects of the 800 MHz regulatory environment, and, in particular, in the fundamental restructuring of the 800 MHz regulatory framework proposed herein. AMTA has been actively involved in all phases of this proceeding, and, in fact, filed the Petition for Rule Making proposing geographic licensing procedures for the 800 MHz SMR service which was the genesis of this rule making. Thus, the Association has a significant interest in the outcome of this proceeding.

## **1. INTRODUCTION**

The Order is a lengthy and substantially interrelated document. In it the FCC has endeavored to "strike a fair and equitable balance between the competing interests of 800 MHz SMR licensees seeking to provide local service and those desiring to provide geographic area service." Order at ¶ 2. The complexity of achieving that objective is reflected in the interrelationship between matters decided in the First Report and Order

("1st R&O") segment which addresses the so-called "upper" 10 MHz of 800 MHz SMR spectrum for which the FCC has adopted a geographic licensing structure based on Department of Commerce Bureau of Economic Analysis Economic Areas ("EAs") and the issues raised in the 2nd FNPR which deal both with certain final aspects of the EA licensing framework and with the FCC's licensing proposal for the "lower" 80 SMR channels and the 150 channels reclassified from the General Category to the SMR service.

**2. THE MATTERS RAISED IN THE 2ND FNPR ARE NOVEL, COMPLEX AND SIGNIFICANTLY INTERRELATED WITH THOSE ADDRESSED IN THE 1ST R&O**

Substantial industry and Commission time and resources have been devoted over the past two and one-half years to consideration of matters relating to the upper 10 MHz of SMR spectrum in the context of an evolving statutory standard and an increasingly competitive marketplace. The FCC's decisions in the 1st R&O will not satisfy all interested parties, but are a critical step in establishing the certainty that will release the industry from its current regulatory limbo.

However, as indicated at numerous points in the Order, those decisions are only one facet of the FCC's revamping of the 800 MHz SMR industry's overall licensing structure. The rules proposed in the 2nd FNPR also will affect virtually every existing 800 MHz SMR licensee. This phase of the proceeding seeks further comment on certain aspects of the EA licensing framework as well as all aspects of the lower channel proposal which has been presented here for the first time. Because of the vital importance of these matters to the entire SMR community, but particularly to those likely

to be displaced from the upper 10 MHz, it is imperative that the industry have a reasonable amount of time in which to consider and discuss the recommendations proposed, and sufficient time to provide reasoned responses to the comments filed.

Matters such as the optimal geographic area to be encompassed by these licenses, the number of channels to be included within each authorization, the appropriate coverage and construction requirements to be applied to them, the treatment of incumbents in this spectrum, and the method by which such licenses should be issued require a degree of thoughtful deliberation which cannot be accomplished within the period provided by the FCC. The thirty-day comment and nine-day reply comment period specified would not have been sufficient even if it had not included the entire Christmas and New Year's holiday period. It clearly is inadequate in light of the general unavailability of interested parties at this particular time of the year.

**3. THE FEDERAL GOVERNMENT HAS BEEN CLOSED THROUGHOUT THE ENTIRE PERIOD SINCE THE ORDER HAS BEEN RELEASED**

A critical part of the process of resolving public policy matters such as those raised in the 2nd FNPR is the interexchange of information between the FCC and the public. AMTA believes that the extensive discussions between the agency and the SMR industry regarding the 1st R&O issues were of significant benefit in assisting the FCC to balance the interests of various segments of this industry.

The public has been denied that opportunity to date in relation to the 2nd FNPR because the agency has been closed, first as part of the Federal Government shutdown and then due to inclement weather in the Washington area, since the Order was released. Neither AMTA nor any other parties have had the opportunity to discuss with the FCC

various, novel aspects of that proposal, or to seek clarification of certain portions of it. Without that valuable input, it is unlikely that the FCC will receive the thoughtful, useful comments that a proposal of this significance deserves.

**4. THE COMMISSION'S RULES AND THE APA REQUIRE THAT INTERESTED PARTIES BE GIVEN A REASONABLE AMOUNT OF TIME AFTER NOTICE OF A RULE MAKING PROCEEDING TO PREPARE COMMENTS**

Section 1.415(b) of the Commission's Rules, 47 C.F.R. § 1.415(b), states that, "A reasonable time will be provided for submission of comments in support of or in opposition to proposed rules, **and the time provided will be specified in the notice of proposed rulemaking.** (Emphasis added.) FCC Rule Section 1.4(a)(1), 47 C.F.R. § 1.4(a)(1) specifies that Public Notice of documents in notice and comment rulemaking proceedings, such as the instant matter, is the date of publication in the Federal Register. As of the date of this Motion, notice of this proceeding has not yet been published in the Federal Register. Thus, under the Commission's rules and the requirements of the Administrative Procedure Act, 5 U.S.C. §553, and assuming the item is published today, the public would have only two days of official notice prior to the current Comment date. That period could not be considered "reasonable" under any analysis.

**5. CONCLUSION**

The FCC and the SMR industry have devoted over two years to deliberating the proposed regulatory structure for the upper 10 MHz of 800 MHz SMR spectrum. While AMTA does not support any regulatory delay that would further disadvantage SMR providers in the increasingly competitive wireless marketplace, the Association also is

committed to ensuring that all segments of the SMR industry operate within a licensing environment that promotes system growth and competitive opportunities. The relatively brief extension requested herein is needed to enable AMTA to consider the opinions of its many members that will be affected by the decisions reached and to prepare thoughtful comments reflective of the best interests of the collective industry.

For the reasons described above, AMTA urges the Commission to extend the comment and reply comment date in the 2nd FNPR in the above-entitled proceeding until March 18, 1996 and April 18, 1996 respectively.

**CERTIFICATE OF SERVICE**

I, Cheri Skewis, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 11th day of January, 1996, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing Motion for Extension of Time to the following:

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- \* Commissioner James H. Quello  
Federal Communications Commission  
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- \* Commissioner Andrew C. Barrett  
Federal Communications Commission  
1919 M Street, NW, Room 826  
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- \* Commissioner Rachelle B. Chong  
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- \* Commissioner Susan Ness  
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\* Via Hand-Delivery