

# AMTA

American Mobile Telecommunications Association

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March 4, 1996

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

William F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

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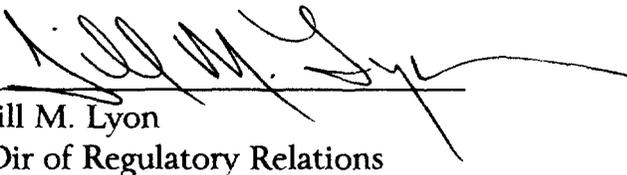
Re: **Notice of oral ex parte presentation**  
**220 MHz modifications**  
**PR Docket No. 89-552**

93-252

Dear Mr. Caton:

On February 29, 1996, the American Mobile Telecommunications Association, Inc. (AMTA) and representatives of members of its 220 MHz Council made an oral ex parte presentation concerning the above-captioned docket to Mr. John Cimko, Chief of the Policy Division of the Wireless Telecommunications Bureau, and Nancy Boocker, Esq., Mr. Martin Liebman and Mary Woytek, Esq. of the Division staff. The meeting included a discussion of questions arising from the Commission's recently released *Second Report and Order* in the above-referenced proceeding. The issues concerned were included in a letter from Mr. Cimko to AMTA president Alan R. Shark, dated February 28, 1996, and will also be included in AMTA's Petition for Reconsideration/Request for Clarification of the *Second Report and Order*, to be filed with the Commission on March 4, 1996.

An original and one copy of this Notice have been submitted.

  
Jill M. Lyon  
Dir of Regulatory Relations

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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MAR - 4 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

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 )  
)  
Implementation of Sections 3(n) and 332 )  
of the Communications Act )  
)  
Regulatory Treatment of Mobile Services )

PR Docket No. 89-552

GN Docket No. 93-252

To: The Commission

PETITION FOR RECONSIDERATION  
AND  
REQUEST FOR CLARIFICATION

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS  
ASSOCIATION, INC

By:



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March 4, 1996

The American Mobile Telecommunications Association, Inc. (“AMTA” or the “Association”), on behalf of its 220 MHz Council and pursuant to Section 1.429 of the Federal Communications Commission’s (“FCC” or the “Commission”) Rules, 47 C.F.R. § 1.429, respectfully requests that the Commission reconsider and/or clarify limited portions of its January 26, 1996 *Second Report and Order* in the above-referenced proceeding.<sup>1</sup> In that decision, the Commission adopted a procedure by which existing licensees authorized on the 220-222 MHz band could modify their facilities. With the modifications or clarifications recommended herein, AMTA can support fully the license modification process established by the FCC.

The Association has worked closely with the Commission in seeking a reasonable, one-time modification process for current 220 MHz licensees prior to the licensing of remaining spectrum in this uniquely-regulated, small frequency band. AMTA is confident that modification of some existing licenses, coupled with the next phase of new licensing, will help to promote the development of the spectrally efficient narrowband technology and services for which this band was allocated in 1991. The decisions reached herein will determine the future of many developing businesses either already providing or about to initiate wireless communications services to a wide variety of business users. As such, it is an extremely important proceeding to the 220 MHz industry, whose members are likely to be the large

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<sup>1</sup> *Second Report and Order*, PR Docket No. 89-552/GN Docket No. 93-252, FCC 96-27 (adopted and released January 26, 1996)(“2nd R&O”).

majority of participants in the anticipated auction to license remaining spectrum.

## I. INTRODUCTION

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 Specialized Mobile Radio (SMR) service operations, 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 includes licensees and other entities with interests in a large majority of the active licensed spectrum in this band, as well as both manufacturers of narrowband 220 MHz equipment and other related entities.

As the leading representative organization of the 220 MHz industry, the Association has been active in all phases of the regulatory history of this band. AMTA coordinated an industry settlement of *Evans v. Federal Communications Commission*,<sup>2</sup> the action brought to challenge the Commission's 220 MHz application process, thus allowing the licensing process to move forward. AMTA also has worked closely with the Commission on a process for modification of existing licenses, needed due to the freeze on acceptance of new applications that has continued since May,

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<sup>2</sup> U.S. Circuit Court of Appeals for the District of Columbia Circuit, Case No. 92-1317, settled by Order, per curiam, March 18, 1994.

1991, and has been an active participation in the proceeding expected to result in new licensing rules for this spectrum.

## II. BACKGROUND

In the 2nd R&O, the Commission adopted a one-time modification procedure that allows licensees to modify their licenses by relocating base station facilities up to one-half the distance over 120 kms in the direction of a co-channel licensee, to a maximum distance. 2nd R&O at ¶ 9. If originally licensed within the county-based Designated Filing Areas (DFAs) encompassing the top 50 urban markets, a licensee may relocate up to 8 kms from its original site. Outside the DFAs, the maximum distance for a move is 25 kms. Id. If moving from a site outside a DFA to one within, the licensee may relocate only 8 kms inside the nearest DFA boundary. The licensee may move closer than one-half the distance over 120 kms from a co-channel licensee if it files a letter of consent from the co-channel licensee with its application. Id.

In addition, the FCC recognized that, due to several years of regulatory uncertainty, many licensees have been operating under Special Temporary Authority (STA) at sites different from their original locations. To avoid disruption of service to customers or the loss of substantial investments, the Commission grandfathered licensees granted STAs at sites regardless of distance where: 1) the licensee had completed construction and begun operation by January 26, 1996; or 2) the licensee

had taken delivery of equipment at the STA location by January 26, 1996. 2nd R&O, Appendix C, 47 C.F.R. § 90.753(c).

The Commission established a strict timetable for the modification process. Licensees must file a letter notifying the FCC of their intent to modify their stations on or before March 11, 1996 and must file modification applications by May 1, 1996. Those licensees not seeking to modify their facilities must complete construction by March 11, 1996. 2nd R&O at ¶ 22. Once granted, licensees must construct at the new site by August 15, 1996, or later if the Commission does not act on their application by June 1, 1996. *Id.* at ¶ 23. The FCC will consider requests for waiver of the modification restrictions where terrain makes those sites available within the modification parameters inferior to others at more elevated locations. *Id.* at ¶ 11.

### **III. ISSUES ON RECONSIDERATION/CLARIFICATION**

The 2nd R&O represents a Commission compromise between an AMTA proposal and the concerns of the Commission and its Wireless Telecommunications Bureau, and was arrived at after many months of discussion. The Association and members of its 220 MHz Council are appreciative of the FCC's decision, and generally believe the modification process will be smooth. However, the language of the 2nd R&O has raised some questions concerning implementation that are of concern to the 220 MHz industry. Due to the timetable established by the FCC,

each step in the modification process must be taken flawlessly, or the licensee will be threatened with loss of its authorization. Therefore, it is vital that these issues be resolved expeditiously to relieve uncertainty.

The Association has already discussed certain matters relating to the 2nd R&O with members of the Wireless Telecommunications Bureau staff, and has received responses that obviate any need for further FCC action. AMTA is confident that administrative solutions, taken under delegated authority, can be found to solve the few remaining issues, and will continue to cooperate fully with the Bureau to that end. However, AMTA urges the Commission to clarify or reconsider the following issues as recommended to provide an equitable and efficient modification process.

**A. Licensees moving out of DFAs should be allowed a maximum relocation of 25 kms.**

The language of the 2nd R&O is unambiguous as to the maximum distance a licensee may move if remaining within a DFA (8 kms) or remaining outside a DFA (25 kms). AMTA recognizes and supports the Commission's intent to place stricter restrictions on relocation modifications in urban areas, where alternative antenna sites are more readily available, while allowing greater freedom of movement in less densely-populated areas. This intent is underscored by the Commission's decision to restrict moves into a DFA to 8 kms beyond the nearest border.

However, the 2nd R&O is silent as to the maximum distance of a move from within a DFA to outside; i.e., away from the core urban area of a city. In such

situations there can be no concern that licensees will serve more population than from their originally authorized, core urban site. Also, since the distance to a desired location would be calculated beginning from within an urban area, a move of up to 25 kms (assuming the maximum distance is possible while complying with the “one-half the distance over 120 kms” formula), cannot raise Commission concern about licensees serving “entirely different geographic areas than those for which they were originally licensed.”<sup>3</sup> AMTA therefore urges the FCC to clarify or reconsider its decision, as necessary, to allow relocation modifications to a maximum distance of 25 kms if the licensee is moving outside the boundary of a DFA and will not cross the boundary of another DFA.

**B. The Commission Should Reconsider its Decision and Allow Other Types of Modifications.**

AMTA recognizes that much of the discussion concerning modification of existing 220 authorizations over the last several months focused on licensees’ need to relocate their base stations. As stated above, the Association is appreciative of Commission efforts to meet those needs through release of the 2nd R&O prior to licensing remaining spectrum in this band. However, to allow *only* relocation modifications unfairly discriminates against licensees requiring other forms of minor adjustment to their systems. These licensees, also, will have no further chance to

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<sup>3</sup> See, 2nd R&O at ¶ 8.

make such adjustments prior to the initiation of a new licensing framework.

AMTA respectfully submits that other forms of modification, such as changes to antenna height and power level within the maximums permitted in the Rules, should also be included in the 2nd R&O. Based on its participation in the discussion of new rules through comment on the *Third Notice of Proposed Rulemaking* in this proceeding, as well as its experience in other services, the Association anticipates that existing stations are likely to be protected under new Rules based on a service contour.<sup>4</sup> Such protection is likely to be based on the maximum allowed antenna height and power under current Rules. Therefore, allowing such minor modifications now will have no effect on the amount of service area available to future auction participants. If the FCC is unable to include other forms of modification in the instant decision, AMTA suggests in the alternative that the Licensing Division be notified that it may continue to grant STAs to 220 MHz licensees for such modifications.

**C. The FCC Should Clarify that STA Requests Filed On or Before January 26, 1996 Will Be Grandfathered.**

AMTA and members of its 220 MHz Council are highly appreciative of the Commission's decision to grant primary authority to stations operating at STA locations. As noted in the 2nd R&O, these licensees are already providing service to

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<sup>4</sup> Specific examples of similar services include the 800 MHz and 900 MHz SMR bands, where licensees have been protected to their 22 dBu or 40 dBu contours.

the public, or are about to do so based on their accepting delivery of equipment.

However, an apparent inconsistency between the text of the 2nd R&O and the attached revised Rules could serve to discriminate against some licensees that have made the same investment. Section 90.753© of the Rules states that licensees with granted STAs that have either 1) commenced operation or 2) taken delivery of equipment by January 26, 1996 may obtain primary authority at their STA sites provided the new location complies with technical and operational rules. However, the text of the 2nd R&O adds the additional restriction that the STA *must have been granted* by January 26, 1996. 2nd R&O at ¶ 15. This limitation is not found in the Rule.

AMTA urges that those licensees that filed STA requests by January 26, 1996 that are later granted, be allowed primary authorization at the new location regardless of grant date, if the licensee can show equipment delivery by January 26, 1996. Not only would this clarification provide consistency between the text of the R&O and the Rules; it would also provide regulatory consistency among licensees that happened to have their STAs granted earlier than others filed on the same or an earlier date. The Association submits that eligibility for primary authorization should not be based on the processing time of one STA request over another, but instead should be dependent on the licensee's own action.

**D. The FCC Should Clarify the 2nd R&O to Provide a Protection Mechanism for Licensees Filing Waiver Requests.**

The Association appreciates the Commission's recognition that special conditions, especially based on terrain, may require waiver of its modification parameters to allow longer-distance modifications. AMTA is confident that the number of such waiver requests will be small, and will be easily grantable based on the FCC's criteria. However, the R&O imposes potentially draconian consequences on licensees whose requests, for some reason, are not eventually granted.

Based on the current language, there is no protection mechanism or tolling of the construction period for those licensees filing waiver requests. Therefore, should their requests ultimately be denied, licensees would lose their authorizations for failure to construct by March 11, 1996.

The Association is confident that such an outcome was not contemplated by the FCC. It therefore recommends that the 2nd R&O be clarified to include a protection mechanism for licensees filing waiver requests. This could take the form of an "alternative showing" of a rule-compliant, albeit inferior, site or the originally authorized site in case the waiver request is denied.<sup>5</sup>

Allowing an alternative showing would be consistent with the Commission's own recognition that "the technical characteristics of base station sites available under our relocation procedure may be considerably inferior to the technical

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<sup>5</sup> Such alternative showings are routinely required under the Rules for other land mobile services. *See*, 47 C.F.R. § 22.19(b).

characteristics of . . . sites that may exist at nearby, more elevated locations.” 2nd R&O at ¶ 11. Given the difficulty often inherent in finding appropriate sites in areas with unusual terrain features, the Association does not believe a protection mechanism would provide an unfair advantage to the very small number of licensees likely to require it. AMTA also suggests that licensees whose waiver requests are denied be allowed a reasonable period of time to construct facilities at the alternative site.

#### **IV. CONCLUSION**

For the reasons described above, AMTA respectfully requests that the FCC clarify and/or reconsider its decision to define relocations to sites outside DFA boundaries, allow other forms of minor modifications, permit primary authorization of STA sites as described above, and provide a protection mechanism for licensees making waiver requests. The Association further requests that, due to the short timetable established for modifications, the Commission move expeditiously to take the action recommended herein.

## CERTIFICATE OF SERVICE

I, Angela Wilson, of the American Mobile Telecommunications Association, Inc., hereby certify that I have, on this 4th day of March, 1996, placed in the United States mail, first-class postage prepaid, a copy of the foregoing Petition for Reconsideration and Request for Clarification, to the following:

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