

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

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AUG 30 1996

In the Matters of	)	
	)	
Interconnection and Resale Obligations	)	
Pertaining To	)	CC Docket No. 94-54
Commercial Mobile Radio Services	)	
	)	
Telephone Number Portability	)	CC Docket No 95-116
	)	
Revision of the Commission's Rules	)	CC Docket No. 94-102
To Ensure Compatibility with	)	
Enhanced 911 Emergency Calling Systems	)	

To: The Commission

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PETITION FOR RECONSIDERATION OR CLARIFICATION

Small Business in Telecommunications, Inc. (SBT), by its attorneys, respectfully requests either reconsideration or clarification of the Commission's First Report and Order (FRO) (FCC 96-263 Released July 12, 1996) and Second Report and Order (SRO) (FCC 96-284 Released August 15, 1996) in CC Docket No. 94-54, the Commission's First Report and Order in CC Docket No. 95-116 (FCC 96-286 Released July 2, 1996), and the Report and Order in CC Docket No. 94-102 (FCC 96-264 Released July 26, 1996). In support of its position, SBT shows the following.

The Commission created an inadvertent ambiguity in its definition of the category of licensees to which its actions in Dockets 94-54, 95-116, and 94-102 applies. In Docket 94-54, the Commission stated that it was extending the manual roaming rule to "all CMRS licensees

competing in the mass market for real-time, two-way voice services," SRO at para. 12. The Commission then explained that the category of "covered SMR providers" includes "800 and 900 MHz SMR licensees that hold geographic area licenses," and "incumbent wide area SMR licensees, defined as licensees who have obtained extended implementation authorizations in the 800 MHz or 900 MHz SMR service", *id.* Had the Commission stopped there, no question would have arisen as to the persons who are included within the definition of covered SMR providers, but the Commission went further. At paragraph 14 of the SRO, the Commission stated that

because they do not compete substantially with cellular and broadband PCS providers, local SMR licensees offering mainly dispatch services to specialized customers in a non-cellular system configuration, as well as licensees offering only data, one-way, or stored voice services on an interconnected basis, are not covered by the roaming rule.

Not expressly included in the definition of covered SMR provider, but not expressly excluded from the category of licensees to which the Commission's action applies is a large group of SMR providers who operate in a non-cellular system configuration, but who cannot be said to offer "mainly dispatch services". It is the obligations of this group of SMR providers for which SBT requests either reconsideration or clarification.

In its Report and Order in Docket No. 94-102 (R&O), the Commission adopted essentially the same explanation as in Docket 94-54, but added an elaboration, stating that

while some traditional SMRs are treated as CMRS because they are interconnected to the public switched network, we do not intend to require them to implement E911. We find that costs of implementing E911 for local SMRs would outweigh the benefits and, as AMTA argues, imposing this obligation on them may give them the incentive to eliminate their interconnection, which would not be in the public interest,

R&O at para. 81. Unfortunately, the elaboration creates the same ambiguity as is found in Docket 94-54.

In Docket 95-116, the Commission made the same explanation of who is not within the category of covered SMR as it made in Docket 94-54, and it used the same language. In Docket No 95-116, however, the Commission went further and codified the ambiguous explanation in new Rule Section 52.1(c).

There are, SBT believes, thousands of SMR providers whose stations operate only locally in a non-cellular system configuration, and who provide an indefinite amount of service which is interconnected with the public switched telephone network (PSTN). None of these SMR providers competes substantially with cellular and broadband PCS providers, but, by some measure, they may not accurately be said to offer mainly dispatch services. For historical reasons, flowing out of the Commission's former rules concerning eligibility, loading, and the resale of telephone service for profit, few, if any, of these local SMR providers has a dominant percentage of mobile units interconnected with the PSTN. Because, however, an interconnected communication typically lasts for three times as long as a dispatch communication, it is possible that, on a minutes-of-use basis, some of these local SMR providers may be said to provide mainly interconnected service.

It would not appear that its omission of local, non-cellular configuration, SMR providers who may provide something different from "mainly dispatch service" was intended to thrust such

providers into the category of covered SMR providers. Because of the attractiveness of wide area service and roaming capability which a cellular, PCS, or wide area SMR can provide, an interconnected local SMR provider cannot compete in the mass market for real-time, two-way voice services. Rather than the mass market, these providers' market is limited to persons who can make use of SMR service within only a local area, and it would, therefore, be inappropriate to classify them with the dissimilar entities which clearly are within the definition of covered SMR providers.

The elaboration expressed in the R&O in Docket 94-102 points rather clearly to an intention to exclude all local service SMRs from the definition of covered SMR provider, but given the wandering statements of various recent Commission actions, the matter is not free from doubt. To relieve uncertainty, a clarification, at the least, is required. In the case of Rule Section 52.1, a technical correction to its text would appear to be necessary.

The action recently taken in the Report and Order in ET Docket No. 93-62 (FCC 96-326 Released August 1, 1996) does not complicate the matter. Rather, at Appendix C, the Commission referred simply to Rule Section 20.3 for its definition of covered SMR provider. Accordingly, no clarification of that action is required. The simple reference in Docket No. 93-62 to Rule Section 20.3, which does not contain the ambiguity, suggests that the classification provided by Rule Section 20.3 is sufficient without any further, potentially confusing explanation.

The Commission's explanation of those SMR providers to whom the manual roaming rule applies left a question concerning local, interconnected SMRs. The codified rules which the Commission adopted in Docket No. 94-54, Rule Sections 20.3 and 20.12(a), do not contain the ambiguity created by the Commission's text. To clarify its definition, the Commission should either simply delete the incomplete explanation from paragraph 14 of the SRO and the comparable language from the FRO.<sup>1</sup> Any effort to expand upon paragraph 14's explanation of who is not included can only lead the Commission into further difficulties. If the Commission merely deletes the explanation from paragraph 14, it will be clear that the only entities within the category of covered SMR providers are interconnected SMR providers which either hold geographic licenses or are incumbent wide area licensees. No further elaboration would then be required with respect to that proceeding.

In Docket 95-116, the Commission should amend new Rule Section 52.1(c) to delete the explanation of who is not in the category of covered SMR providers. Thereby, the Commission can make that rule consistent with Rule Sections 20.3 and 20.12(a).

In Docket 94-102, the Commission should revise paragraph 81 of its R&O to delete the language beginning with "Within these classes" to the end of the paragraph. To the extent that the portion of the material to be deleted is not confusing, it is unnecessary and deletion of all of it is the simplest way to resolve the problem.

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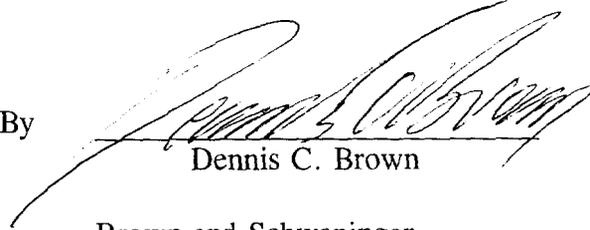
<sup>1</sup> The comparable language appears at paragraph 19 of the FRO.

Conclusion

For all the foregoing reasons, SBT respectfully requests that the Commission either reconsider or clarify its definition of covered SMR providers, as suggested herein.

Respectfully submitted,  
SMALL BUSINESS IN  
TELECOMMUNICATIONS, INC.

By

A handwritten signature in black ink, appearing to read "Dennis C. Brown", is written over a horizontal line. The signature is fluid and cursive.

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Dated: August 30, 1996

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