BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Revision of the Commission's Rules	)	CC Docket No. 94-102
To Ensure Compatibility with	)	RM-8143
Enhanced 911 Emergency Calling Systems	)	

To: The Commission

PETITION FOR RECONSIDERATION

Respectfully submitted,

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By: _____

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September 3, 1996

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), pursuant to Section 1.429 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully requests reconsideration of one aspect of the Commission's July 26, 1996 Report and Order in the above-identified proceeding.[1] AMTA urges the FCC to refine the Order's definition of "covered SMR providers" that will be subject to the Enhanced 911 ("E911") requirements to reflect more accurately the policy objectives articulated in the Order.

I. INTRODUCTION.

1. AMTA supports the Commission's efforts to improve the quality and reliability of 911 services for the customers of consumer-oriented, mass market wireless telecommunications service providers. This type of wireless communications is becoming increasingly ubiquitous in our society and, to the extent that it is technically and economically practicable to do so, it should be perceived as an extension of the wired network with the same functionalities and features.

2. By contrast, and as recognized at least implicitly in the Order, the vast majority of the Association's SMR members offer a different type of wireless service. Unlike cellular and PCS systems which are intended to provide subscribers with access to the public switched network that approximates as closely as possible their home or business telephone capabilities, most of the SMR segment of the Commercial Mobile Radio Service ("CMRS") serves a different market.

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[1] Report and Order, CC Docket No. 94-102, 11 FCC Rcd ___ (rel. July 26, 1996) ("R&O" or "Order").

3. AMTA has already described to the FCC the fact that SMR radio is essentially a business tool, not a consumer service.[2] SMR systems typically are used by commercial and governmental entities that want one-to-many dispatch and, sometimes, ancillary interconnect capability. Most transmissions are between dispatchers and employees in vehicles or carrying handheld units, or between workgroups of employees. The dispatcher is the natural point of contact in the case of an emergency. That person frequently knows the general location of units, and acts much like an intermediary Public Safety Answering Point ("PSAP") should the need arise.

4. Because the traditional SMR industry has focused on this type of service mix, most systems have very limited, relatively unsophisticated interconnection capability. Many operators interconnect as few as one or two channels within the system, reserving the rest for dispatch communications. Most do not prioritize interconnected calls; they are queued for the next available channel like all other transmissions. Interconnection capability is usually confined to the owner's or manager's radio, not a feature made available to the fleet, and is viewed as part of the business communications system rather than a telephone extension.

5. The Order appears to have endeavored to craft rules that would reflect the distinction between these types of wireless systems. It states:

> 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

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[2] See, e.g., Comments, American Mobile Telecommunications Association, CC Docket No. 94-102 (March 4, 1996); Comments, American Mobile Telecommunications Association, CC GN Docket No. 94-33 (June 27, 1994).

> them may give them the incentive to eliminate their interconnection, which would not be in the public interest.[3]

The Order also concludes, however, that:

> ...certain [SMR] providers should be subject to the E911 requirements and schedule imposed on cellular and broadband PCS because these carriers may have significant potential to offer near-term direct competition to cellular and broadband PCS carriers.[4]

6. AMTA agrees with both of these assessments, assuming, of course, that covered SMRs, as well as cellular and PCS providers, prove technically capable of meeting the FCC's rigorous implementation schedule. However, it disagrees that the definition of covered SMR will produce the result intended by the Commission. Thus, the Association urges the Commission to refine that provision as suggested herein to achieve the desired policy delineation.

II. THE FCC SHOULD ADOPT A REFINED DEFINITION OF COVERED SMR.

A. The Current Rule.

7. As noted, supra, the Order concludes that so-called "covered SMR providers" are significant, near-term competitors to cellular and broadband PCS, and, therefore, should be subject to equivalent E911 obligations. It defines this category as follows:

> These SMR providers include two classes of SMR licensees. First, E911 requirements will extend to 800 MHz and 900 MHz SMR licensees that hold geographic area licenses. Second, the rule will cover incumbent wide area SMR licensees defined as licensees who have obtained extended implementation authorizations in the 800 MHz and 900 MHz SMR service, either by waiver or under Section 90.629 of the Commission's Rules. Within each of these classes, "covered SMR providers" includes only licensees that offer real-time, two-way

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[3] Order at ¶ 81.

[4] Id.

> switched voice service that is interconnected with the public switched network, either on a stand-alone basis or packaged with other telecommunications services.[5]

8. It is evident from the excerpt from the Order cited above that the Commission intended to limit its covered SMR provider definition to systems with a realistic potential to compete for the consumer-oriented mass wireless market already served by both cellular and PCS providers. Unfortunately, the FCC's policy determination is not reflected in its covered SMR definition. The definition will encompass a large number of operators that provide precisely the primarily dispatch, business rather than consumer oriented, non-cellular-like service the FCC has determined should not be subject to the E911 requirements. A more narrowly tailored definition is required to achieve the Commission's own objectives.

9. As currently drafted, the definition appears to include every SMR system providing a voice service with any interconnection capability that holds a geographic, as opposed to site-specific, license, as well as those that are authorized for extended implementation. AMTA is unaware of any licensees that would be excluded because their service is not "real-time", a limitation that has no obvious applicability in this context. As described more fully below, AMTA would have assumed that the term "switched" was intended to limit the definition to systems with in-system switching capability comparable to that in a cellular or PCS system, a limitation that would be fully consistent with the policy underlying this rule. It does not interpret the term simply to mean that the system is interconnected with the public switched network because that condition is also part of the definition and, in any event, is unnecessary

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[5] Id.

since CMRS systems are, by definition, interconnected.[6] However, that limiting term is included only in the text of the Order, not in the definition in the rules themselves. Thus, it does not have any exclusionary utility.

10. The result is antithetical to the Commission's intention. For example, the FCC recently conducted an auction for already encumbered 900 MHz SMR spectrum in which it granted geographic licenses based on MTAs. Each winner was awarded the right to operate on ten 12.5 kHz channels, or a total of 250 kHz of spectrum, throughout the MTA, except in those areas in which a co-channel incumbent was already authorized to operate. A number of auction participants, and a significant percentage of successful small business bidders, were incumbents seeking to protect their ongoing operations by acquiring the right to the so-called "white space" in the MTA outside their existing operating areas. These parties had no choice except to acquire a geographic license if they wanted to ensure any expansion opportunity on their channels and prevent potential interference from an unrelated co-channel MTA licensee.

11. While their operational appetites might have been for a smaller coverage area, geographic MTA licenses were the only option on the FCC's menu. However, these licensees harbor no illusions about their competitive posture vis-a-vis cellular or broadband PCS. By comparison with their 250 kHz of capacity, each cellular licensee has 25 MHz of spectrum and PCS operators will enjoy either 10 or 30 MHz. There is no technology that would enable a licensee with 250 kHz of spectrum to deploy a system that would support the channel reuse and mobile handoff capability that enable cellular and PCS operators to target a consumer-oriented, mass market. Yet the definition in this Order would classify such systems as covered SMRs if

[6] 47 C.F.R. § 332(d).

they offered interconnect capability to even one mobile unit. That result is entirely inconsistent with the FCC's express intention.

12. AMTA anticipates that virtually all future SMR licenses, whether in the 800 MHz, 900 MHz, 220 MHz or other bands, will be awarded by auction. It further assumes that these authorizations will be geographic-based since auctions are manageable only when essentially fungible properties are being sold. It is highly unlikely that applicants, including incumbents like those at 900 MHz, will have a choice between a geographic or some less encompassing type of license. In fact, the FCC is actively considering a proposal whereby lower band 800 MHz SMR channels could be licensed and even auctioned on a frequency by frequency basis with a resulting Economic Area ("EA") geographic license. The licensees of such systems, if interconnected at all, would fall within the current definition of covered SMRs although they would control only 50 kHz of spectrum over a few counties, further excluding areas already covered by incumbents. Again, this would be expressly contrary to the FCC's avowed intention.

13. It is clear that the covered SMR definition inadvertently includes many SMR systems as to which the FCC has already determined that an E911 requirement would outweigh the benefits to the public. More fundamentally, these systems may be technically incapable of complying with even the Phase I requirements: they unquestionably will not be capable of the triangulation needed to meet the Phase II rules.

14. Thus, the Association urges the FCC to reconsider its covered SMR definition. AMTA believes that the language refinement suggested below accurately captures that segment of the interconnected SMR industry that properly should be classified as viable competition for cellular and broadband PCS, and only that segment.

B. The Proposed Rule.

15. AMTA and the Commission are in agreement that only SMRs capable of competing with cellular and PCS should be defined as "covered" for purposes of these rules. Therefore, AMTA has endeavored to determine what factors distinguish traditional SMR systems from those seeking to compete in the consumer-oriented, CMRS mass wireless market.

16. The Association has identified one feature that, to the best of AMTA's knowledge, is present in all cellular and cellular-like PCS systems, as well as in SMR systems seeking to compete with them. Unlike traditional, local SMR facilities, systems in each of those categories have an in-network switching facility. It is that facility that enables the system to reuse frequencies dynamically and thereby develop sufficient capacity to accommodate a mass market subscriber base, and to handoff communications between sites seamlessly without manual subscriber intervention.[7]

17. As noted, supra, the FCC already may have identified this switching capability as the appropriate line of demarcation between those SMR systems they intended to classify as covered, and those that were not to be subject to these rules. The text of the Order includes the term "switched" as a definitional feature of a covered SMR provider, but that word was omitted from the rules themselves.

18. Attached hereto as Exhibit A is the Association's proposed revision to the definitions of covered SMR provider and incumbent wide area SMR licensee. Because AMTA recommends use of the phrase "mobile telephone switching facility" in the description of this

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[7] AMTA notes that some local SMR systems incorporate a PBX-like "switch"; however, this equipment does not enable features such as frequency re-use or seamless handoff. Such systems, the Association believes, should not be included as covered SMR operations.

category, it also has included a definition of that term provided at Bellcore Wireless Interconnection '96.

19. The current covered SMR provider definition does not accurately capture the distinction articulated in the Order between SMR systems that were and were not intended to be subject to E911 requirements. The FCC has already determined that the public interest will not be served if SMR operators de-activate or forego the provision of interconnection because of a technical or financial inability to satisfy the Commission's rules. Therefore, AMTA urges the FCC to modify its definition as proposed herein.

C. **An Alternative Solution.**

20. Alternatively, if the Commission is unwilling to adopt the revised language detailed above, AMTA requests that the covered SMR definition be modified to apply only to systems serving twenty thousand (20,000) or more subscribers nationwide. That modification would also be consistent with the FCC's intention to include only those SMR systems that are capable of competing with cellular and PCS systems. It is not the Association's preferred solution because it is not tailored as precisely to reflect the system distinctions identified by the FCC. However, as described herein, it would be preferable to the current definition.[8]

21. As the Commission has recognized already in this proceeding, and as noted above, many SMR systems continue to offer a service that is localized, with individual stations providing discrete areas of coverage to subscribers within a particular market. A licensee may own multiple facilities, and customers may have the capability of roaming from station to station

[8] The Association notes that the FCC has previously adopted subscriber figures, in the form of wireline "lines", to exempt rural telephone companies from more stringent regulatory requirements in its PCS proceeding.

through a manual selection process, but the service is not "cellular-like". It does not reuse frequencies and does not permit automatic, seamless handoff.

22. These traditional-type SMR systems are inherently limited in the number of subscribers that can be served in any market. Without channel reuse, their capacity is restricted whether they employ analog or digital technology. A subscriber count of more than twenty thousand units nationwide does not necessarily indicate that the system has adopted a cellular-like system design since an operator might have multiple, totally independent, heavily loaded, traditional facilities.[9] Similarly, it does not mean that a mass consumer market is being tapped. However, AMTA believes this cap would allow a very significant number of traditional operators, those the FCC intended to exclude, to be classified as not covered, while retaining covered status for the very largest systems that either currently have or may develop the potential to provide some level of competition for cellular and PCS.

III. CONCLUSION.

For the reasons described above, AMTA urges the Commission to refine the definition of "covered SMR" as described herein to reflect more accurately the policy objectives articulated in the Order.

[9] The Commission should note that the newly implemented PCS system in the Baltimore-Washington area is expected to have approximately one hundred thousand (100,000) subscriber units in operation less than a year after service was initiated.

CERTIFICATE OF SERVICE

I, Linda J. Evans, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 3rd day of September, 1996, caused to be mailed a copy of the foregoing Motion for Extension of Time to the following:

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