

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

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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

To: The Commission

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SUPPLEMENTAL COMMENTS  
OF THE  
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS  
ASSOCIATION, INC.

By: \_\_\_\_\_

  
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The American Mobile Telecommunications Association, Inc. (“AMTA” or the “Association”), pursuant to Section 1.415 of the Federal Communications Commission (“FCC” or the “Commission”) Rules and Regulations, 47 C.F.R. § 1.1415, respectfully submits its Supplemental Comments in the above-entitled proceeding.<sup>1</sup> AMTA strongly supports the Commission’s tentative conclusion that the 40-mile rule in the 220 MHz service should be eliminated. The Association and its 220 MHz Council are already on record in support of SMR Advisory Group, L.C.’s (“SMR Advisory”) *ex parte* filing in this matter;<sup>2</sup> however, AMTA appreciates this opportunity to supplement its position.

## I. DISCUSSION

### A. **Retaining the 40-mile rule would be inconsistent with the FCC’s rules governing other CMRS services.**

The 40-mile rule for the 220-222 MHz frequency band (the “Rule”)<sup>3</sup> was adopted at the inception of the service as a means of preventing spectrum warehousing. Its wording is similar to that of other rules formerly governing the 800 and 900 MHz Specialized Mobile Radio (“SMR”) frequency bands that prohibited licensees from obtaining additional channels without a showing of existing subscriber need.

However, as AMTA, SMR Advisory and others have pointed out, both the mobile wireless landscape and the Commission’s rules governing these services have changed substantially during the intervening years. New wireless services have come into existence at the same time that

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<sup>1</sup> *Public Notice*, PR Docket No. 89-552, FCC 96-448 (released November 19, 1996) (“Public Notice” or “PN”).

<sup>2</sup> *See*, Letter from Alan R. Shark, President & CEO, to David Furth, Chief, Commercial Wireless Division, Wireless Telecommunications Bureau, dated May 22, 1996.

<sup>3</sup> Section 90.739 of the Commission’s Rules and Regulations, 47 C.F.R. § 90.739.

advanced technologies and wide-area systems have expanded the types of offerings available from both new and existing providers.

Congress's creation of the commercial mobile radio service ("CMRS") designation in 1993 led to Commission decisions finding that most CMRS services, including the 220 MHz service to the extent that it is a for-profit, interconnected offering, are actually or potentially competitive with one another and that they should be subject to comparable regulation.<sup>4</sup> The FCC determined in its CMRS proceeding that loading rules should be eliminated for the 800 and future 900 MHz SMR services because the rule hindered the ability of licensees to compete with other services with more flexible regulations.<sup>5</sup> However, the Commission left decisions on new rules for the 220 MHz service to a later date. The release of the *Third Notice of Proposed Rulemaking* in this docket in August, 1995 marks the FCC's renewed attention to this band.<sup>6</sup>

AMTA and its 220 MHz Council submit that the Congressional directive to develop comparable regulatory environments for competitive CMRS offerings compels the elimination of the Rule for the 220 MHz service. As licensees complete the initial construction of their facilities and begin making service available to customers, this band is becoming a likely competitor of analog 800 MHz and 900 MHz SMR services. New subscribers, as well as customers who had operated on 800 MHz SMR spectrum that is being re-deployed for wide-area digital systems, are reportedly finding 220 MHz systems a source for cost-efficient, primarily dispatch, two-way

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<sup>4</sup> See, *Third Report and Order*, GN Docket No. 93-252, 9 FCC Rcd. 7988, 7996 (1994).

<sup>5</sup> *Id.* at 8082-83.

<sup>6</sup> *Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking*, PR Docket No. 89-552, 11 FCC Rcd. 188 (1995).

communications services. The Rule must be eliminated to provide comparable regulation among these competitive services.

**B. The FCC's Move Toward Flexible Regulation Requires Elimination of the Rule.**

The Rule no longer serves any beneficial purpose in light of the Commission's move toward flexible regulation. With the wholesale shift to licensing by competitive bidding, the FCC has recognized that market forces will compel the efficient use of licensed spectrum. Beyond eliminating loading rules for the 800 MHz service and new 900 MHz licenses, the Commission recently has even proposed that large amounts of new spectrum be licensed for commercial wireless services without any specific construction, much less utilization, requirements.<sup>7</sup> The Rule, which restricts a 220 MHz licensee from operating more than a single five-channel system within a market -- a total of only 25 kHz of spectrum -- has no place in such an environment.

As in the auction of 900 MHz SMR licenses, AMTA expects that the most active participants in the anticipated auction of remaining spectrum in the 220-222 MHz band will be incumbents. The five-year-old freeze on new licensing in this band has made these licensees understandably anxious about expanding their systems to better meet customer need and demand. The Commission generally has permitted auction participants to obtain licenses without restriction other than the overall 45 MHz CMRS spectrum cap. However, by its terms, the Rule prohibits all 220 MHz licensees from obtaining more than one station within a 40-mile area, even if the licensee has acquired its authorization through competitive bidding. AMTA therefore submits that the Rule would create a significant obstacle to auction participation in a manner inconsistent with all previous auctions. Should the Rule be retained only for incumbent licensees, their efforts to develop more

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<sup>7</sup> See, *Notice of Proposed Rulemaking*, Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service, GN Docket No. 96-228, FCC 96-441, released November 12, 1996.

than single-site systems would be prejudiced vis-a-vis competitors with licenses obtained at auction, a result that will impede, rather than encourage, competition in this marketplace.

## **II. CONCLUSION**

For the reasons stated above, AMTA agrees with the FCC's tentative conclusion that Section 90.739 be eliminated from the rules governing the 220 MHz service, and urges the Commission to move expeditiously to complete this proceeding as recommended herein.

**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 10th day of December, 1996, caused to be mailed a copy of the foregoing Supplemental Comments to the following:

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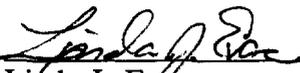
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