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

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| In the Matter of | ) | |
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| Promotion of Spectrum Efficient | ) | RM-9332 |
| Technologies on Certain Part 90 Frequencies | ) | |

To: The Commission

**PARTIAL OPPOSITION OF MRFAC, INC.**

MRFAC, Inc. ("MRFAC"), by its counsel, hereby submits this Partial Opposition to the Petition for Rulemaking filed by American Mobile Telecommunications Association, Inc. ("AMTA"). AMTA requests adoption of a rule requiring Part 90 industrial and business licensee conversion to narrowband, or equivalently efficient, equipment by certain dates tied to market size, namely: December 31, 2003 for markets 1-50; December 31, 2008 for markets 51-100; and December 31, 2020 for markets 101 and above, with failure to convert relegating the licensee to secondary status.

MRFAC supports mandatory conversion but only for the very largest, spectrum-congested markets (the top-20), and only if conversion is accompanied by a positive incentive for existing licensees to convert. Absent a positive incentive for conversion, AMTA's proposal threatens the diversion of yet more private radio spectrum to commercial communications providers, and away from those who utilize the spectrum to meet their internal communications needs. Detailed comments follow.

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## BACKGROUND

MRFAC is one of the Commission's certified Part 90 frequency coordinators and a trade association serving the spectrum advocacy needs of a cross-section of American business and industry. From its offices in Herndon, Virginia, MRFAC provides a range of frequency coordination and related services for coordination clients and members. Through its advocacy efforts, MRFAC endeavors to speak for the interests of true private radio users.

## COMMENTS

In its Reply Comments filed in the re-farming proceeding on January 11, 1996, MRFAC expressed support for mandatory conversion limited to the top 20-metropolitan areas. MRFAC continues to believe that mandatory conversion is appropriate only for these frequency-congested areas.

Re-farming was initiated with the clear and overriding goal of providing spectrum relief especially for the nation's most congested metropolitan areas. Unfortunately, full implementation of re-farming has been stuck on bottom dead center for nearly three years while the agency has pursued a preoccupation with communications carriers and auctions. One casualty has been the Commission's failure to resolve the circumstances under which licensees converting to narrowband technology (or equipment with equivalent efficiency) would be entitled to exclusive use of the new channels created thereby -- an issue raised in the June 23, 1995 Further Notice of Proposed Rulemaking (FCC 95-255). Properly structured, exclusivity offers significant incentives for conversion to more efficient technology; that is, existing licensees would have good reason to convert if, by so doing, they could obtain exclusive use of the channels created

for the licensee's existing coverage area.[1] But without resolution of the Further Notice, there has been a lack of the significant incentive which exclusivity can provide.[2]

While MRFAC is in agreement that the Commission should consider mandatory conversion for the top-20 markets, it does not agree that mandates are necessary for the rest. Governmental mandates -- particularly mandates which impose new and added costs on American business -- are contrary to the deregulatory thrust that characterizes the past 15 years of administrative law. Congressional leaders and regulatory Commissioners, Democrats and Republicans, Federal and State leaders have reached a rare consensus that less government is better government. While there is a case for adoption of mandatory conversion for the top-20 markets, the Petition does not overcome the presumption against adoption of such a requirement for markets outside this largest group -- especially since the Commission itself has already once declined to require conversion. See Report and Order in PR Docket No. 92-235, FCC 95-255, released June 23, 1995 at para. 7.[3] Indeed, extending such a requirement to less congested, much less rural, markets would raise significant questions of lawfulness under the Administrative Procedures Act and the Regulatory Flexibility Act.[4]

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1 Exclusivity should be structured so as to reward early conversion without the need for any added showing.

2 Of course, some licensees are endeavoring to obtain co-channel consents and have been successful in doing so. However, progress continues to be slow in the absence of exclusivity. This is especially true in the very largest markets where congestion is a worsening problem.

3 AMTA's selection of deadlines well into the future does not offset this deficiency: a mandate is no less a mandate for not being imminent.

4 MRFAC noted similar lawfulness concerns in connection with the Land Mobile Communications Council proposal to simply let frequency coordinators designate "frequency-congested" markets. See November 20, 1995 Comments in PR Docket No. 92-235 at 14. No private entity should be empowered to decide which groups of existing licensees will be required to purchase new equipment, on pain of being

Thus, in MRFAC's view AMTA's proposal is both under- and over-inclusive: under-inclusive in the sense that it relies entirely on a sticks approach and over-inclusive in the sense that it would sweep into mandatory conversion far too many markets.[5]

The sensible solution is a combined approach -- one which rewards early conversion in all markets and penalizes late conversion in the top-20 markets. A combined carrot and stick approach would be a better means of facilitating regulatory reform while at the same time benefiting existing licensees who have borne the brunt of the congestion problem. Such an approach is also consistent with precedent. For example, in adopting procedures for the relocation of fixed microwave systems to make way for PCS, the Commission determined upon a two-phased approach which allowed licensees a period of time to negotiate voluntary agreements for early relocation on whatever terms were agreeable to the parties, followed by a mandatory negotiation period which was subject to Commission rules on the parameters for negotiation. See Rules 101.71 and 101.73. This kind of approach -- reliance first on voluntary compliance followed by mandatory compliance (and even then only where needed) -- should be adopted here.

Accordingly, for the foregoing reasons MRFAC submits that mandatory conversion should only be considered as part of an overall program designed to facilitate

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deprived of the protected, primary status for which they were originally licensed. Such a rule must be adopted, if at all, only after proper notice and comment. 5 U.S.C. Section 553.

[5] AMTA suggests that its proposal should be perceived as "at least as 'carrot-like' as they are 'stick-like' for all but the most recalcitrant licensee." Petition at 8. However, in MRFAC's view there is nothing carrot-like to a proposal which effectively requires Part 90 licensees to invest in new equipment.

an evolution to more efficient technology. Since unresolved aspects of re-farming (i.e. exclusivity) bear directly on AMTA's proposal as it would be modified herein, the Commission should first and foremost bring to closure the unresolved issues in the re-farming Further Notice.

Having said all this, an additional comment is in order. A principal reason that true private radio users need spectrum relief stems from diversion of spectrum to communications carriers. Carriers derive revenue from the provision of communications services for profit to third party users. They do not use the spectrum as a tool to enhance their own productivity, safety and competitiveness.

Business and industrial users cannot rely on carriers to provide the specialized kinds of communications needed for their operations. Commercial carriers are simply not able to satisfy these and many other specialized communications requirements encountered in the business marketplace. For example, carriers will not provide reliable coverage within plant facilities, or over wilderness timberlands; will not provide assurances of priority access in the event of disasters; and will not guarantee system reliability compliant with military contract specifications, to name just a few issues.

AMTA of course is a trade association for carriers. The fact that AMTA (again) seeks mandatory conversion deadlines reflects the motivation of its membership to capitalize on the channels which mandatory conversion would create.[6] Further

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[6] Previously, AMTA argued that the Commission should "provide prospective commercial providers with adequate regulatory tools to clear sufficient spectrum in a reasonable timeframe." Comments filed November 20, 1995 in PR Docket No. 92-235 at iii.

diversion of channels to AMTA members would only exacerbate the spectrum shortage experienced by true private radio users.[7]

## CONCLUSION

For the foregoing reasons, MRFAC does not object to the adoption of a mandatory conversion requirement for the top-20 markets if, but only if, such a policy is combined with a resolution of the exclusivity issue which provides positive incentives to convert. The re-farming Further Notice should be acted upon prior to any movement pro or con on the AMTA Petition.[8]

Respectfully submitted,

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Its Counsel

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[7] In passing MRFAC notes that the Petition suggests that licensees must convert to technology which provides at least "one voice path 12.5 kHz of spectrum, using a 25 kHz frequency...," or the equivalent. Id. at p. 6. For clarity's sake any licensee converting to 12.5 kHz equipment or equivalent should be required to shift its center frequency 6.25 kHz from its former center frequency (whether prime or offset). Failure to shift would mean that the converting licensee would occupy not only the center frequency but also half of each adjacent 12.5 kHz frequency.

[8] Assuming arguendo there is favorable action on limited aspects of the Petition, the Commission should make clear that any new channels created by conversion remain subject to the freeze on inter-category sharing of business and industrial/land transportation channels by SMRs. See Inter-Category Sharing of Private Mobile Radio Frequencies in the 806-821/851-866 MHz bands, 10 FCC Rcd 7350, 7353, recon. denied Memorandum Opinion and Order, DA 95-1669, 78 RR 2d 1130 (1995).