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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
1998 Biennial Regulatory Review -- 47 C.F.R. Part 90 - Private Land Mobile Radio Services	)	WT Docket No. 98-182 RM-9222
Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services	)	PR Docket No. 92-235

NOTICE OF PROPOSED RULEMAKING

Adopted: September 30, 1998 **Released:** October 20, 1998

Comments Date: [30 days after publication in the Federal Register]
Reply Comments Date: [45 days after publication in the Federal Register]

By the Commission: Commissioner Furchtgott-Roth issuing a separate statement.

I. INTRODUCTION

1. Although not required by statute, we are initiating this proceeding in conjunction with our 1998 biennial review of regulations pursuant to Section 11 of the Communications Act of 1934, as amended ("the Communications Act").[1] Section 11 requires us to review all our regulations applicable to providers of telecommunications service and determine whether any rule is no longer in the public interest as a result of meaningful economic competition between providers of telecommunications service, and whether such regulations should be deleted or modified. As part of our biennial review of regulations required under Section 11, we believe it is appropriate to review all of our regulations relating to administering wireless services, not just those pertaining to providers of a telecommunications service, to determine which regulations can be streamlined or eliminated.[2]

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[1] *See* Section 11 of the Communications Act of 1934, as amended, 47 U.S.C. § 161.

[2] *See* "FCC Staff Proposes 31 Proceedings as Part of 1998 Biennial Regulatory Review", *FCC News*, Report No. GN 98-1 (February 5, 1998).

2. This *Notice of Proposed Rulemaking* ("*Notice*") is a result of our comprehensive review of the rules applicable to the Private Land Mobile Radio Services ("PLMRS"), 47 C.F.R. Part 90 ("Part 90"), to determine which regulations were either not in the public interest, obsolete, overly complex, required editorial change, or were redundant in nature.[3] The *Notice* proposes rule changes regarding the use of thirty frequencies in the Industrial/Business Pool, clarifying provisions for obtaining special temporary authority to operate a Part 90 radio station, extending the length of license term for all Part 90 licensees from five to ten years, allowing further shared use of Part 90 stations with the Federal government, frequency coordination in the 220-222 MHz band, and making minor miscellaneous editorial changes to the Part 90 rules. Additionally, this *Notice* addresses a Petition for Rulemaking filed by the Association of Public-Safety Communications Officials-International, Inc. ("APCO") concerning conforming certain rules regarding extended implementation periods for public safety licensees[4] and an *ex parte* filing in the Commission's "Refarming Proceeding", PR Docket No. 92-235,[5] regarding trunking on frequencies in the bands between 150 and 512 MHz. We believe that these proposed rule changes will simplify, streamline, and update the Commission's Part 90 rules.

II. BACKGROUND

3. Pursuant to Part 90 of the Commission's rules, the PLMRS provide for the private, non-commercial, internal communications needs of public safety entities, state and local government entities, large and small businesses, transportation providers, the medical community, and other diverse non-commercial users of two-way radio systems. PLMRS licensees do not provide commercial communications service to the general public. Our goal in this proceeding is to further examine our current PLMRS rules with an aim towards streamlining and simplifying the Part 90 rules. We, as an initial matter, note that some of the Part 90 rules already have been reviewed in various recent Commission proceedings. For example, many Part 90 rules were substantially amended in the *Refarming Proceeding*.[6] Additionally, further deregulatory and amendment proposals were discussed in the "Part 90

[3] 47 C.F.R. Part 90 contains the rules and regulations for both the PLMRS and certain for-profit land mobile radio operations designated as Commercial Mobile Radio Services ("CMRS"). This action pertains only to the PLMRS. PLMRS licensees are generally not in the communications business and do not derive their profits from providing communications services. Some examples of PLMRS licensees are public safety agencies, businesses that utilize radio only for their daily internal operations, utilities, transportation entities, and medical service providers. On the other hand, certain CMRS licensees covered by Part 90 rules are in the business of providing for-profit communications services, such as, among others, private paging services, and businesses and Specialized Mobile Radio ("SMR") services that offer customers communications that are interconnected to the public switched telephone network.

[4] Amendment of Part 90 of the Commission's Rules Relating to Implementation of Public Safety Radio Systems, RM-9222, Petition for Rulemaking, Public Notice, Report No. 2251 (January 28, 1998) ("APCO Petition").

[5] *See* Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, PR Docket No. 92-235, *Report and Order*, 10 FCC Rcd 10,076 (1995), *Memorandum Opinion and Order*, 11 FCC Rcd 17,676 (1996), and *Second Report and Order*, FCC 97-61, (released March 12, 1997) ("*Refarming Proceeding*") Recon. pending.

[6] *See* n.3, *supra*.

Omnibus" proceeding.[7] Moreover, additional proposals to streamline and simplify the Part 90 rules are contained in the Universal Licensing System *Notice of Proposed Rulemaking*[8], and in the two Notices of Proposed Rulemaking concerning future public safety communications requirements.[9] By this *Notice*, we identify and seek comment on additional rule change proposals that we believe will further streamline Part 90. The specific proposed rule changes are set forth in the attached Appendix B. In addition to our more specific requests for comment below, we invite commenters to submit information on the costs and benefits of the rules at issue in this proceeding and of our proposed modifications.

III. DISCUSSION

4. **§ 90.35 Industrial/Business Pool.** In 1973, eight frequencies in the 450-470 MHz band were designated for shared use for shore-to-vessel communications relative to cargo handling by certain stations in the Maritime Services (then 47 C.F.R. Part 83, now Part 80), and in the Business Radio Service (then 47 C.F.R. Part 91, now the Industrial/Business Pool in Part 90).[10] As a result of channel splitting in the 450-470 MHz band in the *Refarming Proceeding*, the number of shore-to-vessel/dockside frequencies available to Part 90 Industrial/Business Pool licensees was increased from eight to thirty.[11] These frequencies are listed in Section 90.35(c)(60) of the Commission's rules, 47 C.F.R. § 90.35(c)(60). The original eight frequencies are still designated for on-board communications use by stations in the Maritime Services.[12]

5. It has informally been brought to our attention by the Personal Communications Industry Association ("PCIA"), one of the frequency coordinators for the Industrial/Business Pool, that it has received many requests to use these frequencies in locations other than dock and cargo handling areas. PCIA indicates that there is some confusion about the limitation on the use of the frequencies pursuant

[7] *See* Amendments to Part 90 of the Commission's Rules, WT Docket No. 97-153, *Notice of Proposed Rulemaking*, 12 FCC Rcd 13,468 (1997) ("*Part 90 Omnibus NPRM*").

[8] *See* Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, WT Docket No. 98-20, *Notice of Proposed Rulemaking*, FCC 98-25 (adopted February 19, 1998). This proceeding is also part of the Commission's biennial regulatory review.

[9] *See* The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010, WT Docket No. 96-86, *Notice of Proposed Rulemaking*, 11 FCC Rcd 12,460 (1996), and *Second Notice of Proposed Rulemaking*, 12 FCC Rcd 17,706 (1997).

[10] *See* Amendment of Parts 2, 81, 83, and 91-To Provide Frequencies, Standards, and Procedures for On-Board Communications in the Industrial and Maritime Mobile Services, Docket No 19665, *First Report and Order*, 42 FCC 2d 746 (1973).

[11] *See* n.3, *supra*. The *Refarming Proceeding* integrated the Business Radio Service into the Industrial/Business Pool.

[12] *See* 47 C.F.R. § 80.373(g).

to Section 90.35(c)(60), but it has always considered that these frequencies were for use only in dockside areas.[13]

6. We note that the thirty frequencies in question are subject to several limitations under Section 90.35(c) of the Commission's rules.[14] Pursuant to Section 90.35(c)(60)(i) of the Rules, these frequencies are "for use for communications concerned with cargo handling from a dock, or a cargo handling facility, to a vessel alongside."[15] Further, mobile relay stations may be temporarily installed at or in the vicinity of a dock or cargo handling facility and used when the vessel is alongside the dock or cargo handling facility.[16] Those interested in employing single frequency simplex are to use the noted mobile relay frequencies and are limited to a two-watt power output.[17] In Docket 19665, *First Report and Order*, the eight frequencies were made available for low power, general use as well as for shared use with the Maritime Services relative to cargo handling.[18] Thus, it would appear that these frequencies could be used anywhere for non-voice digital remote control, data, and telemetry operations as well as voice communications.

7. We agree that clarification regarding the use of these frequencies is warranted. Therefore, to eliminate the confusion concerning the permissible use of the frequencies, we propose to amend Section 90.35(c)(60) to indicate that, in addition to permitting their use at any location for low power, non-voice operation, voice operation will be permitted when the frequencies are used specifically for cargo handling purposes. We also ask for comments on whether we should eliminate the distinction between cargo handling and other uses and generally allow any low power use.

8. We acknowledge that there may be other frequency limitations in the Part 90 rules that are confusing, need to be updated,[19] or are no longer needed. We encourage commenters to review such frequency limitations to ascertain which, if any, can be eliminated or need to be clarified.

9. **§ 90.149 License term.** Pursuant to Section 90.149 of the Commission's rules, 47 C.F.R. § 90.149, with one exception, Part 90 authorizations are granted for a period not to exceed five years from the date of issuance, modification, or renewal. The exception is for stations licensed as commercial mobile radio services ("CMRS") providers on 220-222 MHz, 929-930 MHz paging, Industrial/Business

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[13] 47 C.F.R. § 90.35(c)(60)(i) states that frequencies subject to this assignment limitation are herein considered collectively for use for communications concerned with cargo handling from a dock, or a cargo handling facility, to a vessel alongside.

[14] *See* 47 C.F.R. §§ 90.35(c)(11), (c)(30), (c)(33), (c)(35), (c)(47), and (c)(60).

[15] *See* 47 C.F.R. § 90.35(c)(60)(i).

[16] *Id.*

[17] *See* 47 C.F.R. § 90.35(c)(60)(ii).

[18] *See* n.10, *supra*.

[19] For example § 90.35(c)(61) lists certain airports and their coordinates. It has been some time since this list has been reviewed.

Pool, and Specialized Mobile Radio Service frequencies. For these stations, the license term is ten years.[20] We believe that there would be several public interest benefits gained by extending the license term for all Part 90 licensees to ten years.[21] First, there would be an economic benefit to new applicants in that their licensing costs would effectively be lowered. Under the Commission's current license fee structure, a Part 90 licensee with a ten-year authorization has an economic advantage over a licensee with a five-year license in that it enjoys a longer license term at a lower annual regulatory fee.[22] Second, under our proposal, existing five-year licenses would receive a ten-year renewal period upon expiration of the five-year license, thus halving the licensee's long-term renewal costs. Further, we anticipate that standardizing the license term for all Partlicensees would reduce Commission costs associated with the processing of renewal applications.

10. Therefore, we propose to amend Section 90.149(a) to provide that licenses for stations authorized under Part 90 will be issued for a term not to exceed ten years from the date of initial issuance or renewal. We ask for comments on our proposal to lengthen the license term for Part 90 PLMRS authorizations. We also ask commenters to address any drawbacks associated with this proposal.

11. **§ 90.155 Time in which station must be placed in operation.** Section 90.155(a) of the Commission's rules, 47 C.F.R. § 90.155(a), generally requires that stations authorized under Part 90 be placed in operation, *i.e.*, implemented, within eight months from the date of grant. There are two exceptions to this eight-month time frame. Licensees of certain stations have twelve months to implement their stations,[23] and there are provisions for requesting extended implementation for up to five years.[24] We believe there is merit in conforming the implementation time period for all stations not seeking an extended implementation period, to twelve months. We envision that such a change in the regulatory treatment of PLMRS stations would reduce the number of requests for extension of the time to implement a station and thus would simplify regulatory requirements for PLMRS licensees. In a parallel proceeding, we have proposed to amend Section 90.633 of the Commission's rules, 47 C.F.R. § 90.633, to increase the implementation period for 800 MHz conventional and trunked systems from eight to twelve months.[25] Therefore, to foster further consistency in the Commission's rules, as well as to reduce the burden on both the Commission and licensees, we propose to amend Sections 90.155(a) and (b) of the Commission's rules

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[20] *See* 47 C.F.R. § 90.149(a).

[21] Pursuant to 47 U.S.C. 307(c), the Commission may, by rule, prescribe the period for which licenses may be granted or renewed for particular classes of stations.

[22] For example, the license fee for an 800 MHz conventional system is $95 for five years, while the license fee for an 800 MHz SMR system is $45 for ten years. *See* Wireless Telecommunications Bureau Fee Filing Guide, (September 15, 1997).

[23] Location and Monitoring Service stations (47 C.F.R. § 90.353), 800 MHz trunked radio systems (47 C.F.R. § 90.631), and 220-222 MHz stations (47 C.F.R. § 90.757) are permitted a twelve-month implementation period.

[24] Extensive 800 MHz and 900 MHz systems (47 C.F.R. §§ 90.665 and 90.685) are permitted up to five years for system completion. Additionally, extended implementation periods may be granted to local government entities on a case-by-case basis (47 C.F.R. § 90.1559(b)), and 800 MHz trunked or conventional stations may be granted up to a five-year extended implementation period (47 C.F.R. § 90.629).

[25] *See* n.7, *supra*.

to change the time in which a station must be placed in operation from eight months to twelve months. We seek comment on this proposal, including whether some other length of time would provide a more appropriate implementation period.

12. The APCO Petition[26] requests that we amend the Commission's rules to provide for extended implementation ("slow growth") periods for new wide-area public safety systems on frequencies below 800 MHz and on terms and conditions similar to those which apply on frequencies above 800 MHz.[27] Currently, extended implementation periods can be approved for systems below 800 MHz only if such systems are fully approved and funded, whereas an applicant for a system above 800 MHz can receive a "slow growth" authorization without firm, prior funding approval.[28] APCO argues that the distinction between systems operating above and below 800 MHz is about to change because the rules adopted in the *Refarming Proceeding* will lead to the availability of new narrowband equipment and the possibility of using trunked equipment. This will, in turn, lead to larger, more complex public safety systems, and applicants for these systems are unlikely to be able to secure approvals and funding prior to when they would ordinarily seek licenses from the Commission. Thus, APCO suggests that these systems should be treated in a similar fashion to the 800 MHz systems eligible for "slow growth" consideration under Section 90.629.[29]

13. We concur with APCO that eligible applicants for new public safety radio systems that require extensive planning, approval, funding, equipment acquisition, and construction, should be subject to the same regulatory requirements, regardless of the operating frequency(ies). We, therefore, propose to amend Section 90.155 to permit any public safety applicant to seek extended implementation authorization pursuant to the provisions of Section 90.629. This rule change would account for recent changes in the Commission's rules below 800 MHz that create a new environment that fosters use of narrowband and trunked equipment. Further, the proposed rules will promote consistency in procedural treatment of systems in the new environment below 800 MHz with treatment of systems that have been, and continue to be, in a similar environment above 800 MHz. We invite specific comments on this proposal.

14. **§ 90.175 Frequency coordination requirements.** In 1991, the Commission established the 220-222 MHz band ("220 MHz frequencies") for operation under Subpart T of Part 90 of the Commission's rules.[30] Because over 59,000 applications for the 220 MHz frequencies were received

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[26] *See* n.2, *supra*.

[27] *See* APCO Petition at 1.

[28] *See* 47 C.F.R. § 90.155(b). The rules require that local government applicants for frequencies below 800 MHz who seek more than the standard eight months to construct their system submit a showing that the system has been approved and funded for implementation. The rules permit applicants for 800 MHz systems to obtain an extended implementation period if the applicant is required by law to follow a multi-year cycle for planning, approval, funding, and purchasing a proposed system and it indicates whether funding approval has been obtained and if not, when such funding is expected. *See* 47 C.F.R. § 90.629(b).

[29] *See* APCO Petition at 3.

[30] *See* 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 Services, PR Docket No. 89-552, *Report and Order*, ("*220 MHz Report and Order*") 6 FCC Rcd 2356 (1991). *See also*, 47 C.F.R. §§ 90.701-90.757.

within a few days after filing was permitted, the Private Radio Bureau (now the Wireless Telecommunications Bureau), on May 24, 1991, imposed a freeze on the filing of new applications for 220 MHz frequencies to enable it to complete the disposition of the initial applications before accepting more applications.[31] In March 1997, the Commission adopted additional rules to govern the future operation and licensing of 220 MHz frequencies.[32] In this proceeding, fifteen channel pairs were made available for public safety and emergency medical use ("public safety channels").[33] Of the ten public safety base/mobile channels, five channels (Ch. 161-165) were designated for shared use, and five channels (Ch. 166-170) were designated for exclusive use. The five public safety emergency medical channels (Ch. 181-185) were designated for exclusive use.

15. In the *220 MHz Report and Order*, the Commission stated that: (1) applications for the exclusive channels would be granted on a first-come, first-served basis; (2) applications received the same day for the same area of operation would be considered mutually exclusive; and (3) mutually exclusive applications would be granted through random selection (lottery) procedures.[34] In July 1997, Congress passed the Balanced Budget Act of 1997, which terminated the Commission's lottery authority.[35] Consequently, because public safety frequencies are exempt from auctions, and the Commission can no longer utilize lotteries, we currently do not have a procedure for handling and granting mutually exclusive 220 MHz public safety channels.[36]

16. On February 13, 1998, the Wireless Telecommunications Bureau released a Public Notice announcing that on March 31, 1998, it would resume accepting applications for the fifteen 220 MHz public safety channels.[37] In the Public Notice, the Bureau stated that it believed that the probability of receiving mutually exclusive[38] 220 MHz public safety applications would be low, but that it would hold any such applications in abeyance pending a decision on how to resolve such mutual exclusivity.[39] As

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[31] *See* Acceptance of 220-222 MHz Private Land Mobile Applications, *Order*, 6 FCC Rcd 3333 (1991).

[32] *See* 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 Services, PR Docket No 89-552, *Third Report and Order*, 12 FCC Rcd 10,943 (1997).

[33] Channels 161-170 are designated for public safety mutual aid base/mobile use. *See* 47 C.F.R. § 90.720(a). Channels 181-185 are designated for emergency medical use pursuant to 47 C.F.R. § 90.719(c).

[34] *See 220 MHz Report and Order*, 6 FCC Rcd 2354-65 (1991). *See also* 47 C.F.R. § 90.711(a).

[35] *See* Balanced Budget Act of 1997, Pub. L. No 105-33, 47 U.S.C. § 309(i)(5)(A).

[36] Pursuant to 47 C.F.R. § 90.175(i)(14), frequency coordination is not required for frequencies in the 220-222 MHz band. 220 MHz licensees on shared channels are expected to coordinate base station operations amongst themselves to minimize interference and insure operational compatibility.

[37] *See* Filing Freeze to be Lifted for Applications Under Part 90 for the Fifteen Public Safety Channel Pairs in the 220-222 MHz Band, Public Notice, DA 97-2296 (February 13, 1998).

[38] Applications filed on the same day for the same frequencies for use in the same geographic area are considered to be mutually exclusive.

[39] During the filing period, eight mutually exclusive applications were received.

mentioned above, frequency coordination is not required for the 220 MHz frequencies. However, to establish a procedure for processing applications for the ten exclusive 220 MHz public safety channels, and also to establish consistency in the coordination of all 220 MHz public safety channels, we propose to amend Section 90.175(i)(14) of the Rules, 47 C.F.R. § 90.175(i)(14), to require that applicants for any of the fifteen 220 MHz public safety channels set forth in Sections 90.719(c) and 90.720 of the Rules, submit their applications to a public safety frequency coordinator for frequency coordination prior to submission of the applications to the Commission. We ask for comments on this proposal.

17. **§ 90.179 Shared use of radio stations.** Over the years, the Commission has received informal inquiries as to whether a public safety agency could share its radio facilities with Federal government entities. A station is considered shared when a non-licensed user of a station utilizes the station for its own communications under an arrangement with, and pursuant to, the station licensee's authorization.[40] Section 90.179 of the Commission's rules permits Part 90 licensees to share the use of their facilities. However, Section 90.179(a) limits the shared use of a station to persons who, in their own right, would be eligible for a separate authorization. Because Federal government entities are not eligible for Part 90 authorizations, Part 90 licensees would be precluded from entering into sharing arrangements with Federal government entities pursuant to Section 90.179(a).

18. A second arrangement where a non-licensed user of a station may utilize the facilities of a Part 90 licensee is provided for under Section 90.421 of the Commission's rules. This section allows a licensee to permit the use of its frequency and/or mobile units by persons other than the licensee for communications that will enable the licensee to meet its communications requirements in connection with the activities for which it is licensed.[41] Under the provisions of Section 90.421, communications with Federal government entities are limited to emergency situations where coordination and interoperability capability are necessary. Consequently, current Part 90 rules do not provide any means by which a public safety licensee can permit general shared use of a private land mobile radio station by a Federal government entity.

19. In today's communications scenario, many public safety licensees -- such as local government, police and fire entities, etc. -- are licensees of multi-channel radio systems. At the same time, there may be Federal government agencies that require communications in the same geographical area, but, because of circumstances unique to Federal agencies, lack access or the capability to provide such communications. As previously mentioned, the Commission has received inquiries from public safety agencies that have either been approached by, or have an interest in, sharing the operation of their stations with agencies of the Federal government.

20. We believe that there is merit to permitting a public safety licensee to share its station with a Federal government entity, provided it is on a non-profit, cost-sharing basis. Such an arrangement would be beneficial to both parties. It would lower the operational costs of the public safety system in that the public safety licensee would obtain cost-sharing benefits from the Federal agency, and it would enable the Federal agency to obtain needed communications at a lower cost than if the Federal agency had to implement its own communications system.

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[40] *See* 47 C.F.R. § 90.179.

[41] Specifically, 47 C.F.R. § 90.421(a) allows the installation of frequencies and mobile units of a Public Safety Pool licensee to be installed in any vehicle, which in an emergency would require cooperation and coordination with the licensee, and in any vehicle used in the performance, under contract, of official activities of the licensee.

21. Permitting Federal users to utilize private radio systems is consistent with related precedent. For example, in 1988, the Commission amended its rules to allow Federal government entities to be end users of 800 and 900 MHz Specialized Mobile Radio systems.[42] In 1989, the Commission amended its rules to permit Federal users to be end-users of Business Radio Service 900 MHz paging systems.[43] Moreover, established National Telecommunications and Information Administration ("NTIA") policies provide that the Federal government typically should not use Federal government frequencies to provide communications for federal agencies unless commercial services are either unavailable, are not suitable, or are significantly more expensive.[44]

22. Considering the factors discussed above, we propose to amend Section 90.179 of the Commission's rules to provide that a radio facility authorized to a public safety licensee may be shared with a Federal government entity on a cost-shared, non-profit basis. We request comments on whether there should be any restrictions on what type of public safety entity could enter into such a sharing arrangement. Further, while we are proposing herein only that public safety agencies can enter into a sharing arrangement with a Federal entity, we ask for comments on whether we should extend the sharing arrangement for public safety licensees to include sharing with other Part 90 eligibles, such as those in the Industrial/Business Pool and, conversely, whether Industrial/Business Pool licensees should be permitted, by rule, to share their stations with public safety and Federal government entities.[45]

23. **§ 90.187 Trunking in the bands between 150 and 512 MHz.** Section 90.187 of the Commission's rules, 47 C.F.R. § 90.187, which was added in the *Refarming Proceeding*, specifies the manner in which trunking may be accomplished in the frequency bands below 800 MHz. Commission staff have received informal inquiries regarding the applicability of Section 90.187 for decentralized trunked systems. Therefore, we take this opportunity to clarify Section 90.187 with respect to the definitions of centralized and decentralized trunking. In a centralized trunked system, the base station provides dynamic channel assignments by automatically searching for and assigning to a user an open channel within that system. Initially, centralized trunking utilized only exclusively assigned 800 MHz channels, but the *Second Report and Order* in the *Refarming Proceeding*[46] now permits centralized trunking in the 150-512 MHz bands if consent from co-channel incumbents and frequency coordination is obtained.[47] Pursuant to Section 1.952 of the Commission's rules, 47 C.F.R. § 1.952, centralized trunked systems below 800 MHz are given a land mobile service code of YG (trunked Industrial/Business Pool),

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[42] *See*, Amendment of Part 90, Subpart M and S, of the Commission's Rules, PR Docket No. 86-404, *Report and Order*, 3 FCC Rcd 1839-1842 (1988).

[43] *See* Amendment of Part 90 of the Commission's Rules to Expand Eligibility and Shared Use Criteria for Private Land Mobile Frequencies, PR Docket No. 89-45, *Report and Order*, 6 FCC Rcd 543 (1991).

[44] *See* National Telecommunications and Information Administration, U.S. Department of Commerce, NTIA TELECOM 2000, p.376 (1988).

[45] The Wireless Telecommunications Bureau has granted waivers of Section 90.179 of the Rules to permit the sharing of a 900 MHz Industrial/Land Transportation system with public safety and Federal government users. *See, e.g.*, Texas Utilities Services, Inc., *Order*, 13 FCC Rcd 4258 (1997).

[46] *See* n.3, *supra*.

[47] *See* 47 C.F.R. § 90.187(b).

or YW (trunked Public Safety Pool).[48] In a decentralized trunked system, which is also a system of dynamic channel assignment, the mobile units continually monitor the system's assigned channels until an unused channel is found. This channel is then utilized for communications. This type of dynamic channel assignment is not trunking in the traditional sense because the system does not require repeaters specifically designed for trunked operations. Decentralized trunking has always been permitted because the monitoring feature enables a decentralized trunked system to be used on shared frequencies. We conclude, therefore, that Section 90.187 applies only to centralized trunked systems.

24. Section 1.952 of the Commission's rules also designates a land mobile service code of IG for stations that utilize Industrial/Business Pool frequencies in a conventional (non-trunked) manner or PW for Public Safety Pool frequencies.[49] A decentralized trunked system consisting of multiple individual conventional Industrial/Business Pool frequencies is considered to be an IG system or a PW system. Therefore, applicants for, or licensees of, shared IG or PW frequencies that wish to combine shared frequency operations to establish a decentralized trunking system need not obtain consent of co-channel licensees whose service areas overlap the proposed operation.

25. On March 17, 1998, the Land Mobile Commuications Council ("LMCC") filed a letter with the Commission regarding trunking.[50] LMCC states that it would be useful for frequency coordinators and co-channel licensees to have information on which licensees in their area employ decentralized trunking. To that end, LMCC requests that licensees' authorizations indicate whether or not a given licensee is engaged in decentralized trunking.[51] LMCC also contends that any kind of trunked system, centralized or decentralized, operates more efficiently if one channel of the system is "protected," *i.e.* provided with exclusivity. Therefore, LMCC suggests that trunked systems apply for two authorizations to be granted concurrently, an authorization for the protected channel (YG) and authorizations for the remaining channels in the trunked system (IG).[52] LMCC also claims that a Part 22 channel could be used as the protected channel.[53]

26. We believe that the two-license concept, as suggested by LMCC, would be overly burdensome for both the licensee and the Commission. If this information is needed, it appears that it could be reflected on a single license by indicating which frequencies are used for trunking and which are not. In this connection, we note that PLMR spectrum below 470 MHz is available only on a shared basis. Consequently, we seek comment on LMCC's suggestion that decentralized trunking systems be designated as such on the licensees' authorizations, and if two separate authorizations are needed for "hybrid" trunked systems. We specifically seek further information and comment on the intended use of what LMCC refers to as a "protected" channel in the trunking context, *e.g.* whether it is designed to function only as a voice

[48] *See* 47 C.F.R. § 1.952(b).

[49] *Id.*

[50] Letter from Larry A. Miller, President, LMCC to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, dated March 17, 1998. This letter is an ex parte filing in the *Refarming Proceeding*.

[51] *Id.* at 3.

[52] *Id.* at 4.

[53] *Id.* at 4, n.1.

channel or whether it is intended as a control channel and, if so, what control functions are contemplated.

27. **§ 90.421 Operation of mobile units in vehicles not under the control of the licensee.** Section 90.421 of the Commission's rules, 47 C.F.R. § 90.421, provides that a licensee may permit certain other persons, not directly affiliated with the licensee, to use the licensee's frequency(ies) and/or radio equipment under certain specified conditions, such as in the performance of work under contract, or when communications are necessary during emergencies. We believe that much of the text in Section 90.421 is redundant. Additionally, the text is limited to mobile units installed in vehicles. This text has resulted in confusion as to whether the rule also applies to hand-held portable radios. Therefore, in order to simplify this rule, we propose to amend Section 90.421 as set forth in Appendix B to remove redundant text and include text concerning hand-held radio units. We seek comment on this proposal.

28. **§ 90.1 Basis and purpose.** In the *Refarming Proceeding*, the twenty Part 90 radio services were consolidated into two pools, the Public Safety Pool and the Industrial/Business Pool.[54] This change was inadvertently overlooked for Section 90.1(b) of the Commission's rules, 47 C.F.R. § 90.1(b), which still references the former names of the radio services. We propose to amend Section 90.1 to replace the radio service names with the appropriate "pool" names.

29. **§ 90.177 Protection of certain radio receiving locations.** Section 90.177(d)(2) of the Commission's rules, 47 C.F.R. § 90.177(d)(2), contains an address and telephone number for applicants to contact with questions concerning the protection criteria for Federal Communications Commission monitoring stations. This telephone number is no longer correct and any telephone number listed may change again in the future. We propose, therefore, to delete the listed telephone number in Section 90.177(d)(2).

30. **§ 90.449 Answers to official communications and notices of violations.** We propose to delete Section 90.449 of the Commission's rules, 47 C.F.R. § 90.449, because it unnecessarily duplicates Section 1.89 of the Commission's rules, 47 C.F.R. § 1.89.

31. **§ 90.113 Station authorization required.** Section 90.113 of the Commission's rules, 47 C.F.R. § 90.113, states that a radio transmitter cannot be operated under the Commission's Part 90 rules without proper authorization from the Commission. We have been receiving a significant number of inquiries from the public concerning the use of one-watt and two-watt, hand-held portable radios that are becoming increasingly available from retail and mail order sources. The radios are mostly single-channel or two-channel radios, low-cost, and operate on one or more of six low power frequencies assigned to the Industrial/Business Pool.[55] Pursuant to Section 90.175 of the Commission's rules, all six frequencies require frequency coordination prior to licensing by the Commission.[56] In some cases, advertisements for these radios will state that an FCC license is required or that the radios are for business use and require coordination. However, many advertisements imply that these radios can be used by anybody for any purpose, whether commercial or recreational, and make no mention of the licensing requirement.

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[54] *See* n.3, *supra*.

[55] The low power frequencies used include two VHF high band frequencies, 154.570 MHz, and 154.600 MHz, and four UHF frequencies, 467.850 MHz, 467.875 MHz, 467.900 MHz, and 467.925 MHz. Each frequency is identified by a different "color dot" or "color star" on the unit. This frequency identification code was developed by, and apparently is uniformly used by the manufacturers of these radios.

[56] *See*, generally, 47 C.F.R. § 90.175.

Manufacturers have informally indicated to us that it is their belief that only a small percentage of persons buying these radios actually apply for a license.

32. In the *Part 90 Omnibus NPRM*, we proposed to delete the frequency coordination requirement for 154.570 MHz and 154.600 MHz. We also proposed to exempt three additional 150 MHz low power frequencies from the frequency coordination requirement.[57] These five frequencies are licensed as mobile frequencies and the station license, therefore, does not contain station coordinates. We stated that frequency coordination for these frequencies no longer serves a regulatory purpose, particularly given that the frequency coordinator does not know the precise location of the user.[58] Thus, the combination of two circumstances: (1) the existence of our current proposal to eliminate the coordination requirement for these frequencies; and (2) the claim that most users of these frequencies probably are not licensed, cause us now to invite comments on whether these five frequencies should be further deregulated by eliminating the requirement that they be licensed. Should we decide to take this action, we would reallocate the frequencies from Part 90 to a radio service that does not require licensing, such as the Citizens Band, Low Power Radio, or Family Radio Services. We invite comments on the effect such a reallocation would have on existing Part 90 licensees of these frequencies. We also invite comments on whether there are other frequencies in Part 90 for which we could eliminate the licensing requirement.

33. **§ 90.210 Emission masks.** Section 90.210 of the Commission's rules, 47 C.F.R. § 90.210, specifies emission masks for the various frequency bands governed by Part 90 rules. The emission mask is an important technical parameter which affects the efficient use of a frequency band by limiting emissions from one channel into adjacent channels. To maximize spectrum efficiency, the full extent of the channel must be utilized as much as possible to maximize information transfer without expensive filtering requirements. At the same time, out-of-band emission limits must be carefully selected to provide acceptable adjacent channel protection.

34. In its comments to the *Second Notice of Proposed Rule Making*,[59] Motorola Inc. ("Motorola") suggests an alternative approach to emission masks for limiting out-of-band emissions. This approach is called Adjacent Channel Coupled Power ("ACCP"), and Motorola contends that it is a more flexible approach with minimum technical requirements.[60] Motorola states that ACCP is an industry-developed method to provide compatibility within the complex environment resulting from the *Refarming Proceeding*, and that this new approach should better accommodate future technologies as well as eliminate the interpretation problems associated with emission masks that depend on specific spectrum analyzer characteristics.

35. We believe that our regulations must provide flexibility to accommodate and not inhibit the continuously evolving equipment market in ways that encourage competition without favoring any particular technology. We wish to further investigate whether to apply the concept of ACCP to all other

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[57] The frequencies are 151.820 MHz, 151.880 MHz, and 151.940 MHz. They were created for low power use in the Business Radio Service (now the Industrial/Business Pool). *See Refarming Proceeding Report and Order*, 10 FCC Rcd 10123 (1995) .

[58] *See* n.7, *supra*.

[59] *See* n.9, *supra*.

[60] *See* Comments of Motorola to the *Second Notice of Proposed Rule Making*, WT Docket No. 96-86 at 16, and Appendix to Comments at 8.

Part 90 frequency bands. We request comments on both the approach and the technical parameters concerning the ACCP concept as stated in the Motorola comments in the *Second Notice of Proposed Rule Making* with respect to the use of ACCP, rather than emission masks, for all Part 90 frequency bands.

36. **General.** In today's telecommunications environment, land mobile radio systems range in complexity from very fundamental systems to technologically advanced systems. We are continually attempting to keep Part 90 rules in harmony with the latest communications technology. As time advances, operational requirements change, and technology progresses, existing rules may become obsolete or unnecessary. Therefore we ask for comments on any other rule changes that could be made to update, streamline, and clarify Part 90 of the Commission's rules.

III. CONCLUSION

37. In this proceeding we have set forth various proposals designed to improve the regulatory structure of Part 90 of the Commission's rules. Our goal is to establish a streamlined set of rules that will ease the burden on both applicants and licensees, and eliminate redundant, inconsistent, and unnecessary regulations. We believe that this review of the rules and regulations contained in Part 90 will be a significant step towards achieving this goal.

IV. PROCEDURAL MATTERS

Ex Parte Rules - Permit-But-Disclose Proceeding

38. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

Regulatory Flexibility Act

39. With respect to this *Notice*, an Initial Regulatory Flexibility Analysis ("IRFA") is contained in Appendix A. As required by the Regulatory Flexibility Act,[61] the Commission has prepared an IRFA of the expected significant economic impact on small entities by the policies and rules proposed in this *Notice*. Written public comments are requested on the IRFA. We ask questions in the IRFA regarding the prevalence of small businesses in the industries covered by this *Notice*. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the *Notice* and must have a distinct heading designating them as responses to the IRFA.

Comment Submission

40. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on before [30 days after publication in the Federal Register], and reply comments on or before [45 days after publication in the Federal Register]. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998).

[61] Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 *et seq.* (1981), as amended.

41. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

42. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 1919 M St. N.W., Room 222, Washington, D.C. 20554.

43. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center of the Federal Communications Commission, 1919 M Street, N.W., Room 239, Washington, D. C.

V. ORDERING CLAUSES

44. IT IS ORDERED that, pursuant to Sections 4(i), 4(j), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r) and 403, notice is hereby given of proposed amendments to Part 90 of the Commission's Rules, 47 C.F.R. Part 90, in accordance with the proposals, discussions, and statement of issues in this *Notice of Proposed Rulemaking*.

45. IT IS FURTHER ORDERED that the Petition for Rulemaking submitted by the Association of Public-Safety Communications Officials-International, Inc. is GRANTED to the extent indicated herein.

46. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

Further Information

47. For further information, contact Gene Thomson, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418-0680.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas
Secretary

Attachments: Appendices

APPENDIX A

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act ("RFA"),[62] the Commission has prepared this present Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rule Making ("Notice")*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on this *Notice* provided above in paragraph 40. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. § 603(a). In addition, the *Notice* and IRFA will be published in the Federal Register. *See* id.

A. Need for, and Objectives of, the Proposed Rules:

1. Although not required by statute, we initiate this proceeding in conjunction with the Commission's 1998 biennial regulatory under Section 11 of the Communications Act of 1934, 47 U.S.C.§ 161. Section 11 requires us to review all our regulations applicable to providers of telecommunications service and determine whether any rule is no longer in the public interest as a result of meaningful economic competition between providers of telecommunications service, and whether such regulations should be deleted or modified. As part of our biennial review of regulations required under Section 11, however, we believe it is appropriate to review all of our regulations relating to administering wireless services, not just those pertaining to providers of a telecommunications service, to determine which regulations can be streamlined or eliminated. Therefore, to streamline Part 90 of the rules and reduce regulatory requirements, the Commission proposes to amend Part 90 of its rules to: (1) modify the language of specific rules to eliminate the confusions that applicants have had, which in many cases, has caused additional effort on the part of the applicant and resultant delays in application processing; (2) extend all five-year license terms to ten years, thus reducing the licensee's burden and costs for license renewal; (3) for stations with an eight-month construction period, increase the time in which a station must be placed in operation from eight to twelve months; (4) provide extended implementation periods for public safety licensees under identical parameters regardless of the operating frequency band and; (5) permit public safety licensees with excess communications capacity to provide communications service to the Federal Government on a non-profit, cost-shared basis. We believe these changes will encourage growth of land mobile systems and enhance telecommunications offerings for consumers, producers and new entrants.

B. Legal Basis:

2. Authority for issuance of this *Notice of Proposed Rule Making* is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply:

[62] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 194-12, 110 Stat. 848 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

3. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. § 601(6). The RFA, 5 U.S.C. § 601(3), generally defines the term "small business" as having the same meaning as "small business concern" under the Small Business Act, 15 U.S.C. § 632. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). Pursuant to to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

4. Depending upon individual circumstances, the various proposed rules will apply to only certain businesses and local government entities that operate radio systems for their own internal use in the PLMR services. PLMR systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed nor would it be possible to develop a definition of small entities specifically applicable to PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area.

5. We note that the Commission's 1994 Annual Report indicates that at the end of fiscal year 1994, there were approximately 292,000 stations and 5.4 million transmitters operating just in the 800 and 900 MHz and 24 GHz bands.[63] Further, because any entity engaged in a business activity is eligible to hold a PLMR license, these proposed rules could potentially impact every small business in the U.S.

6. The RFA also includes small governmental entities as a part of the regulatory flexibility analysis.[64] The definition of a small governmental entity is one with a population of less than 50,000.[65] There are 85,006 governmental entities in the nation.[66] This number includes such entities as states, counties, cities, utility districts, and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities, and towns, and of those, 37,566, or 96 percent, have populations of fewer than 50,000.[67] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 96 percent, or 81,600 are small entities that may be affected by our proposed rules. Therefore in this IRFA, we seek comment on the number of small businesses which could be impacted by the proposed rule changes.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements:

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[63] *See* Federal Communications Commission, 60th Annual Report, Fiscal Year 1994 at 120-121.

[64] *See* 5 U.S.C. § 601(5) (including cities, counties, towns, townships, villages, school districts, or special districts).

[65] *Id.*

[66] 1992 Census of Governments, U.S. Bureau of the Census, U.S. Department of Commerce.

[67] *Id.*

7. No new reporting, recordkeeping, or other compliance requirements would be imposed on applicants or licensees as a result of the actions proposed in this rule making proceeding.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered:

8. Many of our proposed rules will result in economic benefits to small business and local government entities. We believe that there would be several public interest benefits gained by extending the license term for all Part 90 licensees to ten years. *See* paras. 9, 10, *supra.* First, there would be an economic benefit to new applicants in that their licensing costs would effectively be lowered. Under the Commission's current license fee structure, a Part 90 licensee with a ten-year authorization has an economic advantage over a licensee with a five-year license in that it enjoys a longer license term at less cost. Second, under our proposal, existing five-year licenses would receive a ten-year renewal period upon expiration of the five-year license, thus halving the licensee's long-term renewal costs.

9. Regarding the proposal to increase the time in which a station must be placed in operation from eight to twelve months, *see* para. 11, *supra.*, we envision that this change in the regulatory treatment of PLMRS stations would reduce the necessity for a licensees to request an extension of the time to construct, and thus would eliminate the costs necessary to make such a request.

10. The distinction between systems operating above and below 800 MHz is about to change because recently adopted rules will lead to the availability of new narrowband equipment and increase the possibility of using trunked equipment. This will, in turn, lead to larger, more complex public safety systems. Our proposal to permit "slow growth" extended implementation periods under the same parameters for systems operating below and above 800 MHz will enable faster system planning and implementation, resulting in reduced costs to licensees. *See* paras. 12, 13, *supra.*

11. Permitting a public safety licensee to share its station with a Federal government entity, is on a non-profit, cost-sharing basis would be beneficial to both parties. *See* paras. 17-22, *supra.* It would lower the operational costs of the public safety system in that the public safety licensee would obtain cost-sharing benefits from the Federal agency, and it would enable the Federal agency to obtain needed communications at a lower cost than if the Federal agency had to implement its own communications system.

12. We seek comments on these tentative conclusions.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules:

13. None.

APPENDIX B

Proposed Rules

Part 90 of Chapter 1 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 90 - PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

Authority citation: Sections 4, 303, and 332, 48 Stat. 1066, 1082, as amended: 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 90.1 is proposed to be amended by revising paragraph (b) to read as follows:

§ 90. 1 Basis and purpose.

* * * * *

(b) *Purpose.* This part states the conditions under which radio communications systems may be licensed and used in the Public Safety Pool, Industrial/Land Transportation Pool, and the Radiolocation Radio Service. These rules do not govern radio systems employed by agencies of the Federal Government.

* * * * *

3. Section 90.35 is proposed to be amended by revising paragraph (c)(60)(i) to read as follows:

§ 90.35 Industrial/Business Pool.

* * * * *

(c) * * *

(60) (i) Frequencies subject to this limitation may be used for voice or non-voice communications when utilized for cargo handling from a dock, or a cargo handling facility, to a vessel alongside. Any number of the frequencies may be authorized to one licensee for the purpose. Mobile relay stations may be temporarily installed at or in the vicinity of a dock or cargo handling facility and used when a vessel is alongside the dock or cargo handling facility.

* * * * *

4. Section 90.149 is proposed to be amended by revising paragraph (a) to read as follows:

§ 90. 149 License term.

(a) Licenses for stations authorized under this part will be issued for a term not to exceed ten (10) years from the date of the original issuance or renewal.

* * * * *

5. Section 90.155 is proposed to be revised to read as follows:

§ 90.155 Time in which station must be placed in operation.

(a) All stations authorized under this part, except as provided in §§ 90.629, 90.665, and 90.685, must be placed in operation within twelve (12) months from the date of grant or the authorization cancels automatically and must be returned to the Commission.

(b) A local government entity in the Public Safety Pool, applying for any frequency in this part, may also seek extended implementation authorization pursuant to § 90.629.

(c) For purposes of this section, a base station is not considered to be placed in operation unless at least one associated mobile station is also placed in operation. See also §§ 90.633(d) and 90.631(f).

(d) Multilateration LMS systems authorized in accordance with § 90.353 must be constructed and placed in operation within twelve (12) months from the date of grant or the authorization cancels automatically and must be returned to the Commission. MTA-licensed multilateration LMS systems will be considered constructed and placed in operation if such systems construct a sufficient number of base stations that utilize multilateration technology (see paragraph (e) of this section) to provide multilateration location service to a substantial portion of at least one BTA in the MTA.

(e) A multilateration LMS station will be considered constructed and placed in operation if it is built in accordance with its authorized parameters and is regularly interacting with one or more other stations to provide location service, using multilateration technology, to one or more mobile units. Specifically, LMS multilateration stations will only be considered constructed and placed in operation if they are part of a system that can interrogate a mobile, receive the response at 3 or more sites, compute the location from the time of arrival of the responses and transmit the location either back to the mobile or to a subscriber's fixed site.

(f) For purposes of this section, a station licensed to provide commercial mobile radio service is not considered to have commenced service unless it provides service to at least one unaffiliated party.

(g) Application for extension of time to commence service may be made on FCC Form 600. Extensions of time must be filed prior to the expiration of the construction period. Extensions will be granted only if the licensee shows that the failure to commence service is due to causes beyond its control. No extensions will be granted for delays caused by lack of financing, lack of site availability, for the assignment or transfer of control of an authorization, or for failure to timely order equipment. If the licensee orders equipment within 90 days of the license grant, a presumption of due diligence is created.

(h) An application for modification of an authorization (under construction) at the existing location does not extend the initial construction period. If additional time to commence service is required, a request for such additional time must be submitted on FCC Form 600, either separately or in conjunction with the submission of the FCC Form 600 requesting modification.

6. Section 90.167 is proposed to be removed.

7. Section 90.175 is proposed to be amended by revising paragraph (i)(14) to read as follows:

§ 90.175. Frequency coordination requirements.

* * * * *

(i) ***

(14) Except for applications for the frequencies set forth in §§ 90.719(c) and 90.720, applications for frequencies in the 220-222 MHz band.

8. Section 90.177 is proposed to be amended by revising the second sentence of paragraph (d)(2) to read as follows:

§ 90.177 Protection of certain radio receiving locations.

* * * * *

(d) * * *

(2) * * * Prospective applicants should communicate with: Chief, Compliance and Information Bureau, Federal Communications Commission, Washington, D.C. 20554.

* * * * *

9. Section 90.179 is proposed to be amended by adding paragraph (h) to read as follows:

§ 90.179 Shared use of radio stations.

* * * * *

(h) Licensees authorized to operate radio systems on Public Safety Pool frequencies designated in § 90.20 may share their facilities with Federal Government entities on a non-profit, cost-shared basis. Such a sharing arrangement is subject to the provisions of paragraphs (b), (d), and (e) of this section.

10. Section 90.187 is proposed to be amended by adding paragraph (d) to read as follows:

§ 90.187 Trunking in the bands between 150 and 512 MHz.

* * * * *

(d) The maximum number of frequency pairs that may be assigned at any one time for the operation of a trunked radio station (class of station YG or YW) is ten.

11. Section 90.421 is proposed to be revised as follows:

§ 90.421 Operation of mobile station units not under the control of the licensee.

Mobile stations, as defined in § 90.7 include vehicular-mounted and hand-held units. Such units may be operated by persons other than the licensee, as provided for below, when necessary for the licensee to meet its requirements in connection with the activities for which it is licensed. If the number of such units, together with units operated by the licensee, exceeds the number of mobile units authorized to the licensee, license modification is required. The licensee is responsible for taking necessary precautions to prevent unauthorized operation of such units not under its control.

(a) *Public Safety Pool.*

(1) Mobile units licensed in the Public Safety Pool may be installed in any vehicle which in an emergency would require cooperation and coordination with the licensee, and in any vehicle used in the performance, under contract, of official activities of the licensee. This provision does not permit the installation of radio units in non-emergency vehicles that are not performing governmental functions under contract but with which the licensee might wish to communicate.

(2) Mobile units licensed under § 90.20(a)(2)(iii) may be installed in a vehicle or be hand-carried for use by any person with whom cooperation or coordinations is required for medical services activities.

(b) *Industrial/Business Pool.* Mobile units licensed in the Industrial/Business Pool may be installed in vehicles of persons furnishing under contract to the licensee and for the duration of the contract, a facility or service directly related to the activities of the licensee.

(c) In addition to the above, frequencies assigned to licensees in the Private Land Mobile Radio Services may be installed in the facilities of those who assist the licensee in emergencies and with whom the licensee must communicate in situations involving imminent safety to life or property.

12. Section 90.629 is proposed to be amended by revising paragraphs (a)(1) and (a)(2) and adding paragraph (f) to read as follows:

§ 90.629 Extended implementation period.

* * * * *

(a) * * *

(1) The proposed system will require longer than twelve (12) months to construct and place in operation because of its purpose, size, or complexity; or

(2) The proposed system is to be part of a coordinated or integrated wide-area system which will require more than twelve (12) months to plan, approve, fund, purchase, construct, and place in operation; or

* * * * *

(f) Pursuant to § 90.155(b), the provisions of this section shall apply to local government entities applying for any frequency in the Public Safety Pool.

Separate Statement of Commissioner Harold W. Furchtgott-Roth

In re: Notice of Proposed Rulemaking

1998 Biennial Regulatory Review -- 47 C.F.R. Part 90 - Private Land Mobile Radio Services

I support adoption of this NPRM. In my view, any reduction of unnecessary regulatory burdens is beneficial. To that extent, this item is good and I am all for it. In spite of the fact that this item addresses matters beyond the statutorily required scope of the biennial review, this item should not be mistaken for complete compliance with Section 11 of the Communications Act.

As I have explained previously, the FCC is not planning to "review *all* regulations issued under this Act . . . that apply to the operations or activities of any provider of telecommunications service," as required under Subsection 11(a) in 1998 (emphasis added). *See generally 1998 Biennial Regulatory Review -- Review of Computer III and ONA Safeguards and Requirements*, 13 FCC Rcd 6040 (released Jan. 30, 1998). Nor has the Commission issued general principles to guide our "public interest" analysis and decision-making process across the wide range of FCC regulations.

In one important respect, however, the FCC's current efforts are more ambitious and difficult than I believe are required by the Communications Act. Subsection 11(a) -- "Biennial Review" -- requires only that the Commission "*determine* whether any such regulation is no longer necessary in the public interest" (emphasis added). It is pursuant to Subsection 11(b) -- "Effect of Determination" -- that regulations determined to be no longer in the public interest must be repealed or modified. Thus, the repeal or modification of our rules, which requires notice and comment rule making proceedings, need not be accomplished during the year of the biennial review. Yet the Commission plans to complete roughly thirty such proceedings this year.

I encourage parties to participate in these thirty rule making proceedings. I also suggest that parties submit to the Commission -- either informally or as a formal filing -- specific suggestions of rules we might determine this year to be no longer necessary in the public interest as well as ideas for a thorough review of all our rules pursuant to Subsection 11(a).

* * * * * * *