



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
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WIRELESS TELECOMMUNICATIONS BUREAU REQUESTS COMMENT ON THE CONSTRUCTION REQUIREMENTS FOR COMMERCIAL WIDE-AREA 800 MHz LICENSEES PURSUANT TO *FRESNO MOBILE RADIO, INC. v. FCC*

PR Docket No. 93-144

Comment Date: **June 21, 1999**
 Reply Comment Date: **July 6, 1999**

In this Public Notice, we request comment on the construction requirements that the Commission should impose on 800 MHz Specialized Mobile Radio commercial licensees that are part of a wide area system ("wide-area licensees"). We are seeking comment on this matter because the U.S. Court of Appeals for the District of Columbia in *Fresno Mobile Radio, Inc. v. FCC* remanded to the Commission for further analysis its decision to adopt construction requirements for incumbent wide-area licensees that differ from those adopted for Economic Area (EA) 800 MHz licensees.¹ The court held that the Commission did not adequately explain whether wide-area licensees are sufficiently different from EA 800 MHz or other geographic based licensees to warrant different construction requirements.² On April 15, 1999, the Wireless Telecommunications Bureau temporarily suspended the construction timetables for wide-area licensees until the Commission issues a decision pursuant to the court's remand.³

In light of the court's remand, we seek comment on whether the Commission should adopt on remand the construction requirements that were in effect for wide-area licensees prior to the *Fresno* decision.⁴ Because the court held that the Commission failed to

¹ *Fresno Mobile Radio, Inc. v. F.C.C.*, 165 F.3d 965, 970 (D.C. Cir., Feb. 5, 1999).

² *Id.*

³ See Wireless Telecommunications Bureau Temporarily Suspends Construction Timetable for Wide-Area 800 MHz SMR Licensees Due to Court Remand, *Public Notice*, DA 99-698 (rel. Apr. 15, 1999).

⁴ See 47 C.F.R. § 90.629. Initially, 800 MHz licensees were able to apply for a period of up to five years to construct and place their system in operation if an extended implementation period was justified. In 1995, the Commission stopped accepting requests for extended implementation, accelerated the termination date of existing implementation periods, and required licensees seeking to retain extended implementation to demonstrate compliance with 47 C.F.R. § 90.629. See Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Band, PR Docket No. 93-144, *First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making*, 11 FCC Rcd. 1463 (1995). See also 47 C.F.R. § 90.629(e). The Bureau acted on the extended implementation rejustifications in two separate orders. See Amendment of Part 90 of the Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *Order*, 13 FCC Rcd. 1533 (WTB 1997), *recon.*, 12 FCC Rcd. 18,349 (WTB 1997).

adequately explain its rationale for adopting different construction requirements in the 800 MHz band, parties who support the Commission's decision should explain fully why the agency's approach is reasonable.

We also solicit comment on whether the Commission should adopt for wide-area licensees construction requirements similar to those imposed on EA 800 MHz licensees and other licensees that are licensed on a geographic area basis. Parties who believe that construction requirements should be similar to geographic area licensees should take into account the differences in the way the Commission licensed wide-area 800 MHz systems (*i.e.*, by site-specific licensing) and geographic area licenses when addressing what should be the appropriate requirements for wide-area licensees. In order to determine whether a wide-area licensee has met the coverage requirements, these parties also should address whether the Commission should measure the relevant population based on the entire wide-area, individual EAs located within a wide-area system, or some other alternative. In addition, these commenters should address how the Commission should determine the new timetable for construction of wide-area systems. One option would be to adopt the three and five year benchmarks that were adopted for 800 MHz EA licensees,⁵ and begin the construction period as of the effective date of the new construction requirements. Parties should comment on whether the three and five year benchmarks for wide-area licensees would be fair to EA 800 MHz licensees given that wide-area licensees have already had a number of years to construct their systems. We also solicit comment on alternative construction timetables. In addition, we request comment on whether the Commission should require a wide-area licensee to construct a minimum number of frequencies throughout its wide-area system.⁶

Parties may also present alternative proposals for construction requirements for wide-area licensees. All proposals should balance the need to provide wide-area licensees with construction requirements that are not unduly burdensome with the need to ensure that wide-area licensees do not warehouse spectrum or unreasonably delay service to the public. All proposals should address the specific technical differences and similarities associated with constructing commercial wide-area 800 MHz SMR systems, EA 800 MHz systems, and other wireless services that are licensed on a geographic basis, and how these differences and similarities should affect the construction requirements for wide-area licensees.

Interested parties may file comments on or before **June 21, 1999**. Parties interested in submitting reply comments must do so on or before **July 6, 1999**. Parties should limit their comments to the issue of construction requirements for commercial wide-area 800 MHz licensees.

⁵ Within three years of the grant of their initial license, 800 MHz EA licensees must construct and place into operation a sufficient number of base stations to provide coverage to at least one-third of the population of its EA-based service area. 47 C.F.R. § 90.685(b). Within five years of the grant of their initial license, 800 MHz EA licensees must construct and place into operation a sufficient number of base stations to provide coverage to at least two-thirds of the population of its EA-based service area. *Id.* Alternatively, 800 MHz EA licensees in the Lower 230 Channels must provide substantial service to their markets within five years of the grant of their initial license. *Id.*

⁶ A similar requirement was imposed upon EA 800 MHz licensees in the Upper 220 channels. EA 800 MHz licensees must construct 50 percent of the total channels included in their spectrum block in at least one location in their respective EA-based service area within three years of initial license grant and retain such channel usage for the remainder of the construction period. 47 C.F.R. § 90.685(c).

All comments should reference PR Docket No. 93-144 and should be filed with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Room TW-B204, Washington, DC 20554. A copy of each filing should be sent to International Transcription Services, Inc. (ITS), 1231 20th Street, N.W., Washington, DC 20036. In addition, parties should send two copies to Scott A. Mackoul, Federal Communications Commission, Wireless Telecommunications Bureau, Commercial Wireless Division, Policy and Rules Branch, 445 Twelfth Street, S.W., Room 4A-230, Washington, DC 20554.

Copies of the comments and reply comments will be available for inspection and duplication during regular business hours in the Public Reference Room, 445 Twelfth Street, S.W., Room CY-8257, Washington, DC 20554. Copies also may be obtained from ITS, 1231 20th Street, N.W., Washington, DC 20036, (202) 857-3800. For further information, contact Scott A. Mackoul or Don Johnson, Federal Communications Commission, Wireless Telecommunications Bureau, Commercial Wireless Division, Policy and Rules Branch at (202) 418-7240.