

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

JUL 30 1999

In the Matter of)
)
Relicensing of Certain Part 90 Frequencies)
To Require Spectrally Efficient Use)

To: The Commission

PETITION FOR RULEMAKING OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.

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SUMMARY

The American Mobile Telecommunications Association (AMTA) and its members have concluded that neither the current regulatory environment governing the 450-470 MHz frequency band nor pending modifications to it will prove adequate to accommodate the anticipated demand for high-quality, efficient specialized wireless communications capability. Timely allocations of clear spectrum for non-consumer wireless services will be difficult to identify and secure, necessitating more efficient use of existing bands. In spite of recent, well-intentioned efforts to promote greater efficiency in the 450-470 MHz and other Part 90 bands, AMTA is convinced that revolutionary action is needed if the full potential of this spectrum is to be realized.

Specifically, the Association recommends the following:

- Divide all non-Public Safety Pool spectrum in the 450-470 MHz band into a 2 MHz allocation for continued shared, including low-power, use and a 10 MHz allocation for private and commercial geographic systems with EA licenses assigned by auction;
- Restrict commercial systems to the provision of service to Part 90 eligibles;
- Limit eligibility for one-quarter of the auctioned spectrum to private, internal applicants;
- Limit all auction applicants to one system per market;
- Require incumbents on auctioned spectrum to either relocate to remaining shared frequencies in this band or accept service and replacement equipment from new geographic licensees;
- Require geographic licensees to implement more spectrally efficient technology.

While this band unquestionably serves as a home to many users, its “efficiency” level must be quantified in terms of both quality of service and number of operational units. With no current incentive for existing licensees to purchase more efficient equipment and migrate voluntarily to

narrowband channels, the communications quality on this important band is deteriorating, and will continue to do so without radical action. AMTA offers the instant Petition to advance its effort toward improving efficiency, first undertaken in its Petition filed approximately one year ago. AMTA will include the substance of this Petition in its comments on the larger private land mobile licensing proceeding now underway, and looks forward to working with the Wireless Telecommunications Bureau and the Commission on the future of the Specialized Wireless industry.

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), in accordance with Section 1.401 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations,¹ respectfully requests that the Commission implement a fundamental restructuring of the licensing framework governing certain Part 90 frequencies in the 450-470 MHz band to ensure the future availability of high-quality, technically efficient dispatch service for the private wireless community. Specifically, AMTA urges the FCC to adopt rules that create geographic licensing opportunities on the frequencies in question and that also provide for the migration of existing licensees either to a portion of this band that would be retained for shared use or to the more technically advanced systems implemented by geographic licensees.

In support of this request, the following information is provided.

I. INTRODUCTION

1. AMTA is a nationwide, non-profit trade association dedicated to the interests of the specialized wireless communications industry. The Association's members included trunked and conventional 800 MHz and 900 MHz specialized mobile radio ("SMR") operators, licensees of wide-area SMR systems, and commercial licensees in the 220 MHz and 450-512 MHz bands. These members provide commercial wireless services to the traditional private land mobile user community throughout the country. They typically are local or regional companies with strong ties to business, industrial, land transportation and local government ("Specialized Wireless") users in their operating area. These companies generally sell and service radio equipment used by the Specialized Wireless user community, as well as providing them with system management

¹47 C.F.R. § 1.401.

or third-party commercial communications service depending on the requirements of the individual customer. They have proven themselves well-qualified to satisfy a wide variety of those needs over decades of operation. AMTA fully expects those needs will continue to grow as telecommunications becomes an increasingly integral part of all successful businesses.

2. For the reasons described below, AMTA and its members have concluded that neither the current regulatory environment governing the frequencies in question nor the pending modifications to it will prove adequate to accommodate the anticipated demand for high-quality, efficient Specialized Wireless communications capability. While unquestionably well-intentioned, recent efforts to promote greater efficiencies in the Part 90 bands below 800 MHz have not fulfilled expectations and cannot be expected to do so in the foreseeable future. The Association no longer believes that its members, their customers and prospective customers, or the Commission can afford to pursue what, to date, has been an incremental, purely voluntary approach to improved utilization of this spectrum.

3. However, the groundwork is in place for the Commission to reshape the future of the Specialized Wireless industry. Comments will be filed next week on the FCC's inquiry into the appropriate licensing scheme for new and existing Specialized Wireless services.² That proceeding raises broad policy issues relating to implementation of the Balanced Budget Act of

²See, *Notice of Proposed Rule Making*, WT Docket No. 99-87, 14 FCC Rcd (rel. March 25, 1999) ("*Balanced Budget NPR*"). In that and other proceedings, the Commission typically uses the term Private Land Mobile Radio ("PLMR") services to refer to the same licensee categories AMTA defines as the Specialized Wireless industry. The Association prefers the latter term since PLMR services are often thought to include only internal systems, not commercial providers of service to PLMR eligibles.

1997.³ The Commission is seeking input on matters such as the definition of Public Safety eligibles, auctions versus other frequency assignment approaches, what constitutes an "internal" private system and the implications of geographic versus site-specific licensing. AMTA will participate in that proceeding as well, but is submitting this pleading separately because of the more revolutionary nature of the instant proposal.

4. Indeed, the Association is firmly convinced that revolutionary action is needed if the full potential of this spectrum is to be realized. Experienced Specialized Wireless providers are eager to participate in the reinvention of this band if the regulatory framework provides a reasonable business opportunity. Users who have tasted the efficiencies of 800 MHz or 900 MHz trunking are demanding a higher grade of communications service and access to advanced technologies. The manufacturing community is prepared to provide more advanced, efficient equipment for this proven marketplace, commercial and internal licensees alike, if the regulatory environment supports such an investment. The time is ripe to take a fresh look, to look "outside of the box", in assessing the optimal regulatory approach for this spectrum. It is for this reason that AMTA makes the instant proposal, the key elements of which are as follows:

- Divide all non-Public Safety Pool spectrum in the 450-470 MHz band into a 2 MHz allocation for continued shared, including low-power, use and a 10 MHz allocation for private and commercial geographic systems with EA licenses assigned by auction;⁴
- Restrict commercial systems to the provision of service to Part 90 eligibles;
- Limit eligibility for one-quarter of the auctioned spectrum to private, internal applicants:

³Pub. L. No. 105-33, Title III, Stat. 251 (1997) ("Balanced Budget Act").

⁴As detailed *infra*, these allocations are of approximate size as there currently are a variety of uses interleaved in the band.

- Limit all auction applicants to one system per market;
- Require incumbents on auctioned spectrum to either relocate to remaining shared frequencies in this band or accept service and replacement equipment from new geographic licensees;
- Require geographic licensees to implement more spectrally efficient technology.

II. BACKGROUND

5. There is no serious dispute that telecommunications capability is becoming as fundamental to day-to-day life in the United States as are more traditional infrastructure elements such as roads, electricity and water. This is true both for consumers who now expect the availability of heretofore luxuries such as wireless phone service and Internet access, and for businesses that rely increasingly on voice and data communications to improve their operating efficiencies and thereby their bottom line.

6. The Commission has responded to increased consumer use by allocating unprecedented amounts of spectrum in recent years to accommodate the demands of the general public for ubiquitous, competitive, high-capacity, technically-advanced service offerings designed to satisfy individual user requirements.⁵ AMTA supports those FCC initiatives as essential to promoting the continued development of communications capabilities for the nation's citizens.

7. The FCC's response to the growth requirements of the Specialized Wireless industry, with the exception of the Public Safety component, has not been as generous. In the last

⁵The Commission has allocated 50 MHz to the cellular service, *see Report and Order*, GEN Docket No. 84-1231, 2 FCC Rcd 1825 (1986); and 200 MHz to emerging technology services in general, including PCS, *see First Report and Order and Third Notice of Proposed Rule Making*, Docket No. 92-9, 7 FCC 6886 (1992).

25 years, the Commission has allocated only 38.35 MHz of unoccupied spectrum for use by non-Public Safety land mobile Specialized Wireless licensees, both commercial providers of such services and operators of internal systems.⁶ This is but approximately 14% of the spectrum made available for consumer-oriented services during that same period, an amount inadequate to meet the needs of today's robust business economy. It certainly cannot be expected to accommodate these requirements into the next millennium.

8. Congress has specifically recognized an obligation to address the communications needs of Specialized Wireless users. For example, the Conference Report to the Balanced Budget Act directed the Commission "[To] consider the need to allocate additional spectrum for shared or exclusive use by private wireless services in a timely manner."⁷

9. AMTA fully supports the requests of the Land Mobile Communications Council ("LMCC") and its constituent members for additional private land mobile spectrum.⁸ However, the Association recognizes that allocations of clear spectrum in bands useable by the Specialized Wireless industry will be difficult to identify and secure. The relatively cursory comments of participating LMCC members on the FCC's recent 746-806 MHz spectrum proposal, and the absence of comments from the LMCC itself, indicate an expectation that the Congressionally-

⁶This spectrum includes the 800 MHz channels being deployed in Nextel Communications, Inc.'s ("Nextel") digital iDEN system, a network Nextel and the Commission consider competitive with consumer-oriented cellular and Personal Communications Service ("PCS") systems.

⁷143 Congressional Record H6172 (July 29, 1997).

⁸An Allocation of Spectrum for the Private Mobile Radio Services, *Petition for Rulemaking*, RM-9267, LMCC (Apr. 22, 1998).

mandated strictures under which that spectrum is to be available make it an unlikely source for private land mobile user opportunities.⁹ It appears, therefore, that the Specialized Wireless industry will be required to satisfy its near-term requirements by deriving more intensive, efficient utilization of already-allocated spectrum. AMTA has concluded that those improvements will not be recognized without a fundamental restructuring of the way existing Specialized Wireless spectrum is assigned and utilized.

A. The Refarming Proceeding

10. The Commission already has endeavored to promote the more efficient use of what the PLMR bands below 800 MHz in a rule making initiated seven years ago and referred to as the "refarming" proceeding.¹⁰ The FCC defined its objective in that proceeding as the implementation of proposals:

...designed to increase channel capacity in these bands, to promote more efficient use of these channels, and to simplify our policies governing the use of these bands by a wide variety of small and large businesses and public safety agencies throughout this nation.¹¹

11. The 450-470 MHz spectrum that is the subject of the instant proposal is included in the FCC's refarming effort. This band currently is available to all classes of Part 90 eligibles,

⁹Section 337(f)(1)(A) of the Balanced Budget Act limits use of the 746-806 MHz band to services "the sole or principal purpose of which is to protect the safety of life, health or property". 47 U.S.C. § 337(f)(1)(A).

¹⁰ *Notice of Proposed Rule Making*, PR Docket No. 92-235, 7 FCC Rcd. 8105 (1992) ("*NPR*"). The FCC's effort actually started in 1991 when it initiated an inquiry to gather information on how to promote more efficient use of the Part 90 bands below 512 MHz. *Notice of Inquiry*, PR Docket No. 91-170, 6 FCC Rcd 4125 (1991).

¹¹*NPR* at ¶ 1.

those operating internal systems as well as those providing service to eligibles on a for-profit basis. It includes both 25 kHz and 12.5 kHz bandwidth ¹² paired channels¹³, and provides for full-power and low-power operations. Previously, individual channels in this band had been assigned to specific Radio Services, each of which had particular, often highly detailed, eligibility requirements. All channels were available on a shared basis only,¹⁴ although certain licensees enjoyed *de facto* exclusive use of their frequencies. Applicants sometimes were able to secure frequencies assigned to Radio Services for which they were not eligible under inter-service sharing provisions.

12. One accomplishment of the refarming proceeding was the elimination of the multiplicity of Part 90 Radio Services and a pooling of available frequencies, including those in the 450-470 MHz band, into two broad categories: a Public Safety Radio Pool and an Industrial/Business Radio Pool. This did away with the need for inter-service sharing procedures and ensured that, going forward, all frequencies within each Pool would be available to all Pool eligibles.¹⁵

¹²Pursuant to rules adopted in the refarming proceeding, it also is possible to license systems with 6.25 kHz bandwidth.

¹³A small number of unpaired frequencies are available for one-way paging operations.

¹⁴47 C.F.R. § 90.173(a).

¹⁵Although all frequencies are available to all eligibles within each of these categories, the FCC did reserve to certain Frequency Advisory Committees the continued, exclusive right to coordinate frequencies previously assigned to their respective Radio Services. *Second Report and Order*, 12 FCC Rcd 14307, ¶ 42 (1997); *See*, 47 C.F.R. § 90.35(b)(2)(i).

13. In a further effort to derive more intensive use of the band, the FCC also modified what had been low-power 12.5 kHz offsets between the primary 25 kHz channels to full-power status, but declared an intention to retain some frequencies for continued low-power operation¹⁶. Incumbents who wished to continue operating at low power would be permitted to do so, but would become secondary to full-power, co-channel licensees if they were licensed on a channel that was converted to full-power operation. Alternatively, they could elect to change frequency and move to a channel that would remain low power.

14. Finally, as noted *supra*, the FCC has provided for "overlay" trunked licenses. Under these provisions applicants who can secure concurrence from all affected co-channel and adjacent channel licensees are permitted to implement centralized (i.e. non-monitoring) trunked equipment. Alternatively, centralized trunking is permitted when there is no prohibited overlap of service and interference contours in respect to affected co-channel and adjacent channel systems.¹⁷

15. AMTA has supported these FCC efforts to promote the more efficient use of this and other Part 90 bands. However, AMTA, and it believes the FCC, define "efficiency" as meaning not only the number of units that can utilize, but the quality of service achievable, on a

¹⁶Full implementation of this aspect of the refarming proceeding has been delayed because of the FCC's efforts to accommodate the interests of the medical telemetry industry which had made extensive use of secondary, low-power offsets for the operation of medical telemetry equipment. The FCC recently initiated a proceeding to create a distinct Wireless Medical Telemetry Service in another portion of the spectrum which should permit the full reassignment of the 450 MHz offsets to move forward. *Notice of Proposed Rule Making*. ET Docket No. 99-255, FCC 99-182, 14 FCC Rcd ___ (rel. July 16, 1999).

¹⁷3rd MO&O at ¶ 7.

given amount of spectrum. Channel sharing accomplishes the former, but at the expense of the later.¹⁸ Nevertheless, despite voluminous comments in a multiplicity of phases in this proceeding and extensive efforts on the part of the Commission and the industry to resolve a number of difficult issues, there is little tangible progress to date in the spectrum efficiency level in these bands. The causes are myriad. Primary among them, in AMTA's opinion, is the lack of an FCC-established date by which licensees **must** implement more efficient technology. The absence of a date certain, coupled with a lack of economic and/or operational incentives to encourage licensees to deploy more efficient equipment, have doomed this laudable and much-needed initiative.¹⁹

B. AMTA's 1998 Spectrum Efficiency Proposal

16. AMTA has already urged the Commission to adopt a more aggressive posture in respect to demanding greater spectral efficiency from the Specialized Wireless industry.

¹⁸*Balanced Budget NPR* at ¶ 14 ("Shared use increases the amount of frequency reuse that is possible compared to exclusive use with set distance separations, but requires that private system users must be able to tolerate interference and manage potential blocked access to channels.")

¹⁹The FCC did explore a number of marketplace incentives intended to promote the voluntary implementation of more efficient technologies in an earlier stage of this proceeding, but its proposals met substantial resistance from the traditional PLMR community. *See, First Report and Order and Further Notice of Proposed Rule Making*, PR Docket No. 92-235, 10 FCC Rcd. 10076 (1996) ("1st R&O and FNPR"). The agency recently terminated that phase of the proceeding. *See, Third Memorandum Opinion and Order*, PR Docket No. 92-235, 14 FCC Rcd. ___ (rel. July 1, 1999) ("3rd MO&O"). It did so citing changes in the regulatory landscape, including statutory changes, and the creation of trunked overlay license equivalents. The Commission did reserve the right to consider certain of the issues raised in the FNPR in its deliberations on the *Balanced Budget NPR*. As described herein, AMTA does not share the confidence expressed by the FCC in the 3rd MO&O that its current rules will be adequate to serve the agency's efficiency objectives.

Approximately one year ago, the Association filed a Petition for Rule Making proposing that licensees, other than Public Safety users, in most bands between 222 MHz and 896 MHz be required to deploy technology that achieves the equivalent of two times current capacity per voice path by specified dates depending on the degree of urbanization, and therefore spectrum congestion, in the area.²⁰ AMTA further recommended that the authorizations of incumbents that elected not to implement more efficient equipment be modified from primary to secondary status.

17. The Commission placed AMTA's petition on Public Notice on July 31, 1998,²¹ and now has incorporated the proposal in the Balanced Budget NPR.²² That proceeding includes some of the more controversial issues with which the Specialized Wireless industry and the FCC have had to deal in recent years and is not likely to be resolved quickly. Moreover, in light of the number and significance of issues to be addressed in the proceeding, it is not clear that participants will focus their attention on AMTA's proposal which is referenced in passing toward the end of a lengthy, complex document.

18. Even more fundamentally, however, in the year since its Petition was filed, AMTA and its members have had further opportunity to evaluate the efficacy of the current regulatory framework and to test the practical implications of implementing centralized trunked systems or other efficient technologies requiring the assignment of exclusive channels on heavily encumbered

²⁰AMTA Petition for Rule Making, RM-9332 (filed June 19, 1998) ("AMTA Efficiency Petition").

²¹*Public Notice*, Report No. 2288 (rel. July 31, 1998).

²²*See n. 2, supra.*

Part 90 channels.²³ The Association has listened as more and more members of the traditional Specialized Wireless manufacturing community have expressed frustration in seeing a growing demand for advanced, primarily dispatch networks designed to serve Specialized Wireless user needs but no spectrum on which implementation of such systems would be practical. It has fielded complaints from members and their customers dissatisfied with the quality and capabilities of their existing equipment and prepared to invest in more efficient, advanced technology who see no rational basis for doing so in a regulatory environment which does not reward (and arguably penalizes) those who make such investments.

19. The Association now is convinced that its earlier Petition did not go far enough to address the readily foreseeable requirements of the Specialized Wireless industry. The instant proposal is intended to preserve choice for the Specialized Wireless industry while demanding, in return, a commitment to invest in technologically efficient equipment.

III. A LICENSING PROPOSAL FOR THE 450-470 MHz BAND

20. In considering what regulatory framework is likely to produce efficient, technically advanced systems capable of serving the needs of the Specialized Wireless user community, the FCC need not look beyond its own experience. The creation of the SMR service in the 800 MHz

²³AMTA appreciates that the Commission's revised trunking rules in these bands have not yet gone into effect. *See 3rd MO&O*. Nonetheless, while the recently adopted changes are appropriate and may provide expanded opportunities for trunking in more rural areas, they will have little or no practical impact on the heavily licensed spectrum characteristic of the urban markets in which increased efficiencies are most sorely needed. The number of co-channel and affected adjacent channel licensees in those areas make securing concurrence to trunk extraordinarily difficult and, in most instances, impossible.

and 900 MHz bands, and its commercial licensee equivalent at 220 MHz, produced unprecedented levels of cost- and spectrum-efficiencies for Part 90 users.

21. The SMR experiment was successful for a number of reasons. First, it created a class of licensee with an economic incentive to deploy more efficient technology capable of accommodating a larger number of customers. Second, the original SMR regulatory framework limited the amount of spectrum that could be acquired initially by an entity in a given market, thereby fostering robust competition with the resulting customer benefits. Third, the pro-competitive regulatory environment provided a truly meaningful business opportunity for small- and medium-sized entrepreneurs. Fourth, the manufacturing community responded to the size of the prospective market, both domestic and international, by developing more efficient equipment which then was deployed by both third-party SMR operators and certain licensees of internal systems. Each of these factors contributed to the availability in those bands of high-quality, high-capacity communications systems. AMTA urges the FCC to permit a comparable revitalization of the non-Public Safety portion of the 450-470 MHz band by adopting the following regulatory framework.²⁴

²⁴AMTA has proposed to exclude those portions of the 450-470 MHz band historically used by Public Safety licensees. The Association recognizes the unusual complexities associated with requiring such entities to upgrade their radio systems according to a federally-mandated timetable. Moreover, the need to implement more efficient technology on this spectrum may not be as pressing for the Public Safety community in light of the FCC's recent allocation of 24 MHz from the 746-806 MHz band for those services. However, as improved equipment is developed, some Public Safety entities may elect to deploy it on a voluntary basis.

A. Reconfiguration of the 450-470 MHz Band

22. The Commission has already segregated Public Safety from non-Public Safety frequencies in this and other Part 90 bands. AMTA recommends no change in the FCC's Rules in respect to those 450-470 MHz channels that are within the Public Safety Radio Pool. They would be exempt entirely from the instant proposal.

23. Approximately 2 MHz of the remaining channels currently allocated to the Industrial/Business Radio Pool would be made available for licensing on a shared basis available to all Part 90 eligibles, with some portion reserved for low-power operation. The remaining, roughly 10 MHz would be available on a geographic basis and divided into licenses of approximately .5 MHz of paired, contiguous spectrum each, creating twenty (20) licenses per market.²⁵ These would be further sub-divided with five (5) licenses reserved for private, internal systems and the other fifteen (15) available for either internal or commercial systems.

24. AMTA recommends these allocations to ensure that opportunities remain available for all Specialized Wireless users. The .5 MHz spectrum block size proposed is comparable to the twenty-channel, 25 kHz bandwidth trunked systems initially issued in the 800 MHz band and deemed optimal by many trunked licensees²⁶. They are intended to balance the need for sufficient, contiguous capacity to support a business plan and attract both manufacturers and investors, without being so large as to discourage participation by the smaller commercial operators and

²⁵See Attachment A for the channels under consideration.

²⁶As discussed, *infra*, AMTA does not recommend any designated bandwidth for these spectrum blocks, preferring to leave those determinations to licensees in a dynamically evolving technology marketplace.

private, internal applicants. The Association further recommends that licensees be permitted to integrate their systems freely into larger networks, thereby further reducing implementation costs and enhancing both efficiency and system features.

25. Moreover, as in the 800 MHz and 900 MHz bands, AMTA believes it is appropriate for spectrum, in this case twenty-five percent (25%) of the available capacity, to be reserved initially for private, internal licensees. That eligibility restriction should sunset, perhaps after three (3) years, to permit marketplace rationalization of what is an imprecise attempt to predict user requirements.

26. Finally, the Association recommends that some spectrum be retained for use by those incumbents and prospective applicants that prefer to continue operating in a shared channel environment. Although AMTA would argue most of their needs would be better served on the type of system that will be deployed by geographic licensees, that choice will remain theirs.

B. Geographic Licensing Procedures

27. The Association recommends that geographic licenses be issued for Economic Areas.²⁷ Consistent with statutory directive, the authorizations would be awarded by auction.²⁸ Private, internal applicants would have the option of filing for one of the five (5) reserved licenses

²⁷The Commission has determined that Economic Areas ("EAs") represent an appropriate geographic area for the Specialized Wireless user industry. *First Report and Order*, PR Docket No. 93-144, 11 FCC Rcd 1463 (1995).

²⁸The FCC currently does not have authority to use any other method of awarding licenses in instances of mutual exclusivity, except for defined categories of eligibles that are statutorily exempt from competitive bidding. If the agency is given authority to assess user fees as an alternative to auctions for some classes of applicants, AMTA assumes that option will be given serious consideration in all qualified instances.

or of participating in an auction with other private, as well as commercial, entities seeking one of the other fifteen (15) authorizations.

28. There are two key elements in this geographic licensing proposal. First AMTA recommends that applicants in the auction be limited to purchasing a single license in each geographic area.²⁹ Experience in the 800 MHz, 900 MHz and 220 MHz competitive bidding process indicates that limits on the amount of spectrum that can be acquired, rather than bidding credits or even installment payments, would be the most useful factor in promoting successful participation by small businesses and minorities. Moreover, experience in the actual workings of the original, regulatorily determined, highly competitive 800 MHz SMR marketplace demonstrates conclusively the benefits of such an approach, both for prospective operators and for the customers they serve. That restriction also should be subject to a sunset provision of possibly five (5) years, after which the marketplace should be permitted to work unimpeded.

29. Second, geographic licensees must not be obligated to design their more efficient systems to accommodate the operations of existing licensees. Many entities currently operating in this band continue to use decades-old equipment that provides only the most basic of communications capability, was not designed to enhance spectral efficiency and has long since been fully depreciated. It is reasonable and necessary to require incumbents who choose not to pursue or who are not successful in acquiring their own geographic licenses to make an election.

²⁹AMTA recognizes that parties in the past have attempted to circumvent these restrictions through a variety of operating agreements and other types of arrangements. The Association does not dispute that regulatory vigilance may be required to prevent such abuses in the future, but it is confident that the combined efforts of the FCC and the industry could be successful in curbing that practice.

30. One choice would be to change frequency to one of the remaining shared channels with the cost of doing so paid by the geographic licensee. By contrast, the FCC refarming rules, endorsed by the LMCC, require entities on low-power offsets electing to secure primary status to purchase high-power equipment or move to a channel set aside for low-power operation, in either case without any right to reimbursement.³⁰ Thus, this option is more favorable than the current rules.

31. Alternatively, operational incumbents could elect to receive service from a commercial geographic licensee. In that case, and as an inducement to convert to more efficient usage, the geographic licensee would be required to provide the incumbent with replacement equipment at no cost.³¹ In neither case does AMTA propose that incumbents be compensated for their licenses *per se* because the vast majority of authorizations in this band are assigned on a purely shared basis.³²

³⁰These incumbents would have the option of remaining on the now high-power channel on a secondary basis, but, over time, that election will become increasingly unsatisfactory.

³¹As the Commission is aware, there are some number of 450-470 MHz Part 90 licensees whose systems are not currently, and perhaps never were, operational. Because frequencies in this band have always been assigned on a shared basis, the FCC had no reason to demand construction certification from licensees. The only incumbents who would be entitled to equipment from a geographic licensee would be those who affirmatively registered an operational system within a defined filing period and who provided adequate proof of their operational status. This registration would need to be completed prior to the auction so potential bidders would be able to assess the scope of their economic obligation. To minimize the impact of the instant proposal on the FCC's limited resources, AMTA hereby volunteers to act as the clearinghouse for the registration process.

³²Some relatively small number of licensees have been able to acquire YG (centralized trunked) licenses recently which offer a type of channel exclusivity, at least in respect to later-filing applicants. While the FCC has consistently determined that licensees do not obtain property rights in their authorizations even when assigned on a fully exclusive basis, *Commission v.*

32. Finally, although AMTA has seen little evidence that license partitioning and spectrum disaggregation have created meaningful opportunities for new entities to acquire spectrum through after-market transactions, the Association nonetheless recommends that both options be permitted and that they be available for private, internal, as well as commercial, licensees.

C. Geographic License Parameters

33. The instant proposal rests on the premise that the foreseeable communications needs of the Specialized Wireless user community will not be satisfied without a regulatory framework that promotes more intensive use of existing spectrum. It is essential, therefore, that geographic licensees implement systems with spectral efficiencies superior to those of today's 450-470 MHz systems. It has been argued, at least in respect to commercial operators, that the very act of participating in an auction and paying for spectrum is the strongest possible inducement to implementing highly efficient technology with commensurate opportunities for attractive economic returns. In AMTA's opinion, it is preferable to leave the selection of technology to the licensee.³³ In any event, it would be premature at this time to define minimum technical requirements that might prove inadequate by the time the instant proposal is implemented. Instead, the Commission

Sanders Radio Station, 309 U.S. 470, 475 (1939)(noting that the Communications Act prevents a person from holding a property interest in a license) also *see Stephens Industries, Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986)(noting that the FCC consistently has held licensees do not own their licenses), YG status does not provide even the level of exclusivity the Commission has already deemed inadequate to support a protected property interest.

³³AMTA's earlier proposal recommended a minimum efficiency equivalency which the Association still consider necessary to achieve an acceptable degree of spectrum utilization improvements.

and the Specialized Wireless industry should continue to work together to develop rules that will provide the necessary incentives for licensees to deploy efficient technologies.

34. For this reason, and as stated *supra*, the FCC should not define a bandwidth limitation for geographic licenses. There are a variety of advancements in equipment efficiencies that are becoming commercially available or are under active development, not all of which contemplate similar technical approaches. By declining to adopt a specific bandwidth requirement, the FCC will allow the marketplace to determine which approach is optimal.

IV. CONCLUSION

35. For the reasons described above, AMTA urges the Commission to adopt rules that create geographic licensing opportunities on the frequencies in question and that also provide for the migration of existing licensees either to a portion of this band that would be retained for shared use or to the more technically advanced systems implemented by geographic licensees.

Attachment A

451.025 - 452.950 MHz
460.650 - 462.525 MHz
463.200 - 464.975 MHz

456.025 - 457.950 MHz
465.650 - 467.525 MHz
468.200 - 469.975 MHz

CERTIFICATE OF SERVICE

I, Linda J. Evans, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this July 30, 1999 caused to be hand delivered a copy of the foregoing Petition for Rulemaking to the following:

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