

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

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of	)	
	)	
Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended	)	WT Docket No. <u>99-87</u>
	)	
Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies	)	RM-9332
	)	
Establishment of Public Service Radio Pool in the Private Mobile Frequencies Below 800 MHz	)	RM-9405
	)	
Petition for Rule Making of the American Mobile Telecommunications Association	)	RM-9705
	)	

To: The Commission

REPLY COMMENTS OF THE  
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

Respectfully submitted,

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## SUMMARY

The Association is optimistic that there is sufficient commonality of viewpoint for the Commission, at the very least, to accelerate the transition to more spectrally efficient technology in the refarmed bands and to adopt a more flexible licensing scheme for 900 MHz Business and Industrial/Land Transportation (“B/ILT”) channels.

The Comments in this proceeding confirm broad industry support for adoption of a date certain for implementation of more efficient technology in the refarmed bands. They underscore the vital importance of this issue to the Part 90 community and its general consensus that the current rules are not sufficient to promote the level of spectrum utilization needed to accommodate anticipated user requirements. AMTA and other Part 90 representatives endorse an accelerated migration schedule and urge the FCC to adopt rules that will promote such a result. However, AMTA remains convinced that more revolutionary action is needed if the full potential of this spectrum is realized. Accordingly, AMTA urges the Commission to revisit the proposals the Association made in its Petition for Rulemaking filed on July 30, 1999 and urges the FCC to adopt a regulatory framework consistent with the geographic licensing structure outlined in that filing.

AMTA believes the record in this proceeding supports extending the flexibility granted to 800 MHz B/ILT licensees to their counterparts at 900 MHz. In AMTA’s opinion, the parties opposing the proposal have not adequately explained why the rationale supporting the recent change at 800 MHz - enhanced spectral use and efficiency - would not equally apply to the 900 MHz band. AMTA does not believe the FCC should adopt the “wait and see” approach recommended by ITA and LMCC since (1) the FCC has been examining the beneficial effects of free market forces on spectrum management for some time; (2) developments in the 800 MHz band are not necessarily

predictive of what will happen at 900 MHz; and (3) this approach implies that the FCC might decide that too much or too little 800 MHz conversion is inconsistent with the agency's objectives, thereby warranting different rules at 900 MHz. AMTA is unaware of anything in the record that would support such an assumption. Rather, the FCC has made a specific determination that the operational flexibility proposed herein is fully consistent with the public interest.

## TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS . . . . .	iii
SUMMARY . . . . .	i
I. MORE EFFICIENT USE OF REFARMING SPECTRUM . . . . .	1
A. The Record Evidences Broad Industry Support for Adoption of Dates Certain for Implementation of More Efficient Technology . . . . .	1
B. AMTA Remains Convinced That a Radical Restructuring of The Licensing of The Refarmed Bands Is Necessary . . . . .	5
II. FLEXIBLE USE OF 900 MHz B/ILT CHANNELS . . . . .	9
A. The Record Supports Adoption of Operationally Flexible Rules for 900 MHz B/ILT Spectrum . . . . .	9
B. The FCC Should Not Adopt ITA's and LMCC's Wait and See Proposal . . .	11
III. CONCLUSION . . . . .	13

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), in accordance with Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully submits its Reply Comments in the above-entitled proceeding.<sup>1</sup> The volume of Comments filed in response to the Notice highlights the significance of the issues under consideration to the Part 90 Private Land Mobile Radio ("PLMR") user and commercial operator community.

Both the number of and the variety of positions advanced in the Comments indicate there are matters on which it may be difficult for the industry to reach a consensus, much less a unanimous, position. Nevertheless, the Association is optimistic that there is sufficient commonality of viewpoint for the Commission, at the very least, to accelerate the transition to more spectrally efficient technology in the "refarmed" bands and to adopt a more flexible licensing scheme for 900 MHz Business and Industrial/Land Transportation ("B/ILT") channels.

## **I. MORE EFFICIENT USE OF REFARMING SPECTRUM**

### **A. The Record Evidences Broad Industry Support for Adoption of Dates Certain for Implementation of More Efficient Technology**

1. The first issue on which the Commission had invited comment was AMTA's now almost three-year old Petition for Rule Making<sup>2</sup> in which it urged the FCC to establish a date certain by which non-Public Safety licensees operating in the bands between 222 MHz and 896

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<sup>1</sup>*Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 99-87, FCC 00-403, \_\_FCC Rcd \_\_ (rel. Nov. 20, 2000) (¶¶ 1-136 "BBA Order", ¶¶ 137-144 "Notice" or "FNPR").

<sup>2</sup>AMTA Petition for Rulemaking (RM-9332) (filed June 19, 1998) ("Petition I").

MHz<sup>3</sup> in the larger urban areas would be required to deploy technology that achieves a minimum of two times the capacity of current channelization.<sup>4</sup> The Association submitted its Petition I because of a concern that the Commission's rules were not adequate to promote migration to more efficient technologies in any reasonable timeframe.

2. In the FNPR, the Commission announced its tentative conclusion that:

...we are inclined to agree with AMTA that the current pace of migration to more spectrally efficient technology is not rapid enough.<sup>5</sup>

The agency expressed concern about adopting dates certain, as proposed by AMTA, because of the possibility that doing so would impose an undue economic burden on licensees which recently had purchased non-compliant equipment. The FCC nonetheless acknowledged:

On the other hand, a user that continues to employ spectrally inefficient equipment, when more efficient alternatives are available, is harming other users with whom it is sharing the frequencies in these bands.<sup>6</sup>

3. In its Comments, AMTA urged the Commission to adopt a regulatory framework consistent with Petition I that would establish dates after which licensees utilizing channels in the refarmed bands and in defined markets would be required to convert to more efficient technology

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<sup>3</sup>AMTA recommended exempting from this requirement spectrum that was subject to competitive bidding, such as 800 MHz channels in bands A-V. *See* 47 C.F.R. § 90.617.

<sup>4</sup>Recognizing that the use of narrowband equipment is one, but not the only, approach to achieving greater spectrum efficiency, AMTA defined the recommended standard as technology with the equivalent of one voice path per 12.5 kHz of spectrum based on a 25 kHz bandwidth channel.

<sup>5</sup>FNPR at ¶ 141.

<sup>6</sup>*Id.* at ¶ 142.

or lose primary, protected status on the channel.<sup>7</sup> It did so because it remains convinced that incumbents using legacy 25 kHz bandwidth equipment, which still comprise the vast majority of licensees in the refarmed bands, have no immediate incentive to migrate to more efficient technology under the current rules and, for the most part, have failed to do so. While recognizing the FCC's concern about the possibility of stranded investment, the Association noted these licensees have been on notice for more than a half-decade that the public interest demands more intensive use of this valuable spectrum and that a variety of tested technologies capable of achieving greater efficiencies are available.<sup>8</sup>

4. The Comments reflect broad industry agreement that the current refarming rules are unlikely to produce the efficiency improvements needed in a reasonable time period and, therefore, support for adoption of dates certain along the lines proposed by AMTA.<sup>9</sup> While there

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<sup>7</sup>AMTA must express certain reservations about its recommendation that non-compliant licensees be permitted to continue operating, albeit on a secondary, non-interference basis. Such a scheme may present substantial difficulties for the FCC's Enforcement Bureau which will be responsible for resolving interference issues between primary and secondary licensees. Moreover, the potential for interference from an incumbent 25 kHz bandwidth operation to a new, more efficient, adjacent channel 12.5 kHz system may itself have a significant chilling effect on parties otherwise prepared to implement those newer systems since their investment may be unusable until the Enforcement Bureau is able to resolve the interference dispute.

<sup>8</sup>AMTA, as well as other commenters, also recommended that the FCC stop accepting applications for new 25 kHz bandwidth systems to minimize the stranded investment problem. The parties suggested different timetables for doing so, but the consensus is that this action should be taken as soon as reasonably practicable.

<sup>9</sup>See Comments of Land Mobile Communications Council ("LMCC"), American Petroleum Institute ("API"), Association of Public-Safety Communications Officials-International, Inc. ("APCO"), Industrial Telecommunications Association, Inc. ("ITA"), MRFAC, Inc. ("MRFAC"), Personal Communications Industry Association, Inc. ("PCIA"), Digital Wireless Corporation ("DWC") and Motorola, Inc. ("Motorola").

are different positions about what those dates should be and what markets should be included,<sup>10</sup> it is important to note that only a single representative of a Part 90 user group or equipment manufacturer, the Association of American Railroads ("AAR"), opposed any form of mandatory conversion.<sup>11</sup> AAR's opposition is based on its concern about the impact of such a requirement on what it describes as a fleet that is "essentially nationwide in scope due to equipment-sharing and track-sharing agreements between railroad companies",<sup>12</sup> a situation that could be addressed through waiver or other extraordinary relief if deemed justified by the Commission.

5. This broad industry support for adoption of a date certain underscores the vital importance of this issue to the Part 90 community and its general consensus that the current rules are not sufficient to promote the necessary level of spectrum utilization in the refarmed bands. In fact, ITA recommended an even more accelerated migration schedule than proposed in AMTA's Petition I:

While ITA supports the proposed deadline of December 31, 2003 for urban-area licensees, ITA does not support AMTA's proposed timeframe of December 31, 2008 or December 31, 2020 for licensees in less congested markets. Such a lengthy transition period would provide licensees with an unnecessarily protracted amount of time to adopt narrowband technology....Permitting such a delayed transition in rural areas would perpetuate and even promote an unnecessary disparity in the efficiency of technology deployed by land mobile

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<sup>10</sup>AMTA itself is reassessing whether its proposed deadline of December 31, 2003 should be extended to the top 100, rather than top 50, markets. There has been substantial growth in many markets 51-100 since AMTA's Petition I was adopted by the Association which may warrant a more expansive list of communities in which existing or incipient spectrum shortages demand more efficient use of available allocations.

<sup>11</sup>AAR Comments

<sup>12</sup>*Id.* at p. 4.

licensees... Moreover, the entire industry would benefit from an increase in the amount of private land mobile channels available for use.

ITA proposes that licensees in non-urban areas (markets 51 and higher) should be required to implement 12.5 kHz or equivalent efficiency narrowband technology by December 31, 2005. This deadline would take into account both the needs of current licensees, as well as the feasibility of implementing narrowband technology in a timely manner. By adopting this deadline, licensees in more rural areas would have sufficient latitude to implement new technology over an extended period of time, without unnecessarily delaying the uniform and complete migration to narrowband technology among the private land mobile community.<sup>13</sup>

6. AMTA is encouraged by this confirmation of the need for the FCC to assume a substantially more pro-active role in promoting the efficiency goals of the refarming proceeding. The Association would welcome a migration schedule consistent with ITA's proposal and believes there is significant support for such an approach.<sup>14</sup>

B. AMTA Remains Convinced That a Radical Restructuring of The Licensing of The Refarmed Bands Is Necessary

7. Although AMTA endorses the accelerated migration schedule outlined above, and although its request for an even more revolutionary approach to maximizing utilization of the refarmed bands already was denied by the FCC,<sup>15</sup> the Association remains convinced that even these proposed modifications will not go far enough in meeting the anticipated demand for high-quality, efficient communications capability in these bands. AMTA still believes revolutionary action is needed if the full potential of this spectrum is to be realized.

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<sup>13</sup>ITA Comments at pp. 5-6.

<sup>14</sup>Organizations such as LMCC, API, APCO, MRFAC and PCIA all have indicated support for establishing dates certain, and some have specified January 1, 2005 as an appropriate deadline.

<sup>15</sup>BBA Order at ¶¶ 104-7.

8. As described in the Notice, AMTA filed a Petition for Rulemaking on July 30, 1999 which outlined a radically new approach for licensing the refarmed bands.<sup>16</sup> Specifically, AMTA urged the FCC to permit a revitalization of the non-Public Safety portion of the 450-470 MHz band by adopting the following regulatory framework.<sup>17</sup>

9. Approximately 2 MHz of the 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. 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.

10. The Association recommended that geographic licenses be issued for Economic Areas ("EAs") and awarded by auction. Under this proposal, private, internal applicants would have the option of filing for one of the five (5) reserved licenses or of participating in an auction with other private, as well as commercial, entities seeking one of the other fifteen (15) authorizations. Applicants in the auction would be limited to purchasing a single license in each

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<sup>16</sup>AMTA Petition for Rulemaking (RM-9705) (filed July 30, 1999) ("Petition II").

<sup>17</sup>AMTA proposed to exclude those portions of the 450-470 MHz band historically used by Public Safety licensees. The Association recognized 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.

geographic area and would be required to deploy technology capable of meeting a to-be-determined level of spectrum efficiency.

11. Auction winners would not be required to protect incumbents' existing systems. However, they would assume full financial responsibility, at the incumbent's election, for either relocating the incumbent to one of the remaining shared channels or providing the incumbent with equipment to operate on the geographic licensee's new, more technically advanced system. In neither case did 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.

12. The Commission denied AMTA's Petition II, noting concerns expressed by various commenters that the incumbent choices outlined above would not provide viable options and that the number of incumbents who would choose continued shared use would experience unacceptable levels of congestion on a substantially reduced amount of spectrum.<sup>18</sup> However, the FCC left open the possibility that it would revisit this issue if warranted in the future.<sup>19</sup> The Association urges the Commission to do so at the earliest possible opportunity, including in the context of the instant FNPR.

13. AMTA has consistently supported the demand of certain PLMR users for private systems designed to accommodate their individualized requirements. It continues to do so. However, it has become increasingly apparent that certain PLMR eligibles who heretofore believed they could only be met by operating their own systems have begun to recognize that their

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<sup>18</sup>BBA Order at ¶ 106.

<sup>19</sup>*Id.* at ¶ 107.

requirements can be satisfied by a third party provider. This may be a reflection of the broader ubiquity of commercial systems, their typically more feature-rich capabilities, their cost efficiencies, their improved ability to meet individualized needs, the evolutionary nature of user requirements or some combination of the above. Whatever its cause, this fact cannot be ignored.

14. AMTA believes it is not premature for the Commission to revisit the Petition II concept. The agency has taken positive actions recently to expand the spectrum options available to PLMR users. Its 700 MHz Guard Band decision is expected to provide spectrum leasing opportunities for a wide variety of Part 90 licensees.<sup>20</sup> The Commission also is considering increased use of spectrum leases in a variety of bands<sup>21</sup> and an additional allocation above 1 GHz for Part 90 eligibles.<sup>22</sup> Each of these proceedings has significant spectrum potential for PLMR users with a need to operate their own systems. These initiatives, coupled with a broader acceptance of third party operations to meet certain PLMR requirements, underscore the balanced approach of AMTA's Petition II proposal. That proposal provides opportunities for PLMR users whose communications needs are best served on shared channels, on exclusive spectrum or on third party systems, while also significantly increasing the efficiency achieved on this valuable spectrum. AMTA urges the Commission to consider anew the licensing framework recommended

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<sup>20</sup>*Second Report and Order*, WT Docket No. 99-168, 15 FCC Rcd 5299 (1999).

<sup>21</sup>*Notice of Proposed Rule Making*, WT Docket No. 00-230, FCC 00-402 (rel. Nov. 27, 2000).

<sup>22</sup>*Notice of Proposed Rule Making*, ET Docket No. 00-221, FCC 00-395 (rel. Nov. 20, 2000).

in Petition II, or some other approach with comparable potential for enhancing the utilization of this important, under-utilized band.

## **II. FLEXIBLE USE OF 900 MHz B/ILT CHANNELS**

15. The second issue raised in the FNPR was a proposal to permit incumbent 900 MHz B/ILT licensees to convert their channels to commercial operation or to assign their authorizations to an entity intending to use them in a commercial system. The Commission noted it had adopted such rules for 800 MHz channels in the BBA Order, and queried whether comparable rules should be extended to the 900 MHz band.

### **A. The Record Supports Adoption of Operationally Flexible Rules for 900 MHz B/ILT Spectrum**

16. AMTA believes the record in this proceeding supports extending the flexibility granted to 800 MHz B/ILT licensees to their counterparts at 900 MHz despite the fact that not all commenters agree. Certain parties oppose the FCC's proposal, fearful that giving existing 900 MHz B/ILT licensees the right, although certainly not the obligation, to convert their authorizations to commercial use or to enter into voluntary assignment agreements with commercial operators will deprive potential PLMR licensees of spectrum.<sup>23</sup> They argue that no need for such a rule change has been demonstrated<sup>24</sup> and suggest that the FCC wait and see what happens at 800 MHz before adopting a similar provision at 900 MHz.<sup>25</sup>

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<sup>23</sup>See, e.g., Comments of API and ITA.

<sup>24</sup>API Comments at p. 6.

<sup>25</sup>ITA Comments at p. 10, LMCC Comments at p. 5.

17. Other parties, including PCIA and Motorola, support such a change:<sup>26</sup>

The ability to convert one's system from private to commercial service is a user decision and should be completely voluntary. While the 800 MHz and 900 MHz bands have evolved differently for [IB and I/LT] licensees, it is the right course of action for the FCC to give voluntary flexibility to licensees for both bands.<sup>27</sup>

The Committee echoed this conclusion:

With the rapidly changing landscape of the wireless industry, licensees who depend on mobile communications systems need increased flexibility to determine how to meet their evolving needs. Each individual licensee is in the best position to make this determination for itself and requires a flexible regulatory environment to do so.<sup>28</sup>

18. By contrast, in AMTA's opinion, the parties opposing the proposal have not adequately explained why the rationale supporting the recent change at 800 MHz - enhanced spectral use and efficiency<sup>29</sup> - would not apply equally to the 900 MHz band. After careful consideration, the Commission determined with respect to 800 MHz spectrum that it no longer was in the public interest to preserve an inflexible demarcation between channels allocated for commercial SMR and for non-commercial uses. The decision to afford 800 MHz PLMR licensees this type of operational flexibility was not based on a specific, demonstrated demand for such flexibility on the part of identified users. Instead, the decision was premised on the broader public interest of efficient spectrum management:

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<sup>26</sup>See, also, Comments of Nextel Communications, Inc. ("Nextel"), DW Communications, Inc. ("DW") and Ad Hoc 800/900 MHz Licensees' Committee ("Committee").

<sup>27</sup>Motorola Comments at p. 9.

<sup>28</sup>Committee Comments at pp. 3-4.

<sup>29</sup>BBA Order at ¶ 110.

Consequently, we will amend our Rules to allow 800 MHz Business and I/LT licensees to assign or transfer their spectrum to CMRS licensees for use in CMRS operations....We are not persuaded that we should require the relocation of upper 200 channel incumbents as a condition of approving the transaction....In this broader proceeding, however, we conclude that permitting such assignments and transfers will be beneficial for other reasons. We are convinced that alienability of PLMR licensees will enhance spectral use and efficiency. Limiting the flexibility of spectrum use to relocating upper 200 channel incumbents does not serve the public interest, and would merely erect another barrier to achieving maximum spectral efficiency.

For the same reasons, maintaining the inter-category barrier at 900 MHz will prevent optimal spectrum efficiency for the general benefit of the public.

B. The FCC Should Not Adopt ITA's and LMCC's Wait and See Proposal

19. ITA and the LMCC have proposed that the FCC defer modifying its rules at 900 MHz until some time has elapsed after which the FCC can assess developments at 800 MHz and then decide if similar flexibility should be available at 900 MHz. In AMTA's opinion, it is highly doubtful that the "wait and see" approach will shed any new light on this issue and it should not be adopted.

20. First, the FCC has been examining the beneficial effects of free market forces on spectrum management for some time.<sup>30</sup> With respect to permitting the voluntary conversion of 800 MHz B/ILT channels to commercial use, the FCC is "convinced that alienability of PLMR licensees will enhance spectral use and efficiency."<sup>31</sup> No one has advanced a reason why comparable flexibility in respect to 900 MHz spectrum will not produce similarly improved

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<sup>30</sup>See "In the Matter of Principles for Promoting the Efficient Use of Spectrum by Encouraging the Development of Secondary Markets," *Policy Statement*, \_\_\_ FCC Rcd \_\_\_ (rel. Dec. 1, 2000) ("Policy Statement").

<sup>31</sup>BBA Order at ¶ 110.

spectrum efficiency. Deferring this action for some undetermined period, as proposed by ITA and LMCC, will delay these demonstrable benefits in the 900 MHz band without producing any identified, countervailing advantage.

21. Second, developments in the 800 MHz band are not necessarily predictive of what will happen at 900 MHz. The differences between the two bands which ITA and the LMCC note - the fact that "substantial commercial use does not exist on private land mobile channels at 900 MHz"<sup>32</sup> - may yield different results. B/ILT licensees at 900 MHz may elect to convert their spectrum to commercial use at a slower or faster rate than their 800 MHz counterparts. That will be determined by the facts and circumstances surrounding each individual licensee and is the very essence of the operational flexibility the Commission already has determined is consistent with the public interest.

22. Lastly, the "wait and see" approach implies that the FCC might decide that too much or too little 800 MHz conversion is inconsistent with the agency's objectives, thereby warranting a different approach at 900 MHz. AMTA is unaware of anything in the record that would support such an assumption. In making its decision at 800 MHz, the FCC considered whether adoption of the proposed rule change could deprive qualified B/ILT eligibles of channels needed for internal systems. It concluded that those concerns were not persuasive.<sup>33</sup>

23. Moreover, as noted *supra*, the FCC has taken several important steps to ensure that PLMR eligibles will have appropriate communications options for shared and exclusive use

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<sup>32</sup>ITA Comments at p. 10.

<sup>33</sup>BBA Order at ¶ 112.

operations. The Commission is correct in determining that these initiatives, not maintaining artificial spectrum barriers, are the appropriate methods for addressing prospective PLMR needs, an analysis that is equally compelling in respect to 900 MHz B/ILT flexibility.

24. Adoption of the proposed rule is not a "decision to mandate flexibility."<sup>34</sup> Instead, permitting the conversion of B/ILT channels to commercial use is a decision to provide options to licensees who can choose to exercise the option or not. PLMR licensees, not the FCC and not commercial operators, will determine whether converting their licenses to commercial use is appropriate given their individual communication needs and requirements. Some licensees may decide it is in their best interest to convert their licenses, while others will decide to retain their stations as currently authorized. For example, the member depicted in ITA's comments has clearly determined not to avail itself of this option: "we are in no way interested in turning over our building security and maintenance communication at 900 MHz to commercial providers."<sup>35</sup> Adoption of the change proposed will not compel them to do so; however, it will permit them to convert if their needs should change in the future. As explained in the Association's comments, the subject rule change balances the benefit of market forces with the PLMR licensee's interest by allowing "PLMR licensees to assess marketplace needs and economic factors when determining the best and most efficient use of spectrum."<sup>36</sup>

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<sup>34</sup>ITA Comments at p. 10 (emphasis added).

<sup>35</sup>ITA Comments at p. 11.

<sup>36</sup>BBA Order at ¶ 111.

### **III. CONCLUSION**

25. For the reasons described above, AMTA urges the Commission to proceed promptly to act in a manner consistent with the positions expressed herein.

## 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 April 2, 2001 caused to be mailed, first-class, postage prepaid, a copy of the foregoing Reply Comments to the following:

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