

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

In the Matter of

Amendment of **PR Docket No. 89-553**
Parts 2 and 90 of the
Commission's Rules to Provide for the
Use of 200 Channels Outside the
Designated Filing Areas in the
896-901 MHz and the 935-940 MHz Bands
Allotted to the Specialized Mobile Radio Pool

Implementation of **GN Docket No. 93-252**
Sections 3(n) and 322
of the Communications Act

THIRD ORDER ON RECONSIDERATION

Adopted: October 20, 1995; Released: October 20, 1995

By the Commission:

I. INTRODUCTION

1. On our own motion, pursuant to Section 1.108 of our rules,¹ we reconsider our coverage requirement adopted for the 900 MHz Specialized Mobile Radio ("SMR") service.² We also reconsider the issue of renewal expectancies for 900 MHz SMR Major Trading Area ("MTA") licensees ("900 MHz MTA licensees"). First, the Commission clarifies that 900 MHz MTA licensees cannot meet their coverage requirements through the use of resale agreements. Second, we amend the Part 90 rules to include a renewal expectancy for 900 MHz MTA licensees. We are reconsidering our service rules for 900 MHz SMR MTA licensing at this time to provide potential bidders with needed information prior to the October 26, 1995 short form application (FCC Form 175) filing deadline.³

II. COVERAGE REQUIREMENT

2. In the *Seventh Report and Order*, we stated that 900 MHz MTA licensees must provide coverage to one-third of the population of their service area within three years of initial license grant and to two-thirds of the population of their service area within five years, or, at the five year mark, submit a showing of substantial service.⁴ The "substantial service" showing is a mechanism designed for specialized users who may not be able to meet the two-thirds coverage requirement due to individualized circumstances. Two possible examples of individualized circumstances which could warrant a showing of "substantial service" are licensees who provide a "niche service" to businesses or who focus on serving populations outside of areas currently served by incumbent licensees. The coverage requirement is not intended to act a deterrent to seeking MTA licenses, and we believe that with the "substantial service" mechanism, we have provided sufficient flexibility for new entrants to provide new services or to serve now unserved populations in all of the licenses.

3. We also stated, in the *Seventh Report and Order*, that bidders could investigate the possibility of resale in order to develop a realistic plan for meeting the coverage requirements.⁵ To eliminate any possible ambiguity, we clarify that this statement refers to agreements by 900 MHz MTA licensees to resell their facilities to others. It does not, however, allow such licensees to meet their coverage requirements by obtaining resale from another facilities-based provider, e.g. an incumbent 900 MHz licensee.

4. Our decision in the *Seventh Report and Order* to allow 900 MHz MTA licensees to resell spectrum within their service areas was based on the broadband Personal Communications Service ("PCS") model.⁶ In broadband PCS, we allowed licensees to engage in resale activities of their own facilities because we believed it would facilitate the deployment of PCS. We further stated, however, that PCS licensees are responsible for insuring that their coverage requirements are met, regardless of any resale agreements.⁷ We clarify that 900 MHz SMR coverage requirements are consistent with those for PCS.⁸ Thus, like broadband PCS licensees, 900 MHz MTA licensees may resell their service. However the licensee remains in control of its spectrum and remains responsible for insuring that the coverage requirements are met. We also clarify that 900 MHz MTA licensees may engage in resale agreements for use of others' facilities to enhance the quality of service to the population of their service areas, but these resale agreements may not act as a substitute for meeting the coverage requirements by building facilities.⁹ We decline to require that a specific

¹ 47 C.F.R. § 1.108.

² See Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, *Second Order on Reconsideration and Seventh Report and Order*, FCC 95-395, PR Docket No. 89-553, released September 14, 1995, 60 Fed. Reg. 48,913 (Sept. 21, 1995) ("*Seventh Report and Order*").

³ The Commission will auction 1,020 900 MHz SMR MTA licenses in a simultaneous multi-round auction commencing on November 28, 1995. Public Notice, FCC Announces Auction of 900 MHz Specialized Mobile Radio Service (rel. September 15, 1995).

⁴ *Seventh Report and Order* at ¶ 31.

⁵ *Id.* at ¶ 32.

⁶ Amendment of Parts 2 and 90 of the Commission's Rules to

Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 10 FCC Rcd 6884 (1995) at ¶ 40.

⁷ Amendment of the Commission's Rules to Establish New Personal Communications Services, *Memorandum Opinion and Order*, 9 FCC Rcd 4957 (1994) at ¶ 157.

⁸ Implementation of Sections 3(n) and 332 of the Communications Act, *Third Report and Order*, 9 FCC Rcd 7988 (1994) ("*CMRS Third Report and Order*") at ¶ 80. Congress, in the Omnibus Budget Reconciliation Act of 1993, mandated that we establish regulatory symmetry in our technical, operational and licensing rules for similar mobile service providers.

⁹ We decline to require that a specific number of channels be

number of channels be deployed to implement the coverage rule, however, we reserve judgement on whether such a requirement may be necessary in other services.

III. RENEWAL EXPECTANCY

5. In the *CMRS Third Report and Order*, we stated that the applicable sections of Part 22 governing renewal expectancies would be incorporated into Part 90 of our rules for CMRS providers.¹⁰ In this *Third Order on Reconsideration*, we amend the Part 90 rules to include a renewal expectancy for 900 MHz MTA licensees. Following the end of their ten year license term, 900 MHz MTA licensees will be afforded a renewal expectancy provided they are able to demonstrate that they: (1) provided "substantial" service during the license term; and (2) complied with applicable Commission rules and policies, and the Communications Act.¹¹ IV. CONCLUSION

6. Accordingly, IT IS ORDERED that Part 90 of the Commission's rules is amended as set forth in the attached Appendix A.

7. IT IS FURTHER ORDERED that the rule changes made herein WILL BECOME EFFECTIVE 30 days after their publication in the Federal Register. This action is taken pursuant to Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and 309(j).

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A

FINAL RULES

Part 90 of Chapter S of Title 47 of the Code of Federal Regulations is amended as follows:

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

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

2. A new Section 90.816 is added to Part 90 to read as follows:

§ 90.816 Criteria for comparative 900 MHz SMR renewal proceedings.

The ultimate issue in comparative renewal proceedings will be to determine, in light of the evidence adduced in the proceeding, what disposition of the applications would best serve the public interest, convenience and necessity.

(a) *Renewal expectancies.* The most important comparative factor to be considered in a comparative 900 MHz SMR renewal proceeding is a major preference, commonly referred to as a "renewal expectancy".

(1) The 900 MHz SMR renewal applicant involved in a comparative renewal proceeding will receive a renewal expectancy, if its past record for the relevant license period demonstrates that:

(i) The renewal applicant has provided "substantial" service during its past license term. "Substantial" service is defined as service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal; and

(ii) The renewal applicant has substantially complied with applicable FCC rules, policies and the Communications Act of 1934, as amended.

(2) In order to establish its right to a renewal expectancy, a 900 MHz SMR renewal applicant involved in a comparative renewal proceeding must submit a showing explaining why it should receive a renewal expectancy. At a minimum, this showing must include:

(i) A description of its current service in terms of geographic coverage and population served;

(ii) An explanation of its record of expansion, including a timetable of the construction of new base sites to meet changes in demand for SMR service;

(iii) A description of its investments in its 900 MHz SMR system; and

(iv) Copies of all FCC orders finding the licensee to have violated the Communications Act or any FCC rule or policy; and a list of any pending proceedings that relate to any matter described in this paragraph.

(3) In making its showing of entitlement to a renewal expectancy, a renewal applicant may claim credit for any system modification applications that were pending on the date it filed its renewal application. Such credit will not be allowed if the modification application is dismissed or denied.

deployed to implement the coverage rule, however, we reserve judgement on whether such a requirement may be necessary in other services.

¹⁰ *CMRS Third Report and Order* at ¶¶ 386-387.

¹¹ See 47 C.F.R. 22.940(a). "Substantial" service is defined as service that is sound, favorable, and substantially above a level of mediocre service, which would barely warrant renewal. See 47 C.F.R. 22.940(a)(1)(i).