



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET, N.W.
WASHINGTON, D.C. 20554

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INFORMATION FOR PART 90 LICENSEES SUBJECT TO RECLASSIFICATION AS COMMERCIAL MOBILE RADIO SERVICE PROVIDERS ON AUGUST 10, 1996-- WIRELESS BUREAU ANSWERS FREQUENTLY ASKED QUESTIONS REGARDING CMRS STATUS

On August 10, 1993, Congress amended Section 332 of the Communications Act of 1934 to establish a new framework for the regulation of mobile radio services. As a result of this legislation, certain categories of private land mobile radio services licensed under Part 90 of the Commission's rules became subject to reclassification as "commercial mobile radio services" ("CMRS"). For most reclassified Part 90 licensees, the conversion to CMRS status takes effect on August 10, 1996.

This Public Notice provides answers to some frequently asked questions with respect to the new regulatory obligations of the reclassified CMRS providers.

I. WHO IS SUBJECT TO RECLASSIFICATION AS CMRS?

Section 332 of the Communications Act of 1934, as amended, defines CMRS as any mobile service that is (i) provided for profit; and (ii) makes interconnected service available to the public or to a substantial portion of the public. If you do not meet this test and you are not a "functional equivalent" of a commercial mobile radio provider, you are considered a private mobile radio service (PMRS) provider. There is no established test for determining the "functional equivalent" of a CMRS provider. However, the Commission considers several factors, including, but not limited to such things as: evaluating consumer demand for the service and identifying the targeted market for the service. The Commission has determined that under the above definition, licensees in four Part 90 services -- Specialized Mobile Radio (SMR), 220-222 MHz Service, paging, and Business Radio -- are subject to reclassification as CMRS providers if the service the particular licensee provides meets the statutory definition of CMRS.

A. Why are these services being reclassified?

Prior to Congress' amendment of Section 332, all Part 90 services were regulated as private radio services. Congress established the CMRS category to ensure consistent regulatory treatment of certain Part 90 services that it considered similar to and competitive with services such as cellular telephone service, common carrier paging, and Personal Communications Services (PCS), which were regulated as common carriers. As discussed in greater detail below, these Part 90 services

have been reclassified as part of the Commission's implementation of the statute.

B. Are all SMR, 220 MHz, paging, and Business Radio licensees subject to reclassification as CMRS?

No. Licensees in these services are classified as CMRS only if they (i) provide interconnected service to their customers (i.e., enable customers to send and/or receive messages over the public switched telephone network), (ii) operate on a for-profit basis, and (iii) provide service to the public or a substantial portion of the public. Licensees who do not meet all of these criteria (e.g., an SMR licensee that does not offer interconnection to its subscribers) will be treated as PMRS providers. (Please see attached Quick Reference Chart for a summary of the differences between CMRS and PMRS providers).

C. Are Part 90 services besides SMR, 220 MHz, paging, and Business Radio subject to reclassification as CMRS?

No. The Commission has determined that Part 90 services other than SMR, 220-222 MHz, paging, and Business Radio are not subject to reclassification as CMRS, either because licensees in these services may not provide service for profit or because they may only provide service to very narrowly defined categories of users. Therefore, these Part 90 services (e.g., Public Safety, Industrial/Land Transportation) will continue to be regulated as PMRS.

D. How will the Commission decide whether to reclassify me as CMRS?

The Commission will make a determination based on the station classification identified on your license. Thus the Commission will classify you as CMRS if:

- you hold an SMR, 220 MHz, paging, or Business Radio license

AND

- your station classification authorizes you to provide interconnected service and to operate on a for-profit basis.

Specifically, licensees with the following station classifications will be presumed to be CMRS:

| SERVICE | STATION CLASS CODE |
|-------------------|--------------------|
| SMR Trunked | C |
| SMR Conventional | C |
| 220 | C |
| 929 MHz Paging | C |
| Business Category | 6 C |

For example, on your license if the Service is Business Category and the Station Class Code has a "6" and a "C" in it, you are considered a CMRS provider. If your license lists the Service as 220 and the Station Class Code has a "C" in it, you are considered a CMRS provider.

E. What if the Commission identifies me as CMRS based on my station classification but I am actually not providing interconnected service for profit?

The Commission will continue to presume that you are a CMRS provider based on your station classification. However, you may apply to modify your station classification to conform to the service you are providing. For example, if you are authorized to provide interconnected service, but intend to provide only non-interconnected dispatch service to your subscribers, you may amend your license to authorize non-interconnected service only.

F. Will the Commission notify me that I have been reclassified as a CMRS provider?

No, the Commission will not be notifying licensees that they have been reclassified as CMRS providers.

G. May a Part 90 licensee provide combined CMRS and PMRS operation?

Yes. In those Part 90 services where both CMRS and PMRS operations are allowed (i.e., SMR, 22 MHz, private paging, and Business Radio), the Commission has determined that CMRS and PMRS operations can co-exist on the same frequency bands and has decided to authorize combined CMRS and PMRS to those licensees seeking to offer both services. Currently there are no rules governing combined CMRS and PMRS operations -- but a rulemaking will be initiated shortly. Note that combined CMRS and PMRS operation is not allowed in those Part 90 services that remain exclusively PMRS (see Question C).

II. WHEN DOES RECLASSIFICATION GO INTO EFFECT?

The Commission adopted new rules for CMRS that became effective January 2, 1995. However, reclassification for most Part 90 licensees who are affected by these changes will take effect on August 10, 1996. This is because Congress allowed two categories of reclassified licensees to retain PMRS status on a grandfathered basis for a three-year transition period:

- private land mobile licensees who have been reclassified as CMRS providers but were licensed on or before August 9, 1993.
- private carrier paging licensees operating on frequencies allocated as of January 1, 1993.

III. CAN I CHANGE MY STATUS?

Yes, you can change your status if you are not a CMRS provider and are not going to become a CMRS provider. For example, assume you applied for an 800 MHz conventional license and indicated on your Form 600 that you were going to provide interconnected service. Your license would then indicate that you are authorized to offer interconnection and are therefore a CMRS

provider. However, now you have decided not to provide interconnection and you have no plans to offer interconnection in the future. If you are authorized to provide interconnected service and you are not doing so and you have no intention of ever doing so, you can give up this approval and become a PMRS provider--and not have to fulfill the requirements of a CMRS provider.

In order to change your status, you must modify your license either electronically or by completing and filing an FCC Form 600. Following the above example, in box 25, on page 1 of FCC Form 600 you would enter "N" for no, to indicate that you are not providing interconnected service. You would also need to complete Schedule D and indicate that you were modifying the license in Section D1 and indicate that you are not providing interconnected service and that you are giving up the right to provide such service in Section D3. Electronic filers should follow the instructions for filing electronically announced in the public notices released by the Wireless Telecommunications Bureau on February 26, 1996 and March 12, 1996.

IV. HOW DOES RECLASSIFICATION AFFECT ME?

All CMRS providers, including reclassified Part 90 licensees, are regulated as common carriers under Title II of the Communications Act of 1934, as amended. In addition, reclassified CMRS providers will be subject to different licensing procedures and other procedural requirements that did not previously apply to them.

A. What does it mean to be regulated as a common carrier?

Under Sections 201 and 202 of the Communications Act of 1934, as amended, common carriers are required to (i) furnish service upon request, (ii) charge just and reasonable rates, and (iii) refrain from the practice of unjust and unreasonable discrimination. Common carriers are also subject to rules governing other aspects of their service, including resale, roaming, and participation in the Telephone Relay Service.

B. Am I subject to rate regulation or tariff requirements?

No. CMRS providers are not subject to rate regulation and are not required to file tariffs.

C. Am I subject to state regulation?

Possibly, but state regulation of CMRS is very limited. States cannot regulate entry or rates of CMRS providers, but may regulate other terms and conditions of service.

D. As a common carrier, may I refuse to serve a customer if my capacity is limited?

Common carriers must provide service on reasonable request if they have the capacity to do so, but this does not require them to increase capacity to accommodate more customers.

E. Am I required to provide service to resellers?

Certain SMR licensees will be subject to the Commission's resale rule, which prohibits a carrier from denying service to resellers. This rule has historically applied to cellular carriers, and has

recently been expanded to PCS licensees and to SMR providers who hold geographic-area licenses or extended implementation authorizations and who offer real-time, two-way switched interconnected voice service. Other reclassified Part 90 licensees are not subject to the resale rule.

F. Must I provide roaming to customers from other areas?

The Commission recently expanded the scope of the existing "manual" roaming rule to include all CMRS providers that offer comparable competitive mobile telephony services. As a result, cellular, broadband PCS, and certain "covered SMR providers" must provide service upon request to any individual subscriber to any of these services whose handset is technically capable of accessing their networks. "Covered SMR providers" are licensees who either hold geographic area licenses OR have obtained extended implementation authority by waiver or under Section 90.629 of the Commission's rules, AND the licensee must offer real-time, two-way switched voice service that is interconnected with the public switched network.

The Commission is currently considering (i) whether CMRS providers should offer "automatic" roaming agreements with other carriers, and (ii) the costs and benefits of a non-discrimination requirement with respect to such agreements. However, the Commission acknowledges that once the broadband PCS licensees have built out their networks, market forces should eliminate the need for any roaming regulations. The Commission anticipates that any action it might take with respect to "automatic" roaming agreements would sunset five years after the last initial license for currently allotted broadband PCS spectrum is awarded.

G. What is the Telephone Relay Service and must I participate in it?

Telephone relay services ("TRS") are a group of services that enable hearing or speech impaired persons to communicate via wire or radio services. As a CMRS provider, you do not need to offer TRS directly, but all interstate and intrastate CMRS providers will be required to contribute to the TRS fund. The fund helps pay the costs incurred in providing interstate TRS services to those areas not previously covered.

V. WHAT PROCEDURAL CHANGES APPLY TO RECLASSIFIED CMRS PROVIDERS?

CMRS providers are subject to certain licensing procedures that are different from those applicable to PMRS. Specifically, all CMRS license applications (other than minor modifications) must be placed on 30 days public notice before they can be granted. CMRS applicants are also subject to character qualifications and alien ownership restrictions. CMRS licensees must also comply with the Commission's Equal Employment Opportunity (EEO) rules.

A. What character qualifications apply to CMRS applicants?

CMRS applicants must disclose whether any party to the application has: (i) had a Commission license or permit revoked, (ii) had an application denied by the Commission, (iii) been found by a court to have monopolized radio communication, or (iv) been convicted of a felony.

B. What restrictions are there on alien ownership?

Section 310(b) of the Communications Act of 1934, as amended, prohibits the granting of a CMRS license to (i) any alien (non-citizen of the United States) or the representative of any alien; (ii) any corporation organized under the laws of any foreign government; (iii) any corporation of which more than one-fifth of the capital stock is owned or voted by aliens or their representatives; or (iv) any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned or voted by aliens or their representatives.

C. What are the public notice and petition to deny procedures for CMRS providers?

For CMRS providers, the Commission is required to put initial license applications, major amendments, and assignments and transfers of control applications (other than pro forma assignment and transfer applications) on public notice for 30 days before they can be granted. During the public notice period, parties may file petitions to deny against the application. However, application processing will continue during the public notice period.

D. What is the standard construction period for a CMRS provider?

The standard construction period for a reclassified CMRS provider is 12 months. Those CMRS providers licensed by geographic area (e.g., 900 SMR Major Trading Area licensees) generally get a longer period of time in which to construct.

E. Can a CMRS provider begin construction or operation before it has received its license?

A CMRS provider may commence pre-grant construction of their facilities 35 days after filing its long form (Form 600) application, provided that the applicant has not sought a rule waiver and no petition to deny has been filed against the applicant. Pre-grant operation is not allowed unless the applicant obtains a Special Temporary Authorization (STA). The Commission will grant an STA only in extraordinary circumstances where a delay in operation would seriously prejudice the public interest.

F. Do CMRS providers have a renewal expectancy?

Yes. All reclassified CMRS providers may apply for 10 year license renewals when their current license terms expire. A CMRS license will be renewed if the CMRS provider can demonstrate they have (i) provided a service that is sound, favorable, and substantially above a level of mediocre service during the license term, (ii) complied with the Communications Act of 1934, as amended, and (iii) complied with all Commission rules and policies.

G. What forms must a CMRS provider file for an assignment or transfer of control?

CMRS providers use FCC Form 490 to assign or transfer control of a license. PMRS providers use FCC Form 600 and FCC Form 1046 to assign a license and an FCC Form 703 to transfer control of a license.

H. What regulatory fees must be paid by a CMRS provider?

The Commission has recently implemented a new regulatory fee schedule which may be obtained by calling (202) 632-FORM. The new fees will be assessed annually and will be paid by a pre-determined date established in the Public Notice titled "Common Carrier Regulatory Fee Payments." When paying the regulatory fee, the payor must submit an FCC Form 159, "FCC Remittance Advice" along with the appropriate fee and submit the fee to:

Federal Communications Commission
Regulatory Fees
P.O. Box 358835
Pittsburgh, PA 15251-5835

I. What EEO requirements must be met by CMRS providers?

CMRS licensees with more than 16 employees must file an annual EEO report with the Commission on FCC Form 396A. For Part 90 licensees who become CMRS on August 10, 1996, the first annual EEO report is due on May 31, 1997. All reclassified CMRS licensees must also report any filing of an EEO suit against the licensee by an employee since reclassification occurred.

J. Does becoming a CMRS provider affect my ability to enter into management arrangements for the operation of my stations?

Yes. Reclassified CMRS licensees who have pre-existing contracts with management companies must continue to demonstrate that the licensee -- not the management company -- is in actual control of the license. In addition, the Commission will now consider the following six criteria to determine that a CMRS licensee has control: (i) does the licensee have unfettered use of the facilities?; (ii) who controls the day-to-day operations of the facilities?; (iii) who determines and carries out policy decisions?; (iv) who has responsibility for personnel matters?; (v) who has responsibility for financial matters; and (vi) who receives the financial gain from operating the facilities?

WHERE CAN I GET THE FORMS I MUST FILE WITH THE COMMISSION?

All forms are available from the FCC Forms Distribution Office, 202-632-FORM or from Fax on Demand, 202-418-2830.

[Note: We caution those applicants filling out all forms to read the instructions carefully when designating whether they are CMRS or PMRS (*i.e.*, question 22 on FCC Form 600). Licensees in Part 90 services are also advised that their regulatory status (CMRS or PMRS) is shown on the top right hand side of their license and is based upon the responses to questions included in the form.]

V. RELEVANT AUTHORITY:

All reclassified CMRS providers should familiarize themselves thoroughly with the procedures,

terms and conditions contained in the following:

- Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI § 6002(b), 107 Stat. 312, 392 (1993) (Budget Act).
- Implementation of Section 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411 (1994), Erratum, 9 FCC Rcd 2156 (1994).
- Implementation of Section 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Third Report and Order, 9 FCC Rcd 7988 (1994).
- Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket 94-102, FCC 96-264, Report and Order and Further Notice of Proposed Rulemaking, (adopted June 12, 1996, released July 26, 1996).
- Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, CC Docket 94-54, Notice of Proposed Rulemaking, 9 FCC Rcd 5408 (1994).
- Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket 94-54, First Report and Order, released July 12, 1996.
- Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, Second Report and Order and Third Notice of Proposed Rulemaking, released July 26, 1996.

For further information please contact:

Laura Smith, Commercial Wireless Division: 418-0620
David Kirschner, Commercial Wireless Division: 418-0620

Commercial versus Private Land Mobile Services Quick Reference Chart

Commercial Land Mobile

Statutory Test

- service provided for profit
- interconnected service available
- service available to the public or a substantial portion of the public

Characteristics

- used by general public for both business and personal communications
- often designed to provide communication over large geographic area using large spectrum blocks, though smaller CMRS systems also exist

Regulatory Treatment

- treated as common carrier (must provide service upon request, charge reasonable rates, and not practice discrimination)
- subject to 30 day public notice for all applications (except minor modifications)
- subject to equal employment opportunity requirements, foreign ownership restrictions, and character qualifications

Private Land Mobile

Statutory Test

- neither CMRS nor functional equivalent of CMRS
- usually systems are non-interconnected, non-profit, or both

Characteristics

- used by businesses or government organizations for internal communications
- used for safety of life and property and to enhance productivity
- systems are typically limited to communications among a defined group of users
- most systems have limited capacity and geographic coverage

Regulatory Treatment

- applications do not require public notice prior to grant
- licensees are not subject to common carrier obligations

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

| | | |
|---------------------------------|---|----------------------------------|
| In the Matter of |) | |
| |) | |
| Time Warner Cable, d/b/a |) | |
| Cablevision Industries, Inc. |) | CUID No. FL0216 (Volusia County) |
| |) | |
| Complaint Regarding |) | |
| Cable Programming Services Tier |) | |
| Rate Increase |) | |

ORDER

Adopted: August 6, 1996

Released: August 8, 1996

By the Chief, Financial Analysis and Compliance Division, Cable Services Bureau:

1. In this Order we consider a complaint against the February 1, 1996 rate increase of Time Warner Cable d/b/a Cablevision Industries, Inc. ("Time Warner")¹ for its cable programming services tier ("CPST") in Volusia County, Florida, CUID No. FL0216. In response to this complaint, Time Warner, pursuant to a *Social Contract*² which was entered into with the Federal Communications Commission ("Commission") submitted its "Time Warner Form 1240."³ We conclude that, notwithstanding certain adjustments, Time Warner's rate increase is not unreasonable.

2. Under the Communications Act,⁴ the Commission is authorized to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable. If the Commission finds the rate unreasonable, it shall determine the correct rate and any refund liability.⁵ The Telecommunications Act of 1996⁶ and our rules implementing the

¹ Time Warner acquired the Cablevision Industries of Central Florida, Inc. cable system from Cablevision Industries Inc. ("CVI") in January 1996.

² *Social Contract for Time Warner Cable*, 11 FCC Rcd 2788 (1996). Under the terms of the *Social Contract*, Time Warner may include any cable system acquired from Cablevision Industries Inc. within the provisions of the *Social Contract*. (*Social Contract* at Sec. III.F.6).

³ Because no official form was available for Time Warner to use to implement the rate restructuring starting January 1, 1996 required under the *Social Contract*, the Commission permitted Time Warner to use a modified version of FCC Form 1240 to establish its initial CPST rates.

⁴ Communications Act, Section 623(c), *as amended*, 47 U.S.C. Section 543(c)(3)(1996).

⁵ See 47 U.S.C. Section 543(c)(1993).