

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

In the Matter of

Amendment of Part 90 of the      **PR Docket No. 89-552**  
Commission's Rules To Provide  
for the Use of the 220-222 MHz Band  
by the Private Land Mobile  
Radio Service

Implementation of Sections 3(n)    **GN Docket No. 93-252**  
and 332 of the Communications Act

Regulatory Treatment of Mobile Services

## SECOND REPORT AND ORDER

Adopted: January 26, 1996;      Released: January 26, 1996

By the Commission:

### I. SUMMARY

1. In this Order, we adopt a procedure that will enable 220 MHz licensees to modify their licenses to relocate their authorized base stations to currently unauthorized locations. Under this procedure, licensees with base stations authorized inside any Designated Filing Area (DFA)<sup>1</sup> will be permitted to relocate their base stations up to one-half the distance over 120 kilometers (km) toward any authorized co-channel base station, to a maximum distance of 8 km. Licensees with base stations authorized outside the boundaries of any DFA will be permitted to relocate their base stations up to one-half the distance over 120 km toward any authorized co-channel base station, to a maximum distance of 25 km, so long as they do not locate their base station more than 8 km inside the boundaries of any

DFA. A licensee will be permitted to relocate its base station less than "120 km from the base station of a co-channel licensee or more than one-half the distance over 120 km toward the base station of a co-channel licensee only with the consent of that licensee.

2. We also extend the current February 2, 1996,<sup>2</sup> construction deadline to March 11, 1996 for all non-nationwide 220 MHz licensees that elect to construct their base station at their currently authorized location, and to August 15, 1996, for all licensees granted authority to modify their licenses to relocate their base stations. Licensees seeking authority to modify their authorizations to relocate their base stations will be required to file, by March 11, 1996, a statement of their intention to file an application requesting such modification, and will be required to file a modification application by no later than May 1, 1996. We believe that the procedures adopted in this Order will provide existing 220 MHz licensees flexibility to complete construction of their systems and provide service. At the same time, we believe our decisions will not unreasonably impair the opportunity of potential competitors to obtain licenses in the 220 MHz service.

### II. INTRODUCTION; BACKGROUND

3. The 220-222 MHz radio service (220 MHz) was established in April 1991, with the adoption of a Report and Order in PR Docket No. 89-552.<sup>3</sup> The Commission began accepting applications for 220 MHz licenses on May 1, 1991, and on May 24, 1991, after receiving over 59,000 applications, imposed a freeze on the filing of all initial and modification applications for the 220 MHz service -- a freeze that remains in effect today.<sup>4</sup> Since then, we have issued authorizations to approximately 3,800 licensees to operate "non-nationwide" 220 MHz stations. A number of 220 MHz licensees have asked to be permitted to file modification applications to relocate their stations to currently unauthorized sites. In response, we released, on August 29, 1995, the *220 MHz Fourth Notice of Proposed Rulemaking* in this proceeding (*Fourth Notice*), proposing a procedure to enable existing licensees in the 220 MHz service to seek modification of their authorizations to relocate their base stations.<sup>5</sup>

<sup>1</sup> The Commission established 50 Designated Filing Areas in its initial licensing of the 900 MHz Specialized Mobile Radio (SMR) band. See Public Notice, Private Land Mobile Application Procedures for Spectrum in the 896-901 MHz and 935-940 MHz bands, DA 86-173, 1 FCC Rcd 543 (1986). See also Appendix D for information regarding the identification and location of the DFAs.

<sup>2</sup> See Amendment of Part 90 of the Commission's Rules To Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, PR Docket No. 89-552, Order, DA 95-2490 (released Dec. 15, 1995).

<sup>3</sup> Amendment of Part 90 of the Commission's Rules To Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, PR Docket No. 89-552, Report and Order, 6 FCC Rcd 2356 (1991) (*220 MHz Report and Order*).

<sup>4</sup> Acceptance of 220-222 MHz Private Land Mobile Applications, Order, 6 FCC Rcd 3333 (1991). The Private Radio Bureau stated that the imposition of a freeze on the acceptance of new applications was necessary to allow the Bureau to process the large number of 220 MHz applications received. *Id.* at 3333 (para. 4).

<sup>5</sup> Amendment of Part 90 of the Commission's Rules To Pro-

vide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89-552, Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, Fourth Notice of Proposed Rulemaking, FCC 95-381 (released Aug. 29, 1995). In response, we received 11 comments and 7 reply comments. See Appendix A for a listing of parties filing comments and reply comments. On August 28, 1995, we released the 220 MHz Third Notice of Proposed Rulemaking (*Third Notice*), which proposed market area licensing and more flexible technical rules for the next phase of licensing of the 220 MHz band. Amendment of Part 90 of the Commission's Rules To Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89-552, Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, 220-222 MHz, PP Docket 93-253, Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking, FCC 95-312 (released Aug. 28, 1995).

4. While we are ordinarily reluctant to open a "license modification only" filing window, where the applications of initial applicants would not be accepted,<sup>6</sup> we recognize that the 220 MHz service is unique. Shortly after we began processing 220 MHz applications, a court case was brought against the Commission's 220 MHz licensing procedures that effectively placed all of the more than 3,000 authorizations we granted in doubt for nearly a two-year period, and the uncertainty with respect to the finality of the Commission's grant of their licenses caused many licensees to refrain from constructing their stations.<sup>7</sup> Following the settlement of the case in March 1994, the deadline for licensees to construct their systems and place them in operation was extended on four separate occasions to allow licensees sufficient time to construct their systems.<sup>8</sup> However, because several years have passed since 220 MHz licensees filed their applications for which licenses were granted, many licensees have found that, for various unforeseen reasons, they are unable to construct at their authorized locations. In light of these circumstances, we are adopting a modification procedure. This procedure will provide these licensees an opportunity to construct their radio stations and offer mobile communications service to the public. We believe that the procedure we adopt today will also increase the number of potential users of the 5 kHz narrowband radio equipment and thus help to promote the development and implementation of this spectrally efficient technology. At the same time, because the permissible modifications are limited, we believe that potential competitors desiring to obtain licenses in the 220 MHz service will not be adversely affected.

### III. DISCUSSION

#### A. Modification Procedure

##### 1. Proposal

5. In the *Fourth Notice* we observed that we had never formally defined a "service area" for non-nationwide 220 MHz station licenses.<sup>9</sup> We indicated, however, that we had, in the *220 MHz Report and Order*, provided 120 km co-channel protection for non-nationwide 220 MHz stations based on the provision of 10 dB protection to the stations' 38 dBuV/m field strength contour, and had determined

that stations operating at maximum power and antenna height would "produce a service area with a 38 dBu contour at about 45 kilometers (28 miles) . . . ."<sup>10</sup> We thus advanced a modification proposal in the *Fourth Notice* to define the edge of a licensee's existing service area to be the predicted 38 dBuV/m field strength contour resulting from transmissions from the licensee's authorized base station, and to allow a licensee to relocate its base station so long as transmissions from a relocated base station do not exceed a predicted field strength of 38 dBuV/m at that contour. We also proposed that a licensee seeking to relocate its base station would obtain a "service area authorization,"<sup>11</sup> that under that authorization a licensee's relocated base station would be designated as the licensee's "primary" station,<sup>12</sup> and that a licensee would be permitted to construct additional, "fill-in" stations within its existing service contour so long as the transmissions from such stations do not exceed a predicted field strength of 38 dBuV/m at the contour.<sup>13</sup> We reasoned that this proposal would enable a licensee to relocate its base station and continue to serve the geographic area that it is currently authorized to serve. We also indicated that this proposal would avoid mutually exclusive situations with "new applicants and other licensees seeking modifications."<sup>14</sup>

#### 2. Comments

6. Commenters generally oppose the Commission's modification proposal, arguing that it is unfair to existing 220 MHz licensees, and does not provide 220 MHz licensees with the same opportunities afforded licensees in other mobile services to modify their licenses.<sup>15</sup> In its comments, AMTA suggests an alternative modification procedure that it believes "will better effectuate the FCC's avowed objective of prompt provision of service."<sup>16</sup> AMTA's proposal is to allow licensees to "relocate their facilities a maximum of one-half the distance over 120 km toward any co-channel licensee to a maximum of 35 km. Parties proposing modifications resulting in less than 120 km separation would be accepted only with the consent of the co-channel licensee(s), as evidenced in a letter submit-

<sup>6</sup> In the Third Report and Order in GN Docket No. 93-252, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services (*CMRS Third Report and Order*), we decided that a license modification application to permit a station move of greater than 2 km by a commercial mobile radio service (CMRS) provider would be treated as an initial application -- i.e., subject to 30-day Public Notice, petitions to deny and competing applications. See *CMRS Third Report and Order*, 9 FCC Rcd 7988, 8145 (para. 356) (1994).

<sup>7</sup> See *Evans v. Federal Communications Comm'n*, Order, per curiam, Case No. 92-1317 (D.C. Cir. Mar. 18, 1994).

<sup>8</sup> In a Public Notice released on September 10, 1992 (7 FCC Rcd at 6378) the Private Radio Bureau announced that the construction deadline for all non-nationwide 220 MHz stations would be 120 days after the disposition of the *Evans v. FCC* case. Following the disposition of the case, the Bureau extended the construction deadline to December 2, 1994, in an Order released on March 30, 1994. See 9 FCC Rcd 1739 (1994). On August 19, 1994, the Private Radio Bureau then released a Public Notice (DA 94-902) extending the construction deadline to April 4,

1995. In the *CMRS Third Report and Order*, the Commission again identified April 4, 1995, as the construction deadline. On February 17, 1995, the Wireless Telecommunications Bureau released an Order extending the deadline to December 31, 1995. See 10 FCC Rcd 3356 (1995). On December 15, 1995, the Bureau released an Order providing for a further extension of the construction deadline contingent upon the closure of the Commission as a result of any furlough of Federal Government employees. The ensuing 23-day Federal furlough resulted in an extension of the construction deadline to February 2, 1996, pursuant to a formula established in the Bureau Order. See note 2, *supra*.

<sup>9</sup> *Fourth Notice* at para. 6.

<sup>10</sup> *Id.* (emphasis added).

<sup>11</sup> *Id.* at para. 17.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at para. 10.

<sup>14</sup> *Id.* at para. 14.

<sup>15</sup> AMTA Comments at 5; SMR Advisory Group Comments at

4; Roamer One Comments at 4; Robert Fay Comments at 2.

<sup>16</sup> AMTA Comments at 10.

ted concurrently with the application. Any modification that did not meet that standard would be considered defective and dismissed outright."<sup>17</sup>

7. AMTA asserts that its proposal "eliminates any possibility of mutually exclusive applications,"<sup>18</sup> accommodates the needs of 220 MHz licensees in more rural areas,<sup>19</sup> provides "a fast and efficient method of processing modification requests . . .,"<sup>20</sup> and will "serve the critical objective of delivering a vital service to the American public on a timely basis."<sup>21</sup> Several commenters express support for the AMTA proposal.<sup>22</sup> Johnson indicates that it could support a move of less than 35 km, Incomco proposes that the Commission allow a move of 30 km, and PCIA, noting that "a modification of 35 km appears to result in the provision of service by the licensee of an entirely different area," suggests that the Commission adopt the AMTA proposal but limit the maximum modification distance to 25 km.<sup>23</sup>

### 3. Decision

8. Commenters claim that many of the base station locations requested by 220 MHz applicants in their 1991 applications are, for various reasons, unavailable or not usable.<sup>24</sup> Recognizing that some of these claims of unavailability or infeasibility constitute a reasonable basis for modification, we believe that such licensees should be given the opportunity to seek authorization at alternate, nearby locations so that they may be able to provide communications services in the geographic area for which they originally applied.<sup>25</sup> We are persuaded, by the record that the modification proposal in the *Fourth Notice* will not provide licensees with adequate flexibility to relocate their base stations, especially in rural areas, and therefore we believe we should adopt an alternative plan. However, we have a number of concerns about AMTA's proposal. Specifically, we are not convinced that licensees need to have the ability to move 35 km (or within an area of approximately one million acres) to find an alternative site. We

believe that alternative site locations can be found within a smaller geographic area -- particularly in urban areas where there are a multiplicity of base station sites. Moreover, we are concerned that if we allow licensees to move such large distances, they will be able to serve entirely different geographic areas than those for which they were originally licensed. This in turn may unreasonably impair the opportunity of potential competitors to obtain licenses in the 220 MHz service.

9. Because of the concerns we have noted about the AMTA proposal we will adopt a different approach.

We will afford non-nationwide 220 MHz licensees the opportunity to relocate their authorized base stations by filing modification applications under the following procedure:

(1) A licensee with an authorized base station located in a DFA will be permitted to relocate its base station up to one-half the distance over 120 km toward any co-channel licensee's initially authorized base station, to a maximum distance of 8 km.<sup>26</sup>

(2) A licensee with an authorized base station not located in a DFA may relocate its base station up to one-half the distance over 120 km toward any co-channel licensee's initially authorized base station, to a maximum distance of 25 km, so long as it does not locate its base station more than 8 km inside of any DFA (*i.e.*, not more than 8 km from the nearest DFA boundary line).<sup>27</sup>

(3) The application of a licensee proposing a modification to relocate its base station at least 120 km from each co-channel licensee's initially authorized base station but more than one-half the distance over 120 km toward the base station of a co-channel licensee will be accepted by the Commission only with

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 14.

<sup>19</sup> AMTA observes that for licensees situated "in areas where neither buildings nor population are dense, sites are not always readily available," and that "licensees cannot simply move across the street" if the licensed site is no longer available, or if they are dissatisfied with the facility owner's proposed arrangement or management capabilities." *Id.* at 13.

<sup>20</sup> *Id.* at 13-14.

<sup>21</sup> *Id.* at 7.

<sup>22</sup> US Mobilcomm Reply Comments at 2-3; Securicor Reply Comments at 3; SEA Comments at 3; SMR Advisory Group Reply Comments at 2; Johnson Comments at 5; Roamer One Comments at 6; PCIA Reply Comments at 3; Robert Fay Comments at 2.

<sup>23</sup> Johnson Comments at 5; Incomco Comments at 7; PCIA Reply Comments at 3.

<sup>24</sup> AMTA notes that had the licensing of other mobile services, such as "cellular, paging, and both SMR and ESMR systems," been "frozen" during the last four years, "like the 220 MHz service, "220 MHz operators undoubtedly would find antenna space more readily available" and "the towers and other facilities identified in their 1991 applications might still have capacity to accommodate 220 MHz systems." AMTA Comments at 6. The SMR Advisory Group indicates that certain sites "have suffered some damage (such as fire, rust, or condemnation) such that they are no longer viable locations for system construction." SMR Advisory Group Comments at 3. Roamer One cites the need for relocations due to "the unavailability of transmitter

sites at the completion of licensing, coverage problems from the licensed sites, or interference (intermodulation) problems which developed when multiple 220-222 MHz stations were licensed for the same antenna structure." Roamer One Comments at 3. See also Johnson Comments at 2; Incomco Comments at 9; Securicor Reply Comments at 2.

<sup>25</sup> In the *Fourth Notice*, in discussing our modification proposal, we indicated the proposal "allows licensees to serve the areas they intended to serve at the time they sought their licenses." See *Fourth Notice* at para. 9.

<sup>26</sup> For example, if a licensee's currently authorized base station coordinates are within a DFA and a co-channel licensee's base station is situated 130 km away, the licensee will be permitted to relocate its base station up to a distance of 5 km; if a licensee's currently authorized base station coordinates are within a DFA and a co-channel licensee's base station is situated 140 km away, the licensee will be permitted to relocate its base station up to a distance of 8 km. Under this procedure, a licensee will not be permitted to seek authorization to relocate its base station less than the 120 km co-channel separation criteria provided in Section 90.723(f) of the Commission's Rules.

<sup>27</sup> Under this procedure, a licensee will similarly not be permitted to seek authorization to relocate its base station less than the 120 km co-channel separation criteria provided in Section 90.723(f) of the Commission's Rules.

the consent of that co-channel licensee, as evidenced in a letter submitted concurrently with the modification application.<sup>28</sup>

(4) The application of a licensee proposing a modification resulting in less than 120 km separation from a co-channel licensee's initially authorized base station will be accepted by the Commission only with the consent of that co-channel licensee, as evidenced in a letter submitted concurrently with the modification application.<sup>29</sup>

(5) Any modification application that does not meet these standards will be considered defective and dismissed.

All licensees applying for modification of their authorization must also ensure that they comply with all applicable technical and operational rules (e.g., Section 90.723(d) and Section 90.729 of the Commission's Rules).

10. We believe that this modification procedure will enable 220 MHz licensees to provide service in the geographic area they were authorized to serve pursuant to their initial application, while accommodating their need to relocate their base stations for technical or other legitimate reasons. In addition, we believe that our decision to permit Phase I licensees to modify their licenses in the circumstances described in this Order, without subjecting such license modifications to potential competing applications, serves the public interest because of the unique circumstances that have surrounded our efforts to license the 220 MHz service since 1991, and because the procedures we establish in this Order will help expedite the provision of 220 MHz service to the public. Finally, we also believe that this procedure fairly balances the needs of existing licensees with the rights of future 220 MHz licensees by ensuring that both existing and future 220 MHz licensees will be able to provide service to the public as expeditiously as possible. We have chosen DFAs to delineate the areas in which 25 km relocations are permissible, as well as the areas in which 8 km relocations are permissible, because DFAs have been used in the context of wireless services to approximate the Nation's top 50 markets. We note that we have successfully used DFAs in implementing the initial licensing of the 900 MHz Specialized Mobile Radio (SMR) band.<sup>30</sup> Since we have concluded in this Order that different rules are necessary to govern permissible relocations of base stations in urban areas, we believe it is appropriate to employ a tool to define the boundaries of these urban areas. We have concluded that DFAs will serve effectively as such a tool.

11. While we believe that this decision will accommodate the needs of most 220 MHz licensees that need to relocate their base stations, we recognize that in certain areas of the Nation it is possible that the technical characteristics of base station sites available under our relocation procedure may be considerably inferior to the technical characteristics

of currently licensed sites and sites that may exist at nearby, more elevated locations. Such a scenario could exist, for example, in the Los Angeles area, with the city's close proximity to several mountain ranges,<sup>31</sup> and in the Seattle area. Because of their unique terrain features, we have historically treated licensees authorized to serve these areas differently than we have treated licensees authorized elsewhere in the Nation. For example, under Subpart S of Part 90 of our Rules, we provide 105-mile co-channel protection for licensees operating at sites in various mountains, while providing only 70-mile protection at all other locations.<sup>32</sup> We therefore believe that it would be appropriate to entertain waiver requests by licensees authorized in the Los Angeles and Seattle areas, as well as any other urban areas with comparable terrain features, to relocate their stations to sites at higher elevations that may be situated more than 8 km (or 25 km, for licensees authorized outside DFAs) from their authorized location. A licensee seeking such a waiver of Section 90.753 of our Rules must provide (1) a showing that the terrain in question does, in fact, present unique technical and operational problems; and (2) a technical analysis demonstrating that in relocating its base station to its desired location at a higher elevation, the licensee will provide service to substantially the same geographic area it was authorized to serve pursuant to its initial application.

12. In addition, we note that there are five groups of applications (totalling 34 applications) that were filed on the last day 220 MHz applications were accepted in May 1991. These applications remain pending before the Commission. These applications are mutually exclusive with one another and, in each of the five groups, the applicants have requested the same base station locations. How these 34 applications are to be ultimately processed is a matter raised in the context of the *Third Notice*.<sup>33</sup> Prior to reaching decisions in that proceeding, we will not take any action in this Order that would affect the rights of these applicants, either positively or negatively, to be licensed, or, once licensed, to take advantage of the relocation options we are affording other existing 220 MHz licensees. Our analysis indicates that if we were to allow certain existing 220 MHz licensees, located between 120 km and 170 km from one of the five base station locations, to relocate under our modification procedure as though these pending applications did not exist, the licensees granted licenses at these locations, once authorized, would not be able to relocate their base stations under the procedure. We will therefore require the following licensees to ensure that, in seeking relocation of their base stations pursuant to this Order, they comply with our modification procedure by protecting a possible co-channel station at the following locations. By taking this action, we emphasize that we are not prejudging the ultimate disposition of the pending applications.

<sup>28</sup> Under this procedure, a licensee will not be permitted to seek authorization to relocate its base station less than the 120 km co-channel separation criteria provided in Section 90.723(f) of the Commission's Rules.

<sup>29</sup> Under this procedure, a licensee will not be permitted to seek authorization for a base station located less than 120 km from a co-channel licensee's initially authorized base station by providing the technical analysis identified in Section 90.723(f) of the Commission's Rules.

<sup>30</sup> See Public Notice, Private Land Mobile Application Procedures for Spectrum in the 896-901 MHz and 935-940 MHz bands, DA 86-173, 1 FCC Rcd 543 (1986).

<sup>31</sup> The Santa Monica Mountains, the Santa Susana Mountains, the San Gabriel Mountains, the Verdugo Mountains, and the Santa Ana Mountains are in close proximity to the greater Los Angeles area.

<sup>32</sup> See Section 90.621(b)(3) of the Commission's Rules.

<sup>33</sup> See *Third Notice* at para. 31.

The following licensees must protect a possible co-channel licensee at coordinates N 30.5221, W 083.2036:

<i>Licensee (Call Sign)</i>	<i>Distance to Coordinates (km)</i>
WPCB732	163.87
WPCW990	163.87

The following licensees must protect a possible co-channel licensee at coordinates N 36.3628, W 121.0951:

<i>Licensee (Call Sign)</i>	<i>Distance to Coordinates (km)</i>
WPCY266	140.77
WPCA288	140.77
WPCV737	140.90
WPCX490	140.77
WPCW812	140.90
WPCX487	140.77
WPBU519	140.77
WPBZ605	154.53
WPCW456	154.53
WPCX473	163.16
WPCY621	123.67
WPCK365	123.67
WPCR214	123.67
WPCX477	165.01
WPCW482	156.40
WPCJ969	168.09
WPCX469	157.27

The following licensees must protect a possible co-channel licensee at coordinates N 42.1551, W 089.0155:

<i>Licensee (Call Sign)</i>	<i>Distance to Coordinates (km)</i>
WPBU711	123.19
WPCM336	123.19
WPCX791	123.19
WPCD923	123.45
WPCA452	120.23
WPCT282	126.45
WPCK616	130.69
WPCA720	125.51
WPCA717	125.51
WPCA301	152.08
WPDG617	143.76
WPCV785	152.08

WPDH432	143.76
WPCB933	143.76
WPDR932	123.19

The following licensees must protect a possible co-channel licensee at coordinates N 33.2753, W 080.5642:

<i>Licensee (Call Sign)</i>	<i>Distance to Coordinates (km)</i>
WPCC592	126.82
WPCQ606	126.82
WPBR454	137.48
WPCK496	158.29
WPCP569	158.29
WPDG323	163.37

The following licensees must protect a possible co-channel licensee at coordinates N 35.0658, W 078.5558 :

<i>Licensee (Call Sign)</i>	<i>Distance to Coordinates (km)</i>
WPCD332	138.40
WPCV776	136.08
WPCW524	131.16

Licensees with authorized base stations identified above as being located more than 136 km from a protected base station site *and* located in a DFA are still restricted to relocations of no greater than 8 km.

#### **B. Licensees Operating Under Special Temporary Authority.**

##### **1. Proposal**

13. In the *Fourth Notice*, we proposed that licensees who have obtained Special Temporary Authority (STA), have constructed facilities, and are operating stations at their STA sites would be accommodated by our modification proposal.<sup>34</sup> We proposed that licensees who seek permanent authorization at their STA sites would be required to comply with our modification proposal.<sup>35</sup>

##### **2. Comments**

14. Incomco asks that we should "at the very least allow 220 MHz licensees that have constructed to continue to provide service to the area they now have authorization, whether by license or STA, to serve."<sup>36</sup> Robert Fay argues that we should provide consideration to licensees operating under STAs who have constructed and are "carrying legitimate loading on these systems," noting that the proposal made in the *Fourth Notice* does not provide "sufficient latitude for incumbent licensees and jeopardizes the licensee's investment and ability to continue serving the public . . . ."<sup>37</sup>

<sup>34</sup> See *Fourth Notice* at para. 16.

<sup>35</sup> *Id.*

<sup>36</sup> Incomco Comments at 10.

<sup>37</sup> Robert Fay Comments at 2.

### 3. Decision

15. A number of 220 MHz licensees have obtained STAs to operate base stations at alternative locations. Some of these licensees may currently be operating or planning to operate at locations at which they would *not* be able to operate under our modification procedure. Due to the unique circumstances of the 220 MHz service that we have described in this Order,<sup>38</sup> we do not believe it would be appropriate to require licensees that are currently providing service to the public to discontinue operation. Therefore, any licensee that has been granted an STA to operate at an alternative site and certifies, in accordance with the requirements of this Order, that it has constructed its base station and has placed it in operation, or commenced service at that site by the adoption date of this Order, will be permitted to seek permanent authorization at the site, in accordance with the procedures for filing modification applications established in Section III.D, *infra*, regardless of whether locating at its STA site is in strict conformance with the relocation distance limitations prescribed in our modification procedure.

16. For the same reasons, we will provide similar relief to licensees that are in the *process* of constructing their base station at their STA site. Such licensees will be permitted to seek permanent authorization at their STA site, in accordance with the procedures for filing modification applications established in Section III.D, *infra*, regardless of whether locating their station at its STA site is in strict conformance with the relocation distance limitations prescribed in our modification procedure, if they certify that they had taken delivery of their base station transceiver on or before the adoption date of this Order. A licensee seeking permanent authorization at its STA site under either of these conditions must ensure that it complies with all applicable technical and operational rules (e.g., Section 90.723 and Section 90.729 of the Commission's Rules).

### C. Definition of Modifications as "Minor"

17. The Commission decided not to adopt any rule in the *CMRS Third Report and Order* as to what would be considered a minor modification of an authorization for a CMRS license in the 220 MHz service. In the *Fourth Notice*, however, we tentatively concluded that defining modifications under our proposal as "minor" was consistent with our treatment of other CMRS services.<sup>39</sup> Vega contends that "no application proposing any technical changes to facilities should be deemed minor" and that "any application change to 220 MHz service should be deemed major."<sup>40</sup> We disagree and find that applications filed under our modification procedure do, in fact, qualify as "minor" modifications under our CMRS rules.

18. Our discussion in the *CMRS Third Report and Order* regarding the permissibility of minor modifications for Part 90 licensees in general expressed our intent to "allow minor modification to existing CMRS systems in Part 90 services to be made on a permissive basis, to the extent practicable."<sup>41</sup> Because our 220 MHz modification procedure will result neither in a change to the protection afforded to co-channel 220 MHz licensees nor in mutually exclusive situations among 220 MHz licensees seeking station modification, we believe that these modifications fall within the definition of minor and the procedure is consistent with the policies set forth in the CMRS proceedings to allow such modifications for Part 90 licensees when they are practicable and do not have an impact on other licensees. We therefore conclude that modification applications filed by 220 MHz licensees under our procedure can and should be considered minor. As indicated in the *CMRS Third Report and Order*, minor modification applications are not subject to competing, initial applications, Public Notice requirements, or Petitions to Deny.<sup>42</sup>

### D. Licensing Procedures and Construction Requirements

#### 1. Proposal

19. In the *Fourth Notice*, we proposed that a 220 MHz licensee that desired to relocate its base station under our proposed modification procedure would be required to file a modification application shortly after the adoption of the present Order,<sup>43</sup> and that a licensee granted a modification authorization would be given four months from the grant of the authorization to construct and begin operation of its relocated base station.<sup>44</sup>

#### 2. Comments

20. Commenters generally express support for the 4-month construction deadline extension for a licensee that is relocating its base station.<sup>45</sup> In a letter to Mr. Ralph Haller, Deputy Chief, Wireless Telecommunications Bureau, on November 1, 1995, AMTA subsequently requested that the Commission extend the then-current December 31, 1995 deadline for 220 MHz licensees to construct their stations and place them in operation to a date 120 days after the effective date of the Commission's Order in this proceeding. Vega proposes a 12-month extension of the deadline, noting that while the four-month modification period is "helpful," it "falls short of providing the necessary lead way for a modified facility to obtain authorization and initiate construction before the four-month expiration date occurs."<sup>46</sup>

<sup>38</sup> See para. 3, *supra* (imposition of licensing freeze); para. 4, *supra* (uncertain status of licenses because of legal challenges against licensing procedures; decision by many 220 MHz licensees to refrain from construction because of this uncertain status; impediments faced by licensees at currently authorized construction sites because of freeze and court challenges).

<sup>39</sup> See *Fourth Notice* at para. 15.

<sup>40</sup> Vega Comments at 2.

<sup>41</sup> See *CMRS Third Report and Order*, 9 FCC Rcd at 8151

(paras. 370, 371).

<sup>42</sup> See *CMRS Third Report and Order*, 9 FCC Rcd at 8142, 8144-45 (paras. 348, 354).

<sup>43</sup> See *Fourth Notice* at para. 17.

<sup>44</sup> *Id.* at para. 18.

<sup>45</sup> See AMTA Comments at 10; Comtech Comments at 10; Johnson Comments at 9.

<sup>46</sup> Vega Comments at 3.

### 3. Decision

21. The current deadline for non-nationwide 220 MHz licensees to construct and operate their base station is February 2, 1996. With the adoption and release of this Order occurring close to this February date, we believe that it is appropriate to give licensees sufficient time to decide whether they want to relocate their base station under our modification procedure, and then to construct their base station and begin operation. We will therefore extend the construction deadline for all non-nationwide 220 MHz licensees that intend to construct their base station at their currently authorized location to March 11, 1996. For licensees that elect to modify their authorization to relocate their base station, the deadline shall be August 15, 1996.

22. We will begin to accept modification applications from licensees seeking to relocate their base stations 30 days after publication of the summary of this Order in the Federal Register. The deadline for filing modification applications will be May 1, 1996. If a licensee does not construct its base station and place it in operation, or commence service, at its currently authorized location on or before March 11, 1996 and, instead, chooses to seek modification of its authorization to relocate its base station, it must inform us, on or before March 11, 1996 of its intention to seek a license modification. Otherwise its authorization will cancel automatically at the close of March 11, 1996. Because we recognize that the relatively short time period between the release of this Order and the March 11, 1996 date may not be sufficient to enable licensees to evaluate the decisions we reach in the Order, acquire an alternative base station site, and perform the necessary technical analysis needed to file a modification application, we will permit licensees to submit a letter during the period beginning 30 days after publication of the summary of this Order in the Federal Register, but no later than March 11, 1996, certifying to the Commission their intent to file an application to modify their authorization to relocate their base station.<sup>47</sup> This letter will serve to extend a licensee's authorization past March 11, 1996, even if the licensee has not yet identified and secured an alternate site. We will then allow licensees to file their modification applications requesting relocation of their base station no later than May 1, 1996. If a licensee files a letter indicating its intent to file a modification application and does not file such an application on or before May 1, 1996, the licensee's existing authorization will cancel automatically unless the licensee had constructed its base station at its initially authorized location and placed it in operation, or commenced service, on or before March 11, 1996.

23. With the deadline to construct its base station and place it in operation, or commence service, by August 15, 1996, a licensee seeking relocation of its base station that files a modification application on or about March 11, 1996 will have approximately 4 months after the grant of

its application to meet this deadline -- assuming the grant of its application is made within approximately a 30-day period after filing. This time period is consistent with our proposal in the *Fourth Notice*, generally supported by commenters, to give licensees 4 months after the grant of their modified authorization to construct their base station and place it in operation, or commence service.<sup>48</sup> However, to ensure that licensees are provided an adequate construction period, we will extend the deadline for a licensee to construct its station and place it in operation, or commence service, *beyond* August 15, 1996, by the number of days *after* June 1, 1996, that pass before a licensee's timely filed modification application is actually granted.

24. We note that Vega has requested that licensees granted license modifications be given a 12-month extension of their construction deadline. While a 12-month construction period is appropriate for licensees obtaining an initial authorization in order to give such licensees an opportunity to accomplish the various activities necessary to place a mobile radio system in operation, or commence service, after locating a base station site (*e.g.*, selecting an equipment vendor, seeking necessary financing, *etc.*), most non-nationwide 220 MHz licensees were initially authorized by 1993. As such, we believe that they should have, by now, undertaken many of these actions and that the period of approximately 6 months that follows the release of this Order will then provide licensees a sufficient amount of time to place their system in operation, or commence service. Similarly, we conclude that our adopted construction deadline extension obviates the need for an extension of the type requested by AMTA in its November 1, 1995, letter.<sup>49</sup> To the extent AMTA seeks extension of the construction deadline for *all* licensees, we have concluded that there is not sufficient justification in the record to warrant extension beyond March 11, 1996, in the case of licensees who do not provide any evidence that they need to relocate their base station.

25. In the case of licensees that have not filed, on or before March 11, 1996, either a modification application requesting relocation of their base stations or a letter indicating their intent to file a modification application to relocate their base station, we will transmit a letter to such licensees instructing them to confirm that they have constructed their base station at their initially authorized location and have placed it in operation, or commenced service, by March 11, 1996.

26. If a licensee elects to construct its base station and place it in operation, or commence service, at its initially authorized location on or before March 11, 1996, and *also* seeks to modify its authorization to relocate the station, its construction deadline will be considered to be met if it constructs its base station at its originally authorized location and places it in operation, or commences service, on or before March 11, 1996, and it will be given until August 15, 1996, to construct and place in operation its base station, or commence service, at its new station location. If

<sup>47</sup> Licensees will be permitted to transmit this letter to the Commission by facsimile. Facsimile transmissions should be sent to (717) 337-0408. Any letters transmitted by facsimile on or before March 11, 1996 will be considered to have been timely filed. All licensees transmitting a letter by facsimile, however, must send a paper copy of the letter to the Commission on or before March 25, 1996.

<sup>48</sup> In the *Fourth Notice* we indicated that we would open a

filing window for modification applications shortly after the adoption of this Order and proposed to extend the construction deadline for licensees seeking relocation of their base station to a date 4 months after the grant of their modified authorization. See *Fourth Notice* at paras. 17-18.

<sup>49</sup> Letter to Ralph Haller, Deputy Chief, Wireless Telecommunications Bureau from Jill M. Lyon, Director of Regulatory Relations, AMTA, dated November 1, 1995.

the application for modification of any licensee seeking relocation of its base station is denied for any reason, that licensee's existing authorization will cancel automatically unless the licensee has constructed its base station at its initially authorized location and placed it in operation, or commenced service, by March 11, 1996.

27. The application of a licensee seeking relocation of its base station should include the following:

(1) A Form 600 requesting station modification, and providing all applicable information.

(2) Certification that the location of the proposed base station is in conformance with the modification procedures adopted in this proceeding, or a letter evidencing consent of a co-channel licensee that the licensee may be authorized less than 120 km from the co-channel licensee or more than one-half the distance over 120 km toward the base station of a co-channel licensee.

(3) For licensees with STAs (if applicable, and as provided in Section III.B, *supra*), certification that (a) the licensee has constructed its base station and placed it in operation, or commenced service, at its STA site on or before the adoption date of this

Order; or (b) the licensee had taken delivery of its base station transceiver on or before the adoption date of this Order.

(4) Certification that the licensee has constructed its base station and placed it in operation, or commenced service, at its initially authorized location on or before March 11, 1996 (if applicable).

28. After August 15, 1996, we will transmit a letter to those licensees that have applied for modification of their license and have not certified that they have constructed their base station and placed it in operation, or commenced service, at their initially authorized location on or before March 11, 1996, asking confirmation that they have constructed their base station at their modified base station location and have placed it in operation, or commenced service, on or before August 15, 1996. Licensees granted modification of their authorization to relocate their base station will be issued a new station authorization. That authorization will contain the coordinates of the licensee's relocated base station site, as well as the coordinates of its initial base station site (as the latter are the coordinates upon which the location of the licensee's relocated base station site is based).

29. We provide the following timetable identifying various dates relevant to non-nationwide 220 MHz licensees:

NON-NATIONWIDE 220 MHz LICENSEE CONSTRUCTION DEADLINES AND OTHER DATES	
Date	Action
30 days after publication of summary of Second Report and Order in Federal Register	<ul style="list-style-type: none"> <li>Modification applications may be filed.</li> <li>Letter certifying licensee's intent to file modification application may be filed.</li> </ul>
March 11, 1996	<ul style="list-style-type: none"> <li>Construction deadline for non-nationwide 220 MHz licensees that elect to construct their base station at their currently authorized location.</li> <li>Deadline for acceptance of letter certifying licensee's intent to file modification application.</li> </ul>
May 1, 1996	<ul style="list-style-type: none"> <li>Deadline for acceptance of modification applications.</li> </ul>
August 15, 1996	<ul style="list-style-type: none"> <li>Construction deadline for non-nationwide 220 MHz licensees that elect to modify their authorization to relocate their base station.</li> </ul>



## E. Miscellaneous Issues

### 1. Meeting the Construction and Operation Requirement

30. Section 90.725(f) the Commission's Rules currently specifies that non-nationwide 220 MHz licensees must construct their base station on all authorized channels and place their station in operation within a specified time period or their license "cancels automatically."<sup>50</sup> When the rules for the 220 MHz service were adopted in 1991, the term "placed in operation" was defined in Section 90.155 of the Rules, which indicated that a base station is not considered "placed in operation" unless at least one associated mobile station is also placed in operation. However, since that time, we established the Commercial Mobile Radio Service, and in the *CMRS Third Report and Order* we decided that Part 90 CMRS licensees would be required to "commence service to subscribers by the end of their construction period," with "service to subscribers" defined to mean provision of service to at least one party unaffiliated with, controlled by, or related to the providing carrier.<sup>51</sup> We also indicated that all Private Mobile Radio Service (PMRS) licensees and reclassified Part 90 CMRS licensees that are grandfathered as PMRS providers until August 10, 1996, would continue to be subject to the existing Part 90 requirements for placing stations in operation, and that the mobiles they placed in operation would not have to be unaffiliated with the licensee.<sup>52</sup>

31. Under this decision, "grandfathered" CMRS licensees and PMRS licensees would be required to meet their "placed in operation" requirement by satisfying the provisions of Section 90.155 of the Rules and all "non-grandfathered" CMRS licensees would be required to meet the "commencement of service" requirement as provided under Section 90.167 of the Rules. However, to eliminate any confusion on the part of 220 MHz licensees as to which station construction and operation requirement they must follow, we will allow all 220 MHz licensees to meet their applicable deadline (*i.e.*, March 11, 1996, for licensees constructing their base station at their initially authorized location, and August 15, 1996, for licensees granted license modification to relocate their base station) by constructing their base station and satisfying *either* the "placed in operation" provisions of Section 90.155 *or* the "commencement of service" provisions of Section 90.167.

### 2. AMTS Base Station Receivers

32. Under Section 90.723(d) of the Rules, base station receivers of 220 MHz licensees operating on the "Sub-Band A" channels (*i.e.*, Channels 1-40) are geographically separated from base station transmitters of 220 MHz licensees operating 200 kHz or less removed in "Sub-Band B" (*i.e.*, Channels 161-200) in accordance with a Table in Section 90.723(d) of the Rules. The Table prescribes the power limitations under which Sub-Band B transmitters may operate when located various distances from Sub-Band A receivers.

33. Orion asks that we provide the same type of adjacent channel protection to base station receivers operating in the Automated Maritime Telecommunications System (AMTS) in the 216-220 MHz band as we afford to base receive stations operating in Sub-Band A of the 220-222 MHz band. Orion notes instances of severe interference to an AMTS base station receiver operating in the upper portion of the 216-220 MHz from a nearby 220 MHz transmitter operating in the lower channels of the 220-222 MHz band (*i.e.*, Channels 1-40). Orion therefore requests that Section 90.723(d) of the Rules be modified to require that base station transmitters utilizing channels assigned from Sub-Band A be geographically separated from AMTS base station receivers utilizing channels within 200 kHz of the Sub-Band A channel.<sup>53</sup>

34. We do not believe that the current record is adequate to determine the merits of Orion's requested modification to the Rules. We therefore conclude that it would be more appropriate to consider Orion's request as part of a separate proceeding. We invite Orion to submit its request for relief in the form of a Petition for Rulemaking.

### 3. 220 MHz Licensees Near the Canadian Border

35. In the *Third Notice* we extended the construction deadline for Phase I 220 MHz licensees located within Line A of the Canadian border until 12 months after the signing of an agreement with Canada on the sharing of 220-222 MHz channels near the border.<sup>54</sup> Since we did not amend the appropriate rules at the time of the adoption of the *Third Notice* we will take the opportunity to do so in this proceeding.

## IV. PROCEDURAL MATTERS; ORDERING CLAUSES

36. This Report and Order contains either a proposed or modified information collection. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collection contained in this Report and Order, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Comments should address: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (2) the accuracy of the Commission's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

37. Written comments by the public on the proposed and/or modified information collections are due February 23, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before

<sup>50</sup> That time period for all non-nationwide 220 MHz licensees, as adopted in this Order, is now either March 11, 1996, for licensees not seeking license modification to relocate their base station, or August 15, 1996, for licensees granted license modification to relocate their base station.<sup>6</sup>

<sup>51</sup> See *CMRS Third Report and Order*, 9 FCC Rcd at 8075

(para. 178). See also 47 C.F.R. § 90.167.

<sup>52</sup> See *CMRS Third Report and Order*, 9 FCC Rcd at 8075 (para. 178).

<sup>53</sup> Orion Comments at 5.

<sup>54</sup> See *Third Notice* at para. 19.

March 1, 1996. In addition to filing comments with the Acting Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington D.C. 20554, or via the Internet to dconway fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain\_5@al.eop.gov.

38. IT IS ORDERED that the Final Regulatory Flexibility Analysis, as required by Section 604 of the Regulatory Flexibility Act,<sup>55</sup> and as set forth in Appendix B, IS ADOPTED.

39. IT IS FURTHER ORDERED that pursuant to the authority of Sections 4(i), 303(d), 303(r) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303 (d), 303(r) and 332, Part 90 of the Commission's Rules, 47 C.F.R. Part 90, IS AMENDED as set forth in Appendix C effective 30 days after publication of the summary of this Order in the Federal Register.

40. IT IS FURTHER ORDERED that non-nationwide 220 MHz licensees MAY FILE a letter with the Acting Secretary of the Commission indicating their intent to file an application to modify their authorizations to relocate their base stations 30 days after publication of the summary of this Order in the Federal Register, but no later than March 11, 1996.

41. IT IS FURTHER ORDERED that non-nationwide 220 MHz licensees MAY FILE applications to modify their authorizations to relocate their base stations 30 days after publication of the summary of this Order in the Federal Register, but no later than May 1, 1996.

42. IT IS FURTHER ORDERED that the deadline for non-nationwide 220 MHz licensees to construct their base station and place it in operation, or commence service, IS EXTENDED from February 2, 1996, to March 11, 1996, and that the effective date of this extension is the adoption date of this Order. The current deadline for non-nationwide 220 MHz licensees to construct and operate their base stations is February 2, 1996. With the adoption and release of this Order occurring within 30 days of that date, there is good cause to order this rule change to take effect upon the adoption of this Order.<sup>56</sup>

43. IT IS FURTHER ORDERED that non-nationwide 220 MHz licensees that file a modification application on or before March 11, 1996, or a letter in accordance with this Order indicating an intent to modify their authorization to relocate their base station SHALL BE GRANTED an extension of the deadline to construct their base station and place it in operation, or commence service, until August 15, 1996, if the modification application is ultimately granted.

44. IT IS FURTHER ORDERED that the request by the American Mobile Telecommunications Association to extend the December 31, 1995, deadline for non-nationwide 220 MHz licensees to construct their stations and place them in operation to a date 120 days after the effective date of this Order IS DENIED.

45. IT IS FURTHER ORDERED that the Acting Secretary SHALL TRANSMIT a copy of this Report and Order to the Chief Counsel for Advocacy of the Small Business Administration.

#### FEDERAL COMMUNICATIONS COMMISSION

William F. Caton  
Acting Secretary

#### APPENDIX A

##### Pleadings

##### *Parties Filing Comments*

American Mobile Telecommunications Association, Inc. (AMTA)

Comtech Communications, Inc. (Comtech)

Robert A. Fay (Robert Fay)

Incom Communications Corporation (Incomco)

E.F. Johnson (Johnson)

Fred Daniel d/b/a Orion Telecom (Orion)

Personal Communications Industry Association (PCIA)

Roamer One, Inc. (Roamer One)

SEA, Inc. (SEA)

SMR Advisory Group, L.C. (SMR Advisory Group)

The Richard L. Vega Group (Vega)

##### *Parties Filing Reply Comments*

AMTA

Hill & Welch

PCIA

Securicor Radiocom Ltd. (Securicor)

SEA

SMR Advisory Group

US Mobilcomm, Inc. (US Mobilcomm)

#### APPENDIX B

##### Final Regulatory Flexibility Analysis

##### **I. Need and Purpose of this Action**

This action responds to requests by 220 MHz licensees to establish a flexible license modification procedure that will end a freeze on the acceptance of modification applications and will give existing 220 MHz licensees the ability to relocate their authorized base stations to currently unauthorized sites. This action will enhance the competitive potential of 220 MHz services in the commercial mobile radio service marketplace.

<sup>55</sup> 5 U.S.C. § 604.

<sup>56</sup> See 5 U.S.C. § 553(d)(3).

## II. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

No issues were raised in response to the Initial Regulatory Flexibility Analysis.

## III. Significant Alternatives Considered and Rejected

All significant alternatives have been addressed in this Second Report and Order. The alternative adopted in this decision represents the best balance of providing licensees, many of whom may be considered small businesses, with the most flexibility and the least regulatory burden possible.

## APPENDIX C

### Revisions to Commission Rules

47 CFR Part 90 is amended as follows:

#### PART 90 - PRIVATE LAND MOBILE RADIO SERVICES

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

**AUTHORITY:** 47 U.S.C. §§ 154, 303, and 332, unless otherwise noted.

2. Paragraph (f) of Section 90.723 is revised to read as follows:

#### Section 90.723 Selection and assignment of frequencies.

\*\*\*\*\*

(f) Except for nationwide assignments, the separation of co-channel base stations shall be 120 kilometers. Except for licensees seeking license modification in accordance with the provisions of Sections 90.751 and 90.753, shorter separations will be considered on a case-by-case basis upon submission of a technical analysis indicating that at least 10 dB protection will be provided to an existing station's 38 dBu signal level contour.

3. Section 90.751 is added to Subpart T to read as follows:

#### Section 90.751 Minor modifications of non-nationwide licenses.

Licensees granted non-nationwide authorizations from among applications filed on or before May 24, 1991 (Phase I licensees) will be given an opportunity to seek modification of their license to relocate their initially authorized base station, *i.e.*, locate their base station at a site other than its initially authorized location. The conditions under which modifications will be granted and the procedures for applying for license modifications are described in Sections 90.753, 90.755, and 90.757. For CMRS licensees, these modifications will be treated as minor modifications in accordance with Section 90.164.

4. Section 90.753 is added to Subpart T to read as follows:

#### Section 90.753 Conditions of license modification.

(a) Except as provided in paragraphs (b), and (c) of this section, a Phase I non-nationwide licensee may modify its authorization to relocate its authorized base station up to one-half the distance over 120 km toward any co-channel licensee's initially authorized base station, to a maximum distance of 8 km.

(b) A Phase I non-nationwide licensee with an authorized base station located outside a Designated Filing Area (DFA) (*see* Public Notice, DA 86-173, 52 FR 1302 (January 12, 1987)) may modify its authorization to relocate its authorized base station up to one-half the distance over 120 km toward any co-channel licensee's initially authorized base station, to a maximum distance of 25 km, so long as the base station is relocated no more than 8 km inside of any DFA (*i.e.*, no more than 8 km from the nearest DFA boundary line).

(c) A Phase I non-nationwide licensee that has been granted Special Temporary Authority (STA) to operate at an alternative base station location may modify its authorization to seek permanent authorization at that location, regardless of whether locating the station at the STA site is in strict conformance with the provisions of paragraphs (a) and (b) of this section, if the licensee certifies that such a modification is in conformance with Sections 90.723 and 90.729 and:

(1) It has constructed its base station and has placed it in operation, or commenced service, at the STA site on or before January 26, 1996; or

(2) It has taken delivery of its base station transceiver on or before January 26, 1996.

(d) The application of a Phase I non-nationwide licensee proposing a base station modification resulting in less than 120 km separation from a co-channel licensee's initially authorized base station will be accepted by the Commission only with the consent of that co-channel licensee, as evidenced in a letter submitted concurrently with the licensee's application.

(e) The application of a Phase I non-nationwide licensee proposing a base station modification resulting in at least a 120 km separation from each co-channel licensee's initially authorized base station but more than one-half the distance over 120 km toward any co-channel licensee's initially authorized base station will be accepted by the Commission only with the consent of that co-channel licensee, as evidenced in a letter submitted concurrently with the licensee's application.

5. Section 90.755 is added to Subpart T to read as follows:

#### Section 90.755 Procedures for License Modification.

(a) A Phase I non-nationwide licensee seeking modification of its authorization to relocate its authorized base station in accordance with the provisions of Section 90.753 must file the following on or before May 1, 1996:

(1) Form 600 requesting license modification, and providing all applicable information;

(2) Certification that the location of its proposed base station is in conformance with the provisions of Section 90.753, or, as provided in Section 90.753(d), a

letter evidencing consent of a co-channel licensee that the licensee may be authorized less than 120 km from the co-channel licensee;

(3) If applicable, the required certification by a licensee with a Special Temporary Authority, in accordance with Section 90.753(c);

(4) If applicable, certification that the licensee has constructed its base station and placed it in operation, or commenced service, at its initially authorized location on or before March 11, 1996.

(b) A licensee seeking modification of its authorization to relocate its base station in accordance with the provisions of Section 90.753, should file, on or before March 11, 1996, either a modification application, as provided in paragraph (a) of this section, or a letter certifying to the Commission its intent to file an application to modify its authorization to relocate its base station. For a licensee that has not constructed its authorized base station and placed it in operation, or commenced service, by March 11, 1996, this filing will serve to extend the licensee's construction requirement in accordance with the provisions of Section 90.757.

6. Section 90.757 is added to Subpart T to read as follows:

**Section 90.757 Construction requirements.**

(a) Except as provided in paragraph (b) of this section, a Phase I non-nationwide licensee that is granted modification of its authorization to relocate its base station must construct its base station and place it in operation, or commence service, on all authorized channels on or before August 15, 1996, or within 12 months of initial grant date, whichever is later. The authorization of a licensee that does not construct its base station and place it in operation, or commence service, by this date, cancels automatically and must be returned to the Commission.

(b) A Phase I non-nationwide licensee with a base station authorized at a location north of Line A must construct its base station and place it in operation, or commence service, on all authorized channels within 12 months of initial grant date, or within 12 months of the date of the release of the terms of an agreement between the United States and Canadian governments on the sharing of 220-222 MHz spectrum between the two countries, whichever is later. The authorization of a licensee that does not construct its base station and place it in operation, or commence service, by this date, cancels automatically and must be returned to the Commission.

**APPENDIX D**

**Designated Filing Areas**

**NEW YORK**

Bronx County, New York  
Kings County, New York  
Nassau County, New York  
New York County, New York  
Queens County, New York  
Richmond County, New York  
Bergen County, New Jersey  
Essex County, New Jersey  
Hudson County, New Jersey  
Union County, New Jersey

**LOS ANGELES**

Los Angeles County, California  
Orange County, California  
Riverside County, California  
Ventura County, California

[The Los Angeles DFA includes only that portion of Riverside County that is north of 33 degrees, 40 minutes North latitude and west of 117 degrees, 20 minutes West longitude.]

**CHICAGO**

Cook County, Illinois  
Lake County, Indiana

**PHILADELPHIA**

Bucks County, Pennsylvania  
Montgomery County, Pennsylvania  
Philadelphia County, Pennsylvania  
Burlington County, New Jersey  
Camden County, New Jersey

**SAN FRANCISCO and SACRAMENTO**

Alameda County, California  
Contra Costa County, California  
Marin County, California  
Sacramento County, California  
San Francisco County, California  
San Mateo County, California  
Santa Clara County, California  
Santa Cruz County, California  
Solano County, California

**DETROIT**

Macomb County, Michigan  
Oakland County, Michigan  
Wayne County, Michigan

**BOSTON and PROVIDENCE**

Bristol County, Massachusetts  
Essex County, Massachusetts  
Middlesex County, Massachusetts  
Norfolk County, Massachusetts  
Plymouth County, Massachusetts  
Suffolk County, Massachusetts  
Kent County, Rhode Island  
Providence County, Rhode Island

**HOUSTON**

Brazoria County, Texas  
Fort Bend County, Texas  
Galveston County, Texas  
Harris County, Texas  
Liberty County, Texas  
Montgomery County, Texas  
Waller County, Texas

**WASHINGTON DC and BALTIMORE**

Washington, District of Columbia  
Alexandria (City), Virginia  
Arlington County, Virginia  
Fairfax (City), Virginia  
Fairfax County, Virginia  
Falls Church (City), Virginia  
Ann Arundel County, Maryland  
Baltimore County, Maryland  
Baltimore (City), Maryland  
Howard County, Maryland  
Montgomery County, Maryland  
Prince Georges County, Maryland

**DALLAS - FORT WORTH**

Collin County, Texas  
Dallas County, Texas  
Denton County, Texas  
Ellis County, Texas  
Johnson County, Texas  
Kaufman County, Texas  
Parker County, Texas  
Rockwall County, Texas  
Tarrant County, Texas

**MIAMI**

Dade County, Florida  
Broward County, Florida

**CLEVELAND**

Cuyahoga County, Ohio  
Geauga County, Ohio  
Lake County, Ohio  
Medina County, Ohio

**ST. LOUIS**

Franklin County, Missouri  
Jefferson County, Missouri

St. Charles County, Missouri  
St. Louis County, Missouri  
St. Louis (City), Missouri  
Clinton County, Illinois  
Jersey County, Illinois  
Madison County, Illinois  
Monroe County, Illinois  
St. Clair County, Illinois

**ATLANTA**

Barrow County, Georgia  
Butts County, Georgia  
Cherokee County, Georgia  
Clayton County, Georgia  
Cobb County, Georgia  
Coweta County, Georgia  
De Kalb County, Georgia  
Douglas County, Georgia  
Fayette County, Georgia  
Forsyth County, Georgia  
Fulton County, Georgia  
Gwinnett County, Georgia  
Henry County, Georgia  
Newton County, Georgia  
Paulding County, Georgia  
Rockdale County, Georgia  
Spalding County, Georgia  
Walton County, Georgia

**PITTSBURGH**

Allegheny County, Pennsylvania  
Fayette County, Pennsylvania  
Washington County, Pennsylvania  
Westmoreland County, Pennsylvania

**MINNEAPOLIS**

Anoka County, Minnesota  
Carver County, Minnesota  
Chisago County, Minnesota  
Dakota County, Minnesota  
Hennepin County, Minnesota  
Isanti County, Minnesota  
Ramsey County, Minnesota  
Scott County, Minnesota  
Washington County, Minnesota  
Wright County, Minnesota  
St. Croix County, Wisconsin

**SEATTLE**

King County, Washington  
Pierce County, Washington  
Snohomish County, Washington

**SAN DIEGO**

San Diego County, California

[The San Diego DFA includes only that portion of San Diego County that is south of 33 degrees, 30 minutes North latitude.]

**TAMPA - ST. PETERSBURG**

Hernando County, Florida  
Hillsborough County, Florida  
Pasco County, Florida  
Pinellas County, Florida

**DENVER**

Adams County, Colorado  
Arapahoe County, Colorado  
Boulder County, Colorado  
Denver County, Colorado  
Douglas County, Colorado  
Jefferson County, Colorado

**PHOENIX**

Maricopa County, Arizona

**CINCINNATI and DAYTON**

Butler County, Ohio  
Clermont County, Ohio  
Hamilton County, Ohio  
Montgomery County, Ohio  
Warren County, Ohio  
Boone County, Ohio  
Campbell County, Ohio  
Kenton County, Ohio  
Dearborn County, Ohio

**MILWAUKEE**

Milwaukee County, Wisconsin  
Ozaukee County, Wisconsin  
Racine County, Wisconsin  
Washington County, Wisconsin  
Waukesha County, Wisconsin

**KANSAS CITY**

Johnson County, Kansas  
Leavenworth County, Kansas  
Miami County, Kansas  
Wyandotte County, Kansas  
Cass County, Missouri  
Clay County, Missouri  
Jackson County, Missouri  
Lafayette County, Missouri  
Platte County, Missouri  
Ray County, Missouri

**PORTLAND**

Clackamas County, Oregon  
Marion County, Oregon  
Multnomah County, Oregon  
Washington County, Oregon  
Yamhill County, Oregon

**NEW ORLEANS**

Jefferson Parish, Louisiana  
Orleans Parish, Louisiana  
St. Bernard Parish, Louisiana  
St. Charles Parish, Louisiana  
St. John The Baptist Parish, Louisiana  
St. Tammany Parish, Louisiana

**COLUMBUS**

Franklin County, Ohio

**NORFOLK**

Chesapeake (City), Virginia  
Hampton (City), Virginia  
Newport News (City), Virginia  
Norfolk (City), Virginia  
Portsmouth (City), Virginia  
Virginia Beach (City), Virginia

**BUFFALO**

Erie County, New York  
Niagara County, New York

**INDIANAPOLIS**

Marion County, Indiana

**SAN ANTONIO**

Bexar County, Texas  
Comal County, Texas  
Guadalupe County, Texas

**CHARLOTTE**

Gaston County, North Carolina  
Mecklenburg County, North Carolina  
Union County, North Carolina  
York County, North Carolina

**HARTFORD**

Hartford County, Connecticut

**SALT LAKE CITY**

Davis County, Utah  
Salt Lake County, Utah  
Weber County, Utah

**ROCHESTER**

Livingston County, New York  
Monroe County, New York  
Ontario County, New York  
Wayne County, New York

**LOUISVILLE**

Bullitt County, Kentucky  
Jefferson County, Kentucky  
Oldham County, Kentucky  
Shelby County, Kentucky  
Clark County, Indiana

Floyd County, Indiana  
Harrison County, Indiana

**OKLAHOMA CITY**

Canadian County, Oklahoma  
Cleveland County, Oklahoma  
Logan County, Oklahoma  
McClain County, Oklahoma  
Oklahoma County, Oklahoma  
Pottawatomie County, Oklahoma

**MEMPHIS**

Shelby County, Tennessee  
Tipton County, Tennessee  
Crittenden County, Arkansas  
De Soto County, Mississippi

**BIRMINGHAM**

Blount County, Alabama  
Jefferson County, Alabama  
Shelby County, Alabama  
Walker County, Alabama

**NASHVILLE**

Cheatham County, Tennessee  
Davidson County, Tennessee  
Dickson County, Tennessee  
Robertson County, Tennessee  
Rutherford County, Tennessee  
Sumner County, Tennessee  
Williamson County, Tennessee  
Wilson County, Tennessee

**GREENSBORO**

Forsyth County, North Carolina  
Guilford County, North Carolina

**ALBANY**

Albany County, New York  
Greene County, New York  
Montgomery County, New York  
Rensselaer County, New York  
Saratoga County, New York  
Schenectady County, New York

**ORLANDO**

Orange County, Florida  
Osceola County, Florida  
Seminole County, Florida

**HONOLULU**

Honolulu County, Hawaii

**RICHMOND**

Chesterfield County, Virginia  
Colonial Heights (City), Virginia  
Goochland County, Virginia

Hanover County, Virginia  
Henrico County, Virginia  
Petersburg (City), Virginia  
Powhatan County, Virginia  
Richmond (City), Virginia

**JACKSONVILLE**

Clay County, Florida  
DuVal County, Florida  
Nassau County, Florida  
St. Johns County, Florida

[The Jacksonville DFA includes only those portions of St. Johns and Clay Counties that are north of 29 degrees, 55 minutes North latitude.]