

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

In the Matter of)	
)	
Biennial Regulatory Review –)	
Amendment of Parts 1, 22, 24,)	WT Docket No. 03-264
27, and 90 to Streamline and)	
Harmonize Various Rules Affecting)	
Wireless Radio Services)	

**COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION**

The Cellular Telecommunications & Internet Association (“CTIA”)¹ hereby submits comments in response to the Commission’s January 7, 2004, Notice of Proposed Rulemaking (“NPRM”) requesting comment on a number of modifications or deletions to Parts 1, 22, 24, 27 and 90 of the Commission’s rules.² As noted in CTIA’s previous comments, Section 11 of the Telecommunications Act of 1996 requires the Commission to rigorously examine rules impacting wireless carriers to determine whether these rules are “necessary” in the public interest, rather than just looking at the rules to determine whether they can serve the public interest.³ In this context, CTIA supports the

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers all Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

² See *Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27 and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, Notice of Proposed Rulemaking*, WT Docket No. 03-264, FCC 03-334 (rel. Jan. 7, 2004); see also *Biennial Regulatory Review – Streamlining and Harmonizing Various Rules Affecting Wireless Radio Services*, 69 Fed. Reg. 8132 (Feb. 23, 2004) (setting April 23, 2004, comment date).

³ See, e.g., *Petition for Rulemaking of the Cellular Telecommunications & Internet Association*, WT Docket No. 02-310, at 1-5 (filed July 25, 2002) (hereinafter “Petition”)

Commission's efforts in the NPRM to eliminate a number of outdated and unnecessary regulations, and urges the Commission to take the action further delineated below.

I. Part I: Frequency and Transmitter Site Deletions Should Be Treated as Minor Modifications

Section 1.929(c)(4) of the Commission's rules currently classifies changes to frequencies or changes in the location of base stations as "major modifications" to a license that require, among other things, frequency coordination prior to submission to the Commission for approval.⁴ In its earlier Petition urging the Commission to initiate the 2002 Biennial Review ("CTIA Petition"), CTIA urged the Commission to modify the rules to specifically exclude applications only deleting a frequency from the coordination process.⁵ The American Petroleum Institute ("API") made a similar request, and also urged the Commission to "categorize the deletion of a site from a multi-site Part 90 authorization as a minor modification which would require neither frequency coordination nor prior Commission approval."⁶

In the NPRM, the Commission tentatively concluded that "a request to delete a frequency or a site from a multi-site authorization under Part 90 should be considered a minor modification that requires neither frequency coordination nor the Commission's prior approval."⁷ CTIA supports the Commission's conclusion, and urges the

or "CTIA Petition"); Further Comments of the Cellular Telecommunications & Internet Association, WT Docket No. 02-310, at 2-5 (filed October 18, 2002) (hereinafter "Further Comments").

⁴ 47 C.F.R. § 1.929(c)(4).

⁵ See Petition at 17; NPRM at ¶ 6.

⁶ NPRM at ¶ 7.

⁷ *Id.* at ¶ 9.

Commission to make this change to Section 1.129 to eliminate the frequency coordination and prior approval requirements.

II. Part 22: The Commission Should Eliminate the Transmitter Call Sign Identification Requirement

Section 22.303 provides, among other things, that every cellular transmitting facility must post the station call sign “on or near” the facility.⁸ In the CTIA Petition, CTIA urged the Commission to eliminate this requirement since the obligation was unnecessary and not imposed on other CMRS providers.⁹ In comments, the Rural Cellular Association (“RCA”) also urged the Commission to eliminate the requirement in the interest of commercial wireless parity.¹⁰ In the absence of any evidence showing that this requirement continues to be necessary, CTIA urges the Commission to adopt the NPRM’s tentative conclusion, and “delete the last sentence of Section 22.303, thereby eliminating the transmitter-specific posting requirement for cellular and the other Part 22 licensees.”

III. Part 90

A. The Commission Should Harmonize the Various Emission Masks in Section 90.210

Section 90.210 of the Commission’s rules details a number of “emissions masks” that are applicable to Part 90 transmitters.¹¹ In comments filed in response to the 2002 Biennial Review Public Notice, Motorola noted that a number of the emissions masks (masks D, E and F) place no limitation on the “spectral power density profile within the

⁸ 47 C.F.R. § 22.303.

⁹ See Petition at 21; Further Comments at 6; NPRM at ¶ 12.

¹⁰ See NPRM at ¶ 12.

¹¹ 47 C.F.R. § 90.210.

maximum authorized bandwidth.”¹² Emissions Mask G, however, places a number of additional restrictions on emissions, which Motorola claims “limits design flexibility without any corresponding value in improved interference control.”¹³ Accordingly, Motorola requested that the Commission harmonize “Mask G” to conform to the requirements of the Emissions Masks.

In the NPRM, the Commission preliminarily accepts Motorola’s recommendation, and proposes to “revise Section 90.210(g) to eliminate paragraph (g)(1) and renumber the remaining subsections” to harmonize Mask G with the other emissions masks.¹⁴ CTIA agrees with Motorola that the emissions masks in Section 90.210 should be harmonized, and supports the Commission proposal to achieve the harmonization of the masks.

B. The 800 and 900 MHz Supplemental Information Requirement in Section 90.607 Should Be Eliminated

Section 90.607 of the Commission’s rules details supplemental information that must be furnished for applicants of 800 and 900 MHz specialized mobile radio (“SMR”) systems, including a “statement of the planned mode of operation”¹⁵ and a statement certifying that “no person not eligible to use the proposed facility for the purposes for which it is to be authorized will be offered or provided service through the licensee’s base station facility.”¹⁶ In its comments, PCIA noted that the planned mode of operation statements or diagrams requested in Section 90.607 are no longer used by the

¹² NPRM at ¶ 21.

¹³ *Id.*

¹⁴ *Id.* at ¶ 22.

¹⁵ 47 C.F.R. § 90.607(a)(1).

¹⁶ 47 C.F.R. § 90.607(a)(2).

Commission.¹⁷ In addition, PCIA also noted that the “eligibility statement” is no longer needed because the underlying eligibility rules have been eliminated by the Commission.¹⁸

The NPRM notes that Section 90.607(a) “appears to serve no regulatory purpose and is inconsistent with the Commission’s policies regarding the flexible use of spectrum.”¹⁹ Accordingly, the Commission tentatively concludes that Section 90.607(a) should be eliminated. CTIA agrees with the Commission’s conclusion, and urges the Commission to eliminate Section 90.607(a).

C. The Trunked Systems Loading, Construction and Authorization Requirements in Section 90.631 Should Be Eliminated

In its Petition, CTIA noted that the 900 MHz SMR licensee “loading requirements” contained in Section 90.631(i)²⁰ were obsolete because the “timeframe for site-specific SMR 900 MHz systems to meet loading requirements has since expired,” and urged the Commission to eliminate that section of the rules.²¹ Similarly, PCIA noted that the “waiting list” exception to the definition of a rural area contained in Section 90.631(d) of the Commission’s rules is obsolete because the waiting lists were eliminated when the Commission switched to competitive bidding in 1995, and urged the Commission to delete the “waiting list” references from that rule.²²

¹⁷ See NPRM at ¶ 25.

¹⁸ See *id.*

¹⁹ *Id.*

²⁰ 47 C.F.R. § 90.631(i).

²¹ See Petition at 28; NPRM at ¶ 27.

²² *Id.* at ¶ 26.

In the NPRM, the Commission agreed with CTIA that the loading requirement for 900 MHz SMR licensees was obsolete, and tentatively concluded that “paragraph (i) of Section 90.631 . . . as well as references to paragraph (i) in Section 90.631(b) of the rules” should be eliminated.²³ In addition, the Commission also agreed with PCIA’s recommendation to eliminate the “waiting list” exception, and tentatively concluded that the waiting list exception in Section 90.631(d) should be eliminated, along with “other references to waiting lists contained in Section 90.631(d) of the rules.”²⁴ CTIA agrees with the Commission’s tentative conclusions in this area, and urges the Commission to eliminate both the loading requirement and references to the “waiting list” in Section 90.631(d) of the rules.

D. The Commission Should Modify Section 90.635 of the Rules to Adopt the “Urban” Power and Antenna Height Limits for Both “Urban” and “Suburban” 800 and 900 MHz Systems

Section 90.635 currently provides for different power levels and antenna heights for “urban” and “suburban” conventional 900 and 900 MHz systems.²⁵ Under the rule, “urban” systems are able to operate at 1000 -watts maximum power and a maximum antenna height of 304 meters, whereas “suburban” systems are limited to a maximum power of 500-watts and a maximum antenna height of 152 meters.²⁶ In comments, PCIA argued that this distinction “no longer serves a useful purpose and should be

²³ *Id.* at ¶ 27.

²⁴ *Id.* at ¶ 26.

²⁵ 47 C.F.R. § 90.635.

²⁶ *Id.*

eliminated.”²⁷ The NPRM also stated that “there is significant question as to whether the justification for such distinction remains relevant in today’s marketplace.”²⁸

CTIA agrees with PCIA’s contention that the proposal no longer serves a useful purpose. For instance, under the current rule, an “urban” system operating 24 km from the geographic center of the top 50 urbanized areas could operate with a higher power and antenna height than a system located 25 km from an urban center, which would instead be classified as a “suburban” system. Such a bright-line distinction makes little, if any, sense from an engineering perspective.²⁹ Furthermore, the existence of the “urban” versus “suburban” thresholds increases infrastructure and compliance costs, without providing any countervailing public interest benefit. Accordingly, CTIA urges the Commission to harmonize Section 90.635 by providing that both “urban” and “suburban” sites may utilize the current “urban” power and height limits.

E. The System Authorization Limit in Geographic Areas Contained in Section 90.653 Should Be Deleted

Section 90.653 currently states that there shall be no limit on systems operating in any geographic area, “except that imposed by allocation limitations.”³⁰ In its Petition, CTIA noted that this rule – which was adopted in 1982 – is redundant “and no longer serves any regulatory purpose” due to the Commission’s shift to competitive bidding for

²⁷ NPRM at ¶ 29.

²⁸ *Id.*

²⁹ It is also questionable from a public land use perspective. Commercial development and density in “Edge Cities” such as suburban Tysons Corner, Virginia and Bellevue, Washington can equal or even exceed the density of the “urban” city cores of Washington, D.C. or Seattle, respectively, which are in the same metropolitan area. This is true in “Edge Cities” throughout America.

³⁰ 47 C.F.R. § 90.653.

geographic area licensing.³¹ In the NPRM, the Commission agreed with CTIA's analysis, and stated that "the rule is no longer in the public interest."³² Accordingly, CTIA again urges the Commission to delete Section 90.653.

F. The Commission Should Delete the Reporting Requirement for Trunked SMR Loading Data in Section 90.658

During the 2002 Biennial Review comment process, both CTIA and PCIA noted that Section 90.658³³ – which requires "loading data" as a condition of license renewal for "trunked SMR systems licensed before June 1, 1993" – was outdated and unnecessary because all SMR licenses issued prior to June 1, 1993, have been through at least one license renewal.³⁴ In the NPRM, the Commission noted that the Staff Report found that this provision "may be an outdated and burdensome requirement on SMR licenses," and tentatively concluded that the provision should be deleted.³⁵ CTIA supports the Commission's conclusion, and again urges the Commission to delete Section 90.658.

G. The 220 MHz Phase I Supplemental Progress Report Requirement in Section 90.737 Should Be Eliminated

Section 90.737 imposes certain requirements on unconstructed site-based Phase I 220 MHz licenses.³⁶ These requirements were initially imposed by the Commission when these licenses were allocated by lottery in order to prevent "speculation and

³¹ CTIA Petition at 28; NPRM at ¶ 31.

³² *Id.*

³³ 47 C.F.R. § 90.658.

³⁴ NPRM at 32.

³⁵ *Id.*; see also *Federal Communications Commission 2002 Biennial Regulatory Review, Staff Report of the Wireless Telecommunications Bureau*, WT Docket No. 02-310, GC Docket No. 02-390, at 104 (rel. Dec. 31, 2002) (hereinafter "Staff Report").

³⁶ 47 C.F.R. § 90.737.

trafficking” in the licenses.³⁷ The Staff Report, however, notes that these licenses are no longer allocated by lottery, and the reporting requirements in Section 90.737 “may actually impede the transferability of 220 MHz spectrum” and disrupt the further development of this band in a competitive CMRS marketplace.³⁸ Accordingly, the NPRM tentatively concludes that Section 90.737 should be eliminated as no longer in the public interest.³⁹ CTIA agrees with the Commission’s conclusion, and requests that the Commission delete Section 90.737.

³⁷ Staff Report at 108.

³⁸ *Id.*

³⁹ NPRM at ¶ 33.

CONCLUSION

For the aforementioned reasons, CTIA urges the Commission to eliminate outdated or unnecessary regulations by adopting the recommendations set forth in these comments.

Respectfully submitted,

/s/ Michael Altschul

**CELLULAR TELECOMMUNICATIONS &
INTERNET ASSOCIATION**
1400 16th Street, N.W.
Suite 600
Washington, D.C. 20036
(202) 785-0081

Michael Altschul
Senior Vice President & General Counsel

Christopher R. Day
Staff Counsel

Its Attorneys

Dated: April 23, 2004