

sites developed on an interference-free basis due to the freeze on primary licensing outside the DFAs. To prevent unnecessary disruption of existing operations, the Commission concluded that 900 MHz secondary sites licensed on or before August 9, 1994, would be afforded primary status, thus requiring new MTA licensees to afford them full co-channel interference protection.

12. On reconsideration, the Commission amends its rules to extend protected status to all secondary sites filed on or before August 9, 1994, even if they were not granted until after August 9. Granting primary site protection for these sites will promote uninterrupted service, and protect only a *de minimis* amount of new spectrum. Moreover, the Commission's delays in processing secondary site applications in the 900 MHz SMR service appear to have produced an inequitable result for applicants who otherwise would have been entitled to protection under the *CMRS Third Report & Order*, 59 FR 59,945 (Nov. 21, 1994). Therefore, this *Second Report and Order* provides that all MTA licensees provide complete co-channel protection to all sites for which applications were filed on or before August 9, 1994. Secondary sites based on applications filed after August 9, 1994, however, will not be afforded such protection.

13. *Loading Requirements*. In the *CMRS Third Report & Order*, 59 FR 59,945 (Nov. 21, 1994), the Commission determined that loading requirements, which were adopted in the SMR services to protect against spectrum warehousing, are not necessary for MTA-based licensing of 900 MHz SMR, provided that licensees are subject to strict construction and coverage requirements. However, the Commission retained the loading/automatic cancellation requirement for 900 MHz SMR incumbent licensees. See 47 C.F.R. § 90.631(i). Because the 900 MHz SMR market is less mature than the 800 MHz SMR market, and because incumbent licensees are not required to achieve significant coverage of their service areas, the Commission found that loading requirements continue to serve a public interest purpose in the former.

14. Based on the unique history and nature of the 900 MHz service as it has developed to date, the Commission affirms its decision in the *CMRS Third Report & Order* to retain loading requirements for incumbent 900 MHz SMR licensees. The 900 MHz service is not a mature service, both because it was licensed more recently than 800 MHz and because Phase I licensing has been confined to limited service areas.

Based on these factors, the Commission has already granted special relief to 900 MHz licensees by providing them an additional two years to load their systems, on top of the five years originally granted. *Report & Order*, PR Docket No. 92-17, 57 FR 37731 (August 20, 1992). Having granted this relief, eliminating loading requirements for incumbent licensees who have failed to fully load their systems would not be in the public interest. Incumbents may overcome this obstacle by obtaining an MTA license, which exempts them from all previously applicable loading requirements. Moreover our policy of retaining loading requirements for incumbents will prevent the warehousing of spectrum, as once the Commission takes back channels from an incumbent who has not met loading requirements, the spectrum covered by the incumbent's authorization will automatically revert to the MTA licensee who has obtained the contingent rights to that spectrum. See, e.g., *Further Notice of Proposed Rule Making*, PR Docket No. 83-144, 59 FR 60111 (November 22, 1994).

15. *Emission Masks*. The Commission generally subjects mobile radio services to emission mask rules to restrict transmitter emissions on spectrum adjacent to the licensee's adjacent channel. In the *CMRS Third Report & Order*, 59 FR 59,945 (November 21, 1994), the Commission affirmed that the out-of-band emission rules should apply only where emissions have the potential to affect other licensees' operations. Consistent with the *CMRS Third Report & Order*, 59 FR 59,945 (Nov. 21, 1994), the Commission will only apply emission mask rules to "outer" MTA channels in each block (*i.e.*, channels on the outer edges of an MTA licensee's channel block that may present adjacent channel interference to other MTA licensees) and to "interior" MTA channels (*i.e.* channels inside of the MTA licensee's channel block assignment that are adjacent only to the licensee's channels and not to other licensees) where there are incumbent SMR licensees who will be affected by the MTA licensee's operations.

16. These channels alone have the potential to affect operations outside of the MTA licensee's authorized bandwidth, and that the emission mask established in this Order will adequately protect other MTA licensees. Specifically, for wide-area licensees in the 900 MHz SMR band on any frequency outside the MTA licensee's frequency block, the peak power of any emission shall be attenuated below the transmitter power (P) by at least 43 plus $10 \log_{10}(P)$ decibels or 80 decibels,

whichever is the lesser attenuation. As an exception to this requirement, if a single entity aggregates adjacent channel blocks, it will not be required to mask its emissions at the band edge of each ten-channel block.

17. *Mexican/Canadian Border Areas*. In the *CMRS Third Report & Order*, 59 FR 59,945 (Nov. 21, 1994), the Commission noted that 900 MHz channel availability is limited in the Mexican and Canadian border areas and that limitations on ERP and antenna height have been placed on a number of the channels. See 47 C.F.R. §§ 90.619(b)(2), 90.619(d). Consequently, some channels may not be available to MTA licensees operating in border areas, and restrictions on ERP or antenna height will make them less attractive for MTA licensees. The creation of different channel allocations in border areas is administratively unworkable. Because applicants can assess the impact of border requirements in their valuation of these blocks for competitive bidding purposes, the Commission will use the same allocation of MTA channel blocks in border areas as in non-border areas. Therefore, use of channels in MTAs that encompass border areas will be subject to the relevant rules regarding international assignments and coordination of such channels.

18. *Discontinuance of Operation*. Section 90.631(f) of the Commission's rules, 47 CFR § 90.631(f), provides that SMR licenses cancel automatically if a licensee discontinues station operations for more than 60 consecutive days, unless the Commission authorizes additional time for station operations to remain discontinued. If additional time is not authorized, the license cancels automatically unless the station resumes operations within five days after the licensee receives the Commission's letter declining to authorize additional time. The Omnibus Budget Reconciliation Act of 1993, however, requires the Commission to modify its rules, to the extent "necessary and practical," to ensure that substantially similar services are subject to "comparable technical requirements." 47 U.S.C. § 332(d)(3). Because the Commission concluded in the *CMRS Third Report & Order*, 59 FR 59,945 (Nov. 21, 1994), that 900 MHz SMR services compete or have the potential to compete with existing wide-area CMRS service providers, the rules governing MTA licensees must be substantially similar to the rules governing cellular and PCS providers. Therefore, the Commission modifies Section 90.631(f) to include provisions comparable to those contained in