

(e) It shall be the responsibility of the licensee of an FM translator or FM booster station to correct any condition of interference which results from the radiation of radio frequency energy by its equipment on any frequency outside the assigned channel. Upon notice by the Commission to the station licensee that such interference is being caused, the operation of the FM translator or FM booster station shall be suspended within three minutes and shall not be resumed until the interference has been eliminated or it can be demonstrated that the interference is not due to spurious emissions by the FM translator or FM booster station; *provided, however,* that short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures.

39. Section 74.1234 is amended by revising paragraph (a) introductory text and removing paragraph (c) to read as follows:

**§ 74.1234 Unattended operation.**

(a) A station authorized under this subpart may be operated without a designated person in attendance if the following requirements are met:

\* \* \* \* \*

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BILLING CODE 6712-01-M

**47 CFR Part 90**

[PR Docket No. 89-553, GN Docket No. 93-252; FCC 95-429]

**SMR Systems in the 900 MHz Frequency Band**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, on its own motion, adopted a *Third Order on Reconsideration*, reconsidering the coverage requirement for the 900 MHz Specialized Mobile Radio (SMR) service. In addition, the *Third Order on Reconsideration* also amended the Part 90 rules to include a renewal expectancy for 900 MHz Major Trading Area (MTA) licensees. The intended effect of this action is to clarify the service rules for the 900 MHz SMR service.

**EFFECTIVE DATE:** December 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** Diane Law, (202) 418-0660, Wireless Communications Bureau.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the *Third Order on Reconsideration*, released October 20, 1995. The complete text of this *Third*

*Order on Reconsideration* is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 239, 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Synopsis of the Third Order on Reconsideration

Adopted: October 20, 1995

Released: October 20, 1995

**I. Background**

The Commission adopted the service and auction rules for the 900 MHz SMR auction in the *Second Order on Reconsideration & Seventh Report & Order*, 60 FR 48913 (Sept. 21, 1995). In that *Order*, The Commission stated that it would auction 1,020 MTA licenses for the 900 MHz SMR service in a simultaneous multi-round auction. The Commission also adopted coverage requirements for MTA licensees. 900 MHz MTA licensees must provide coverage to one-third of the population of their service area within three years of initial license grant and to two-thirds of the population of their service area within five years, or, at the five year mark, submit a showing of substantial service.

**II. Third Order on Reconsideration**

**A. Coverage Requirement**

**Substantial Service.** The Commission clarifies that the "substantial service" showing is a mechanism designed for specialized users who may not be able to meet the two-thirds coverage requirement due to individualized circumstances. Two possible examples of individualized circumstances which could warrant a showing of "substantial service" are licensees who provide a "niche service" to businesses or who focus on serving populations outside of areas currently served by incumbent licensees. The coverage requirement is not intended to act a deterrent to seeking MTA licenses, and the Commission believes that with the "substantial service" mechanism it has provided sufficient flexibility for new entrants to provide new services or to serve now unserved populations in all of the licenses.

**Resale.** The Commission also clarifies that 900 MHz MTA licensees may engage in resale agreements for use of others' facilities to enhance the quality of service to the population of their service areas, but these resale agreements may not act as a substitute for meeting the coverage requirements

by building facilities. 900 MHz MTA licensees may resell their service. However the licensee must remain in control of its spectrum and remains responsible for insuring that the coverage requirements are met. The Commission declines to require that a specific number of channels be deployed to implement the coverage rule, however, it reserves judgment on whether such a requirement may be necessary in other services.

**B. Renewal Expectancy.**

In the Commercial Mobile Radio Service (CMRS) *Third Report and Order*, 59 FR 59945 (Nov. 21 1994), the Commission stated that the applicable sections of Part 22 governing renewal expectancies would be incorporated into Part 90 of the Commission's rules for CMRS providers. In this *Third Order on Reconsideration*, the Commission amends the Part 90 rules to include a renewal expectancy for 900 MHz MTA licensees. Following the end of their ten year license term, 900 MHz MTA licensees will be afforded a renewal expectancy provided they are able to demonstrate that they: (1) Provided "substantial" service during the license term; and (2) complied with applicable Commission rules and policies, and the Communications Act.

**IV. Procedural Matters and Ordering Clauses**

**Ordering Clauses.** Accordingly, it is ordered that, pursuant to the authority of Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 309(j), this *Third Order on Reconsideration* is adopted and Part 90 of the Commission's Rules is amended as set forth below.

It is further ordered that the rule amendments set forth below will become effective December 1, 1995.

**List of Subjects in 47 CFR Part 90 Radio.**

Federal Communications Commission.  
William F. Caton,  
*Acting Secretary.*

**Amendatory Text**

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

**PART 90—PRIVATE LAND MOBILE RADIO SERVICES**

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

Authority: 47 U.S.C. 154, 303, 309 and 332.

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

**§ 90.816 Criteria for comparative 900 MHz SMR renewal proceedings.**

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

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

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

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

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

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

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

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

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

(iv) Copies of all FCC orders finding the licensee to have violated the Communications Act or any FCC rule or policy; and a list of any pending proceedings that relate to any matter described in paragraph (b)(2) of this section.

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

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**47 CFR Part 97**

[DA 95-2106]

**Use of CLOVER, G-TOR, and PacTOR Digital Codes**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; interpretation.

**SUMMARY:** On October 2, 1995, the Chief, Wireless Telecommunications Bureau adopted an *Order* that clarified that amateur stations may use any digital code that has its technical characteristics publicly documented. The amendments were necessary because some amateur operators have expressed concern about the propriety of using the CLOVER, G-TOR, and PacTOR codes on the High Frequency amateur service bands.

**EFFECTIVE DATE:** November 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** William T. Cross of the Wireless Telecommunications Bureau at (202) 418-0680.

**SUPPLEMENTARY INFORMATION:**  
Order

Adopted: October 2, 1995  
Released: October 11, 1995

By the Chief, Wireless Telecommunications Bureau:

1. This Order amends Section 97.309(a) of the Commission's Rules, 47 CFR 97.309(a), to clarify that amateur stations may use any digital code that has its technical characteristics publicly documented. This action was initiated by a letter from the American Radio Relay League, Inc. (ARRL).

2. The ARRL states that some amateur operators have expressed concern about the propriety of using the CLOVER, G-TOR, and PacTOR codes on the High Frequency (HF) amateur service bands. [CLOVER, G-TOR, and PacTOR are different techniques currently used by many amateur operators to increase the efficiency of digital communications transmitted on the HF portion of the radio spectrum.] This is due to the fact that Section 97.309(a) appears to authorize only the Baudot, AMTOR, and ASCII codes on the HF bands. [On the Very High Frequency and shorter wavelength bands, the rules authorize the use of any unspecified digital code provided the emission does not exceed a specified bandwidth. See Sections 97.307(f) (5)-(7) of the Commission's Rules, 47 CFR §§ 97.307(f) (5)-(7).] The ARRL states that it has worked with the developers of CLOVER, G-TOR, and PacTOR to document the technical characteristics of these codes. It requests, therefore, that we amend

Section 97.309(a) of the Commission's Rules to specifically authorize CLOVER, G-TOR, and PacTOR to remove any doubt about the permissibility of their use.

3. The primary purpose of CLOVER, G-TOR, and PacTOR is to facilitate communications using already-authorized digital codes, emission types, and frequency bands. The technical characteristics of CLOVER, G-TOR, and PacTOR have been documented publicly for use by amateur operators, and commercial products are readily available that facilitate the transmission and reception of communications incorporating these codes. [See *Technical Descriptions CLOVER, G-TOR, PACTOR*, published by the American Radio Relay League, Inc. (1995).] Including CLOVER, G-TOR, and PacTOR in the rules will not conflict with our objective of preventing the use of codes or ciphers intended to obscure the meaning of the communication. [The HF bands are widely used for international communications. Number 2732 § 2.(1) of Article 32 Section I of the International Telecommunications Union *Radio Regulations* requires that transmissions between amateur stations of different countries be made in plain language. Section 97.113(a)(4) of the Commission's Rules, 47 CFR § 97.113(a)(4), therefore, prohibits amateur stations from transmitting messages in codes or ciphers intended to obscure the meaning thereof.] We agree, therefore, that it would be helpful to the amateur service community for the rules to specifically authorize amateur stations to transmit messages and data using these and similar digital codes. Accordingly, we are amending Section 97.309(a) to clarify the rules as requested by the ARRL.

4. Because the rule amendment adopted herein is interpretative in nature, and clarifies the existing amateur service rules, the notice and comment provisions of Section 553(b) of the Administrative Procedure Act, 5 U.S.C. § 553(b), do not apply, and it is not subject to the publication or service requirements of Section 553(d) of the Administrative Procedure Act, 5 U.S.C. § 553(d).

5. We certify that the Regulatory Flexibility Act of 1980 does not apply to the amended rule because there will not be any significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. The amateur service may not be used to transmit communications for compensation, for the pecuniary benefit of the station control operator or the