

	Urban area (constituent counties)	Wage index	GAF
0240 .....	Allentown-Bethlehem-Easton, PA; Carbon, PA; Lehigh, PA .....	0.9925	0.9949
3040 .....	Great Falls, MT; Cascade, MT .....	0.9330	0.9536

3. On page 47156, in Table 4B—Wage Index and Capital Geographic Adjustment Factor (GAF) for Rural Areas, the wage index and GAF for the specified nonurban area is corrected to read as follows:

Nonurban area	Wage index	GAF
Vermont .....	0.9409	0.9591

4. On page 47156 through 47157, in Table 4C—Wage Index and Capital

Geographic Adjustment Factor (GAF) for Hospitals that are Reclassified, the wage indexes and GAFs for the specified areas are added or corrected to read as follows:

Area	Wage index	GAF
Barnstable-Yarmouth, MA .....	1.3583	1.2333
Burlington, VT .....	1.0236	1.0161
Great Falls, MT .....	0.9330	0.9536
Kalamazoo-Battlecreek, MI .....	1.0291	1.0198
Newburgh, NY-PA .....	1.0317	1.0216

5. On page 47157, in Table 4D—Average Hourly Wage for Urban Areas, the average hourly wage for the specified urban area is corrected to read as follows:

Urban area	Average hourly wage
Allentown-Bethlehem-Easton, PA .....	21.6065

6. On pages 47160 and 47167, in Table 5—List of Diagnosis Related Groups (DRGs), Relative Weighting Factors, Geometric and Arithmetic Mean Length of Stay, the fourth column (DRG title) is amended as follows:

- a. DRG 27, “Traumatic Stupor & Coma, Coma <1 hr” is corrected to read “Traumatic Stupor & Coma, Coma >1 hr.”
- b. DRG 29, “Traumatic Stupor & Coma, Coma <1 hr Age ≤17 W/O CC” is

corrected to read “Traumatic Stupor & Coma, Coma <1 hr Age> 17 W/O CC.”

c. DRG 425, “Acute Adjustment Reaction & Psychological Dysfunction” is corrected to read “Acute Adjustment Reaction & Psychosocial Dysfunction.”

7. On page 47171, in Table 6C—Invalid Diagnosis Codes the following entry is added before the first line of the table to read as follows:

Diagnosis code	Description	CC	MDC	DRG
282.5 .....	Anemia in chronic illness .....	N	16	395, 396

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance)

Dated: February 22, 2001.

**William E. Clark,**  
Acting, Deputy Assistant Secretary for Information Resource Management.  
[FR Doc. 01-5107 Filed 3-1-01; 8:45 am]  
**BILLING CODE 4120-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 90

[PR Docket No. 93-144; RM 8117; RM 8029; RM 8030; GN Docket No. 93-252; PP Docket No. 93-253; FCC 01-33]

### Future Development of SMR Systems in the 800 MHz Frequency Band, Regulatory Treatment of Mobile Services, and Competitive Bidding

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; petition for reconsideration.

**SUMMARY:** In this *Third Order on Reconsideration*, the Commission answers petitions for reconsideration filed by the American Mobile Telecommunications Association (“AMTA”) and Petroleum Communications, Inc. (“Petrocom”) of the Commission’s *Memorandum Opinion and Order on Reconsideration*. In that document, the Commission completed the implementation of a new licensing framework for the 800 MHz Specialized Mobile Radio Service (“SMR”). In this document, the Commission denies the petition filed by AMTA seeking interim payments for incumbent 800 MHz licensees being involuntarily relocated to new frequencies by geographic licensees. Additionally, the Commission denies the Petrocom petition requesting that the Commission include the Gulf of Mexico as an additional Economic Area (“EA”) in the then-upcoming 800 MHz

auctions for the 150 General Category channels (Auction 34) and the Lower 80 channels (Auction 36).

**FOR FURTHER INFORMATION CONTACT:** Don Johnson, Wireless Telecommunications Bureau, Commercial Wireless Division at (202) 418-7240.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission’s (“the Commission”) *Third Order on Reconsideration*, FCC 01-33, in PR Docket No. 93-144; RM-8117; RM-8029; RM-8030; GN Docket No. 93-252; PP Docket No. 93-253 was adopted January 26, 2001, and was released February, 2, 2001. The full text of this *Third Order on Reconsideration* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC. The complete text may be purchased from the Commission’s copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W.,

Washington, D.C. 20037. The full text may also be downloaded at: [www.fcc.gov](http://www.fcc.gov). Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418-0260 or TTY (202) 418-2555.

### Synopsis of Third Order on Reconsideration

#### I. Introduction

1. On January 19, 2000, the American Mobile Telecommunications Association (AMTA)<sup>1</sup> and Petroleum Communications, Inc. (Petrocom)<sup>2</sup> filed separate petitions for reconsideration of the Commission's *Memorandum Opinion and Order on Reconsideration*.<sup>3</sup> Three parties filed comments, and two filed reply comments.<sup>4</sup> In the *MO&O on Reconsideration*, the Commission completed the implementation of a new licensing framework for the 800 MHz Specialized Mobile Radio Service (SMR).<sup>5</sup> In this order, we deny the petitions filed by AMTA and Petrocom for the reasons discussed below.

#### I. Summary of Third Order on Reconsideration

##### A. AMTA Petition

2. AMTA requests that the Commission reconsider its decision with respect to the timing of EA licensee payments to incumbent licensees who are involuntarily relocated to new frequencies.<sup>6</sup> Specifically, it urges the Commission to require EA licensees to make "reasonable progress payments to

the incumbent if requested."<sup>7</sup> AMTA argues that the MO&O on Reconsideration's decision to make payments for incumbent relocation costs due at the end of the relocation process is unsupported by our rules or previous decisions.<sup>8</sup> According to AMTA, the MO&O on Reconsideration incorrectly relied on the 800 MHz Second Report and Order published in the *Federal Register* at 62 FR 41190 (July 31, 1997), because the referenced discussion in the 800 MHz Second Report and Order "did not relate to the timing of payments from EA licensees to incumbents during the retuning process" but instead concerned the "timing of payments among EA licensees when the relocation of an incumbent by one EA licensee would result in the availability of a channel(s) to another EA licensee, one that had not paid any of the associated relocation costs".<sup>9</sup> AMTA reiterated that the Commission's decision not to require progress payments to incumbent licensees would render incumbent licensees especially vulnerable after the involuntary relocation period begins because each incumbent will have lost any bargaining power it previously possessed vis-à-vis the EA licensee.<sup>10</sup>

3. Upon further review, we conclude that AMTA is correct that neither the 800 MHz Second Report and Order nor the MO&O on Reconsideration adequately addressed the question of when incumbent licensees should be repaid for their involuntary relocation costs.<sup>11</sup> On reconsideration of this issue here, however, we affirm our decision that EA licensees should not be required to make progress payments of an incumbent's relocation costs. We believe that this policy is consistent with the involuntary relocation procedures established in our 800 MHz Second Report and Order and adopted in § 90.699(c) and (d) of the Commission's rules.<sup>12</sup> Section 90.699(c)(1) requires that the EA licensee guarantee repayment of relocation costs, "including all engineering, equipment, site and FCC fees, as well as any legitimate and

prudent transaction expenses . . .".<sup>13</sup> Additionally, § 90.699(c)(2) states that the EA licensee must "[c]omplete all activities necessary for implementing the replacement facilities [of the incumbent], including all engineering and cost analysis of relocation and, if radio facilities are used, identifying and obtaining, on the incumbent's behalf, new frequencies and frequency coordination."<sup>14</sup> Furthermore, § 90.699(c)(3) requires that EA licensees must "build the replacement system and test it for comparability with the existing 800 MHz system."<sup>15</sup> Section 90.699(d) requires that the "replacement system" provided by the EA licensee to an incumbent licensee during this involuntary relocation process "must be at least equivalent to the existing 800 MHz system" with respect to the system itself, capacity, quality of service, and operating costs.<sup>16</sup>

4. In view of the requirements of § 90.699(c) and (d) that the EA licensees directly bear the cost of building and testing the replacement system, it is clear that the primary cost burden for involuntary relocation rests on the EA licensees, not the incumbent. To the extent that the incumbent may incur additional relocation costs, the rule further requires the EA licensee to guarantee payment of those costs. However, because we anticipate that EA licensees will bear most relocation costs directly we believe that it is equitable for the incumbent to be repaid for any remaining costs that it has incurred after relocation has occurred. We note that such reimbursable costs may include costs that reflect the time-value of money, such as reasonable and customary interest expenses incurred by incumbents who must borrow or finance the funds needed to relocate. We pointed out previously that this approach is unlikely to prejudice incumbents inasmuch as EA licensees "have a large financial incentive to relocate the incumbent licensees, construct their facilities, and begin operating."<sup>17</sup> We also stated in the *MO&O on Reconsideration* that "parties are free to negotiate when reimbursement of relocation costs will occur, and may agree to reimbursement as such expenses are incurred."<sup>18</sup> Thus, we have consistently encouraged EA and incumbent licensees to arrange for

<sup>1</sup> AMTA Petition for Reconsideration filed January 19, 2000 (AMTA Petition).

<sup>2</sup> Petrocom Petition for Reconsideration filed January 19, 2000 (Petrocom Petition).

<sup>3</sup> See Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *Memorandum Opinion and Order on Reconsideration*, 64 FR 71042 (pub. Dec. 20, 1999) (*MO&O on Reconsideration*).

<sup>4</sup> On March 16, 2000, the Commission released a public notice, Report No. 2395, informing parties interested in filing comments regarding the AMTA and Petrocom petitions that they would be due within 15 days of the date of public notice in the Federal Register. Notice was published in the Federal Register on March 24, 2000. *See Petitions for Reconsideration of Action in Rulemaking Proceedings*, Report No. 2395, 65 FR 15907 (Pub. March 24, 2000). Comments were filed by Nextel Communications, Inc. (styled as an "Opposition" to AMTA's petition); Mobex Communications, Inc. (urging the Commission "to embrace" the AMTA proposal); and, the Personal Communications Industry Association (PCIA) (urging the Commission to allow progress payments). Reply comments were filed by Nextel and AMTA.

<sup>5</sup> *Id.* at 17558 (paragraph 1).

<sup>6</sup> AMTA Petition at 1. *See Public Notice*, Petitions for Reconsideration of Action in Rulemaking Proceeding, Report No. 2395 (rel. March 16, 2000), 65 FR 15907 (Mar. 24, 2000).

<sup>7</sup> AMTA Petition at 3, note 4 (citing AMTA's October 20, 1997 Reply to Opposition to Petitions for Reconsideration of the 800 MHz Second Report and Order).

<sup>8</sup> AMTA Petition at 3-4 (paragraphs 6-7).

<sup>9</sup> AMTA Petition at 4 (paragraph 7) (referring to the costs set forth in 47 CFR 90.699(f)(4)(i)).

<sup>10</sup> AMTA Petition at 4-5 (paragraph 8), 6-7 (paragraphs 11-13).

<sup>11</sup> The cited discussion in the *800 MHz Second Report and Order* concerns cost-sharing among EA licensees, not the payments EA licensees must make to involuntarily relocated incumbents. *See 800 MHz Second Report and Order*, 12 FCC Rcd. at 19123 (paragraph 124).

<sup>12</sup> 47 CFR 90.699(c), (d).

<sup>13</sup> 47 CFR 90.699(c)(1).

<sup>14</sup> 47 CFR 90.699(c)(2).

<sup>15</sup> 47 CFR 90.699(c)(3).

<sup>16</sup> 47 CFR 90.699(d).

<sup>17</sup> *MO&O on Reconsideration*, 14 FCC Rcd. at 17584-5 (paragraph 57-8).

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

the payment of relocation costs as they see fit, and we continue to do so.

5. AMTA does not present any new arguments to support its current request that the Commission require EA licensees to make progress payments to incumbent 800 MHz licensees during their involuntary relocation. Moreover, there is nothing currently before us in the record that would prompt us to change our decision. In its opposition, Nextel, the predominant winner of EA licenses in the upper 200 channel auction, states that it has initiated relocation discussions with over ninety percent of the nation's upper 200 channel incumbents and has already reached voluntary agreements to acquire or relocate over fifty percent of the total number of incumbent channels that it, as an EA licensee, will be allowed to relocate.<sup>19</sup> Nextel recommends that the timing of payments for relocation expenses should continue to be left to the negotiation process and the common sense of the parties "to select the payment schedule and other terms that meet the unique requirements of the individual transaction."<sup>20</sup> Nextel also points out that neither AMTA nor PCIA has cited any instance in which an EA licensee did not agree to some form of progress payments or an incumbent has been harmed by the current rule structure.<sup>21</sup> We also note that the Commission did not adopt a progress payments method when it established policies relocating 2 GHz microwave licensees by PCS MTA and BTA licensees.<sup>22</sup> For these reasons, we deny AMTA's petition.

6. We also disagree with AMTA's contention that incumbent licensees will be especially vulnerable after the involuntary relocation period begins because they will not be in a position to negotiate with the EA licensee.<sup>23</sup> As our discussion above demonstrates, an EA licensee that seeks to involuntarily relocate an incumbent licensee assumes

<sup>19</sup> Opposition of Nextel Communications, Inc., to Petition for Reconsideration of the American Mobile Telecommunications Association, Inc., filed on April 10, 2000, at 2 (Nextel Opposition).

<sup>20</sup> Nextel Opposition at 5.

<sup>21</sup> *Id.* AMTA and PCIA agree that the relocation process has proceeded successfully. AMTA Petition at 2; PCIA Comments at 3.

<sup>22</sup> Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, *First Report and Order and Further Notice of Proposed Rule Making*, 11 FCC Rcd. 8825, 8838 (paragraph 23) 61 FR 29679 (June 12, 1996) (incumbent must be made "whole," which includes being provided with "comparable facilities"). Section 101.75 requires the payment of relocation costs to the incumbent but envisages that this will occur after the relocation process is completed, not according to a progress payments system. See 47 CFR 101.75.

<sup>23</sup> AMTA Petition at 4-5 (paragraph 8), 6-7 (paragraphs 11-13).

a broad range of obligations to the incumbent that must be met before the incumbent can be required to relocate. Because the burden of providing comparable facilities and paying relocation costs rests on the EA licensee, we do not believe that an incumbent will be prejudiced by the process.

#### B. Petrocom Petition

7. In its petition,<sup>24</sup> Petrocom, which holds site-specific SMR licenses as well as one of the cellular licenses for the Gulf of Mexico, requested that the Commission include the Gulf of Mexico as an additional Economic Area (EA) in the then-upcoming 800 MHz auctions for the 150 General Category channels (Auction 34) and the Lower 80 channels (Auction 36). Petrocom acknowledged that it had not previously raised this issue in the 800 MHz proceeding.<sup>25</sup> Since Petrocom filed its petition, both Auction 34 and Auction 36 have concluded.<sup>26</sup> Although neither of these auctions provided for EA licensing in the Gulf, we note that Petrocom has filed a similar petition for rulemaking in the *Gulf Cellular* proceeding,<sup>27</sup> and that we have sought comment in that proceeding as to whether we should establish a Gulf EA in the 800 and 900 MHz SMR services for possible future licensing. Because this issue is before us in the *Gulf Cellular* proceeding, and because Petrocom has not raised it previously in this proceeding, we decline to address it here. Therefore, we dismiss Petrocom's petition.

#### III. Procedural Matters

##### A. Regulatory Flexibility Act

8. No Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) has been prepared for this item because this *Third Order on Reconsideration* does not promulgate or revise any rules, and our previous RFA analyses in this proceeding remain unchanged. Furthermore, no Regulatory Flexibility comments were received regarding the *Memorandum Opinion and Order on Reconsideration*.

<sup>24</sup> Petrocom Petition at 1.

<sup>25</sup> *Id.*

<sup>26</sup> Auction 34 concluded on September 1, 2000, and Auction 36 concluded on December 5, 2000.

<sup>27</sup> *See In re Cellular Service and Other Commercial Mobile Radio Services in the Gulf of Mexico, WT Docket No. 97-112, Second Further Notice of Proposed Rule Making*, 12 FCC Rcd. 4578, 4600 (paragraph 62) (1997), 65 FR 24168 (Apr. 25, 2000) (*Gulf Cellular Second Further Notice*). The Commission took notice in the *Gulf Cellular Second Further Notice* of Petrocom's petition for rulemaking. *Id.* at 4600-1 (paragraph 62) (citing Letter from Kenneth W. Burnley, Myers Keller Communications Law Group, to David Furth, FCC, dated February 21, 1997).

#### B. Paperwork Reduction Act of 1995 Analysis

9. This Third Report and Order on Reconsideration does not contain a new or modified information collection.

#### IV. Ordering Clauses

10. Pursuant to sections 4(i) and 405 of the Communications Act as 1934, as amended, 47 U.S.C. 154(i), 405, the petition for reconsideration filed by the American Mobile Telecommunications Association is denied.

11. Further, pursuant to sections 4(i) and 405 of the Communications Act as 1934, as amended, 47 U.S.C. 154(i), 405, the petition for reconsideration filed by the Petroleum Communications, Inc., is dismissed.

Federal Communications Commission.

**William F. Caton,**

*Deputy, Secretary.*

[FR Doc. 01-5041 Filed 3-1-01; 8:45 am]

**BILLING CODE 6712-01-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 001127331-1044-02; I.D. 102600B]

**RIN 0648-AN69**

### Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; 2001 Specifications and Foreign Fishing Restrictions

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; specifications for 2001.

**SUMMARY:** NMFS issues final specifications for the 2001 fishing year for Atlantic mackerel, squid, and butterfish (MSB). This action also allocates the domestic annual harvest for *Loligo* squid into quarterly periods. The intent of this final rule is to conserve and manage the MSB resource in compliance with the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP); the regulations; and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Effective March 2, 2001, except that the quotas for *Loligo* and *Illex* squid, Atlantic mackerel, and butterfish