found not to be deregulated. The one-year limitation on refund liability will not be applicable during that period to ensure that the filing of an invalid small operator certification does not reduce any refund liability that the operator would otherwise incur.

(3) Within 30 days of being served with a local franchising authority's notice that the local franchising authority intends to file a cable programming services tier rate complaint, an operator may certify to the local franchising authority that it meets the criteria for qualification as a small cable operator. This certification shall be filed in accordance with the cable programming services rate complaint procedure set forth in § 76.1402. Absent a cable programming services rate complaint, the operator need not file for small cable operator certification in order to treat its cable programming services tier as deregulated.

(4) If a pending CPST rate complaint was filed with the Commission before April 30, 1996 the operator should file its certification of small cable operator status directly with the Commission within 15 days of that date.

§ 76.1404 Use of cable facilities by local exchange carriers.

For purposes of § 76.505(d)(2), the Commission will determine whether use of a cable operator's facilities by a local exchange carrier is reasonably limited in scope and duration according to the following procedures:

(a) Within 10 days of final execution of a contract permitting a local exchange carrier to use that part of the transmission facilities of a cable system extending from the last multi-user terminal to the premises of the end use, the parties shall submit a copy of such contract, along with an explanation of how such contract is reasonably limited in scope and duration, to the Commission for review. The parties shall serve a copy of this submission on the local franchising authority, along with a notice of the local franchising authority's right to file comments with the Commission consistent with § 76.7.

(b) Based on the record before it, the Commission shall determine whether the local exchange carrier's use of that part of the transmission facilities of a cable system extending from the last multi-use terminal to the premises of the end user is reasonably limited in scope and duration. In making this determination, the Commission will evaluate whether the proposed joint use of cable facilities promotes competition in both services and facilities, and encourages long-term investment in telecommunications infrastructure.

[FR Doc. 96–10173 Filed 4–26–96; 8:45 am]
BILLING CODE 6712–01–P

47 CFR Part 90

[PR Docket No. 93–61, FCC 96–115]

Automatic Vehicle Monitoring

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order on Reconsideration resolves issues raised by petitions for reconsideration of the Commission's Report and Order in PR Docket No. 93–61, which established rules governing the licensing of the Location and Monitoring Service (LMS) in the 902–928 MHz band. Specifically, the Order on Reconsideration resolves issues regarding existing LMS licensees that are being afforded grandfathered status. These issues involve interference testing, accommodation of secondary uses in the 902–928 MHz band, emission masks, frequency tolerance, type acceptance and site relocation, as well as extension of the construction deadline for grandfathered licensees to September 1, 1996. The actions taken in the Order on Reconsideration are needed to provide such grandfathered licensees with certainty as they construct their systems.

EFFECTIVE DATES: This final rule is effective May 30, 1996, except that §§ 90.203(b)(7) and 90.363(d) became effective March 18, 1996.

FOR FURTHER INFORMATION CONTACT: Jane Hinckley Halprin, Wireless Telecommunications Bureau, Commercial Wireless Division, (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order on Reconsideration in PR Docket No. 93–61, adopted March 18, 1996, and released March 21, 1996. The complete text of this Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, ITS, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C., (202) 857–3800.

Synopsis of Order on Reconsideration

I. Introduction and Background

1. LMS encompasses both the Automatic Vehicle Monitoring (AVM) service established in 1974 and future advanced transportation-related services. Existing AVM systems were authorized in the 903–912 and 918–927 MHz bands, as well as in several bands below 512 MHz. Existing LMS systems in these bands generally fall into one of two broad technological categories: multilateration systems and non-multilateration systems. Multilateration systems use spread-spectrum technology to locate vehicles (and other moving objects) with great accuracy throughout a wide geographic area. Non-multilateration systems typically use narrowband technology to transmit data to and from vehicles passing through a particular location.

2. LMS systems, both multilateration and non-multilateration, and Part 15 devices will play an important role in providing many valuable services to the public in the future. In Report and Order, PR Docket No. 93–61, 10 FCC Rcd 4695 (1995), 60 FR 15248 (March 23, 1995) (LMS Report and Order), the Commission developed a spectrum plan that is designed to accommodate these service providers' requirements to the extent possible. Aspects of the spectrum plan include: (1) continuing to permit secondary operations by unlicensed Part 15 devices across the entire band; (2) providing a ''safe harbor'' in which Part 15 devices may operate, along with a testing requirement to determine questions of interference from multilateration systems; (3) authorizing additional spectrum in the 902–928 MHz band in order to enable non-multilateration LMS systems to operate on spectrum separate from multilateration systems; and (4) permitting only one new multilateration provider in each sub-band of spectrum allocated for multilateration operations.

3. In the LMS Report and Order, the Commission decided to stop accepting applications for the operation of multilateration LMS systems in the 904–912 and 918–926 MHz bands under our current rules as of February 3, 1995. In addition, the Commission adopted certain grandfathering provisions that allowed existing, operating multilateration LMS systems until April 1, 1998, to complete the transition to the rules adopted in the LMS Report and Order. These grandfathering provisions were adopted to prevent any undue hardship on existing, operating multilateration LMS systems. The Commission also conferred grandfathered status on multilateration LMS licensees who had not constructed their systems so that such licensees may construct and operate their licensed stations under the rules adopted in the LMS Report and Order. The Commission concluded, however, that such systems must be constructed and

operational by April 1, 1996, and must comply with the rules adopted in the LMS Report and Order by that date. The LMS Report and Order directed existing licensees to file applications to modify their licenses to reflect operations consistent with the new band plan for multilateration systems.

4. In addition to adopting a new spectrum plan and grandfathering provisions, the Commission resolved other technical issues in the LMS Report and Order. The Commission established conditions under which Part 15 operations would not be considered to cause interference to multilateration licensees. It allowed multilateration licensees to commence operations only after demonstrating efforts to minimize interference with Part 15 operations.

5. In the Order on Reconsideration, the Commission clarifies its decision in the LMS Report and Order regarding the treatment of grandfathered LMS systems with respect to Part 15 interference testing. In addition, it clarifies that the rule regarding non-interference by Part 15 devices set out in § 90.361 applies to grandfathered LMS licensees that did not construct as of February 3, 1995, as well as future LMS licensees. It also considers modification of various technical rules, including emission mask specification, frequency tolerance, and site relocation, and we clarify our rules regarding type acceptance of LMS equipment. Any remaining issues raised in the petitions for reconsideration will be addressed in a later Memorandum Opinion and Order.

6. The Order on Reconsideration also extends the build-out deadline for grandfathered LMS licensees by five months, to September 1, 1996. It also notes that because the 902–928 MHz frequency band is shared with federal government users, LMS operators are required to coordinate with the Interdepartmental Radio Advisory Committee (IRAC) concerning any proposed modifications to their systems. The Commission expresses concern that if existing licensees must await the completion of such frequency coordination process before commencing modifications to their systems, licensees may not have sufficient time to complete their system modifications by the build-out deadline. As a result, the Commission concludes that these licensees should be permitted to begin modifications to their systems provided they have initiated the frequency coordination process with IRAC and on the condition that the Commission's final approval of such modifications will be contingent upon the successful completion of such frequency coordination.

7. In addition, On May 22, 1995, Southwestern Bell Mobile Systems (SBMS) filed a request for waiver of Section 90.363 of the Commission's Rules to grandfather SBMS applications that were pending as of the date the LMS Report and Order was adopted. The Commission concludes that pending LMS applications should not be eligible for grandfathering. The Commission notes that its stated purpose in adopting grandfathering provisions was ''[t]o ensure that our new licensing scheme does not impose undue hardship on existing, operating multilateration [LMS] systems,'' and to allow already-licensed systems the opportunity to construct and operate pursuant to the LMS rules adopted in the LMS Report and Order. LMS Report and Order, 10 FCC Rcd at 4728. The Commission concludes that if some licensees are warehousing spectrum, as alleged by SBMS, then they will likely not construct in the time allotted so as to attain grandfathered status. That spectrum will then be available for competitive bidding by all prospective licensees, including SBMS if they so choose.

8. Further, the Commission notes the argument of SBMS that in the SMR context, the Commission adopted a grandfathering provision awarding certain secondary sites in the 900 MHz SMR service primary status so as to entitle them to full interference protection and decided to grandfather pending applications for these secondary sites, concluding that this would promote service to the public, that the additional amount of protected spectrum would be *de minimis* and that such action would be equitable in light of processing delays. The Commission distinguishes the SMR situation from the case of pending LMS applications in that the 900 MHz SMR secondary sites were extensions of primary sites that were already licensed and constructed, while the LMS facilities at issue are unbuilt. Thus, it is questionable how service to the public would be facilitated by extending grandfathered status to sites that have not even been licensed, much less constructed. Moreover, grant of the pending applications could materially alter the LMS landscape by adding a number of additional sites and would thus not be a *de minimis* change. Accordingly, the Commission declines SBMS's request and clarifies that LMS applications filed prior to February 3, 1995, will not be eligible for grandfathering. SBMS also asks for an extension of the construction deadline for its pending applications. Because the Commission is not affording SBMS grandfathered status with respect to these applications, this issue is moot. In addition, SBMS seeks a waiver to permit relocation of grandfathered sites by more than two kilometers and to add sites within a 75-mile radius. This same suggestion was made by petitioners for reconsideration and, for the reasons discussed *infra*, the Commission denies SBMS's request.

II. Discussion

A. Multilateration System Operations (Part 15 Testing)

9. In the LMS Report and Order, the Commission adopted a spectrum band plan and established technical criteria for the operators of the various systems designed to minimize the potential for interference and provide a more conducive environment for sharing of the band by disparate services. In an effort to ensure that the coexistence of the various services in the band would be as successful as possible, the Commission decided to condition the grant of each MTA multilateration license on the licensee's ability to demonstrate through actual field tests that their systems do not cause unacceptable levels of interference to Part 15 devices.

10. On reconsideration, Part 15 users requested that grandfathered multilateration LMS systems be required to demonstrate through testing that their systems will not cause unacceptable interference to Part 15 devices. Further, some Part 15 petitioners suggested that the Commission establish uniform guidelines for the testing of LMS systems and the demonstration of non-interference to Part 15 devices. Some LMS providers, on the other hand, argues that testing of LMS systems is not necessary. Further, some parties contended that the testing requirement violated the Administrative Procedure Act (APA) because testing procedures were not contemplated in the Notice of Proposed Rule Making in this proceeding, Notice of Proposed Rule Making, PR Docket No. 93–61, 8 FCC Rcd 2502 (1993), 58 FR 21276 (April 20, 1993), and/or because testing requirements materially alter the Part 15 rules, which was not previously proposed.

11. In the Order on Reconsideration, the Commission clarifies that as a condition of grandfathering, it will require all multilateration LMS operators who did not construct stations prior to February 3, 1995, to demonstrate through testing that their LMS systems will not cause unacceptable interference to Part 15

devices. The Commission reiterates that multilateration licensees may employ any one of a number of technical refinements, i.e., limiting duty cycle, pulse duration power, etc., to facilitate band sharing and minimize interference to Part 15 operations. Further, the Commission seeks to ensure not only that Part 15 operators refrain from causing harmful interference to LMS systems, but also that LMS systems are not operated in such a manner as to degrade, obstruct or interrupt Part 15 devices to such an extent that Part 15 operations will be negatively affected.

12. The Order on Reconsideration declines to establish specific guidelines for Part 15 testing at this time. The Commission states that it recognizes that LMS systems employ different methods to provide location and monitoring that are constantly changing to keep up with consumer demand. Moreover, the Part 15 industry has an even greater array of technologies that fluctuate in response to the needs of the public. It thus concludes that it would be inappropriate to apply uniform testing parameters to those varied technologies, as no one testing method would adequately address the needs of either LMS or Part 15 operations. Instead, the Commission believes that the more prudent course of action would be for LMS and Part 15 operators to work closely together to reach consensus on testing guidelines that satisfy their respective requirements.

13. Further, the Commission does not agree that its adoption of the testing requirement violated the APA. The Commission believes that the testing requirement was a logical outgrowth of the Notice of Proposed Rule Making in this proceeding, which sought comment on ways to accommodate the various users of the 902–928 MHz band. Moreover, it concludes that the rules adopted in the LMS Report and Order do not modify our Part 15 rules by elevating the status of Part 15 providers, as alleged by some petitioners. Part 15 operation remain secondary; the testing requirement is merely an attempt to achieve the most efficient coexistence possible among the various users of the band.

B. Accommodation of Secondary Users in the 902–928 MHz Band

14. The LMS Report and Order affirmed that unlicensed Part 15 devices in the 902–928 MHz band are secondary and, as in other bands, may not cause harmful interference to and must accept interference from all other operations in the band. To accommodate the concerns of Part 15 users about their secondary status in light of multilateration LMS and our authorizing LMS to use the additional 8 MHz of the band (902–903, 912–918 and 927–928 MHz), however, the Commission in the LMS Report and Order adopted rules that describe a ''safe harbor'' within which a Part 15 operation would be deemed not to cause interference to a multilateration LMS system.

15. On reconsideration, many petitioners agreed that a safe harbor provision is necessary to provide Part 15 technologies protection against claims of interference from existing LMS licensees. On the other hand, most LMS petitioners argued that they should be able to rebut any presumption of non-interference by Part 15 operators. If not, they argued, a large class of Part 15 devices will be immune from complaints of interference to multilateration licensees. They also contended that such a result would be contrary to the secondary status of Part 15 devices.

16. In the Order on Reconsideration, the Commission clarifies that if Part 15 devices operate within the ''safe harbor'' provision they will be deemed not to cause harmful interference to LMS operators. In addition, this provision applies to all LMS licensees, including existing and grandfathered licensees. The Commission notes that in the LMS Report and Order, it stated that a definition of what shall constitute harmful interference from amateur operations or unlicensed Part 15 devices to multilateration LMS systems would promote the cooperative use of the 902–928 MHz band. It also noted that this ''safe harbor'' approach would promote effective use of the 902–928 MHz band by the various services through establishing the parameters under which such devices may operate without risk of receiving complaints of interference from service providers with a higher allocation status. Based on the technical diversity of the numerous existing LMS systems and the multiplicity of Part 15 devices that eventually will be placed in operation, the Commission concluded in the LMS Report and Order that some interference problems would remain unresolved. As a result, the Commission determined that by providing multilateration LMS system operators a means of recourse by way of complaint to the Commission only when a Part 15 device is not operating in the ''safe harbor,'' the vast majority of equipment and services would be able to operate successfully in this band. The Commission concludes in the Order on Reconsideration that although the multilateration LMS system operators will not be able to file a complaint with the Commission where the Part 15 user has satisfied the ''safe harbor'' provisions, the Commission encourages LMS operators to resolve the interference by modifying their systems or by obtaining the voluntary cooperation of the Part 15 user. The Commission disagrees that such a result is inconsistent with the secondary status of Part 15 devices under our Rules and believes that its approach will assure the efficient and equitable use of the 902–928 MHz band.

C. Technical Issues

1. Emission Mask Specification

In the LMS Report and Order, the Commission required that licensees' emissions be attenuated by at least 55 + 10 log(P) dB at the edges of the specified LMS subbands. The band edges for multilateration systems where emissions must be attenuated are 904, 909.75, 919.75, 921.75, 927.50, 927.75 and 928 MHz. If the 919.75–921.75 and 921.75–927.25 MHz subbands were aggregated by a single licensee, the emission mask limitations at the band edges at 921.75 and 927.50 MHz may be ignored. The band edges for non-multilateration systems where emissions must be attenuated are 902, 904, 909.75 and 921.75 MHz.

18. On reconsideration, a group of LMS providers contended that the emission mask adopted in the LMS Report and Order is flawed. They propose a modification of the emission mask specification that they believe should not inhibit the operation of non-multilateration systems, and the emission levels outside of the multilateration LMS sub-bands would be below the field strength levels permitted under Part 15 of the Commission's Rules for operation within the 902–928 MHz band. The proposed emission mask specification is as follows:

> For LMS wideband emissions, operating in the 902–928 MHz band, in any 100 kHz band, the center frequency of which is removed from the center of authorized sub-band(s) by more than 50 percent up to and including 250 percent of the authorized bandwidth: The mean power of emissions shall be attenuated below the maximum permitted output power, as specified by the following equation but in no case less than 31dB:
>
> A=16+0.4 (P–50)+10logB (attenuation greater than 66dB is not required)
>
> Where:
>
> A=attenuation (in decibels) below the maximum permitted output power level
>
> P=percent removed from the center of the authorized sub-band(s)
>
> B=authorized bandwidth in megahertz

19. On the other hand, CellNet, a Part 15 operator, objected to the relaxation of the emission mask specification,

contending that the potential for interference to Part 15 devices will be increased if the emission mask requirements are relaxed. Hughes contended that the attenuation used in the formula proposed by the LMS Providers would be insufficient to protect adequately against interference in the portion of the spectrum band set aside for non-multilateration systems. Thus, Hughes proposed a variation of the LMS multilateration parties' formula that requires greater attenuation. The Part 15 Coalition contended that there is no justification for relaxing the emission mask standard. TIA opposed the justification used by the LMS Providers to modify the emission mask specification. TIA pointed out that the LMS Providers' proposal is very similar to Sections 21.106(a)(2) and 94.71(c)(2) of our rules, which specify emission limits for the Domestic Public Fixed Radio Services and Private Operational Fixed Microwave Service, respectively. Further, TIA contended that in fixed services, the emission is but one of several ways to prevent interference, while in mobile services emission masks and power limits are the primary forms of interference control. It contended that while it may be appropriate to base the limits of LMS wideband emissions on the limits that apply to high-speed digital microwave transmissions, it is not reasonable that the LMS specification should be less strict than the fixed microwave specification.

20. In the Order on Reconsideration, the Commission finds that the LMS providers have shown that the single emission mask adopted in the LMS Report and Order to cover all LMS operations in the 902–928 MHz band is not appropriate for multilateration LMS systems. It notes that the LMS providers stated that none of their various multilateration systems, either existing or proposed, can comply with the existing mask and still achieve a commercially marketable level of locating accuracy. Additionally, the Commission states that it is persuaded by the LMS providers that an emission mask similar to the one applicable to narrowband PCS channels is more appropriate for narrowband forward link equipment operating in the spectrum between 927.250 MHz and 928 MHz.

21. Therefore, the Commission states that it will not apply the existing mask to equipment used for wideband multilateration links, either forward or reverse, in the three subbands 904–909.75 MHz, 921.75–927.25 MHz and 919.75–921.75 MHz, or to equipment used for narrowband forward links in the spectrum between 927.25 and 928 MHz. Instead, it will adopt two additional emission masks, both essentially the same as proposed by the LMS providers, that will apply to this equipment. All other equipment to operate in the LMS will remain subject to the emission mask adopted in the Report and Order.

22. Although these new emission masks are less stringent than the one adopted in the Report and Order, they do require a greater attenuation of out-of-band emissions than was considered to be required for multilateration systems operating under the interim rules. The Commission states its belief that these masks are adequate to prevent interference to non-multilateration systems. The Commission indicates that while TIA is correct that these new masks are less stringent than those for fixed microwave links, it does not agree with TIA that the masks for LMS multilateration systems must necessarily be more strict than for fixed microwave links. These two services are very different and the expectations of potential interference must also be considerably different—one is a highly coordinated fixed microwave service in exclusively allocated spectrum and the other is a mobile multilateration system operating in spectrum shared with a multitude of other users. Also, the Commission states that it is not persuaded that the refinement suggested by Hughes (increasing the slope of the wideband mask) is necessary to prevent interference, and that adopting it might unnecessarily preclude the use of some technologies or favor one type of system over another.

2. Frequency Tolerance

23. In the LMS Report and Order, the Commission adopted a frequency tolerance of 0.00025 percent (2.5 parts per million (ppm)) for both multilateration and non-multilateration systems. It noted that tighter frequency tolerances were justified to help reduce the potential for interference to systems operating on adjacent frequencies.

24. On reconsideration, Hughes, TI/MFS, and AMTECH requested that the Commission relax the frequency tolerance. Hughes argued that the 0.00025 percent frequency tolerance is overly restrictive for non-multilateration systems. It contended that a frequency tolerance of 2.5 ppm does not add significantly to existing means of avoiding interference between non-multilateration systems within designated subbands. Hughes submitted that since non-multilateration systems operate over relatively short ranges, the instances of coverage overlap between facilities on adjacent channels will be rare.

25. Hughes further alleged that the present frequency tolerance level would necessitate a significant and expensive design modification for their Vehicle to Roadside Communications (VRC) system readers. In addition, they contended that equipment changes required to conform their VRC mobile transponders to the present frequency tolerance level would be economically prohibitive. If the Commission decides to maintain the present frequency tolerance level for non-multilateration systems, Hughes requested that the Commission apply the frequency tolerance level only to the reader transmitters and not to the mobile transponders, which are designed to transmit with extremely low power and only while passing in close proximity to a reader.

26. According to TI/MFS there are no current LMS non-multilateration systems in operation that conform to the 2.5 ppm frequency tolerance. They noted that most of the non-multilateration technology operates at frequency tolerance levels no greater than 50 ppm. TI/MFS stated its belief that the imposition of the present frequency tolerance level will have the negative effect of decreasing both available technology and potential players in the market.

27. In response to the concerns raised by the non-multilateration system operators, the Commission in the Order on Reconsideration imposes the present frequency tolerance level of 2.5 ppm on high power fixed reader transmitters operating near the band edges, but not on mobile transponders or hand-held portable readers. The Commission is persuaded that the significant cost of tightening the frequency tolerance for mobile transponders and hand-held readers could severely raise the cost of the devices beyond the realm of economic feasibility. The Commission is not changing the tolerance requirement for other non-multilateration LMS systems or for multilateration LMS systems.

3. Type Acceptance

28. In the LMS Report and Order, the Commission determined that the mobile nature of most LMS transmitters and the new advanced technology that will be employed by this equipment justified strict regulatory oversight of having equipment type accepted rather than continuing to use the notification procedure. Therefore, it decided that all LMS equipment imported or marketed after April 1, 1996, including the ''transmitting tags'' used in certain non-

multilateration systems, must be type accepted for use under Part 90. If, however, these units met the requirements under Part 15, they may have been authorized under that part and do not need to be type accepted.

29. On reconsideration, the LMS providers requested that for systems constructed after February 3, 1995, that the type acceptance requirement for multilateration LMS be extended from the current date of April 1, 1996, until 12 months after any rule on reconsideration concerning the emission mask (the ''1996 Effective Date''). They also requested that all LMS transmitters imported or manufactured domestically prior to the 1996 Effective Date be exempt from type acceptance regardless of whether they are used before or after the 1996 Effective Date. In addition, they asked the Commission to clarify that LMS providers may indefinitely continue to use equipment deployed prior to the 1996 Effective Date provided that it is not marketed after that date (whether the deadline is April 1, 1996 or a later date), unless the equipment is first type accepted.

30. The LMS providers further requested that for systems constructed before February 3, 1995, the installation of non-type accepted multilateration LMS transmitters imported or manufactured domestically on or before the 1996 Effective Date should be permitted through April 1, 1998. They urged that such equipment need not be type-accepted at any time unless such a step is necessary in order to resolve interference problems that cannot otherwise be accommodated, but that such equipment must comply with the emission mask requirements by April 1, 1998. In addition, for systems constructed and placed into operation before February 3, 1995, the LMS providers would mandate that transmitters imported or manufactured after the 1996 Effective Date must be type accepted. Similarly, AMTECH requests that the Commission delay the type-acceptance date at least until 12 months after final technical requirements have been adopted.

31. In the Order on Reconsideration, the Commission states its belief that the type acceptance requirements it adopted in the LMS Report and Order are necessary to ensure efficient deployment of LMS to the public without causing significant interference. The Commission provides that it recognizes the concern of multilateration LMS operators that they may experience difficulty in meeting the construction deadline if they must comply with type acceptance requirements. To alleviate this concern, the Commission's Office of Engineering and Technology has committed to process type acceptance applications within 40 days of receipt. Further, the Commission notes that it has extended the construction deadline. The Commission therefore concludes that compliance with these type acceptance requirements should not impede a licensee's efforts to meet the build-out deadline. It also notes that constructed multilateration LMS systems must also meet type acceptance requirements after September 1, 1996.

32. The Commission further notes that non-multilateration systems contain a substantial amount of embedded equipment with numerous users, particularly state and local governments. Thus, non-multilateration system operators will be able to continue operation of current equipment until replacement is needed. However, if non-multilateration system operators decide either to build new systems or replace existing equipment on or after September 1, 1996, the Commission states, the new equipment must comply with type acceptance by April 1, 1998.

4. Site Relocation

33. In the LMS Report and Order, the Commission allowed LMS licensees to modify their applications to comply with the new band plan, and stated that an alternate site must be within two kilometers (km) of the site specified in the original license. On reconsideration, the LMS providers contended that the two kilometer restriction is unworkable due to the upcoming April 1, 1996, deadline for preserving grandfathered status. They argued that competition for wireless facilities has caused many sites to become unavailable or unsuitable for LMS use. They also noted that site surveys and negotiations are time-consuming and in many cases replacements within the 2 km radius either do not exist or are unavailable. Thus, the LMS providers proposed that the Commission instead allow replacement sites within a ten-mile radius.

34. The Commission declines to modify the site relocation restriction in the Order on Reconsideration. It notes that the Third Report and Order in GN Docket No. 93–252 utilized two kilometers as the benchmark for determining whether an application for a site change of a CMRS facility is to be treated as a modification application or an ''initial'' application for the purpose of determining eligibility for competitive bidding procedures. Implementation of Sections 3(n) and 332 of the Communications Act—Regulatory Treatment of Mobile Services, Third Report and Order, GN Docket No. 93–252, 9 FCC Rcd 7988, 59 FR 59945 (Nov. 21, 1994) (CMRS Third Report and Order). The Commission concludes that the LMS providers have failed to demonstrate adequately that a different benchmark should apply in the LMS context and that it will continue to place a 2 km restriction on replacement sites for LMS systems.

III. Procedural Matters and Ordering Clauses

35. The Final Regulatory Flexibility Analysis, as required by Section 604 of the Regulatory Flexibility Act of 1980, 5 U.S.C. § 604 is as follows:

36. Need and Purpose of this Action: The rules adopted herein will enhance use of the 902–928 MHz band for location and monitoring systems. The new rules create a more stable environment for LMS system licensees and provides much needed flexibility for operators of such systems.

37. Issues Raised in Response to the Initial Regulatory Flexibility Analysis: There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

38. Significant Alternatives Considered and Rejected: All significant alternatives regarding grandfathering issues are discussed in this Order on Reconsideration. Other issues raised on reconsideration will be addressed in a forthcoming Memorandum Opinion and Order.

39. It is ordered that, pursuant to the authority of Sections 4(i), 302, 303(r), and 332(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 302, 303(r), and 332(a), the rule changes specified below are adopted.

40. It is further ordered that the rule changes set forth below will become effective May 30, 1996, except for §§ 90.203(b)(7) and 90.363(d). Sections 90.203(b)(7) and 90.363(d) were effective March 18, 1996.[1]

41. It is further ordered that the petitions for reconsideration filed by the parties listed in the attachment below are granted to the extent discussed herein, and denied to the extent discussed herein. Those issues not resolved by this Order on

[1] Sections 90.203(b)(7) and 90.363(d) extend the type acceptance and construction deadlines, respectively, from April 1, 1996, to September 1, 1996. As such, these rules relieve a restriction and are not subject to the 30 days' notice requirement of the Administrative Procedure Act (APA). *See* 5 U.S.C. 553(d)(1). Moreover, the Commission finds good cause to make these rules effective on less than 30 days' notice to prevent the former type acceptance and construction deadline of April 1, 1996, from taking effect. *See* 5 U.S.C. 553(d)(3).

Reconsideration will addressed in a future Memorandum Opinion and Order.

List of Subjects in 47 CFR Part 90

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

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 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 90.203 is amended by revising paragraph (b)(7) to read as follows:

§ 90.203 Type acceptance required.

* * * * *

(b) * * *

(7) Transmitters imported and marketed prior to September 1, 1996 for use by LMS systems.

* * * * *

3. Section 90.210 is amended by revising paragraph (k) to read as follows:

§ 90.210 Emission masks.

* * * * *

(k) *Emission Mask K.* (1) Wideband multilateration transmitters. For transmitters authorized under Subpart M to provide forward or reverse links in a multilateration system in the subbands 904–909.75 MHz, 921.75–927.25 MHz and 919.75–921.75 MHz, and which transmit an emission occupying more than 50 kHz bandwidth: in any 100 kHz band, the center frequency of which is removed from the center of authorized sub-band(s) by more than 50 percent of the authorized bandwidth, the power of emissions shall be attenuated below the transmitter output power, as specified by the following equation, but in no case less than 31 dB:

A=16+0.4 (D − 50)+10 log B (attenuation greater than 66 dB is not required)

Where:

A=attenuation (in decibels) below the maximum permitted output power level

D=displacement of the center frequency of the measurement bandwidth from the center frequency of the authorized sub-band, expressed as a percentage of the authorized bandwidth B

B=authorized bandwidth in megahertz.

(2) Narrowband forward link transmitters. For LMS multilateration narrowband forward link transmitters operating in the 927.25–928 MHz frequency band the power of any emission shall be attenuated below the transmitter output power (P) in accordance with following schedule:

On any frequency outside the authorized sub-band and removed from the edge of the authorized sub-band by a displacement frequency (f_d in kHz): at least 116 log ((f_d+10)/6.1) dB or 50 + 10 log (P) dB or 70 dB, whichever is the lesser attenuation.

(3) Other transmitters. For all other transmitters authorized under Subpart M, the peak power of any emission shall be attenuated below the power of the highest emission contained within the authorized channel bandwidth in accordance with the following schedule:

(i) On any frequency within the authorized bandwidth: Zero dB;

(ii) On any frequency outside of the authorized bandwidth: 55+10log(P) dB where (P) is the highest emission (watts) of the transmitter inside the authorized bandwidth.

(4) The resolution bandwidth of the instrumentation used to measure the emission power shall be 100 kHz, except that, in regard to paragraph (2) of this section, a minimum spectrum analyzer resolution bandwidth of 300 Hz shall be used for measurement center frequencies within 1 MHz of the edge of the authorized subband. If a video filter is used, its bandwidth shall not be less than the resolution bandwidth.

(5) Emission power shall be measured in peak values.

4. Section 90.213 is amended by revising the entry for the 902–928 MHz band and adding footnote 13 to the table in paragraph (a) to read as follows:

§ 90.213 Frequency stability.

(a) * * *

MINIMUM FREQUENCY STABILITY

[Parts per million (ppm)]

Frequency range (MHz)	Fixed and base stations	Mobile stations	
		Over 2W output power	2W or less output power
* * * * * * *			
902–928 [13]	2.5	2.5	2.5
* * * * * * *			

[13] Fixed non-multilateration transmitters operating within 40 kHz from the band edge, intermittently operated hand-held readers, and mobile transponders are not subject to frequency tolerance restrictions.

* * * * *

5. Section 90.363 is amended by revising paragraph (d) to read as follows:

§ 90.363 Grandfathering provisions for existing AVM Licensees.

* * * * *

(d) Multilateration AVM licensees for stations that *were not* constructed and placed in operation on or before February 3, 1995 must construct their LMS systems and place them in operation on the spectrum identified in their LMS system license on or before September 1, 1996, or their licenses will cancel automatically (see Section 90.155 (e)). Also, these licenses will cancel automatically on July 1, 1996 unless timely modification applications are filed on or before this date (see paragraph (a) of this section).

* * * * *

Attachment—Petitions for Reconsideration

Note: This attachment will not be published in the Code of Federal Regulations.

1. Ad Hoc Gas Distribution Utilities Coalition (Ad Hoc Gas)
2. AirTouch Teletrac (Teletrac)

3. The American Radio Relay League, Inc. (ARRL)
4. AMTECH Corporation (AMTECH)
5. CellNet Data Systems, Inc. (CellNet)
6. Connectivity for Learning Coalition
7. Hughes Transportation Management Systems (Hughes)
8. Intelligent Transportation Society of America (ITSA)
9. Metricom, Inc. and Southern California Edison Company (Metricom/SCE)
10. MobileVision, L.P. (MobileVision)
11. The New Jersey Highway Authority, the New Jersey Turnpike Authority, the New York State Thruway Authority, the Pennsylvania Turnpike Commission, the Metropolitan Transportation Authority Bridges and Tunnels, the Port Authority of New York and New Jersey, the South Jersey Transportation Authority and the Delaware River Port Authority (''the Interagency Group'').
12. The Part 15 Coalition (Part 15 Coalition)
13. Pinpoint Communications (Pinpoint)
14. Rand McNally & Company (Rand McNally)
15. Safetran Systems Corporation (Safetran)
16. Southwestern Bell Mobile Systems, Inc. (SBMS)
17. Texas Instruments, Inc. and MFS Network Technologies, Inc. (TI/MFS)
18. Uniplex Corporation (Uniplex)
19. UTC
20. Wireless Transactions Corporation (Wireless Transactions)

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DEPARTMENT OF DEFENSE

48 CFR Part 225

[DFARS Case 96–D309]

Defense Federal Acquisition Regulation Supplement; Pricing for Sales of Defense Articles

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comment.

SUMMARY: The Director of Defense Procurement is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement statutory provisions which require that foreign military sales wholly paid for from funds made available on a nonrepayable basis shall be priced on the same costing basis as is applicable to acquisitions of like items purchased by DoD for its own use.

DATES: *Effective date:* April 30, 1996.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before July 1, 1996, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350. Please cite DFARS Case 96–D309 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT:

Ms. Amy Williams, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS Subpart 225.73 to implement Section 531A of the Fiscal Year 1996 Foreign Operations, Export Financing, and Related Programs Appropriations Act (Pub. L. 104–107), which amends Section 22 of the Arms Export Control Act (22 U.S.C. 2762) to require that foreign military sales of defense articles and defense services wholly paid for from funds made available on a nonrepayable basis shall be priced on the same costing basis as is applicable to like items purchased by DoD for its own use.

B. Regulatory Flexibility Act

This rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because DFARS Subpart 225.73 already requires pricing of foreign military sales contracts using the same general principles as are used in pricing other defense contracts. The only significant change in this rule relates to the allowability of independent research and development and bid and proposal costs in accordance with the cost principle at FAR 31.205–18. This change is not expected to significantly impact small entities, as most contracts awarded to small entities are awarded on a competitive, fixed-price basis and do not require application of the FAR cost principles. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite DFARS Case 96–D309 in correspondence.

C. Paperwork Reduction Act

This rule does not impose any new information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement Section 531A of the Fiscal Year 1996 Foreign Operations, Export Financing, and Related Programs Appropriations Act (Pub. L. 104–107), which became effective on April 12, 1996. Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 225 is amended as follows:

PART 225—FOREIGN ACQUISITION

1. The authority citation for 48 CFR Part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Section 225.7303 is amended by revising the title to read as follows:

225.7303 Pricing acquisitions for foreign military sales (FMS).

3. Section 225.7303–2 is amended by revising the introductory text of paragraphs (a) and (c) to read as follows:

225.7303–2 Cost of doing business with a foreign government or an international organization.

(a) In pricing FMS contracts where non-U.S. Government prices as described in 225.7303–1 do not exist, except as provided in 225.7303–5, recognize the reasonable and allocable costs of doing business with a foreign government or international organization, even though such costs might not be recognized in the same amounts in pricing other defense contracts. Examples of such costs include, but are not limited to—

* * * * *

(c) The provisions of 10 U.S.C. 2372 do not apply to contracts for foreign military sales. Therefore, the cost limitations on independent research and development and bid and proposal (IR&D/B&P) costs in FAR 31.205–18 do not apply to such contracts, except as provided in 225.7303–5. The allowability of IR&D/B&P costs on contracts for foreign military sales not wholly paid for from funds made available on a nonrepayable basis shall