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

In the Matter of	)	File Nos.
	)	
MOBILCOM PITTSBURG, INC.	)	0000474637 (Ref. #1286736)
	)	0000474713 (Ref. #1286735)
ST. MARY'S COLGAN, MT. CARMEL	)	0000474744 (Ref. #1297079)
MEDICAL CENTER, MIKE SOUTHARD,	)	0000474946 (Ref. #1297081)
THE YARD CART, WHEELER &	)	0000474864 (Ref. #1297080)
MITCHELSON CHARTERED, BLUE	)	0000545797 (Ref. #1284028)
WATER POOLS, BRENT'S ELECTRIC,	)	0000696428 (Ref. #1286740)
DOC'S HEATING & AIR CONDITIONING,	)	0000696429 (Ref. #1286737)
B&L SHEETMETAL, DUMM FARMS, JCB	)	0000702092 (Ref. #1286739)
FARMS, INC., DAVID CLARK, RIPPEL'S	)	0000703864 (Ref. #1286741)
INC., LACY KENT, HEARTLAND RURAL	)	0000703869 (Ref. #1286743)
ELECTRIC COOPERATIVE INC., UNIFIED	)	0000702072 (Ref. #1297075)
SCHOOL DISTRICT 246, FIRST STATE	)	0000702078 (Ref. #1297076)
BANK OF ARMA, CRAWFORD CO.	)	0000702079 (Ref. #1297077)
AMBULANCE SERVICE, GERRY DENNET	)	0000703872 (Ref. #1286727)
HOMEBUILDING INC.	)	0000705853 (Ref. #1286730)
	)	0000702083 (Ref. #1297078)
Applications for Multiple Licensed Trunked	)	0000703884 (Ref. #1286728)
Radio Systems (YB/FB4) in the Private Land	)	0000703874 (Ref. #1286738)
Mobile Radio Services in Southeastern	)	0000703885 (Ref. #1286734)
Kansas	)	0000703867 (Ref. #1286733)
	)	0000703873 (Ref. #1286742)
	)	0000703882 (Ref. #1286731)
	)	0000705855 (Ref. #1286729)
	)	0000703865 (Ref. #1286732)

MEMORANDUM OPINION AND ORDER

Adopted: November 3, 2003 **Released: November 6, 2003**

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (*Order*), we consider a Consolidated Petition for Reconsideration filed on March 14, 2002, by Mobilcom Pittsburg, Inc. (Mobilcom).[1] Mobilcom requests reconsideration of the dismissals by the Licensing and Technical Analysis Branch (Branch), Public Safety and Private Wireless Division, of each of the captioned applications for trunked private land mobile radio (PLMR) "community repeaters."[2] For the reasons discussed below, we deny Mobilcom's Petition.

II. BACKGROUND

2. *Multiple Licensing under Section 90.185*. Under the Commission's multiple licensing rule, two or more entities may be licensed for the same land station, provided that each licensee complies with the Commission's Rules regarding permissible communications and each licensee is eligible for the frequency or frequencies on which the proposed land station would operate.[3] A "multiple-licensed" system, also known as a "community repeater," is a base station in the Part 90 PLMR services which functions as a mobile relay, enabling low power mobile units to communicate with one another over a wide area by picking up a signal from one unit and repeating it to another.[4] Generally, the licensees who share a multiple-licensed facility have been brought together by a third party, often the manufacturer of the land mobile radio equipment or a retailer who operates the station on a profit-making basis.[5] The Commission does not usually regulate this third party's activity and the third party is not licensed by the Commission.[6]

3. In 2000, the Commission re-examined the multiple licensing of facilities in the PLMR services and found such practices to be permissible as a matter of law and desirable as a matter of public policy.[7] The Commission agreed with a commenter that the "practical realities"

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[1] Consolidated Petition for Reconsideration filed by Mobilcom, Inc., *et al*., on March 14, 2002 (Petition). Mobilcom states that it filed the Petition on behalf of all of the applicants listed in the caption. We will refer to the all of the applicants collectively as the "Petitioners," and to the non-Mobilcom applicants collectively as the "Applicants," in which case we will separately refer to Mobilcom, as appropriate.

[2] *Id.* at 2.

[3] *See* 47 C.F.R. § 90.185.

[4] In the Matter of an Inquiry Concerning the Multiple Licensing of Land Mobile Radio Systems ('Community Repeaters') in the Bands 806-812 and 851-866 MHz, PR Docket No. 79-107, *Notice of Inquiry*, 71 FCC 2d 1391, 1392 ¶ 4 (1979) (*MLS Notice of Inquiry*). Multiple licensing has been a widespread practice in the land mobile radio services since the 1960s. *Id.* at 1392 ¶ 6.

[5] *Id*. at 1392 ¶ 5.

[6] *Id*. The third-party equipment provider is also sometimes one of the multiple licensees in order to serve its own internal communications need, but this tends to be an infrequent scenario. Relative to this scenario, the Commission has made clear that "frequencies above 800 MHz are available to entrepreneurial licensees only in the SMR pool. Frequencies in the other pools above 800 MHz, therefore, remain available to eligible individual licensees and non-profit communications cooperatives." Amendment of Part 90, Subparts M and S of the Commission's Rules, *Memorandum Opinion and Order*, 4 FCC Rcd 356, 359 ¶ 31 (1989).

[7] In the Matter of Implementation of Sections 309(j) and 337 of the Communications Act of 1934, as amended, WT Docket No. 99-87, *Report and Order and Further Notice of Proposed Rule Making*, 15 FCC Rcd 22709, 22765-68 ¶¶ 120-125 (2000) (*1997 Budget Act Report and Order*).

that led to the development of community repeaters continue to prevail, *i.e.,* most Part 90 licensees cannot independently afford the monthly site rent for a tower or rooftop which could provide the necessary coverage, and that if each entity had to construct a separate system, it would be difficult to coordinate.[8] However, the Commission also acknowledged comments stating that the relevant rules for multiple licensing are widely ignored, little enforced, and an invitation to abuse, as well as decisions that support the view that not every multiple licensing application represents a legitimate private radio cost-sharing proposal.[9] The Commission noted, for example, that in *East River Electric Power Cooperative*,[10] East River, which previously had applied unsuccessfully for Specialized Mobile Radio (SMR)[11] frequencies, sought a waiver of the multiple licensing rules to permit use of its excess capacity by entities not otherwise eligible to use those frequencies.[12] Opponents of the proposal argued that East River simply intended to provide a for-profit commercial communications service to other parties[13] and the Wireless Telecommunicatins Bureau agreed, finding that East River's proposal was not a legitimate multiple licensing arrangement under Section 90.185 of the Commission's Rules.[14] In this connection, the Commission noted that while East River's use of its system for internal communications remained private mobile radio service (PMRS), the proposed sale of excess capacity to third parties did not.[15] Moreover, in *Viking Dispatch Services, Inc.*, the Commission rejected a purported sharing proposal on the grounds that it really was a for-profit commercial mobile radio service (CMRS).[16] Viking filed applications to be licensed to operate forty-two sites for PMRS two-way mobile dispatch systems as a third-party provider on a not-for-profit, cost-shared basis.[17] The Commission concluded that Viking's proposal was not PMRS because

[8] *Id.*

[9] *Id.* (noting that when the Commission implemented the 1993 Budget Act, it concluded that Congress recognized the benefits of allowing private radio users to enter into legitimate cost-sharing arrangements, and did not intend such arrangements to be classified as for-profit CMRS. *See* In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act –Regulatory Treatment of Mobile Services, GN Docket No. 93-252, *Second Report and Orde*r, 9 FCC Rcd 1411, 1430 ¶ 47 (1994) (*CMRS Second R&O*). This conclusion was based upon the definition of "mobile service" adopted in the 1993 Budget Act, *see id.* at 1430 n.75 citing 47 U.S.C. § 153(27), which refers to communications that may be licensed on an "individual, cooperative, or multiple basis." The Commission determined that the legislative intent was to provide for shared use and multiple licensed "private" communications systems exempt from the competitive bidding process. Despite concern that these systems are often indistinguishable from commercial systems, the Commission deemed it appropriate at that time to retain multiple licensing as a non-auction, private radio licensing alternative but stated that it would closely monitor the use of multiple licensing in order to ensure that unlicensed station managers did not attempt to provide for-profit service in competition with CMRS licensees. *CMRS Second R&O*, 9 FCC Rcd at 1430-31 ¶¶ 47-49.)

[10] *1997 Budget Act Report and Order*, 15 FCC Rcd at 22766 ¶ 125 *citing* East River Electric Power Cooperative, *Order*, 13 FCC Rcd 5871 (WTB 1997) (*East River*).

[11] A SMR system is one in which licensees provide land mobile communications services (other than radiolocation services) in the 800 MHz and 900 MHz bands on a commercial basis to entities otherwise eligible for licensing on the same frequencies. *See* 47 C.F.R. § 90.7.

[12] *East River*, 13 FCC Rcd at 5873-74 ¶¶ 5-6.

[13] *Id.* at 5876 ¶ 9.

[14] *Id.* at 5876-78 ¶¶ 10-11.

[15] *1997 Budget Act Report and Order*, 15 FCC Rcd at 22766 ¶ 125.

[16] *Id*. *citing* Viking Dispatch Services, Inc., *Memorandum Opinion and Order*, 14 FCC Rcd 18814 (1999) (*Viking*).

[17] *Viking*, 14 FCC Rcd at 18815 ¶ 2.

it intended only to provide communications service to others rather than using the radio facilities to meet its internal communications needs.[18] The Commission also concluded that it was not a true not-for-profit arrangement, because the system manager and equipment vendor was an affiliate of Viking.[19] Therefore, Viking's request was denied. The Commission concluded its 2000 review of multiple licensing by stating that, as in *Viking* and *East River*, "we must continue to closely monitor multiple-licensed systems and judge their validity on a case-by-case basis."[20]

4. *Captioned applications for multiple licensing under Section 90.185*. Mobilcom provided trunked, analog 800 MHz SMR service in Southeastern Kansas to approximately thirty business customers, including the Applicants, using radio facilities licensed under Call Signs KNRS271, KNHK797, WNLV446, KNRS224 and WNUX370.[21] However, Mobilcom sold these licenses to a digital SMR operator that plans to terminate the analog operations, which will leave no infrastructure to support the Applicants' trunked, analog 800 MHz mobiles and portables.[22]

5. To replace the aforementioned analog systems, in January 2001, Mobilcom submitted five "lead" applications to the Personal Communications Industry Association, Inc. (PCIA), a Commission-certified PLMR frequency advisory committee, each requesting authorization to establish a trunked "community repeater" system at several locations on 800 MHz Business Category Pool frequencies.[23] However, PCIA notified Mobilcom that applicants for trunked community repeaters must file applications "up front" for each proposed user to justify the number of frequencies requested by showing that each channel would be loaded in accordance with the Commission's Rules.[24] PCIA states that Mobilcom refused its request and that it was therefore unable to certify the applications for trunking.[25] PCIA filed the referenced applications with the Commission on May 18, 2001, after revising the radio service code from trunked business (YB) to conventional business (GB).

6. On July 24, 2001, the Commission sent Notice of Application Returns to Mobilcom for three of its applications, requesting that Mobilcom (1) justify its need for the number of channels requested for internal use; (2) verify that all requested units will be used for internal operation; and (3) explain how Mobilcom intends to utilize a community repeater when Mobilcom's requested units appear to fill the system to capacity.[26] In response, Mobilcom submitted amended applications, requesting YB service for all of its applications. Additionally,

[18] *Id.* at 18817-18 ¶ 7.

[19] *Id.* at 18818-19 ¶ 8.

[20] *1997 Budget Act Report and Order*, 15 FCC Rcd at 22766 ¶ 125.

[21] Petition at 2.

[22] *Id.*

[23] *See* File Nos. 0000474637, 0000474713, 0000474744, 0000474946, 0000474864.

[24] *See* PCIA Comments at 1-2, filed October 15, 2001. "Loading" criteria refers to the number of mobile stations that a non-SMR applicant must have to be assigned a channel, *e.g.*, "[n]on-SMR trunked systems will be authorized on the basis of a loading criteria of one hundred (100) mobile stations per channel." 47 C.F.R. § 90.631(a).

[25] *See* PCIA Comments at 2.

[26] Automatic Notice of Application Return Letter to Mobilcom regarding File Nos. 0000474637, 0000474744 and 0000474864 (Return Letter).

Mobilcom submitted a letter explaining that it was seeking to establish an 800 MHz trunked system pursuant to Section 90.617 of the Commission's Rules.[27] Mobilcom asserted that it was establishing four "primary" base stations, and three "secondary" stations, and that the primary stations were entitled to 20 trunked frequency pairs pursuant to Section 90.617.[28]

7. In addition, Mobilcom asserted that initial loading was not required for its proposed trunked system, and that it was only required to *certify* that a minimum of seventy mobiles for each channel would be placed in operation within five years of the initial license grant.[29] Mobilcom further stated that it was entitled to increase its channel capacity by five channels without meeting any loading requirements.[30] Thus, Mobilcom claimed that it was entitled to request a minimum of five channels per site without having to demonstrate loading at the time the stations are placed in service.[31] Finally, Mobilcom re-filed its application directly with the Commission, arguing that no purpose would be served by returning the applications to PCIA for coordination given PCIA's prior refusal to coordinate YB stations.[32] Thereafter, between October and December 2001, the Applicants filed the captioned applications as "add on" users of Mobilcom's proposed trunked stations.[33]

8. On February 13, 2002 and February 20, 2002, the Branch dismissed the captioned applications, finding insufficient loading to justify assigning the requested frequencies to the proposed system.[34] The Branch noted that under Section 90.631(a) of the Commission's Rules, non-SMR trunked systems are authorized on the basis of a loading of 100 mobile stations per channel. Therefore, in order to justify authorization for the 32 frequencies sought, the Petitioners would be required to demonstrate that its system would support 3200 mobile units.[35] The Branch found that because the proposed system was only intended to support 249 mobile units, it could only justify a request for three channels. Thus, the Branch denied the Petitioners'

[27] Attachment Letter from Mobilcom filed on Sept. 7, 2001, alerting the Commission that it was modifying its radio service codes for all five of its pending applications (Service Code Letter).

[28] *Id.* "The frequencies specified in Section 90.617 are unquestionably available for trunked radio systems. Section 90.621(a)(1)(iii) . . . explicitly provides that '[a]uthorizations for non-SMR stations may be granted for up to 20 trunked frequency pairs at a time in accordance with the frequencies listed in § . . . 90.617.' In no case has the applicant requested more than five channels at a given location and all frequencies are listed in Section 90.617(c). Thus, the requirements for requesting a private trunked station are fully satisfied by MPI's applications." Service Code Letter at 2.

[29] *Id.* at 3.

[30] *Id.* at 2-3.

[31] *Id*.

[32] *Id*.

[33] Petition at 6.

[34] *See* Letters of the Licensing and Technical Analysis Branch, dated February 13, 2002, and February 20, 2002 (Dismissal Letters).

[35] *Id.*

requests for all remaining channels.[36] On March 14, 2002, Mobilcom filed the instant petition for reconsideration of the Branch's dismissals of the captioned applications.[37]

III. DISCUSSION

9. Turning to the Petition now before us, the captioned applications were governed by Section 90.631(a) of the Commission's Rules,[38] which provides that non-SMR trunked systems are authorized on the basis of a loading criterion of one hundred (100) mobile stations per channel.

10. According to Mobilcom, as an applicant for a rural trunked system, it is only required to certify in its application that a minimum of 70 mobiles for each channel will be placed into operation within five years of the initial grant, pursuant to Section 90.631(b).[39] Mobilcom further argues that the Commission does not require applications for rural trunked systems to meet any threshold loading standards.[40] We disagree. While the Commission has eliminated the channel recovery program for underutilized non-SMR systems, it has considered the issue with regard to 800 and 900 MHz non-SMR systems and determined that the mobile loading requirement for such systems should not be eliminated.[41] Thus, the Commission's rules continue to require applicants for non-SMR system licenses to comply with the loading requirements set forth in Section 90.631(a). On the other hand, Mobilcom's applications, filed in 2001, are not subject to the provisions of Section 90.631(b), which clearly states that such provision is only applicable to non-SMR licensees initially authorized before June 1, 1993.[42]

11. Mobilcom points to the loading requirements in Section 90.633(a) of our rules to support its assertion that only conventional systems are subject to upfront loading requirements.[43] Section 90.633(a) authorizes non-SMR conventional systems on the basis of a minimum loading criteria of 70 mobile stations per channel.[44] Section 90.633(a), which only governs conventional systems, is not applicable to trunked systems, and does not support Mobilcom's argument that only conventional systems are subject to upfront loading requirements. Indeed, the loading requirements for conventional systems set forth in Section 90.633(a) closely mirror the loading requirements for trunked systems set forth in Section

[36] *Id.*

[37] *See supra* note 1.

[38] 47 C.F.R. § 90.631(a).

[39] Petition at 7; *see* 47 C.F.R. § 90.631(b).

[40] Petition at 8.

[41] *See* Amendments to Part 90 of the Commission's Rules Concerning Private Land Mobile Radio Services, *Notice of Proposed Rulemaking*, WT Docket 97-153, 12 FCC Rcd 13468, 13474-75 ¶¶ 14-15 (1997) citing Amendment of Part 90, Subparts M and S of the Commission's Rules, PR Docket No. 86-404, *Report and Order*, 3 FCC Rcd 1838 (1988), *aff'd Memorandum Opinion and Order*, 4 FCC Rcd 356 (1989).

[42] 47 C.F.R. § 90.631(b). Section 90.631(b) is also applicable to certain SMR licensees.

[43] Petition at 8.

[44] 47 C.F.R. § 90.633(a).

90.631(a).[45] Therefore, if one concludes that Section 90.633(a) includes upfront loading criteria as a term of authorization for non-SMR conventional stations, as Mobilcom does, one must also conclude that Section 90.631(a) includes upfront loading criteria as a term of authorization for non-SMR trunked stations. There is simply no support for Mobilcom's assertion that upfront loading is not required for non-SMR trunked systems.

12. We note that the upfront loading requirement in Section 90.631(a) serves the important function of ensuring that non-SMR applicants for a multiple-licensed system are not granted more PLMR channels than needed for their private internal communication.[46] As noted in the paragraphs above, the multiple licensing rules recognize the practical reality that most Part 90 licensees cannot independently afford the monthly site rent for a tower or rooftop that could provide the necessary coverage, and that if each entity had to construct a separate system, it would be difficult to coordinate.[47] In this connection, in retaining the multiple licensing rules, the Commission also noted that multiple licensing must not be used to permit a licensee to sell use of its excess capacity to entities not otherwise eligible to use those frequencies.[48] Thus, such providers must demonstrate a need for the requested channels prior to receiving a license rather than after service is established. Moreover, the loading requirement is critical to ensuring that proposed non-SMR systems are not-for-profit and cost-shared, as required by our Rules.[49] As we have previously noted, the existence of identifiable participants with existing communications needs demonstrates that a proposed system will be not-for-profit and cost shared in accordance with our Rules. On the other hand, a non-SMR provider's inability to demonstrate a need for requested frequencies results in the appearance that a proposed system will instead be a private carrier communications system available for possible subscription, in violation of our Rules.[50] That Mobilcom's operations must be not-for-profit and cost-shared highlights the importance of compliance with the loading requirements in Section 90.631(a).[51]

13. Further, Mobilcom insists that the Branch erred by allegedly failing to treat similarly situated applicants similarly.[52] To support this claim, Mobilcom notes that the Commission granted its application for a three-channel system under call sign WPSR877, and another applicant's request for a five-channel system under call sign WPTF976.[53] Mobilcom argues that the applications for the referenced stations, which were granted "in full and without

[45] Pursuant to these rules, the benchmark for conventional systems is 70 mobiles, and the benchmark for trunked systems is 100 mobiles. *See* 47 C.F.R. §§ 90.631, 90.633.

[46] *See* Applications of Viking Dispatch Services, Inc., for up to Twenty (20) 900 MHz Private Land Mobile Service Channels at Various Locations, 11 FCC Rcd 6685, 6693 ¶ 17 (1996).

[47] *Id.*

[48] *East River*, 13 FCC Rcd at 5873-74 ¶¶ 5-6.

[49] *Id.*

[50] *Id.*

[51] Mobilcom seeks to establish multiple licensed facilities interconnected with the public switched telephone network, pursuant to Section 90.185 of the Commission's Rules. 47 C.F.R. § 90.185. Section 90.185(c) requires such facilities to comply with Section § 90.477, which in turn mandates that such sharing arrangements be on a non-profit cost sharing basis. *See* 47 C.F.R. § 90.477(b)(2).

[52] Petition at 8-9.

[53] File No. 0000474894; see Petition at 8.

question," did not contain any demonstration of "up front" loading.[54] With regard to call sign WPSR877, review of Mobilcom's application shows that three channels were requested for 210 mobile units,[55] which satisfied the loading requirement for that application. On the other hand, upon our review of the application for call sign WPTF976, it appears that such application was coordinated and granted in error because the application requested five channels for only seventy mobile units.[56] Nonetheless, because this grant is a final action, we will not reconsider it herein.[57]

14. Petitioner also argues that the Branch's determination that Mobilcom's proposed operation qualifies as a wide area system, and its ensuing reliance on Section 90.631(g) was erroneous.[58] Section 90.631(g) of the Commission's rules establishes the framework for the authorization of wide area systems, including computation of the loading requirements and determinations as to the primary or secondary status of such systems.[59] We note that Section 90.631(g) does not displace the number of mobile units required to satisfy loading requirements. Therefore, the loading requirements provided in Section 90.631(a) is binding on applicants seeking to operate primary or secondary systems, regardless of whether such systems are wide area. That is, reliance on either Section 90.631(a) or Section 90.631(g) yields the same loading requirement of 3200 mobile units for the 32 channels requested by Mobilcom.[60] Inasmuch as the Branch's reliance on Section 90.631(g) did not alter the loading requirements to which

[54] *See* Petition at 8.

[55] *See* File No. 0000474894.

[56] *Id.* at Schedule H.

[57] *See* Application of John M. Yoger, File No. 0000483804 (granted Sept. 25, 2001, under call sign WPTF976). No petition for reconsideration was filed and the Branch did not set aside this action within thirty days of the grant. *See* 47 C.F.R. §§ 1.106, 1.113; *see also* Applications of San Mateo County, California, *Memorandum Opinion and Order*, 16 FCC Rcd 16501 (2001) (explaining the administrative finality and ministerial error doctrines, *e.g.*, the staff may only set aside final actions that are the result of clerical or administrative errors). On the other hand, the error in granting the application for call sign WPTF976 provides no basis for continuing to grant applications that are inconsistent with the Commission's Rules or policies. Rather, appropriate course of action is to consider whether to take some action with respect to the affected license or licensee. *See* Applications of Warren C. Havens, *Memorandum Opinion and Order*, 17 FCC Rcd 17,527, 17,532 ¶ 11 (2002) (citing Application of Fred Daniel d/b/a Orion Telecom, *Order on Reconsideration*, 14 FCC Rcd 1050, 1055 n.43 (WTB PSPWD 1999) (citing Quinnipiac College, *Memorandum Opinion and Order*, 8 FCC Rcd 6285, 6286 ¶ 12 (1993)).

[58] Petition at 10-11.

[59] 47 C.F.R. § 90.631(g). Remote or secondary stations are permitted under Rule 90.631(g); however, such stations have always been authorized on channels already assigned to the system on a primary basis, although the Rule does not specifically indicate this requirement. The Rule does specify, however, that loading be counted over the full complement of frequencies. Consequently, applicants must justify loading with respect to all discreet channels requested whether asking for them on a primary or secondary basis.

[60] *See* Branch Letter. In pertinent part, the Branch states, ". . . We find that there is insufficient loading to justify assigning additional spectrum to this system. If the system is evaluated with respect to Rule 90.631(a) or (g), a loading of 3200 units would be required . . . "

Mobilcom was subject, the Branch's determination that Mobilcom was establishing a wide area system was, at worst, harmless error.[61]

15. Finally, Mobilcom asserts that its applications should have been granted because pursuant to Section 90.631(d), it is entitled to receive five extra channels per station.[62] Section 90.631(d) of our Rules,[63] which serves to facilitate the expansion of rural systems, allows a licensee of a trunked system in a rural area to increase its system capacity by five more channels than it has constructed without meeting the loading requirements in Section 90.631(a). In this connection, Mobilcom asserts that because one of its applications was granted, any of its other applications that requests authorization to operate up to five frequencies should be granted in accordance with Section 90.631(d). We agree with the Branch's determination that Section 90.631(d) is not applicable here as Mobilcom's request does not seek to add capacity to a constructed station, but rather, to license additional sites. As Mobilcom correctly notes, in examining this issue, the Commission has held that there is no clear public interest benefit to requiring that trunked systems in rural areas meet a threshold loading standard *before they can expand their systems* (*emphasis added*).[64] Expansion of a system includes adding frequencies to and increasing the service contour of existing operations. Here, Mobilcom sought to establish separate site locations, not to add frequencies to Station WPSR877. Therefore, we uphold the Branch's determination that Mobilcom's applications did not provide sufficient justification for the number of frequencies requested.

IV. CONCLUSION

16. We agree with the Branch's determination that Mobilcom's applications to establish a trunked non-SMR system were subject to the loading requirements set forth in Section 90.631(a) of the Commission's Rules. Because Mobilcom requested initial authorization of a total of 32 channels, Mobilcom was required to demonstrate that such channels would be loaded to a capacity of 3200 mobile units. Furthermore, the Branch's determination that Mobilcom was establishing a wide area system was harmless error. Moreover, we agree with the Branch that Section 90.631(d) would only entitle Mobilcom to receive five additional channels if it were seeking to expand the capacity of a constructed system, rather than to license new sites. Therefore, we deny Mobilcom's Petition for Reconsideration.

V. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405), and Section 1.106 of the

[61] We note that because our rules for wide area systems allow applicants to use the same mobile units to satisfy its loading requirements for each location, it was actually to Mobilcom's benefit for its proposed operation to be considered a wide area system. *See* 47 C.F.R. § 90.631(g).

[62] Petition at 11-12.

[63] 47 C.F.R. § 90.631(d).

[64] Amendment of Part 90, Subparts M and S, of the Commission's Rules, PR Docket 86-404, *Report and Order*, 3 FCC Rcd 1838, 1846 ¶ 71 (1988). The Commission identified an existing licensee as the beneficiary of its rule change and offered illustration of thereof by stating ". . . For example, a five-channel system may obtain five additional channels regardless of their current system loading. To add an additional five channels (to a total of fifteen), however, the licensee must show that the first five channels are fully loaded." *Id*.

Commission's Rules, 47 C.F.R. § 1.106, that the Petition for Reconsideration filed on October 22, 2001, by Mobilcom Pittsburgh, Inc., et. al., IS DENIED.

18. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau