Section 22.317 for cellular operations. This will permit licensees to discontinue operations for 90 continuous days and removes any provisions for licensees to request an additional extension of this period.

B. Miscellaneous Matters

19. Spectrum Cap and Attribution. An entity may hold up to 45 MHz of spectrum in the three radio services (broadband PCS, cellular, and SMR) in any geographic area. CMRS Third Report & Order, 59 FR 59,945 (Nov. 21, 1994). The Commission will also apply a 20 percent cross-ownership attribution rule for purposes of the spectrum aggregation limit. For example, an entity with 20 percent or greater ownership of a 900 MHz SMR license who has 40 MHz of broadband PCS spectrum in a geographic market would reach the spectrum cap with 5 MHz of SMR spectrum in an MTA within that geographic market. Where cellular, broadband PCS and SMR licensees are held indirectly through intervening corporate entities, attribution will be determined through a multiplier. Memorandum Opinion & Order, GEN Docket No. 90-314, 60 FR 13915 (March 15, 1995). Finally, 900 MHz SMR channels count toward the 10 percent population overlap threshold adopted in the CMRS Third Report & Order, 59 FR 59,945 (Nov. 21, 1994). Thus, a 900 MHz SMR provider's spectrum counts toward the spectrum cap if the carrier is licensed to serve ten percent or more of the population of the MTA.

20. Grandfathering—Regulatory Classification. In the CMRS Second Report & Order, 59 FR 59,945 (Nov. 21, 1994), the Commission stated that SMR licensees are classified as CMRS if they offer interconnected service, and are otherwise classified as PMRS. All 900 MHz MTA licensees presumptively will be classified as CMRS providers. An MTA licensee, however, who was an incumbent in the 900 MHz service before August 10, 1993, is not subject to CMRS regulation until August 10, 1996.

47 U.S.C. § 332(c)(2)(B)).

21. Foreign Ownership Waivers. The Budget Act amendments to the Communications Act permit the Commission to waive the application of Section 310(b) to any foreign ownership that lawfully existed before May 24, 1993, of any provider of a private land mobile service that will be treated as a common carrier, as a result of the Budget Act amendments, on the condition that the extent of foreign ownership not increase above the pre-May 24, 1993, level, and that no subsequent transfer of ownership is made to anyone in violation of Section

310(b). 47 U.S.C. § 332(b)(6). The Commission's decision to treat incumbent licensees as new applicants raise the question as to whether a waiver filed by an incumbent licensee will cover the MTA license, in the event that the incumbent wins the MTA license. The Commission will grandfather any timely filed waiver petitions with respect to the MTA license. Although the MTA license is considered a "new" license, the provider's existing facilities will be entirely subsumed in the new license. Thus, the Commission believes it is unnecessary to require an additional filing by an incumbent who wins the MTA license.

III. Procedural Matters

22. Final Regulatory Flexibility Analysis. Pursuant to the Regulatory Flexibility Act of 1980, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rule Making in GN Docket No. 93-252. Written comments on the IRFA were requested. The Commission's final analysis is as follows:

A. Need for and purpose of the action. This rulemaking proceeding was initiated to implement Sections 332 and 3(n), respectively, of the Communications Act, as amended. The rules adopted herein will carry out Congress's intent to establish a consistent regulatory framework for all commercial mobile radio service (CMRS).

- B. Issues raised in response to the *IRFA*. No comments were submitted in response to the IRFA in GN Docket No. 93-252.
- C. Significant alternatives considered and rejected. All significant alternatives have been addressed in the Second Report & Order, and the CMRS Third Report & Order, 59 FR 59,945 (Nov. 21, 1994).
- 23. Ordering Clauses. Accordingly, IT IS ORDERED. That the petitions for reconsideration ARE GRANTED to the extent described above and DENIED in all other respects.
- 24. It is further ordered that Part 90 of the Commission's rules, 47 C.F.R. Part 90, IS AMENDED, as indicated below. It is ordered that the rule changes herein will become effective 30 days after publication in the Federal Register.

List of Subjects in 47 CFR Part 90

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

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

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

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

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

2. Section 90.7 is amended by adding the definition for "MTA license" following the definition for "Mobile station" to read as follows:

§ 90.7 Definitions.

MTA-based license or MTA license. A license authorizing the right to use a specified block of SMR spectrum within one of the 51 Major Trading Areas ("MTAs"), as embodied in Rand McNally's Trading Area System MTA Diskette and geographically represented in the map contained in Rand McNally's Commercial Atlas & Marketing Guide (the "MTA Map.") The MTA Listings, the MTA Map and the Rand McNally/ AMTA license agreement are available for public inspection at the Wireless Telecommunications Bureau's public reference room, Room 628, 1919 M Street NW., Washington, DC 20554.

3. Section 90.617 is amended by revising paragraph (d) introductory text, to read as follows:

§ 90.617 Frequencies in the 809.750-824/ 854.750-869 MHz, and 896-901/935-940 MHz bands available for trunked or conventional system use in non-border areas.

(d) The channels listed in Tables 4A and 4B are available only to eligibles in the SMR category, which consists of Specialized Mobile Radio (SMR) stations and eligible end users. The frequencies listed in Table 4B are available to SMR eligibles desiring to be authorized on MTA service areas in accordance with Section 90.661. SMR licensees licensed on the channels listed in Table 4B on or before August 9, 1994 may continue to utilize these frequencies within their existing service areas, as provided in Section 90.661. This paragraph deals with the assignment of frequencies only in areas farther than 110 km (68.4 miles) from the U.S./Mexico border and farther than 140 km (87 miles) from the U.S./Canada border. See § 90.619 for the assignment