

2. *Background.* The *Report and Order* established technical rules and guidelines aimed at improving the efficiency of the PLMR spectrum and facilitating the introduction of advanced technologies into the private mobile services. In addition to the technical rules adopted, the Commission concluded that the number of PLMR service pools should be reduced and consolidated. The Commission decided that maintaining twenty service pools is administratively burdensome and that consolidating the PLMR services into 2–4 service pools would lead to greater operational efficiency for users and promote more flexible use of the spectrum.⁵ Instead of dictating a specific plan and structure for the radio services under a consolidated system, the Commission encouraged the PLMR community, including users, manufacturers, and frequency coordinators, to submit a consensus plan that would reflect the interests and needs of the community which in turn would assist the Commission in consolidating the service pools. The PLMR industry was given three months from the effective date of the rules in the *Report and Order* to develop and submit a comprehensive consolidation consensus plan. This industry report on radio service consolidation is due November 20, 1995. The Commission stated in the *Report and Order* that it would issue its final rule amendments on consolidation approximately six months after the effective date of the *Report and Order*. Further, it noted that consolidation of the PLMR services will incorporate the PLMR community's recommendations if consensus is achieved but will proceed regardless of the participation of the PLMR community.⁶

3. Independently of this rulemaking, the National Telecommunications and Information Administration (NTIA) and the Commission have established the Advisory Committee to prepare a final report to the NTIA and the Commission on operational, technical and spectrum requirements of Federal, state and local public safety entities through the year 2010. Included in the work of the Advisory Committee is the examination of the definition, structure, and

functions of the existing Public Safety Radio Services. According to its Charter, the Advisory Committee will submit a report to the Commission within twelve months of the first formal meeting.⁷

4. *Contention of the Parties.* Petitioners each present similar reasons in support of their requests for stay of the Public Safety Radio Service consolidation, including the filing of a proposal as to how best to consolidate the services pursuant to the Commission's *Report and Order*. Petitioners argue that it would be premature and inappropriate for the Commission to require the filing of a consensus plan and immediate consolidation of the existing Public Safety Radio Services before the Advisory Committee has completed its work.⁸ According to PSCC "[i]t would be needlessly expensive and burdensome on all involved, including the Commission, for the Public Safety services to implement changes * * * and then have to make significant changes again at the conclusion of the (Advisory Committee's) studies and recommendations."⁹ IMSA and IAFC further contend that they are entitled to a stay under the four-prong test¹⁰ set forth in *Washington Metropolitan Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977) (*Holiday Tours*).¹¹ We will address each applicable "prong" below.¹²

5. *Irreparable Harm.* First, IMSA/IAFC contend that failure to allow the Advisory Committee to do its job and provide crucial information which would determine the best way to consolidate existing stations could cause irreparable harm to new applicants as well as existing licensees. They argue that a stay will allow the Commission sufficient time to ensure that policies developed for the Public

Safety Radio Services maximize interoperability, efficiency and enhancement of public safety telecommunications and minimize chances for interference or mismanagement of these important services.¹³

6. A stay is an extraordinary remedy which the Commission grants upon request in limited circumstances. Based on the factors presented by the above parties, we conclude that Petitioners do not meet the standards required for grant of a stay. Specifically, we find that Petitioners have failed to make the required showing of irreparable harm. To show irreparable harm, "the injury must be both certain and great; it must be actual and not theoretical."¹⁴ We believe that Petitioners overstate the impact of not granting their request.

7. The Advisory Committee's work and recommendations will be an important vehicle in the Commission's endeavor to ensure that public safety communications are effective, efficient and respond to the increasing demands placed on the public safety community. The consolidation of services is but one of a myriad of issues that the Advisory Committee may address within the extremely confined time frame it is working under. The Advisory Committee will be meeting throughout the coming months to examine issues and make recommendations. The resolution of every issue does not necessarily await articulation in the Advisory Committee's final report. Throughout the process, a number of recommendations may emerge as consensus agreements or be acted upon formally. Importantly, because of its time constraints, the Advisory Committee itself would benefit by the submission of proposals or comments as to how best to accomplish the consolidation of services. Moreover, the Commission's review and analysis of consolidation alternatives can commence while still affording the Advisory Committee an opportunity to make a recommendation on the issue. Under these circumstances, as both the Advisory Committee and the Commission would benefit by the submission of proposals or views addressing the consolidation of services, we find that Petitioners have failed to

⁷ The first formal meeting of the Advisory Committee was held on September 11, 1995. The Advisory Committee report therefore is due by September 11, 1996.

⁸ See, for example, APCO petition at 2, PSCC petition at 4, and IMSA/IAFC petition at 2.

⁹ Public Safety Communication Council comments at 5.

¹⁰ Under this test, a party moving for a stay must show: (1) A strong likelihood of prevailing on the merits; (2) irreparable harm; (3) issuance of a stay will not harm others; and (4) that granting a stay will serve the public interest. IMSA/IAFC note, however, that its pleading addresses only three prongs of the test as there is no underlying litigation and no issue with respect to prevailing on the merits.

¹¹ See also *Virginia Petroleum Jobbers Ass'n v. Federal Power Commission*, 259 F.2d 921, 925 (D.C. Cir. 1958).

¹² We do not herein address "likelihood of prevailing on the merits." This prong is inapposite because these petitions are not filed in conjunction with a contested cause of action between opposing parties.

¹³ IMSA/IAFC comments at 6.

¹⁴ *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985); *In the Matter of Cincinnati Bell Telephone Company, Requests for Stay of Orders Finding Violations of the Commission's Rate of Return Prescriptions*, 8 FCC Rcd 6709 (1993).

⁵ The twenty (20) PLMR services which are the focus of this proceeding are the Public Safety Radio Services (Local Government, Police, Fire, Highway Maintenance, Forestry-Conservation and Emergency Medical) the Special Emergency Radio Service, the Industrial Radio Services (Power, Petroleum, Forest Products, Video Production, Relay Press, Special Industrial, Business, Manufacturers, and Telephone Maintenance), and the Land Transportation Radio Services (Motor Carrier, Railroad, Taxicab, and Automobile Emergency).

⁶ *Report and Order* at para. 55.