

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

In the Matter of Applications of)	
)	
LMR SYSTEMS, INC.)	FCC File Nos. 592683, 592684, 592687,
)	592691, 592693, 592694, 592695, 592696,
to Operate New Private Radio System)	592697 and 592698
at Various Locations Throughout the)	
United States and Request for Waiver)	
Of the Commission's Rules)	

MEMORANDUM OPINION AND ORDER

Adopted: December 31, 2001

Released: January 18, 2002

By the Commission:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order (MO&O)*, we consider the Application for Review filed by LMR Systems, Inc. (LMR) on November 12, 1999.¹ LMR seeks review of the decision by the Wireless Telecommunications Bureau's (Bureau) Public Safety and Private Wireless Division (Division) to dismiss LMR's above-referenced ten applications for various 800 and 900 MHz band channels for use in LMR's proposed Airport Specialized Mobile Radio (AIRSMR) communications systems.² For the reasons set forth below, we affirm the dismissal of two of the ten applications at issue,³ but grant in part LMR's Application for Review and remand the matter to the Division for further consideration of the remaining eight applications.

¹ LMR Systems, Inc. Application for Review (filed. Nov. 12, 1999) (Application for Review). Four oppositions to LMR's Application for Review were filed. On November 29, 1999, Industrial Wireless Technologies, Inc., and Fleet Talk Partners 900, Ltd. (FleetTalk), filed their oppositions. On November 30, 1999, Prudencia Investments, Inc., filed its opposition. On December 8, 1999, Lone Star Radio, Inc. (LSRI), filed a Motion for Leave to File Opposition to Application for Review and its opposition.. In its motion, LSRI explains that LMR failed to serve LSRI with a copy of its Application for Review. LSRI Motion at 1. LSRI also states that LMR's counsel did not object to the filing of LSRI's opposition. *Id.* at 2. Therefore, we will grant LSRI's motion and consider its opposition.

² LMR Systems, Inc, *Order*, 14 FCC Rcd 17227 (WTB PSPWD 1999) (*Order*).

³ The Division's *Order* dismissed all 17 applications filed by LMR, but LMR's Application for Review presents arguments only with respect to the 10 applications filed for Industrial/Land Transportation (I/LT) and Business channels. Consequently, we shall not address the Division's dismissal of the SMR and General Category applications because the dismissal of those applications is now a final action.

II. BACKGROUND

2. On June 23, 1992, LMR filed seventeen applications for various 800 and 900 MHz channels for use in its proposed AIRSMR system: four applications for I/LT channels,⁴ one application for Business channels,⁵ five applications for both I/LT and Business channels,⁶ six applications for Specialized Mobile Radio (SMR) channels,⁷ and one application for General Category Private Land Mobile Radio (PLMR) channels.⁸ LMR contemporaneously requested a waiver of Sections 90.175,⁹ 90.603,¹⁰ 90.615,¹¹ 90.621(a)¹² and (b),¹³ and 90.631(b),¹⁴ (e)¹⁵ and (f)¹⁶ of our Rules to establish its proposed AIRSMR system.¹⁷ Numerous licensees filed pleadings opposing LMR's applications and associated waiver

⁴ FCC File Nos. 592683 (filed Oct. 2, 1992) (Los Angeles Int'l Airport), 592697 (filed Sept. 25, 1992) (Washington Nat'l Airport), 592698 (filed Sept. 25, 1992) (Dulles Int'l Airport) and 592687 (filed Sept. 25, 1992) (Logan Int'l Airport).

⁵ FCC File No. 592684 (filed Oct. 2, 1992) (Los Angeles Int'l Airport).

⁶ FCC File Nos. 592691 (filed Dec. 1, 1992) (Miami Int'l Airport), 592693 (filed Dec. 1, 1992) (Orlando Airport), 592694 (filed Dec. 1, 1992) (LaGuardia Airport), 592695 (filed Dec. 1, 1992) (JFK Int'l Airport) and 592696 (filed Dec. 1, 1992) (Baltimore Washington Int'l Airport).

⁷ FCC File Nos. 592686 (filed Feb. 8, 1993) (Houston Airport), 592688 (filed Sept. 25, 1992) (Philadelphia Int'l Airport), 592689 (filed Oct. 5, 1992) (Newark Airport), 592690 (filed Oct. 21, 1992) (Chicago O'Hare Airport), 592692 (filed Sept. 25, 1992) (Atlanta Int'l Airport) and 592699 (filed Sept. 25, 1992) (Dallas/Ft. Worth Airport).

⁸ FCC File No. 592685 (filed Oct. 1, 1992) (San Francisco Int'l Airport).

⁹ 47 C.F.R. § 90.175 requires an applicant to obtain frequency coordination of PLMR channels before submission of its application to the Commission.

¹⁰ 47 C.F.R. § 90.603 prevents the use of PLMR 800 and 900 MHz channels on a commercial, for-profit basis.

¹¹ 47 C.F.R. § 90.615 prohibits the creation of a trunked 800 MHz system with unassigned General Category channels.

¹² 47 C.F.R. § 90.621(a) restricts the assignment of more than five channels at one time to an 800 MHz SMR station.

¹³ 47 C.F.R. § 90.621(b) requires a 70-mile separation between co-channel SMR transmitter sites.

¹⁴ 47 C.F.R. § 90.631(b) requires an applicant for a trunked system to certify that a minimum of 70 mobiles for each channel authorized will be placed in operation within five years of the initial license grant.

¹⁵ 47 C.F.R. § 90.631(e) requires licensees of trunked systems to complete construction within one year.

¹⁶ 47 C.F.R. § 90.631(f) states that a license cancels automatically and must be returned to the Commission if the station is not placed in permanent operation within one year.

¹⁷ See Request for Rule Waivers and Other Relief filed by LMR Systems, Inc. on June 23, 1992 at 5 (Waiver Request).

request.¹⁸ On January 14, 1993, in response to the pleadings filed against its applications and waiver request, LMR submitted a reply that contained modifications to its previous application and waiver request (Waiver II).¹⁹ In Waiver II, LMR explained that it chose to re-engineer its system to utilize (with only one exception) channels in the 900 MHz band from unassigned channels in the SMR, I/LT or Business Categories, and not to use any 800 MHz band channels (particularly, General Category channels).²⁰ In light of the changes to its system proposal, LMR asserted that only waivers of Sections 90.615, 90.617,²¹ 90.621(h),²² and 90.631(e) and (f) of the Commission's Rules were necessary to operate its proposed system.²³

3. On August 1, 1994, LMR requested a conditional grant of its licenses.²⁴ LMR proposed two conditions on any licenses granted pursuant to a waiver of Sections 90.615, 90.617 and 90.621 of our Rules.²⁵ First, LMR proposed to accept a condition that its AIRSMR system would be designed to operate at a maximum service area radius of ten miles and would also meet the height and power limits for the area radius as prescribed by our Rules.²⁶ Second, LMR proposed to restrict the AIRSMR systems to use by subscribers with businesses associated with the operation of the airport facilities, and then only for communications associated with those airport-related operations.²⁷

4. On May 30, 1996, LMR withdrew its waiver request that had been filed on January 14, 1993.²⁸ LMR asserted that all of its pending applications could be granted under our Rules without any waivers.²⁹ Specifically, LMR averred that the I/LT channels would be used only by eligible persons and for purposes consistent with the I/LT eligibility criteria.³⁰ LMR also argued that it should be able to charge

¹⁸ See Order, 14 FCC Rcd at 17229 n.17.

¹⁹ Consolidated Reply to Comments to Waivers filed by LMR on January 14, 1993 (Waiver II).

²⁰ *Id.* at 9-11.

²¹ 47 C.F.R. § 90.617 sets forth the channels in the 800 and 900 MHz bands available for trunked or conventional system use in non-border areas.

²² 47 C.F.R. § 90.621(h) states that channel numbers 401-410, 441-450, 481-490, 522-530 and 561-570 are available on a co-primary basis to station in Basis Exchange Telecommunications Radio Service as described in Part 22 of the Commission's Rules.

²³ See Waiver II at 11-24.

²⁴ Letter from Lawrence J. Movshin, Counsel to LMR, to Ralph Haller, Chief, Private Radio Bureau, FCC, dated August 1, 1994 (August 1st Letter).

²⁵ *Id.* at 2.

²⁶ *Id.* See also 47 C.F.R. § 90.635.

²⁷ August 1st Letter at 2.

²⁸ Letter from Frederick M. Joyce, Counsel to LMR, to Terry L. Fishel, Chief, Land Mobile Branch, Licensing Division Office of Operations - Gettysburg, FCC, dated May 30, 1996 (May 30th Letter).

²⁹ *Id.* at 1.

³⁰ *Id.* at 2.

these eligible end users a reasonable fee for the use of LMR-installed or contracted equipment.³¹ Further, LMR contended that it too should be considered eligible to hold these authorizations because it will not engage in any activity other than the "promotion and operation" of the AIRSMR system.³² In a prior AIRSMR proposal, LMR envisioned that its system would be used by numerous end users including airlines, airport authorities, airline support facilities, baggage handlers, caterers, maintenance organizations, freight and cargo firms, hotels, car rental companies, and ground transportation services, etc.³³ Under its modified proposal, LMR anticipated that its system would be used to coordinate "airport transportation vehicles, safety and service personnel."³⁴

5. On October 13, 1999, the Division approved the withdrawal of Waiver II and dismissed all of the amended applications filed on January 14, 1993 as defective pursuant to Section 1.934(d)(2) of our Rules.³⁵ The Division determined that, without waiver requests, LMR's applications for I/LT and Business channels were defective because Section 90.179 of the Commission's Rules provides that PLMR channels above 800 MHz may be shared only on a not-for-profit basis, and LMR intended to operate for-profit systems.³⁶ The Division based this determination, in part, on LMR's initial waiver request in which LMR stated that it did not wish to operate the proposed systems on a not-for-profit basis because of the regulatory requirements attached to such operation, and that LMR had applied for I/LT and Business channels only because sufficient SMR channels were not available.³⁷ Because LMR never explained how or why an option it originally deemed infeasible had become acceptable, and it continued to pursue channels where for-profit operation was permitted, the Division concluded that LMR's application for I/LT and Business channels did not comply with Section 90.179.³⁸ The Division also noted that LMR's failure to identify specific entities that would share its systems,³⁹ and LMR's statement in the May 30th Letter that it would "promot[e]" its AIRSMR systems (an activity not ordinarily associated with not-for-profit operations)⁴⁰ also were factors the Division considered to be indicative that LMR's proposal was for a

³¹ *Id.*

³² *Id.*

³³ *See* Waiver II at 1-2.

³⁴ May 30th Letter at 2.

³⁵ *Order*, 14 FCC Rcd at 17228 ¶ 1.

³⁶ *Id.* at 17235-36 ¶¶ 16-18.

³⁷ *Id.* at 17236 ¶ 18.

³⁸ *Id.*

³⁹ *Id.* at 17237 ¶ 20.

⁴⁰ *Id.* (citing, *e.g.*, Amendment of Section 90.631 of the Commission's Rules and Regulation Concerning Loading Requirement for 900 MHz Trunked SMR Station, *Report and Order*, PR Docket No. 92-17, 7 FCC Rcd 4914, 4919 (1992)).

commercial, for-profit system. On November 12, 1999, LMR requested Commission review of the Division's *Order*. Four entities filed oppositions to LMR's Application for Review.⁴¹

III. DISCUSSION

6. In its Application for Review, LMR submits three reasons to reinstate and grant its applications. Specifically, LMR contends that (1) the Division based its decision upon facts that were not properly before it by relying on Waiver I because it was superseded by Waiver II, (2) the Division's *Order* misconstrues or ignores Sections 1.925(c)(ii) and 1.934(d)(2) of our Rules and (3) the Division's action was in conflict with statute, regulation, case precedent or Commission policy by applying Section 90.179 to LMR, as an applicant.

7. LMR argues that the Division based its decision upon facts that were not properly before it by relying on the initial waiver request, which was superseded by Waiver II.⁴² We disagree. As noted by Industrial Wireless Technologies, Inc. (IWTI), and Prudencia Investments, Inc. (Prudencia) all documents submitted by LMR became a part of the record upon which the Division, pursuant to our Rules, was permitted, if not, obliged, to consider.⁴³ LMR's withdrawn waiver request is a part of the record; and thus, we find that the Division could consider and refer to it in rendering its decision.⁴⁴ According to Section 1.8 of the Commission's Rules, granting of a request to dismiss or withdraw an application or a pleading does not authorize the removal of such application or pleading from the Commission's records. Moreover, contrary to LMR's argument, the Commission has held that it is proper to consider information provided in a withdrawn filing.⁴⁵

8. LMR also contends that the Division's *Order* misconstrues or ignores Sections 1.925(c)(ii) and 1.934(d)(2) of our Rules.⁴⁶ As an initial matter, we note that these rules address situations in which waiver requests have been denied, and provide that in such cases, if an "alternative proposal" has been submitted that fully complies with the Rules, the underlying applications will be processed using the alternative proposal.⁴⁷ LMR argues that having its applications processed standing alone, without reference to either waiver request, was its alternative proposal. We disagree, as noted above. We find that Sections 1.925(c)(ii) and 1.934(d)(2) were not violated in the instant matter because the Division

⁴¹ See *supra* note 1. We will address three of the Oppositions. FleetTalk limits its Opposition to the SMR channels. Because LMR's application for review presents arguments only with respect to the I/LT and Business channels, we are not addressing the Division's dismissal of the SMR and General Category applications, nor are we addressing the Fleet Talk Opposition. See *supra* note 3.

⁴² Application for Review at 6-7.

⁴³ IWTI Opposition at 3-4; Prudencia Opposition at 1-2.

⁴⁴ 47 C.F.R. § 1.8.

⁴⁵ See *Communique Telecommunications, Inc., Memorandum Opinion and Order*, 14 FCC Rcd 13635, 13642 n.40 (1999) (noting that the withdrawn comments would remain a part of the Commission's records); *Seven Hills Television Company, Decision*, MM Docket No. 83-657 and 84-835, 2 FCC Rcd 6867, 6868 n.7 (Rev. Bd. 1987) (stating that the Review Board will notice withdrawn pleadings of record from the original proceeding).

⁴⁶ Application for Review at 10.

⁴⁷ 47 C.F.R §§ 1.925(c)(ii), 1.934(d)(2).

considered the only alternative proposal and determined, based on the record before it, that LMR's remaining proposal was not fully compliant with the Commission's Rules.

9. We note that with respect to two of LMR's ten applications, the applications are defective because they fail to comply with Section 90.175(e) of our Rules, which requires that an applicant submit a showing by the appropriate frequency coordinator recommending specific frequencies that are available in accordance with the applicable loading standards and mileage separation criteria.⁴⁸ With respect to the two applications filed for facilities at Los Angeles International Airport,⁴⁹ LMR offered an analysis by Spectrum Management Systems, Inc. (SMS),⁵⁰ but SMS is not an FCC-certified frequency coordinator.⁵¹ Thus, such analysis is not sufficient under the rules, absent grant of a waiver of the frequency coordination requirement under our Rules. Notably, Lone Star Radio, Inc. (LSRI) objects to one of LMR's Los Angeles International Airport applications for failure to secure proper frequency coordination.⁵² For the aforementioned reasons, we agree.

10. We note that with respect to five applications, in which LMR requested use of both Business and I/LT channels,⁵³ the Special Industrial Radio Service Association (SIRSA) certified the use of those channels.⁵⁴ SIRSA was the frequency coordinator for I/LT channels. However, the National Association of Business and Educational Radio (NABER), who at that time was the frequency coordinator for the Business channels, refused to certify the use of those channels because it did not agree with LMR's

⁴⁸ 47 C.F.R. § 90.175(e).

⁴⁹ FCC File Nos. 596283 and 596284.

⁵⁰ Letter from Klaus Bender, Manager for Engineering Services, Spectrum Management Systems, Inc. to Donald Goodwin, LMR Systems, Inc. (Feb. 1, 1992) (SMS Letter A). *See also* Letter from Klaus Bender, Manager for Engineering Services, Spectrum Management Systems, Inc. to Donald Goodwin, LMR Systems, Inc. (Feb. 1, 1992) (SMS Letter B).

⁵¹ *See* SMS Letter A at Enclosure and SMS Letter B at 1. Although the firm states that the 40/30 dBu contour is protected, no evidence was offered to suggest that the proposed LMR site satisfied the distance separation requirement.

⁵² LSRI Opposition at 2-4.

⁵³ FCC File Nos. 592691, 592693, 592694, 592695, 592696.

⁵⁴ Letter from Karin L. Norton, Vice President, Frequency Administration, Special Industrial Radio Service Association, Inc. (SIRSA) to Terry L. Fishel, Chief, Land Mobile Branch, Licensing Division, Private Radio Bureau (Nov. 25, 1992) (FCC File No. 592691 SIRSA letter); Letter from Karin L. Norton, Vice President, Frequency Administration, Special Industrial Radio Service Association, Inc. (SIRSA) to Terry L. Fishel, Chief, Land Mobile Branch, Licensing Division, Private Radio Bureau (Nov. 25, 1992) (FCC File No. 592693 SIRSA letter); Letter from Karin L. Norton, Vice President, Frequency Administration, Special Industrial Radio Service Association, Inc. (SIRSA) to Terry L. Fishel, Chief, Land Mobile Branch, Licensing Division, Private Radio Bureau (Nov. 25, 1992) (FCC File No. 592694 SIRSA letter); Letter from Karin L. Norton, Vice President, Frequency Administration, Special Industrial Radio Service Association, Inc. (SIRSA) to Terry L. Fishel, Chief, Land Mobile Branch, Licensing Division, Private Radio Bureau (Nov. 25, 1992) (FCC File No. 592695 SIRSA letter); Letter from Karin L. Norton, Vice President, Frequency Administration, Special Industrial Radio Service Association, Inc. (SIRSA) to Terry L. Fishel, Chief, Land Mobile Branch, Licensing Division, Private Radio Bureau (Nov. 30, 1992) (FCC File No. 592696 SIRSA letter).

proposed use of the Business channels.⁵⁵ LMR originally requested a waiver of the frequency coordination requirement,⁵⁶ but it withdrew that request.⁵⁷ Accordingly, while we reinstate those applications, upon remand, the Bureau will need to determine whether the portions of those applications requesting the use of Business channels should be granted without frequency coordination.⁵⁸

11. While it was reasonable for the Division to question whether LMR's proposal was a not-for-profit, cost-shared system, we will nonetheless afford LMR an opportunity to make a showing that its proposed system is a not-for-profit, cost-shared system. Therefore, we will reinstate and return to pending status LMR's eight remaining applications.⁵⁹ Under this approach, in order to determine whether LMR is eligible for the authorization that it seeks, we will afford LMR an opportunity to provide the Division any additional information in support of its contention that it satisfies the requisite eligibility criteria. LMR must submit this additional information within thirty days of the release of this *Memorandum Opinion and Order*.⁶⁰ If LMR fails to supplement the record as requested, the Division will make a determination of whether the pending applications should be granted or denied based upon the information currently in the record.⁶¹

12. One of the bases for the Division's conclusion that LMR intended to operate for-profit systems was that LMR had not identified any shared system participants.⁶² Section 90.179(d) provides,

If the licensee shares the land station on a non-profit, cost shared basis to the licensee, this shared use must be pursuant to a written agreement

⁵⁵ Letter from Kathy Ballo, Assistant Director, Coordination Services, National Association of Business and Educational Radio (NABER) to Andre Cote, Vice President, Operations, SIRSA (Nov. 9, 1992) (FCC File No. 592691 NABER letter); Letter from Kathy Ballo, Assistant Director, Coordination Services, National Association of Business and Educational Radio (NABER) to Andre Cote, Vice President, Operations, SIRSA (Nov. 9, 1992) (FCC File No. 592693 NABER letter); Letter from Kathy Ballo, Assistant Director, Coordination Services, National Association of Business and Educational Radio (NABER) to Andre Cote, Vice President, Operations, SIRSA (Nov. 10, 1992) (FCC File No. 592694 NABER letter); Letter from Kathy Ballo, Assistant Director, Coordination Services, National Association of Business and Educational Radio (NABER) to Andre Cote, Vice President, Operations, SIRSA (Nov. 10, 1992) (FCC File No. 592695 NABER letter); Letter from Kathy Ballo, Assistant Director, Coordination Services, National Association of Business and Educational Radio (NABER) to Andre Cote, Vice President, Operations, SIRSA (Nov. 9, 1992) (FCC File No. 592696 NABER letter).

⁵⁶ See Waiver Request at 19-21.

⁵⁷ See Waiver II at 9.

⁵⁸ See Hauppauge Fire District, *Memorandum Opinion and Order*, DA 99-2830 (WTB PSPWD rel. Dec. 21, 1999) at ¶ 10-12.

⁵⁹ FCC File Nos. 592687, 592691, 592693, 592694, 592695, 592696, 592697 and 592698.

⁶⁰ See 47 C.F.R. § 1.17.

⁶¹ If LMR declines to submit additional information, we believe, in light of the factors noted below, that LMR has failed to establish its eligibility to use the frequencies in question. Under those circumstances, we believe the Division would be justified in dismissing LMR's applications.

⁶² *Order*, 14 FCC Rcd at 17237 ¶ 20.

between the licensee and each participant which sets out (1) the method of operation, (2) the components of the system which are covered by the sharing arrangements, (3) the method by which costs are to be apportioned, and (4) acknowledgement that all shared transmitter use must be subject to the licensee's control. These agreements must be kept as part of the station records.⁶³

LMR alleges that the Division acted in conflict with statute, regulation, case precedent or established Commission policy by applying the requirements of Section 90.179 our Rules to LMR, as an applicant.⁶⁴ We disagree. While the Commission has recognized that legitimate cost-sharing arrangements that allow radio users to combine resources to meet compatible needs for specialized internal communications facilities are not "for profit," the Commission also has cautioned that "it was not Congress's intent, nor is it ours, to allow licensees to enter into sham 'not-for-profit' arrangements in an effort to disguise essentially for profit activity."⁶⁵ In *Viking Dispatch Services, Inc. (Viking)*, the Commission affirmed that when internal communications are not envisioned, greater scrutiny as to the validity of the non-profit status is often warranted.⁶⁶ Furthermore, the Commission reiterated that identifiable participants, with existing communications needs, are key components of a not-for-profit, cost-shared system and that the lack of specified users indicates the entrepreneurial nature of a system.⁶⁷ In that case, Viking filed applications to construct and operate 900 MHz facilities for two-way mobile dispatch systems on a not-for-profit, cost-shared basis. Even after Viking supplemented its applications to address the Bureau's concerns, the Bureau determined that the proposed systems were not *bona fide* not-for-profit, cost-shared systems.⁶⁸ Specifically, the Bureau noted that the proposed systems were not to be used for internal communications.⁶⁹ Moreover, Viking had not explained why it would undertake to construct expensive systems and then make them available on a non-profit basis, and Viking had failed to identify particular shared system participants.⁷⁰ The Commission affirmed the Bureau's decision, stating, "[W]e believe it is possible to develop a list of sincere and committed prospective users before an application is filed. . . . We find that [Viking's] demonstration of some general, loosely-defined need to be met by [Viking] as a third-party provider does not meet the PLMRS criteria for current, identifiable users to share costs and expenses."⁷¹

⁶³ 47 C.F.R. § 90.179(d).

⁶⁴ Application for Review at 7-8.

⁶⁵ See Implementation of Sections 3(n) and 322 of the Communications Act Regulatory Treatment of Mobile Services, *Second Report and Order*, GN Docket No. 93-252, 9 FCC Rcd 1411, 1430 ¶ 47 (1994); see also J & W Mobile Radio Association, *Order*, 15 FCC Rcd 1893 (WTB PSPWD 2000) (deciding, *inter alia*, that the applicant did not meet the not-for-profit, cost shared requirements of the Commission's Rules).

⁶⁶ *Viking Dispatch Services, Inc., Memorandum Opinion and Order*, 14 FCC Rcd 18814, 18817-18 ¶ 7 (WTB 1999).

⁶⁷ *Id.* at 18820 ¶ 10.

⁶⁸ *Id.* at 18816 ¶ 3.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.* at 18820 ¶ 10.

13. Nonetheless, we recognize that while LMR's proposal has similarities to the rejected Viking proposal, there are also some notable differences. For instance, while Viking intended to provide general dispatch service to a variety of users, LMR proposes to serve the narrow category of airport transportation vehicles and personnel. Also, we believe that LMR did not receive the same opportunity as Viking to address the Division's concerns after questions arose regarding the not-for-profit nature of its proposal. Consequently, we believe LMR's proposal merits further examination, and LMR should be afforded the opportunity to provide additional information to demonstrate that it is a *bona fide* not-for-profit, cost-shared system.

IV. CONCLUSION

14. Based on the record before it, we find that the Division had ample reason to question whether the nature of LMR's proposal was commercial rather than not-for-profit, and therefore to question LMR's eligibility. We believe, however, that it is appropriate to afford LMR an opportunity to demonstrate its eligibility for the stations in question. We note, however, that two of LMR's ten applications at issue were subject to dismissal because they lack frequency coordination. LMR's eight other applications will be reinstated and returned to pending status. LMR may submit to the Division any additional information in support of its claim that its system will be a not-for-profit, cost-shared system within thirty days from the release of this *Memorandum Opinion and Order*.

V. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 5(c)(4) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(4), and Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, the Application for Review filed by LMR Systems, Inc. on November 12, 1999, IS GRANTED IN PART AND DENIED IN PART as provided herein.

16. IT IS FURTHER ORDERED that, the Wireless Telecommunications Bureau SHALL RETURN FCC File Nos. 592687, 592691, 592693, 592694, 592695, 592696, 592697, and 592698 to pending status.

17. IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.46 of the Commission's Rules, 47 C.F.R. § 1.46,

the Motion for Leave to File Opposition to Application for Review filed by Lone Star Radio, Inc. on December 8, 1999, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary