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FEDERAL COMMUNICATIONS COMMISSION
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ORIGINAL
FILE

In The Matter Of)
)
Revision Of Part 22 Of)
The Commission's Rules)
Governing The Public Mobile)
Services)

CC Docket No. 92-115

To The Commission:

COMMENTS OF SOUTHWESTERN BELL CORPORATION

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SUMMARY

Southwestern Bell Corporation ("SBC") generally supports the objective of the Commission to rewrite the Part 22 Rules to be more clear, less onerous, and streamlined. However, in certain instances, the Proposed Rules actually create uncertainty, add complexity and costs, and should be either modified or eliminated. In still other areas, the Proposed Rules would benefit the public and Public Mobile Service providers by being supplemented.

While the Comments of SBC are detailed and numerous, some general statements can be made:

- SBC believes that the Proposed Rules should be modified to state their specific application, or nonapplication as the case may be, to microcellular systems;
- SBC believes that the prohibition on cellular provision of dispatch services should be eliminated;
- SBC believes that the period for filing a direct case in a license renewal situation should be extended from 30 to 150 days;
- SBC believes that the Proposed Rules in certain instances make it more, rather than less, difficult to expand existing services and facilities;

- SBC believes that grants, if they are to be made conditional, should only be made conditional for a shorter period and should not be terminated without a hearing;
- SBC is opposed to the proposal to eliminate traffic loading studies; and
- SBC believes that the Proposed Rule which would automatically terminate certain authorizations is arbitrary, inflexible, and requires clarification.

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To The Commission:

COMMENTS OF SOUTHWESTERN BELL CORPORATION

Southwestern Bell Corporation ("SBC") on behalf of its operating subsidiaries and affiliates, submits these Comments in response to the Commission's *Notice of Proposed Rule Making* ("NPRM") released June 12, 1992 in the above referenced matter. The NPRM relates to proposed revisions to Part 22 of the Commission's rules governing Public Mobile Services.

I. INTRODUCTION.

In the NPRM, the Commission proposes to rewrite its Part 22 Rules to make them easier to understand, to eliminate outdated rules and unnecessary information collection requirements, to streamline licensing procedures, and to allow licensees greater flexibility in providing service to the public.¹ The Commission notes that, while it completed its last comprehensive review and revision of the

¹NPRM, para. 1.

Part 22 Rules in 1983, it has in numerous proceedings adopted various amendments to those rules since that time.²

SBC supports the Commission's basic objectives in this proceeding and many of its proposed rule changes. However, in certain other instances, the proposed rule changes either do not go far enough or are more likely to create uncertainty, add complexity, increase costs, and create rather than to eliminate regulatory burdens. They could also, in many instances, restrict the ability to respond competitively to changes in the marketplace and delay the introduction or expansion of new technologies. Thus, in these Comments, SBC will focus principally on the areas where the proposed changes to the rules need additional improvement, and clarification, and on the areas where no changes should be made.

II. TECHNOLOGICAL AND REGULATORY CHANGES.

The Commission notes that, since its last comprehensive review of these rules, there have been substantial changes in technology that have made it desirable to provide carriers greater flexibility to deal with new and changing circumstances.³ Among those changes has been the development and potential introduction of microcellular technology into Public Mobile System networks.

²NPRM, paras. 2 and 3.

³NPRM, para. 5.

A. MICROCELLS.

Recognizing the inevitability of microcellular introduction, the Commission should in its rule changes provide for that event and tailor its Rules and Form requirements accordingly. Microcellular service presents unique problems and circumstances that are not adequately covered or recognized by the current Part 22 Rules and Forms, both of which were drafted principally to cover macrocellular type services. For example, microcellular service will involve a larger number of base stations, and radiation patterns that involve areas of a few hundred feet. As such, for those applications, it will not be practical to file a Form showing the location of each base station or the contours of those base stations. Nor would such information be particularly meaningful or helpful to the Commission since, unlike macrocellular base stations, microcellular base stations will tend to operate at relatively low frequency power levels and without the radiation and interference potential of larger macrocellular systems and devices.

1. SECTION 22.99.

To recognize and facilitate the introduction of Public Mobile Microcellular Services, SBC proposes several changes to the Commission's Part 22 Rules. First to Section 22.99, there should be added a "microcell" definition. SBC suggests the following definition:

"Microcell. A base transmitter including base transmitters associated with a wireless Private Branch Exchange ("PBX") or an adjunct to central office based equipment that functions as a PBX, which provides service to mobile stations either in or out of buildings using cellular frequencies at a power setting of 1 watt or less." [Emphasis notes addition.]

2. SECTION 22.165.

Second, to remove with certainty any requirement that a Form 489 would be required for the addition of microcell transmitters within existing systems, SBC recommends that a specific reference to microcells be included in Proposed Rule 22.165. Proposed Section 22.165 begins with the statement that:

"Licensees may operate additional transmitters at additional locations on the same channel or channel block as an existing system without obtaining Commission approval, provided"

SBC's proposal is to add the following language as Proposed Rule 22.165(e):

"(e) Cellular Radiotelephone Service. The service area boundaries of the additional transmitters, including transmitters associated with microcells, must remain within the market." [Emphasis notes addition.]

By making this addition, the Commission will be making it clear, consistent with its discussion at page 10 of Appendix A to the *NPRM* and Proposed Rule 22.165 that it need not be notified of the placement of additional transmitters within the market area through the filing of an

FCC Form 489. The addition simply clarifies that the requirement is also being eliminated for the placement of microcells within such market areas. In doing so, the Commission will save both itself and the industry a tremendous amount of time and resources that would otherwise be required if a Form 489 had to be filed with the addition of each microcell. In other words, with this change, it will not be necessary for service operators to show either the contours or the locations of each microcell base station within their licensed service areas.

3. SECTION 22.373.

Another problem that could inevitably arise with the increased placement of microcells stems from the fact that those microcells will be far more accessible to the general public than a normal traditional cell site. Indeed, a base station associated with a microcell could, in certain applications, be literally installed on the ceiling of someone's office. Under such circumstances, it will not be possible to construct the base station with the same level of security as a regular cell site.

In recognition of this greater accessibility, Proposed Section 22.373 - Access to Transmitters - should be modified as follows:

"Unless otherwise provided in this part or limited herein, transmitters in the Public Mobile Service must meet the requirements of this Section."

- (a) Transmitters, other than microcells, must be installed such that unauthorized persons will not have access to the transmitter or its control point(s).
- (b) Transmitters, other than microcells, must be designed and installed such that any adjustments or controls that could cause the transmitter to deviate from its authorized operating parameters are accessible only by properly qualified service persons. [Emphasis notes addition.]

In addition, in order to define the parameters governing the microcells specifically exempted from subsections (a) and (b) of Section 22.373, a new subsection (e) should be added to the Rule which states as follows:

"(e) Transmitters associated with microcells must be designed and installed in such a manner that, should unauthorized personnel gain access to the transmitter, the unauthorized person could not cause the transmitter to deviate from its authorized operating parameters in such a way as to cause interference to other base stations or transmitters." [Emphasis notes addition.]

4. SECTION 22.323.

Section 22.308 of the Commission's current rules allows Public Mobile Service carriers to provide communications services incidental to those specified in their authorizations, subject to certain conditions. Proposed Section 22.323 contains the essence of the old rule, with one notable exception. It eliminates the additional frequency coordination requirements placed on carriers offering incidental services and, thus, would only make the offering of those services subject to the normal

frequency coordination requirements specified in other sections of the Commission's rules. SBC supports this rule change.

However, Proposed Section 22.323 requires another modification. Because Public Mobile Service providers will likely offer microcellular services on an incidental basis to their existing service authorizations, the Rule should be changed to expressly permit microcellular services to be offered by such carriers on that basis. In this regard, SBC suggests the following modification to the opening sentence of Proposed Section 22.323:

"Carriers authorized to operate stations in the Public Mobile Radio Services may use these stations to provide other communications services, including microcells, incidental to the primary Public Mobile Service for which the authorizations were issued. . . .
[Emphasis notes addition.]

By making this change, the Commission will be recognizing the substantial changes in technology that have occurred since its last major rewrite of Part 22; it will be granting Public Mobile Service greater flexibility in light of changing circumstances; and it will be eliminating certain additional frequency coordination requirements on carriers which are not necessary, particularly in the context of the incidental provision of low power (1 watt or less) microcellular systems.

5. SECTIONS 22.901 AND 22.3(b).

Two other rules require modification and/or clarification to recognize the use of microcells by Public Mobile Service providers. Proposed Section 22.901 requires cellular system licensees to provide cellular mobile radio telephone service upon request to all cellular subscribers in good standing, including roamers. Of course, if microcellular service, in particular microcells used in conjunction with a wireless PBX, is added elsewhere to the Part 22 Rules, as it should be, the application of this Rule should be clarified in the context of such services. SBC suggests the following modification to Proposed Section 22.901 to clarify that the roaming access requirements of the Rule do not apply to microcells where the cellular systems operated by the licensee allow access to roamers on the macrocellular cell sites.

The modification would be in a form of a second sentence to the Section, so that the first two sentences would read as follows:

"Cellular system licensees must provide cellular mobile radio telephone service upon request to all cellular subscribers in good standing, including roamers (subscribers to cellular systems other than the one from which they are requesting service), while such subscribers are located within the authorized cellular geographic service area (see § 22.911). Licensees providing service to or by a microcell associated with wireless PBX need not, however, provide access to roamers via the microcell so long as the cellular

system operated by that licensee allows access to roamers on cell sites not associated with the microcell."
[Emphasis notes additions.]

By making this addition, the Commission will be recognizing that microcellular systems, associated with indoor wireless PBX systems, do not involve roaming except in connection with the licensee's out-of-building macrocellular system. Therefore, a modification of Proposed Rule is required to make it clear that microcells associated with wireless PBX systems inside a building need not be designed to allow a roamer to use the frequencies utilized by the wireless PBX.

The second Rule which requires modification is Section 22.3(b). Section 22.3(b) gives subscribers authority to operate mobile or fixed stations in the Public Mobile Services under the cellular carrier's authorization. Under normal circumstances, such use can be monitored for compliance with the carrier's authorization. However, it is possible in the microcellular wireless PBX context that such use could occur without notice to the cellular carrier and in that circumstance the cellular carrier may not be able to determine compliance. Therefore, the Section should be modified to make clear the limits of the subscriber authorization.

SBC suggests that Section 22.3(b) be modified as follows. The first sentence of the subsection should read:

"(b) Authority for subscribers to operate mobile or fixed stations, other than microcells associated with wireless PBXs, in the Public Mobile Services, except for certain stations in the Rural Radiotelephone Service and the Air-ground Radiotelephone Service, is included in the authorization held by common carrier providing service to them." [Emphasis notes addition.]

In addition, SBC suggests that a third sentence be added to subsection (b):

"No subscriber may operate a microcell associated with a wireless PBX in the Public Mobile Services absent a written contract to obtain cellular service with the licensed cellular carrier on whose frequencies the microcell is operating, and the activation of that service by the licensed cellular carrier."
[Emphasis notes addition.]

B. DISPATCH SERVICES.

Proposed Section 22.901(c) provides that:

"Cellular systems must not offer or provide dispatch service." Retention of this subsection would be unfair and inequitable in view of regulatory developments. Today, expanded Specialized Mobile Radio ("SMR") Service operators have the ability to offer dispatch services and they have also been granted authority to offer cellular-like services. In view of this fact, the Commission should modify this Rule to expressly allow cellular carriers to offer dispatch services in addition to the services they currently offer. In other words, subsection (c) of Rule 22.901 is no longer proper or necessary and it should be deleted from the Proposed Rule. Such elimination would be consistent with

the Commission's stated objective of eliminating rules that are outdated and unnecessary, and with its stated goal of allowing carriers greater flexibility to meet changing circumstances (e.g., competition and entry of new carriers).⁴

III. LICENSE RENEWALS.

In its license renewal *Report and Order*, the Commission added Section 22.942, titled "Procedures for Comparative Renewal Proceedings," to Part 22 of its Rules.⁵ Section 22.942, and other Rules that were proposed to be modified in the renewal *Report and Order*, are not referenced, however, in either the *NPRM* or at p. 86 of Appendix B setting forth the Proposed Rules.⁶ SBC assumes the omission of Section 22.942 is the result of the Proposed Rules in the renewal *Report and Order* being not yet final. Nonetheless, as suggested by Southwestern Bell in that case, many of the Rules proposed therein should be adopted with modifications.⁷

⁴*NPRM*, para. 5.

⁵See *Amendment of Part 22 of the Commission's Rules relating to License Renewals in the Domestic Public Cellular Radio Telecommunications Service*, CC Docket No. 90-358, *Report and Order*, 7 FCC Rcd. 719 (1992).

⁶At page 86, the rules skip from 22.941 to 22.943.

⁷Response of Southwestern Bell Mobile Systems, Inc. to Petitions for Reconsideration, CC Docket No. 90-358, dated April 22, 1992.

For example, in the renewal case Proposed Section 22.942 requires the renewal applicant to file its complete affirmative direct case within 30 days of the issuance of a Public Notice announcing the filing of a competing application. This requirement imposes an unnecessary and unreasonable burden upon renewal applicants as it requires them to incur unnecessary and significant costs. As a practical matter, a complete affirmative direct case cannot be prepared in 30 days meaning that all cases will have to be prepared in advance even though not every licensee will face a competing application. As such, this requirement will cause a significant waste of resources.

SBC suggests that proposed Section 22.942 be changed in this Docket and/or in Docket No. 90-358 to extend the period for the renewal applicant to file a complete affirmative direct case from 30 to 150 days. In doing so, the Commission will be reducing costs that would be better spent serving customers and will be avoiding a situation where renewal applicants would be required to incur the costs of preparing such a direct case unnecessarily. The suggested change is as follows:

"(2) within 150 days of the issuance of the Public Notice announcing the filing of a renewal application and applications competing with that renewal application, the renewal applicant must file a complete affirmative direct case, including its showing demonstrating any entitlement to renewal expectancy. Four (4) copies of the direct case must be filed with the Commission and a copy

served on each other party to the proceeding."

IV. OTHER.

In this part, SBC will comment on various other Part 22 Rules and on certain other matters discussed in the NPRM. Items will be discussed under each Rule and/or NPRM heading.

A. APPLICATIONS (NPRM, PARAS. 9 & 10).

The Commission proposes to grant applications on a "first come, first served" basis instead of permitting mutually exclusive applications to be filed with 60 days of the first filed application. Nevertheless, the Commission expresses concern that this change could limit the opportunity for carriers to file applications to expand an existing system on a specific channel.⁸

SBC shares the concern about the potential abuses which could result from the "first come, first served" process because it could lead to competitors who could file for some one else's channel in an attempt to block system expansion. Moreover, a review of the FCC Public Notices reveals that lotteries for mutually exclusive applications make up less than 1% of all applications filed. Thus, the first come, first served process would likely result in an additional workload, besides also encouraging speculators to file for the channels of existing licensees. A solution to

⁸NPRM, para. 10.

these problems might be to modify the Proposed Rule to permit a 30-day window for filing mutually exclusive applications. Such a window would cut processing time and give the incumbent co-channel licensees the ability to respond to anticompetitive activity and speculators.

B. CONDITIONAL GRANTS (NPRM, PARAS. 11 & 12).

The Commission describes a new procedure whereby licenses would be granted without substantive review and approval by its Staff, and the licenses would be made conditional for a ten year period. Furthermore, the new procedure provides that the grant can be canceled without a hearing. The new procedure appears to be designed to result in faster application processing.

SBC is opposed to the new procedure for several reasons. One, the procedure does not seem consistent with either the requirement that the Commission assure compliance with its rules or with its obligation to assure full deployment of services. Two, the long term conditional nature of the license will increase the risk to the licensee, and could have a dampening effect on its investment in the system.⁹ Three, the new procedure is likely to result in numerous post-grant challenges that will distract the licensee from operating the granted business. And, four, the rule would apparently eliminate the

⁹An example of where this occurred is the case of vehicle location service.

protection that current licensees have, whereby the Commission must hold a hearing before shutting down their operations, and giving them a due process opportunity to demonstrate that they are in fact operating within their authorizations.¹⁰

SBC suggests that the Commission change its conditional grant proposal. If a grant is to be made conditional, it should be for a shorter period (e.g., one year).¹¹ There should also be an opportunity for a hearing before a licensee is required to suspend operations. Furthermore, if the rule is adopted, it should not be made retroactive. That is, the condition should not be made applicable to existing licenses which were granted on an unconditional basis.

C. FINDER'S PROCEDURES/LOADING REQUIREMENTS (NPRM, PARAS. 13 & 16).

The Commission proposes to adopt a "finder's preference" in an effort to recapture unused spectrum, while at the same time eliminating the traffic loading requirements for applicants requesting additional radio

¹⁰Most carriers have been subject to baseless complaints of "so-called" interference only for it to be found later that they were not required to cease operations.

¹¹There is little danger in shortening the period to one year, as applicants will be required to certify that their proposals meet all FCC Rule requirements for interference protection and since such applications will be placed on public notice thereby allowing interested parties an opportunity to assure that ample interference protection is demonstrated.

channels.¹² The intent of these Rule changes is purportedly to deter the practice of warehousing spectrum.¹³

By eliminating the loading requirements, however, the Commission may be encouraging rather than discouraging warehousing. Conceivably, under the Proposed Rule, if one radio unit were on the air, the channel could be considered "in service." For example, since SMRs generally have 70 radio units per channel, the fact that one unit is in service provides no assurance that the channel is being used productively, and the only way to determine whether or not productive use of the channel is being made in this and other contexts (e.g., Rural Radio Service) is through the submission of traffic loading studies. Accordingly, instead of eliminating same, the Commission should continue to require the submission of traffic loading studies. Otherwise, the practice of warehousing will most likely continue, and legitimate "finders" could be precluded from acquiring underutilized channels.

¹²Appendix B, Sections 22.167 and 22.569, pp. 22, and Appendix A, pp. 13-14, and Section 22.715 on Rural Radio Service.

¹³SBC believes that undue emphasis should not be placed on the concern about warehousing and the Commission should not lose sight of the fact that any ongoing business must plan for the future, sometimes over a period of three to five years. Investment in spectrum is a vital requirement especially in cases of scarcity and the potential inability to ensure that a channel will be available for geographic expansion.

D. TERMINATION OF AUTHORIZATIONS (NPRM, PARAS. 19-21).

The Commission proposes a strict standard that will cause authorizations to terminate automatically without further action by the Commission for failure to commence service in the time period required by the rules. In SBC's view, the Proposed Rule is too inflexible, particularly when combined with the restriction prohibiting refiling for a year.¹⁴

The Rule, while it provides for extension requests, does not indicate that a request for extension delays the "automatic" termination of an authorization. Therefore, the Proposed Rule should be modified to make it clear that the authorization does not terminate when the Commission has failed to act upon a request for extension prior to the required date for commencement of service.

Another problem is that the Proposed Rule could be interpreted as resulting in a partial "automatic" termination of an authorization if service does not begin from all authorized transmitters within the specified point in time.¹⁵ Such a requirement would severely restrict a carrier's flexibility to respond in a rational manner to the marketplace and to its own legitimate budgetary constraints. Furthermore, by mandating a one year moratorium on refiling,

¹⁴Proposed Section 22.121, Appendix A, p. 7.

¹⁵Proposed Section 22.142(b)(2).

the Commission would appear to be limiting the existing practice of allowing cellular carriers to refile for authorized transmitters that do not start within the required amount of time for the same locations.¹⁶

None of these inflexibilities makes any business or economic sense. To the contrary, they would merely serve to arbitrarily constrain and burden the industry without regard to the market realities of the business. They would limit a carrier's ability to target areas for expansion even when such areas involve common, regional frequencies with its existing operations, and for each of these reasons, the proposed changes in this area should be rejected.¹⁷

E. NOTIFICATION OF COMMENCEMENT OF SERVICE AND CONSTRUCTION (NPRM, PARA. 14; SECTIONS 22.142 & 22.143).

Under the Proposed Rules, as interpreted in the NPRM, considerable confusion could exist as to various

¹⁶This proposal is quite severe. Failure to construct a station may be caused by any number of reasons including site and equipment availability, an unexpected temporary change in the financial condition of a licensee, a change in marketing strategy or a decision to offer new products instead of geographic expansion. In any case, a licensee needs the flexibility in filing applications to react to a changing marketplace, including the ability to refile after postponing construction. The one year filing ban would likely result in a delay of 18 months or longer in the ability to expand service to new areas and, thus, would have the perverse result of delaying service to the public.

¹⁷On a related matter, the Commission should clarify whether, in the event a construction permit is close to expiration, a Form 489 needs to be filed prior to expiration, or whether the "within the 15 days Rule" still applies (even though the latter may not result in the Form being filed until after the permit has expired).

notification and filing requirements. For example, under current practices, it is quite common for Forms (489) to be filed weeks ahead of actually commencing service. Proposed Rule § 22.142(b) would appear to continue to permit such a filing by allowing licensees to file a Form 489 no later than 15 days after service begins. However, Paragraph 14 of the *NPRM* states and implies that it is improper to notify the Commission of commencement of service when, in fact, such service has not commenced. Therefore, the Commission needs to clarify its reasoning on this point, and to eliminate the implied prohibition on a notification filing made prior to the actual commencement of service.

Furthermore, on August 2, 1989, the FCC released a *Report and Order* in CC Docket No. 88-475 amending Part 22 to allow applicants to commence construction after filing a FCC Form 401, but prior to grant of their application. The Proposed Rule (§ 22.143) would not appear to continue to allow the construction of a modification to an existing system prior to the application's grant. Such flexibility is needed - particularly in the case of existing systems - and the Proposed Rule should be modified, accordingly, so as to maintain the existing flexibility to modify or add to such systems before the actual application is granted.

F. CLASSIFICATION OF FILINGS AS MAJOR OR MINOR (PROPOSED RULE 22.123).

The Proposed Rule indicates that certain changes, previously considered minor, will now be reclassified a

major, thus requiring 30 days notice and Commission action before the changes can be made. This effectively increases regulatory burdens, rather than decreasing them, and will likely delay certain facility changes.

For example, the Proposed Rule indicates that all changes (including small changes) to the Cellular Geographic Service Area ("CGSA") would be classified as a major change.¹⁸ Ostensibly, this could include not only small changes, but even reductions of the CGSA which have not been heretofore considered a major change because they did not materially expand the CGSA. At the very least, the Commission should clarify the Rule to state that small changes and/or reductions to the CGSA will not be considered major changes within the meaning of the Proposed Rule.

G. CONSTRUCTION PERIODS AND REQUIREMENTS FOR CELLULAR SYSTEMS (PROPOSED RULE 22.946(a)(1), APPENDIX B, P. 87).

Proposed Rule 22.946(a)(1) could be interpreted as stating that a cellular licensee fails to meet the commencement of service requirements when it has no local customers or where it serves only roamers in a given market. In this regard, the Proposed Rule ignores that, in practice, there has been an evolution and consolidation into larger service areas, and that many of the added markets were simply considered as an extension of an existing market, where initial demand did not justify the assignment of an

¹⁸Proposed Section 22.123(c)(2)(i)(A).