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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Revision of Part 22 of the Commission's Rules )  
Governing the Public Mobile Services )

CC Docket 92-115

To: The Commission

COMMENTS

**BELLSOUTH CORPORATION**  
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BellSouth Corporation and BellSouth Enterprises, Inc. (collectively "BellSouth") hereby comment in response to the Commission's *Notice of Proposed Rulemaking*, FCC 92-205, 7 FCC Rcd. 3658 (1992) ("NPRM"), *summarized*, 57 Fed. Reg. 29,260 (1992), in the captioned proceeding.

**INTRODUCTION AND SUMMARY**

BellSouth supports the FCC's efforts to streamline and simplify the provisions of Part 22. Properly targeted rule changes will substantially reduce regulatory burdens and improve FCC oversight of the common carrier mobile industry. As the Commission notes in the NPRM, there are four important reasons for revising the rules at this time: (1) the need to re-craft Part 22 in light of changes that have been adopted over the last nine years; (2) the need to eliminate obsolete rules; (3) the need to eliminate outdated technical approaches and increase licensee flexibility; and (4) the need to comply with the Metric Conversion Act of 1975.

In Section I of these comments, BellSouth addresses the subjects on which the Commission specifically sought comment in the text of the NPRM. There are, however, a number of important issues that were not discussed in the text of the NPRM. Many of the Commission's proposed rule changes appear without discussion in Appendix B to the NPRM,

while some of the changes are briefly discussed in Appendix A to the NPRM. In Section II of these comments, BellSouth addresses some of the most significant among these rule changes and also proposes other changes to Part 22 that could contribute to the improvement of Part 22.<sup>1</sup> Finally, BellSouth sets forth in appendices its detailed comments and recommendations regarding a wide variety of rule changes.

The following comments proceed in the order that subjects are discussed in the NPRM. The appendices include specific discussions of particular rule sections and include BellSouth's proposed recommendations. A number of items addressed in the appendices are not separately discussed in Section I of these Comments.

**I. COMMENTS RESPONSIVE TO ISSUES RAISED IN THE TEXT OF THE NPRM**

**A. Reorganization of Part 22**

BellSouth agrees that Part 22 would benefit from reorganization, moving rules into related groups and collecting together those rules that affect all Part 22 applicants and licensees equally. BellSouth has no objection to the retitling of the various radio services involved or to the establishment of certain new services currently covered within the Public Land Mobile Service.

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<sup>1</sup> In Paragraph 21 of the NPRM, the Commission invited the submission of other proposals, as well as ways to refine the proposals in the NPRM.

**B. First-Come, First-Served Processing**

BellSouth agrees with the Commission that the elimination of a sixty-day window for filing mutually exclusive applications and its replacement with the proposed first-come, first-served procedure would reduce significantly the number of mutually exclusive applications requiring lotteries. The proposed procedure, however, would encourage the filing of speculative applications and require licensees wishing to secure expansion rights to file their legitimate applications earlier than otherwise necessary.

As a solution to these problems, BellSouth suggests that the Commission consider reducing the cut-off period for filing mutually exclusive applications from sixty to thirty days from the date of public notice. Further, BellSouth submits that the Commission should only accept for filing mutually exclusive applications from co-channel licensees within 250 km. Limiting eligibility and the period within which the Commission accepts competing applications would serve the public interest in ensuring that only serious applications are filed and encourage the development of wide area systems.

The current procedure gives existing licensees and potential applicants notice of the filing of an application that may have a bearing on their business plans and provides a window within which they may file competing applications. The first-come, first-served procedure would eliminate any opportunity to file legitimate applications in response to a filing; only applications filed on the very same day would be entitled to consideration together. This may result in the *de facto* establishment of a one-day filing window for any applications that can be filed, on the effective date of the new rules, because it would prompt speculative applicants to file applications immediately after the rules go into effect.

Because of this possibility, existing licensees may find it necessary to file applications during this window that they would otherwise prefer to file at a later date. Licensees that do

not file on this date risk being preempted by an earlier-filed application. These premature filings would not only be disruptive to the licensees' planning process, they would also result in a large number of same-day application filings that would delay action on all applications, legitimate or otherwise.

BellSouth does not propose changing the first-come, first-served procedure adopted for Phase II of the cellular unserved area application process because that would require a substantive revision of rules recently adopted in a proceeding currently undergoing reconsideration. Instead of its proposed first-come, first-served procedure for all other application processes, however, the Commission may wish to consider shortening the cut-off period for filing mutually exclusive applications to thirty days after public notice, which would be consistent with the time for filing petitions to deny.

### **C. Conditional Grants**

BellSouth is concerned that the proposal in the NPRM to process applications without verification of the technical exhibits in the applications, with grants being conditioned on non-interference, will result in considerable uncertainty as to the status of licenses. BellSouth agrees that a 50% savings in processing time is a laudable public interest objective, but submits that uncertainty as to the validity of a license for its entire ten-year term is an unacceptable cost.<sup>2</sup>

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<sup>2</sup> Moreover, the uncertainty surrounding conditional licenses will be exacerbated if the Commission intends to rely solely on the proposed theoretical formulas for defining carriers' service areas and identifying an interfering facility. See proposed §§ 22.537 and 22.567. Theoretical formulas are inherently inaccurate when applied to "real world" conditions. To avoid future litigation, assuming licenses are conditioned, the Commission should adopt clear guidelines regarding the circumstances under which it will order a licensee to suspend operation of an "interfering" station.

A more reasonable alternative to the proposal would be for the Commission to rely on the technical exhibits in an application without verification and simply to grant applications based on this reliance, thus affording interference protection and relative certainty. In the event interference results, because of inaccurate technical exhibits, the FCC retains the right to modify the license involved pursuant to Section 316 of the Communications Act. Furthermore, any responsible licensee who is notified that its operations are causing interference would immediately undertake the modifications needed to prevent interference caused by the licensee's erroneous technical exhibits.

**D. Finder's Preference**

BellSouth supports the concept underlying the Commission's proposal to create a "finder's preference" that would allow an applicant to file for a channel that is assigned but unused. Nevertheless, BellSouth has a number of reservations about the practical implementation of this concept. Accordingly, if the Commission adopts the proposed rules it should address the following concerns about the procedure in its Report and Order.

First, the Commission should make clear, in adopting the finder's preference rules, that it will delete an existing authorization and consider the finder's application only if the FCC's investigation demonstrates, after notice to the existing licensee and an opportunity to respond, that the licensee did not construct its facilities within the required time or has not provided service on the channels in question for a period of more than 90 days. Any such notice should comply with the requirements of Section 316 of the Communications Act and should specifically give notice that the FCC may modify the licensee's authorization without further hearing if the facility was not constructed or certain channels have not been in service for a period in excess of 90 days.

Second, the Commission should acknowledge that a common carrier's facilities are "in operation" in some instances even if there are no radio transmissions from the facilities during any specific time period. For example, a paging station transmits only when customers are paged. If, during some time period, none of a licensee's customers who are paying for service actually sends a page, there will be no radio transmission. Because of the demand-based transmission characteristics of a paging station, the station should be considered operational if it has been constructed, is prepared to transmit as soon as a page is initiated, and has subscribers. A similar result would obtain in the case of a conventional mobile telephone system. Such a system may, for example, use several channels in a trunked configuration, and there may not be any radio transmissions on the lowest-ranked channels in a trunk group unless traffic in the relevant period exceeds the capacity of the higher-ranked channels.

Third, the Commission should make clear that a "finder's application" must be consistent with the rules governing the particular service involved. Specifically, the Commission should not entertain applications for cellular channels based on a claim that the licensee is not utilizing specific channels within its authorized frequency block. BellSouth believes that this is implicit in the Commission's proposal, given the block-by-block, rather than channel-by-channel cellular licensing scheme; unless this is made explicit, however, the Commission could find itself swamped with finders' applications for cellular channels that are authorized but not used at a particular time due to demand or coordination reasons.

**E. Elimination of Notification Requirement for Minor Changes and Additional Transmitters Within Contours of Existing Stations**

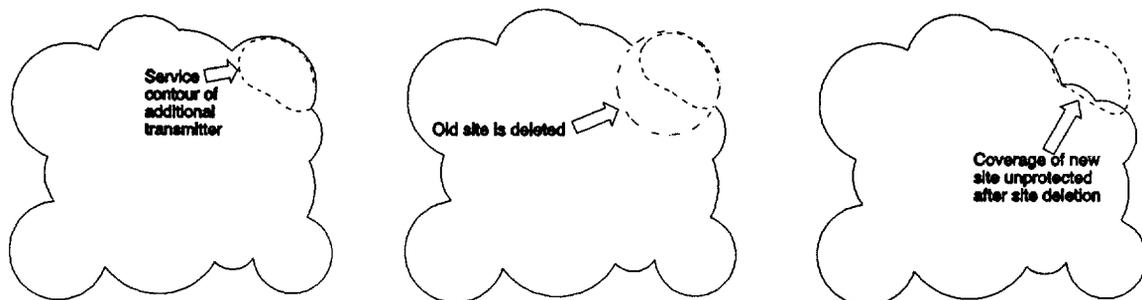
The Commission has proposed to allow licensees to modify their facilities by making minor changes and adding transmitters that do not increase system contours without obtaining prior approval or notifying the Commission. Currently, licensees may construct such modified

facilities without prior authorization but must file a Form 489 notification the day they are placed in operation.

The Commission intended this proposal to give licensees more flexibility and minimize regulatory filing requirements. BellSouth supports these objectives. The specific proposal in the NPRM, however, presents some problems which BellSouth believes can easily be corrected.

The most important problem is that the Commission's proposed rules provide no mechanism for protecting facilities that result from minor changes or the addition of a transmitter. The rules do not *require* the filing of a Form 489 notification regarding minor changes or additional transmitters, but the rules apparently do not even *permit* filing a Form 489 notification to place these facilities in the FCC's station files if the licensee wants to ensure their protection. While this may pose no problem for changes that are substantially inside the licensee's composite service contour, it places licensees at an unacceptable risk if the changed or additional facilities are near the periphery of the system.

This problem is illustrated in the diagrams below. It is common for a paging or cellular licensee to add a transmitter whose coverage is wholly within the coverage of one or more existing facilities. If, either because of the addition of the new site or for other reasons, the original site that formed the basis for the composite service contour is deleted or reduced in power, the new site's coverage will be wholly or partially outside the coverage area of the remaining original facilities.



Thus, the licensee needs some means to ensure protection of facilities that are modified in minor ways. BellSouth strongly urges the Commission to provide a mechanism for providing such protection. Allowing the licensee the option of filing a Form 489 notification at any time subsequent to making such modifications and transmitter additions would provide the necessary interference protection. If there is no such option, all minor modifications and transmitter additions will be relegated to secondary, unprotected status.

It is also important that the Commission's station files contain information concerning facilities that are modified or added in order to give other parties notice of the facilities they must consider for purposes of coordination. An applicant or licensee in a nearby area cannot perform any meaningful analysis of potential interference to those facilities if the FCC's records do not contain their technical parameters.<sup>3</sup>

In the Appendix, BellSouth proposes that the Commission combine into a single section its rules pertaining to additional transmitters and other minor changes, and that a licensee should be permitted to notify the Commission of any such changes on Form 489. Licensees would be permitted to make such minor changes without filing a notification, but any changes not reported to the Commission would have a secondary status and would not receive interference protection directly.

#### **F. Revision of Forms**

BellSouth strongly supports the revision of all forms pertaining to Part 22 licensees by simplifying them and eliminating unnecessary or duplicative items. There are a number

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<sup>3</sup> In addition, allowing licensees to file a Form 489 will also assist adjacent carriers in selecting antenna locations within their systems. For example, a modification to facilities near an adjacent licensee's protected service area could free up a neighboring system to relocate a tower to provide better coverage within its system.

of ways in which the proposed forms could be improved, however. These are discussed in Appendix 1.

**G. Termination of Authorizations**

BellSouth supports the Commission's proposal to terminate authorizations automatically on their stated expiration date, without a provision for reinstatement. BellSouth suggests, however, that the Commission adopt a case-by-case approach regarding the extension of authorizations where good cause is shown.

Further, as a related matter, BellSouth urges the Commission to modify proposed § 22.121 to allow flexibility within the rules for exceptions to the prohibition on filing an application for another co-channel station in the same area (or frequency range in the case of the 931 MHz band) for one year following automatic termination. The Commission's rules should recognize situations which are beyond the licensee's control or where there is good cause such as interference problems, site loss or the inability to obtain state approval. In these cases proposed § 22.121 would only serve to penalize licensees for events which are beyond their control. The public interest would be better served in such cases by accepting applications and allowing carriers to expand their systems to satisfy customer demand in their service areas.

**II. BELLSOUTH'S OTHER PRINCIPAL COMMENTS AND PROPOSALS FOR IMPROVING THE REVISION OF PART 22**

**A. Consistency With Other Rulemakings**

In a number of instances, the NPRM omitted significant rule provisions recently adopted in rulemakings affecting Part 22. For example, a number of substantive rules adopted in the cellular renewal proceeding, CC Docket 90-358, and the unserved area

proceeding, CC Docket 90-6, appear to have been inadvertently omitted from the proposed revision to Part 22.

Since both of those proceedings are pending on reconsideration, it would not appear to be appropriate to engage, herein, in substantive changes to the rules at issue in those proceedings. In Appendix 2, BellSouth has noted where the omitted rules should be incorporated. By suggesting that such omitted rules be incorporated at appropriate places, BellSouth does not endorse the rules at issue and does not waive or modify its position regarding reconsideration or review of such rules.

#### **B. Assignments and Transfers**

BellSouth has a number of suggestions for refining the Commission's procedures for handling assignments of authorizations and transfers of control of licensees under Part 22. As described below, BellSouth's proposals are: (1) Eliminate any need for approval of purely internal changes in corporate or organizational structure; (2) Deem *pro forma* transfers and assignments granted effective on filing with the Commission; (3) Retain the rule providing that a change from minority to majority ownership will always be considered a transfer of control; (4) Clarify the financial qualification standard that will apply to transfers and assignments; (5) Eliminate the requirement that the assignee or transferee include a Form 430 in an assignment or transfer application; (6) Eliminate the requirement that copies of all authorizations and notifications pertaining to the licensee be included in a transfer or assignment application; and (7) Permit a single application form to be filed for a transfer or assignment affecting multiple call signs. In addition to these changes, the Commission should clarify its definition and usage of the terms "assignment of authorization" and "transfer of

control."<sup>4</sup> These suggestions would substantially reduce the burden and expense involved in many transfers and assignments and would not impair the Commission's oversight of licensee activities or qualifications. Further, BellSouth's recommendation regarding purely internal corporate reorganizations would eliminate the need for Commission processing of hundreds or thousands of *pro forma* transfers and assignment applications each year that consume staff resources and appear to have no relevance to Commission licensing functions and are not required by the Communications Act.

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<sup>4</sup> The NPRM is ambiguous in defining "assignment of authorization" to include a transfer of control of the licensee, while maintaining a separate definition of "transfer of control." See proposed § 22.99. At some places in the rules, the term "assignment" is used to cover both assignments and transfers, while in other places both terms are used. Since the language of Section 310(d) is intended to be broad and all-inclusive, the use of these two terms in tandem can be viewed as including all cases within the reach of the statute. However, the proposed definitions, coupled with inconsistent use of the terms in the rules, make it unclear just what any particular rule section may address. For these reasons, it would appear useful to maintain separate definitions of the two, but to use the two terms together (*i.e.* "assignment or transfer") whenever a rule intends to cover the full scope of Section 310(d).

The Commission should, however, consider the elimination of any differences in regulatory treatment of the two and eliminate the requirement that a transaction be identified as either an assignment or a transfer on the Form 490. The information needed to process assignments and transfers does not differ in any significant way. See Sewell, *Assignments and Transfers of Control of FCC Authorizations Under Section 310(d) of the Communications Act of 1934*, 43 Fed. Comm. L.J. 277, 286 (1991) ("As far as Commission rules and policies are concerned, there are no significant differences between assignments and transfers of control.").

In light of this, the Commission should consider eliminating the requirement that a given transaction be categorized as an assignment or a transfer. The same information is supplied on the form in either case, and the processing does not differ in any significant respect. If there is no valid regulatory reason for the applicant to designate whether its application involves an assignment or transfer, the Commission should not require the designation of one or the other category.

**1. Elimination of Prior Commission Approval for Purely Internal Changes in Corporate Organizational Structure**

BellSouth strongly urges the Commission to adopt a streamlined means for handling the many changes in organizational structure that frequently occur in modern businesses that have no effect on the identity of the licensee or the ultimate ownership or control of the licensee. For example, many businesses are organized with multiple tiers of corporate subsidiaries under a holding company; radio licenses are commonly held by a lower-level subsidiary, which is owned by an intermediate subsidiary, which in turn is owned by the parent holding company. Business strategies may make it necessary to shift the assets of one intermediate subsidiary to another or to merge certain low-level subsidiaries into others.

These purely internal organizational and structural changes have traditionally been viewed as transfers or assignments of a *pro forma* nature, requiring prior authorization. BellSouth suggests that this view is not mandated by Section 310(d) of the Communications Act.

The relevant text of the statute provides that:

No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, except upon application to the Commission and upon finding by the Commission that the public interest, convenience and necessity will be served thereby.

47 U.S.C. § 310(d).<sup>5</sup> It appears that the principal purpose of this statute and its predecessors is to ensure that the Commission can review the qualifications of those who will own or control a radio station prior to their assuming that position, rather than afterward.<sup>6</sup>

The Commission has considerable discretion in interpreting the language of this statute, and its interpretation will be given great weight by the courts as long as it is reasonable.<sup>7</sup> It would be reasonable for the Commission to find that no transfer or assignment has occurred within the meaning of Section 310(d), and therefore no prior consent is required, when a purely intracorporate reorganization occurs. In such a setting, there is no change in ultimate ownership or control, and there is, accordingly, no need for the Commission to pass once again on the qualifications of the ultimate owners or controlling parties. This remains true even though the license may be held by a different subsidiary or the parent's control may be exercised through a different intermediate entity.<sup>8</sup>

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<sup>5</sup> See also 47 U.S.C. § 309(c)(2)(B), which exempts from the public notice requirements any application for "consent to an involuntary assignment or transfer under Section 310(d) or to an assignment or transfer thereunder which does not involve a substantial change in ownership or control."

<sup>6</sup> See Sewell, 43 Fed. Comm. L.J. at 282-83.

<sup>7</sup> In *Chevron U.S.A. Inc. v. NRDC*, 467 U.S. 837 (1984), the Supreme Court held that courts could not impose their own interpretations of statutes on the administering agencies. Under *Chevron*, if a statute is "silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." 467 U.S. at 842-43. An agency need not give its governing statute "the reading the court would have reached if the question initially had arisen in a judicial proceeding," 467 U.S. at 843 n.11, but rather, the courts must accord "substantial deference . . . to the interpretation of the authorizing statute by the agency authorized with administering it." 467 U.S. at 844. In *Rust v. Sullivan*, 111 S. Ct. 1759 (1991), the Court relied on *Chevron* for its holding that when "the legislative history is ambiguous and unenlightening on the matters with respect to which the regulations deal, we customarily defer to the expertise of the agency," even when the agency has revised its interpretation. 111 S. Ct. at 1768, 1769.

<sup>8</sup> This is similar to the principle that no transfer of control results even from the admission of a significant new shareholder if ultimate control is vested in a single owner. See *McCaw Cellular Communications, Inc.*, 4 FCC Rcd. 3784 (Com. Car. Bur.), *aff'd*, 4 FCC Rcd. 4865 (1989).

In view of these principles, BellSouth recommends that the Commission adopt rules providing that internal reorganizations and similar organizational changes not involving any change in ultimate ownership or control do not constitute transfers of control or assignments of authorizations. This should be the case regardless of whether there is a change in the identity of the entity holding the license or the intermediate ownership chain. In these situations, the Commission should make clear that a Form 490 need not be filed. In order to ensure the accuracy of the Commission's records, however, the Commission may require the filing of a notification in letter form describing any such change in the form of corporate ownership.<sup>9</sup>

This rule change would very substantially reduce the burden and expense involved in effecting corporate organizational changes and would not impinge in any way on the Commission's oversight of licensee activities or qualifications. It would also eliminate the need for Commission processing of hundreds or thousands of *pro forma* transfer and assignment applications each year that consume staff resources but appear to have no relevance to the Commission's licensing functions. This is an example of regulatory reform and streamlining that will clearly serve the public interest.

**2. Deem *Pro Forma* Assignment and Transfer Applications Granted Effective Upon Filing with the Commission**

BellSouth urges the Commission to adopt rules that would eliminate a waiting period for grant of applications for *pro forma* assignments and transfers. Specifically, *pro forma* assignment and transfer applications should be deemed granted upon filing with the

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<sup>9</sup> BellSouth has accordingly proposed rule revisions in Appendix 2 that would require a letter notification for each affected licensee listing the call signs of the stations involved and describing the change in the form of ownership.

Commission, subject to reconsideration by the Commission within thirty days from the filing date. *Pro forma* changes in ownership and control are frequently necessary on short notice due to changing business relationships, corporate alignments, or tax-driven considerations. Deeming the applications granted upon filing would permit licensees to engage in relatively insubstantial reorganizations, partnership changes, and similar activities without waiting for the staff to reach their applications for routine processing.

### **3. Acquisition of 50% or Greater Ownership**

In proposed Section 22.137, the Commission has eliminated the language from current Section 22.39(a)(1) and (2) that specifies what will be deemed a transfer of control. These clauses currently provide:

- (1) A change from less than 50% ownership to 50% or more ownership shall always be considered a transfer of control.
- (2) In other situations a controlling interest shall be determined on a case-by-case basis considering the distribution of ownership, and the relationships of the owners, including family relationships.

47 C.F.R. § 22.39(a)(1)-(2). It appears that these provisions may have been omitted from the revised rules unintentionally, because the NPRM gave no reason why they were not included in the revised Part 22.

In any event, BellSouth submits that the elimination of the first provision is significant and cannot be accomplished, if that is the Commission's intent, without a considered explanation. This rule is, as shown below, important to the Commission's review of licensee ownership and control. Moreover, the deletion of the second provision could be viewed as signaling that the Commission will no longer consider whether the facts of a given case give rise to a *de facto* transfer of control. Under Section 310(d) and Section 309(c)(2)(B) of the

Act, however, the Commission cannot avoid this responsibility: a case-by-case analysis will have to be performed in any event.

The first clause of the current rule — the "50% rule" — is a substantive rule that should remain in effect and should therefore be incorporated into the revised rule. There are sound policy reasons for the Commission to police changes in ownership that result in acquisition of 50% or greater ownership of a licensee, even where that ownership level does not necessarily carry with it *de facto* control, as may be the case with limited partnership interests or non-voting stock interests.<sup>10</sup>

The 50% rule serves the public interest by keeping track of major ownership interests in licensees and by giving the agency the opportunity to review whether there are changes in the *de facto* or *de jure* control of limited partnerships and similar entities. Limited partnerships and corporations with non-voting stockholders vary greatly with regard to the degree to which the limited partners or non-voting stockholders participate in the business. The requirement to file applications whenever major ownership changes occur also serves to deter unapproved transfers of control and, thus, conserves agency resources. It would clearly be contrary to the public interest to allow wholesale changes in majority ownership of cellular or paging systems without any opportunity for Commission review.

Moreover, the current rule's effect on limited partnerships is consistent with the Commission's long-standing policy in the cellular area of deeming limited partnership interests

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<sup>10</sup> Clearly, a transfer of control is involved when a minority owner obtains a 50 or more percent interest in the form of voting stock or general partnership interests, because in such a case the equity owner acquires *de jure* control. See *Metromedia, Inc.*, 98 FCC 2d 300, *recon. denied*, 56 Rad. Reg. 2d (P&F) 1198 (1984), *appeal dismissed sub nom. California Association of the Physically Handicapped v. FCC*, 778 F.2d 823 (D.C. Cir. 1985). Accordingly, BellSouth focuses herein on situations involving non-voting stock or limited partnership interests.

fully cognizable.<sup>11</sup> This policy was a conscious departure from the broadcast policy of not attributing insulated limited partnership interests,<sup>12</sup> and was adopted through notice and comment procedures. The Commission should not lightly depart from this considered policy, which serves the public interest. Accordingly, BellSouth strongly urges the Commission to include the provisions of current Section 22.39(a)(1) in its revised rules. BellSouth also urges the Commission to amend the new rule to make clear that both *de facto* and *de jure* transfers of control require prior authorization.

#### **4. Clarify the Financial Showing Applicable to Cellular Assignments and Transfers**

Both the current and proposed rules require financial showings in the case of cellular assignments and transfers. However, the language of the rules should be modified to make clearer what in fact must be filed. Furthermore, in the case of *pro forma* assignments and transfers the Commission should eliminate the requirement of a financial showing.

Proposed Section 22.937 (Demonstration of financial qualifications) provides, in relevant part:

Each applicant for assignment of license or consent to transfer of control must demonstrate that the proposed assignee or transferee has, at the time the application is filed, either a separate market-specific firm financial commitment or available financial resources sufficient to construct and operate for one year the proposed cellular system.

This would, if adopted, be a significant change in the financial showing requirement applicable to cellular transfers and assignments. The commentary on the proposed rule in Appendix A

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<sup>11</sup> *Cellular Radio Lotteries Reconsideration*, 101 FCC 2d 577, 600 (1985), *further reconsideration*, 59 Rad. Reg. 2d (P&F) 407 (1985), *reconsideration denied*, FCC 86-217 (May 7, 1986), *reconsideration denied*, 2 FCC Rcd. 176 (1987).

<sup>12</sup> *E.g., Anax Broadcasting, Inc.*, 87 FCC 2d 483 (1981). Current section 22.39(a)(1) has no parallel in the broadcast rules. *See also Sewell, supra*, 43 Fed. Comm. L. J. at 327-27 n.185.

to the NPRM does not indicate that the Commission specifically intended a major change in this context,<sup>13</sup> and the text of the NPRM did not address the issue.

The current rule, Section 22.917(d), provides:

Each application for assignment of a license (or permit), or for the transfer of control of a corporation holding a license (or permit), shall demonstrate the financial ability of the proposed assignee or transferee to acquire and operate the facilities by submitting adequate financial information under the guidelines specified in this section, as appropriate.

47 C.F.R. § 22.917. This rule differs significantly from the proposed rule in that it requires a showing of financial ability to *acquire* the facilities, rather than to *construct* the facilities, and it requires a level of financial showing based on guidelines applicable to the market involved, rather than requiring a firm, market-specific financial commitment or available financial resources. The Commission should confront whether this change was intended.

##### **5. Eliminate Form 430 Requirement for Assignee/Transferee**

BellSouth recommends that the Commission eliminate the requirement that an assignment or transfer application include a Licensee Qualification Report (FCC Form 430) or a reference to an accurate Form 430 on file with the Commission. The Form 430 is no more needed to establish licensee qualifications in connection with an assignment or transfer application than it is in connection with a Form 401 application, yet one applying on Form 401 does not have to file a Form 430.

Any application filed with the Commission by which an entity becomes a new licensee, whether by initial authorization pursuant to a Form 401 or by assignment or transfer pursuant to a Form 490, requires the entity to demonstrate its qualifications and to identify the real

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<sup>13</sup> See NPRM, Appendix A at § 22.937, 7 FCC Rcd. at 3673.

parties in interest.<sup>14</sup> Accordingly, the information called for by the Form 430 is at best redundant.<sup>15</sup> It is simply one more form to be completed and signed that appears to add nothing to the Commission's oversight of licensee qualifications.<sup>16</sup> The public interest would be served by eliminating this unnecessary paperwork burden.

#### **6. Eliminate the Need for Filing Copies of Authorizations**

BellSouth strongly suggests that the Commission eliminate the requirement that assignment and transfer applications include as an exhibit copies of the current authorizations and notifications (FCC Form 489) relating to the call sign(s) involved in the transaction. This requirement should be eliminated for two principal reasons.

First, it duplicates information already on file with the Commission, information that is frequently far greater in volume than the rest of the application and exhibits. Requiring the re-filing of this information is unduly burdensome and contravenes the Paperwork Reduction Act.<sup>17</sup> BellSouth has been involved in many transactions where numerous applications including thousands of pages of authorizations were required to be filed in connection with corporate transactions to which the authorizations had little, if any, relevance.

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<sup>14</sup> Proposed rule sections 22.107(a) (applicant's qualifications) and 22.108 (parties to applications) are explicitly applicable with equal force to applications for authorizations and applications for approval of assignments and transfers.

<sup>15</sup> Under the Paperwork Reduction Act of 1980, 44 U.S.C. § 35, the Commission must minimize or eliminate the public's need to file the same information repeatedly.

<sup>16</sup> In the unlikely event that there is information called for on the Form 430 that the Commission deems relevant but that is not otherwise required by Part 22 rules, the Commission should place the requirement for filing such information into its rules applicable to all applications, such as proposed Section 22.107, rather than requiring it to be submitted only in the case of assignments and transfers through the Form 430 requirement.

<sup>17</sup> 44 U.S.C. § 35.

Furthermore, the voluminous applications resulting from this requirement then are added to the Commission's station files, thus reduplicating the information already on file.

Second, the stations affected have already been identified by call sign; in all cases except partial assignments (for which the relevant information must be submitted through Forms 401 and 489), an assignment or transfer affects all of a licensed station's facilities, as defined by the Commission's station files — the transaction is not facility-specific. Accordingly, further information does not appear to have any relevance to either the assignee's or transferee's qualifications, identifying what is involved in the transaction, or the public interest.

#### **7. Multiple Call Signs in a Single Application**

BellSouth urges the Commission to permit a single assignment or transfer application to be filed for a given transaction (other than a partial assignment) as long as the transaction involves the same transferor/assignor, transferee/assignee, and licensee entity, even if multiple call signs are involved. This would be consistent with the practice followed in other services, such as the Point-to-Point Microwave Radio Service, where ownership or control changes involving a single licensee may affect multiple stations. The Commission could require the submission of extra copies of the application for inclusion in the multiple station files, and apply a fee multiplier based on the number of call signs involved. The only thing that would change is the number of different original applications. This would represent a significant lessening of the paperwork burden by eliminating the filing of duplicative materials and would reduce the total number of separate applications filed with the Commission. In short, it would clearly serve the public interest and would cause no adverse impact on Commission oversight of licensee ownership and control.

### C. Permit Use of Multi-frequency Transmitters

Proposed § 22.507 is intended to promote efficient use of the spectrum and discourage frequency "warehousing" by requiring licensees to use "a separate transmitter for every assigned channel at each location."<sup>18</sup> BellSouth agrees with the Commission's policy objective; however, it is concerned that the proposed rule would unnecessarily restrict carriers' legitimate ability to make efficient use of existing technology for planned growth and to provide service to the public in otherwise uneconomic areas.

The proposed rule overlooks uses of multi-frequency transmitters that would serve the public interest and restricts carriers' ability to build out their systems to meet customer demand for new and expanded service. Technological advances have not kept pace with increasing demand for services — especially in large markets. Thus, carriers are continually engaged in advance planning to ensure that they have sufficient frequencies available to cover current service areas, as well as growth areas, in their markets. Physical build-out of large simulcast systems often requires as much as eighteen months' advance planning to design and sometimes re-design facilities, ensure the availability of appropriate sites, secure site leases, order equipment, obtain additional frequencies, construct facilities, *etc.* There are costs associated with each step in the planning cycle. Requiring a separate transmitter for each frequency from the outset adds substantially to these costs which eventually must be passed on to subscribers. Thus, allowing carriers to use multi-frequency transmitters will reduce consumer costs for service by shortening the planning cycle and allow carriers to defer capital investment in equipment until demand reaches a level warranting construction of additional transmitters.

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<sup>18</sup> *NPRM*, 7 FCC Rcd. at 3669.

The proposed rule would also limit carriers' flexibility to expand their coverage in order to offer regional and national service to the public. Multi-frequency transmitters allow carriers the option of offering expanded coverage by using existing facilities in adjacent systems where customer demand would not otherwise warrant construction of a new network in the expanded area. For example, a carrier may have substantial demand for regional service, but not enough to justify the capital investment required to construct a second network of stand-alone transmitters in the adjacent market. By allowing multi-frequency transmitters, the incremental cost of expansion is substantially less, making it possible to satisfy demand for regional service in areas which would otherwise not receive service.<sup>19</sup> As the demand in the expended area increases, carriers could then invest the necessary capital to add additional transmitters as required. This would conserve resources and promote the Commission's goal of efficient spectrum utilization.

#### **D. Operation During Emergencies**

Based on its experience with Hurricane Andrew, BellSouth is in a position to propose revisions to the rules which would aid licensees in restoring normal communications in emergency situations. Specifically, BellSouth recommends that licensees in the Public Mobile Services should be allowed to implement temporary measures in emergency situations without prior Commission approval provided that the measures would otherwise be considered minor under the proposed rules. Accordingly, BellSouth suggests that proposed § 22.125(b) be

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<sup>19</sup> By adding additional frequencies to their existing systems, carriers could also enter into agreements with other regional and nationwide providers to act as an agent within their local markets without disrupting their own customer base. The two carriers could add channels to their facilities that would permit the customers of one carrier to be paged in the other carrier's area without buying a second page. By using multi-frequency transmitters, this would be accomplished without the substantial expense of an entire network of new transmitters. This would promote efficient use of the spectrum by allowing otherwise unused channels to be used in a market.