

Discussion:

The proposed revision of the introductory paragraph and subsection (d) is consistent with current Commission practice with regard to transfers and assignments of constructed cellular systems. Thus, the proposed revision is intended to clarify this policy while retaining the requirement that an applicant demonstrate that it has sufficient financing to complete the proposed acquisition.

§ 22.937(d)

NPRM: (d) *Showings of financial resources.* Applicants relying upon personal or internal financial resources must submit the following:

Recommendation:

Modify subsection (d) as follows:

(d) *Showings of financial resources.* Applicants relying upon personal or internal financial resources for a new cellular system must submit the following:

Discussion:

In the *First Report and Order*, 6 FCC Rcd. 6185 (1991), in the unserved area proceeding, the Commission eliminated the financial showing for "modified facilities in any MSA or RSA market." See 6 FCC Rcd. at 6230 (¶ 110-111). See also 47 C.F.R. § 22.917(a)(1). The Commission found that applicants proposing modifications to its existing systems had already provided financial showings in previously filed applications and that the financial showing was unnecessary. Thus, proposed § 22.937(d) should be amended to clarify that financial showings are required only in the case of "new cellular systems."

§ 22.937(f)

NPRM: (f) *Notice upon default.* In addition to the disclosures required by paragraph (c) of this section, any loan or other credit arrangement providing for a chattel mortgage or secured interest in any proposed cellular system must include a provision for a minimum of ten (10) days prior written notification to the licensee, and to the Commission, before any such equipment may be repossessed under [a] default provision of the agreement.

Recommendation:

Subsection (f) should be incorporated into subsection (c) and be numbered (c)(6). The first clause of the first sentence should be amended as follows:

(c) * * *

(6) In addition to the disclosures required by this paragraph, any loan . . .

Discussion:

Current proposed subsection (f) relates to outside financing involving loans and other credit arrangements. For clarity, BellSouth suggests that rather than reference subsection (c) that it be made a subsection of (c) which speaks to outside financing.

§ 22.937

NPRM: None (Proposed new subsection).

Recommendation:

A new paragraph (h) should be added, to read:

(h) Applicants relying upon personal or internal financial resources for acquiring a cellular system by a transfer of control or assignment must submit the following:

(1) financial statements that show the availability of sufficient net current assets to acquire the system.

(2) a balance sheet current within 90 days of the date of filing that shows the continued availability of sufficient net current assets to acquire the cellular system.

(3) if the cellular system to be acquired by transfer of control or assignment has not yet been constructed, the transferee or assignee must also submit the information required in subsection (d) of this section.

Discussion.

New paragraph (h) is proposed to provide guidance to applicants filing applications (FCC Form 490s) seeking Commission consent to the transfer of control or assignment of Part 22 authorizations. The proposed rule change is consistent with current practice and supports the recommended modification to the introductory paragraph discussed above.

In the event proposed paragraph (f) is incorporated into paragraph (c) as a subsection, the new rule suggested herein may take over as a new paragraph (f) instead of (h).

§ 22.937(g)

NPRM: (g) Adjacent system exemption. Any licensee applying for an unserved area adjacent to its existing cellular system, to integrate such area into the existing system, is exempt from the financial demonstration requirements of this section.

Recommendation:

(g) Exemptions. The following are exempt from the financial demonstration requirements of this section:

- (1) Any licensee applying for an unserved area adjacent to its existing cellular system, to integrate such area into its existing cellular system;
- (2) Applicants filing for Commission consent to the *pro forma* assignment or transfer of control of an authorization.

Discussion:

BellSouth recommends that the proposed exemption be broadened to include *pro forma* transactions. The financial demonstration requirement of this section is unnecessary in *pro forma* transactions as the entity controlling the license remains unchanged and the Commission has already approved of the financial qualifications of said entity. This approach is consistent with existing Commission practice.

§ 22.939 Limitations on amendments to applications.

NPRM: [Proposed § 22.939 sets out certain limitations (in addition to proposed § 22.122) regarding amendments to applications for unserved areas. Specifically, in accordance with § 22.939(a) and (b): Phase I applications may not be amended prior to conclusion of the random selection process; only tentative selectees of the random selection may make minor modifications to their applications; and, major amendments to Phase I applications will not be accepted.]

Recommendation:

Incorporate proposed § 22.939 into proposed § 22.949 as new subsection (e).

Discussion:

Proposed § 22.939 applies only to Phase I unserved area applications, thus, for clarity, it should be incorporated in the proposed § 22.949 governing procedures and filing windows specific to unserved area applications.

§ 22.939(c) New subsection

NPRM: None (New proposed subsection)

Recommendation:

A new subsection § 22.939(c) should be added to incorporate the provisions of current § 22.918(c)(2), adopted in the unserved area proceeding, governing amendments to Phase II unserved area application. Specifically, the following should be added:

(c) In the Phase II first come, first served licensing phase, minor amendments may be filed to resolve frequency conflicts or establish that the proposal is mutually exclusive. These minor amendments may be filed only if the service area boundaries proposed in the application are not increased and new or increased frequency conflicts are not created by the amendment.

(1) Frequency changes (use of signaling or voice channels) within the frequency block originally filed for, to resolve interference conflicts between systems are permitted.

(2) Applications for unserved areas filed during Phase II, proposing to change frequency blocks will be considered newly filed.

Discussion:

Current § 22.918(c)(2) permits Phase II unserved area applicants to file minor amendments and amendments which resolve frequency conflicts. Allowing such minor amendments, and encouraging applicants to resolve frequency conflicts serves the public interest. *See* 47 C.F.R. § 22.918(c)(2). The Commission adopted the unserved area rules to expedite service to areas not currently receiving cellular service. Permitting Phase II applicants to make minor modifications will expedite service and avoid disruption to existing licensed systems. Because the permissive amendment rules are also specific to unserved area applications, they should be moved to § 22.949.

Two editorial changes were made from the current rule. First reference to current § 22.23(g)(2) was deleted because the NPRM has removed that subsection. *See* 7 FCC Rcd. at 3752 (Appendix C). Second, the word "either" was removed immediately before the word "Phase II" in current § 22.918(c)(2)(ii).

If, as recommended previously, § 22.939 is incorporated into § 22.949, the proposed new section would become § 22.949(f).

§ 22.941 System identification numbers.

NPRM: [System identification number assignment; licensees must file an FCC Form 489 to notify the Commission of changes to SID numbers.]

Recommendation:

Delete the proposed rule section.

Discussion:

As noted in the Commission's discussion of SID numbers (NPRM, 7 FCC Rcd. at 3674) the Commission is not required to administer SID codes. BellSouth supports moving the administration of SID codes to a private national cellular industry organization. Removing the responsibility for SID administration from the Commission will conserve Commission resources and eliminate unnecessary filings.

In the event the Commission retains responsibility for SID administration, BellSouth supports deleting any requirement to obtain prior Commission approval before changing its SID codes; however, an FCC Form 489 should not be required to notify the Commission of such changes. Changes to a carrier's SID code should not be considered a modification triggering a Form 489 filing. Notification should be permitted by a letter filing with the appropriate number of copies for association with each affected station file.

§ 22.943 Limitations on assignment of cellular authorizations.

NPRM: **§ 22.943 Limitations on assignment of cellular authorizations.**

The following limitations apply to applications for assignment of authorizations in the Cellular Radiotelephone service.

(a) *Unserved area systems.* Except as provided in paragraph (a)(2) of this section, the Commission will not grant any application for assignment of the authorization of a cellular system licensed to serve an unserved area until the system has provided service to the public for one year.

(1) Licensees must not enter into any agreement (*e.g.*, option agreement or management contract) to transfer control of the licensee of the system until the system has provided service to the public for one year.

Recommendation:

Amend to read:

§ 22.943 Limitations on assignments and transfers of control of cellular authorizations.

The following limitations apply to applications for assignment of authorizations and transfers of control in the Cellular Radiotelephone Service. See § 22.137 for additional rules controlling transfers and assignments applicable.

(a) *Unserved area systems.* Except as provided in paragraph (a)(2) of this section, the Commission will not grant any application for transfer of control of an unserved area licensee or assignment of the authorization of a cellular system licensed to serve an unserved area until the system has provided service to the public for one year.

(1) Licensees must not enter into any agreement (*e.g.*, option agreement or management contract) to assign the authorization or transfer control of the licensee of the system until the system has provided service to the public for one year. Management contracts which do not and will not affect control of the licensee are permitted.

Discussion:

Reference to transfers of control should be added as shown above to clarify that the proposed rule is intended to govern both transfers as well as assignments of authorizations. Cross reference to proposed § 22.137 should be added for rules governing the filing of applications (FCC Form 490) and notifications. The language added immediately following subsection (a)(1) is meant to clarify that cellular licensees are permitted to delegate those management functions which do not affect ownership or control of a cellular system.

§ 22.943(a)(3) New Subsection

NPRM: None (New proposed subsection)

Recommendation:

Add a new subsection (a)(3) as follows:

(3) The sale, transfer, assignment or other alienation of any application to operate a new cellular system in an unserved area is prohibited. This alienation includes any form of alienation (*i.e.*, option arrangements and agreements, and equity and debt placement plans).

Discussion.

BellSouth recommends adding proposed new subsection (a)(3) to extend the prohibition on the sale, transfer, assignment or other alienation of interests to applicants seeking Commission authority to operate cellular systems in unserved areas. The change is necessary to discourage speculation by alienation of interests in cellular applications, and

complements the Commission's proposed prohibition on speculation in cellular authorizations contained in subsection (a)(1).

§ 22.943 Limitations on assignment and transfers — cellular renewals.

NPRM: The NPRM does not discuss the limitation on assignments and transfers of cellular authorizations awarded as a result of a comparative renewal proceeding. *See* 47 C.F.R. § 22.40(b)(2).)

Discussion:

BellSouth has filed comments in the renewal proceeding and feels that it is inappropriate to comment on proposed § 22.943 regarding limitation on assignments and transfers of cellular authorizations awarded as a result of a comparative renewal proceeding until all issues raised in Docket 90-358 have been resolved.

§ 22.946(a) Construction periods and requirements for cellular systems.

NPRM: (a) *Commencement of service.* New cellular systems must be at least partially constructed and begin providing cellular service to the public by the end of the construction periods specified in Table H-1. All construction periods begin on the date of grant of the initial authorization.

Recommendation:

Subsection (a) should be amended to read:

(a) *Commencement of service.* The first system authorized, and any subsequent systems authorized pursuant to contracts in partitioned markets, must be at least partially constructed and begin providing service to the general public by the end of the construction periods specified in Table H-1. Unserved area systems must be fully constructed (all proposed cells) and providing service to the public by the end of the construction period specified in Table H-1.

Discussion:

The proposed change in subsection (a) above is intended to distinguish the construction and commencement of service requirement as between unserved area licensees and other licensees in the cellular service. The revised subsection is consistent with the Commission's decisions in the unserved area proceeding to require unserved area licensees "to complete construction of their systems and initiate service to the public within one year of the date of their initial authorizations." *Unserved Areas, First Report and Order*, 56 Fed.

Reg. 58503, 58504 (1991). The Commission imposed the more stringent requirement on unserved area licensees in order to "guarantee expeditious service to the public and deter speculative applications." *Id.* Further, the proposed change clarifies a possible discrepancy between proposed § 22.946(a) and § 22.946(b)(2). As discussed below, with the proposed revision to subsection (a), subsection (b) should be eliminated in its entirety.

§ 22.946(b)(1) and (b)(2)

NPRM: [Proposed § 22.946(b)(1) retains the former 75% coverage requirement. Proposed § 22.946(b)(2) requires unserved area cellular licensees to complete construction of their systems during the one-year construction period.]

Recommendation:

Proposed § 22.946(b) should be deleted in its entirety and proposed subsection (c) renumbered to (b).

Discussion:

The revisions recommended to proposed § 22.946(a) makes subsection (b)(2) redundant and no longer necessary. Proposed § 22.946(b)(1) retains the 75% coverage requirement which was effectively eliminated in the *Second Report and Order*, 7 FCC Rcd. 2449 (1992) in the Unserved Area proceeding when the Commission adopted the new 32 dBu formula for calculating carriers' CGSA and cellular reliable service area. Thus, subsection (b) is not necessary.

§ 22.947 Five year fill-in period.

§ 22.947(a)

NPRM: (a) *Exclusive right to expand within market.* Except as provided in paragraph (b) of this section, the Commission does not accept applications for authority to operate a new cellular system in any unserved area on the channel block in that market during the five year fill-in period for each such cellular system.

Recommendation

Amend to read:

(a) *Exclusive right to expand within market.* Except as provided in paragraph (b) of this section, the Commission does not accept applications for authority to operate a new cellular system in any area where the licensee's CGSA does

not extend in that market during the five year fill-in period for each such cellular system.

Discussion:

Subsection (a) has been rewritten by deleting reference to unserved areas and adding "area where the licensee's CGSA does not extend." This suggested change is consistent with the proposed definition (proposed § 22.99) for unserved areas — unserved areas do not exist prior to the expiration of the five year fill-in period. Because licensees of the first cellular system on each channel block has a protected five year period to expand their systems, or enter into contracts to partition their markets, unserved areas cannot be determined until after expiration of the protected period. Thus, the term "unserved area" should only be used in the context of an expired market.

§ 22.947(b)

NPRM: (b) *Partitioned RSAs*. [Proposed § 22.947(b) permits RSA licensees during the five year fill-in period to enter into contracts to partition their markets.]

Recommendation:

Subsection (b) should be amended as follows:

(b) *Partitioned Markets*. During the five year fill-in period, the licensee of the first cellular system on each channel block in a market may assign or transfer a portion of its market to another party in furtherance of a market settlement or enter into contracts with eligible parties, allowing such parties to apply for a new cellular system on that channel block within the market. The Commission may grant such applications if they are in compliance with the rules in this Part. Markets with two or more authorized cellular systems on the same channel block during the five year fill-in period are referred to as partitioned markets. Each licensee of a partitioned market will continue have protected CGSA after the expiration of the five year fill-in period provided that the partitioned market licensee files a system information update in accordance with subsection (c) of this section.

Discussion:

Subsection (b) should be revised to permit MSA licensees to partition their markets prior to the expiration of the five year fill-in period. Further, it recognizes existing MSA markets which may have been partitioned. Further, the last sentence should be added to clarify that licensees' CGSAs in partitioned markets are protected after the expiration of the fill-in period, provided that they file system update information.

§ 22.947(c)

NPRM: (c) *System information update.* [Subsection (c) sets forth the procedures and requirements for existing licensees to file their system information updates to protect their service areas.]

Recommendation:

(c) *System information update.* Sixty days before the end of the five year fill-in period, the licensee, or licensees of partitioned markets, of each cellular system authorized on each channel block in each cellular market must file, in triplicate, a full scale map, a reduced map, and an updated channel usage chart. . . .

Discussion:

Consistent with the discussion above (proposed subsections (b)), subsection (c) should be revised to allow licensees of partitioned markets to protect their CGSA areas at the end of the five year fill-in period for the channel block in the partitioned market.

§ 22.949(a)-(b) Unserved area licensing phases, procedures and filing windows.

NPRM: [Proposed § 22.949 defines the licensing procedures and filing deadlines for unserved areas.]

Recommendation:

Amend subsection (a)(1) by adding the following immediately after the last sentence.

The filing window for applications for unserved area systems in markets where the fill-in period has already expired will be announced by public notice.

Amend subsection (b)(2) to insert the following sentence at the beginning.

Applications for Phase II will be considered mutually exclusive if they propose CGSA overlaps with another Phase II application filed on the same day.

Discussion:

Subsection (a)(1) should be modified consistent with current § 22.6(b)(2)(ii) (*see First Report and Order*, 56 Fed. Reg. 58503, 58506 (1991)) to clarify that the filing window for expired markets will be designated by public notice.

Subsection (b)(2) should be clarified by including a definition of mutually exclusive applications for Phase II unserved area applications.

§ 22.951 Minimum coverage requirement.

NPRM: Applications for authority to operate a new cellular system in an unserved area, other than those filed by the licensee of an existing system that abuts the unserved area, must propose a contiguous cellular geographical service area (CGSA) of at least 130 square Kilometers (50 square miles).

Recommendation:

Proposed § 22.951 should be amended by adding the following immediately after the last sentence of the paragraph.

De minimis extension areas may not be counted as territory for purposes of the minimum area coverage requirement.

Discussion:

The suggested change is consistent with current § 22.903(d)(3)(ii) adopted in the unserved area proceeding. See 47 C.F.R. § 22.903(d)(3)(ii).

§ 22.953(a)-(e) Content and form of applications.

NPRM: [The section sets forth the requirements for filing applications for initial cellular systems.]

Recommendation:

Amend introduction and retitle subsection (a) as follows:

§ 22.953 Content and form of applications.

Applications for authority to construct and operate a new cellular system in an unserved area must comply with subsections (a)-(d) of this section. Applications for new stations or notifications of modified facilities expanding the CGSA of existing cellular systems must comply with the requirements of subsection (f) of this section.

(a) *Unserved areas.* Application to construct and operate a new cellular system in an unserved area must comply with the specifications in this section. . . .

(5) *Exhibits.* The following exhibits must be set off by tabs and numbered as follows:

(i) EXHIBIT I - full-size map. . . . [Add the following immediately after the last sentence.] The map must include an effective date (the date when the CGSA and cell site depictions were drawn on the map). Maps must be submitted for each market into which the CGSA extends, even if *de minimis*, showing the extension area in the adjacent market, marked and labelled for the adjacent market.

* * *

(v) EXHIBIT V - ownership information. . . . [Add the following immediately after the last sentence.] In the case of partnerships, the name and address of each partner, his citizenship and the share or interest in the partnership. This information must be provided for all partners, regardless of their respective ownership interests in the partnership.

* * *

(ix) EXHIBIT IX - Start-up expenses. . . . [Add the following immediately after the last sentence.] Any licensee applying for an unserved area adjacent to its existing cellular system, to integrate such area into the existing system, is exempt from the financial demonstration requirements. *See* § 22.937(g).

* * *

(b) In Phase I, applicants will file a master microfiche and one copy in accordance with § 22.105. The microfiche must depict the reduced 8.5" x 11" map. The paper original of the application must be filed 7 days after the release of the public notice announcing the applicant as the lottery winner and include two full size maps.

(c) In Phase II, applicants must file the paper original and a master microfiche plus two microfiche copies. Two maps on a scale of 1:250,000 and a reduced map must be included with the paper original.

(d) A copy of each unserved area application must be served on the licensees for the same frequency block of any adjacent systems whose CGSA, MSA or RSA boundaries are within 50 miles of the boundaries of the proposed system.

(e) Applications for new facilities or notifications of modified facilities expanding the CGSA of existing systems must include an exhibit including two 1:250,000 scale maps and one 8½ x 11 reduced copy of those maps drawn in accordance with § 22.953(a)(5)(i) and (5)(ii) of this section. In addition, the maps must show the system's existing Cellular Geographic Service Area (CGSA), if any, and the CGSA proposed in the application. The CGSA shall be calculated in accordance with § 22.911.

Discussion:

The recommended modifications to the introductory paragraph and proposed subsection (e) are intended to incorporate current § 22.926. The modifications make clear that two 1:250,000 maps and an 8½ x 11 inch reduction of those maps must be attached as an exhibit to all applications for new facilities or notifications of modified facilities.

BellSouth proposes modifications to subsection (a)(5)(i), regarding the maps to be filed to include an "effective date" and require that copies be filed in every market in where the CGSA of an applicant will extend. See proposed § 22.911(c) regarding contract extensions. The proposed modification is consistent with current § 22.926 and should be retained.

Subsection (a)(v) should be modified to clarify that partnerships, along with corporations and individuals, are required to report ownership information. The showing is contained in current § 22.13(a)(1)(iv) of the rules. Current § 22.13 was revised and renumbered to § 22.108. The subsection containing the partnership information was deleted. Subsection (a)(v) incorporates proposed § 22.108 and adds an additional disclosure regarding individuals. Similarly, the rule should be expanded to include partnership information.

Subsection (a)(ix) should be clarified to exclude existing licensees from including a financial exhibit when proposing to service unserved area as part of their existing systems. This change is consistent with the Commission's decision in the unserved area proceeding and current § 22.917(f)(8). The Commission excluded existing carriers from making the financial showing because "[a]djacent system licensees will usually be incurring only marginal additional capital costs to add additional cells to an existing system" and the same concerns regarding speculation in filing unserved area applications are not present. *Unserved Areas, First Report and Order*, 6 FCC Rcd. at 6211 (¶ 60).

Subsections (b)-(d) are proposed to clarify the filing procedures for unserved area applicants. The procedures were adopted in the unserved area proceeding and are codified at 47 C.F.R. § 22.6(d)(3). The subsections, as proposed, have been revised slightly to conform to this NPRM. It appears that they were inadvertently omitted in the NPRM. See NPRM, 7 FCC Rcd. at 3752 (Appendix C).