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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Cathleen A. Massey
Senior Regulatory Counsel

December 7, 1994

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Mail Stop Code 1170
Washington, D.C. 20544

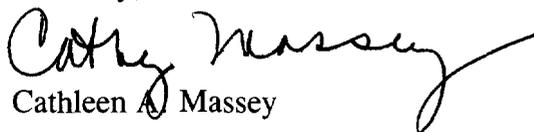
RE: Ex Parte Presentation
Regulatory Treatment of Mobile Services GN Docket No. 93-252 ✓
Revision of Part 22 and Related Proceedings CC Docket No. 92-115

Dear Mr. Caton:

Pursuant to the requirements of Sections 1.1200 et seq. of the Commission's Rules, you are hereby notified that the attached written material was delivered today by me to Steve Markendorff, Chief of the Broadband Commercial Radio Branch of the Wireless Telecommunications Bureau. The attached document summarizes questions and comments that may be discussed with Mr. Markendorff at a CTIA-sponsored meeting tomorrow concerning issues for reconsideration or clarification associated with the FCC's Third Report & Order in GN Docket 93-252 and Report & Order in CC Docket No. 92-115.

Should there be any questions regarding this matter, please contact me.

Sincerely,


Cathleen A. Massey

cc: Steve Markendorff

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MEMORANDUM

To: Steve Markendorff
From: Cathy Massey
RE: Talking Points for Part 22 Rewrite Meeting

Listed below are a few of the issues that may be worth discussing at the Part 22 Rewrite meeting on Thursday. Please let me know if I can be of further help.

Part 22 Rewrite

Rule 22.99 --

In-Building Radiation Systems -- The definition implies that "leaky cable" is fine for in-building systems, but elsewhere in the Order the Commission states that only vertical polarization is allowed for cellular. Because interference with other radio services is not an issue, there appears to be no reason why in-building radiation systems to employ horizontal, vertical or circular polarization.

Rule 22.106 -- The changes to this rule section expand the attributable interests reporting requirement for Form 401s to mirror the changes the Commission made to the PCS rules. Does the Commission really need information regarding all of the applicant's operations (including affiliates and subsidiaries that are not engaged in public mobile services) or did the old rule limiting reporting to public mobile services make more sense?

Elimination of Rule 22.119 -- The language that appears in the summary of the rules under the discussion of Rule 22.375 (A-26) appears to restate the Rule 22.119 prohibition against providing non-common carrier services. The last line states that the elimination of Rule 22.119 "does not mean that channels available under Part 22 may be used for non-common carrier service." The Commission should clarify that carriers can provide both common carrier and non-common carrier services as long as they meet their common carrier obligations.

Rule 22.163(c) and 22.165(b) -- It is unclear whether an applicant/licensee has to obtain FAA clearance before placing a facility into operation or merely file a request for clearance. Do we have to wait for a response from Gettysburg? This is ambiguous.

Rule 22.159(e) -- The first sentence of the rule is confusing. It seems to state that during a system's five-year build-out period, it can extend beyond the market boundary only into "area that is part of the CGSA or is already encompassed by the service area boundaries of previously authorized facilities." In fact, the system could extend into unserved area in an adjacent market pursuant to a contract SAB extension if the system it is extending into is not yet past its five-year date. In addition, it could extend into the CGSA of a neighboring market pursuant to a contract

SAB extension regardless of whether the market is past its five year date. Later language in the rule recognizes that contract SAB extensions are permitted, but when read as a whole, the rule is somewhat confusing. The rule should be clarified to state that a licensee can extend its market boundaries pursuant to a contract extension agreement into the CGSA of an adjacent system or into unserved area of an adjacent system that is still within its five-year build-out period and a Form 489 filing is appropriate in these circumstances.

Rule 22.367 -- In 22.367(c) the Commission indicates that it may authorize circularly polarized wave under certain circumstances. It would be helpful if the Commission would indicate, however, that the use of “leaky cable” in in-building systems is permitted without seeking Commission authorization. The discussion of in-building systems in the text of the Order suggests that the Commission contemplates the use of “leaky cable.”

Rule 22.901 -- This rule seems to limit the types of circumstances under which a carrier can refuse to provide service to a customer to the two circumstances stated in the rule. There is a whole laundry list of legitimate reasons for terminating a customer including: suspected fraud, failure to abide by the terms and conditions of the subscriber agreement, failure to pay for service, use of an emulated phone, etc.

Rule 22.929(c) -- The text (paragraph 94) states that “after the five-year build-out period has expired” a new full-sized map must be filed with any application proposing a change in the CGSA. The rule itself lacks the qualifying language regarding the five-year date and appears to state that any change to the CGSA requires the filing of a full-size map. This is probably not what the Commission intended, since a market adding cell sites within its five-year fill-in period would have to file a full-size map with the addition of each new transmitter.

Rule 22.929 (a) -- What is called for in Rule 22.929(a)(2) with regard to cellular service?

Third Report & Order GN Docket 93-252

Fee Schedule -- In the fee schedule Form 600 is listed for “applications for minor modification” and Form 489 is listed for “notification of minor modification.” When would we every “apply” for a minor modification?

Implementation Date for Form 600 -- The implementation date for the new Form 600 should be at least 90 days after the form is available in final form. LCC has indicated that it will take a minimum of 30-60 days to obtain FCC approval for a computer-generated version of the form. In addition, it will take some time to train staff to properly fill out and file the form.

Form 600 -- Schedule C -- The Commission should delete “C21. Distance to CGSA.” This is new information that the Commission has never required before and requires technical staff to make a legal determination of what constitutes CGSA. In addition, under the Commission’s rules, the “distance to CGSA” continually will change as a market matures and as neighboring

markets pass their five-year dates. It is not apparent from the Order that this information is relevant to any of the Part 22 technical rules.

Form 600 -- Schedule C -- In "C20. Distance to SAB" the Commission should add a box at the bottom of the column requesting "Average Distance to SAB" since this information is necessary to determine maximum ERP. Otherwise, the Commission staff will have to calculate the average for each application so that it can determine whether the maximum ERP limits have been met.