

89-3-252-101

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)	
)	GN Docket No. 93-252
Implementation of Sections 3(n) and 332)	
of the Communications Act)	
)	
Regulatory Treatment of Mobile Services)	
)	
Amendment of Part 90 of the)	PR Docket No. 93-144 ✓
Commission's Rules To Facilitate Future)	
Development of SMR Systems in the 800)	
MHz Frequency Band)	
)	
Amendment of Parts 2 and 90 of the)	PR Docket No. 89-553
Commission's Rules To Provide for the)	
Use of 200 Channels Outside the)	
Designated Filing Areas in the 896-901)	
MHz and 935-940 MHz Band Allotted to)	
the Specialized Mobile Radio Pool)	

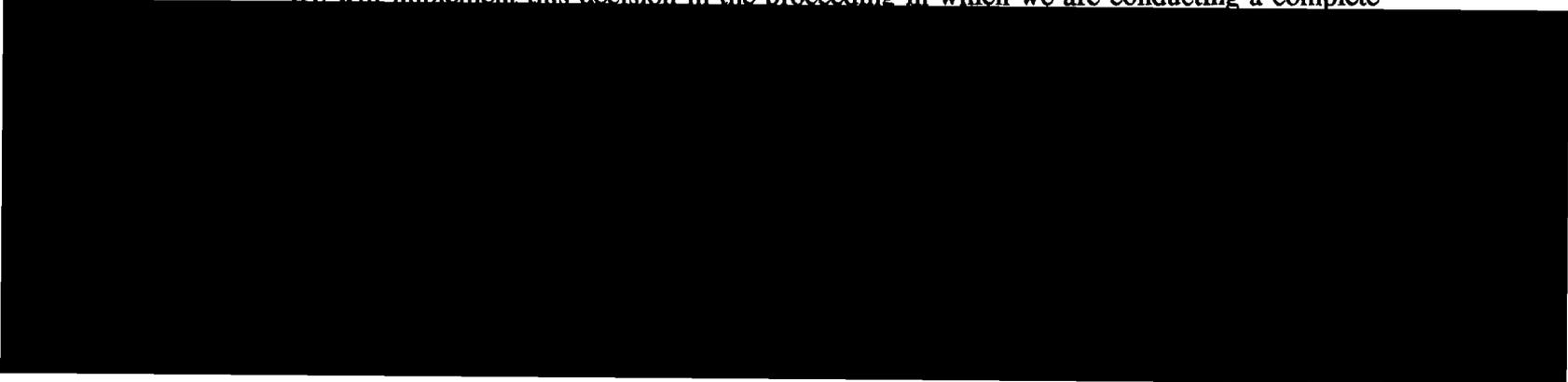
ERRATUM

Released: November 30, 1994

1. This *Erratum* corrects various minor and technical errors contained in the *Third Report and Order* in the above captioned proceeding, FCC 94-212, which was released by the Commission on September 23, 1994. These errors were corrected prior to publication of the *Third Report and Order* in the Federal Register and the FCC Record.

2. The end of paragraph 157 is corrected to add the following language:

We will implement this decision in the proceeding in which we are conducting a complete



3. Paragraph 414 is corrected to read as follows:

IT IS FURTHER ORDERED that the forms set forth in Appendix A and the rule changes set forth in Appendix B WILL BECOME EFFECTIVE on January 2, 1995. This action is taken pursuant to Sections 4(i), 4(j), 7(a), 302, 303(c), 303(f), 303(g), 303(r), 332(c), and 332(d) of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 157(a), 302, 303(c), 303(f), 303(g), 303(r), 332(c), 332(d).

4. The final rules in Appendix B are corrected to read as follows:

Rule Amendments

47 CFR Parts 1, 20, 22, 24, and 90 are amended as follows:

Part 1 - PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 503(b)(5); 5 U.S.C. 552; 31 U.S.C. 853a, unless otherwise noted.

2. Section 1.823 is amended by removing and reserving paragraph (b) (2).

3. Section 1.901 is revised to read as follows:

§ 1.901 Scope.

In the case of any conflict between the rules set forth in this subpart and the rules set forth in Part 13 of this chapter or the rules set forth for specific services in Parts 80 through 97 of this chapter (other than rules relating to Commercial Mobile Radio Services contained in Part 90 of this chapter), the rules in this subpart shall govern. In the case of any conflict between the rules set forth in this subpart and the rules relating to Commercial Mobile Radio Services set forth in Part 20 of this chapter or in Part 90 of this chapter, the rules in Part 20 or Part 90 of this chapter shall govern.

4. Section 1.922 is revised to read as follows:

§ 1.922 Forms to be used.

FCC Form	Title
175	Application To Participate in an FCC Auction.
175-S	Supplemental Application To Participate in an FCC Auction.
402	Application for Microwave Station Authorization in the Safety and Special Radio Services.
402-10	Instructions for Completion of FCC Form 402.

- 402-A Annual Report of Licensees of Microwave and Other Fixed Stations When Such Facilities Are Used Cooperatively With Other Persons.
- 402-R Renewal Notice and Certification in the Private Operational-Fixed Microwave Radio Service.
- 404 Application for Aircraft Radio Station License.
- 404-A Temporary Aircraft Radio Station Operating Authority.
- 405-A Application for Renewal of Station License.
- 405-B License Expiration Notice and/or Renewal Application.
- 406 Application for Ground Station Authorization in the Aviation Services.
- 410 Registration of Canadian Radio Station Licensee and Application for Permit to Operate.
- 410-B Application for Permit To Operate a Canadian General Radio Station in the United States.
- 452-R Application for Renewal of Coast and Ground Services.
- 480 Application for Civil Air Patrol Radio Station Authorization.
- 490 Application for Assignment or Transfer of Control.
- 503 Application for Land Radio Station License in the Maritime Services.
- 506 Application for Ship Radio Station License.
- 506-A Temporary Operating Authority, Ship Radio Station License and Restricted Radiotelephone Operator Permit.
- 525 Application for Disaster Communications Radio Station Construction Permit and License.
- 572 Temporary Permit To Operate a Business Radio Station.
- 572C Conditional Temporary Authorization To Operate a Part 90 Radio Station.
- 574 Application for Radio Station Authorization in the General Mobile Radio Services.
- 574-R Application for Renewal of Radio Station License.
- 574-T Temporary Permit To Operate a General Mobile Radio Service System.
- 577 Temporary Permit To Operate a Part 90 Radio Station.
- 600 Application for Mobile Radio Service Authorization .
- 610 Application for Amateur Radio Station and/or Operator License.
- 610-A Application of Alien Amateur Radio Licensee for Permit To Operate in the United States.
- 610-B Application for Amateur Club, Military Recreation, or Radio Amateur Civil Emergency Service Station License.
- 660-B Interim Amateur Permit.
- 702 Application for Consent to Assignment of Radio Station Construction Permit or License (For Stations in Services Other Than Broadcast).
- 703 Application for Consent To Transfer of Control of Corporation Holding Construction Permit or Station License (For Station in Services Other Than Broadcast).
- 714 Supplement to Application for New or Modified Radio Station Authorization (Concerning Antenna Structure Notification to FAA).
- 820 Application for Exemption from Ship Radio Station Requirements.
- 845 Amateur Code Credit Certificate.
- 1046 Assignment of Authorization.

5. Section 1.924 is amended by revising the heading in paragraph (b)(2)(i) and paragraph (b)(2)(vi) and by adding a new paragraph (b)(2)(vii) to read as follows:

§ 1.924 Assignment or transfer of control; voluntary or involuntary.

(b) * * *

(2) * * *

(i) *FCC Form 600*. * * *

(vi) *FCC Form 703*. For consent to transfer control of a corporation holding any type of Part 90 license except a license to provide commercial mobile radio service.

(vii) *FCC Form 490*. For consent to transfer control of a corporation holding a Part 90 license to provide commercial mobile radio service.

6. Section 1.925 is amended by revising the first sentence of paragraph (g) and (h) to read as follows:

§ 1.925 Application for special temporary authorization, temporary permit, or temporary operating authority.

(g) An applicant for a Business Radio Station license (other than an applicant who seeks to provide commercial mobile radio service as defined in Part 20 of this chapter) utilizing an already authorized facility may operate the station for a period of 180 days, under a temporary permit, evidenced by a properly executed certification made on *FCC Form 572*, after the mailing of a formal application for station license together with evidence of frequency coordination, if required, to the Commission. * *

(h) An applicant for a radio station license under Part 90, Subpart S, of this chapter (other than an applicant who seeks to provide commercial mobile radio service as defined in Part 20 of this chapter) to utilize an already existing Specialized Mobile Radio System (SMRS) facility or to utilize an already licensed transmitter may operate the radio station for a period of up to 180 days, under a temporary permit, evidenced by a properly executed certification of *FCC Form 572* after the mailing of a formal application for station license, provided that the antenna employed by the control station is a maximum of 20 feet (6.1 meters) above a man-made structure (other than an antenna tower) to which it is affixed.

7. Section 1.1105 is amended by revising the entries in the table from 2. through 5.n. to read as follows:

Action	FCC Form No.	Fee Amount	Fee Type Code	Address
2. Domestic Public Land Mobile Stations (Paging and Radiotelephone Service, Air-ground Radiotelephone Service):				
a. Application for new or additional facility (per transmitter).	FCC 600	265.00	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
b. Application for major modification of an existing facility (per transmitter).	FCC 600	265.00	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
c. Notification of additional transmitter (per transmitter).	FCC 489	265.00	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
d. Major amendment of a pending application (per transmitter).	FCC 600	265.00	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
e. Application for assignment of authorization or consent to transfer of control.				
(i) First call sign	FCC 490	265.00	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(ii) Each additional call sign	FCC 490	45.00	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
f. Application for partial assignment of authorization (per call sign).	FCC 600 & FCC 490	265.00	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
g. Application for renewal (per call sign).	FCC 405 & FCC 156	45.00	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
h. Minor modification (per transmitter).				
(i) Notification of minor modification	FCC 489	45.00	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(ii) Application for minor modification	FCC 600	45.00	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.

Action	FCC Form No.	Fee Amount	Fee Type Code	Address
i. Request for special temporary authority (per channel/per location).	written request & FCC 159	230.00	CLD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
j. Application for extension of construction period (per authorization).	FCC 800	45.00	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
k. Notification of commencement of service to subscribers (per notification).	FCC 488	45.00	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
l. Application for new or modified auxiliary test transmitter (per transmitter).	FCC 600	230.00	CLD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
m. Application for authority to provide commercial mobile service using broadcast station subcarriers (per application).	FCC 600	115.00	CFD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
n. Application for reinstatement [NO LONGER AVAILABLE].				
o. Application to combine separate authorizations (per call sign).	FCC 600	230.00	CLD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
p. Application for new or modified standby transmitter (per transmitter/per location).	FCC 600	230.00	CLD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
q. 931 MHz nationwide paging renewal [SEE 2g].				
r. Application for new, modified or renewal general aviation air-ground mobile license (per application).	FCC 408 & FCC 158	45.00	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
s. Application for 932-932.5 / 941-941.5 MHz point-to-multipoint channels (per transmitter).	FCC 800	285.00	CMP	Federal Communications Commission, 932/941 MHz Point-to-Multipoint Channels, Common Carrier Bureau, P.O. Box 358924, Pittsburgh, PA 15261-5924.
3. Cellular Systems [Cellular Radiotelephone Service]:				
a. Initial application for new cellular system.	FCC 800	285.00	CMC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251-5135.
b. Application for major modification.	FCC 800	285.00	CMC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251-5135.
c. Minor modifications.				
(i) Application for minor modification	FCC 800	70.00	CDC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251-5135.

Action	FCC Form No.	Fee Amount	Fee Type Code	Address
(ii) Notification of minor modification or commencement of service to subscribers (per notification).	FCC 489	70.00	CDC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251-5135.
d. Application for full or partial assignment of authorization or consent to transfer of control.	FCC 490	285.00	CMC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251-5135.
e. Application for renewal.	FCC 405 & FCC 159	45.00	CAC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251-5135.
f. Application for extension of construction period.	FCC 800	45.00	CAC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251-5135.
g. Request for special temporary authority.	written request & FCC 159	230.00	CLC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251-5135.
h. Request to combine cellular geographic service areas (per system).	written request & FCC 159	80.00	CBC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251-5135.
4. Rural Radio [Rural Radiotelephone Service]:				
a. Application for new or additional facility (per transmitter).	FCC 800	125.00	CGR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
b. Application for major modification of an existing facility (per transmitter).	FCC 800	125.00	CGR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
c. Major amendment of a pending application (per transmitter).	FCC 800	125.00	CGR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
d. Minor modifications.				
(i) Notification of minor modification (per transmitter).	FCC 489	45.00	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(ii) Application for minor modification (per transmitter).	FCC 800	45.00	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
e. Application for assignment of authorization or consent to transfer of control.				
(i) First call sign:	FCC 490	125.00	CGR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(ii) Each additional call sign:	FCC 490	45.00	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.

Action	FCC Form No.	Fee Amount	Fee Type Code	Address
(iii) Partial assignment of authorization (per call sign):	FCC 490 & FCC 800	125.00	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
f. Application for renewal (per call sign).	FCC 405 & FCC 159	45.00	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
g. Application for extension of construction period (per application).	FCC 800	45.00	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
h. Notification of commencement of service to subscribers (per notification).	FCC 489	45.00	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
i. Request for special temporary authority (per channel/per location)	written request & FCC 159	230.00	CLR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
j. Application for reinstatement [NO LONGER AVAILABLE].				
k. Application to combine separate authorizations (per call sign).	FCC 800	230.00	CLR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
l. Application for new or modified auxiliary test transmitter (per transmitter).	FCC 800	230.00	CLR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
m. Application for new or modified standby transmitter (per transmitter).	FCC 800	230.00	CLR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
5. Offshore Radiotelephone Service:				
a. Application for new or additional facility (per transmitter).	FCC 800	125.00	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
b. Application for major modification of an existing facility (per transmitter).	FCC 800	125.00	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
c. FM-in transmitters [NOT AVAILABLE]				
d. Major amendment of a pending application (per transmitter).	FCC 800	125.00	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
e. Minor modifications.				
(i) Notification of minor modification (per transmitter).	FCC 489	45.00	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(ii) Application for minor modification (per transmitter).	FCC 800	45.00	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.

Action	FCC Form No.	Fee Amount	Fee Type Code	Address
f. Application for assignment of authorization or consent to transfer of control.				
(i) First call sign:	FCC 490	125.00	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(ii) Each additional call sign:	FCC 490	45.00	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(iii) Partial assignment of authorization (per call sign):	FCC 490 & FCC 600	125.00	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
g. Application for renewal (per call sign).	FCC 405 & FCC 159	45.00	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
h. Application for extension of construction period (per application).	FCC 800	45.00	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
i. Application for reinstatement (NO LONGER AVAILABLE)				
j. Notification of commencement of service to subscribers (per notification).	FCC 499	45.00	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
k. Request for special temporary authority (per channel/per location).	written request & FCC 159	230.00	CLF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
l. Application to combine separate authorizations (per call sign).	FCC 800	230.00	CLF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
m. Application for new or modified auxiliary test transmitter (per transmitter).	FCC 800	230.00	CLF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
n. Application for new or modified standby transmitter (per transmitter).	FCC 800	230.00	CLF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.

Part 20 - COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for Part 20 continues to read as follows:

Authority: Secs. 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. New Section 20.6 is added to read as follows:

§ 20.6 CMRS spectrum aggregation limit.

(a) *45 MHz limitation.* No licensee in the broadband PCS, cellular, or SMR services (including all parties under common control) regulated as CMRS (see § 20.9) shall have an attributable interest in a total of more than 45 MHz of licensed broadband PCS, cellular, and SMR spectrum regulated as CMRS with significant overlap in any geographic area.

(b) *SMR spectrum.* To calculate the amount of attributable SMR spectrum for purposes of paragraph (a) of this section, an entity must count all 800 MHz channels and 900 MHz channels located at any SMR base station inside the geographic area (MTA or BTA) where there is significant overlap. All 800 MHz channels located on at least one of those identified base stations count as 50 kHz (25 kHz paired), and all 900 MHz channels located on at least one of those identified base stations count as 25 kHz (12.5 kHz paired), except that no more than 10 MHz of SMR spectrum in the 800 MHz SMR service will be attributed to an entity when determining compliance with the cap.

(c) *Significant overlap.* (1) For purposes of paragraph (a) of this section, significant overlap of a PCS licensed service area and CGSA(s) (as defined in § 22.911 of this chapter) or SMR service area(s) occurs when at least 10 percent of the population of the PCS licensed service area, as determined by the 1990 census figures for the counties contained therein, is within the CGSA(s) and/or SMR service area(s).

(2) The Commission shall presume that an SMR service area covers less than 10 percent of the population of a PCS service area if none of the base stations of the SMR licensee is located within the PCS service area. For an SMR licensee's base stations that are located within a PCS service area, the channels licensed at those sites will be presumed to cover 10 percent of the population of the PCS service area, unless the licensee shows that its protected service contour for all of its base stations covers less than 10 percent of the population of the PCS service area.

(d) *Ownership attribution.* For purposes of paragraph (a) of this section, ownership and other interests in broadband PCS licensees, cellular licensees, or SMR licensees will be attributed to their holders pursuant to the following criteria:

(1) Controlling interest shall be attributable. Controlling interest means majority voting equity ownership, any general partnership interest, or any means of actual

working control (including negative control) over the operation of the licensee, in whatever manner exercised.

(2) Partnership and other ownership interests and any stock interest amounting to 20 percent or more of the equity, or outstanding stock, or outstanding voting stock of a broadband PCS, cellular, or SMR licensee shall be attributed, except that ownership will not be attributed unless the partnership and other ownership interests and any stock interest amount to at least 40 percent of the equity, or outstanding stock, or outstanding voting stock of a broadband PCS, cellular, or SMR licensee if the ownership interest is held by a small business, a rural telephone company, or a business owned by minorities and/or women, as these terms are defined in § 1.2110 of this chapter or other related provisions of the Commission's Rules, or if the ownership interest is held by an entity with a non-controlling equity interest in a broadband PCS licensee or applicant that is a business owned by minorities and/or women.

(3) Stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock to any person who has the sole power to sell such stock, and, in the case of stock held in trust, to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal, or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust.

(4) Non-voting stock shall be attributed as an interest in the issuing entity if in excess of the amounts set forth in paragraph (d)(2) of this section.

(5) Debt and instruments such as warrants, convertible debentures, options, or other interests (except non-voting stock) with rights of conversion to voting interests shall not be attributed unless and until conversion is effected, except that this provision does not apply in determining whether an entity is a small business, a rural telephone company, or a business owned by minorities and/or women, as these terms are defined in § 1.2110 of this chapter or other related provisions of the Commission's Rules.

(6) Limited partnership interests shall be attributed to limited partners and shall be calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses.

(7) Officers and directors of a broadband PCS licensee or applicant, cellular licensee, or SMR licensee shall be considered to have an attributable interest in the entity with which they are so associated. The officers and directors of an entity that controls a broadband PCS licensee or applicant, a cellular licensee, or an SMR licensee shall be considered to have an attributable interest in the broadband PCS licensee or applicant, cellular licensee, or SMR licensee.

(8) Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

(e) *Divestiture.* Any party holding controlling or attributable ownership interests in SMR licensees accounting for more than 5 MHz of SMR spectrum may be a party to a broadband PCS application (*i.e.*, have a controlling or attributable interest in a broadband PCS applicant), and such PCS applicant will be eligible for PCS licenses amounting to 40 MHz of broadband PCS spectrum in a geographical area, pursuant to the divestiture procedures set forth in paragraphs (e)(1) through (e)(3) of this section.

(1) The broadband PCS applicant shall certify on its bidder application that it and all parties to the application will come into compliance with the limitations on spectrum aggregation set forth in this section.

(2) If such an applicant is a successful bidder, it must submit with its long-form application a signed statement describing its efforts to date and future plans to come into compliance with the limitations on spectrum aggregation set forth in this section.

(3) If such an applicant is otherwise qualified, its application will be granted subject to a condition that the licensee shall come into compliance with the limitations on spectrum aggregation set forth in this section within ninety (90) days of final grant.

(i) Parties holding controlling interests in SMR licensees that conflict with the attribution threshold or geographic overlap limitations set forth in this section will be considered to have come into compliance if they have submitted to the Commission an application for assignment of license or transfer of control of the SMR licensee (see § 90.158 of this chapter) by which, if granted, such parties no longer would have an attributable interest in the SMR license. If no such assignment or transfer application

is tendered to the Commission within ninety (90) days of final grant, the Commission may consider the short-form certification and the long-form divestiture statement to be material, bad faith misrepresentations and shall invoke the condition on the PCS license, cancelling it automatically, shall retain all monies paid to the Commission, and, based on the facts presented, shall take any other action it may deem appropriate. Divestiture may be to an interim trustee if a buyer has not been secured in the required period of time, as long as the applicant has no interest in or control of the trustee, and the trustee may dispose of the license as it sees fit.

(ii) Where parties to broadband PCS applications hold less than controlling (but still attributable) interests in SMR licensee(s), they shall submit, within ninety (90) days of final grant, a certification that the applicant and all parties to the application have come into compliance with the limitations on spectrum aggregation set forth in this section.

[NOTE 1 to Section 20.6: For purposes of the ownership attribution limit, all ownership interests in operations that serve at least 10 percent of the population of the PCS service area should be included in determining the extent of a PCS applicant's cellular or SMR ownership.]

[NOTE 2 to 20.6: When a party owns an attributable interest in more than one cellular or SMR system that overlaps a PCS service area, the total population in the overlap area will apply on a cumulative basis.]

Part 22 - PUBLIC MOBILE RADIO SERVICE

1. The authority citation for Part 22 is revised to read as follows:

Authority: 47 U.S.C. 154, 303, and 332, unless otherwise noted.

§ 22.105 [Amended]

2. In § 22.105, Table B-1 is amended by removing the number 401 in the "Form Number" column and, in its place, adding the number 600 in the "Form Number".

3. The following sections of Part 22 are amended by removing the term "FCC Form 401" and adding, in its place, the term "FCC Form 600":

(a) 22.115(a)(2);

- (b) 22.137(c)(1)(ii);
- (c) 22.142(c), introductory text, and (d) introductory text;
- (d) 22.357, introductory text;
- (e) 22.411(d)(1);
- (f) 22.413(b)(1);
- (g) 22.415(b)(1);
- (h) 22.417(b)(1);
- (i) 22.507;
- (j) 22.529(a), introductory text and (b) introductory text;
- (k) 22.531(c);
- (l) 22.709(b), introductory text;
- (m) 22.803(a), introductory text, and (b) introductory text;
- (n) 22.911(b), introductory text;
- (o) 22.929(a), introductory text, and (b), introductory text;
- (p) 22.941(c);
- (q) 22.947(b), introductory text; and
- (r) 22.953(a)(2)(iii).

4. Section 22.131 is revised to read as follows:

§ 22.131 Procedures for mutually exclusive applications.

Two or more pending applications are mutually exclusive if the grant of one application would effectively preclude the grant of one or more of the others under Commission rules governing the Public Mobile Services involved. The Commission uses the general procedures in this section for processing mutually exclusive applications in the Public Mobile Services. Additional specific procedures are prescribed in the subparts of this part governing the individual Public Mobile Services (see §§ 22.509, 22.717, and 22.949) and in Part 1 of this chapter.

(a) *Separate applications.* Any applicant that files an application knowing that it will be mutually exclusive with one or more applications should not include in the mutually exclusive application a request for other channels or facilities that would not, by themselves, render the application mutually exclusive with those other applications. Instead, the request for such other channels or facilities should be filed in a separate application.

(b) *Filing groups.* Pending mutually exclusive applications are processed in filing groups. Mutually exclusive applications in a filing group are given concurrent

consideration. The Commission may dismiss as defective (pursuant to § 22.128) any mutually exclusive application(s) whose filing date is outside of the date range for inclusion in the filing group. The types of filing groups used in day-to-day application processing are specified in paragraph (c)(3) of this section. A filing group is one of the following types:

(1) *Renewal filing group.* A renewal filing group comprises a timely-filed application for renewal of an authorization and all timely-filed mutually exclusive competing applications (see § 22.145).

(2) *Same-day filing group.* A same-day filing group comprises all mutually exclusive applications whose filing date is the same day, which is normally the filing date of the first-filed application(s).

(3) *Thirty-day notice and cut-off filing group.* A 30-day notice and cut-off filing group comprises mutually exclusive applications whose filing date is no later than thirty (30) days after the date of the Public Notice listing the first-filed application(s) (according to the filing dates) as acceptable for filing.

(4) *Window filing group.* A window filing group comprises mutually exclusive applications whose filing date is within an announced filing window. An announced filing window is a period of time between and including two specific dates, which are the first and last dates on which applications (or amendments) for a particular purpose may be accepted for filing. In the case of a one-day filing window, the two dates are the same. The dates are made known to the public in advance.

(c) *Procedures.* Generally, the Commission may grant one application in a filing group of mutually exclusive applications and dismiss the other application(s) in the filing group that are excluded by that grant, pursuant to § 22.128.

(1) *Selection methods.* In selecting the application to grant, the Commission may use competitive bidding, random selection, or comparative hearings, depending upon the type of applications involved.

(2) *Dismissal of applications.* The Commission may dismiss any application in a filing group that is defective or otherwise subject to dismissal under § 22.128, either before or after employing selection procedures.

(3) *Type of filing group used.* Except as otherwise provided in this part, the type of filing group used in the processing of two or more mutually exclusive applications depends upon the purpose(s) of the applications.

(i) If one of the mutually exclusive applications is a timely-filed application for renewal of an authorization, a renewal filing group is used.

(ii) If any mutually exclusive application filed on the earliest filing date is an application for modification and none of the mutually exclusive applications is a timely-filed application for renewal, a same-day filing group is used.

(iii) If all of the mutually exclusive applications filed on the earliest filing date are applications for initial authorization, a 30-day notice and cut-off filing group is used, except that, for Phase I unserved area applications in the Cellular Radiotelephone Service, a one-day window filing group is used (see § 22.949).

(4) *Disposition.* If there is only one application in any type of filing group, the Commission may grant that application and dismiss without prejudice any mutually exclusive applications not in the filing group. If there is more than one mutually exclusive application in a filing group, the Commission disposes of these applications as follows:

(i) *Applications in a renewal filing group.* All mutually exclusive applications in a renewal filing group are designated for comparative consideration in a hearing.

(ii) *Applications in a 30-day notice and cut-off filing group.*

(A) If all of the mutually exclusive applications in a 30-day notice and cut-off filing group are applications for initial authorization, and none is an application for facilities in the Rural Radiotelephone Service, the Commission shall administer competitive bidding procedures in accordance with Subpart Q of Part 1 of this chapter. After such procedures, the application of the successful bidder may be granted and the other applications may be dismissed without prejudice.

(B) If any of the mutually exclusive applications in a 30-day notice and cut-off filing group is an application for modification or an application for facilities in the Rural Radiotelephone Service, the Commission may attempt to resolve the mutual exclusivity by facilitating a settlement between the applicants. If a settlement is not reached within a reasonable time, the Commission may designate all applications in

the filing group for comparative consideration in a hearing. In this event, the result of the hearing disposes of all of the applications in the filing group.

(iii) *Applications in a same-day filing group.* If there are two or more mutually exclusive applications in a same-day filing group, the Commission may attempt to resolve the mutual exclusivity by facilitating a settlement between the applicants. If a settlement is not reached within a reasonable time, the Commission may designate all applications in the filing group for comparative consideration in a hearing. In this event, the result of the hearing disposes of all of the applications in the filing group.

(iv) *Applications in a window filing group.* Applications in a window filing group are processed in accordance with the procedures for a 30-day notice and cut-off filing group in paragraph (c)(4)(ii) of this section.

(d) *Terminology.* For the purposes of this section, terms have the following meanings:

(1) The "filing date" of an application is the date on which that application was received in a condition acceptable for filing or the date on which the most recently filed major amendment to that application was received, whichever is later, excluding major amendments in the following circumstances:

(i) The major amendment reflects only a change in ownership or control found by the Commission to be in the public interest;

(ii) The major amendment as received is defective or otherwise found unacceptable for filing; or

(iii) The application being amended has been designated for hearing and the Commission or the presiding officer accepts the major amendment.

(2) An "application for initial authorization" is:

(i) Any application requesting an authorization for a new system or station;

(ii) Any application requesting authorization for an existing station to operate on an additional channel, unless the additional channel is for paired two-way radiotelephone operation, is in the same frequency range as the existing channel(s), and will be operationally integrated with the existing channel(s) such as by trunking;

(iii) Any application requesting authorization for a new transmitter at a location more than 2 kilometers (1.2 miles) from any existing transmitters of the applicant licensee on the requested channel or channel block; or

(iv) Any application to expand the CGSA of a cellular system (as defined in § 22.911), except during the five-year build-out period.

(3) An "application for modification" is any application other than an application for initial authorization or renewal.

5. Section 22.301 is revised to read as follows:

§ 22.301 Station inspection.

Upon reasonable request, the licensee of any station authorized in the Public Mobile Services must make the station and station records available for inspection by authorized representatives of the Commission at any reasonable hour.

6. Section 22.313 is amended by revising paragraph (a)(4), adding a new paragraph (a)(5), and revising paragraphs (b) and (c) to read as follows:

§ 22.313 Station identification.

(a) ***

(4) Rural subscriber stations using Basic Exchange Telephone Radio Systems in the Rural Radiotelephone Service; or

(5) Nationwide network paging stations operating on 931 MHz channels.

(b) For all other stations in the Public Mobile Services, station identification must be transmitted each hour within five minutes of the hour, or upon completion of the first transmission after the hour. Transmission of station identification may be temporarily delayed to avoid interrupting the continuity of any public communication in progress, provided that station identification is transmitted at the conclusion of that public communication.

(c) Station identification must be transmitted by telephony using the English language or by telegraphy using the international Morse code, and in a form that can be received using equipment appropriate for the modulation type employed, and understood without the use of unscrambling devices, except that, alternatively, station identification may be transmitted digitally, provided that the licensee provides the Commission with information sufficient to decode the digital transmission to ascertain the call sign. Station identification comprises transmission of the call sign assigned by the Commission to the station, however, the following may be used in lieu of the call sign:

(1) For transmissions from subscriber operated transmitters, the telephone number or other designation assigned by the carrier, provided that a written record of such designations is maintained by the carrier;

(2) For general aviation airborne mobile stations in the Air-Ground Radiotelephone Service, the official FAA registration number of the aircraft;

(3) For stations in the Paging and Radiotelephone Service, a call sign assigned to another station within the same system.

7. Section 22.357 is revised to read as follows:

§ 22.357 Emission types.

Any authorized station in the Public Mobile Services may transmit any emission type provided that the resulting emission complies with the appropriate emission mask. See §§ 22.359 and 22.917.

8. A new Section 22.509 is added to read as follows:

§ 22.509 Procedures for mutually exclusive applications in the Paging and Radiotelephone Service.

Mutually exclusive applications in the Paging and Radiotelephone Service, including those that are mutually exclusive with applications in the Rural Radiotelephone Service, are processed in accordance with § 22.131 and with this section.

(a) Applications in the Paging and Radiotelephone Service may be mutually exclusive with applications in the Rural Radiotelephone Service if they seek authorization to

operate facilities on the same channel in the same area, or the technical proposals are otherwise in conflict. See § 22.567.

(b) A modification application in either service filed on the earliest filing date may cause all later-filed mutually exclusive applications of any type in either service to be “cut off” (excluded from a same-day filing group) and dismissed, pursuant to § 22.131(c)(3)(ii) and § 22.131(c)(4).

(c) Competitive bidding will not be used as a selection procedure for any filing group that contains one or more applications for facilities in the Rural Radio Service. If a settlement between the applicants cannot be reached in a reasonable time, the applications may be designated for comparative consideration in a hearing. See § 22.131(c)(4)(ii).

9. Section 22.541 is removed.

10. Section 22.717 is revised to read as follows:

§ 22.717 Procedure for mutually exclusive applications in the Rural Radiotelephone Service.

Mutually exclusive applications in the Rural Radiotelephone Service, including those that are mutually exclusive with applications in the Paging and Radiotelephone Service, are processed in accordance with § 22.131 and with this section.

(a) Applications in the Rural Radiotelephone Service may be mutually exclusive with applications in the Paging and Radiotelephone Service if they seek authorization to operate facilities on the same channel in the same area, or the technical proposals are otherwise in conflict. See § 22.567.

(b) A modification application in either service filed on the earliest filing date may cause all later-filed mutually exclusive applications of any type in either service to be “cut off” (excluded from a same-day filing group) and dismissed, pursuant to § 22.131(c)(3)(ii) and § 22.131(c)(4).

(c) Competitive bidding will not be used as a selection procedure for any filing group that contains one or more applications for facilities in the Rural Radio Service. If a settlement between the applicants cannot be reached in a reasonable time, the

applications may be designated for comparative consideration in a hearing. See § 22.131(c)(4)(ii).

11. Section 22.949 is amended by revising paragraph (a)(2), adding a NOTE following paragraph (a)(2), revising the introductory text of paragraph (b), and revising paragraphs (b)(2), (c), (d)(1) and (d)(3), to read as follows:

§ 22.949 Unserved area licensing process.

(a) ***

(2) Only one Phase I initial application is granted on each channel block in each market. Consequently, whenever two or more acceptable Phase I initial applications are timely filed in the same market on the same channel block, such Phase I initial applications are mutually exclusive, regardless of any other considerations such as the technical proposals. In order to determine which of such mutually exclusive Phase I initial applications to grant, the Commission administers competitive bidding procedures in accordance with Subpart Q of Part 1 of this chapter. After such procedures, the application of the winning bidder may be granted and the applications excluded by that grant may be dismissed without prejudice.

NOTE: Notwithstanding the provisions of § 22.949(a)(2), mutually exclusive Phase I initial applications that were filed between March 10, 1993 and July 25, 1993, inclusive, are to be included in a random selection process, following which the selected application may be granted and the applications excluded by that grant may be dismissed without prejudice.

(b) *Phase II.* Phase II is an on-going filing process that allows eligible parties to apply for any unserved areas that may remain in a market after the Phase I process is complete.

(2) There is no limit to the number of Phase II applications that may be granted on each channel block in each market. Consequently, Phase II applications are mutually

exclusive only if the proposed CGSAs would overlap. Mutually exclusive applications are processed using the general procedures in § 22.131.

(c) *Settlements among mutually exclusive applicants.* Settlements among some, but not all, applicants with mutually exclusive applications for unserved areas (partial settlements) are prohibited. Settlements among all applicants with mutually exclusive applications (full settlements) are allowed and must be filed no later than fifteen (15) business days before the competitive bidding procedure is scheduled to take place.

(d) ***

(1) The Commission will not accept amendments (of any type) to mutually exclusive Phase I applications prior to the conclusion of the competitive bidding process.

(3) Minor amendments required by § 1.65 of this chapter must be filed no later than thirty (30) days after public notice announcing the results of the competitive bidding process.

Part 24 - PERSONAL COMMUNICATIONS SERVICES

1. The authority citation for Part 24 continues to read as follows:

AUTHORITY: 47 U.S.C. §§ 154, 301, 302, 303, 309, and 332, unless otherwise noted.

2. The following sections of Part 24 are amended by removing the term "FCC Form 401" and adding, in its place, the term "FCC Form 600":

- (a) 24.307;
- (b) 24.406(b);
- (c) 24.409(b);
- (d) 24.413(a), introductory text;
- (e) 24.426(a);
- (f) 24.427(b);

- (g) 24.707;
- (h) 24.806(b);
- (i) 24.809(b);
- (j) 24.813(a), introductory text;
- (k) 24.826(a); and
- (l) 24.827(b).

Part 90 - PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

AUTHORITY: Sections 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 90.5 is amended by redesignating paragraphs (h) through (k) as paragraphs (i) through (l) and adding a new paragraph (h) to read as follows:

§ 90.5 Other applicable rule parts.

(h) Part 20 of this chapter contains rules relating to commercial mobile radio services.

3. Section 90.75 is amended by revising paragraph (a), introductory text, and the third sentence of paragraph (c)(10) to read as follows:

§ 90.75 Business Radio Service.

(a) *Eligibility.* Persons primarily engaged in any of the following activities are eligible to hold authorizations in the Business Radio Service to provide commercial mobile radio service as defined in Part 20 of this chapter or to operate stations for transmission of communications necessary to such activities of the licensee:

(c) * * *

(10) * * * Licensees may provide one-way paging communications on this frequency to individuals, persons eligible for licensing under subpart B, C, D, or E of this part, to representatives of Federal Government agencies, and foreign governments and their representatives.

4. Section 90.115 is revised to read as follows:

§ 90.115 Foreign government and alien eligibility.

(a) No station authorization in the radio services governed by this part shall be granted to or held by a foreign government or its representative.

(b) No station authorization in the radio services governed by this part shall be granted to or held by any entity providing or seeking to provide commercial mobile radio services (except such entities meeting the requirements of § 20.9(c) of this chapter) if such entity is:

- (1) An alien or the representative of any alien;
- (2) A corporation organized under the laws of any foreign government;
- (3) A corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country;
- (4) A corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

5. Section 90.119 is revised to read as follows:

§ 90.119 Application forms.

The following application forms shall be used--

(a) Form 600 shall be used to apply:

(1) For new base, fixed, or mobile station authorizations governed by this part.

(2) For system authorizations, where the system meets the requirements of § 90.117.

(i) Application for a radio system may be submitted on a single Form 600.

(ii) If the control station(s) will operate on the same frequency as the mobile station, and if the height of the control station(s) antenna(s) will not exceed 6.1 meters (20 feet) above ground or an existing man-made structure (other than an antenna structure), there is no limit on the number of such stations which may be authorized. Appropriate items on Form 600 shall be completed showing the frequency, the station class, the total number of control stations, the emission, and the output power of the highest powered control station. Applicants for all control stations in the 470-512 MHz band must furnish the information requested in the relevant items in Form 600.

(3) For modification or for modification and renewal of an existing authorization. See § 90.135.

(4) For the Commission's consent to the assignment of an authorization to another person or entity, except for authorization to provide commercial mobile radio service. In addition, the application shall be accompanied by a letter from the assignor setting forth his or her desire to assign all right, title, and interest in and to such authorization, stating the call sign and location of the station, and stating that the assignor will submit his or her current station authorization for cancellation upon completion of the assignment. Form 1046 may be used in lieu of this letter.

(5) For reinstatement of an expired license. See also paragraphs (b)(1) and (e) of this section.

(b) Form 405-A shall be used to:

(1) Apply for license reinstatement or renewal if the reinstatement or renewal does not involve the modification of the station or system license.