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

In the Matter of	)	
	)	
Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services	)	CC Docket No. 92-115
	)	
Amendment of Part 22 of the Commission's Rules To Delete Section 22.119 and Permit the Concurrent Use of Transmitters in Common Carrier and Non-common Carrier Service	)	CC Docket No. 94-46 RM 8367
	)	
Amendment of Part 22 of the Commission's Rules Pertaining to Power Limits for Paging Stations Operating in the 931 MHz Band in the Public Land Mobile Service	)	CC Docket No. 93-116

McCAW CELLULAR COMMUNICATIONS, INC.
PETITION FOR RECONSIDERATION AND CLARIFICATION

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TABLE OF CONTENTS

Page

I. SUMMARY 2

II. APPLICATION REQUIREMENTS AND PROCEDURES 7

A. New Section 22.108 Should Be Revised To Limit Disclosure of Real Parties in Interest to Entities Involved in Public Mobile Services 7

B. The Commission Should Expand the Scope of Filings Classified as Minor in the Air-Ground Radiotelephone Service 10

C. The Commission Should Require Licensees Only To Construct Facilities and Be Capable of Providing Service in Order To Meet an Authorization Construction Deadline 12

D. The Commission Should Expand the Opportunities for Permissible Pre-Grant Construction 16

E. The Commission Should Clarify or Expand the Distance Computation Rule Under New Section 22.157 18

F. The Commission Should Clarify Its Requirements with Respect to Antenna Structure Notifications 19

G. New Section 22.165(d) Requires Clarification in Order To Effectuate the Commission's Apparent Purpose 21

H. New Section 22.165(e) Should Be Clarified To Reflect Pre-Existing Rules and Policies with Respect to Permissive Extensions of Cellular Service Area Boundaries Outside the Licensee's Cellular Market 22

III. OPERATIONAL AND TECHNICAL REQUIREMENTS 25

A. The Commission Should Exempt Air-Ground Radiotelephone Service Facilities from Station Identification Requirements 25

Page

B. In-building Radiation Systems Using Circular Polarization Should Be Clearly Authorized 27

C. The Effect on Public Mobile Service Licensees of the Deletion of Old Section 22.119 Should Be Clarified 30

D. The Commission Should Permit Part 22 Licensees To Share Transmitters 31

IV. PAGING AND RADIOTELEPHONE SERVICE 35

A. The Commission Should Revise New Section 22.529(a)(2) To Specify a Definite Area in Which Pending Applications and Granted Facilities Are To Be Identified 35

V. AIR-GROUND RADIOTELEPHONE SERVICE 37

A. The Geographical Channel Block Layout Should Be Revised 37

B. The Commission Should Reinstate the Previous Rule for the Emission Mask for Air-Ground Transmissions 38

VI. CELLULAR RADIOTELEPHONE SERVICE 41

A. New Section 22.901 Should Be Clarified To Ensure That It Does Not Unduly Limit the Ability of Cellular Carriers To Terminate, for Good Reason, Service to Subscribers 42

B. New Section 22.929(a)(2) Should Be Deleted 43

C. New Section 22.936 Should Be Revised To Reflect the Commission's Cellular Renewal Policies 44

D. The SIU Map Filing Requirements Should Be Clarified 45

VII. CONCLUSION 47

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PETITION FOR RECONSIDERATION AND CLARIFICATION

McCaw Cellular Communications, Inc. ("McCaw"),[1] on behalf of its cellular and messaging affiliates and Claircom Communications Group, L.P. ("Claircom"), its commercial air-ground affiliate, hereby seeks reconsideration or clarification of certain elements of the Commission's Report and Order adopted in the above-captioned proceeding.[2] The *Part 22 Rewrite Order* completely revised and recodified Part 22 of the Commission's Rules governing the provision of, *inter alia*, paging and

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[1] McCaw is a wholly-owned subsidiary of AT&T Corp.

[2] FCC 94-201 (Sept. 9, 1994) ("*Part 22 Rewrite Order*"), Erratum, Mimeo No. 44847 (Sept. 21, 1994). A summary of the order was published at 59 Fed. Reg. 59502 (Nov. 17, 1994).

radiotelephone service, air-ground radiotelephone service, and cellular radiotelephone service. McCaw generally concurs with the Commission's assessment that "Public Mobile Service applicants and licensees will find [new Part 22] better organized and easier to understand and use."[3] Nonetheless, certain rules and policies adopted by the *Part 22 Rewrite Report* require clarification in order to provide complete and meaningful guidance to applicants and licensees in the Part 22 services. Other provisions and Commission statements warrant reconsideration in order to ensure that the rules and policies adopted by the Commission most effectively further the public interest.

I. SUMMARY

The Commission's Report and Order in this docket ("*Part 22 Rewrite Order*") represents a massive, years-long, joint undertaking by the Commission and the mobile services industry to update, clarify, and simplify the rules governing existing common carrier mobile services. McCaw believes that, overall, this effort has been very successful and has resulted in a dramatically improved set of rules and policies to govern the Part 22 services. There are, however, some areas where further clarification is required to ensure that licensees and applicants correctly understand their obligations or where revisions to the rules and policies would better serve the public interest. These areas are outlined below.

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[3] *Id.*, ¶ 1.

First, new Section 22.108 alters the requirements for disclosure of real parties in interest in Part 22 applications. Despite the Commission's statements that it was retaining the substantive requirements of the existing rule, the new section requires disclosure of *all* subsidiaries, affiliates, and holders of 5 percent or more interest in the applicant -- not just those entities engaged in Public Mobile Services. This limitation on the disclosure obligation should be restored.

Second, the Commission should expand the scope of air-ground applications that are considered to be minor. This will help to expedite the provision of service to the public.

Third, the *Part 22 Rewrite Order* requires that, to meet a construction deadline, the licensee must construct facilities and actually provide service to at least one unaffiliated subscriber. The Commission instead should require that the licensee be deemed to have complied with the construction deadline if it has constructed its facilities and is capable of providing service to the public.

Fourth, while the *Part 22 Rewrite Order* expanded the ability of Part 22 licensees to undertake pre-authorization construction, such opportunities can be further enlarged consistent with the requirements of the Communications Act. Such construction should be permitted to proceed *if*: (1) an application has been filed and appeared on public notice as accepted for filing; (2) the applicant certifies that construction in advance of the grant of an authorization is done at its own risk; (3) the applicant certifies that it will remove any constructed facilities within 30 days of the

denial or dismissal of the application in question; (4) the construction is in compliance with Part 17 of the Commission's Rules; and (5) the construction is in compliance with Subpart I of Part 1 of the Commission's Rules. Such action will enable licensees to expedite the initiation of service upon the grant of an authorization from the Commission.

Fifth, the Commission should clarify or expand the distance computation rule under new Section 22.157 in order to provide a reliable formula for calculating distances over 295 miles. Air-ground licensees must be able to implement a reliable method for determining distances that exceed the 295 mile figure.

Sixth, the Commission should clarify that, for permissive minor modifications and the addition of transmitters not requiring prior Commission approval, the licensee is not required to await action by the Commission's Support Services Branch regarding the marking and lighting of antenna facilities before proceeding with installation. Rather, the Commission should confirm that the filing of a Form 854 with the Support Services Branch is a sufficient prerequisite for these types of construction and installation activities.

Seventh, the Commission should clarify that, in the paging and radiotelephone service, the addition of co-channel transmitters will be permitted when encompassed by the composite service area contour and predicted interfering contour of transmitters controlled by, or under the common control of, the licensee.

Eighth, new Section 22.165(e) needs clarification or reconsideration to include certain categories of cellular service area boundary ("SAB") extensions currently permitted by the Commission and that are explicitly authorized by other sections of the new Part 22 rules. The Commission should make clear that the Section 22.165(e) procedures govern SAB extensions into unserved area in an adjacent market pursuant to a contract or agreement with the neighboring licensee if the market into which the extension reaches is not yet past its five year build-out date as well as SAB extensions into the cellular geographic service area of a neighboring market pursuant to agreement regardless of whether either market has passed its five year build-out date.

Ninth, the Commission should exempt air-ground radiotelephone service facilities from station identification requirements, due to very troublesome practical and technical difficulties in implementing such a requirement.

Tenth, the new Part 22 rules are unclear with respect to the ability of licensees to deploy in-building radiation systems. The Commission should clarify its statements and also state that in-building radiation systems may use vertical, horizontal, or circular polarization.

Eleventh, the Commission needs to clarify the effect of the deletion of old Section 22.119. Specifically, the Commission should state that Part 22 licensees may provide enhanced services over their facilities.

Twelfth, the *Part 22 Rewrite Order* declares without any advance notice that Part 22 licensees may not share transmitters -- despite the fact that the Commission

previously has routinely dual licensed transmitters. This policy must be reversed, and Part 22 licensees should be permitted to share transmitters.

Thirteenth, new Section 22.529(a)(2) should be revised in order to indicate specifically the area in which paging and radiotelephone applicants are required to identify pending applications and granted facilities.

Fourteenth, the geographical channel block layout for the air-ground radiotelephone service should be revised consistent with a petition for rulemaking (as supplemented) filed by the air-ground licensees on July 22, 1993.

Fifteenth, the emission mask requirement adopted by the Commission for air-ground licensees will require them to redesign and replace the equipment in their systems. The Commission instead should reinstate the previous rule for emission masks in this service.

Sixteenth, the Commission should clarify new Section 22.901 to ensure that this rule does not inadvertently limit the rights of cellular operators to terminate service to subscribers engaged in fraud or who fail to abide by the terms and conditions of the subscriber agreement or fail to pay for service.

Seventeenth, new Section 22.929(a)(2) requires cellular licensees to identify facilities controlled by the applicant that are in the same area as the proposed operations. There appears to be no reason to impose this requirement in the cellular service and it should be deleted.

Eighteenth, new Section 22.936 does not, contrary to the Commission's stated intent, accurately reflect the existing cellular renewal policies. This rule section must be corrected to retain the policies adopted in the cellular renewal proceeding, specifically including the requirement that an applicant that dismisses an application involved in a renewal proceeding may receive no monetary reimbursement.

Nineteenth, the Commission's requirements for the filing of system information updates should be clarified. If the Commission declines to shift the filing date to the end of the five year build-out period, the rule should be altered to require licensees to disclose actual coverage as well as coverage anticipated to be in place as of the end of the five year build-out period.

Adoption of these clarifications and modifications will further improve the Part 22 rules and will enhance the operations of a competitive mobile services marketplace. The ultimate beneficiary of such improvements will be the consumer, and this clearly furthers achievement of the Commission's public interest obligations.

II. APPLICATION REQUIREMENTS AND PROCEDURES

A. New Section 22.108 Should Be Revised To Limit Disclosure of Real Parties in Interest to Entities Involved in Public Mobile Services

New Section 22.108 requires that "[e]ach application for an authorization, assignment of authorization, or for consent to transfer of control in the Public Mobile

Services must disclose fully the real party or parties in interest to the application."[4] The Commission's discussion of this new rule requirement indicates that "[t]he intent of the NPRM[5] was to propose the retention of the substance of § 22.13(a)(1) as it existed prior to the NPRM with respect to the disclosure of real parties in interest," and that the Commission in fact "adopted the substantive provisions of old § 22.13(a)(1) concerning the disclosure of information concerning real parties in interest."[6]

Despite this intent, there in fact is a substantive difference in the disclosure requirement embodied in the old and new rule sections. Specifically, existing Section 22.13(a)(1) states that "[e]ach application for a radio station authorization or for consent to assignment or transfer of control shall . . . [d]isclose fully the real party or parties in interest, *that are engaged in the Public Mobile Services*, including the following information . . . ."[7] New Section 22.108 does not limit the real party in interest disclosure to entities that are engaged in the Public Mobile Services. As demonstrated below, the new rule should be revised to retain that qualification.

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[4] New Section 22.108, *Part 22 Rewrite Order*, B-14. The rule further specifies that this disclosure must include a list of the applicant's subsidiaries, affiliates, and stockholders with stock and other interests of 5 percent or more in the applicant. *Id.*

[5] Revision of Part 22 of the Commission's Rules Governing the Public Mobile Service, 7 FCC Rcd 3658 (1992) (Notice of Proposed Rulemaking) ("*Notice*" or "*NPRM*").

[6] *Part 22 Rewrite Order*, A-9 (footnote added).

[7] 47 C.F.R. § 22.13(a)(1) (1993) (emphasis added).

Initially, McCaw notes that the only discussion of the new rule reflected the Commission's view that it was adopting the substantive provisions of the existing rule with respect to the identification of real parties in interest to Part 22 applications. Without further explanation, it is unclear whether the deletion of the qualifying language of existing Section 22.13(a)(1) was intentional or inadvertent.

If the rule is not changed as suggested in this petition, applicants (whether new entrants or existing licensees) with a variety of business activities will be required to disclose every subsidiary and affiliate meeting the Commission's broad, all-encompassing definitions of such entities.[8] Many of these entities would have no interest in Commission authorizations.[9] Requiring information about such entities appears to have no relevance to the Commission's review of a licensee's or applicant's qualifications and does not appear to be required by the dictates of the Communications Act. Moreover, supplying and updating this information in every application would be burdensome for many Commission licensees and applicants.

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[8] *See* new Section 22.108 (a), (b) ("a subsidiary is any business for which the applicant or any officer, director, stockholder or key manager of the applicant owns 5% or more of the stock, warrants, options or debt securities;" an affiliate is "[a]ny business that holds a 5% or more interest in the applicant; or, . . . [a]ny business in which a 5% or more interest is held by a business that also holds a 5% or more interest in the applicant").

[9] McCaw, for example, would be required to submit a voluminous list of AT&T affiliates engaged in activities such as manufacturing, computer services, and international ventures.

Given the absence of any explanation for the rule change, the Commission's lack of need for the additional information, and the unwarranted burdens placed on many applicants, McCaw urges the Commission to revise the opening paragraph of new Section 22.108 as follows (new language is underlined):

> Each application for an authorization, assignment of authorization, or for consent to transfer of control in the Public Mobile Services must disclose fully the real party or parties in interest to the application, <u>that are engaged in the Public Mobile Services</u>.

Such action will ensure that the Commission has access to information necessary to ensure that an applicant is qualified and that grant of an application will serve the public interest without unduly burdening the providers of Part 22 services.

B. The Commission Should Expand the Scope of Filings Classified as Minor in the Air-Ground Radiotelephone Service

As adopted, new Section 22.163 allows air-ground licensees to make minor modifications to existing stations without obtaining prior Commission approval.[10] The Commission defined a "minor" modification as any modification not classified as "major" under new Section 22.123.[11] Applications and amendments to applications in the air-ground radiotelephone service are considered "major" if they, *inter alia*: (1) request the first authorization for a new commercial aviation ground station at a

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[10] New Section 22.163, *Part 22 Rewrite Order*, B-25.

[11] New Section 22.123, *Part 22 Rewrite Order*, B-16 - B-17.

location other than those listed in the Commission's rules (Section 22.859), or (2) amend a pending application to change the requested channel or channel block.[12]

Claircom requests that the Commission clarify this rule and redefine the applications that it considers "major" in certain respects. There are currently only three operating air-ground licensees. Because sharing of the air-ground frequencies is required, there is a high degree of coordination and cooperation among the air-ground service providers. As a result, in situations where an air-ground licensee files an application with the Commission and obtains the concurrence of all the other air-ground licensees, the Commission should amend its rules to allow the following applications to be classified as "minor:" (1) modification of ground station channel block assignments; (2) relocation of an existing ground station's coordinates beyond one mile from the coordinates in Section 22.859 provided that the maximum separation between all of the operational ground stations is less than two miles;[13] and (3) establishment of new full or low power ground stations, provided that the Commission's co-channel separation requirements are met.

An air-ground applicant would demonstrate industry concurrence by obtaining prior written approval from each operating 800 MHz air-ground licensee. The

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[12] New Section 22.123(h)(2), (4), *Part 22 Rewrite Order*, B-17.

[13] Under the new rule, air-ground licensees apparently would still need to obtain a waiver of Section 22.859 from the Commission before they could relocate an existing ground station more than one mile from the coordinates. *See Part 22 Rewrite Order*, B-66 - B-70.

applicant would be required to notify in writing all non-active air-ground licensees at least 30 days prior to the filing of FCC Form 489, and to certify industry concurrence in its FCC filing. If industry concurrence is required, but not received, a filing would be classified as "major" and would require public notice and the opportunity for public comment.

This approach will ensure faster delivery of air-ground service to meet customer demand. On average, "major" filings that must go through notice and comment procedures take 30 to 60 days longer to approve than "minor" filings. For "minor" filings, there is no public notice requirement and no need to file an FCC Form 489 or Form 600.

C. The Commission Should Require Licensees Only To Construct Facilities and Be Capable of Providing Service in Order To Meet an Authorization Construction Deadline

New Section 22.142 requires Part 22 licensees to commence providing service to subscribers by the end of the "construction period."[14] New Section 22.99 of the Commission's rules defines "service to subscribers" as "[s]ervice to at least one subscriber that is not affiliated with, controlled by or related to the providing carrier."[15] The Commission's intent in defining the term "service to subscribers" in this manner was to ensure that when facilities are constructed they do, in fact, provide

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[14] New Section 22.142, *Part 22 Rewrite Order*, B-22.

[15] New Section 22.99, *Part 22 Rewrite Order*, B-12.

service to subscribers, thereby preventing the warehousing of spectrum. While helpful in terms of eliminating ambiguities in previous Commission-established policies under former Part 22, McCaw submits that the definition of "service to subscribers" does not prevent warehousing of spectrum and ignores the realities of constructing wide area paging systems. For the reasons set forth below, McCaw suggests the Commission reconsider new Section 22.142 and new Section 22.99 by eliminating the term "service to subscribers" as a requirement to perfect one's license. In its place, McCaw suggests the Commission adopt the definition of completion of construction as proposed by the Personal Communications Industry Association ("PCIA") in its original comments in this proceeding. Specifically, PCIA proposed that the definition be:

> the facilities authorized by the Commission have been constructed in accordance with the Commission's Rules and are either (1) actually providing service to customers or (2) if no customers are yet using the facilities, are fully capable of providing service within a reasonable period of time following a request by a representative of the Commission and are available to customers upon their requests.[16]

PCIA's proposal more accurately reflects the realities of today's business environment.

In the existing paging market, subscribers demand and carriers provide wide-area coverage. Based on the time it takes for the Commission to process base station applications as well as the time it takes to construct wide-area systems,[17] it is often

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[16] Comments of Telocator [now PCIA], CC Docket No. 92-115, App. B at 1 (filed Oct. 5, 1992).

[17] It should be noted that the Commission has recognized the difficulties inherent in constructing wide-area telecommunications systems in Part 90 of the Commission's rules where extended implementation schedules have historically been permitted.

imprudent for paging carriers to market service to the public until the entire wide-area system is built. In fact, it may ultimately be harmful for a carrier to offer service when less than an entire system is constructed since competitors will use the lack of geographic coverage to their competitive advantage. Carriers must, therefore, be given a certain degree of flexibility in determining when to actually start to market services to potential subscribers.

If the Commission's goal in tying the construction completion rule to the definition of "service to subscribers" is to ensure that spectrum is not warehoused, the rules, taken as a whole, will not accomplish their intended purpose as efficiently as will marketplace forces. Indeed, a requirement to have a single unaffiliated subscriber on a system in order to perfect one's license will have little impact on warehousing. The prospect of millions of dollars in stranded investment in base station, terminal, and other equipment will, however, impel a carrier to load a system quickly with thousands of unaffiliated subscribers. Stated another way, the marketplace creates its own incentives for carriers to load unconstructed facilities at the very earliest possible time. Accordingly, McCaw suggests that the Commission reconsider its decision and adopt the PCIA proposal for defining when a system is deemed to have been constructed for purposes of Section 22.142.

To the extent the Commission nonetheless chooses not to reconsider this aspect of its rules, additional clarification of new Section 22.142 and the "service to subscriber" definition of new Section 22.99 is needed since the rules as written do not

provide the public mobile service ("PMS") community with sufficient guidance on how the definition will be applied. Two factual situations serve to illustrate the need for additional clarification. In the first example, an entity with no PMS operations applies for and receives authorization to construct and operate a 40 base station, wide-area, integrated, multicast paging system. In this case, does the definition of "service to subscriber" taken together with the notification obligation of new Section 22.142(b) require the licensee to provide service to one subscriber for the entire system or does the definition require the licensee to provide service to 40 subscribers?

In the second example, an existing licensee, which has been operating a wide-area, multicast system for many years and has thousands of subscribers, applies for and receives an authorization to add a new transmitter location to its existing system. In order to comply with the provision of new Section 22.142(b), does the licensee have to provide service to a new subscriber or does the fact that existing subscribers use the "new" base station satisfy the one subscriber requirement? As a related matter and with respect to both factual situations, how does a licensee "assign" a subscriber to an individual base station that may be operationally related to a wide-area multicast system?

McCaw submits that, with deployment of wide-area systems being the norm in today's PMS paging environment, coupled with the difficulty of "assigning" a subscriber to any particular base station, service to one subscriber, even in a multi-

transmitter wide-area system, should satisfy the "service to subscriber" definition as applied to the notification rules.[18]

D. The Commission Should Expand the Opportunities for Permissible Pre-Grant Construction

In the *Part 22 Rewrite Order,* the Commission modified its rules to enable PMS applicants to construct Part 22 facilities without further authorization from the Commission 35 days after the application has appeared on public notice as accepted for filing, provided certain other conditions are met, including that no petitions to deny have been filed against the application, no waivers are sought in the application, and the application is not mutually exclusive with any other application.[19] Although new Section 22.143 provides PMS applicants with more flexibility than had previously existed, McCaw submits the Commission did not go far enough. Instead, the Commission should reconsider new Section 22.143 by enabling any PMS applicant[20]

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[18] Similar concerns also are present in the air-ground service. Specifically, an air-ground licensee does not know when the first commercial airplane will pass a new cell site and when that site will first be used by a subscriber.

[19] *See* new Section 22.143, *Part 22 Rewrite Order*, B-22 - B-23. Other conditions required to engage in pre-grant construction are that FAA approval is not required or has been obtained; the application is not considered a major environmental action; and the allocation of the frequency sought would not violate international treaties. McCaw does not object to those conditions being imposed before pre-grant construction can be commenced.

[20] The one exception to this rule may be unserved area applications, where the possibility of mutually exclusive applications is substantially increased as compared to other PMS situations.

construct facilities in advance of authorization provided that: (1) an application has been filed and appeared on public notice as accepted for filing; (2) the applicant certifies that construction in advance of the grant of an authorization is done at its own risk; (3) the applicant certifies that it will remove any constructed facilities within 30 days of the denial or dismissal of the application in question; (4) the construction is in compliance with Part 17 of the Commission's rules; and (5) the construction is in compliance with Subpart I of Part 1 of the Commission's rules.[21]

Under McCaw's proposal, it would not be necessary for the Commission to wait 35 days to determine whether an application is subject to a petition to deny, is mutually exclusive with another application, or seeks a waiver of the Commission's rules. Although these situations potentially suggest that an application may not be grantable, non-grants in situations such as these are extremely rare. Indeed, McCaw submits that of the thousands of Part 22 applications filed each year only a very small percentage are subject to petitions to deny or mutual exclusivity. Of the handful of applications that *are* subject to petitions to deny and/or mutually exclusive applications, an even smaller percentage of the overall number of applications filed annually are ultimately denied or dismissed for those reasons.

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[21] The certifications and/or other conditions imposed on pre-grant construction could be incorporated into the FCC Form 401 (or FCC Form 600) much like certifications are included in short-form applications required to participate in broadband PCS auctions.

The value of pre-grant construction lies primarily in the ability of carriers to be able to provide service to subscribers at the very earliest possible time. As long as applicants know that they may not commence operation until and unless an authorization is granted and that construction, otherwise in compliance with FAA and/or environmental rules, must be dismantled soon after any application is denied or dismissed, there is no harm in allowing pre-grant construction as proposed herein.

E. The Commission Should Clarify or Expand the Distance Computation Rule Under New Section 22.157

New Section 22.157 sets forth the method to be used to compute the distance between any two locations under the rules.[22] Previously, there was no formula in the FCC's rules for computation of distances. The Commission considers the method provided in Section 22.157 to be sufficiently accurate for distances not exceeding 295 miles. The distances that must be computed by air-ground licensees, however, are greater than 295 miles. For example, there must be a minimum mileage separation of 550 miles between full power ground stations using the same channel block.[23] Similarly, there must be a minimum mileage separation of at least 300 miles between low power and full power ground stations using the same channel block.[24] Claircom

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[22] New Section 22.157, *Part 22 Rewrite Order*, B-24.

[23] New Section 22.859(b), *Part 22 Rewrite Order*, B-70.

[24] New Section 22.859(a), *Part 22 Rewrite Order*, B-70.

requests that the Commission clarify the method to be used for making accurate distance calculations for distances greater than 295 miles.

F. The Commission Should Clarify Its Requirements with Respect to Antenna Structure Notifications

The rules governing notifications concerning antenna structures in connection with certain categories of permissible system changes may be interpreted to impose new prior approval requirements that apparently were not intended by the Commission. Specifically, new Sections 22.163(c) and 22.165(b), which are included in rules addressing the procedures for minor modifications to existing stations and additional transmitters for existing systems, respectively, set forth Commission requirements for antenna clearance when a licensee undertakes these types of system changes.

Both sections state:

> For any construction or alteration that would exceed the requirements of § 17.7 of this chapter, licensees must notify the appropriate Regional Office of the Federal Aviation Administration (FAA Form 7460-1) and file a request for antenna height clearance and obstruction marking and lighting specifications (FCC Form 854) with the FCC, PRB, Support Services Branch, Gettysburg, PA 17325.[25]

This text appears to require the licensee only to *notify* the Federal Aviation Administration ("FAA") and the FCC when undertaking minor modifications or adding transmitters to an existing system. Nonetheless, both subsections are entitled "Antenna structure clearance required." This title suggests that licensees must obtain approval

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[25] New Sections 22.163(c), 22.165(b), *Part 22 Rewrite Order*, B-25.

(including obstruction marking and lighting specifications) from the Commission's Support Services Branch in advance of making the changes contemplated by new Sections 22.163 and 22.165.

The Commission's staff has indicated that it was not the Commission's intent that licensees obtain the required specifications from the Support Services Branch before proceeding with minor modifications and adding additional transmitters. Rather, the staff has indicated that the pre-condition imposed by the rule is the *submission* of the FCC Form 854 to the Support Services Branch. Given the importance of licensee compliance with tower requirements, however, this matter needs to be resolved with clarity -- and its should be resolved in the manner suggested by the Commission's own staff.

Such clarification would be consistent with the procedures currently employed by the Commission with respect to the filing of Forms 489 for permissive modifications to cellular systems. In contrast, a Commission conclusion at this time that the rule does in fact require the prior issuance by the Support Services Branch of obstruction marking and lighting specifications would impose requirements beyond those necessary to ensure that the Commission and licensees are meeting their obligations under the Communications Act and to ensure air safety. In addition, such an interpretation would be highly disruptive to the ability of licensees effectively to meet customer needs. Finally, there is no basis in the record for imposition of such an interpretation. Thus, the public interest is best furthered by clarifying these rule sections are consistent with

the staff interpretation that licensees are required only to file Form 854 with the Commission's Support Services Branch -- and not also obtain prior approval of that Branch before undertaking minor modifications or adding transmitters.[26]

G. New Section 22.165(d) Requires Clarification in Order To Effectuate the Commission's Apparent Purpose

New Section 22.165(d), which replaces former Section 22.117(b), allows the addition of co-channel transmitters in the paging and radiotelephone service if "[t]he service area and interfering contours of the additional transmitter(s) [are] totally encompassed by the composite service area contour and predicted interfering contour, respectively, of the *existing station* on the same channel. . . ."[27] Based on the fact that the Commission has indicated it may split wide-area systems into two or more "stations,"[28] McCaw requests that the term "existing stations" in the context of new Section 22.165 be clarified to include co-channel base transmitters controlled by, or under common control of, the licensee. Such a clarification will ensure that previous conventions of defining stations, transmitters and/or call signs do not preclude the use

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[26] This clarification could be achieved in one of two ways. First, the reconsideration order simply could clearly set forth the interpretation of the requirements imposed by these rule subsections. Second, the title of each subsection could be changed to "Antenna structure notification required."

[27] New Section 22.165(d)(1), *Part 22 Rewrite Order*, B-25.

[28] *See* new Section 22.507, *Part 22 Rewrite Order*, B-38.

of commonly-owned and/or controlled transmitters to be used to demonstrate "encompassment" of a proposed fill-in transmitter.

H. New Section 22.165(e) Should Be Clarified To Reflect Pre-Existing Rules and Policies with Respect to Permissive Extensions of Cellular Service Area Boundaries Outside the Licensee's Cellular Market

New Section 22.165(e) provides, in part, that:

> During the five year build-out period, the service area boundaries of the additional transmitters, as calculated by the method set forth in § 22.911(a) of this part, must remain within the market, except that the service area boundaries may extend beyond the market boundary into area that is part of the CGSA or is already encompassed by the service area boundaries of previously authorized facilities. After the five year build-out period, the service area boundaries of the additional transmitters, as calculated by the method set forth in § 22.911(a) of this part, must remain within the CGSA.[29]

In Appendix A, the Commission explains that, "[i]n the first sentence of paragraph (e) [of Sec. 22.165], we add the phrase 'except that the service area boundaries may extend beyond the market boundary into area that is part of the CGSA or is already encompassed by the service area boundaries of previously authorized facilities.' This reflects our current practice."[30]

Despite the Commission's conclusion that the clause identified immediately above would help to codify current practice, new Section 22.165(e) in fact excludes two categories of service area boundary ("SAB") extensions currently acceptable under

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[29] New Section 22.165, *Part 22 Rewrite Order*, B-26.

[30] *Id.*, A-21.