C. Legal Basis

The proposed action is authorized by Sections 4(i), 303(c), 303(f), 303(g), 303(r) and 309(j)(13) of the Communications Act of 1934, as amended, 47 U.S.C. Section 154(i), 303(c), 303(f), 303(g), 303(r), and 309(j)(13).

D. Description, Potential Impact, and Number of Small Entities Affected

The payment requirement imposed by the GATT legislation may impact small businesses that obtain pioneer's preference licenses. However, we have proposed to allow small businesses, pursuant with the GATT legislation, to pay for their licenses in installments over a period not to exceed five years.

E. Reporting, Record Keeping and other Compliance Requirements

None.

F. Federal Rules which overlap, Duplicate or Conflict with this Rule.

None.

G. Significant Alternatives

We invite comment on any alternative proposals.

D. General -- Further Notice

57. The rule making proposals in the Further Notice constitute a non-restricted notice and comment rule making proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission Rules. See generally 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

58. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before March 29, 1995, and reply comments on or before April 12, 1995. All relevant and timely comment will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M. Street, N.W., Washington, D.C. 20554.

59. For further information concerning this rule making, contact Rodney Small at (202) 776-1622, Office of Engineering and Technology, Federal Communications Commission, Washington, D.C. 20554.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton

William F. Caton
Acting Secretary

## Appendix A -- Final Rules

I. Part 1 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 1 -- PRACTICE AND PROCEDURE**

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

**AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552 and 21 U.S.C. 853a, unless otherwise noted.**

2. Section 1.402 is amended to read as follows:

**Section 1.402 Pioneer's Preference.**

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(c) Pioneer's preference requests relating to a specific new spectrum-based service or technology will not be accepted after the Commission's Sunshine Notice is issued announcing initiation, by either a notice of inquiry or notice of proposed rule making that will be considered by the Commission at a public meeting, of a proceeding pertaining to that service or technology. Alternatively, if the Commission initiates a new proceeding pertaining to a specific new spectrum-based service or technology by notation, pioneer's preference requests will not be accepted after such notice is submitted to the Commission for vote.

(d) Pioneer's preference requests complying with the requirements and procedures in paragraphs (a) through (c) of this section will be accepted for filing and listed by file number in a notice of proposed rule making addressing the new service or technology proposed in the request, if such a notice of proposed rulemaking is adopted. A final determination on a request for pioneer's preference and its scope will normally be made in a report and order adopting new rules for the service or technology proposed in the request, if such rules are adopted. If awarded, the pioneer's preference will provide that the preference applicant's application for a construction permit or license will not be subject to mutually exclusive applications. If granted, the construction permit or license will be subject to the conditions in paragraphs (f) and (g) of this section.

(e) Any interested person may file a statement in support of or in opposition to a request for pioneer's preference listed in a notice of proposed rule making, and a reply to such statements, subject to filing deadlines that shall be published in the notice of proposed rule making. Statements on the merits of pioneer's preference requests must be filed separate from, and not part of, any comments on the rules proposed in the notice of proposed rule making. Statements on pioneer's preference requests will not be accepted prior to issuance of the notice of proposed rule making.

(f) As a condition of its license grant, a pioneer's preference grantee will be required to construct a system that substantially uses the design and technologies upon which its pioneer's preference award is based within a reasonable time, as determined by the Commission, after receiving its license. Failure to comply with this provision will result in revocation of the pioneer grantee's license, and transfer of the license will be prohibited until this requirement is met.

(g) In services in which licenses are assigned by competitive bidding, any parties receiving pioneer's preferences will be required to pay for their licenses in accord with the payment formula specified in the General Agreement on Tariffs and Trade legislation, Pub. L. No. 103-465. This formula requires that pioneers pay in a lump sum or in installment payments over a period of not more than five years 85 percent of the average price paid for comparable licenses. Comparable licenses will be determined by the Commission on a case-by-case basis.

(h) In the event of a conflict between this rule and any rule for a particular service that provides for the filing and consideration of competing applications, this rule shall prevail.

3. Section 1.403 is amended to read as follows:

**Section 1.403 Notice and availability.**

All petitions for rule making (other than petitions to amend the FM, Television, and Air-Ground Tables of Assignments) meeting the requirements of § 1.401 will be given a file number and, promptly thereafter, a "Public Notice" will be issued (by means of a Commission release entitled "Petitions for Rule Making Filed") as to the petition, file number, nature of the proposal, and date of filing. Petitions for rule making are available at the Commission's Dockets Reference Center (1919 M Street N.W., Room 239, Washington, DC).

II. Part 5 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 5 -- EXPERIMENTAL RADIO SERVICES (OTHER THAN BROADCAST)**

1. The authority citation for Part 5 continues to read as follows:

**AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply sec. 301, 48 Stat. 1081, as amended; 47 U.S.C. 301.**

2. Section 5.207 is amended to read as follows:

**Section 5.207 Experiments performed in conjunction with pioneer's preference applications.**

An applicant for a pioneer's preference pursuant to § 1.402 may file an experimental license application for a limited geographical area, generally including no more than one Metropolitan Statistical Area. In order to be eligible for a preference at the time of a report and order in a proceeding addressing a new service or technology, the experimental applicant must demonstrate the technical feasibility of its proposal by summarizing its experimental results in its preference application, unless it instead submits an acceptable showing of technical feasibility. If a pioneer's preference applicant wishes the Commission to consider in conjunction with the application experimental material filed subsequent to the application, the applicant must summarize this material and submit the summary to the Commission prior to the Sunshine Notice announcing that a report and order pertaining to the new service or technology will be considered by the Commission at a public meeting, or -- if a report and order is considered by notation -- prior to submission of the report and order to the Commission for vote. All experimental material must be summarized and its relevance to the pioneer's preference application explained in order for it to be considered by the Commission.

## Appendix B -- Final Regulatory Flexibility Analysis -- Second R&O

Pursuant to 5 U.S.C. Section 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rule Making in this proceeding. Written comments on the proposals in the Notice, including the IRFA, were requested.

### A. Need for and Objective of Rules:

Our objective is to modify the pioneer's preference rules to make them better comport with newly-enacted competitive bidding authority and our experience administering them.

### B. Issues Raised by the Public in Response to the IRFA:

No party specifically responded to the IRFA.

### C. Any Significant Alternatives Minimizing Impact on Small Entities and Consistent With Stated Objectives:

We have reduced burdens wherever possible. The regulatory burdens we have retained are necessary to ensure that the public receives the benefit of expeditious provision of new services and technologies. We will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant impact on small entities.