

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Reorganization and Revision of)
Parts 1, 2, 21, and 94 of)
the Rules to Establish a New)
Part 101 Governing Terrestrial)
Microwave Fixed Radio Services)

WT Docket No. 94-148

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To: The Commission

PETITION FOR RECONSIDERATION

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TABLE OF CONTENTS

SUMMARY	i
I. THE NEW PART 101 RULES SERVE THE PUBLIC INTEREST	3
A. Consolidation and Revision of FS Technical and Operating Rules Will Support Continued Provision of Essential Services.	4
B. Certain Minor Revisions to the New Rules Are Needed to Ensure That Part 101 Fully Meets Industry Needs.	6
II. PUBLIC NOTICE FOR POFS APPLICATIONS MUST NOT BE ELIMINATED	8
A. The 30-Day Public Notice For POFS Applications Is Critical.	8
B. Losing The POFS Public Notice Is Not In The Public Interest.	9
C. A Rulemaking Should Be Conducted to Determine If Elimination Of The POFS Public Notice Is In The Public Interest Because Such Elimination Is Discretionary, Not Mandatory.	10
D. If POFS Public Notices Are Not Reinstated, The Same Data Still Must Be Released Periodically.	12
III. SIMPLIFIED LICENSING PROCEDURES MUST BE ADOPTED	13
A. A Single Application Form Must Be Adopted.	14
B. A Specific Timetable For Implementation Of Electronic Licensing Must Be Established.	16
C. The Commission Must Establish An IAC to Ensure Full Industry Input Into Developing New Application Forms, A Timetable for Implementing Electronic Filing, and Procedures for Electronic Filing.	16
IV. CONDITIONAL LICENSING FOR THE 10 GHz BAND MUST BE RELAXED	17
V. PRIOR COORDINATION NOTICES MUST INCLUDE DIFFERENT POWER LEVELS CONSISTENT WITH USE OF ATPC	19

VI.	THE TRANSITION PERIOD MUST BE REVISED TO CLARIFY APPLICABLE GRANDFATHERING PROVISIONS	20
VII.	MINIMUM CHANNEL LOADING REQUIREMENTS FOR ANALOG SYSTEMS WITH A MINIMUM BANDWIDTH OF 10 MHz OR MORE SHOULD BE 25%	21
VIII.	CERTAIN CLERICAL ERRORS IN THE RULES MUST BE CORRECTED AND CERTAIN PROVISIONS IN THE RULES MUST BE CLARIFIED	21
	CONCLUSION	23
	APPENDIX 1	A-1
	APPENDIX 2	

SUMMARY

In the captioned Report and Order, the Commission listens to the private operational ("POFS") and the common carrier ("CC") fixed point-to-point terrestrial microwave service ("FS") industry and adopts a consolidated menu of technical and operating rules that will support fixed networks and the public health, safety, utility, wireline and wireless industries they serve. These rules generally are up-to-date, efficient, and consistent with industry standards.

The Fixed Point-to-Point Communications Section, Network Equipment Division of the Telecommunications Industry Association ("TIA"), and the National Spectrum Managers Association, Inc. ("NSMA"), which jointly proposed most of the rules adopted in the new Part 101, appreciate the Commission's decision. However, to optimize the benefits to be derived from this rule update and consolidation, TIA and NSMA herein petition the Commission to reconsider certain of its decisions.

The changes proposed herein, if adopted, will fine-tune the Part 101 rules for POFS and CC operations. These proposed changes include:

- Implementing a rulemaking to determine if reinstatement of formal public notice provisions for POFS applications is in the public interest. If such a public notice requirement is not resurrected, the Commission must be required to issue a periodic listing of POFS applications and related processing activities to provide the information formerly included in public notices.
- Creating an appropriate consolidated application form for both POFS and CC applicants, identifying a specific timetable for implementing electronic filing, developing electronic filing procedures that are consistent with existing formats developed by coordinators, users and manufacturers, and establishing an Industry Advisory Committee so that industry and the Commission can work together to achieve such objectives.
- Permitting unlimited 10.6-10.68 GHz band conditional licensing except in specified areas where actual Government operations exist.

- Amending the rules to require that data for Automatic Transmitter Power Control transmitters are included in a prior coordination notice.
- Clarifying transition period grandfathering provisions.
- Revising minimum channel loading requirements for certain analog systems to increase user flexibility.
- Correcting certain clerical errors and clarifying certain provisions in the rules.

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To: The Commission

PETITION FOR RECONSIDERATION

In the above-captioned Report and Order,¹ the Commission consolidated its rules for private operational ("POFS") and common carrier ("CC") fixed point-to-point terrestrial microwave services ("FS"). Pursuant to Section 405 of the Communications Act of 1934, as amended (the "Act"),² the Fixed Point-to-Point Communications Section, Network Equipment Division of the Telecommunications Industry Association ("TIA"), and the National Spectrum

¹The above-captioned Report and Order, 2 Comm. Reg. (P&F) 541 (FCC 96-51) (1996) ("Part 101 Order"), was published in the Federal Register on May 28, 1996. 61 FR 26670.

²47 U.S.C. Section 405 (1996).

Managers Association, Inc. ("NSMA"),³ hereby petition the Commission to reconsider certain rules adopted in the Part 101 Order.⁴

The changes proposed herein, if adopted, will fine-tune the rules established in the Part 101 Order for POFS and CC operations.⁵ These proposed changes include:

- Implementing a rulemaking to determine if reinstatement of formal public notice provisions for POFS applications is in the public interest. If such a public notice requirement is not resurrected, the Commission must be required to issue a periodic listing of POFS applications and related processing activities to provide the information formerly included in public notices.
- Creating an appropriate consolidated application form for both POFS and CC applicants, identifying a specific timetable for implementing electronic filing, developing electronic filing procedures that are consistent with existing formats developed by coordinators, users and manufacturers, and

³TIA is the principal industry association representing FS radio manufacturers. TIA members serve, among others, companies, licensed by the Commission to use the 2 GHz private and common carrier bands for provision of important and essential telecommunications services, including networks to support personal communications services ("PCS"). TIA's members, as suppliers to the large and important FS microwave radio market, are greatly concerned about the criteria for determining what technical and other rules will govern operation by their customers. Consistent with this interest, TIA has adopted its "Telecommunications Systems Bulletin No. 10-F, Interference Criteria for Microwave Systems" ("Bulletin 10"), which prescribes standards for implementing the new FS radio channel plans for the bands above 3 GHz and for establishing criteria regarding 2 GHz band PCS-to-microwave interference protection. The NSMA represents the frequency coordination community. Established in 1984, the NSMA is a voluntary association of individuals involved in the frequency coordination of FS, PCS and satellite earth stations. The NSMA's role is to supplement the Commission's coordination rules with procedural and technical recommendations developed in an open industry forum of coordinators, licensees, and manufacturers. The NSMA's objective is to make the frequency coordination process more efficient and effective.

⁴TIA and NSMA assume that, pursuant to Section 1.48 of the Commission's Rules, the Appendices attached hereto will not be counted in determining if this Petition for Reconsideration complies with the page limit prescribed in Section 1.429 of the Commission's Rules. 47 C.F.R. §§1.48 and 1.429 (1996). If this is not the case, TIA and NSMA hereby request that the Commission waive the page limit because the information in the Appendices is essential to enuring that Part 101 is complete and accurate.

⁵The new Part 101 rules are scheduled to become effective August 1, 1996. Part 101 Order, 2 Comm. Reg. (P&F) at 560. To minimize any confusion or other disruption to FS operations if the changes requested herein are adopted, and to avoid any possible delay in this effective date, TIA and NSMA respectfully request expedited action on their Petition for Reconsideration.

establishing an Industry Advisory Committee ("IAC") so that industry and the Commission can work together to achieve such objectives.

- Permitting unlimited 10.6-10.68 GHz band conditional licensing except in specified areas where actual Government operations exist.
- Amending the rules to require that certain data for Automatic Transmitter Power Control ("ATPC") transmitters are included in a prior coordination notice ("PCN")
- Clarifying transition period grandfathering provisions.
- Revising minimum channel loading requirements for certain analog systems to increase user flexibility.
- Correcting certain clerical errors and clarifying certain provisions in the rules.

I. THE NEW PART 101 RULES SERVE THE PUBLIC INTEREST

TIA and NSMA applaud the Commission's decision to establish Part 101. Many of the rules adopted in the Part 101 Order are based upon suggestions originally made by TIA and NSMA members.

The Commission clearly has met its objective "to simplify the rules" for Part 21 and Part 94 fixed microwave services, to consolidate these rules into a new Part 101, and to "restructure the fixed microwave rules so that they are easier for the public to understand and use" ⁶ Indeed, it has created "one comprehensive new rule part for [the] microwave services, [while] eliminating undue regulatory burdens . . . result[ing] in significant benefits for both the public and the Commission."⁷

⁶Reorganization and Revision of Parts 1, 2, 21, and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services, WT Docket No. 94-148, FCC 94-314, Notice of Proposed Rulemaking, 10 FCC Rcd 2508 (1994).

⁷Part 101 Order, 2 Comm. Reg. (P&F) at 545.

A. Consolidation and Revision of FS Technical and Operating Rules Will Support Continued Provision of Essential Services.

Adoption of Part 101 could not have occurred at a more propitious time. Demand for FS grows while available spectrum shrinks. Thus, it is critical that the rules governing these services reflect industry needs.

Emerging wireless telecommunications, especially PCS, will rely upon FS users for spectrum to provide their services and will rely upon FS facilities in other bands to support their operations. Public health and safety users depend upon reliable and available FS frequencies for delivery of their services to the public. Local exchange carriers and new Competitive Access Providers, cellular telephone companies, utilities, railroads, petroleum companies, financial institutions, and federal, state and local governments use FS to support their network operations. These FS users frequently are the cornerstone of supervisory and operational programs designed to deliver essential products and services to the public. Thus, FS users serve specific industrial, public safety, and commercial requirements of many companies and public agencies that constitute much of this nation's infrastructure.

In particular, TIA and NSMA welcome the following rule changes reflected in Part 101:

- New definitions for antenna power gain, ATPC, path length, periscope antenna system, and prior coordination (Section 101.3).
- Establishment of an appropriate transition period for the new rules (Section 101.4).
- Provision for POFS and CC licenses to cancel their licenses by letter (Sections 101.13(f) and 101.15(a)).
- Consolidation of all technical and operational rules for POFS and CC applicants and licensees (Subparts C and D), including combining the technical content of applications into a single rule which sets forth a

revised list of technical information needed to facilitate coordination (Section 101.21).

- Industry-appropriate revisions to the criteria for classifying application amendment or license modification applications (Sections 101.29, 101.57, 101.61).
- Extension of the POFS construction period from 12 to 18 months (Section 101.63).
- Industry-appropriate frequency availability standards (Section 101.101).
- Industry-appropriate frequency coordination procedures and PCN content criteria (Section 101.103).
- Necessary interference protection criteria, including: (i) a definition of "practical threshold;" (ii) the use of Bulletin 10 for determining if interference exists; (iii) specific interference dispute resolution procedures; and (iv) a provision allowing parties to agree that interference limits can be exceeded (Section 101.105).
- Industry-appropriate frequency tolerance criteria, including provisions applicable to heterodyne systems (Section 101.107).
- Industry-appropriate standards for: (i) bandwidth (Section 101.109); (ii) emission limitations, including use of Log_{10} (Section 101.111); (iii) transmitter power limitations, including use of ATPC (Section 101.113); (iv) directional antennas (Section 101.115); and (v) antenna polarization, including requiring that only linear polarization (horizontal or vertical) can be used (Section 101.117).
- Industry-appropriate rules for microwave modulation, including: (i) application of digital modulation requirements to frequencies below 19.7 GHz; (ii) digital system bandwidth capacity and loading requirements; (iii) minimum payload capacities (particularly the requirement that payload capacity shall correspond to commercially available equipment); and (iv) provisions for analog equipment (Section 101.141).
- An appropriate minimum path length formula, which includes provision for ATPC (Section 101.143).

B. Certain Minor Revisions to the New Rules Are Needed to Ensure That Part 101 Fully Meets Industry Needs.

While these rule changes represent a much needed comprehensive overhaul of the regulations governing FS, certain further changes are needed. As demonstrated herein, grant of this Petition for Reconsideration and adoption of the following revisions would ensure that the new Part 101 serves the public interest completely:⁸

- Public Notice elimination -- The Commission has eliminated the 30-day public notice procedure for POFS applications.⁹ However, POFS users must be protected and must not lose the benefits provided by the 30-day public notice. Absent the information listed on a public notice, POFS users, frequency coordinators and equipment manufacturers will have no idea what systems are being installed, and thus they will not have the information needed to verify previously coordinated data and to achieve closure of the PCN process. Any realistic opportunity to formally protest and thus defer grant of an application, until interference or other legitimate concerns are resolved, would be lost.

The Commission's claim, that elimination of the POFS public notice period is required under Section 403(j) of the Telecommunications Act of 1996 (the "1996 Act"),¹⁰ is unjustified. This decision should have been subject to a formal rulemaking to determine if it is in the public interest because the statutory language makes it discretionary, not mandatory, for POFS public notices to be eliminated. If, after the requisite rulemaking, the Commission persists in eliminating the POFS public notice, to mitigate the loss of the 30-day public notice, the Commission must be required to publish a list of pending POFS applications periodically. The same data included in a formal public notice would be included in this informational list. This list also could be transmitted over the Internet. Issuance of this list would not create a formal right to protest an application and thus would not conflict with the statutory change. Instead, the list would be used only for informational purposes (*i.e.*, monitoring applications to detect if interference or other problems might exist). Dissemination of this list also would contribute to the Commission's goal of establishing parity

⁸The proposed text of these rule changes is in Appendix 1, attached hereto.

⁹Part 101 Order, 2 Comm. Reg. (P&F) at 559.

¹⁰The Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56 (1996).

between POFS and CC applicants and users. In addition, should elimination of the POFS public notice be affirmed, several editorial changes must be made to the Part 101 rules reflecting this change.

- Simplified licensing -- Adoption of measures to expedite implementation of new services and to reduce time-to-market, such as authorization of unlicensed services, have become an important Commission policy initiative. Advances in radio technology and improved industry monitoring compel comparable treatment for licensed FS users. TIA and NSMA propose establishing such comparable treatment of licensed FS and unlicensed services by recommending consolidation of all application forms for FS systems and by requiring electronic licensing for such systems within a specified time frame. To ensure that industry needs are satisfied, TIA and NSMA propose establishing a formal IAC to develop recommendations for a consolidated application form, for electronic filing implementation deadlines, and for electronic filing protocols.
- 10 GHz band conditional licensing -- While the Commission decided to establish conditional licensing authority on both CC and POFS licensees, it limited such licensing in certain bands. For frequencies allocated to both Government and non-Government users, such authority would not be available for operations: (i) in the 10.6--10.68 GHz band anywhere in the U.S.; (ii) in the 17.7--19.7 GHz band for operations in Colorado, Maryland, Virginia, and the District of Columbia; and (iii) in the 21.2--21.3 GHz band for operations with an ERP greater than 55 dBm. Instead, licensing on these frequencies is subject to prior coordination between the FCC and the National Telecommunications and Information Administration ("NTIA"). No reason is given why the restriction in the 10.6--10.68 GHz band is unlimited. Given the importance of the 10.6-10.68 GHz band for short haul, low capacity PCS cell site interconnects in urban areas, imposing unnecessary restrictions on conditional licensing would be counter-productive. Thus, the restriction on 10 GHz band conditional licensing should be limited geographically (e.g., to specific areas where Government operations exist).
- ATPC -- The Commission appropriately has authorized the use of ATPC to provide needed operating flexibility for FS users. To ensure that prior coordination accurately reflects the use of ATPC, the Commission required that a PCN include the values for maximum transmit power, coordinated transmit power and nominal transmit power.¹¹ However, this requirement is not set forth in Section 101.103(d), which prescribes PCN content. TIA

¹¹Part 101 Order, 2 Comm. Reg. (P&F) at 555.

and NSMA herein recommend that the Commission revise Section 101.103(d) to expressly require inclusion of these data in a PCN.

- Transition period clarification -- The transition period to implement Part 101 must be revised to clarify the duration of applicable grandfathering provisions.
- Minimum channel loading -- The minimum channel loading requirements for analog systems, with a bandwidth of 10 MHz or greater, should be 25%, instead of 50%, to provide increased user flexibility.
- Clerical errors and minor clarifications -- Apparent clerical errors must be corrected and certain minor clarifications must be made.

II. PUBLIC NOTICE FOR POFS APPLICATIONS MUST NOT BE ELIMINATED

The 30-day public notice period for POFS applications has been eliminated.¹² As demonstrated below, this decision is not mandated by Section 309(b) of the Act, as amended by Section 403(j) of the 1996 Act. Thus, TIA and NSMA, to ensure that elimination of the public notice safeguards do not adversely affect POFS users, urge the Commission to conduct a rulemaking so it can be determined if reinstatement of the POFS public notice is in the public interest. If, however, based upon this rulemaking, it is determined that a public notice for POFS applications is not needed, TIA and NSMA strongly recommend that the Commission adopt a rule requiring regular issuance of a "public list" with the same information as a public notice but without conferring the right to file formal petitions to deny.

A. The 30-Day Public Notice For POFS Applications Is Critical.

When the Commission reallocated the 2 GHz band for PCS, it required the massive relocation of both Part 21 CC and Part 94 POFS users to the bands above 3 GHz on a shared

¹²Part 101 Order, 2 Comm. Reg. (P&F) at 559.

basis.¹³ Since these FS users will share the same bands, they must be treated the same. This parity generally is accomplished in the new Part 101. Unfortunately, the Commission's decision to eliminate the POFS application public notice could reduce this parity substantially.

A 30-day Commission public notice period clearly is important. The FS industry relies upon this public notice period to ensure that proper frequency coordination is achieved and to resolve any conflicts that might arise. The benefits derived from the prior coordination process are well documented. Data are transmitted more expeditiously between coordinators, databases are updated quickly, and processing burdens on the Commission are reduced substantially. If the industry polices itself for interference conflicts, as is currently done under Section 21.100, the Commission can devote more resources to processing applications in a timely manner.

B. Losing The POFS Public Notice Is Not In The Public Interest.

Deleting the public notice requirement could have an adverse impact upon FS users:

- POFS and CC users would not be treated equally because CC public notice requirements are retained. Under this procedure, it is quite likely that POFS applications would be granted sooner than CC applications. This distorted playing field is inconsistent with the goals of Part 101. Moreover, this distinction is inconsistent with the ET Docket No. 92-9 reallocation of the bands above 3 GHz to relocate FS users because POFS and CC licensees share the same frequencies, utilize the same channel plans and equipment, and follow the same frequency coordination procedures.
- The frequency coordination process, required by the Commission and used extensively by industry to ensure that radio frequency interference will not occur among radio systems, would be disrupted significantly by removing the 30-day public notice period. Elimination of the public notice, which also facilitates the transmission of technical information to industry

¹³Redevelopment of Spectrum to Encourage Innovation In the Use of New Telecommunications Technologies, Second Report and Order, ET Docket No. 92-9, 8 FCC Rcd 6495, 6519-20 (1993), modified, Memorandum Opinion and Order, 9 FCC Rcd 1943 (1994).

databases, would interrupt the flow of information to users, frequency coordinators and equipment manufacturers, and would make it much more difficult for them to determine that an application has been filed and that the facilities subsequently have been constructed. This information is necessary to provide verification of previously coordinated data and to provide closure of the frequency coordination process.

- POFS applications could be granted before any public knowledge of the filing, thereby foreclosing any opportunity for a meaningful pre-licensing review. Without public notice, there would be no attendant right to file a formal petition to deny an application that, notwithstanding completion of the coordination process, did not have an appropriately prepared PCN, did not match actual conditions, or did not otherwise constitute an acceptable filing.
- Without a public notice, the Commission would have to act to recall a license, granted for an application that was unacceptable for filing, within a certain time limit.¹⁴ Since applications, that are based upon erroneous data or that would cause harmful interference, only could be corrected after Commission grant, instead of being resolved among members of industry prior to grant as they are today, the Commission could be flooded with a large number of petitions to recall.

C. A Rulemaking Should Be Conducted to Determine If Elimination Of The POFS Public Notice Is In The Public Interest Because Such Elimination Is Discretionary, Not Mandatory.

TIA and NSMA understand the need to eliminate barriers to service deployment. However, FS users must be protected and thus must not lose the benefits provided by the 30-day public notice period.

¹⁴Under Section 1.113(a) of its rules, the Commission can set aside a license grant within 30 days of its issue date. The entire license recall process, which includes public discovery of the grant, examination of the technical data, filing of an objection with the Commission, and Commission evaluation and license recall, must be completed within this 30-day period. 47 C.F.R. §1.113(a) (1996).

In Section 309(b)(2)(F) of the Act, the Commission is authorized to require public notice for otherwise unlisted application categories.¹⁵ Thus, the Commission, by a rulemaking, should have addressed the status of the public notice requirement for the "additional" class of POFS stations. Unfortunately, in the Part 101 Order, the Commission, without any opportunity for comment, decided that public notice for POFS should not be retained.

This decision by the Commission, to eliminate POFS applications without a notice and comment rulemaking, is inconsistent with the Administrative Procedure Act ("APA"). The Commission is permitted under Section 553(b) of the APA to adopt "procedural" rules without prior notice and comment.¹⁶ Elimination of the public notice for POFS applications is "substantive" because it carries with it the statutory right to notice and to petition to deny.¹⁷ Consequently, the Commission's decision to eliminate POFS public notice is not entitled to the APA notice and comment exemption for procedural actions.

TIA and NSMA regret that the Commission ignored its obligation to conduct a rulemaking because they certainly would have used such an opportunity to demonstrate how critical the public notice provisions are to establishing interference-free, spectrum-efficient FS operations.

¹⁵Under Section 309(b)(2)(F) of the Act, as revised by Section 403(j) of the 1996 Act, the Commission has the right to adopt a rule imposing public notice requirements upon "such other stations or classes of stations, not in the broadcasting or common carrier services. . . ." 47 U.S.C. §309(b)(2)(F) (1996).

¹⁶5 U.S.C. §553(b) (1996).

¹⁷C.f., Batterton v. Marshall, 648 F.2d 694 (D.C. Cir. 1980).

Indeed, TIA and NSMA actively made these views known during the congressional deliberations over the 1996 Act.¹⁸

D. If POFS Public Notices Are Not Reinstated, The Same Data Still Must Be Released Periodically.

If the Commission ultimately decides to eliminate POFS public notices, the same data still must be made available periodically to the public. As an alternative to the formal public notice, TIA and NSMA herein propose a new Section 101.71 obligating the Commission to publish a list of pending POFS applications periodically with the exact same information and on the exact same interval as the formal public notice.¹⁹ This list also could be transmitted over the Internet. Issuance of this list would not create a right to protest a POFS application, but would be used only for informational purposes (i.e., monitoring applications to detect if interference or other problems might exist).²⁰

¹⁸With the support of TIA, members of NSMA had numerous discussions and presented numerous position papers to House and Senate staff responsible for the legislation regarding the problems associated with elimination of the public notice for POFS applicants.

¹⁹See proposed text for new Section 101.71 in Appendix 1.

²⁰Several provisions in the new Part 101 rules contemplate periodic issuance of a public notice. These provisions must be revised to reflect the fact that public notices for POFS applications no longer will be issued. In Appendix 1, TIA and NSMA propose such changes. The Commission also should review its new Part 101 rules to ensure that any other references to public notice requirements, or related requirements, for POFS applications are deleted. If, however, the Commission reinstates the POFS public notice, then the proposed Section 101.71 and all related changes in Appendix 1 would be unnecessary and should be deleted.

III. SIMPLIFIED LICENSING PROCEDURES MUST BE ADOPTED

The Commission has made great strides in simplifying licensing requirements and procedures. Electronic filing by CC and POFS applicants is permissible under the rules.²¹ Computer software, technical support and other necessary tools are being provided by the Commission to facilitate this transition.²² However, as detailed herein, more must be done.

Changes in technology and improved industry standards have convinced the Commission that adequate safeguards exist to support establishing unlicensed services so that time-to-market can be reduced. These same factors apply equally to FS systems, which are characterized by simple radio designs, increased use of digital technology, and active industry standard-setting activities (*i.e.*, Bulletin 10). With these industry attributes, FS users should have entry requirements comparable to unlicensed services.

While the Commission hopes to have converted to exclusive electronic filing by June 1999,²³ several steps could be taken to expedite this process. These steps include: (i) adopting a single application form for POFS and CC applicants; and (ii) establishing a specific timetable for electronic filing implementation.

²¹See Part 101 Order, 2 Comm. Reg. (P&F) at 549-50.

²²See, e.g., the Commission's recent announcement that it has implemented an interactive electronic filing and remote access system for certain Wireless Telecommunications Bureau services. Public Notice, Notification of Change to Public Reference Room Procedures at Wireless Telecommunications Bureau's Gettysburg Office, Mimeo No. 63100 (May 24, 1996). See also the Commission's News Release detailing its efforts at establishing a "paperless" environment. News Release, "WTB Is On Its Way To A Paperless Environment," Mimeo No. 62999 (May 16, 1996).

²³Part 101 Order, 2 Comm. Reg. (P&F) at 550.

Active industry involvement in the Commission's efforts to develop a consolidated application form and electronic licensing procedures for FS is essential. Such input would ensure that the contents of the consolidated form and that the protocols for electronic filing are consistent with industry standards and needs. Thus, TIA and NSMA recommend that the Commission establish an IAC to accommodate such industry and Commission cooperation.²⁴

A. A Single Application Form Must Be Adopted.

Consistent with consolidating all technical rules for CC and POFS users into a single subpart, in response to a TIA and NSMA recommendation, the Commission adopted Section 101.21, which imposes the same application content requirements on both POFS and CC applicants.²⁵ TIA and NSMA also recommended adoption of a single application form:

Consolidation of Parts 21 and 94 and adoption of Part 101 is a singular event and must be comprehensive. Unifying application processing without unifying the application form makes no sense. There is no reason to delay creating a single application form. Having such a single form in place when Part 101 becomes effective will facilitate a seamless transition to the new rules by making application preparation and processing easier.²⁶

Widespread support was expressed in the record of this proceeding for using a single application form.²⁷ For example, Comsearch strongly recommended such action:

²⁴This IAC could be established to work with, or to be a part of, the Federal Advisory Committee ("FAC") that the Commission proposed establishing to assist the Common Carrier Bureau in the development and implementation of an electronic filing system. Public Notice, FCC Asks For Comments Regarding The Establishment of An Advisory Committee, 9 FCC Red 1293 (1994). Even though there was near unanimous support for establishing the FAC, the Commission has yet to implement this proposal.

²⁵Part 101 Order, Appendix A.

²⁶TIA and NSMA Joint Comments at 12 (footnote omitted).

²⁷See TIA and NSMA Joint Reply Comments at 9-15.

We view the consolidation of the Part 21 (Form 494) and Part 94 (Form 402) as a vital component in streamlining the application and licensing process. Since the technical parameters of a microwave system are consistent regardless of service, the consolidation of forms is appropriate. The implementation of the Commission's proposed electronic filing system would be facilitated by the use of one form and subsequently one set of data elements. Comsearch suggests that the Commission's development of a consolidated form and streamlined electronic filing system can be best achieved through cooperation with industry representatives.²⁸

Similarly, UTC identifies the myriad benefits from using a single application form:

To the extent there are application requirements that are unique to either POFS or CC applicants, UTC recommends that the unified application form specifically identify on the form which questions pertain to each service. In its newly-adopted application form (Form 600) for all mobile radio services, many questions appear to govern all applicants and it is only upon careful review of the accompanying instructions that the applicant can determine which questions must be answered or can be ignored. Due to the relatively minor differences between CC and POFS application requirements, it should not be difficult to segregate any unique application requirements within the context of the form itself.²⁹

In the Part 101 Order, the Commission ignores this record support for a single application form. It fails to justify this omission. Considering the fact that such consolidation is totally consistent with unifying all POFS and CC technical rules, with imposing the same information requirements on both POFS and CC applicants, and with the needs of affected FS users, coordinators and manufacturers, the Commission should fill-in the "missing link" with a single application form.³⁰

²⁸Comsearch Comments at 7.

²⁹UTC Comments at 5.

³⁰See proposed revised text for Sections 101.13 and 101.15 in Appendix 1. Section 101.13(d) is revised to delete language requiring applicants to note "any special renewal requirements under the rule(s)" because the renewal form itself must require submission of such information.

B. A Specific Timetable For Implementation Of Electronic Licensing Must Be Established.

The Commission's goal of establishing total electronic filing by June 1999 is commendable. Moreover, its efforts at creating easier on-line access for filing and reviewing applications is greatly appreciated.

Establishing a timetable for reaching its goal of exclusive electronic filing, with specific milestones, will greatly facilitate this process. Users, manufacturers and other interested parties then will have a clear understanding of how and when the electronic filing procedures will be put into effect.

C. The Commission Must Establish An IAC to Ensure Full Industry Input Into Developing New Application Forms, A Timetable for Implementing Electronic Filing, and Procedures for Electronic Filing.

Formal industry input into developing the consolidated form, a timetable for implementing electronic filing, and the necessary protocols for electronic filing, are crucial. Without such input while the consolidated form and electronic filing architecture are being developed, the Commission risks creating procedures that are inconsistent with standard industry practice.³¹ Such inconsistency clearly would undermine the public interest benefits expected from adopting a single form and from promoting electronic filing. Thus, TIA and NSMA propose that the Commission establish an IAC to maximize industry involvement.

³¹The Form 600 for mobile service applicants, which was developed with little, if any, industry input, turned out to be very lengthy and unduly complicated. Hopefully, an IAC would avoid these problems for the consolidated FS form.

IV. CONDITIONAL LICENSING FOR THE 10 GHz BAND MUST BE RELAXED

In the Part 101 Order, the Commission decides to permit conditional pre-licensing operation. Under this conditional licensing procedure, "an applicant will be allowed to operate while its formal license application(s) is being processed" if it certifies certain conditions have been satisfied.³²

Unfortunately, this conditional licensing is not unlimited:

Although we are extending conditional licensing authority to both common carrier and private fixed microwave services generally, we conclude that such authority should not be available for operations in certain frequency bands. The 10.6-10.68 GHz, 17.7-19.7 GHz, and 21.2-23.6 GHz bands are allocated to both Government and non-Government users. As a result, licensing on these frequencies is subject to coordination between the Commission and the National Telecommunications and Information Administration (NTIA). Pending an agreement between the Commission and NTIA, we will not allow conditional licensing in the following frequency bands: (1) the 10.6-10.68 GHz band, (2) the 17.7-19.7 GHz band in the states of Colorado, Maryland, and Virginia, and the District of Columbia, and (3) the 21.2-23.6 GHz band for operations with an effective radiated power (E.R.P.) greater than 55 dBm. We hereby delegate authority to the Wireless Telecommunications Bureau and Office of Engineering and Technology to modify the rule regarding conditional licensing, if appropriate, once the Commission and NTIA have reached an agreement regarding coordination of these frequencies.³³

Availability of the 10.6-10.68 GHz band will be essential to support new PCS and other wireless networks. This band is designed to serve low-capacity networks. Many PCS providers have plans to use the 10 GHz band for cell site interconnects in urban areas. The path lengths in this band are short (typically less than 3 miles), which will accommodate such wireless network backbone requirements.

³²Part 101 Order, 2 Comm. Reg. (P&F) at 551.

³³Part 101 Order, 2 Comm. Reg. (P&F) at 551 (footnote omitted).

Under the new Part 101 regulations, FS operators will be able to start operating immediately after filing for a license in the 11 GHz band, but not in the 10 GHz band. As a result, FS operators, which want to start operating as quickly as possible, will tend to prefer the 11 GHz band. However, the 11 GHz band is primarily used for high capacity microwave systems carrying 1, 2, or 3 DS3s of traffic, which should not normally be used for low capacity systems. Consequently, the proposed artificial restriction on conditional 10 GHz band licensing could result in inefficient spectrum usage.

The Commission does not explain why it imposed this limit on the 10.6-10.68 GHz band. Its unlimited restriction on conditional licensing in the 10.6-10.68 GHz band is surprising because co-primary Government operations in this band involve the radio astronomy service.³⁴ Specifically, pursuant to footnote US277 of the Table of Frequency Allocations, the "radio astronomy service shall not receive protection from stations in the fixed service which are licensed to operate in the one hundred most populous urbanized areas as defined by the U.S. Census Bureau," and such Government operations only have been coordinated in a limited number of states.³⁵ Thus, as set out in Appendix 1, TIA and NSMA propose that the Commission revise Section 101.31(e) so that conditional licensing in the 10.6-10.68 GHz band is permissible except for the specified areas where Government radio astronomy services are operated.³⁶ Furthermore, TIA and NSMA propose defining these areas by using the same

³⁴47 C.F.R. §2.106 (1996).

³⁵47 C.F.R. §2.106, footnote US277 (1996). The states where government operations have been identified are West Virginia, New Mexico, Texas, California, and Maryland. *Id.*

³⁶TIA and NSMA also propose that the Commission revise Section 101.31(e)(1) to include the point-to-point 932-941, 952-960 and 2110-2200 MHz bands as frequencies eligible for conditional licensing.

geographic rectangles set forth in footnote US256 of the Table of Frequency Allocations for the identical locations.³⁷

**V. PRIOR COORDINATION NOTICES MUST INCLUDE
DIFFERENT POWER LEVELS CONSISTENT WITH USE OF ATPC**

In the Part 101 Order, the Commission appropriately adopts rules authorizing ATPC for both CC and POFS licensees:

The use of ATPC transmitters should improve service reliability without increasing the probability of interference. [S]ystems normally will operate at power levels substantially less than the maximum power level of the transmitters. When a system experiences a deep fade, the ATPC circuitry will increase the transmitter output power to compensate for the fade. We note that some existing systems currently employ the technology, and to date, the Commission has received no reports of any interference to other operating point-to-point radio systems as the result of ATPC operation.³⁸

Procedures for coordinating ATPC systems are set forth in Bulletin 10. Concern was expressed during this rulemaking "over how to use ATPC and the acceptable relationship between the various power levels identified in TIA Bulletin 10."³⁹ In response to this concern, the Commission required

applicants to notify potentially affected parties that ATPC transmitters will be used and [to] include on the coordination notice a value for each of the following: maximum transmit power, coordinated transmit power, and nominal transmit power For the purpose of licensing such transmitters, applicants are required to specify the maximum EIRP on their application(s). By using this power level as the authorized power and revising our rules to permit station operation at less than authorized power,

³⁷See 47 C.F.R. §2.106, footnote US256 (1996). There are no rectangular areas defined in footnote US256 for the Maryland and Texas government operations that must be protected in the 10.6-10.68 GHz band. TIA and NSMA thus propose that the Commission work with NTIA to define these areas.

³⁸Part 101 Order, 2 Comm. Reg. (P&F) at 555.

³⁹Part 101 Order, 2 Comm. Reg. (P&F) at 555.

we avoid the need to change our databases, license format, and application forms.⁴⁰

Unfortunately, in Section 101.103(d), which lists the information that must be included in a PCN, the Commission omits any requirement to provide the maximum transmit power, coordinated transmit power and the nominal transmit power. Accordingly, herein TIA and NSMA propose that the Commission revise Section 101.103(d) to require such data in the PCN.⁴¹

VI. THE TRANSITION PERIOD MUST BE REVISED TO CLARIFY APPLICABLE GRANDFATHERING PROVISIONS

Under new Section 101.4(a), "[a]ll systems subject to Parts 21 and 94 of the Rules, which are licensed or which are proposed in an application on file, as of the effective date of this part, are subject to the requirements under Part 21 or Part 94, as applicable."⁴² In the explanatory text for this rule, the Commission states that "[a]ll subject microwave systems authorized prior to [the effective date], and applications filed prior to that date will be grandfathered indefinitely"⁴³ To ensure that there are no questions concerning the scope of grandfathering, TIA and NSMA request that the Commission revise Section 101.4(a) so that the grandfathering period clearly is "indefinite."⁴⁴

⁴⁰Part 101 Order, 2 Comm. Reg. (P&F) at 555.

⁴¹See proposed revised text for Section 101.103(d) in Appendix 1.

⁴²Part 101 Order, Appendix A.

⁴³Part 101 Order, 2 Comm. Reg. (P&F) at 559 (emphasis added).

⁴⁴See proposed revised text for Section 101.4(a) in Appendix 1.