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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Cellular Service and Other Commercial Mobile Radio Services in the Gulf of Mexico	)	WT Docket No. 97-112
	)	
Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules	)	CC Docket No. 90-6

REPORT AND ORDER

Adopted: December 21, 2001 **Released: January 15, 2002**

By the Commission:

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I. INTRODUCTION

1. In this *Report and Order*, we resolve certain issues raised in the *Second Further Notice of Proposed Rule Making* in this proceeding,[1] in which we proposed changes to our cellular service rules for the Gulf of Mexico Service Area ("GMSA"). Our decision also responds to the remand by the United States Court of Appeals for the District of Columbia Circuit in *Petroleum Communications v. FCC*,[2] which was the result of an appeal of prior rules for licensing in the Gulf adopted in the Commission's *Unserved Area Third Report and Order*.[3] We adopt a bifurcated approach to cellular licensing in the Gulf, based on the differences between the deployment of cellular service in the Eastern Gulf (the Florida Gulf coast) and the Western Gulf (the Texas, Louisiana, Mississippi, and Alabama Gulf Coast). In the Eastern Gulf, where there are no offshore oil and gas drilling platforms on which to site cellular facilities, we adopt our proposal to establish a Coastal Zone in which our cellular unserved area licensing rules will apply. In the Western Gulf, we find that the extensive deployment of both Gulf-based and land-based facilities that has occurred in the past few years makes adoption of our *Second Further Notice* proposal impractical. Instead, we conclude that cellular service in the Western Gulf should continue to be governed by current rules, with certain modifications to facilitate negotiated solutions to ongoing coverage conflicts between Gulf-based and land-based carriers. Accordingly, we establish the Gulf of Mexico Exclusive Zone, encompassing the Western Gulf and areas of the Eastern Gulf outside of the Coastal Zone, in which the Gulf carriers will be exclusively licensed to operate.

2. The *Second Further Notice* also requested comment regarding the possibility of establishing licensing areas in the Gulf for Commercial Mobile Radio Services ("CMRS") other than cellular.[4] Given the limited comment we have received on these issues, we decline to adopt new licensing and service rules for the provision of non-cellular services in the Gulf at this time. Instead, we conclude that the issue of establishing new Gulf licensing areas should be addressed on a service-by-service basis, as we have done in several services since the *Second Further Notice*. In addition, we clarify the rights of land-based licensees in those services in which we have not provided for licensing of carriers in the Gulf.[5]

II. BACKGROUND

3. *Initial Licensing of Cellular Service in the Gulf of Mexico.* The Commission first authorized the provision of cellular service in the Gulf of Mexico in 1983 and licensed two carriers to serve the region in 1985.[6] The original rules allowed the Gulf carriers to operate throughout the GMSA, which extends to

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[1] Cellular Service and Other Commercial Mobile Radio Services in the Gulf of Mexico, Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, WT Docket No. 97-112 and CC Docket No. 90-6, *Second Further Notice of Proposed Rule Making*, 12 FCC Rcd 4578 (1997) (*Second Further Notice*). Although the *Second Further Notice* was adopted and released in 1997, it was inadvertently not published in the Federal Register at that time, as required under the Administrative Procedure Act. The *Second Further Notice* was published in the Federal Register on April 25, 2000. 65 Fed. Reg. 24168.

[2] *Petroleum Communications, Inc.* v. FCC, 22 F.3d 1164 (D.C. Cir. 1994) (*PetroCom*).

[3] Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, CC Docket 90-6, *Third Report and Order and Memorandum Opinion and Order on Reconsideration*, 7 FCC Rcd 7183 (1992) (*Unserved Area Third Report and Order*).

[4] *Second Further Notice*, 12 FCC Rcd at 4601, para. 63.

[5] *See* Section III.B., *infra*.

[6] Applications of Petroleum Communications, Inc. and Gulf Cellular Associates for New Domestic Cellular Radio Telecommunications Service Systems in the Gulf of Mexico, *Memorandum Opinion and Order*, File No. 30003-CL-

the shoreline and, therefore, includes coastal water areas. However, the Gulf carriers were limited to placing their transmitter sites on offshore platforms (predominantly oil and gas drilling platforms) and were prohibited from using land-based transmitters to serve the GMSA. In addition, in order to prevent interference to adjacent land-based cellular systems, the Gulf carriers were required to limit transmitter power from offshore sites to the extent necessary to avoid extending their service area contours over land.[7]

4. The presence of the Gulf licensees placed similar limitations on land-based cellular operations in adjacent coastal areas. Land-based carriers were prohibited by our rules from extending their service area contours into the GMSA, *i.e.*, beyond the mean high-tide line that defined the service area border, except for *de minimis* extensions.[8] As a result, land-based carriers seeking to cover shore areas, *e.g.*, to provide comprehensive service along coastal roads and in coastal communities, were unable to site transmitters close to the shoreline without incurring substantial engineering costs to avoid their signals being transmitted over water.

5. From the outset, these rules have caused conflict between the Gulf carriers and adjacent land carriers regarding the provision of service in the Gulf coastal region. Because offshore drilling has not occurred in the Eastern Gulf, these conflicts have occurred almost exclusively in the Western Gulf, particularly in areas where offshore and onshore sites were in close proximity. In some instances, the requirement to avoid encroachment into adjacent service areas has led to gaps in coverage, both on land and over water, because neither Gulf-based nor land-based carriers could extend coverage into these areas without capture of each other's subscriber traffic. In other instances, disputes have arisen over whether particular Gulf or land carriers were improperly extending coverage and capturing subscribers in the adjacent land or Gulf service area.[9]

6. *Unserved Area Rules.* In 1993, the Commission adopted the *Unserved Area Second Report and Order*, which established unserved area licensing rules for land-based cellular service. Under these rules, the Cellular Geographic Service Area ("CGSA") of each cellular system was redefined as the composite contour created by the actual service areas of all cells in the system.[10] The CGSA is the area in which carriers are entitled to protection from interference and from capture of subscriber traffic by adjacent carriers.[11] In addition, areas not within any carrier's CGSA were subject to reclamation by the Commission and licensing as unserved areas. In the *Unserved Area Third Report and Order*, the Commission extended these rules to cellular service in the Gulf. As a result, the Gulf carriers' service areas no longer comprised the entire GMSA, but were now limited to areas in the Gulf that received

P-84, Mimeo No. 6337 (CCB 1985). The history of the licensing and operation of cellular service in the Gulf of Mexico is set forth in greater detail in the *Second Further Notice*.

[7] *Id.*

[8] A *de minimis* extension is a relatively small overlap of a service area boundary (SAB) contour into a neighboring market which is necessary for engineering reasons to adequately serve the market of the licensee who proposes the extension. Great Lakes of Iowa, Inc., *Order*, 8 FCC Rcd 5572, 5573 (1993), citing Amendment of Part 22 of the Commission's Rules to provide for filing and processing of applications for unserved areas in the Cellular Service and to modify other cellular rules in CC Docket No. 90-6, *First Report and Order and Memorandum Opinion and Order on Reconsideration*, 6 FCC Rcd 6185, n. 23 (1991). *De minimis* extensions generally do not become part of the licensee's CGSA, are not entitled to interference protection, and must be pulled back if objectionable interference occurs to adjacent licensees. Western Maine Cellular, Inc., *Order*, 7 FCC Rcd 8648 (1992).

[9] *Second Further Notice*, 12 FCC Rcd at 4578, para 2.

[10] The service area of each cell is the area within its SAB, which is calculated using propagation formulas set forth in the Commission's rules. 47 C.F.R. § 22.911. *See* Section III.C., *infra*.

[11] 47 C.F.R. § 22.912.

actual coverage from an offshore platform-based cell site. This caused portions of the Gulf that were outside the coverage area of any offshore cell site to be redefined as "unserved" areas, which could not be served by the Gulf carriers without further application and licensing.

7. *PetroCom Remand.* In the *PetroCom* decision, the D.C. Circuit reversed and remanded certain aspects of the unserved area rules as they applied to the Gulf. The Court found that the Commission had failed adequately to consider the distinctive nature of Gulf-based service, which relied on movable drilling platforms for placement of cell sites, in comparison to land-based service, which used stationary sites. The Court stated that, while it did not foreclose the possibility of a convincing rationale for applying a uniform standard to both Gulf and land-based licensees, the Commission had failed adequately to justify the decision in the *Unserved Area* proceeding to treat Gulf licensees in the same manner as land-based cellular licensees in light of their reliance on transitory sites.[12] The Court remanded the issue and instructed the Commission to vacate the rule that defined the Gulf carriers' CGSAs based on their areas of actual service.[13] The effect of the remand was the restoration of the service area of the Gulf carriers as the entire GMSA, regardless of the location of their platform-based cell sites.

8. *Second Further Notice Proposal.* Following the *PetroCom* decision, the Commission issued the *Second Further Notice*, in which it initiated a comprehensive reexamination of the cellular service rules for the Gulf.[14] Specifically, the Commission proposed dividing the GMSA into a Coastal Zone and an Exclusive Zone.[15] Under this proposal, the Coastal Zone would consist of the portion of the GMSA extending from the coastline of the Gulf of Mexico to the twelve-mile offshore limit,[16] while the Exclusive Zone would extend from the twelve-mile limit to the southern boundary of the GMSA. In the Exclusive Zone, the two existing Gulf carriers would be able to move their offshore transmitters freely and to expand or modify their systems without being required to file additional applications, obtain prior Commission approval, or face competing applications for the right to serve the territory.[17] In the Coastal Zone, we proposed to apply our Phase II unserved area licensing rules, as adopted in the *Competitive Bidding Ninth Report and Order*.[18] Thus, within the Coastal Zone, any qualified applicant (including both Gulf- and land-based carriers) would be permitted to apply to serve unserved areas, and all mutually exclusive applications would be subject to competitive bidding procedures.

9. *Comments and Carriers' Proposals.* In response to the *Second Further Notice*, we received a number of comments and alternative proposals from land-based and Gulf-based carriers, many of which have been supplemented recently with *ex parte* presentations. While commenting land carriers generally

[12] *PetroCom*, 22 F.3d at 1173.

[13] *Id.* (vacating former rule section 22.903(a), as it applied to the Gulf-based carriers).

[14] *Second Further Notice*, 12 FCC Rcd at 4578, paras. 3-4.

[15] *Id.* at 4589, para. 27.

[16] In the alternative, the boundary would be represented by a line defined by geographic coordinates that closely approximates the twelve-mile mark. *See id.*

[17] *Id.* In effect, the licensees would have the exclusive right to expand, as in section 22.947(a), 47 C.F.R. § 22.947(a), except that the right would continue throughout the license term rather than expire after a five-year buildout period.

[18] Implementation of Section 309(j) of the Communications Act -- Competitive Bidding; Amendment of Part 22 of the Commission's Rules to Provide for the Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, *Ninth Report and Order*, 11 FCC Rcd 14769 (1996).

support our proposal to bifurcate the GMSA into a Coastal Zone and Exclusive Zone,[19] most oppose our proposal to use cellular unserved area licensing rules to award licenses in the Coastal Zone.[20] Instead, many of the land-based carriers support a proposal by ALLTEL to treat the Coastal Zone as a "buffer zone" extending twelve miles out to sea from the Gulf coastline. Within this buffer zone, ALLTEL proposes that Gulf and land carriers could freely extend their SABs and overlap contours, subject to mandatory frequency coordination, but without protection from subscriber capture.[21] In the GMSA outside the buffer zone, Gulf carriers would be fully protected from interference.[22]

10. A second alternative proposal has been advanced by PetroCom, the A-side Gulf licensee, and US Cellular, an adjacent land-based licensee in certain markets. PetroCom and US Cellular propose a bifurcated approach in the Eastern and Western Gulf. In the Eastern Gulf, they would redraw the GMSA boundary ten miles seaward from the shoreline, thus allowing land-based carriers in Florida to expand their coverage over water to that extent. In the Western Gulf, this proposal would retain the existing GMSA boundary along the coastline, and for a period of five years would prohibit either side from expanding over that boundary without the other carrier's consent. A carrier, however, would be allowed to use a higher effective radiated power than that resulting from the Commission's SAB formula, based on measurement data demonstrating equal signal strengths at the coastline. The resulting SAB extensions, however, would not be included as part of the other carrier's CGSA. After five years, their proposal would allow a land carrier to serve portions of the Gulf from land without consent from the Gulf carrier, so long as the latter was not serving that area, but the Gulf carrier would have the right to "reclaim" the area if a new or relocated drilling platform enabled it to provide service. PetroCom and US Cellular also propose that pending, non-mutually exclusive Phase II applications to serve coastal waters be granted.[23] Originally, these carriers proposed that either a land-based or Gulf-based carrier be permitted to adjust its signal strength to equalize that of the adjacent carrier at the coastline boundary without the adjacent carrier's consent; recently, however, PetroCom informed the Commission that, in light of the recent agreement between the B-side land-based and Gulf-based carriers, the proposal had been revised to eliminate this provision.[24]

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[19] ALLTEL Further Comments at 9-10; AT&T Further Reply Comments at 2; BellSouth Further Comments at 2; Centennial Ex Parte at 2; Dobson Further Reply Comments at 3; GTE Further Comments at 13; and MobileTel Reply Comments at 2.

[20] Initially, many land-based carriers supported the creation of an Exclusive Zone but advocated extending their market boundaries to the boundary of the Exclusive Zone in lieu of creating a separate Coastal Zone. *See* AT&T Wireless Comments at 4; AT&T Wireless Reply Comments at 4-5; Palmer Comments at 3-4; Texas RSA Reply Comments at 1-3; BellSouth Comments at 4; Centennial Reply Comments at 2; GTE Comments at 2-3; GTE Reply Comments at 3; MobileTel Comments at 2; MobileTel Reply Comments at 3; SBMS Comments at 9. This approach, according to these commenters, would be consistent with geographic areas established in other services and would promote regulatory parity among wireless services. 360° Reply Comments at 5; AT&T Wireless Comments at 6; Centennial Reply Comments at 2; GTE Reply Comments at 9-10.

[21] ALLTEL Further Comments at 9-10.

[22] According to ALLTEL and supporting commenters, this two-zone approach simultaneously addresses the land carriers' interest in providing reliable service to their customers throughout their licensed areas and the Gulf carriers' interest in being able to relocate sites without forfeiting CGSA. ALLTEL Further Comments at 9-10; AT&T Further Reply Comments at 2; BellSouth Further Comments at 2; Centennial Ex Parte at 2; Dobson Further Reply Comments at 3; GTE Further Comments at 13; and Mobiltel Reply Comments at 2.

[23] Joint Comments of Petroleum Communications, Inc. and U.S. Cellular Corporation, dated May 15, 2000.

[24] *See Ex Parte* Submission of Revised Proposal as Alternative to Proposed Rules Pursuant to the Regulatory Flexibility Act, filed by PetroCom, dated August 21, 2001.

11. Coastel, the B-side Gulf carrier, argues that the current rules are sufficient to meet the Commission's objectives, and therefore proposes that we terminate this rulemaking without adopting new rules.[25] According to Coastel, the Gulf carriers have substantially expanded their coverage of the Gulf in recent years, eliminating gaps in coverage and providing more reliable service to coastal waters in the Gulf.[26] Coastel contends that this change in circumstances obviates the need for further rulemaking, and further argues that the Commission's proposals in the *Second Further Notice* would not reduce conflict because many issues would still remain to be resolved between carriers.[27]

III. DISCUSSION

12. We find that the record in this proceeding demonstrates that different approaches toward the Eastern and Western Gulf are warranted. The development of cellular service has followed different paths in these two areas, which justifies treating them differently so as to spur the development of reliable service where needed, minimize the disturbance to current operations and contractual arrangements, and address the issues raised in the *PetroCom* remand.

A. Establishment of the Eastern Gulf Coastal Zone

13. As noted above, the circumstances with respect to the Gulf carriers' current service to and ability to serve the coastal areas vary greatly between the Eastern and Western Gulf. Unlike the Western Gulf, where the Gulf carriers have substantial offshore operations, the Eastern Gulf has no offshore oil or gas drilling platforms, and consequently, the Gulf carriers have no offshore base stations from which to provide service in the coastal waters off Florida. The record also indicates no likelihood of such platforms being constructed in the Eastern Gulf any time in the near future.[28] We agree with PetroCom and US Cellular that, in light of these circumstances, there is a basis to differentiate between our approach to the Eastern Gulf and the Western Gulf.[29]

14. We conclude that, in the Eastern Gulf, the best way to ensure that seamless cellular service is provided – both on land and in coastal waters -- is to adopt our proposal to create a Coastal Zone along the eastern portion of the GMSA. The current positioning of the eastern GMSA boundary directly along the Florida coastline does not accomplish this because it requires land carriers to engineer their systems to limit signal strength along the coast so as to avoid extending their coverage over water. Moreover, section 22.911(d)(2)(i) requires a land-based carrier in Florida to obtain the consent of the Gulf carrier to extend coverage over water, even though the Gulf carriers have no cellular facilities to serve Florida coastal waters.

15. Establishing a Coastal Zone in the Eastern Gulf will improve cellular service to coastal areas by providing an opportunity for land-based carriers to extend their service area contours into territorial

[25] Comments of Bachow/Coastel at 5-6; Written *Ex Parte* Presentation of Bachow/Coastel, L.L.C., filed April 4, 2001 at i.

[26] *Id.* at 8.

[27] Coastel Further Comments at 5-6, 16.

[28] On July 12, 2001, the U.S. Department of the Interior's Minerals Management Service issued a proposed Notice of Sale regarding a Federal natural gas and oil lease sale in the Eastern Gulf of Mexico, to be conducted in December 2001. *See Notice of Availability of the Proposed Notice of Sale for Outer Continental Shelf Oil and Gas Lease Sale 181 in the Eastern Gulf of Mexico*, 66 Fed. Reg. 36592 (2001). This lease sale would not lead to any potential Gulf carrier sites within the Coastal Zone as the sale area involved encompasses areas at least 100 miles away from the Florida coastline.

[29] Joint Comments of PetroCom and U.S. Cellular at 6.

coastal waters, which will in turn enable them to add cell sites close to shore and to increase signal strength, thereby improving the reliability of service, from existing sites. This will not only lead to improved coverage of coastal communities, beach resorts, and coastal roads, but will also facilitate service to coastal boat traffic operating close to shore that can be served from land-based transmitters.

16. The remainder of the Eastern Gulf that is not included in the Coastal Zone, along with the entire Western Gulf,[30] will be designated as the Gulf of Mexico Exclusive Zone. In this area, as proposed in the *Second Further Notice*, the Gulf carriers will have the unrestricted and exclusive right to operate cellular facilities. The Gulf carriers will also have the flexibility to add, remove, modify, or relocate sites in the Exclusive Zone without notice to or approval by the Commission.

17. In the Second *Further Notice*, we proposed that the Coastal Zone would be coextensive with the territorial waters of the United States, a maritime zone that extends approximately twelve nautical miles from the U.S. coastline.[31] We conclude that the territorial water limit will serve as an appropriate boundary between the Coastal Zone and the Exclusive Zone in the Eastern Gulf. This approach is also consistent with the approach we have taken more recently in established services where we have provided for licensing in the Gulf. In the context of WCS, we drew the boundary between land-based operations and Gulf-based operations at the territorial water limit.[32] Therefore, we define the Eastern Gulf Coastal Zone as the portion of the Gulf that is bounded by a line extending approximately twelve nautical miles due south from the coastline boundary of the States of Florida and Alabama, and continuing along the west coast of Florida at a distance of approximately twelve nautical miles from the shoreline.[33]

18. We believe that the most advisable course for licensing the Eastern Gulf Coastal Zone will be to define the region as unserved area. This will enable all entities to apply to serve areas of the Coastal Zone that are not currently served.[34] Accordingly, we will begin accepting Phase II unserved area applications to serve portions of the Coastal Zone sixty days after the effective date of the rules. Further, in the event of mutually exclusive applications, use of our unserved area competitive bidding rules will ensure that the authorization to serve a given area is awarded to the carrier that values it most and will help maximize the use of the spectrum. Carriers who apply to serve portions of the Eastern Gulf Coastal Zone will be required, consistent with our rules for terrestrial unserved areas, to construct facilities in these areas within one year from the date of receiving approval to serve this area.

19. We recognize that as a result of our decision to apply unserved area licensing rules to the Eastern Gulf Coastal Zone, the Gulf carriers will no longer have the exclusive right to serve Florida coastal waters as part of the GMSA. We conclude, however, that the above-described public interest benefits of this course outweigh the costs. Because the Gulf carriers have no operations in the Eastern Gulf, our decision

[30] For discussion of the Western Gulf, *see* paras. 21-34, *infra*.

[31] *Second Further Notice*, 12 FCC Rcd at 4580, para. 32. As proposed in the *Second Further Notice*, we will define the 12-mile Coastal Zone boundary by reference to a small number of specified coordinates in order to simplify application of these rules for licensees and applicants. The coordinates are listed in section 22.950, and a map of these coordinates in the Eastern Gulf Coastal Zone is attached at Appendix A.

[32] Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service, *Report and Order*, 12 FCC Rcd 10735, para. 58 (1997).

[33] One U.S. nautical mile is equal to 6,080 feet or 1,853 kilometers.

[34] Applicants wishing to serve the Eastern Gulf Coastal Zone must file an application in accordance with our cellular Phase II unserved area licensing rules. For example, a land-based carrier that proposes to construct new facilities along the Florida coast must file a Phase II cellular unserved area application if the proposed facilities produce a SAB contour extension into the Eastern Gulf Coastal Zone. Likewise, a Gulf-based carrier that wishes to extend coverage into the Eastern Gulf Coastal Zone must file a Phase II application. If any such applications are granted, the contour extension will be incorporated into that licensee's CGSA.

will not result in any reduction in cellular service or stranded investment in cellular facilities by the Gulf carriers. Moreover, given the lack of existing or planned installation of offshore platforms in the Eastern Gulf Coastal Zone, there is no likelihood that the Gulf carriers would be in a position to provide service there in the foreseeable future. Nonetheless, our decision does not preclude the Gulf carriers from seeking to provide service in the Coastal Zone in conformity with the unserved area licensing rules we are adopting for this region, either from land-based sites or from offshore platforms, at any point in the future should they become available.

20. Finally, we note that some land-based carriers in Florida have previously-granted *de minimis* extensions extending into the GMSA.[35] Our creation of the Eastern Gulf Coastal Zone is not intended to limit the scope of existing cellular operations, and we therefore grandfather all existing *de minimis* extensions of land carriers in the Eastern Gulf Coastal Zone. However, if a land carrier wishes to incorporate the area within an existing *de minimis* extension into its CGSA, it must file an unserved area application. In addition, carriers who are currently operating on the Florida coast under Special Temporary Authorization[36] must file an unserved area application if they wish to operate on a permanent basis.

B. Licensing in the Western Gulf

21. As noted above, the nature and extent of cellular service in the Western Gulf differs significantly from that in the Eastern Gulf. While the Gulf carriers do not have offshore facilities in the Eastern Gulf, they have built an extensive offshore cellular network on oil and gas drilling platforms in the Western Gulf. In substantial portions of the Western Gulf, particularly off the coast of Louisiana, Mississippi, and Alabama, many of these platforms are located only a few miles from shore, enabling the Gulf carriers to extend coverage to the coastline.[37]

22. The close proximity of these water-based sites to the coastline has given rise to technical and operational conflicts between the Gulf carriers seeking to provide service in coastal waters and the adjacent land-based carriers seeking to provide service to coastal communities, resorts, beaches, and coastal roads. In areas where land and water-based sites are close to one another, Gulf and land carriers must reduce their respective signal strength near the coastline in order to avoid incursions into their counterparts' markets. Some land-based carriers contend that the requirement to limit signal strength has led to gaps in their coverage along the coast, and that the Gulf carriers refuse to consent to SAB extensions into the Gulf that are needed to allow the land-based carriers to provide seamless service on land.[38] The Gulf carriers dispute this characterization, and contend that it is the land-based carriers who are preventing them from providing ubiquitous service in the Gulf.[39]

23. In addition, both Gulf and land carriers accuse one another of improperly extending coverage across the coastline into their counterparts' markets and consequently capturing subscriber traffic that

[35] *See e.g.* Petition to Deny, filed by Petroleum Communications, dated September 9, 1992 (opposing *de minimis* extension by Galveston Cellular Telephone Company, for KNKA676).

[36] *See, e.g.,* Wireless Telecommunications Bureau Grants Special Temporary Authority to ALLTEL Corporation Allowing Improvements in Cellular Coverage in Coastal Florida, *Public Notice*, 15 FCC Rcd 6907 (WTB 1999).

[37] *See* licensing records for Call Signs KNKA412 (Coastel) and KNKA411 (PetroCom).

[38] BellSouth Comments at 3,7; BellSouth Further Comments at 1; 360° Communications Comments at 3-5; 360° Communications Reply Comments at 2-3; GTE July 2, 1997 Comments at 4, n.3, 6; GTE August 4, 1997 Comments at 4-6; AT&T Further Reply Comments at 1-2; MobileTel Further Reply Comments at 1.

[39] Coastel Reply Comments at 25; Coastel Further Comments at 6-7.

should be served by the home carrier.[40] Some land-based carriers contend that their customers have complained about placing calls on land that were captured by the Gulf carrier's system rather than the land-based system, requiring the customer to pay extremely high roaming charges to the Gulf carrier.[41] The Gulf carriers argue that the land carriers have failed to document these alleged incidents of capture, that such capture is extremely uncommon, and that it is far more common in the Gulf for offshore cellular calls to be captured by land-based systems.[42]

24. In the *Second Further Notice*, we proposed to bifurcate the Western Gulf into a Coastal and Exclusive Zone in the same manner that we proposed (and are adopting today) for the Eastern Gulf. We stated that we would grandfather all existing Gulf facilities, but that any unserved area in the Coastal Zone (*i.e.*, area not currently served by the Gulf carrier from an existing offshore drilling platform) would be available for licensing under our cellular unserved area licensing rules.[43] As noted above, commenters generally oppose this proposal, though from different perspectives.[44] Most land carriers, led by ALLTEL, propose that the Coastal Zone should not be subject to unserved area licensing, but should instead be open to both Gulf and land-based carriers on a shared, coordinated basis. PetroCom, with the concurrence of US Cellular, opposes the creation of a Coastal Zone in the Western Gulf, proposing instead that land-based carriers be allowed to expand their SAB contours into unserved portions of the Gulf but also required to pull back if a Gulf carrier sought to serve the area. Coastel opposes the *Second Further Notice* proposal and advocates continuing to apply the current rules without modification.

25. In evaluating our proposal and the alternatives presented by commenters, we consider it important to note that circumstances in the Western Gulf appear to have changed significantly since the adoption of the *Second Further Notice*. First, in the *Second Further Notice*, the Commission expressed concern regarding gaps in coverage of the Western Gulf, and sought to advance a solution that would ensure ubiquitous coverage of coastal waters (whether from land or water-based transmitters) in order to make service available not only to personnel on drilling platforms but also to coastal boat traffic.[45] The record in this proceeding indicates that, in the past few years, the Gulf carriers have substantially expanded their networks and improved their coverage of the Western Gulf.[46] As a result, there appear to be fewer gaps in coverage of coastal waters than there were previously.

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[40] *See, e.g.*, GTE Reply Comments at 6; GTE Further Comments at 8-10; PetroCom Reply Comments at 3. *See also* Bachow/Coastel, L.L.C., v. GTE Wireless of the South, Inc., File No. WB/ENF-F-98-005, *Order on Reconsideration*, FCC 01-161 (rel. May 14, 2001). At boundaries between adjacent carriers, calls made by one carrier's customer from that carrier's home territory may be "captured" by the adjacent carrier if the adjacent carrier's signal is stronger at the location where the customer is making the call. In that event, the customer is charged by the adjacent carrier as a roamer and subject to greater fees, even though the customer placed the call in his or her home territory.

[41] *See, e.g.*, ALLTEL February 28, 2001 *Ex Parte* Filing at Att. 4; GTE Further Comments at 8-10; Verizon April 2, 2001 *Ex Parte* Filing at 1-2. According to the land carriers, roaming rates charged by Gulf carriers can be as high as $3.00 per minute. ALLTEL February 28, 2001 Ex Parte Filing at Att. 4.

[42] *See e.g.* Coastel Further Reply Comments at 7-9; PetroCom Further Reply Comments at 5-6; PetroCom March 1, 2001 *Ex Parte* Filing at 1-2; PetroCom January 8, 2001 *Ex Parte* Filing at Att. 1, Att. 3.

[43] *Second Further Notice*, 12 FCC Rcd at 4594, paras. 36, 41.

[44] *See* paras. 9-10, *supra*.

[45] *Second Further Notice*, 12 FCC Rcd at 4588, para. 26.

[46] *See* Further Comments of Bachow/Coastel, L.L.C., dated May 15, 2000 (stating that Coastel doubled the number of its sites in the Gulf between 1997 and 2000); licensing records for Call Signs KNKA412 and KNKA411.

26. Second, while there are still significant disputes between Gulf and land-based carriers generally, some Gulf and land carriers have successfully negotiated agreements since the *Second Further Notice* that provide a mutually agreed-upon framework for cooperative operation along portions of the Western Gulf coast. In particular, PetroCom, the A-side Gulf carrier, has entered into a series of extension and collocation agreements with US Cellular and several other A-side land-based carriers.[47] These agreements facilitate seamless coverage of coastal areas (over both land and water) and apply negotiated solutions to issues such as coverage, capture, and roaming rates.[48] A similar accord has been negotiated by Coastel, the B-side Gulf carrier, and ALLTEL, the principal B-side land carrier, by which they have reached agreement with respect to their operations along the Alabama coastline, specifically in Mobile Bay.[49]

27. In light of these developments, we believe that the best way to achieve reliable, ubiquitous service in the Western Gulf is to encourage further reliance on negotiation and market-based solutions to the fullest extent possible. The fact that some Gulf- and land-based carriers have reached negotiated agreements suggests that carrier-driven solutions to these issues are possible without substantial changes to existing rules. Moreover, in other instances where negotiations have not been successful, a partial cause may be uncertainty and speculation regarding possible rule changes that could result from this proceeding. Thus, adopting rules that substantially change the relationship between land and Gulf carriers in the Western Gulf could be counter-productive by further delaying negotiated solutions and even leading parties to seek to unwind existing agreements.

28. Therefore, upon review of the record, we conclude that we should not adopt our *Second Further Notice* proposal to create a Coastal Zone subject to unserved area licensing rules in the Western Gulf. First, because of the buildout that has occurred in the Western Gulf in recent years, there is relatively little unserved area in what would comprise the Coastal Zone. Second, to the extent that applying unserved area licensing rules would impose a "use or lose" regime on the Gulf carriers (*i.e.*, a Gulf carrier providing service from an offshore platform could permanently lose the right to serve that portion of the Gulf if the platform were moved out of the area, even if the relocation was not permanent), we are concerned that such a fundamental change in the rules could delay resolution of coverage conflicts and discourage negotiation of extension and collocation agreements between land and Gulf carriers.

29. We similarly decline to adopt the ALLTEL proposal that the Coastal Zone be available for use by both Gulf and land-based carriers on a shared, coordinated basis. Although ALLTEL's proposal is

[47] PetroCom states that it has either co-location or extension agreements in Houston/Galveston, Corpus Christi, Beaumont-Port-Arthur, Texas RSA No. 16, and Texas RSA No. 20 with land-based A-side carriers. PetroCom January 8, 2001 *Ex Parte* Filing at Att. 2.

[48] For example, under certain collocation agreements, the land carriers own facilities for which PetroCom contributes construction costs. The antennas of a collocated site are configured to keep a signal strength equal to PetroCom's system at the coastline boundary. The land carriers provide switching services for the origination and termination of calls, including calls in the Gulf areas, as well as switching services for authorized roamers, which include Gulf subscribers. PetroCom pays the land carriers per-minute charges for switching and roaming services, and land carriers pay PetroCom a per-minute charge whenever a land carrier subscriber uses PetroCom's system. *See* PetroCom *Ex Parte* filing, dated March 1, 2001.

[49] *See* Letter from Glenn S. Rabin, Vice President Federal Regulatory Affairs, ALLTEL Corporation, and Steven J. Hamrick, Counsel for Bachow/Coastel, L.L.C., to Magalie Roman Salas, Secretary, Federal Communications Commission, dated July 16, 2001. As a result of their agreement, ALLTEL and Coastel jointly requested dismissal of four pending ALLTEL applications, three pending Coastel applications, and related petitions and pleadings, with respect to service in the Gulf. *See* Joint Motion for Dismissal and Approval of Settlement Agreement, filed by ALLTEL and Coastel, August 22, 2001, at 2-4 (file nos. 00004996022, 0000223356, 0000125728, 0000105772, 0000188467, 0000113774, 0000160419). Their request was granted on September 27, 2001. *See* "Wireless Telecommunications Bureau Approves Settlement Agreement between Bachow/Coastel, L.L.C. and ALLTEL Illinois Limited Partnership," *Public Notice*, 16 FCC Rcd 17084 (WTB 2001).

designed to provide a basis for negotiated agreements, implementing it as a formal rule would, in effect, turn the Coastal Zone into a "no-man's land" where the prohibition against capture of a neighboring carrier's subscriber traffic would not apply. Moreover, by eliminating capture protection in a portion of the GMSA while retaining it in the CGSAs of the adjacent land carriers, the effect of the ALLTEL proposal would be to shift the protections afforded by existing rules in favor of the land carriers and against the Gulf carriers. While we have no objection to voluntary agreements along the lines of ALLTEL's proposal, we see no compelling public interest reason to codify it in our rules, and are concerned that doing so could reduce the incentive for land carriers to negotiate with Gulf carriers regarding traffic capture in the Coastal Zone.[50] In addition, because the ALLTEL proposal does not provide a mechanism for settling frequency coordination disputes, there is a substantial likelihood that the Commission would be burdened with resolving such matters in instances where frequency coordination failed.

30. Rather than adopt our *Second Further Notice* proposal or the ALLTEL proposal in the Western Gulf, we conclude that the wisest course is to designate a Gulf of Mexico Exclusive Zone by generally maintaining the currently applicable rules and continuing to encourage carriers to resolve their differences through negotiated agreements. Specifically, we identify the GMSA area west of the Eastern Gulf Coastal Zone as part of the Gulf of Mexico Exclusive Zone, which will reach landward up to the land-water boundary in the western portion of the Gulf. In reaching this conclusion, we do not subscribe to Coastel's position that no revisions to the rules are required. However, we believe that with relatively minor modifications, described below, the current rules should provide sufficient incentives for both Gulf and land carriers to negotiate agreements that lead to seamless cellular coverage in coastal areas at competitive rates.

31. Accordingly, in the Western Gulf, we will maintain the GMSA border at the coastline as currently defined in our rules, and will allow the Gulf carriers to provide service throughout the Gulf of Mexico Exclusive Zone regardless of the location of their cell sites at any particular time. Thus, Gulf carriers will not be subject to a "use or lose" regime based on the movement of offshore drilling platforms. We note that this approach addresses the concern expressed by the court in *PetroCom* that our rules for the Gulf carriers take into account the transitory nature of water-based transmission sites. Our decision today gives the Gulf carriers full flexibility to build, relocate, modify and remove offshore facilities throughout the Western Gulf without seeking prior FCC approval or facing competing applications.

32. In the *Second Further Notice*, we noted that, although under our proposal only the Gulf carriers would have exclusive rights within the Exclusive Zone, we tentatively concluded that *de minimis* extensions into unserved areas in the GMSA Exclusive Zone should be permitted.[51] Upon further consideration of our proposal, however, we do not believe it is necessary to permit *de minimis* extensions into the Exclusive Zone in light of the ability of the land-based and Gulf carriers to enter into agreements regarding their operations. In instances where it is necessary for a carrier to extend into an adjacent carrier's licensed area, the record reflects that contract extensions (*i.e.* where the Gulf and land licensees mutually agree to the extension) are sufficient to ensure reliable coverage.

33. We recognize that the rules we are adopting for the Western Gulf cannot resolve all of the technical and operational conflicts (*e.g.*, interference, subscriber capture) that have arisen in areas where Gulf carriers and land carriers operate in close proximity to one another. Ultimately, only negotiation and cooperative arrangements between land and Gulf-based carriers can resolve these conflicts. Nonetheless,

[50] For example, if a land-based carrier increased its effective radiated power to provide a stronger signal at the coastline -- which would be allowed under the ALLTEL proposal – it would benefit substantially on land because capture of its customers would be reduced inland from the coastline, but the land-based carrier would have little incentive to negotiate to reduce capture in the Coastal Zone because most of its customers would not benefit from such protection.

[51] *Second Further Notice*, 12 FCC Rcd at 4597, para. 50.

because our decision here provides finality regarding our licensing and operational rules, we expect that it will facilitate and speed the progress of such negotiations. We emphasize that under our decision today, parties remain free to negotiate consensual agreements that provide for extensions, coordination of frequencies, collocation, facilities sharing, or other solutions, so long as such agreements do not affect the rights of third parties.[52] Thus, nothing in our decision today is intended to modify or alter the effect of the existing agreements that have been negotiated by PetroCom or Coastel with adjacent land-based carriers. We also encourage Gulf and land-based carriers who have not reached negotiated agreements to enter into negotiations that could result in such agreements.

34. In seeking to facilitate negotiated agreements, it is our goal to create incentives for carriers to reach agreements that are not only mutually beneficial, but that also benefit existing and potential cellular subscribers. For example, while we recognize that the operating costs of Gulf carriers are typically higher than those of land-based carriers, we seek to ensure that they cannot recover those costs by charging uncompetitive rates or roaming charges to their customers, including the numerous land-based subscribers who may roam onto a Gulf carrier's network when close to the coastline (*e.g.*, recreational boaters). We believe that the rules we adopt today will help to foster a competitive marketplace in the Gulf that will protect consumers from such charges and practices. We note, for example, that some of the recently negotiated agreements between Gulf and land-based carriers provide for "in-shore" roaming rates that are comparable to roaming rates on land as opposed to the higher rates that PetroCom charges roamers operating significantly further out to sea. This creates a competitive incentive for similar terms to be negotiated in future agreements also. Moreover, the deployment of non-cellular services such as PCS along the Gulf coast will apply pressure on both cellular providers in the Gulf, and their land-based counterparts, to offer competitive services and rates.

C. Service Area Boundary Formula

35. In the *Unserved Area Second Report and Order*, the Commission applied the standard land-based SAB formula to operations by land carriers along the Gulf coast ("land formula"), but adopted a separate mathematical formula to define the SABs of facilities operated by the Gulf carriers from offshore sites ("water formula") in the *Unserved Area Third Report and Order*.[53] The use of different formulas recognized that cellular signals transmitted over water typically have stronger propagation characteristics (*i.e.*, can be received at greater distances from the transmitter) than comparable signals transmitted over land, which are attenuated by variations in terrain, buildings, trees, and other obstacles. The two SAB formulas also incorporated different assumptions regarding receivers: the land formula determined the distance to the service area boundary that results in reliable service to a conventional mobile unit, while

[52] We reiterate that we will no longer prohibit land-based sites for the Gulf carriers, relying solely on our SAB extension rules to determine whether such sites will be permitted.

[53] *Unserved Area Third Report and Order*, 7 FCC Rcd at 7184, paras. 5-6. Prior to the adoption of the cellular unserved area rules, the CGSA was the area defined by the licensee as the area it intended to serve. The Commission used the median 39 dBu field strength contour to represent reliable service. The Commission required applicants to identify the 39 dBu contour or contours within their CGSAs, and within which the applicant would provide reliable cellular service. Former rule section 22.903 required that the combined 39 dBu contours of all base stations of a licensee must cover at least 75% of the licensee's total CGSA. The Gulf carriers, however, were not required to comply with the 75% coverage requirement. *See* Amendment of the Commission's Rules for Rural Cellular Service, CC Docket 85-388, *Second Report and Order*, 2 FCC Rcd 2306, *modified*, Amendment of the Commission's Rules for Rural Cellular Service, CC Docket 85-388, *Order on Reconsideration of Second Report and Order*, 4 FCC Rcd 5377, 5379-5380 (1989); Amendment of the Commission's Rules for Rural Cellular Service, CC Docket 85-388, *Fifth Report and Order*, 3 FCC Rcd 6401 (1988). In the *Unserved Area Second Report and Order*, the Commission adopted a mathematical formula which approximated the 32 dBu contour which was believed to be the minimum strength required for reliable cellular service. The Commission also required that the CGSAs of carriers be drawn back to be coterminous with their actual areas of service. In the *Unserved Area Third Report and Order*, the Commission set out a separate mathematical formula applicable to the Gulf of Mexico service area.

the water formula established the distance to the service area boundary that results in reliable service to a marine mobile unit with a mast-mounted antenna.[54] In the *Second Further Notice*, the Commission sought comment on whether to retain the two-formula approach or to adopt an alternative "hybrid" approach that would account for signals in the Gulf coastal region that are transmitted over both land and water.[55]

36. We will continue to use the two existing SAB formulas for land and water-based sites, respectively. While no mathematical formula can precisely duplicate actual signal propagation in all circumstances, we conclude that the two-formula approach adequately accounts for the different characteristics of signal propagation over land and water. In addition, the record reflects little support for a hybrid formula, and we find that it would be difficult to establish such a formula that would account for the variation in propagation of a single signal over both land and water. Finally, retaining the existing SAB formulas is consistent with our overall decision to maintain the existing relationship between land and Gulf carriers in the Western Gulf as the basis for negotiated solution of their operational conflicts. The Gulf carriers have been using the water formula to depict SAB contours for their facilities operating in the Gulf since the formula was adopted, while the land carriers have used the land-based formula for their facilities. Consequently, changing the SAB definitions at this point could lead to one side or the other unilaterally increasing their transmitter power under the revised definitions, which could upset existing agreements and create new conflicts. Of course, this does not preclude parties from entering into voluntary agreements that would allow for consensual transmitter power adjustments based on alternative contour definitions.

D. Placement of Transmitters

37. When we initially licensed carriers to provide cellular service in the Gulf, we did not prohibit them from placing sites on land, but required Gulf carriers to avoid causing significant overlap of their reliable service area contours with land-based licensees.[56] Subsequently, we determined that allowing Gulf carriers to place transmitters on land would cause significant incursions over land and hamper the ability of land-based MSA and RSA licensees to carry out the initial build out of their systems. Thus we concluded that Gulf carriers should not be permitted to place transmitters on land without the consent of the affected land-based carrier.[57]

38. In the *Second Further Notice*, we observed that the land-based licensees along the Gulf coast have built out their cellular systems to encompass nearly the entire coastal land area of the Gulf region, and tentatively concluded that it was no longer necessary to prohibit Gulf carriers from siting on land, so long as no overlap with any land-based carrier's CGSA occurred. We therefore proposed to abandon our blanket prohibition against Gulf carriers placing their transmitters on land, and proposed to rely solely on our CGSA and SAB extension rules to determine whether or not the placement of a particular transmitter

[54] The water formula adopted by the Commission was based on measurement data submitted by PetroCom.

[55] *Second Further Notice*, 12 FCC Rcd at 4593, para. 38.

[56] *See* Application of Petroleum Comms., Inc. to Construct a Developmental Cellular Radio Telephone System in the Gulf of Mexico, *Memorandum Opinion and Order*, 54 Rad. Reg. 2d (P&F) 1020 (1983); Applications of Petroleum Comms., Inc. and Gulf Star Comms., Inc., and Fluor Engineers, Inc., for Authority to Construct Cellular Radio Telecommunications Systems in the Gulf of Mexico, *Memorandum Opinion and Order on Reconsideration*, 56 Rad. Reg. 2d (P&F) 1651 (1984).

[57] *See* Applications of Petroleum Comms., Inc., and Gulf Cellular for New Domestic Cellular Radio Telecommunications Service Systems in the Gulf of Mexico, File No. 30003-CL-P-84, *Order on Reconsideration*, 1 FCC Rcd 511 (1986); Applications of Petroleum Comms., Inc., and Gulf Cellular for New Domestic Cellular Radio Telecommunications Service Systems in the Gulf of Mexico, File No. 30003-CL-P-84, *Order on Reconsideration*, 2 FCC Rcd 3695 (1987).

was permissible.[58] In light of the course we now take, we believe that it is appropriate to adopt this part of the proposal from the *Second Further Notice* and permit Gulf carriers to operate land-based sites, subject to SAB extension rules as discussed above. We believe that this additional flexibility will help facilitate contractual resolutions of the issues facing adjacent carriers along the Gulf of Mexico.

E. Pending Applications

1. Pending Phase II Applications

39. In December 1992, following our adoption of cellular unserved area licensing rules applicable to the Gulf, we accepted Phase II applications for unserved area licenses in the GMSA.[59] Many of these applications were petitioned against by the Gulf carriers. In addition, PetroCom filed a Phase II application that remains pending. However, following the *PetroCom* remand of the unserved area rules as they applied to the GMSA, we suspended processing of these applications pending reconsideration of our policies in the Gulf region.[60] In the *Second Further Notice*, we proposed that areas of the Coastal Zone that do not receive cellular service be treated as unserved areas and that Phase II competitive bidding procedures should be implemented for those areas.[61] We further proposed that all unserved area applications previously filed to serve Coastal Zone areas would be dismissed without prejudice, and that applicants would be allowed to resubmit their applications sixty days after the effective date of this rulemaking.[62]

40. In light of our actions today, we will dismiss all pending Phase II applications and associated petitions to deny. In both the Western Gulf, where we have decided not to apply unserved area licensing procedures, and the Eastern Gulf, where we are instituting unserved area licensing in the Coastal Zone, we will allow carriers to refile to the extent allowed under the new rules adopted in this *Report and Order*. In light of the passage of several years since the applications were filed, we conclude that dismissing applications filed under superseded rules and allowing carriers currently serving or desiring to serve the Eastern Gulf Coastal Zone to submit new applications is the fairest and most efficient manner to license cellular service in that region.

2. Pending *De Minimis* Extension Applications

41. Following the *PetroCom* remand, we also suspended processing of applications for *de minimis* extensions into the Gulf. In the *Second Further Notice*, we proposed to dismiss all such pending applications because the *PetroCom* court directed us to vacate former section 22.903(a) to the extent that it applied to the Gulf carriers, and because virtually all applications for contour extensions were subject to petitions to deny and applications for review. We also noted that pending applicants would not be prejudiced by a dismissal of extension applications, because such applicants would have the opportunity to resubmit applications under our revised licensing rules for unserved areas in the Gulf.[63]

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[58] *Second Further Notice*, 12 FCC Rcd at 4593-4594, para. 40. *See* 47 C.F.R. § 22.912. Section 22.912 provides that a SAB extension outside of a licensee's CGSA and into an adjacent market is permissible if the extension is *de minimis* or if the extension results from a contract with applicants or other licensees to allow SAB extensions into their CGSAs.

[59] *Second Further Notice*, 12 FCC Rcd at 4587, para. 22.

[60] *Id.* at 4588-4589, para. 26.

[61] *Id.* at 4594, para. 41.

[62] *Id.*

[63] *Id.* at 4598, para. 56.

42. Based on the action we take today, we will dismiss all pending extension applications and allow carriers to refile to the extent permissible under the rules we adopt in this *Report and Order*. We conclude that dismissal is the more equitable course in light of the passage of time since the applications were filed and the fact that the rules under which they were filed have undergone some modification.

F. Other Services

43. In the *Second Further Notice*, the Commission requested comment regarding possible operations in the Gulf by CMRS licensees in services other than cellular.[64] Specifically, we asked whether we should establish a Gulf licensing area, analogous to the cellular GMSA, for use in other CMRS services and, if such a licensing area were established, where the boundary should lie between it and the adjacent licensing areas of land-based CMRS providers.[65] We received only limited comment on the issue of licensing such services in the Gulf. Stratos Offshore Services Company ("Stratos'), which operates a microwave network that supports communications in the Gulf, generally supports creating a license area for the non-cellular services to protect licensees operating in the Gulf.[66] Stratos, however, does not support licensing PCS in the Gulf because of the high cost of relocating microwave networks operating at 2 GHz. On the other hand, DW Communications, a 900 MHz operator with at least one license along the Gulf coast, argues that creating Gulf area licenses in other services would create more problems than would be solved.[67] PCS licensees Sprint PCS and Verizon Wireless each argue that the Commission's PCS service area rules define boundaries based on county lines, which, under state law, extend into the Gulf's offshore areas, and therefore, the Commission should not create a separate license area for PCS in the Gulf.[68]

44. Since the issuance of the *Second Further Notice*, the Commission has established Gulf licensing areas in several other services, including Wireless Communications Service ("WCS"),[69] Multiple Address Systems (MAS),[70] 746-747/776-777 and 762-764/792-794 MHz bands ("700 MHz Guardband"),[71] 24.25-24.45 GHz and 25.05-25.25 GHz bands ("24 GHz"),[72] and the 746-764 MHz and 776-794 MHz bands ("700 MHz").[73] In the case of WCS, the Commission incorporated United States territorial waters in the Gulf, *i.e.*, waters from the shoreline to a line 12 nautical miles offshore, into the adjacent land-based

[64] *Second Further Notice*, 12 FCC Rcd at 4601, para. 63.

[65] *Id.* at 4599-4601, paras. 58-63.

[66] Stratos Offshore Services Further Comments at 3-10.

[67] DW Communications Further Comments at 8-15.

[68] Sprint Further Comments at 1-7; Verizon Wireless Comments at 1-5.

[69] Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service, *Report and Order*, 12 FCC Rcd 10735 (1997).

[70] Amendment of the Commission's Rules Regarding Multiple Address Systems, WT Docket No. 97-81, *Memorandum Opinion and Order*, FCC 01-171 (rel. May 29, 2001).

[71] In The Matter Of Service Rules For The 746-764 And 776-794 MHz Bands, and Revisions To Part 27 Of The Commission's Rules, WT Docket No. 99-168, *Second Report and Order*, 15 FCC Rcd 5299 (2000).

[72] Amendment to Parts 1, 2, 87, and 101 of the Commission's Rules To License Fixed Services at 24 GHz, WT Docket No. 99-327, *Order on Reconsideration*, FCC 01-151 (rel. May 17, 2001).

[73] In the Matter of Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99-168, *First Report and Order*, 15 FCC Rcd 8634 (2000).

licensing areas. Thus, the WCS licensing area, unlike the original cellular GMSA, extends seaward from the 12-mile limit, and includes coastal waters. For 700 MHz, the Commission established Economic Area Groupings (EAGs) whereby the Gulf of Mexico is divided in two, with the eastern portion being included in the license for Southeast EAG, and the western portion being included in the license for the Central/Mountain EAG.

45. With respect to non-cellular CMRS services, we conclude that we should not create a Gulf licensing area in this proceeding for all such services, but instead should take up the issue of establishing a Gulf licensing area on a service-by-service basis, as we did for WCS, MAS, 24 GHz, 700 MHz Guardband, and 700 MHz. The dearth of support in this proceeding advocating creation of Gulf licensing areas suggests that there is limited interest among carriers in many non-cellular CMRS services in providing service to offshore drilling facilities analogous to that provided by the Gulf cellular carriers. Furthermore, to the extent that carriers in a particular service may wish to establish a Gulf licensing area for that service, we can address such issues separately, taking into account the specific characteristics of that service.[74]

46. On the other hand, land-based carriers in services that have no service provider licensed in the Gulf have expressed significant interest in our clarifying whether they can extend their coverage offshore from land-based sites. We find that in those services where there is no licensed carrier in the Gulf, it is in the public interest to allow land-based CMRS carriers to extend their coverage offshore, both to increase coverage and service quality for land-based customers along the coastline and to offer service to coastal boating traffic. In general, the geographic service area definitions used for non-cellular CMRS services are based on county boundaries, which extend over water pursuant to state law.[75] We therefore clarify that the licensing areas of land-based licensees in such services extend to the limit of county boundaries that extend over water. In addition, licensees may provide service extending further into the Gulf on a secondary basis so long as they comply with the technical limitations applicable to the radio service and do not cause co-channel or adjacent channel interference to others.

47. Finally, PetroCom has filed a petition for rulemaking with respect to establishment of special interference criteria for Gulf-based facilities.[76] Although we have never adopted specific rules for licensing of water-based SMR facilities, the Commission has issued some site-specific SMR licenses to PetroCom for sites in the Gulf.[77] Under the existing SMR rules, these sites are entitled to interference protection on the same basis as site-specific licenses on land. In its petition, PetroCom sought to change the interference protection rules for site-based SMR facilities in the Gulf, arguing that the land-based rules did not adequately protect its water-based facilities. We incorporated PetroCom's petition into the *Second Further Notice* and sought comment on it.[78] However, we received only limited comment on

[74] The Commission recently created a Gulf licensing area with respect to the 698-746 MHz band ["Channels 52-59"] and is considering a Gulf market in 4.9 GHz. *See e.g.* In the Matter of Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), GN Docket No. 01-74; *Report and Order*, FCC 01-364 (release pending).

[75] For example, MTAs, BTAs, and EAs are all based on county boundaries. The distance that the boundaries of coastal counties extend over water varies by state. The county boundaries of Texas and Florida extend three marine leagues (nine nautical miles) out from the water line, the county boundary of Louisiana extends three imperial nautical miles (imperial nautical mile = 6080.2 feet) into the Gulf, and all other states' boundaries extend three nautical miles (approximately 3.3 statute miles) from the baseline into the Gulf.

[76] *See* Letter from Kenneth W. Burnley, Myers Keller Communications Law Group, to David Furth, Federal Communications Commission, dated February 21, 1997.

[77] *See, e.g.,* call signs KNRU807-KNRU822.

[78] *See Second Further Notice*, 12 FCC Rcd at 4600, para. 62. We also sought comment on whether to create an 800 MHz SMR Gulf geographic licensing area. *Id.*

issues relating to Gulf-based SMR facilities.[79] Moreover, since the *Second Further Notice*, we have issued land-based EA licenses in the 800 MHz SMR service, and have received no indication that the operations of these licensees have caused interference to Gulf-based SMR facilities. We conclude that in light of these circumstances, the record before us does not support amending the existing SMR rules as they apply to service in the Gulf, and we therefore deny PetroCom's petition.[80] However, PetroCom or any other party is free to file an updated petition for rulemaking if it believes that current or potential circumstances warrant revision of the SMR rules to protect the operation of Gulf-based facilities.

IV. CONCLUSION

48. We conclude this reevaluation of our Gulf cellular rules by finding that the carriers themselves are best able to resolve most of the issues standing in the way the provision of reliable, ubiquitous cellular coverage to both land-based and Gulf-based subscribers in the Gulf region. The imposition of a new regulatory structure would cause additional and unnecessary delay in meeting this goal. In addition, the record reflects that a number of carriers have been able to resolve their differences under the current rules. We believe the few changes we now make help to strike a fair balance between the interests of the carriers, the interest of the public, and the need for flexibility to deal with these issues.

V. PROCEDURAL MATTERS

A. Regulatory Flexibility Act Analysis.

49. The Final Regulatory Flexibility Analysis for this *Report and Order*, as required by Section 604, of the Regulatory Flexibility Act of 1980, 5 U.S.C. § 604, is set forth in Appendix D.

B. Paperwork Reduction Act Analysis.

50. The actions taken in this *Report and Order* have been analyzed with respect to the Paperwork Reduction Act of 1995, Pub. L. No. 104-13, and found to impose no new or modified reporting and record-keeping requirements or burdens on the public.

VI. ORDERING CLAUSES

51. IT IS ORDERED that, pursuant to the authority of Sections 4(i), 7, 303(c), 303(f), 303(g), 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(c), 303(f), 303(g), 303(r), and 332, the rule changes specified in Appendix C are adopted.

52. IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), the applications listed in Appendix B are dismissed.

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[79] PetroCom opposed creation of an SMR geographic Gulf licensing area, as did Nextel and AMTA. *See* AMTA Comments at 6; Nextel Comments at 3-4; PetroCom Comments at 18-19; Nextel Reply Comments at 2-4; PetroCom Reply Comments at 25. API and SOSCo (now Stratos) supported the idea. API Comments at 7-8; SOSCo Comments at 5; SOSCo Reply Comments at 6. In a January 2000 petition for reconsideration in the 800 MHz SMR proceeding, PetroCom reversed its prior position and sought the creation of a Gulf licensing area in the Lower 800 MHz SMR band prior to the auction of EA licenses in that band. *See* Petition for Reconsideration, PR Docket No. 93-144, filed by Petroleum Communications, Inc., on January 19, 2000. We received no comments on the petition. After the auction had occurred, we dismissed the petition, noting the pendency of this proceeding. *See* Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, *Third Order on Reconsideration*, 16 FCC Rcd 2866 (2001). In light of the lack of comments and the time that has elapsed since PetroCom filed the petition, we conclude that the record does not support taking action in this proceeding based on PetroCom's request.

53. IT IS FURTHER ORDERED that the Wireless Telecommunications Bureau will begin accepting Phase II unserved area applications for the Gulf of Mexico Coastal Zone sixty days after the effective date of the rules.

54. IT IS FURTHER ORDERED that the Petition for Rulemaking filed by Petroleum Communications is DENIED.

55. IT IS FURTHER ORDERED that the rule changes set forth in Appendix C WILL BECOME EFFECTIVE 60 days after publication in the *Federal Register*.

56. IT IS FURTHER ORDERED that this proceeding is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

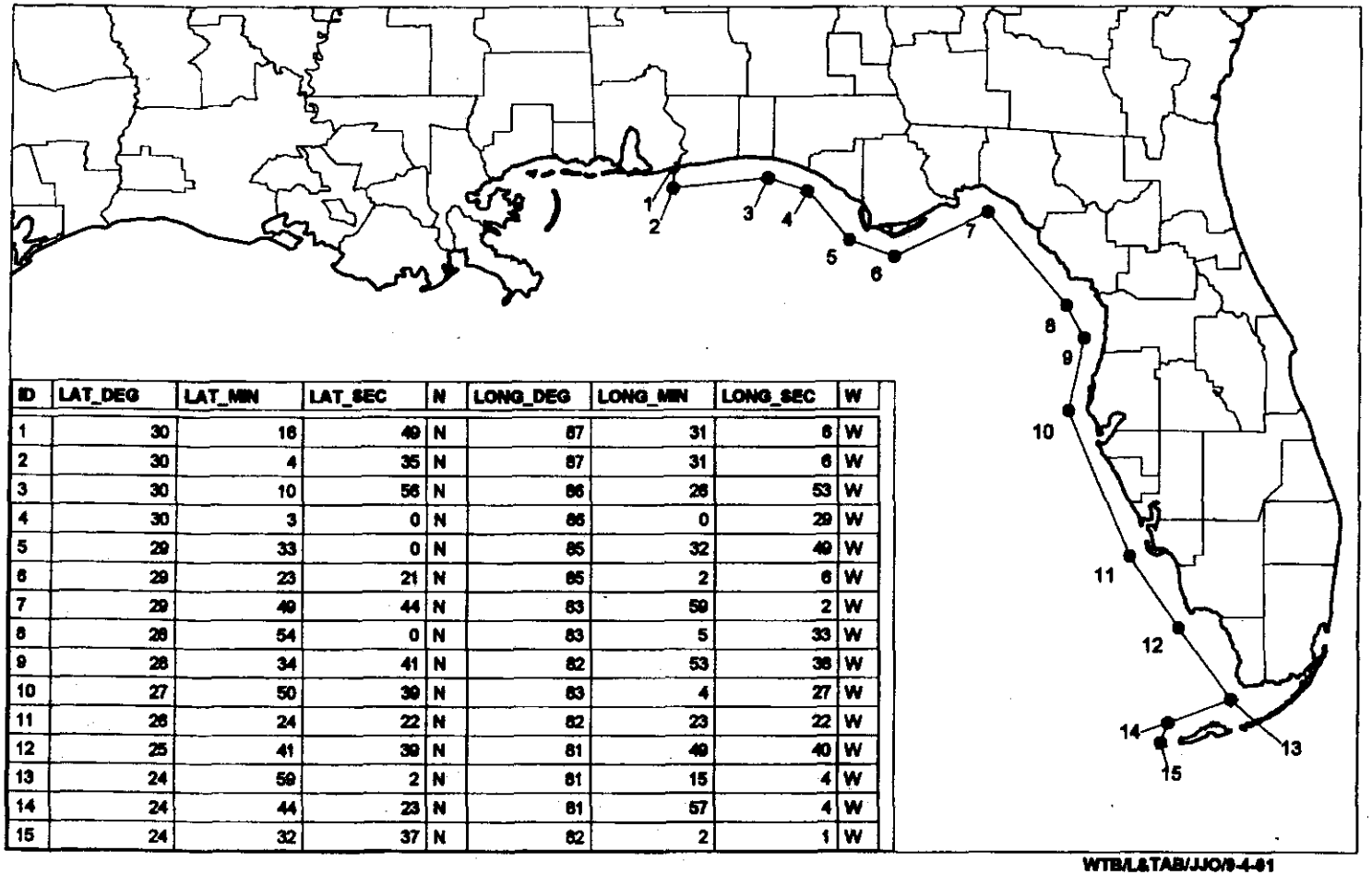
Magalie Roman Salas
Secretary

APPENDIX A

MAP OF EASTERN GULF COASTAL ZONE COORDINATES

Appendix A

Gulf of Mexico Coastal Zone for the the Cellular Radiotelephone Service



ID	LAT_DEG	LAT_MIN	LAT_SEC	N	LONG_DEG	LONG_MIN	LONG_SEC	W
1	30	16	49	N	87	31	6	W
2	30	4	35	N	87	31	6	W
3	30	10	56	N	86	28	53	W
4	30	3	0	N	86	0	29	W
5	29	33	0	N	85	32	49	W
6	29	23	21	N	85	2	6	W
7	29	49	44	N	83	59	2	W
8	28	54	0	N	83	5	33	W
9	28	34	41	N	82	53	38	W
10	27	50	39	N	83	4	27	W
11	26	24	22	N	82	23	22	W
12	25	41	39	N	81	49	40	W
13	24	59	2	N	81	15	4	W
14	24	44	23	N	81	57	4	W
15	24	32	37	N	82	2	1	W

WTB/L&TAB/JJO/9-4-01

APPENDIX B

PHASE II AND *DE MINIMIS* EXTENSION APPLICATIONS

The following pending Phase II applications for unserved area licenses in the Gulf of Mexico Service Area (GMSA) and applications for *de minimis* extensions into the GMSA will be dismissed. Any associated pleadings relating to these applications are also dismissed.

Cellular Block "A" Applications

07433-CL-MP-92
07440-CL-MP-92
01091-CL-CP-95
01094-CL-CP-95
01096-CL-CP-95
01328-CL-CP-95
01329-CL-CP-95
02025-CL-CP-95
02163-CL-CP-95
02165-CL-CP-95
04160-CL-CP-95
05605-CL-P2-95
05913-CL-MP-95
06361-CL-P2-95
01743-CL-P2-96
04235-CL-P2-96
04992-CL-P2-96
00700-CL-P2-97
02590-CL- -97
02591-CL- -97
02592-CL- -97
02593-CL- -97
02594-CL- -97
02595-CL- -97
02596-CL- -97
02597-CL- -97
02600-CL-P2-97
01242-CL-MP-98
01243-CL-MP-98
01244-CL-MP-98
01245-CL-MP-98
02407-CL-P2-98

Cellular Block "B" Applications

10152-CL-P-306-B-93
01621-CL-MP-93
01613-CL-MP-93
04076-CL-MP-95
04915-CL-MP-95
06794-CL-MP-95
07427-CL-MP-95
00103-CL-MP-96
02245-CL-MP-96
03856-CL-P2-97
03857-CL-P2-97
03858-CL-P2-97
03859-CL-MP-97
03860-CL-MP-97

APPENDIX C

FINAL RULES

Part 22 of Title 47 of the Code of federal Regulations is amended as follows:

1. Section 22.99 is amended by adding the following definition, inserted in proper position to maintain alphabetical order:

§ 22.99 Definitions

* * * * *

Gulf of Mexico Service Area (GMSA). The cellular market comprising the water area of the Gulf of Mexico bounded on the West, North and East by the coastline. Coastline, for this purpose, means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea, and the line marking the seaward limit of inland waters. Inland waters include bays, historic inland waters and waters circumscribed by a fringe of islands within the immediate vicinity of the shoreline.

* * * * *

2. Section 22.911 is amended by removing the Note to paragraph (a), and revising paragraphs (a)(2), to read as follows:

§ 22.911 Cellular geographic service area.

* * * * *

(a) * * *

(2) For cellular systems with facilities located within the Gulf of Mexico Service Area, the distance from a cell transmitting antenna to its SAB along each cardinal radial is calculated as follows:

* * * * *

3. Section 22.946 is amended by adding a new table H-1 following paragraph (a) to read as follows:

§ 22.946 Service commencement and construction periods for cellular systems

* * * * *

Type of cellular system	**Required to commence service in**
The first system authorized on each channel block in markets 1-90	36 months
The first system authorized on each channel block in all other markets and any subsequent systems authorized pursuant to contracts in partitioned markets	18 months
The first system authorized on each channel block in the Gulf of Mexico Exclusive Zone	No requirement
All other systems	12 months

* * * * *

4. Section 22.947 is amended by revising the introductory paragraph to read as follows:

§ 22.947 Five-year buildout period.

Except for systems authorized in the Gulf of Mexico Exclusive Zone, the licensee of the first cellular system authorized * * *

* * * * *

5. Section 22.949 is amended by revising the introductory paragraph to read as follows:

§ 22.949 Unserved area licensing process.

This section sets forth the process for licensing unserved areas in cellular markets on channel blocks for which the five year build-out period has expired. This process has two phases: Phase I and Phase II. This section also sets forth the Phase II process applicable to applications to serve the Gulf of Mexico Coastal Zone.

* * * * *

6. A new Section 22.950 is added to read as follows:

§ 22.950 Provision of service in the Gulf of Mexico Service Area (GMSA)

The GMSA has been divided into two areas for licensing purposes, the Gulf of Mexico Exclusive Zone (GMEZ) and the Gulf of Mexico Coastal Zone (GMCZ). This section describes these areas and sets forth the process for licensing facilities in these two respective areas within the GMSA.

(a) The GMEZ and GMCZ are defined as follows:

(1) Gulf of Mexico Exclusive Zone. The geographical area within the Gulf of Mexico Service Area that lies between the coastline line and the southern demarcation line of the Gulf of Mexico Service Area, excluding the area comprising the Gulf of Mexico Coastal Zone.

(2) Gulf of Mexico Coastal Zone. The geographical area within the Gulf of Mexico Service Area that lies between the coast line of Florida and a line extending approximately twelve nautical miles due south from the coastline boundary of the States of Florida and Alabama, and continuing along the west coast of Florida at a distance of twelve nautical miles from the shoreline. The line is defined by Great Circle arcs connecting the following points (geographical coordinates listed as North Latitude, West Longitude) consecutively in the order listed:

(1)	30°16'49"N 87°31'06"W	(9)	28°34'41"N 82°53'38"W
(2)	30°04'35"N 87°31'06"W	(10)	27°50'39"N 83°04'27"W
(3)	30°10'56"N 86°26'53"W	(11)	26°24'22"N 82°23'22"W
(4)	30°03'00"N 86°00'29"W	(12)	25°41'39"N 81°49'40"W
(5)	29°33'00"N 85°32'49"W	(13)	24°59'02"N 81°15'04"W
(6)	29°23'21"N 85°02'06"W	(14)	24°44'23"N 81°57'04"W
(7)	29°49'44"N 83°59'02"W	(15)	24°32'37"N 82°02'01"W
(8)	28°54'00"N 83°05'33"W		

(a) Service Area Boundary Calculation. The service area boundary of a cell site located within the Gulf of Mexico Service Area is calculated pursuant to section 22.911(a)(2) of this chapter. Otherwise, the service area boundary is calculated pursuant to section 22.911(a)(1) or (b) of this chapter.

(b) Operation within the Gulf of Mexico Exclusive Zone (GMEZ). GMEZ licensees have exclusive right to provide service in the GMEZ, and may add, modify, or remove facilities anywhere within the GMEZ without prior Commission approval. There is no five-year buildout period for GMEZ licensees, no requirement to file system information update maps pursuant to 22.947 of this chapter, and no unserved area licensing procedure for the GMEZ.

(c) Operation within the Gulf of Mexico Coastal Zone (GMCZ). The GMCZ is subject to the Phase II unserved area licensing procedures set forth in section 22.949(b) of this chapter.

APPENDIX D

FINAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act (RFA),[81] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Second Further Notice of Proposed Rulemaking* in WT Docket No. 97-112 and CC Docket No. 90-6, released April 16, 1997 (*Second Further Notice*).[82] The Commission sought written public comment on the proposals in the Second Further Notice, including comment on the IRFA. The comments received are discussed below. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[83]

A. Need for, and Objectives of, the Order

2. In this *Report and Order*, we resolve certain issues raised in the *Second Further Notice of Proposed Rule Making* in this proceeding, in which we proposed changes to our cellular service rules for the Gulf of Mexico Service Area (GMSA). Our decision also responds to the remand by the United States Court of Appeals for the District of Columbia Circuit in *Petroleum Communications v. FCC*,[84] which was the result of an appeal of prior rules for licensing in the Gulf of Mexico (Gulf) adopted in the Commission's *Unserved Area Third Report and Order*.[85]

3. In the *PetroCom* decision, the D.C. Circuit reversed and remanded certain aspects of the unserved area rules as they applied to the Gulf. The Court found that the Commission had failed adequately to consider the distinctive nature of Gulf-based service, which relied on movable drilling platforms for placement of cell sites, in comparison to land-based service, which used stationary sites. The Court stated that, while it did not foreclose the possibility of a convincing rationale for applying a uniform standard to both Gulf and land-based licensees, the Commission had failed to adequately justify the decision in the *Unserved Area* proceeding to treat Gulf licensees in the same manner as land-based cellular licensees in light of their reliance on transitory sites.[86] The Court remanded the issue and instructed the Commission to vacate the rule that defined the Gulf carriers' Cellular Geographic Service

[81] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[82] Cellular Service and Other Commercial Mobile Radio Services in the Gulf of Mexico, WT Docket No. 97-112; Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, CC Docket No. 90-6, *Second Further Notice of Proposed Rule Making*, 12 FCC Rcd 4578 (1997) (*Second Further Notice*). Although the *Second Further Notice* was adopted and released in 1997, it was inadvertently not published in the Federal Register at that time, as required under the Administrative Procedure Act. The *Second Further Notice* was published in the Federal Register on April 25, 2000. 65 Fed. Reg. 24168. The IRFA was inadvertently not published in the Federal Register at the time, as required by the RFA. The IRFA was published in the Federal Register on September 26, 2000, 65 Fed. Reg. 57798.

[83] *See* 5 U.S.C. § 604.

[84] *Petroleum Communications, Inc. v. FCC*, 22 F.3d 1164 (D.C. Cir. 1994) (*PetroCom*).

[85] Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, CC Docket 90-6, *Third Report and Order and Memorandum Opinion and Order on Reconsideration*, 7 FCC Rcd 7183 (1992) (*Unserved Area Third Report and Order*).

[86] *PetroCom*, 22 F.3d at 1173.

Areas (CGSA) based on their areas of actual service.[87] The effect of the remand was the restoration of the original rules that defined the service area of the Gulf carriers as the entire GMSA, regardless of the location of their platform-based cell sites.

4. Following the *PetroCom* decision, the Commission issued the *Second Further Notice*, in which it initiated a comprehensive reexamination of the cellular service rules for the Gulf.[88] Specifically, the Commission proposed dividing the GMSA into a Coastal Zone and an Exclusive Zone.[89] Under this proposal, the Coastal Zone would consist of the portion of the GMSA extending from the coastline of the Gulf of Mexico to the twelve-mile offshore limit, while the Exclusive Zone would extend from the twelve-mile limit to the southern boundary of the GMSA. In the Exclusive Zone, the two existing Gulf carriers would be able to move their offshore transmitters freely and to expand or modify their systems without being required to file additional applications, obtain prior Commission approval, or face competing applications for the right to serve the territory.[90] In the Coastal Zone, we proposed to apply our Phase II unserved area licensing rules, as adopted in the *Competitive Bidding Ninth Report and Order*.[91] Thus, within the Coastal Zone, any qualified applicant (including both Gulf and land-based carriers) would be permitted to serve unserved areas, and all mutually exclusive applications would be subject to competitive bidding procedures.

5. In this *Report and Order*, we adopt a bifurcated approach to cellular licensing in the Gulf, based on the differences between the deployment of cellular service in the Eastern Gulf (the Florida Gulf coast) and the Western Gulf (the Texas, Louisiana, Mississippi, and Alabama Gulf Coast). In the Eastern Gulf, where there are no offshore oil and gas drilling platforms on which to site cellular facilities, we adopt our proposal to establish a Coastal Zone in which our cellular unserved area licensing rules will apply. In the Western Gulf, we find that the extensive deployment of both Gulf-based and land-based facilities that has occurred in the past few years makes adoption of our *Second Further Notice* proposal impractical. Instead, we conclude that cellular service in the Western Gulf should continue to be governed by current rules, with certain modifications to facilitate negotiated solutions to ongoing coverage conflicts between Gulf-based and land-based carriers. Accordingly, we establish the Gulf of Mexico Exclusive Zone, encompassing the Western Gulf and areas of the Eastern Gulf outside of the Coastal Zone, in which the Gulf carriers will have the exclusive right to operate.

6. The *Second Further Notice* also requested comment regarding possible operations in the Gulf by Commercial Mobile Radio Services (CMRS) licensees for services other than cellular.[92] Given the limited comment we have received on these issues, we decline to adopt specific licensing and service rules for the provision of non-cellular services in the Gulf at this time. We conclude, however, that the boundaries of non-cellular CMRS markets with market areas that are derived from the aggregation of counties (e.g. Economic Areas, Basic Trading Areas), are coterminous with county boundaries absent specific service rules to the contrary.

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[87] *Id.* (vacating former rule section 22.903(a), as it applied to the Gulf carriers).

[88] *Second Further Notice*, 12 FCC Rcd at 4578, paras. 3-4.

[89] *Id.* at 4589, para. 27.

[90] *Id.*

[91] Implementation of Section 309(j) of the Communications Act -- Competitive Bidding; Amendment of Part 22 of the Commission's Rules to Provide for the Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, *Ninth Report and Order*, 11 FCC Rcd 14769 (1996).

[92] *Second Further Notice*, 12 FCC Rcd at 4601, para. 63.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

7. Although we have received a number of comments in response to the *Second Further Notice,* we received only one comment in response to the IRFA. However, as described in Section E. below, we have nonetheless considered potential significant economic impacts of the rules on small entities.

8. Comments raised in response to the *Second Further Notice* regarding proposals that may have an impact on small entities. In response to the *Second Further Notice*, we received a number of comments and alternative proposals from land-based and Gulf-based carriers, many of which have been supplemented recently with *ex parte* presentations. Some commenting land carriers generally support our proposal to bifurcate the GMSA into a Coastal Zone and Exclusive Zone,[93] while most oppose our proposal to use cellular unserved area licensing rules to award licenses in the Coastal Zone.[94] Many of the land-based carriers support a proposal by ALLTEL to treat the Coastal Zone as a "buffer zone" extending twelve miles out to sea from the Gulf coastline. Within this buffer zone, ALLTEL proposes that Gulf and land carriers could freely extend their service area boundaries (SABs), subject to mandatory frequency coordination, but without protection from subscriber capture.[95] In the GMSA outside the buffer zone, Gulf carriers would be fully protected from interference.[96]

9. A second alternative proposal has been advanced by PetroCom, a Gulf licensee, and US Cellular, an adjacent land-based licensee in certain markets. PetroCom and US Cellular advocate a bifurcated approach in the Eastern and Western Gulf. In the Eastern Gulf, they propose that we extend the GMSA boundary ten miles seaward from the shoreline, thus allowing land-based carriers in Florida to expand their coverage over water to that extent. In the Western Gulf, PetroCom and US Cellular would retain the existing GMSA boundary along the coastline, and for a period of five years would prohibit either side from expanding over that boundary without the other carrier's consent. After five years, their proposal would allow a land carrier to serve portions of the Gulf from land without consent from the Gulf carrier, so long as the latter was not serving that area, but the Gulf carrier would have the right to "reclaim" the area if a new or relocated drilling platform enabled it to provide service.[97]

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[93] ALLTEL Further Comments at 9-10; AT&T Further Reply Comments at 2; BellSouth Further Comments at 2; Centennial Ex Parte at 2; Dobson Further Reply Comments at 3; GTE Further Comments at 13; and MobilTel Reply Comments at 2.

[94] Initially, many land-based carriers supported the creation of an Exclusive Zone but advocated extending their market boundaries to the boundary of the Exclusive Zone in lieu of creating a separate Coastal Zone. *See* AT&T Wireless Comments at 4; AT&T Wireless Reply Comments at 4-5; Palmer Comments at 3-4; Texas RSA Reply Comments at 1-3; BellSouth Comments at 4; Centennial Reply Comments at 2; GTE Comments at 2-3; GTE Reply Comments at 3; MobileTel Comments at 2; MobileTel Reply Comments at 3; SBMS Comments at 9. This approach, according to these commenters, would be consistent with geographic areas established in other services and would promote regulatory parity among wireless services. 360° Reply Comments at 5; AT&T Wireless Comments at 6; Centennial Reply Comments at 2; GTE Reply Comments at 9-10.

[95] ALLTEL Further Comments at 9-10.

[96] According to ALLTEL and supporting commenters, this two-zone approach simultaneously addresses the land carriers' interest in providing reliable service to their customers throughout their licensed areas and the Gulf carriers' interest in being able to relocate sites without forfeiting CGSA. ALLTEL Further Comments at 9-10; AT&T Further Reply Comments at 2; BellSouth Further Comments at 2; Centennial Ex Parte at 2; Dobson Further Reply Comments at 3; GTE Further Comments at 13; and MobilTel Reply Comments at 2.

[97] PetroCom and US Cellular also propose that certain non-mutually exclusive Phase II applications to serve coastal waters should be granted.

10. Another commenter, Coastel, argues that the current rules are sufficient to meet the Commission's objectives, and therefore proposes that we terminate this rulemaking without adopting new rules.[98] Coastel asserts that the Gulf carriers have substantially expanded their coverage of the Gulf in recent years, eliminating gaps in coverage and providing more reliable service to coastal waters in the Gulf.[99] Coastel contends that this change in circumstances obviates the need for further rulemaking, and argues that the Commission's proposals in the *Second Further Notice* would not reduce conflict because many issues would still remain to be resolved between carriers.[100]

11. With respect to the issue of whether or not to create Gulf of Mexico service areas for non-cellular commercial mobile radio services (CMRS), a few commenters state that customers in the Gulf would benefit from additional CMRS options.[101] Others, however, oppose the creation of additional market areas in the Gulf.[102] Commenters argue that creating Gulf area licenses in other services would create more problems than would be solved.[103]A few commenters assert that incumbent licensees with markets adjacent to the Gulf are already authorized to serve the Gulf's offshore areas.[104]

12. Certain commenters also express concern over our proposal to dismiss all pending Phase II and *de minimis* applications. Some commenters object to our dismissing applications because applicants have spent time and resources to file the applications, and suggest that we process the pending applications instead.[105]

13. Further, the two Gulf carriers argue that they should be permitted to site their transmitters on land.[106] Other commenters argue that such sites should not be permitted, because interference and capture issues will likely arise if Gulf carriers are permitted to locate transmitters on land without the land-based carrier's consent.[107] Commenters also generally oppose the proposal to adopt a "hybrid" propagation

[98] Comments of Bachow/Coastel at 5-6; Written *Ex Parte* Presentation of Bachow/Coastel, L.L.C., filed April 4, 2001 at i.

[99] *Id.* at 8.

[100] Coastel Further Comments at 5-6, 16.

[101] *See e.g.* ProNet Comments at 3; SOSCo Comments at 4; API Reply Comments at 4-5; Stratos Offshore Services Further Comments at 3-10.

[102] *See e.g.* BellSouth Reply Comments at 2-3; Nextel Reply Comments at 3; Sprint PCS Reply Comments at 2-3.
[103] DW Communications Further Comments at 8-15.

[104] *See e.g.* BellSouth Reply Comments at 2-3; Sprint PCS Reply Comments at 2; Sprint Further Comments at 1-7; Verizon Wireless Comments at 1-5.

[105] *See e.g.* Centennial Reply Comments at 8-9; Radiofone Comments at 8; PetroCom and US Cellular Joint Comments.

[106] *See e.g.* Coastel Comments at 25; Coastel Reply Comments at 24; PetroCom Comments at 13-14.

[107] *See e.g.* 360° Communications Comments at 10; AT&T Wireless Comments at 7; MobileTel Comments at 6; Palmer Comments at 12; AT&T Wireless Reply Comments at 7; BellSouth Reply Comments at 7-8; SBMS Reply Comments at 4.

approach that would account for signals in the Gulf coastal region that are transmitted over both land and water.[108] Commenters argue that a hybrid formula would be unworkable and expensive.[109]

14. Comment in response to the IRFA. In an ex parte submission filed on August 21, 2001, PetroCom revised its proposal and that of U.S. Cellular for consideration by the Commission as an alternative to the agency's proposed rules in this proceeding pursuant to the RFA.[110] PetroCom contends that it has opposed any changes to the current definition of its CGSA on the Western (non-Florida) side of the Gulf where it has fully built out infrastructure providing cellular service to customers throughout the proposed Coastal Zone, and that such action would adversely impact the proposed Coastal Zone rules.[111] PetroCom states that there is no factual, legal or policy reason to change the current rules that require it's consent to the SAB extensions of land carriers that cross the coastline into it's CGSA.[112]

15. PetroCom asserts that paragraphs 64-72 of the *Second Further Notice* violates several RFA requirements.[113] Among its assertions, PetroCom states that the Commission's IRFA does not describe the impact of the proposed Coastal Zone on small entities, and that the Commission failed to describe alternatives to the Coastal Zone as required by the RFA.[114] Further, PetroCom asserts that the Commission failed to provide a small entity impact analysis with respect to the agency's proposal and an analysis of alternatives.[115] Further still, PetroCom calls attention to the Commission's IRFA in the *Second Further Notice*, which it avers, contained no discussion or analysis of the 15-day reporting rule that was proposed in paragraph 47 which conflicts with Section 1.947 of the rules that contains a 30-day reporting rule.[116] PetroCom also asserts that the Commission's definition of a small business has not complied with SBA rules.[117]

16. PetroCom states that there is nothing in the record that will support a finding in an FRFA that the creation of a Coastal Zone as proposed in the *Second Further Notice* is the best alternative.[118] Further, PetroCom asserts that the alternatives advocated by other carriers (*see infra*) will significantly affect the

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[108] *See e.g.* 360° Communications Comments at 7; AT&T Wireless Comments at 10; Palmer Comments at 10; Vanguard Comments at 5; Coastel Reply Comments at 18-19.

[109] *See e.g.* 360° Communications Comments at Attachment A, 3-4. 360° Communications argues that the hybrid formula would have to determine where the land/water boundaries exist and that the only way to do that in predictive models is through the use of digital topography data. 360° argues that use of the hybrid formula would place an undue burden upon carriers because the digital topography data is extremely expensive.

[110] *See Ex Parte* Submission of Revised Proposal as Alternative to Proposed Rules Pursuant to the Regulatory Flexibility Act of PetroCom at 1, filed August 21, 2001.

[111] *Id.* at 3-4.

[112] *Id.* at 4.

[113] *Id.* at 4-5.

[114] *Id.* at 5-6.

[115] *Id.*

[116] *Id.*

[117] *Id.* at 6.

[118] *Id.*

annual revenues of the Gulf carriers.[119] PetroCom argues that, among the various alternatives, its joint proposal best minimizes adverse impacts on small entities.[120]

C. Description and Estimate of the Number of Small Entities to which the Rules Will Apply

17. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[121] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[122] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[123] A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[124]

18. Cellular Licensees. Neither the Commission nor the SBA has developed a definition of small entities specific to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone (wireless) company employing no more than 1,500 persons.[125] According to the Census Bureau, only twelve radiotelephone (wireless) firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[126] Even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. According to a recent *Telecommunications Reporting Worksheet* data, 806 wireless telephony providers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, and Specialized Mobile Radio (SMR) telephony carriers, which are placed together in the data.[127] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. We estimate that there are fewer than 806 small wireless service providers that may be affected by these revised rules.

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[119] *Id.* at 7-8.

[120] *Id.* at 10-11.

[121] 5 U.S.C. § 603(b)(3).

[122] 5 U.S.C. § 601(6).

[123] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[124] 15 U.S.C. § 632.

[125] 13 C.F.R. § 121.201, NAICS code 513322.

[126] *1992 Census, Series UC92-S-1*, at Table 5, NAICS code 513322.

[127] *Trends in Telephone Service*, Table 16.3 (December 2000).

19. 220 MHz Radio Service – Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone (Wireless) Communications companies. This definition provides that a small entity is a radiotelephone (wireless) company employing no more than 1,500 persons.[128] According to the Census Bureau, only 12 radiotelephone (wireless) firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[129] If this general ratio continues in 2001 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

20. 220 MHz Radio Service – Phase II Licensees. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted criteria for defining small and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[130] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years.[131] The SBA has approved these definitions.[132] Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[133] In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.[134] Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[135]

21. 700 MHz Guard Band Licenses. In the *700 MHz Guard Band Order*, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[136] We have defined a small business

[128] 13 C.F.R. § 121.201, NAICS code 513322.

[129] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, NAICS codes 513321, 513322, and 51333.

[130] *220 MHz Third Report and Order*, 12 FCC Rcd 10943, 11068-70, at paras. 291-295 (1997).

[131] *Id.* at 11068-69, para. 291.

[132] *See* Letter to D. Phythyon, Chief, WirelessTelecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA, dated January 6, 1998.

[133] *See generally* "220 MHz Service Auction Closes," *Public Notice*, 14 FCC Rcd 605 (1998).

[134] "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," *Public Notice*, 14 FCC Rcd 1085 (1999).

[135] "Phase II 220 MHz Service Spectrum Auction Closes," *Public Notice*, 14 FCC Rcd 11218 (1999).

[136] *See* Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99-168, *Second Report and Order*, 15 FCC Rcd 5299 (2000).

as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.[137] Of the 104 licenses auctioned, 96 licenses were sold to 9 bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.[138]

22. Paging. The Commission has adopted a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. A small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[139] At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to a recent *Telecommunications Industry Revenue* data, 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data.[140] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 172 small paging carriers that may be affected by the rules adopted herein. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

23. Broadband Personal Communications Service (PCS). The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[141] For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[142] These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.[143] No

[137] *See generally* "220 MHz Service Auction Closes," *Public Notice*, Report No. WT 98-36 (WTB, rel. October 23, 1998).

[138] "700 MHz Guard Bands Auction Closes," *Public Notice*, 16 FCC Rcd 4590.

[139] 13 C.F.R. § 121.201, SIC code 4812.

[140] *Trends in Telephone Service*, Table 19.3 (February 19, 1999).

[141] *See* Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96-59, *Report and Order*, 11 FCC Rcd 7824, paras. 57- 60 (1996); *see also* 47 C.F.R. § 24.720(b).

[142] *See id.* at para. 60.

[143] *See, e.g.*, Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5581-84 (1994).

small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.[144] On March 23, 1999, the Commission reauctioned 347 C, D, E, and F Block licenses; there were 48 small business winning bidders. On January 26, 2001, the Commission completed the reauction of 422 C and F Block licenses. Of the 35 winning bidders, 30 were small business entities. Based on this information, we conclude that there are approximately 261 small entity broadband PCS providers as defined by the SBA and the Commission's auction rules.

24. Narrowband PCS. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

25. Specialized Mobile Radio (SMR). Pursuant to 47 C.F.R. § 90.814(b)(1), the Commission has defined "small business" for purposes of auctioning 900 MHz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and 800 MHz SMR licenses for the lower 230 channels on the 800 MHz band as a firm that has had average annual gross revenues of $15 million or less in the three preceding calendar years. The SBA has approved this small business size standard for the 800 MHz and 900 MHz auctions. Sixty winning bidders for geographic area licenses in the 900 MHz SMR band qualified as small businesses under the $15 million size standard. The auction of the 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten (10) winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard.

26. The auction of the 1,030 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven (11) winning bidders for geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. The Commission anticipates that a total of 2,823 EA licenses will be auctioned in the lower 80 channels of the 800 MHz SMR service. Therefore, we conclude that the number of 800 MHz SMR geographic area licensees for the lower 80 channels that may ultimately be affected by these proposals could be as many as 2,823. In addition, there are numerous incumbent site-by-site SMR licensees on the 800 and 900 MHz band. The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years.[145]

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

27. In this *Report and Order,* we reexamine our cellular service rules as they apply to the Gulf of Mexico Service Area. Our principal goals in this proceeding are to establish a comprehensive regulatory scheme that will reduce conflict between water-based and land-based carriers, to provide regulatory flexibility to Gulf carriers because of the transitory nature of water-based sites, and to provide reliable,

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[144] FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (rel. January 14, 1997).
[145] 47 C.F.R. § 90.814(b)(1).

seamless service to the Gulf region. We do not impose reporting or record keeping requirements in this *Report and Order*.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

28. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[146]

29. Creation of the Eastern Gulf Coastal Zone and Gulf of Mexico Exclusive Zone. The record in this proceeding demonstrates that different approaches toward the Eastern and Western Gulf are warranted. Unlike the Western Gulf, where the Gulf carriers have substantial offshore operations, the Eastern Gulf has no offshore oil or gas drilling platforms, and consequently, the Gulf carriers have no offshore base stations from which to provide service in the coastal waters off Florida. As we explain in our *Report and Order*, the best way to ensure that seamless cellular service is provided in the Eastern Gulf – both on land and in coastal waters -- is to create a Coastal Zone along the eastern portion of the GMSA. The current positioning of the eastern GMSA boundary directly along the Florida coastline does not accomplish this because it requires land carriers to engineer their systems to limit signal strength along the coast so as to avoid extending their coverage over water.

30. Establishing an Eastern Gulf Coastal Zone will improve cellular service to coastal areas by providing an opportunity for land-based carriers to extend their service area contours into territorial coastal waters, which will in turn enable them to add cell sites close to shore and to increase signal strength (and resulting coverage) from existing sites. This will not only lead to improved coverage of coastal communities, beach resorts, and coastal roads, but will also facilitate service to coastal boat traffic operating close to shore that can be served from land-based transmitters.

31. The remainder of the eastern half of the Gulf that is not included in the Eastern Gulf Coastal Zone will be designated, along with the entire Western Gulf, as the Gulf of Mexico Exclusive Zone. In this area, as proposed in the *Second Further Notice*, the Gulf carriers will have the unrestricted and exclusive right to operate cellular facilities. The Gulf carriers will have full flexibility to build, relocate, modify and remove offshore facilities throughout the Gulf of Mexico Exclusive Zone without seeking prior FCC approval or facing competing applications. While we do not agree with Coastel's position that no revisions to the rules are required, we believe that with relatively minor modifications, the current rules should provide sufficient incentives for both Gulf and land carriers to negotiate agreements that lead to seamless cellular coverage in coastal areas at competitive rates.

32. We recognize that as a result of our decision to apply unserved area licensing rules to the Eastern Gulf Coastal Zone, the Gulf carriers will no longer have the exclusive right to serve Florida coastal waters as part of the GMSA. We must weigh, however, not only the interests of the Gulf carriers, but also the interests of adjacent land-based carriers and, most of all, the need to provide cellular subscribers in the coastal region with seamless coverage by the most technically efficient means, whether from land or water-based sites. Because the Gulf carriers have no operations in the Eastern Gulf, our decision will not result in any reduction in cellular service or stranded investment in cellular facilities by the Gulf carriers.

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[146] 5 U.S.C. § 603 (c).

Moreover, given the lack of existing or planned installation of offshore platforms in the Eastern Gulf Coastal Zone, there is no likelihood that the Gulf carriers would be in a position to provide service there in the foreseeable future. Nonetheless, our decision does not preclude the Gulf carriers from seeking to provide service in the Coastal Zone in conformity with the unserved area licensing rules we are adopting for this region, either from land-based sites or from offshore platforms, at any point in the future should they become available.

33. We decline to adopt the ALLTEL proposal that the Coastal Zone be available for use by both Gulf and land-based carriers on a shared, coordinated basis. Although ALLTEL's proposal is designed to provide a basis for negotiated agreements, we believe the effect of this proposal would be to turn the Coastal Zone into a "no-man's land" where the prohibition against capture of a neighboring carrier's subscriber traffic would not apply. Moreover, by eliminating capture protection in a portion of the GMSA while retaining it in the CGSAs of the adjacent land carriers, the effect of the ALLTEL proposal would be to shift the protections afforded by existing rules in favor of the land carriers and against the Gulf carriers. We are concerned that adopting the ALLTEL proposal could reduce the incentive for land carriers to negotiate with Gulf carriers regarding traffic capture in the Coastal Zone. In addition, because the ALLTEL proposal does not provide a mechanism for settling frequency coordination disputes, there is a substantial likelihood that the Commission would be burdened with resolving such matters in instances where frequency coordination failed.

34. Service Area Boundary Formula. In this *Report and Order* we conclude that we should retain the existing land-based and water-based SAB formulas. We conclude that the two-formula approach adequately accounts for the different characteristics of signal propagation over land and water, and are easier to use than a hybrid formula. Moreover, retaining the existing SAB formulas is consistent with our overall decision to maintain the existing relationship between land and Gulf carriers in the Western Gulf as the basis for negotiated solution of their operational conflicts.

35. Placement of Transmitters. The Gulf carriers urge us to allow them to site their transmitters on land without the express consent of the applicable land-based licensees. We believe that a blanket prohibition against Gulf carriers placing their transmitters on land is not necessary, and we will rely on our CGSA and SAB extension rules to determine whether or not the placement of a particular transmitter is permissible.[147] Although the Gulf carriers argue that this action is insufficient, we believe that this will provide additional flexibility that will facilitate contractual resolutions of the issues facing adjacent carriers along the Gulf of Mexico.

36. Pending applications. In our *Report and Order*, we conclude that areas of the Eastern Gulf Coastal Zone that do not receive cellular service shall be defined as unserved areas and that Phase II competitive bidding procedures implemented for those areas. All unserved area applications previously filed to serve Eastern Gulf Coastal Zone areas are dismissed, as well as their associated petitions to deny. Similarly, we dismiss all pending *de minimis* extensions into the Gulf in this *Report and Order*. We considered whether or not the dismissal of pending licenses would impose significant additional costs or burdens on carriers. We find that this action will not prejudice carriers because such applicants have the opportunity to resubmit applications to the extent allowed under the new rules adopted in the *Report and Order*. We conclude that, in light of the passage of several years since the applications were filed, dismissing applications filed under superseded rules and allowing carriers currently serving or desiring to serve the Eastern Gulf Coastal Zone to submit new applications is the fairest and most efficient manner to license cellular service in that region.

[147] *See* 47 C.F.R. § 22.912. Section 22.912 provides that a SAB extension outside of a licensee's CGSA and into an adjacent market is permissible if the extension is *de minimis* or if the extension results from a contract with applicants or other licensees to allow SAB extensions into their CGSAs.

Report to Congress: The Commission will send a copy of this *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.[148] In addition, the Commission will send a copy of the *Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register.[149]

[148] *See* 5 U.S.C. § 801(a)(1)(A).

[149] *See* 5 U.S.C. § 604(b).