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 90-6

ORDER ON RECONSIDERATION

Adopted: June 10, 2003 Released: June 27, 2003

By the Commission:

I. INTRODUCTION

1. In this *Order on Reconsideration*, we resolve petitions for reconsideration filed against the *Report and Order* in WT Docket No. 97-112 (*Gulf Report and Order*), in which the Commission modified rules affecting cellular service in the Gulf of Mexico.[1] In this item, we affirm the decision in the *Gulf Report and Order* to use different formulas for predicting the propagation of cellular signals over land and over water as the basis for determining the service area boundaries (SABs) of land-based and water-based cell sites in the Gulf of Mexico area. We reinstate certain co-location applications that were inadvertently dismissed pursuant to the *Gulf Report and Order*, and modify section 22.912 of the Commission's rules to clarify that land-based cellular carriers are precluded from extending their SABs into any part of the Gulf of Mexico Exclusive Zone without the applicable Gulf carrier's consent. We also affirm that the market boundaries of Personal Communications Service (PCS) licensees adjacent to the Gulf of Mexico are co-extensive with county boundaries.

II. BACKGROUND

2. The Commission first licensed two cellular carriers to serve the Gulf of Mexico Service Area (GMSA) in 1985.[2] The two Gulf carriers were authorized to operate throughout the GMSA, but were limited to using transmitter sites on offshore platforms (predominately oil and gas drilling platforms). In 1992, the Commission established unserved area licensing rules for land-based cellular service, and established a new method of calculating a carrier's cellular geographic service area (CGSA) as part of

[1] *See* 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. 97-112, *Report and Order*, 17 FCC Rcd 1209 (2002) (*Gulf Report and Order*).

[2] *See* 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-P-84, Mimeo No. 6337 (CCB 1985).

those new rules.[3] The rules provided that a carrier's CGSA would be coterminous with its area of actual service, and set out a mathematical formula to be used by carriers to determine the service area boundary (SAB) of a cell that would approximate actual coverage.[4] In effect, the rules created a "use-or-lose" licensing regime: areas not within a carrier's CGSA were classified as unserved areas and subject to potential relicensing. The Commission further determined that the unserved area approach should be used to define the service areas of the Gulf carriers as well as land-based carriers, but it used a different formula to calculate the SABs of Gulf carrier cell sites because of the different propagation characteristics of radio signals over water.[5] Thus, as in the case of land-based carriers, the Gulf carriers' service areas no longer encompassed their entire original licensing area, but instead were limited to areas actually covered by the carriers' offshore platform-based transmitters. Areas not served by the offshore cell sites were considered "unserved" and subject to re-licensing.

3. In response, the Gulf carriers filed suit in the D.C. Circuit Court of Appeals challenging the Commission's decision to apply its unserved area rules to cellular service in the Gulf. The Gulf carriers contended that because their cell sites were situated on movable offshore platforms, it was unreasonable to define their rights to serve the Gulf based on a "use-or-lose" regime, which could potentially allow land-based licensees to permanently extend their service areas into areas of the Gulf where no offshore platform was currently located. In the *PetroCom* decision, the D.C. Circuit reversed and remanded this aspect of the Commission's decision.[6] The Court found that the Commission had failed to adequately consider the distinctive nature of Gulf-based service, which relied on movable platforms for placement of cell sites, in comparison to land-based service, which used stationary sites. The Court accordingly vacated the use-or-lose rule that defined the Gulf carriers' CGSAs based on their areas of actual service, and instructed the Commission to re-evaluate the issue.[7] The effect of the remand was the restoration of the original licensing areas of the Gulf carriers, regardless of the location of their platform-based cell sites at any particular time. However, the remand did not vacate other aspects of the rule, such as the formula used by the Gulf carriers to determine their service area boundaries.

4. In January 2002, the Commission released the *Gulf Report and Order*, which responded to the *PetroCom* remand and resolved several other outstanding issues relating to cellular service in the Gulf of Mexico. In the *Gulf Report and Order*, the Commission established a comprehensive regulatory scheme for the Gulf designed to facilitate the provision of cellular service to unserved areas of the Gulf region and resolve operational conflicts between Gulf and land carriers, while minimizing the disturbance to existing operations and contractual relationships. As part of this licensing scheme, the Commission adopted a bifurcated approach in the Gulf that reflected the differences in deployment of cellular service in the Eastern Gulf and the Western Gulf.[8] Due to the Gulf carriers' extensive deployment of offshore cellular

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[3] The CGSA is the area within which carriers are entitled to protection from interference and capture of subscriber traffic from adjacent carriers. *See* 47 C.F.R. § 22.912.

[4] 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 Report and Order*, 7 FCC Rcd 2449 (1992) (*Unserved Area Second Report and Order*).

[5] 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, *Third Report and Order and Memorandum Opinion and Order on Reconsideration*, 7 FCC Rcd 7183 (1992) (*Unserved Area Third Report and Order*).

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

[7] *Id.*

[8] For purposes of our rules, the "Western Gulf" consists of the combined coasts of Texas, Louisiana, Mississippi, and Alabama, while the "Eastern Gulf" consists of the Florida Gulf coast. Gulf carriers cannot deploy facilities in the coastal waters off Florida because there are no offshore oil or gas platforms in that region suitable for placement of cell sites. *See Gulf Report and Order*, 17 FCC Rcd at 1214, para. 13.

service in the Western Gulf, the Commission concluded that such service should continue to be governed by existing rules, with minor modifications, to facilitate negotiated solutions to ongoing technical and operational conflicts between Gulf-based and land-based carriers.[9] Therefore, the Commission determined that the entirety of the Western Gulf would be included within the "Gulf of Mexico Exclusive Zone" (GMEZ) in which the Gulf carriers would not be subject to use-or-lose rules, but would have full flexibility to build, relocate, modify and remove offshore facilities without any impact on their rights to provide service to "unserved" areas.[10] In the Eastern Gulf, the lack of offshore cellular deployment led the Commission to designate a Coastal Zone extending from the shoreline seaward twelve nautical miles, in which unserved area licensing rules would apply, while the remainder of the Eastern Gulf was included in the GMEZ, giving Gulf carriers full flexibility to operate beyond the twelve nautical mile limit.[11]

5. By using the existing rules as the basis for its decision in the Western Gulf, the Commission reaffirmed the coastline as the legal demarcation line for the Western Gulf separating the service areas of Gulf and land-based cellular carriers.[12] The *Gulf Report and Order* continued to bar land-based carriers from extending their SABs over any portion of the Western Gulf without the consent of the relevant Gulf carrier, regardless of whether the Gulf carrier is serving that portion of the Gulf from an offshore site. Conversely, the Gulf carriers are prohibited in the Western Gulf from extending contours over land that would encroach on areas served by land-based carriers, absent consent.[13] The Commission also determined that because of the different propagation characteristics of radio signals transmitted over land and water, it would continue to use different formulas to determine the SABs of land and water-based sites.[14] Accordingly, the Commission retained the rule that determined the reliable service area of Gulf-based sites using a 28 dBμV/m contour, while using a 32 dBμV/m contour to determine the reliable service area of land-based sites.[15]

6. Finally, the *Gulf Report and Order* addressed the issue of non-cellular services in the Gulf.[16] The Commission declined to create a Gulf licensing area for non-cellular services, noting the lack of support for this alternative in the record. However, the Commission clarified that in CMRS services that do not have a separately licensed Gulf market, licensees serving areas adjacent to the Gulf of Mexico were entitled to extend their coverage offshore. Because most non-cellular services use licensing areas based on county boundaries, which typically extend a specified distance over water pursuant to state law, the *Gulf Report and Order* clarified that such Commission licensing areas were co-extensive with county boundaries.[17] The *Gulf Report and Order* also stated that licensees could extend service further into the Gulf on a secondary basis, provided they did not cause interference to others.[18]

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[9] *See id.* at 1266-1220, paras. 21-34.

[10] *Id.* at 1219, para. 31.

[11] The rules established for the Eastern Gulf Coastal Zone were not subject to petition for reconsideration and are not at issue here.

[12] *Gulf Report and Order*, 17 FCC Rcd at 1218, para. 31.

[13] *Id.* at 1218, paras. 32-33.

[14] *Id.* at 1220-1221, paras. 35-36.

[15] *Id.*

[16] *Id.* at 1222-1224, paras. 43-46.

[17] *Id.* at 1224, para. 46.

[18] *Id.*

7. *Petitions for Reconsideration.* Petroleum Communications, Inc. (PetroCom) and VoiceStream Wireless Corp. (VoiceStream), filed petitions for reconsideration of the *Gulf Report and Order.*[19] In its petition, PetroCom, one of the two cellular licensees in the Gulf, argues that the Commission erred in adopting different propagation formulas to calculate the SABs of land and water-based cell sites, and contends that the Commission should have adopted a single formula applicable to all sites.[20] PetroCom also argues that this aspect of the Commission's decision is inconsistent with the record and violates the Regulatory Flexibility Act. In addition, PetroCom seeks relief with respect to several other matters. Specifically, PetroCom seeks: (1) reinstatement of certain co-location applications that it filed pursuant to agreements with land carriers,[21] (2) clarification that land carriers may not extend their coverage into any portion of the Western Gulf without the applicable Gulf carrier's consent; and (3) grandfathering of the service area contours for all Gulf facilities that existed as of April 16, 1997.

8. VoiceStream, a PCS carrier, seeks reconsideration or clarification of the Commission's decisions regarding PCS licensing in the Gulf.[22] VoiceStream argues that the *Gulf Report and Order* erroneously reduced the rights of existing PCS licensees along the Gulf coast to provide service extending out into the Gulf. VoiceStream asserts that PCS licensees bordering the Gulf are entitled to serve the entire Gulf area on a primary basis, and that the Commission should be precluded from establishing a separate PCS licensing area for the Gulf. Alternatively, VoiceStream advocates defining the market area boundaries of PCS licensees extending into the Gulf based on federal rather than state law.[23]

III. DISCUSSION

A. PetroCom Petition.

1. Two-Formula Approach.

9. *Background.* For the most part, PetroCom does not challenge the Commission's disposition of issues concerning the Western Gulf in the *Gulf Report and Order*, which substantially adopted the position advanced by the Gulf carriers that they should not be subject to use-or-lose licensing rules. PetroCom does seek reconsideration, however, of the Commission's decision to continue using different formulas to determine the SABs of land and Gulf-based transmitters. PetroCom contends that this aspect of the *Gulf Report and Order* gives land-based carriers a signal strength advantage over Gulf carriers, thereby enabling land-based carriers to encroach into the Gulf and capture water-based cellular traffic.[24] PetroCom maintains that either Gulf carriers should be entitled to use the 32 dBμV/m land-based formula to determine their predicted signal strength at the coastal boundary, or alternatively that the 28 dBμV/m

[19] A third petitioner, Texas RSA 20B2 Limited Partnership, also filed a petition for reconsideration, arguing that the Commission had erroneously dismissed its request for an alternative CGSA determination. That petition was withdrawn on February 4, 2003. "Wireless Telecommunications Bureau Approves Withdrawal of Petition for Reconsideration," *Public Notice*, 18 FCC Rcd 1826 (WTB 2003).

[20] Petition for Partial Reconsideration filed April 3, 2002 (PetroCom Petition). The other Gulf cellular licensee, Bachow/Coastel, L.L.C., did not seek reconsideration of the *Gulf Report and Order.*

[21] PetroCom filed its request for reinstatement of these applications in a separate petition for reconsideration filed February 22, 2002. *See* Application of PetroCom License Corporation, For Cell Site Co-Licensing at Various Locations in Markets Adjacent to the Gulf of Mexico, *Petition for Reconsideration*, filed February 22, 2002. Because PetroCom's April 3 petition for partial consideration incorporates arguments made in the February 22 petition, citations herein are to the April 3 petition unless otherwise indicated.

[22] VoiceStream Wireless Corporation Petition for Reconsideration, filed April 3, 2002 (VoiceStream Petition).

[23] VoiceStream Petition at 4-6, 8-9.

[24] PetroCom Petition at 14.

water-based formula should be used by land-based as well as Gulf carriers.[25] PetroCom also asserts that the Commission's adoption of the two-formula approach lacks adequate basis in the record and is procedurally flawed.

10. *Discussion.* We affirm our decision to use the two-formula approach in calculating service area contours for land-based and Gulf carriers. This approach recognizes a basic fact of signal propagation: due to the absence of path obstructions and typically quieter RF environment, a signal transmitted over water is likely to be stronger than a signal transmitted over land at the equivalent distance from the transmitter. Therefore, it is important to use formulas that take into account the different characteristics of land and water environments, as we have done here.

11. The 32 dBμV/m land-based formula incorporates factors that typically affect propagation of signals over land, such as rolling terrain. The land formula also assumes a noisier environment and that the subscriber will be using a mobile handset near ground level. On the other hand, assumptions factored into the 28 dBμV/m water formula are quite different. The water formula assumes that a signal in the Gulf will not have the same path obstructions encountered by radio signals over land. The water formula does not factor in rolling terrain, presumes a quieter noise environment, and also takes into account the different characteristics of water-borne cellular receivers, which are typically mast-mounted and therefore able to receive a signal at a greater distance from the transmitter. Thus, the water formula assumes that the typical Gulf subscriber operating on a boat or drilling platform will have a receive unit with a mast-mounted antenna at a height of approximately 30 feet.

12. Indeed, using 28 dBμV/m as the basis for defining reliable service over water was originally proposed by PetroCom itself, which contended that it more accurately approximated actual coverage in the Gulf. In the *Unserved Area* proceeding, the Commission initially proposed a water formula based on the 32 dBμV/m median field strength contour.[26] However, PetroCom argued that 28 dBμV/m more accurately predicted reliable service in the Gulf due to the stronger propagation characteristics of over-water transmissions.[27] In support of this argument, PetroCom submitted actual received power measurements from Gulf facilities to what it characterized as a typical mobile unit for a Gulf subscriber. The Commission concluded that PetroCom's technical exhibit provided a convincing demonstration of the service range of typical cellular facilities found in the Gulf, and therefore established the formula based on the data submitted by PetroCom.[28]

13. PetroCom now argues that the measurement data it submitted, and that the Commission used as a basis for the water formula, is now "stale."[29] Accordingly, it argues that we should not use the water formula. PetroCom does not, however, provide support for its assertion that the technical data supporting

[25] PetroCom Petition at 18.

[26] *See* 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, *Further Notice of Proposed Rulemaking*, 6 FCC Rcd 6158, 6159, para. 11-12 (1991) (*Further Notice*). The originally proposed water formula was derived from established field strength predictions of radio signals over sea water. *See* Kenneth Bullington, *Radio Propagation Fundamentals*, XXXVI Bell System Technical Journal, No. 3, 593 (May 1957).

[27] *See* PetroCom Comments in response to the *Further Notice*; *see* also *Unserved Area Third Report and Order*, 7 FCC Rcd at 7184, paras. 5-6. It is not surprising that a lower median field strength (28 dBμV/m compared to 32 dBμV/m) results in reliable service over water because water-based systems do not need to compensate for multipath fading and terrain blockage. Multipath fading and terrain blockage lead to a greater fluctuation in received signal levels at a given time and place on land. Thus, land systems require a higher median signal level whereas water systems can provide reliable service at a lower median level due to less fluctuation. As stated, this observation is reinforced by Petrocom's own data.

[28] *Unserved Area Third Report and Order*, 7 FCC Rcd at 7184, para. 6.

[29] PetroCom Petition at 19.

the water formula is no longer valid. We do not agree that propagation measurements become "stale" with the passage of time. We note that the land formula is based on measured data from the Carey Report which was issued in 1964.[30] Accordingly, we continue to consider the water formula a fair approximation of reliable service in the Gulf.

14. We also reject PetroCom's argument that a single formula will "equalize" the signal strengths of land-based and Gulf carriers at the shoreline. If we were to apply the land-based formula to establish the SABs of both land-based and Gulf carriers, as PetroCom proposes, the actual signal strength of the Gulf carrier's signal at the shoreline would very likely be higher than 32 dBμV/m. Because the land formula assumes rolling terrain that is not encountered over water, it will tend to underestimate the actual strength of a signal transmitted over water at the SAB radial distance. Thus, while the land formula will indicate that the Gulf carrier's SAB does not encroach on land, the Gulf carrier's actual 32 dBμV/m contour is likely to extend inland. Accordingly, use of the land formula over water could result in the Gulf carrier having an actual signal strength at the boundary that is greater than that of the adjacent land carrier, thereby leading to potential capture of the land carrier's customers.

15. Alternatively, if we were to apply the water formula to both land-based and Gulf carriers, the result would likely be dead spots and undesired carrier capture along the coastline. The water formula does not take into account variations in terrain that are present in over-land transmissions; accordingly, although use of the formula may make it appear that the land carrier has an adequate signal at the shoreline, in fact the signal may well be substantially weaker.[31] In contrast, the Gulf carrier would be operating at a signal strength sufficient to provide reliable service. The use of the water formula by all parties would therefore likely lead to capture of land traffic by the Gulf carrier because of the stronger Gulf signal.

16. PetroCom argues that using different formulas for land-based and Gulf carriers gives a signal strength advantage to land carriers[32] and thereby will cause subscriber capture problems for Gulf carriers. We agree that the two-formula approach will not prevent subscriber capture in all situations, and that capture of Gulf traffic by land carriers may occur on occasion. The Commission has always acknowledged that these formulas are theoretical models that approximate but do not precisely predict the extent of actual coverage provided by carriers beyond their respective sides of the coastline.[33] However, in situations where the majority of the signal path is over a single medium -- land or water -- the two-formula approach provides the most reasonable estimate of a given station's service area. We conclude that the PetroCom's proposal does not provide a better solution to subscriber capture than the two-formula approach, and that it is more likely to exacerbate capture problems in comparison to the two-formula approach.

17. PetroCom further argues that the two-formula approach does not preserve the status quo, but actually gives land-based carriers a bargaining advantage in negotiating agreements with Gulf carriers.[34]

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[30] *See* Roger B. Carey, "Technical Factors Affecting the Assignment of Facilities in the Domestic Public Land Mobile Service," Report No. R-6406 (1964).

[31] Moreover, because the 28 dBμV/m formula also assumes an elevated receiver antenna, the actual signal strength for a ground level receiver may be considerably lower. Factoring in additional overland propagation losses, and any induced attenuation by the land carrier in order not to cause extensions, the land signal could be well below 19 dBμV/m --- much lower than the 32 dBμV/m required to provide reliable service at the boundary.

[32] *See e.g.* PetroCom Reply Comments at 1-3; *see also* PetroCom Petition at 3.

[33] *See Further Notice*, 6 FCC Rcd at 6159, para. 9; *Unserved Area Second Report and Order*, 7 FCC Rcd at 2452, para. 8. In developing the formulas, the Commission sought to establish a simple and consistent methodology to facilitate application processing and promote the Commission's goal of expeditiously providing cellular service on a nationwide basis *Further Notice*, 6 FCC Rcd at 6159, paras. 6-9.

[34] *See* PetroCom Petition at 16.

We reject this view. Because the *Gulf Report and Order* prohibits land carriers from extending their SAB contours anywhere into the Western Gulf, a land carrier seeking to place a site close to the boundary has no choice but to negotiate with the applicable Gulf carrier, regardless of whether the Gulf carrier has a facility in the area. As noted in the *Gulf Report and Order*, we realize that in areas where Gulf carriers and land carriers operate in close proximity to one another, the Commission's technical rules will not resolve all conflicts. Accordingly, only cooperation between land-based and Gulf carriers can resolve these conflicts, and we conclude that the existing rules present the most viable means to bring about such resolution.

18. PetroCom also notes that it has negotiated agreements with land-based carriers in which both parties agreed to use of the land formula.[35] This is not an argument for adopting the land formula as an across-the-board rule. The Commission found that land and Gulf carriers had been using the existing formulas and had been successful in reaching negotiated agreements under the existing framework. The Commission consequently found that changing the SAB definitions 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.[36] Parties remain free to negotiate alternative arrangements. PetroCom's current extension and co-location agreements with land carriers (where PetroCom has filed applications showing a 32 dBμV/m contour) were the end result of negotiations, rather than the starting points.

19. PetroCom further argues that as part of the D.C. Circuit's *PetroCom* remand decision, the court vacated the water formula established in the *Unserved Area Third Report and Order* and reinstated the original cellular rule that defined reliable service, which was based on a 39 dBμV/m contour. Accordingly, PetroCom argues, it is entitled under the "status quo" to a signal strength of 39 dBμV/m at the coastline, a significantly stronger signal than either 28 or 32 dBμV/m.[37] We disagree with PetroCom's characterization of the effect of the remand on this issue. The issue that the Gulf carriers raised and which the D.C. Circuit Court remanded was whether the Gulf carriers should be limited to areas of actual service in light of their dependence on itinerant offshore platforms as sites for their transmitters. The Court held that the Commission had not addressed why it was treating land and Gulf carriers in the same manner (*i.e.*, limiting both land and Gulf carriers to areas of actual service) even though the Gulf carriers are dependent on oil and gas rigs as transmitter sites.[38]

20. Accordingly, the Court remanded "this issue to the Commission with instructions to vacate section 22.903(a)[39] insofar as it applies to GMSA licensees pending reconsideration."[40] Pending resolution of the remand, the Commission adopted a note to paragraph (a) of the rule, in which it identified the status quo: "[U]ntil further notice, the authorized CGSAs of the cellular systems licensed to serve the GMSA are those which were authorized prior to January 11, 1993."[41] The Commission believed then, and continues to believe now that the Court's intent was to direct the Commission to vacate only that portion of former section 22.903(a) that limited Gulf licensees' CGSAs to their existing areas of actual

[35] *See e.g.* PetroCom Petition at 16, 19.

[36] *Gulf Report and Order*, 17 FCC Rcd at 1221, para. 36.

[37] PetroCom Petition at 16.

[38] *PetroCom*, 22 F.3d at 1172.

[39] Former section 22.903(a) is now section 22.911(a). 47 C.F.R. § 22.911(a).

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

[41] 47 C.F.R. § 22.911(a) (1994). The referenced date of January 11, 1993 refers to effective date of the *Unserved Area Third Report and Order*. This note was removed in light of the Commission's decision in the *Gulf Report and Order*.

service -- the only issue as to which the Court was remanding[42] -- and not to compel the Commission to also vacate the formula it had adopted for determining reliable service in the Gulf, as to which no objection had been made and which played no role in defining the previous CGSA which was reinstated during the interim as a result of the Court's decision.[43]

21. Following the *PetroCom* remand, the Commission has applied the 28 dBμV/m water formula as the applicable standard for Gulf carriers.[44] This is consistent with our policy that, to the extent that Gulf carriers are allowed to serve up to the boundary of the GMSA, *i.e.*, the shoreline, they are permitted to operate at a height and power sufficient to provide reliable service at the shoreline. The use of the 39 dBμV/m field strength by Gulf carriers is inappropriate because it is clearly counter to data submitted to the Commission regarding the field strength necessary for reliable service by either land or water carriers. Indeed, carriers other than PetroCom have understood that the Gulf carriers were subject to the water formula. For example, Bachow/Coastel, the B-Block Gulf carrier, engineered its systems using the water formula as the applicable standard, and entered into agreements based on that formula.[45]

2. "Hybrid" Formula Proposal.

22. *Background.* In the *Second Further Notice*, the Commission proposed to create a Coastal Zone that would encompass coastal waters in both the Eastern and Western Gulf, and proposed to develop a "hybrid" propagation formula that would be used by both land-based and Gulf carriers to measure service area contours within the Coastal Zone.[46] In the *Gulf Report and Order*, the Commission declined to adopt the Coastal Zone proposal or a hybrid propagation formula, but instead, as noted above, concluded that the existing rules should be retained in the Gulf of Mexico Exclusive Zone. With respect to the hybrid formula proposal, the Commission noted that the record reflected little support for such a formula, and found that it would be difficult to establish a single formula that would accurately account for the variations in signal propagation over both land and water.[47]

23. In its reconsideration petition, PetroCom argues that the Commission's tentative conclusion in favor of developing a hybrid formula constituted an "acknowledgment" that a two-formula approach was

[42] *Id.* We note that if this issue had been raised at the time regarding the scope of the remand, the Commission would have immediately sought clarification from the court.

[43] The Court recognized that there were two components to former rule section 22.903(a): In the first, the rule identified the methodology by which reliable service was calculated for the Gulf carriers. Secondly, the rule set out the areas in which the Gulf carriers were entitled to protection, *i.e.* the CGSA. For former section 22.903(a), the area of reliable service and the area in which the Gulf carriers were entitled to protection were the same. The Court noted that the Commission had addressed the first component of the rule; that is, the Commission had adjusted the "reliable-service" formula to account for radio wave propagation conditions peculiar to Gulf-based systems. *See PetroCom*, 22 F.3d at 1172. However, the Court concluded that the Commission had not adequately explained why it was applying the second component of the rule, *i.e.* limiting the Gulf carriers to areas of actual service. *Id.*

[44] *See* Bachow/Coastel, L.L.C., Complainant, v. GTE Wireless of the South, Inc., Defendant, File No. WB/ENF-F-98-005, *Order*, 15 FCC Rcd 4484 (ENF 2000) (regarding the Formal Complaint filed by Bachow/Coastel, L.L.C., on August 28, 1998); Bachow/Coastel, L.L.C., Complainant, v. GTE Wireless of the South, Inc., Defendant, File No. WB/ENF-F-98-005, *Order on Review*, 16 FCC Rcd 4967 (2001).

[45] *See e.g.* licensing records for Call Signs KNKA412 (Coastel); Dobson Comments at 3.

[46] 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. 97-112, *Second Further Notice of Proposed Rulemaking*, 12 FCC Rcd 4578, 4592, para. 38.

[47] *Gulf Report and Order*, 17 FCC Rcd at 1221, para. 36.

inappropriate.[48] PetroCom also maintains that there was record support for a hybrid formula.[49] Accordingly, PetroCom argues that Commission erred in rejecting the hybrid formula and adopting the two-formula approach.[50]

24. *Discussion.* We find no merit in PetroCom's contention that the Commission erred in rejecting a hybrid approach in favor of retaining the two-formula approach. First, as noted above, the proposal in the *Notice* to create a hybrid formula was linked to the proposal to establish a Coastal Zone that could be served by both land and Gulf carriers, which the Commission ultimately did not adopt. Once the Commission decided to retain existing rules rather than establish a Coastal Zone in both the Eastern and Western Gulf, there was no longer a need to pursue development of a hybrid signal propagation formula as previously proposed. Second, we reject PetroCom's contention that there was a sufficient record to justify, much less compel, adoption of a hybrid formula. Although there were indeed some commenters who supported use of a hybrid formula, others did not. Moreover, few commenters actually proposed specific technical criteria for the development of such a formula, and the Commission found that those who did failed to provide the type of detailed technical analysis or supporting data (such as measurements) necessary to support their proposals. Given these and other factors, we continue to believe that a hybrid formula would be very difficult to develop, and that the benefits of such a formula do not outweigh the costs and complications involved in establishing and employing one.

3. Regulatory Flexibility Act requirements.

25. *Background.* PetroCom argues that the Commission violated the Regulatory Flexibility Act (RFA) because its Initial Regulatory Flexibility Analysis (IRFA) did not describe the potential impact on Gulf carriers of retaining the two-formula approach. PetroCom further argues that the Final Regulatory Flexibility Analysis (FRFA) in the *Gulf Report and Order* was flawed because it did not contain a description of the steps the Commission has taken to minimize the significant economic impact on the Gulf carriers of continuing to allow land carriers to utilize the land formula. PetroCom also contends that the Commission was required to include a statement in the FRFA why proposals for the use of "an equal strength rule" were rejected as alternatives.[51]

26. *Discussion.* The Regulatory Flexibility Act requires that agencies evaluate the effect that new regulations will have on small business entities.[52] When proposing a new rule, agencies must perform an IRFA discussing the proposed new rule's impact on small entities.[53] Further, when adopting a final rule, the agency must also perform a FRFA. The Commission complied with these requirements. However, PetroCom incorrectly asserts that as part of the RFA process, the Commission was required to analyze the effects that retaining *existing* rules would have on small entities. The Commission's decision to continue applying existing rules was not a new undertaking that falls under the provisions of the RFA.[54] Instead, after reviewing alternatives, the Commission determined that, in light of the difficulties of adopting a single formula that would apply in all cases, the existing regulatory environment should be retained

[48] *Id.* at 14.

[49] *Id.* at 15.

[50] *Id.* at 14.

[51] *Id.* at 20.

[52] 5 U.S.C. § 601 *et seq.*

[53] 5 U.S.C. § 603.

[54] *See Darrell Andrews Trucking, Inc. v. Federal Motor Carrier Safety Admin.*, 296 F.3d 1120, 1133, n. 15 (D.C. Cir 2002) (finding that a requirement that was a reasonable interpretation of a previously approved regulation did not represent the imposition of a new rule that demanded new compliance with the Paperwork Reduction Act and the RFA).

because of the flexibility provided by the Commission's rules for parties to enter into agreements that would allow carriers to choose for themselves which operating parameters to apply. This decision did not require additional discussion in the FRFA.

4. Other Issues.

a. PetroCom Co-location Applications.

27. *Background.* In December 1992, following the adoption of Gulf-specific cellular unserved area licensing rules in the *Unserved Area Third Report and Order*, the Commission began accepting Phase II applications for unserved area licenses in the GMSA. However, following the *PetroCom* remand, the Commission suspended processing of these applications pending reconsideration of the Commission's policies in the Gulf region. Similarly, the Commission ceased processing *de minimis* extension requests along the Gulf coast due to uncertainty regarding the rules for the GMSA. In the *Gulf Report and Order*, the Commission dismissed all pending Phase II applications and extension requests (as well as associated petitions to deny). The Commission reasoned that in light of length of time since the applications had been filed, the fairest and most efficient resolution was to dismiss all pending applications and allow the carriers to reapply.[55]

28. On reconsideration, PetroCom argues that, in dismissing all pending Phase II and *de minimis* extension applications, the Commission erroneously dismissed a number of PetroCom's applications that were filed pursuant to agreements to co-license sites on land in markets adjacent to the Gulf of Mexico. PetroCom argues that the dismissal of these applications conflicts with the Commission's stated intent in the *Gulf Report and Order* to encourage agreements between Gulf and land-based carriers.[56]

29. *Discussion.* We agree that PetroCom's referenced applications should not have been included among the Phase II and *de minimis* applications that were dismissed. As noted, a major goal of the *Gulf Report and Order* was to encourage parties to reach negotiated solutions to issues such as coverage, capture, and roaming rates. The policies set out in the *Gulf Report and Order* were also aimed at ensuring that existing contractual relationships are not disturbed. The dismissal of PetroCom's applications based on negotiated co-location agreements runs counter to that goal. Accordingly, we reinstate the applications cited in PetroCom's petition to pending status.[57]

b. Clarification regarding extensions into the GMEZ.

30. *Background.* In the *Gulf Report and Order*, the Commission gave the Gulf carriers full flexibility to build, relocate, modify, and remove offshore facilities throughout the GMEZ without seeking prior Commission approval or facing competing applications. Further, the Commission chose not to allow land carriers to make *de minimis* extensions into unserved areas of the GMEZ.[58] In light of these decisions, PetroCom seeks clarification of the relationship between rule section 22.950, which provides that the Gulf carriers are exclusively licensed to operate facilities in the GMEZ, and section 22.911, which details the Commission's rules regarding the calculation of carriers' CGSAs and SABs. PetroCom expresses concern that these rules could be misconstrued as meaning that a land carrier may extend service into the

[55] *Gulf Report and Order*, 17 FCC Rcd at 1222, para. 40.

[56] PetroCom Petition at 20-21.

[57] Specifically, the applications at issue are: File Nos. 02590-CL-97, 02593-CL-97, 02594-CL-97, 02595-CL-97, 02596-CL-97, 02600-CL-P2-97, 02407-CL-P2-97. We note that these applications were filed over six years ago; therefore, prior to final processing of these applications we will give Petrocom a brief opportunity to make any necessary amendments.

[58] *Gulf Report and Order*, 17 FCC Rcd at 1219, para. 32.

Gulf so long as it does not encroach upon a Gulf carrier's SAB contours.[59] PetroCom suggests that the CGSA definition of section 22.911(a)(2) be modified to clarify that a land carrier may not extend into any part of the GMEZ, served or unserved, without the Gulf carrier's consent.[60] Alternatively, PetroCom proposes that the Gulf carriers' CGSAs be defined as coterminous with the GMEZ.[61] PetroCom argues that failure to make these changes will undermine its co-location agreements if land carriers believe the rules permit non-consensual extensions into unserved portions of the GMEZ.

31. *Discussion.* We agree with PetroCom that our rules as currently worded may cause some confusion. Accordingly, we clarify that land-based carriers are precluded from extending their SABs into any part of the GMEZ, whether served by the applicable Gulf carrier or not, without the Gulf carrier's consent. We amend rule section 22.912 to reflect this fact.

32. We also take this opportunity to clarify, on our own motion, the wording of another rule section to remove confusion. In the *Gulf Report and Order*, the Commission amended section 22.911(a)(2) in order to reflect that areas of the Gulf of Mexico Coastal Zone would be subject to Phase II licensing and open to all carriers.[62] However, section 22.911(a)(2) in its current form may be misread as applying only to the two original Gulf (GMEZ) carriers. We therefore clarify that the rule applies to all cell sites actually located in the GMSA (whether in the GMEZ or GMCZ), and not just to GMEZ carriers.

c. Grandfathering of existing Gulf carrier operating parameters.

33. *Background.* PetroCom argues that it was material error for the Commission not to address an *ex parte* request made by PetroCom in October 2001, proposing that the Commission adopt a grandfathering rule that preserves the current operating parameters of all facilities that existed as of the release date of the *Second Further Notice*.[63] PetroCom argues that "current operating parameters" means the use of 32 dBμV/m contours as calculated using the land formula at the coastline.[64] According to this proposal, all operating parameters, including contour extensions that cross the coastline boundary, would be grandfathered using the land formula. PetroCom's proposal would allow a carrier to modify or construct a new site as long as any new cross-boundary extensions (also calculated using the land formula) remain within the extension of the originally grandfathered contour.[65]

34. *Discussion.* We decline to reconsider the grandfathering of existing cellular facilities as proposed by PetroCom. The *Gulf Report and Order* sought to maintain existing operational facilities to encourage carriers to maintain any agreements they entered into that resolved operational conflicts along the coastline boundary. Accordingly, the *Gulf Report and Order* did not affect any existing operating parameters, including the use of the land formula by Gulf carriers or cross-boundary contours, that might have resulted from such agreements. However, while the Commission grandfathered such existing operations, it did not grant carriers, either land carrier or Gulf carrier, a permanent right to encroach across the coastline boundary or the right to Gulf carriers to calculate contours using the land formula in the absence of agreements permitting them to do so. As previously discussed, the use of the land formula by Gulf carriers has never been the status quo for the Gulf carriers. Instead, the Gulf carriers are required to operate using the water formula, absent an agreement with the applicable land carrier. Given that the

[59] PetroCom Petition at 21.

[60] *Id.* at 21-22.

[61] PetroCom states that this change should be made along with a switch to the land formula for calculating contours.

[62] *See Gulf Report and Order*, 17 FCC Rcd at 1214, paras. 17-18.

[63] *See* Petroleum Communications, Inc. October 26, 2001 *Ex Parte.*

[64] PetroCom argues that it is entitled to operate at 39 dBμV/m at the coastline boundary.

[65] PetroCom Comments at 22

Commission has previously concluded that the use of the land formula by Gulf carriers is not appropriate, we must also decline to adopt PetroCom's proposal to "grandfather" facilities using the land formula that are not subject to agreements.

B. VoiceStream Petition.

35. *Background.* In the *Second Further Notice*, the Commission requested comment on whether the Commission should adopt licensing and service rules for non-cellular CMRS in the Gulf.[66] In the *Gulf Report and Order*, the Commission observed that although Gulf licensing areas have been established in several services, there was little support in the record for creating a Gulf licensing area for all non-cellular CMRS services. Instead, the Commission stated that it would take up the issue of establishing Gulf licensing areas on a service-by-service basis.

36. In response to the *Second Further Notice*, however, many land-based carriers in services that lacked a Gulf licensing area sought clarification regarding their ability to extend their coverage offshore. Addressing this issue, the Commission found in the *Gulf Report and Order* that it was 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.[67] The Commission further noted that the geographic service area definitions used for most non-cellular CMRS services -- including those for PCS -- are based on county boundaries, which typically extend over water pursuant to state law.[68] Accordingly, the *Gulf Report and Order* clarified that such Commission licensing areas are co-extensive with the county boundaries on which they are based.[69] The Commission also stated that licensees could provide service extending beyond county boundaries and 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.[70]

37. In its petition for reconsideration, VoiceStream argues that the *Gulf Report and Order* erroneously reduced the rights of existing PCS licensees along the Gulf coast to provide service extending out into the Gulf.[71] Prior to the *Gulf Report and Order*, VoiceStream contends, land-based PCS licensees assumed they had the right to provide service throughout the entire Gulf of Mexico on a primary basis, not just in those portions of the Gulf within state-defined county boundaries.[72] VoiceStream argues that this assumption was reasonable because the Commission did not establish a Gulf licensing area for PCS as it had in cellular, and did not identify any limits on the ability of land-based PCS carriers to extend service into the Gulf.[73] VoiceStream and other PCS licensee commenters also argue that they presumed that they could serve the entire Gulf of Mexico based on the PCS rules regarding signal strength, propagational characteristics of signals over water, and the absence of any PCS Gulf licensee that they

[66] *Second Further Notice*, 12 FCC Rcd at 4599, para. 58.

[67] *Gulf Report and Order*, 17 FCC Rcd at 1224, para. 46.

[68] *Gulf Report and Order*, 17 FCC Rcd at 1224, para. 46. The extent of county boundaries differ depending on the state bordering the Gulf: the county boundaries of Texas and Florida extend nine nautical miles out from the water line, Louisiana extends into the Gulf for three imperial nautical miles (one imperial nautical mile equals 6,080.2 feet), and Mississippi and Alabama extend three nautical miles (approximately 3.3 statute miles) from the coastline into the Gulf.

[69] *Gulf Report and Order*, 17 FCC Rcd at 1224, para. 46.

[70] *Id.*

[71] VoiceStream Petition at 1-2.

[72] *Id*

[73] *See* VoiceStream Reply Comments at 4.

would be required to protect from interference.[74] Commenters argue that PCS auction bidders relied on these factors in setting their bids for land-based licenses along the Gulf coast, and that it was reasonable for such bidders to assume that no separate PCS license would ever be created in the Gulf.[75]

38. VoiceStream and other commenters assert that by defining PCS licensing areas as co-extensive with county boundaries, allowing carriers to provide service in the Gulf beyond county boundaries only on a secondary basis, and leaving open the possibility of licensing separate PCS markets in the Gulf at a later date, the *Gulf Report and Order* has arbitrarily reduced the rights of existing PCS licensees.[76] VoiceStream contends that PCS licensees bordering the Gulf should be expressly authorized to serve the entire Gulf area on a primary basis, and that the Commission should be precluded from establishing a separate PCS licensing area for the Gulf. Alternatively, VoiceStream requests that if we conclude that PCS licensing areas along the Gulf coast are limited to county boundaries, we should redefine the market area boundaries of PCS licensees extending into the Gulf based on the federally-defined Exclusive Economic Zone (EEZ) which extends 200 nautical miles into the Gulf of Mexico.[77]

39. *Discussion.* We affirm the conclusion in the *Gulf Report and Order* that the licensing areas of PCS licensees along the Gulf coast are co-extensive with county boundaries. The Commission has clearly stated in its rules and proceedings that PCS is licensed using Major Trading Areas (MTAs) and Basic Trading Areas (BTAs), as defined in the Rand McNally Commercial Atlas and Marketing Guide.[78] The boundaries of MTAs and BTAs are expressly based on county boundaries.[79] Thus, we find that county boundaries define the licensing area borders for PCS licensees, both on land and in the Gulf.[80]

40. Similarly, the PCS technical rules regarding field strength limits at licensing area borders do not entitle licensees to extend service on a primary basis beyond the licensing areas specified on their

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[74] AT&T Wireless Comments at 3; Sprint Comments at 3-4; VoiceStream Petition at 2-3; VoiceStream Reply Comments at 3-4.

[75] Sprint Comments at 4.

[76] AT&T Wireless Comments at 3-4; Sprint Comments at 4-7; VoiceStream Petition at 2.

[77] *See* Presidential Proclamation No. 5030, 48 Fed. Reg. 10605 (1983).

[78] Rand McNally, *1992 Commercial Atlas & Marketing Guide*, 123rd Edition, 1992 (*Rand McNally*). *See* 47 C.F.R. § 24.202; Amendment Of The Commission's Rules To Establish New Personal Communications Services, GEN Docket No. 90-314, *Second Report and Order*, 8 FCC Rcd 7700, 7729, para. 64 (1993) (*PCS Second Report and Order*).

[79] *Rand McNally* at 39; *PCS Second Report and Order*, 8 FCC Rcd at 7732, para. 73. VoiceStream itself recognizes that MTAs and BTAs are based on county boundaries. VoiceStream Petition at 8.

[80] In support of the proposition that PCS carriers are entitled to serve the entire Gulf region, some commenters cite to a footnote in *Mobil Oil Telcom*, a Wireless Telecommunications Bureau order in which the Bureau stated: "Unlike cellular mobile service, there is no PCS licensee for the water areas of the Gulf of Mexico. Entities eligible to serve the Gulf of Mexico are the licensees of BTAs bordering the Gulf." Applications of Mobil Oil Telcom, Ltd., *Order on Reconsideration*, 11 FCC Rcd 4115, 4116, para. 10 (WTB 1996). *See* AT&T Wireless Comments at 3; Sprint Comments at 4; VoiceStream Petition at 3-4. However, commenters' reliance on this footnote is misplaced. *Mobil Oil Telcom* concerned a request by a 2 GHz fixed microwave operator who sought primary status for certain 2 GHz sites in the Gulf. In that order, the Bureau agreed with Mobil's argument that it should receive primary status because, *inter alia*, the sites at issue were far away from areas that PCS carriers were likely to serve and thus would not impose additional cost to any PCS carriers. The footnote language cited by commenters merely conveyed that there were no PCS licensees in the Gulf that would be affected by a grant of primary status to Mobil, and that the grant of primary status did not affect the interests of land-based PCS licensees to the extent that they were entitled to extend service into the Gulf. Thus, far from stating that land-based carriers have the right to serve the entire Gulf, this language suggests that their rights in the Gulf are insufficient to preclude granting primary status to a Gulf-based fixed microwave licensee.

authorizations. Nothing in the Commission's rules indicates that carriers may serve areas outside of their markets on a primary basis simply because there is no adjacent licensee. To the contrary, our rules state that the "holding of an authorization does not create any rights beyond the terms, conditions and period specified in the authorization."[81] We reject the argument that our conclusions here represent a "reduction" in the rights of PCS licensees, because primary rights to serve the Gulf beyond county boundaries were never granted as part of those licenses.

41. We also reject the argument that the Commission should grant land-based PCS licensees primary rights to serve the Gulf because PCS bidders allegedly relied on the lack of a separate PCS Gulf licensee in setting their bids.[82] In our proceeding on MDS/ITFS service in the Gulf, we rejected a similar argument that bidders for BTA-based MDS licenses along the Gulf coast could reasonably assume that there was no prospect of future licensing of the service in the Gulf:

> It would [not] have been reasonable for applicants [ ] to have based their bidding strategy upon the assumption that, in the future, the Commission would not designate a Gulf service area or auction authorizations for such a service area. As a general matter, in circumstances such as this, we expect all applicants when developing their bidding strategies to take into consideration potential allocation or auction determinations that would result in additional auctions in the service.[83]

In the case of PCS, nothing in the bidder information packages for the various PCS auctions, including maps that set out MTA and BTA boundaries, indicated that the Commission had foreclosed the possibility of creating a PCS licensing area in the Gulf at some time in the future.[84]

42. Finally, we see no basis to adopt VoiceStream's request that we change the MTA and BTA definitions in PCS to extend existing Gulf coast markets 200 nautical miles into the Gulf based on the federally-defined Exclusive Economic Zone. The Commission adopted the MTA and BTA market areas for PCS in 1993 after much debate over which type of service area is the most appropriate,[85] and has repeatedly affirmed its decision to use MTA and BTA market areas on reconsideration.[86] VoiceStream provides no compelling reason why we should revisit our MTA and BTA market definitions ten years after the PCS rules were adopted.

43. While we affirm that the licensing areas of land-based PCS licensees are co-extensive with county boundaries, we reiterate that this does not prevent such licensees from building facilities or extending their coverage further into the Gulf on a secondary basis so long as such coverage does not

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[81] *See* 47 C.F.R. § 1.903(b).

[82] Sprint Comments at 4.

[83] Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico, *Notice of Proposed Rulemaking*, WT Docket No. 02-68, RM-9718, 17 FCC Rcd 8446 (2002).

[84] Further, nothing in the Commission's orders or information provided to bidders indicates or explains how multiple, MTA and BTA licensees on the same spectrum block would be given the co-primary authority in the Gulf. In other words, because the Gulf coastline is curved, licensees could not reasonably infer that their markets extend into the Gulf because, at some point, they would intersect and overlap other markets.

[85] *See PCS Second Report and Order*, 8 FCC Rcd at 7729-7734, paras. 64-78.

[86] *See* Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, *Memorandum Opinion and Order*, 9 FCC Rcd 4957, 4986-4988, paras. 72-79 (1994); Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, *Third Memorandum Opinion and Order*, 9 FCC Rcd 6908, paras. 42-47 (1994).

cause interference to other operations. Moreover, we clarify that our use of the term "secondary" in this context does not imply the existence of a "primary" Gulf spectrum user with superior rights, nor does it imply that PCS licensees should expect that a primary carrier will be licensed. The term "secondary" signifies that PCS licensees who choose to build facilities or extend coverage into the Gulf beyond county boundaries do not have exclusive operating rights in such areas, and must accept interference as well as avoiding interference to others. As a practical matter, this enables land-based PCS to extend their coverage into the Gulf so long as they coordinate with one another, because there is no primary PCS licensee in the Gulf.

44. We also reiterate that we find no basis in the record to create a separate PCS Gulf licensee with primary rights in this proceeding. The *Gulf Report and Order* sought only to provide flexibility in cases where carriers in a particular service seek to establish a separate Gulf market.[87] In those cases, we would commence a proceeding to determine whether, based on a service's specific rules, a new Gulf market should be established. In the *Gulf Report and Order*, however, we did not find that a new PCS market should be created. To the contrary, we stated that the lack of support in the record suggests that there is limited interest among PCS carriers in serving offshore facilities in the Gulf.[88] We see no reason to revisit this issue. While we do not rule out the possibility that circumstances could change at some time in the future, we emphasize that we would only consider creation of a PCS Gulf licensing area based on a clear record demonstrating that such a step is in the public interest, and that the interests of land-based PCS licensees along the Gulf coast have been fully taken into account.

IV. PROCEDURAL MATTERS.

A. Supplemental Regulatory Flexibility Act Certification.

45. The Regulatory Flexibility Act of 1980, as amended (RFA)[89] requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."[90] The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[91] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[92] 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. As required by the RFA, a Final Regulatory Flexibility Analysis was incorporated in the *Gulf Report and Order*. This Supplemental Final Regulatory Flexibility Analysis is limited to matters raised on reconsideration.

46. In this order, we affirm the decision in the *Gulf Report and Order* to use different formulas for predicting the propagation of cellular signals over land and over water as the basis for determining the

[87] *Gulf Report and Order*, 17 FCC Rcd at 1224, para.45.

[88] *Id.*

[89] 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 Act of 1996 (SBREFA).

[90] 5 U.S.C. § 605(b).

[91] 5 U.S.C. § 601(b).

[92] 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 definitions(s) in the Federal Register."

service area boundaries (SABs) of land-based and water-based cell sites in the Gulf of Mexico area. We also affirm that the market boundaries of PCS licensees adjacent to the Gulf of Mexico are co-extensive with county boundaries. We also amend rule section 22.912 to codify the Commission's decision in the *Gulf Report and Order* that a land carrier may not extend its SABs into any part of the GMEZ, served or unserved, without the Gulf carrier's consent. Further, we clarify language in section 22.911(a)(2) to more accurately reflect a rule change made in the *Gulf Report and Order.*

47. Because this decision affects only the small number of carriers providing cellular service along the coastline adjacent to the Gulf of Mexico, we conclude that this action will not affect a substantial number of small businesses. Further, the Order on Reconsideration affirms or codifies decisions previously made in the *Gulf Report and Order.* Accordingly, we certify that this decision will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Order on Reconsideration including a copy of this certification, in a report to Congress pursuant to the Congressional Review Act of 1996.[93] In addition, the Order on Reconsideration and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the Federal Register.

B. Paperwork Reduction Act Analysis.

48. This Order on Reconsideration has been analyzed with respect to the Paperwork Reduction Act of 1995, Pub. L. 104-13, and found to impose no new or modified reporting and recordkeeping requirements or burdens on the public.

V. ORDERING CLAUSES.

49. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4(i), 4(j), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), and 405, and section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, that the April 3, 2002 Petition for Partial Reconsideration filed by Petroleum Communications, Inc., IS DENIED IN PART AND GRANTED IN PART, as described herein.

50. IT IS FURTHER ORDERED that the February 22, 2002 Petition for Reconsideration filed by Petroleum Communications, Inc., IS GRANTED, and that File Nos. 02590-CL-97, 02593-CL-97, 02594-CL-97, 02595-CL-97, 02596-CL-97, 02600-CL-P2-97, and 02407-CL-P2-97 are reinstated and placed in pending status.

51. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by VoiceStream Wireless Corporation IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[93] See 5 U.S.C. § 801(a)(1)(A).

APPENDIX A

RULES

1. Section 22.911 is amended by revising paragraph (a)(2) to read as follows:

§ 22.911 Cellular geographic service area.

* * * * *

(a) * * *

(2) The distance from a cell transmitting antenna located in the Gulf of Mexico Service Area (GMSA) to its SAB along each cardinal radial is calculated as follows:

$$d = 6.895 \times h^{0.30} \times p^{0.15}$$

where:
d is the radial distance in kilometers
h is the radial antenna HAAT in meters
p is the radial ERP in Watts

* * * * *

2. Section 22.912 is amended by revising paragraphs (a) and (b) as follows:

§ 22.912 Service area boundary extensions.

* * * * *

(a) *De minimis extensions.* Except as otherwise provided in paragraphs (b) and (d), SABs may be extended into adjacent cellular markets if such extensions are *de minimis*, are demonstrably unavoidable for technical reasons of sound engineering design, and do not extend into the CGSA of any other licensee's cellular system on the same channel block, any part of the Gulf of Mexico Exclusive Zone (GMEZ), or into any adjacent cellular market on a channel block for which the five year build-out period has expired.

(b) *Contract extensions.* Except as otherwise provided in paragraph (d), cellular system licensees may enter into contracts to allow SAB extensions as follows:

(1) The licensee of any cellular system may, at any time, enter into a contract with an applicant for, or licensee of, a cellular system on the same channel block in an adjacent cellular market, to allow one or more SAB extensions into its CGSA only (not into unserved area).

(2) The licensee of the first authorized cellular system on each channel block in the Gulf of Mexico Service Area (GMSA) may enter into a contract with an applicant for, or licensee of, a cellular system on the same channel block in an adjacent cellular market or in the Gulf of Mexico Coastal Zone (GMCZ), to allow one or more SAB extensions into the Gulf of Mexico Exclusive Zone.

(3) The licensee of the first authorized cellular system on each channel block in each cellular market may enter into a contract with an applicant for or licensee of a cellular system on the same channel block

in an adjacent cellular market, to allow one or more SAB extensions into its CGSA and/or unserved area in its cellular market, during its five year build-out period.

* * * * *