

Dated: June 7, 2000.

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[FR Doc. 00-14796 Filed 6-12-00; 8:45 am]

BILLING CODE 6820-34-C

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[WT Docket No. 96-148; GN Docket No. 96-113; FCC 00-141]

Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees

AGENCY: Federal Communications
Commission.

ACTION: Final rule.

SUMMARY: This document modifies the Commission's rules governing Cellular Radiotelephone Service (cellular service) to permit spectrum disaggregation by cellular licensees. In addition, the Commission maintains its existing geographic partitioning rules for initial cellular licensees, and extends partitioning rules to unserved area licensees. This document also resolves several related issues relevant to cellular partitioning and disaggregation.

DATES: Effective July 13, 2000.

FOR FURTHER INFORMATION CONTACT:

Jeffrey Steinberg, Wireless
Telecommunications Bureau,
Commercial Wireless Division, at (202)
418-0896.

SUPPLEMENTARY INFORMATION: *Synopsis
of the Second Report and Order.*

"Partitioning" is the assignment of geographic portions of a radio license along geopolitical or other boundaries. "Disaggregation" is the assignment of discrete portions or "blocks" of spectrum licensed to a geographic licensee or other qualifying entity. The Commission has previously examined partitioning and disaggregation for many Commercial Mobile Radio Services (CMRS) on a service-by-service basis, and has adopted geographic partitioning and spectrum disaggregation rules for several services. In the *Further Notice of Proposed Rulemaking* in this proceeding, 62 FR 696 (January 6, 1997), the Commission tentatively concluded that it is now appropriate to consider permitting full partitioning and disaggregation in the cellular service.

2. The Commission concludes that modifying its cellular rules to allow disaggregation will promote competition and further regulatory symmetry

between cellular and other CMRS licensees. Extending flexible disaggregation rules to cellular will increase carriers' flexibility to tailor their service offerings to meet market demands, thus increasing competition and enhancing the efficient use of spectrum. The Commission further finds that there are no technical or other constraints unique to the cellular service that would make disaggregation either impractical or administratively burdensome. The Commission therefore modifies its rules to permit cellular licensees to disaggregate portions of their spectrum to other eligible entities. In addition, the Commission declines to adopt minimum standards regarding the amount of spectrum that cellular licensees may disaggregate.

3. With regard to partitioning, the Commission decides to retain its existing partitioning rules for initial cellular licensees, and to provide for partitioning by unserved area licensees. The Commission recognizes that the current cellular partitioning rules are different from the rules for geographically licensed services because the rules restrict cellular partitioning outside the licensee's Cellular Geographic Service Area (CGSA) after the initial five-year buildout period. However, this restriction ensures that the cellular partitioning rules do not conflict with the unserved area rules, and the Commission finds that the rules are sufficiently flexible so as not to place cellular licensees at a competitive disadvantage compared to other CMRS. The Commission also believes that cellular unserved area licensees should have the ability to partition their service areas. As in the case of initial cellular licensees, the Commission will allow cellular unserved area licensees to partition within their designated licensing areas during the initial buildout period of the license. After the expiration of the 12-month buildout period, an unserved area licensee may not partition outside of the licensing area established as a result of the buildout process.

4. The Commission retains its existing cellular construction rules as they apply to partitioning. These rules provide sufficient flexibility for cellular licensees to build out their markets and to respond to demands for service. Thus, where a cellular licensee partitions its license prior to the expiration of the relevant buildout period, each partitionee will be responsible for completing the buildout in its partitioned area within the remainder of the original buildout period. Any area that remains unbuild at the conclusion of the buildout period

will revert to the Commission and be available for unserved area licensing. With respect to disaggregation, the parties will be required to certify in their disaggregation application which party will be responsible for building out the licensed area.

5. The Commission adopts its proposal to permit combined partitioning and disaggregation for cellular. The Commission also determines that the license terms for partitioned and disaggregated cellular licenses will be limited to the remaining term of the underlying licenses, and that partitionees and disaggregators may obtain renewal expectancy on the same basis as initial cellular licensees and other CMRS licensees. Finally, the Commission declines to change its current procedures for reviewing and licensing cellular partitioning transactions, and adopts these procedures for reviewing and licensing disaggregation transactions.

Final Regulatory Flexibility Analysis

6. As required by section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Further Notice of Proposed Rulemaking (Further Notice) in WT Docket No. 96-148.¹ The Commission sought written public comment on the proposals in the Further Notice, including the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Second Report and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996.²

A. Need for and Purpose of This Action

7. In this document, we modify our rules for the Cellular Radiotelephone Service (cellular) to permit partitioning and disaggregation for all licensees in these services. The rules adopted herein also implement Congress' goal of giving small businesses the opportunity to participate in the provision of spectrum-based services in accordance with 47 U.S.C. 309(j)(4)(D) and reduce entry barriers for small businesses in accordance with 47 U.S.C. 257. With flexible partitioning and disaggregation, additional entities, including small businesses, may participate in the

¹ Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees, WT Docket No. 96-148, FCC 96-287, Notice of Proposed Rulemaking, 11 FCC Rcd. 10187 (1996).

² Public Law 104-121, 110 Stat. 847 (1996) (CWA, Subtitle II of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) codified at 5 U.S.C. 601, *et seq.*)

provision of cellular service without needing to acquire wholesale an existing license (with all of the bundle of rights currently associated with the existing license). Acquiring "less" than the current license will presumably be a flexible and less expensive alternative for entities desiring to provide these services.

B. Description and Number of Small Entities Involved

8. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by our rules.³ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁴ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."⁵ Nationwide, there are 275,801 small organizations.⁶ In addition, the term "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business Act.⁷ Under the Small Business Act, a "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).⁸

9. The rules adopted in this document will affect all small businesses which avail themselves of these rule changes, including small businesses currently holding cellular licenses who choose to partition and/or disaggregate, and small businesses that may acquire licenses through partitioning and/or disaggregation. We have not developed a definition of small entities applicable to cellular licensees.

Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons.⁹ The size data provided by the SBA does not enable us to make a meaningful estimate of the number of

cellular providers which are small entities because it combines all radiotelephone companies with 500 or more employees.¹⁰

10. The 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, is the most recent information available. This document shows that only twelve radiotelephone firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees.¹¹ Therefore, even if all twelve of these large firms were cellular telephone companies, nearly all of the cellular carriers were small businesses under the SBA's definition. We assume, for purposes of this FRFA, that all of the current cellular licensees are small entities, as that term is defined by the SBA. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. The most reliable source of information regarding the number of cellular service providers nationwide appears to be data that we publish annually in our Telecommunications Industry Revenue report, regarding the Telecommunications Relay Service (TRS). The report places cellular licensees and Personal Communications Services (PCS) licensees in one group. According to the data released in November 1997, there are 804 companies reporting that they engage in cellular or PCS service.¹² It seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees; however, we are unable at this time to estimate with greater precision the number of cellular service carriers qualifying as small business concerns under the SBA's definition. For purposes of this FRFA, we estimate that there are fewer than 804 small cellular service carriers.

C. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements

11. The rules adopted in this document will impose reporting and recordkeeping requirements on small

¹⁰ U.S. Small Business Administration 1992 Economic Census Employment Report, Bureau of the Census, U.S. Department of Commerce, SIC Code 4812 (radiotelephone communications industry data adopted by the SBA Office of Advocacy).

¹¹ 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, SIC Code 4812 (issued May 1995).

¹² FCC, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Figure 2 (Number of Carriers Paying Into the TRS Fund by Type of Carrier) (Nov. 1997).

businesses seeking licenses through partitioning and disaggregation. The information requirements will be used to determine whether the licensee is a qualifying entity to obtain a partitioned license or disaggregated spectrum. Any applicant requesting such a license, will provide this information in a one-time filing. The applicant will submit this information on a FCC Form 490 Application for Assignment of Authorization or Consent to Transfer of Control of License. The applicant will also submit an FCC Form 430 Licensee Qualification Report if one is not already on file with us, and an FCC Form 600 Application for Mobile Radio Service Authorization. These forms are currently in use and have already received Office of Management and Budget clearance. We estimate that the average burden on the applicant is three hours for the information necessary to complete these forms. We further estimate that seventy-five percent of the respondents (which may include small businesses) will contract out the burden of responding. Finally, we estimate that it will take approximately thirty minutes to coordinate information with those contractors. The remaining twenty-five percent of respondents (which may include small businesses) are estimated to employ in-house staff to provide the information.

D. Steps Taken To Minimize Burdens on Small Entities

12. The rules adopted in this document are designed to implement Congress' goal of giving small businesses, as well as other entities, the opportunity to participate in the provision of spectrum-based services and are consistent with the Communications Act's mandate to identify and eliminate market entry barriers for entrepreneurs and small businesses in the provision and ownership of telecommunications services.

13. Allowing non-restricted partitioning of licenses will facilitate market entry by parties who may lack the financial resources for participation in auctions, including small businesses. Some small businesses may have been unable to obtain cellular licenses through sale due to high asking prices. By eliminating this restriction and allowing flexible partitioning, small businesses will be able to obtain partitioned licenses for smaller service areas at presumably reduced costs, thereby providing a method for small businesses to enter the cellular marketplace.

14. Similarly, allowing immediate disaggregation of cellular licenses will

³ 5 U.S.C. 603(b)(3), 604(a)(3).

⁴ 5 U.S.C. 601(6).

⁵ 5 U.S.C. 601(4).

⁶ 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

⁷ 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632).

⁸ 15 U.S.C. 632.

⁹ 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812.

facilitate the entry of new competitors to the provision of these services, many of whom will be small businesses seeking to acquire a smaller amount of spectrum at a reduced cost. Additionally, allowing disaggregation of spectrum in any amount will also promote participation by small businesses who may seek to acquire a smaller amount of cellular spectrum tailored to meet the needs of their proposed service.

E. Significant Alternatives Considered and Rejected

15. We considered and rejected several alternative proposals concerning partitioning and disaggregation:

- We considered and rejected the option of continuing to disallow disaggregation of cellular spectrum. We concluded that permitting disaggregation would promote competition and further regulatory symmetry, and that there were no technical or other constraints that would make cellular disaggregation either impractical or administratively burdensome.

- We declined to establish any minimum amount of spectrum that can be disaggregated. We concluded that allowing flexibility in disaggregation would promote more efficient use of spectrum and permit deployment of a wider array of services.

- We declined to allow additional flexibility in our cellular partitioning rules. We concluded that our existing rules are sufficiently flexible so as not to place cellular licensees at a competitive disadvantage compared to other CMRS, and that additional flexibility would be inconsistent with our cellular unserved area rules.

- We declined to apply a new license term to partitioned license areas or disaggregated spectrum. We found that allowing parties to "re-start" their license term would effectively allow a licensee to extend its license term and could lead to circumvention of our license term rules.

F. Report to Congress

16. We shall include a copy of this Final Regulatory Flexibility Analysis, along with this Second Report and Order, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this Final Regulatory Flexibility Analysis will also be published in the **Federal Register**.

G. Ordering Clauses

17. Accordingly, pursuant to the authority of sections 4(i), 257, 303(g), 303(r), and 332(a) of the

Communications Act of 1934, as amended, 47 U.S.C. 154(i), 257, 303(g), 303(r), and 332(a), part 22 of the Commission's Rules, 47 CFR 22.1, *et seq.*, *Is Amended* as set forth in the rule changes.

18. The rules adopted herein will become effective July 13, 2000. This action is taken pursuant to sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 309(j).

List of Subjects in 47 CFR Part 22

Radio.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

Rule Changes

For the reasons set forth in the preamble, the Federal Communications Commission amends 47 CFR part 22 as follows:

PART 22—PUBLIC MOBILE SERVICES

1. The authority citation for part 22 continues to read:

Authority: 47 U.S.C. 154, 222, 303, 309 and 332.

2. Add § 22.948 to read as follows:

§ 22.948 Partitioning and Disaggregation.

(a) *Eligibility.* (1) *Generally.* Parties seeking approval for partitioning and disaggregation shall request an authorization for partial assignment of a license pursuant to § 1.948 of this chapter. Cellular licensees may partition or disaggregate their spectrum to other qualified entities.

(2) *Partitioning.* During the five year build-out period, as defined in § 22.947, cellular licensees may partition any portion of their cellular market to other qualified entities. After the five year build-out period, cellular licensees and unserved area licensees may partition any portion of their Cellular Geographic Service Area (CGSA), as defined by § 22.911, to other qualified entities but may not partition unserved portions of their cellular market.

(3) *Disaggregation.* After the five year build-out period, as defined in § 22.947, parties obtaining disaggregated spectrum may only use such spectrum in that portion of the cellular market encompassed by the original licensee's CGSA and may not use such spectrum to provide service to unserved portions of the cellular market.

(b) *Disaggregation.* Cellular licensees and unserved area licensees may disaggregate spectrum in any amount.

(c) *Combined partitioning and disaggregation.* The Commission will

consider requests for partial assignment of cellular licenses that propose combinations of partitioning and disaggregation.

(d) *License Term.* The license term for the partitioned license area and for disaggregated spectrum shall be the remainder of the original cellular licensee's or the unserved area licensee's license term provided for in § 22.144(a).

[FR Doc. 00-14872 Filed 6-12-00; 8:45 am]

BILLING CODE 6712-01-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1807, 1811, 1812, 1815, 1816, 1823, 1842, 1846, and 1852

Risk Management

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule changes the NASA FAR Supplement (NFS) to emphasize considerations of risk management, including safety, security (including information technology security), health, export control, and damage to the environment, within the acquisition process. The interim rule addresses risk management within the context of acquisition planning, selecting sources, choosing contract type, structuring award fee incentives, administering contracts, and conducting contractor surveillance. Also, this interim rule provides that contractors not be paid award fee for any evaluation period in which there is a major breach of safety or security.

DATES: *Effective Date:* This rule is effective July 13, 2000.

Applicability Date: This rule applies to solicitations issued on or after July 13, 2000.

Comment Date: Comments should be submitted to NASA at the address below on or before August 14, 2000.

ADDRESSES: Interested parties should submit written comments to James H. Dolvin, NASA Headquarters Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546. Comments may also be submitted by e-mail to jdolvin1@mail.hq.nasa.gov.

FOR FURTHER INFORMATION CONTACT: James H. Dolvin, (202) 358-1279.

SUPPLEMENTARY INFORMATION:

A. Background

It is critically important for NASA to achieve mission success without