

and copies of all exhibits, letters, and other documents filed as part thereto, all correspondence between the permittee or licensee and the Commission pertaining to the reports after they have been filed and all documents incorporated therein by reference.

(ii) *Period of retention.* The documents specified in paragraph (f)(2)(i) of this section shall be maintained for a period of 2 years.

[35 FR 12894, Aug. 14, 1970, as amended at 36 FR 3119, Feb. 18, 1971. Redesignated at 38 FR 22481, Aug. 21, 1973]

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AUTHORITY: 47 U.S.C. 154, 301, 302, 303, 309 and 332.

SOURCE: 58 FR 59183, Nov. 8, 1993, unless otherwise noted. Redesignated at 59 FR 18499, Apr. 19, 1994.

Subpart A—General Information**§ 24.1 Basis and purpose.**

This section contains the statutory basis for this part of the rules and provides the purpose for which this part is issued.

(a) *Basis.* The rules for the personal communications services (PCS) in this part are promulgated under the provisions of the Communications Act of 1934, as amended, that vests authority in the Federal Communications Commission to regulate radio transmission and to issue licenses for radio stations.

(b) *Purpose.* This part states the conditions under which portions of the radio spectrum are made available and licensed for PCS.

(c) *Scope.* The rules in this part apply only to stations authorized under this part. Rules in subparts D and E apply only to stations authorized under those subparts.

[58 FR 59183, Nov. 8, 1993. Redesignated at 59 FR 18499, Apr. 19, 1994, and amended at 59 FR 32854, June 24, 1994]

§ 24.2 Other applicable rule parts.

Other FCC rule parts applicable to licensees in the personal communications services include the following:

(a) *Part 0.* This part describes the Commission's organization and delegations of authority. Part 0 of this chapter also lists available Commission publications, standards and procedures for access to Commission records, and location of Commission Field Offices.

(b) *Part 1.* This part includes rules of practice and procedure for license applications, adjudicatory proceedings, procedures for reconsideration and review of the Commission's actions; provisions concerning violation notices and forfeiture proceedings; and the environmental requirements that, if applicable, must be complied with prior to the initiation of construction. Subpart F includes the rules for the Wireless Telecommunications Services and the procedures for filing electronically via the ULS.

(c) *Part 2.* This part contains the Table of Frequency Allocations and special requirements in international regulations, recommendations, agreements, and treaties. This part also contains standards and procedures concerning the marketing and importation of radio frequency devices, and for obtaining equipment authorization.

(d) *Part 5.* This part contains rules prescribing the manner in which parts of the radio frequency spectrum may be made available for experimentation.

(e) *Part 15.* This part contains rules setting out the regulations under which an intentional, unintentional, or incidental radiator may be operated without an individual license. It also contains the technical specifications, administrative requirements and other conditions relating to the marketing of part 15 devices. Unlicensed PCS devices operate under subpart D of part 15.

(f) *Part 17.* This part contains requirements for construction, marking and lighting of antenna towers.

(g) *Part 20* of this chapter governs commercial mobile radio services.

(h) *Part 21.* This part contains rules concerning multipoint distribution service and multichannel multipoint distribution service.

(i) *Part 68.* This part contains technical standards for connection of terminal equipment to the telephone network.

(j) *Part 101.* This part contains rules concerning common carrier and private services relating to fixed point-to-point and point-to-multipoint microwave systems.

[58 FR 59183, Nov. 8, 1993. Redesignated and amended at 59 FR 18499, Apr. 19, 1994, as amended at 63 FR 68952, Dec. 14, 1998; 65 FR 38325, June 20, 2000]

§ 24.3 Permissible communications.

PCS licensees may provide any mobile communications service on their assigned spectrum. Fixed services may be provided on a co-primary basis with mobile operations. Broadcasting as defined in the Communications Act is prohibited.

[61 FR 45356, Aug. 29, 1996]

§ 24.5 Terms and definitions.

Assigned Frequency. The center of the frequency band assigned to a station.

Authorized Bandwidth. The maximum width of the band of frequencies permitted to be used by a station. This is normally considered to be the necessary or occupied bandwidth, whichever is greater.

Average Terrain. The average elevation of terrain between 3 and 16 kilometers from the antenna site.

Base Station. A land station in the land mobile service.

Broadband PCS. PCS services operating in the 1850-1890 MHz, 1930-1970

MHz, 2130-2150 MHz, and 2180-2200 MHz bands.

Effective Radiated Power (e.r.p.) (in a given direction). The product of the power supplied to the antenna and its gain relative to a half-wave dipole in a given direction.

Equivalent Isotropically Radiated Power (e.i.r.p.). The product of the power supplied to the antenna and the antenna gain in a given direction relative to an isotropic antenna.

Fixed Service. A radiocommunication service between specified fixed points.

Fixed Station. A station in the fixed service.

Land Mobile Service. A mobile service between base stations and land mobile stations, or between land mobile stations.

Land Mobile Station. A mobile station in the land mobile service capable of surface movement within the geographic limits of a country or continent.

Land Station. A station in the mobile service not intended to be used while in motion.

Mobile Service. A radiocommunication service between mobile and land stations, or between mobile stations.

Mobile Station. A station in the mobile service intended to be used while in motion or during halts at unspecified points.

Narrowband PCS. PCS services operating in the 901-902 MHz, 930-931 MHz, and 940-941 MHz bands.

National Geodetic Reference System (NGRS): The name given to all geodetic control data contained in the National Geodetic Survey (NGS) data base. (Source: National Geodetic Survey, U.S. Department of Commerce)

PCS Relocator. A PCS entity that pays to relocate a fixed microwave link from its existing 2 GHz facility to other media or other fixed channels.

Personal Communications Services (PCS). Radio communications that encompass mobile and ancillary fixed communication that provide services to individuals and businesses and can be integrated with a variety of competing networks.

Universal Licensing System. The Universal Licensing System (ULS) is the consolidated database, application filing system, and processing system for

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all Wireless Radio Services. ULS supports electronic filing of all applications and related documents by applicants and licensees in the Wireless Radio Services, and provides public access to licensing information.

UTAM. The Unlicensed PCS Ad Hoc Committee for 2 GHz Microwave Transition and Management, which coordinates relocation in the 1910–1930 MHz band.

Voluntarily Relocating Microwave Incumbent. A microwave incumbent that voluntarily relocates its licensed facilities to other media or fixed channels.

[58 FR 59183, Nov. 8, 1993. Redesignated at 59 FR 18499, Apr. 19, 1994, and amended at 61 FR 29691, June 12, 1996; 62 FR 12757, Mar. 18, 1997; 63 FR 68952, Dec. 14, 1998]

Subpart B—Applications and Licenses

GENERAL FILING REQUIREMENTS

§ 24.10 Scope.

This subpart contains some of the procedures and requirements for filing applications for licenses in the personal communications services. One also should consult subparts F and G of this part. Other Commission rule parts of importance that may be referred to with respect to licensing and operation of radio services governed under this part include 47 CFR parts 0, 1, 2, 5, 15, 17 and 20.

[59 FR 32854, June 24, 1994]

§ 24.11 Initial authorization.

(a) An applicant must file a single application for an initial authorization for all markets won and frequency blocks desired.

(b) Blanket licenses are granted for each market and frequency block. Applications for individual sites are not required and will not be accepted.

[59 FR 32854, June 24, 1994, as amended at 63 FR 68952, Dec. 14, 1998]

§ 24.12 Eligibility.

Any entity, other than those precluded by section 310 of the Communications Act of 1934, as amended, 47

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U.S.C. 310, or §§ 99.202(c) or 99.204, is eligible to hold a license under this part.

[58 FR 59183, Nov. 8, 1993; 59 FR 15269, Mar. 31, 1994]

§ 24.15 License period.

Licenses for service areas will be granted for ten year terms from the date of original issuance or renewal.

§ 24.16 Criteria for comparative renewal proceedings.

A renewal applicant involved in a comparative renewal proceeding shall receive a preference, commonly referred to as a renewal expectancy, which is the most important comparative factor to be considered in the proceeding, if its past record for the relevant license period demonstrates that the renewal applicant:

(a) Has provided “substantial” service during its past license term. “Substantial” service is defined as service which is sound, favorable, and substantially above a level of mediocre service which might just minimally warrant renewal; and

(b) Has substantially complied with applicable Commission rules, policies and the Communications Act.

Subpart C—Technical Standards

§ 24.50 Scope.

This subpart sets forth the technical requirements for use of the spectrum and equipment in the personal communications services.

§ 24.51 Equipment authorization.

(a) Each transmitter utilized for operation under this part and each transmitter marketed, as set forth in § 2.803 of this chapter, must be of a type that has been authorized by the Commission under its certification procedure for use under this part.

(b) Any manufacturer of radio transmitting equipment to be used in these services may request equipment authorization following the procedures set forth in subpart J of part 2 of this chapter. Equipment authorization for an individual transmitter may be requested by an applicant for a station authorization by following the procedures set forth in part 2 of this chapter.

(c) Applicants for certification of transmitters that operate in these services must determine that the equipment complies with IEEE C95.1-1991, "IEEE Standards for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz" as measured using methods specified in IEEE C95.3-1991, "Recommended Practice for the Measurement of Potentially Hazardous Electromagnetic Fields—RF and Microwave." The applicant for certification is required to submit a statement affirming that the equipment complies with these standards as measured by an approved method and to maintain a record showing the basis for the statement of compliance with IEEE C.95.1-1991.

[58 FR 59183, Nov. 8, 1993. Redesignated at 59 FR 18499, Apr. 19, 1994, as amended at 63 FR 36604, July 7, 1998]

§ 24.52 RF hazards.

Licensees and manufacturers are subject to the radiofrequency radiation exposure requirements specified in §1.1307(b), §2.1091 and §2.1093 of this chapter, as appropriate. Applications for equipment authorization of mobile or portable devices operating under this section must contain a statement confirming compliance with these requirements for both fundamental emissions and unwanted emissions. Technical information showing the basis for this statement must be submitted to the Commission upon request.

[61 FR 41018, Aug. 7, 1996]

§ 24.53 Calculation of height above average terrain (HAAT).

(a) HAAT is determined by subtracting average terrain elevation from antenna height above mean sea level.

(b) Average terrain elevation shall be calculated using elevation data from a 30 arc second or better Digital Elevation Models (DEMs). DEM data is available from United States Geological Survey (USGS). The data file shall be identified. If 30 arc second data is used, the elevation data must be processed for intermediate points using interpolation techniques; otherwise, the nearest point may be used. If DEM data is not available, elevation data from

the Defense Mapping Agency's Digital Chart of the World (DCW) may be used.

(c) Radial average terrain elevation is calculated as the average of the elevation along a straight line path from 3 to 16 kilometers extending radially from the antenna site. At least 50 evenly spaced data points for each radial shall be used in the computation.

(d) Average terrain elevation is the average of the eight radial average terrain elevations (for the eight cardinal radials).

(e) The position location of the antenna site shall be determined to an accuracy of no less than ± 5 meters in both the horizontal (latitude and longitude) and vertical (ground elevation) dimensions with respect to the National Geodetic Reference System.

[58 FR 59183, Nov. 8, 1993; 59 FR 15269, Mar. 31, 1994]

§ 24.55 Antenna structures; air navigation safety.

Licensees that own their antenna structures must not allow these antenna structures to become a hazard to air navigation. In general, antenna structure owners are responsible for registering antenna structures with the FCC if required by part 17 of this chapter, and for installing and maintaining any required marking and lighting. However, in the event of default of this responsibility by an antenna structure owner, each FCC permittee or licensee authorized to use an affected antenna structure will be held responsible by the FCC for ensuring that the antenna structure continues to meet the requirements of part 17 of this chapter. See §17.6 of this chapter.

(a) *Marking and lighting.* Antenna structures must be marked, lighted and maintained in accordance with part 17 of this chapter and all applicable rules and requirements of the Federal Aviation Administration.

(b) *Maintenance contracts.* Antenna structure owners (or licensees and permittees, in the event of default by an antenna structure owner) may enter into contracts with other entities to monitor and carry out necessary maintenance of antenna structures. Antenna structure owners (or licensees and permittees, in the event of default by an antenna structure owner) that

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make such contractual arrangements continue to be responsible for the maintenance of antenna structures in regard to air navigation safety.

[61 FR 4366, Feb. 6, 1996]

Subpart D—Narrowband PCS

§ 24.100 Scope.

This subpart sets out the regulations governing the licensing and operations of personal communications services authorized in the 901-902, 930-931, and 940-941 MHz bands (900 MHz band).

§ 24.101 [Reserved]

§ 24.102 Service areas.

Narrowband PCS service areas are nationwide, regional, and Major Trading Areas (MTAs), as defined in this section. MTAs are based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 38-39 (MTA Map). Rand McNally organizes the 50 States and the District of Columbia into 47 MTAs. The MTA Map is available for public inspection in the FCC's Library, Room TW-B505, 445 12th Street SW, Washington, D.C.

(a) The nationwide service area consists of the fifty states, the District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and United States Virgin Islands.

(b) The regional service areas are defined as follows:

(1) Region 1 (Northeast): The Northeast Region consists of the following MTAs: Boston-Providence, Buffalo-Rochester, New York, Philadelphia, and Pittsburgh.

(2) Region 2 (South): The South Region consists of the following MTAs: Atlanta, Charlotte-Greensboro-Greenville-Raleigh, Jacksonville, Knoxville, Louisville-Lexington-Evansville, Nashville, Miami-Fort Lauderdale, Richmond-Norfolk, Tampa-St. Petersburg-Orlando, and Washington-Baltimore; and, Puerto Rico and United States Virgin Islands.

(3) Region 3 (Midwest): The Midwest Region consists of the following MTAs: Chicago, Cincinnati-Dayton, Cleveland, Columbus, Des Moines-Quad Cities, Detroit, Indianapolis, Milwaukee, Minneapolis-St. Paul, and Omaha.

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(4) Region 4 (Central): The Central Region consists of the following MTAs: Birmingham, Dallas-Fort Worth, Denver, El Paso-Albuquerque, Houston, Kansas City, Little Rock, Memphis-Jackson, New Orleans-Baton Rouge, Oklahoma City, San Antonio, St. Louis, Tulsa, and Wichita.

(5) Region 5 (West): The West Region consists of the following MTAs: Honolulu, Los Angeles-San Diego, Phoenix, Portland, Salt Lake City, San Francisco-Oakland-San Jose, Seattle (including Alaska), and Spokane-Billings; and, American Samoa, Guam, and the Northern Mariana Islands.

(c) The MTA service areas are based on the Rand McNally 1992 *Commercial Atlas & Marketing Guide*, 123rd Edition, at pages 38-39, with the following exceptions and additions:

(1) Alaska is separated from the Seattle MTA and is licensed separately.

(2) Guam and the Northern Mariana Islands are licensed as a single MTA-like area.

(3) Puerto Rico and the United States Virgin Islands are licensed as a single MTA-like area.

(4) American Samoa is licensed as a single MTA-like area.

[59 FR 14118, Mar. 25, 1994, as amended at 59 FR 46199, Sept. 7, 1994; 65 FR 35852, June 6, 2000]

§ 24.103 Construction requirements.

(a) Nationwide narrowband PCS licensees shall construct base stations that provide coverage to a composite area of 750,000 square kilometers or serve 37.5 percent of the U.S. population within five years of initial license grant date; and, shall construct base stations that provide coverage to a composite area of 1,500,000 square kilometers or serve 75 percent of the U.S. population within ten years of initial license grant date. Licensees may, in the alternative, provide substantial service to the licensed area as provided in paragraph (d) of this section.

(b) Regional narrowband PCS licensees shall construct base stations that provide coverage to a composite area of 150,000 square kilometers or serve 37.5 percent of the population of the service area within five years of initial license grant date; and, shall construct base stations that provide coverage to a

composite area of 300,000 square kilometers or serve 75 percent of the service area population within ten years of initial license grant date. Licensees may, in the alternative, provide substantial service to the licensed area as provided in paragraph (d) of this section.

(c) MTA narrowband PCS licensees shall construct base stations that provide coverage to a composite area of 75,000 square kilometers or 25 percent of the geographic area, or serve 37.5 percent of the population of the service area within five years of initial license grant date; and, shall construct base stations that provide coverage to a composite area of 150,000 square kilometers or 50 percent of the geographic area, or serve 75 percent of the population of the service area within ten years of initial license grant date. Licensees may, in the alternative, provide substantial service to the licensed area as provided in paragraph (d) of this section.

(d) As an alternative to the requirements of paragraphs (a), (b), and (c) of this section, narrowband PCS licensees may demonstrate that, no later than ten years after the initial grant of their license, they provide substantial service to their licensed area. Licensees choosing this option must notify the FCC by filing FCC Form 601, no later than 15 days after the end of the five year period following the initial grant of their license, that they plan to satisfy the alternative requirement to provide substantial service. "Substantial service" is defined as service that is sound, favorable, and substantially above a level of mediocre service that would barely warrant renewal.

(e) In demonstrating compliance with the construction requirements set forth in this section, licensees must base their calculations on signal field strengths that ensure reliable service for the technology utilized. Licensees may determine the population of geographic areas included within their service contours using either the 1990 census or the 2000 census, but not both.

(1) For the purpose of this section, the service radius of a base station may be calculated using the following formula:

$$d_{km} = 2.53 \times h_m 0.34 \times p^{0.17}$$

where d_{km} is the radial distance in kilometers,
 h_m is the antenna HAAT of the base station in meters, and
 p is the e.r.p. of the base station in watts.

(2) Alternatively, licensees may use any service radius contour formula developed or generally used by industry, provided that such formula is based on the technical characteristics of their system.

(f) Upon meeting the five and ten year benchmarks in paragraphs (a), (b), and (c) of this section, or upon meeting the substantial service alternative in paragraph (d), licensees shall notify the Commission by filing FCC Form 601 and including a map and other supporting documentation that demonstrate the required geographic area coverage, population coverage, or substantial service to the licensed area. The notification must be filed with the Commission within 15 days of the expiration of the relevant period.

(g) If the sale of a license is approved, the new licensee is held to the original build-out requirement.

(h) Failure by a licensee to meet the above construction requirements shall result in forfeiture of the license and ineligibility to regain it.

[59 FR 14118, Mar. 25, 1994, as amended at 65 FR 35852, June 6, 2000]

§ 24.104 Partitioning and disaggregation.

Nationwide, regional, and MTA licensees may apply to partition their authorized geographic service area or disaggregate their authorized spectrum at any time following grant of their geographic area authorizations.

(a) *Application required.* Parties seeking approval for partitioning and/or disaggregation shall apply for partial assignment of a license pursuant to § 1.948 of this chapter.

(b) *Partitioning.* In the case of partitioning, applicants and licensees must file FCC Form 603 pursuant to § 1.948 of this chapter and describe the partitioned service area on a schedule to the application. The partitioned service area shall be defined by up to 120 sets of geographic coordinates at points at every 3 degrees azimuth from a point within the partitioned service area

along the partitioned service area boundary unless either an FCC-recognized service area is used (e.g., MEA or EA) or county lines are followed. The geographical coordinates must be specified in degrees, minutes, and seconds to the nearest second latitude and longitude, and must be based upon the 1983 North American Datum (NAD83). In the case where FCC-recognized service areas or county lines are used, applicants need only list the specific area(s) through use of FCC designations or county names that constitute the partitioned area.

(c) *Disaggregation.* Spectrum may be disaggregated in any amount.

(d) *Combined partitioning and disaggregation.* Licensees may apply for partial assignment of authorizations that propose combinations of partitioning and disaggregation.

(e) *License term.* The license term for a partitioned license area and for disaggregated spectrum shall be the remainder of the original licensee's license term as provided for in § 1.955 of this chapter.

(f) *Coverage requirements for partitioning.* (1) Parties to a partitioning agreement must satisfy at least one of the following requirements:

(i) The partitionee must satisfy the applicable coverage requirements set forth in § 24.103 for the partitioned license area; or

(ii) The original licensee must meet the coverage requirements set forth in § 24.103 for the entire geographic area. In this case, the partitionee must meet only the requirements for renewal of its authorization for the partitioned license area.

(2) Parties seeking authority to partition must submit with their partial assignment application a certification signed by both parties stating which of the options they select.

(3) Partitionees must submit supporting documents showing compliance with their coverage requirements as set forth in § 24.103.

(4) Failure by any partitionee to meet its coverage requirements will result in automatic cancellation of the partitioned authorization without further Commission action.

(g) *Coverage requirements for disaggregation.* (1) Parties to a

disaggregation agreement must satisfy at least one of the following requirements:

(i) Either the disaggregator or disaggregatee must satisfy the coverage requirements set forth in § 24.103 for the entire license area; or

(ii) Parties must agree to share responsibility for meeting the coverage requirements set forth in § 24.103 for the entire license area.

(2) Parties seeking authority to disaggregate must submit with their partial assignment application a certification signed by both parties stating which of the requirements they select.

(3) Disaggragatees must submit supporting documents showing compliance with their coverage requirements as set forth in § 24.103.

(4) Parties that accept responsibility for meeting the coverage requirements and later fail to do so will be subject to automatic license cancellation without further Commission action.

[65 FR 35853, June 6, 2000]

EFFECTIVE DATE NOTE: At 65 FR 35853, June 6, 2000, § 24.104 was added. This section contains information collection and record-keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 24.129 Frequencies.

The following frequencies are available for narrowband PCS.

(a) Eleven frequencies are available for assignment on a nationwide basis as follows:

(1) Five 50 kHz channels paired with 50 kHz channels:

Channel 1: 940.00–940.05 and 901.00–901.05 MHz;
 Channel 2: 940.05–940.10 and 901.05–901.10 MHz;
 Channel 3: 940.10–940.15 and 901.10–901.15 MHz;
 Channel 4: 940.15–940.20 and 901.15–901.20 MHz;
 and,
 Channel 5: 940.20–940.25 and 901.20–901.25 MHz;

(2) Three 50 kHz channels paired with 12.5 kHz channels:

Channel 6: 930.40–930.45 and 901.7500–901.7625 MHz;
 Channel 7: 930.45–930.50 and 901.7625–901.7750 MHz; and,
 Channel 8: 930.50–930.55 and 901.7750–901.7875 MHz;

(3) Three 50 kHz unpaired channels:

Channel 9: 940.75–940.80 MHz;

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Channel 10: 940.80–940.85 MHz; and,
Channel 11: 940.85–940.90 MHz.

(b) Six frequencies are available for assignment on a regional basis as follows:

(1) Two 50 kHz channels paired with 50 kHz channels:

Channel 12: 940.25–940.30 and 901.25–901.30 MHz; and,
Channel 13: 940.30–940.35 and 901.30–901.35 MHz.

(2) Four 50 kHz channels paired with 12.5 kHz channels:

Channel 14: 930.55–930.60 and 901.7875–901.8000 MHz;
Channel 15: 930.60–930.65 and 901.8000–901.8125 MHz;
Channel 16: 930.65–930.70 and 901.8125–901.8250 MHz; and,
Channel 17: 930.70–930.75 and 901.8250–901.8375 MHz.

(c) Nine frequencies are available for assignment on an MTA basis as follows:

(1) Two 50 kHz channels paired with 50 kHz channels:

Channel 18: 940.35–940.40 and 901.35–901.40 MHz; and,
Channel 19: 940.40–940.45 and 901.40–901.45 MHz.

(2) Five 50 kHz channels paired with 12.5 kHz channels:

Channel 20: 930.75–930.80 and 901.8375–901.8500 MHz;
Channel 21: 930.80–930.85 and 901.8500–901.8625 MHz;
Channel 22: 930.85–930.90 and 901.8625–901.8750 MHz;
Channel 25: 930.90–930.95 and 901.8750–901.8875 MHz; and,
Channel 26: 930.95–931.00 and 901.8875–901.9000 MHz.

(3) Two 50 kHz unpaired channels:

Channel 23: 940.90–940.95 MHz; and
Channel 24: 940.95–941.00 MHz.

NOTE 1: Operations in markets or portions of markets which border other countries, such as Canada and Mexico, will be subject to on-going coordination arrangements with neighboring countries.

[59 FR 44069, Aug. 26, 1994, as amended at 65 FR 35853, June 6, 2000]

§ 24.130 Paging response channels.

The following eight 12.5 kHz unpaired channels are available for assignment on an MTA basis and shall be used only

to provide mobile-to-base station communications:

- A: 901.9000–901.9125 MHz;
- B: 901.9125–901.9250 MHz;
- C: 901.9250–901.9375 MHz;
- D: 901.9375–901.9500 MHz;
- E: 901.9500–901.9625 MHz;
- F: 901.9625–901.9750 MHz;
- G: 901.9750–901.9875 MHz; and
- H: 901.9875–902.0000 MHz.

[65 FR 35853, June 6, 2000]

§ 24.131 Authorized bandwidth.

The authorized bandwidth of narrowband PCS channels will be 10 kHz for 12.5 kHz channels and 45 kHz for 50 kHz channels. For aggregated adjacent channels, a maximum authorized bandwidth of 5 kHz less than the total aggregated channel width is permitted.

§ 24.132 Power and antenna height limits.

(a) Stations transmitting in the 901–902 MHz band are limited to 7 watts e.r.p.

(b) Mobile stations transmitting in the 930–931 MHz and 940–941 MHz bands are limited to 7 watts e.r.p.

(c) Base stations transmitting in the 930–931 MHz and 940–941 MHz bands are limited to 3500 watts e.r.p. per authorized channel and are unlimited in antenna height except as provided in paragraph (d) of this section.

(d)(1) MTA and regional base stations located between 200 kilometers (124 miles) and 80 kilometers (50 miles) from their licensed service area border are limited to the power levels in the following table:

Antenna HAAT in meters (feet) (see § 24.53 for HAAT calculation method)	Effective radiated power (e.r.p.) (watts)
183 (600) and below	3500
183 (600) to 208 (682)	3500 to 2584
208 (682) to 236 (775)	2584 to 1883
236 (775) to 268 (880)	1883 to 1372
268 (880) to 305 (1000)	1372 to 1000
305 (1000) to 346 (1137)	1000 to 729
346 (1137) to 394 (1292)	729 to 531
394 (1292) to 447 (1468)	531 to 387
447 (1468) to 508 (1668)	387 to 282
508 (1668) to 578 (1895)	282 to 206
578 (1895) to 656 (2154)	206 to 150
656 (2154) to 746 (2447)	150 to 109
746 (2447) to 848 (2781)	109 to 80
848 (2781) to 963 (3160)	80 to 58
963 (3160) to 1094 (3590)	58 to 42
1094 (3590) to 1244 (4080)	42 to 31
1244 (4080) to 1413 (4636)	31 to 22

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Antenna HAAT in meters (feet) (see § 24.53 for HAAT HAAT calculation method)	Effective radiated power (e.r.p.) (watts)
Above 1413 (4636)	16

(2) For heights between the values listed in the table, linear interpolation shall be used to determine maximum e.r.p.

(e) MTA and regional base stations located less than 80 kilometers (50 miles) from the licensed service area border must limit their effective radiated power in accordance with the following formula:

$$PW = 0.0175 \times dkm^{**} \times 6.6666 \times hm^{**} - 3.1997$$

PW is effective radiated power in watts

dkm is distance in kilometers

hm is antenna HAAT in meters; see § 24.53 for HAAT calculation method

(f) All power levels specified in this section are expressed in terms of the maximum power, averaged over a 100 millisecond interval, when measured with instrumentation calibrated in terms of an rms-equivalent voltage with a resolution bandwidth equal to or greater than the authorized bandwidth.

(g) Additionally, PCS stations will be subject to any power limits imposed by international agreements.

[58 FR 59183, Nov. 8, 1993; 59 FR 15269, Mar. 31, 1994, as amended at 62 FR 27511, May 20, 1997; 65 FR 35853, June 6, 2000]

§ 24.133 Emission limits.

(a) The power of any emission shall be attenuated below the transmitter power (P), as measured in accordance with § 99.132(f), in accordance with the following schedule:

(1) For transmitters authorized a bandwidth greater than 10 kHz:

(i) On any frequency outside the authorized bandwidth and removed from the edge of the authorized bandwidth by a displacement frequency (f_d in kHz) of up to and including 40 kHz: at least $116 \text{ Log}_{10} ((f_d+10)/6.1)$ decibels or 50 plus $10 \text{ Log}_{10} (P)$ decibels or 70 decibels, whichever is the lesser attenuation;

(ii) On any frequency outside the authorized bandwidth and removed from the edge of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 40 kHz: at least $43+10 \text{ Log}_{10} (P)$ decibels or 80 decibels, whichever is the lesser attenuation.

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(2) For transmitters authorized a bandwidth of 10 kHz:

(i) On any frequency outside the authorized bandwidth and removed from the edge of the authorized bandwidth by a displacement frequency (f_d in kHz) of up to and including 20 kHz: at least $116 \times \text{Log}_{10} ((f_d+5)/3.05)$ decibels or $50+10 \times \text{Log}_{10} (P)$ decibels or 70 decibels, whichever is the lesser attenuation;

(ii) On any frequency outside the authorized bandwidth and removed from the edge of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 20 kHz: at least $43+10 \text{ Log}_{10} (P)$ decibels or 80 decibels, whichever is the lesser attenuation.

(b) The measurements of emission power can be expressed in peak or average values provided they are expressed in the same parameters as the transmitter power.

(c) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

(d) The following minimum spectrum analyzer resolution bandwidth settings will be used: 300 Hz when showing compliance with paragraphs (a)(1)(i) and (a)(2)(i) of this section; and 30 kHz when showing compliance with paragraphs (a)(1)(ii) and (a)(2)(ii) of this section.

[58 FR 59183, Nov. 8, 1993. Redesignated at 59 FR 18499, April 19, 1994, as amended at 59 FR 14119, Mar. 25, 1994]

§ 24.134 Co-channel separation criteria.

The minimum co-channel separation distance between base stations in different service areas is 113 kilometers (70 miles). A co-channel separation distance is not required for the base stations of the same licensee or when the affected parties have agreed to other co-channel separation distances.

§ 24.135 Frequency stability.

(a) The frequency stability of the transmitter shall be maintained within ± 0.0001 percent (± 1 ppm) of the center frequency over a temperature variation of -30° Celsius to $+50^\circ$ Celsius at normal supply voltage, and over a variation in the primary supply voltage of 85 percent to 115 percent of the rated

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supply voltage at a temperature of 20° Celsius.

(b) For battery operated equipment, the equipment tests shall be performed using a new battery without any further requirement to vary supply voltage.

(c) It is acceptable for a transmitter to meet this frequency stability requirement over a narrower temperature range provided the transmitter ceases to function before it exceeds these frequency stability limits.

Subpart E—Broadband PCS

SOURCE: 59 FR 32854, June 24, 1994, unless otherwise noted.

§ 24.200 Scope.

This subpart sets out the regulations governing the licensing and operations of personal communications services authorized in the 1850–1910 and 1930–1990 MHz bands.

§ 24.202 Service areas.

Broadband PCS service areas are Major Trading Areas (MTAs) and Basic Trading Areas (BTAs) as defined in this section. MTAs and BTAs are based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 38–39 (“BTA/MTA Map”). Rand McNally organizes the 50 states and the District of Columbia into 47 MTAs and 487 BTAs. The BTA/MTA Map is available for public inspection at the Office of Engineering and Technology’s Technical Information Center, 445 12th Street, SW, Washington, DC 20554.

(a) The MTA service areas are based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 38–39, with the following exceptions and additions:

- (1) Alaska is separated from the Seattle MTA and is licensed separately.
 - (2) Guam and the Northern Mariana Islands are licensed as a single MTA-like area.
 - (3) Puerto Rico and the United States Virgin Islands are licensed as a single MTA-like area.
 - (4) American Samoa is licensed as a single MTA-like area.
- (b) The BTA service areas are based on the Rand McNally 1992 Commercial

Atlas & Marketing Guide, 123rd Edition, at pages 38–39, with the following additions licensed separately as BTA-like areas: American Samoa; Guam; Northern Mariana Islands; Mayaguez/Agua-dilla-Ponce, Puerto Rico; San Juan, Puerto Rico; and the United States Virgin Islands. The Mayaguez/Agua-dilla-Ponce BTA-like service area consists of the following municipios: Adjuntas, Aguada, Aguadilla, Anasco, Arroyo, Cabo Rojo, Coamo, Guanica, Guayama, Guayanilla, Hormigueros, Isabela, Jayuya, Juana Diaz, Lajas, Las Marias, Mayaguez, Maricao, Maunabo, Moca, Patillas, Penuelas, Ponce, Quebradillas, Rincon, Sabana Grande, Salinas, San German, Santa Isabel, Villalba, and Yauco. The San Juan BTA-like service area consists of all other municipios in Puerto Rico.

[59 FR 32854, June 24, 1994; 59 FR 40835, Aug. 10, 1994; 63 FR 68952, Dec. 14, 1998; 65 FR 53636, Sept. 5, 2000]

EFFECTIVE DATE NOTE: At 65 FR 53636, Sept. 5, 2000, §24.202 was amended by revising the introductory text, effective Nov. 6, 2000. For the convenience of the user the superseded text is set forth as follows:

§ 24.202 Service areas.

Broadband PCS service areas are Major Trading Areas (MTAs) and Basic Trading Areas (BTAs) as defined below. MTAs and BTAs are based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 38–39 (“BTA/MTA Map”). Rand McNally organizes the 50 states and the District of Columbia into 47 MTAs and 487 BTAs. The BTA/MTA Map is available for public inspection at the Office of Engineering and Technology’s Technical Information Center, 2000 M Street, NW, Washington, DC 20554.

* * * * *

§ 24.203 Construction requirements.

(a) Licensees of 30 MHz blocks must serve with a signal level sufficient to provide adequate service to at least one-third of the population in their licensed area within five years of being licensed and two-thirds of the population in their licensed area within 10 years of being licensed. Licensees may choose to define population using the 1990 census or the 2000 census. Failure by any licensee to meet these requirements will result in forfeiture or non-

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renewal of the license and the licensee will be ineligible to regain it.

(b) Licensees of 10 MHz blocks, including 10 MHz C block licenses reconfigured pursuant to Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, WT Docket No. 97-82, Sixth Report and Order, FCC 00-313, and 15 MHz blocks resulting from the disaggregation option as provided in the Commission's Rules Regarding Installment payment Financing for Personal Communications Services (PCS) Licensees, Second Report and Order and Further Notice of Proposed Rule Making, WT Docket 97-82, 12 FCC Rcd 16436 (1997), as modified by Order on Reconsideration of the Second Report and Order, WT Docket 97-82, 13 FCC Rcd 8345 (1998), must serve with a signal level sufficient to provide adequate service to at least one-quarter of the population in their licensed area within five years of being licensed, or make a showing of substantial service in their licensed area within five years of being licensed. Population is defined as the 1990 population census. Licensees may elect to use the 2000 population census to determine the five-year construction requirement. Failure by any licensee to meet these requirements will result in forfeiture of the license and the licensee will be ineligible to regain it.

(c) Licensees must file maps and other supporting documents showing compliance with the respective construction requirements within the appropriate five- and ten-year benchmarks of the date of their initial licenses.

[58 FR 59183, Nov. 8, 1993, as amended at 64 FR 26890, May 18, 1999; 65 FR 53636, Sept. 5, 2000]

EFFECTIVE DATE NOTE: At 65 FR 53636, Sept. 5, 2000, §24.203 was amended by revising paragraph (b), effective Nov. 6, 2000. For the convenience of the user the superseded text is set forth as follows:

§ 24.203 Construction requirements.

* * * * *

(b) Licensees of 10 MHz blocks and 15 MHz blocks resulting from the disaggregation option as provided in the Commission's Rules

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Regarding Installment payment Financing for Personal Communications Services (PCS) Licensees, Second Report and Order and Further Notice of Proposed Rule Making, WT Docket 97-82, 12 FCC Rcd 16,436 (1997), as modified by Order on Reconsideration of the Second Report and Order, WT Docket 97-82, 13 FCC Rcd 8345 (1998), must serve with a signal level sufficient to one-quarter of the population in their licensed area within five years of being licensed, or make a showing of substantial service in their licensed area within five years of being licensed. Population is defined as the 1990 population census. Licensees may elect to use the 2000 population census to determine the five-year construction requirement. Failure by any licensee to meet these requirements will result in forfeiture of the license and the licensee will be ineligible to regain it.

* * * * *

§ 24.229 Frequencies.

The frequencies available in the Broadband PCS service are listed in this section in accordance with the frequency allocations table of §2.106 of this chapter.

(a) The following frequency blocks are available for assignment on an MTA basis:

- Block A: 1850-1865 MHz paired with 1930-1945 MHz; and
Block B: 1870-1885 MHz paired with 1950-1965 MHz.

(b) The following frequency blocks are available for assignment on a BTA basis:

- Block C: 1895-1910 MHz paired with 1975-1990 MHz;

Pursuant to Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, WT Docket No. 97-82, Sixth Report and Order, FCC 00-313, all 30 MHz Block C licenses available for auction in Auction No. 35 or any subsequent auction will be reconfigured into three 10 MHz C block licenses as follows: 1895-1900 MHz paired with 1975-1980 MHz, 1900-1905 MHz paired with 1980-1985 MHz, 1905-1910 MHz paired with 1985-1990 MHz;

- Block D: 1865-1870 MHz paired with 1945-1950 MHz;
Block E: 1885-1890 MHz paired with 1965-1970 MHz;

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Block F: 1890–1895 MHz paired with 1970–1975 MHz;

[59 FR 32854, June 24, 1994, as amended at 60 FR 13917, Mar. 15, 1995; 60 FR 26375, May 17, 1995; 61 FR 33868, July 1, 1996; 62 FR 660, Jan. 6, 1997; 65 FR 53637, Sept. 5, 2000]

EFFECTIVE DATE NOTE: At 65 FR 53637, Sept. 5, 2000, §24.229 was amended by revising paragraph (b) effective Nov. 6, 2000. For the convenience of the user, the superseded text is set forth as follows:

§ 24.229 Frequencies.

* * * * *

(b) The following frequency blocks are available for assignment on a BTA basis:

Block C: 1895–1910 MHz paired with 1975–1990 MHz;

Block D: 1865–1870 MHz paired with 1945–1950 MHz;

Block E: 1885–1890 MHz paired with 1965–1970 MHz; and

Block F: 1890–1895 MHz paired with 1970–1975 MHz.

§ 24.232 Power and antenna height limits.

(a) Base stations are limited to 1640 watts peak equivalent isotropically radiated power (e.i.r.p.) with an antenna height up to 300 meters HAAT. See §24.53 for HAAT calculation method. Base station antenna heights may exceed 300 meters with a corresponding reduction in power; see Table 1 of this section. In no case may the peak output power of a base station transmitter exceed 100 watts. The service area boundary limit and microwave protection criteria specified in §24.236 and §24.237 apply.

TABLE 1.—REDUCED POWER FOR BASE STATION ANTENNA HEIGHTS OVER 300 METERS

HAAT in meters	Maximum e.i.r.p. (watts)
≤300	1,640
≤500	1,070
≤1,000	490
≤1,500	270
≤2,000	160

(b) Mobile/portable stations are limited to 2 watts e.i.r.p. peak power and the equipment must employ means to limit the power to the minimum necessary for successful communications.

(c) Peak transmit power must be measured over any interval of contin-

uous transmission using instrumentation calibrated in terms of an rms-equivalent voltage. The measurement results shall be properly adjusted for any instrument limitations, such as detector response times, limited resolution bandwidth capability when compared to the emission bandwidth, sensitivity, *etc.*, so as to obtain a true peak measurement for the emission in question over the full bandwidth of the channel.

§ 24.235 Frequency stability.

The frequency stability shall be sufficient to ensure that the fundamental emission stays within the authorized frequency block.

§ 24.236 Field strength limits.

The predicted or measured median field strength at any location on the border of the PCS service area shall not exceed 47 dBuV/m unless the parties agree to a higher field strength.

§ 24.237 Interference protection.

(a) All licensees are required to coordinate their frequency usage with the co-channel or adjacent channel incumbent fixed microwave licensees in the 1850–1990 MHz band. Coordination must occur before initiating operations from any base station. Problems that arise during the coordination process are to be resolved by the parties to the coordination. Licensees are required to coordinate with all users possibly affected, as determined by Appendix I to this subpart E (Appendix E of the Memorandum Opinion and Order, GEN Docket No. 90–314, FCC 94–144; TIA Telecommunications Systems Bulletin 10-F, “Interference Criteria for Microwave Systems,” May 1994, (TSB10-F)); or an alternative method agreed to by the parties.

(b) The results of the coordination process need to be reported to the Commission only if the parties fail to agree. Because broadband PCS licensees are required to protect fixed microwave licensees in the 1850–1990 MHz band, the Commission will be involved in the coordination process only upon

complaint of interference from a fixed microwave licensee. In such a case, the Commission will resolve the issues.

(c) In all other respects, coordination procedures are to follow the requirements of §101.103(d) of this chapter to the extent that these requirements are not inconsistent with those specified in this part.

(d) The licensee must perform an engineering analysis to assure that the proposed facilities will not cause inter-

ference to existing OFS stations within the coordination distance specified in Table 2 of a magnitude greater than that specified in the criteria set forth in paragraph (e) and (f) of this section, unless there is prior agreement with the affected OFS licensee. Interference calculations shall be based on the sum of the power received at the terminals of each microwave receiver from all of the applicant's current and proposed PCS operations.

TABLE 2.—COORDINATION DISTANCES IN KILOMETERS
[PCS Base Station Antenna HAAT in Meters]

e.i.r.p. (W)	5	10	20	50	100	150	200	250	300	500	1000	1500	2000
0.1	90	93	99	110	122	131	139	146	152	173	210	239	263
0.5	96	100	105	116	128	137	145	152	158	179	216	245	269
1	99	103	108	119	131	140	148	155	161	182	219	248	272
2	120	122	126	133	142	148	154	159	164	184	222	250	274
5	154	157	161	168	177	183	189	194	198	213	241	263	282
10	180	183	187	194	203	210	215	220	225	240	268	291	310
20	206	209	213	221	229	236	242	247	251	267	296	318	337
50	241	244	248	255	264	271	277	282	287	302	331	354	374
100	267	270	274	282	291	297	303	308	313	329	358	382	401
200	293	296	300	308	317	324	330	335	340	356	386	409	.....
500	328	331	335	343	352	359	365	370	375	391	421	.....	.....
1000	354	357	361	369	378	385	391	397	402	418	.....	.....	.....
1200	361	364	368	376	385	392	398	404	409	.....	.....	.....	.....
1640	372	375	379	388	397	404	410	416	421	.....	.....	.....	.....

Note: If actual value does not match table values, round to the closest higher value on this table. See Section 24.53 for HAAT calculation method.

(e) For microwave paths of 25 kilometers or less, interference determinations shall be based on the C/I criteria set forth in TIA Telecommunications Systems Bulletin 10-F, "Interference Criteria for Microwave Systems," May 1994 (TSB10-F).

(f) For microwave paths longer than 25 kilometers, the interference protection criterion shall be such that the interfering signal will not produce more than 1.0 dB degradation of the practical threshold of the microwave receiver for analog system, or such that the interfering signal will not cause an increase in the bit error rate (BER) from 10E-6 to 10E-5 for digital systems.

(g) The development of the C/I ratios and interference criteria specified in paragraphs (e) and (f) of this section and the methods employed to compute the interfering power at the microwave receivers shall follow generally acceptable good engineering practices. The procedures described for computing interfering signal levels in (Appendix I

to this subpart E Appendix E of the Memorandum Opinion and Order, GEN Docket No. 90-314, FCC 94-144) shall be applied. Alternatively, procedures for determining interfering signal levels and other criteria as may be developed by the Electronics Industries Association (EIA), the Institute of Electrical and Electronics Engineers, Inc. (IEEE), the American National Standards Institute (ANSI) or any other recognized authority will be acceptable to the Commission.

[59 FR 32854, June 24, 1994, as amended at 61 FR 29691, June 21, 1996]

§ 24.238 Emission limits.

(a) On any frequency outside a licensee's frequency block, the power of any emission shall be attenuated below the transmitter power (P) by at least 43 + 10 log (P) dB.

(b) Compliance with these provisions is based on the use of measurement instrumentation employing a resolution bandwidth of 1 MHz or greater. However, in the 1 MHz bands immediately

outside and adjacent to the frequency block a resolution bandwidth of at least one percent of the emission bandwidth of the fundamental emission of the transmitter may be employed. The emission bandwidth is defined as the width of the signal between two points, one below the carrier center frequency and one above the carrier center frequency, outside of which all emissions are attenuated at least 26 dB below the transmitter power.

(c) When measuring the emission limits, the nominal carrier frequency shall be adjusted as close to the licensee's frequency block edges, both upper and lower, as the design permits.

(d) The measurements of emission power can be expressed in peak or average values, provided they are expressed in the same parameters as the transmitter power.

(e) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

POLICIES GOVERNING MICROWAVE RELOCATION FROM THE 1850-1990 MHZ BAND

§ 24.239 Cost-sharing requirements for broadband PCS.

Frequencies in the 1850-1990 MHz band listed in § 101.147(c) of this chapter have been allocated for use by PCS. In accordance with procedures specified in §§ 101.69 through 101.81 of this chapter, PCS entities (both licensed and unlicensed) are required to relocate the existing Fixed Microwave Services (FMS) licensees in these bands if interference to the existing FMS operations would occur. All PCS entities who benefit from spectrum clearance by other PCS entities or a voluntarily relocating microwave incumbent, must contribute to such relocation costs. PCS entities may satisfy this requirement by entering into private cost-sharing agreements or agreeing to terms other than those specified in § 24.243. However, PCS entities are required to reimburse other PCS entities or voluntarily relocating microwave incumbents that incur relocation costs and are not parties to the alternative agreement. In addition, parties to a private cost-sharing agreement may seek reimburse-

ment through the clearinghouse (as discussed in § 24.241) from PCS entities that are not parties to the agreement. The cost-sharing plan is in effect during all phases of microwave relocation specified in § 101.69 of this chapter.

[62 FR 12757, Mar. 18, 1997]

§ 24.241 Administration of the Cost-Sharing Plan.

The Wireless Telecommunications Bureau, under delegated authority, will select an entity to operate as a neutral, not-for-profit clearinghouse. This clearinghouse will administer the cost-sharing plan by, *inter alia*, maintaining all of the cost and payment records related to the relocation of each link and determining the cost-sharing obligation of subsequent PCS entities. The cost-sharing rules will not take effect until an administrator is selected.

[61 FR 29691, June 12, 1996]

§ 24.243 The cost-sharing formula.

A PCS relocater who relocates an interfering microwave link, *i.e.* one that is in all or part of its market area and in all or part of its frequency band or a voluntarily relocating microwave incumbent, is entitled to *pro rata* reimbursement based on the following formula:

$$R_N = \frac{C}{N} \times \frac{[120 - (T_m)]}{120}$$

(a) *R_N* equals the amount of reimbursement.

(b) *C* equals the actual cost of relocating the link. Actual relocation costs include, but are not limited to, such items as: Radio terminal equipment (TX and/or RX—antenna, necessary feed lines, MUX/Modems); towers and/or modifications; back-up power equipment; monitoring or control equipment; engineering costs (design/path survey); installation; systems testing; FCC filing costs; site acquisition and civil works; zoning costs; training; disposal of old equipment; test equipment (vendor required); spare equipment; project management; prior coordination notification under § 101.103(d) of this chapter; site lease renegotiation;

required antenna upgrades for interference control; power plant upgrade (if required); electrical grounding systems; Heating Ventilation and Air Conditioning (HVAC) (if required); alternate transport equipment; and leased facilities. C also includes voluntarily relocating microwave incumbent's independent third party appraisal of its compensable relocation costs and incumbent transaction expenses that are directly attributable to the relocation, subject to a cap of two percent of the "hard" costs involved. C may not exceed \$250,000 per link, with an additional \$150,000 permitted if a new or modified tower is required.

(c) *N* equals the number of PCS entities that would have interfered with the link. For the PCS relocater, *N*=1. For the next PCS entity that would have interfered with the link, *N*=2, and so on. In the case of a voluntarily relocating microwave incumbent, *N*=1 for the first PCS entity that would have interfered with the link. For the next PCS entity that would have interfered with the link, *N*=2, and so on.

(d) *Tm* equals the number of months that have elapsed between the month the PCS relocater or voluntarily relocating microwave incumbent obtains reimbursement rights for the link and the month that the clearinghouse notifies a later-entrant of its reimbursement obligation for the link. A PCS relocater obtains reimbursement rights for the link on the date that it signs a relocation agreement with a microwave incumbent. A voluntarily relocating microwave incumbent obtains reimbursement rights for the link on the date that the incumbent notifies the Commission that it intends to discontinue, or has discontinued, the use of the link, pursuant to §101.305 of the Commission's rules.

[62 FR 12757, Mar. 18, 1997, as amended at 65 FR 46113, July 27, 2000]

§ 24.245 Reimbursement under the Cost-Sharing Plan.

(a) *Registration of reimbursement rights.* (1) To obtain reimbursement, a PCS relocater must submit documentation of the relocation agreement to the clearinghouse within ten business days of the date a relocation agreement is signed with an incumbent.

(2) To obtain reimbursement, a voluntarily relocating microwave incumbent must submit documentation of the relocation of the link to the clearinghouse within ten business days of the date that the incumbent notifies the Commission that it intends to discontinue, or has discontinued, the use of the link, pursuant to §101.305 of the Commission's rules.

(b) *Documentation of expenses.* Once relocation occurs, the PCS relocater or the voluntarily relocating microwave incumbent, must submit documentation itemizing the amount spent for items listed in §24.243(b). The voluntarily relocating microwave incumbent, must also submit an independent third party appraisal of its compensable relocation costs. The appraisal should be based on the actual cost of replacing the incumbent's system with comparable facilities and should exclude the cost of any equipment upgrades or items outside the scope of §24.243(b). The PCS relocater or the voluntarily relocating microwave incumbent, must identify the particular link associated with appropriate expenses (*i.e.*, costs may not be averaged over numerous links). If a PCS relocater pays a microwave incumbent a monetary sum to relocate its own facilities, the PCS relocater must estimate the costs associated with relocating the incumbent by itemizing the anticipated cost for items listed in §24.243(b). If the sum paid to the incumbent cannot be accounted for, the remaining amount is not eligible for reimbursement. A PCS relocater may submit receipts or other documentation to the clearinghouse for all relocation expenses incurred since April 5, 1995.

(c) *Full Reimbursement.* A PCS relocater who relocates a microwave link that is either fully outside its market area or its licensed frequency band may seek full reimbursement through the clearinghouse of compensable costs, up to the reimbursement cap as defined in §24.243(b). Such reimbursement will not be subject to depreciation under the cost-sharing formula.

[61 FR 29692, June 12, 1996, as amended at 62 FR 12757, Mar. 18, 1997; 65 FR 46113, July 27, 2000]

§ 24.247 Triggering a reimbursement obligation.

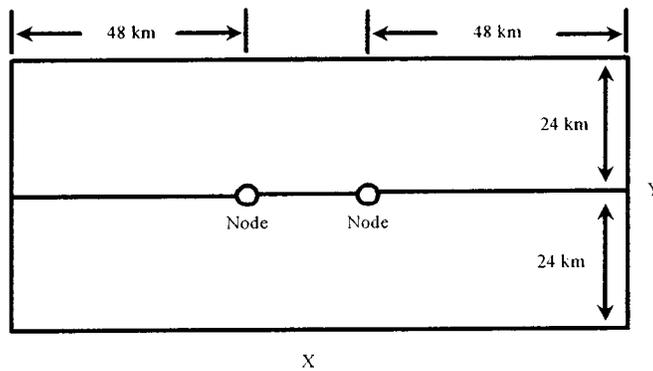
(a) *Licensed PCS.* The clearinghouse will apply the following test to determine if a PCS entity preparing to initiate operations must pay a PCS relocater or a voluntarily relocating microwave incumbent in accordance with the formula detailed in § 24.243:

(1) All or part of the relocated microwave link was initially co-channel with the licensed PCS band(s) of the subsequent PCS entity;

(2) A PCS relocater has paid the relocation costs of the microwave incumbent; and

(3) The subsequent PCS entity is preparing to turn on a fixed base station at commercial power and the fixed base station is located within a rectangle (Proximity Threshold) described as follows:

(i) The length of the rectangle shall be x where x is a line extending through both nodes of the microwave link to a distance of 48 kilometers (30 miles) beyond each node. The width of the rectangle shall be y where y is a line perpendicular to x and extending for a distance of 24 kilometers (15 miles) on both sides of x . Thus, the rectangle is represented as follows:



(ii) If the application of the Proximity Threshold test indicates that a reimbursement obligation exists, the clearinghouse will calculate the reimbursement amount in accordance with the cost-sharing formula and notify the subsequent PCS entity of the total amount of its reimbursement obligation.

(b) *Unlicensed PCS.* UTAM's reimbursement obligation is triggered either:

(1) When a county is cleared of microwave links in the unlicensed allocation, and UTAM invokes a Zone 1 power cap as a result of third party relocation activities; or

(2) A county is cleared of microwave links in the unlicensed allocation and

UTAM reclassifies a Zone 2 county to Zone 1 status.

[61 FR 29692, June 12, 1996, as amended at 62 FR 12757, Mar. 18, 1997]

§ 24.249 Payment issues.

(a) *Timing.* On the day that a PCS entity files its prior coordination notice (PCN) in accordance with § 101.103(d) of this chapter, it must file a copy of the PCN with the clearinghouse. The clearinghouse will determine if any reimbursement obligation exists and notify the PCS entity in writing of its repayment obligation, if any. When the PCS entity receives a written copy of such obligation, it must pay directly to the PCS relocater or the voluntarily relocating microwave incumbent the amount owed within thirty days, with the exception of those businesses that

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qualify for installment payments. A business that qualifies for an installment payment plan must make its first installment payment within thirty days of notice from the clearinghouse. UTAM's first payment will be due thirty days after its reimbursement obligation is triggered, as described in § 24.247(b).

(b) *Eligibility for Installment Payments.* PCS licensees that are allowed to pay for their licenses in installments under our designated entity rules will have identical payment options available to them with respect to payments under the cost-sharing plan. The specific terms of the installment payment mechanism, including the treatment of principal and interest, are the same as those applicable to the licensee's installment auction payments. If, for any reason, the entity eligible for installment payments is no longer eligible for such installment payments on its license, that entity is no longer eligible for installment payments under the cost-sharing plan. UTAM may make quarterly payments over a five-year period with an interest rate of prime plus 2.5 percent. UTAM may also negotiate separate repayment arrangements with other parties.

[61 FR 29693, June 12, 1996, as amended at 62 FR 12757, Mar. 18, 1997]

§ 24.251 Dispute resolution under the Cost-Sharing Plan.

Disputes arising out of the cost-sharing plan, such as disputes over the amount of reimbursement required, must be brought, in the first instance, to the clearinghouse for resolution. To the extent that disputes cannot be resolved by the clearinghouse, parties are encouraged to use expedited ADR procedures, such as binding arbitration, mediation, or other ADR techniques.

[61 FR 29693, June 12, 1996]

§ 24.253 Termination of cost-sharing obligations.

The cost-sharing plan will sunset for all PCS entities on April 4, 2005, which is ten years after the date that voluntary negotiations commenced for A and B block PCS entities. Those PCS entities that are paying their portion of relocation costs on an installment

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basis must continue the payments until the obligation is satisfied.

[61 FR 29693, June 12, 1996]

APPENDIX I TO SUBPART E—A PROCEDURE FOR CALCULATING PCS SIGNAL LEVELS AT MICROWAVE RECEIVERS (APPENDIX E OF THE MEMORANDUM OPINION AND ORDER)

The new Rules adopted in Part 24 stipulate that estimates of interference to fixed microwave operations from a PCS operation will be based on the sum of signals received at a microwave receiver from the PCS operation. This appendix describes a procedure for computing this PCS level.

In general, the procedure involves four steps:

1. Determine the geographical coordinates of all microwave receivers operating on co-channel and adjacent frequencies within the coordination distance of each base station and the characteristics of each receiver, *i.e.*, adjacent channel susceptibility, antenna gain, pattern and height, and line and other losses.

2. Determine an equivalent isotropically radiated power (e.i.r.p.) for each base station and equivalent e.i.r.p. values for the mobiles and portables associated with each base station. Determine the values of pertinent correction and weighting factors based on building heights and density and distribution of portables. Close-in situations, prominent hills, and extra tall buildings require special treatment.

3. Based on PCS e.i.r.p. values, correction and weighting factors, and microwave receiving system characteristics determined above, calculate the total interference power at the input of each microwave receiver, using the Longley-Rice propagation model.

4. Based on the interference power level computed in step 3, determine interference to each microwave receiver using criteria described in Part 24 and EIA/TIA Bulletin 10-F.

The interference from each base station and the mobiles and portables associated with it is calculated as follows:

$$P_{rbi} = 10 \text{Log} (p_{tbi}) - L_{bi} - UC_i + G_{mwi} - C_i - BP_i$$

$$P_{rmi} = 10 \text{Log} (n_{mi} \times p_{tmi}) - L_{mi} - UC_i + G_{mwi} - C_i$$

$$P_{rpsi} = 10 \text{Log} (n_{psi} \times p_{tpsi}) - L_{psi} - UC_i + G_{mwi} - C_i$$

$$P_{rptbi} = 10 \text{Log} (n_{pbi} \times p_{tpbi}) - L_{pbi} - UC_i - (BP_i - BH_i) + G_{mwi} - C_i$$

$$P_{rpri} = 10 \text{Log} (n_{pri} \times p_{tpri}) - L_{pri} - (UC_i - BH_i) + G_{mwi} - C_i$$

where:

- P refers to Power in dBm
- p refers to power in milliwatts
- P_{rbi} = Power at MW receiver from ith base station in dBm
- p_{tbi} = e.i.r.p. transmitted from ith base station in milliwatts, which equals average power per channel x number of channels

x antenna gain with respect to an isotropic antenna—line loss
 L_{bi} =Path loss between MW and base station site in dB
 UC_i =Urban correction factor in dB
 G_{mwi} =Gain of MW antenna in pertinent direction (dBi)
 C_i =Channel discrimination of MW system in dB
 P_{rmi} =Power at MW receiver from mobiles associated with i th base station
 p_{mi} =e.i.r.p. transmitted from mobiles associated with i th base station
 n_{mi} =Number of mobiles associated with i th base station
 L_{mi} =Path loss between MW and mobile transmitters in dB
 P_{rpsi} =Power at MW receiver from outdoor portables (s for sidewalk)
 p_{psi} =e.i.r.p. transmitted from outdoor portables associated with i th base station
 n_{psi} =Number of outdoor portables associated with i th base station
 L_{psi} =Path loss between MW and outdoor portables in dB
 P_{rphi} =Power at MW receiver from indoor portables (b for building)
 p_{phi} =e.i.r.p. transmitted from indoor portables associated with i th base station
 n_{phi} =number of indoor portables associated with i th base station

L_{pbi} =Path loss in dB between MW and base station site (using average building height divided by 2 as effective antenna height)
 P_{rphi} =Power at MW receiver from rooftop portables (r for rooftop)
 p_{phi} =e.i.r.p. transmitted from rooftop portables associated with i th base station
 n_{phi} =Number of rooftop portables associated with i th base station
 L_{pri} =Path loss in dB between MW and base station site (using average building height as effective antenna height)
 BP_i =Building penetration loss at street level in dB
 BH_i =Height gain for portables in buildings $dB=2.5 \times (nf-1)$, where nf is number of floors

NOTE: where C_i varies from channel-to-channel, which often is the case, the summation process is more complex, requiring summation at a channel level first.

Finally, the total PCS interference power at a given microwave receiver from all the base stations in a given frequency band is found by summing the contributions from the individual stations. Likewise, the total interference power at a given microwave receiver from all mobiles and portables operating in a given frequency band is found by summing the contributions from the mobiles and portables associated with each cell.

$$P_{rb} = \sum_i P_{rbi} \text{ milliwatts}$$

$$P_{rm} = \sum_i (P_{rmi} + P_{rpsi} + P_{rphi} + P_{rphi}) \text{ milliwatts}$$

$$P = 10 \text{ Log}(p) \text{ dBm}$$

Base Stations. Interference from each base station to each microwave should normally be considered independently. A group of base stations having more or less (within ± 50 percent) the same height above average terrain, the same e.i.r.p., basically the same path to a microwave receiving site, and subtending an angle to that receiving site of less than 5 degrees, may be treated as a group, using the total power of the group and the average antenna height of the group to calculate path loss, L .

Mobile Stations. The e.i.r.p. from mobile transmitters is weighted according to the number of base station channels expected to be devoted to mobile operation at any given time. The antenna height of mobiles used in

calculating path loss, L , is assumed to be 2 meters.

Portable Stations. The e.i.r.p. from the portable units associated with each base station is weighted according to the estimated portion of portables associated with that cell expected to be operated inside buildings at any given time and the portion which could be expected to be operating from elevated locations, such as balconies or building rooftops. For example, in the case of service intended for business use in an urban area, one might expect that perhaps 85 percent of the portables in use at any given time would be operating from within buildings and perhaps 5 percent might be operating from rooftops or balconies. The remaining 10 percent would be outside at street level.

Calculation of an equivalent e.i.r.p. for cells in suburban areas will involve different weighting criteria.

Urban Correction Factor. The urban correction factor (UC) depends on the height and density of buildings surrounding a base station. For the core area of large cities, it is assumed to be 35 dB. For medium size cities and fringe areas of large cities (4- to 6-story buildings with scattered taller buildings and lower buildings and open spaces) it is assumed to be 25 dB; for small cities and towns, 15 dB, and for suburban residential areas (one- and two-story, single family houses with scattered multiple-story apartment buildings, shopping centers and open areas), 10 dB.

The unadjusted urban correction factor, UC, should not be applied to base station antenna heights that are greater than 50 percent of the average building height for a cell.

Building Height and Building Penetration Factors. The building height correction, BH, is a function of the average building height within the nominal coverage area of the base station. It is used in conjunction with the building penetration loss, BP, to adjust the expected interference contribution from that portion of the portables transmitting from within buildings. The adjustment is given by:

BP=20 dB in urban areas
BP=10 dB in suburban areas
BH=2.5×(nf-1) dB

where nf is the average height (number of floors) of the buildings in the area.

(Note that this formula implies a net gain when the average building height is greater than 8 floors). All buildings more than twice the average height should be considered individually. The contribution to BH from that portion of portables in the building above the average building height should be increased by a factor of $20\log(h)$ dB, where h is the height of the portables above the average building height in meters.

Channel Discrimination Factor. A factor based on the interference selectivity of the microwave receiver.

Propagation Model. The PCS to microwave path loss, L, is calculated using the Longley-Rice propagation model, Version 1.2.2., in the point-to-point mode. The Longley-Rice [1] model was derived from NBS Technical Note 101 [2], and updated in 1982 by Hufford [3]. Version 1.2.2 incorporated modifications described in a letter by Hufford [4] in 1985. Terrain elevations used as input to the model should be from the U.S. Geological Survey 3-second digitized terrain database.

Special Situations. If a cell size is large compared to the distance between the cell and a microwave receiving site so that it subtends an angle greater than 5 degrees, the cell should be subdivided and calculations should

be based on the expected distribution of mobiles and portables within each subdivision.

If terrain elevations within a cell differ by more than a factor of two-to-one, the cell should be subdivided and microwave interference calculations should be based on the average terrain elevation for each subdivision.

If a co-channel PCS base station lies within the main beam of a microwave antenna (± 5 degrees), there is no intervening terrain obstructions, and the power at the microwave receiver from that base station, assuming free space propagation, would be 3 dB or less below the interference threshold, interference will be assumed to exist unless the PCS licensee can demonstrate otherwise by specific path loss calculations based on terrain and building losses.

If any part of a cell or cell subdivision lies within the main beam of a co-channel microwave antenna, there is no intervening terrain obstructions, and the accumulative power of 5 percent or less of the mobiles, assuming free space propagation would be 3 dB or less below the interference threshold, interference will be assumed to exist unless the PCS licensee can demonstrate otherwise by specific path loss calculations based on terrain and building losses.

If a building within a cell or cell subdivision lies within the main beam of a co-channel microwave antenna, there is no intervening terrain obstructions, and the cumulative power of 5 percent or fewer of the portables, assuming free space propagation, would be 3 dB or less below the interference threshold, interference will be assumed to exist unless the PCS licensee can demonstrate otherwise by specific path loss calculations based on terrain and building losses.

REFERENCES:

1. Longley, A.G. and Rice, P.L., "Prediction of Tropospheric Radio Transmission Loss Over Irregular Terrain, A Computer Method-1968", ESSA Technical Report ERL 79-ITS 67, Institute for Telecommunications Sciences, July 1968.
2. Rice, P.L., Longley, A.G., Norton, K.A., Barsis, A.P., "Transmission Loss Predictions for Tropospheric Communications Circuits," NBS Technical Note 101 (Revised), Volumes I and II, U.S. Department of Commerce, 1967.
3. Hufford, G.A., Longley, A.G. and Kissick, W.A., "A Guide to the use of the ITS Irregular Terrain Model in the Area Prediction Mode", NTIA Report 82-100, U.S. Department of Commerce, April 1982. Also, Circular letter, dated January 30, 1985, from G.A. Hufford, identifying modifications to the computer program.
4. Hufford, G.A., Memorandum to Users of the ITS Irregular Terrain Model, Institute for Telecommunications Sciences, U.S. Department of Commerce, January 30, 1985.

Subpart F—Competitive Bidding Procedures for Narrowband PCS

SOURCE: 59 FR 26747, May 24, 1994, unless otherwise noted.

§ 24.301 Narrowband PCS subject to competitive bidding.

Mutually exclusive initial applications to provide narrowband PCS service are subject to competitive bidding procedures. The general competitive bidding procedures found in 47 CFR part 1, subpart Q, will apply unless otherwise provided in this part.

§ 24.302–24.309 [Reserved]

§ 24.320 [Reserved]

§ 24.321 Designated entities.

(a) *Eligibility for small business provisions.* (1) A small business is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding \$40 million for the preceding three years.

(2) A very small business is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding \$15 million for the preceding three years.

(3) For purposes of determining whether an entity meets either of the definitions set forth in paragraphs (a)(1) and (a)(2) of this section, the gross revenues of the entity, its controlling interests and affiliates shall be considered on a cumulative basis and aggregated. An applicant seeking status as a small business or very small business under this section must disclose on its short- and long-form applications, separately and in the aggregate, the gross revenues of the applicant (or licensee), its controlling interests and affiliates for each of the previous three years.

(4) Persons or entities that hold interests in an applicant (or licensee) that are affiliates of each other or have an identity of interests identified in § 1.2110(b)(4)(iii) of this chapter will be treated as though they were one person or entity and their ownership interests aggregated for purposes of determining an applicant's (or licensee's) compliance with the requirements of this section.

(5) Where an applicant (or licensee) cannot identify controlling interests under the standards set forth in this section, the gross revenues of all interest holders in the applicant, and their affiliates, will be attributable.

(6) A consortium of small businesses (or a consortium of very small businesses) is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(1) of this section (or each of which individually satisfies the definition in paragraph (a)(2) of this section). Where an applicant or licensee is a consortium of small businesses (or very small businesses), the gross revenues of each small business (or very small business) shall not be aggregated.

(7) Designated entities must describe on their long-form applications how they satisfy the requirements for eligibility for designated entity status, and must list and summarize on their long-form applications all agreements that affect designated entity status such as partnership agreements, shareholder agreements, management agreements and other agreements, including oral agreements, establishing, as applicable, *de facto* or *de jure* control of the entity. Such information must be maintained at the licensee's facilities or by its designated agent for the term of the license in order to enable the Commission to audit designated entity eligibility on an ongoing basis.

(b) *Controlling interest.* (1) For purposes of this section, a controlling interest includes individuals or entities with either *de jure* or *de facto* control of the applicant. *De jure* control is evidenced by holdings of greater than 50 percent of the voting stock of a corporation, or in the case of a partnership, general partnership interests. *De facto* control is determined on a case-by-case basis. An entity must disclose its equity interest and demonstrate at least the following indicia of control to establish that it retains *de facto* control of the applicant:

(i) The entity constitutes or appoints more than 50 percent of the board of directors or management committee;

(ii) The entity has authority to appoint, promote, demote, and fire senior

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executives that control the day-to-day activities of the licensee; and

(iii) The entity plays an integral role in management decisions.

(2) The following rules apply for the calculation of certain interests.

(i) Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options, and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised.

(ii) Partnership and other ownership interests and any stock interest equity, or outstanding stock, or outstanding voting stock shall be attributed as specified in this paragraph (b).

(iii) Stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal, or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust will be attributed to the grantor or beneficiary, as appropriate.

(iv) Non-voting stock shall be attributed as an interest in the issuing entity.

(v) Limited partnership interests shall be attributed to limited partners and shall be calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses.

(vi) Officers and directors of an entity shall be considered to have a controlling interest in the entity. The officers and directors of an entity that controls a licensee or applicant shall be considered to have a controlling interest in the licensee or applicant.

(vii) Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be

treated as if it were a 100 percent interest.

(viii) Any person who manages the operations of an applicant or licensee pursuant to a management agreement shall be considered to have a controlling interest in such applicant or licensee if such person, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

(A) The nature or types of services offered by such an applicant or licensee;

(B) The terms upon which such services are offered; or

(C) The prices charged for such services.

(ix) Any licensee or its affiliate who enters into a joint marketing arrangement with an applicant or licensee, or its affiliate, shall be considered to have a controlling interest, if such applicant or licensee, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

(A) The nature or types of services offered by such an applicant or licensee;

(B) The terms upon which such services are offered; or

(C) The prices charged for such services.

(c) *Bidding credits.* (1) After August 7, 2000, a winning bidder that qualifies as a small business or a consortium of small businesses as defined in this section may use the bidding credit specified in §1.2110(e)(2)(iii) of this chapter. A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in this section may use the bidding credit specified in §1.2110(e)(2)(ii) of this chapter.

(2)(i) Businesses owned by members of minority groups and women, including small businesses owned by members of minority groups and women, that are winning bidders on nationwide licenses on Channel 5, Channel 8, and Channel 11 prior to [effective date of rules] will be eligible for a twenty-five (25) percent bidding credit.

(ii) Businesses owned by members of minority groups and women, including small businesses owned by members of

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minority groups and women, that are winning bidders on regional licenses on Channel 13 and Channel 17 prior to August 7, 2000 will be eligible for a forty (40) percent bidding credit.

(d) Installment payments. Small businesses, including small businesses owned by members of minority groups and women, that are winning bidders on any regional license prior to August 7, 2000 will be eligible to pay the full amount of their winning bids in installments over the term of the license pursuant to the terms set forth in § 1.2110(f) of this chapter.

[65 FR 35854, June 6, 2000]

Subpart G—Interim Application, Licensing and Processing Rules for Narrowband PCS

SOURCE: 59 FR 26749, May 24, 1994, unless otherwise noted.

§ 24.403 Authorization required.

No person shall use or operate any device for the transmission of energy or communications by radio in the services authorized by this part except as provided in this part.

§ 24.404 Eligibility.

(a) *General.* Authorizations will be granted upon proper application if:

(1) The applicant is qualified under the applicable laws and the regulations, policies and decisions issued under the laws, including § 24.12;

(2) There are frequencies available to provide satisfactory service; and

(3) The public interest, convenience or necessity would be served by a grant.

(b) *Alien ownership.* A narrowband PCS authorization to provide Commercial Mobile Radio Service may not be granted to or held by:

(1) Any alien or the representative of any alien.

(2) Any corporation organized under the laws of any foreign government.

(3) Any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or any corporation organized under the laws of a foreign country.

(4) Any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license. A Narrowband PCS authorization to provide Private Mobile Radio Service may not be granted to or held by a foreign government or a representative thereof.

[59 FR 26749, May 24, 1994, as amended at 61 FR 55581, Oct. 28, 1996; 65 FR 35855, June 6, 2000]

§§ 24.405–24.414 [Reserved]

§ 24.415 Technical content of applications; maintenance of list of station locations.

(a) All applications required by this part shall contain all technical information required by the application forms or associated public notice(s). Applications other than initial applications for a narrowband PCS license must also comply with all technical requirements of the rules governing the narrowband PCS (see subparts C and D as appropriate). The following paragraphs describe a number of general technical requirements.

(b) Each application (except applications for initial licenses filed on Form 175) for a radio station authorization for narrowband PCS must comply with the provisions of §§ 24.129 through 24.135.

(c)—(i) [Reserved]

(j) The location of the transmitting antenna shall be considered to be the station location. Narrowband PCS licensees must maintain a current list of all station locations, which must describe the transmitting antenna site by its geographical coordinates and also by conventional reference to street number, landmark, or the equivalent. All such coordinates shall be specified in terms of degrees, minutes, and seconds to the nearest second of latitude and longitude.

[59 FR 26749, May 24, 1994; 59 FR 43898, Aug. 25, 1994]

§§ 24.416–24.429 [Reserved]

§ 24.430 Opposition to applications.

(a) Petitions to deny (including petitions for other forms of relief) and responsive pleadings for Commission consideration must comply with § 1.2108 of this chapter and must:

(1) Identify the application or applications (including applicant's name, station location, Commission file numbers and radio service involved) with which it is concerned;

(2) Be filed in accordance with the pleading limitations, filing periods, and other applicable provisions of §§ 1.41 through 1.52 of this chapter except where otherwise provided in § 1.2108 of this chapter;

(3) Contain specific allegations of fact which, except for facts of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof, and which shall be sufficient to demonstrate that the petitioner (or respondent) is a party in interest and that a grant of, or other Commission action regarding, the application would be prima facie inconsistent with the public interest; and

(4) Contain a certificate of service showing that it has been mailed to the applicant no later than the date of filing thereof with the Commission.

(b) A petition to deny a major amendment to a previously filed application may only raise matters directly related to the amendment which could not have been raised in connection with the underlying, previously filed application. This does not apply to petitioners who gain standing because of the major amendment.

(c) Parties who file frivolous petitions to deny may be subject to sanctions including monetary forfeitures, license revocation, if they are FCC licensees, and may be prohibited from participating in future auctions.

[59 FR 44072, Aug. 26, 1994, as amended at 65 FR 35855, June 6, 2000]

§ 24.431 Mutually exclusive applications.

(a) The Commission will consider applications to be mutually exclusive if their conflicts are such that the grant of one application would effectively

preclude by reason of harmful electrical interference, or other practical reason, the grant of one or more of the other applications. The Commission will presume "harmful electrical interference" to mean interference which would result in a material impairment to service rendered to the public despite full cooperation in good faith by all applicants or parties to achieve reasonable technical adjustments which would avoid electrical conflict.

(b) Mutually exclusive applications filed on Form 175 for the initial provision of narrowband PCS service are subject to competitive bidding in accordance with the procedures in subpart F of this part and in 47 CFR part 1, subpart Q.

(c) An application will be entitled to comparative consideration with one or more conflicting applications only if the Commission determines that such comparative consideration will serve the public interest.

§§ 24.432–24.444 [Reserved]

Subpart H—Competitive Bidding Procedures for Broadband PCS

SOURCE: 59 FR 37604, July 22, 1994, unless otherwise noted.

§ 24.701 Broadband PCS subject to competitive bidding.

Mutually exclusive initial applications to provide broadband PCS service are subject to competitive bidding procedures. The general competitive bidding procedures found in 47 CFR part 1, subpart Q will apply unless otherwise provided in this part.

§ 24.702 Competitive bidding design for Broadband PCS licensing.

(a) The Commission will employ the following competitive bidding designs when choosing from among mutually exclusive initial applications to provide broadband PCS service:

- (1) Simultaneous multiple round auctions.
- (2) Sequential auctions.

(b) The Commission may design and test alternative procedures. The Commission will announce by Public Notice before each auction the competitive

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bidding design to be employed in a particular auction.

(c) The Commission may use combinatorial bidding, which would allow bidders to submit all or nothing bids on combinations of licenses, in addition to bids on individual licenses. The Commission may require that to be declared the high bid, a combinatorial bid must exceed the sum of the individual bids by a specified amount or percentage. Combinatorial bidding may be used with any type of auction design.

(d) The Commission may use single combined auctions, which combine bidding for two or more substitutable licenses and award licenses to the highest bidders until the available licenses are exhausted. This technique may be used in conjunction with any type of auction.

§ 24.703 [Reserved]

§ 24.704 Withdrawal, default and disqualification penalties.

See § 1.2104 of this chapter.

[63 FR 50799, Sept. 23, 1998]

§ 24.705 [Reserved]

§ 24.706 Submission of upfront payments and down payments.

(a) All auction participants are required to submit an upfront payment in accordance with § 1.2106 of this chapter. Any C block applicant that has previously been in default on any Commission licenses or has previously been delinquent on any non-tax debt owed to any Federal agency must submit an upfront payment equal to 50 percent more than that set for each particular license.

(b) Winning bidders in an auction must submit a down payment to the Commission in accordance with § 1.2107(b) of this chapter and §§ 24.711(a)(2) and 24.716(a)(2).

(c) Each eligible bidder for licenses on frequency Blocks D and E subject to auction shall pay an upfront payment of \$0.06 per MHz per pop for the maximum number of licenses (in terms of MHz-pops) on which it intends to bid

pursuant to § 1.2106 of this chapter and procedures specified by Public Notice.

[61 FR 33868, July 1, 1996, as amended at 63 FR 50799, Sept. 23, 1998]

§ 24.707 [Reserved]

§ 24.708 License grant, denial, default, and disqualification.

(a) Except with respect to entities eligible for installment payments (see § 24.711), each winning bidder will be required to pay the balance of its winning bid in a lump sum payment within five (5) business days following the award of the license. Grant of the license will be conditioned upon full and timely payment of the winning bid amount.

(b) A bidder who withdraws its bid subsequent to the close of bidding, defaults on a payment due or is disqualified will be subject to the penalties specified in § 1.2109 of this chapter.

§ 24.709 Eligibility for licenses for frequency Blocks C and F.

(a) *General Rule for licenses offered for closed bidding.* (1) No application is acceptable for filing and no license shall be granted to a winning bidder in closed bidding for frequency block C or frequency block F, unless the applicant, together with its affiliates and persons or entities that hold interests in the applicant and their affiliates, have had gross revenues of less than \$125 million in each of the last two years and total assets of less than \$500 million at the time the applicant's short-form application (Form 175) is filed.

(2) The *gross revenues* and *total assets* of the applicant (or licensee), and its *affiliates*, and (except as provided in paragraph (b) of this section) of persons or entities that hold interests in the applicant (or licensee), and their *affiliates*, shall be attributed to the applicant and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for a license for frequency block C or frequency block F under this section.

(3) Any licensee awarded a license won in closed bidding pursuant to the eligibility requirements of this section (or pursuant to § 24.839(a)(2)) shall

maintain its eligibility until at least five years from the date of initial license grant, except that a licensee's (or other attributable entity's) increased gross revenues or increased total assets due to nonattributable equity investments (i.e., from sources whose gross revenues and total assets are not considered under paragraph (b) of this section), debt financing, revenue from operations or other investments, business development, or expanded service shall not be considered.

(4) In order to be eligible for participation in a C block auction, an applicant must certify that it is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency. See § 24.706 of this part.

(5) An applicant for participation in a C block auction must state under penalty of perjury whether or not it has ever been in default on any Commission licenses or has ever been delinquent on any non-tax debt owed to any Federal agency. See § 24.706 of this part.

(b) *Exceptions to General Rule.* (1) *Small Business Consortia.* Where an applicant (or licensee) is a *consortium of small businesses*, the *gross revenues* and *total assets* of each small business shall not be aggregated.

(2) *Publicly-Traded Corporations.* Where an applicant (or licensee) is a *publicly traded corporation with widely dispersed voting power*, the *gross revenues* and *total assets* of a person or entity that holds an interest in the applicant (or licensee), and its *affiliates*, shall not be considered.

(3) *25 Percent Equity Exception.* The *gross revenues* and *total assets* of a person or entity that holds an interest in the applicant (or licensee), and its *affiliates*, shall not be considered so long as:

(i) Such person or entity, together with its *affiliates*, holds only *nonattributable equity* equaling no more than 25 percent of the applicant's (or licensee's) total equity;

(ii) Except as provided in paragraph (b)(5) of this section, such person or entity is not a member of the applicant's (or licensee's) *control group*; and

(iii) The applicant (or licensee) has a *control group* that complies with the minimum equity requirements of para-

graph (b)(5) of this section, and, if the applicant (or licensee) is a corporation, owns at least 50.1 percent of the applicant's (or licensee's) voting interests, and, if the applicant (or licensee) is a partnership, holds all of its general partnership interests.

(4) *49.9 Percent Equity Exception.* The *gross revenues* and *total assets* of a person or entity that holds an interest in the applicant (or licensee), and its *affiliates*, shall not be considered so long as:

(i) Such person or entity, together with its *affiliates*, holds only *nonattributable equity* equaling no more than 49.9 percent of the applicant's (or licensee's) total equity;

(ii) Except as provided in paragraph (b)(6) of this section, such person or entity is not a member of the applicant's (or licensee's) *control group*; and

(iii) The applicant (or licensee) has a *control group* that complies with the minimum equity requirements of paragraph (b)(6) of this section and, if the applicant (or licensee) is a corporation, owns at least 50.1 percent of the applicant's (or licensee's) voting interests, and, if the applicant (or licensee) is a partnership, holds all of its general partnership interests.

(5) *Control Group Minimum 25 Percent Equity Requirement.* In order to be eligible to exclude *gross revenues* and *total assets* of persons or entities identified in paragraph (b)(3) of this section, and applicant (or licensee) must comply with the following requirements:

(i) Except for an applicant (or licensee) whose sole control group member is a *preexisting entity*, as provided in paragraph (b)(5)(ii) of this section, at the time the applicant's short-form application (Form 175) is filed and until at least three years following the date of initial license grant, the applicant's (or licensee's) *control group* must own at least 25 percent of the applicant's (or licensee's) total equity as follows:

(A) At least 15 percent of the applicant's (or licensee's) total equity must be held by *qualifying investors*, either unconditionally or in the form of options exercisable, at the option of the holder, at any time and at any exercise price equal to or less than the market value at the time the applicant files its short-form application (Form 175);

(B) Such *qualifying investors* must hold 50.1 percent of the voting stock and all general partnership interests within the control group, and must have *de facto* control of the control group and of the applicant;

(C) The remaining 10 percent of the applicant's (or licensee's) total equity may be owned, either unconditionally or in the form of stock options, by any of the following entities, which may not comply with §24.720(n)(1):

(1) *Institutional Investors*;

(2) Noncontrolling *existing investors* in any *preexisting entity* that is a member of the *control group*;

(3) Individuals that are members of the applicant's (or licensee's) management; or

(4) *Qualifying investors*, as specified in §24.720(n)(4).

(D) Following termination of the three-year period specified in paragraph (b)(5)(i) of this section, *qualifying investors* must continue to own at least 10 percent of the applicant's (or licensee's) total equity, either unconditionally or in the form of stock options subject to the restrictions in paragraph (b)(5)(i)(A) of this section. The restrictions specified in paragraph (b)(5)(i)(C)(1) through (4) of this section no longer apply to the remaining equity after termination of such three-year period.

(ii) At the election of an applicant (or licensee) whose *control group's* sole member is a *preexisting entity*, the 25 percent minimum equity requirements set forth in paragraph (b)(5)(i) of this section shall apply, except that only 10 percent of the applicant's (or licensee's) total equity must be held by *qualifying investors* and that the remaining 15 percent of the applicant's (or licensee's) total equity may be held by *qualifying investors* or noncontrolling *existing investors* in such *control group* member or individuals that are members of the applicant's (or licensee's) management. These restrictions on the identity of the holder(s) of the remaining 15 percent of the licensee's total equity no longer apply after termination of the three-year period specified in paragraph (b)(5)(i) of this section.

(6) *Control Group Minimum 50.1 Percent Equity Requirement*. In order to be eligible to exclude *gross revenues* and *total*

assets of persons or entities identified in paragraph (b)(4) of this section, an applicant (or licensee) must comply with the following requirements:

(i) Except for an applicant (or licensee) whose sole control group member is a *preexisting entity*, as provided in paragraph (b)(6)(ii) of this section, at the time the applicant's short-form application (Form 175) is filed and until at least three years following the date of initial license grant, the applicant's (or licensee's) *control group* must own at least 50.1 percent of the applicant's (or licensee's) total equity as follows:

(A) At least 30 percent of the applicant's (or licensee's) total equity must be held by *qualifying investors*, either unconditionally or in the form of options, exercisable at the option of the holder, at any time and at any exercise price equal to or less than the market value at the time the applicant files its short-form application (Form 175);

(B) Such *qualifying investors* must hold 50.1 percent of the voting stock and all general partnership interests within the control group and must have *de facto* control of the control group and of the applicant;

(C) The remaining 20.1 percent of the applicant's (or licensee's) total equity may be owned by *qualifying investors*, either unconditionally or in the form of stock options not subject to the restrictions of paragraph (b)(6)(i)(A) of this section, or by any of the following entities which may not comply with §24.720(n)(1):

(1) *Institutional investors*, either unconditionally or in the form of stock options;

(2) Noncontrolling *existing investors* in any *preexisting entity* that is a member of the *control group*, either unconditionally or in the form of stock options;

(3) Individuals that are members of the applicant's (or licensee's) management, either unconditionally or in the form of stock options; or

(4) *Qualifying investors*, as specified in 24.720(n)(4).

(D) Following termination of the three-year period specified in paragraph (b)(6)(i) of this section, *qualifying investors* must continue to own at least 20 percent of the applicant's (or licensee's) total equity unconditionally or in the form of stock options subject to

the restrictions in paragraph (b)(6)(i)(A) of this section. The restrictions specified in paragraph (b)(6)(i)(C)(1) through (4) of this section no longer apply to the remaining equity after termination of such three-year period.

(ii) At the election of an applicant (or licensee) whose *control group's* sole member is a *preexisting entity*, the 50.1 percent minimum equity requirements set forth in paragraph (b)(6)(i) of this section shall apply, except that only 20 percent of the applicant's (or licensee's) total equity must be held by *qualifying investors*, and that the remaining 30.1 percent of the applicant's (or licensee's) total equity may be held by *qualifying investors*, or noncontrolling *existing investors* in such *control group* member or individuals that are members of the applicant's (or licensee's) management. These restrictions on the identity of the holder(s) of the remaining 30.1 percent of the licensee's total equity no longer apply after termination of the three-year period specified in paragraph (b)(6)(i) of this section.

(7) *Calculation of Certain Interests.* Except as provided in paragraphs (b)(5) and (b)(6) of this section, ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised, except that such agreements may not be used to appear to terminate or divest ownership interests before they actually do so, in order to comply with the *non-attributable equity* requirements in paragraphs (b)(3)(i) and (b)(4)(i) of this section.

(8) *Aggregation of Affiliate Interests.* Persons or entities that hold interest in an applicant (or licensee) that are *affiliates* of each other or have an identity of interests identified in § 24.720(1)(3) will be treated as though they were one person or entity and their ownership interests aggregated for purposes of determining an applicant's (or licensee's) compliance with the *nonattributable equity* requirements in paragraphs (b)(3)(i) and (b)(4)(i) of this section.

Example 1 for paragraph (b)(8). ABC Corp. is owned by individuals, A, B, and C, each having an equal one-third voting interest in ABC Corp. A and B together, with two-thirds of the stock have the power to control ABC Corp. and have an identity of interest. If A & B invest in DE Corp., a broadband PCS applicant for block C, A and B's separate interests in DE Corp. must be aggregated because A and B are to be treated as one person.

Example 2 for paragraph (b)(8). ABC Corp. has subsidiary BC Corp., of which it holds a controlling 51 percent of the stock. If ABC Corp. and BC Corp., both invest in DE Corp., their separate interests in DE Corp. must be aggregated because ABC Corp. and BC Corp. are affiliates of each other.

(9) *Special rule for licensees disaggregating or returning certain spectrum in frequency block C.*

(i) In addition to entities qualifying for closed bidding under paragraph (a)(1) of this section, any entity that was eligible for and participated in the auction for frequency block C, which began on December 18, 1995, or the re-auction for frequency block C, which began on July 3, 1996, will be eligible to bid for C block licenses offered in closed bidding in any re-auction of frequency block C spectrum that begins within two years of March 23, 1999.

(ii) In cases of merger, acquisition, or other business combination of entities, where each of the entities is eligible to bid for C block licenses offered in closed bidding in any re-auction of C block spectrum on the basis of the eligibility exception set forth in paragraph (b)(9)(i) of this section, the resulting entity will also be eligible for the exception specified in paragraph (b)(9)(i).

(iii) In cases of merger, acquisition, or other business combination of entities, where one or more of the entities are ineligible for the exception set forth in paragraph (b)(9)(i) of this section, the resulting entity will not be eligible pursuant to paragraph (b)(9)(i) unless an eligible entity possesses *de jure* and *de facto* control over the resulting entity.

(iv) The following restrictions will apply for any re-auction of frequency block C spectrum conducted after March 24, 1998:

(A) Applicants that elected to disaggregate and surrender to the Commission 15 MHz of spectrum from any

or all of their frequency block C licenses, as provided in Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, Second Report and Order and Further Notice of Proposed Rule Making, WT Docket No. 97-82, 12 FCC Rcd 16,436 (1997), as modified by the Order on Reconsideration of the Second Report and Order, WT Docket No. 97-82, FCC 98-46 (rel. Mar. 24, 1998), will not be eligible to apply for such disaggregated spectrum until 2 years from the start of the reauction of that spectrum.

(B) Applicants that surrendered to the Commission any of their frequency block C licenses, as provided in Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, Second Report and Order and Further Notice of Proposed Rule Making, WT Docket No. 97-82, 12 FCC Rcd 16,436 (1997), as modified by the Order on Reconsideration of the Second Report and Order, WT Docket No. 97-82, FCC 98-46 (rel. Mar. 24, 1998), will not be eligible to apply for the licenses that they surrendered to the Commission until 2 years from the start of the reauction of those licenses if they elected to apply a credit of 70% of the down payment they made on those licenses toward the prepayment of licenses they did not surrender.

(c) *Short-Form and Long-Form Applications: Certifications and Disclosure.* (1) *Short-form Application.* In addition to certifications and disclosures required by Part 1, subpart Q of this chapter and §24.813, each applicant for a license for frequency block C or frequency block F shall certify on its short-form application (Form 175) that it is eligible to bid on and obtain such license(s), and (if applicable) that it is eligible for designated entity status pursuant to this section and §24.720, and shall append the following information as an exhibit to its Form 175:

(i) For an applicant that is a *publicly traded corporation with widely disbursed voting power*:

(A) A certified statement that such applicant complies with the requirements of the definition of *publicly trad-*

ed corporation with widely disbursed voting power set forth in §24.720(m);

(B) The identify of each *affiliate* of the applicant if not disclosed pursuant to §24.813; and

(C) The applicant's *gross revenues* and *total assets*, computed in accordance with paragraphs (a) and (b) of this section.

(ii) For all other applicants:

(A) The identity of each member of the applicant's *control group*, regardless of the size of each member's total interest in the applicant, and the percentage and type of interest held;

(B) The citizenship and the gender or minority group classification for each member of the applicant's *control group* if the applicant is claiming status as a *business owned by members of minority groups and/or women*;

(C) The status of each *control group* member that is an *institutional investor*, an *existing investor*, and/or a member of the applicant's management;

(D) The identify of each *affiliate* of the applicant and each *affiliate* of individuals or entities identified pursuant to paragraphs (c)(1)(ii)(A) and (c)(1)(ii)(C) of this section if not disclosed pursuant to §24.813;

(E) A certification that the applicant's sole *control group* member is a *preexisting entity*, if the applicant makes the election in either paragraph (b)(5)(ii) or (b)(6)(ii) of this section; and

(F) The applicant's *gross revenues* and *total assets*, computed in accordance with paragraphs (a) and (b) of this section.

(iii) For each applicant claiming status as a *small business consortium*, the information specified in paragraph (c)(1)(ii) of this section, for each member of such consortium.

(2) *Long-form Application.* In addition to the requirements in subpart I of this part and other applicable rules (e.g., §§20.6(e) and 20.9(b) of this chapter), each applicant submitting a long-form application for a license(s) for frequency block C or frequency block F shall, in an exhibit to its long-form application:

(i) Disclose separately and in the aggregate the *gross revenues* and *total assets*, computed in accordance with paragraphs (a) and (b) of this section, for each of the following: the applicant;

the applicant's *affiliates*, the applicant's *control group* members; the applicant's attributable investors; and *affiliates* of its attributable investors;

(ii) List and summarize all agreements or other instruments (with appropriate references to specific provisions in the text of such agreements and instruments) that support the applicant's eligibility for a license(s) for frequency block C or frequency block F and its eligibility under §§ 24.711, 24.712, 24.714 and 24.720, including the establishment of *de facto* and *de jure* control; such agreements and instruments include articles of incorporation and by-laws, shareholder agreements, voting or other trust agreements, partnership agreements, management agreements, joint marketing agreements, franchise agreements, and any other relevant agreements (including letters of intent), oral or written; and

(iii) List and summarize any investor protection agreements and identify specifically any such provisions in those agreements identified pursuant to paragraph (c)(2)(ii) of this section, including rights of first refusal, supermajority clauses, options, veto rights, and rights to hire and fire employees and to appoint members to boards of directors or management committees.

(3) *Records Maintenance*. All applicants, including those that are winning bidders, shall maintain at their principal place of business an updated file of ownership, revenue and asset information, including those documents referenced in paragraphs (c)(2)(ii) and (c)(2)(iii) of this section and any other documents necessary to establish eligibility under this section or under the definitions of *small business and/or business owned by members of minority groups and/or women*. Licensees (and their successors in interest) shall maintain such files for the term of the license. Applicants that do not obtain the license(s) for which they applied shall maintain such files until the grant of such license(s) is final, or one year from the date of the filing of their short-form application (Form 175), whichever is earlier.

(d) *Audits*. (1) Applicants and licensees claiming eligibility for closed bidding under this section or for other provisions under §§ 24.711 through 24.720

shall be subject to audits by the Commission, using in-house and contract resources. Selection for audit may be random, on information, or on the basis of other factors.

(2) Consent to such audits is part of the certification included in the short-form application (Form 175). Such consent shall include consent to the audit of the applicant's or licensee's books, documents and other material (including accounting procedures and practices) regardless of form or type, sufficient to confirm that such applicant's or licensee's representations are, and remain, accurate. Such consent shall include inspection at all reasonable times of the facilities, or parts thereof, engaged in providing and transacting business, or keeping records regarding licensed broadband PCS service and shall also include consent to the interview of principals, employees, customers and suppliers of the applicant or licensee.

(e) *Tiers*. (1) For purposes of determining spectrum to which the eligibility requirements of this section are applicable, the BTA service areas (see § 24.202(b)) are divided into two tiers according to their population as follows:

(i) Tier 1: BTA service areas with population equal to or greater than 2.5 million;

(ii) Tier 2: BTA service areas with population less than 2.5 million.

(2) For Auction No. 35, the population of individual BTA service areas will be based on the 1990 census. For auctions beginning after the start of Auction No. 35, the population of individual BTA service areas will be based on the most recent available decennial census.

(f) *Application of eligibility requirements*. (1) The following categories of licenses will be subject to closed bidding pursuant to the eligibility requirements of this section in auctions that begin after the effective date of this paragraph.

(i) For Tier 1 BTAs, one of the 10 MHz C block licenses (1895–1900 MHz paired with 1975–1980 MHz);

(ii) For Tier 2 BTAs, two of the 10 MHz C block licenses (1895–1900 MHz paired with 1975–1980 MHz; 1900–1905 MHz paired with 1980–1985 MHz) and all 15 MHz C block licenses.

(2) Notwithstanding the provisions of paragraph (f)(1) of this section, any C block license for operation on spectrum that has been offered, but not won by a bidder, in closed bidding in any auction beginning on or after March 23, 1999, will not be subject in a subsequent auction to closed bidding pursuant to the eligibility requirements of this section.

(g) *Definitions.* The terms *affiliate, business owned by members of minority groups and/or women, and gross revenues* used in this section are defined in §1.2110 of this chapter. The terms *consortium of small businesses, control group, existing investor, institutional investor, nonattributable equity, preexisting entity, publicly traded corporation with widely dispersed voting power, qualifying investor, small business, and total assets* used in this section are defined in §24.720 of this chapter.

[59 FR 63232, Dec. 7, 1994; 60 FR 5335, Jan. 27, 1995, as amended at 60 FR 37795, July 21, 1995; 61 FR 33868, July 1, 1996; 63 FR 17122, Apr. 8, 1998; 63 FR 50799, Sept. 23, 1998; 65 FR 53637, Sept. 5, 2000]

EFFECTIVE DATE NOTE: At 65 FR 53637, Sept. 5, 2000, §24.229 was amended by revising paragraphs (a), (a)(1), (a)(3), (b)(9)(i), redesignating paragraph (b)(9)(ii) as paragraph (b)(9)(iv), adding new paragraphs (b)(9)(ii), (b)(9)(iii), revising paragraph (d)(1), redesignating paragraph (e) as paragraph (g), and adding new paragraphs (e) and (f), effective Nov. 6, 2000. For the convenience of the user, the superseded text is set forth as follows:

§ 24.709 Eligibility for licenses for frequency Blocks C and F.

(a) *General Rule.* (1) No application is acceptable for filing and no license shall be granted for frequency block C or frequency block F, unless the applicant, together with its *affiliates* and persons or entities that hold interests in the applicant and their *affiliates*, have *gross revenues* of less than \$125 million in each of the last two years and *total assets* of less than \$500 million at the time the applicant's short-form application (Form 175) is filed.

* * * * *

(3) Any licensee awarded a license pursuant to this section (or pursuant to §24.839(d)(2)) shall maintain its eligibility until at least five years from the date of initial license grant, except that a licensee's (or other attributable entity's) increased *gross revenues* or increased *total assets* due to *nonattributable equity* investments (i.e., from sources whose

gross revenues and *total assets* are not considered under paragraph (b) of this section), debt financing, revenue from operations or other investments, business development or expanded service shall not be considered.

* * * * *

(b) * * *

(9) * * *

(i) In addition to entities qualifying under this section, any entity that was eligible for and participated in the auction for frequency block C, which began on December 18, 1995, or the reauction for frequency block C, which began on July 3, 1996, will be eligible to bid in any reauction of block C spectrum that begins within two years of the start date of the first reauction of C block spectrum following the effective date of this rule.

* * * * *

(d) * * * (1) Applicants and licensees claiming eligibility under this section or §§24.711 through 24.720 shall be subject to audits by the Commission, using in-house and contract resources. Selection for audit may be random, on information, or on the basis of other factors.

* * * * *

§ 24.710 Limitation on licenses won at auction for frequency Blocks C and F.

(a) No applicant may be deemed the winning bidder of more than 98 of the licenses available for frequency Blocks C and F. Any applicant who is the high bidder for more than 98 of the licenses available for frequency Blocks C and F shall be required to withdraw its bid(s) for a sufficient number of licenses to achieve compliance with this section and may be subject to bid withdrawal penalties under §24.704.

(b) For purposes of paragraph (a) of this section, licenses will be deemed to be won by the same bidder if an entity that controls or has the power to control any applicant that wins licenses at the auction, has the power to control any other applicant that wins licenses at the auction.

EFFECTIVE DATE NOTE: At 65 FR 53637, Sept. 5, 2000, §24.710 was removed and reserved, effective Nov. 6, 2000.

§ 24.711 Upfront payments, down payments and installment payments for licenses for frequency Block C.

(a) *Upfront Payments and Down Payments.* (1) Each eligible bidder for licenses subject to auction on frequency Block C shall pay an upfront payment as set forth in a Public Notice pursuant to the procedures in § 1.2106 of this chapter.

(2) Each winning bidder shall make a down payment and pay the balance of its winning bids pursuant to § 1.2107 and § 1.2109 of this chapter.

(b) *Installment payments.* Each eligible licensee of frequency Block C or F may pay the remaining 90 percent of the net auction price for the license in installment payments pursuant to § 1.2110(g) of this chapter and under the following terms:

(1) For an eligible licensee with *gross revenues* exceeding \$75 million (calculated in accordance with § 24.709(a)(2) and (b)) in each of the two preceding years (calculated in accordance with § 24.720(f)), interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 3.5 percent; payments shall include both principal and interest amortized over the term of the license.

(2) For an eligible licensee with *gross revenues* not exceeding \$75 million (calculated in accordance with § 24.709(a)(2) and (b)) in each of the two preceding years, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 2.5 percent; payments shall include interest only for the first year and payments of interest and principal amortized over the remaining nine years of the license term.

(3) For an eligible licensee that qualifies as a Small business or as a consortium of small businesses, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 2.5 percent; payments shall include interest only for the first two years and payments of interest and principal amortized over the remaining eight years of the license term.

(4) For an eligible licensee that qualifies as a business owned by members of minority groups and/or women, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted; payments shall include interest only for the first three years and payments of interest and principal amortized over the remaining seven years of the license term.

(5) For an eligible licensee that qualifies as a small business owned by members of minority groups and/or women or as a consortium of small business owned by members of minority groups and/or women, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted; payments shall include interest only for the first six years and payments of interest and principal amortized over the remaining four years of the license term.

(c) *Unjust enrichment.* See § 1.2111 of this chapter.

[59 FR 63235, Dec. 7, 1994; 60 FR 5335, Jan. 27, 1995, as amended at 60 FR 37796, July 21, 1995; 63 FR 2349, Jan. 15, 1998; 63 FR 50799, Sept. 23, 1998]

§ 24.712 Bidding credits for licenses for frequency Block C.

(a) Except with respect to licenses won in closed bidding in auctions that begin after March 23, 1999, a winning bidder that qualifies as a small business or a consortium of small businesses as defined in § 24.720(b)(1) or § 24.720(b)(4) may use a bidding credit of fifteen percent, as specified in § 1.2110(e)(2)(iii) of this chapter, to lower the cost of its winning bid.

(b) Except with respect to licenses won in closed bidding in auctions that begin after March 23, 1999, a winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in § 24.720(b)(2) or § 24.720(b)(5) may use a bidding credit of twenty-five percent as specified in § 1.2110(e)(2)(ii) of this chapter, to lower the cost of its winning bid.

(c) *Unjust enrichment.* See § 1.2111 of this chapter. The unjust enrichment provisions of § 1.2111(d) and (e)(2) shall

not apply with respect to licenses acquired in either the auction for frequency block C that began on December 18, 1995, or the reauction of block C spectrum that began on July 3, 1996.

[65 FR 53637, Sept. 5, 2000]

EFFECTIVE DATE NOTE: At 65 FR 53637, Sept. 5, 2000, § 24.712 was revised, effective Nov. 6, 2000. For the convenience of the user, the superseded text is set forth as follows:

§ 24.712 Bidding credits for licenses for frequency Block C.

(a) A winning bidder that qualifies as a small business or a consortium of small businesses as defined in § 24.720(b)(1) or § 24.720(b)(4) of this part may use a bidding credit of fifteen percent, as specified in § 1.2110(e)(2)(iii) of this chapter, to lower the cost of its winning bid.

(b) A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in § 24.720(b)(2) or § 24.720(b)(5) of this part may use a bidding credit of twenty-five percent as specified in § 1.2110(e)(2)(ii) of this chapter, to lower the cost of its winning bid.

(c) *Unjust enrichment.* See § 1.2111 of this chapter.

§ 24.713 [Reserved]

§ 24.714 Partitioned licenses and disaggregated spectrum.

(a) *Eligibility.* (1) Parties seeking approval for partitioning and disaggregation shall request an authorization for partial assignment of a license pursuant to § 24.839.

(2) Broadband PCS licensees in spectrum blocks A, B, D, and E and broadband PCS C and F block licenses not subject to the eligibility requirements of § 24.709 may apply to partition their licensed geographic service area or disaggregate their licensed spectrum at any time following the grant of their licenses.

(3) Broadband PCS licensees that acquired C or F block licenses in closed bidding subject to the eligibility requirements of § 24.709 may partition their licensed geographic service area or disaggregate their licensed spectrum at any time to an entity that meets the eligibility criteria set forth in § 24.709 at the time the request for partial assignment of license is filed or to an entity that holds license(s) for frequency blocks C and F that met the eligibility criteria set forth in § 24.709

at the time of receipt of such license(s). Partial assignment applications seeking partitioning or disaggregation of broadband PCS licenses in spectrum blocks C and F must include an attachment demonstrating compliance with this section.

(b) *Technical standards—(1) Partitioning.* In the case of partitioning, applicants and licensees must file FCC Form 603 pursuant to § 1.948 of this chapter and list the partitioned service area on a schedule to the application. The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude and must be based upon the 1983 North American Datum (NAD83).

(2) *Disaggregation.* Spectrum may be disaggregated in any amount.

(3) *Combined partitioning and disaggregation.* The Commission will consider requests for partial assignment of licenses that propose combinations of partitioning and disaggregation.

(c) *Unjust enrichment—(1) Installment payments.* Licensees in frequency Blocks C and F making installment payments that partition their licenses or disaggregate their spectrum to entities not meeting the eligibility standards for installment payments, will be subject to the provisions concerning unjust enrichment as set forth in §§ 1.2111 of this chapter and 24.716(d).

(2) *Bidding credits.* Licensees in frequency Blocks C and F that received a bidding credit and partition their licenses or disaggregate their spectrum to entities not meeting the eligibility standards for such a bidding credit, will be subject to the provisions concerning unjust enrichment as set forth in §§ 1.2110(f) of this chapter and 24.717(c).

(3) *Apportioning unjust enrichment payments.* Unjust enrichment payments for partitioned license areas shall be calculated based upon the ratio of the population of the partitioned license area to the overall population of the license area and by utilizing the most recent census data. Unjust enrichment payments for disaggregated spectrum shall be calculated based upon the ratio of the amount of spectrum

disaggregated to the amount of spectrum held by the licensee.

(d) *Installment payments*—(1) *Apportioning the balance on installment payment plans.* When a winning bidder elects to pay for its license through an installment payment plan pursuant to §§ 1.2110(e) of this chapter or 24.716, and partitions its licensed area or disaggregates spectrum to another party, the outstanding balance owed by the licensee on its installment payment plan (including accrued and unpaid interest) shall be apportioned between the licensee and partitionee or disaggregatee. Both parties will be responsible for paying their proportionate share of the outstanding balance to the U.S. Treasury. In the case of partitioning, the balance shall be apportioned based upon the ratio of the population of the partitioned area to the population of the entire original license area calculated based upon the most recent census data. In the case of disaggregation, the balance shall be apportioned based upon the ratio of the amount of spectrum disaggregated to the amount of spectrum allocated to the licensed area.

(2) *Parties not qualified for installment payment plans.* (i) When a winning bidder elects to pay for its license through an installment payment plan, and partitions its license or disaggregates spectrum to another party that would not qualify for an installment payment plan or elects not to pay for its share of the license through installment payments, the outstanding balance owed by the licensee (including accrued and unpaid interest) shall be apportioned according to § 24.714(d)(1).

(ii) The partitionee or disaggregatee shall, as a condition of the approval of the partial assignment application, pay its entire pro rata amount within 30 days of Public Notice conditionally granting the partial assignment application. Failure to meet this condition will result in a rescission of the grant of the partial assignment application.

(iii) The licensee shall be permitted to continue to pay its pro rata share of the outstanding balance and shall receive new financing documents (promissory note, security agreement) with a revised payment obligation, based on the remaining amount of time on the

original installment payment schedule. These financing documents will replace the licensee's existing financing documents which shall be marked "superseded" and returned to the licensee upon receipt of the new financing documents. The original interest rate, established pursuant to § 1.2110(e)(3)(i) of this chapter at the time of the grant of the initial license in the market, shall continue to be applied to the licensee's portion of the remaining government obligation. We will require, as a further condition to approval of the partial assignment application, that the licensee execute and return to the U.S. Treasury the new financing documents within 30 days of the Public Notice conditionally granting the partial assignment application. Failure to meet this condition will result in the automatic cancellation of the grant of the partial assignment application.

(iv) A default on the licensee's payment obligation will only affect the licensee's portion of the market.

(3) Parties qualified for installment payment plans. (i) Where both parties to a partitioning or disaggregation agreement qualify for installment payments, the partitionee or disaggregatee will be permitted to make installment payments on its portion of the remaining government obligation, as calculated according to § 24.714(d)(1).

(ii) Each party will be required, as a condition to approval of the partial assignment application, to execute separate financing documents (promissory note, security agreement) agreeing to pay their pro rata portion of the balance due (including accrued and unpaid interest) based upon the installment payment terms for which they qualify under the rules. The financing documents must be returned to the U.S. Treasury within thirty (30) days of the Public Notice conditionally granting the partial assignment application. Failure by either party to meet this condition will result in the automatic cancellation of the grant of the partial assignment application. The interest rate, established pursuant to § 1.2110(e)(3)(i) of this chapter at the time of the grant of the initial license in the market, shall continue to be applied to both parties' portion of the balance due. Each party will receive a

license for their portion of the partitioned market or disaggregated spectrum.

(iii) A default on an obligation will only affect that portion of the market area held by the defaulting party.

(iv) Partitionees and disaggregatees that qualify for installment payment plans may elect to pay some of their pro rata portion of the balance due in a lump sum payment to the U.S. Treasury and to pay the remaining portion of the balance due pursuant to an installment payment plan.

(e) *License term.* The license term for a partitioned license area and for disaggregated spectrum shall be the remainder of the original licensee's license term as provided for in §24.15.

(f) *Construction requirements—(1) Requirements for partitioning.* Parties seeking authority to partition must meet one of the following construction requirements:

(i) The partitionee may certify that it will satisfy the applicable construction requirements set forth in §24.203 for the partitioned license area; or

(ii) The original licensee may certify that it has or will meet its five-year construction requirement and will meet the ten-year construction requirement, as set forth in §24.203, for the entire license area. In that case, the partitionee must only satisfy the requirements for "substantial service," as set forth in §24.16(a), for the partitioned license area by the end of the original ten-year license term of the licensee.

(iii) Applications requesting partial assignments of license for partitioning must include a certification by each party as to which of the above construction options they select.

(iv) Partitionees must submit supporting documents showing compliance with the respective construction requirements within the appropriate five- and ten-year construction benchmarks set forth in §24.203.

(v) Failure by any partitionee to meet its respective construction requirements will result in the automatic cancellation of the partitioned or disaggregated license without further Commission action.

(2) *Requirements for disaggregation.* Parties seeking authority to

disaggregate must submit with their partial assignment application a certification signed by both parties stating which of the parties will be responsible for meeting the five- and ten-year construction requirements for the PCS market as set forth in §24.203. Parties may agree to share responsibility for meeting the construction requirements. Parties that accept responsibility for meeting the construction requirements and later fail to do so will be subject to license forfeiture without further Commission action.

[62 FR 661, Jan. 6, 1997, as amended at 63 FR 68953, Dec. 14, 1998; 65 FR 53638, Sept. 5, 2000]

EFFECTIVE DATE NOTE: At 65 FR 53638, Sept. 5, 2000, §24.714 was amended by revising paragraphs (a)(2) and (a)(3) effective Nov. 6, 2000. For the convenience of the user, the superseded text is set forth as follows:

§ 24.714 Partitioned licenses and disaggregated spectrum.

(a) * * *

(2) Broadband PCS licensees in spectrum blocks A, B, D, and E may apply to partition their licensed geographic service area or disaggregate their licensed spectrum at any time following the grant of their licenses.

(3) Broadband PCS licensees in spectrum blocks C and F may not partition their licensed geographic service area or disaggregate their licensed spectrum for the first five years of the license term unless it is to an entity that meets the eligibility criteria set forth in §24.709 at the time the request for partial assignment of license is filed or to an entity that holds license(s) for frequency blocks C and F that met the eligibility criteria set forth in §24.709 at the time of receipt of such license(s). Partial assignment applications seeking partitioning or disaggregation of broadband PCS licenses in spectrum blocks C and F must include an attachment demonstrating compliance with this section.

* * * * *

§ 24.716 Upfront payments, down payments, and installment payments for licenses for frequency Block F.

(a) *Upfront Payments and Down Payments.* (1) Each eligible bidder for licenses subject to auction on frequency Block F shall pay an upfront payment as set forth in a Public Notice pursuant to the procedures in §1.2106 of this chapter.

(2) Each winning bidder shall make a down payment and pay the balance of

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its winning bids pursuant to § 1.2107 and § 1.2109 of this chapter.

(b) *Installment Payments.* Each eligible licensee of frequency Block F may pay the remaining 80 percent of the net auction price for the license in installment payments pursuant to § 1.2110(e) of this chapter and under the following terms:

(1) For an eligible licensee with *gross revenues* exceeding \$75 million (calculated in accordance with § 24.709 (a)(2) and (b)) in each of the two preceding years (calculated in accordance with § 24.720(f)), interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 3.5 percent; payments shall include both principal and interest amortized over the term of the license;

(2) For an eligible licensee with *gross revenues* not exceeding \$75 million (calculated in accordance with § 24.709 (a)(2) and (b)) in each of the two preceding years (calculated in accordance with § 24.720(f)), interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 2.5 percent; payments shall include interest only for the first year and payments of interest and principal amortized over the remaining nine years of the license term; or

(3) For an eligible licensee that qualifies as a small business or as a consortium of small businesses, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted; payments shall include interest only for the first two years and payments of interest and principal amortized over the remaining eight years of the license term.

(c) *Late installment payments.* See § 1.2110(f)(4) of this chapter.

(d) *Unjust enrichment.* See § 1.2111 of this chapter.

[60 FR 37799, July 21, 1995, as amended at 61 FR 33868, July 1, 1996; 63 FR 2349, Jan. 15, 1998; 63 FR 50799, Sept. 23, 1998]

§ 24.717 Bidding credits for licenses for frequency Block F.

(a) Except with respect to licenses won in closed bidding in auctions that begin after March 23, 1999, a winning

bidder that qualifies as a small business or a consortium of small businesses as defined in § 24.720(b)(1) or § 24.720(b)(4) may use a bidding credit of fifteen percent, as specified in § 1.2110(e)(2)(iii) of this chapter, to lower the cost of its winning bid.

(b) Except with respect to licenses won in closed bidding in auctions that begin after March 23, 1999, a winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in § 24.720(b)(2) or § 24.720(b)(5) may use a bidding credit of twenty-five percent as specified in § 1.2110(e)(2)(ii) of this chapter, to lower the cost of its winning bid.

(c) *Unjust enrichment.* See § 1.2111 of this chapter.

[63 FR 50800, Sept. 23, 1998, as amended at 65 FR 53638, Sept. 5, 2000]

EFFECTIVE DATE NOTE: At 65 FR 53638, Sept. 5, 2000 § 24.717 was amended by revising paragraphs (a) and (b) effective Nov. 6, 2000. For the convenience of the user, the superseded text is set forth as follows:

§ 24.717 Bidding credits for licenses for frequency Block F.

(a) A winning bidder that qualifies as a small business or a consortium of small businesses as defined in § 24.720(b)(1) or § 24.720(b)(4) of this part may use a bidding credit of fifteen percent, as specified in § 1.2110(e)(2)(iii) of this chapter, to lower the cost of its winning bid.

(b) A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in § 24.720(b)(2) or § 24.720(b)(5) of this part may use a bidding credit of twenty-five percent, as specified in § 1.2110(e)(2)(ii) of this chapter, to lower the cost of its winning bid.

* * * * *

§ 24.720 Definitions.

(a) Scope. The definitions in this section apply to §§ 24.709 through 24.717, unless otherwise specified in those sections.

(b) *Small business; very small business; consortia.* (1) A *small business* is an entity that, together with its *affiliates* and persons or entities that hold interest in such entity and their affiliates, has average annual *gross revenues* that are not more than \$40 million for the preceding three years.

(2) A *very small business* is an entity that, together with its *affiliates* and

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persons or entities that hold interests in such entity and their *affiliates*, has average annual *gross revenues* that are not more than \$15 million for the preceding three years.

(3) For purposes of determining whether an entity meets the \$40 million average annual *gross revenues* size standard set forth in paragraph (b)(1) of this section or the \$15 million average annual *gross revenues* size standard set forth in paragraph (b)(2) of this section, the *gross revenues* of the entity, its *affiliates*, persons or entities holding interests in the entity and their *affiliates* shall be considered on a cumulative basis and aggregated subject to the exceptions set forth in §24.709(b).

(4) A *small business consortium* is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition of a *small business* in paragraphs (b)(1) and (b)(3) of this section.

(5) A *very small business consortium* is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition of a *very small business* in paragraphs (b)(2) and (b)(3) of this section.

(c) *Business Owned by Members of Minority Groups and/or Women*. A *business owned by members of minority groups and/or women* is an entity:

(1) In which the *qualifying investor* members of an applicant's *control group* are members of minority groups and/or women who are United States citizens; and

(2) That complies with the requirements of §24.709 (b)(3) and (b)(5) or §24.709 (b)(4) and (b)(6).

(d) *Small Business Owned by Members of Minority Groups and/or Women: Consortium of Small Businesses Owned by Members of Minority and/or Women*. A *small business owned by members of minority groups and/or women* is an entity that meets the definitions in both paragraphs (b) and (c) of this section. A *consortium of small businesses owned by members of minority groups and/or women* is a conglomerate organization formed as a joint venture between mutually-independent business firms, each of which individually satisfies the defini-

tions in paragraphs (b) and (c) of this section.

(e) *Rural Telephone Company*. A *rural telephone company* is a local exchange carrier operating entity to the extent that such entity:

(1) Provides common carrier service to any local exchange carrier study area that does not include either;

(i) Any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

(ii) Any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(2) Provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(3) Provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(4) Has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

(f) *Gross Revenues*. *Gross revenues* shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (e.g., cost of goods sold), as evidenced by audited financial statements for the relevant number of most recently completed calendar years, or, if audited financial statements were not prepared on a calendar-year basis, for the most recently completed fiscal years preceding the filing of the applicant's short-form application (Form 175). If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate. When an applicant does not otherwise use audited financial statements, its gross revenues may be certified by its chief financial officer or its equivalent.

(g) *Total Assets*. *Total assets* shall mean the book value (except where

generally accepted accounting principles (GAAP) require market valuation) of all property owned by an entity, whether real or personal, tangible or intangible, as evidenced by the most recent audited financial statements or certified by the applicant's chief financial officer or its equivalent if the applicant does not otherwise use audited financial statements.

(h) *Institutional Investor*. An *institutional investor* is an insurance company, a bank holding stock in trust accounts through its trust department, or an investment company as defined in 15 U.S.C. 80a-3(a), including within such definition any entity that would otherwise meet the definition of investment company under 15 U.S.C. 80a-3(a) but is excluded by the exemptions set forth in 15 U.S.C. 80a-3 (b) and (c), without regard to whether such entity is an issuer of securities; provided that, if such investment company is owned, in whole or in part, by other entities, such investment company, such other entities and the *affiliates* of such other entities, taken as a whole, must be primarily engaged in the business of investing, reinvesting or trading in securities or in distributing or providing investment management services for securities.

(i) *Members of Minority Groups*. Members of minority groups include individuals of African American, Hispanic-surnamed, American Eskimo, Aleut, American Indian, and Asian American extraction.

(j) *Nonattributable Equity*. (1) *Nonattributable equity* shall mean:

(i) For corporations, voting stock or non-voting stock that includes no more than twenty-five percent of the total voting equity, including the right to vote such stock through a voting trust or other arrangement;

(ii) For partnerships, joint ventures and other non-corporate entities, limited partnership interests and similar interests that do not afford the power to exercise control of the entity.

(2) For purposes of assessing compliance with the equity limits in §24.709 (b)(3)(i) and (b)(4)(i), where such interests are not held directly in the applicant, the total equity held by a person or entity shall be determined by successive multiplication of the ownership

percentages for each link in the vertical ownership chain.

(k) *Control Group*. A *control group* is an entity, or a group of individuals or entities, that possesses *de jure* control and *de facto* control of an applicant or licensee, and as to which the applicant's or licensee's charters, bylaws, agreements and any other relevant documents (and amendments thereto) provide:

(1) That the entity and/or its members own unconditionally at least 50.1 percent of the total voting interests of a corporation;

(2) That the entity and/or its members receive at least 50.1 percent of the annual distribution or any dividends paid on the voting stock of a corporation;

(3) That, in the event of dissolution or liquidation of a corporation, the entity and/or its members are entitled to receive 100 percent of the value of each share of stock in its possession and a percentage of the retained earnings of the concern that is equivalent to the amount of equity held in the corporation; and

(4) That, for other types of businesses, the entity and/or its members have the right to receive dividends, profits and regular and liquidating distributions from the business in proportion to the amount of equity held in the business.

NOTE TO PARAGRAPH (k): Voting control does not always assure *de facto* control, such as for example, when the voting stock of the control group is widely dispersed (see e.g., §24.720(1)(2)(iii)).

(1) *Affiliate*. (1) *Basis for Affiliation*. An individual or entity is an *affiliate* of an applicant or of a person holding an attributable interest in an applicant (both referred to herein as "the applicant") if such individual or entity:

(i) Directly or indirectly controls or has the power to control the applicant, or

(ii) Is directly or indirectly controlled by the applicant, or

(iii) Is directly or indirectly controlled by a third party or parties that also controls or has the power to control the applicant, or

(iv) Has an "identity of interest" with the applicant.

(2) Nature of control in determining affiliation.

(i) Every business concern is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

Example for paragraph (1)(2)(i). An applicant owning 50 percent of the voting stock of another concern would have negative power to control such concern since such party can block any action of the other stockholders. Also, the bylaws of a corporation may permit a stockholder with less than 50 percent of the voting to block any actions taken by the other stockholders in the other entity. Affiliation exists when the applicant has the power to control a concern while at the same time another person, or persons, are in control of the concern at the will of the party or parties with the power of control.

(ii) Control can arise through stock ownership; occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors. A key employee is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

(iii) Control can arise through management positions where a concern's voting stock is so widely distributed that no effective control can be established.

Example for paragraph (1)(2)(iii). In a corporation where the officers and directors own various size blocks of stock totaling 40 percent of the corporation's voting stock, but no officer or director has a block sufficient to give him or her control or the power to control and the remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control. If persons with such management control of the other entity are persons with attributable interests in the applicant, the other entity will be deemed an affiliate of the applicant.

(3) Identity of interest between and among persons. Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments. In determining if the applicant controls or is

controlled by a concern, persons with an identity of interest will be treated as though they were one person.

Example 1. Two shareholders in Corporation Y each have attributable interests in the same PCS application. While neither shareholder has enough shares to individually control Corporation Y, together they have the power to control Corporation Y. The two shareholders with these common investments (or identity of interest) are treated as though they are one person and Corporation Y would be deemed an affiliate of the applicant.

Example 2. One shareholder in Corporation Y, shareholder A, has an attributable interest in a PCS application. Another shareholder in Corporation Y, shareholder B, has a nonattributable interest in the same PCS application. While neither shareholder has enough shares to individually control Corporation Y, together they have the power to control Corporation Y. Through the common investment of shareholders A and B in the PCS application, Corporation Y would still be deemed an affiliate of the applicant.

(i) *Spousal Affiliation.* Both spouses are deemed to own or control or have the power to control interests owned or controlled by either of them, unless they are subject to a legal separation recognized by a court of competent jurisdiction in the United States.

(ii) *Kinship Affiliation.* Immediate family members will be presumed to own or control or have the power to control interests owned or controlled by other immediate family members. In this context "immediate family member" means father, mother, husband, wife, son, daughter, brother, sister, father- or mother-in-law, son- or daughter-in-law, brother- or sister-in-law, step-father, or -mother, step-brother, or -sister, step-son, or -daughter, half brother or sister. This presumption may be rebutted by showing that

(A) The family members are estranged,

(B) The family ties are remote, or

(C) The family members are not closely involved with each other in business matters.

Example for paragraph (1)(3)(ii). A owns a controlling interest in Corporation X. A's sister-in-law, B, has an attributable interest in a PCS application. Because A and B have a presumptive kinship affiliation, A's interest in Corporation X is attributable to B, and

thus to the applicant, unless B rebuts the presumption with the necessary showing.

(4) *Affiliation through stock ownership.*

(i) An applicant is presumed to control or have the power to control a concern if he or she owns or controls or has the power to control 50 percent or more of its voting stock.

(ii) An applicant is presumed to control or have the power to control a concern even though he or she owns, controls or has the power to control less than 50 percent of the concern's voting stock, if the block of stock he or she owns, controls or has the power to control is large as compared with any other outstanding block of stock.

(iii) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, such minority holdings are equal or approximately equal in size, and the aggregate of these minority holdings is large as compared with any other stock holding, the presumption arises that each one of these persons individually controls or has the power to control the concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(5) *Affiliation arising under stock options, convertible debentures, and agreements to merge.* Stock options, convertible debentures, and agreements to merge (including agreements in principle) are generally considered to have a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements will generally be treated as though the rights held thereunder had been exercised. However, neither an affiliate nor an applicant can use such options and debentures to appear to terminate its control over another concern before it actually does so.

Example 1 for paragraph (1)(5). If company B holds an option to purchase a controlling interest in company A, who holds an attributable interest in a PCS application, the situation is treated as though company B had exercised its rights and had become owner of a controlling interest in company A. The gross revenues of company B must be taken into account in determining the size of the applicant.

Example 2 for paragraph (1)(5). If a large company, BigCo, holds 70% (70 of 100 outstanding shares) of the voting stock of company A, who holds an attributable interest in a PCS application, and gives a third party, SmallCo, an option to purchase 50 of the 70 shares owned by BigCo, BigCo will be deemed to be an affiliate of company A, and thus the applicant, until SmallCo actually exercises its options to purchase such shares. In order to prevent BigCo from circumventing the intent of the rule which requires such options to be considered on a fully diluted basis, the option is not considered to have present effect in this case.

Example 3 for paragraph (1)(5). If company A has entered into an agreement to merge with company B in the future, the situation is treated as though the merger has taken place.

(6) *Affiliation under voting trusts.* (i) Stock interests held in trust shall be deemed controlled by any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will.

(ii) If a trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust will be deemed controlled by the grantor or beneficiary, as appropriate.

(iii) If the primary purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may meet the Commission's size standards, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not recognized within the appropriate jurisdiction.

(7) *Affiliation through common management.* Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another entity.

(8) *Affiliation through common facilities.* Affiliation generally arises where one concern shares office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operations, or

where such concerns were formerly affiliated, and through these sharing arrangements one concern has control, or potential control, of the other concern.

(9) *Affiliation through contractual relationships.* Affiliation generally arises where one concern is dependent upon another concern for contracts and business to such a degree that one concern has control, or potential control, of the other concern.

(10) *Affiliation under joint venture arrangements.* (i) A joint venture for size determination purposes is an association of concerns and/or individuals, with interests in any degree or proportion, formed by contract, express or implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business operation is a joint venture.

(ii) The parties to a joint venture are considered to be affiliated with each other

(11) For purposes of § 24.709(a)(2) and paragraphs (b)(2) and (d) of this section, Indian tribes or Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), or entities owned and controlled by such tribes or corporations, are not considered affiliates of an applicant (or licensee) that is owned and controlled by such tribes, corporations or entities, and that otherwise complies with the requirements of § 24.709 (b)(3) and (b)(5) or § 24.709 (b)(4) and (b)(6), except that gross revenues derived from gaming activities conducted by affiliated entities pursuant to the Indian Gaming Regulatory Act (25 U.S.C. 2701 *et seq.*) will be counted in determining such applicant's (or licensee's) compliance with the financial requirements of § 24.709(a) and paragraphs (b) and (d) of this section,

unless such applicant establishes that it will not receive a substantial unfair competitive advantage because significant legal constraints restrict the applicant's ability to access such gross revenues.

(m) *Publicly Traded Corporation with Widely Dispersed Voting Power.* A *publicly traded corporation with widely dispersed voting power* is a business entity organized under the laws of the United States:

(1) Whose shares, debt, or other ownership interests are traded on an organized securities exchange within the United States;

(2) In which no person

(i) Owns more than 15 percent of the equity; or

(ii) Possesses, directly or indirectly, through the ownership of voting securities, by contract or otherwise, the power to control the election of more than 15 percent of the members of the board of directors or other governing body of such publicly traded corporation; and

(3) Over which no person other than the management and members of the board of directors or other governing body of such publicly traded corporation, in their capacities as such, has *de facto* control.

(4) The term *person* shall be defined as in section 13(d) of the Securities and Exchange Act of 1934, as amended (15 U.S.C. 78(m)), and shall also include investors that are commonly controlled under the indicia of control set forth in the definition of *affiliate* in paragraphs (1)(2) through (1) of this section.

(n) *Qualifying Investor; Qualifying Minority and/or Woman Investor.*

(1) A qualifying investor is a person who is (or holds an interest in) a member of the applicant's (or licensee's) control group and whose gross revenues and total assets, when aggregated with those of all other attributable investors and affiliates, do not exceed the gross revenues and total assets limits specified in § 24.709(a), or, in the case of an applicant (or licensee) that is a small business, do not exceed the gross revenues limit specified in paragraph (b) of this section.

(2) A *qualifying minority and/or woman investor* is a person who is a *qualifying investor* under paragraph (n)(1), who is

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(or holds an interest in) a member of the applicant’s (or licensee’s) control group and who is a member of a minority group or a woman and a United States citizen.

(3) For purposes of assessing compliance with the minimum equity requirements of §24.709(b) (5) and (6), where such equity interests are not held directly in the applicant, interests held by qualifying investors or qualifying minority and/or woman investors shall be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain.

(4) For purposes of §24.709 (b)(5)(i)(C) and (b)(6)(i)(C), a qualifying investor is a person who is (or holds an interest in) a member of the applicant’s (or licensee’s) control group and whose gross revenues and total assets do not exceed the gross revenues and total assets limits specified in §24.709(a).

(o) *Preexisting entity; Existing investor.* A *preexisting entity* is an entity that was operating and earning revenues for at least two years prior to December 31, 1994. An *existing investor* is a person or entity that was an owner of record of a *preexisting entity’s* equity as of November 10, 1994, and any person or entity acquiring *de minimus* equity holdings in a *preexisting entity* after that date.

NOTE: In applying the term *existing investor* to *de minimus* interests in preexisting entities obtained or increased after November 10, 1994, the Commission will scrutinize any significant restructuring of the preexisting entity that occurs after that date and will presume that any change of equity that is five percent or less of the preexisting entity’s total equity is *de minimis*. The burden is on the applicant (or licensee) to demonstrate that changes that exceed five percent are not significant.

[59 FR 63236, Dec. 7, 1994; 60 FR 5335, Jan 27, 1995; 60 FR 8571, 8572, Feb. 15, 1995, as amended at 60 FR 37800, July 21, 1995; 61 FR 33869, July 1, 1996; 61 FR 51234, Oct. 1, 1996; 65 FR 53638, Sept. 5, 2000]

EFFECTIVE DATE NOTE: At 65 FR 53638, Sept. 5, 2000, §24.720 was amended by revising paragraph (i), effective Nov. 6, 2000. For the convenience of the user, the superseded text is set forth as follows:

§ 24.720 Definitions.

* * * * *

(i) *Members of Minority Groups.* *Members of minority groups* includes Blacks, Hispanics, American Indians, Alaskan Natives, Asians, and Pacific Islanders.

* * * * *

Subpart I—Interim Application, Licensing, and Processing Rules for Broadband PCS

SOURCE: 59 FR 37610, July 22, 1994, unless otherwise noted.

§§ 24.801–24.803 [Reserved]

§ 24.804 Eligibility.

(a) General. Authorizations will be granted upon proper application if:

(1) The applicant is qualified under all applicable laws and Commission regulations, policies and decisions;

(2) There are frequencies available to provide satisfactory service; and

(3) The public interest, convenience or necessity would be served by a grant.

(b) Alien ownership. A broadband PCS authorization to provide Commercial Mobile Radio Service may not be granted to or held by:

(1) Any alien or the representative of any alien.

(2) Any corporation organized under the laws of any foreign government.

(3) Any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or any corporation organized under the laws of another country.

(4) Any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such a license.

(c) A broadband PCS authorization to provide Private Mobile Radio Service

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may not be granted to or held by a foreign government or a representative thereof.

[59 FR 37610, July 22, 1994, as amended at 61 FR 55581, Oct. 28, 1996]

§§ 24.805–24.814 [Reserved]

§ 24.815 Technical content of applications; maintenance of list of station locations.

(a) All applications required by this part shall contain all technical information required by the application forms or associated Public Notice(s). Applications other than initial applications for a broadband PCS license must also comply with all technical requirements of the rules governing the broadband PC (see subparts C and E of this part as appropriate). The following paragraphs describe a number of general technical requirements.

(b) Each application (except applications for initial licenses filed on Form 175) for a license for broadband PCS must comply with the provisions of §§ 24.229–24.238 of the Commission's Rules.

(c)-(i) [Reserved]

(j) The location of the transmitting antenna shall be considered to be the station location. Broadband PCS licensees must maintain a current list of all station locations, which must describe the transmitting antenna site by its geographical coordinates and also by conventional reference to street number, landmark, or the equivalent. All such coordinates shall be specified in terms of degrees, minutes, and seconds to the nearest second of latitude and longitude.

§§ 24.816–24.829 [Reserved]

§ 24.830 Opposition to applications.

(a) Petitions to deny (including petitions for other forms of relief) and responsive pleadings for Commission consideration must comply with § 1.2108 of this chapter and must:

(1) Identify the application or applications (including applicant's name, station location, Commission file numbers and radio service involved) with which it is concerned;

(2) Be filed in accordance with the pleading limitations, filing periods,

and other applicable provisions of §§ 1.41 through 1.52 of this chapter except where otherwise provided in § 1.2108 of this chapter;

(3) Contain specific allegations of fact which, except for facts of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof, and which shall be sufficient to demonstrate that the petitioner (or respondent) is a party in interest and that a grant of, or other Commission action regarding, the application would be *prima facie* inconsistent with the public interest;

(4) Be filed within thirty (30) days after the date of public notice announcing the acceptance for filing of any such application or major amendment thereto (unless the Commission otherwise extends the filing deadline); and

(5) Contain a certificate of service showing that it has been mailed to the applicant no later than the date of filing thereof with the Commission.

(b) A petition to deny a major amendment to a previously-filed application may only raise matters directly related to the amendment which could not have been raised in connection with the underlying previously-filed application. This subsection does not apply, however, to petitioners who gain standing because of the major amendment.

§ 24.831 Mutually exclusive applications.

(a) The Commission will consider applications for broadband PCS licenses to be mutually exclusive if they relate to the same geographical boundaries (MTA or BTA) and are timely filed for the same frequency block.

(b) Mutually exclusive applications filed on Form 175 for the initial provision of broadband PCS are subject to competitive bidding in accordance with the procedures in subpart H of this part and in part 1, subpart Q of this chapter.

(c) An application will be entitled to comparative consideration with one or more conflicting applications only if the Commission determines that such comparative consideration will serve the public interest.

(d)-(j) [Reserved]

§ 24.832 [Reserved]

§ 24.833 **Post-auction divestitures.**

Any parties sharing a common non-controlling ownership interest who aggregate more PCS spectrum among them than a single entity is entitled to hold (See §§20.6(e), 24.710, 24.204, 24.229(c) of this chapter) will be permitted to divest sufficient properties within 90 days of the license grant to come into compliance with the spectrum aggregation limits as follows:

(a) The broadband PCS applicant shall submit a signed statement with its long-form application stating that sufficient properties will be divested within 90 days of the license grant. If the licensee is otherwise qualified, the Commission will grant the applications subject to a condition that the licensee come into compliance with the PCS spectrum aggregation limits within 90 days of grant.

(b) Within 90 days of license grant, the licensee must certify that the applicant and all parties to the application have come into compliance with the PCS spectrum aggregation limits. If the licensee fails to submit the certification within 90 days, the Commission will immediately cancel all broadband PCS licenses won by the applicant, impose the default penalty and, based on the facts presented, take any other action it may deem appropriate. Divestiture may be to an interim trustee if a buyer has not been secured in the required time frame, as long as the applicant has no interest in or control of the trustee, and the trustee may dispose of the property as it sees fit. In no event may the trustee retain the property for longer than six months from grant of license.

[59 FR 53371, Oct. 24, 1994]

§§ 24.834–24.838 [Reserved]

§ 24.839 **Transfer of control or assignment of license.**

(a) Restrictions on Assignments and Transfers of Licenses for Frequency Blocks C and F won in closed bidding. No assignment or transfer of control of a license for frequency Block C or frequency Block F won in closed bidding pursuant to the eligibility requirements of §24.709 will be granted unless:

(1) The application for assignment or transfer of control is filed after five years from the date of the initial license grant; or

(2) The proposed assignee or transferee meets the eligibility criteria set forth in §24.709 of this part at the time the application for assignment or transfer of control is filed, or the proposed assignee or transferee holds other license(s) for frequency blocks C and F and, at the time of receipt of such license(s), met the eligibility criteria set forth in §24.709 of this part; or

(3) The application is for partial assignment of a partitioned service area to a rural telephone company pursuant to §24.714 of this part and the proposed assignee meets the eligibility criteria set forth in §24.709 of this part; or

(4) The application is for an involuntary assignment or transfer of control to a bankruptcy trustee appointed under involuntary bankruptcy, an independent receiver appointed by a court of competent jurisdiction in a foreclosure action, or, in the event of death or disability, to a person or entity legally qualified to succeed the deceased or disabled person under the laws of the place having jurisdiction over the estate involved; provided that, the applicant requests a waiver pursuant to this paragraph; or

(5) The assignment or transfer of control is pro forma; or

(6) The application for assignment or transfer of control is filed on or after the date the licensee has notified the Commission pursuant to §24.203(c) that its five-year construction requirement has been satisfied.

(b) If the assignment or transfer of control of a license is approved, the assignee or transferee is subject to the original construction requirement of §24.203 of this part.

[63 FR 68953, Dec. 14, 1998; as amended at 65 FR 53638, Sept. 5, 2000]

EFFECTIVE DATE NOTE: At 65 FR 53638, Sept. 5, 2000, §24.839 was amended by revising paragraphs (a) introductory text, (a)(2), (a)(3) and (a)(5) and by adding paragraph (a)(6), effective Nov. 6, 2000. For the convenience of the user, the superseded text is set forth as follows:

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§ 24.839 Transfer of control or assignment of license.

(a) Restrictions on Assignments and Transfers of Licenses for Frequency Blocks C and F. No assignment or transfer of control of a license for frequency Block C or frequency Block F will be granted unless:

* * * * *

(2) The proposed assignee or transferee meets the eligibility criteria set forth in §24.709 of this part at the time the application for assignment or transfer of control is filed, or the proposed assignee or transferee holds other license(s) for frequency blocks C and F and, at the time of receipt of such license(s), met the eligibility criteria set forth in §24.709 of this part;

(3) The application is for partial assignment of a partitioned service area to a rural telephone company pursuant to §24.714 of this part and the proposed assignee meets the eligibility criteria set forth in §24.709 of this part;

* * * * *

(5) The assignment or transfer of control is pro forma.

* * * * *

§§ 24.840–24.842 [Reserved]

§ 24.843 Extension of time to complete construction.

(a) If construction is not completed within the time period set forth in §24.203, the authorization will automatically expire. Before the period for construction expires an application for an extension of time to complete construction (FCC Form 489) may be filed. See paragraph (b) of this section. Within 30 days after the authorization expires an application for reinstatement may be filed on FCC Form 489.

(b) *Extension of Time to Complete Construction.* An application for extension of time to complete construction may be made on FCC Form 489. Extension of time requests must be filed prior to the expiration of the construction period. Extensions will be granted only if the licensee shows that the failure to complete construction is due to causes beyond its control.

(c) An application for modification of an authorization (under construction) does not extend the initial construction period. If additional time to con-

struct is required, an FCC Form 489 must be submitted.

(d) [Reserved]

§ 24.844 [Reserved]

Subpart J—Required New Capabilities Pursuant to the Communications Assistance for Law Enforcement Act (CALEA)

SOURCE: 64 FR 51717, Sept. 24, 1999, unless otherwise noted.

§ 24.900 Purpose.

Pursuant to the Communications Assistance for Law Enforcement Act (CALEA), Public Law 103-414, 108 Stat. 4279 (1994) (codified as amended in sections of 18 U.S.C. and 47 U.S.C.), this subpart contains rules that require a broadband PCS telecommunications carrier to implement certain capabilities to ensure law enforcement access to authorized communications or call-identifying information.

§ 24.901 Scope.

The definitions included in this subpart shall be used solely for the purpose of implementing CALEA requirements.

§ 24.902 Definitions.

Call identifying information. Call identifying information means dialing or signaling information that identifies the origin, direction, destination, or termination of each communication generated or received by a subscriber by means of any equipment, facility, or service of a telecommunications carrier. Call identifying information is “reasonably available” to a carrier if it is present at an intercept access point and can be made available without the carrier being unduly burdened with network modifications.

Collection function. The location where lawfully authorized intercepted communications and call-identifying information is collected by a law enforcement agency (LEA).

Content of subject-initiated conference calls. Capability that permits a LEA to monitor the content of conversations by all parties connected via a conference call when the facilities under

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surveillance maintain a circuit connection to the call.

Dialed digit extraction. Capability that permits a LEA to receive on the call data channel a digits dialed by a subject after a call is connected to another carrier's service for processing and routing.

IAP. Intercept access point is a point within a carrier's system where some of the communications or call-identifying information of an intercept subject's equipment, facilities, and services are accessed.

In-band and out-of-band signaling. Capability that permits a LEA to be informed when a network message that provides call identifying information (e.g., ringing, busy, call waiting signal, message light) is generated or sent by the IAP switch to a subject using the facilities under surveillance. Excludes signals generated by customer premises equipment when no network signal is generated.

J-STD-025. The interim standard developed by the Telecommunications Industry Association and the Alliance for Telecommunications Industry Solutions for wireline, cellular, and broadband PCS carriers. This standard defines services and features to support lawfully authorized electronic surveillance, and specifies interfaces necessary to deliver intercepted communications and call-identifying information to a LEA.

LEA. Law enforcement agency; e.g., the Federal Bureau of Investigation or a local police department.

Party hold, join, drop on conference calls. Capability that permits a LEA to identify the parties to a conference call conversation at all times.

Subject-initiated dialing and signaling information. Capability that permits a LEA to be informed when a subject using the facilities under surveillance uses services that provide call identifying information, such as call forwarding, call waiting, call hold, and three-way calling. Excludes signals generated by customer premises equipment when no network signal is generated.

Timing information. Capability that permits a LEA to associate call-identifying information with the content of a

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call. A call-identifying message must be sent from the carrier's IAP to the LEA's Collection Function within eight seconds of receipt of that message by the IAP at least 95% of the time, and with the call event time-stamped to an accuracy of at least 200 milliseconds.

§ 24.903 Capabilities that must be provided by a broadband PCS telecommunications carrier.

(a) Except as provided under paragraph (b) of this section, as of June 30, 2000, a broadband PCS telecommunications carrier shall provide to a LEA the assistance capability requirements of CALEA, see 47 U.S.C. 1002. A carrier may satisfy these requirements by complying with publicly available technical requirements or standards adopted by an industry association or standard-setting organization, such as J-STD-025.

(b) As of September 30, 2001, a broadband PCS telecommunications carrier shall provide to a LEA communications and call-identifying information transported by packet-mode communications and the following capabilities:

- (1) Content of subject-initiated conference calls;
- (2) Party hold, join, drop on conference calls;
- (3) Subject-initiated dialing and signaling information ;
- (4) In-band and out-of-band signaling;
- (5) Timing information;
- (6) Dialed digit extraction.

[64 FR 51717, Sept. 24, 1999; 65 FR 18255, Apr. 7, 2000]

PART 25—SATELLITE COMMUNICATIONS

Subpart A—General

- Sec.
- 25.101 Basis and scope.
 - 25.102 Station authorization required.
 - 25.103 Definitions.
 - 25.104 Preemption of local zoning of earth stations.
 - 25.105–25.108 [Reserved]
 - 25.109 Cross-reference.