

(b) The assignment of a file number, if any, to an application is for the administrative convenience of the Commission and does not indicate the acceptance of the application for filing and consideration.

§§ 25.528–25.529 [Reserved]

§ 25.530 Scope of authorization.

(a) In order to effectuate the purpose of the Communications Satellite Act of 1962 of promoting the widest possible distribution of stock among the authorized carriers, each authorization issued pursuant to this subpart by the Commission shall be so conditioned that in the event any voting stock authorized to be issued by the corporation, which is reserved and available for purchase by authorized carriers, is oversubscribed, the Commission may specify the dollar amount or percentage of such stock which may be purchased pursuant to such authorization.

(b) All authorizations shall be issued to, or on behalf of the named applicant and shall not be transferable.

(c) The Commission may attach such other conditions to the authorization as it determines to be consistent with the public interest, convenience, and necessity.

§ 25.531 Revocation of authorization.

Where any person to whom an authorization has been issued pursuant to this subpart has willfully failed to make a complete disclosure with regard to the real party or parties in interest or as to all matters and things required to be disclosed in the application, the Commission at any time may order such person to show cause why such authorization should not be revoked. Such person will be given reasonable opportunity to respond in writing to the order to show cause. Upon consideration of the response, the Commission will determine whether an order of revocation should issue or whether further proceedings, as may be appropriate, should be instituted. If an order of revocation is issued, immediate disposition shall be made of the shares of stock purchased or otherwise obtained pursuant to said authorization.

Subpart I—Equal Employment Opportunities

§ 25.601 Equal employment opportunity requirement.

Notwithstanding other EEO provisions within § 1.815 of this chapter, an entity that uses an owned or leased fixed satellite service facility (operating under this part) to provide more than one channel of video programming directly to the public must comply with the equal employment opportunity requirements set forth in part 76, subparts E and U of this chapter, if such entity exercises control (as defined in part 76, subparts E and U of this chapter) over the video programming it distributes.

[58 FR 42249, Aug. 9, 1993, as amended at 65 FR 53614, Sept. 5, 2000]

EFFECTIVE DATE NOTE: At 65 FR 53614, Sept. 5, 2000, § 25.601 was amended by removing the phrase “part 76, subpart E” each place it appears and adding in its place the phrase “part 76, subparts E and U” effective Oct. 5, 2000.

PART 26—GENERAL WIRELESS COMMUNICATIONS SERVICE

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- 26.303–26.307 [Reserved]
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- 26.321 Mutually exclusive applications.
- 26.322 [Reserved]
- 26.323 Post-auction divestitures.
- 26.324–26.326 [Reserved]

AUTHORITY: 47 U.S.C. sections 154, 301, 302, 303, 309 and 332, unless otherwise noted.

SOURCE: 60 FR 40719, Aug. 9, 1995, unless otherwise noted.

Subpart A—General Information

§ 26.1 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 general wireless communications service (GWCS) 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 stations.

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

(c) *Scope.* The rules in this part apply only to stations authorized under this part.

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§ 26.2 Other applicable rule parts.

Other FCC rule parts applicable to licensees in the general wireless communications service 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, 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 17. This part contains requirements for construction, marking and lighting of antenna towers.

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

[60 FR 40719, Aug. 9, 1995, as amended at 63 FR 68953, Dec. 14, 1998]

§ 26.3 Permissible communications.

GWCS licensees may provide any fixed or mobile communications service on their assigned spectrum. Broadcasting services, Radiolocation services and satellite services as defined in § 2.1 of this chapter are prohibited.

§ 26.4 Terms and definitions.

Affiliate. See § 1.2110(b)(4) of this chapter.

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.

Controlling interest. (a) For purposes of this section, controlling interest includes individuals or entities with both *De jure* and *De facto* control of the applicant. *De jure* control is greater than 50 percent of the voting stock of a corporation, or in the case of a partnership, the general partner. *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:

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

(2) The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and

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

(b) Calculation of certain interests.

(1) 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.

(2) Partnership and other ownership interests and any stock interest equity, or outstanding stock, or outstanding voting stock shall be attributed as specified below.

(3) 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 grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust.

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

(5) 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.

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

(7) 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.

(8) Any person who manages the operations of an applicant or licensee pursuant to a management agreement shall be considered to have an attributable interest in such applicant or licensee if such person or its affiliate pursuant to § 1.2110(b)(4), has authority to make decisions or otherwise engages in practices or activities that determine, or significantly influence:

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

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

(iii) The prices charged for such services.

(9) 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 an attributable 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:

- (i) The nature or types of services offered by such an applicant or licensee;
- (ii) The terms upon which such services are offered; or
- (iii) The prices charged for such services.

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 radio communication service between specified fixed points.

Fixed station. A station in the fixed service.

Gross Revenues. See § 1.2110(m) of this chapter.

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 radio communication 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.

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)

Rural telephone companies. A rural telephone company is any local exchange carrier operating entity to the extent that such entity—

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

- (1) 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

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

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

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

- (d) 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.

Small business: consortium of small businesses. (a) A small business is an entity that, together with its affiliates and entities holding controlling interests in the entity, has average annual gross revenues that are not more than \$40 million for the preceding three years.

(b) 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. Where an applicant (or licensee) is a consortium of small businesses, the gross revenues of each business shall not be aggregated.

(c) Applicants without identifiable controlling interests. 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.

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.

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

[60 FR 40719, Aug. 9, 1995, as amended at 64 FR 56577, Oct. 22, 1998; 63 FR 68953, Dec. 14, 1998]

Subpart B—Applications and Licenses

§ 26.11 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.

[60 FR 40719, Aug. 9, 1995, as amended at 63 FR 68953, Dec. 14, 1998]

§ 26.12 Eligibility.

Any entity, other than those precluded by section 310 of the Communications Act of 1934, as amended, 47 U.S.C. § 310, is eligible to hold a license under this part.

§ 26.13 License period.

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

§ 26.14 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

§ 26.51 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 type certification procedure.

(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.

[63 FR 36604, July 7, 1998]

§ 26.52 RF safety.

Licenses 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.

[62 FR 47968, Sept. 12, 1997]

§ 26.53 Emission limits.

(a) The power of any emission at the edges of the 4660–4685 MHz band shall be attenuated below the transmitter power (P) by at least $43 + 10 \log_{10}(P)$ or 80 decibels, whichever is less.

(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

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and one above the carrier center frequency, outside of which all emission 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 license'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 that they are expressed in the same parameters as the transmission 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.

§ 26.54 Frequency stability.

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

§ 26.55 Field strength limits.

The predicted or measured median field strength at any location on the border of the GWCS service area shall not exceed 55 dBu unless licensees operating in adjacent areas agree to higher field strength along their mutual borders.

§ 26.56 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

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

[63 FR 71041, Dec. 23, 1998]

Subpart D—Miscellaneous

§ 26.101 Multiple ownership restrictions.

(a) GWCS licensees shall not have an ownership interest in more than three of the five, 5 megahertz wide channels available in any geographic area. For purposes of this restriction, a GWCS licensee is:

(1) Any institutional investor, as defined in § 26.4, with an ownership interest of ten or more percent in a GWCS license; and

(2) Any other person or entity with an ownership interest of five or more percent in a GWCS license.

(b) In cases where a party had indirect ownership, through an interest in an intervening entity (or entities) that has ownership in the GWCS license, that indirect ownership shall be attributable if the percentages of ownership at each level, multiplied together, equal five or more percent ownership of the GWCS license, 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.

EXAMPLE. Party X has a non-controlling ownership interest of 25 percent in Company Y, which in turn has a non-controlling ownership interest of 10 percent in Company Z, the GWCS licensee. Party X's effective ownership interest in Company Z is Party X's ownership interest in Company Y (25 percent) times Company Y's ownership interest in Company Z (10 percent). Therefore, Party

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X's effective ownership interest in Company Z is 2.5 percent, and is not attributable.

(c) Notwithstanding paragraph (b) of this section, the following interests shall not constitute attributable ownership interests for purposes of paragraph (a) of this section.

(1) A limited partnership interest held by an institutional investor (as defined §26.4) where the limited partner is not materially involved, directly or indirectly, in the management or operation of the GWCS holdings of the partnership, and the licensee so certifies. The criteria which would assure adequate insulation for the purposes of this certification require:

- (i) Prohibiting limited partners from acting as employees of the limited partnership if responsibilities relate to the carrier activities of the licensee;
- (ii) Barring the limited partners from serving as independent contractors;
- (iii) Restricting communication among limited partners and the general partner regarding day-to-day activities of the licensee;
- (iv) Empowering the general partner to veto admissions of new general partners;
- (v) Restricting the circumstances in which the limited partners can remove the general partner;
- (vi) Prohibiting the limited partners from providing services to the partnership relating to the GWCS holdings of the licensee; and
- (vii) Stating that the limited partners may not become involved in the management or operation of the licensee.

§26.102 Service areas.

GWCS service areas are based on Economic Areas developed by the Bureau of Economic Analysis, Department of Commerce, referred to as "EAs" and three additional EA-like service areas: Guam and the Northern Mariana Islands (combined as one service area), Puerto Rico and the United States Virgin Islands (combined as one service area), and American Samoa.

(a) *Economic Areas.* Codes from 001 to 172 are assigned to the EAs in approximate geographic order, beginning with 001 in northern Maine, continuing south to Florida, then north to the Great Lakes, and continuing in a ser-

pentine pattern to the West Coast. Except for the Western Oklahoma EA (126), the Northern Michigan EA (058), and the 17 EAs that mainly correspond to consolidated metropolitan statistical areas (CMSAs), each EA is named for the metropolitan area or city that is the node of its largest component economic area (CEA) and that is usually, but not always, the largest metropolitan area or city in the EA. Each CEA consists of a single economic node and the surrounding counties that are economically related to the node. The following list provides EA codes and names.

Code and Name	
001	Bangor, ME
002	Portland, ME
003	Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH
004	Burlington, VT
005	Albany-Schenectady-Troy, NY
006	Syracuse, NY
007	Rochester, NY
008	Buffalo-Niagara Falls, NY
009	State College, PA
010	New York-No. New Jersey-Long Island, NY-NJ-CT-PA
011	Harrisburg-Lebanon-Carlisle, PA
012	Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD
013	Washington-Baltimore, DC-MD-VA-WV
014	Salisbury, MD
015	Richmond-Petersburg, VA
016	Staunton, VA
017	Roanoke, VA
018	Greensboro-Winston-Salem-High Point, NC
019	Raleigh-Durham-Chapel Hill, NC
020	Norfolk-Virginia Beach-Newport News, VA-NC
021	Greensville, NC
022	Fayetteville, NC
023	Charlotte-Gastonia-Rock Hill, NC-SC
024	Columbia, SC
025	Wilmington, NC
026	Charleston-North Charleston, SC
027	Augusta-Aiken, GA-SC
028	Savannah, GA
029	Jacksonville, FL
030	Orlando, FL
031	Miami-Fort Lauderdale, FL
032	Fort Myers-Cape Coral, FL
033	Sarasota-Bradenton, FL

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034 Tampa-St. Petersburg-Clearwater, FL	089 Monroe, LA
035 Tallahassee, FA	090 Little Rock-North Little Rock, AR
036 Dothan, AL	091 Fort Smith, AR-OK
037 Albany, GA	092 Fayetteville-Springdale-Rogers, AR
038 Macon, GA	093 Joplin, MO
039 Columbus, GA-AL	094 Springfield, MO
040 Atlanta, GA	095 Jonesboro, AR
041 Greenville-Spartanburg-Anderson, SC	096 St. Louis, MO-IL
042 Asheville, NC	097 Springfield, IL
043 Chattanooga, TN-GA	098 Columbia, MO
044 Knoxville, TN	099 Kansas City, MO-KS
045 Johnson City-Kingsport-Bristol, TN-VA	100 Des Moines, IA
046 Hickory-Morganton, NC	101 Peoria-Pekin, IL
047 Lexington, KY	102 Davenport-Moline-Rock Island, IA-IL
048 Charleston, WV	103 Cedar Rapids, IA
049 Cincinnati-Hamilton, OH-KY-IN	104 Madison, WI
050 Dayton-Springfield, OH	105 La Crosse, WI-MN
051 Columbus, OH	106 Rochester, MN
052 Wheeling, WV-OH	107 Minneapolis-St. Paul, MN-WI
053 Pittsburgh, PA	108 Wausau, WI
054 Erie, PA	109 Duluth-Superior, MN-WI
055 Cleveland-Akron, OH	110 Grand Forks, ND-MN
056 Toledo, OH	111 Minot, ND
057 Detroit-Ann Arbor-Flint, MI	112 Bismarck, ND
058 Northern Michigan, MI	113 Fargo-Moorhead, ND-MN
059 Green Bay, WI	114 Aberdeen, SD
060 Appleton-Oshkosh-Neenah, WI	115 Rapid City, SD
061 Traverse City, MI	116 Sioux Falls, SD
062 Grand Rapids-Muskegon-Holland, MI	117 Sioux City, IA-NE
063 Milwaukee-Racine, WI	118 Omaha, NE-IA
064 Chicago-Gary-Kenosha, IL-IN-WI	119 Lincoln, NE
065 Elkhart-Goshen, IN	120 Grand Island, NE
066 Fort Wayne, IN	121 North Platte, NE
067 Indianapolis, IN	122 Wichita, KS
068 Champaign-Urbana, IL	123 Topeka, KS
069 Evansville-Henderson, IN-KY	124 Tulsa, OK
070 Louisville, KY-IN	125 Oklahoma City, OK
071 Nashville, TN	126 Western Oklahoma, OK
072 Paducah, KY	127 Dallas-Fort Worth, TX
073 Memphis, TN-AR-MS	128 Abilene, TX
074 Huntsville, AL	129 San Angelo, TX
075 Tupelo, MS	130 Austin-San Marcos, TX
076 Greenville, MS	131 Houston-Galveston-Brazoria, TX
077 Jackson, MS	132 Corpus Christi, TX
078 Birmingham, AL	133 McAllen-Edinburg-Mission, TX
079 Montgomery, AL	134 San Antonio, TX
080 Mobile, AL	135 Odessa-Midland, TX
081 Pensacola, FL	136 Hobbs, NM
082 Biloxi-Gulfport-Pascagoula, MS	137 Lubbock, TX
083 New Orleans, LA	138 Amarillo, TX
084 Baton Rouge, LA	139 Santa Fe, NM
085 Lafayette, LA	140 Pueblo, CO
086 Lake Charles, LA	141 Denver-Boulder-Greeley, CO
087 Beaumont-Port Arthur, TX	142 Scottsbluff, NE
088 Shreveport-Bossier City, LA	143 Casper, WY
	144 Billings, MT

- 145 Great Falls, MT
- 146 Missoula, MT
- 147 Spokane, WA
- 148 Idaho Falls, ID
- 149 Twin Falls, ID
- 150 Boise City, ID
- 151 Reno, NV
- 152 Salt Lake City-Ogden, UT
- 153 Las Vegas, NV-AZ
- 154 Flagstaff, AZ
- 155 Farmington, NM
- 156 Albuquerque, NM
- 157 El Paso, TX
- 158 Phoenix-Mesa, AZ
- 159 Tucson, AZ
- 160 Los Angeles-Riverside-Orange
County, CA
- 161 San Diego, CA
- 162 Fresno, CA
- 163 San Francisco-Oakland-San Jose,
CA
- 164 Sacramento-Yolo, CA
- 165 Redding, CA
- 166 Eugene-Springfield, OR
- 167 Portland-Salem, OR-WA
- 168 Pendleton, OR
- 169 Richland-Kennewick-Pasco, WA
- 170 Seattle-Tacoma-Bremerton, WA
- 171 Anchorage, AK
- 172 Honolulu, HI

(b) Other eligible areas not included in the Bureau of Economic Analysis's list of EAs include: Guam and the Northern Mariana Islands, Puerto Rico and United States Virgin Islands, and American Samoa.

§ 26.103 Frequencies.

The following frequencies are available for GWCS in the Economic Areas and other areas described in § 26.102 as shown below.

Channel Block and Frequency Band

- Block A: 4660-4665 MHz
- Block B: 4665-4670 MHz
- Block C: 4670-4675 MHz
- Block D: 4675-4680 MHz
- Block E: 4680-4685 MHz

§ 26.104 Construction requirements.

(a) GWCS licensees shall within five years of initial license grant date offer service to one-third of the population in the area in which they are licensed. Licensees shall serve two-thirds of the population in the area in which they are licensed within ten years of initial license grant date.

(b) In demonstrating compliance with the above construction requirements, licensees must base their calculations on signal field strengths that ensure reliable service for the technology utilized. 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.

(c) Upon meeting the five and ten year benchmarks in paragraph (a) of this section, licensees shall file a map and other supporting documentation that demonstrates compliance with the geographic area or population coverage requirement. Licensees shall file a statement indicating commencement of service. The filing must be received at the Commission on or before expiration of the relevant period.

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

(e) The licensee must notify the FCC electronically by using FCC Form 601 via the ULS, no later than by the end of the five-and ten-year periods, respectively, that it has met the applicable service requirements. If the licensee fails to respond within the allotted time, then the authorization will automatically terminate.

NOTE TO § 26.104: Population-based construction requirements contained in this section shall be based on the 1990 census.

[60 FR 40719, Aug. 9, 1995, as amended at 63 FR 68953, Dec. 14, 1998]

EFFECTIVE DATE NOTE: At 60 FR 40719, Aug. 9, 1995, § 26.104 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.

§ 26.105 Notification to the Arecibo Observatory.

(a) The requirements in this section are intended to minimize possible interference at the Arecibo Observatory in Puerto Rico. Licensees must make reasonable efforts to protect the Observatory from interference. Licensees planning to construct and operate a new station at a permanent fixed location on the islands of Puerto Rico, Desecheo, Mona, Vieques or Culebra in services in which individual station licenses are issued by the FCC; planning

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to construct and operate a new station at a permanent fixed location on these islands that may cause interference to the operations of the Arecibo Observatory in services in which individual station licenses are not issued by the FCC; or planning a modification of any existing station at a permanent fixed location on these islands that would increase the likelihood of causing interference to the operations of the Arecibo Observatory must notify the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically (e-mail address: prcz@naic.edu), of the technical parameters of the planned operation. Carriers may wish to use the interference guidelines provided by Cornell University as guidance in designing facilities to avoid interference to the Observatory. The notification must include identification of the geographical coordinates of the antenna location (NAD-83 datum), the antenna height, antenna directivity (if any), proposed channel and FCC rule part, type of emission, and effective isotropic radiated power.

(b) In services in which individual station licenses are issued by the FCC, the notification required in paragraph (a) of this section should be sent at the same time the application is filed with the FCC, and at least 20 days in advance of the applicant's planned operation. The application must state the date that notification in accordance with paragraph (a) was made. In services in which individual station licenses are not issued by the FCC, the notification required in paragraph (a) of this section should be sent at least 45 days in advance of the applicant's planned operation. In the latter services, the Interference Office must inform the FCC of a notification by an applicant within 20 days if the Office plans to file comments or objections to the notification. After the FCC receives an application from a service applicant or is informed by the Interference Office of a notification from a service applicant, the FCC will allow the Interference Office a period of 20 days for comments or objections in response to the application or notification.

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(c) If an objection to any planned service operation is received during the 20-day period from the Interference Office, the FCC will take whatever action is deemed appropriate.

[63 FR 41203, Aug. 3, 1998]

Subpart E—Competitive Bidding Procedures for GWCS

§ 26.201 GWCS subject to competitive bidding.

Mutually exclusive initial applications to provide GWCS 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.

§ 26.202 Competitive bidding design for GWCS licensing.

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

(1) Simultaneous multiple round auctions

(2) Sequential oral auctions

(b) The Commission may design and test alternative procedures. The Commission will announce by Public Notice before each auction the competitive bidding design to be employed in a particular auction.

(c) 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.

§ 26.203 Competitive bidding mechanisms.

See § 1.2104 of this chapter.

[63 FR 56578, Oct. 22, 1998]

§ 26.204 [Reserved]

§ 26.205 Bidding application (FCC form 175 and 175-S short-form).

See § 1.2105 of this chapter.

[63 FR 56578, Oct. 22, 1998]

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§ 26.206 Submission of upfront payments and down payments.

See § 1.2106 of this chapter.

[63 FR 56578, Oct. 22, 1998]

§ 26.207 Long-form applications.

Winning bidders will be required to submit a long-form application on FCC form 601 within ten business days after being notified that they are the winning bidder. A single application for all winning markets must be filed. Applications on FCC Form 601 shall be submitted pursuant to the procedures set forth in Subpart G of this Part and § 1.2107(c) and (d) of this chapter and any associated Public Notices. Only auction winners will be eligible to file applications on FCC Form 601 for initial GWCS licenses in the event of mutual exclusivity between applicants filing Form 175.

[63 FR 68954, Dec. 14, 1998]

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

See § 1.2109 of this chapter.

[63 FR 56578, Oct. 22, 1998]

§ 26.209 Eligibility for partitioned licenses.

(a) Notwithstanding § 26.102, an applicant that is a rural telephone company, as defined in § 26.4, may be granted a GWCS license that is geographically partitioned from a separately licensed EA, so long as the EA applicant or licensee has voluntarily agreed (in writing) to partition a portion of the license to the rural telephone company.

(b) If partitioned licenses are being applied for in conjunction with a license(s) to be awarded through competitive bidding procedures—

(1) The applicable procedures for filing short-form applications and for submitting upfront payments and down payments contained in this part and part 1 of this chapter shall be followed by the applicant, who must disclose as part of its short-form application all parties to agreement(s) with or among rural telephone companies to partition the license pursuant to this section, if won at auction (see § 1.2105(a)(2)(viii));

(2) Each rural telephone company that is a party to an agreement to par-

tion the license shall file, either electronically via the ULS or with a paper form, a long-form application for its respective, mutually agreed-upon geographic area together with the application for the remainder of the Economic Area filed by the auction winner.

(c) If the partitioned license is being applied for as a partial assignment of the EA license following grant of the initial license, request for authorization for partial assignment of a license shall be made pursuant to § 26.324.

(d) Each application for a partitioned area (long-form initial application or partial assignment application) shall contain a partitioning plan that must propose to establish a partitioned area to be licensed that meets the following criteria:

(1) Conforms to established geopolitical boundaries (such as county lines);

(2) Includes the wireline service area of the rural telephone company applicant; and

(3) Is reasonably related to the rural telephone company's wireline service area.

NOTE TO PARAGRAPH (d)(3): A partitioned service area will be presumed to be reasonably related to the rural telephone company's wireline service area if the partitioned service area contains no more than twice the population overlap between the rural telephone company's wireline service area and the partitioned area.

(e) Each licensee in each partitioned area will be responsible for meeting the construction requirements in its area (see § 26.104).

[60 FR 40719, Aug. 9, 1995, as amended at 63 FR 68954, Dec. 14, 1998]

§ 26.210 Provisions for small businesses.

(a) *Bidding credits.* A winning bidder that qualifies as a small business or a consortium of small businesses may use the bidding credit specified in § 1.2110(e)(2)(iii) of this chapter.

(b) *Demonstrating small business qualifications.* See § 1.2110(i) of this chapter.

(c) *Audits.* See § 1.2110(l) of this chapter.

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

[63 FR 56578, Oct. 22, 1998]

Subpart F—Application, Licensing, and Processing Rules for GWCS

§ 26.301 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.

§ 26.302 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 those laws, including §§ 26.101 and 26.12;

(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 GWCS 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 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 license.

(c) A GWCS authorization to provide Private Mobile Radio Service may not be granted to or held by a foreign government or a representative thereof.

[60 FR 40719, Aug. 9, 1995, as amended at 61 FR 55581, Oct. 28, 1996]

§ 26.303–26.307 [Reserved]

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

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 GWCS license must also comply with all technical requirements of the rules governing the GWCS (see subparts C and D as appropriate).

§§ 26.309–26.320 [Reserved]

§ 26.321 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 GWCS service are subject to competitive bidding in accordance with the procedures in subpart F 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.

§ 26.322 [Reserved]

§ 26.323 Post-action divestitures.

Any parties sharing a common non-controlling ownership interests who aggregate more GWCS spectrum among them than a single entity is entitled to hold 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 GWCS applicant shall submit electronically via the ULS, a signed statement with its long-form application (FCC Form 601) stating that sufficient properties will be divested within ninety 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 GWCS spectrum aggregation limits within 90 days of grant of the license.

(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 GWCS spectrum aggregation limits. If the licensee fails to submit the certification within 90 days, the Commission will immediately cancel all broadband GWCS licenses won by the applicant, impose the default payment and, based on the facts presented, take any other action it deems appropriate. Divestiture may be 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.

[60 FR 40719, Aug. 9, 1995, as amended at 63 FR 68954, Dec. 14, 1998]

§§ 26.324–26.326 [Reserved]

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

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