times, except during initial fill and during those intervals when the tank is completely emptied or subsequently emptied and refilled. When the roof is resting on the leg supports, the process of filling, emptying, or refilling shall be as continuous as possible, based on the amount of waste and the nature of the waste handling operation, and shall be accomplished as rapidly as possible.

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE MANAGEMENT PROGRAM

40. The authority citation for Part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6925, 6927, 6939, and 6974.

Subpart B—Permit Application

§ 270.27 [Amended]

41. Section 270.27(a)(1) is amended by revising ''as listed in § 265.1091(c)'' to read ''as listed in § 265.1091(a)''.

§ 270.27 [Amended]

42. Section 270.27(a)(3) is amended by revising ''the specification listed in § 265.1087(b)(2)(ii)'' to read ''the specifications listed in § 264.1086(b)(2)(ii).''

* * * * *

[FR Doc. 96–1713 Filed 2–8–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 1

[ET Docket No. 93–266; FCC 95–493]

Review of the Pioneer's Preference Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this *Memorandum Opinion and Order* (*MO&O*), the Commission denies the petition for reconsideration filed by Qualcomm Incorporated (Qualcomm) to the *Second Report and Order* (*Second R&O*) in this proceeding, and grants the petition for reconsideration filed by Celsat America, Inc. (Celsat) to the *Third Report and Order* (*Third R&O*). The Commission finds that there is no need to reconsider its determination of what constitutes innovative technology, as requested by Qualcomm; and finds that it is desirable to reconsider its decision to apply certain new pioneer's preference regulations to pioneer's preference requests accepted for filing on or before September 1, 1994, as requested by Celsat. This action is intended to affirm the Commission's pioneer's preference policies, consistent with Congressional directives.

EFFECTIVE DATE: March 11, 1996.

FOR FURTHER INFORMATION CONTACT: Rodney Small, (202) 418–2452, Office of Engineering and Technology, Federal Communications Commission, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *MO&O* adopted December 8, 1995, and released January 30, 1996. This action will not add to or decrease the public reporting burden. The full text of the Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Summary of MO&O

1. The pioneer's preference program provides preferential treatment in the Commission's licensing processes for parties that make significant contributions to the development of a new service or to the development of a new technology that substantially enhances an existing service. The program was established to foster new communications services and technologies and to encourage parties to submit innovative proposals in a timely manner. Under the pioneer's preference rules, a necessary condition for the award of a preference is that an applicant demonstrate that it has developed the capabilities or possibilities of a new technology or service, or has brought the technology or service to a more advanced or effective state. The applicant must also demonstrate that the new service or technology is technically feasible by submitting either the summarized results of an experiment or a technical showing. Finally, a preference is granted only if the service rules adopted are a reasonable outgrowth of the applicant's proposal and lend themselves to grant of a preference. A pioneer's preference recipient's license application is not subject to mutually exclusive applications.

2. The *Second R&O*, 60 FR 13636 (March 14, 1995), addressed proposals set forth in the *Notice of Proposed Rule Making*, 58 FR 57578 (October 26, 1993), in this proceeding and modified certain rules regarding the Commission's pioneer's preference program. Specifically, the *Second R&O* provided pioneers with a discount on license charges in services in which licenses are awarded by competitive bidding, and it also modified several administrative rules. In addition, the *Second R&O* also held that, where an ''innovative technology'' has developed or enhanced more than one service, the grant of a pioneer's preference in only one such service is sufficient incentive to encourage pioneering proposals to be submitted.

3. Qualcomm states that the Commission should reconsider its determination of what constitutes ''innovative technology.'' Qualcomm contends that four aspects of the *Second R&O* are not clearly defined. First, Qualcomm maintains that a technology should not be considered ineligible for a pioneer's preference merely because that technology could be used in an existing service; second, it requests that the Commission clarify that an innovative technology that can be applied to more than one new service should be eligible for a preference in all services that are not existing services; third, it requests that an innovator who develops a new technology that both significantly improves an existing service and that may also be used to provide a new service in a different band be eligible for a preference in the new service; and fourth, it requests that the Commission clarify what it means by a ''new service'' operating in a higher band. Qualcomm states that there may be some confusion on this point with respect to broadband Personal Communications Services (PCS). No party filed comments on Qualcomm's petition.

4. Legislation implementing domestically the General Agreement on Tariffs and Trade (GATT) was enacted on December 8, 1994, and contained an amendment to the Communications Act relating to the pioneer's preference program. Included in this amendment was Section 309(j)(13)(D), which specified new requirements regarding criteria, peer review, and unjust enrichment for pioneer's preference requests that were accepted for filing after September 1, 1994. In the *Third R&O*, 60 FR 32116 (June 20, 1995), the Commission implemented the new requirements specified in Section 309(j)(13)(D) and extended them to pioneer's preference requests filed on or before September 1, 1994 in proceedings that have not reached the tentative decision stage. The Commission stated that such action would further its

pioneer's preference policy in an auction environment. Also, the Commission imposed the requirement that pending pioneer's preference requests must be amended so as to conform to the new requirements—including an additional requirement adopted in the *Third R&O* and a requirement adopted in the *Second R&O*—no later than 30 days from the effective date of the rules established by the *Third R&O* (*i.e.*, by September 20, 1995).

5. In its petition, Celsat requests that the Commission reconsider its decision to apply the new requirements regarding criteria, peer review, and unjust enrichment to pioneer's preference requests that were accepted for filing on or before September 1, 1994. Celsat also requests that the Commission defer the deadline for filing amendments to pioneer's preference requests until 30 days after the effective date of the Order that responds to its petition. No party filed comments on Celsat's petition or its request for deferral.

6. The Commission emphasizes that the pioneer's preference program was established ''to foster a host of valuable new technologies and services to the public'' and ''to induce innovators to present their proposals to the Commission in a timely manner.'' To the extent that new technologies are being developed and presented to the Commission in a timely manner for use in existing services independently of the pioneer's preference program, the Commission sees no need to award preferences based upon the additional use of those technologies in new services. Therefore, it finds unpersuasive Qualcomm's argument that a technology that is first used in an existing service independently of the pioneer's preference program should be eligible for a preference in the new service. With respect to Qualcomm's argument regarding the eligibility of an innovative technology to multiple new services, it does not intend to reward the same technology with a preference in more than one service. Further, the Commission believes that such a technology should be eligible for a pioneer's preference only in the first new service that is proposed (provided that the technology has not previously been implemented in an existing service). To permit an applicant to use the same technology as the basis for a pioneer's preference in more than one new service would be administratively burdensome, because there may be numerous new services in which an innovative technology can be used and a party could repeatedly apply for a preference using that technology. Finally, with respect to new services operating in higher bands, Qualcomm does not present a valid reason to believe that there is confusion as to what constitutes a new service. Accordingly, the Commission finds no need to clarify its rules regarding new services.

7. With regard to Celsat's petition, the Commission finds that applying the new pioneer's preference requirements regarding criteria, peer review, and unjust enrichment to pioneer's preference requests that were accepted for filing on or before September 1, 1994 is unnecessary to evaluate these requests and would be administratively burdensome on the Commission and on the applicants. The Commission believes that it has sufficient information on each of these requests to determine whether they are entitled to a pioneer's preference. Accordingly, it will not apply the new requirements regarding criteria, peer review, and unjust enrichment to these requests.

8. The Commission notes, however, that all pending pioneer's preference applicants except Celsat in proceedings that have not reached the tentative decision stage were required by the *Third R&O* to submit by September 20, 1995 amended filings pertaining to these and other new pioneer's preference requirements adopted in the *Second R&O* and *Third R&O*. Even though a number of pending applicants supplemented their preference requests by that date, the Office of Management and Budget (OMB) has not yet approved a new information collection for pioneer's preference requests pursuant to the Paperwork Reduction Act. Accordingly, pursuant to that statute, the Commission is ordering that subsequent to approval by OMB of the new collection, the Chief, Office of Engineering and Technology announce a new date for the submission of amended pioneer's preference requests and publish that date in the Federal Register. Therefore, Celsat and other parties who may wish to amend their pioneer's preference requests will not be required to do so prior to the new filing date. On that date, a party that has not previously filed an amended pioneer's preference request will be required to do so by submitting a filing pertaining to the new requirements adopted in the *Second R&O* and *Third R&O*. Specifically, a party that filed a pioneer's preference request on or before September 1, 1994, must submit a statement that a new allocation of spectrum is necessary for its innovation to be implemented. Further, if the applicant relied on experimental results to demonstrate the technical feasibility of its innovation, it must submit a summary of those experimental results. Additionally, for pioneer's preference requests filed after September 1, 1994, an applicant must submit a showing demonstrating that the Commission's public rulemaking process inhibits it from capturing the economic rewards of its innovation unless it is granted a pioneer's preference license; *i.e.*, the applicant must show that it may lose its intellectual property protection because of the Commission's public process; that the damage to its intellectual property is likely to be more significant than in other contexts, such as the patent process; and that the guarantee of a license is a significant factor in its ability to capture the rewards from its innovation. Failure by any party to amend in a timely manner will result in the dismissal of its request.

9. Accordingly, *it is ordered* that Parts 0 and 1 of the Commission's Rules are amended as specified below, effective March 11, 1996. *It is further ordered* that the petition for reconsideration filed by Qualcomm Incorporated is denied. *It is further ordered* that the petition for reconsideration filed by Celsat America, Inc. is granted. *It is further ordered* that the request for deferral filed by Celsat America, Inc. is dismissed as moot. *It is further ordered* that the Chief, Office of Engineering and Technology announce a new date for the submission of amended pioneer's preference requests and publish that date in the Federal Register, subsequent to approval from the Office of Management and Budget of the new information collection for pioneer's preference requests. This action is taken pursuant to Sections 4(i), 7(a), 303(g), and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 157(a), 303(g), and 303(r).

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 1

Pioneer's preference, Radio.

Federal Communications Commission

William F. Caton,

Acting Secretary.

Amendatory Text

Parts 0 and 1 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.241 is amended by revising paragraph (f) to read as follows:

§ 0.241 Authority delegated.

* * * * *

(f) For pioneer's preference requests accepted for filing after September 1, 1994, the Chief, Office of Engineering and Technology (OET) is authorized to select, in appropriate cases on his/her own initiative or upon request by a pioneer's preference applicant or other interested person, a panel of experts consisting of persons who are knowledgeable about the specific technology set forth in a pioneer's preference request and who are neither employed by the Commission nor by any applicant seeking a pioneer's preference in the same or similar communications service. In consultation with the General Counsel, the Chief, OET, shall also impose other conflict-of-interest requirements that are necessary in the interest of attaining impartial, expert advice regarding the particular pioneer's preference request or requests.

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552 and 21 U.S.C. 853a, unless otherwise noted.

2. Section 1.402 is amended by revising paragraphs (h) and (i) to read as follows:

§ 1.402 Pioneer's preference.

* * * * *

(h) For pioneer's preference requests accepted for filing after September 1, 1994, an opportunity for review and verification of the requests by experts who are not Commission employees will be provided by the Commission. The Chief, Office of Engineering and Technology (OET) may select a panel of experts consisting of persons who are knowledgeable about the specific technology set forth in a pioneer's preference request and who are neither employed by the Commission nor by any applicant seeking a pioneer's preference in the same or similar communications service. The panel of experts will generally be granted a period of up to 90 days, but no more than 180 days, to present their findings to the Commission. The Commission will generally establish, conduct, and seek the consensus of the panel pursuant to the Federal Advisory Committee Act, and will evaluate its recommendations in light of all the submissions and comments in the record. Panelists will have the authority to seek further information pertaining to preference requests and to perform field evaluations, as deemed appropriate by the Chief, OET.

(i) For pioneer's preference requests accepted for filing after September 1, 1994, in order to qualify for a pioneer's preference in services in which licenses are awarded by competitive bidding, an applicant must demonstrate that the Commission's public rulemaking process inhibits it from capturing the economic rewards of its innovation unless it is granted a pioneer's preference license. The applicant must show that it may lose its intellectual property protection because of the Commission's public process; that the damage to its intellectual property is likely to be more significant than in other contexts, such as the patent process; and that the guarantee of a license is a significant factor in its ability to capture the rewards from its innovation. This demonstration will be required even if the Commission has not determined at the time a pioneer's preference request is filed whether assignments in the proposed service will be made by competitive bidding.

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[FR Doc. 96–2843 Filed 2–8–96; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 43

[DA 95–1248]

Reporting Requirements for International Traffic Data

AGENCY: Federal Communications Commission.

ACTION: Revised manual.

SUMMARY: The Common Carrier Bureau adopted a revised filing manual for international traffic data. The new manual has a separate section that consolidates the filing requirements for pure resale carriers. While the new manual did not change these requirements, the consolidated section will make it easier for small businesses which primarily provide pure resale service to report. The new manual did change the reporting requirements for facilities based traffic, which is primarily provided by large businesses. In order to protect U.S. carriers' interests, the new manual allows carriers to report some information on a proprietary basis. Both facilities-based and pure resale carriers must use this manual to report message counts, minute counts, gross revenues, international settlements amounts, and retained revenues for international communications services. The manual was adopted June 6, 1995 and approved by OMB.

DATES: Traffic data for the prior calendar year must be filed by July 31.

ADDRESSES: The original transmittal letter only must be filed with the Secretary, Federal Communications Commission, Washington, DC 20554. Traffic data must be filed with the FCC Common Carrier Bureau, Industry Analysis Division, Mail Stop 1600 F, 1919 M Street NW., Washington, D.C. 20554 and with the FCC's Contract Copier (Currently International Transcription Services, Inc.), Room 246, 1919 M Street NW., Washington D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Linda Blake or Jim Lande, Common Carrier Bureau, Industry Analysis Division, (202) 418–0940.

SUPPLEMENTARY INFORMATION:

FCC Report 43.61

Approved by OMB 3060–0106.
Expires 08/31/98.
Estimated Average Burden Hours Per Response: 24 Hours.

Manual for Filing Section 43.61 Data in Accordance With the FCC's Rules and Regulations

June 1995.

Notice to Individuals

Section 43.61 of the Commission's Rules requires all carriers providing international service to provide traffic and revenue data. The collection of Section 43.61 traffic data stems from the Commission's authority under the Communications Act of 1934, Sections 4, 48, 48 Stat. 1066, as amended, 47 U.S.C. 154 unless otherwise noted. Interpret or apply sections 211, 219, 48 Stat. 1073, 1077, as amended; 47 U.S.C. 211, 219, 220.

The foregoing Notice is required by the Privacy Act of 1974, Pub.L. 93.579, December 31, 1974, 5 U.S.C. 552(a)(e)(3), and the Paperwork Reduction Act of 1980. Pub.L. 96–511, section 3504(c)(3).

Public reporting burden for this collection of information is estimated to average 24 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including