plan meet the redesignation requirements in section 107(d)(3)(E) of the Act as amended in 1990. The redesignation meets the Federal requirements of section 182(a)(1) of the Clean Air Act as a revision to the Louisiana ozone State Implementation Plan for Pointe Coupee Parish. The EPA therefore approved the request for redesignation to attainment with respect to ozone for Pointe Coupee Parish on December 20, 1996.

## PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.319, the ozone table is amended by revising the entry for the Baton Rouge area and by adding an entry for the Pointe Coupee area to read as follows:

**§ 81.319 Louisiana.**

* * * * *

LOUISIANA—OZONE

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Baton Rouge Area: | | | | |
| Ascension Parish | | Nonattainment | | Serious. |
| East Baton Rouge Parish | | Nonattainment | | Serious. |
| Iberville Parish | | Nonattainment | | Serious. |
| Livingston Parish | | Nonattainment | | Serious. |
| West Baton Rouge Parish | | Nonattainment | | Serious. |
| * * * | * | * | * | * |
| Pointe Coupee Area: | | | | |
| Pointe Coupee Parish | Dec. 20, 1996 | | | |

[1] This date is November 15, 1990, unless otherwise noted.

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[FR Doc. 97–42 Filed 1–3–97; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 24

**[WT Docket No. 96–148; GN Docket No. 96–113; FCC 96–474]**

## Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees; and Implementation of Section 257 of the Communications Act; Elimination of Market Entry Barriers

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this Report and Order in WT Docket No. 96–148, the Commission adopts rules concerning geographic partitioning and spectrum disaggregation by broadband personal communications service (PCS) licensees. The rules adopted for broadband PCS will permit partitioning and disaggregation by all broadband PCS licensees. This will provide broadband PCS licensees with desirable flexibility to determine the amount of spectrum they will occupy and the geographic area they will serve. Such flexibility will: facilitate the efficient use of spectrum by providing licensees with the flexibility to make offerings directly responsive to market demands for particular types of service; increase competition by allowing market entry by new entrants; and expedite the provision of service to areas that otherwise may not receive broadband PCS service in the near term.

**EFFECTIVE DATE:** March 7, 1997.

**FOR FURTHER INFORMATION CONTACT:** Shaun A. Maher, Commercial Wireless Division, Wireless Telecommunications Bureau at (202) 418–0620.

**SUPPLEMENTARY INFORMATION:** This Report and Order in WT Docket No. 96–148 and GN Docket No. 96–113, adopted on December 13, 1996, and released December 20, 1996, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 234, 1919 M Street, N.W., Washington, D.C. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800. Synopsis of Report and Order.

I. Background

1. The Commission's initial regulations and policies for broadband PCS were adopted in the Broadband PCS Second Report and Order, Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90–314, Second Report and Order, 58 FR 59174 (November 8, 1993) (Broadband PCS Second Report and Order), and amended in the Broadband PCS Memorandum Opinion and Order, Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90–314, Memorandum Opinion and Order, 59 FR 32830 (June 24, 1994) (Broadband PCS Memorandum Opinion and Order). In the Broadband PCS Memorandum Opinion and Order, the Commission declined to adopt unrestricted geographic partitioning for broadband PCS based on its concern that licensees might use partitioning as a means of circumventing construction requirements. However, the Commission stated that it would consider the issue of geographic partitioning for rural telephone companies (rural telcos) and other designated entities in a future proceeding to establish competitive bidding rules for broadband PCS. The Commission then permitted broadband PCS geographic partitioning for rural telcos in the Competitive Bidding Fifth Report and Order, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, Fifth Report and Order, 59 FR 37566 (July 22, 1995) (Competitive Bidding Fifth Report and Order). The Commission observed that partitioning was one method to satisfy Congress' mandate to provide an opportunity for rural telcos to participate in the provision of broadband PCS. The Commission also found that rural telcos could take advantage of their existing infrastructure to provide broadband PCS services, thereby speeding service to rural areas. In the Competitive Bidding Further Notice of Proposed Rule Making, Implementation of Section

309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, Further Notice of Proposed Rule Making, 59 FR 41426 (August 12, 1994) (Competitive Bidding Further Notice of Proposed Rule Making), the Commission sought comment on whether to extend post-auction geographic partitioning of broadband PCS licenses to women- and minority-owned businesses.

2. Section 24.229(c) of the Commission's rules permits a broadband PCS licensee that has met its five-year construction requirement to disaggregate its licensed PCS spectrum after January 1, 2000. In the Broadband PCS Memorandum Opinion and Order, the Commission reasoned that this limit on spectrum disaggregation for broadband PCS would allow the PCS market to develop and prevent anti-competitive practices with regard to disaggregation.

3. The Commission believes that it is appropriate at this time to liberalize its rules to allow partitioning and disaggregation for broadband PCS. The rules adopted in the Report and Order will provide licensees with the flexibility to use their spectrum more efficiently, will increase opportunities for small businesses and other entities to enter into the broadband PCS market, and will speed service to underserved or unserved areas.

II. Discussion

*A. Partitioning*

1. License Eligibility

4. The Commission concludes that relaxing its PCS geographic partitioning rules, as discussed herein, will help to (1) remove potential barriers to entry thereby increasing competition in the PCS marketplace; (2) encourage parties to use PCS spectrum more efficiently; and (3) speed service to unserved and underserved areas. Parties that were unsuccessful bidders or that did not participate in the PCS auctions will be able to use partitioning as a method to acquire PCS licenses after the auctions. Smaller or newly-formed entities, for example, may enter the PCS market for the first time through partitioning. Under the prior rules, such entities would have been unable to qualify for partitioning because of the Commission's rural telco restriction. By eliminating that restriction, these entities will be able to negotiate for licenses for portions of the original service area at a cost that is proportionately less than that of the full geographic market.

5. The Commission also finds that increasing the number of parties that may obtain partitioned PCS licenses will lead to more efficient use of PCS spectrum and will speed service to underserved or rural areas. PCS licensees will be able to partition portions of their markets to entities more willing to serve niche markets instead of postponing service to those areas. The Commission believes that retaining the existing partitioning restrictions, as recommended by the rural telco commenters, would prevent additional small businesses and other entities from using partitioning to enter the broadband PCS market. In addition, restricting the number of parties that are eligible for partitioned PCS licenses only serves to unreasonably reduce the number of potential entrants into the PCS marketplace without any corresponding public interest benefit.

6. The rural telco commenters claim that changing the current partitioning rules would be inconsistent with the mandate set forth in Section 309(j)(3)(B) of the Communications Act of 1934, as amended (Communications Act), 47 U.S.C. 309(j)(3)(B), to ensure that licenses are disseminated among a wide variety of applicants including rural telcos. They contend that partitioning was the sole means by which the Commission sought to fulfill the mandate of Section 309(j)(3)(B) of the Communications Act, 47 U.S.C. 309(j)(3)(B) for rural telcos. The Commission disagrees. Rural telcos are able to take advantage of the special provision for small businesses the Commission designed in its auction rules to obtain licenses in the entrepreneur block auctions. Furthermore, Sections 309(j)(3)(A), (B), and (D) of the Communications Act, 47 U.S.C. 309(j)(A), (B) & (D), direct the Commission to further the rapid deployment of new technologies for the benefit of the public including those residing in rural areas, to promote economic opportunity and competition, and to ensure the efficient use of spectrum. While encouraging rural telco participation in PCS service offerings is an important element in meeting these goals, Congress did not dictate that this should be the sole method of ensuring the rapid deployment of service in rural areas. The Commission concludes that allowing open partitioning will further the goals of Section 309(j)(3) of the Communications Act, 47 U.S.C. 309(j)(3), by allowing PCS licensees to partition to multiple entities within their markets rather than limiting partitioning to a small number of rural telcos.

7. The rural telcos argue further that they will not be able to compete for partitioned PCS licenses unless the Commission retains its current restriction because PCS licensees will be unwilling to partition their licenses to rural telcos and will choose to partition to Commercial Mobile Radio Service (CMRS) providers with greater financial resources. The rural telco commenters also argue that they relied to their detriment upon the current partitioning restrictions when devising their business plans and that many of them chose not to participate in the broadband PCS auctions because they believed that they would be the only parties that could obtain partitioned PCS licenses. The Commission is unpersuaded that its action herein will harm the rural telcos' business plans. Under the new rules adopted herein, rural telcos will be fully able to obtain partitioned PCS licenses, as they were previously. Moreover, in many instances, rural telcos are likely to be in a superior position to obtain partitioned licenses.

8. The Commission declines to adopt the rural telcos' proposal to require a right of first refusal. Granting the rural telcos a right of first refusal would limit the number of parties that could obtain partitioned PCS licenses which would be at odds with the Commission's goals of encouraging participation in the PCS marketplace by as many parties as possible and reducing barriers to entry for small businesses. The Commission finds that increasing the number of potential entities that can acquire partitioned PCS licenses will result in better service and increased competition which may result in lower prices for PCS service.

9. The Commission also finds that the right of first refusal would be difficult to administer and could discourage partitioning. The area proposed in a partitioning agreement may not coincide exactly with the area for which a rural telco would have a right of first refusal or a single partitioning transaction may encompass more than one rural telcos' service area. In those cases, the consent of multiple rural telcos would be required before a partitioning transaction could be consummated. Additionally, a partitioning agreement may be part of a larger assignment transaction. If a rural telco were to exercise its right of first refusal to acquire the partitioned area, it may not be possible to separate out the partitioning agreement to stand on its own and the entire assignment transaction could not be consummated.

2. Available License Area, Restrictions on Timing of Partitioning, and Matters Related to Entrepreneur Block Licensees

a. *License Area.* 10. The Commission is persuaded by the commenters' arguments that limiting geographic partitioning of PCS licenses to those areas defined by county lines may not be reflective of market realities and may otherwise inhibit partitioning. As the commenters note, parties seeking a partitioned license may not desire to serve an entire county but rather a smaller niche market. The Commission believes that permitting partitioning along any service area defined by the partitioner and partitionee is the most logical approach, provided they submit sufficient information to the Commission to maintain its licensing records. This will be the rule for all parties, including rural telcos.

11. Partitioning applicants will be required to submit, as separate attachments to the partial assignment application, a description of the partitioned service area and a calculation of the population of the partitioned service area and licensed market. The partitioned service area must be defined by coordinate points at every 3 seconds along the partitioned service area agreed to by both parties, unless either (1) an FCC-recognized service area is utilized (i.e., Major Trading Area, Basic Trading Area, Metropolitan Service Area, Rural Service or Economic Area) or (2) county lines are followed. These geographical coordinates must be specified in degrees, minutes and seconds to the nearest second of latitude and longitude, and must be based upon the 1927 North American Datum (NAD27). Applicants may also supply geographical coordinates based on 1983 North American Datum (NAD83) in addition to those required based on NAD27. This coordinate data should be supplied as an attachment to the partial assignment application, and maps need not be supplied. In cases where an FCC recognized service area or county lines are being utilized, applicants need only list the specific area(s) (through use of FCC designations) or counties that make up the newly partitioned area. Allowing partitioning along any agreed-upon service area will provide an opportunity for PCS licensees to design flexible and efficient partitioning agreements. By providing such flexibility to licensees for determining partitioned areas, the Commission will permit the market to decide the most suitable service areas.

b. *Non-entrepreneur block licenses.* 12. The Commission concludes that the public interest will be served by allowing non-entrepreneur block licensees to freely partition their licenses to any other qualifying entity following the issuance of the license. Since non-entrepreneur block licensees are permitted to assign their entire license after grant, the Commission finds they should be able to assign a portion of their license following the issuance of their license. PCS licensees will be permitted to partition their licensed market areas without limitation on the overall size of the partitioned areas consistent with the Commission's rules.

c. *Entrepreneur block licenses.* 13. The Commission will permit entrepreneur block PCS licensees to partition at any time to other parties that would be eligible for licenses in those blocks. Partitioning of entrepreneur block license areas to non-entrepreneurs will not be permitted for the first five years of an entrepreneur block license term. This restriction is necessary in order to ensure that entrepreneurs do not circumvent the Commission's restrictions on full license transfers by attempting to immediately partition a portion of their licenses to non-entrepreneurs.

14. The Commission finds that its unjust enrichment requirements should be applied if an entrepreneur block licensee partitions a portion of its license area to a non-entrepreneur, after the initial five-year license term. The Commission will apply its unjust enrichment rules to transactions where entrepreneurs obtain partitioned licenses from other entrepreneurs and subsequently seek to assign their partitioned license to a non-entrepreneur. The Commission will also apply the unjust enrichment provisions to an entrepreneur block licensee that qualifies as a small business who partitions to an entity that satisfies the entrepreneur block eligibility criteria but is not a small business that would be eligible for bidding credits or installment payments.

15. The Commission will use population as the objective measure to calculate the relative value of the partitioned area for determining all of its unjust enrichment obligations. Population will be calculated based upon the latest census data.

16. In partitioning cases involving installment payments, the Commission finds that separating the payment obligations and default provisions of the original licensee and partitionee is the best approach because it reduces each party's risk and creates payment obligations that can be enforced separately against the defaulting party without adversely affecting the other licensee. The Commission adopts the following rules to address the various combinations of parties and the relative obligations for each in the event an entrepreneur seeks to partition its license:

(a) *No Continued Installment Payments.* When an entrepreneur block licensee with installment payments partitions its license after the five-year holding period to a party that would not qualify for installment payments under our rules or to an entity that does not desire to pay for its share of the license with installment payments, the Commission will first apportion the percentage of the remaining government obligation (including accrued and unpaid interest calculated on the date the partial assignment application is filed) between the partitionee and original licensee based upon the ratio of the population of the partitioned area to the population of the entire original licensed area. Under this procedure, both parties will be responsible to the U.S. Treasury for their proportionate share of the balance due including accrued and unpaid interest calculated on the date the partial assignment application is filed. The Commission will require, as a condition of grant of the partial assignment application, that the partitionee 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 the automatic cancellation of the grant of the partial assignment application. The partitioner will receive new financing documents (promissory note and 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 partitioner's existing financing documents which will be marked ''superseded'' and returned to the licensee upon receipt of the new financing documents. The original interest rate, established at the time of the issuance of the initial license in the market, will continue to be applied to the partitioner's portion of the remaining government obligation. The Commission will require, as a further condition to approval of the partial assignment application, that the partitioner 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. A

default on an obligation will only affect that portion of the market area held by the defaulting party. The payments to the U.S. Treasury are required notwithstanding any additional terms and conditions agreed to between or among the parties.

(b) *Partitioning With Continued Installment Payments.* Where both parties to the partitioning arrangement qualify for installment payments under § 24.720(b)(1), 47 CFR 24.720(b)(1), the Commission will permit the partitionee to make installment payments on its portion of the remaining government obligation. Partitionees are free, however, to make a lump sum payment of their *pro rata* portion of the remaining government obligation within 30 days of the Public Notice conditionally granting the partial assignment application. Should a partitionee choose to make installment payments, the Commission will require, as a condition to approval of the partial assignment application, that both parties execute financing documents (promissory note and security agreement) agreeing to pay the U.S. Treasury their pro rata portion of the balance due (including accrued and unpaid interest on the date the partial assignment application is filed) based upon the installment payment terms for which they would qualify. These documents must be executed and returned to the U.S. Treasury within 30 days of the Public Notice conditionally granting the partial assignment application. Either party's failure to meet this condition will result in the automatic cancellation of the grant of the partial assignment application. The original interest rate, established at the time of the issuance of the initial license in the market, will apply to both parties' portion of the remaining government obligation. Each party will receive a license for its portion of the market area and each party's financing documents will provide that a default on its obligation would only affect their portion of the market area. These payments to the U.S. Treasury are required notwithstanding any additional terms and conditions agreed to between or among the parties.

3. Construction Requirements

17. The Commission will adopt two alternative construction options for broadband PCS partitioning. Under the first option, the partitionee certifies that it will satisfy the same construction requirements as the original licensee. The partitionee then must meet the same five- and ten-year service requirements as the original 10 MHz or 30 MHz licensee in its partitioned area, while the partitioner remains responsible for meeting those requirements in the area it has retained. Under the second option, the partitioner certifies that it has already met or will meet its five-year construction requirement and that it will meet the ten-year construction requirement for the entire market. Because the partitioner retains the responsibility for meeting the construction requirements for the entire market, the partitionee will only be required to meet the substantial service requirement for its partitioned area at the end of the ten-year license term. The definition of substantial service will be that definition found at § 24.16(a) of the rules, 47 CFR 24.16(a). If a partitionee fails to meet its construction requirements, the license for the partitioned area will automatically cancel without further Commission action.

18. At the five- and ten-year benchmarks, partitionees are required to file supporting documentation showing compliance with the construction requirements. Licensees failing to meet the coverage requirements will be subject to forfeiture, license cancellation, or other penalties.

*B. Disaggregation*

1. Timing of Disaggregation

19. The Commission concludes that disaggregation of broadband PCS spectrum should be allowed prior to January 1, 2000, and that the condition that the licensee must first satisfy the five-year build out requirement before disaggregating should be eliminated. To the extent that disaggregation would enable other entities to provide broadband PCS within geographic market areas, the Commission finds that allowing immediate disaggregation would encourage rather than impede competition by enabling the entry of new competitors. Moreover, the current prohibition on disaggregation may constitute a barrier to entry for small businesses that lacked the resources to participate successfully at auction for 30 MHz and 10 MHz spectrum blocks. In furtherance of the mandate prescribed by Section 257 of the Communications Act, the Commission is eliminating such market entry barriers by permitting non-entrepreneur block (A, B, D, and E block) PCS licensees to disaggregate spectrum at any time to other entities with minimum eligibility qualifications. Entrepreneur block (C and F block) licensees may disaggregate at any time to other entrepreneurs, or to non-entrepreneurs after a five-year holding period. While the Commission concludes that disaggregation should generally be allowed, it emphasizes that all proposed disaggregation agreements, like partitioning agreements, will be subject to Commission review and approval under the public interest standard of Section 310 of the Act. In addition, as discussed below, disaggregatees will be subject to the CMRS spectrum cap to ensure that disaggregation is not used to accumulate large amounts of spectrum in order to preclude entry by other competitors.

2. Amount of Spectrum to Disaggregate

20. The Commission concludes that there should be no restriction on the amount of broadband PCS spectrum that can be disaggregated. Providing the flexibility to allow parties to decide the exact amount of spectrum to be disaggregated is preferable because it will encourage more efficient use of spectrum and will permit the deployment of a broader mix of service offerings, leading to a more competitive wireless marketplace. The Commission finds that requiring parties to obtain disaggregated spectrum in a predetermined amount, such as a block of 1 MHz, may result in parties obtaining more spectrum they need, leaving some spectrum unused, and may foreclose some parties from using disaggregation as a means of obtaining the spectrum they need to provide their service offerings. Therefore, the Commission will not restrict the amount of broadband PCS spectrum that can be disaggregated. Similarly, it will not require the disaggregator to retain a minimum amount of spectrum.

21. The Commission is not adopting a limit on the maximum amount of spectrum that licensees may disaggregate, provided that the disaggregatee complies with the CMRS spectrum cap. The Commission finds no evidence at this time that a maximum limitation for disaggregation is necessary. PCS licensees shall be permitted to disaggregate spectrum without limitation on the overall size of the disaggregation as long as such disaggregation is otherwise consistent with the rules.

3. Matters Relating to Entrepreneur Block Licensees

22. In keeping with the proposals the Commission is adopting for partitioning, it will permit entrepreneur block licensees to disaggregate at any time to other parties that qualify as entrepreneurs. Disaggregation to entities that do not qualify as entrepreneurs is not permitted for the first five years of a license term. Allowing unrestricted entrepreneur block disaggregation

would be inconsistent with the five-year restriction on full license transfers to non-entrepreneurs which was designed to ensure that entrepreneurs do not take advantage of special entrepreneur block provisions by immediately seeking to transfer their licenses to non-entrepreneurs. The Commission believes the same rationale would apply to entrepreneur block disaggregation, as licensees who have benefited from such provisions could immediately disaggregate spectrum to parties that would not qualify for such benefits.

23. The Commission declines to permit entrepreneur block licensees to swap equivalent blocks of entrepreneur spectrum with non-entrepreneurs within the same market area. The administrative burden of keeping track of such arrangements would far outweigh any benefit to the public.

24. The Commission will follow the approach outlined for partitioning and apply unjust enrichment payments to entrepreneur block licensees that disaggregate to non-entrepreneurs after the five-year holding period and to entrepreneur block licensees that qualified for bidding credits and installment payments and that disaggregate to other entrepreneurs that would not have qualified for such benefits. All such unjust enrichment payments will be calculated based upon the ratio of the amount of spectrum disaggregated to the amount of spectrum retained by the original licensee. With respect to disaggregation from an entrepreneur block licensee to another entrepreneur that would also qualify for installment payments, the Commission adopts an approach similar to the one it adopted for partitioning. The Commission will apportion the payment obligations between the disaggregator and disaggregatee based upon the amount of spectrum disaggregated and require separate payment obligations, promissory notes and default liabilities for each party.

4. Construction Requirements

25. The Commission concludes that the proposed construction requirements for disaggregation set forth in the NRPM would be inconsistent with the approach adopted in its partitioning rules, and that a more flexible approach is appropriate. Because the rules do not dictate a minimum level of spectrum usage by the original PCS licensee, the Commission believes it would be inconsistent to impose separate construction requirements on both disaggregator and disaggregatee for their respective spectrum portions. At the same time, the Commission wishes to ensure that the parties do not use disaggregation to circumvent its underlying construction requirements. Therefore, the Commission adopts a flexible approach analogous to its approach in the partitioning context: to retain the underlying five- and ten-year construction requirements for the spectrum block as a whole, but allow either party to meet the requirements on its disaggregated portion. Thus, a PCS licensee who disaggregates a portion of its spectrum may elect to retain responsibility for meeting the five- and ten-year coverage requirements, or it may negotiate a transfer of this obligation to the disaggregatee. In either case, the rules ensure that the spectrum will be developed to at least the same degree that was required prior to disaggregation.

26. To ensure compliance with the rules, the Commission will require that parties seeking Commission approval of a disaggregation agreement include a certification as to which party will be responsible for meeting the applicable five- and ten-year construction requirements. Parties may also propose to share the responsibility for meeting the construction requirements. The specific requirements to be met will depend on whether the spectrum being disaggregated was originally licensed as a 30 MHz block or a 10 MHz block. In the event that only one party agrees to take responsibility for meeting the construction requirement and later fails to do so, that party's license will be subject to forfeiture, but the other party's license will not be affected. Should both parties agree to share the responsibility for meeting the construction requirements and either party later fails to do so, both parties' licenses will be subject to forfeiture. So that the CMRS rules remain consistent and competitively neutral, disaggregatees that already hold a broadband PCS license or other CMRS license in the same geographic market will be subject to the same coverage requirements as disaggregatees who do not hold other licenses for disaggregated spectrum.

*C. Related Matters*

1. Combination of Partitioning and Disaggregation

27. To allow parties flexibility to design the types of agreements they desire, the Commission will permit combined partitioning and disaggregation. For example, this will allow a party to obtain a license for a single county of an A block market with only 15 MHz of spectrum. In the event that there is a conflict in the application of the partitioning and disaggregation rules, the partitioning rules should prevail. For the purpose of applying the unjust enrichment requirements and/or for calculating obligations under installment payment plans, when a combined partitioning and disaggregation is proposed, the Commission will use a combination of both population of the partitioned area and amount of spectrum disaggregated to make these *pro rata* calculations.

2. Licensing

28. The Commission will follow existing partial assignment procedures for broadband PCS licenses in reviewing requests for geographic partitioning, disaggregation, or a combination of both. Such applications will be placed on Public Notice and will be subject to petitions to deny. A licensee will be required to file an FCC Form 490 that is signed by both the licensee and the qualifying entity. With respect to partitioning, the FCC Form 490 must include the attachment defining the partitioned license area and an attachment demonstrating the population of the partitioned license area. Partial assignment applications that are filed seeking partitioning or disaggregation in the entrepreneur blocks must include an attachment demonstrating compliance with the five year entrepreneur block holding period. The qualifying entity will also be required to file an FCC Form 430 unless a current FCC Form 430 is already on file with the Commission. An FCC Form 600 must be filed by the qualifying entity to receive authorization to operate in the market area being partitioned or to operate the disaggregated spectrum or to modify an existing license of the qualifying entity to include the new/additional market area being partitioned or the spectrum that is disaggregated. Any requests for a partitioned license or disaggregated spectrum must contain the FCC Forms 490, 430, and 600 and be filed as one package under cover of the FCC Form 490.

29. The 45 MHz CMRS spectrum cap contained in Section 20.6 of the rules applies to partitioned license areas and disaggregated spectrum.

3. License Term

30. The Commission will allow partitionees and disaggregatees to hold their licenses for the remainder of the original licensee's ten-year license term. Partitionees and disaggregatees may also earn a renewal expectancy on the same basis as other PCS licensees.

31. The Commission will not permit an existing broadband PCS licensee acquiring a partitioned license or disaggregated spectrum in a market in

which it is already a licensee to apply its original license term to the partitioned license or spectrum. Such a proposal would be burdensome to administer because the processing staff would be required to determine the licensee's other licenses in the market and calculate the correct expiration date for the partitioned or disaggregated license. The Commission finds that such an administrative burden would outweigh the benefit that may result from such a proposal.

4. Technical Rules

32. The Commission finds that its existing technical rules are sufficient for application in the partitioning and disaggregation contexts and that no additional technical rules are required at this time. Should technical difficulties arise, however, the Commission will take whatever action is necessary to alleviate any technical or interference problems that result from partitioning or disaggregation, including appropriate modifications to its technical rules.

5. Microwave Relocation

33. The Commission concludes that partitionees and disaggregatees should be treated the same as all other PCS licensees with respect to microwave relocation issues. In particular, partitionees will have the same rights and obligations as other broadband PCS licensees under the cost-sharing plan adopted in Amendment of the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, WT Docket No. 95–157, Report and Order and Further Notice of Proposed Rulemaking, 61 FR 24470 (May 15, 1996). Thus, partitionees and disaggregatees may seek reimbursement under the plan if they relocate incumbents and they will be required to pay their share of microwave relocation costs if they benefit from the spectrum-clearing efforts of another party, according to the cost-sharing formula adopted by the Commission.

34. The Commission declines to require that the original PCS licensee guarantee payments under the cost-sharing plan by the partitionee or disaggregatee. To require licensees to guarantee such payments would be unfair because the original licensees would have no control over the actions of the partitionees and disaggregatees.

6. Clearinghouse for Spectrum

35. The Commission declines to create a Commission-based resource of information, but will continue to make available, in a user-friendly manner, information contained in its existing databases, concerning geographic areas open to partitioning and spectrum that would be available through disaggregation. Although a few entities offered to serve as commercial clearinghouses of PCS spectrum information, the Commission declines to establish an official Commission clearinghouse.

VI. Conclusion

36. The partitioning and disaggregation proposals the Commission has adopted are consistent with a pro-competitive policy framework. These rules will eliminate barriers to entry for small businesses seeking to enter the PCS marketplace and will promote the rapid creation of a competitive market for the provision of PCS services. These rules also meet the Congressional objectives to further the rapid development of new technologies for the benefit of the public including those residing in rural areas, without administrative delay, to promote economic opportunity and competition, and to ensure that new technologies are available by avoiding excessive concentration of licenses.

VII. Procedural Matters and Ordering Clauses

*A. Regulatory Flexibility Act*

Summary

As required by Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NRPM) in WT Docket No. 96–148. The Commission sought written public comment on the proposals in the NPRM, including the IRFA. The Commission's Final Regulatory Flexibility Analysis in this Report and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996.

Need for and Purpose of this Action

In this Report and Order the Commission modifies the broadband PCS rules to permit partitioning and disaggregation for all Part 24 licenses. The proposals adopted herein also implement Congress' goal of giving small businesses the opportunity to participate in the provision of spectrum-based services in accordance with 47 U.S.C. 309(j)(4)(D) and to reduce entry barriers for small businesses in accordance with 47 U.S.C. 257. With more open partitioning and disaggregation, additional entities, including small businesses, may participate in the provision of broadband PCS service without needing to acquire wholesale an existing license (with all of the bundle of rights currently associated with the existing license). Acquiring less than the current license will presumably be a more flexible and less expensive alternative for entities desiring to enter these services.

Summary of Issues Raised in Response to the Initial Regulatory Flexibility Analysis

Only one commenter, National Telephone Cooperative Association (NTCA), submitted comments that were specifically in response to the IRFA. NTCA argues that the Commission is required under the RFA to identify significant alternatives to the proposed rules in order to accomplish the stated objectives of Sections 309(j) and 257 of the Communications Act of 1934, as amended (Communications Act). Specifically, NTCA argues that the Commission must consider the right of first refusal approach suggested by some commenters as an alternative to allowing open partitioning of PCS licenses and how it might minimize significant economic impacts on rural telcos. NTCA contends that, for the purposes of determining which businesses are to be included in an RFA analysis, the Commission should adopt the U.S. Small Business Administration's (SBA) definition of small business, which is any company with fewer than 1,500 employees.

In the Report and Order, significant alternatives were identified and considered in order to further the mandates of Sections 309(j) and 257 of the Communications Act. In addition, significant consideration was given to the rural telcos' right of first refusal approach for partitioning; however, the Commission concluded that such an approach was unworkable and would actually discourage partitioning. Finally, the Commission declined to adopt NTCA's suggestion to utilize the SBA definition of small business (businesses with fewer than 1,500 employees). As noted below, the existing definition of small business (firms with revenues of less than $40 million in each of the last three years) was used in the PCS C-Block auction and was approved by the SBA. The Commission also notes that it has found incumbent LECs to be ''dominant in their field of operation'' since the early 1980's, and it has consistently certified under the RFA that incumbent LECs are not subject to regulatory flexibility analyses because they are not small businesses. The Commission has made similar determinations in other areas.

Description and Number of Small Entities Involved

The rules adopted in the Report and Order will affect all small businesses which avail themselves of these rule changes, including small businesses currently holding broadband PCS licenses who choose to partition and/or disaggregate, and small businesses who may acquire licenses through partitioning and/or disaggregation. The rules will also affect rural telephone companies which, under the current rules, have the exclusive right to obtain partitioned broadband PCS licenses. Small businesses will be defined for these purposes as firms that have revenues of less than $40 million in each of the last three calendar years. This definition was used in the PCS C-Block auction and approved by the SBA. The definition of rural telephone company shall be that definition found at § 24.720(e) of the rules, 47 CFR 24.720(e).

The broadband PCS spectrum is divided into six frequency blocks designated A through F. The Commission has auctioned broadband PCS licenses in blocks A, B, and C. The Commission does not have sufficient information to determine whether any small businesses within the SBA-approved definition bid successfully for licenses in the A or B block PCS auctions. There were 89 winning bidders that qualified as small businesses in the C block PCS auctions. Based upon this information, the Commission concludes that the number of broadband PCS licensees affected by the rules adopted herein includes the 89 winning bidders that qualified as small entities in the block C broadband PCS auctions.

The Commission anticipates that a total of 10,370 PCS licensees or potential licensees could take the opportunity to partition or disaggregate a license or obtain a license through partitioning and/or disaggregation. This estimate is based on the total number of broadband PCS licenses auctions and subject to auction, 2,074, and the Commission's estimate that each license would probably not be partitioned and/or disaggregated to more than five parties. Currently, the C and F block licensees and potential licensees (holding a total of 986 licenses) must be small businesses or entrepreneurs with average gross revenues over the past three years of less than $125 million. Under the rules adopted in the Report and Order, they will be permitted to partition and/or disaggregate to other qualified entrepreneurs at any time and to non-entrepreneurs after the first five years of their license term. The A, B, D, and E block licensees and potential licensees (holding a total of 1,088 licenses) will also be permitted under the proposed rules to partition and/or disaggregate to small businesses.

The Commission is presently conducting auctions for the D, E, and F blocks of broadband PCS spectrum. The Commission anticipates that a total of 1,479 licenses will be awarded in the D, E, and F block PCS auctions. Eligibility for the F block licenses is limited to entrepreneurs with average revenues of less than $125 million. It is not possible to estimate the number of licenses that will be awarded to small businesses in the F block nor is it possible to estimate how many small businesses will win the D or E block licenses. The Commission believes that it is possible that small businesses will constitute a significant number of the up to 10,370 PCS licensees or potential licensees who could take the opportunity to partition and/or disaggregate or who could obtain a license through partitioning and/or disaggregation.

Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements

The rules adopted in the Report and Order will impose reporting and recordkeeping requirements on small businesses seeking licenses through partitioning and disaggregation. The information requirements will be used to determine whether the licensee is a qualifying entity to obtain a partitioned license or disaggregated spectrum. This information will be given in a one-time filing by any applicant requesting such a license. The information will be submitted on the FCC Form 490 (or 430 and/or 600 filed as one package under cover of the Form 490) which are currently in use and have already received OMB clearance. The Commission estimates that the average burden on the applicant is three hours for the information necessary to complete these forms. The Commission estimates that 75 percent of the respondents (which may include small businesses) will contract out the burden of responding. The Commission estimates that it will take approximately 30 minutes to coordinate information with those contractors. The remaining 25 percent of respondents (which may include small businesses) are estimated to employ in-house staff to provide the information.

Steps Taken To Minimize Burdens on Small Entities

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

Allowing non-restricted partitioning of PCS licenses will facilitate market entry by parties who may lack the financial resources for participation in PCS auctions, including small businesses. Some small businesses may have been unable to be winning bidders at the PCS auctions due to high bidding and would have been unable to qualify for partitioning because of our current restriction which permits partitioning of PCS licenses to only rural telephone companies (rural telcos). By eliminating this restriction, small businesses will be able to obtain partitioned PCS licenses for smaller service areas at presumably reduced costs, thereby providing a method for small businesses to enter the PCS marketplace.

Similarly, allowing immediate disaggregation of PCS licenses will facilitate the entry of new competitors to the provision of PCS services, many of whom will be small businesses seeking to acquire a smaller amount of PCS spectrum at a reduced cost.

Allowing geographic partitioning of PCS licenses by services areas defined by the parties rather than only by county lines will provide an opportunity for small businesses to obtain partitioned PCS license areas designed to serve smaller, niche markets. This will permit small businesses to enter the PCS marketplace by reducing the overall cost of acquiring a partitioned PCS license.

Allowing disaggregation of spectrum in any amount will also promote participation by small businesses who may seek to acquire a smaller amount of PCS spectrum tailored to meet the needs of their proposed service.

The Commission's proposals to allow non-entrepreneur block licensees to partition or disaggregate to any party and to allow entrepreneurs to partition or disaggregate to other entrepreneurs at any time and to non-entrepreneurs after a five year holding period will significantly increase the opportunities for small businesses to enter the PCS marketplace. Allowing entrepreneur partitionees and disaggregatees to pay their proportionate share of the remaining government obligation through installment payments will provide a further opportunity for small

businesses to participate in the provision of PCS services.

The Commission's decision to allow partitioning parties to choose between two construction requirements will provide small businesses with more flexibility to construct their systems at a rate that is determined by market forces, thus allowing them to conserve their resources.

Significant Alternatives Considered and Rejected

The Commission considered and rejected a number of alternative proposals concerning partitioning and disaggregation.

The rural telephone companies (rural telcos) argued that the Commission should either retain the current partitioning restriction or adopt a right of first refusal approach that would require partitioning parties to notify the rural telco and offer it the partitioned license area under similar terms and conditions. The Commission found that retaining the current partitioning restriction would prevent small businesses from using partitioning to enter the broadband PCS market. Since retaining the partitioning restriction would constitute a significant barrier to entry for small businesses, the Commission declined to continue to limit partitioning to rural telcos.

The Commission found that the right of first refusal would be difficult to implement and could discourage partitioning. Areas proposed in partitioning agreements may not coincide exactly with areas for which a rural telco may have a right of first refusal. A single partitioning transaction may encompass more than one rural telco's service area, or a partitioning agreement may be part of a larger assignment transaction. Parties would be unwilling to enter into partitioning agreements not knowing how much of an area would ultimately be partitioned or whether they could consummate the transaction. This determination will make it easier for non-rural-telcos, including some small business entities, to enter partitioning agreements.

The Commission declined to adopt the proposal set forth in the NPRM to limit partitioning to areas defined by county lines. The Commission was convinced by the majority of commenters that geographic partitioning along county lines is too restrictive. The Commission found that parties seeking a partitioned license may not desire to serve an entire county but rather a smaller niche market. Therefore, the Commission found that allowing partitioning along service areas defined by the parties would allow the parties to design flexible partitioning agreements.

The Commission rejected proposals to permit partitioning and disaggregation during the first five years of an entrepreneur's license term. While allowing entrepreneurs to immediately partition or disaggregate to non-entrepreneurs may have resulted in additional entities participating in the provision of PCS services, the Commission concluded that the five year holding period restriction is necessary in order to ensure that entrepreneurs do not take advantage of the special entrepreneur block benefits by immediately partitioning a portion of their licenses or disaggregating a portion of their spectrum to parties that would not have qualified at auction, on their own merits, for such benefits. Furthermore, limiting partitioning and disaggregation during the first five years of an entrepreneur's license term will increase the possibility that small businesses will be able to acquire PCS licenses.

The Commission declined to adopt proposals to apply a new license term to partitioned license areas and disaggregated spectrum. Under this approach, entities obtaining partitioned licenses or disaggregated spectrum would receive a new ten-year license term beginning from the date the Commission approved the partitioning or disaggregation. The Commission found that permitting parties to ''re-start'' their license term would effectively allow a licensee to extend its license term and could lead to circumvention of our license term rules.

The Commission rejected the proposal to require disaggregation of broadband PCS spectrum in blocks of 1 MHz of paired frequencies (500 kHz plus 500 kHz). The Commission found that requiring parties to obtain that large a block of spectrum could act as a barrier to entry for entities that do not require that much spectrum to provide service.

Finally, the Commission declined the proposal put forth by some commenters that PCS licensees be required to assume the obligations and responsibilities for microwave relocation costs for their entire license area and spectrum block even if they partition a portion of their license area or disaggregate a portion of their spectrum to another party. The Commission found that requiring licensees to guarantee the payments of partitionees and disaggregatees would be unfair because licensees would not have control over the actions of partitionees and disaggregatees and because there was no reason to treat those parties differently than other late-entrant PCS licensees with respect to microwave relocation costs.

Report to Congress:

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

*B. Ordering Clauses*

Accordingly, *it is ordered* That, pursuant to the authority of Sections 4(i), 257, 303(g), 303(r) and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 257, 303(g), 303(r), and 332(a), Part 24 of the Commission's Rules, 47 CFR 24, is amended as set forth below.

*It is further ordered* That the rules adopted herein will become effective March 7, 1997. This action is taken pursuant to 4(i), 303(r) and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 332(a).

List of Subjects in 47 CFR Part 24

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

*Acting Secretary.*

Rule Changes

Part 24 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 24—PERSONAL COMMUNICATIONS SERVICES

1. The authority citation for Part 24 continues to read as follows:

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

**§ 24.229 [Amended]**

2. Section 24.229 is amended by removing paragraph (c).

**§ 24.707 [Amended]**

3. Section 24.707 is amended by removing the phrase from the third sentence: ''(and applicants seeking partitioned licenses pursuant to agreements with auction winners under § 24.714).''

4. Section 24.714 is revised to read as follows:

**§ 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 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.

(b) *Technical standards*—(1) *Partitioning.* In the case of partitioning, requests for authorization for partial assignment of a license must include, as attachments, a description of the partitioned service area and a calculation of the population of the partitioned service area and the licensed geographic service area. The partitioned service area shall be defined by coordinate points at every 3 seconds along the partitioned service area unless an FCC recognized service area is utilized (i.e., Major Trading Area, Basic Trading Area, Metropolitan Service Area, Rural Service Area or Economic Area) or county lines are followed. 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 1927 North American Datum (NAD27). Applicants may supply geographical coordinates based on 1983 North American Datum (NAD83) in addition to those required (NAD27). In the case where an FCC recognized service area or county lines are utilized, applicants need only list the specific area(s) (through use of FCC designations or county names) that constitute the partitioned area.

(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.

[FR Doc. 97–98 Filed 1–3–97; 8:45 am]

BILLING CODE 6712–01–P

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## 47 CFR Part 51

**[CC Docket No. 96–98; FCC 96–483]**

## Implementation of the Local Competition Provisions in the Telecommunications Act of 1996

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; motion for stay and notification of court stay.

**SUMMARY:** The Order released December 18, 1996 dismisses the motion for stay of three rules adopted in the *First Report and Order,* (August 29, 1996), filed by the Rural Telephone Coalition (RTC) to the extent that RTC seeks a stay of 47 CFR 51.809, and otherwise denies the motion for stay. Denial of the motion for stay allows the rules relating to local competition which have not been stayed by the United States Court of Appeals for the Eighth Circuit (*Iowa Utilities Board* v. *Federal Communications Commission,* No. 96–3321 *et al.,* 1996 WL 589284 (8th Cir. 1996 Oct. 15, 1996)) to go into effect without delay.

**EFFECTIVE DATE:** Sections 51.501–51.515 (inclusive), 51.601–51.611 (inclusive), 51.705–51.715 (inclusive), and 51.809 are stayed effective October 15, 1996 pursuant to court order. Motion for stay by the Rural Telephone Coalition is dismissed effective January 6, 1997.

**FOR FURTHER INFORMATION CONTACT:** Lisa Gelb, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order adopted December 18, 1996, and released December 18, 1996. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc96483.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M St., NW., Suite 140, Washington, DC 20037.

Regulatory Flexibility Analysis

There are no new rules or modifications to existing rules adopted in this Order.

Paperwork Reduction Act

There are no new or modified collections of information required by this Order.

Synopsis of Order

I. Introduction

1. On August 1, 1996, the Commission adopted rules implementing the local competition provisions of the Telecommunications Act of 1996 (1996 Act). On October 2, 1996, the Rural Telephone Coalition (RTC) filed a motion for stay of three rules adopted in the *First Report and Order,* 61 FR 45476 (August 29, 1996), pending judicial review. Oppositions to the motion for stay were filed by MCI, the Association for Local Telecommunications Service (ALTS), and the National Cable Television Association (NCTA). For the reasons set forth below, we dismiss the motion in part, and otherwise deny the motion for stay.

II. Background

2. Section 251(c) of the Communications Act of 1934, as amended, (the Act) imposes on incumbent local exchange carriers (LECs) obligations regarding interconnection, resale of services, and unbundled network elements. Section 251(f)(1) of the Act provides that a rural telephone company is exempt from the requirements of section 251(c) unless the state commission finds that the rural carrier has received a bona fide request for interconnection, services, or network elements, and the state commission determines that the request ''is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof).'' Section 251(f)(2) of the Act permits LECs ''with fewer than 2 percent of the Nation's subscriber lines installed nationwide'' to petition a state commission for suspension or modification of application of one or more requirements of sections 251(b) or 251(c). The petition