

in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Request for comments and assistance was published in the notice of proposed rulemaking for this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1126, 1231; 46 U.S.C. chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Section 165.1316 is added to read as follows:

§ 165.1316 Safety Zone; Columbia River, Astoria, Oregon.

(a) *Location.* The following area is a safety zone: All waters of the Columbia River at Astoria, Oregon enclosed by the following points: North from the Oregon shoreline at 123°49'36" West to 46°11'51" North thence east to 123°48'53" West thence south to the Oregon shoreline and finally westerly along the Oregon shoreline to the point of origin.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, no person or vessel may enter or remain in this zone unless authorized by the Captain or the Port or his designated representatives.

(c) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

(d) *Enforcement period.* This section will normally be enforced on the second Saturday of August from 9:30 p.m. (PDT) to 10:30 p.m. (PDT). Announcement of enforcement periods may be made by the methods described in 33 CFR 165.7, or any other reasonable method.

Dated: July 8, 2003.

Paul D. Jewell,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 03-18119 Filed 7-16-03; 8:45 am]

BILLING CODE 4910-15-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[WT Docket No. 97-112, CC Docket No. 90-6; FCC 03-130]

Public Mobile Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission resolves petitions for

reconsideration filed against the *Report and Order* in WT Docket No. 97–112 and CC Docket No. 90–6, in which the Commission modified rules affecting cellular service in the Gulf of Mexico. The Commission reinstates certain collocation applications that were inadvertently dismissed pursuant to the *Gulf Report and Order*, and modifies § 22.912 of the Commission's rules to clarify that land-based cellular carriers are precluded from extending their service area boundaries into any part of the Gulf of Mexico Exclusive Zone without the applicable Gulf carrier's consent. The Commission also affirms that the market boundaries of Personal Communications Service (PCS) licensees adjacent to the Gulf of Mexico are co-extensive with county boundaries.

DATES: Effective September 15, 2003.

FOR FURTHER INFORMATION CONTACT: Roger Noel or Linda Chang, Wireless Telecommunications Bureau, at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order on Reconsideration*, in WT Docket 97–112 and CC Docket No. 90–6, FCC 03–130, adopted June 10, 2003, and released June 27, 2003. The full text of the *Order on Reconsideration* is available for public inspection during regular business hours at the FCC Reference Information Center, 445 12th St., SW., Room CY–A257, Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor: Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at qualexint@aol.com.

Synopsis of Order on Reconsideration

I. Background

1. In January 2002, the Commission released a *Report and Order* in WT Docket No. 97–112 and CC Docket 90–6 (*Gulf Report and Order*), in which it established a comprehensive regulatory scheme for the Gulf of Mexico designed to facilitate the provision of cellular service to unserved areas of the Gulf region and resolve operational conflicts between Gulf and land carriers, while minimizing the disturbance to existing operations and contractual relationships. See Cellular Service and Other Commercial Mobile Radio Services in the Gulf of Mexico, WT Docket No. 97–112, Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other

Cellular Rules, CC Docket No. 97–112, *Report and Order*, 67 FR 9596 (March 4, 2002) (*Gulf Report and Order*). As part of this licensing scheme, the Commission adopted a bifurcated approach for the Gulf that reflected the differences in deployment of cellular service in the Eastern Gulf and the Western Gulf. The Commission determined that the entirety of the Western Gulf would be included within the Gulf of Mexico Exclusive Zone (GMEZ) in which the Gulf carriers would not be subject to use-or-lose rules, but would have full flexibility to build, relocate, modify and remove offshore facilities without any impact on their rights to provide service to “unserved” areas. In the Eastern Gulf, the lack of offshore cellular deployment led the Commission to designate a Gulf of Mexico Coastal Zone (GMCZ) extending from the shoreline seaward twelve nautical miles, in which unserved area licensing rules would apply, while the remainder of the Eastern Gulf was included in the GMEZ, giving Gulf carriers full flexibility to operate beyond the twelve nautical mile limit.

2. By using the existing rules as the basis for its decision in the Western Gulf, the Commission reaffirmed the coastline as the legal demarcation line for the Western Gulf separating the service areas of Gulf and land-based cellular carriers. The *Gulf Report and Order* continued to bar land-based carriers from extending their service area boundaries (SABs) over any portion of the Western Gulf without the consent of the relevant Gulf carrier, regardless of whether the Gulf carrier is serving that portion of the Gulf from an offshore site. Conversely, the Gulf carriers are prohibited in the Western Gulf from extending contours over land that would encroach on areas served by land-based carriers, absent consent. The Commission also determined that because of the different propagation characteristics of radio signals transmitted over land and water, it would continue to use different formulas to determine the SABs of land and water-based sites. Accordingly, the Commission retained the rule that determined the reliable service area of Gulf-based sites using a 28 dB μ V/m contour, while using a 32 dB μ V/m contour to determine the reliable service area of land-based sites.

3. The *Gulf Report and Order* also addressed the issue of non-cellular commercial mobile radio services (CMRS) services in the Gulf. The Commission declined to create a Gulf licensing area for non-cellular services, noting the lack of support for this

alternative in the record. However, the Commission clarified that in CMRS services that do not have a separately licensed Gulf market, licensees serving areas adjacent to the Gulf of Mexico were entitled to extend their coverage offshore. Because most non-cellular services use licensing areas based on county boundaries, which typically extend a specified distance over water pursuant to state law, the *Gulf Report and Order* clarified that such Commission licensing areas were co-extensive with county boundaries. The *Gulf Report and Order* also stated that licensees could extend service further into the Gulf on a secondary basis, provided they did not cause interference to others.

II. Discussion

A. Two-Formula Approach

4. Petroleum Communications, Inc. (PetroCom) contends that the Commission's decision to continue using different formulas to determine the SABs of land and Gulf-based transmitters gives land-based carriers a signal strength advantage over Gulf carriers, thereby enabling land-based carriers to encroach into the Gulf and capture water-based cellular traffic. PetroCom maintains that either Gulf carriers should be entitled to use the 32 dB μ V/m land-based formula to determine their predicted signal strength at the coastal boundary, or alternatively that the 28 dB μ V/m water-based formula should be used by land-based as well as Gulf carriers. PetroCom also asserts that the Commission's adoption of the two-formula approach lacks adequate basis in the record and is procedurally flawed.

5. The Commission affirms its decision to use the two-formula approach in calculating service area contours for land-based and Gulf carriers. This approach recognizes a basic fact of signal propagation: due to the absence of path obstructions and typically quieter RF environment, a signal transmitted over water is likely to be stronger than a signal transmitted over land at the equivalent distance from the transmitter. The 32 dB μ V/m land-based formula incorporates factors that typically affect propagation of signals over land, such as rolling terrain. The land formula also assumes a noisier environment and that the subscriber will be using a mobile handset near ground level. On the other hand, assumptions factored into the 28 dB μ V/m water formula are quite different. The water formula assumes that a signal in the Gulf will not have the same path obstructions encountered

by radio signals over land. The water formula does not factor in rolling terrain, presumes a quieter noise environment, and also takes into account the different characteristics of water-borne cellular receivers, which are typically mast-mounted and therefore able to receive a signal at a greater distance from the transmitter. Thus, the water formula assumes that the typical Gulf subscriber operating on a boat or drilling platform will have a receive unit with a mast-mounted antenna at a height of approximately 30 feet.

6. Indeed, using 28 dB μ V/m as the basis for defining reliable service over water was originally proposed by PetroCom itself, which contended that it more accurately approximated actual coverage in the Gulf. PetroCom previously argued that 28 dB μ V/m more accurately predicted reliable service in the Gulf due to the stronger propagation characteristics of over-water transmissions. In support of this argument, PetroCom submitted actual received power measurements from Gulf facilities to what it characterized as a typical mobile unit for a Gulf subscriber. The Commission concluded that PetroCom's technical exhibit provided a convincing demonstration of the service range of typical cellular facilities found in the Gulf, and therefore established the formula based on the data submitted by PetroCom.

7. The Commission also rejects PetroCom's argument that a single formula will "equalize" the signal strengths of land-based and Gulf carriers at the shoreline. If the Commission was to apply the land-based formula to establish the SABs of both land-based and Gulf carriers, as PetroCom proposes, the actual signal strength of the Gulf carrier's signal at the shoreline would very likely be higher than 32 dB μ V/m. Because the land formula assumes rolling terrain that is not encountered over water, it will tend to underestimate the actual strength of a signal transmitted over water at the SAB radial distance. Thus, while the land formula will indicate that the Gulf carrier's SAB does not encroach on land, the Gulf carrier's actual 32 dB μ V/m contour is likely to extend inland. Accordingly, use of the land formula over water could result in the Gulf carrier having an actual signal strength at the boundary that is greater than that of the adjacent land carrier, thereby leading to potential capture of the land carrier's customers. Alternatively, if the Commission were to apply the water formula to both land-based and Gulf carriers, the result would likely be dead spots and undesired carrier capture along the

coastline. The water formula does not take into account variations in terrain that are present in over-land transmissions; accordingly, although use of the formula may make it appear that the land carrier has an adequate signal at the shoreline, in fact the signal may well be substantially weaker. In contrast, the Gulf carrier would be operating at a signal strength sufficient to provide reliable service. The use of the water formula by all parties would therefore likely lead to capture of land traffic by the Gulf carrier because of the stronger Gulf signal.

8. PetroCom argues that using different formulas for land-based and Gulf carriers gives a signal strength advantage to land carriers and thereby will cause subscriber capture problems for Gulf carriers. The Commission agrees that the two-formula approach will not prevent subscriber capture in all situations, and that capture of Gulf traffic by land carriers may occur on occasion. The Commission has always acknowledged that these formulas are theoretical models that approximate but do not precisely predict the extent of actual coverage provided by carriers beyond their respective sides of the coastline. However, in situations where the majority of the signal path is over a single medium—land or water—the two-formula approach provides the most reasonable estimate of a given station's service area. The Commission concludes that the PetroCom's proposal does not provide a better solution to subscriber capture than the two-formula approach, and that it is more likely to exacerbate capture problems in comparison to the two-formula approach.

9. PetroCom further argues that the two-formula approach does not preserve the status quo, but actually gives land-based carriers a bargaining advantage in negotiating agreements with Gulf carriers. However, because the *Gulf Report and Order* prohibits land carriers from extending their SAB contours anywhere into the Western Gulf, a land carrier seeking to place a site close to the boundary has no choice but to negotiate with the applicable Gulf carrier, regardless of whether the Gulf carrier has a facility in the area.

10. PetroCom also notes that it has negotiated agreements with land-based carriers in which both parties agreed to use of the land formula. This is not an argument for adopting the land formula as an across-the-board rule. The Commission found that land and Gulf carriers had been using the existing formulas and had been successful in reaching negotiated agreements under the existing framework. The

Commission consequently found that changing the SAB definitions could lead to one side or the other unilaterally increasing their transmitter power under the revised definitions, which could upset existing agreements and create new conflicts. Parties remain free to negotiate alternative arrangements. PetroCom's current extension and collocation agreements with land carriers (where PetroCom has filed applications showing a 32 dB μ V/m contour) were the end result of negotiations, rather than the starting points.

11. PetroCom further argues that in *Petroleum Communications, Inc. v. FCC*, 22 F.3d 1164 (DC Cir. 1994) (*PetroCom*), the DC Circuit Court vacated the water formula, and reinstated the original cellular rule that defined reliable service, which was based on a 39 dB μ V/m contour. Accordingly, PetroCom argues, it is entitled under the "status quo" to a signal strength of 39 dB μ V/m at the coastline, a significantly stronger signal than either 28 or 32 dB μ V/m. The Commission disagrees with PetroCom's characterization of the effect of the remand on this issue. The issue that the Gulf carriers raised and which the DC Circuit Court remanded was whether the Gulf carriers should be limited to areas of actual service in light of their dependence on itinerant offshore platforms as sites for their transmitters. The Court held that the Commission had not addressed why it was treating land and Gulf carriers in the same manner (*i.e.*, limiting both land and Gulf carriers to areas of actual service) even though the Gulf carriers are dependent on oil and gas rigs as transmitter sites.

12. Accordingly, the Court remanded "this issue to the Commission with instructions to vacate § 22.903(a) [now § 22.911(a)] insofar as it applies to [Gulf of Mexico Service Area (GMSA)] licensees pending reconsideration." Pending resolution of the remand, the Commission adopted a note to paragraph (a) of the rule, in which it identified the status quo: "[U]ntil further notice, the authorized CGSAs of the cellular systems licensed to serve the GMSA are those which were authorized prior to January 11, 1993." The Commission believed then, and continues to believe now that the Court's intent was to direct the Commission to vacate only that portion of former § 22.903(a) that limited Gulf licensees' CGSAs to their existing areas of actual service—the only issue as to which the Court was remanding—and not to compel the Commission to also vacate the formula it had adopted for determining reliable service in the Gulf, as to which no objection had been made

and which played no role in defining the previous CGSA which was reinstated during the interim as a result of the Court's decision.

13. Following the *PetroCom* remand, the Commission has applied the 28 dB μ V/m water formula as the applicable standard for Gulf carriers. This is consistent with its policy that, to the extent that Gulf carriers are allowed to serve up to the boundary of the GMSA, *i.e.*, the shoreline, they are permitted to operate at a height and power sufficient to provide reliable service at the shoreline. The use of the 39 dB μ V/m field strength by Gulf carriers is inappropriate because it is clearly counter to data submitted to the Commission regarding the field strength necessary for reliable service by either land or water carriers. Indeed, carriers other than PetroCom have understood that the Gulf carriers were subject to the water formula. For example, Bachow/Coastel, the B-Block Gulf carrier, engineered its systems using the water formula as the applicable standard, and entered into agreements based on that formula.

B. "Hybrid" Formula Proposal

14. In the *Gulf Report and Order*, the Commission declined to adopt its proposal to create a Coastal Zone that would encompass coastal waters in both the Eastern and Western Gulf, and proposed to develop a "hybrid" propagation formula that would be used by both land-based and Gulf carriers to measure service area contours within the Coastal Zone. The Commission noted that the record reflected little support for a hybrid formula, and found that it would be difficult to establish a single formula that would accurately account for the variations in signal propagation over both land and water. The Commission finds no merit in PetroCom's contention that the Commission erred in rejecting a hybrid approach in favor of retaining the two-formula approach. First, the proposal to create a hybrid formula was linked to the proposal to establish a Coastal Zone that could be served by both land and Gulf carriers, which the Commission ultimately did not adopt. Once the Commission decided to retain existing rules rather than establish a Coastal Zone in both the Eastern and Western Gulf, there was no longer a need to pursue development of a hybrid signal propagation formula as previously proposed. Second, the Commission rejects PetroCom's contention that there was a sufficient record to justify, much less compel, adoption of a hybrid formula. Although there were indeed some commenters who supported use of

a hybrid formula, others did not. Moreover, few commenters actually proposed specific technical criteria for the development of such a formula, and the Commission found that those who did failed to provide the type of detailed technical analysis or supporting data (such as measurements) necessary to support their proposals. Given these and other factors, the Commission continues to believe that a hybrid formula would be very difficult to develop, and that the benefits of such a formula do not outweigh the costs and complications involved in establishing and employing one.

C. Regulatory Flexibility Act Requirements

15. PetroCom argues that the Commission violated the Regulatory Flexibility Act (RFA) because its Initial Regulatory Flexibility Analysis (IRFA) did not describe the potential impact on Gulf carriers of retaining the two-formula approach. PetroCom further argues that the Final Regulatory Flexibility Analysis (FRFA) in the *Gulf Report and Order* was flawed because it did not contain a description of the steps the Commission has taken to minimize the significant economic impact on the Gulf carriers of continuing to allow land carriers to utilize the land formula. PetroCom also contends that the Commission was required to include a statement in the FRFA why proposals for the use of "an equal strength rule" were rejected as alternatives.

16. The RFA requires that agencies evaluate the effect that new regulations will have on small business entities. 5 U.S.C. 601 *et seq.* When proposing a new rule, agencies must perform an IRFA discussing the proposed new rule's impact on small entities. Further, when adopting a final rule, the agency must also perform a FRFA. The Commission complied with these requirements. PetroCom incorrectly asserts that as part of the RFA process, the Commission was required to analyze the effects that retaining existing rules would have on small entities. The Commission's decision to continue applying existing rules was not a new undertaking that falls under the provisions of the RFA. Instead, after reviewing alternatives, the Commission determined that, in light of the difficulties of adopting a single formula that would apply in all cases, the existing regulatory environment should be retained because of the flexibility provided by the Commission's rules for parties to enter into agreements that would allow carriers to choose for themselves which operating parameters

to apply. This decision did not require additional discussion in the FRFA.

D. PetroCom Co-location Applications

17. In December 1992, the Commission began accepting Phase II applications for unserved area licenses in the GMSA. However, following the *PetroCom* remand, the Commission suspended processing of these applications pending reconsideration of the Commission's policies in the Gulf region. Similarly, the Commission ceased processing *de minimis* extension requests along the Gulf coast due to uncertainty regarding the rules for the GMSA. In the *Gulf Report and Order*, the Commission dismissed all pending Phase II applications and extension requests (as well as associated petitions to deny). The Commission reasoned that in light of length of time since the applications had been filed, the fairest and most efficient resolution was to dismiss all pending applications and allow the carriers to reapply. In dismissing all pending Phase II and *de minimis* extension applications, however, the Commission erroneously dismissed a number of PetroCom's applications that were filed pursuant to agreements to co-license sites on land in markets adjacent to the Gulf of Mexico. A major goal of the *Gulf Report and Order* was to encourage parties to reach negotiated solutions to issues such as coverage, capture, and roaming rates. The policies set out in the *Gulf Report and Order* were also aimed at ensuring that existing contractual relationships are not disturbed. The dismissal of PetroCom's applications based on negotiated co-location agreements runs counter to that goal. Accordingly, the Commission reinstates the applications cited in PetroCom's petition to pending status.

E. Clarification Regarding Extensions Into the GMEZ

18. In the *Gulf Report and Order*, the Commission gave the Gulf carriers full flexibility to build, relocate, modify, and remove offshore facilities throughout the GMEZ without seeking prior Commission approval or facing competing applications. Further, the Commission chose not to allow land carriers to make *de minimis* extensions into unserved areas of the GMEZ. The Commission agrees with PetroCom that the Commission's rules as currently worded may cause some confusion. Accordingly, the Commission clarifies that land-based carriers are precluded from extending their SABs into any part of the GMEZ, whether served by the applicable Gulf carrier or not, without

the Gulf carrier's consent, and amends rule § 22.912 to reflect this fact.

F. Clarification of Phase II Licensing in the GMSA

19. The Commission also clarifies, on its own motion, the wording of § 22.911(a)(2) to remove confusion. In the *Gulf Report and Order*, the Commission amended § 22.911(a)(2) in order to reflect that areas of the GMCZ would be subject to Phase II licensing and open to all carriers. However, § 22.911(a)(2) in its current form may be misread as applying only to the two original Gulf (GMEZ) carriers. The Commission therefore clarifies that the rule applies to all cell sites actually located in the GMSA (whether in the GMEZ or GMCZ), and not just to GMEZ carriers.

G. Grandfathering of Existing Gulf Carrier Operating Parameters

20. PetroCom argues that it was material error for the Commission not to address an *ex parte* request made by PetroCom in October 2001, proposing that the Commission adopt a grandfathering rule that preserves the current operating parameters of all facilities that existed as of April 17, 1997. PetroCom argues that current operating parameters means the use of 32 dBµV/m contours as calculated using the land formula at the coastline. According to this proposal, all operating parameters, including contour extensions that cross the coastline boundary, would be grandfathered using the land formula. PetroCom's proposal would allow a carrier to modify or construct a new site as long as any new cross-boundary extensions (also calculated using the land formula) remain within the extension of the originally grandfathered contour.

21. The Commission declines to reconsider the grandfathering of existing cellular facilities as proposed by PetroCom. The *Gulf Report and Order* did not affect any existing operating parameters, including the use of the land formula by Gulf carriers or cross-boundary contours, that might have resulted from such agreements. However, while the Commission grandfathered such existing operations, it did not grant carriers, either land carrier or Gulf carrier, a permanent right to encroach across the coastline boundary or the right to Gulf carriers to calculate contours using the land formula in the absence of agreements permitting them to do so. As previously discussed, the use of the land formula by Gulf carriers has never been the *status quo* for the Gulf carriers. Instead, the Gulf carriers are required to operate

using the water formula, absent an agreement with the applicable land carrier.

H. Market Boundaries of Personal Communications Service (PCS) Licensees Adjacent to the Gulf of Mexico Are Co-extensive With County Boundaries

22. The Commission found in the *Gulf Report and Order* that it was in the public interest to allow land-based CMRS carriers to extend their coverage offshore, both to increase coverage and service quality for land-based customers along the coastline and to offer service to coastal boating traffic. The Commission further noted that the geographic service area definitions used for most non-cellular CMRS services—including those for PCS—are based on county boundaries, which typically extend over water pursuant to state law. Accordingly, the *Gulf Report and Order* clarified that such Commission licensing areas are co-extensive with the county boundaries on which they are based. The Commission also stated that licensees could provide service extending beyond county boundaries and into the Gulf on a secondary basis so long as they comply with the technical limitations applicable to the radio service and do not cause co-channel or adjacent channel interference to others.

23. VoiceStream Wireless Corp. (VoiceStream) argues that the *Gulf Report and Order* erroneously reduced the rights of existing PCS licensees along the Gulf coast to provide service extending out into the Gulf. VoiceStream and other commenters assert that by defining PCS licensing areas as co-extensive with county boundaries, allowing carriers to provide service in the Gulf beyond county boundaries only on a secondary basis, and leaving open the possibility of licensing separate PCS markets in the Gulf at a later date, the *Gulf Report and Order* has arbitrarily reduced the rights of existing PCS licensees. VoiceStream contends that PCS licensees bordering the Gulf should be expressly authorized to serve the entire Gulf area on a primary basis, and that the Commission should be precluded from establishing a separate PCS licensing area for the Gulf. Alternatively, VoiceStream requests that if the Commission concludes that PCS licensing areas along the Gulf coast are limited to county boundaries, the Commission should redefine the market area boundaries of PCS licensees extending into the Gulf based on the federally-defined Exclusive Economic Zone (EEZ) which extends 200 nautical miles into the Gulf of Mexico.

24. The Commission has clearly stated in its rules and proceedings that PCS is licensed using Major Trading Areas (MTAs) and Basic Trading Areas (BTAs), as defined in the Rand McNally Commercial Atlas and Marketing Guide. See Rand McNally, *1992 Commercial Atlas & Marketing Guide*, 123rd Edition, 1992 (Rand McNally). Similarly, the PCS technical rules regarding field strength limits at licensing area borders do not entitle licensees to extend service on a primary basis beyond the licensing areas specified on their authorizations. Nothing in the Commission's rules indicates that carriers may serve areas outside of their markets on a primary basis simply because there is no adjacent licensee. To the contrary, the Commission's rules state that the holding of an authorization does not create any rights beyond the terms, conditions and period specified in the authorization. The Commission rejects the argument that its conclusions represent a "reduction" in the rights of PCS licensees, because primary rights to serve the Gulf beyond county boundaries were never granted as part of those licenses. The Commission also rejects the argument that it should grant land-based PCS licensees primary rights to serve the Gulf because PCS bidders allegedly relied on the lack of a separate PCS Gulf licensee in setting their bids. The Commission previously rejected a similar argument that bidders for Multipoint Distribution Service licenses along the Gulf coast could reasonably assume that there was no prospect of future licensing of the service in the Gulf. See Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico, *Notice of Proposed Rulemaking*, WT Docket No. 02-68, RM-9718, 67 FR 35083 (May 17, 2002). Finally, the Commission sees no basis to adopt VoiceStream's request that the Commission change the geographic market definitions in PCS to extend existing Gulf coast markets 200 nautical miles into the Gulf based on the federally-defined Exclusive Economic Zone. The Commission adopted the specific market areas for PCS in 1993 after much debate over which type of service area is the most appropriate, and has repeatedly affirmed its decision to use such market areas on reconsideration.

III. Procedural Matters

A. Supplemental FRFA Certification

25. The RFA requires that a regulatory flexibility analysis be prepared for

rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 601(b). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. 632). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration. As required by the RFA, a FRFA was incorporated in the *Gulf Report and Order*. This Supplemental Final Regulatory Flexibility Analysis is limited to matters raised on reconsideration.

26. Because this decision affects only the small number of carriers providing cellular service along the coastline adjacent to the Gulf of Mexico, the Commission concludes that this action will not affect a substantial number of small businesses. Further, the *Order on Reconsideration* affirms or codifies decisions previously made in the *Gulf Report and Order*. Accordingly, the Commission certifies that this decision will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *Order on Reconsideration* including a copy of this certification, in a report to Congress pursuant to the Congressional Review Act of 1996. See 5 U.S.C. 801(a)(1)(A). In addition, the *Order on Reconsideration* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**. In this order, the Commission affirms the decision in the *Gulf Report and Order* to use different formulas for predicting the propagation of cellular signals over land and over water as the basis for determining the SABs of land-based and water-based cell sites in the Gulf of Mexico area. The Commission also affirms that the market boundaries of PCS licensees adjacent to the Gulf of Mexico are co-extensive with county boundaries. The Commission also amends rule § 22.912 to codify the Commission's decision in the *Gulf Report and Order* that a land carrier may not extend its SABs into any part

of the GMEZ, served or unserved, without the Gulf carrier's consent. Further, the Commission clarifies language in § 22.911(a)(2) to more accurately reflect a rule change made in the *Gulf Report and Order*.

B. Paperwork Reduction Act Analysis

27. This *Order on Reconsideration* has been analyzed with respect to the Paperwork Reduction Act of 1995, Pub. L. 104-13, and found to impose no new or modified reporting and recordkeeping requirements or burdens on the public.

IV. Ordering Clauses

28. Pursuant to sections 1, 4(i), 4(j), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and 405, and § 1.429 of the Commission's rules, 47 CFR 1.429, the April 3, 2002 Petition for Partial Reconsideration filed by Petroleum Communications, Inc., is denied in part and granted in part.

29. The February 22, 2002 Petition for Reconsideration filed by Petroleum Communications, Inc., is granted, and that File Nos. 02590-CL-97, 02593-CL-97, 02594-CL-97, 02595-CL-97, 02596-CL-97, 02600-CL-P2-97, and 02407-CL-P2-97 are reinstated and placed in pending status.

30. The Petition for Reconsideration filed by VoiceStream Wireless Corporation is denied.

31. The rule changes set forth below will become effective September 15, 2003.

List of Subjects in 47 CFR Part 22

Public Mobile Services.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Rule Changes

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

PART 22—PUBLIC MOBILE SERVICES

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

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

■ 2. Section 22.911 is amended by revising paragraph (a)(2) to read as follows:

§ 22.911 Cellular geographic service area.

* * * * *

(a) * * *

(2) The distance from a cell transmitting antenna located in the Gulf

of Mexico Service Area (GMSA) to its SAB along each cardinal radial is calculated as follows:

$$d = 6.895 \times h^{0.30} \times p^{0.15}$$

Where:

d is the radial distance in kilometers
h is the radial antenna HAAT in meters
p is the radial ERP in Watts

* * * * *

■ 3. Section 22.912 is amended by revising paragraphs (a) and (b) to read as follows:

§ 22.912 Service area boundary extensions.

* * * * *

(a) *De minimis extensions.* Except as otherwise provided in paragraphs (b) and (d) of this section, SABs may be extended into adjacent cellular markets if such extensions are *de minimis*, are demonstrably unavoidable for technical reasons of sound engineering design, and do not extend into the CGSA of any other licensee's cellular system on the same channel block, any part of the Gulf of Mexico Exclusive Zone (GMEZ), or into any adjacent cellular market on a channel block for which the five year build-out period has expired.

(b) *Contract extensions.* Except as otherwise provided in paragraph (d) of this section, cellular system licensees may enter into contracts to allow SAB extensions as follows:

(1) The licensee of any cellular system may, at any time, enter into a contract with an applicant for, or licensee of, a cellular system on the same channel block in an adjacent cellular market, to allow one or more SAB extensions into its CGSA only (not into unserved area).

(2) The licensee of the first authorized cellular system on each channel block in the Gulf of Mexico Service Area (GMSA) may enter into a contract with an applicant for, or licensee of, a cellular system on the same channel block in an adjacent cellular market or in the Gulf of Mexico Coastal Zone (GMCZ), to allow one or more SAB extensions into the Gulf of Mexico Exclusive Zone.

(3) The licensee of the first authorized cellular system on each channel block in each cellular market may enter into a contract with an applicant for or licensee of a cellular system on the same channel block in an adjacent cellular market, to allow one or more SAB extensions into its CGSA and/or unserved area in its cellular market, during its five year build-out period.

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