

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of

Amendment of Part 90 of the)
Commission's Rules To Provide)
for the Use of the 220-222 MHz Band) PR Docket No. 89-552
by the Private Land Mobile)
Radio Service)

Implementation of Sections 3(n) and 332)
of the Communications Act) GN Docket No. 93-252
)
Regulatory Treatment of Mobile Services)

FOURTH NOTICE OF PROPOSED RULEMAKING

Adopted: August 28, 1995; Released: August 29, 1995

Comments Due: September 13, 1995
Reply Comments Due: September 18, 1995

By the Commission:

I. INTRODUCTION and BACKGROUND

1. The Commission established the 220-222 MHz (220 MHz) Radio Service on March 14, 1991, with the adoption of a Report and Order in PR Docket No. 89-552 (*220 MHz Report and Order*).¹ Because we received nearly 60,000 applications for 220 MHz service assignments within a short time after accepting applications, the former Private Radio Bureau established a freeze, effective May 24, 1991, on the continued acceptance of 220 MHz applications, and this freeze remains in effect today.² As a consequence of the freeze, licensees wishing to relocate their existing facilities through license modification have been unable to do so.

2. More recently, we released the Third Report and Order in GN Docket No. 93-252 (*CMRS Third Report and Order*),³ which completed our initial implementation of Sections 3(n) and 332 of the Communications Act of 1934. In that proceeding we addressed a number of issues relating to the licensing of Commercial Mobile Radio Services (CMRS) authorized under Part 90 of our Rules. For example, under Section 309 of the Communications Act, all major filings (*i.e.*, amendments to applications, major modifications to authorizations, and initial applications) for common carrier services must be placed on Public Notice for a period of 30 days, during which time petitions to deny may be filed against these applications. Minor amendments to applications and minor modifications are exempt from these requirements. In the *CMRS Third Report and Order*, we adopted the same or similar definitions for initial applications and major and minor amendments and modifications for the formerly private services reclassified as CMRS services under Part 90 (*e.g.*, Business Radio, 929-930 MHz paging and SMR services) as were established for the Part 22 services.⁴

3. We thus identified the types of applications that would be considered *initial* and *major* modification applications for CMRS services, and indicated that all modification applications that were not classified as major would be considered *minor* applications. We

¹ Amendment of Part 90 of the Commission's Rules To Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, PR Docket No. 89-552, Report and Order, 6 FCC Rcd 2356 (1991) (*220 MHz Report and Order*).

² Acceptance of 220-222 MHz Private Land Mobile Applications, Order, 6 FCC Rcd 3333 (1991).

³ Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, Third Report and Order, 9 FCC Rcd 7988 (1994) (*CMRS Third Report and Order*), *recon. pending*.

⁴ *Id.* at 8144-8146 (paras. 354-358), 8151 (para. 370), and 8227 (para. 13) (adopting new Sections 90.161 and 90.164 of the Commission's Rules, to be codified at 47 C.F.R. §§ 90.161, 90.164).

decided, for example, that for both Part 22 and Part 90 CMRS licensees authorized on a single-station basis, a relocation of greater than 2 km would be considered an initial application.⁵ However, we specifically decided to leave these terms undefined for CMRS licensees in the 220 MHz service.⁶ As a result, we did not establish a framework for the acceptance of initial or modification applications for the service. With the December 31, 1995, construction deadline approaching,⁷ however, we believe it is appropriate to provide such a framework, so that non-nationwide 220 MHz licensees -- who, for whatever reason, cannot construct at their authorized locations -- can modify their license to construct at different locations.

4. By this Fourth Notice of Proposed Rulemaking (*220 MHz Fourth Notice*), we seek comment on proposed rules that will allow existing, *i.e.*, Phase I licensees in the 220 MHz service to seek minor modifications of their licenses to construct and operate base stations at currently unauthorized locations. We propose to define a minor modification for the 220 MHz service as any change in an existing licensee's authorized base station location such that, at the new station location, transmissions do not exceed a predicted field strength of 38 dBuV/m at the edge of the licensee's existing service area, and we propose to define the edge of a licensee's existing service area as the predicted 38 dBuV/m field strength contour resulting from transmissions from the licensee's currently authorized base station. Our goal in proposing this licensing procedure is to enable Phase I 220 MHz licensees to provide service within the geographic area they could serve pursuant to their initial applications, while accommodating those licensees that need to relocate their base stations for technical or other reasons.

⁵ *Id.* at 8145 (para. 356). Our decision to define relocations of greater than 2 km as initial applications for CMRS licensees was derived from our existing definition of an initial application for the 931 MHz paging service as any move of greater than 2 km. See Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, CC Docket No. 92-115, Amendment of Part 22 of the Commission's Rules To Delete Section 22.119 and Permit the Concurrent Use of Transmitters in Common Carrier and Non-Common Carrier Service, CC Docket No. 94-46, Amendment of Part 22 of the Commission's Rules Pertaining to Power Limits for Paging Stations Operating in the 931 MHz Band in the Public Land Mobile Service, CC Docket No. 93-116, Report and Order, 9 FCC Rcd 6513, 6536 (para. 105) (1994) (*Part 22 Rewrite Order*). That definition was based on the premise that a paging licensee that needed to relocate to an alternate site would generally be able to find such a site within 2 km of its authorized location. *Id.* In justifying our decision to define station relocations of greater than 2 km as initial applications in the *CMRS Third Report and Order*, we indicated that such moves would essentially be "new ventures" and should thus be subject to "competitive forces -- *i.e.*, all qualified applicants should be considered and the one who values the spectrum most highly will prevail in the selection process." *CMRS Third Report and Order*, 9 FCC Rcd at 8145-8146 (para. 356).

⁶ *Id.* at 8147 (para. 359) and 8152 (para. 373).

⁷ Amendment of Part 90 of the Commission's Rules To Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, Order, 10 FCC Rcd 3356 (1995).

5. We will require parties commenting on this proposal to file comments within 15 days of the release of this item and to file reply comments 5 days thereafter. Following adoption of an Order in this proceeding, we will open a filing window for applications for minor modifications. This, we believe, will provide most existing 220 MHz licensees who wish to make minor modifications to their facilities sufficient time to do so prior to the December 31, 1995 construction deadline. However, in order to provide those licensees who need additional time to construct at their new locations, we will extend the construction deadline for those licensees to a date 4 months after the grant of their modification application.

II. DISCUSSION

a. Service Area Definition

6. Our current rules for the 220 MHz service do not specifically define a "service area" for non-nationwide 220 MHz stations. However, in our *220 MHz Report and Order*, we provided 120 km co-channel protection for 220 MHz stations based on the fact that a licensee operating at the maximum allowable power and antenna height (*i.e.*, 500 watts ERP and 150 m, respectively) would produce a 38 dBuV/m signal at a distance of 45 kilometers, and that a co-channel station operating 120 km away would afford sufficient, *i.e.*, 10 dB protection, at the licensee's 38 dBuV/m contour.⁸ By specifically protecting a station's 38 dBuV/m contour we effectively deemed the area encompassed by this contour to define the "service area" of a 220 MHz station. In the *220 MHz Report and Order* we, in fact, stated that stations operating at maximum authorized power and antenna height would "produce a service area with a 38 dBu contour at about 45 kilometers (28 miles)"⁹ There is additional precedent for defining a "service area" for Part 90 services that were originally authorized on a single-station basis. In our Second Report and Order and Second Further Notice of Proposed Rulemaking in PR Docket No. 89-553, we defined the "existing service area" for 900 MHz SMR licensees as their "originally-licensed 40 dBu signal strength contour."¹⁰

⁸ Section 90.723(f) of the Commission's Rules, 47 C.F.R. § 90.723(f).

⁹ *220 MHz Report and Order*, 6 FCC Rcd at 2370-71 (para. 115) (emphasis added).

¹⁰ Amendment of Parts 2 and 90 of the Commission's Rules To Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89-553, Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, and Implementation of Sections 3(n) and 322 of the Communications Act, GN Docket No. 93-252, Second Report and Order and Second Further Notice of Proposed Rule Making, FCC 95-159, released Apr. 17, 1995, at para. 46 (*900 MHz Second Report and Order*).

b. Modification Proposal

7. General. We propose that 220 MHz licensees be permitted to modify their authorizations to locate their base stations anywhere within their existing service area contour¹¹ so long as transmissions at their new station locations do not exceed a predicted field strength of 38 dBuV/m anywhere within this contour. Thus, a licensee could seek modification of its license to move to a location, for example, 5 km away from its authorized coordinates, but in so doing would be required to reduce its effective radiated power by approximately 2-3 dB (at its currently authorized antenna height) in order to maintain a signal of no greater than 38 dBuV/m at its existing service area contour. We request comment on this proposal.

8. We note that we have decided not to propose to open a filing window to allow a 220 MHz licensee to modify its license to move its base station a small distance, such as 2 km, and redefine its service area contour based on the new base station coordinates. The *CMRS Third Report and Order* stated that for single-station services we would define moves of 2 km or less as modifications, rather than initial applications,¹² and we anticipated that such modification applications would be subject to competing initial applications.¹³ For the reasons presented in the following paragraph, we tentatively conclude that allowing such modifications for existing 220 MHz licensees would not be appropriate. We seek comment on our analysis.

9. We have proposed, in the *220 MHz Third Notice of Proposed Rulemaking*, to use geographic service areas for Phase II 220 MHz licensing.¹⁴ We tentatively conclude that opening a filing window for site specific modification applications of 2 km or less and

¹¹ A licensee's existing service area contour is defined as the location of the predicted 38 dBuV/m field strength contour resulting from transmissions from the licensee's authorized base station. It is calculated using the F(50,50) field strength chart for Channels 7-13 in Section 73.699 of our Rules (Figure 10), with a 9 dB correction factor for antenna height differential. See Section 73.699 (Figure 10) of the Commission's Rules, 47 C.F.R. § 73.699 (Figure 10).

¹² *CMRS Third Report and Order*, 9 FCC Rcd at 8145 (para. 356). This treatment of single station licenses did not apply to the 220 MHz service, the Commission noting that this issue would be addressed in a future rulemaking. *Id.* at 8147 (para. 359).

¹³ *Id.* at 8149 (para. 366).

¹⁴ Amendment of Part 90 of the Commission's Rules To Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89-552, Implementation of Sections 3(n) and 332 of the Communications Act - Regulatory Treatment of Mobile Services, GN Docket No. 93-252, and Implementation of Sections 309(j) of the Communications Act - Competitive Bidding, 220-222 MHz, PP Docket No. 93-253, Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking, FCC 95-312, released Aug. 28, 1995, (*220 MHz Third Notice of Proposed Rulemaking*) at paras. 58-59.

competing initial applications would not be consistent with our effort to consider a substantial revision to the 220 MHz service licensing structure. Moreover, we do not believe that it would be appropriate to deem modifications of 2 km or less as “minor” modifications because such relocations would result in a change in service area and the potential exists for mutual exclusivity between such modifications. This is consistent with the *CMRS Third Report and Order*, where we did not classify such modifications as minor with respect to other CMRS services. As we discuss in paragraph 14, *infra*, we believe it is important to avoid cases of mutual exclusivity resulting from base station relocations. Resolution of these competing applications would further delay the completion of construction, thus frustrating our policy goal of facilitating the delivery of service to consumers. Our proposal avoids these complications, allows licensees to serve the areas they intended to serve at the time they sought their licenses, and minimizes delay in auctioning licenses for geographic service areas because it lessens uncertainty regarding the location of incumbents who will be entitled to co-channel interference protection.

10. Additional Base Stations. We believe that most licensees will be able to locate alternative sites relatively close to their authorized site so that they will not be required to reduce their power or antenna height significantly and will thus be able to serve most of their originally authorized service area. However, to enable 220 MHz licensees who desire to move greater distances from their authorized site to serve as much of their original service area as possible, we propose to allow all licensees modifying their authorizations to construct an unlimited number of additional, or “fill-in” base stations within their existing service area contour so long as the transmissions from these sites do not exceed the predicted field strength of 38 dBuV/m anywhere within the existing service area contour. Allowing non-nationwide 220 MHz licensees to construct multiple base stations is a departure from our existing rules for the 220 MHz service. However, there is precedent for allowing the construction of additional base stations for Part 90 services originally licensed on a “single-station basis.” Recently, in the *900 MHz Second Report and Order*, we stated that existing 900 MHz SMR licensees would be permitted to “add new transmitters in the existing service area . . . so long as their original 40 dBu signal strength contour is not exceeded.”¹⁵

11. Technical Showings. We also propose to accommodate those 220 MHz licensees that are situated in areas of the nation where signal levels could be affected by unusual terrain. We propose to allow such licensees to move to alternate locations and operate at transmitters powers and antenna heights greater than would be allowed using Figure 10 of Section 73.699 of our Rules, if they provide a technical showing, using established terrain models, to justify the use of higher powers and antenna heights. Technical showings would have to be approved by the Commission. We seek comment on this proposal.

¹⁵ *900 MHz Second Report and Order*, at para. 47 (adopting new Section 90.667 of the Commission’s Rules, to be codified at 47 C.F.R. § 90.667).

12. Co-Channel Separation, Mutual Exclusivity, and Related Considerations. Under our proposal, 220 MHz licensees obtaining modifications will be able to satisfy our co-channel station separation requirements, and applications filed by such licensees will not be mutually exclusive with one another. This is because, under our rules, co-channel interference protection is provided to a 220 MHz station based on the provision of "10 dB protection" to the station's 38 dBuV/m field strength contour¹⁶ (*i.e.*, the signal from an interfering station may not exceed 28 dBuV/m at the protected station's 38 dBuV/m contour).¹⁷ Under our proposed modification procedure, a licensee relocating its authorized base stations or adding fill-in base stations will have to operate these stations at lower power levels and antenna heights than currently authorized in order not to exceed transmissions of 38 dBuV/m within their existing service contour.

13. By operating at these lower power levels and antenna heights, the predicted 28 dBuV/m interfering contours of these stations will always be located *outside* a co-channel licensee's 38 dBuV/m service contour, thus satisfying our 10 dB protection requirement.¹⁸ Similarly, if *two* nearby co-channel licensees were to modify their base station locations or add fill-in stations within their service areas, the predicted 28 dBuV/m interfering contour of each would be located outside each other's 38 dBuV/m service contour, thus providing the necessary 10 dB protection. Thus, 220 MHz licensees seeking minor modification of their authorizations will be able to satisfy our co-channel station separation requirements with respect to existing 220 MHz licensees, and applications filed by such licensees will not be mutually exclusive with one another. With regard to protection of Phase I licensees obtaining modifications, we propose to require future, *i.e.*, Phase II 220 MHz applicants, to provide 10 dB protection to Phase I licensees' existing service area contour. Thus, Phase I licensees will be able to construct any number of "fill-in" stations and such stations will be

¹⁶ Section 90.723(f) of the Commission's Rules, 47 C.F.R. § 90.723(f); *220 MHz Report and Order*, 6 FCC Rcd at 2371 (para. 119).

¹⁷ If two co-channel 220 MHz stations are operating at maximum power and antenna height and are situated 120 km apart, each's station's 28 dBuV/m "interfering" contour will coincide with the other's 38 dBuV/m "service" contour. The location of a 220 MHz station's "interfering" contour is determined using the F(50,10) field strength chart for Channels 7-13 in Section 73.699 of our Rules (Figure 10a), with a 9 dB correction factor for antenna height differential. See Section 73.699 (Figure 10a) of the Commission's Rules, 47 C.F.R. § 73.699 (Figure 10a).

¹⁸ The 28 dBuV/m interfering contour of the station operating at maximum power and antenna height is located approximately 75 km from the station. Thus, if a licensee operating such a base station were, for example, to move 10 km in the direction of a co-channel licensee (and was consequently required to reduce its effective radiated power by 5 dB in order not to exceed transmissions of 38 dBuV/m within its existing service area contour) its 28 dBuV/m interfering contour would be located approximately 63 km from the station. The 28 dBuV interfering contour would therefore be 73 (*i.e.*, 63 + 10) km from the original base station location. Thus, the new 28 dBuV/m interfering contour would fall outside the 38 dBuV/m service contour of any co-channel station operating at maximum power and antenna height.

protected. We ask comment on this proposal. We also seek comment as to whether a time limit should be placed providing 10 dB protection to a Phase I licensee's existing service area contour, after which a Phase II licensee would only be required to afford 10 dB protection to the predicted 38 dBuV/m service contours of the Phase I licensee's constructed and operating stations. Commenters favoring such a time limit should indicate the extent of the time limit.

14. In addition to the fact that our proposal avoids issues associated with the possibility of mutually exclusive applications by existing licensees and others, we also tentatively conclude that the proposal is the surest means of achieving the provision of service to the public by permitting Phase I licensees to make minor modifications to their licenses to construct and operate base stations expeditiously at new locations. Because the type of license modification we are proposing would allow a licensee to serve *only* the geographic area that the licensee is already authorized to serve, we will avoid mutually exclusive situations with new applicants and other licensees seeking modifications. We believe that any alternative which would permit Phase I licensees to file license modifications establishing significantly different geographic service areas would be problematic and would delay service to the public if mutually exclusive applications result. We tentatively conclude that any rule either permitting or cutting off competing applications at this juncture in our efforts to complete the licensing process for 220 MHz service would not serve the important policy objective of facilitating the completion of construction and the delivery of service to consumers.

c. Definition of Proposed Modification as "Minor"

15. In our Further Notice of Proposed Rulemaking in GN Docket No. 93-252 (*CMRS Further Notice*)¹⁹ we sought comment on a proposal to allow Part 90 CMRS licensees to make "permissive changes to their systems," through minor modifications to their authorizations. In our *CMRS Third Report and Order* we decided generally to allow minor modifications to be made to existing CMRS systems in Part 90 services "to the extent practicable,"²⁰ but made no specific finding regarding how CMRS licensees in the 220 MHz service could apply for minor modifications (*i.e.*, we made no decision as to what would be considered a minor modification to a 220 MHz license).²¹ Our tentative conclusion to allow Phase I 220 MHz licensees to make minor modifications by allowing the relocation of existing base stations and the addition of "fill-in" stations in the manner described above is consistent with our treatment of other services. For example, for Part 22 services, such as

¹⁹ Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, Further Notice of Proposed Rule Making, 9 FCC Rcd 2863, 2891 (1994) (para. 134) (*CMRS Further Notice*).

²⁰ *CMRS Third Report and Order*, 9 FCC Rcd at 8151 (para. 370).

²¹ *Id.* at 8152 (para. 373).

the 931 MHz paging service, which are authorized over "protected service contours," we allow "fill-in" transmitters within the service contour to be added by a licensee as a "permissive change." In the *900 MHz Second Report and Order*,²² in deciding that 900 MHz SMR licensees could add fill-in transmitters within their existing service area, we determined that licensees could notify the Commission of the addition of such stations "through a minor modification of their license." In both this and the 900 MHz SMR proceeding, we have established a particular service area contour -- in the 900 MHz SMR service, a 40 dBuV/m contour, and in the 220 MHz service, a 38 dBuV/m contour -- and have indicated that licensees may construct stations within those contours so long as the signals from such stations do not exceed these field strengths at the respective service area contours. In keeping with our decision in the *CMRS Third Report and Order* that only *major* filings -- *i.e.*, initial applications, major amendments, and major modifications -- for the Part 90 CMRS services would be subject to 30-day public notice and petitions to deny, we tentatively conclude that minor modifications to 220 MHz applications, as defined above, shall not be subject to such requirements. We seek comment on these tentative conclusions.

d. Licensees Operating Under Special Temporary Authority

16. Our modification proposal, if adopted, will permit 220 MHz licensees to obtain permanent authorization to operate at alternative locations. A number of 220 MHz licensees, however, have obtained Special Temporary Authority (STA) to allow them to operate stations temporarily at such locations. We believe that those licensees who have obtained STAs and have constructed and are operating stations will be accommodated by our modification proposal. That is, those licensees that are operating relatively short distances from their authorized location will only be required to reduce their power by a small amount in order to comply with the 38 dBuV/m requirement. Licensees who must reduce their power by larger amounts will be able to construct additional stations to provide complete coverage to their existing service area. We therefore propose that licensees with STAs who seek permanent authorization at their STA site be required to comply with our modification proposal.

e. Construction and Operation Requirements

17. We intend to adopt a Report and Order in this proceeding as soon as possible to set forth our procedures for minor modification of 220 MHz licenses. Shortly thereafter, we will open a filing window to allow applicants to file modification applications. Licensees will then obtain an authorization to construct a base station at their desired location and under their new operating parameters. We propose that this authorization, which replaces the licensee's existing authorization, will be the licensee's "service area authorization" and that

²² *900 MHz Second Report and Order*, at para. 47.

thereafter the base station constructed under the service area authorization will be the licensee's "primary base station." We seek comment on these proposals.

18. Although we intend to grant applications for service area authorizations within a short time of their receipt, we are concerned that licensees obtaining such authorizations may not have sufficient time to construct their primary base stations by the December 31, 1995, construction and operation deadline. Therefore, for all licensees obtaining service area authorizations, we will extend the deadline for the construction and operation of their primary base stations to a date 4 months after the grant of their service area authorization. Licensees not granted service area authorizations must still construct their currently authorized base stations and begin operation by December 31, 1995. Licensees obtaining service area authorizations may construct fill-in stations, but will be required to notify us of their construction. The authority to operate fill-in stations will then be granted through minor modification of their service area authorization.

19. Finally, with the requirement, under our modification proposal, that the predicted field strength of transmissions from a licensee's primary base station not exceed 38 dBuV/m at the licensee's existing service area contour, we are concerned that licensees obtaining service area authorizations could place into operation a primary base station of minimal power simply to meet their construction requirement. To prevent this from occurring, we propose to require licensees seeking service area authorizations to operate their primary base station at a power and antenna height that will result in the transmission of a predicted signal of 38 dBuV/m or more over at least 50 percent of the licensee's existing service area. We seek comment on these proposals.

III. PROCEDURAL MATTERS

20. Pursuant to applicable procedures set forth in Section 1.415 and 1.419 of the Commission's Rules,²³ interested parties may file comments on or before **September 13, 1995** and reply comments on or before **September 18, 1995**. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Reference Center of the Federal Communications Commission, 1919 M Street, N.W., Room 239, Washington, D.C. 20054.

²³ 47 C.F.R. §§ 1.415, 1.419.

21. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission Rules.²⁴

22. As required by the Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix A of this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act.²⁵

23. For further information concerning this proceeding, contact Martin Liebman at (202) 418-1310 (Wireless Telecommunications Bureau, Policy Division).

IV. ORDERING CLAUSE

24. Authority for issuance of this Fourth Notice of Proposed Rulemaking is contained in Sections 4(i), 303(r), and 332 of the Communications Act of 1934, as amended; 47 U.S.C. §§ 154(i), 303(r), and 332.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

²⁴ See generally 47 C.F.R. §§ 1.1202, 1.1203, 1.1206(a).

²⁵ Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1980).

APPENDIX A

Initial Regulatory Flexibility Analysis

I. Reason for Action:

The action is taken to complete the implementation of the statutory and regulatory revisions applicable to the 220 MHz service by Congress in the Omnibus Budget Reconciliation Act of 1993 and by the Commission in several orders adopted in GN Docket No. 93-252 pertaining to a framework for the acceptance of initial or modification applications for the 220 MHz service.

II. Objectives of this Action:

The Commission's primary goal is to establish a flexible regulatory scheme that will allow for more efficient licensing, eliminate unnecessary regulatory burdens on existing Phase I, non-nationwide licensees, and enhance the competitive potential of 220 MHz services in the mobile marketplace.

III. Legal Basis:

The proposed action is authorized under Sections 4(i), 303(r), and 332 of the Communications Act of 1934, as amended.

IV. Description, Potential Impact and Number of Small Entities Affected:

There are approximately 3,800 non-nationwide licensees authorized under Phase I licensing of the 220 MHz band. The potential impact of the proposals contained in this decision on small businesses is hard to predict without the benefit of comment, and the actual impact will depend on the final action taken. The intention of this action is to provide these Phase I non-nationwide licensees, which are authorized under site-specific licenses, with more flexibility with a minimum increased burden. The Commission, in drafting these proposals, has tried to balance the needs of all licensees and potential licensees. For example, to afford Phase I non-nationwide licensees increased flexibility to meet consumer demand and the ability to compete with future 220 MHz licensees and other CMRS licensees, licensees would be permitted to relocate a base station or construct fill-in stations anywhere within a service area to be defined by their existing 38 dBuV/m service contour, as long as the transmissions from the new sites do not extend beyond that contour. As an example of proposed rules decreasing restrictions on these Phase I licensees, a licensee seeking to relocate within the newly defined service area would file a modification application to replace its existing site-specific authorization with a service area authorization that permits relocation on a permissive basis through minor modification of the service area authorization. Moreover, the existing deadline of December 31, 1995, imposed on Phase I licenses for the

construction and operation of primary base stations will be extended to a date four months after the grant of the proposed service area authorization.

V. Reporting, Recordkeeping and Other Compliance Requirements:

The Commission is proposing to generally decrease the burden on non-nationwide, Phase I licensees. A licensee would be able to replace its existing site-specific authority with an authorization that permits it to relocate authorized base stations or add fill-in base stations within an area to be defined by its existing 38 dBuV/m service contour through minor modification procedures. However, the licensee would be required to file a modification application during a filing window to be established upon the adoption of final rules in order to obtain the authorization to operate within the proposed service area. Also, the licensee would be required to notify the Commission of the construction of any fill-in stations.

VI. Federal Rules which Overlap, Duplicate, or Conflict with these Proposals:

None.

VII. Significant Alternatives:

The Commission believes that the modification licensing procedure proposed for non-nationwide Phase I licensees represents the best balance of providing them with the most flexibility and the least regulatory burden possible. It enables licensees to exchange their site-specific license for a broad, service-area license that permits them to move sites freely within the transmission area of the existing license through modification applications, while ensuring that transmissions do not extend to new geographic areas so as to require competing applications under initial application procedures.