

[—Indicates fees remain at FY 2000 amount]

Fee code	37 CFR Sec.	Description	FY 2000	FY 2001
363	2.6(a)(3)	Statement of Use, per class	100	—
364	2.6(a)(4)	Extension for filing Statement of Use, per class	150	—
365	2.6(a)(5)	Application for renewal, per class	400	—
366	2.6(a)(6)	Additional fee for late renewal, per class	100	—
367	2.6(a)(7)	Publication of mark under § 12(c), per class	100	—
368	2.6(a)(8)	Issuing new certificate of registration	100	—
369	2.6(a)(9)	Certificate of correction, registrant's error	100	—
370	2.6(a)(10)	Filing disclaimer to registration	100	—
371	2.6(a)(11)	Filing amendment to registration	100	—
372	2.6(a)(12)	Filing section 8 affidavit, per class	100	—
373	2.6(a)(13)	Filing section 15 affidavit, per class	200	—
381	2.6(a)(14)	Filing a section 8 affidavit during the grace period, per class	100	—
375	2.6(a)(15)	Petition to the Director	100	—
376	2.6(a)(16)	Petition for cancellation, per class	300	—
377	2.6(a)(17)	Notice of opposition, per class	300	—
378	2.6(a)(18)	Ex parte appeal, per class	100	—
379	2.6(a)(19)	Dividing an application, per new application created	100	—
382	2.6(a)(20)	Correcting a deficiency in a section 8 affidavit	100	—
380	2.6(a)(21)	Correcting a deficiency in a renewal application	100	—
461	2.6(b)(1)(i)	Copy of registered mark	3	—
462	2.6(b)(1)(ii)	Copy of registered mark, overnight delivery to USPTO box or fax	6	—
463	2.6(b)(1)(iii)	Copy of reg. mark ordered by exp. mail or fax, exp. service	25	—
466	2.6(b)(2)(i)	Certified copy of trademark application as filed	15	—
467	2.6(b)(2)(ii)	Certified copy of trademark application as filed, expedited	30	—
468	2.6(b)(3)	Cert. or uncert. copy of TM-related file wrapper and contents	50	—
464	2.6(b)(4)(i)	Cert. copy of registered mark, with title or status	15	—
465	2.6(b)(4)(ii)	Cert. copy of registered mark, with title or status—expedited	30	—
469	2.6(b)(5)	Certified or uncertified copy of trademark document	25	—
481	2.6(b)(6)	Recording trademark property, per mark, per document	40	—
482	2.6(b)(6)	For second and subsequent marks in the same document	25	—
470	2.6(b)(7)	For assignment records, abstracts of title and certification	25	—
488	2.6(b)(8)	X-SEARCH terminal session time, per hour	40	—
480	2.6(b)(9)	Self-service copy charge, per page	0.25	—
484	2.6(b)(10)	Labor charges for services, per hour or fraction thereof	40	—
485	2.6(b)(11)	Unspecified other services, excluding labor	(¹)	—
650	2.7(a)	Recordal application fee	20	—
651	2.7(b)	Renewal application fee	20	—
652	2.7(c)	Late fee for renewal application	20	—

¹ Actual Cost.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[WT Docket No. 96-6; FCC 00-246]

Permit Flexible Service Offerings in the Commercial Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission (the Commission) has previously permitted commercial mobile radio service (CMRS) providers to offer fixed wireless services on a co-primary basis with commercial mobile services. In this document, the Commission determines that due to the evolving nature of fixed wireless services, it will decide the regulatory treatment of such services on a case-by-

case basis. The Commission also amends its rules to clarify that fixed wireless services provided are not subject to the requirements for incidental communications services. Further, this document eliminates the notification requirement of submitting FCC Form 601 prior to the provision of incidental services.

DATES: Effective September 11, 2000.

FOR FURTHER INFORMATION CONTACT: Jeffrey Steinberg, Wireless Telecommunications Bureau, Commercial Wireless Division, at (202) 418-0896.

SUPPLEMENTARY INFORMATION: 1. The *Second Report and Order and Order on Reconsideration* was released on July 20, 2000, and is available for inspection and copying during normal business hours in the FCC Reference Center, 445 Twelfth Street, S.W., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036. The document

is also available via the internet at <http://www.fcc.gov/Bureaus/Wireless/Orders/2000/index2.html>.

Synopsis of the Second Report and Order and Order on Reconsideration

2. In the *First Report and Order* in this proceeding, 61 FR 45336, the Commission permitted CMRS providers to offer fixed wireless services on a co-primary basis with commercial mobile services. This decision raised the related issue of how such fixed service offerings should be classified for regulatory purposes. In a *Further Notice of Proposed Rulemaking* released together with the *First Report and Order*, 61 FR 43721, the Commission proposed a rebuttable presumption that fixed services offered over frequency bands licensed to CMRS providers would be treated for regulatory purposes as CMRS. The Commission sought comment on this proposal and related issues.

3. Based on the record established in this proceeding, the Commission

concludes that it is inappropriate at this time to establish a bright-line test for determining the regulatory treatment of co-primary fixed services offered over CMRS spectrum. At this point, the development of fixed and fixed/mobile services on CMRS spectrum is at too early a stage for the Commission to anticipate how the future evolution of these services will occur. Thus, any test that the Commission might adopt at this time would be based on assumptions and criteria that could soon be made obsolete by developments in technology and the marketplace, and could cause more regulatory uncertainty than it resolves. For similar reasons, the Commission declines to adopt a rebuttable presumption that fixed services offered over CMRS spectrum should be treated as CMRS.

4. Section 22.323 of the Commission's rules, permits Part 22 (Public Mobile Services) licensees to provide incidental communications services provided that (1) The costs of the incidental service are not borne by subscribers who do not use the service, (2) the quality of the primary service does not materially deteriorate, (3) the provision of the incidental service is not inconsistent with the Communications Act or Commission rules, and (4) the licensee notifies the Commission before providing the incidental service. Section 22.901(d) of the Commission's rules, 47 CFR 22.901(d), was amended in the *First Report and Order* to specifically allow cellular carriers to provide fixed services on a co-primary basis. In a petition for reconsideration of the *First Report and Order*, BellSouth argued that § 22.323 is inconsistent with the *First Report and Order*. BellSouth requested that the Commission either eliminate § 22.323 or issue a declaratory ruling that § 22.323 is inapplicable to CMRS licensees providing co-primary fixed services pursuant to the *First Report and Order* and § 22.901 of the Commission's rules.

5. The Commission concludes that there is a need to clarify the relationship between incidental services provided under § 22.323 and co-primary fixed services offered pursuant to § 22.901(d). Therefore, the Commission amends its rules to clarify that CMRS providers who provide fixed services on a co-primary basis pursuant to § 22.901(d) are not subject to the requirements of § 22.323. In light of this clarification, the Commission does not eliminate § 22.323 as it applies to incidental services at this time. However, the Commission eliminates the notification requirement in § 22.323 because it currently serves no useful purpose and it is inconsistent with the premises of flexibility

underlying this proceeding. In addition, the Commission will develop a more complete record and consider whether to delete, further amend, or replace § 22.323 as part of its current biennial review of all regulations that apply to providers of telecommunications service.

Supplemental Final Regulatory Flexibility Analysis

6. As required by Section 604 of the Regulatory Flexibility Act (RFA), a Final Regulatory Flexibility Analysis (FRFA) for the First Report and Order was incorporated in the First Report and Order and Further Notice of Proposed Rule Making in WT Docket No. 96-6.¹ The Commission's Supplemental Final Regulatory Flexibility Analysis (SFRFA) for this Order on Reconsideration² contains information additional to that contained in the FRFA and is limited to matters raised on reconsideration with regard to the First Report and Order and addressed in this Order on Reconsideration. This SFRFA conforms to the RFA, as amended by the Contract With America Advancement Act of 1996.³

A. Need for, and Objectives of, the Order on Reconsideration

7. The Order on Reconsideration modifies and clarifies aspects of the regulatory regime governing the provision of co-primary fixed services and ancillary, auxiliary, and incidental services under part 22, as established in the First Report and Order. Specifically, the Commission clarifies that commercial mobile radio services (CMRS) providers who provide fixed services on a co-primary basis pursuant to § 22.901(d) of the rules are not subject to the requirements that govern provision of ancillary, auxiliary, and incidental services under § 22.323. The Commission also modifies § 22.323 by eliminating the requirement that carriers notify the Commission when providing ancillary, auxiliary, and incidental services. These actions are intended to clarify the Commission's rules and to

eliminate an unnecessary notification requirement.

B. Summary of Significant Issues Raised by Public Comments in Response to the FRFA

8. No petitions for reconsideration were filed in direct response to the FRFA. In the petition for partial reconsideration or clarification and in responsive pleadings, however, some issues were raised that might affect small entities. Specifically, some commenters argued that limiting the applicability of § 22.323, and in particular the notification requirement, would eliminate regulatory burdens that could deter CMRS providers, including small entities, from providing fixed wireless services. Other commenters, however, argued that § 22.323 protects CMRS providers, including small entities, that provide ancillary, auxiliary, and incidental services from unlawful attempts to impose State regulation.⁴

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

9. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by a rule. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act.⁵ 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 (SBA).⁶

10. The rule changes effectuated by this Order on Reconsideration apply to telecommunications service providers that are regulated under part 22 of the Commission's rules. These include providers of Cellular Radiotelephone, Paging and Radiotelephone (Common Carrier Paging), Air-Ground Radiotelephone, Offshore Radiotelephone, and Rural Radiotelephone services. In addition, pursuant to § 90.493(b) of the Commission's rules, paging licensees on exclusive channels in the 929-930 MHz bands are subject to the licensing, construction, and operation rules set forth in part 22.⁷ Since this rulemaking proceeding applies to multiple services,

¹ Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, First Report and Order and Notice of Proposed Rule Making, WT Docket No. 96-6, 11 FCC Rcd 8965, 9021 (1996).

² We note that this SFRFA addresses only the matters considered in the Order on Reconsideration portion of the Second Report and Order and Order on Reconsideration. No FRFA is necessary for the Second Report and Order because we have decided not to make any change to the Commission's rules.

³ The FRA, see 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

⁴ See Order on Reconsideration, paragraph 10.

⁵ 5 U.S.C. 601(3).

⁶ 5 U.S.C. 632.

⁷ See 47 CFR 90.493(b).

we will analyze the number of small entities affected on a service-by-service basis.

i. Cellular

11. Since the Commission does not define a small business with respect to cellular services, we utilize the SBA's definition applicable to radiotelephone companies—*i.e.* an entity employing fewer than 1,500 persons.⁸ The size data provided by the SBA does not enable us to make a meaningful estimate of the number of cellular providers which are small entities because it combines all radiotelephone companies with 500 or more employees.⁹ We therefore use the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. Data from the Bureau of the Census' 1992 study indicates that only 12 out of a total of 1,178 radiotelephone firms that operated during 1992 had 1,000 or more employees.¹⁰ Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent Telecommunications Industry Revenue data, 804 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data.¹¹ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 804 small cellular service carriers that may be affected by the new rules.

⁸ 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812.

⁹ U.S. Small Business Administration 1992 Economic Census Employment Report, Bureau of the Census, U.S. Department of Commerce, SIC Code 4812 (radiotelephone communications industry data adopted by the SBA Office of Advocacy).

¹⁰ U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC Code 4812 (issued May 1995).

¹¹ Telecommunications Industry Revenue, Figure 2.

ii. Paging

12. The Commission has adopted, and the SBA has approved, a two-tier definition of small businesses in the context of auctioning licenses in the paging services. Under this definition, a small business is defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than \$3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than \$15 million. The Commission has estimated that as of January 1998, there were more than 600 paging companies in the United States.¹² We do not have data specifying the number of these carriers that are not independently owned and operated or meet the small business thresholds set forth, or the number of these carriers that are regulated under part 22 of the Commission's rules, and thus are unable at this time to estimate with precision the number of affected paging carriers that would qualify as small business concerns under our definition. However, we estimate that the majority of existing paging providers qualify as small entities under our definition. Consequently, we estimate that there are up to approximately 600 currently licensed small paging carriers that will be affected by the rules adopted in this Order on Reconsideration. In addition, high bids were recently placed at auction for 985 new geographic area paging licenses, and an additional 15,645 geographic area paging licenses are expected to be awarded following future auctions. In the recent auction, high bids were placed on paging licenses by 55 entities that qualify as small businesses under the Commission's definition. Licenses have been granted to 51 of these entities, and the applications of the other four remain pending. Thus, in addition to existing licensees, between 51 and 55 license winners in the recent auction will be affected small entities, and up to 15,645 winners of paging licenses in future auctions will be affected small entities.

iii. Air-Ground Radiotelephone Service

13. The Commission has not adopted a definition of small business specific to the Air-Ground radiotelephone service.¹³ Accordingly, we use the SBA definition applicable to radiotelephone

¹² Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Third Report, 13 FCC Rcd 19746, 19792 (1998).

¹³ Air-ground radiotelephone service is defined in § 22.99 of the Commission's rules, 47 CFR 22.99.

companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground radiotelephone service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

iv. Offshore Radiotelephone Service

14. This service operates on several ultra high frequency (UHF) TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. The Commission has not adopted a definition of small business specific to the Offshore radiotelephone service. Accordingly, we use the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition for radiotelephone communications. The Commission assumes, for purposes of this SFRFA, that all of the 55 licensees are small entities, as that term is defined by the SBA.

v. Rural Radiotelephone Service

15. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.¹⁴ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).¹⁵ We therefore use the SBA definition applicable to radiotelephone companies; *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

D. Description of Reporting, Recordkeeping, and Other Compliance Requirements

16. The Order on Reconsideration does not impose any additional reporting, recordkeeping, or other compliance requirements. The Order on Reconsideration eliminates a requirement that part 22 licensees notify the Commission before providing incidental services. As a result, no reporting or recordkeeping requirements remain under § 22.323 of the Commission's rules.

¹⁴ Rural Radiotelephone Service is defined in section 22.99 of the Commission's rules, 47 CFR 22.99.

¹⁵ BETRS is defined in sections 22.757 and 22.729 of the Commission's rules, 47 CFR 22.757, 22.729.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

17. The Order on Reconsideration modifies § 22.901(d) to clarify that fixed wireless services provided on a co-primary basis are not subject to the requirements of § 22.323 for incidental communications services. Clarifying that carriers providing fixed wireless services on a co-primary basis pursuant to § 22.901(d) need not comply with the requirements of § 22.323 will provide further flexibility to CMRS carriers, including small entities, and is consistent with the Commission's intent in the First Report and Order. In addition, we amend § 22.323 to delete the requirement that carriers notify the Commission when providing incidental services. This change will reduce burdens on small entities and other providers subject to part 22 by eliminating an unnecessary notification requirement.

18. The Commission considered and rejected eliminating § 22.323 because it concluded that retaining § 22.323 is consistent with its decision in the First Report and Order not to alter the regulatory treatment of ancillary, auxiliary, and incidental fixed services that had been provided by CMRS providers under the rules. However, the Commission will consider the continued need for § 22.323 as part of its upcoming biennial review of all regulations that apply to providers of telecommunications service. The Commission also considered and rejected refining the notification requirement in § 22.323, finding that the notification requirement currently serves no useful purpose and therefore should be eliminated.

F. Report to Congress

19. The Commission shall send a copy of the Order on Reconsideration, including this Supplemental Final Regulatory Flexibility Analysis, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. See 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Order on Reconsideration and Supplemental Final Regulatory Flexibility Analysis (or summaries thereof) will also be published in the **Federal Register**. See 5 U.S.C. 604(b).

List of Subjects in 47 CFR Part 22

Communications common carriers, Communications equipment, Radio.

Federal Communications Commission.
Magalie Roman Salas,
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: 47 U.S.C. 154, 222, 303, 309, and 332.

2. Section 22.323 is amended by removing paragraph (d) and revising paragraphs (b) and (c) to read as follows:

§ 22.323 Incidental communication services.

* * * * *

(b) The quality of the primary public mobile service does not materially deteriorate as a result of provision of incidental services, and neither growth nor availability of the primary public mobile service is significantly diminished as a result of provision of incidental services; and

(c) The provision of the incidental services is not inconsistent with the Communications Act of 1934, as amended, or with FCC rules and policies.

3. Section 22.901 is amended by revising the introductory text and paragraph (d) to read as follows:

§ 22.901 Cellular service requirements and limitations.

Cellular system licensees must provide cellular mobile radiotelephone service upon request to subscribers in good standing, including roamers, as provided in § 20.12 of this chapter. A cellular system licensee may refuse or terminate service, however, subject to any applicable state or local requirements for timely notification, to any subscriber who operates a cellular telephone in an airborne aircraft in violation of § 22.925 or otherwise fails to cooperate with the licensee in exercising operational control over mobile stations pursuant to § 22.927.

* * * * *

(d) *Alternative technologies and co-primary services.* Licensees of cellular systems may use alternative cellular technologies and/or provide fixed services on a co-primary basis with their mobile offerings, including personal communications services (as defined in part 24 of this chapter) on the spectrum within their assigned channel block.

Cellular carriers that provide mobile services must make such service available to subscribers whose mobile equipment conforms to the cellular system compatibility specification (see § 22.933).

(1) Licensees must perform or obtain an engineering analysis to ensure that interference to the service of other cellular systems will not result from the implementation of co-primary fixed services or alternative cellular technologies.

(2) Alternative technology and co-primary fixed services are exempt from requirements for incidental communications services of § 22.323, the channeling requirements of § 22.905, the modulation requirements of § 22.915, the wave polarization requirements of § 22.367, the compatibility specification in § 22.933 and the emission limitations of §§ 22.357 and 22.917, except for emission limitations that apply to emissions outside the assigned channel block.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[DA 00-1654]

Amendment of the Geographic Channel Block Layout for Commercial Aviation Air-Ground Systems in the Air-Ground Radiotelephone Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the geographical channel block layout for commercial aviation air-ground systems licensed in the Air-Ground Radiotelephone Service. These systems provide telephone service over a wireless air-ground link to the telephones that are installed in commercial airliners for use by passengers during flights. The purpose of this action is to update the geographic channel block layout set forth in the Commission's rules such that it correctly lists the reference locations and channel block allotments for currently operating ground stations in this service.

DATES: Effective September 11, 2000.

FOR FURTHER INFORMATION CONTACT: B.C. "Jay" Jackson, Jr., Wireless Telecommunications Bureau at (202) 418-1309.