

a licensee for the other channel block in an overlapping CGSA.

(b) *Non-controlling interests.* A direct or indirect non-attributable interest in both systems is excluded from the general rule prohibiting multiple ownership interests.

(c) *Divestiture.* Divestiture of interests as a result of a transfer of control or assignment of authorization must occur prior to consummating the transfer or assignment.

(d) *Ownership attribution.* For purposes of paragraphs (a) and (b) of this section, ownership and other interests cellular licensees will be attributed to their holders pursuant to the following criteria:

(1) Controlling interest shall be attributable. Controlling interest means majority voting equity ownership, any general partnership interest, or any means of actual working control (including negative control) over the operation of the licensee, in whatever manner exercised.

(2) Partnership and other ownership interests and any stock interest amounting to 20 percent or more of the equity, or outstanding stock, or outstanding voting stock of a cellular licensee shall be attributed.

(3) Non-voting stock shall be attributed as an interest in the issuing entity if in excess of the amounts set forth in paragraph (d)(2) of this section.

(4) Debt and instruments such as warrants, convertible debentures, options, or other interests (except non-voting stock) with rights of conversion to voting interests shall not be attributed unless and until converted.

(5) Limited partnership interests shall be attributed to limited partners and shall be calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses.

(6) Officers and directors of a cellular licensee shall be considered to have an attributable interest in the entity with which they are so associated. The officers and directors of an entity that controls a cellular licensee shall be considered to have an attributable interest in the cellular licensee.

(7) Ownership interests that are held indirectly by any party through one or more intervening corporations will be

determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest. (For example, if A owns 20% of B, and B owns 40% of licensee C, then A's interest in licensee C would be 8%. If A owns 20% of B, and B owns 51% of licensee C, then A's interest in licensee C would be 20% because B's ownership of C exceeds 50%.)

(8) Any person who manages the operations of a cellular licensee pursuant to a management agreement shall be considered to have an attributable interest in such licensee if such person, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence,

(i) The nature or types of services offered by such licensee;

(ii) The terms upon which such services are offered; or

(iii) The prices charged for such services.

(9) Any licensee or its affiliate who enters into a joint marketing arrangements with a cellular licensee, or its affiliate shall be considered to have an attributable interest, if such licensee, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence,

(i) The nature or types of services offered by such licensee;

(ii) The terms upon which such services are offered; or

(iii) The prices charged for such services.

[64 FR 54576, Oct. 7, 1999]

§ 22.943 Limitations on assignments and transfers of cellular authorizations.

The following limitations apply to applications for consent to transfer of control or assignment of authorizations in the Cellular Radiotelephone Service.

(a) *Trafficking.* Applications for consent to transfer of control or assignment of authorization in the Cellular Radiotelephone Service are subject to the provisions of § 22.139, except for:

(1) Applications reflecting the trading of an ownership interest in an authorized but unconstructed cellular system in one market for a commensurate interest in a cellular system in another market; and,

(2) Applications for consent to transfer of control or assignment of a cellular authorization obtained by random selection, after commencement of service.

(b) *Unserviced area systems.* Except as otherwise provided in paragraph (b)(2) of this section, the FCC does not accept applications for consent to transfer of control or assignment of the authorization of a cellular system licensed to serve an unserved area until the system has provided service to subscribers for at least one year.

(1) Licensees must not enter into any agreement (e.g. option agreement or management contract) to transfer control of the licensee of the system until the system has provided service to subscribers for one year.

(2) The FCC may accept that grant applications for consent to transfer of control or for assignment of authorization if the transfer or assignment is *pro forma* and does not involve a change in ownership.

(3) An applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's Rules, 47 CFR chapter I) of a license within three years of receiving a new license through a competitive bidding procedure must, together with its application for transfer of control or assignment, file with the Commission a statement indicating that its license was obtained through competitive bidding. Such applicant must also file with the Commission the other documents and information set forth in § 1.2111 of this chapter.

(c) *Systems authorized as result of comparative renewal proceeding.* Except as otherwise provided in paragraphs (c)(1), (c)(2) and (c)(3) of this section, the FCC does not accept applications for consent to transfer of control or for assignment of the authorization of a cel-

lular system that has been acquired by the current licensee for the first time as a result of a comparative renewal proceeding until the system has provided service to subscribers for at least three years.

(1) The FCC may accept and grant applications for consent to transfer of control or for assignment of the authorization of a cellular system that is to be transferred as a part of a *bona fide* sale of an on-going business to which the cellular operation is incidental.

(2) The FCC may accept and grant applications for consent to transfer of control or for assignment of the authorization of a cellular system that is to be transferred as a result of the death of the licensee.

(3) The FCC may accept and grant applications for consent to transfer of control or for assignment of authorization if the transfer or assignment is *pro forma* and does not involve a change in ownership.

[59 FR 59507, Nov. 17, 1994, as amended at 61 FR 58339, Nov. 14, 1996]

§ 22.945 Interests in multiple applications.

This section governs interests in applicants with mutually exclusive applications for a new cellular system. For the purposes of this section, "interest in an application" means interest in the applicant.

(a) *General.* Except as otherwise provided in this section, parties must not have any interest, direct or indirect, in more than one application for authority to operate a new cellular system in the same cellular market.

(b) *Abutting CGSAs.* Licensees of existing systems whose cellular geographic service area (CGSA) abuts a proposed CGSA may each file one application that is mutually exclusive with the applications of other such licensees, even though they share common owners, provided that such licensees do not thereby acquire a simultaneous interest in applications for both channel blocks in any geographical area.

(c) *Publicly traded corporate applicants.* Parties must not have any interest, direct or indirect, in more than