

Federal Communications Commission.

**Magalie Roman Salas,**  
Secretary.

### Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 20 and 80 as follows:

### PART 20—COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for part 20 continues to read as follows:

**Authority:** 47 U.S.C. 154, 160, 251–254, 303, and 332 unless otherwise noted.

2. § 20.9 is amended by revising paragraph (b) introductory text and (b)(1) to read as follows:

#### § 20.9 Commercial mobile radio service.

(b) Licensees of a Personal Communications Service or applicants for a Personal Communications Service license, and VHF Public Coast Station geographic area licensees or applicants, proposing to use any Personal Communications Service or VHF Public Coast Station spectrum to offer service on a private mobile radio service basis must overcome the presumption that Personal Communications Service and VHF Public Coast Stations are commercial mobile radio services.

(1) The applicant or licensee (who must file an application to modify its authorization) seeking authority to dedicate a portion of the spectrum for private mobile radio service, must include a certification that it will offer Personal Communications Service or VHF Public Coast Station service on a private mobile radio service basis. The certification must include a description of the proposed service sufficient to demonstrate that it is not within the definition of commercial mobile radio service in § 20.3. Any application requesting to use any Personal Communications Service or VHF Public Coast Station spectrum to offer service on a private mobile radio service basis will be placed on public notice by the Commission.

### PART 80—STATIONS IN THE MARITIME SERVICES

3. The authority citation for part 80 continues to read as follows:

**Authority:** Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

4. § 80.371 is amended by revising the table in paragraph (c)(1)(i) to read as follows:

#### § 80.371 Public correspondence frequencies.

\* \* \* \* \*

(c) \* \* \*

(1)(i) \* \* \*

#### WORKING CARRIER FREQUENCY PAIRS IN THE 156–162 MHz BAND <sup>1</sup>

Channel designator	Carrier frequency (MHz)	
	Ship transmit	Coast transmit
24 .....	157.200	161.800
84 .....	157.225	161.825
25 .....	157.250	161.850
85 <sup>2</sup> .....	157.275	161.875
26 .....	157.300	161.900
86 .....	157.325	161.925
27 .....	157.350	161.950
87 .....	157.375	161.975
28 .....	157.400	162.000
88 <sup>3</sup> .....	157.425	162.025

<sup>1</sup>For special assignment of frequencies in this band in certain areas of Washington State, the Great Lakes and the east coast of the United States pursuant to arrangements between the United States and Canada, see subpart B of this part.

<sup>2</sup>The frequency pair 157.275/161.875 MHz is available on a primary basis to ship and public coast stations. In Alaska it is also available on a secondary basis to private mobile repeater stations.

<sup>3</sup>Within 120 km (75 miles) of the United States/Canada border, in the area of the Puget Sound and the Strait of Juan de Fuca and its approaches, the frequency 157.425 MHz is available for use by ship stations for public correspondence communications only. One hundred twenty kilometers (75 miles) from the United States/Canada border 157.425 MHz is available for intership and commercial communications. Outside the Puget Sound area and its approaches and the Great Lakes, 157.425 MHz is available for communications between commercial fishing vessels and associated aircraft while engaged in commercial fishing activities.

\* \* \* \* \*

5. Revise § 80.751 to read as follows:

#### § 80.751 Scope.

This subpart specifies receiver antenna terminal requirements in terms of power, and relates the power available at the receiver antenna terminals to transmitter power and antenna height and gain. It also sets forth the co-channel interference protection that VHF public coast station geographic area licensees must provide to incumbents and to other VHF public coast station geographic area licensees.

6. Add new paragraph (c) to § 80.773 to read as follows:

#### § 80.773 Co-channel interference protection.

\* \* \* \* \*

(c) VHF public coast station geographic area licensees are prohibited from exceeding a field strength of +5 dBu (decibels referenced to 1 microvolt per meter) at their service area boundaries, unless all the affected VHF public coast station geographic area licensees agree to the higher field strength.

[FR Doc. 99–12411 Filed 5–17–99; 8:45 am]

BILLING CODE 6712–01–U

### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 24

[WT Docket No. 97–82; FCC 99–66]

#### Installment Payment Financing for Personal Communications Services (PCS) Licenses

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission denies petitions for reconsideration of the *Order on Reconsideration of the Second Report and Order* and amends the Commission's rules to apply construction requirements for 10 MHz licensees to licensees of 15 MHz blocks resulting from the disaggregation restructuring option available to certain C block Personal Communications Services ("PCS") licensees. The Commission also considers and denies requests for clarification and/or waiver of the cross default provisions in F block notes.

**EFFECTIVE DATE:** July 19, 1999.

**FOR FURTHER INFORMATION CONTACT:** Jill Pender of the Wireless Telecommunications Bureau, Auctions and Industry Analysis Division, Legal Branch, at (202) 418–1546 or email [jpender@fcc.gov](mailto:jpender@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This document is a summary of the Commission's *Second Order on Reconsideration of the Second Report and Order*, WT Docket No. 97–82, FCC 99–66, adopted March 31, 1999, and released, April 5, 1999. The full text of this *Second Order on Reconsideration of the Second Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 Twelfth St., S.W., Washington, D.C. 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Services, 1231 20th Street, N.W., Washington,

D.C. 20036, telephone (202) 857-3800, facsimile (202) 857-3805. The complete *Second Order on Reconsideration of the Second Report and Order* is also available on the Internet at the Commission's web site: <http://www.fcc.gov/wtb>.

## Summary of Action

### I. Background

1. On March 23, 1998, the Commission adopted an *Order on Reconsideration of the Second Report and Order*, 63 FR 17111, April 8, 1998 ("First Reconsideration Order") generally affirming the installment payment restructuring options for C block PCS licensees established in the *Second Report and Order* and *Further Notice of Proposed Rule Making*, 62 FR 55348, October 24, 1997 ("C Block Second Report and Order") (collectively "C Block Restructuring Orders"). In the *C Block Second Report and Order*, the Commission allowed elections among four options—disaggregation, amnesty, prepayment, and resumption of payments. In the *First Reconsideration Order*, the Commission modified the *C Block Second Report and Order* to: (1) eliminate the requirement that a licensee must make the same election for all of its licenses, instead allowing different elections for the different MTAs in which a licensee holds licenses; (2) apply elections made for an MTA to every Basic Trading Area (BTA) license held by the licensee in that MTA; (3) permit a combination of disaggregation and prepayment; and (4) permit payment credits for each disaggregated license for which the licensee elected to resume installment payments rather than prepay.

2. By an *Order* adopted and released on February 24, 1998, 63 FR 10153, March 2, 1998, the Commission notified licensees that elections for resumption of payments would be due 60 days after publication of the Commission's *First Reconsideration Order* in the **Federal Register**. The Wireless Telecommunications Bureau ("Bureau") announced by public notice on April 17, 1998 an election date of June 8, 1998 and a payment resumption date of July 31, 1998. See "Wireless Telecommunications Bureau Announces June 8, 1998 Election Date for Broadband PCS C Block Licensees," *Public Notice*, DA 98-741 (rel. April 17, 1998).

3. During the period in which the Commission was considering the election options, two licensees filed for bankruptcy, DCR PCS, Inc., the subsidiary of Pocket Communications, Inc. ("Pocket") and GWI PCS, Inc.

("GWI"). Two weeks before the submission date for petitions for reconsideration in this matter, the U.S. Bankruptcy Court for the Northern District of Texas ("bankruptcy court") issued a bench ruling in *GWI PCS 1, Inc. v. FCC*, Adv. Pro. 397-3492 (Bankr. N.D. Tex. April 24, 1998), *appeal pending*, *United States v. GWI PCS 1, Inc., et al.*, No. 3:98cv1704-L (N.D. Tex.) ("GWI Decision"), allowing the GWI licensees to retain 14 C block licenses for which GWI PCS was the high bidder at the C block auction, but voiding 84.34 percent of the debt owed to the Commission for these licenses. Three other C block licensees have since filed for bankruptcy. See *In Re NextWave Personal Communications, Inc.*, 98-B21529 (ASH), Chapter 11, Adv. Pro. 98-5178A (Bankr. SDNY); *In re Urban Comm-North Carolina, Inc.*, No. 98-B10086 (Bankr. SDNY); *In re Magnacomm Wireless, LLC*, No. 98-39048T (Bankr. WD Wash). In response to the *First Reconsideration Order*, the Commission received eleven petitions for reconsideration, one set of supplemental comments, and no oppositions or replies. A number of these petitions asked that the Commission apply the *GWI Decision* to C block licensees in general. Subsequently, more than 90 percent of C block licensees filed proper elections in compliance with the *First Reconsideration Order*.

4. The Commission also received requests for rulings on the impact of its cross default policy on certain pre-existing PCS F block notes. The Commission previously concluded that it would not pursue a policy of cross default (either within or across services) where licensees default on an installment payment. See Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, WT Docket No. 97-82, ET Docket No. 94-32, *Third Report and Order* and *Second Further Notice of Proposed Rule Making*, 63 FR 2315, January 15, 1998 ("Part 1 Third Report and Order"). The Commission found in the *Part 1 Third Report and Order* and in the *First Reconsideration Order* that its policy against cross defaults on installment payments would promote the goals discussed in Section 309(j) of the Communications Act by not terminating a license simply because an affiliate failed to make a payment with respect to another license. These decisions did not address the subject of cross defaults that might occur in the installment payment program as a result

of an event of default other than a failure to make installment payment. One party requests that the Commission not exercise remedies based on the cross-bankruptcy default provisions in notes that had been issued for installment payment financing of PCS F block licenses ("F block notes"), while another requests a waiver of the cross default provisions contained in the F block notes. A third party argues that certain F block note provisions are inconsistent with the Commission's cross default ruling in the *Part 1 Third Report and Order*, the *C Block Second Report and Order*, and the *First Reconsideration Order*, and further maintains that the *Part 1 Third Report and Order* requires invalidation of the provisions of any notes that the Commission may already have executed where the insolvency of a note maker or its affiliate is defined as an event of default.

### II. Overview

5. In this *Second Order on Reconsideration of the Second Report and Order*, WT Docket No. 97-82, FCC 99-66 ("Second Reconsideration Order"), the Commission reaffirms its earlier conclusion that the relief provided C block licensees in previous *C Block Restructuring Orders* will speed deployment of service to the public by easing lenders' and investors' concerns regarding regulatory uncertainty and by potentially making more capital available for investment and growth. The adjustments to the *C Block Second Report and Order* contained in the *First Reconsideration Order* provided additional flexibility to licensees without undermining the integrity of the auctions process. The petitioners have presented no arguments sufficient to require modifications to the *C Block Restructuring Orders*. Accordingly, the Commission affirms its *First Reconsideration Order*, but makes one minor amendment to the construction rules to effectuate the disaggregation option. Section 24.203(b) is amended to recognize the existence of 15 MHz blocks resulting from the *C Block Restructuring Orders*, and apply the current construction requirements for 10 MHz blocks to the 15 MHz blocks. The Commission also considers and rejects requests for clarification or waiver of cross default provisions contained in F block notes.

### III. Issues Related to Bankruptcy Filings and Decisions

6. The Commission released previous *C Block Restructuring Orders* prior to the issuance of the *GWI Decision*. Some petitioners rely on the *GWI Decision* as

a basis for requesting a stay of the June 8, 1998 election and July 31, 1998 resumption of payment dates. The Commission notes that this issue is mooted by the proper filing of election notices and the resumption of payments by more than 90 percent of the C block licensees, and finds that no good cause exists for delaying elections based on actual and projected bankruptcy activity. The Commission also rejects the *GWI Decision* as a valid precedent in this matter and refuses to apply the bankruptcy court's findings to other C block licensees.

#### IV. First Reconsideration Order Issues Raised

7. Some petitioners claim that single license holders fail to realize the benefits afforded larger-scale licensees. They sought future auction credits for single-license holders using the amnesty option, so that such licensees would not lose the benefit of their down payments. The Commission rejects special options that would enhance the financial benefits afforded single license holders and affirms the options as articulated in the *First Reconsideration Order*. The *Second Reconsideration Order* provides the following reasons for refusing to grant the petitioners' request: (1) the Commission already has provided a variety of restructuring options so that licensees may choose the option that best suits their situation; (2) multiple licensees receiving a credit for returned licenses, unlike holders of single licenses using the amnesty option, are prohibited from rebidding on surrendered licenses; (3) holders of single licenses may use the disaggregation option and thereby receive the same proportional benefits as large-scale holders.

8. Two petitioners raise arguments concerning the validity and use of the MTA-by-MTA elections contained in the *First Reconsideration Order*. The Commission rejects any alteration to disaggregation generally and refuses to discard or change the MTA-by-MTA elections permitted in the *First Reconsideration Order*. The Commission believes that the MTA is the appropriate unit for making an election and it will not permit BTA-by-BTA elections because it would threaten the interdependency of licenses and limit the potential for aggregation of licenses within an MTA.

#### V. Amendment of Section 24.203(b)

9. The Commission notes that while the C Block Restructuring Orders provided a disaggregation option which will result in 15 MHz C block licenses, the current construction rules address

only 10 MHz and 30 MHz blocks. See 47 CFR 24.203(b). The *Second Reconsideration Order* amends Section 24.203(b) to apply to licensees of 15 MHz blocks resulting from the disaggregation option under the *C Block Restructuring Orders* the construction requirements for 10 MHz blocks.

#### VI. Requests for Ruling on Impact of Cross Default Policy on Certain Pre-Existing PCS F Block Notes

10. The Commission finds that the *Part 1 Third Report and Order* is not inconsistent with, and therefore does not invalidate, the cross default provisions contained in the F block notes. The Commission notes that the *Part I Third Report and Order* and the F block notes set forth the Commission's policy toward licensees that default under different circumstances. The *Second Reconsideration Order* affirms the policy of the *Part 1 Third Report and Order*, which states that the Commission will not pursue a policy of cross default in cases where licensees default on installment payments. The Commission cautions that this finding does not preclude the application of cross default in the very different circumstance of an affiliate's insolvency or bankruptcy. Accordingly, the Commission holds that the F block note default provisions continue to have full force and effect as to all events enumerated therein. In light of this clarification that the cross default provisions in the F block note continue to have full force and effect, the Commission will not grant requests for clarification to the contrary, nor will it permit a waiver of the cross default provisions in the F block notes.

#### VII. Second Supplemental Final Regulatory Flexibility Analysis

11. As required by the Regulatory Flexibility Act ("RFA"), 5 U.S.C. 604, an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *Order*, *Memorandum Opinion and Order and Notice of Proposed Rulemaking* ("Notice") in WT Docket No. 97-82. The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. A Final Regulatory Flexibility Analysis ("FRFA") was incorporated in the *C Block Second Report and Order*. A Supplemental FRFA appeared in the *First Reconsideration Order*. The Commission received 11 Petitions for Reconsideration in response to the *First Reconsideration Order*. This Second Supplemental FRFA addresses modification of the construction requirements for broadband PCS

licenses necessitated by the adoption of the *C Block Restructuring Orders*.

#### A. Need for, and Objectives of, New Rule

12. The *C Block Restructuring Orders* were designed to assist C block broadband personal communications services ("PCS") licensees to meet their financial obligations to the Commission while at the same time helping the Commission meet its goal of ensuring rapid provision of PCS service to the public. One of the financial restructuring options provided for in the *C Block Restructuring Orders* permitted disaggregation of a licensee's spectrum, resulting in the availability of 15 MHz C block licenses where only 10 MHz and 30 MHz blocks were available previously. The amendment of section 24.203(b) in this *Second Reconsideration Order* sets necessary construction standards for licensees of 15 MHz blocks created through the disaggregation option available under the *C Block Restructuring Orders*. This amendment applies to licensees of 15 MHz blocks the same construction requirements as apply to 10 MHz blocks. In doing so, this rule facilitates a process designed to increase effective use of the spectrum and ultimately provide licensees with the flexibility to introduce a wide variety of new and innovative telecommunications services to the public.

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

13. There were no comments filed in response to the IRFA in the *C Block Second Report and Order*; however, in this proceeding we have considered the economic impact on small businesses of the modification adopted in this *Second Reconsideration Order*. See Section E of this Second Supplemental FRFA, *infra*.

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

14. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by our rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act. Under the Small Business Act, a "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field

of operation; and (3) meets any additional criteria established by the Small Business Administration ("SBA").

15. The *Second Reconsideration Order* applies to broadband PCS C and F block licensees. The Commission, with respect to broadband PCS, defines small entities to mean those having gross revenues of not more than \$40 million in each of the preceding three calendar years. This definition has been approved by the SBA. On May 6, 1996, the Commission concluded the broadband PCS block auction. A Second PCS C block auction closed on July 16, 1996. The broadband PCS D, E, and F block auction closed on Jan. 14, 1997. Ninety bidders (including the C block reauction winners, prior to any defaults by winning bidders) won 493 C block licenses and 88 bidders won 491 F block licenses. Small businesses placing high bids in the C and F block auctions were eligible for bidding credits and installment payment plans. For purposes of our evaluations and conclusion in this FRFA, we assume that all of the 90 C block broadband PCS licensees and 88 F block broadband PCS licensees, a total of 178 licensees potentially affected by this *Second Reconsideration Order*, are small entities. The disaggregation option applies only to C Block licensees, so therefore the rules changes will affect no more than 90 entities prior to any auction of returned spectrum.

#### *D. Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements*

16. The modifications adopted by the *C Block Restructuring Orders* include reporting and record-keeping requirements for licensees of newly created 15 MHz blocks to establish compliance with the construction requirement adopted for those blocks. These licensees must file maps and other supporting documents at the five and ten-year construction benchmarks.

#### *E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

17. As noted in the FRFA of the *C Block Second Report and Order*, the Commission analyzed the significant economic impact on small entities and considered significant alternatives. The modifications adopted on reconsideration further reduced the burden on C block licensees, which are small businesses. These steps were detailed at length in the Supplemental FRFA. The amendment adopted in the *Second Reconsideration Order* similarly

minimizes economic impact in that it applies the 10 MHz construction requirements to licensees of the newly created 15 MHz blocks. Thus, it applies the less onerous of the existing construction requirements.

#### *F. Report to Congress*

18. The Commission shall send a copy of the *Second Reconsideration Order*, including this Second Supplemental FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. See 5 USC 801(a)(1)(A). A copy of the Second Reconsideration Order and this FRFA will also be sent to the Chief Counsel for Advocacy of the Small Business Administration.

#### *Paperwork Reduction Act*

19. This *Second Reconsideration Order* contains neither a modified nor a new information collection.

#### **List of Subjects in 47 CFR Part 24**

Personal communications services.  
Federal Communications Commission.  
**Magalie Roman Salas**,  
Secretary.

#### **Rule Changes**

Accordingly, Part 24 of Title 47 of the Code of Federal Regulations is amended as follows:

#### **PART 24—PERSONAL COMMUNICATIONS SERVICES**

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

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

2. Section 24.203(b) is amended by revising the first sentence to read as follows:

#### **§ 24.203 Construction requirements.**

\* \* \* \* \*

(b) Licensees of 10 MHz blocks and 15 MHz blocks resulting from the disaggregation option as provided in the Commission's Rules Regarding Installment payment Financing for Personal Communications Services (PCS) Licensees, *Second Report and Order and Further Notice of Proposed Rule Making*, WT Docket 97-82, 12 FCC Rcd 16,436 (1997), as modified by *Order on Reconsideration of the Second Report and Order*, WT Docket 97-82, 13 FCC Rcd 8345 (1998), must serve with a signal level sufficient to one-quarter of the population in their licensed area within five years of being licensed, or make a showing of substantial service in

their licensed area within five years of being licensed. \* \* \*

\* \* \* \* \*

[FR Doc. 99-12455 Filed 5-17-99; 8:45 am]

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#### **DEPARTMENT OF COMMERCE**

#### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 300**

[Docket No. 99990312074-9074-01; I.D. 051299A]

#### **Pacific Halibut Fisheries; Washington Sport Fisheries**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Inseason action.

**SUMMARY:** NMFS announces changes to the regulations for the Area 2A sport fisheries off the south coast of Washington. This action opens the south coast closed area to halibut fishing. The purpose of this action is to allow sport fishers access to the south coast of Washington halibut quota in a season of unusually slow fishing.

**DATES:** Effective May 13, 1999.

**ADDRESSES:** Comments may be mailed to William Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, Seattle, WA 98115.

**FOR FURTHER INFORMATION CONTACT:** Yvonne deReynier, 206-526-6120.

**SUPPLEMENTARY INFORMATION:** The Area 2A Catch Sharing Plan for Pacific halibut off Washington, Oregon, and California is implemented in the annual management measures for the Pacific halibut fisheries published on March 19, 1999 (64 FR 13519). Those regulations established the 1999 subarea quota for the south coast of Washington (Queets River, Washington to Leadbetter Point, Washington) fishery as 32,081 lb (14.6 mt). The all-depth sport fishery in this area is scheduled for 5 days per week (Sunday through Thursday), and the nearshore fishery is scheduled for 7 days per week. Early catch rate attainment for this area is significantly slower than in past years, with several charter vessels returning to dock without having caught any halibut. In 1998, charter anglers averaged 1 fish per person over the fishery's opening weekend. This year, anglers averaged .25 fish per person over the opening weekend.