

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		<ol style="list-style-type: none"> <li>1. <i>Verification Testing:</i> GM must implement an annual testing program to demonstrate, based on the analysis of a minimum of four representative samples, that the constituent concentrations measured in the TCLP (or OWE, where appropriate) extract of the waste are within specific levels. The constituent concentrations must not exceed the following levels (mg/l) which are back-calculated from the delisting health-based levels and a DAF of 90: Arsenic—4.5; Cobalt—189; Copper—126; Nickel—63; Vanadium—18; Zinc—900; 1,2-Dichloroethane—0.45; Ethylbenzene—63; 4-Methylphenol—16.2; Naphthalene—90; Phenol—1800; and Xylene—900. The constituent concentrations must also be less than the following levels (mg/l) which are the toxicity characteristic levels: Barium—100.0; and Chromium (total)—5.0.</li> <li>2. <i>Changes in Operating Conditions:</i> If GM significantly changes the manufacturing or treatment process or the chemicals used in the manufacturing or treatment process, GM may handle the WWTP filter press sludge generated from the new process under this exclusion after the facility has demonstrated that the waste meets the levels set forth in paragraph 1 and that no new hazardous constituents listed in Appendix VIII of Part 261 have been introduced.</li> <li>3. <i>Data Submittals:</i> The data obtained through annual verification testing or paragraph 2 must be submitted to U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604-3590, within 60 days of sampling. Records of operating conditions and analytical data must be compiled, summarized, and maintained on site for a minimum of five years and must be made available for inspection. All data must be accompanied by a signed copy of the certification statement in 260.22(l)(12).</li> </ol>
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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 1 and 24**

[WT Docket No. 97-82; FCC 97-342]

**Installment Payment Financing for Personal Communications Services (PCS) Licensees**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this *Second Report and Order* the Commission orders resumption of installment payments for the broadband Personal Communications Services (PCS) C and F blocks, with the payment deadline reinstated as of March 31, 1998. The Commission adopts disaggregation, amnesty, and prepayment options designed to assist C block licensees experiencing financial difficulties. These options will allow C block licensees to build systems or surrender spectrum to the Commission for reauction. The Commission's objectives in this proceeding are to ensure that the

C block licensees have opportunities to provide service to the public while maintaining the fairness and integrity of the Commission's auctions program.

**EFFECTIVE DATE:** The effective date of the rule changes herein is December 23, 1997. The information collection contained in these rules becomes effective on OMB approval but no sooner than December 23, 1997. The Commission will publish a document on a later date announcing the effective date of the information collection.

**FOR FURTHER INFORMATION CONTACT:** Jerome Fowlkes or Sandra Danner, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418-0660.

**SUPPLEMENTARY INFORMATION:** This *Second Report and Order* in WT Docket No. 97-82, adopted on September 25, 1997 and released on October 16, 1997, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554. 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 (202) 857-3800. The complete *Second Report and Order* also is available on the Commission's

Internet home page (<http://www.fcc.gov>).

**Summary of Action**

*I. Background*

1. In the *Competitive Bidding Fifth Report and Order*, the Commission established a variety of incentives to encourage small businesses to participate in the auction of C block 30 MHz and F block 10 MHz broadband PCS licenses. See Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Fifth Report and Order, 59 FR 37566 (July 22, 1994) (*Competitive Bidding Fifth Report and Order*). Provisions to promote participation by small businesses in broadband PCS included limiting eligibility in the initial C and F block auctions to entrepreneurs and small businesses, offering varying bidding credits, and offering installment payment plans. The installment payment plan for C block permitted licensees that qualified as small businesses to pay 90% of the bid price over a period of ten years, with interest only paid for the first six years and interest and principal for the remaining four. See 47 CFR § 24.711(b)(3). In addition, there were other installment payment options available for bidders

qualifying as entrepreneurs. See 47 CFR §§ 24.711(b)(1)–(3). All bidders in the C block auction, however, qualified as small businesses. Installment payments for small business F block licensees were limited to 80% of the bid price over ten years, and payments consist of interest only for the first two years, then interest and principal for the remaining eight years. See 47 CFR § 24.716(b)(3). Entrepreneurs were also eligible for less favorable installment payment terms. See 47 CFR §§ 24.711(b)(1)–(2).

2. On May 6, 1996 and July 16, 1996, the Commission concluded its broadband PCS C block auctions. Ninety bidders (including the C block reauction winners) won 493 C block licenses. The broadband PCS D, E, and F block auction concluded on January 14, 1997, and 88 bidders won 491 F block licenses. Net high bids received for C block 30 MHz licenses, including C block reauction bids, totalled approximately \$10.2 billion; net high bids received for F block 10 MHz licenses totalled \$642.3 million.

3. While many C block licenses were purchased for prices below or comparable to those for the A or B blocks, a handful of large bidders bid extremely high prices per pop for major markets, even adjusted for the value of the government financing we provide. The aggregate results of the C block auction, when measured in average price per pop paid, are markedly higher than the other PCS bands, even after adjusting for financing, and even though many individual small licensees bid prices comparable to those paid for the A and B block PCS licenses.

4. When formulating its original auction rules in 1994, the Commission considered the possibility of debt restructuring and observed that it would follow current procedures under the existing debt collection rules and procedures. See Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Second Report and Order, 59 FR 22980 (May 4, 1994) (*Competitive Bidding Second Report and Order*).

5. The *Notice of Proposed Rulemaking* to revise the part 1 auction rules sought comment on several topics related to auction installment debt. See Amendment of Part 1 of the Commission's Rules—Competitive Bidding Proceeding, Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making, 62 FR 13540 (March 21, 1997) (*Part 1 Proceeding*). The Commission sought comment on imposing late payment fees on installment payments; the default provisions of § 1.2104(g) in the event of installment payment defaults; and

revised procedures for granting grace period requests.

6. On March 31, 1997, in response to a joint request from several C block licensees seeking to modify their installment payment obligations, and because of other debt collection issues, the Wireless Telecommunications Bureau (Bureau) suspended the deadline for payment of installment payments for all C block licensees. On April 28, 1997, the Bureau extended the suspension to F block licensees.

7. On June 30, 1997, the Bureau conducted a public forum in Washington, D.C. ("FCC Public Forum") to discuss broadband PCS C and F block installment payment issues, including the alternative financing arrangements proposed in connection with the Public Notices issued on June 2, 1997. An FCC Task Force also was established which included representatives from the Bureau, the Office of Plans and Policy, the Office of General Counsel, and the Office of Communications Business Opportunities. This Task Force was charged with evaluating proposals for alternative financing arrangements submitted by PCS C and F block licensees and recommending to the Commission how to respond to those proposals. Both before and after the FCC Public Forum, numerous comments, reply comments, and *ex parte* letters and presentations were submitted to the Commission as part of this proceeding. The Commission thus has before it a wide range of proposals from entrepreneur block licensees, financial institutions and investors, equipment vendors, and other interested parties.

## II. Second Report and Order

8. The Commission requires C and F block licensees to resume their Note payments on March 31, 1998. They will also be required to pay on that date one-eighth of the Suspension Interest, and thereafter, pay one-eighth of the Suspension Interest with each regular installment payment made until the Suspension Interest is paid in full. "Suspension Interest" is the entire amount of the unpaid simple interest that was accrued at the rate set forth in each licensee's Note(s) during the period beginning with the date on which each license was conditionally granted through and including March 31, 1998 ("Suspension Period"). After March 31, 1998, payment due dates will conform to those indicated in the Notes executed by the licensees. C block licensees will be entitled to elect to continue making payments under their original C block Notes. In addition, the Commission adopts three options relating to the rules governing

installment payments for the C block. These are designed to help to resolve the financing issues facing C block licensees and restore certainty to the marketplace, while at the same time helping the Commission meet its statutorily mandated public interest considerations set forth under Section 309(j) of the Communications Act.

9. These goals will also be furthered by generally applying the same rules regarding eligibility that were used in the C block auction to the reauction of C block licenses. See 47 CFR § 24.709. All applicants for the reauction meeting the current definition of "entrepreneur" will be eligible to bid in the reauction. The Commission will also allow all entities that were eligible for and participated in the original C block auction to bid in the reauction. Further, with the exception of incumbent licensees who choose to disaggregate portions of spectrum they currently hold, and those licensees who surrender licenses under the prepayment option, all C block licensees who return licenses to the Commission will be eligible to bid on all markets in the reauction.

### A. Resumption of Payments

10. Effective March 31, 1998, the Commission rescinds the Order and Public Notice suspending payments for the C and F block licenses and reinstates the installment payment plans for all C and F block licensees. The Commission directs that all payments due and owing on and after March 31, 1998 be made in accordance with the terms of each licensee's Note, associated Security Agreement, and the Commission Orders and regulations. All Suspension Interest will become due and payable over a two-year period and all Commission rules regarding installment payments and defaults for the broadband PCS C and F blocks will remain in effect. Any C or F block licensee that fails to remit the payment due on March 31, 1998, and remains delinquent for more than 60 days (*i.e.*, fails to make the March 31, 1998, payment on or before May 30, 1998), will be in default on its license. See 47 CFR § 1.2110(e)(4)(i). The 60-day period is an exception to the existing rules that provide for an automatic 90-day non-default period. Given the one year suspension, the Commission believes that providing a shorter automatic grace period is justified.

11. Any licensee that continues under its original Note(s), will be required to pay on March 31, 1998, one-eighth of the Suspension Interest; thereafter, regular payments will become due and payable in accordance with the provisions of the licensee's original Note. The Commission concludes that it

could place a significant burden on licensees to require payment of the entire amount of the Suspension Interest on March 31, 1998. Therefore, the Commission requires that broadband PCS C and F block licensees submit one-eighth of the Suspension Interest on March 31, 1998, and one-eighth of the Suspension Interest with each regular installment payment made thereafter until the Suspension Interest is paid in full. After March 31, 1998, payment due dates will conform to those indicated in the Note(s) executed by the licensees. While the first regular installment payment next made after March 31, 1998, will be pro-rated to account for the resumption of payments on March 31, 1998, all regular installment payments thereafter will be in the amounts shown on the amortization schedule attached to and made a part of each Note, as amended, plus the applicable payments of Suspension Interest. For example, for those licensees granted in September, 1996 whose regular installments occur on March 31, June 30, September 30, and December 31 of each year, the next regular payment due after March 31, 1998, will be due on June 30, 1998, and will include the amount of interest accrued from April 1, 1998, through and including June 30, 1998, plus one-eighth of the Suspension Interest. The next regular payment will be due on September 30, 1998, and will be due in the amount shown on the amortization schedule attached to the Note (*i.e.*, interest from July 1, 1998, through and including September 30, 1998), plus one-eighth of the Suspension Interest. Regular payments will continue on each and every December 31, March 31, June 30, and September 30 thereafter until the Note is paid in full. For these licensees, the payment due on December 31, 1999, will be the last payment due that includes any amortized Suspension Interest. All payments after that date will continue in accordance with the terms of the amortization schedule attached to the Note executed by the licensee. All installment payments previously made by licensees who elect one of the three options will be applied in accordance with the provisions set forth under the discussion of each option below.

12. The Commission delegates to the Bureau authority to set forth all procedures for implementing the resumption of payments.

13. Broadband PCS C block licensees choosing to surrender their licenses pursuant to the amnesty option described below and those surrendering licenses that are not prepaid pursuant to the prepayment option described below

will be required to return to the Commission each original Note and Security Agreement for cancellation by the Commission. The Commission will not entertain any requests for an extension of the March 31, 1998 deadline beyond the automatic 60-day non-default period discussed above. The licensees have already been afforded a significant period to licensees during which payments were not required. Therefore, the Commission intends to deny any requests for a grace period beyond the automatic 60-day non-default period adopted herein, including any requests made pursuant to § 1.2110 of the Commission's rules. See 47 CFR § 1.2110(e)(4)(ii).

14. C block licensees may resume payments under their current Note or elect one of the three options described below.

#### B. Disaggregation of Spectrum for Reauction

15. Under the disaggregation option adopted today by the Commission, any C block licensee may disaggregate a portion of its spectrum from each of its licenses and surrender it to the Commission for reauction. The licensee must disaggregate 15 MHz of spectrum it holds across all Basic Trading Areas (BTAs) in an Major Trading Area (MTA). These provisions prevent licensees from selectively surrendering spectrum for which they may believe they paid too much, or otherwise discarding spectrum in markets that may be more difficult to serve (commonly referred to as "cherry-picking" of licenses or spectrum). The Commission limits the ability of licensees to selectively disaggregate spectrum within an MTA also to facilitate attempts by new bidders to aggregate spectrum and initiate service. Because the Commission is allowing disaggregation on an MTA-by-MTA basis, special exemptions for built-out systems, such as the one adopted under the amnesty option discussed below, are unnecessary. In cases where a licensee has built-out a BTA, it can choose either to retain all 30 MHz in each of the BTAs it has licenses for in an MTA, or it can operate its built-out system with 15 MHz. The Commission believes that this flexibility mitigates the need for a build-out exception for this option.

16. Licensees electing this option will be required to return half of their spectrum at 1895–1902.5 MHz paired with 1975–1982.5 MHz, which is spectrum contiguous to the PCS F block. The surrender of spectrum adjacent to the F block will provide sufficient contiguous spectrum for both the

incumbent and new licensees to offer competitive PCS services.

17. Under the disaggregation option, the Commission will reduce the amount of the debt owed by an amount equal to the *pro rata* portion of the spectrum returned to the Commission, *i.e.*, by 50%, subject to coordination with the Department of Justice pursuant to applicable federal claims collection standards. The Commission will retain the *pro rata* portion of the down payments applicable to the spectrum. The following illustrates how this proposal would operate in practice:

Company X holds a 30 MHz license in a BTA market; paid the Commission \$100,000 in its down payment; and owes the Commission \$900,000 on a net bid of \$1,000,000. Company X could disaggregate 15 MHz and surrender it to the Commission for reauction, and the Commission would retain \$50,000 of the down payment. In return, the Commission would reduce the licensee's obligation to the government to \$450,000.

The face amount of the licensee's Note will be adjusted to reflect the new principal, and the Note will then be amortized from the original date of execution to calculate the payments at the new face amount of the Note. All installment payments made as of March 31, 1997 (including any payments due prior to and on March 31, 1997) will be applied to reduce the amount of the Suspension Interest calculated on the new principal balance to be made in eight equal payments beginning March 31, 1998.

18. Where applicable, the existing disaggregation rules will govern this option. See 47 CFR § 24.714. However, the broadband disaggregation rules were not designed for the surrender of spectrum to the Commission. Thus, existing rule provisions on designated entity transfer restrictions, unjust enrichment, installment payments, abbreviated license terms and construction requirements, restrictions on the amount of spectrum that can be disaggregated, and similar rules will not apply to disaggregation to the Commission authorized by this option. In order to take advantage of the disaggregation option, licensees will be required to make an election consistent with the procedures specified in this *Second Report and Order*.

19. In order to avoid unjust enrichment, licensees (defined as qualifying members of the licensee's control group, and their affiliates) will be prohibited from bidding in the subsequent reauction for spectrum the incumbent licensee has disaggregated. However, they will be permitted to acquire spectrum for any BTA for which

the incumbent licensee has not disaggregated spectrum. The Commission does not believe that it would be fair for these entities to benefit from a reauction after taking advantage of the disaggregation option. To ensure further against unjust enrichment, these entities will also be barred from reacquiring the spectrum they have surrendered to the Commission through a secondary market transaction for a period of two years from the start of a reauction.

20. The Commission believes that the disaggregation option set forth above is consistent with the goals in this proceeding and serves the public interest. First, this option preserves the credibility and integrity of the Commission's rules. The relief provided is another means of making more efficient use of the spectrum. It does not provide a windfall or unfair advantage to the C block licensees availing themselves of the disaggregation option. The disaggregating licensee continues to pay for spectrum at its net high bid price, and the Commission receives full payment for the spectrum retained by the licensee. In addition, the Commission will retain 50% of the down payment consistent with the amount of spectrum being surrendered to the Commission. Moreover, disaggregation with a *pro rata* adjustment in debt is consistent with the Commission's rules with regard to private party disaggregation.

21. Second, the disaggregation option is fair and equitable to all interested parties. Losing bidders and other eligible parties will have an opportunity to bid on the disaggregated spectrum in the reauction. Also, by limiting disaggregation of spectrum to 15 MHz blocks on a BTA within an MTA basis, the Commission increases the likelihood that the licenses available for reauction will be in quantities and geographic clusters that are commercially viable. In addition, by providing this limited opportunity to "pick and choose" which licenses to disaggregate, and not requiring the surrender of all 30 MHz of the spectrum it holds in an MTA, this option is fair to those who have built-out some of their markets. This option does not materially alter the competitive landscape for commercial mobile radio services. Given the current state of the market and the Commission's existing rules, it is reasonable to expect that some C block spectrum will be transferred to competitors through reauction or private sale. The Commission's action here facilitate this process, by reducing the amount of spectrum that would otherwise be marketed in a piecemeal fashion.

Moreover, as noted above, other parties will have an opportunity to bid on this spectrum in the reauction and, because of the spectrum's proximity to the F block, the spectrum may be particularly attractive to prospective licensees.

22. Third, the disaggregation option is consistent with the Section 309(j) obligation for the Commission to promote opportunities for designated entities, including small businesses. This option should assist current C block licensees in moving forward with the deployment of their service offerings. Disaggregation will also provide opportunities for other small businesses to enter the PCS market in the future. Finally, by requiring C block licensees to disaggregate the 15 MHz of spectrum adjacent to the F block, the Commission provides opportunities for existing F block licensees to aggregate spectrum in a manner that could benefit their planned or prospective service offerings.

#### C. Surrender Licenses for Reauction (Amnesty)

23. The Commission concludes that it serves the public interest to adopt an amnesty option that permits any C block licensee to surrender all of its licenses in exchange for relief from its outstanding debt and waive any applicable default payments, subject to coordination with the Department of Justice pursuant to applicable federal claims collections standards. The Commission adopts the amnesty option for purposes of speeding use of the C block spectrum to provide services to the American public. The surrender of licenses under this option will provide qualified parties with an opportunity to obtain C block licenses at the market value of the licenses prevailing at the time of the reauction. The amnesty option adopted today is equitable to all parties because, while amnesty relieves a licensee from further debt obligations and any applicable default payments, a coordinated surrender of licenses facilitates expeditious reauctioning of the spectrum and will provide new market opportunities for all eligible entities. In addition, rapid reauction of those licenses surrendered will also comply with the Congressional directive that we promote competition and participation in the telecommunications industry by small businesses.

24. A C block licensee must make the amnesty election in accordance with the procedures set forth below in this *Second Report and Order*. The Commission will reauction those licenses surrendered on an expedited basis under the reauction rules discussed in the *Further Notice of*

*Proposed Rulemaking* adopted with this *Second Report and Order*. Licensees electing the amnesty option will be eligible to bid for any and all licenses at the reauction.

25. Licensees electing the amnesty option will not have their down payment returned. This will discourage speculation and ensure that all bidders, new entrants as well as existing licensees, participate in the reauction without undue advantage. Retention of the down payments—10% of the bid price for most licensees—is consistent with the Commission's previous decisions and actions affecting C block bidders. The Commission has retained any payments made by those C block bidders who have failed to make their first or second down payments. In forgiving the outstanding debt the Commission affords significant relief to the licensees by allowing them to avoid anticipated defaults. In addition, these licensees will not be deemed in default or delinquent in meeting government debt obligations. Nor will they be subject to any applicable default payments or in violation of any Commission rules or license conditions.

26. Subject to one exception identified below, licensees choosing to take advantage of the amnesty option will be required to surrender all of their licenses to the Commission. The requirement that all licenses be surrendered precludes licensees from "cherry picking." The simultaneous multiple-round auction design enables bidders to place bids on many licenses at once and to aggregate desired licenses in a manner that facilitates workable business plans. If licensees could "cherry pick" which licenses to surrender, the interdependency of the licenses would be harmed. Licenses surrendered pursuant to such a "cherry picking" scheme might lack the potential for beneficial aggregation within MTAs, and therefore would likely be less valuable to potential bidders and impair business plans of new investors.

27. As an exception to the all-or-nothing requirement, licensees that have met or exceeded the five year build-out requirements by September 25, 1997, the date of adoption of this *Second Report and Order*, will not be required to surrender licenses for built-out markets. In addition, these licensees will be permitted to retain those BTA licenses in which such build-out has occurred. However, licensees availing themselves of this exception may not pick and choose BTAs within an MTA but will be required, instead, to keep all of the other BTAs in the MTA in which the build-out requirement has been met

and to pay for those licenses under the terms of their Notes. The build-out exception facilitates the achievement of the statutory goal set forth in Section 309(j) that it encourages the rapid provision of service to the public, and responds to the needs of licensees that have already commenced operations or have otherwise invested significantly in certain of their C block licenses. The Commission has an interest in minimizing the competitive impact of the changes that it makes to the auction rules, consistent with its broader policy objectives. The exception adopted today is one method by which the Commission can ensure that the menu of options available to the C block is fair to those licensees that have rapidly built-out their markets and initiated provision of competitive service.

28. Some licensees made their installment payments (*i.e.*, installments due on that date, and amounts due on December 31, 1996, but not paid until March 31, 1997, based on the automatic 90-day non-default rule) after the suspension. In addition, prior to the suspension of payments, many C block licensees made their regularly scheduled installment payments. Due to the actions taken in this *Second Report and Order*, it would be unjust and inequitable for C block licensees to be treated differently merely because some C block licensees made prior payments while others did not. Consequently, the Wireless Telecommunications Bureau is directed to refund any installment payments made (whether due on or before March 31, 1997) on any license that is surrendered pursuant to this *Second Report and Order*. In addition, the Commission will forgive payment of any due, but unpaid, installment payments for any surrendered license. For licensees exercising the build-out exception and retaining certain licenses, all previously made installment payments will be applied first to reduce the Suspension Interest applicable to those licenses, and any amounts remaining will be refunded.

#### D. Prepayment

29. Under the prepayment option the Commission adopts, any C block licensee may prepay selective licenses subject to the restrictions described in this *Second Report and Order*. All licenses that are not prepaid in accordance with this option must be surrendered to the Commission in exchange for a forgiveness of the corresponding debt and any penalties. A licensee selecting this option may apply 70% of the total of all down payments it made on the licenses that it elects to surrender to the Commission

(“Available Down Payments”), to a prepayment of the Notes for as many of its licenses it wishes to keep. For example, if a licensee held two licenses with net high bids of \$100 and \$200, then the total down payments would equal \$30 (\$10 + \$20). If the licensee elected to keep the \$200 license, the licensee would have \$7 (\$10 x 70 percent) of its down payment from the \$100 license to apply towards the prepayment of the \$200 license’s Note. If, on the other hand, the licensee elected to prepay the \$100 license, then the licensee would have \$14 (\$20 x 70 percent) of its down payment from the \$200 license to apply towards the prepayment of the \$100 license’s Note. The remaining down payments not applied to prepayment will be retained by the Commission.

30. Additionally, an incumbent may use any “new money” to prepay as many of its own licenses as it desires. Any installment payments previously made by the licensee for all its licenses will be added to the Available Down Payments to increase the funds available to prepay its Notes. Interest accrued from the date of the conditional license grant through the Election Date will be forgiven. For purposes of this option, the down payment associated with licenses that are transferred as of the Election Date to subsidiaries or affiliates will be considered transferred with the licenses and the corresponding debt. For example, if ABC Company paid \$100,000 each for two licenses and submitted \$10,000 in down payments for each license, the total down payments submitted by ABC Company would be \$20,000. However, if ABC had subsequently transferred one of its licenses to XYZ Company, a wholly-owned subsidiary, ABC Company would not have any additional money available to purchase its license, and XYZ Company would not have any additional money available to purchase its license. This option, however, is not intended to prohibit additional license transfers consistent with existing Commission rules.

31. The Commission believes that this prepayment option fairly balances competing interests, while maintaining the fairness and integrity of our rules and auctions. The Commission notes that 30% of the down payments is equal to 3% of the net high bids and is consistent with the approach adopted previously for down payments. Under the Commission’s existing rules, an applicant is subject to a 3% payment if it fails to make the required down payment. See 47 CFR §§ 1.2104(g)(2), 24.704(a)(2). The Commission believes it to be most fair to apply this provision

to those licensees who seek the relief provided by this option. If licensees were able to use all of their down payment, they would recoup in full what they paid, and there would be no deterrent effect against bidding excessively in the auction or otherwise gaming the process. Thus, in the next auction to which default payments apply, these rules could be ignored with impunity. Such a result would severely harm the Commission’s market-based auction program. It would make it impossible to impose the charges already imposed in past cases, including in C block cases. Further, permitting C block licensees access to the down payments they previously made for licenses they no longer wish to retain is a substantial benefit and fair to these licensees. To allow them to use 100% of those funds would be unfair to other C block licensees who choose to continue to pay under their existing obligations, and to bidders who were unsuccessful in the auction.

32. The Commission declines to discount the Notes. The Commission believes it is fair to other bidders and to the credibility and integrity of the rules for the prepayment to be in the amount of the outstanding debt for the net high bid. In other words, licensees should pay what they bid. To offer deep discounts off the amount of the debt is outside normal commercial practices and otherwise appears to be a “bail-out” of C block licensees who have encountered financial difficulties long after the auction was completed and the financial commitments were made. Debt paid off in advance of the maturity date allows the debtor to reap the benefit of not incurring additional interest due on the principal amount owed. To discount the amount of the principal would unfairly permit a windfall to the licensee electing this option. The Commission is cognizant of the financial difficulties for some C block licensees, but is also mindful of a duty to the other C block licensees who are successfully meeting their obligations and continuing build-out efforts for wireless services. Therefore, the Commission believes that it strikes the proper balance by allowing a licensee the benefit of prepaying its debt obligations, thereby reducing the amount of interest that would be payable over the full term of the Note, while avoiding fundamental changes to our rules that unfairly harm other licensees who followed the rules and who continue to meet their payment obligations.

33. Under this prepayment option, an incumbent must prepay all of the BTA licenses in a particular MTA and cannot

arbitrarily select individual BTA licenses in a given MTA to prepay while surrendering other licenses in that MTA, with one exception. The Commission concludes that while a licensee must prepay the debt on all of the BTAs for which it holds licenses in an MTA, a licensee may not have sufficient funds available to it to prepay all of its Notes for the BTA licenses in a given MTA. Therefore, any licensee that has enough funds on hand to prepay one or more BTAs within an MTA, but not enough for the entire MTA, must prepay all of those BTAs within that MTA that it can afford. The Commission concludes that a requirement that all licenses in a given MTA be prepaid precludes licensees from "cherry picking." The simultaneous multiple-round auction design discussed in the *Further Notice of Proposed Rulemaking* enables bidders to place bids on many licenses at once. If licensees were permitted to "cherry pick" which licenses in an MTA to prepay and which to surrender under this option, the interdependency of the licenses would be threatened. Licenses surrendered pursuant to such a "cherry picking" scheme would lack the potential for aggregation, and consequently would hold much less value to other bidders in the subsequent reacution.

34. The Commission declines to provide an exception for markets in which the five-year build-out requirement has been met as provided under the amnesty option. Under the prepayment option, licensees have the flexibility to select which markets they will retain subject to the restrictions in this *Second Report and Order*. For this reason, licensees have the option of selecting and prepaying for licenses where they have invested capital to meet the build-out requirements and not prepaying in an MTA where they have not. The Commission believes that this flexibility, compared to the all or nothing approach of simple amnesty, mitigates the need for this exception.

35. Finally, for a period of two years from the start date of the reacution, licensees (defined as qualifying members of the licensee's control group, and their affiliates) will be prohibited from reacquiring the licenses surrendered pursuant to this option either through a reacution or any other secondary market transaction. The Commission does not believe that it would be fair to other licensees and bidders for these licensees to benefit from a reacution of those licenses after taking advantage of this option. Furthermore, the Commission does not believe that this option should provide

opportunities for licensees to "selectively" reduce their license obligations by surrendering a license in hopes of re-obtaining it in a reacution at a lower price.

#### E. Election Procedures

36. The Commission concludes that a licensee electing to continue under its existing installment payment plan or electing one of the options set forth in this *Second Report and Order*, must file a written notice of such election with the Wireless Telecommunications Bureau on or before the Election Date ("Election Notice"). The "Election Date" is January 15, 1998. The Election Notice must be filed on or before January 15, 1998 with the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554 (attn: Wireless Telecommunications Bureau, Auctions and Industry Analysis Division—Election Notice). The Wireless Telecommunications Bureau will provide more information concerning filing procedures in a subsequent public notice.

37. The Commission requires that those licensees electing (i) to continue making payments under their original C block Notes, (ii) the disaggregation option, or (iii) the amnesty option who elect to take advantage of the build-out exception and retain certain of their licenses make the appropriate payment by March 31, 1998 (or by the end of the 60-day grace period allowed), and execute any necessary financing documents pursuant to appropriate requirements and time frames established by the Bureau in order to continue to be eligible under the option chosen.

38. *Continuation Under Existing Note(s)*. Any licensee that wishes to continue making installment payments in accordance with the terms of its original C block Note, must elect to do so by submitting the Election Notice of such election.

39. *Disaggregation*. For licensees electing the disaggregation option, the Election Notice must include (i) a list of all licenses being disaggregated, (ii) the original of all licenses being disaggregated, and (iii) all originals of the Notes and Security Agreements for those licenses being disaggregated for cancellation by the Commission. Upon acceptance of the Election Notice, the disaggregated spectrum will be deemed returned to the Commission.

40. *Amnesty*. For licensees electing the amnesty option, the Election Notice must include (i) a list of all licenses being surrendered, (ii) if applicable, a statement indicating that it intends to avail itself of the build-out exception

together with a list of those BTA licenses it intends to retain and pertinent information concerning build-out pursuant to the Commission's rules, (iii) the original of all licenses being surrendered, and (iv) all originals of the Notes and Security Agreements for those licenses being surrendered for cancellation by the Commission. Those licensees electing to proceed under the build-out exception will be required to adhere to the specific obligations set forth in their Notes and Security Agreements, as modified for those licenses not being surrendered to the Commission.

41. *Prepayment*. For licensees electing the prepayment option, the Election Notice must include (i) a list of all licenses being prepaid, (ii) a payment in the amount of any additional "new money" a licensee desires to apply to the prepayment of its licenses, (iii) the original of all licenses not being prepaid in accordance with this option, and (iv) all originals of the Notes and Security Agreements for those licenses not being prepaid for cancellation by the Commission. Notes which are prepaid will be marked "Paid-In-Full" and returned to the licensee.

42. The Commission further concludes that any C block licensee that (i) fails to elect one of the options set forth in this *Second Report and Order* on or before the Election Date, or (ii) fails to elect on or before the Election Date to continue making payments under its original C block Note(s), or (iii) fails to fully and timely execute and deliver to the Commission (or its agent) any required financing documents within the period of time specified by the Bureau, will not be afforded the opportunity granted to licensees who do make a timely election to repay the Suspension Interest over a period of eight equal payments. In such event, the licensee will be required, on or before March 31, 1998, to make all payments that would have been due under its Note(s) but for the effect of the *Suspension Order*. For example, a licensee whose regular installment due date was March 31, 1997, who did not make payment on that date because of the *Suspension Order*, will owe on March 31, 1998, all payments that were due and payable earlier, but unpaid due to the *Suspension Order*, in addition to the regularly scheduled March 31, 1998, payment.

#### F. Cross Defaults

43. The Commission will not pursue cross default remedies against C block licensees who default on installment payments with regard to other licenses in the C or F blocks. For example, if a

licensee defaults on a C block license and that licensee holds other C block licenses on which it is making its payments, the Commission will not declare it to be in default on its debt associated with the other C block licenses. Similarly, if a licensee defaults on a C block license, and also holds F block licenses on which it is making its payments, the Commission will not declare it to be in default on its F block debt.

44. This decision is warranted in light of the efforts to provide current C block licensees who are experiencing financing difficulties with options for meeting their financial obligations to the Commission. This decision does not affect the Commission's policy with regard to defaults on first or second down payments. The Commission emphasizes that this decision only addresses the context of a licensee's default on an installment payment for a C block license upon other licenses held by that licensee in the C or F blocks. The Commission defers to completion of the *Part 1 Rulemaking* a decision on whether to amend more comprehensively the policy of cross defaults. The Commission also emphasizes that existing installment payment default rules and license conditions will continue to apply for those particular licenses in default after March 31, 1998. Accordingly, upon default, a license will automatically cancel and the Commission will initiate debt collection procedures against the licensee and accountable affiliates. See 47 CFR § 1.2110(e)(4)(iii).

### III. Conclusion

45. In this *Second Report and Order* the Commission orders resumption of installment payments for the broadband PCS C and F blocks, with the payment deadline reinstated as of March 31, 1998. The Commission also adopts options designed to assist C block licensees that are experiencing financial difficulties to build systems that will promote competition, or to surrender spectrum to the Commission for reauction. These options include disaggregation, amnesty, and prepayment. These provisions will create opportunities for C block licensees to provide service to the public while maintaining the fairness and integrity of our auctions program.

### IV. Procedural Matters and Ordering Clauses

#### A. Regulatory Flexibility Analysis

46. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. § 604, an Initial Regulatory Flexibility Analysis

(IRFA) was incorporated in Amendment of Part 1 of the Commission's Rules—Competitive Bidding Proceeding, Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making, 62 FR 13540 (March 21, 1997) (*Part 1 Proceeding*) in WT Docket No. 97-82. The Commission sought written public comment on the proposals in the *Part 1 Proceeding*, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the IRFA.

#### Need for, and Objectives of, this Action

47. This *Second Report and Order* is 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 goals of ensuring the rapid provision of PCS service to the public.

#### Summary of Significant Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analysis (IRFA)

48. There were no comments filed in response to the IRFA; however, in this proceeding we have considered the economic impact on small businesses of the rules adopted herein.

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

49. 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. See 5 U.S.C. §§ 603(b)(3), 604(a)(3). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." See 5 U.S.C. § 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act. See 5 U.S.C. § 601(3). 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). See 15 U.S.C. § 632.

50. This *Second Report and 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. See 47 CFR § 24.720(b)(1). This definition has been approved by the SBA. On May 6, 1996, the Commission

concluded the broadband PCS C block auction. 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 order, are small entities.

#### Description of the Projected Reporting, Recordkeeping, and other Compliance Requirements

51. A licensee electing one of the options set forth in the Order must file a written notice of such election (the "Election Notice") with the Wireless Telecommunications Bureau, Auctions and Industry Analysis Division no later than the Election Date. The "Election Date" is January 15, 1998. Those licensees electing either (1) to continue making payments under their original C block Notes; (2) the disaggregation option; or (3) the amnesty option but elect to take advantage of the build-out exception and retain certain of their licenses, will be required to execute and submit a modification of their Notes, Security Agreements, Uniform Commercial Code ("UCC") Financing Statements and any other related documents securing their Notes within the time frame established by the Bureau.

52. *Continuation under Existing Note(s)*. Any licensee that wishes to continue making installment payments in accordance with the terms of its original C block Note, must elect to do so by submitting the Election Notice.

53. *Disaggregation*. For licensees electing the disaggregation option, the Election Notice must include the following: (1) A list of all licenses being disaggregated; (2) the original of all licenses being disaggregated; and (3) all originals of the Notes and Security Agreements for those licenses being disaggregated for cancellation by the Commission.

54. *Amnesty*. For licensees electing the amnesty option, the Election Notice must include the following: (1) A list of all licenses being surrendered; (2) if applicable, a statement indicating that the licensee intends to avail itself of the build-out exception together with a list of those BTA licenses it intends to retain and pertinent information

concerning build-out; (3) the original of all licenses being surrendered; and (4) originals of the Notes and Security Agreements for those licenses being surrendered for cancellation by the Commission.

55. *Prepayment.* For licensees electing the prepayment option, the Election Notice must include the following: (1) A list of all licenses being prepaid; (2) a payment in the amount of any additional "new money" as a licensee desires to apply to the prepayment of its licenses; (3) the original of all licenses not being prepaid in accordance with this option; and (4) all originals of the Notes and Security Agreements for those licenses not being prepaid for cancellation by the Commission.

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

56. The Commission believes that it is in the public interest to adopt these provisions to facilitate use of C block licenses without further regulatory or marketplace delay. The menu approach adopted in this *Second Report and Order* is intended to provide options to facilitate the rapid introduction of service to the public, while recognizing that ultimately the decisions concerning competition and services appropriately are marketplace decisions and should not be determined by government intervention. This decision is intended to be fair to current C block licensees (including small entities), to bidders who were not successful in their attempts to obtain licenses in this spectrum, and to the public desiring new and innovative competitive services. These options minimize the potential significant economic impact on small entities because they meet the unique circumstances facing the C block licensees and permit these small entities to choose one of three alternative solutions to reduce their debt to the Commission. All of the entities affected by this *Second Report and Order* are small entities, and the intent of this *Second Report and Order* is to alleviate, to some extent, the financial difficulties faced by these small entities. These options are relatively straightforward, achieve a degree of fairness to all parties, including losing bidders in the C block auction, continue to promote competition and participation by smaller businesses in providing broadband PCS service, and avoid solutions that merely prolong uncertainty.

57. The Commission received numerous comments and *ex parte* comments that addressed these issues at great length. The majority of

commenters favor some type of relief, including debt restructuring, spectrum disaggregation, or a penalty-free license surrender (*i.e.*, amnesty) followed by a reauction. Other commenters express disapproval of any relief, and urge the Commission to strictly enforce its rules. The Commission believes that there may be a need for some measure of relief for these small entities in addition to the suspension of payments previously granted. The Commission believes that the options adopted in this *Second Report and Order* are relatively straightforward and achieve a degree of fairness to all parties, including small entities. Finally, the Commission rejects any proposal of a deferral of payments on the grounds that such proposal would be unfair to unsuccessful bidders who may have withdrawn from the C block when prices became too high.

58. Among other goals, Section 309(j) directs the Commission to disseminate licenses among a wide variety of applicants, including small businesses and other designated entities. See 47 U.S.C. § 309(j)(3)(B). At the same time, Section 309(j) requires that the Commission ensure the development and rapid deployment of new technologies, products and services for the benefit of the public, and recover for the public a portion of the value of the public spectrum resource made available for commercial use. See 47 U.S.C. §§ 309(j)(3)(A), (C). In assessing the public interest, the Commission must try to ensure that all the objectives of Section 309(j) are considered. The Commission believes that those goals are best met by promoting efficient competition while maintaining fairness and efficiencies of process in the Commission's rules.

*Report to Congress*

59. The Commission shall send a copy of the *Second Report and Order*, including the Final Regulatory Flexibility Analysis, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. See 5 U.S.C. § 801(a)(1)(A). A copy of the *Second Report and Order* and this Final Regulatory Flexibility Analysis will also be sent to the Chief Counsel for Advocacy of the Small Business Administration.

B. Paperwork Reduction Act

60. This *Second Report and Order* contains a modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the

information collections contained in this *Second Report and Order*, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due December 1, 1997. OMB comments are due December 1, 1997. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

*Dates:* Written comments by the public on the modified information collections in this *Second Report and Order* are due on or before December 1, 1997. Written comments must be submitted by OMB on the modified information collections on or before December 1, 1997.

*Address:* In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to [jboley@fcc.gov](mailto:jboley@fcc.gov) and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to [fain\\_t@al.eop.gov](mailto:fain_t@al.eop.gov).

*Further Information:* For additional information concerning the information collections contained in this *Second Report and Order* contact Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to [jboley@fcc.gov](mailto:jboley@fcc.gov).

*Supplementary Information*

*Title:* Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees

*Type of Review:* New Collection.

*Respondents*

*Number of Respondents:* The Commission estimates that up to 90 respondents will take the opportunity to elect one of the options in the *Second Report and Order*.

*Estimated Time Per Response:* The Commission estimates the total burden under the disaggregation and amnesty options would be 4.0 hours per



respondent, a total hour burden of 360 hours, which is the highest estimate and assumes that all 90 potential respondents elect either the disaggregation or amnesty options. The Commission believes that the actual total hour burden will be less than 360 hours. The Commission is of the opinion that the respondents will prepare the submission with in-house staff, such as in-house counsel or the equivalent, in lieu of outside contractors. At the equivalent of the GS 15 hourly rate, \$41.24, the total burden would be \$41.24 times 360 hours = \$14,846.40.

*Estimate of total cost burden to respondents:* The Commission estimates that there will be no additional cost burden to respondents.

*Cost to the Federal Government*

- GS 7 Legal Instrument Examiners at \$14.06 per hour to review the documentation for approximately 0.5 hours per submission, times 90 submissions = \$632.70
  - GS 7 Clerical at \$14.06 per hour to process refunds for approximately 1.0 hour per submission, times 90 submissions = \$1,265.40
  - GS 12 Engineers to review the documentation at \$24.95 per hour, for approximately 0.5 hours per submission, times 90 submissions = \$1,122.75
  - GS 12 Engineers to review technical analysis at \$24.95 per hour, for approximately 0.5 hours per submission, times 90 submissions = \$1,122.75
  - GS 12 Attorneys to review the financial documentation at \$24.95 per hour, for approximately 2.0 hours per submission, times 90 submissions = \$4,491.00
  - GS 15 Financial Analysts or Accountants to review the documentation, accounting analysis, and revised payment schedules and to oversee the repayment process at \$41.24 per hour, for approximately 2.0 hours per submission, times 90 submissions = \$7,423.20
- Total = \$16,057.80.

**C. Authority**

61. The above action is authorized under the Communications Act of 1934, §§ 4(i), 5(b), 5(c)(1), 303(r), and 309(j) as amended.

**D. Ordering Clauses**

62. Accordingly, *it is ordered that*, pursuant to Sections 4(i), 5(b), 5(c)(1), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 155(b), 156(c)(1), 303(r), and 309(j), this

*Second Report and Order* is hereby adopted, and §§ 1.2110 and 24.709 of the Commission's rules are amended as set forth below, effective December 23, 1997. The information collection contained in these rules becomes effective on OMB approval but no sooner than December 23, 1997. The Commission will publish a document on a later date announcing the effective date of the information collection.

63. *It is further ordered that* the Wireless Telecommunications Bureau's *Suspension Order* dated March 31, 1997, suspending the installment payment obligations for Personal Communications Services (PCS) C block licensees, and the subsequent Public Notice dated April 28, 1997, suspending those obligations for PCS F block licensees are rescinded, effective March 31, 1998, and installment payments for C and F block PCS licensees are reinstated as of that date.

64. *It is further ordered that* on or before January 15, 1998, the Election Date, all C block broadband PCS licensees must elect either (1) to continue making payments under their original C block Notes, or (2) one of the options set forth in Section IV of this *Second Report and Order*. The Election Notice must be filed on or before January 15, 1998 with the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554 (attn: Wireless Telecommunications Bureau, Auctions and Industry Analysis Division—Election Notice).

65. *It is further ordered that* the Secretary shall send a copy of this *Second Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. §§ 601 et seq.

66. *It is further ordered that*, pursuant to 47 U.S.C. § 155(c) and 47 CFR § 0.331, the Chief of the Wireless Telecommunications Bureau *Is granted delegated authority* to prescribe and set forth procedures for the implementation of the provisions adopted herein.

**List of Subjects**

*47 CFR Part 1*

Communications common carriers, Reporting and recordkeeping requirements.

*47 CFR Part 24*

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

**William F. Caton,**  
*Acting Secretary.*

**Rule Changes**

Parts 1 and 24 of Chapter I of title 47 of the Code of Federal Regulations are amended as follows:

**PART 1—PRACTICE AND PROCEDURE**

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

**Authority:** Secs. 4, 301, 302, 303, 309 and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 301, 302, 303, 309 and 332, unless otherwise noted.

2. Section 1.2110 is amended by revising paragraph (e)(4)(i) to read as follows.

**§ 1.2110 Designated entities.**

\* \* \* \* \*

(e) \* \* \*

(4) \* \* \*

(i) If an eligible entity making installment payments is more than ninety (90) days delinquent in any payment, it shall be in default, except that broadband PCS frequency block C licensees making the March 31, 1998, interest payment pursuant to their elections under the Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services Licensees, *Second Report and Order*, WT Docket No. 97-82 (released October 16, 1997), shall be in default if they are more than sixty (60) days delinquent on such payment. (The *Second Report and Order* is available in the FCC Reference Center, Room 239, 1919 M Street, NW., Washington, DC 20554.)

\* \* \* \* \*

**PART 24—PERSONAL COMMUNICATIONS SERVICES**

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

**Authority:** Secs. 4, 301, 302, 303, 309 and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 301, 302, 303, 309 and 332, unless otherwise noted.

4. Section 24.709 is amended by adding paragraph (b)(9) to read as follows.

**§ 24.709 Eligibility for licenses for frequency Blocks C and F.**

\* \* \* \* \*

(b) \* \* \*

(9) *Special rule for licensees disaggregating or returning certain spectrum in frequency block C.*

(i) In addition to entities qualifying under this section, any entity that was

eligible for and participated in the first auction for frequency block C, which began on December 18, 1995, will be eligible to bid in a reauction of licenses for frequency block C conducted after March 31, 1998.

(ii) The following restrictions will apply for any reauction of frequency block C licenses conducted after March 31, 1998:

(A) Applicants that elected to disaggregate 15 MHz of spectrum from any or all of their frequency block C licenses, as provided in subsection IV.B., Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services Licensees, *Second Report and Order*, WT Docket No. 97-82 (released October 16, 1997), will not be eligible to apply for such disaggregated licenses until 2 years from the start of the reauction of those licenses. The *Second Report and Order* is available in the FCC Reference Center, Room 239, 1919 M Street, NW., Washington, DC 20554.

(B) Applicants that surrendered any of their frequency block C licenses as provided in subsection IV.D. (the "prepayment option") Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services Licensees, *Second Report and Order*, WT Docket No. 97-82 (released October 16, 1997), will not be eligible to apply for the licenses that they surrendered to the Commission until 2 years from the start of the reauction of those licenses.

(C) For purposes of this paragraph, *applicant* shall mean the applicant and its affiliates and any present or former qualifying member of a control group and their affiliates.

\* \* \* \* \*

[FR Doc. 97-28221 Filed 10-23-97; 8:45 am]  
BILLING CODE 6712-01-P

**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

**49 CFR Part 1**

[OST Docket No. 1; Amdt. 1-291]

RIN 9000-AA02

**Organization and Delegation of Powers and Duties; Secretarial Succession**

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Final rule.

**SUMMARY:** The purpose of this amendment is to alter the order of Secretarial succession for the Department to reflect that the Federal Aviation Administrator now serves a statutory term of office.

**DATES:** The effective date of this amendment is October 24, 1997.

**FOR FURTHER INFORMATION CONTACT:** David K. Tochen, Office of the General Counsel, Department of Transportation, Washington, DC (202) 366-4710.

**SUPPLEMENTARY INFORMATION:** In 49 CFR 1.26, the order of succession to act as Secretary of Transportation is set forth: The Deputy Secretary, General Counsel, Assistant Secretary for Transportation Policy, Assistant Secretary for Aviation and International Affairs, Assistant Secretary for Governmental Affairs, Assistant Secretary for Budget and Programs, Associate Deputy Secretary, Saint Lawrence Seaway Development Corporation Administrator, and Assistant Secretary for Administration, in that order. The Saint Lawrence Seaway Development Corporation Administrator is included in the order of succession because that official has a statutory term of office, and therefore is more likely to be in office during a Presidential transition, when someone of that rank must act as Secretary. With the recent appointment of the first Federal Aviation Administrator to serve a statutory term of office (five years—see 49 USC 106(b), as amended by the Federal Aviation Administration Authorization Act of 1994, Public Law 103-305, Section 201, August 23, 1994), that official is also more likely to be in office during a Presidential transition, and is being substituted for the Saint Lawrence Seaway Development Corporation Administrator. This amendment reflects this change in the order of Secretarial Succession.

Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary under 5 USC 553(b)(3)(A), and it may be made effective in less than 30 days after publication in the **Federal Register** under 5 USC 553(d)(2) as a change in internal policy.

**List of Subjects in 49 CFR Part 1**

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

**PART 1—[AMENDED]**

1. The authority citation continues to read as follows:

**Authority:** 49 USC 322; Public Law 101-522, 28 USC 2672, 31 USC 3711 (a)(2).

2. In § 1.26, paragraph (a) introductory text is republished and paragraph (a)(8) is revised to read as follows:

**§ 1.26 Secretarial succession.**

(a) The following officials, in the order indicated, shall act as Secretary of Transportation, in case of the absence or disability of the Secretary, until the absence or disability ceases, or, in case of a vacancy, until a successor is appointed:

- \* \* \* \* \*
- (8) Federal Aviation Administrator.
- \* \* \* \* \*

Issued in Washington, DC, on October 15, 1997.

**Rodney E. Slater,**

*Secretary of Transportation.*

[FR Doc. 97-27960 Filed 10-23-97; 8:45 am]

BILLING CODE 4910-62-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 630**

[Docket No. 970710171-7240-02; I.D. 041097A]

RIN 0648-AJ63

**Atlantic Swordfish Fishery; Annual Quotas**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to amend the regulations governing the Atlantic swordfish fishery to: establish the U.S. swordfish quota for the North Atlantic Ocean at 2,464 metric tons (mt) dressed weight (dw) for 1997, at 2,398.6 mt dw for 1998, and at 2,333.2 mt dw for 1999, with one half of each year's longline/harpoon subquota allocated to each of two semiannual fishing seasons (June 1 through November 30 and December 1 through May 31); define the South Atlantic swordfish stock and set a 188 mt dw quota for that stock for 1997, with one-half allocated to each of the two semiannual fishing seasons; and implement the same management measures for the South Atlantic swordfish stock as are currently in place for the North Atlantic stock.

**DATES:** All provisions of this final rule are effective October 21, 1997, except for the amendments to §§ 630.4(a), 630.7(c), (bb) and (cc), and 630.23(a) and (b) and the revision to § 630.21 which are effective November 20, 1997.

**ADDRESSES:** Copies of the Final Environmental Assessment/Regulatory Impact Review (EA/RIR) supporting this