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Federal Communications Commission
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Report No. WT 98-25 WIRELESS TELECOMMUNICATIONS ACTION August 6, 1998

**FCC ADOPTS PARTITIONING AND DISAGGREGATION RULES
FOR 220 MHz LICENSES
(PR Docket No. 89-552, GN Docket No. 93-252)**

The Commission has adopted a *Fifth Report and Order (Fifth R&O)* amending Part 90 of the Commission's rules to adopt geographic partitioning and spectrum disaggregation rules for the 220-222 MHz service. These rules will give the 220 MHz service the competitive benefits that can be achieved by allowing licensees to partition and disaggregate -- more efficient use of spectrum, "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate" in the provision of 220 MHz service, and expedited delivery to unserved areas, consistent with the Commission's mandate under section 309(j) of the Telecommunications Act. These rules will apply to incumbent and future 220 MHz licensees. The auction for the second phase of licensing in the 220 MHz service is scheduled to commence on September 15, 1998.

Partitioning is the reassignment of licenses by geographic areas other than those used by the Commission in the original licensing process. Disaggregation is the assignment of discrete portions, or "blocks," of spectrum licensed to a geographic licensee or other qualifying entity. In an effort to create regulatory symmetry among wireless services, the Commission has followed the general framework for partitioning and disaggregation that has previously been adopted for other wireless services.

Specifically, in the *Fifth R&O*, the Commission adopted the following partitioning and disaggregation rules for the 220 MHz service:

- 220 MHz licensees, with the exception of Public Safety and Emergency Medical Radio Service (EMRS) licensees, are permitted to partition.
- Partitioning of 220 MHz licenses is permitted based on any geographic area defined by the parties, provided they submit information to the Commission regarding relevant boundaries or coordinates.
- All 220 MHz licensees are permitted to disaggregate, with the exception of Public Safety or EMRS licensees. Disaggregation of 220 MHz spectrum is allowed for any amount of spectrum, with no requirement that the disaggregator retain a certain amount

of spectrum as long as the disaggregation is otherwise consistent with the Commission's rules.

- Combined partitioning and disaggregation is permitted.

- Non-nationwide Phase I licensees eligible to partition and disaggregate may do so only after fully constructing their base stations and placing them in operation, or commencing service.
- Nationwide Phase I licensees are permitted to partition and disaggregate only after constructing 40 percent of their proposed systems.
- Phase II licensees eligible to partition and disaggregate may do so at any time after they receive their license.
- Phase II licensees eligible to partition and disaggregate may negotiate with their partial assignees to determine how the construction requirements will be met. Under one option, the assignee can certify that it will satisfy the construction requirements for its area or spectrum, while the original licensee is responsible for the area or spectrum it retains. Under a second option, one party can certify that it will meet the construction requirements for all the license area or spectrum.
- 220 MHz partitionees and disaggregatees will hold their licenses for the remainder of the original licensees' term and may earn a renewal expectancy similar to other 220 MHz licensees.
- 220 MHz licensees that obtained a small business, or very small business, bidding credit at auction must adhere to the unjust enrichment rules if they partition or disaggregate to a non-small business entity. Unjust enrichment will be calculated on a *pro rata* basis using population to determine the relative value of the partitioned area or the amount of spectrum disaggregated to determine the relative value of the disaggregated spectrum.
- The Commission's current Part 90 assignment procedures will apply to 220 MHz partitioning and disaggregation.

Action by the Commission, August 4, 1998, by Fifth Report and Order (FCC 98-186).
Chairman Kennard, Commissioners Ness, Furchtgott-Roth, Powell, and Tristani.

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