D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, or $100 million or more. Under section 205, EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the final approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Air pollution control, Gasoline, Motor vehicles, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: August 22, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 86 of title 40 of the Code of Federal Regulations is amended as follows:

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart A—[Amended]

2. Section 86.094–17 is amended by revising paragraph (j) to read as follows:

§ 86.094–17 Emission control diagnostic system for 1994 and later light-duty vehicles and light-duty trucks.

* * * * *

(j) Demonstration of compliance with California OBD II requirements (Title 13 California Code § 1968.1), as modified pursuant to California Mail Out #95–34 (September 26, 1995), shall satisfy the requirements of this section through the 1998 model year except that compliance with Title 13 California Code § 1968.1(d), pertaining to tampering protection, is not required to satisfy the requirements of this section.

* * * * *

[FR Doc. 96–21946 Filed 8–29–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[GEN Docket No. 90–314; FCC 96–340]

Omnipoint Communications New York MTA Frequency Block A; Establishment of New Personal Communications Services

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: By this action, the Commission denies a petition for declaratory ruling filed by The Wireless Communications Council (WCC). The Commission finds that WCC has not demonstrated the existence of a controversy or uncertainty sufficient to warrant exercise of the Commission's discretion to issue a declaratory ruling. The intended effect of this action is to clarify when it is appropriate for the Commission to issue a declaratory ruling regarding whether a party awarded a pioneer's preference has made substantial use of its pioneering technology.

EFFECTIVE DATE: August 30, 1996.

FOR FURTHER INFORMATION CONTACT: Rodney Small or Charles Iseman, Office of Engineering and Technology, at (202) 418–2452 or (202) 418–2444, respectively.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order (MO&O) in GEN Docket 90–314, FCC 96–340, adopted August 9, 1996, and released August 23, 1996. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Summary of MO&O

1. In the Third Report and Order (Third R&O) in GEN Docket No. 90–314 (the broadband Personal Communications Services (PCS) proceeding), 59 FR 9419 (February 28, 1994), the Commission awarded pioneer's preferences to American Personal Communications (APC), Cox Enterprises, Inc. (Cox), and Omnipoint Communications, Inc. (Omnipoint). The Commission directed the Wireless Telecommunications Bureau (Bureau) to condition the broadband PCS licenses received by APC, Cox, and Omnipoint upon each licensee building a system that substantially uses the design and technologies upon which its preference award is based. Specifically, the Commission stated that this condition would apply in the service area for which the preference is being granted and for the initial required five-year build-out period specified in the rules for broadband PCS.

2. Omnipoint was awarded a pioneer's preference for having designed and manufactured a 2 GHz spread spectrum handset and associated base station equipment, and for proposing a viable service with the flexibility to be implemented in a variety of environments with capabilities useful to subscribers. This preference granted Omnipoint the right, if otherwise qualified, to use a 30 megahertz channel block (Block A, 1850–1865 MHz and 1930–1945 MHz) in the Major Trading Area that includes northern New Jersey (New York MTA). On December 13, 1994, the Bureau granted a pioneer's preference license to Omnipoint, on condition that ''Omnipoint * * * shall construct a * * * system * * * that substantially uses the design and technology upon which the pioneer's preference award * * * was based,'' and on condition that Omnipoint retain control of the license for three years or until it has met the five-year build-out requirement, whichever is the first to occur.

3. On January 16, 1996, WCC submitted a petition for declaratory ruling, urging the Commission to clarify the ''substantial use'' condition, as

specified in the pioneer's preference license awarded to Omnipoint.[1] WCC asserts that public evidence indicates that Omnipoint will initially use Global System for Mobile Communications (GSM) equipment for its New York PCS network, rather than the IS–661 technology for which the Commission awarded Omnipoint a preference. Specifically, WCC attaches the statement of its consulting engineer, Charles Jackson, who asserts that he has reviewed the publicly available information and believes that Omnipoint is currently constructing a GSM system with only minor use of IS–661 technology. WCC requests the Commission to clarify the extent to which Omnipoint must use its own technology to retain its preference award and asks several questions, including whether the substantial use condition requires Omnipoint to use its IS–661 interface from the inception of its broadband PCS operations pursuant to its license.

4. On January 31, 1996, Omnipoint submitted a response, in which it argues that WCC's petition should be dismissed or denied on five grounds. Omnipoint first states that ''WCC has failed to articulate who it is, whom it represents, or how it or its membership, if any, is affected by Omnipoint's activities in the New York MTA.'' Omnipoint notes that the Commission's rules permit requests for clarification of a decision only when the petitioner demonstrates the existence of a genuine decisional controversy or uncertainty, and argues that WCC has failed to make such a demonstration. Second, Omnipoint contends that WCC's petition is in substance not a petition for clarification but an untimely filed petition for reconsideration of the Third R&O. Third, Omnipoint addresses WCC's substantive allegations. Omnipoint avers that in the deployment of its New York MTA PCS system, it is, in fact, substantially using the IS–661 technology for which it received a preference. It adds that other companies are ''licensing and commercializing'' this technology. Omnipoint stresses that it is deploying and using its IS–661 technology in conjunction with GSM, and that such use of multiple technologies is similar to the practices of most cellular and other broadband PCS licensees. Omnipoint concludes that WCC is unfairly asking the Commission to prohibit only Omnipoint from using multiple technologies in deploying a broadband PCS system. Fourth, Omnipoint submits that WCC's petition is not ripe for consideration because there is no Commission requirement that pioneers demonstrate compliance with the substantial use condition prior to the expiration of the five-year build-out requirement. Hence, Omnipoint argues that it should be afforded five years to comply fully with the condition in the New York MTA. Finally, Omnipoint states that the substantial use condition is not vague and does not need to be clarified by an order that could inadvertently delay the rapid deployment of pioneers' systems.

5. On February 7, 1996, WCC submitted a reply to Omnipoint's response in which it contends that Omnipoint offers no information to suggest that WCC's petition is unwarranted. WCC states that it is not arguing that Omnipoint must use only IS–661 technology in the New York MTA, but is asking merely that the Commission define the substantial use condition associated with Omnipoint's pioneer's preference license. WCC also states that Omnipoint does not attempt to clarify the extent to which Omnipoint will use its IS–661 technology in the New York MTA, either initially or over a five-year period.

6. The Commission has discretionary authority to issue a declaratory ruling to ''terminat[e] a controversy or remov[e] uncertainty.'' The doctrine of standing was developed by the courts as an analytic tool to determine whether the exercise of jurisdiction by a court over a given case would exceed the limitation of ''the scope of the federal judicial power to the resolution of 'cases' or 'controversies.' '' This jurisdictional limitation is set forth in Article III of the U.S. Constitution. Although this limit on jurisdiction is not directly applicable to administrative agencies such as the Commission and there are no statutory or regulatory standing requirements applicable to the Commission in the declaratory ruling context, the Commission believes that the presence or absence of standing is a useful factor to consider in determining whether a ''controversy'' or ''uncertainty'' exists in a form sufficiently crystallized to warrant our consideration in the context of a declaratory ruling.

7. To establish standing in the context of federal appellate proceedings, a petitioner must satisfy a three-pronged test. That is, the petitioner must allege (1) A ''distinct and palpable'' personal injury-in-fact that is (2) ''fairly traceable'' to the respondent's conduct and (3) redressable by the relief requested. By analogy, in considering similar factors in the declaratory ruling context, the Commission's review of the pleadings indicates that WCC has not identified itself, its membership, or its interest in the Omnipoint application. Though WCC has alleged a general concern that the ''substantial use'' condition should be clarified to ''ensure that Omnipoint is in full compliance with the condition[ ] * * *, and that it is deserving of the substantial financial benefits attached to its license,'' it has not alleged how it personally would be injured if Omnipoint were not to comply with the ''substantial use'' condition. Its general allegations of potential harm to Omnipoint's competitors and to the U.S. Treasury are not distinct and palpable injuries personal to WCC.

8. In addition, although ripeness concerns addressed by federal courts in the context of Article III do not apply to agency declaratory rulings, concepts of ripeness can also provide a useful analogy in determining whether the Commission should exercise its discretion to issue declaratory rulings. The Commission concludes that this is not an appropriate case to issue such a ruling because the question of the extent to which technology must be deployed in order to satisfy the ''substantial use'' condition is not ripe for our consideration at this time and no unusual and compelling circumstances are present. A finding of ''substantial use'' entails a judgment of the degree and/or nature of deployment and use, which can be affected by the nature and extent of other technologies with which the pioneer's preference technology is entwined, the effect of market forces, the effect of ensuing technological advancements, and other factors. Such judgments are best made on a case-by-case basis. No precise formula for ''substantial use'' can productively be set forth at this time, and any effort to do so would only serve to delay unnecessarily the deployment and use of pioneer's preference technology. In the instant case, Omnipoint's broadband PCS system in the New York MTA is still under construction, and Omnipoint has until the five-year build-out date specified in its license authorization, December 13, 1999, to meet its build-out requirements. Therefore, the issue of substantial use is not yet ripe for Commission review.

9. Therefore, for these reasons, the Commission declines to exercise its discretion to issue a declaratory ruling here. Accordingly, *it is ordered* that the petition for declaratory ruling filed on

[1] The WCC petition is styled as a ''Petition for Clarification.'' Because the petition essentially asks the Commission to issue a declaratory ruling defining in greater detail the meaning and scope of the ''substantial use'' condition placed on pioneer's preference licenses, the Commission is treating it as a petition for declaratory ruling pursuant to 47 C.F.R. § 1.2.

January 16, 1996 by The Wireless Communications Council *is denied.*

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–22195 Filed 8–29–96; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 190, 191, 192 and 193

[Docket PS–125; [Amdt Nos. 190–7; 191–11; 192–77; 193–12]]

RIN 2137–AC28

Regulatory Reinvention Initiative: Pipeline Safety Program Procedures; Reporting Requirements; Gas Pipeline Standards; and Liquefied Natural Gas Facilities Standards; Correction

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Correction to final rule.

SUMMARY: This document contains corrections to final regulations Docket PS–125, which were published Monday, June 3, 1996 (61 FR 27789). The regulations made various changes to administrative practices in the pipeline safety program and made minor modifications to requirements for gas detection, protective enclosures, and pipeline testing temperatures.

EFFECTIVE DATE: July 3, 1996.

FOR FURTHER INFORMATION CONTACT: L.E. Herrick, (202) 366–5523 or online at herrickl@rspa.dot.gov regarding the subject matter of this correction, or the Dockets Unit, (202) 366–5046, regarding copies of this final rule or other information in the docket.

SUPPLEMENTARY INFORMATION:

Need for Correction

The final rule that is the subject of these corrections was published with several errors and omissions. The document did not contain the amendment numbers. A hidden formatting inconsistency from imported text resulted in the misprinting of some of the typographical symbols used to denote degrees. As a result some of the degree symbols were printed as the letter ''N'' instead of the symbol ''°''. And, the instructions for amending § 193.2907 ''Protective enclosure construction'' did not specify that (c) was to be removed.

Correction of Publication

Accordingly, the publication on June 3, 1996 of the final rule Docket PS–125, is corrected as follows:

1. On page 27789, in the Heading, the docket number reference ''[Docket PS–125; Notice 2'', is corrected to read: ''[Docket PS–125; Amdt. 190–7; 191–11; 192–77; 193–12]''.

2. On page 27791, in the first column, line 24, the temperature ''100NF'' is amended to read ''100°F''.

3. On page 27791, in the first column, last paragraph, the temperatures ''23NC'' and ''73NF'' in all three instances are amended to read ''23°C'' and ''73°F''.

4. On page 27791, in the second column second line, the temperature ''100NF'' is amended to read ''100°F''.

5. On page 27791, in the second column second paragraph, the temperature ''100NF'' is amended to read ''100°F''.

6. On page 27793, in the first column, last paragraph, the temperature ''100NF'' is amended to read ''100°F''.

7. On page 27793, in the second column paragraph 3, the instructions are amended by inserting the phrase ''and by removing paragraph (c)'' following the section designation (b). and by removing the five asterisks following the word ''opening''.

Issued in Washington, D.C. on August 22, 1996.

Kelley S. Coyner,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 96–22171 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–60–U