While it is preferable for carriers to memorialize such contracts in a written agreement, the parties here agree that there is no written agreement or any express contract between AT&T and Sprint PCS. Nevertheless, the law recognizes—as has the Commission—that an agreement may exist even absent an express contract. Turning to the question whether there was such an agreement here, we believe that it is an issue that should be resolved by the Court. We interpret the Court's primary jurisdiction referral as seeking our input on the federal communications law questions related to this dispute. Because the existence of a contract is a matter to be decided under state law, we defer to the court to answer this question.

We offer the court two important observations regarding the regulatory regimes applicable to both IXCs and CMRS carriers during the period in dispute. First, CMRS carriers have never operated under the same calling party's network pays (CPNP) compensation regime as wireline LECs. Under a CPNP regime, LECs are compensated for terminating calls by the carrier of the customer that originates the call, not by the customer receiving the call. In contrast, since the advent of commercial wireless service, and continuing today, CMRS carriers have charged their end users both to make and to receive calls. Until 1998, when Sprint PCS first approached AT&T and other IXCs about payment for terminating access service, all CMRS carriers recovered the cost of terminating long distance calls from their end users, and not from interexchange carriers.

Second, there is a benefit to customers of both IXCs and CMRS carriers when CMRS carriers terminate IXC traffic. Because both carriers charge their customers for the service they provide, it does not necessarily follow that IXCs receive a windfall in situations where no compensation is paid for access service provided by a CMRS carrier. Nor do we believe that terminating access charges to CMRS carriers are necessarily imputed in IXCs' retail rates. The fact that the industry practice for 15 years has been for CMRS carriers to recover costs from their end users, together with the highly competitive nature of the interexchange market, makes it unlikely that an IXC that does not pay access charges to CMRS carriers somehow ''overcharges'' its customers.

We need not address Sprint PCS's claims under sections 201(b) or 202(a) at this time. Until the court determines the respective obligations of the parties, in particular whether AT&T has any obligation to pay Sprint PCS under a contract, the Commission has no basis on which to assess whether AT&T is subject to sections 201(b) or 202(a) in these circumstances and, if so, whether its actions violate those statutory provisions.

In addition to questions presented by the district court regarding our present policy on CMRS access charges, the pleadings filed in response to the declaratory ruling petitions raise a number of issues that relate either to the prospective treatment of CMRS–IXC interconnection or to issues beyond the scope of those presented for Commission resolution in the primary jurisdiction referral. Our order today clarifies requirements under our *existing* rules. Suggestions for changes to those rules will be addressed in our pending *Intercarrier Compensation* proceeding. Our goal in the *Intercarrier Compensation* proceeding is to move toward a unified compensation regime that eliminates the opportunity for arbitrage due to different regulatory treatment of different types of traffic. At that time we will address CMRS carriers' requests to be placed on equal footing with wireline carriers, whether through bill-and-keep or some other compensation mechanism.

In the interim, IXCs and CMRS carriers remain free to negotiate the rates, terms and conditions under which they will exchange traffic. Given the mutual benefit that CMRS and IXC customers realize when CMRS carriers terminate calls from IXCs, we anticipate that these negotiations will be conducted in good faith and prove fruitful for both sets of carriers. To the extent that carriers encounter problems with this regime, we encourage them to raise any concerns in the pending *Intercarrier Compensation* proceeding so that we may consider those concerns in any future compensation regime we may adopt.

Accordingly, *it is ordered* that, pursuant to the authority contained in sections 4(i), 201, and 332 of the Communications Act, as amended, 47 U.S.C. 154(i), 201, and 332, and section 1.2 of the Commission's rules, 47 CFR 1.2, the Petitions for Declaratory Ruling filed by AT&T and Sprint PCS are *denied* to the extent set forth herein.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–19180 Filed 7–29–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WT Docket No. 99–168; FCC 02–204]

Service Rules for the 746–764 and 776–794 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule, petitions for reconsideration.

SUMMARY: This document responds to public safety concerns, in resolving two petitions for reconsideration filed in this proceeding. The document establishes mandatory coordination zones near public safety base stations, within which commercial base station operators will be required to coordinate their operations with public safety licensees. In adopting this document, the Commission intends to establish an anticipatory, rather than reactive, process for controlling interference to public safety operators in the upper 700 MHz band.

DATES: Effective July 30, 2002.

FOR FURTHER INFORMATION CONTACT: Stanley Wiggins, Attorney Advisor, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Memorandum Opinion and Order (MO&O) in WT Docket No. 99–168; FCC 02–204, adopted July 2, 2002, and released July 12, 2002. The complete text of this M O&O is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at *qualexint@aol.com.* Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by contacting Brian Millin at 202–418–7426, TTY 202–418–7365, or at *bmillin@fcc.gov.*

Synopsis of the Third Memorandum Opinion and Order

1. The Commission, in this Third Memorandum Opinion and Order (MO&O) continues its efforts to ensure the capabilities and responsiveness of both public safety and commercial wireless services in emergency situations. The MO&O responds to two petitions for reconsideration of the Second Memorandum Opinion and

Order (66 FR 4035, February 6, 2001) filed by the National Public Safety Telecommunications Council (NPSTC) and the Public Safety Wireless Network.

2. Specifically, the MO&O establishes ''mandatory coordination zones'' near public safety base stations, within which commercial base station operators will be required to coordinate their facility decisions with public safety licensees. This will establish an anticipatory, rather than reactive process for controlling interference to public safety operators in the upper 700 MHz band. The MO&O also reflects the Commission's interest in exploring measures that would approach the other side of the interference issue, providing for more robust public safety signals rather than simply constraining Commercial Mobile Radio Service (CMRS) signals.

3. NTPSC requests that the Commission restore the original 700 MHz band plan's limitation of commercial base stations to the lower band, and argues in favor of substantially more stringent out-of-band emission (OOBE) limits. The MO&O concludes that commercial base station transmitters should continue to be permitted in the upper band and that more stringent OOBE limits are not required to protect public safety operations. This discussion may be found in paragraphs 10 through 23 of the full text of the MO&O.

4. The Commission does, however, recognize the public safety community's concern over the substantially greater burdens of resolving, rather than preventing, instances of problematic interference. The Commission determines, therefore, that additional anticipatory protections should be adopted to minimize the possibility for base-to-base interference. The Commission, in the MO&O, thus establishes a ''mandatory coordination zone'' surrounding 700 MHz public safety base stations, and will require any commercial 700 MHz carrier to coordinate with the public safety community any base stations planned within that zone. If a commercial carrier has already begun operating a base station within the ''mandatory coordination zone'' of a future public safety base station, the carrier must coordinate the operation of its base station with the licensee of any such public safety base station and relocate or modify the CMRS base station if necessary. Details of the ''mandatory coordination zone'' may be found in paragraphs 17 through 19 of the MO&O and in the ''Rule Changes'' section of this summary.

5. NPTSC also recommends that the Commission adopt a position of ''zero tolerance of interference to public safety.'' The Commission, as discussed in paragraphs 24 through 27 of the MO&O, declines to revise the 700 MHz service rules to adopt a ''zero tolerance'' approach as a means for limiting the effects of out-of-band interference, because the present 700 MHz band service rules establish a much more stringently protected environment for public safety operations than the service rules applicable to other bands. The ''zero tolerance'' approach would replace the Commission's traditional reliance on actual interference as a basis for mitigation measures with an anticipatory standard that would be both overbroad in concept and imprecise in application.

6. Finally, the MO&O expresses the Commission's interest in exploring proposals to increase public safety signal strength levels in the upper 700 MHz band. As indicated in paragraph 30 of the MO&O, should the public safety community wish to consider revising public safety signal strength standards governing public safety operators in the Upper 700 MHz band, the Commission would be receptive to considering such proposals.

Administrative Matters

7. The MO&O adopts a coordination regulation which constitutes a ''third party contact'' burden as defined by the Paperwork Reduction Act of 1995. Section 213 of the Consolidated Appropriation Act, 2000 states that the Regulatory Flexibility Act (as well as certain provisions of the Contract with America Advancement Act of 1996 and the Paperwork Reduction Act of 1995) shall not apply to the rules and competitive bidding procedures governing the frequencies in the 746–806 MHz band (currently used for television broadcasts on channels 60–69). In particular, this exemption extends to the requirements imposed by Chapter 6 of Title 5, United States Code, Section 3 of the Small Business Act (15 U.S.C. 632) and section 3507 and 3512 of Title 44 United States Code. Consolidated Appropriations Act, 2000. Public Law 106–113, 113 Stat. 2502, Appendix E, section 213(a)(4)(A)–(B); *See* 145 Cong. Rec. H12493–94 (November 17, 1999); 47 U.S.C.A section 337, note at section 213(a)(4)(A)–(B).

8. *Authority.* This action is taken pursuant to Sections 1, 4(i), 7, 10, 201, 202, 208, 214, 301, 303, 307, 308, 309(j), 309(k), 310, 311, 315, 316, 317, 319, 324, 331, 332, 336, 337 and 614 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 208, 214, 301, 303, 307, 308, 309(j), 309(k), 310, 311, 315, 316, 317, 319, 324, 331, 332, 336, 337, and 534, and the Consolidated Appropriations Act, 2000, Public Law 106–113, 113 Stat. 1501, Section 213.

Ordering Clauses

9. Part 27 of the Commission's Rules is revised as set forth in the Rule Changes section of this summary, and, in accordance with Section 213 of the Consolidated Appropriations Act, 2000, Public Law 106–113, 113 Stat. 1501 (1999), these rules shall be effective July 30, 2002.

10. The Petitions for Reconsideration filed by the National Public Safety Telecommunications Council and the Public Safety Wireless Network are denied as indicated in this summary.

11. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this MO&O, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 27

Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, 47 CFR part 27 is amended to read as follows:

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

1. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

2. Section 27.303 is added to read as follows:

§ 27.303 Upper 700 MHz commercial and public safety coordination zone.

(a) *General.* CMRS operators are required, prior to commencing operations on fixed or base station transmitters on the 777–792 MHz band that are located within 500 meters of existing or planned public safety base station receivers, to submit a description of their proposed facility to a Commission-approved public safety coordinator.

(1) The description must include, at a minimum;

(i) The frequency or frequencies on which the facility will operate;

(ii) Antenna location and height;
(iii) Type of emission;
(iv) Effective radiated power;
(v) A description of the area served and the operator's name.

(2) It is the CMRS operator's responsibility to determine whether referral is required for stations constructed in its area of license. Public safety base stations are considered ''planned'' when public safety operators have notified, or initiated coordination with, a Commission-approved public safety coordinator.

(b) CMRS operators must wait at least 10 business days after submission of the required description before commencing operations on the referenced facility, or implementing modifications to an existing facility.

(c) The potential for harmful interference between the CMRS and public safety facilities will be evaluated by the public safety coordinator.

(1) With regard to existing public safety facilities, the coordinator's determination to disapprove a proposed CMRS facility (or modification) to be located within 500 meters of the public safety facilities will be presumed correct, but the CMRS operator may seek Commission review of such determinations. Pending Commission review, the CMRS operator will not activate the facility or implement proposed modifications.

(2) With regard to proposed public safety facilities, the coordinator's determination to disapprove a proposed CMRS facility (or modification) to be located within 500 meters of the public safety facilities will be presumed correct, but the CMRS operator may seek Commission review and, pending completion of review, operate the facility during construction of the public safety facilities. If coordination or Commission review has not been completed when the public safety facilities are ready to operate, the CMRS operator must cease operations pending completion of coordination or Commission review. Such interim operation of the CMRS facility within the coordination zone (or implementation of modifications) will not be relied on by the Commission in its subsequent review and determination of measures necessary to control interference, including relocation or modification of the CMRS facility.

(d) If, in the event of harmful interference between facilities located within 500 meters proximity, the parties are unable, with the involvement of the coordinator, to resolve the problem by mutually satisfactory arrangements, the Commission may impose restrictions on the operations of any of the parties involved.

[FR Doc. 02–19179 Filed 7–29–02; 8:45 am]
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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 95–31; FCC 02–192]

Reexamination of Comparative Standards for Noncommercial Educational Applicants

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petitions for further reconsideration.

SUMMARY: In this document the Commission denies petitions for further reconsideration of the rules and procedures used to compare reserved channel noncommercial educational (''NCE'') broadcast applicants. The Commission rejects suggestions that it adopt relatively small alterations to, or exemptions from, the current standards, finding that such changes are unwarranted. The effect of this document is to affirm the standards for comparing mutually exclusive NCE applicants on reserved channels.

FOR FURTHER INFORMATION CONTACT: Irene Bleiweiss, Media Bureau, (202) 418–2700, Internet address: *ibleiwei@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of a Memorandum Opinion and Second Order on Reconsideration adopted on June 27, 2002 and released on July 5, 2002. The Memorandum Opinion and Second Order is also available during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Washington, DC 20554, Room CY–B402. It also appears on the internet at www.fcc.gov/mb in the headlines section.

Synopsis

In February 2000 and April 2001 the Commission adopted new procedures for comparing mutually exclusive applications to construct noncommercial educational broadcast stations on channels reserved for such use. For FM and FM translator applications the procedures begin with a preliminary analysis of fair distribution of service (FM) or fill-in service (FM translator). If the preliminary analysis is not determinative, the applicants are compared using a point system, which selects the applicant receiving the highest score. The point system also is used to compare applicants for noncommercial educational television stations. The reserved channel selection rules are published at 47 CFR 73.7000 through 47 CFR 73.7005. The Memorandum Opinion and Second Order denies petitions for further reconsideration, leaving unchanged the reserved channel selection rules, related rules and procedures announced earlier in this proceeding. Specifically, the Commission declined to adopt a suggestion to count, in the reserved channel fair distribution of service analysis, certain longstanding NCE stations operating on nonreserved channels. Also unchanged is use of a June 4, 2001 ''look back'' date for all pending applicants in closed groups to establish their non-technical qualifications for the point system. The Commission rejected a suggestion that, without a change in the look back date, older organizations might qualify for points as ''established local applicants'' even if the organization existed only on paper. It has never been the Commission's intent to award such points to organizations engaged in virtually no activities in the community of interest. The Commission also affirmed its requirement that the organization itself, not only its governing board, must be local for two years to be considered ''established.'' Finally, the Commission declined to modify its rules concerning the applicability of attribution standards in NCE contexts.

Procedural Matters

This Memorandum Opinion and Second Order on Reconsideration promulgates no additional final rules, and we received no petitions for reconsideration of the Final Regulatory Flexibility Certification. Therefore, no additional Regulatory Flexibility Analysis is required by the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The previous final certification made in this proceeding remains unchanged. The actions taken in this Memorandum Opinion and Second Order on Reconsideration have been analyzed with respect to the Paperwork Reduction Act of 1995, and found to impose no new or modified reporting and recordkeeping requirements or burdens on the public.