and 1, 2, 4(c), 201, 202, 214, 301, 303, 307, 308 and 309, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(c), 201, 202, 214, 301, 303, 307, 308 and 309 that on December 6, 1999 Level 3 direct access to INTELSAT shall be available to carriers and users authorized to obtain INTELSAT space segment capacity for the provision of telecommunications services to and from the United States in accordance with the terms and conditions of this Report and Order and those established by INTELSAT to implement Level 3 direct access.

17. *It is further ordered* that, following publication in the **Federal Register** of this Report and Order, the International Bureau shall release a Public Notice requesting authorized carriers and users desiring to obtain Level 3 direct access to INTELSAT to so inform the Commission within 21 days of the release of the Public Notice.

18. *It is further ordered,* that, in its capacity as the U.S. Signatory to INTELSAT, and in accordance with procedures established by INTELSAT permitting ''blanket authorizations'' for Level 3 direct access, Comsat shall inform INTELSAT in writing within ten calendar days of receiving the information from the International Bureau that the identified authorized carriers and users responding to the Public Notice may obtain Level 3 direct access from INTELSAT on the effective date of this Report and Order, as provided in paragraphs 206 and 216, without further approval of the U.S. Signatory.

19. *It is further ordered,* that, authorized carriers and users, not identified as part of the initial ''blanket authorization'' sent to INTELSAT by Comsat, may request Comsat to request adding them to the list of named carriers and users eligible for Level 3 direct access and Comsat shall so inform INTELSAT within ten days of receiving each such subsequent request.

20. *It is further ordered,* that, within 60 days of publication in the **Federal Register** of this Report and Order, Comsat may file, on one day's notice, a tariff of the terms and conditions of the surcharge applicable to U.S. Level 3 direct access customers which shall be consistent with findings in the Report and Order.

21. *It is further ordered,* that, authorized carriers and users obtaining Level 3 direct access from INTELSAT shall pay Comsat the surcharge specified in Comsat's effective tariff that is applicable to the services obtained from INTELSAT.

22. *It is further ordered,* that, in its role as the U.S. Signatory, Comsat may establish reporting mechanisms with INTELSAT for the limited purpose of assuring that Comsat can identify the appropriate surcharge that U.S. direct access customers must pay Comsat upon receipt of service from INTELSAT under Level 3 direct access.

23. *It is further ordered,* that, Comsat's tariff may provide that failure to pay the appropriate surcharge will result in loss of a customer's Level 3 direct access privileges.

24. *It is further ordered,* that the Comsat Corporation MOTION TO STRIKE the *ex parte* filing submitted by counsel for the Satellite Users Coalition, IS DENIED.[5]

25. *It is further ordered,* that, the Commission's Office of Managing Director shall send a copy of this Report and Order, including Final Regulatory, Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

26. *It is further ordered,* that policies and requirements established in this Report and Order shall take effect December 6, 1999, or in accordance with the requirements of 5 U.S.C. 801(a)(3) and 44 U.S.C. 3507, whichever occurs later.

List of Subjects in 47 CFR Chapter 1

Communications common carriers, Telecommunications.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–26148 Filed 10–6–99; 8:45 am]

BILLING CODE 6712–01–P

[5] Comsat moves to strike the filing on September 9, 1999 by the Satellite Users Coalition giving notice of an *ex parte* presentation it made to Commission staff the previous day, prior to release of the Sunshine Notice. *See* Letter from Comsat Corporation to the Secretary, Federal Communications Commission, dated September 9, 1999. *See also* Opposition to Motion to Strike by Satellite Users Coalition, IB Docket No. 98–192, File No. 60–SAT–ISP–97 (Sept. 13, 1999). *See also* Comsat Reply to Opposition to Motion to Strike, IB Docket No. 98–192, File No. 60–SAT–ISP–97 (Sept. 14, 1999). Comsat contends that receipt of this required filing the following day, by staff not present at the September 8, 1999 meeting, constituted a violation of our *ex parte* rules which prohibits presentations to decision-makers on matters listed on the Commission's Agenda. *See* 47 CFR 1.1203(a). However, the oral and other information provided by the Satellite Users Coalition on September 8, 1999, was constructively available to all Commission decision-makers on that date. In addition, the Satellite Users Coalition was required to file this information for the public record by the end of the next day in accordance with Section 1.1206(b) of our rules. 47 CFR 1.1206(b). As a result, service on decision-makers not present at the September 8 meeting did not constitute a violation of Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 20 and 22

[WT Docket Nos. 98–205, 96–59, GN Docket No. 93–252; FCC 99–244]

1998 Biennial Regulatory Review—Spectrum Aggregation Limits for Wireless Telecommunications Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document completes the Commission's re-assessment of the 45 MHz Commercial Mobile Radio Service (CMRS) spectrum cap and cellular cross-interest rules initiated as part of our 1998 biennial review of the Commission's regulations pursuant to section 11 of the Communications Act. After careful analysis and extensive review of the rules and the record in this proceeding, the Commission concludes that at this time the spectrum cap and cellular cross-interest rules continue to be necessary to promote and protect competition in CMRS markets. However, the Commission finds that it is appropriate to modify both rules to allow some greater cross-ownership at this time. The Commission adopts a modest increase in the spectrum cap's current aggregation limit in rural areas to reflect the differing costs and benefits of limits on spectrum aggregation in rural areas, and a separate attribution benchmark of 40 percent for passive institutional investors. The Commission amends the cellular cross interest rule by increasing the attribution benchmarks used in the rule. Finally, as part of this proceeding, the Commission denied a petition to forbear from enforcement of the CMRS spectrum cap filed by the Cellular Telecommunications Industry Association (CTIA).

DATES: Effective November 8, 1999.

FOR FURTHER INFORMATION CONTACT: David Krech or Pieter van Leeuwen, Commercial Wireless Division, Wireless Telecommunications Bureau, (202) 418–0620.

SUPPLEMENTARY INFORMATION: This *Report and Order* in WT Docket Nos. 98–205, 96–59, GN Docket No. 93–252, adopted September 15, 1999, and released September 22, 1999, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 230, 1919 M Street N.W., Washington D.C. 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.

Synopsis of the Report and Order

I. Background

A. CMRS Spectrum Cap

1. *The CMRS Spectrum Cap*. Under the CMRS spectrum cap, ''[n]o licensee in the broadband PCS, cellular, or SMR services (including all parties under common control) regulated as CMRS [] shall have an attributable interest in a total of more than 45 MHz of licensed broadband PCS, cellular and SMR spectrum regulated as CMRS with significant overlap in any geographic area.'' 47 CFR 20.6(a). A ''significant overlap'' of a PCS licensed service area and CGSA(s) and SMR service area(s) occurs when at least ten percent of the population of the PCS licensed service area is within the cellular geographic service area and/or SMR service area(s). 47 CFR 20.6(b).

2. *History of the Spectrum Cap*. The CMRS spectrum cap was established in Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93–252, *Third Report and Order*, 59 FR 59945 (November 21, 1994) (*CMRS Third Report and Order*). Prior to the adoption of the CMRS spectrum cap, the Commission had imposed service-specific limitations on aggregation of broadband PCS spectrum and on cellular/PCS cross-ownership. In adopting a general, multiple service cap in addition to the PCS/cellular ownership rules, the Commission explained that an overall spectrum cap for CMRS would add certainty to the marketplace without sacrificing the benefits of pro-competitive and efficiency-enhancing aggregation. The Commission found that if licensees were to aggregate sufficient amounts of CMRS spectrum, it would be possible for them, unilaterally or in combination, to exclude efficient competitors, to reduce the quantity or quality of services provided, or to increase prices to the detriment of consumers. The Commission found that a 45 MHz cap provided a ''minimally intrusive means'' for ensuring that the mobile communications marketplace remained competitive and preserved incentives for efficiency and innovation. The Commission further clarified that certain business relationships could give rise to attributable ownership interests for purposes of the CMRS spectrum cap. Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93–252, Fourth Report and Order, 59 FR 61828 (December 2, 1994) (*CMRS Fourth Report and Order*).

3. In 1996, the Commission reaffirmed the basic tenets of the CMRS spectrum cap and provided additional economic rationale for its use. Amendment of parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap; Amendment of the Commission's Cellular/PCS Cross-Ownership Rule, WT Docket No. 96–59, GN Docket No. 90–314, *Report and Order*, 61 FR 33859 (July 1, 1996) (*CMRS Spectrum Cap Report and Order, recon. (BellSouth MO&O) aff'd. sub nom. BellSouth Corporation* v. *FCC*, 162 F.3d 1215 (D.C. Cir. 1999). The Commission found that such a spectrum cap would help ensure competition and would address concerns about potential anticompetitive behavior in CMRS markets. The Commission also reconsidered, but did not alter, the 20 percent ownership attribution standard. It did, however, adopt a four-pronged test under which it would review requests for waiver of the standard. The Commission also declined to alter the geographic attribution standard. In 1997, the Commission has also clarified that the CMRS spectrum cap is not limited to real-time, two-way switched telephone service, but covers a variety of services within the definition of CMRS. The D.C. Circuit affirmed this position, and declined to impose a distinction between voice and non-voice SMR in the context of spectrum acquisition. The court instead found the inclusion of all SMR spectrum in the cap, including those frequencies used to provide data services, to be reasonable. *BellSouth* v. *FCC*, 162 F.3d 1215 (1999).

B. Cellular Cross-Interest Rule

4. *The Rule*. 47 CFR 22.942 prohibits any person from having a direct or indirect ownership interest in licensees for both cellular channel blocks in overlapping CGSAs. A party with a controlling interest in a licensee for one cellular channel block may not have any direct or indirect ownership interest in the licensee for the other channel block in the same geographic area. A party may, however, have a direct or indirect ownership interest of five percent or less in the licensees for both channel blocks so long as neither of those interests is controlling. 47 CFR 22.942(a). Divestiture of interests as a result of an assignment of authorization or transfer of control must occur prior to the consummation of the transfer or assignment. 47 CFR 22.942(b).

5. *History of the Cellular Cross-Interest Rule*. The cellular cross-interest rule was adopted in 1991 in order to guarantee the competitive nature of the cellular industry and to foster the development of competing systems.

C. Notice of Proposed Rulemaking

6. In the Notice of Proposed Rulemaking in this proceeding, we sought comment initiated this re-evaluation of the CMRS spectrum cap as part of our 1998 biennial regulatory review. 1998 Biennial Regulatory Review—Spectrum Aggregation Limits for Wireless Telecommunications Carriers, WT Docket No. 98–205, *Notice of Proposed Rulemaking*, 63 FR 70727 (Dec. 22, 1998) (*NPRM*). The *NPRM* requested comment on whether the Commission should retain, modify or repeal the spectrum cap. Specific options set forth in the *NPRM* included: (1) Modification of the significant overlap threshold; (2) modification of the 45 MHz limitation; (3) modification of the ownership attribution thresholds; (4) forbearance from enforcing the spectrum cap; (5) sunsetting the spectrum cap; and (6) elimination of the spectrum cap. The NPRM also sought comment on whether to retain, modify, or repeal the cellular cross-interest rule. In addition, the NPRM incorporated a petition filed by CTIA on September 30, 1998, requesting that the Commission forbear from enforcing the CMRS spectrum cap pursuant to section 10 of the Communications Act. Twenty-five parties filed comments on the *NPRM*, and fifteen parties filed reply comments.

II. Report and Order

A. Assessment of the Need for the Spectrum Cap and Cellular Cross-Interest Rules

7. The Commission concludes that bright-line spectrum cap and cellular cross-interest rules remain necessary to serve the public interest at this time. The Commission also determines that both our spectrum cap and cellular cross-interest rules are appropriate and effective tools to be used in conjunction with our case-by-case reviews under 47 U.S.C. 310(d) as we evaluate proposed mergers and acquisitions.

1. Public Policy Objectives

8. The Commission's re-evaluation of the need for CMRS spectrum aggregation limits and cellular cross-interest limits is guided by four central principles. First, the operation of market forces generally better serves the public interest than regulation. As a general matter of principle, we prefer to place ultimate reliance on the market, rather than on regulation, to direct the course of development in the CMRS and other markets. Second, we intend to foster vigorous competition in all

telecommunications markets. In particular, we wish to ensure that there are no regulatory impediments to the evolution of wireless carriers into more effective competitors vis-à-vis the local wireline telephone companies. Third, we seek to secure the benefits of modern telecommunication services, including wireless services, for all areas of our Nation, including high-cost and rural areas. Finally, our regulations must promote, rather than impede, the introduction of innovative services and technological advances.

2. Current State of CMRS Competition and the Spectrum Cap

9. There is considerable evidence that competition is steadily growing in many CMRS markets. Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, *Fourth Report*, FCC 99–136 (rel. June 24, 1999) (*Fourth Annual CMRS Competition Report*). Commenters generally agree that considerable progress has been made in recent years toward more competitive CMRS markets. There is also general agreement that further progress toward competitive CMRS markets can be anticipated. Nevertheless, commenters remain sharply divided in their assessments of the current state of competition in these markets. Those favoring retention of a spectrum cap typically distinguish among the various wireless product markets and highlight barriers to entry over the near term, most notably, the need to secure spectrum rights before they can enter these markets. Commenters favoring elimination of the cap tend to define markets broadly, raise *de novo* entry prospects associated with future spectrum auctions, and predict dramatic changes from the adoption of third generation (3G) wireless network technologies, such as IMT–2000.

10. Although we agree that competition is increasing in CMRS markets, we find that there remain significant reasons to be concerned about the effects of undue concentration of CMRS spectrum. Even in major metropolitan markets, where numerous competitors are offering mobile voice services, in almost all markets the two cellular carriers still have in excess of 70 percent of the customers. In addition, the amount of CMRS spectrum is fixed, and the discipline of market forces is tempered by the reality that would-be market entrants must obtain spectrum rights, which in practical terms requires that they find willing sellers.

11. We also observe that, by and large, the current 45 MHz spectrum aggregation limit does not appear to be constraining carriers. Generally, PCS carriers have not yet deployed capacity up to the limits of their licensed capacity. In addition, very few cellular carriers have acquired spectrum up to the permissible limit. We also have received only a handful of waiver requests to exceed the cap. Consequently, at least for now, we determine that our spectrum cap rule has not significantly constrained carriers in their ability to provide service at low cost, deploy new services, or commit to innovation. Recognizing the speed with which the industry is changing and the biennial review mandate of the 1996 Act, however, we will revisit these issues as part of our year 2000 biennial review. We decline to adopt a sunset for either the spectrum cap or the cellular cross-interest rule at this time. As we discuss in this Order, competition in CMRS markets is changing rapidly. We do not believe that at this time we can accurately predict when it would be proper to eliminate either of these two rules. We believe it is more appropriate at this time to reassess the state of CMRS markets, and the continuing need for these rules, as part of our year 2000 biennial review.

3. Assessment of the State of CMRS Competition and the Effects of Possible Spectrum Consolidation

a. *Analytical Framework*. 12. In determining whether to eliminate, sunset, or modify the spectrum cap and cellular cross-interest rules we take into consideration several factors. One factor that must be considered is the ease or difficulty with which competitors can enter CMRS markets. Our assessment must also take into account the effect of the relevant rules on the long-term prospects for competition in CMRS markets. Finally, when evaluating the spectrum cap and cellular cross-interest rules, we must consider the potential risk of re-concentration in CMRS markets. We are particularly concerned about the possibility of coordinated behavior among CMRS carriers.

b. *Discussion*. 13. *Market Entry*. With respect to market entry, ''entry is * * * easy if entry would be timely, likely, and sufficient in its magnitude, character and scope to deter or counteract the competitive effects of concern.'' *Merger Guidelines* at § 3.0. In particular, we note that antitrust authorities ''will consider timely only those committed entry alternatives that can be achieved within two years from initial planning to significant market impact.'' *Merger Guidelines* at § 3.2. Because a license for use of government spectrum is required to provide CMRS, we must conclude that entry into CMRS markets is not ''easy.'' Markets function optimally only if one or more firms are able to enter a market or expand current production swiftly and effectively in response to the elevation of prices (or degradation of service) by one or more firms attempting to exercise market power. We believe that barriers to entry are significant, and that the current state of competition requires continued vigilance over at least the near term.

14. *Prospects for Long-Term Competition*. Turning to the second factor, long-term prospects for competition, there is little dispute in the record that considerable progress has been made toward the goal of promoting competition in CMRS markets, but many commenters question whether an adequate array of competitive options is now available to all of the nation's wireless consumers. The Commission has had prior occasion to point out the continuing need to promote competition and the entrance of new participants in the CMRS markets even after broadband licenses were awarded. Given the ongoing impediments to entry into broadband CMRS markets, we believe that our spectrum cap and cellular cross-interest rules continue to serve our competition goals.

15. Moreover, despite enormous progress in the past few years, the broadband PCS sector remains in the early stages of deployment. While many carriers are offering service now, facilities-based coverage often is provided only to a portion of a new carrier's potential market. Additionally, many licensees have yet to begin offering service at all, and some have yet to begin constructing their networks. In this regard, we find while our public interest standard and the Sherman and Clayton Acts can deal with potential rather than actual competition, the spectrum cap is a particularly effective way of addressing concerns related to the loss of potential competition.

16. Our concern that competition in CMRS markets is not fully developed is supported by the fact that, as conventional analyses of market concentration show, even the largest urban markets for mobile telephone services remain quite concentrated. We find persuasive the submissions by several commenters with data on market concentration in urban markets for mobile voice services. In addition, the Department of Justice (DOJ) recently found that market concentration in the fourteen markets in which SBC and Ameritech both control cellular licenses was in the range of 3200 to 4100, well

above the 1800 threshold at which the DOJ normally considers a market to be concentrated.

17. The data in the record indicate that in most of the nation's 200 largest markets the two cellular companies together have in excess of 70 percent of mobile phone subscribers. Given the limited deployment of PCS in less densely populated areas, one of these two firms, and in many cases both, likely command market shares in excess of 35 percent.

18. We are not persuaded by the arguments of commenters who urge elimination of the cap based on information other than market shares or concentration as evidence of the competitive nature of CMRS markets. However, the critical issue is whether these and other indicia of increased competition would be threatened by a reconsolidation of the industry. We agree with those commenters who contend that eliminating the spectrum cap at this time could pose such a threat, by enabling reconsolidation to occur.

19. Finally, while we agree with commenters who argue that the use of historical or contemporaneous data on market performance potentially understates the potential competitive impact of new entrants in a dynamic industry and overstates the risks of anticompetitive conduct, we remain concerned about the effects of possible consolidation of CMRS spectrum over the next two years. We are concerned that if we abandon our ownership rules at this time, the competitive success we have seen in these markets may be reversed.

20. *Reconsolidation.* Given the current levels of market concentration discussed above, we are particularly concerned that any reconsolidation in the CMRS markets would either ''potentially raise significant competitive concerns'' or ''create or enhance market power or facilitate its exercise.'' *Merger Guidelines* at §§ 1.51, 2.0. In mature industries, the typical indicia of market power being exercised would be curtailed usage, increased prices, or degraded service. Because of the dynamic nature of CMRS markets, however, we think it more likely that any exercise of market power would be evidenced by a slowing in the rate of growth of new customers and usage, prices falling less rapidly than would otherwise occur, or delays in the introduction of newer services.

21. In this regard, we reject the view of commenters who suggest that consolidation of CMRS markets to as few as three competitors would not adversely affect CMRS competition. We believe that significant benefits of competition are unlikely to be exhausted with the entry of a third carrier. First, the value of additional entry by fourth and fifth competitors need not be manifested solely through falling prices. The benefits of further entry may appear in the form of improved quality, product innovation, and product differentiation. Second, economic theory generally supports the view that additional entry, and the installation of additional capacity, will afford consumers additional benefits, whether through pricing or otherwise. We are persuaded that if mobile voice markets were to stabilize as three-firm oligopolies, recently observed price competition could be reduced or eliminated. Finally, we also draw upon our experience in other telecommunications markets, where consumers generally have benefited from their ability to choose from among more than three firms to obtain the services they desire.

22. We are also not persuaded that the existence of nationwide service and pricing plans substantially eliminates any concern that carriers would amass spectrum in an effort to extract monopoly rents. The fact that a major service provider may offer nationwide service and pricing plans does not, in our view, mean that we should be unconcerned about its level of spectrum accumulation in a particular market. To the contrary, we conclude that the control of excessive spectrum by any single market participant would be a matter of serious concern.

23. At this time, we also reject arguments by commenters for a more broadly defined product market. Consumers obtain mobile phone services principally from cellular, PCS and digital SMR carriers. While consumers may be considering other services as alternatives, no evidence was provided suggesting that these alternatives are capable of constraining competitive behavior in this product market. In the case of mobile voice telephone service, for example, no commenter furnished evidence that consumers perceive any particular alternative communication service as sufficiently interchangeable, such that it could impede a hypothetical monopolist of mobile voice services from profitably elevating prices—the standard test for defining a market. In particular, no evidence was submitted that consumers are switching between mobile voice telephone services and other services in response to changes in relative prices.

4. Benefits of Bright-Line Rules Over Alternative Regulatory Tools

a. *Benefits of Regulatory Certainty and Regulatory Efficiency* 24. By setting bright lines for permissible ownership interests, the spectrum cap and cross-ownership rules benefit the public, the telecommunications industry, and the Commission by providing regulatory certainty and facilitating more rapid processing of transactions. Providing regulatory certainty is particularly important in an environment in which there is likely to be widespread restructuring of CMRS spectrum holdings, for example, in apparent efforts to create national footprints or as the by-product of larger mergers within the telecommunications industry. We also agree with numerous commenters who assert that regulatory certainty is critical to providing the industry with incentives to make investments, including in new technologies such as 3G service. Moreover, we believe that continuing to provide bright-line guidance as to permissible ownership interests will assist CMRS service providers to structure their transactions and plan their investments efficiently, based on their knowledge of the relevant regulatory requirements. This, in turn, will facilitate obtaining financing for such transactions and investments.

25. Our bright-line rules also promote regulatory efficiency, both by speeding the processing of transfers of control and assignment of licenses and by conserving the resources of the Commission and of interested parties. Abandoning our spectrum cap and cross-interest rules inevitably would lengthen our review process. Given the rapid pace of developments in the telecommunications industry, we believe that any advantages that might accrue to market participants from individualized review of spectrum concentration are outweighed by the advantages to them of a shorter review period for their transactions. We note in that regard that any party that believes that an individualized analysis is appropriate in its case may request a waiver of our spectrum cap and cross-interest rules.

b. *Benefits of Preventing Spectrum Re-Concentration When 47 U.S.C. 310(d) Review is Not Available.* 26. We further conclude that the spectrum cap serves important public interest goals that are not covered by 47 U.S.C. 310(d) . The Commission does not have the opportunity to review under 47 U.S.C. 310(d) certain kinds of transactions that may result in re-concentration of spectrum. For example, our review authority under 47 U.S.C. 310(d) would

not extend to a transaction in which less-than-controlling interest in a licensee was transferred, even if the holder of one cellular license in a particular service area obtained a substantial interest in the other cellular block in that market. Such a transaction nonetheless could give rise to competitive concerns. Because certain types of transactions that may re-concentrate spectrum and reduce incentives to compete would not be reviewable under 47 U.S.C. 310(d), we disagree with commenters who suggest that 47 U.S.C. 310(d) is, by itself, an adequate substitute for our spectrum cap and cross-interest.

c. *Benefits for Ongoing Spectrum Management.* 27. We also conclude that bright-line rules are useful for the Commission's ongoing spectrum management purposes. For example, bright-line rules greatly expedite the assignment of spectrum using auctions. They are considerably less costly from a public interest perspective than attempting to decide on a case-by-case basis whether a particular bidder's acquisition of a certain amount of spectrum in a service area would result in undue spectrum concentration. Making that decision with respect to each bidder for a particular service area before the start of an auction would significantly and unnecessarily delay auctions. Even making the decision only with respect to auction winners could delay substantially the assignment of licenses and, if undue concentration were found, presumably would require an entire re-auction.

d. *Benefits Not Afforded By Antitrust Review.* 28. The availability on a case-by-case basis of antitrust review, which several commenters raise, does not change our conclusions as to the benefits of our spectrum cap and cross-interest rules. We note that we typically have conducted a competitive analysis as part of our public interest analysis under 47 U.S.C. 310(d), notwithstanding any independent antitrust review. The courts have acknowledged our authority to engage in such an analysis. We do not disagree with commenters that the availability of case-by-case antitrust review constitutes a valuable tool in furthering our competitive goals. We believe, however, that it is important for us to retain our ability to employ more than one regulatory tool, where necessary in the public interest, to protect and promote competition in those areas within our particular expertise, including spectrum mangement.

29. Moreover, for reasons related to resource constraints or procedural priorities, other agencies with antitrust authority may choose not to give detailed review to a particular merger that, from this Commission's perspective, may adversely affect competition in CMRS markets, or may otherwise be contrary to the public interest. Our spectrum cap and cross-interest rules were designed specifically for use in these markets. The spectrum cap rule, in particular, was expressly conceived to achieve long-term objectives that stressed the beneficial role of new entrants. By contrast, antitrust laws were written primarily to address concerns involving mergers that threaten to curtail actual competition.

e. *Benefits Not Afforded by Regulation of Market Behavior.* 30. Finally, we note that several commenters identified alternative regulatory tools that the Commission has at its disposal, in addition to its public interest authority under 47 U.S.C. 310(d). These include: (a) The Commission's build-out requirements; (b) resale obligations; (c) 47 U.S.C. 201 and 202; and (d) the Commission's complaint and enforcement procedures under 47 U.S.C. 208. We agree with these commenters to the extent that we recognize the importance of retaining our flexibility to employ a variety of regulatory tools where particular circumstances may make alternative approaches useful. We are not persuaded, however, that the alternatives suggested by commenters, individually or collectively, constitute an adequate substitute for our spectrum cap and cross-interest rules as efficient means for promoting and protecting competition in the CMRS sector. Indeed, the greater competition that the spectrum cap promotes makes reliance on those other, arguably more intrusive, regulatory tools, which focus principally on controlling licensees' market behavior, less necessary and less frequent. As a general matter, we believe the better approach is to have rules that promote competition and let competition regulate market behavior, rather than rely in the first instance on this Commission to directly regulate such behavior even if we have the legal authority to do so.

5. Public Interest Costs

31. Some parties argue that there are potential public interest costs associated with the use of the spectrum cap and cellular cross-ownership rules and that such costs warrant the elimination of those rules. We conclude, however, that we can address adequately the concerns raised by these parties by resetting the parameters of the cross-interest and the spectrum cap rules in certain markets, through future spectrum allocations, and by other means.

32. *New and Innovative Services.* Some parties claim that the current cap impairs the ability of wireless carriers to use existing spectrum to develop 3G and other advanced services, such as high-speed internet access. While these possibilities are a concern to us, we do not believe these claims provide a basis for lifting the spectrum cap at the present time. Initially, we note that the assertions in the record along these lines are very general and do not provide any concrete evidence regarding the amount of spectrum that will be needed for 3G technologies or exactly when carriers will need access to that spectrum. Our analysis shows that there are very few markets in which carriers have spectrum holdings that are approaching the cap, which suggests the cap is in most cases not a binding constraint, at least not at the present time. Moreover, as parties explain, there are numerous alternatives to CMRS spectrum that can be used to provide certain types of new services. We also note that no party has submitted an application for waiver to enable it to use additional spectrum to implement a business plan for the development of 3G services. (To the extent that a licensee can demonstrate that compliance with the spectrum cap limits its ability to implement 3G or other advanced services in a particular geographic area in an timely and efficient manner, we would consider grant of a waiver of the spectrum cap for that carrier in that geographic area.)

33. In addition, in our view any disincentives toward the development of new services that arguably may be caused by the current spectrum cap must be weighed against the disincentives toward the development of new services that would exist in a regulatory world without the current spectrum cap. Also, we believe that in many ways the spectrum cap rule has in fact encouraged innovations.

34. Finally, we expect to make available in the near future additional spectrum for the provision of 3G and other advanced wireless services. We will be initiating proceedings to allocate spectrum for those services. We believe it is more appropriate to address spectrum requirements for 3G and other advanced services in the context of a spectrum allocation proceeding than in this proceeding. In the allocation proceeding we will consider whether any newly allocated spectrum should be included in the cap. If we decide to include the newly allocated spectrum under the cap, we will determine in that proceeding how the cap should be adjusted to reflect that additional spectrum.

35. *Competition with Wireline Services.* We find that the record does not indicate the need to raise the spectrum cap to realize the potential of wireless service as a source of competition to wireline service. Although some parties argue that the spectrum cap deters investment in technologies that may compete with wireline offerings, we find that at least theorectically, it is equally plausible that the spectrum cap encourages that development of wireless services that can compete with wireline services. By guarding against the concentration of ownership in a market, the spectrum cap rule helps to ensure that a significant number of wireless licensees will compete in that market. We believe that the likelihood of at least one licensee focusing on wireless local loop service increases with the number of wireless licensees.

36. *Additional Efficiencies.* We find that there is no showing in the record that raising the cap would allow the realization of significant additional efficiencies. First, we note that the record indicates that few carriers have accumulated as much as 45 MHz of spectrum in any one market and that, in general, carriers with 45 MHz are not currently using their entire spectrum allocation. Second, we find that raising the spectrum cap would not necessarily result in significant improvement in allocation of resources because digitalization and other capacity-enhancing innovations have permitted more efficient allocation by carriers of existing spectrum under the cap.

B. Modifications to the Cellular Cross-Interest and Spectrum Cap Rules

1. Modifications to Cellular Cross-Interest Rule

We conclude that the cellular cross-interest rule is still necessary at this time, given the strong market position held by the two cellular carriers in virtually all markets. The two cellular carriers still have the vast majority of subscribers in all markets and are still the only providers of mobile telephone service in many markets. We recognize, however, that the cellular carriers' relative market position has diminished and continues to do so as PCS and digital SMR service providers initiate service in more areas of the country and attract more subscribers. We therefore will reassess the need for a separate cellular cross-interest rule as part of our year 2000 biennial review, by which time we expect that the market positions of the two cellular carriers and PCS and digital SMR service providers will have narrowed further.

38. We also find that it is necessary to maintain a separate cellular cross-interest rule, and not rely solely upon the spectrum cap. Reliance on the cap without the cellular cross-interest rule would allow a party to have an attributable interest in one of the cellular licensees, including control, and up to 20 percent equity ownership interest in the other cellular licensee in the same market. We find that such a high ownership interest by one cellular licensee in the other cellular licensee would pose a substantial threat to competition. It is also not appropriate for us to rely solely on the spectrum cap because we have today modified the spectrum cap to allow a licensee to have an attributable interest in up to 55 MHz in rural areas, defined as RSAs. Without a separate cross-interest rule, this new provision of the spectrum cap would allow a licensee to control both cellular licenses in an RSA.

39. Although CMRS markets are not yet sufficiently competitive to eliminate the cross-interest rule, we believe that given increased competition it is appropriate to relax the attribution benchmarks used in the rule. We amend the rule to allow a party with a controlling or otherwise attributable interest in one of the cellular licensees to have a non-controlling or otherwise non-attributable direct or indirect ownership of up to five percent in the other cellular licensee in the CGSA. We do not believe that such a cross-ownership limit would generally pose a significant threat to competition. We continue to insist that a party with a controlling interest in one cellular licensee in a CGSA may not have a controlling interest, no matter how small, in the other licensee in that market. Similarly, we amend the rule to allow a party to have a non-controlling or otherwise non-attributable direct or indirect ownership interest of up to 20 percent in both licensees in the same CGSA. We believe that given the trend towards more competitive markets, we can relax this attribution level and use the general attribution benchmark set out in the spectrum cap. We also amend the attribution rules relating to the cellular cross-interest rule to bring them in line with the spectrum cap attribution rules in certain other respects.

2. Modifications to Spectrum Cap Rule

a. *Overview.* 40. While we conclude that the spectrum cap should be retained, upon review of the record and re-evaluation of the various components of 47 CFR 20.6, we further conclude that some modifications of the spectrum cap are warranted. As an initial matter, we find that the cap should not generally be raised above 45 MHz. We conclude, however, that an exception should be made in rural areas, defined as RSAs, where a 55 MHz cap will provide additional benefits to the carriers and consumers without substantial risk of anticompetitive conduct. We also amend the attribution provisions of the rule to establish a separate benchmark of 40 percent for equity interests held by passive institutional investors. Finally, we adopt other changes to the rule to clarify which SMR spectrum comes under the cap and to clarify the divestiture provisions of the rule.

b. *Spectrum Aggregation Limit.* 41. We conclude that the spectrum aggregation limit should remain at 45 MHz in most areas. This limitation strikes an appropriate balance between the benefits of spectrum aggregation, and the risk of undue economic concentration in the CMRS markets. In 1996, the Commission set out the economic arguments why a 45-MHz aggregation limit strikes an appropriate balance between the concern about undue market concentration and the benefits of spectrum aggregation. No commenter has persuaded us that this economic analysis is not still valid. We further conclude that in major markets any alleged detriments of a 45 MHz spectrum cap cited by some commenters do not outweigh the benefits of a 45 MHz cap. We are not persuaded that the cap has constrained the ability of carriers to provide services.

42. Regarding the deployment of new, third-generation (3G) technologies, we will be initiating a proceeding in the near future to consider the allocation of spectrum for such services. However, some carriers assert that they have an immediate need to access additional existing CMRS spectrum to offer new services. Therefore, to the extent that a carrier can credibly demonstrate that in a particular geographic area the spectrum cap is currently having a significant adverse affect on its ability to provide 3G or other advanced services, we will consider granting a waiver of the cap for that geographic area. We urge carriers requesting waivers to clearly identify what additional services they would provide if the spectrum cap were waived, and why such services can not be provided without exceeding the cap. In evaluating a waiver request the Commission will also take into account any potential adverse affects of granting the waiver, such as diminution of competition, as well as the potential benefits from the provision of advanced mobile services.

43. We are also concerned that raising the cap to a higher level could lead to unacceptable concentration of these markets. Adoption of a 90 MHz cap could lead to a market with only two competitors, both with 90 MHz. That would, in essence, re-institute the cellular duopoly that the Commission sought to eliminate by establishing PCS. The introduction of new providers and the end of the cellular duopoly has led to substantial consumer benefits through reductions in the price of service and in new and enhanced services. We also reject suggestions to raise the cap to 70 MHz, which would allow the re-concentration of the market to three carriers. While a third competitor in a market provides benefits relative to a duopoly, such a market would still be highly concentrated, and would be less competitive than many markets are today. Even a 50 MHz cap or 55 MHz cap, while maintaining at least four competitors, could lead to excessive concentration in most markets.

44. We find, however, that the economics of serving rural areas are different, and adopt a 55 MHz aggregation limit for those areas. For purposes of the spectrum cap rule, we define rural areas as Rural Service Areas (RSAs). *See* 47 CFR 22.909(b). A 55 MHz aggregation limit in rural areas will permit carriers serving these areas to achieve economies of scope and will allow greater partnering between PCS and cellular in those areas, thereby helping to make competition in rural areas more vigorous. Such partnering may enable carriers to reduce roaming charges that rural subscribers now incur when traveling to urban areas, and when urban residents travel to rural areas. Partnering may also allow further deployment of PCS and other broadband services to rural areas. In addition, the economics of serving high-cost and low-density areas makes it is unreasonable to expect a large number of independent carriers to be viable. As a result, the opportunity cost of rural spectrum rights is likely near zero, and the risks of anticompetitive conduct by foreclosing entry through the monopolization of spectrum are low.

45. We decline to adopt a market-by-market approach. Although a market-by-market approach may have initial appeal there are potential difficulties in implementation, including determining the appropriate geographic area to use since each service uses different market areas.

c. *Attribution.* 46. In reviewing the attribution benchmarks used with the spectrum cap, we make several changes to clarify the rules and to increase the availability of capital to CMRS carriers. We note that the change in the aggregation limit to 55 MHz for rural areas adopted today will increase the availability of capital to CMRS carriers serving rural areas independent of the changes we make to the attribution rules.

47. *Control and Influence.* We decline to adopt a control standard because such a test does not take into account the variety of ways that an investor can exert influence or control over a licensee. An individual or firm does not need actual operational control over (or to be in the management) of a licensee in order to exert influence over that licensee. Further, our concerns about anticompetitive behavior are not limited to what influence the party may exert on the licensee, but also how another licensee may act in the market if it has a significant interest in one of the other providers in that market. A carrier may price its services differently if it has a substantial, yet non-controlling interest in another carrier in the same market. Under such circumstances, it may believe that it can recover some of the revenues it would otherwise lose by its actions through its partial ownership in the other carrier. That type of activity becomes even more fruitful to a carrier as its stake in the other carrier increases. Such actions would also restrict the competition between the two carriers and the resultant benefits to consumers from robust competition.

48. Another difficulty with use of a control test is the burden it would place on the Commission and industry. A control test would be highly inefficient and would not provide regulatory certainty. Under a control test, the Commission would have to engage in frequent case-by-case determinations of control that would be time-consuming, fact-specific, and subjective. We find that a bright-line attribution test avoids these administrative burdens.

49. Similarly, we decline to adopt an exception for insulated partners. Although the fact that a partner is insulated may have an effect on the ability of that partner to directly influence the licensee, it does not address our concerns regarding unilateral action by the limited partner.

50. We also will not adopt a single majority shareholder exception, but will maintain our test for waiving the attribution rules in situations where there is a single majority shareholder. The fact that there may be a single majority shareholder does not change the ability or motive for a party with a significant non-controlling interest to engage in anticompetitive behavior. We do recognize, however, that there may be instances in which a non-controlling interest in a licensee may not provide any incentive or ability for anticompetitive conduct. In 1996, the Commission adopted a four-pronged test to determine when the existence of a single majority shareholder mitigates the competitive impact of common ownership and the ability of the non-controlling interest holder to influence the licensee. 47 CFR 20.6 note 3. Under that test, if the non-controlling interest holder can show that there is an unaffiliated single majority shareholder, that the non-controlling interest holder has no ability to influence the licensee, and that it is not likely to act in an anticompetitive manner, the Commission may waive the attribution rules.

51. We also decline to adopt suggestions that we change the spectrum cap attribution rules to more closely conform to the broadcast attribution rules. Although the spectrum cap attribution rules find their roots in the broadcast attribution rules, they differ, in some respects, due to the different policy concerns that led to their adoption. The primary basis for the spectrum cap attribution rules is the Commission's concern with potential anticompetitive conduct by CMRS carriers. In broadcasting and cable, the Commission also has concerns regarding programming diversity. As a result, certain cross-ownership interests that may be acceptable in broadcasting are inappropriate for CMRS markets. For example, in the broadcast context, the Commission may be less concerned with significant non-controlling ownership when there is a single majority shareholder in charge of programming decisions. In a CMRS setting, the same situation with a non-controlling but significant owner may still be able to leverage its ownership to act anticompetitively in the market.

52. Additionally, we decline to accept suggestions that we modify the attribution rules with respect to directors. Directors, in general, may possess the ability and incentive to use their positions of authority and influence to coordinate behavior of the licensees on whose boards they sit, and can be a conduit to pass non-public information between the licensees on whose boards they sit. The record in this proceeding specifically addressing director attribution is thin and certainly is not sufficient to justify any generally-applicable relaxation of our attribution rules in that regard. We would consider granting a waiver, however, in a particular case if the specific circumstances of a directorship allay the concerns that we have identified.

53. Finally, we address ownership interests linked through partnerships. Any partnership can provide the means for one licensee to influence the actions of its partner in another market where both have interests. In particular, either partner could seize on the goals of their partner in one market to influence the actions of its partner in the other market to anticompetitive effect. Of course, not all partnerships will provide an opportunity for exercising such influence. Consequently, we believe that it is most appropriate to evaluate these ownership relationships on a case-by-case basis.

54. *Waiver Test.* The spectrum cap rule also includes a four-pronged test for waiving attribution for investors with non-controlling, minority interests where the licensee is controlled by a single majority shareholder or controlling general partner. *See* 47 CFR 20.6 note 3. In considering whether a petitioner has met the second prong of the test, we will examine actual competitive conditions in the relevant markets at issue to determine whether an interest holder is likely to affect the market in an anticompetitive manner. Regarding the third prong of the test, in a situation involving a limited partner, we will look to the criteria set forth in the Attribution Reconsideration Order, 50 FR 27438 (July 3, 1985), to determine whether the interest holder is involved in the licensee's operation and has the ability to influence the licensee on a regular basis.

55. *Passive Institutional Investors.* We find that allowing passive institutional investors to have a larger ownership interest in licensees should facilitate access to capital for licensees, and therefore we adopt a separate attribution benchmark for passive institutional investors. In connection with the broadcast and cable attribution rules, the Commission has found that passive institutional investors, such as banks or insurance companies, can have a greater interest in a licensee without incurring substantial risk that investors who should be counted for purpose of applying the ownership rules will avoid attribution. We establish the benchmark for passive institutional investors at 40 percent of the outstanding voting stock of a corporation.

56. *Trusts.* In reviewing the attribution rules used with the spectrum cap, we find it appropriate to adjust our rule regarding the use of trusts. In re-evaluating our attribution rules, we find that the beneficiary maintains an economic interest in the licensee, as well as potentially other interests in the same market. These overlapping interests could provide it with incentives to undertake actions that may impinge on competition in the relevant market, since its actions can affect the benefits it receives from the trust. Consequently, we will amend our attribution rules so that stock interests held in trust will be attributable to both the trustee and the beneficiary. We will grandfather any trust agreements that meet the requirements of the old rule that were in effect on September 14, 1999. For any trust agreements entered into beginning September 15, 1999, stock interests held in trust will be attributed to the trustee, grantor, and the beneficiary of the trust. Those interests will still be subject to the general attribution benchmark, so that if the stock interests in the trust are less than 20 percent of the stock of the company, they will not be attributable. We will still allow the use of trusts for the purpose of divesting an otherwise impermissible interest.

d. *Significant Overlap.* 57. We will not alter the 10 percent overlap threshold for the CMRS spectrum cap. The record does not show that a greater attribution threshold would not raise competitive concerns given our retention of an aggregation limit. We recognize, however, that there may be circumstances in which an overlap of 10 percent or greater would not raise competitive concerns, and may even facilitate the provision of new, enhanced or expanded services to consumers. To the extent that a party can show that in a particular context an overlap of 10 percent or greater would not adversely affect competition in the market at issue, we will consider a request for a limited waiver of the overlap threshold.

e. *SMR Spectrum Aggregation Limits.* 58. We find that the wording of 47 CFR 20.6(b) does not accurately reflect the Commission's intent in the CMRS Third Report and Order, and we will revise the language to clarify that the cap includes 800– and 900–MHz SMR spectrum combined. We are also revising 47 CFR 20.6(b) of our rules to provide that any discrete 800– or 900–MHz channel shall be counted only once per licensee within the relevant geographic area, even if the licensee in question uses the same channel at more than one location.

f. *Divestiture.* 59. We are adopting several changes to the rule to clarify the divestiture provision. First, we clarify that a licensee must divest sufficient attributable interests to maintain compliance with the spectrum cap prior to consummation of the transaction or final grant of the assignment that would give them an attributable interest in excess of the cap, unless they qualify for the additional ninety-day divestiture period. Second, we also clarify that a licensee need meet only one of the three conditions set out in the rule to qualify for the additional ninety-day divestiture period. Third, in conjunction with our changes to the attribution rules regarding the use of trusts, we clarify that a licensee may use a trust for divestiture purposes if the trust is of limited duration (six months or less) and the terms of the trust are approved by the Commission prior to the transfer of the assets to the trust. The applicant must not have any interest in or control of the trustee. The trust agreement must clearly state that there will be no communications with the trustee regarding the management or operation of the subject facilities, and must give the trustee authority to dispose of the license as the trustee sees fit. Consistent with 47 CFR 0.5(c), we delegate authority to the Wireless Telecommunications Bureau to review proposed trusts to ensure that they comply with our rules.

C. CTIA Forbearance

60. On September 30, 1998, the Cellular Telecommunications Industry Association filed a Petition for Forbearance. CTIA requests that the Commission use its authority under 47 U.S.C. 160 to forbear from applying 47 CFR 20.6. CTIA urges the Commission to rely upon a case-by-case determination of permissible levels of horizontal ownership as part of the 47 U.S.C. 310(d) license transfer review.

61. Upon review of the record in this proceeding, we find that enforcement of the spectrum cap continues to be in the public interest. Thus, we will not forbear from enforcement of the spectrum cap rule at this time. While CMRS markets are becoming more competitive, we do not find, for the reasons discussed above, that we can rely on market forces alone to constrain anticompetitive practices by CMRS carriers. The spectrum cap still plays an important role in protecting and promoting competition within CMRS markets, and ensuring that rates and practices of CMRS carriers are reasonable. We also do not find that reliance on case-by-case review under antitrust law and our authority under 47 U.S.C. 310(d) are an adequate substitute for the spectrum cap. Particularly under circumstances where a party is transferring unbuilt spectrum or a system that is not operational or lacks customers, antitrust review can be especially burdensome. Similarly, reliance on review under 47 U.S.C. 310(d) would not bring to the Commission's attention many cross-

ownership situations comprising less than control yet raising competitive concerns. Consequently, we find that the spectrum cap rule is necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory.

62. We find the spectrum cap is necessary for the protection of consumers. As we discuss above in addressing the first prong of 47 U.S.C. 160, we find the spectrum cap is necessary to ensure that carriers do not act in a manner that could lead to the imposition of unreasonable rates or practices. Although CMRS markets are growing increasingly more competitive as more carriers enter the market, we do not find we can rely solely on market forces to protect consumers. Thus, we find the spectrum cap serves a necessary purpose in protecting consumers by promoting and protecting competition.

63. We find the spectrum cap serves the public interest. As the D.C. Circuit Court recently recognized, ''[a] spectrum cap, unlike many other regulations, might actually require a bright-line rule to be effective.'' *BellSouth* v. *FCC,* 162 F.3d at 1225. A bright-line test provides both the Commission and industry with regulatory certainty in dealing with possible cross-ownership situations. As such, it reduces burdens placed on both the Commission and industry. It gives industry advance notice of which types of cross-ownership situations the Commission finds would be anticompetitive. Use of a case-by-case review would eventually lead to an understanding of which types of cross-ownership interests the Commission believes are anticompetitive, but would require the Commission and industry to expend significant resources in reviewing individual cross-ownership proposals before sufficient precedent would be set to establish the line. Under the spectrum cap rule, a party that believes its proposed cross-ownership interest would not be anticompetitive and would serve the public interest is still able to make its case to the Commission through a request for waiver of the cap. On balance, we find that our use of bright-line tools better serve the public interest than a case-by-case approach.

III. Other Issues

A. Third FNPRM in GN Docket 93–252

64. *Background.* In 1995, the Commission sought comment on whether the spectrum cap should be extended to all cellular, SMR, and broadband PCS providers regardless of whether they are classified as Private Mobile Radio Services (PMRS) or CMRS providers. Implementation of Sections 3(n) and 332 of the Communications Act—Regulatory Treatment of Mobile Services, GN Docket No. 93–252, *Third Further Notice of Proposed Rulemaking,* 60 FR 26861 (May 19, 1995). We find that such a rule change is unnecessary at this time. Under the definitions of CMRS and PMRS contained in the statute and our regulations, mobile service that is the functional equivalent of CMRS will be treated as CMRS. To the extent that a licensee provides service that is the functional equivalent of CMRS in the frequency bands included within the spectrum cap it will be treated as CMRS and thus subject to the cap. Therefore, we will not include PMRS under the spectrum cap.

B. Separate Cap for SMR

65. We decline to adopt a separate spectrum cap for SMR services using 800 MHz frequencies as suggested by Southern Communications Services. We find that the appropriate service(s) for a spectrum cap are all broadband CMRS, as CMRS carriers generally compete or have the potential to compete against each other. We can decide on a case-by-case basis under authority pursuant to 47 U.S.C. 310(d) whether a different market definition is appropriate in the context of a specific ownership situation.

C. Pending Petitions for Reconsideration

66. In the NPRM we stated our intent to consolidate in this proceeding certain spectrum-cap-related issues pending in other proceedings, and accordingly incorporated the records of those proceedings into this one. We therefore also consider here certain petitions for reconsideration which raise issues regarding the spectrum cap: (1) A petition for reconsideration of the *CMRS Third Report and Order* filed by SMR Won; (2) a petition for reconsideration of the *CMRS Fourth Report and Order* filed by McCaw Cellular; and, (3) petitions for reconsideration of the *CMRS Spectrum Cap Report and Order* filed by Omnipoint and Radiofone. In this *Report and Order* we have conducted a comprehensive review of the spectrum cap. For the reasons discussed herein, we find that the use of a spectrum aggregation limit for broadband CMRS services serves the public interest and advances the goals of the Commission including the promotion of competition, the protection of existing competition, and provision of new and enhanced services to consumers throughout the country. Given our thorough re-examination of the cap and our findings regarding its public interest benefit, we find the petitions for reconsideration to be moot and consequently dismiss them.

IV. Procedural Issues

A. Regulatory Flexibility Analysis

67. As required by the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (*NPRM*) in WT Docket No. 98–205. The Commission sought written comments on the proposals in the *NPRM,* including the IRFA. The Commission's Final Regulatory Flexibility Analysis for the Report and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996.

1. Need for and Purpose of the Action

68. The Report and Order in this docket concludes CMRS spectrum cap and cellular cross-interest rules continue to be appropriate and effective tools to promote and protect competition in CMRS markets. The recent and rapid growth of competition in these markets—resulting from Commission decisions to allocate spectrum for PCS and assign licenses subject to the spectrum cap (thereby assuring multiple providers in most markets)—has been a great success. The Commission finds that undue consolidation of CMRS ownership would jeopardize the continued realization of these benefits. The Commission concludes that the public interest is better served by the continued use of a bright-line test of spectrum ownership rather than by exclusive reliance on case-by-case review of proposed ownership arrangements. The Commission finds that it is not sufficient to rely solely on case-by-case review of CMRS transactions, whether through the Commission's transfer of control process under 47 U.S.C. 310(d) or antitrust review, to protect and promote competition in CMRS markets. Therefore, the Commission concludes that the spectrum cap and cellular cross-interest rules continue to play an important role in guiding the development of competition and services in CMRS markets.

69. Although the Commission concludes in the Report and Order that the spectrum cap and cellular cross-interest rules should be retained, it finds that the rules can be modified to allow certain additional cross-ownership interests without significantly

increasing the risk of undue market concentration or anticompetitive behavior by licensees. Consequently, in the Report and Order the Commission makes the following modifications to the spectrum cap and cellular cross-interest rules: (1) Adopts a 55 MHz spectrum aggregation limit for licensees serving rural areas, defined as Rural Service Areas (RSAs); (2) allows up to 40 percent investment for passive institutional investors (as opposed to 20 percent for other investors); and (3) amends the cellular cross-interest rule to allow a cellular investor to have a limited non-controlling interest in the other cellular license in the same market. Finally, the Commission states that it will reevaluate the continuing need for these rules as part of our year 2000 biennial review.

70. Finally, for the reasons outlined above, the Commission finds that enforcement of the spectrum cap continues to be in the public interest, and therefore denies a request to forbear from enforcing the spectrum cap filed by the Cellular Telecommunications Industry Association pursuant to 47 U.S.C. 160.

2. Issues Raised in Response to the IRFA

71. The Commission sought comment generally on the IRFA. No comments were submitted specifically in response to the IRFA.

3. Description and Estimates of the Number of Small Entities to Which the Rules Adopted in This Report and Order Will Apply

72. 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. 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.'' 5 U.S.C. 601(6). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(6). Nationwide, there are 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' 5 U.S.C. 601(5). As of 1992, there were 85,006 such jurisdictions in the United States.

73. In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under Section 3 of the Small Business Act. 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). 15 U.S.C. 632.

74. The rule changes adopted in this Report and Order will affect all small businesses that currently are or may become licensees of the broadband PCS, cellular and/or specialized mobile radio (SMR) services. The Commission estimates the following number of small entities may be affected by the proposed rule changes:

75. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons. 13 CFR 121.201. According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent *Trends in Telephone Service* data, 732 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data. *Trends in Telephone Service*, Table 19.3 (Feb. 19, 1999). We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 732 small cellular service carriers that may be affected by the policies adopted in this Report and Order.

76. *Broadband PCS.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

77. *SMR Licensees.* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined ''small entity'' in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. This definition of a ''small entity'' in the context of 900 MHz SMR has been approved by the SBA. Approval concerning 800 MHz SMR is being sought. The rules adopted in this Reconsideration may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. We assume, for purposes of this FRFA, that all of the extended implementation authorizations may be held by small entities, which may be affected by the policies adopted in this Report and Order.

78. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the rule adopted in this *Report and Order* includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of

525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. The Commission, however, has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of this FRFA, that all of the licenses may be awarded to small entities who, thus, may be affected by the decisions adopted in this Report and Order.

4. Reporting, Recordkeeping, and Other Compliance Requirements

79. The rules adopted in this Report and Order pose no additional reporting, record keeping or other compliance measures.

5. Steps Taken To Minimize Burdens on Small Entities and Significant Alternatives Considered

80. In the *Report and Order,* the Commission concludes that retention of the CMRS spectrum cap and cellular cross-interest rules serves the public interest. The Commission concludes that the benefits of these bright-line tests in addressing concerns about increased spectrum aggregation continue to make these approaches preferable to exclusive reliance on case-by-case review under section 310(d). By setting bright lines for permissible ownership interests, the rules benefit the public, the telecommunications industry and the Commission by providing regulatory certainty and facilitating more rapid processing of transactions.

81. The Commission finds that the CMRS spectrum cap and cellular cross-interest rule promote regulatory efficiency, both by speeding the processing of transfers of control and assignment of licenses and by conserving the resources of the Commission and of interested parties. Moving from the spectrum cap and cross-interest rules to case-by-case review inevitably would lengthen the review process. The Commission recognized the concerns raised by several commenters about the burdens on the resources of the Commission and of interested parties that are inherent in case-by-case determinations regarding permissible ownership structures. For example, case-by-case analysis is especially expensive and time-consuming for small businesses, which often do not have the requisite resources.

6. Report to Congress

82. The Commission shall send a copy of the Report and Order, including a copy of this Final Regulatory Flexibility Analysis, in a report to Congress pursuant to Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). In addition, the Commission shall send a copy of this Report and Order, including this Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Regulatory Flexibility Analysis will also be published in the **Federal Register**.

B. Paperwork Reduction Act Analysis

83. This Report and Order has been analyzed with respect to the Paperwork Reduction Act of 1995, Public Law No. 104–13, and does not contain any new or modified information collections subject to Office of Management and Budget review.

V. Ordering Clauses

84. Accordingly, *it is ordered* that, pursuant to sections 4(i), 11 and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161 and 332, this Report and Order is hereby *adopted,* and sections 20.6 and 22.942 of the Commission's Rules, 47 CFR 20.6, 22.942, *are amended* as set forth in Appendix B, effective November 8, 1999.

85. *It is further ordered* that, pursuant to sections 1, 2, 4, and 10 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154 and 160, the Petition for Forbearance filed by the Cellular Telecommunications Industry Association *is denied.*

86. *It is further ordered* that the Petition for Partial Reconsideration of the Third Report and Order in GN Docket No. 93–252 filed by SMR Won *is dismissed as moot* to the extent discussed herein.

87. *It is further ordered* that the Petition for Reconsideration of the Fourth Report and Order in GN Docket No. 93–252 filed by McCaw Comunications, Inc. is dismissed as moot.

88. *It is further ordered* that the Petition for Reconsideration of the Report and Order in WT Docket No. 96–59 filed by Omnipoint Corporation *is dismissed as moot.*

89. *It is further ordered* that the Petition for Reconsideration of the Report and Order in WT Docket No. 96–59 filed by Radiofone, Inc. *is dismissed as moot.*

90. *It is further ordered* pursuant to section 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c), and §§ 0.5(c), 0.131 and 0.331 of the Commission's rules, 47 CFR 0.5(c), 0.131, 0.331, the Chief of the Wireless Telecommunications Bureau *is granted delegated authority* to review and approve proposals to hold ownership interests in broadband Personal Communications Service, cellular, and Special Mobile Radio services licenses regulated as Commercial Mobile Radio Services in a trust to ensure that the trust complies with the Commission's rules.

91. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, *shall send* a copy of *this Report and Order,* including the final regulatory flexibility analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

List of Subjects

47 CFR Part 20

Communications common carrier.

47 CFR Part 22

Communications common carrier.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 20 and 22 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

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

47 U.S.C. 154, 160, 251–54, 303, and 332 unless otherwise noted.

2. Section 20.6 is revised to read as follows:

§ 20.6 CMRS spectrum aggregation limit.

(a) *Spectrum limitation.* No licensee in the broadband PCS, cellular, or SMR services (including all parties under common control) regulated as CMRS (see 47 CFR 20.9) shall have an attributable interest in a total of more than 45 MHz of licensed broadband PCS, cellular, and SMR spectrum regulated as CMRS with significant overlap in any geographic area, except that in Rural Service Areas (RSAs), as defined in 47 CFR 22.909, no licensee shall have an attributable interest in a total of more than 55 MHz of licensed broadband PCS, cellular, and SMR

spectrum regulated as CMRS with significant overlap in any RSA.

(b) *SMR spectrum*. To calculate the amount of attributable SMR spectrum for purposes of paragraph (a) of this section, an entity must count all 800 MHz and 900 MHz channels located at any SMR base station inside the geographic area (MTA or BTA) where there is significant overlap. All 800 MHz channels located on at least one of those identified base stations count as 50 kHz (25 kHz paired), and all 900 MHz channels located on at least one of those identified base stations count as 25 kHz (12.5 kHz paired); provided that any discrete 800 or 900 MHz channel shall be counted only once per licensee within the geographic area, even if the licensee in question utilizes the same channel at more than one location within the relevant geographic area. No more than 10 MHz of SMR spectrum in the 800 and 900 MHz SMR services will be attributed to an entity when determining compliance with the cap.

(c) *Significant overlap*. (1) For purposes of paragraph (a) of this section, significant overlap of a PCS licensed service area and CGSA(s) (as defined in § 22.911 of this chapter) or SMR service area(s) occurs when at least 10 percent of the population of the PCS licensed service area for the counties contained therein, as determined by the latest available decennial census figures as complied by the Bureau of the Census, is within the CGSA(s) and/or SMR service area(s).

(2) The Commission shall presume that an SMR service area covers less than 10 percent of the population of a PCS service area if none of the base stations of the SMR licensee are located within the PCS service area. For an SMR licensee's base stations that are located within a PCS service area, the channels licensed at those sites will be presumed to cover 10 percent of the population of the PCS service area, unless the licensee shows that its protected service contour for all of its base stations covers less than 10 percent of the population of the PCS service area.

(d) *Ownership attribution*. For purposes of paragraph (a) of this section, ownership and other interests in broadband PCS licensees, cellular licensees, or SMR licensees will be attributed to their holders pursuant to the following criteria:

(1) Controlling interest shall be attributable. Controlling interest means majority voting equity ownership, any general partnership interest, or any means of actual working control (including negative control) over the operation of the licensee, in whatever manner exercised.

(2) Partnership and other ownership interests and any stock interest amounting to 20 percent or more of the equity, or outstanding stock, or outstanding voting stock of a broadband PCS, cellular or SMR licensee shall be attributed, except that ownership will not be attributed unless the partnership and other ownership interests and any stock interest amount to at least 40 percent of the equity, or outstanding stock, or outstanding voting stock of a broadband PCS, cellular or SMR licensee if the ownership interest is held by a small business or a rural telephone company, as these terms are defined in § 1.2110 of this chapter or other related provisions of the Commission's rules, or if the ownership interest is held by an entity with a non-controlling equity interest in a broadband PCS licensee or applicant that is a small business.

(3) Investment companies, as defined in 15 U.S.C. 80a–3, insurance companies and banks holding stock through their trust departments in trust accounts will be considered to have an attributable interest only if they hold 40 percent or more of the outstanding voting stock of a corporate broadband PCS, cellular or SMR licensee, or if any of the officers or directors of the broadband PCS, cellular or SMR licensee are representatives of the investment company, insurance company or bank concerned. Holdings by a bank or insurance company will be aggregated if the bank or insurance company has any right to determine how the stock will be voted. Holdings by investment companies will be aggregated if under common management.

(4) Non-voting stock shall be attributed as an interest in the issuing entity if in excess of the amounts set forth in paragraph (d)(2) of this section.

(5) Debt and instruments such as warrants, convertible debentures, options, or other interests (except non-voting stock) with rights of conversion to voting interests shall not be attributed unless and until converted, except that this provision does not apply in determining whether an entity is a small business, a rural telephone company, or a business owned by minorities and/or women, as these terms are defined in § 1.2110 of this chapter or other related provisions of the Commission's rules.

(6) Limited partnership interests shall be attributed to limited partners and shall be calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses.

(7) Officers and directors of a broadband PCS licensee or applicant, cellular licensee, or SMR licensee shall be considered to have an attributable interest in the entity with which they are so associated. The officers and directors of an entity that controls a broadband PCS licensee or applicant, a cellular licensee, or an SMR licensee shall be considered to have an attributable interest in the broadband PCS licensee or applicant, cellular licensee, or SMR licensee.

(8) Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest. (For example, if A owns 20% of B, and B owns 40% of licensee C, then A's interest in licensee C would be 8%. If A owns 20% of B, and B owns 51% of licensee C, then A's interest in licensee C would be 20% because B's ownership of C exceeds 50%.)

(9) Any person who manages the operations of a broadband PCS, cellular, or SMR licensee pursuant to a management agreement shall be considered to have an attributable interest in such licensee if such person, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence,

(i) The nature or types of services offered by such licensee;

(ii) The terms upon which such services are offered; or

(iii) The prices charged for such services.

(10) Any licensee or its affiliate who enters into a joint marketing arrangements with a broadband PCS, cellular, or SMR licensee, or its affiliate shall be considered to have an attributable interest, if such licensee, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence,

(i) The nature or types of services offered by such licensee;

(ii) The terms upon which such services are offered; or

(iii) The prices charged for such services.

(e) *Divestiture*. (1) Divestiture of interests as a result of a transfer of control or assignment of authorization must occur prior to consummating the transfer or assignment, except that a licensee that meets the requirements set forth in paragraph (e)(2) of this section

shall have 90 days from final grant to come into compliance with the spectrum aggregation limit.

(2) An applicant with:

(i) Controlling or attributable ownership interests in broadband PCS, cellular, and/or SMR licenses where the geographic license areas cover 20 percent or less of the applicant's service area population;

(ii) Attributable interests in broadband PCS, cellular, and/or SMR licenses solely due to management agreements or joint marketing agreements; or

(iii) Non-controlling attributable interests in broadband PCS, cellular, and/or SMR licenses, regardless of the degree to which the geographic license areas cover the applicant's service area population, shall be eligible to have its application granted subject to a condition that the licensee shall come into compliance with the spectrum limitation set out in paragraph (a) within ninety (90) days after final grant. For purposes of this paragraph, a ''non-controlling attributable interest'' is one in which the holder has less than a fifty (50) percent voting interest and there is an unaffiliated single holder of a fifty (50) percent or greater voting interest.

(3) The applicant for a license that, if granted, would exceed the spectrum aggregation limitation in paragraph (a) of this section shall certify on its application that it and all parties to the application will come into compliance with this limitation. If such an applicant is a successful bidder in an auction, it must submit with its long-form application a signed statement describing its efforts to date and future plans to come into compliance with the spectrum aggregation limitation. A similar statement must also be included with any application for assignment of licenses or transfer of control that, if granted, would exceed the spectrum aggregation limit.

(4)(i) Parties holding controlling interests in broadband PCS, cellular, and/or SMR licensees that conflict with the attribution threshold or geographic overlap limitations set forth in this section will be considered to have come into compliance if they have submitted to the Commission an application for assignment of license or transfer of control of the conflicting licensee (see §§ 24.839 (PCS), 22.39 (cellular), and 90.158 of this chapter (SMR)) by which, if granted, such parties no longer would have an attributable interest in the conflicting license. Divestiture may be to an interim trustee if a buyer has not been secured in the required period of time, as long as the applicant has no interest in or control of the trustee, and the trustee may dispose of the license as it sees fit. Where parties to broadband PCS, cellular, or SMR applications hold less than controlling (but still attributable) interests in broadband PCS, cellular, or SMR licensee(s), they shall submit a certification that the applicant and all parties to the application have come into compliance with the limitations on spectrum aggregation set forth in this section.

(ii) Applicants that meet the requirements of paragraph (e)(2) of this section must tender to the Commission within ninety (90) days of final grant of the initial license, such an assignment or transfer application or, in the case of less than controlling (but still attributable) interests, a written certification that the applicant and all parties to the application have come into compliance with the limitations on spectrum aggregation set forth in this section. If no such transfer or assignment application or certification is tendered to the Commission within ninety (90) days of final grant of the initial license, the Commission may consider the certification and the divestiture statement to be material, bad faith misrepresentations and shall invoke the condition on the initial license or the assignment or transfer, cancelling or rescinding it automatically, shall retain all monies paid to the Commission, and, based on the facts presented, shall take any other action it may deem appropriate.

Note 1 to § 20.6: For purposes of the ownership attribution limit, all ownership interests in operations that serve at least 10 percent of the population of the PCS service area should be included in determining the extent of a PCS applicant's cellular or SMR ownership.

Note 2 to § 20.6: When a party owns an attributable interest in more than one cellular or SMR system that overlaps a PCS service area, the total population in the overlap area will apply on a cumulative basis.

Note 3 to § 20.6: Waivers of § 20.6(d) may be granted upon an affirmative showing:

(1) That the interest holder has less than a 50 percent voting interest in the licensee and there is an unaffiliated single holder of a 50 percent or greater voting interest;

(2) That the interest holder is not likely to affect the local market in an anticompetitive manner;

(3) That the interest holder is not involved in the operations of the licensee and does not have the ability to influence the licensee on a regular basis; and

(4) That grant of a waiver is in the public interest because the benefits to the public of common ownership outweigh any potential anticompetitive harm to the market.

PART 22—PUBLIC MOBILE SERVICES

3. The authority citation for part 22 continues to read as follows:

47 U.S.C. 154, 222, 303, 309, and 332.

4. Section 22.942 is revised to read as follows:

§ 22.942 Limitations on interests in licensees for both channel blocks in an area.

(a) *Controlling interests.* A licensee, an individual or entity that owns a controlling or otherwise attributable interest in a licensee, or an individual or entity that actually controls a licensee for one channel block in a CGSA may have an direct or indirect ownership interest of 5 percent or less in the licensee, an individual or entity that owns a controlling or otherwise attributable interest in a licensee, or an individual or entity that actually controls a licensee for the other channel block in an overlapping CGSA.

(b) *Non-controlling interests.* A direct or indirect non-attributable interest in both systems is excluded from the general rule prohibiting multiple ownership interests.

(c) *Divestiture.* Divestiture of interests as a result of a transfer of control or assignment of authorization must occur prior to consummating the transfer or assignment.

(d) *Ownership attribution.* For purposes of paragraphs (a) and (b) of this section, ownership and other interests cellular licensees will be attributed to their holders pursuant to the following criteria:

(1) Controlling interest shall be attributable. Controlling interest means majority voting equity ownership, any general partnership interest, or any means of actual working control (including negative control) over the operation of the licensee, in whatever manner exercised.

(2) Partnership and other ownership interests and any stock interest amounting to 20 percent or more of the equity, or outstanding stock, or outstanding voting stock of a cellular licensee shall be attributed.

(3) Non-voting stock shall be attributed as an interest in the issuing entity if in excess of the amounts set forth in paragraph (d)(2) of this section.

(4) Debt and instruments such as warrants, convertible debentures, options, or other interests (except non-voting stock) with rights of conversion to voting interests shall not be attributed unless and until converted.

(5) Limited partnership interests shall be attributed to limited partners and shall be calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses.

(6) Officers and directors of a cellular licensee shall be considered to have an

attributable interest in the entity with which they are so associated. The officers and directors of an entity that controls a cellular licensee shall be considered to have an attributable interest in the cellular licensee.

(7) Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest. (For example, if A owns 20% of B, and B owns 40% of licensee C, then A's interest in licensee C would be 8%. If A owns 20% of B, and B owns 51% of licensee C, then A's interest in licensee C would be 20% because B's ownership of C exceeds 50%.)

(8) Any person who manages the operations of a cellular licensee pursuant to a management agreement shall be considered to have an attributable interest in such licensee if such person, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence,

(i) The nature or types of services offered by such licensee;

(ii) The terms upon which such services are offered; or

(iii) The prices charged for such services.

(9) Any licensee or its affiliate who enters into a joint marketing arrangements with a cellular, licensee, or its affiliate shall be considered to have an attributable interest, if such licensee, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence,

(i) The nature or types of services offered by such licensee;

(ii) The terms upon which such services are offered; or

(iii) The prices charged for such services.

[FR Doc. 99–25704 Filed 10–6–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket 94–158; FCC 99–171]

Operator Services Providers and Call Aggregators

AGENCY: Federal Communications Commission.

ACTION: Final rule; establishment of effective date.

SUMMARY: This document establishes the effective date of the rule published on August 30, 1999 concerning a deadline to update inaccurate information posted on a public phone about the presubscribed provider of long-distance operator services at that location.

DATES: Section 64.703(c) of the Commission's rules published at 64 FR 47118 (August 30, 1999) concerning Operator Services Providers and Call Aggregators shall become effective November 8, 1999.

FOR FURTHER INFORMATION CONTACT: Adrien R. Auger, Enforcement Division, Common Carrier Bureau (202) 418–0960, or via the Internet at aauger@fcc.gov.

SUPPLEMENTARY INFORMATION: On July 12, 1999, the Commission amended its rules to require that the information that call aggregators must post on or near pay phones be updated as soon as practicable, but no later than 30 days from the time of a change of the presubscribed operator service provider. The new rule was adopted in order to ensure that consumers are timely provided with basic information they need to make informed choices among telecommunications operator services providers. A summary of this order was published in the **Federal Register**. *See* 64 FR 47118, August 30, 1999. Because § 64.703(c) imposes new information collection requirements, it could not become effective until approved by the Office of Management and Budget (OMB). We stated that the Commission would publish a document in the **Federal Register** announcing the effective date for the rule. On September 24, 1999, OMB approved the information collections contained in the rule. (See OMB No. 3060–0653). This publication satisfies our statement that the Commission would publish a document announcing the effective date of the rule.

List of Subjects in 47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 99–25974 Filed 10–6–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 092899G]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

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

ACTION: General category closure.

SUMMARY: NMFS has determined that the 1999 Atlantic bluefin tuna (BFT) coastwide General category quota will be attained by October 3, 1999. Therefore, the coastwide General category fishery will be closed effective 11:30 p.m. on October 3, 1999. This action is being taken to prevent overharvest of the coastwide General category quota of 644 metric tons (mt).

DATES: Effective 11:30 p.m. local time on October 3, 1999, through May 31, 2000.

FOR FURTHER INFORMATION CONTACT: Brad McHale or Pat Scida, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories. The General category landings quota, including time-period subquotas and the New York Bight set-aside, are specified annually as required under § 635.27(a)(1). The 1999 General category quota and effort control specifications were issued June 1, 1999 (64 FR 29806, June 3, 1999).

General Category Closure

NMFS is required, under § 635.28 (a)(1), to file with the Office of the Federal Register for publication notification of closure when a BFT quota is reached, or is projected to be