

and which played no role in defining the previous CGSA which was reinstated during the interim as a result of the Court's decision.

13. Following the *PetroCom* remand, the Commission has applied the 28 dBµV/m water formula as the applicable standard for Gulf carriers. This is consistent with its policy that, to the extent that Gulf carriers are allowed to serve up to the boundary of the GMSA, *i.e.*, the shoreline, they are permitted to operate at a height and power sufficient to provide reliable service at the shoreline. The use of the 39 dBµV/m field strength by Gulf carriers is inappropriate because it is clearly counter to data submitted to the Commission regarding the field strength necessary for reliable service by either land or water carriers. Indeed, carriers other than *PetroCom* have understood that the Gulf carriers were subject to the water formula. For example, *Bachow/Coastel*, the B-Block Gulf carrier, engineered its systems using the water formula as the applicable standard, and entered into agreements based on that formula.

B. "Hybrid" Formula Proposal

14. In the *Gulf Report and Order*, the Commission declined to adopt its proposal to create a Coastal Zone that would encompass coastal waters in both the Eastern and Western Gulf, and proposed to develop a "hybrid" propagation formula that would be used by both land-based and Gulf carriers to measure service area contours within the Coastal Zone. The Commission noted that the record reflected little support for a hybrid formula, and found that it would be difficult to establish a single formula that would accurately account for the variations in signal propagation over both land and water. The Commission finds no merit in *PetroCom*'s contention that the Commission erred in rejecting a hybrid approach in favor of retaining the two-formula approach. First, the proposal to create a hybrid formula was linked to the proposal to establish a Coastal Zone that could be served by both land and Gulf carriers, which the Commission ultimately did not adopt. Once the Commission decided to retain existing rules rather than establish a Coastal Zone in both the Eastern and Western Gulf, there was no longer a need to pursue development of a hybrid signal propagation formula as previously proposed. Second, the Commission rejects *PetroCom*'s contention that there was a sufficient record to justify, much less compel, adoption of a hybrid formula. Although there were indeed some commenters who supported use of

a hybrid formula, others did not. Moreover, few commenters actually proposed specific technical criteria for the development of such a formula, and the Commission found that those who did failed to provide the type of detailed technical analysis or supporting data (such as measurements) necessary to support their proposals. Given these and other factors, the Commission continues to believe that a hybrid formula would be very difficult to develop, and that the benefits of such a formula do not outweigh the costs and complications involved in establishing and employing one.

C. Regulatory Flexibility Act Requirements

15. *PetroCom* argues that the Commission violated the Regulatory Flexibility Act (RFA) because its Initial Regulatory Flexibility Analysis (IRFA) did not describe the potential impact on Gulf carriers of retaining the two-formula approach. *PetroCom* further argues that the Final Regulatory Flexibility Analysis (FRFA) in the *Gulf Report and Order* was flawed because it did not contain a description of the steps the Commission has taken to minimize the significant economic impact on the Gulf carriers of continuing to allow land carriers to utilize the land formula. *PetroCom* also contends that the Commission was required to include a statement in the FRFA why proposals for the use of "an equal strength rule" were rejected as alternatives.

16. The RFA requires that agencies evaluate the effect that new regulations will have on small business entities. 5 U.S.C. 601 *et seq.* When proposing a new rule, agencies must perform an IRFA discussing the proposed new rule's impact on small entities. Further, when adopting a final rule, the agency must also perform a FRFA. The Commission complied with these requirements. *PetroCom* incorrectly asserts that as part of the RFA process, the Commission was required to analyze the effects that retaining existing rules would have on small entities. The Commission's decision to continue applying existing rules was not a new undertaking that falls under the provisions of the RFA. Instead, after reviewing alternatives, the Commission determined that, in light of the difficulties of adopting a single formula that would apply in all cases, the existing regulatory environment should be retained because of the flexibility provided by the Commission's rules for parties to enter into agreements that would allow carriers to choose for themselves which operating parameters

to apply. This decision did not require additional discussion in the FRFA.

D. *PetroCom* Co-location Applications

17. In December 1992, the Commission began accepting Phase II applications for unserved area licenses in the GMSA. However, following the *PetroCom* remand, the Commission suspended processing of these applications pending reconsideration of the Commission's policies in the Gulf region. Similarly, the Commission ceased processing *de minimis* extension requests along the Gulf coast due to uncertainty regarding the rules for the GMSA. In the *Gulf Report and Order*, the Commission dismissed all pending Phase II applications and extension requests (as well as associated petitions to deny). The Commission reasoned that in light of length of time since the applications had been filed, the fairest and most efficient resolution was to dismiss all pending applications and allow the carriers to reapply. In dismissing all pending Phase II and *de minimis* extension applications, however, the Commission erroneously dismissed a number of *PetroCom*'s applications that were filed pursuant to agreements to co-license sites on land in markets adjacent to the Gulf of Mexico. A major goal of the *Gulf Report and Order* was to encourage parties to reach negotiated solutions to issues such as coverage, capture, and roaming rates. The policies set out in the *Gulf Report and Order* were also aimed at ensuring that existing contractual relationships are not disturbed. The dismissal of *PetroCom*'s applications based on negotiated co-location agreements runs counter to that goal. Accordingly, the Commission reinstates the applications cited in *PetroCom*'s petition to pending status.

E. Clarification Regarding Extensions Into the GMEZ

18. In the *Gulf Report and Order*, the Commission gave the Gulf carriers full flexibility to build, relocate, modify, and remove offshore facilities throughout the GMEZ without seeking prior Commission approval or facing competing applications. Further, the Commission chose not to allow land carriers to make *de minimis* extensions into unserved areas of the GMEZ. The Commission agrees with *PetroCom* that the Commission's rules as currently worded may cause some confusion. Accordingly, the Commission clarifies that land-based carriers are precluded from extending their SABs into any part of the GMEZ, whether served by the applicable Gulf carrier or not, without