

the Gulf carrier's consent, and amends rule § 22.912 to reflect this fact.

#### *F. Clarification of Phase II Licensing in the GMSA*

19. The Commission also clarifies, on its own motion, the wording of § 22.911(a)(2) to remove confusion. In the *Gulf Report and Order*, the Commission amended § 22.911(a)(2) in order to reflect that areas of the GMCZ would be subject to Phase II licensing and open to all carriers. However, § 22.911(a)(2) in its current form may be misread as applying only to the two original Gulf (GMEZ) carriers. The Commission therefore clarifies that the rule applies to all cell sites actually located in the GMSA (whether in the GMEZ or GMCZ), and not just to GMEZ carriers.

#### *G. Grandfathering of Existing Gulf Carrier Operating Parameters*

20. PetroCom argues that it was material error for the Commission not to address an *ex parte* request made by PetroCom in October 2001, proposing that the Commission adopt a grandfathering rule that preserves the current operating parameters of all facilities that existed as of April 17, 1997. PetroCom argues that current operating parameters means the use of 32 dBµV/m contours as calculated using the land formula at the coastline. According to this proposal, all operating parameters, including contour extensions that cross the coastline boundary, would be grandfathered using the land formula. PetroCom's proposal would allow a carrier to modify or construct a new site as long as any new cross-boundary extensions (also calculated using the land formula) remain within the extension of the originally grandfathered contour.

21. The Commission declines to reconsider the grandfathering of existing cellular facilities as proposed by PetroCom. The *Gulf Report and Order* did not affect any existing operating parameters, including the use of the land formula by Gulf carriers or cross-boundary contours, that might have resulted from such agreements. However, while the Commission grandfathered such existing operations, it did not grant carriers, either land carrier or Gulf carrier, a permanent right to encroach across the coastline boundary or the right to Gulf carriers to calculate contours using the land formula in the absence of agreements permitting them to do so. As previously discussed, the use of the land formula by Gulf carriers has never been the *status quo* for the Gulf carriers. Instead, the Gulf carriers are required to operate

using the water formula, absent an agreement with the applicable land carrier.

#### *H. Market Boundaries of Personal Communications Service (PCS) Licensees Adjacent to the Gulf of Mexico Are Co-extensive With County Boundaries*

22. The Commission found in the *Gulf Report and Order* that it was in the public interest to allow land-based CMRS carriers to extend their coverage offshore, both to increase coverage and service quality for land-based customers along the coastline and to offer service to coastal boating traffic. The Commission further noted that the geographic service area definitions used for most non-cellular CMRS services—including those for PCS—are based on county boundaries, which typically extend over water pursuant to state law. Accordingly, the *Gulf Report and Order* clarified that such Commission licensing areas are co-extensive with the county boundaries on which they are based. The Commission also stated that licensees could provide service extending beyond county boundaries and into the Gulf on a secondary basis so long as they comply with the technical limitations applicable to the radio service and do not cause co-channel or adjacent channel interference to others.

23. VoiceStream Wireless Corp. (VoiceStream) argues that the *Gulf Report and Order* erroneously reduced the rights of existing PCS licensees along the Gulf coast to provide service extending out into the Gulf. VoiceStream and other commenters assert that by defining PCS licensing areas as co-extensive with county boundaries, allowing carriers to provide service in the Gulf beyond county boundaries only on a secondary basis, and leaving open the possibility of licensing separate PCS markets in the Gulf at a later date, the *Gulf Report and Order* has arbitrarily reduced the rights of existing PCS licensees. VoiceStream contends that PCS licensees bordering the Gulf should be expressly authorized to serve the entire Gulf area on a primary basis, and that the Commission should be precluded from establishing a separate PCS licensing area for the Gulf. Alternatively, VoiceStream requests that if the Commission concludes that PCS licensing areas along the Gulf coast are limited to county boundaries, the Commission should redefine the market area boundaries of PCS licensees extending into the Gulf based on the federally-defined Exclusive Economic Zone (EEZ) which extends 200 nautical miles into the Gulf of Mexico.

24. The Commission has clearly stated in its rules and proceedings that PCS is licensed using Major Trading Areas (MTAs) and Basic Trading Areas (BTAs), as defined in the Rand McNally Commercial Atlas and Marketing Guide. See Rand McNally, *1992 Commercial Atlas & Marketing Guide*, 123rd Edition, 1992 (Rand McNally). Similarly, the PCS technical rules regarding field strength limits at licensing area borders do not entitle licensees to extend service on a primary basis beyond the licensing areas specified on their authorizations. Nothing in the Commission's rules indicates that carriers may serve areas outside of their markets on a primary basis simply because there is no adjacent licensee. To the contrary, the Commission's rules state that the holding of an authorization does not create any rights beyond the terms, conditions and period specified in the authorization. The Commission rejects the argument that its conclusions represent a "reduction" in the rights of PCS licensees, because primary rights to serve the Gulf beyond county boundaries were never granted as part of those licenses. The Commission also rejects the argument that it should grant land-based PCS licensees primary rights to serve the Gulf because PCS bidders allegedly relied on the lack of a separate PCS Gulf licensee in setting their bids. The Commission previously rejected a similar argument that bidders for Multipoint Distribution Service licenses along the Gulf coast could reasonably assume that there was no prospect of future licensing of the service in the Gulf. See Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico, *Notice of Proposed Rulemaking*, WT Docket No. 02-68, RM-9718, 67 FR 35083 (May 17, 2002). Finally, the Commission sees no basis to adopt VoiceStream's request that the Commission change the geographic market definitions in PCS to extend existing Gulf coast markets 200 nautical miles into the Gulf based on the federally-defined Exclusive Economic Zone. The Commission adopted the specific market areas for PCS in 1993 after much debate over which type of service area is the most appropriate, and has repeatedly affirmed its decision to use such market areas on reconsideration.

### **III. Procedural Matters**

#### *A. Supplemental FRFA Certification*

25. The RFA requires that a regulatory flexibility analysis be prepared for