

competitive bidding, consistent with the above discussion, the Commission finds no need to give such pioneers an advantage over similarly situated small businesses. The Commission notes that in the *Further Notice* it proposed that if an entity receiving a pioneer's preference would be eligible for installment payments in the auction for that service, the entity could pay for its pioneer's preference license in installments under comparable terms and conditions to similarly situated licenses over a period not to exceed five years. The Commission finds this proposal adequate to address Omnipoint's concerns and adopts it, while rejecting Omnipoint's deferred payment proposal.

16. No comments were filed with respect to the other proposals in the *Further Notice*. Because they are in the public interest and promote the goals of the pioneer's preference program and the GATT legislation, the Commission adopts them. Specifically, with respect to peer review, it provides an opportunity for review and verification of pioneer's preference requests by experts who are not Commission employees. It delegates to the Chief, OET the authority to select, in appropriate cases on his/her own initiative or upon request by a preference applicant or other interested person, a panel of experts consisting of persons who are knowledgeable about the specific technology set forth in a pioneer's preference request and who are neither employed by the Commission nor by any applicant seeking a pioneer's preference in the same or similar communications service. It concludes that the best interpretation of Section 309(j)(13)(D)(i)'s conflict-of-interest language provides that there must be an opportunity for review and verification by experts who are neither employees of the Commission nor employees of any applicant seeking a pioneer's preference. These panels will generally be granted a period of up to 90 days, but no more than 180 days, to present their findings to the Commission.

17. With respect to implementing the unjust enrichment provisions in section 309(j)(13)(D)(ii), the Commission is requiring that to qualify for a pioneer's preference in services in which licenses are awarded by competitive bidding, an applicant—in addition to meeting the other pioneer's preference requirements—must demonstrate that the Commission's public rulemaking process inhibits it from capturing the economic rewards of its innovation unless it is granted a pioneer's preference license. The applicant must

show that it may lose its intellectual property protection because of the Commission's public process; that the damage to its intellectual property is likely to be more significant than in other contexts, such as the patent process; and that the guarantee of a license is a significant factor in its ability to capture the rewards from its innovation. Such a showing must accompany the pioneer's preference request even if the Commission has not yet determined that the particular service for which a preference is sought will be subject to competitive bidding.

18. As proposed in the *Further Notice*, pioneer's preference awards will be limited to services that require a spectrum allocation. However, the Commission notes that an entity that develops a new technology that may be used in an existing service may be able to reap significant financial benefits by patenting that technology or by selling equipment that uses that technology.

19. Pursuant to authority in section 4(i), in conjunction with sections 1, 303(r), 307, and 309 of the Communications Act, the Commission finds that it is in the public interest and in furtherance of its pioneer's preference policy in an auction environment to apply the rules adopted herein to pending pioneer's preference proceedings that have not reached the tentative decision stage. Parties with pending pioneer's preference applications on file with the Commission will have 30 days from the effective date of the rules adopted herein to amend their applications to bring them into conformance with these rules and the rules adopted in the Second Report and Order in this proceeding. Failure to timely amend a pending pioneer's preference request will result in the dismissal of the request.

20. In the Second Report and Order, the Commission stated that while the payment mechanism in the GATT legislation does not apply to pioneer's preference requests accepted for filing on or before September 1, 1994, nevertheless—pursuant to section 4(i) and other provisions of the Communications Act—license charges would be imposed on any pioneer's preference license granted in proceedings in which no tentative decision had yet been made, even if the requests in such proceedings were accepted for filing on or before that date. In addition, prior to enactment of the GATT legislation, the Commission amended the rules (also pursuant to Section 4(i)) to impose charges on any pioneer's preference licenses granted as a result of the three pioneer's preference

proceedings in which only tentative decisions had been made prior to the initiation of this pioneer's preference review rulemaking.

21. The Commission now concludes, on further analysis, that the payment requirements in subsections 309(j)(13)(B), (C) and (E) of the Communications Act, which were enacted by the GATT legislation, apply to pioneer's preference requests regardless to any licenses issued on or after August 1, 1994, regardless of when the pioneer's preference requests were accepted for filing. The September 1, 1994 date applies only to the regulations required by subsection 309(j)(13)(D). Accordingly, the Commission determines that, while the new regulations prescribed here (regarding criteria, peer review and unjust enrichment), pursuant to subsection 309(j)(13)(D), will not apply in the proceedings in which tentative decisions have been made, the payment provisions of the GATT legislation will apply to any and all licenses ultimately issued in the future resulting from a pioneer's preference, including any license based on a preference granted in CC Docket No. 92-297 (28 GHz Local Multipoint Distribution Service proceeding).

22. Finally, pursuant to the GATT legislation, the Commission will terminate the pioneer's preference program on September 30, 1998.

23. Accordingly, it is ordered that Parts 0 and 1 of the Commission's Rules are amended as specified below, effective 60 days after publication in the **Federal Register**. This action is taken pursuant to Sections 4(i), 7(a), 303(c), 303(f), 303(g), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 157(a), 303(c), 303(f), 303(g), 303(r), and 309(j).

#### **List of Subjects**

##### *47 CFR Part 0*

Organization and functions  
(Government agencies).

##### *47 CFR Part 1*

Administrative practice and procedure.

Federal Communications Commission

**William F. Caton,**  
*Acting Secretary.*

#### **Amendatory Text**

Parts 0 and 1 of chapter I of title 47 of the Code of Federal Regulations are amended as follows: