street address, and telephone number of at least one attorney of record. Parties not represented by an attorney that file comments and replies in electronic form shall provide their name, street address, and telephone number.

14. Section 1.429 is amended by revising paragraphs (d), (e), (f), (g) and (h) to read as follows:

§ 1.429 Petitions for reconsideration.

* * * * *

(d) The petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of such action, as that date is defined in § 1.4(b). No supplement to a petition for reconsideration filed after expiration of the 30 day period will be considered, except upon leave granted pursuant to a separate pleading stating the grounds for acceptance of the supplement. The petition for reconsideration shall not exceed 25 double-spaced typewritten pages. See also § 1.49(f).

(e) Except as provided in § 1.420(f), petitions for reconsideration need not be served on parties to the proceeding. (However, where the number of parties is relatively small, the Commission encourages the service of petitions for reconsideration and other pleadings, and agreements among parties to exchange copies of pleadings. See also § 1.47(d) regarding electronic service of documents.) When a petition for reconsideration is timely filed in proper form, public notice of its filing is published in the **Federal Register**. The time for filing oppositions to the petition runs from the date of public notice. See § 1.4(b).

(f) Oppositions to a petition for reconsideration shall be filed within 15 days after the date of public notice of the petition's filing and need be served only on the person who filed the petition. See also § 1.49(d). Oppositions shall not exceed 25 double-spaced typewritten pages. See § 1.49(f).

(g) Replies to an opposition shall be filed within 10 days after the time for filing oppositions has expired and need be served only on the person who filed the opposition. Replies shall not exceed 10 double-spaced typewritten pages. See also § 1.49(d) and § 1.49(f).

(h) Petitions for reconsideration, oppositions and replies shall conform to the requirements of §§ 1.49 and 1.52, except that they need not be verified. Except as provided in § 1.420(e), an original and 11 copies shall be submitted to the Secretary, Federal Communications Commission, Washington, D.C. 20554. Parties filing in electronic form need only submit one copy.

* * * * *

15. Section 1.1206 is amended by revising paragraphs (b)(1) and (b)(2) preceeding Note 1 to read as follows:

§ 1.1206 Permit-but-disclose proceedings.

* * * * *

(b) * * *

(1) *Written presentations.* A person who makes a written ex parte presentation subject to this section shall, no later than the next business day after the presentation, submit two copies of the presentation to the Commission's secretary under separate cover for inclusion in the public record. The presentation (and cover letter) shall clearly identify the proceeding to which it relates, including the docket number, if any, shall indicate that two copies have been submitted to the Secretary, and must be labeled as an ex parte presentation. If the presentation relates to more than one proceeding, two copies shall be filed for each proceeding. Alternatively, in rulemaking proceedings governed by § 1.49(f), the person making the presentation may file one copy of the presentation electronically; no additional paper copies need to be filed.

(2) *Oral presentations.* A person who makes an oral ex parte presentation subject to this section that presents data or arguments not already reflected in that person's written comments, memoranda or other filings in that proceeding shall, no later than the next business day after the presentation, submit to the Commission's Secretary, an original and one copy of a memorandum which summarizes the new data or arguments. Except in proceedings subject to § 1.49(f) in which pleadings are filed electronically, a copy of the memorandum must also be submitted to the Commissioners or Commission employees involved in the oral presentation. In proceedings governed by § 1.49(f), the person making the presentation may, alternatively, electronically file one copy of the memorandum, which will be available to Commissioners and Commission employees involved in the presentation through the Commission's electronic comment filing system. Memoranda must contain a summary of the substance of the ex parte presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. The memorandum (and cover letter) shall clearly identify the proceeding to which it relates, including the docket number, if any, shall indicate that an original and one copy have been submitted to the Secretary or that one copy has been filed electronically, and must be labeled as an ex parte presentation. If the presentation relates to more than one proceeding, two copies of the memorandum (or an original and one copy) shall be filed for each proceeding.

* * * * *

[FR Doc. 98–10310 Filed 4–30–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CC Docket No. 92–297; RM–7872; PP–22 et al.; FCC 98–71]

Dismissal of All Pending Pioneer's Preference Requests; Review of the Pioneer's Preference Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petition for reconsideration.

SUMMARY: By this action, the Commission denies a petition for reconsideration filed by QUALCOMM Incorporated. QUALCOMM contends that the Commission is obligated to consider on its merits QUALCOMM's request for a pioneer's preference in the 2 GHz broadband Personal Communications Service (PCS). However, the Commission affirms that it no longer has the authority to award pioneer's preferences because the Balanced Budget Act of 1997 (Budget Act) terminated the pioneer's preference program. The intended effect of this action is to affirm the Commission's previous Order, which formally terminated the pioneer's preference program and dismissed all pending pioneer's preference requests.

EFFECTIVE DATE: May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 418–2452; internet: rsmall@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order (MO&O) adopted April 16, 1998, and released April 23, 1998. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International

Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of MO&O

1. On October 20, 1997, QUALCOMM filed a petition for reconsideration of the Commission's Order, 62 FR 48951, September 18, 1997, which dismissed all pending pioneer's preference requests, including QUALCOMM's 2 GHz broadband PCS request. For reasons that follow, we deny the petition for reconsideration.

2. In 1994, we denied QUALCOMM's 2 GHz broadband PCS request. In January 1997, however, the United States Court of Appeals for the District of Columbia Circuit (Court) granted QUALCOMM's petition for review of our action, vacated our denial of QUALCOMM's pioneer's preference request, and remanded the proceeding to us for further consideration.

3. On August 5, 1997, President Clinton signed into law the Budget Act. Among other things, the Budget Act revised the expiration date of the pioneer's preference program, as set forth in section 309(j)(13)(F) of the Communications Act of 1934, as amended. That section had been added in 1994 legislation domestically implementing the General Agreement on Tariffs and Trade (GATT), and read prior to enactment of the Budget Act: ''The authority of the Commission to provide preferential treatment in licensing procedures (by precluding the filing of mutually exclusive applications) to persons who make significant contributions to the development of a new service or to the development of new technologies that substantially enhance an existing service shall expire on September 30, 1998.'' The Budget Act advanced that date to ''the date of enactment of the Balanced Budget Act of 1997.'' Thus, the pioneer's preference program expired on August 5, 1997. In our Order, we formally terminated the pioneer's preference program and dismissed all pending pioneer's preference requests, including QUALCOMM's.

4. On October 9, 1997, QUALCOMM filed with the Court a ''Motion to Enforce Mandate and Supporting Memorandum,'' contending that our Order misconstrued the Budget Act and requesting the Court to order us to consider QUALCOMM's pioneer's preference request on its merits. On October 16, 1997, counsel for the Commission filed an opposition to the motion, pointing out, *inter alia*, that QUALCOMM's motion was procedurally improper because QUALCOMM had not filed a petition for reconsideration of the Order affording us an opportunity to address its contentions. On October 20, 1997, while QUALCOMM's motion was still pending before the Court, QUALCOMM filed with the Commission a petition for reconsideration of the Order. On November 5, 1997, the Court dismissed the motion on the grounds that QUALCOMM had failed to exhaust its administrative remedies, stating that the ''appropriate procedure for QUALCOMM to seek relief is to petition to the Commission to reconsider its decision dismissing QUALCOMM's application.''

5. In its petition for reconsideration, QUALCOMM argues that ''the FCC's application of the Budget Act violates the rule against retroactive application of the law,'' that ''the language of the Budget Act suggests that Congress intended to permit continuation of the [pioneer's preference] program, while placing restrictions on the Commission's authority to preclude the filing of mutually exclusive applications,'' and that ''QUALCOMM is entitled to a fair hearing on the merits of its pioneer's preference application.'' QUALCOMM also claims that, in terminating the pioneer's preference program and dismissing its request for a preference without providing for public notice and comment, our Order violated the requirements of the Administrative Procedure Act (APA). We reject each of these arguments.

6. *Retroactivity.* We find QUALCOMM's characterization of our Order dismissing its pioneer's preference request as an improper ''retroactive'' application of the Budget Act to be without merit. The Order appropriately gave *prospective* effect to this statute in concluding that as of the date of its enactment, August 5, 1997, we no longer had authority to grant pending requests for pioneer's preferences. Thus, contrary to QUALCOMM's claim, our action did not violate the traditional presumption against retroactivity that the Supreme Court reiterated in *Landgraf* v. *USI Film Products,* 511 U.S. 244 (1994).

7. Moreover, our application of the Budget Act in this case is consistent with the firmly-established principle that, ''when a law conferring jurisdiction is repealed without any reservation as to pending cases, all cases fall with the law.'' *Bruner* v. *United States,* 343 U.S. 112, 116–117 (1952). The Supreme Court has explained that application of a new jurisdictional rule normally does not raise concerns about retroactivity ''because jurisdictional statutes speak to the power of the court rather than to the rights or obligations of the parties.'' *Landgraf,* 511 U.S. at 273. Similarly, application of the Budget Act in this case does not produce an impermissible retroactive effect because that statute addresses our authority to act, not the merits of QUALCOMM's pioneer's preference request.

8. Accordingly, we find that we properly applied the time-honored tenet of statutory construction that, ''when a law conferring jurisdiction is repealed without any reservation as to pending cases, all cases fall with the law.'' *Bruner,* 343 U.S. at 116–17. Moreover, even if the Budget Act properly could be characterized as altering the substantive law applicable to pioneer's preferences, the statute's application in QUALCOMM's case does not raise the retroactivity concerns identified in *Landgraf.* As the Supreme Court explained, a new statute is considered retroactive only if ''it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed.'' *Landgraf,* 511 U.S. at 280. *See also Saco River Cellular, Inc.* v. *FCC,* No. 91–1248, slip op. at 9 (DC Cir. Jan. 16, 1998) (*Saco River*). The Budget Act has none of these effects. It neither increases QUALCOMM's liability for past conduct nor imposes new duties relating to completed transactions. Additionally, this new statute does not impair any right possessed by QUALCOMM ''because none vested on the filing of its [request].'' *Chadmoore Communications, Inc.* v. *FCC,* 113 F.3d 235, 241 (DC Cir. 1997).

9. Further, in its remand order, the Court in *Freeman Engineering* did not find that QUALCOMM had a vested right to a pioneer's preference; it simply required us to reevaluate whether QUALCOMM's request for a preference should be granted or denied. Thus, the effect of the remand was to return QUALCOMM's preference request to pending status before the Commission and afforded QUALCOMM no greater or lesser rights than those of any other party with a pending preference request. Clearly, Congress had the power to enact legislation that terminated our authority to grant pending requests for pioneer's preferences; and ''the mere expectations of a license applicant cannot bar the legitimate exercise of such congressional power.'' *Multi-State Communications, Inc.* v. *FCC,* 728 F.2d 1519, 1526 n.12 (DC Cir.), *cert. denied,* 469 U.S. 1017 (1984). The mere fact that a statute is ''applied in a case arising from conduct antedating the statute's enactment or upsets expectations based in prior law'' does not render the statute

retroactive.'' *Saco River,* slip op. at 9, quoting *Landgraf,* 511 U.S. at 269.

10. *Scope of Sunset Provision in Budget Act.* QUALCOMM asserts that the Budget Act does not bar us from awarding pioneer's preferences, but only limits our power to provide preferential treatment to pioneers by precluding the filing of mutually exclusive applications. We disagree. Our preference program rewarded innovators by enabling them to obtain licenses without having to face competing (*i.e.,* mutually exclusive) applications. We are not at liberty to grant some other sort of preference to communications pioneers. Section 309(j)(13)(A) of the Communications Act provides that we ''shall not award licenses'' by giving preferential treatment to innovators ''except in accordance with the requirements'' of section 309(j)(13). 47 U.S.C. 309(j)(13)(A). Following its amendment by the Budget Act, section 309(j)(13) contains no provision authorizing us to give preferences to innovators in the licensing process. Further, while sections 7(a) and 303(g) give us the authority to award pioneer's preferences in the absence of an explicit statute to the contrary, section 309(j)(13)(F) is just such a statute.

11. QUALCOMM contends, however, that Congress did not intend for the Budget Act's immediate termination of the pioneer's preference program to affect its pending preference request because the House Report on the 1994 GATT Legislation stated that Congress did not intend to ''affect the rights of persons who have been denied a pioneer's preference.'' Petition for Reconsideration at 6 (quoting Report to accompany H.R. 5110, 103 Cong. 2d. House Rept. 103–826 (House Report)). We are not persuaded by QUALCOMM's argument. The quoted statement from the House Report does not address the sunset provision set forth in section 309(j)(13)(F) of the Communications Act. Instead, the statement in question clarified that a different provision of the Act, section 309(j)(13)(E), which precluded further administrative and judicial review of certain *grants* of pioneer's preference requests, was not intended to ''affect the rights of persons who have been *denied* a pioneer's preference.'' House Report at 8 (emphasis added). That is, Congress intended simply to make clear in 1994 that parties like QUALCOMM could appeal the denial of a pioneer's preference request despite the no review provision.

12. *Right to a Hearing.* QUALCOMM argues that the Order violated its right to due process by denying its ''right to a fair hearing [that had] vested long before Congress changed the law relating to pioneer's preferences on a going forward basis.'' We disagree. QUALCOMM does not have a constitutional ''right to a fair hearing'' unless that hearing concerns constitutionally protected liberty or property interests: ''The requirements of procedural due process apply only to the deprivation of interests encompassed by the [Constitution's] protection of liberty and property.'' *Board of Regents* v. *Roth,* 408 U.S. 564, 569 (1972). Although QUALCOMM claims a property interest in a fair hearing, any hearing that it would receive at this point would not implicate any property interest because we no longer have authority to grant QUALCOMM's preference request. As the U.S. Court of Appeals for the District of Columbia Circuit recently reaffirmed, ''[t]he filing of an application creates no vested right to a hearing; if the substantive standards change so that the applicant is no longer qualified, the application may be dismissed.'' *Chadmoore,* 113 F.3d at 241 (quoting *Hispanic Information & Telecommunications Network* v. *FCC,* 865 F.2d 1289, 1294–95 (DC Cir. 1989)); *see also Melcher* v. *FCC,* 134 F.3d 1143, 1164–65 (DC Cir. 1998).

13. While QUALCOMM contends that it has a vested right in a pioneer's preference, neither we nor the court has ever found that QUALCOMM was entitled to a preference under our rules. Further, QUALCOMM has no right to a hearing that cannot yield the benefits it seeks. A hearing is a means to an end, and the end that QUALCOMM seeks—grant of a pioneer's preference—is no longer available. A hearing thus would be futile. Accordingly, our decision to dismiss QUALCOMM's preference application ''simply respects the statutorily-fixed deadline'' for exercising our authority to award pioneer's preferences: ''[I]n thus following the legislature's direction, the [Commission] contravened no due process right to fundamentally fair procedures.'' *Spannaus* v. *FCC,* 990 F.2d 643, 645 (DC Cir. 1993).

14. *APA Notice and Comment Requirements.* QUALCOMM argues that ''[t]he APA requires that the Commission allow an opportunity for notice and comment before promulgating rules other than those 'of agency organization, or practice.' '' The APA also, however, permits us to proceed without notice and comment procedures when good cause exists for finding such procedures are ''impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B). Similarly, publication or service of a rule change at least 30 days before its effective date is not required when good cause is found. 5 U.S.C. 553(d)(3). Such is the situation before us. The unambiguous language of the Budget Act terminating our authority to grant pioneer's preferences effective upon enactment of the Act made it unnecessary for us to follow public notice and comment procedures or to provide for at least 30 days advance publication in order to amend our rules to terminate the pioneer's preference program and to dismiss pending pioneer's preference requests.

15. *Other Matters.* In comments filed November 6, 1997, QUALCOMM argues that the Order interpreted the sunset provision of section 309(j)(13)(F) in a manner inconsistent with past Commission precedent but failed to explain the reasons for this departure from precedent. Specifically, QUALCOMM claims that in the Second Report and Order and Further Notice of Proposed Rule Making (Second R&O) in the Pioneer's Preference Review Proceeding, 60 FR 13396, March 13, 1995, we interpreted section 303(j)(13)(F) as applying only to pioneer's preference requests filed after September 1, 1994, but in our Order we applied that provision to pioneer's preference requests, such as QUALCOMM's, which were filed before that date. Because the Order relied on the sunset provision as the basis for dismissing QUALCOMM's request, QUALCOMM asserts that it was denied administrative due process because the Commission changed its interpretation of the sunset provision without explanation.

16. As an initial matter, we agree with observations made by PrimeCo Personal Communications, L.P. and Sprint PCS, in their opposition to the petition, that QUALCOMM's comments constitute a late-filed supplement to its petition for reconsideration. Accordingly, pursuant to section 1.429 of the Commission's rules, we are dismissing those comments. Nonetheless, we note *sua sponte* that the ''unexplained departure from precedent'' argument advanced in QUALCOMM's comments is without merit. In the Second R&O, in rejecting comments suggesting that we immediately repeal the pioneer's preference program, we explained that, for preference requests filed after September 1, 1994, section 309(j)(13)(F) directed us to continue this program until September 30, 1998, and that for preference requests filed on or before September 1, 1994, we did not find any valid reason for terminating the program earlier. No commenter in that

proceeding had raised, and we did not discuss, whether we had the authority to continue the pioneer's preference program beyond the date specified in section 309(j)(13)(F) for preference requests filed on or before September 1, 1994. It is clear, however, that we retained no such authority. The GATT legislation required the termination of the entire pioneer's preference program by a date certain, September 30, 1998. That we retained the discretion to terminate the program with respect to earlier-filed preference requests (but chose not to exercise that discretion) does not imply that we had discretion to continue the program in any respect beyond the date set forth in the legislation. Our actions in the Order dismissing QUALCOMM's preference request and terminating the pioneer's preference program as of the date set forth in section 309(j)(13)(F) as amended by the Budget Act, August 5, 1997, are thus fully consistent with our actions in the Second R&O.

17. Finally, we note that in comments filed November 12, 1997, Global Broadcasting Company, Inc. requests that we ''consider on the merits'' the pioneer's preference request filed by Web SportsNet, Inc. and Gregory D. Deieso but also dismissed in our Order. We are dismissing these comments as an improperly late-filed petition for reconsideration of our action dismissing the preference request, but also note that we have no authority to grant the relief requested.

Ordering Clauses

18. Accordingly, *it is ordered* that the petition for reconsideration filed on October 20, 1997 by QUALCOMM Incorporated *is denied*. This action is taken pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

19. *It is further ordered* that the comments filed on November 6, 1997 by QUALCOMM Incorporated and on November 12, 1997 by Global Broadcasting Company, Inc. *are dismissed*. This action is taken pursuant to section 1.429(d) of the Commission's rules.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–11616 Filed 4–30–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

48 CFR Parts 5243 and 5252

RIN 0703–AA34

Adjustments to Prices Under Shipbuilding Contracts

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy (DON) is removing certain regulations for adjustments to prices under shipbuilding contracts contained in the Navy Acquisition Procedures Supplement (48 CFR part 5243, §§ 5252.243–9000 and 5252.243–9001). The National Defense Authorization Act of Fiscal Year 1998 eliminated the statutory authority for these rules. Such rules are now unnecessary and are removed immediately. Providing for a comment period before final action in this case would be unnecessary, impracticable, and contrary to public interest. However, DON will accept and consider comments from interested persons in evaluating the effect of this action.

DATES: *Effective Date of Removal:* May 1, 1998.

Comment Date: Comments on this removal action should be submitted in writing to the address shown below on or before June 30, 1998.

ADDRESSES: Interested parties should submit written comments to Department of the Navy, Office of the Assistant Secretary of the Navy (Research, Development and Acquisition) Acquisition and Business Management, 2211 South Clark Place, Arlington, Virginia, 22244–5104.

FOR FURTHER INFORMATION CONTACT: Mr. Michael G. Shaffer, (703)602–1263.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of Defense Authorization Act, 1985 (Pub. L. 98–525 § 1234(a), 98 Stat. 2604, Oct. 19, 1984) established certain limitations on price adjustments made to shipbuilding contracts, which were codified at 10 U.S.C. 2405. The DON published proposed rules to implement the requirements of 10 U.S.C. 2405 in the **Federal Register** on Nov. 16, 1989 (54 FR 47689). A correction and extension of the public comment period was published in the **Federal Register** on Feb. 2, 1990 (55 FR 3603). Revised proposed rules and notice of additional public comment period and public hearing were published in the **Federal Register** on Jun. 29, 1990 (55 FR 26708). Extension of the public comment period and rescheduling of the public hearing were published in the **Federal Register** on Aug. 16 and Oct. 26, 1990 (55 FR 33541 and 43150). An interim rule and request for comments was published in the **Federal Register** on Dec. 5, 1991 (56 FR 63664). This interim rule added to title 48 of the Code of Federal Regulations a new Part 5243, as well as new §§ 5252.243–9000 and 5252.243–9001, and was made effective on Dec. 5, 1991. No final rule was published.

Section 810 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85, 111 Stat. 1839, Nov. 18, 1997) repealed 10 U.S.C. 2405, making the Navy's implementing regulations contained in 48 CFR parts 5243 and 5252 unnecessary. For this reason, the Navy is now removing and reserving 48 CFR part 5243 in its entirety, as well as §§ 5252.243–9000 and 5252.243–9001.

While the Navy is removing part 5243 in its entirety from the Code of Federal Regulations, information and policy statements regarding contract modifications remain in part 5243 of the Navy Acquisition Procedures Supplement (''NAPS''), which may be accessed at www.abm.rda.hq.navy.mil/naps, or by contacting the office listed in the **ADDRESSES** block.

B. Determination To Remove Without Prior Public Comment

This removal action is being issued as a final rule without a public comment period as an exception to the DON's standard practice of soliciting comments during the rulemaking process. Providing a period for public comment in this case would be unnecessary, impracticable, and contrary to the public interest. This determination is based on two factors. First, removal of these rules is entirely administrative and corrective in nature, not requiring the exercise of agency discretion. Second, to allow these rules to remain in the Code of Federal Regulations any longer may mislead and confuse the public regarding statutory requirements relating to adjustments of any price under a shipbuilding contract for the amount set forth in a claim, request for equitable adjustment, or demand for payment.

C. Matters of Regulatory Procedure

Executive Order 12866, Regulatory Planning and Review

Removal of these rules does not meet the definition of ''significant regulatory action'' for purposes of E.O. 12866.