Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6082.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Dated: November 4, 1999.

Jerri-Anne Garl,

Acting Regional Administrator, Region 5.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, and 101

[WT Docket No. 99–327; FCC 99–333]

Commission's Rules To License Fixed Services at 24 GHz

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this Notice of Proposed Rulemaking (NPRM), the Commission proposes licensing and service rules to govern the 24 GHz band generally. Specifically, the Commission proposes that future licensees in the 24 GHz band, as well as licensees relocated to the 24 GHz band from the 18 GHz band, will be generally subject to part 101, as modified to reflect the particular characteristics and circumstances of this band. The Commission also proposes to apply competitive bidding procedures under the Commission's part 1 competitive bidding rules for future licensing in the band.

DATES: Comments are due on or before January 19, 2000. Reply comments are due on or before February 7, 2000.

ADDRESSES: Federal Communications Commission, Secretary, 445 12th Street, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Howard Davenport, Wireless Telecommunications Bureau, Auctions and Industry Analysis Division, Legal Branch, at (202) 418–0585. Media Contact: Meribeth McCarrick at (202) 419–0654.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in the matter of Amendments to parts 1, 2, and 101 of the Commission's Rules To License Fixed Services at 24 GHz, WT Docket No. 99–327, adopted November 4, 1999 and released November 10, 1999. The complete text of this NPRM is available for inspection and copying during normal business hours in the Commission's Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. It is also available through the Internet at http://www.fcc.gov.

Synopsis of Notice of Proposed Rulemaking

1. In 1983, the Commission adopted rules for Digital Electronic Message Service (''DEMS''), which was envisioned as a high-speed, two-way, point-to-multipoint terrestrial microwave transmission system. *See,* Amendment of the Commission's Rules to Relocate the Digital Electronic Message Service From the 18 GHz Band to the 24 GHz Band and to Allocate the 24 GHz Band for Fixed Service, *Memorandum Opinion and Order,* 63 FR 50538, (September 22, 1998), (''DEMS MO&O''). The service was allocated spectrum in the 18.36–18.46 GHz band paired with the 18.94–19.04 GHz band. Subsequently, the Commission modified the initial DEMS allocation, instead designating spectrum in the 18.82–18.92 GHz and 19.16–19.26 GHz bands. The Commission began to grant DEMS licenses in the early 1980's, but the service was not initially commercially successful. Frequently, licensees had to return their licenses because they had not met construction requirements. The high cost of equipment appears to have been one of the many issues involved in the service's lack of early success. In the early 1990s, a small number of companies began acquiring licenses in approximately 30 of the country's largest markets.

2. In January 1997, and again in March 1997, the National Telecommunications and Information Administration (''NTIA''), on behalf of the United States Department of Defense (''DoD''), formally requested that the Commission take action to protect military satellite system operations in the 18 GHz band. NTIA stated that DEMS use of frequencies in the 17.8–20.2 GHz bands within 40 kilometers of existing Government Fixed-Satellite Service (''FSS'') earth stations ''will not be possible.'' As a result, NTIA asked the Commission to protect those government satellite earth stations operating in the 18 GHz band in Washington, DC and Denver, and ''[e]xpeditiously undertake any other necessary actions, such as amending the Commission's rules and modifying Commission issued licenses.'' Specifically, in its January 1997 letter, NTIA stated:

> We are asking that these actions be undertaken on an expedited basis. As we have previously indicated, this matter involves military functions, as well as specific sensitive national security interests of the United States. These actions are essential to fulfill requirements for Government space systems to perform satisfactorily.

The Commission is permitted to amend its Rules without complying with the notice provisions of the Administrative Procedure Act (APA) in cases involving any ''military, naval of [sic] foreign affairs function of the United States'' or where the agency for good cause finds ''notice and public procedure * * * are impracticable, unnecessary, or contrary to the public interest.'' To protect the two government earth stations from interference, NTIA proposed to make 400 MHz of spectrum available in the 24 GHz band so that the Commission could relocate DEMS licensees. Recognizing the Commission's objective of maintaining DEMS on a uniform, nationwide frequency band, NTIA stated that ''[t]aking into account our common interests, [NTIA] could make available spectrum in the region of 24.25–24.65 GHz'' and suggested that ''the Commission take such steps as may be necessary to license DEMS stations in this spectrum * * *''

3. For its part, the Commission had before it sharing issues between 18 GHz non-Government satellite services and DEMS. *See* Amendment of the Commission's Rules to Relocate the Digital Electronic Message Service from the 18 GHz Band to the 24 GHz Band and To Allocate the 24 GHz Band For Fixed Service, *Order,* 62 FR 24576 (May 6, 1997) (''Reallocation Order''). In July 1996, the Commission designated 500 MHz of spectrum in the 18.8–19.3 GHz band for non-geostationary satellite orbit, fixed satellite service (NGSO/FSS) downlinks to help meet increasing demand for spectrum for this service. *See,* Rulemaking to Amend parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, to Reallocate the 29.5–30.0 GHz Frequency Band, to establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, 61 FR 39425 (July 29, 1996). Initially, it appeared that sharing between NGSO/FSS and DEMS would be possible. However, subsequent to that allocation, the only applicant for an NGSO/FSS system in the 18 GHz band

indicated that coordination between the two services might present difficulties.

4. Finally, on March 5, 1997, NTIA reiterated its request for protection of government systems, using the 18 GHz band and further discussed the issues regarding use of that spectrum. NTIA stated again that it had ''determined that both existing and anticipated FCC licensees could cause interference problems to the Federal Government use of the 18 GHz band.'' Consequently, NTIA offered to withdraw government co-primary allocations for radionavigation service in the 24.25–24.45 and 25.05–25.25 GHz bands to clear the way for DEMS relocation. Accordingly, in the *Reallocation Order*, adopted on March 14, 1997, the Commission amended the Table of Frequency Allocations and part 101 of the Commission's Rules regarding Fixed Microwave Services to permit fixed service use of the 24.25–24.45 GHz and 25.05–25.25 GHz bands (24 GHz band). *See* 47 CFR 101. This also had the practical effect of resolving potential interference concerns between non-Government NGSO/FSS and DEMS operations at 18 GHz.

A. Licensing Plan for 24 GHz Services

1. Table of Allocations

5. In the *Reallocation Order,* the Commission amended the Table of Allocations in part 2 of the Commission's Rules to add the fixed service on a primary basis in the 24 GHz band, and the Commission recognized the deletion of radionavigation by the government from its portion of the 24 GHz band. *See* 47 CFR 2. One issue the Commission intends to examine in this rulemaking is whether the Table of Allocations should be amended further to facilitate other possible uses of spectrum in the 24 GHz band. The Commission has focused its initial review on the issue of whether mobile service should be added to the Table of Allocations for the 24 GHz band. Based on the information currently available, it appears that, in the near term, equipment may not be available for mobile use in the 24 GHz band. Licensees at 18 GHz are limited to fixed service, and no one has requested the opportunity to provide mobile service at 24 GHz. If, contrary to the Commission's assumption, equipment is available for mobile use in this band, and interference problems can be resolved, the Commission knows of no reason why it would not allow mobile operations. The Commission believes this would be consistent with its goal of providing 24 GHz licensees with flexibility in designing their systems. The Commission seeks comment on whether it should include an allocation in the 24 GHz band for mobile service.

6. The Commission proposes to amend the Commission's Table of Allocations and rules to provide, among other things, for the use of the 24.75–25.25 GHz band for Broadcasting Satellite Service (BSS) earth-to-space ''feeder links'' in the FSS. *See,* Redesignation of the 17.7–19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7–20.2 GHz and 27.5–30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3–17.8 GHz and 24.75–25.25 GHz Frequency Bands for Broadcast Satellite-Service Use, *Notice of Proposed Rulemaking,* 63 FR 54100 (October 8, 1998) (''18 GHz Band Plan''). Current 24 GHz licensees contend that the Commission would have to prohibit 24 GHz BSS feeder link sites within 300 miles of the boundaries of each 24 GHz service area, a requirement that would be too impractical and inefficient to be consistent with the public interest. On the other hand, one licensee takes the position that it is possible for BSS feeder links and 24 GHz nodal stations, which are the central or controlling station in a radio system operating on point-to-multipoint frequencies, in the 25.05–25.25 GHz band to share spectrum on a co-frequency basis at distances in the range of 0.2 miles. Because BSS feeder link stations need not be ubiquitously employed and can be located outside population centers, the Commission believes sharing between these services may be feasible. In the 18 GHz Band Plan proceeding, the Commission noted that the corresponding downlink BSS allocation in the 17.3–17.8 GHz band cannot become effective until after April 1, 2007; and thus there is no immediate need to implement the FSS allocation in the 25.05–25.25 GHz band. Delaying the FSS allocation would allow sufficient time for a detailed sharing methodology to be formulated between terrestrial fixed service interests and satellite interests. In light of the foregoing, the Commission tentatively concludes, based on preliminary review of the petition and comments filed regarding such FSS use of this band, that the criteria need not be as severe and restrictive as that put forth by the current 24 GHz licensees, and that a more workable solution can be developed. The Commission solicits comment on the interaction between these two services.

7. The Commission proposes to revise the Table of Frequency Allocations in part 2 of its rules to delete the non-Government radionavigation service allocations in the 24.25–24.45 GHz and 25.05–25.25 GHz bands, which is consistent with previous Government action taken with respect to these bands. The Commission has not issued any licenses for the use of these bands by the radionavigation service, and does not anticipate any demand for this service in these bands. Further, the Commission also proposes to delete footnote US341 from the Table of Frequency Allocations because the Federal Aviation Administration has decommissioned its remaining radar facility at the Newark, New Jersey International Airport and thus, concluded its operations in the 24.25–24.45 GHz band. In light of the foregoing, the Commission proposes to amend the frequency table in the aviation service rules, specifically section 87.173(b), by changing the entry for 24.25–25.45 GHz to 24.45–25.05 GHz, which would remain available for use by the aeronautical radionavigation service. *See* 47 CFR 87.173(b).

2. Geographic Area-Wide Licensing

8. The Commission proposes to license the 24 GHz band spectrum on the basis of Economic Areas (EAs), which were developed by the Department of Commerce's Bureau of Economic Analysis (BEA), because it believes this licensing scheme would best serve the public interest in facilitating efficient use of this spectrum. *See* Final Redefinition of the BEA Economic Areas, 60 FR 13114 (March 10, 1995). The Commission seeks comment on this proposal. The Commission tentatively concludes that using EAs for 24 GHz licenses in connection with its proposed partitioning and disaggregation rules discussed will create reasonable opportunities for the dissemination of 24 GHz licenses among a large number of entities. *See* In the Matter of Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Band, (''39 GHz''), *Memorandum Opinion and Order,* ET Docket No. 95–183, 64 FR 45891, (August 23, 1999). The Commission also tentatively concludes that using EAs for 24 GHz licenses will facilitate service to rural areas. *See* 47 USC 309(j)(3)(A). Specifically, because EAs typically contain both urban and rural areas, licensees will have both the legal authority to provide service in both areas and the financial incentive to do so in order to earn a return on their investment in their licenses. In contrast, the Standard Metropolitan Statistical Areas (''SMSA'') which were originally used to license DEMS service did not include rural areas, and thus, rural areas

were not provided the service. Further, the relatively small size of EAs will allow for a more rapid build-out than might be the case in a larger geographic area. In addition, to give licensees maximum flexibility, the Commission tentatively concludes that licensees will be permitted to aggregate licenses in order to operate in larger geographic areas. The Commission seeks comment on these tentative conclusions. Because the Commission used SMSAs to license those that were originally relocated from 18 GHz to 24 GHz, it proposes to exclude from the applicable EAs, the areas currently licensed in the 24 GHz band, and to add as three additional areas for licensing the United States territories and possessions over which the Commission has jurisdiction: Guam and the Commonwealth of Northern Marianas (EA 173), Puerto Rico and the U.S. Virgin Islands (EA 174), and American Samoa (EA 175). *See e.g.,* Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, *Third Report and Order,* 62 FR 16004 (April 3, 1997). The Commission seeks comment on these proposals.

9. The Commission also requests comment on alternative geographic areas, including nationwide licenses, and licenses based upon Metropolitan and Rural Service Areas (MSAs and RSAs), *See* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Fourth Report and Order,* 59 FR 24947 (May 13, 1994), Regional Economic Area Groupings (REAGs), Major Economic Areas (MEAs) or other relevant geographic areas. Commenters supporting alternative geographic areas should specify which areas they support and explain in detail why those alternatives would be superior to the use of EAs for 24 GHz licensing areas.

3. Treatment of Incumbents

10. As the Commission discussed in the *Reallocation Order,* incumbent licensees would begin to transfer their operations to frequencies in the 24 GHz band over a period of time commencing with the effective date, June 24, 1997, of the Order which modified the licenses. After the transfer of operations by an incumbent licensee to the 24 GHz band, such licensee generally shall be governed by part 101 of the Commission's rules. *See* 47 CFR 101. Under those rules, transferred licensees are generally subject to the same rules as applied to operations in the 18 GHz band.

11. By this *NPRM,* the Commission proposes to make licensees subject to any changes it makes in this proceeding to the part 101 rules that are generally applicable to the 24 GHz band, including interference criteria. Therefore, it is the Commission's tentative view that no special rules for protection of incumbents alone are necessary, any more than special protections would be required if additional providers were licensed in the 18 GHz band. The Commission believes that the protection requirements of part 101.509 will accommodate the new stations and allow licensees to effectively coordinate their systems. To the extent that any incumbent licensee wishes to use additional frequencies at 24 GHz or to extend its currently authorized service area, then such licensee may apply for such a license or licenses subject to the Commission's competitive bidding and other assignment procedures available. Any incumbent licensee may also acquire additional frequencies in the 24 GHz band through the partitioning and disaggregation procedures proposed. The Commission seeks comment on these proposals.

4. Authorized 24 GHz Services

12. In the *Reallocation Order,* the Commission adopted fixed service in this band as the only authorized use under its Table of Frequency Allocations. In keeping with this allocation, the Commission proposes to permit any 24 GHz licensee to use spectrum in the band for any fixed service. In addition, as discussed in section II.B.1, *supra,* the Commission seeks comment on whether it should permit the use of this band for mobile services, should it become technically feasible to do so. While the Commission proposes general ''fixed'' use for this spectrum, it does not know precisely the types of services new licensees will seek to provide. The Commission therefore proposes rules that will enable licensees to offer a wide variety of services and that will minimize regulatory barriers and costs of operation. It is the Commission's tentative view that the proposals it is making regarding licensed services areas, spectrum blocks, and partitioning and disaggregation will provide both incumbent and new licensees with a wide variety of options for using 24 GHz spectrum to meet market demands.

13. The Commission notes that section 303(y) of the Communications Act grants it the ''authority to allocate electromagnetic spectrum so as to provide flexibility of use,'' if ''such use is consistent with international agreements to which the United States is a party'' and if the Commission makes certain findings. The Commission has not proposed to allocate this spectrum to multiple categories of service listed in the Table of Allocations, but rather have allocated spectrum only to the Fixed Service. However, in this service rule proceeding, the Commission is seeking comment on whether to expand or revise its earlier approach. The Commission seeks comment on the findings required by section 303(y) of the Act and whether section 303(y) applies here.

14. The Commission proposes to modify part 101 of its rules to include the entire range of digital services to be provided at 24 GHz, so that the use of the 24 GHz band by new and relocated licensees in the 24 GHz band shall be subject to those rules. (Because relocated and new licensees in the 24 GHz band will be treated the same, the Commission refers to both as ''24 GHz licensees.'') The Commission refers to them separately as ''relocated licensees'' and ''new licensees.'' Consequently, all applications for licenses will be filed pursuant to Section 101 of 47 CFR. The Commission also proposes to modify part 101 of its rules to the extent necessary to reflect the particular characteristics and circumstances of the services to be offered. The Commission seeks comment on this general approach. The Commission discusses several specific issues in this *NPRM,* but also requests comment on any other changes in the existing part 101 rules that might be useful or necessary for the 24 GHz band. The Commission believes that making this spectrum available for use under these rules is in the public interest because it will contribute to technological and service innovation and, more robust competition in the telecommunications service markets.

5. Spectrum Blocks

15. In the *Reallocation Order*, the Commission decided to license relocated operations in 40 megahertz channel pairs. 47 CFR 101.109(c). The Commission proposes that the same amount of spectrum be provided to each new 24 GHz licensee as is provided under the rules for the relocated licensees adopted in the *Reallocation Order*. In the *Reallocation Order*, the Commission discussed the basis for its conclusion that DEMS licensees need 40 megahertz channel pairs at 24 GHz for their capacity to be equivalent to the capacity they have at 18 GHz. The Commission found that differences in propagation, rain attenuation, and available equipment between the two bands would require DEMS systems at 24 GHz to use approximately four times as much bandwidth as DEMs systems at

18 GHz to maintain comparable reliability and coverage. While this analysis would not necessarily apply to non-DEMS use at 24 GHz, the Commission believes that 40 megahertz paired blocks would be efficient for such use. Thus, the Commission proposes that it license five spectrum blocks, except in the SMSAs where there are incumbent licensees. Each spectrum block shall consist of a pair of 40 megahertz channels. The Commission also proposes to modify the emission mask in section 101.111 to accommodate the changes in spectrum and bandwidth. *See* 47 CFR 101.111. The Commission seeks comment on these proposals.

16. The Commission tentatively concludes that the use of EAs, described in section A.2, *supra,* as well as the partitioning and spectrum disaggregation, described in section B.4, *infra,* will result in economic opportunity for a wide variety of applicants, including small business, rural telephone, and minority-owned and women-owned applicants, as required by section 309(j)(4)(C). These proposals, the Commission tentatively concludes, will lower entry barriers through the creation of licenses for smaller geographic areas, thus requiring less capital and facilitating greater participation by such entities.

B. Application, Licensing, and Processing Rules

1. Regulatory Status

17. In this *NPRM,* the Commission is proposing a broad licensing framework for implementing services in the 24 GHz spectrum band. Under its proposal, a 24 GHz licensee would be allowed to provide a variety or combination of fixed services. In order to fulfill its enforcement obligations and ensure compliance with the statutory requirements of Titles II and III of the Communications Act, the Commission has required applicants to identify whether they seek to provide common carrier services.

18. In the *LMDS Second Report and Order,* the Commission required applicants for fixed services to indicate if they planned to offer services as a common carrier, a non-common carrier, or both, and to notify the Commission of any changes in status without prior authorization. The Commission seeks comment on a similar proposal to permit an applicant for a 24 GHz license to request common carrier status as well as non-common carrier status for authorization in a single license, rather than require the applicant to choose between common carrier and non-common carrier services, and to change regulatory status upon notification without prior approval. The licensee would be able to provide all allowable services anywhere within its licensed area at any time, consistent with its regulatory status. This approach, the Commission tentatively concludes, would achieve efficiencies in the licensing and administrative process. This is consistent with its approach with respect to Multipoint Distribution Service (''MDS''), and the Local Multipoint Distribution Service (''LMDS''). *See* Revisions to part 21 of the Commission's Rules Regarding the Multipoint Distribution Service, ''*MDS Report and Order*'', 52 FR 27553 (July 22, 1987). Apart from the designation of regulatory status, the Commission proposes not to require 24 GHz license applicants to describe the services they seek to provide. The Commission believes it is sufficient that an applicant indicate its choice for regulatory status in a streamlined application process. In providing guidance on this issue to MDS and LMDS applicants, the Commission points out that an election to provide service on a common carrier basis requires that the elements of common carriage be present; otherwise, the applicant must choose non-common carrier status. Accordingly, a determination of regulatory status will be based on the service actually provided, rather than the service proposed. The Commission also proposes that if licensees change the service they offer such that it would change their regulatory status, they must notify the Commission, although such change would not require prior Commission authorization. The Commission proposes that licensees notify them within 30 days of this change, unless the change results in the discontinuance, reduction, or impairment of the existing service, in which case the licensee is also governed by section 101.305 and submits the application under section 1.947 in conformance with the time frames and requirements of § 101.305. *See* 47 CFR 101.305.

2. Eligibility

19. The Commission's primary goal in the present proceeding is to encourage efficient competition, particularly in the local exchange telephone market. In assessing whether to restrict the opportunity of any class of service providers to obtain and use spectrum to provide communications services in the 24 GHz band, the Commission seeks to determine whether open eligibility poses a significant likelihood of substantial competitive harm in specific markets, and, if so, whether eligibility restrictions are an effective way to address that harm. *See* Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, 37.0–38.6 GHz and 38.6–40.0 GHz, *Report and Order and Second Notice of Proposed Rulemaking,* (''39 GHz Report and Order''), 63 FR 3075 (January 21, 1998). This approach relies on competitive market forces to guide license assignment absent a showing that regulatory intervention to exclude potential participants is necessary. Such an approach is appropriate because it best comports with the Commission's statutory guidance. When granting the Commission authority in section 309(j)(3) of the Communications Act to auction spectrum for the licensing of wireless services, Congress acknowledged the Commission's authority ''to [specify] eligibility and other characteristics of such licenses.'' However, Congress specifically directed the Commission to exercise that authority so as to ''promot[e] * * * economic opportunity and competition.'' Congress also emphasized this pro-competitive policy in section 257, where it articulated a ''national policy'' in favor of ''vigorous economic competition'' and the elimination of barriers to market entry by a new generation of telecommunications providers.

20. Current providers in the 24 GHz band offer a range of services such as local and long distance telephony and internet access. The Commission tentatively concludes that open eligibility for 24 GHz licenses will not pose a significant likelihood of substantial competitive harm in local exchange telephone markets, and that it is therefore unnecessary to impose eligibility restrictions on incumbent local exchange carriers (''ILECs''). This tentative conclusion is based on several factors. First, other wireless providers such as LMDS and 39 GHz licensees may provide competition in the local telephony markets. *See* 47 CFR 101.1003(a) and Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands, ET Docket No. 95–183, *Report and Order and Second Notice of Proposed Rulemaking.* Second, other facilities-based, wireline entrants such as interexchange carriers and competitive LECs, and non-facilities-based wireline entrants utilizing the local competition provisions of the Communications Act, may provide competition in these

markets as well. Third, in LMDS, a fixed broadband point-to-multipoint microwave service in the 28 GHz band, ILECs and cable companies have been prohibited from holding an attributable interest in any license whose geographic service area significantly overlaps such incumbent's authorized or franchised service area. This prohibition guaranteed that initially each one of those licenses will be acquired by a firm new to the provision of local exchange in the service area. These new providers have now had a significant opportunity to enter these markets without the participation of ILECs and cable interests. Finally, under its proposal, the Commission will make available five licenses for each geographic area. This number of licenses permits numerous 24 GHz licensees in any one market and, thus, numerous competitors for the licenses. This scenario makes it more difficult for an incumbent LEC to acquire all the licenses in a single geographic area. Taken together, these factors demonstrate that an incumbent strategy of trying to forestall competition in local telephony by buying 24 GHz licenses cannot succeed because there are several other sources of actual and potential competition.

21. Given all these competitive possibilities, the Commission tentatively concludes that it would be exceedingly difficult for an incumbent LEC to pursue a strategy of buying 24 GHz licenses in the hope of foreclosing or delaying competition, and implausible that it would succeed at that strategy. As noted, the Commission seeks comment on these tentative conclusions. The Commission also tentatively concludes that the spectrum made available for 24 GHz may be inadequate to enable the provision of competitive multi-channel video programming distribution (MVPD) service, and that incumbent cable company acquisition of these licenses does not raise anti-competitive concerns. The Commission bases this conclusion in part on Teligent's current service offerings, which are generally limited to voice and data, as well as its own assessment. The Commission also relies on the number of licenses (five) available in each geographic area to check anti-competitive conduct by cable operators. Nevertheless, the Commission does note, however, that cable companies are increasingly offering high speed internet access, a service offering that Teligent is currently providing. The Commission's concerns about anti-competitive behavior by cable companies is substantially attenuated by the existence of alternative sources of such internet access, including digital subscriber lines, fixed wireless applications, and satellite. Furthermore, the cable companies are also subject to the restrictions in the LMDS service, which the Commission has noted herein. The Commission, therefore, tentatively concludes that it is unnecessary to impose eligibility restrictions on incumbent cable operators

3. Foreign Ownership Restrictions

22. Certain foreign ownership and citizenship requirements are imposed in sections 310(a) and 310(b) of the Communications Act, as modified by the 1996 Act, that restrict the issuance of licenses to certain applicants. The statutory provisions are implemented in § 101.7 of the Commission's Rules and reflect the restrictions as they must be imposed on 24 GHz license applicants. Specifically, § 101.7(a) prohibits the granting of any license to be held by a foreign government or its representative. § 101.7(b) prohibits the granting of any common carrier license to be held by individuals who fail any of the four citizenship requirements listed in the rule. *See* 47 CFR 101.7(b).

23. Based on the prohibitions set forth in § 101.7(a), the Commission concludes that neither a foreign government, nor its representative can hold a license, including either a common carrier or non-common carrier license, to operate in the 24 GHz band. In addition, the Commission concludes that § 101.7(b) prohibits any individual who fails to meet the four citizenship requirements set forth therein from holding a license to operate as a common carrier in the 24 GHz band. Further, any individual who elects both common carrier and non-common carrier status must comply with § 101.7(b)'s four citizenship requirements. But, since the prohibitions set forth in § 101.7(b) do not apply to non-common carriers, an individual may elect to hold a license, as a non-common carrier in the 24 GHz band, without complying with the four citizenship requirements, as long as the individual is still in compliance with the requirements set forth in § 101.7(a). *See* 47 CFR 101.7(b)(4); *See* also Rules and Policies on Foreign Participation in the U.S. Telecommunications Market and Market Entry and Regulation of Foreign-Affiliated Entities, *Report and Order and Order on Reconsideration,* (''Foreign Participation Report and Order''), 62 FR 64741 (December 9, 1997).

24. To assist its analysis of alien ownership restrictions, the Commission tentatively concludes that applicants in the 24 GHz band shall file FCC Form 430. This requirement is identical to the information which the Commission requires MDS, satellite, and LMDS applicants to submit in order to assess the alien ownership restrictions under § 101.7(b). Furthermore, both common carriers and non-common carriers would be required to file the information whenever there are changes to the foreign ownership information, as well as the other legal and financial qualifications. The Commission would not disqualify an applicant requesting authorization exclusively to provide non-common carrier services solely because its citizenship information reflects that it would be disqualified from a common carrier license. However, consistent with what the Commission stated in the *Satellite Rules Report and Order* and in the *LMDS Second Report and Order,* the Commission tentatively concludes that requiring non-common carriers to address all the alien ownership prohibitions better enables the Commission to monitor all of the licensed providers in light of their ability to provide both common and non-common carrier services. The Commission requests comment on this proposal.

4. Aggregation, Disaggregation and Partitioning

25. The Commission proposes to permit 24 GHz licensees to partition their service areas and to aggregate and disaggregate their spectrum. The Commission believes that such an approach would serve to promote the efficient use of the spectrum. The Commission thus tentatively concludes that partitioning and spectrum disaggregation will provide a means to overcome entry barriers through the creation of licenses for smaller geographic areas that require less capital, thereby facilitating greater participation by, and economic opportunity for, smaller entities such as small businesses, rural telephone companies, and businesses owned by minorities and women, as required by section 309(j)(4)(C) of the Communications Act. *See* Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees and Implementation of section 257 of the Communications Act—Elimination of Market Barriers, *Report and Order and Further Notice of Proposed Rulemaking,* (''*Partitioning and Disaggregation Report and Order*''), 62 FR 653 (January 6, 1997), 62 FR 696 (January 6, 1997). The Commission requests comment on this conclusion.

26. The Commission also requests comment regarding what limits, if any, should be placed on the ability of a 24 GHz licensee to partition its service area and disaggregate its spectrum. The Commission notes that in the *Partitioning and Disaggregation Report and Order* the Commission permitted both geographic partitioning and spectrum disaggregation by broadband PCS licensees. In the case of broadband PCS service, the Commission decided to permit geographic partitioning along any service area defined by the partitioner and partitionee, and spectrum disaggregation without restriction on the amount of spectrum to be disaggregated, and to permit combined partitioning and disaggregation. The Commission concluded that allowing parties to decide without restriction the exact amount of spectrum to be disaggregated will encourage more efficient use of the spectrum and permit the deployment of a broader mix of service offerings, both of which will lead to a more competitive wireless marketplace.

27. The Commission requests comment regarding whether such an approach should apply to 24 GHz licenses. If commenters take the position that such an approach should apply, they should also address what information should be filed with the Commission to allow us to maintain our licensing records.

5. License Term and Renewal Expectancy

28. The Commission proposes that the 24 GHz license term for both incumbent and new licensees be 10 years, with a renewal expectancy similar to that afforded PCS and cellular licensees. In the case of either a cellular or PCS licensee, a renewal applicant shall receive a preference or renewal expectancy if the applicant has provided substantial service during its past license term and has complied with the Act and applicable Commission rules and policies. *See* 47 CFR 22.940(a)(1)(i). While preferring a substantial service requirement, the Commission also invites comment on whether a build-out requirement is more appropriate for this service. The Commission believes that this 10-year license term, combined with a renewal expectancy, will help to provide a stable regulatory environment that will be attractive to investors and, thereby, encourage development of this frequency band. The Commission also seeks comment on whether a license term longer than 10 years is appropriate to achieve these goals and better serve the public interest. Commenters who favor a license term in excess of ten years should specify the appropriate license term and include a basis for the period proposed.

29. The Commission proposes that the renewal application of a 24 GHz licensee must include at a minimum the following showings in order to claim a renewal expectancy:

- A description of current service in terms of geographic coverage and population served or links installed and a description of how the service complies with the substantial service requirement.
- Copies of any Commission Orders finding the licensee to have violated the Communications Act or any Commission rule or policy, and a list of any pending proceedings that relate to any matter described by the requirements for the renewal expectancy.
- If applicable, a description of how the licensee has complied with the build-out requirement. These proposed requirements are based on those the Commission ordered for LMDS. *See* 47 CFR 22.940(a)(1)(i).

30. Under the Commission's proposal, in the event that a 24 GHz license is partitioned or disaggregated, any partitionee or disaggregatee would be authorized to hold its license for the remainder of the partitioner's or disaggregator's original license term, and the partitionee or disaggregatee will be required to demonstrate that it has met the substantial service, or build-out standard, requirements in any renewal application. The Commission believes that this approach, which is similar to the partitioning provisions it adopted for MDS and for current broadband PCS licensees, is appropriate because a licensee, through partitioning or disaggregation, should not be able to confer greater rights than it was awarded under the terms of its license grant. *See* Amendment of parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, *Report and Order,* 60 FR 36524 (July 17, 1995); *See Partitioning and Disaggregation Report and Order*.

C. Operating Rules

1. Performance Requirements

31. The Commission seeks comment on whether licensees in the 24 GHz band should be subject to a substantial service requirement or a minimum coverage requirements as a condition of license renewal. The Commission imposed such requirements on licensees in other services to ensure that spectrum is used effectively and service is implemented promptly.

32. The Commission seeks comment on whether 24 GHz licensees should be required to provide ''substantial service'' to the geographic license area within ten years or any other license term which the Commission adopts for this service. The Commission defined substantial service as ''service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal. *See e.g.* 47 CFR 22.940(a)(1)(i). Further, as an alternative, safe harbor standard, the Commission seeks comment on whether there should be a construction requirement that the licensee transmit to reach a minimum of one-third of the population in their licensed area, no later than the mid-point of the license term and two-thirds of the population by the end of the license term. The Commission also seeks comment on whether, in the event that a 24 GHz license is partitioned or disaggregated, a partitionee or disaggregatee should be bound by the standard, either substantial service or a construction requirement, which the Commission may adopt in this proceeding.

33. If a licensee does not comply with whichever standard the Commission adopts, either substantial service or minimum coverage, the Commission must consider what action to take. The Commission could adopt a standard whereby a licensee who does not comply with the appropriate standard, either substantial service or minimum coverage, is subject to license termination upon action by the Commission or alternatively, the license would automatically cancel. The Commission seeks comment on whether to adopt an automatic cancellation standard or cancellation only upon action by the Commission. If the geographic licensee loses its license for failure to comply with coverage requirements, should the licensee be prohibited from bidding on the geographic license for the same territory in the future? Is there a sanction more appropriate than automatic cancellation?

2. Application of Title II Requirements to Common Carriers

34. The Commission also seeks comment on whether it should forbear from applying certain obligations on common carrier licensees in the 24 GHz band pursuant to section 10 of the Act. In the case of commercial mobile radio service (''CMRS'') providers, the Commission concluded that it was appropriate to forbear from sections 203, 204, 205, 211, 212, and most

applications of section 214. *See* also In the Matter of Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance For Broadband Personal Communications Services, Forbearance from Applying Provisions of the Communications Act to Wireless Telecommunications Carriers, *Memorandum Opinion and Order and Notice of Proposed Rulemaking,* (''Forbearance Order'') 63 FR 43033 (August 11, 1998), 63 FR 43026 (August 11, 1998). The Commission, however, declined to forbear from enforcing other provisions, including sections 201 and 202. The Commission has also exercised its forbearance authority in permitting competitive access providers (''CAPS'') and competitive local exchange carriers (''CLECs'') to file permissive tariffs. The Commission seeks comment on whether it is appropriate to forbear from enforcing any provisions of the Act or the Commission's rules in the 24 GHz band.

D. Technical Rules

35. As discussed, the Commission's general proposal is to apply the rules in part 101 to govern the use of the 24 GHz band, except as they may be modified as a result of this proceeding. This would include technical parameters such as channelization, frequency tolerance and stability, power and emission limitations, antennas, and equipment authorization. Also, general provisions of part 101, such as environmental and radio frequency (RF) safety requirements, and the protection of quiet zones, would be applicable.

36. The technical parameters for operations at 24 GHz were adopted in the *Reallocation Order.* As discussed there, such parameters were derived, for purposes of expedience, from those applied to operations at 18 GHz , and may not have been exactly suited to operations at the higher 24 GHz band. The use of the higher frequency band is, for example, one reason for the change in channelization. The Commission has little information in the record at this time, however, on which to propose other specific changes to the part 101 rules. New developments in fixed technology, besides those generated by the transition to a new band, may warrant other changes in the technical parameters. Moreover, changes and advancements in technology may, in the future, warrant use of this band for not only digital modulation, but also other modulations. In that connection, it is not the Commission's intent to impose technological requirements which may in the future restrain more efficient and innovative use of this spectrum. Therefore, the Commission solicits comment regarding whether this service should be limited to digital modulation and whether further development of service at 24 GHz will be facilitated by technical parameters different from those that are currently in part 101. Regardless of the final set of technical rules adopted in this proceeding, the Commission proposes that they all apply to all licensees in the 24 GHz band, including licensees that acquire their licenses through partitioning and disaggregation. But, none of the proposed rule changes are directed at, nor intended to apply to DEMS licensees that operate in the 10 GHz band. While it is the Commission's tentative view that most technical issues are addressed by the current rules, there is one specific technical issue that warrants some attention and is therefore discussed. The Commission solicits comments, however, on all technical parameters that should apply to operations at 24 GHz.

1. Licensing and Coordination of 24 GHz Stations

37. With one exception, incumbent licenses have been granted, by waiver, on an area wide basis. However, nodal stations, which serve as the central or controlling station in a radio system operating on point-to-multipoint frequencies, must be specifically applied for by licensees and authorized by the Commission. *See* 47 CFR 101.3 and 47 CFR 101.503. This could be viewed as a dual licensing situation and may not be necessary or administratively efficient. § 101.103(d) of the Commission's Rules contains guidelines for the current frequency coordination process for Fixed Microwave Services, while § 101.509 of the Commission's Rules sets forth interference protection criteria for 24 GHz licensees. These two rule sections have similar goals: to facilitate interference-free operations, to ensure cooperation among licensees to minimize and resolve potential interference problems, and to obtain the most efficient and effective use of the spectrum and authorized facilities. The Commission intends to auction the remaining spectrum in geographic areas and believes that licensees must be assured a reasonable and effective use of their own areas, while equally protecting the interests of other licensees.

38. The Commission tentatively concludes that a requirement to coordinate those 24 GHz nodal stations located within the boundaries of a licensed SMSA or other geographic licensing area prior to putting them into operation would be sufficient to achieve these goals, and therefore proposes to replace the individual licensing of nodal stations with a coordination requirement. Such coordination would be required with co-channel 24 GHz licensees in adjacent geographic areas and with adjacent channel 24 GHz licensees in adjacent geographic areas, as well as the same or overlapping area. Based on propagational characteristics at 24 GHz, the Commission's information on planned system configurations, the current technical parameters and similar distances adopted in Commission proceedings regarding other microwave bands, the Commission tentatively concludes that the 80 km coordination distance currently specified in our rules appears to be too large. *See* § 101.103(g) and 101.103(I) of the Commission's Rules, 47 CFR 101.103(g), 101(i). However, the Commission proposes to have each licensee coordinate with licensees in other relevant areas and develop agreements between systems. Instead of specifying a fixed distance, the Commission proposes that licensees coordinate their facilities whenever their facilities have line-of-sight into other licensees' facilities or are within the same geographic area. Under the Commission's proposal, both types of coordination must be successfully completed before operation is permitted. In the event that there is no 24 GHz licensee immediately available in an adjacent, same or overlapping area, the licensee must be prepared to coordinate its stations in the future in order to accommodate other licensees to ensure cooperative and effective use of the spectrum in each area. The Commission solicits comment on these coordination procedures and criteria.

39. International coordination is also an issue that needs to be addressed. While no specific proposals are made at this time, operations at 24 GHz in the United States will be subject to any agreements reached with Canada and Mexico. The Commission is in the process of holding discussions with these countries to determine the types of coordination that would be necessary.

2. RF Safety

40. The Commission proposes that licensees and manufacturers be subject to the RF radiation exposure requirements specified in §§ 1.1307(b), 2.1091, and 2.1093 of the Commission's Rules, which lists the services and devices for which an environmental evaluation must be performed. *See* 47 CFR 1.1307(b), 2.1091, 2.1093. *See* also Guidelines for Evaluating the

Environmental Effects of Radiofrequency Radiation, *Report and Order*, (''*RF Guidelines Report and Order*''), 61 FR 41006 (August 7, 1996); *First Memorandum Opinion and Order*, 62 FR 3232 (January 22, 1997); and *Second Memorandum Opinion and Order*, 62 FR 47960 (September 12, 1997). The Commission tentatively concludes that routine environmental evaluations for RF exposure should be required in the case of fixed operations, including base stations, when the effective radiated power (ERP) is greater than 1,000 watts.

41. The Commission proposes to treat services and devices in the 24 GHz band in accordance with the Commission's exposure limits in OET Bulletin 65, which has replaced OST Bulletin No. 65.

E. Competitive Bidding Procedures

1. Statutory Requirements

42. The Balanced Budget Act of 1997 amended section 309(j) of the Act to require the Commission to award mutually exclusive applications for initial licenses or permits using competitive bidding procedures, with very limited exceptions. Section 309(j)(2) exempts from auctions licenses and construction permits for public safety radio services, digital television service licenses and permits given to existing terrestrial broadcast licensees to replace their analog television service licenses, and licenses and construction permits for noncommercial educational broadcast stations and public broadcast stations. Thus, if not exempted by the statute, a service will be auctionable if the Commission implements a licensing process that permits the filing and acceptance of mutually exclusive applications. In establishing particular licensing schemes or methodologies, the Commission is required to consider the public interest objectives described in section 309(j)(3).

43. Pursuant to section 309(j)(6)(E) of the Act, the Commission has an ''obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings.'' In the Balanced Budget Act, Congress highlighted the Commission's obligation under section 309(j)(6)(E) by referencing that obligation in the general auction authority provision. The Commission recently sought comment on whether that reference changes the scope or content of the Commission's obligation under section 309(j)(6)(E). *See* Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Notice of Proposed Rule Making*, (''BBA NPRM''), 64 FR 23571 May 3, 1999. In determining whether to resolve mutually exclusive applications for licenses in the 24 GHz band through competitive bidding, the Commission intends to adhere to any conclusions it reaches in the Balanced Budget Act proceeding regarding the scope of our auction authority.

44. In paragraphs 8 and 9, *supra*, the Commission proposed to continue the use of a geographic area licensing scheme for the 24 GHz band, using EAs instead of SMSAs. Because the Commission has tentatively concluded that it would serve the public interest to implement a licensing scheme under which mutual exclusivity is possible, it also tentatively concludes that mutually exclusive initial applications for the 24 GHz band must be resolved through competitive bidding. The Commission seeks comment on this tentative conclusion.

2. Incorporation of Part 1 Standardized Auction Rules

45. In the *Part 1 Third Report and Order*, the Commission streamlined its auction procedures by adopting general competitive bidding rules applicable to all auctionable services, and, in the same proceeding, issued a *Second Further Notice of Proposed Rule Making* concerning designated entities and attribution rules, among other issues. The Commission proposes to conduct the auction for initial licenses in the 24 GHz band in conformity with the general competitive bidding rules set forth in part 1, subpart Q of the Commission's rules, and substantially consistent with the bidding procedures that have been employed in previous Commission auctions. Specifically, the Commission proposes to employ the part 1 rules governing designated entities, application issues, payment issues, competitive bidding design, procedure and timing issues, and anti-collusion. These rules would be subject to any modifications that the Commission adopts in relation to the *Second Further Notice of Proposed Rule Making*. The Commission seeks comment on this proposal and on whether any of our part 1 rules would be inappropriate in an auction for this service.

3. Provisions for Designated Entities

46. The Communications Act provides that, in developing competitive bidding procedures, the Commission shall consider various statutory objectives and consider several alternative methods for achieving them. Specifically, the statute provides that, in establishing eligibility criteria and bidding methodologies, the Commission shall:

> promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.

47. In the *Competitive Bidding Second Memorandum Opinion and Order*, the Commission stated that it would define eligibility requirements for small businesses on a service-specific basis, taking into account the capital requirements and other characteristics of each particular service in establishing the appropriate threshold. *See* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Second Memorandum Opinion and Order*, (''*Competitive Bidding Second Memorandum Opinion and Order*''), 59 FR 44272 (August 26, 1994). The *Part 1 Third Report and Order*, while it standardizes many auction rules, provides that the Commission will continue a service-by-service approach to defining small businesses. For the 24 GHz band, the Commission proposes to adopt the definitions the Commission adopted for broadband PCS for ''small'' and ''very small'' businesses, which the Commission also adopted for 2.3 GHz and 39 GHz applicants. *See* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Fifth Memorandum Opinion and Order*, 59 FR 63210 (December 7, 1994). *See* 47 CFR 27.210(b)(1)(2), 101.1209(b)(1)(i). The Commission tentatively concludes that the capital requirements are likely to be similar to the capital requirements in those services. Specifically, the Commission proposes to define a small business as any firm with average annual gross revenues for the three preceding years not in excess of $40 million. For entities who qualify as a small business, the Commission proposes to provide them with a bidding credit of 15%. *See* 47 CFR 1.2110(e)(2)(iii).

48. The Commission observes that the capital costs of operational facilities in the 24 GHz band are likely to vary widely. Accordingly, the Commission seeks to adopt small business size standards that afford licensees substantial flexibility. Thus, in addition to its proposal to adopt the general small business standard the Commission used in the case of

broadband PCS, 2.3 GHz, and 39 GHz licenses, the Commission proposes to adopt the definition for very small businesses used for 39 GHz licenses and for the PCS C and F block licenses: businesses with average annual gross revenues for the three preceding years not in excess of $15 million. For entities who qualify as a very small business, the Commission proposes to provide them with a bidding credit of 25%. *See* 47 CFR 1.2110(e)(2)(ii).

49. The Commission seeks comment on the use of these standards and associated bidding credits for applicants to be licensed in the 24 GHz band, with particular focus on the appropriate definitions of small and very small businesses as they relate to the size of the geographic area to be covered and the spectrum allocated to each license. In discussing these issues, commenters are requested to address the expected capital requirements for services in the 24 GHz band. Commenters are invited to use comparisons with other services for which the Commission has already established auction procedures as a basis for their comments regarding the appropriate definitions for small and very small businesses.

50. The Commission seeks comment here on whether there are any actions specific to the 24 GHz service that should be taken to insure that this service will be provided in rural areas. Relatedly, the Commission notes that section 309(j) requires the Commission to ''promote * * * economic opportunity for a wide variety of applicants, including * * * rural telephone companies.'' Consistent with this mandate, the Commission seeks comment on whether there are specific measures that should be taken with respect to these entities.

Procedural Matters

A. Initial Regulatory Flexibility Analysis

51. As required by § 603 of the Regulatory Flexibility Act (RFA) of 1980, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this *NPRM*. The IRFA is set forth in Appendix A. The Commission requests written public comment on the IRFA. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, the Commission asks a number of questions in our IRFA regarding the prevalence of small businesses in the affected industries.

52. Comments must be filed in accordance with the same filing deadlines as comments filed in this rulemaking proceeding, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Consumer Information Bureau, Reference Operations Division, shall send a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with § 603(a) of the Regulatory Flexibility Act.

B. Comment Dates

53–55. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before January 19, 2000, and reply comments on or before February 7, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, *Report and Order,* 63 FR 24121 (May 1, 1998); Electronic Filing of Documents in Rulemaking Proceedings, *Memorandum Opinion and Order,* 63 FR 56090 (October 21, 1998). All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally, interested parties must file an original and four copies of all comments, reply comments, and supporting comments. If interested parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Interested parties should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, with a copy to Howard Davenport, Wireless Telecommunications Bureau, 445 12th Street, SW, Washington, DC 20554. Parties are also encouraged to file a copy of all pleadings on a 3.5-inch diskette in Word 97 format.

56. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address.'' A sample form and directions will be sent in reply.

57. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

58. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC 20554.

Ordering Clauses

59. Accordingly, these actions are taken pursuant to sections 1, 4(i), 7, 301, 303, 308 and 309(j) of the Communications Act of 1934, 47 U.S.C. 151, 154(i), 157, 301, 303, 308, 309(j) and that notice is hereby given of the proposed regulatory changes described, and that comment is sought on these proposals.

60. This *NPRM* is hereby adopted and that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this NPRM, including the Initial Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration in accordance with § 603(a) of the Regulatory Flexibility Act of 1980, Public Law 96–354, 94 Stat 1164, 5 U.S.C. 601–612.

List of Subjects

47 CFR 1

Administrative practice and procedure.

47 CFR 2 and 101

Communications equipment.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Attachment—Initial Regulatory Flexibility Analysis

As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small and very small entities of the policies and rules proposed in this Notice of Proposed Rule Making (NPRM). Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM.

Reason for Action

This rulemaking is being initiated to adopt certain licensing and service rules for the 24 GHz band, to auction 24 GHz spectrum not used by Digital Electronic Message Service (DEMS) licensees relocated from the 18.82–18.92 and 19.16–19.26 GHz bands (18 GHz band) to the 24.25–24.45 and 25.05–25.25 GHz bands (24 GHz band).

Objectives

The Commission's objectives are: (1) to accommodate the introduction of new uses of spectrum and the enhancement of existing uses; and (2) to facilitate the awarding of licenses to entities who value them the most.

Legal Basis for Proposed Rules

The proposed action is authorized under the Administrative Procedure Act, 5 U.S.C. 553; and sections 1, 4(i), 7, 301, 303, 308 and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 301, 303, 308 and 309(j).

Description and Estimate of Small Entities Subject to the Rules

The rules will affect incumbent licensees who are relocated to the 24 GHz band from the 18 GHz band and applicants who wish to provide services in the 24 GHz band.

The Commission has not developed a definition of small entities applicable to licensees in the 24 GHz band. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules for the radiotelephone industry that provides that a small entity is a radiotelephone company employing fewer than 1,500 persons. The 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available, shows that only 12 radiotelephone firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees. The Commission believes that there are only two licensees in the 24 GHZ band that will be relocated, Teligent and TRW, Inc. It is the Commission's understanding that Teligent and its related companies have less than 1,500 employees, although this may change in the future. On the other hand, TRW is not a small entity. The Commission therefore believes that only one licensee in the 24 GHz is a small business entity. The Commission seeks comment on this analysis. In providing such comment, commenters are requested to provide information regarding how many total and small business entities would be relocated.

The proposals also affect potential new licensees on the 24 GHz band. Pursuant to 47 CFR 24.720(b), the Commission has defined ''small entity'' for Blocks C and F broadband PCS licensees as firms that had average gross revenues of less than $40 million in the three previous calendar years. This regulation defining ''small entity'' in the context of broadband PCS auctions has been approved by the SBA. With respect to new applicants in the 24 GHz band, the Commission also proposes to use the small entity definition adopted in the Broadband PCS proceeding. With regard to ''very small businesses'' the Commission proposes to adopt the definition used for 39 GHz licenses and for the PCS C and F block licenses: businesses with average annual gross revenues for the three preceding years not in excess of $15 million.

The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held. Even after that, the Commission will not know how many licensees will partition their license areas or disaggregate their spectrum blocks, if partitioning and disaggregation are allowed. In view of our lack of knowledge of the entities that will seek 24 GHz licenses, the Commission therefore assumes that, for purposes of its evaluations and conclusions in the Initial Regulatory Flexibility Analysis, all of the prospective licensees are either small or very small business entities.

The Commission invites comment on this analysis.

Reporting, Recordkeeping, and Other Compliance Requirements

Applicants for 24 GHz licenses will be required to submit applications. The Commission requests comment on how these requirements can be modified to reduce the burden on small entities and still meet the objectives of the proceeding.

Significant Alternatives Minimizing the Impact on Small Entities Consistent With Stated Objectives

The Commission has reduced burdens wherever possible. To minimize any negative impact, however, it proposes certain incentives for small and very small entities that will redound to their benefit. These special provisions include partitioning and spectrum disaggregation. The regulatory burdens the Commission has retained, such as filing applications on appropriate forms, are necessary in order to ensure that the public receives the benefits of innovative new services in a prompt and efficient manner. The Commission will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities. The Commission seeks comment on significant alternatives commenters believes it should adopt.

Federal Rules That Overlap, Duplicate, or Conflict With These Proposed Rules

None.

[FR Doc. 99–32829 Filed 12–17–99; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–2684, MM Docket No. 99–342, RM–9773]

Radio Broadcasting Services; Pearsall and George West, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a Petition for Rule Making filed by John R. Furr, requesting the substitution of Channel 281C1 for Channel 281A at Pearsall, Texas, and modification of the authorization for Channel 281A to specify operation on Channel 281C1. To accommodate the substitution at Pearsall, we shall also propose the substitution of Channel 265A for Channel 281A at George West, Texas, and modification of the authorization for Channel 281A accordingly. The coordinates for Channel 281C1 at Pearsall are 28–44–52 and 98–50–13. The coordinates for Channel 265A at George West are 28–24–26 and 98–10–05. Mexican concurrence will be requested for the allotments at Pearsall and George West. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 281C1 at Pearsall.

DATES: Comments must be filed on or before January 24, 2000, and reply comments on or before February 8, 2000.

ADDRESSES: Federal Communications Commission, Washington, 445 Twelfth Street, SW, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John J. McVeigh, 12101 Blue paper Trail, Columbia, Maryland 20036.