

132. IT IS FURTHER ORDERED that the rule changes made herein WILL BECOME EFFECTIVE at the time of their publication in the Federal Register.¹⁹⁸

V. PROCEDURAL MATTERS

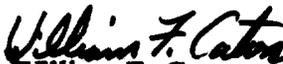
Final Regulatory Flexibility Analysis

133. A Final Regulatory Flexibility Act Statement is contained in Appendix B of this Second Report and Order.

Contact Persons

134. For further information concerning this proceeding, contact Karen Rackley (202) 418-0620 or Dan Grosh (202) 418-1534, Wireless Telecommunications Bureau, Policy Division.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

¹⁹⁸ This Order is adopted pursuant to a statutory requirement that the Commission, by August 9, 1995, allocate and establish licensing rules for 50 megahertz of spectrum that was transferred from Federal Government to private sector use, as required by the Budget Act. Thus, there is good cause to order the rule changes made by this Order to take effect upon Federal Register publication. See 5 U. S. C. § 553(d)(3).

APPENDIX A

Comments

1. American Petroleum Institute (API)
2. American Telecasting Inc. (ATI)
3. Association for Maximum Service Television, Inc. and Other Major Television Broadcasting Entities (MSTV)
4. Association of Public-Safety Communications Officials-International, Inc. (APCO)
5. Bell Atlantic
6. Chief Counsel for Advocacy of the United States Small Business Administration (SBA)
7. Ladybug Mountain PCS Corp.
8. Leaco Rural Telephone Cooperative, Inc. (Leaco)
9. Motorola, Inc. (Motorola)
10. Personal Communications Industry Association (PCIA)
11. Rand McNally & Company (RMC)
12. UTC
13. The Wireless Cable Association International, Inc. (WCAI)

Reply Comments

1. Alcatel Network Systems, Inc.
2. American Telecasting Inc.
3. In-Flight Phone Corporation
4. Association for Maximum Service Television, Inc. and Other Major Television Broadcast Entities (MSTV)
5. Telecommunications Industry Association

APPENDIX B

Final Regulatory Flexibility Analysis

I. Need and Purpose of this Action:

This action is taken in further response to the Omnibus Budget Reconciliation of 1993 (which mandated the identification and transfer of spectrum currently allocated for use by the Federal Government which could be allocated for private sector use, and the ensuing Preliminary Spectrum Reallocation Report published by the Department of Commerce, which identified such spectrum. The establishment of the General Wireless Communications Service is intended to permit and encourage the introduction of new services and the enhancement of existing services. These new and enhanced services and uses will create new jobs, foster economic growth, and improve access to communications by industry and the public.

II. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis:

No comments were filed in response to the Initial Regulatory Flexibility Act Statement

III. Significant Alternatives Considered and Rejected:

Representatives of the public safety community, the fixed microwave community, and the broadcast industry opposed designating the 4 GHz band to the General Wireless Communications Service (GWCS) and asked that the Commission instead the band be allocated to their own specific existing services. The Second Notice of Proposed Rule Making acknowledged the option of limiting the use of the 4660-4685 MHz frequency band to specific services, and invited comment on this possibility. However, the Commission finds that the flexible GWCS approach should permit a range of qualified uses, including those preferred by commenters opposed to such an approach, while permitting new technologies and services to emerge and encouraging efficient use of this spectrum, thus best satisfying the goals of the Reconciliation Act. Restricting this spectrum to defined uses or services would tend to reduce the attractiveness of this spectrum for new technologies and services. Moreover, GWCS is flexible enough to permit such specific uses as well as other uses. The Commission finds that it has the legal authority, supported by precedence to allocate the spectrum in this manner and that establishing the GWCS is the option which most satisfies the concerns of the Reconciliation Act while responding to the needs of the public and of existing licensees.

The Commission also elects to resolve instances of mutually-exclusive applications by auction rather than by comparative hearing. The comments filed in this proceeding support assignment of mutually-exclusive applications by auction and leads to the conclusion that an auction process best comports with the objectives set forth in Section 509(j)(3) of the Communications Act. The Commission's experience indicates that assignment such applications by auction is quicker than other licensing schemes, promotes economic opportunity and the dissemination of licenses among a wide variety of applicants, and enables the Commission to recover for the public a portion of the value of the public spectrum and avoid problems of unjust enrichment.

The Second NPRM proposed that all license issued by based on the 51 major trading areas (MTA) and MTA-like areas as a compromise between providing areas small enough to deploy services aimed at rural or relatively rural areas, while providing a large enough area for those licensees that wish to provide wide-area or regional service. The majority of GWCS supporters opposed licensing on an MTA basis and proposed smaller license regions. To accommodate the range of possible GWCS uses, the Commission elects to issue GWCS licenses based on three different geographic areas. Two of the five blocs will be assigned as a nationwide license, one will be assigned within five regional license areas, and the remaining two will be assigned based on EA-like geographical areas. The Commission believes that assigning licenses based on a range of geographic areas gives all potential licensees an opportunity to acquire spectrum within a geographic area that suits the natural technical and market area for the intended use. Moreover, the Commission anticipates that by giving licensees substantial flexibility to aggregate or disaggregate geographic regions, we will encourage intensive and efficient use of this spectrum.

APPENDIX C

Codes and Names for BEA Economic Areas (EAs)

Codes from 001 to 172 are assigned to the new EAs in approximate geographic order, beginning with 001 in northern Maine, continuing south to Florida, then north to the Great Lakes, and continuing in a serpentine pattern to the West Coast. Except for the Western Oklahoma EA (126), the Northern Michigan EA (058), and the 17 EAs that mainly correspond to consolidated metropolitan statistical areas (CMSAs), each EA is named for the metropolitan area or city that is the node of its largest component economic area (CEA) and that is usually, but not always, the largest metropolitan area or city in the EA. Each CEA consists of a single economic node and the surrounding counties that are economically related to the node. The following list provides EA codes and names. EA boundaries and codes are shown on the map following the list.

EA Code	Name	EA Code	Name
001	Bangor, ME	018	Greensboro-Winston-Salem- High Point, NC
002	Portland, ME	019	Raleigh-Durham-Chapel Hill, NC
003	Boston-Worcester-Lawrence- Lowell-Brockton, MA-NH	020	Norfolk-Virginia Beach-Newport News, VA-NC
004	Burlington, VT	021	Greenville, NC
005	Albany-Schenectady-Troy, NY	022	Fayetteville, NC
006	Syracuse, NY	023	Charlotte-Gastonia-Rock Hill, NC-SC
007	Rochester, NY	024	Columbia, SC
008	Buffalo-Niagara Falls, NY	025	Wilmington, NC
009	State College, PA	026	Charleston-North Charleston, SC
010	New York-No. New Jersey- Long Island, NY-NJ-CT-PA	027	Augusta-Aiken, GA-SC
011	Harrisburg-Lebanon-Carlisle, PA	028	Savannah, GA
012	Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD	029	Jacksonville, FL
013	Washington-Baltimore, DC-MD-VA-WV	030	Orlando, FL
014	Salisbury, MD	031	Miami-Fort Lauderdale, FL
015	Richmond-Petersburg, VA	032	Fort Myers-Cape Coral, FL
016	Staunton, VA	033	Sarasota-Bradenton, FL
017	Roanoke, VA	034	Tampa-St. Petersburg-Clearwater, FL

EA Code	Name
035	Tallahassee, FL
036	Dothan, AL
037	Albany, GA
038	Macon, GA
039	Columbus, GA-AL
040	Atlanta, GA
041	Greenville-Spartanburg- Anderson, SC
042	Asheville, NC
043	Chattanooga, TN-GA
044	Knoxville, TN
045	Johnson City-Kingsport-Bristol, TN-VA
046	Hickory-Morganton, NC
047	Lexington, KY
048	Charleston, WV
049	Cincinnati-Hamilton, OH-KY-IN
050	Dayton-Springfield, OH
051	Columbus, OH
052	Wheeling, WV-OH
053	Pittsburgh, PA
054	Erie, PA
055	Cleveland-Akron, OH
056	Toledo, OH
057	Detroit-Ann Arbor-Flint, MI
058	Northern Michigan, MI
059	Green Bay, WI
060	Appleton-Oshkosh-Neenah, WI
061	Traverse City, MI
062	Grand Rapids-Muskegon- Holland, MI
063	Milwaukee-Racine, WI
064	Chicago-Gary-Kenosha, IL-IN-WI
065	Elkhart-Goshen, IN
066	Fort Wayne, IN
067	Indianapolis, IN
068	Champaign-Urbana, IL
069	Evansville-Henderson, IN-KY
070	Louisville, KY-IN
071	Nashville, TN
072	Paducah, KY
073	Memphis, TN-AR-MS
074	Huntsville, AL

EA Code	Name
075	Tupelo, MS
076	Greenville, MS
077	Jackson, MS
078	Birmingham, AL
079	Montgomery, AL
080	Mobile, AL
081	Pensacola, FL
082	Biloxi-Gulfport-Pascagoula, MS
083	New Orleans, LA
084	Baton Rouge, LA
085	Lafayette, LA
086	Lake Charles, LA
087	Beaumont-Port Arthur, TX
088	Shreveport-Bossier City, LA
089	Monroe, LA
090	Little Rock-North Little Rock, AR
091	Fort Smith, AR-OK
092	Fayetteville-Springdale-Rogers, AR
093	Joplin, MO
094	Springfield, MO
095	Jonesboro, AR
096	St. Louis, MO-IL
097	Springfield, IL
098	Columbia, MO
099	Kansas City, MO-KS
100	Des Moines, IA
101	Peoria-Pekin, IL
102	Davenport-Moline-Rock Island, IA-IL
103	Cedar Rapids, IA
104	Madison, WI
105	La Crosse, WI-MN
106	Rochester, MN
107	Minneapolis-St. Paul, MN-WI
108	Wausau, WI
109	Duluth-Superior, MN-WI
110	Grand Forks, ND-MN
111	Minot, ND
112	Bismarck, ND
113	Fargo-Moorhead, ND-MN
114	Aberdeen, SD
115	Rapid City, SD
116	Sioux Falls, SD
117	Sioux City, IA-NE

EA Code	Name
118	Omaha, NE-IA
119	Lincoln, NE
120	Grand Island, NE
121	North Platte, NE
122	Wichita, KS
123	Topeka, KS
124	Tulsa, OK
125	Oklahoma City, OK
126	Western Oklahoma, OK
127	Dallas-Fort Worth, TX
128	Abilene, TX
129	San Angelo, TX
130	Austin-San Marcos, TX
131	Houston-Galveston-Brazoria, TX
132	Corpus Christi, TX
133	McAllen-Edinburg-Mission, TX
134	San Antonio, TX
135	Odessa-Midland, TX
136	Hobbs, NM
137	Lubbock, TX
138	Amarillo, TX
139	Santa Fe, NM
140	Pueblo, CO
141	Denver-Boulder-Greeley, CO
142	Scottsbluff, NE
143	Casper, WY
144	Billings, MT
145	Great Falls, MT
146	Missoula, MT
147	Spokane, WA
148	Idaho Falls, ID
149	Twin Falls, ID
150	Boise City, ID
151	Reno, NV
152	Salt Lake City-Ogden, UT
153	Las Vegas, NV-AZ
154	Flagstaff, AZ
155	Farmington, NM
156	Albuquerque, NM
157	El Paso, TX
158	Phoenix-Mesa, AZ
159	Tucson, AZ

EA Code	Name
160	Los Angeles-Riverside- Orange County, CA
161	San Diego, CA
162	Fresno, CA
163	San Francisco-Oakland- San Jose, CA
164	Sacramento-Yolo, CA
165	Redding, CA
166	Eugene-Springfield, OR
167	Portland-Salem, OR-WA
168	Pendleton, OR
169	Richland-Kennewick-Pasco, WA
170	Seattle-Tacoma-Bremerton, WA
171	Anchorage, AK
172	Honolulu, HI

APPENDIX D

Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1 – PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

2. New paragraph (a)(8) is added to Section 1.2102 to read as follows:

§ 1.2102 Eligibility of applications for competitive bidding.

(a) ***

(8) General Wireless Communications Service (GWCS) (see Part 26 of this chapter).

* * * * *

PART 26 – GENERAL WIRELESS COMMUNICATIONS SERVICE

1. Authority: 47 U.S.C. Sections 154, 301, 302, 303, 309 and 332, unless otherwise noted.

2. Part 26 of Chapter 1 of Title 47 of the Code of Federal Regulations is added to read as follows:

PART 26 – GENERAL WIRELESS COMMUNICATIONS SERVICE

Subpart A – General Information

Sec.

26.1 Basis and purpose.

26.2 Other applicable rule parts.

26.3 Permissible communications.

26.4 Terms and definitions.

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- 26.12 Eligibility.
- 26.13 License period.
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- 26.102 Service areas.
- 26.103 Frequencies.
- 26.104 Construction requirements.

Subpart E – Competitive Bidding Procedures for GWCS

- 26.201 GWCS subject to competitive bidding.
- 26.202 Competitive bidding design for GWCS licensing.
- 26.203 Competitive bidding mechanisms.
- 26.204 Withdrawal, default and disqualification penalties.
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- 26.301 Authorization required.
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- 26.303 Formal and informal applications.
- 26.304 Filing of GWCS applications, fees, and numbers of copies.
- 26.305 Standard application forms and permissive changes or minor modifications for the General Wireless Communications Service.
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- 26.309 Station antenna structures.
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- 26.311 Defective applications.
- 26.312 Inconsistent or conflicting applications.
- 26.313 Amendment of application for General Wireless Communications Service filed on FCC Form 175.
- 26.314 Amendment of applications for General Wireless Communications Service (other than applications filed on FCC Form 175).
- 26.315 Application for temporary authorizations.
- 26.316 Receipt of application; applications in the General Wireless Communications Service filed on FCC Form 175 and other applications in the GWCS.
- 26.317 Public notice period.
- 26.318 Dismissal and return of applications.
- 26.319 Ownership changes and agreements to amend or to dismiss applications or pleadings.
- 26.320 Opposition to applications.
- 26.321 Mutually exclusive applications.
- 26.322 Consideration of applications.
- 26.323 Post-auction divestitures.
- 26.324 Transfer of control or assignment of station authorization.
- 26.325 Extension of time to complete construction.
- 26.326 Termination of authorization.

Subpart A – General Information

§ 26.1 Basis and purpose.

This section contains the statutory basis for this part of the rules and provides the purpose for which this part is issued.

(a) *Basis.* The rules for the general wireless communications service (GWCS) in this part are promulgated under the provisions of the Communications Act of 1934, as amended, that vests authority in the Federal Communications Commission to regulate radio transmission and to issue licenses for radio stations.

(b) *Purpose.* This part states the conditions under which portions of the radio spectrum are made available and licensed for GWCS.

(c) *Scope.* The rules in this part apply only to stations authorized under this part.

§ 26.2 Other applicable rule parts.

Other FCC rule parts applicable to licensees in the general wireless communications service include the following:

(a) *Part 0.* This part describes the Commission's organization and delegations of authority.

Part 0 of this chapter also lists available Commission publications, standards and procedures for access to Commission records, and location of Commission Field Offices.

(b) *Part 1.* This part includes rules of practice and procedure for license applications, adjudicatory proceedings, procedures for reconsideration and review of the Commission's actions; provisions concerning violation notices and forfeiture proceedings; and the environmental requirements that, if applicable, must be complied with prior to the initiation of construction.

(c) *Part 2.* This part contains the Table of Frequency Allocations and special requirements in international regulations, recommendations, agreements, and treaties. This part also contains standards and procedures concerning the marketing and importation of radio frequency devices, and for obtaining equipment authorization.

(d) *Part 5.* This part contains rules prescribing the manner in which parts of the radio frequency spectrum may be made available for experimentation.

(e) *Part 17.* This part contains requirements for construction, marking and lighting of antenna towers.

(f) *Part 63.* This part contains technical standards for connection of terminal equipment to the telephone network.

§ 26.3 Permissible communications.

GWCS licensees may provide any fixed or mobile communications service on their assigned spectrum. Broadcasting services, Radiolocation services and satellite services, as defined in §2.1 of this Chapter, are prohibited.

§ 26.4 Terms and definitions.

Assigned Frequency. The center of the frequency band assigned to a station.

Authorized Bandwidth. The maximum width of the band of frequencies permitted to be used by a station. This is normally considered to be the necessary or occupied bandwidth, whichever is greater.

Average Terrain. The average elevation of terrain between 3 and 16 kilometers from the antenna site.

Effective Radiated Power (e.r.p.) (in a given direction). The product of the power supplied to the antenna and its gain relative to a half-wave dipole in a given direction.

Equivalent Isotropically Radiated Power (e.i.r.p.). The product of the power supplied to the antenna and the antenna gain in a given direction relative to an isotropic antenna.

Fixed Service. A radio communication service between specified fixed points.

Fixed Station. A station in the fixed service.

Gross Revenues. *Gross revenues* shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (e.g. cost of goods sold), as evidenced by audited financial statements for the relevant number of calendar years preceding January 1, 1994, or, if audited financial statements were not prepared on a calendar-year basis, for the most recently completed fiscal years preceding the filing of the

applicant's short-form application (Form 175). For applications filed after December 31, 1995, gross revenues shall be evidenced by audited financial statements for the preceding relevant number of calendar or fiscal years. If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate.

Land Mobile Service. A mobile service between base stations and land mobile stations, or between land mobile stations.

Land Mobile Station. A mobile station in the land mobile service capable of surface movement within the geographic limits of a country or continent.

Land Station. A station in the mobile service not intended to be used while in motion.

Mobile Service. A radio communication service between mobile and land stations, or between mobile stations.

Mobile Station. A station in the mobile service intended to be used while in motion or during halts at unspecified points.

National Geodetic Reference System (NGRS): The name given to all geodetic control data contained in the National Geodetic Survey (NGS) data base. (Source: National Geodetic Survey, U.S. Department of Commerce)

Rural Telephone Company. A rural telephone company is a local exchange carrier having 100,000 or fewer access lines, including all affiliates.

Small Business: Consortium of Small Businesses.

(1) A small business is an entity that, together with its affiliates and persons or entities that hold interest in such entity and their affiliates, has average annual gross revenues that are not more than \$40 million for the preceding three years.

(2) A small business consortium is conglomerate organization formed as a joint venture between or among mutually-independent business firms, each of which individually satisfies the definition of a small business.

Total assets. Total assets shall mean the book value (except where generally accepted accounting principles (GAAP) require market valuation) of all property owned by an entity, whether real or personal, tangible or intangible, as evidenced by the most recent audited financial statements.

Subpart B – Applications and Licenses

§ 26.11 Initial authorization.

(a) An applicant must file an application for an initial authorization in each market and frequency block desired.

(b) Blanket licenses are granted for each market and frequency block. Applications for individual sites are not required and will not be accepted.

§ 26.12 Eligibility.

Any entity, other than those precluded by section 310 of the Communications Act of 1934, as amended, 47 U.S.C. § 310, is eligible to hold a license under this part.

§ 26.13 License period.

Licenses for service areas will be granted for ten year terms from the date of original issuance or renewal.

§ 26.14 Criteria for comparative renewal proceedings.

A renewal applicant involved in a comparative renewal proceeding shall receive a preference, commonly referred to as a renewal expectancy, which is the most important comparative factor to be considered in the proceeding, if its past record for the relevant license period demonstrates that the renewal applicant:

- (a) Has provided "substantial" service during its past license term. "Substantial" service is defined as service which is sound, favorable, and substantially above a level of mediocre service which might just minimally warrant renewal; and
- (b) Has substantially complied with applicable Commission rules, policies and the Communications Act.

Subpart C – Technical Standards

§ 26.51 Equipment authorization.

(a) Each transmitter utilized for operation under this part and each transmitter marketed, as set forth in § 2.803 of this chapter, must be of a type that has been authorized by the Commission under its type acceptance procedure.

(b) The Commission periodically publishes a list of type accepted equipment, entitled "Radio Equipment List, Equipment Accepted for Licensing." Copies of this list are available for public reference at the Commission's offices in Washington, D.C., at each of its field offices, and may be ordered from its copy contractor.

(c) Any manufacturer of radio transmitting equipment to be used in these services may request equipment authorization following the procedures set forth in Subpart J of part 2 of this chapter. Equipment authorization for an individual transmitter may be requested by an applicant for a station authorization by following the procedures set forth in part 2 of this chapter. Such equipment if approved or accepted will not normally be included in the Commission's Radio Equipment List but will be individually enumerated on the station authorization.

(d) Applicants for type acceptance of transmitters that operate in these services must determine that the equipment complies with IEEE C95.1-1991, "IEEE Standards for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz" as measured using methods specified in IEEE C95.3-1991,

"Recommended Practice for the Measurement of Potentially Hazardous Electromagnetic Fields - RF and Microwave." The applicant for type acceptance is required to submit a statement affirming that the equipment complies with these standards as measured by an approved method and to maintain a record showing the basis for the statement of compliance with IEEE C.95.1-1991.

§ 26.52 RF hazards.

(a) Licensees and manufacturers are required to ensure that their facilities and equipment comply with IEEE C95.1-1991 (ANSI/IEEE C95.1-1992), "Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz." Measurement methods are specified in IEEE C95.3-1991, "Recommended Practice for the Measurement of Potentially Hazardous Electromagnetic Fields - RF and Microwave." Copies of these standards are available from IEEE Standards Board, 445 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855-1331. Telephone: 1-800-678-4333. The limits for both "controlled" and "uncontrolled" environments, as defined by IEEE C95.1-1991, will apply to all GWCS base and mobile stations, as appropriate. The application for equipment authorization must contain a statement confirming compliance with IEEE C95.1-1991. Technical information showing the basis for this statement must be submitted to the Commission upon request.

(b) GWCS hand-held devices whose maximum radiated power is 100 milliwatts or less are not required to be evaluated for compliance with ANSI/IEEE SAR (specific absorption rate) requirements, as long as a 2.5 cm separation distance is maintained between the radiating structure and the body of the user. (The ANSI/IEEE standard uses the term "radiated power," meaning input power to the antenna.)

(c) For further information on the Commission's environmental rules see §§ 1.1301 through 1.1319 of this chapter.

§ 26.53 Emission limits.

(a) The power of any emission at the edges of the 4660-4685 MHz band shall be attenuated below the transmitter power (P) by at least $43 + 10 \log_{10}(P)$ or 80 decibels, whichever is less.

(b) Compliance with these provisions is based on the use of measurement instrumentation employing a resolution bandwidth of 1 MHz or greater. However, in the 1 MHz bands immediately outside and adjacent to the frequency block a resolution bandwidth of at least one percent of the emission bandwidth of the fundamental emission of the transmitter may be employed. The emission bandwidth is defined as the width of the signal between two points, one below the carrier center frequency and one above the carrier center frequency, outside of which all emission are attenuated at least 26 dB below the transmitter power.

(c) When measuring the emission limits, the nominal carrier frequency shall be adjusted as close the license's frequency block edges, both upper and lower, as the design permits.

(d) The measurements of emission power can be expressed in peak or average values, provided that they are expressed in the same parameters as the transmission power.

(e) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

§ 26.54 Frequency stability.

The frequency stability shall be sufficient to ensure that the fundamental emission stays within the authorized frequency block.

§ 26.55 Field strength limits.

The predicted or measured median field strength at any location on the border of the GWCS service area shall not exceed 55 dBu unless licensees operating in adjacent areas agree to a higher field strengths along their mutual borders.

Subpart D – Miscellaneous

§ 26.101 Multiple ownership restrictions.

(a) GWCS licensees shall not have an ownership interest in more than three of the five, 5 megahertz wide channels available in any geographic area. For purposes of this restriction, a GWCS licensee is:

(1) Any institutional investor, as defined in § 26.4, with an ownership interest of ten or more percent in a GWCS license; and

(2) Any other person or entity with an ownership interest of five or more percent in a GWCS license.

(b) In cases where a party had indirect ownership, through an interest in an intervening entity (or entities) that has ownership in the GWCS license, that indirect ownership shall be attributable if the percentages of ownership at each level, multiplied together, equal five or more percent ownership of the GWCS license, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

Example: Party X has a non-controlling ownership interest of 25 percent in Company Y, which in turn has a non-controlling ownership interest of 10 percent in Company Z, the GWCS licensee. Party X's effective ownership interest in Company Z is Party X's ownership interest in Company Y (25 percent) times Company Y's ownership interest in Company Z (10 percent). Therefore, Party X's effective ownership interest in Company Z is 2.5 percent, and is not attributable.

(c) Notwithstanding paragraph (b) of this section, the following interests shall not constitute attributable ownership interests for purposes of paragraph (a) of this section:

(1) A limited partnership interest held by an institutional investor (as defined § 26.4) where the limited partner is not materially involved, directly or indirectly, in the management or operation of the GWCS holdings of the partnership, and the licensee so certifies. The criteria which would assure adequate insulation for the purposes of this certification require:

(i) Prohibiting limited partners from acting as employees of the limited partnership if responsibilities relate to the carrier activities of the licensee;

- (ii) Barring the limited partners from serving as independent contractors;
- (iii) Restricting communication among limited partners and the general partner regarding day-to-day activities of the licensee;
- (iv) Empowering the general partner to veto admissions of new general partners;
- (v) Restricting the circumstances in which the limited partners can remove the general partner;
- (vi) Prohibiting the limited partners from providing services to the partnership relating to the GWCS holdings of the licensee; and
- (vii) Stating that the limited partners may not become involved in the management or operation of the licensee.

§ 26.102 Service areas.

GWCS service areas are based on Economic Areas developed by the Bureau of Economic Analysis, Department of Commerce, referred to as "EAs" and three additional EA-like service areas: Guam and the Northern Mariana Islands (combined as one service area), Puerto Rico and the United States Virgin Islands (combined as one service area), and American Samoa.

(a) *Economic Areas.* Codes from 001 to 172 are assigned to the EAs in approximate geographic order, beginning with 001 in northern Maine, continuing south to Florida, then north to the Great Lakes, and continuing in a serpentine pattern to the West Coast. Except for the Western Oklahoma EA (126), the Northern Michigan EA (058), and the 17 EAs that mainly correspond to consolidated metropolitan statistical areas (CMSAs), each EA is named for the metropolitan area or city that is the node of its largest component economic area (CEA) and that is usually, but not always, the largest metropolitan area or city in the EA. Each CEA consists of a single economic node and the surrounding counties that are economically related to the node. The following list provides EA codes and names.

EA Code	Name
001	Bangor, ME
002	Portland, ME
003	Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH
004	Burlington, VT
005	Albany-Schenectady-Troy, NY
006	Syracuse, NY
007	Rochester, NY
008	Buffalo-Niagara Falls, NY
009	State College, PA
010	New York-No. New Jersey-Long Island, NY-NJ-CT-PA
011	Harrisburg-Lebanon-Carlisle, PA
012	Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD
013	Washington-Baltimore, DC-MD-VA-WV

- 014 Salisbury, MD
- 015 Richmond-Petersburg, VA
- 016 Staunton, VA
- 017 Roanoke, VA
- 018 Greensboro-Winston-Salem-High Point, NC
- 019 Raleigh-Durham-Chapel Hill, NC
- 020 Norfolk-Virginia Beach-Newport News, VA-NC
- 021 Greenville, NC
- 022 Fayetteville, NC
- 023 Charlotte-Gastonia-Rock Hill, NC-SC
- 024 Columbia, SC
- 025 Wilmington, NC
- 026 Charleston-North Charleston, SC
- 027 Augusta-Aiken, GA-SC
- 028 Savannah, GA
- 029 Jacksonville, FL
- 030 Orlando, FL
- 031 Miami-Fort Lauderdale, FL
- 032 Fort Myers-Cape Coral, FL
- 033 Sarasota-Bradenton, FL
- 034 Tampa-St. Petersburg-Clearwater, FL
- 035 Tallahassee, FL
- 036 Dothan, AL
- 037 Albany, GA
- 038 Macon, GA
- 039 Columbus, GA-AL
- 040 Atlanta, GA
- 041 Greenville-Spartanburg-Anderson, SC
- 042 Asheville, NC
- 043 Chattanooga, TN-GA
- 044 Knoxville, TN
- 045 Johnson City-Kingsport-Bristol, TN-VA
- 046 Hickory-Morganton, NC
- 047 Lexington, KY
- 048 Charleston, WV
- 049 Cincinnati-Hamilton, OH-KY-IN
- 050 Dayton-Springfield, OH
- 051 Columbus, OH
- 052 Wheeling, WV-OH
- 053 Pittsburgh, PA
- 054 Erie, PA
- 055 Cleveland-Akron, OH
- 056 Toledo, OH
- 057 Detroit-Ann Arbor-Flint, MI

058 Northern Michigan, MI
059 Green Bay, WI
060 Appleton-Oshkosh-Neenah, WI
061 Traverse City, MI
062 Grand Rapids-Muskegon-Holland, MI
063 Milwaukee-Racine, WI
064 Chicago-Gary-Kenosha, IL-IN-WI
065 Elkhart-Goshen, IN
066 Fort Wayne, IN
067 Indianapolis, IN
068 Champaign-Urbana, IL
069 Evansville-Henderson, IN-KY
070 Louisville, KY-IN
071 Nashville, TN
072 Paducah, KY
073 Memphis, TN-AR-MS
074 Huntsville, AL
075 Tupelo, MS
076 Greenville, MS
077 Jackson, MS
078 Birmingham, AL
079 Montgomery, AL
080 Mobile, AL
081 Pensacola, FL
082 Biloxi-Gulfport-Pascagoula, MS
083 New Orleans, LA
084 Baton Rouge, LA
085 Lafayette, LA
086 Lake Charles, LA
087 Beaumont-Port Arthur, TX
088 Shreveport-Bossier City, LA
089 Monroe, LA
090 Little Rock-North Little Rock, AR
091 Fort Smith, AR-OK
092 Fayetteville-Springdale-Rogers, AR
093 Joplin, MO
094 Springfield, MO
095 Jonesboro, AR
096 St. Louis, MO-IL
097 Springfield, IL
098 Columbia, MO
099 Kansas City, MO-KS
100 Des Moines, IA
101 Peoria-Pekin, IL

- 102 Davenport-Moline-Rock Island, IA-IL
- 103 Cedar Rapids, IA
- 104 Madison, WI
- 105 La Crosse, WI-MN
- 106 Rochester, MN
- 107 Minneapolis-St. Paul, MN-WI
- 108 Wausau, WI
- 109 Duluth-Superior, MN-WI
- 110 Grand Forks, ND-MN
- 111 Minot, ND
- 112 Bismarck, ND
- 113 Fargo-Moorhead, ND-MN
- 114 Aberdeen, SD
- 115 Rapid City, SD
- 116 Sioux Falls, SD
- 117 Sioux City, IA-NE
- 118 Omaha, NE-IA
- 119 Lincoln, NE
- 120 Grand Island, NE
- 121 North Platte, NE
- 122 Wichita, KS
- 123 Topeka, KS
- 124 Tulsa, OK
- 125 Oklahoma City, OK
- 126 Western Oklahoma, OK
- 127 Dallas-Fort Worth, TX
- 128 Abilene, TX
- 129 San Angelo, TX
- 130 Austin-San Marcos, TX
- 131 Houston-Galveston-Brazoria, TX
- 132 Corpus Christi, TX
- 133 McAllen-Edinburg-Mission, TX
- 134 San Antonio, TX
- 135 Odessa-Midland, TX
- 136 Hobbs, NM
- 137 Lubbock, TX
- 138 Amarillo, TX
- 139 Santa Fe, NM
- 140 Pueblo, CO
- 141 Denver-Boulder-Greeley, CO
- 142 Scottsbluff, NE
- 143 Casper, WY
- 144 Billings, MT
- 145 Great Falls, MT

- 146 Missoula, MT
- 147 Spokane, WA
- 148 Idaho Falls, ID
- 149 Twin Falls, ID
- 150 Boise City, ID
- 151 Reno, NV
- 152 Salt Lake City-Ogden, UT
- 153 Las Vegas, NV-AZ
- 154 Flagstaff, AZ
- 155 Farmington, NM
- 156 Albuquerque, NM
- 157 El Paso, TX
- 158 Phoenix-Mesa, AZ
- 159 Tucson, AZ
- 160 Los Angeles-Riverside-Orange County, CA
- 161 San Diego, CA
- 162 Fresno, CA
- 163 San Francisco-Oakland-San Jose, CA
- 164 Sacramento-Yolo, CA
- 165 Redding, CA
- 166 Eugene-Springfield, OR
- 167 Portland-Salem, OR-WA
- 168 Pendleton, OR
- 169 Richland-Kennewick-Pasco, WA
- 170 Seattle-Tacoma-Bremerton, WA
- 171 Anchorage, AK
- 172 Honolulu, HI

(b) Other eligible areas not included in the Bureau of Economic Analysis's list of EAs include: Guam and the Northern Mariana Islands, Puerto Rico and United States Virgin Islands, and American Samoa.

§ 26.103 Frequencies

The following frequencies are available for GWCS in the Economic Areas and other areas described in § 26.102 as shown below.

Channel Block	Frequency Band
Block A:	4660-4665 MHz
Block B:	4665-4670 MHz
Block C:	4670-4675 MHz
Block D:	4675-4680 MHz
Block E:	4680-4685 MHz

§ 26.104 Construction requirements.

(a) GWCS licensees shall within five years of initial license grant date offer service to one-third of the population in the area in which they are licensed. Licensees shall serve two-thirds of the population in the area in which they are licensed within ten years of initial license grant date.

(b) In demonstrating compliance with the above construction requirements, licensees base their calculations on signal field strengths that ensure reliable service for the technology utilized. Licensees may use any service radius contour formula developed or generally used by industry, provided that such formula is based on the technical characteristics of their system.

(c) Upon meeting the five and ten year benchmarks in paragraph (a) of this section, licensees shall file a map and other supporting documentation that demonstrates compliance with the geographic area or population coverage requirement. Licensees shall file a statement indicating commencement of service. The filing must be received at the Commission on or before expiration of the relevant period.

(d) If the sale of a license is approved, the new licensee is held to the original build-out requirement.

(e) Failure by a licensee to meet the above construction requirements may result in forfeiture of the license and ineligibility to regain it.

Note: Population-based construction requirements contained in this section shall be based on the 1990 census.

Subpart E - Competitive Bidding Procedures for GWCS

§ 26.201 GWCS subject to competitive bidding.

Mutually exclusive initial applications to provide GWCS service are subject to competitive bidding procedures. The general competitive bidding procedures found in 47 CFR Part 1, Subpart Q, will apply unless otherwise provided in this part.

§ 26.202 Competitive bidding design for GWCS licensing.

(a) The Commission will employ the following competitive bidding designs when choosing from among mutually exclusive initial applications to provide GWCS service:

- (1) Simultaneous multiple round auctions
- (2) Sequential oral auctions

(b) The Commission may design and test alternative procedures. The Commission will announce by Public Notice before each auction the competitive bidding design to be employed in a particular auction.

(c) The Commission may use single combined auctions, which combine bidding for two or more substitutable licenses and award licenses to the highest bidders until the available licenses are exhausted. This technique may be used in conjunction with any type of auction.

§ 26.203 Competitive bidding mechanisms.

(a) *Sequencing.* The Commission will establish and may vary the sequence in which GWCS licenses will be auctioned.

(b) *Reservation Price.* The Commission may establish a reservation price, either disclosed or undisclosed, below which a license subject to auction will not be awarded.

(c) *Minimum Bid Increments.* The Commission may, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms. The Commission may also establish by Public Notice a suggested opening bid or a minimum opening bid on each license.

(d) *Stopping Rules.* The Commission may establish stopping rules before or during multiple round auctions in order to terminate an auction within a reasonable time.

(e) *Activity Rules.* The Commission may establish activity rules which require a minimum amount of bidding activity. In the event that the Commission establishes an activity rule in connection with a simultaneous multiple round auction, each bidder will be entitled to request and will be automatically granted one activity rule waiver during each stage of an auction, or one automatic waiver during a specified number of bidding rounds. The Commission may change by Public Notice the number and frequency of such automatic activity rule waivers for a specific auction.

(f) *Bidder Identification During Auctions.* The Commission may choose, on an auction-by-auction basis, to release the identity of the bidders associated with bidder identification numbers. The Commission will announce by Public Notice before each auction whether bidder identities will be revealed.

(g) *Nationwide Bidders.* Bidders seeking to aggregate EA-based GWCS licenses into nationwide licenses are required to declare the number of nationwide aggregations for which they will bid and to be active in every round of bidding on sufficient licenses to create the number of declared aggregations.

§ 26.204 Withdrawal, default and disqualification penalties.

(a) When the Commission conducts a simultaneous multiple round auction pursuant to § 26.202 (a)(1), the Commission will impose penalties on bidders who withdraw high bids during the course of an auction, or who default on payments due after an auction closes or who are disqualified.

(1) *Bid withdrawal prior to close of auction.* A bidder who withdraws a high bid during the course of an auction will be subject to a penalty equal to the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission. No withdrawal penalty would be assessed if the subsequent winning bid exceeds the withdrawn bid. This penalty amount will be deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission. The

withdrawal penalty for a nationwide bidder for each aggregation is limited to 5 percent of the aggregate withdrawn bids. The withdrawal penalty for a nationwide bidder is calculated between the sum of the withdrawn bids and the sum of the subsequent high bids on the withdrawn licenses.

(2) *Default or disqualification after close of auction.* If a high bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to the penalty in paragraph (a)(1) of this section plus an additional penalty equal to three (3) percent of the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the 3 percent penalty will be calculated based on the defaulting bidder's bid amount. These amounts will be deducted from any upfront payments or down payments that the defaulting or disqualified bidder has deposited with the Commission.

(b) When the Commission conducts sequential oral auctions, the Commission may modify the penalties to be paid in the event of bid withdrawal, default or disqualification; provided, however, that such penalties shall not exceed the penalties specified above.

(c) In the case of single round bidding for GWCS licenses:

(1) If a bid is withdrawn before the Commission releases the initial Public Notice announcing the winning bidder(s), no bid withdrawal penalty will be assessed.

(2) If a bid is withdrawn after the Commission releases the initial Public Notice announcing the winning bidder(s), the bid withdrawal penalty will be equal to the difference between the high bid amount and the amount of the next highest valid bid. A bid will be considered valid for this purpose if the bidder has not already been designated the winning bidder on more licenses than it is permitted to be awarded. Losing bidders will only be subject to this bid withdrawal penalty for a period of 30 days after the Commission releases the initial Public Notice announcing the winning bidders.

(d) In the case of oral sequential bidding for GWCS licenses:

(1) If a bid is withdrawn before the Commission has declared the bidding to be closed for the license bid on, no bid withdrawal penalty will be assessed.

(2) If a bid is withdrawn after the Commission has declared the bidding to be closed for the license bid on, the bid withdrawal penalty of § 1.2104(g) of this chapter and paragraphs (a)(1) and (a)(2) of this section will apply.

§ 26.205 Bidding application (FCC Form 175 and 175-S Short-Form).

All applicants for initial provision of GWCS service must submit applications on FCC Forms 175 and 175-S pursuant to the procedures set forth in § 1.2105 of part 1 of this chapter. The Commission will issue a Public Notice announcing the date of a GWCS auction, the licenses which are to be auctioned, and the date on or before which applicants intending to participate in an upcoming GWCS auction must file their applications in order to be eligible for that auction. The Public Notice will also contain information necessary for completion of the application as well as other important information such as the materials which must accompany the Forms, any filing fee that must accompany the application or any upfront payment that will need to be submitted, and the location where the application must be filed.

§ 26.206 Submission of upfront payments and down payments.

(a) Where the Commission uses simultaneous multiple round auctions or oral sequential auctions bidders will be required to submit an upfront payment pursuant to the procedures set forth in § 1.2106 of this chapter.

(b) Winning bidders in an auction must submit a down payment to the Commission in accordance with the procedures set forth in § 1.2107 (a) and (b) of this chapter.

(c) Notwithstanding paragraphs (a) and (b) of this section, eligible small businesses may submit a down payment of 5 percent of the winning bid five days after the auction closes and 5 percent five days after public notice that the license is ready for grant.

§ 26.207 Long form applications.

Winning bidders will be required to submit long form applications on FCC form XXX, as modified, within ten (10) business days after being notified that they are the winning bidder. Applications on FCC Form XXX shall be submitted pursuant to the procedures set forth in subpart G of this part and § 1.2107 (c) and (d) of this chapter and any associated Public Notices. Only auction winners will be eligible to file applications on FCC Form XXX for initial GWCS licenses in the event of mutual exclusivity between applicants filing Form 175. Winning bidders need not complete Schedule B to Form XXX.

§ 26.208 License grant, denial, default, and disqualification.

(a) Unless eligible for installment payments and/or a bidding credit, each winning bidder is required to pay the balance of its winning bid in a lump sum payment within five (5) business days following the award of the license. Grant of the license will be conditioned upon full and timely payment of the winning bid amount.

(b) A bidder who withdraws its bid, defaults on a payment or is disqualified will be subject to the penalties specified in § 1.2109 of this Chapter.

(c) An eligible small business may elect to pay its winning bid, less up-front payments, over the term of the license. Interest charges are fixed at the time of licensing at the rate equal to U.S. Treasury obligation plus 2.5 percent. Installment payments are due quarterly on the anniversary of the day the license was granted, except that interest-only installment payments are permitted during the first two years of the license.

§ 26.209 Eligibility for partitioned licenses.

(a) Notwithstanding § 26.102, an applicant that is a rural telephone company, as defined in § 26.4, may be granted a GWCS license that is geographically partitioned from a separately licensed EA, so long as the EA applicant or licensee has voluntarily agreed (in writing) to partition a portion of the license to the rural telephone company.

(b) If partitioned licenses are being applied for in conjunction with a license(s) to be awarded through competitive bidding procedures --

(1) The applicable procedures for filing short-form applications and for submitting upfront

payments and down payments contained in this part and Part 1 of this chapter shall be followed by the applicant, who must disclose as part of its short-form application all parties to agreement(s) with or among rural telephone companies to partition the license pursuant to this section, if won at auction (see §1.2105(a)(2)(viii));

(2) Each rural telephone company that is a party to an agreement to partition the license shall file a long-form application for its respective, mutually agreed-upon geographic area together with the application for the remainder of the EA filed by the auction winner.

(c) If the partitioned license is being applied for as a partial assignment of the EA license following grant of the initial license, request for authorization for partial assignment of a license shall be made pursuant to § 26.324.

(d) Each application for a partitioned area (long-form initial application or partial assignment application) shall contain a partitioning plan that must propose to establish a partitioned area to be licensed that meets the following criteria:

- (1) Conforms to established geopolitical boundaries (such as county lines);
- (2) Includes the wireline service area of the rural telephone company applicant; and
- (3) Is reasonably related to the rural telephone company's wireline service area.

Note to paragraph (d)(3) of this section: A partitioned service area will be presumed to be reasonably related to the rural telephone company's wireline service area if the partitioned service area contains no more than twice the population overlap between the rural telephone company's wireline service area and the partitioned area.

(e) Each licensee in each partitioned area will be responsible for meeting the construction requirements in its area (see § 26.104).

§ 26.210 Provisions for small businesses.

(a) *Bidding Credits.* A winning bidder that qualifies as a small business or a consortium of small businesses may use a bidding credit of ten percent to lower the cost of its winning bid.

(b) *Installment Payments.* A winning bidder that qualifies as a small business may pay its winning bid amount (less upfront payments) in installments over the ten year term of the license, with interest charges to be fixed at the time of licensing at a rate equal to the rate for ten year U.S. Treasury obligations plus 2.5 percent. Installment payments are due quarterly on the anniversary of the day the license is granted. Failure to make timely installment payments may result in revocation of the license. Small businesses are permitted to make interest-only installment payments during the first two years of the license.

(c) *Down Payments.* A winning bidder that qualifies as a small business is permitted to make a down payment equal to 5 percent of the winning bid due five days after the auction closes with the remaining 5 percent down payment due five days after Public Notice that the license is ready for grant.

(d) *Unjust Enrichment.* If a licensee that utilizes a bidding credit under this section seeks to assign or transfer control of its license to an entity not meeting the eligibility standards for bidding credits or seeks to make any other change in ownership that would result in the licensee no longer qualifying for bidding credits under this section, the licensee must seek Commission approval and reimburse the government for the amount of the bidding credit, plus interest at the rate imposed for installment financing at the time the license was awarded