5. Section 90.210 is amended by adding a new footnote 3 against the frequency range "806-821/851-866" in the Table labelled "Applicable Emission Masks", and by adding a new footnote 3 and accompanying text at the end of the Table to read as follows:

§ 90.210 Emission Masks.

* * * * *

806-821/851-866[3]	B	G

* * * * *

[3] Equipment used in this band licensed to EA systems shall comply with the emission mask provisions of Section 90.691.

* * * * *

6. Section 90.609 is amended by modifying paragraphs (c) and (d) to read as follows:

§ 90.609 Special limitations on amendment of applications for assignment or transfer of authorizations for radio systems above 800 MHz.

* * * * *

(c) Licensees of constructed systems in any category other than Spectrum Block D frequencies in the 800 MHz SMR service (formerly General Category) are permitted to make partial assignments of an authorized grant to an applicant proposing to create a new system or to an existing licensee that has loaded its system to 70 mobiles per channel and is expanding that system. An applicant authorized to expand an existing system or to create a new system with frequencies from any category other than Spectrum Block D frequencies in the 800 MHz SMR service obtained through partial assignment will receive the assignor's existing license expiration date and loading deadline for the frequencies that are assigned. A licensee that makes a partial assignment of a station's frequencies will not be authorized to obtain additional frequencies for that station for a period of one year from the date of the partial assignment.

(d) A constructed system originally licensed in the General Category that is authorized to operate in the conventional mode may be combined with an existing SMR system above 800 MHz authorized to operate in the trunked mode by assignment of an authorized grant of the General Category station to the SMR station.

7. Section 90.611 is amended by modifying paragraphs (a) and (c) and by removing and reserving paragraph (d) to read as follows:

§ 90.611 Processing of applications.

* * * * *

(a) All applications will first be considered to determine whether they are substantially complete and acceptable for filing. If so, except as otherwise specifically provided for in this subpart, they will be assigned a file number and put in pending status. If not, they will be returned to the applicant.

* * * * *

(c) Each application will be reviewed to determine whether it can be granted. Applicants must specify the intended frequency (or frequencies) of operation.

(d) [Reserved]

* * * * *

8. Section 90.615 is revised in its entirety to read as follows:

§ 90.615 Frequencies available in Spectrum Block D in the 800 MHz SMR service (formerly General Category).

(a) Except as indicated in Section 90.619, as of **[effective date of these rules]**, frequencies in the 800 MHz Spectrum Block D (Channels 1-150) previously designated as General Category channels are re-allocated for use exclusively by the SMR service for either trunked or conventional operations. The frequencies are available to SMR licensees in areas farther than 110 km (68.4 miles) from the U.S./Mexico border and farther than 140 km (87 miles) from the U.S./Canada border.

(b) Non-SMR stations that were authorized to transmit on these frequencies prior to **[effective date of these rules]** and have remained so authorized continuously since that time may continue to operate in accordance with their current authorizations. Such authorizations may be renewed unchanged or with minor modifications as described in § 90.693 of this subpart.

9. Section 90.617 is amended by revising the text of paragraphs (b), (c), (d), and by revising Table 4A of paragraph (d) to read as follows:

§ 90.617 Frequencies in the 809.750-824/854.750-869 MHz, and 896-901/935-940 MHz bands available for trunked or conventional system use in non-border areas.

* * * * *

(b) The channels listed in Table 2A are available to eligible applicants in the Industrial/Land Transportation Category (consisting of the Power, Petroleum, Forest Products, Film and Video Production, Relay Press, Special Industrial, Manufacturers, Telephone Maintenance, Motor Carrier, Railroad, Taxicab and Automobile Emergency Radio Services). These frequencies are available in areas farther than 110 km (68.4 miles) from the U.S./Mexico border and farther than 140 km (87.0 miles) from the U.S./Canada border. Specialized Mobile Radio (SMR) systems will not be authorized on these frequencies. These channels are available for inter-category sharing as indicated in § 90.621(g).

* * * * *

(c) The channels listed in Table 3A are available to eligible applicants in the Business Radio Category. This category does not include Specialized Mobile Radio Systems as defined in § 90.7. These frequencies are available in areas farther than 110 km (68.4 miles) from the U.S./Mexico border and farther than 140 km (87.0 miles) from the U.S./Canada border. Specialized Mobile Radio Systems will not be authorized on these frequencies. These channels are available for inter-category sharing as indicated in § 90.621(g).

* * * * *

(d) The channels listed in Tables 4A and 4B are available only to eligibles in the SMR category which consists of Specialized Mobile Radio (SMR) stations and eligible end users. The frequencies listed in Table 4A are available to SMR eligibles desiring to be authorized for EA-based service areas in accordance with Section 90.681. SMR licensees licensed on Channels 401 - 600 on or before **[effective date of these rules]** may continue to utilize these frequencies within their existing service areas, subject to the mandatory relocation provisions of § 90.699. Systems licensed on the channels listed in Table 4A as Spectrum Block D or E Channels will be licensed on a site-specific basis. This paragraph deals with the assignment of frequencies only in areas farther than 110 km (68.4 miles) from the U.S./Mexico border and farther than 140 km (87) miles from the U.S./Canada border. See § 90.619 for the assignment of SMR frequencies in these border areas. For stations located within 113 km (70 miles) of Chicago, channels 401-600 will be assigned in blocks as outlined in Table 4C.

Table 4A--SMR Category 806-821/851-866 MHz Band Channels

EA-Based SMR Category Systems (200 channels)

Spectrum Block	Channel No.
A	401-420
B	421-480
C	481-600

SMR Category (230 channels)

Spectrum Block	Channel No.
D	1-150
E	201-208, 221-228, 241-248, 261-268, 281-288, 301-308, 321-328, 341-348, 361-368, 381-388

* * * * *

10. Section 90.619 is amended by revising paragraphs (a)(3), (a)(5), (b)(8), (b)(9), (b)(10), and (b)(11) to read as follows:

§ 90.619 Frequencies available for use in the U.S./Mexico and U.S/Canada border areas.

(a)* * *

(3) Tables 2A and 2B list the channels that are available for assignment to eligible applicants in the Industrial/Land Transportation Category (consisting of the Power, Petroleum, Forest Products, Video Production, Relay Press, Special Industrial, Manufacturers, Telephone Maintenance, Motor Carrier, Railroad, Taxicab and Automobile Emergency Radio Services). New applications for Specialized Mobile Radio systems will not be accepted for these channels after **[effective date of these rules]**.

* * * * *

(5) Tables 4A and 4B list the channels that are available for assignment for the SMR Category (consisting of Specialized Mobile Radio systems as defined in § 90.7). These channels are not available for inter-category sharing.

TABLE 4A - UNITED STATES-MEXICO BORDER AREA, SMR CATEGORY 806-821/851-866 MHZ BAND (95 CHANNELS):

<u>EA-Based SMR Category</u> (30 Channels)

Spectrum Block	Offset Channel No.
A	None
B	429, 431, 433, 435, 437,439, 469, 471, 473, 475, 477, 479
C	509, 511, 513, 515, 517, 519, 549, 551, 553, 555, 557, 559, 589, 591, 593, 595, 597, 599

<u>SMR Category</u> (65 Channels)

Spectrum Block	Offset Channel No.
D	None
E	None
Other	228-240, 268-280, 308-320, 348-360, 388-400

* * * * *

(b)* * *

(8)* * *

TABLE 12--SMR CATEGORY--95 Channels
[Regions 1, 4, 5, 6]

EA-Based SMR Category (90 Channels)

Spectrum Block	Channel No.
A	None
B	463-480
C	493-510, 523-540, 553-570, 583-600

SMR Category (5 Channels)

Spectrum Block	Channel No.
D	30, 60, 90, 120, 150
E	None

(9)* * *

TABLE 16--SMR CATEGORY--60 Channels
[Region 2]

EA-Based SMR Category (55 Channels)

Spectrum Block	Channel No.
A	None
B	None
C	518-528, 536-546, 554-564, 572-582, 590-600

SMR Category (5 Channels)

Spectrum Block	Channel No.
D	18, 36, 54, 72, 90
E	None

(10)* * *

TABLE 20--SMR CATEGORY--135 Channels

[Region 3]

EA-Based SMR Category (120 Channels)

Spectrum Block	Channel No.
A	417-420
B	421-440, 457-480
C	497-520, 537-560, 577-600

SMR Category (15 Channels)

Spectrum Block	Channel No.
D	38, 39, 40, 78, 79, 80, 118, 119,120
E	None
Other	158, 159, 160, 198, 199, 200

(11)* * *

TABLE 24--(REGIONS 7, 8) SMR CATEGORY--190 Channels

EA-Based SMR Category (80 Channels)

Spectrum Block	Channel No.
A	None
B	425-440, 465-480
C	505-520, 545-560, 585-600

SMR Category (110 Channels)

Spectrum Block	Channel No.
D	35-40, 75-80, 115-120
E	225-228, 265-268, 305-308, 345-348, 385-388
Other	155-160, 195-200, 229-240, 269-280, 309-320, 349-360, 389-400

* * * * *

11. Section 90.621 is amended by revising paragraph (a) introductory text, revising paragraph (a)(1)(iii), removing paragraph (a)(1)(iv), revising paragraph (b) introductory text, paragraph (c), and paragraph (3) introductory text, and removing and reserving paragraphs (e)(2), (e)(3), and (e)(4) to read as follows:

§ 90.621 Selection and assignment of frequencies.

(a) Applicants for frequencies in the Public Safety, Industrial/Land Transportation, and Business Categories must specify on the application the frequencies on which the proposed system will operate pursuant to a recommendation by the applicable frequency coordinator. Applicants for frequencies in the SMR Category must request specific frequencies by including in their applications the frequencies requested.

(1) * * *

(i) * * *

(ii) * * *

(iii) There are no limitations on the number of frequencies that may be trunked. Authorizations for non-SMR stations may be granted for up to 20 trunked frequency pairs at a time in accordance with the frequencies listed in Secs. 90.615, 90.617, and 90.619.

* * * * *

(b) Stations authorized on frequencies listed in this Subpart, except for those stations authorized pursuant to paragraph (g) of this section and EA-based and MTA-based SMR systems, will be afforded protection solely on the basis of fixed distance separation criteria. The separation between co-channel systems will be a minimum of 113 km (70 mi) with the following exceptions:

* * * * *

(c) Conventional systems authorized on frequencies in the Public Safety (except for those systems that have participated in a formal regional planning process as described in Sec. 90.16), Industrial/Land Transportation, Business, and Spectrum Block D frequencies in the 800 MHz SMR service (formerly General) Categories which have not met the loading levels necessary for channel exclusivity will not be afforded co-channel protection.

* * * * *

(e) Frequencies in the 806-821/851-866 MHz bands listed as available for eligibles in the Public Safety, Industrial/Land Transportation, and Business Categories are available for inter-category sharing under the following conditions:

* * * * *

(2) [Reserved]

(3) [Reserved]

(4) [Reserved]

* * * * *

12. Section 90.629 is amended by adding a new paragraph (e) to read as follows:

§ 90.629 Extended implementation period.

* * * * *

(e) As of **[effective date of these rules]**, Specialized Mobile Radio systems are not eligible for extended implementation periods under this section. Additionally, all 800 MHz SMR licensees that are operating under extended implementation authority as of **[effective date of these rules]** must, by **[90 days from effective date of this item]**, demonstrate that continuing to allow them to have an extended period of time to construct their facilities is warranted and furthers the public interest. If a licensee's extended implementation authority showing is approved by the Bureau, such licensee will be afforded an extended implementation of two years or the remainder of its current extended implementation period, whichever is shorter. Upon the termination of this period, the authorizations for those facilities that remain unconstructed will terminate automatically. If a licensee with a current extended implementation period fails to submit the showing mentioned above within the designated timeframe or submits an insufficient or incomplete showing, such licensee will have six months from the last day on which it could timely file such a showing or from the disapproval of its request to construct the remaining facilities covered under its implementation plan to construct any unconstructed facilities for which it is authorized. The authorizations for those facilities remaining unconstructed after this six-month period will terminate automatically.

13. Section 90.631(b) is amended by replacing the expression "General Category" with the expression "Spectrum Block D frequencies in the 800 MHz SMR service (formerly General Category)"

§ 90.631 Trunked systems loading, construction and authorization requirements.

* * * * *

(b)* * * If a trunked system has channels from more than one category, Spectrum Block D frequencies in the 800 MHz SMR service (formerly General Category) channels are the first channels considered to cancel automatically. * * *

* * * * *

14. Subpart S is amended by adding a new heading following Section 90.671 to read as follows:

POLICIES GOVERNING THE LICENSING AND USE OF EA-BASED SMR SYSTEMS IN THE 816-821/861-866 BAND.

15. A new section 90.681 is added to Subpart S to read as follows:

§ 90.681 EA-based SMR Service Areas.

EA licenses for SMR spectrum blocks in the 816-821/861-866 band listed in Table 4A of Section 90.617(d) are available in 175 Economic Areas (EAs) as defined in Section 90.7.

16. A new Section 90.683 is added to Subpart S to read as follows:

§ 90.683 EA-Based SMR System Operations.

(a) EA-based licensees authorized in the 816-821/861-866 MHz band pursuant to Section 90.681 may construct and operate base stations using any of the base station frequencies identified in their spectrum block anywhere within their authorized EA, provided that:

(1) The EA licensee affords protection, in accordance with §90.621(b), to all previously authorized co-channel stations that are not associated with another EA license.

(2) The EA licensee complies with any rules and international agreements that restrict use of frequencies identified in their spectrum block, including the provisions of § 90.619 relating to U.S./Canadian and U.S./Mexican border areas.

(3) The EA licensee limits the field strength of its base stations at any location on the border of the EA service area in accordance with § 90.689.

(4) The EA licensee notifies the Commission within 30 days of the completion of the addition, removal, relocation or modification of any of its facilities within the EA. Such notification must be made by submitting an FCC Form 600 and must include the appropriate filing fee, if any.

(5) For any construction or alteration that would exceed the requirements of § 17.7 of this chapter, licensees must notify the appropriate Regional Office of the Federal Aviation Administration (FAA Form 7460-1) and file a request for antenna height clearance and obstruction marking and lighting specifications (FCC Form 854) with the FCC, WTB, Support Services Branch, Gettysburg, PA 17325.

(6) Any additional transmitters placed in operation must not have a significant environmental effect as defined by §§ 1.1301 through 1.1319 of this Chapter.

(b) In the event that the authorization for a previously authorized co-channel station within the EA licensee's spectrum block is terminated or revoked, the EA licensee's co-channel obligations to such station will cease upon deletion of the facility from the Commission's official licensing records, and the EA licensee then will be able to construct and operate without regard to that previous authorization.

17. A new Section 90.685 is added to Subpart S to read as follows:

§ 90.685 Authorization, Construction and Implementation of EA Licenses.

(a) EA licenses in the 816-821/861-866 MHz band will be issued for a term not to exceed ten years. Additionally, EA licensees generally will be afforded a renewal expectancy only for those stations put into service after August 10, 1996.

(b) EA licensees in the 816-821/861-866 band will be permitted five years to construct their stations. This five-year period will commence with the issuance of the EA-based license and will apply to all of the licensee's stations within the EA spectrum block, including any stations that may have been subject to an earlier construction deadline arising from a pre-existing authorization.

(c) EA licensees in the 816-821/861-866 MHz band must, within three years, construct and place into operation a sufficient number of base stations to provide coverage to at least one-third of the population of its EA-based service area. Further, each EA licensee must provide coverage to at least two-thirds of the population of the EA-based service area within five years.

(d) Channel Use Requirement. In addition to the population coverage requirements described in this section, we will require EA licensees to construct 50 percent of the total channels included in their spectrum block in at least one location in their respective EA-based service area within three years of initial license grant and to retain such channel usage for the remainder of the construction period.

(e) An EA licensee's failure to meet the population coverage requirements of paragraphs (c) and (d) of this section, will result in forfeiture of the entire EA license. Forfeiture of the EA license, however, would not result in the loss of any constructed facilities authorized to the licensee prior to the date of the commencement of the auction for the EA licenses.

18. A new Section 90.687 is added to Subpart S to read as follows:

§ 90.687 Special provisions regarding assignments and transfers of authorizations for incumbent SMR licensees in the 816-821/861-866 MHz band.

An SMR licensee initially authorized on any of the channels listed in Table 4A of Section 90.617 may transfer or assign its channel(s) to another entity subject to the provisions of §§ 90.153 and 90.609(b). If the proposed transferee or assignee is the EA licensee for the spectrum block to which the channel is allocated, such transfer or assignment presumptively will be deemed to be in the public interest. However, such presumption will be rebuttable.

19. A new Section 90.689 is added to Subpart S to read as follows:

§ 90.689 Field Strength Limits.

(a) For purposes of implementing §§ 90.689 through 90.699, predicted 40 dBuV/m contours shall be calculated using Figure 10 of § 73.699 of this Chapter with a correction factor of -9 dB, and predicted 22 dBuV/m contours shall be calculated using Figure 10a of § 73.699 with a correction factor of -9 dB.

(b) The predicted or measured field strength at any location on the border of the EA-based service area for EA licensees must not exceed 40 dBuV/m unless all bordering EA licensees agree to a higher field strength. In the event that this standard conflicts with the EA licensee's obligation to provide co-channel protection to incumbent licensees pursuant to § 90.621(b), the requirements of Section 90.621(b) shall prevail.

20. A new Section 90.691 is added to Subpart S to read as follows:

§ 90.691 Emission Mask Requirements for EA-based Systems.

(a) Out-of-band emission requirement shall apply only to the "outer" channels included in an EA license and to spectrum adjacent to interior channels used by incumbent licensees. The emission limits are as follows:
(1) For any frequency removed from the EA licensee's frequency block by up to and including 37.5 kHz, the power of any emission shall be attenuated below the transmitter power (P) in watts by at least 116 $\text{Log}_{10}(f/6.1)$ decibels or 50 + 10 $\text{Log}_{10}(P)$ decibels or 80 decibels, whichever is the lesser attenuation, where f is the frequency removed from the center of the outer channel in the block in kilohertz and where f is greater than 12.5 kHz.
(2) For any frequency removed from the EA licensee's frequency block greater than 37.5 kHz, the power of any emission shall be attenuated below the transmitter power (P) in watts by at least 43 + $10\text{Log}_{10}(P)$ decibels or 80 decibels, whichever is the lesser attenuation, where f is the frequency remvoed form the center of the outer channel in the block in kilohertz and where f is greater than 37.5 kHz.

(b) 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.

21. A new section 90.683 is added to Subpart S to read as follows:

§ 90.693 Grandfathering provisions for incumbent licensees in spectrum blocks A, B, and C.

(a) These provisions apply to "incumbent licensees", all 800 MHz SMR licensees who obtained licenses or filed applications on or before December 15, 1995. An incumbent licensee's service area shall be defined by its originally-licensed 40 dBu field strength contour and its interference contour shall be defined as its originally-licensed 22 dBu field strength contour. Incumbent licensees are permitted to add, remove or modify transmitter sites within this existing service area without prior notification to the Commission so long as their original 22 dBu field strength contour is not expanded and the station complies with the Commission's short-spacing criteria in §§ 90.621(b)(4) through 90.621(b)(6). The incumbent licensee must, however, notify the Commission within 30 days of the completion of any changes in technical parameters or additional stations constructed through a minor modification of their license. Such notification must be made by submitting an FCC Form 600 and must include the appropriate filing fee, if any. These minor modification applications are not subject to public notice and petition to deny requirements or mutually exclusive applications.

(b) Incumbent licensees operating at multiple sites may, after grant of EA licenses has been completed, exchange multiple site licenses for a single license, authorizing operations throughout the contiguous and overlapping 40 dBu field strength contours of the multiple sites. Incumbents exercising this license exchange option must submit specific information for each of their external base sites after the close of the 800 MHz SMR auction.

22. A new Section 90.699 is added to Subpart S to read as follows:

§ 90.699 Transition of the Upper 200 Channels in the 800 MHz Band to EA Licensing.

In order to facilitate provision of service throughout an EA, an EA licensee may relocate incumbent licensees in its EA by providing "comparable facilities" on other frequencies in the 800 MHz band. Such relocation is subject to the following provisions:

(a) EA licensees may negotiate with incumbent licensees as defined in § 90.693 of this subpart operating on frequencies in Spectrum Blocks A, B, and C for the purpose of agreeing to terms under which the incumbents would relocate their operations to other channels in the 800 MHz band, or alternatively, would accept a sharing arrangement with the EA licensee that may result in an otherwise impermissible level of interference to the incumbent licensee's operations. EA licensees may also negotiate agreements for relocation of the incumbents' facilities within Spectrum Blocks A, B or C in which all interested parties agree to the relocation of the incumbent's facilities elsewhere within these bands. "All interested parties" includes the incumbent licensee, the EA licensee requesting and paying for the relocation, and any EA licensee of the spectrum to which the incumbent's facilities are to be relocated.

(b) The relocation mechanism consists of two phases that must be completed before an EA

licensee may proceed to request the involuntary relocation of an incumbent licensee.

(1) Voluntary period. There is a one year voluntary period during which an EA licensee and an incumbent may negotiate any mutually agreeable relocation agreement. The Commission will announce the commencement of the first phase voluntary period by Public Notice. EA licensees must notify incumbents operating on frequencies included in their spectrum block of their intention to relocate such incumbents within 90 days of the release of the Public Notice that commences the voluntary negotiation period. Failure on the part of the EA licensee to notify the incumbent licensee during this 90 period of its intention to relocate the incumbent will result in the forfeiture of the EA licensee's right to request involuntary relocation of the incumbent at any time in the future.

(2) Mandatory period. If no agreement is reached by the end of the voluntary period, a two-year mandatory period will begin during which both the EA licensee and the incumbent must negotiate in "good faith". Failure on the part of the EA licensee to negotiate in good faith during this mandatory period will result in the forfeiture of the EA licensee's right to request involuntary relocation of the incumbent at any time in the future.

(c) If no agreement is reached during either the voluntary or mandatory negotiating periods, the EA licensee may request involuntary relocation of the incumbent's system. In such a situation, the EA licensee must:

(1) Guarantee payment of all costs of relocating the incumbent to a comparable facility;
(2) Complete all activities necessary for placing the new facilities into operation; and
(3) Build and test the new system

(d) If an EA licensee cannot provide comparable facilities to an incumbent licensee as defined in this section, the incumbent licensee may continue to operate its system on a primary basis in accordance with the provisions of this rule part.

23. A new Subpart V is added with a heading to read as follows:

SUBPART V -- COMPETITIVE BIDDING PROCEDURES FOR 800 MHz SPECIALIZED MOBILE RADIO SERVICE

24. A new Section 90.901 is added to Subpart V to read as follows:

§ 90.901 800 MHz SMR spectrum subject to competitive bidding.

Mutually exclusive initial applications for Spectrum Blocks A, B, and C in the 800 MHz band are subject to competitive bidding procedures. The general competitive bidding procedures provided in 47 C.F.R. Part 1, Subpart Q will apply unless otherwise indicated in this subpart.

25. A new Section 90.902 is added to Subpart V to read as follows:

§ 90.902 Competitive bidding design for 800 MHz SMR licensing.

The Commission will employ a simultaneous multiple round auction design when selecting from among mutually exclusive initial applications for EA licenses for Spectrum Blocks A, B,

and C in the 800 MHz band, unless otherwise specified by the Wireless Telecommunications Bureau before the auction.

26. A new Section 90.903 is added to Subpart V to read as follows:

§ 90.903 Competitive bidding mechanisms.

(a) Sequencing. The Wireless Telecommunications Bureau will establish and may vary the sequence in which 800 MHz SMR licenses for Spectrum Blocks A, B, and C will be auctioned.

(b) Grouping. All EA licenses for Spectrum Blocks A, B, and C will be auctioned simultaneously, unless the Wireless Telecommunications Bureau announces, by Public Notice prior to the auction, an alternative competitive bidding design.

(c) Minimum Bid Increments. The Wireless Telecommunications Bureau will, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms.

(d) Stopping Rules. The Wireless Telecommunications Bureau will establish stopping rules before or during the multiple round auctions in order to terminate an auction within a reasonable time.

(e) Activity Rules. The Wireless Telecommunications Bureau will 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 a certain number of waivers of such rule during the auction.

27. A new Section 90.904 is added to Subpart V to read as follows:

§ 90.904 Aggregation of EA licenses for spectrum blocks A, B, and C.

The Commission will license each Spectrum Block A, B, and C in the 800 MHz band separately. Applicants may aggregate across spectrum blocks within the limitations specified in § 20.6 of this Chapter.

28. A new Section 90.905 is added to Subpart V to read as follows:

§ 90.905 Withdrawal, default and disqualification payments.

(a) During the course of an auction conducted pursuant to § 90.902, the Commission will impose payments on bidders who withdraw high bids during the course of an auction, who default on payments due after an auction closes, or who are disqualified.

(b) 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 payment equal to the difference between the amount bid and the amount of the winning bid the next time the license if offered by the Commission. No withdrawal payment would be assessed if the subsequent winning bid exceeds the withdrawn bid. This payment amount will be deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission.

(c) 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 payment in paragraph (b) of this section plus an additional monetary asssessment 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 payment 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. If the default occurs within five (5) business days after the bidding has closed, the Commission retains the discretion to offer the license to the second highest bidder at its final bid level, or if that bidder declines the offer, to offer the license to other bidders (in descending order of their bid amounts) at the final bid levels.

29. A new Section 90.906 is added to Subpart V to read as follows:

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

All applicants to participate in competitive bidding for 800 MHz SMR licenses in Spectrum Blocks A, B, and C must submit applications on FCC Forms 175 and 175-S pursuant to the provisions of § 1.2105 of this Chapter. The Wireless Telecommunications Bureau will issue a Public Notice announcing the availability of these 800 MHz SMR licenses and, in the event that mutually exclusive applications are filed, the date of the auction for those licenses. This Public Notice also will specify the date on or before which applicants intending to participate in a 800 MHz SMR auction must file their applications in order to be eligible for that auction, and it will 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. In addition to identifying its status as a small business or rural telephone company, each applicant must indicate whether it is a minority-owned entity and/or a women-owned entity, as defined in § 90.912(e).

30. A new Section 90.907 is added to Subpart V to read as follows:

§ 90.907 Submission of upfront payments and down payments.

(a) Bidders in the 800 MHz SMR auction for Spectrum Blocks A, B, and C will be required to submit an upfront payment of $0.02 per activity unit, in accordance with § 1.2106 of this Chapter.

(b) Winning bidders in a 800 MHz SMR auction for Spectrum Blocks A, B, and C must submit a down payment to the Commission in an amount sufficient to bring their total

deposits up to 20 percent of their winning bids within five (5) business days after the auction closes, and the remaining balance due on the license shall be paid within five (5) business days after Public Notice announcing that the Commission is prepared to award the license.

31. A new Section 90.908 is added to Subpart V to read as follows:

§ 90.908 Long-form applications.

Each winning bidder will be required to submit a long-form application on FCC Form 600 within ten (10) business days after being notified by Public Notice that it is the winning bidder. Applications on FCC Form 600 shall be submitted pursuant to the procedures set forth in 90.119 of this Part and any associated Public Notices. Only auction winners (and rural telephone companies seeking partitioned licenses pursuant to agreements with auction winners under § 90.911) will be eligible to file applications on FCC Form 600 for initial 800 MHz SMR licenses in the event of mutual exclusivity between applicants filing FCC Form 175.

32. A new Section 90.909 is added to Subpart V to read as follows:

§ 90.909 License grant, denial, default, and disqualification for spectrum blocks A, B, and C.

(a) Except with respect to entities eligible for installment payments (see § 90.912) each winning bidder will be required to pay the balance of its winning bid in a lump sum payment within five (5) business days following Public Notice that the license is ready for grant. The Commission will grant the license within ten (10) business days after receipt of full and timely payment of the winning bid amount.

(b) A bidder who withdraws its bid subsequent to the close of bidding, defaults on a payment due, or is disqualified, will be subject to the payments specified in § 90.905 of this Part or § 1.2109 of this Chapter, as applicable.

(c) EA licenses pursued through competitive bidding procedures will be granted pursuant to the requirements specified in § 90.166.

33. A new Section 90.910 is added to Subpart V to read as follows:

§ 90.910 Installment payments for licenses for spectrum blocks A, B, and C.

(a) Each licensee for Spectrum Blocks A, B, and C that qualifies as a small business may pay the remaining 90 percent of the net auction price for the license in quarterly installment payments pursuant to § 1.2110(e) of this Chapter. Licensees who qualify for installment payments are entitled to pay their winning bid amount in installments over the 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. Payments shall include both principal and interest amortized over the term of the license. An EA license issued to an eligible small business that elects installment payments will be conditioned on the full and timely performance of the license holder's quarterly payments. The additional following terms apply:

(1) An eligible licensee qualifying as a small business under Section 90.912(b)(1)(i) may make interest-only payments for five years. Interest will accrue at the Treasury note rate. Payments of interest and principal shall be amortized over the remaining five years of the license term.

(2) An eligible licensee qualifying as a small business under Section 90.912(b)(1)(ii) may make interest-only payments for the first two years of the license term. Interest will accrue at the Treasury note rate plus an additional 2.5 percent. Payments of interest and principal shall be amortized over the remaining eight years of the license term.

(b) Unjust Enrichment.

(1) If a licensee that utilizes installment financing under this section seeks to assign or transfer control of its license to an entity not meeting the eligibility standards for installment payments, the licensee must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of assignment or transfer as a condition of approval.

(2) If a licensee that utilizes installment financing under this section seeks to make any change in ownership structure that would result in the licensee losing eligibility for installment payments, the licensee shall first seek Commission approval and must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of such change as a condition of approval.

(3) If a licensee that utilizes installment financing under this section seeks to assign or transfer control of a license to an entity that does not qualify for as favorable an installment payment plan, the installment payment plan for which the acquiring entity qualifies will become effective immediately upon transfer.

34. A new Section 90.911 is added to Subpart V to read as follows:

§ 90.911 Procedures for partitioned licenses in spectrum blocks A, B, and C.

(a) Notwithstanding § 90.661, a rural telephone company, as defined in § 90.912, may be granted a 800 MHz SMR 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 other entities to partition the license pursuant to this section, if won at auction (*see* 47 CFR §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 § 90.153.

(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: 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 set forth in § 90.685.

35. A new Section 90.912 is added to Subpart V to read as follows:

§ 90.912 Definitions for spectrum blocks A, B, and C.

(a) Scope. The definitions in this section apply to §§ 90.910 and 90.911, unless otherwise specified in those sections.

(b) Small Business: Consortium of Small Businesses.

(1) A small business is an entity that either:

(i) together with its affiliates, persons or entities that hold attributable interests in such entity, and their affiliates, has average gross revenues that are not more than $3 million for the three preceding years; or

(ii) together with its affiliates, persons, or entities that hold attributable interests in such entity, and their affiliates, has average gross revenues that are not more than $15 million for the preceding three years.

(2) For purposes of determining whether an entity meets the $3 million or $15 million average annual gross revenues size standard set forth in paragraph (b)(1) of this section, the gross revenues of the entity, its affiliates, persons, or entities holding interests in the entity and their affiliates shall be considered on a cumulative basis and aggregated, subject to the exceptions set forth in § 90.912(h).

(3) 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 in paragraphs (b)(1) and (b)(2) of this section. In a consortium of small businesses, each individual member must establish its eligibility as a small business, as defined in this section.

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

(d) *Gross Revenues.* For applications filed after December 31, 1994, 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.

(e) *Businesses Owned by Members of Minority Groups and/or Women.* A business owned by members of minority groups and/or women is one in which minorities and/or women who

are U.S. citizens control the applicant, have at least 50.1 percent equity ownership and, in the case of a corporate applicant, a 50.1 percent voting interest. For applicants that are partnerships, every general partner either must be a minority and/or woman (or minorities and/or women) who are U.S. citizens and who individually or together own at least 50.1 percent of the partnership equity, or an entity that is 100 percent owned and controlled by minorities and/or women who are U.S. citizens. The interests of minorities and women are to be calculated on a fully-diluted basis; agreements such as stock options and convertible debentures shall be considered to have a present effect on the power to control an entity and shall be treated as if the rights thereunder already have been fully exercised. However, upon a demonstration that options or conversion rights held by non-controlling principals will not deprive the minority and female principals of a substantial financial stake in the venture or impair their rights to control the designated entity, a designated entity may seek a waiver of the requirement that the equity of the minority and female principals must be calculated on a fully-diluted basis.

(f) *Members of Minority Groups.* *Members of minority groups* includes Blacks, Hispanics, American Indians, Alaskan Natives, Asians, and Pacific Islanders.

(g) *Attributable Interests.* Partnership and other ownership interests and any stock interest amounting to 20 percent or more of the equity, or outstanding stock, or outstanding voting stock of a licensee or applicant will be attributable.

NOTE: Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentages 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.

(h) *Affiliate.*

(1) *Basis for Affiliation.* An individual or entity is an affiliate of an applicant or of a person holding an attributable interest in an applicant (both referred to herein as "the applicant") if such individual or entity:

(i) Directly or indirectly controls or has the power to control the applicant, or

(ii) Is directly or indirectly controlled by the applicant, or

(iii) Is directly or indirectly controlled by a third party or parties that also controls or has the power to control the applicant, or

(iv) Has an "identity of interest" with the applicant.

(2) *Nature of control in determining affiliation.*

(i) Every business concern is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

Example for paragraph (h)(2)(i). An applicant owning 50 percent of the voting stock of another concern would have negative power to control such concern since such party can block any action of the other stockholders. Also, the bylaws of a corporation may permit a stockholder with less than 50 percent of the voting to block any actions taken by the other stockholders in the other entity. Affiliation exists when the applicant has the power to control a concern while at the same time another person, or persons, are in control of the concern at the will of the party or parties with the power of control.

(ii) Control can arise through stock ownership; occupancy of director, officer or key

employee positions; contractual or other business relations; or combinations of these and other factors. A key employee is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

(iii) Control can arise through management positions where a concern's voting stock is so widely distributed that no effective control can be established.

Example for paragraph (h)(2)(iii). In a corporation where the officers and directors own various size blocks of stock totaling 40 percent of the corporation's voting stock, but no officer or director has a block sufficient to give him or her control or the power to control and the remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control. If persons with such management control of the other entity are persons with attributable interests in the applicant, the other entity will be deemed an affiliate of the applicant.

(3) *Identity of interest between and among persons.* Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments. In determining if the applicant controls or is controlled by a concern, persons with an identity of interest will be treated as though they were one person.

Example 1. Two shareholders in Corporation Y each have attributable interests in the same SMR application. While neither shareholder has enough shares to individually control Corporation Y, together they have the power to control Corporation Y. The two shareholders with these common investments (or identity of interest) are treated as though they are one person and Corporation Y would be deemed an affiliate of the applicant.

Example 2. One shareholder in Corporation Y, shareholder A, has an attributable interest in a SMR application. Another shareholder in Corporation Y, shareholder B, has a nonattributable interest in the same SMR application. While neither shareholder has enough shares to individually control Corporation Y, together they have the power to control Corporation Y. Through the common investment of shareholders A and B in the SMR application, Corporation Y would still be deemed an affiliate of the applicant.

(i) *Spousal Affiliation.* Both spouses are deemed to own or control or have the power to control interests owned or controlled by either of them, unless they are subject to a legal separation recognized by a court of competent jurisdiction in the United States.

(ii) *Kinship Affiliation.* Immediate family members will be presumed to own or control or have the power to control interests owned or controlled by other immediate family members. In this context "immediate family member" means father, mother, husband, wife, son, daughter, brother, sister, father- or mother-in-law, son- or daughter-in-law, brother- or sister-in-law, step-father, or -mother, step-brother, or -sister, step-son, or -daughter, half brother or sister. This presumption may be rebutted by showing that

(A) The family members are estranged,

(B) The family ties are remote, or

(C) The family members are not closely involved with each other in business matters.

Example for paragraph (h)(3)(ii). A owns a controlling interest in Corporation X. A's sister-in-law, B, has an attributable interest in an SMR application. Because A and B have a presumptive kinship affiliation, A's interest in Corporation X is attributable to B, and thus to the applicant, unless B rebuts the presumption with the necessary showing.

(4) *Affiliation through stock ownership.*

(i) An applicant is presumed to control or have the power to control a concern if he or she owns or controls or has the power to control 50 percent or more of its voting stock.

(ii) An applicant is presumed to control or have the power to control a concern even though he or she owns, controls or has the power to control less than 50 percent of the concern's voting stock, if the block of stock he or she owns, controls or has the power to control is large as compared with any other outstanding block of stock.

(iii) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, such minority holdings are equal or approximately equal in size, and the aggregate of these minority holdings is large as compared with any other stock holding, the presumption arises that each one of these persons individually controls or has the power to control the concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(5) *Affiliation arising under stock options, convertible debentures, and agreements to merge.* Stock options, convertible debentures, and agreements to merge (including agreements in principle) are generally considered to have a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements will generally be treated as though the rights held thereunder had been exercised. However, neither an affiliate nor an applicant can use such options and debentures to appear to terminate its control over another concern before it actually does so.

Example 1 for paragraph (h)(5). If company B holds an option to purchase a controlling interest in company A, who holds an attributable interest in an SMR application, the situation is treated as though company B had exercised its rights and had become owner of a controlling interest in company A. The gross revenues of company B must be taken into account in determining the size of the applicant.

Example 2 for paragraph (h)(5). If a large company, BigCo, holds 70% (70 of 100 outstanding shares) of the voting stock of company A, who holds an attributable interest in an SMR application, and gives a third party, SmallCo, an option to purchase 50 of the 70 shares owned by BigCo, BigCo will be deemed to be an affiliate of company, and thus the applicant, until SmallCo actually exercises its options to purchase such shares. In order to prevent BigCo from circumventing the intent of the rule which requires such options to be considered on a fully diluted basis, the option is not considered to have present effect in this case.

Example 3 for paragraph (h)(5). If company A has entered into an agreement to merge with company B in the future, the situation is treated as though the merger has taken place.

(6) *Affiliation under voting trusts.*

(i) Stock interests held in trust shall be deemed controlled by any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will.

(ii) If a trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust will be deemed controlled by the grantor or beneficiary, as appropriate.

(iii) If the primary purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may meet the Commission's size standards, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not recognized within the appropriate jurisdiction.

(7) *Affiliation through common management.* Affiliation generally arises where officers,

directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another entity.

(8) *Affiliation through common facilities.* Affiliation generally arises where one concern shares office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operations, or where such concerns were formerly affiliated, and through these sharing arrangements one concern has control, or potential control, of the other concern.

(9) *Affiliation through contractual relationships.* Affiliation generally arises where one concern is dependent upon another concern for contracts and business to such a degree that one concern has control, or potential control, of the other concern.

(10) *Affiliation under joint venture arrangements.*

(i) A joint venture for size determination purposes is an association of concerns and/or individuals, with interests in any degree or proportion, formed by contract, express or implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business operation is a joint venture.

(ii) The parties to a joint venture are considered to be affiliated with each other.

36. A new Section 90.913 is added to Subpart V to read as follows:

§ 90.913 Eligibility for small business status for spectrum blocks A, B, and C.

(a) *Short-Form Applications: Certifications and Disclosure.*
Each applicant for an EA license for Spectrum Blocks A, B, or C which qualifies as a *small business* or *consortium of small businesses* shall append the following information as an exhibit to its short-form application (FCC Form 175):

(1) The identity of the applicant's *affiliates*, persons or entities that hold *attributable interests* in such entity, and their *affiliates*, and, if a *consortium of small businesses*, the members of the joint venture; and

(2) The applicant's *gross revenues*, computed in accordance with § 90.912.

(b) *Long-Form Applications: Certifications and Disclosure.*
In addition to the requirements in subpart V of this part, each applicant submitting a long-form application for license(s) for Spectrum Blocks A, B, or C and qualifying as a *small business* shall, in an exhibit to its long-form application:

(1) Disclose separately and in the aggregate the *gross revenues*, computed in accordance with § 90.912, for each of the following: the applicant, the applicant's *affiliates*, the applicant's attributable investors, *affiliates* of its attributable investors, and, if a *consortium of small businesses*, the members of the joint venture;

(2) List and summarize all agreements or other instruments (with appropriate references to specific provisions in the text of such agreements and instruments) that support the applicant's eligibility as a *small business* under §§ 90.910 and 90.911, including the establishment of *de*

facto and *de jure* control; such agreements and instruments include articles of incorporation and bylaws, shareholder agreements, voting or other trust agreements, franchise agreements, and any other relevant agreements (including letters of intent), oral or written; and

(3) List and summarize any investor protection agreements, including rights of first refusal, supermajority clauses, options, veto rights, and rights to hire and fire employees and to appoint members to boards of directors or management committees.

(c) *Records Maintenance*. All winning bidders qualifying as *small businesses*, shall maintain at their principal place of business an updated file of ownership, revenue and asset information, including any document necessary to establish eligibility as a *small business* and/or *consortium of small businesses* under § 90.912. Licensees (and their successors in interest) shall maintain such files for the term of the license.

(d) *Audits*.

(1) Applicants and licensees claiming eligibility as a a *small business* and/or *consortium of small businesses* under §§ 90.910 and 90.911 shall be subject to audits by the Commission, using in-house and contract resources. Selection for audit may be random, on information, or on the basis of other factors.

(2) Consent to such audits is part of the certification included in the short-form application (FCC Form 175). Such consent shall include consent to the audit of the applicant's or licensee's books, documents and other material (including accounting procedures and practices) regardless of form or type, sufficient to confirm that such applicant's or licensee's representations are, and remain, accurate. Such consent shall include inspection at all reasonable times of the facilities, or parts thereof, engaged in providing and transacting business, or keeping records regarding licensed 800 MHz SMR service and shall also include consent to the interview of principals, employees, customers and suppliers of the applicant or licensee.

(3) *Definitions*. The terms *affiliate, attributable interests, consortium of small businesses, gross revenues, small business* used in this dection are defined in § 90.912.