channels.[3] (*See* para. 98). These commenters, who have developed radio equipment in the 220 MHz band using spectrally efficient technologies, argue that allowing aggregation of channels would severely jeopardize their ability to continue to develop and market their technology. The Commission decided in favor of allowing licensees to aggregate their channels, agreeing with those commenters who support allowing such aggregation because this type of flexibility will allow 220 MHz licensees to offer a wider variety of communications services and more effectively compete in the wireless marketplace. While allowing channel aggregation, the Commission agreed with SEA and Securicor that it should also require licensees and equipment manufacturers to meet a spectrum efficiency standard. In adopting a spectrum efficiency standard, the Commission sought to ensure that the 220 MHz band would continue to be a home for the development of spectrally efficient technologies.

The Commission proposed two classifications of non-nationwide 220 MHz licensing -- *i.e.*, Economic Area (EA) licenses and Regional licenses. Pagenet endorsed this proposal, noting that such assignments would be a "complement to nationwide" licensing, and would allow "participation by small, medium and large carriers in which local to nationwide service will be provided by a number of different licensees in each marketplace." (*See* para. 79). The Commission adopted this proposal. (*See* para. 80).

American Mobile Telecommunications Association (AMTA) and Comtech asked that no limit be placed on the number of channels a licensee may obtain within an EA or Region through our auction procedures. Comtech also asked that EA and Regional licensees not be required to construct a minimum number of channels at all of their base stations. The Commission adopted both of these proposals.

The Commission also adopted a proposal by Fairfield to allow for fixed operations on a secondary basis. In so doing, the Commission acknowledged the concerns of other commenters that such operations might cause interference to primary users of the band. We thus required secondary licensees to notify nearby primary users of their secondary facilities, limited secondary licensees' operating parameters beyond those initially proposed, and restricted secondary licensees from operating on public safety, Emergency Medical Radio Service (EMRS), or Federal Government 220-222 MHz channels.

A number of commenters asked that we provide greater protection to Phase I base stations than initially proposed. We decided to adopt our proposed co-channel protection criteria because we concluded that, *inter alia*, this decision would provide protection to Phase I base stations consistent with other recent Commission decisions establishing protection criteria in other mobile services. Commenters were also opposed to our proposal for limiting field strength at EA and Regional borders. We adopted our proposal in order to afford Phase

[3] The Commission received comments from five equipment manufacturers: Fairfield Industries (Fairfield), SEA Inc. (SEA), Securicor Radiocoms, Ltd. (Securicor), Ericsson Corporation, and E. F. Johnson Company. Of these commenters, Fairfield, SEA, and Securicor may be small businesses under the definition used in this analysis. Securicor is a corporation based in England. A sixth equipment manufacturer, Motorola, while not submitting formal comments, filed *ex parte* presentations in this proceeding.

II licensees the maximum degree of flexibility in designing their systems and to enable them to provide a quality signal at the borders of their service areas.

Association of Public-Safety Communications Officials-International (APCO) asked that we refrain from assigning the 125 non-nationwide channels not reserved for Public Safety or EMRS eligibles by competitive bidding in order to give public safety entities a realistic opportunity to obtain authorization for more than ten 220 MHz channels. We decided that such channels should be assigned through competitive bidding because we could not conclusively determine the demand by public safety entities for 220 MHz channels, and because we intend to fully explore the spectrum needs of the public safety community in a future rulemaking proceeding.

A number of commenters urged the Commission to maintain a non-commercial set-aside for the 220 MHz service, arguing that there is a continuing demand for such a set-aside and that it is necessary for licensees' internal communications. Other commenters disagreed. We found that it would not be in the public interest to establish a non-commercial set-aside based in part on our continuing commitment to efficient use of the spectrum. As discussed in para. 42, we agree with those commenters who believe that it is unnecessary to set aside spectrum for exclusively internal communications, given the apparent demand for nationwide spectrum for the provision of service to the public and the fact that we are not precluding a nationwide licensee from using all or part of its spectrum for internal communications.

Commenters disagreed regarding how the Commission should treat pending applications for nationwide 220 MHz licenses. Many commenters urged the Commission to exercise its discretion to award the licenses through lotteries. Other commenters argued that the pending applications should be returned and the licenses should be awarded through auctions. We found that it would be in the public interest to return the pending applications for the 220 MHz service without prejudice and award the licenses through competitive bidding. We concluded that, because the nature of the 220 MHz service is undergoing a substantial change, it would be unfair to preclude new applicants from having the opportunity to apply for these licenses. We also noted that awarding licenses through auctions benefits the public by ensuring that licenses go to those who value them the most and to those who have an incentive to build their systems quickly, thereby speeding the provision of service to the public.

III. Description and Estimate of the Small Entities Involved:

The Commission anticipates receiving approximately 2,220 total applications for the Phase II 220 MHz service -- *i.e.*, 2,000 Public Safety applications (including 1,000 EMRS applications), 90 applications for Economic Area channels, 20 applications for Regional channels, 100 applications for secondary service, and 10 applications for nationwide channels. These applicants, many of whom may be small businesses, as well as approximately 3,800 Phase I 220 MHz licensees, many of whom may be small entities, and at least six equipment manufacturers, three of which may be small businesses, will be subject to the rules adopted in the *220 MHz Third Report and Order*.

The Commission has not developed a definition of small entities applicable to 220 MHz Phase I licensees, or equipment manufacturers for purposes of this Final Regulatory Flexibility Analysis, and since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small businesses that are associated with the 220 MHz service. However, we have adopted criteria for defining small businesses and very small businesses for purposes of determining eligibility for auction bidding credits and installment payments.[4] We will therefore use this definition for estimating the number of potential Phase II entities applying for auctionable spectrum that are small businesses. To estimate the number of Phase I licensees and the number of 220 MHz equipment manufacturers that are small businesses, and the number of Phase II entities applying for non-auctionable spectrum (*i.e.*, public safety and EMRS channels) we shall turn to the relevant definitions as provided by the Small Business Administration (SBA).

Phase I Licensees. There are approximately 3,800 non-nationwide Phase I licensees and 4 nationwide licensees currently authorized to operate in the 220 MHz band. To estimate the number of such entities that are small businesses, we apply the definition of a small entity under SBA rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons.[5] However, the size data provided by the SBA do not allow us to make a meaningful estimate of the number of 220 MHz providers that are small entities because they combine all radiotelephone companies with 500 or more employees.[6] We therefore use the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. Data from the Bureau of the Census' 1992 study indicate that only 12 out of a total 1,178 radiotelephone firms which operated during 1992 had 1,000 or more employees -- and these may or may not be small entities, depending on whether they employed more or less than 1,500 employees.[7] But 1,166 radiotelephone firms had fewer than 1,000 employees and therefore, under the SBA definition, are small entities. However, we do not know how many of these 1,166 firms are likely to be involved in the 220 MHz service.

Phase II Entities Applying for Auctionable Spectrum. The *220 MHz Third Report and Order* adopts a two-tiered definition of small business for the purpose of competitive bidding. The Commission defines a "very small business" as an entity that, together with its affiliates and

[4] Approval from the Small Business Administration for this definition is pending.

[5] 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

[6] U.S. Small Business Administration 1992 Economic Census Employment Report, Bureau of the Census, U.S. Department of Commerce, Table 3, SIC Code 4812 (radiotelephone communications industry data adopted by the SBA Office of Advocacy).

[7] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC Code 4812 (issued May 1995).

controlling principals, has average gross revenues for the three preceding years of not more than $3 million; and a "small business" as an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $15 million. For purposes of determining small business status, the Commission will attribute the gross revenues of all controlling principals in the small business applicant as well as the gross revenues of affiliates of the applicant. The Commission is not imposing specific equity requirements on the controlling principals that meet this small business definition. In order for an applicant to qualify as a small business, qualifying small business principals must maintain both *de facto* and *de jure* control of the applicant.

As noted above, the SBREFA was not in effect at the time the *Third Notice* was issued, so comment was not sought on the number of prospective Phase II applicants in the 220 MHz service which might qualify as small businesses. Therefore, the Commission cannot accurately predict the number of applicants in the 220 MHz service who will fit the description of a small business. However, using the definitions of small business and very small business we adopted for the purpose of determining eligibility for bidding credits and installment payments, the Commission can attempt to estimate the number of applicants for 220 MHz licenses that are small businesses by looking at the number of applicants in similar services that qualified as small businesses. For example, the 900 MHz SMR service utilized a definition of very small business based on gross revenues of not more than $3 million and a definition of small business based on gross revenues of not more than $15 million. A total of 128 applications were received in the 900 MHz SMR auction, and, of these applications, 71 qualified as very small businesses and an additional 30 qualified as small businesses.

Approximately 900 licenses will be made available for authorization in the 220 MHz auction. In the 900 MHz SMR auction, 1050 licenses were made available. Given that 128 qualified applications were received in the 900 MHz auction, we anticipate receiving slightly fewer, or 120 applications in the 220 MHz auction. Given that 71 applicants qualified as very small businesses and 30 applicants qualified as small businesses in the 900 MHz SMR auction, we estimate that proportionately fewer, or 65 applicants, will qualify as very small businesses, and 27 applicants will qualify as small businesses in the 220 MHz auction.

Phase II Entities Applying for Non-Auctionable Spectrum. We estimate that approximately 1,000 applications will be filed for authorization on the 220 MHz public safety channels, and we estimate that approximately 1,000 applications will be filed for authorization on the 220 MHz EMRS channels. To estimate the number of such applicants that are small entities, we apply the definition of a small entity under the SBA rules applicable to small governmental entities. The SBREFA requires that we estimate the number of governmental entities with populations of less than 50,000 for which our rules will apply.[8] According to the Census Bureau, 96 percent of the nation's counties, cities, and towns have populations of fewer than 50,000.[9] The Census Bureau estimates that this ratio is approximately accurate for all

[8] *See* 5 U.S.C. § 601(5) (including cities, counties, towns, townships, villages, school districts, or special districts).

[9] *See* 1992 Census of Governments, U.S. Bureau of the Census, U.S. Department of Commerce.

governmental entities. We thus estimate that 96 percent of all governmental entities are small; and further estimate that, because the estimated 1,000 applications for the public safety channels will be from governmental entities, that 960 of these applications may be from small governmental entities. Some EMRS applicants will be governmental entities, while others will be non-governmental (*e.g.*, hospitals, ambulance services). Because we assume that *all* such non-governmental entities applying for EMRS licenses will be small entities, we estimate that a slightly higher percentage of applicants for EMRS licenses, or 98 percent of EMRS applicants, will be small entities. We therefore estimate that approximately 980 applications for the EMRS channels will be from small entities.

Radio Equipment Manufacturers. We anticipate that at least six radio equipment manufacturers will be affected by our decisions in this proceeding. According to the SBA's regulations, a radio and television broadcasting and communications equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.[10] Census Bureau data indicate that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would therefore be classified as small entities.[11] We do not have information that indicates how many of the six radio equipment manufacturers associated with this proceeding are among these 778 firms. However, because three of these manufacturers (Motorola, Ericsson and E.F. Johnson) are major, nationwide radio equipment manufacturers, we conclude that these manufacturers would *not* qualify as small businesses.

IV. Summary of the Projected Reporting, Recordkeeping, and Other Compliance Requirements:

The *220 MHz Third Report and Order* adopts a number of rules that will entail reporting, recordkeeping, and/or third party consultation. However, the Commission believes that these requirements are the minimum needed to ensure the integrity of the 220 MHz service. The Commission considers the effects of these requirements first on Phase II applicants and licensees and then on Phase I licensees.

Phase II Applicants. Applicants for the Phase II 220 MHz auction will be required to submit a completed FCC Form 175. Auction winners, as well as applicants for the 220 MHz public safety and EMRS channels, will be required to file a completed FCC Form 600. In addition, applicants for the 220 MHz EMRS channels, like all other EMRS applicants, must furnish a statement from the governmental body having jurisdiction over the state emergency plan indicating that the applicant is included in the emergency plan, or is otherwise supporting the application.

Phase II Licensees. Phase II licensees authorized on Channels 161-200 and Channels 1-40 will be required to coordinate among themselves to locate their base stations to avoid

[10] 13 C.F.R. § 121.201, (SIC) Code 3663.

[11] U.S. Dept. of Commerce, *1992 Census of Transportation, Communications and Utilities* (issued May 1995), SIC category 3663.

interference. Regional licensees operating on Channels 196-200 may operate stations at powers exceeding 2 watts ERP or at antenna heights greater than 20 feet provided that they obtain the written concurrence of all Phase I and Phase II licensees operating base stations on Channels 1-40 within 6 km of the base stations of the Regional licensees.

Phase II licensees operating secondary, fixed stations will be required to notify any co-channel primary licensees authorized in the area of their operation of the location of their secondary facilities. Phase II licensees implementing nationwide land mobile or paging systems will be required to meet construction "benchmarks" and must submit maps and other supporting documentation to demonstrate compliance with these benchmarks five and ten years after grant of the initial license. Also, nationwide licensees implementing fixed systems, in lieu of meeting the construction benchmarks described above, may make a showing of "substantial service" within five and ten years of the initial license grant. To comply with these requirements, such licensees must also submit maps and other supporting documents five and ten years after grant of the initial license. Regional licensees and EA licensees implementing land mobile, paging, or fixed systems must also comply with 5- and 10-year construction or substantial service requirements and must also provide maps and other supporting documents to demonstrate compliance with such requirements. Preparation of maps and supporting documentation may involve engineering expertise. Failure by nationwide, EA, or Regional licensees to meet either the five- or ten-year construction requirement will result in automatic cancellation of the licensees' nationwide authorization.

Phase II licensees will not be permitted to construct their stations less than 120 km from a constructed and operating Phase I, co-channel station unless they submit a technical analysis demonstrating that the predicted 28 dBuV/m interfering contour of their base station does not overlap the predicted 38 dBuV/m service contour of the Phase I licensee's station. This technical analysis will involve engineering expertise. Phase II licensees may also locate their stations less than 120 km from the station of an existing Phase I co-channel licensee or with less 10 dB protection to such co-channel's station's 38 dBuV/m contour if the Phase II licensee obtains the written consent of the affected Phase I licensee. Finally, Phase II licensees operating in adjacent EAs or Regions may exceed the specified field strength limit at their border if all affected, co-channel EA and Regional licensees agree to the higher field strength.

Section 309(j)(4)(E) of the Communications Act directs the Commission to "require such transfer disclosures and anti-trafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment as a result of the methods employed to issue licenses and permits."[12] The Commission adopted safeguards designed to ensure that the requirements of this section are satisfied, including a transfer disclosure requirement for licenses obtained through the competitive bidding process for the 220 MHz service. An applicant seeking approval for a transfer of control or assignment of a license within three years of receiving a new license through a competitive bidding procedure must, together with its application for transfer of control or assignment, file with the Commission a statement indicating that its license was obtained through competitive bidding. Such applicant must also file with the

[12] 47 U.S.C. § 309(j)(4)(E).

Commission the associated contracts for sale, option agreements, management agreements, or other documents disclosing the total consideration that the applicant would receive in return for the transfer or assignment of its license.

With respect to small businesses, we have adopted unjust enrichment provisions to deter speculation and participation in the licensing process by those who do not intend to offer service to the public, or who intend to use the competitive bidding process to obtain a license at a lower cost than they would otherwise have to pay and to later sell it at a profit, and to ensure that large businesses do not become the unintended beneficiaries of measures meant to help small firms. Small business licensees seeking to transfer their licenses to entities which do not qualify as small businesses (or very small businesses seeking to transfer their licenses to small businesses or large companies), as a condition of approval of the transfer, must remit to the government a payment equal to a portion of the total value of the benefit conferred by the government.

Finally, applicants and licensees claiming eligibility for competitive bidding as a small business, a very small business, or a consortium of small businesses (or very small businesses) are subject to audits by the Commission. Selection for audit may be random, on information, or on the basis of other factors. Consent to such audit is part of the certification included in the short-form application (FCC Form 175).

Phase I Licensees: Phase I nationwide licensees intending to operate primary, fixed or paging operations instead of or in addition to their land mobile operations must revise their 10-year schedule for construction of their land mobile system to describe the fixed or paging system they intend to deploy. They must also certify that the financial showings and all other certifications they had previously provided in demonstrating their ability to construct and operate their nationwide land mobile system remain applicable to their planned, primary fixed or paging system, or they must revise their financial showings and provide all other relevant certifications to demonstrate their ability to construct and operate a nationwide, primary fixed or paging system. These certifications and showings may involve engineering and financial expertise. The Commission anticipates that two Phase I licensees will seek to deploy primary fixed or paging operations.

Phase I nationwide licensees intending to operate primary fixed systems will be required to comply with existing construction, recordkeeping, and reporting requirements, but, rather than constructing base stations (for base and mobile operations) and placing them in operation to meet their 4-, 6- and 10-year construction benchmarks, must demonstrate how their fixed stations are providing "substantial service" to the public. This demonstration of substantial service will be provided in the same form as documentation currently required for nationwide Phase I licensees providing evidence of the construction of their primary land mobile systems.

All 220 MHz Licensees. All 220 MHz licensees seeking renewal of their authorizations will be required, *inter alia*, to demonstrate that they have provided substantial service during their past license term, and submit a showing explaining why they should receive a renewal expectancy.

V. Significant Alternatives and Steps Taken by Agency to Minimize the Significant Economic Impact on a Substantial Number of Small Entities Consistent With Stated Objectives.

The Commission's chief objectives in adopting the *220 MHz Third Report and Order* are to establish a regulatory plan for the 220 MHz service that will allow for the efficient licensing and use of the service, to eliminate unnecessary regulatory burdens, to enhance the competitive potential of the 220 MHz service in the mobile services marketplace, to provide a wide variety of radio services to the public, and to continue to provide a home for the development of spectrally efficient technologies. A number of the Commission's original proposals were modified in order to minimize the significant economic impact on small entities consistent with these objectives, based on issues and suggestions raised in the public comment.

For example, the Commission made significant changes to the proposed Phase II channel band plan based on an analysis of the comments. Most of the commenters favored the assignment of larger numbers of channels to individual EA and Regional licensees than the proposed 5-channel blocks. The Commission concurred with the commenters' argument that proposed 5-channel blocks would unjustly inhibit licensees' revenue-producing ability and therefore decided to authorize 10- and 15-channel EA and Regional assignments, respectively. We concluded that adoption of a licensing scheme that provides for 10-channel and 15-channel assignments should enable Phase II licensees, many of which are likely to be small businesses, to establish more viable radio services. Commenters were also generally opposed to the Commission's use of contiguous channel assignments in our proposed Phase II band plan after having previously adopted predominantly non-contiguous assignments in Phase I. The Commission found merit in the argument of those who emphasized the difficulties that are likely to be encountered by both Phase I licensees and Phase II licensees, many of which are likely to be small businesses, if we adopted completely inconsistent Phase II and Phase I band plans. We therefore adopted a Phase II band plan that mirrored the existing Phase I plan. We concluded that adopting a Phase II band plan patterned after the Phase I plan will benefit both Phase I and Phase II licensees because Phase I licensees will be able to more easily expand on their existing authorized channels, and Phase II licensees will be able to more easily provide protection to co-channel Phase I licensees. In addition, at the suggestion of a commenter, we decided not to require EA, Regional or nationwide licensees to construct a minimum number of channels at all of their base stations.

In order to provide licensees with maximum flexibility to employ a variety of technologies, the Commission decided to allow them to aggregate their contiguous channels. However, in so doing the Commission agreed with the views of commenters SEA and Securicor and adopted a spectrum efficiency standard. In adopting a spectrum efficiency standard, we rejected other commenters' arguments that a standard is not necessary because licensees acquiring spectrum assigned on contiguous channels through competitive bidding will have an incentive to use that spectrum as efficiently as possible, and that adoption of a particular spectrum efficiency standard could limit the types of services that licensees would be able to provide. The Commission concluded that a standard was needed to ensure that the 220 MHz band would continue to be a home for the development of spectrum efficient technologies.

The Commission also attempted, wherever possible, to offer licensees the most flexibility with a minimum regulatory burden. For example, the Commission elected to allow Phase I and Phase II licensees the flexibility to conduct paging operations on a primary basis. The commenters were divided on this issue. Commenters opposed to allowing paging on a primary basis maintained that to do so would transform the 220 MHz band into merely an additional band for the provision of paging services, and that this would be unfair to existing paging licensees in other bands. These commenters argued that there are a sufficient number of paging bands already in existence and that the 220 MHz band should continue to be used to advance the development of narrowband technology. The Commission, however, decided to allow paging on a primary basis in the 220 MHz band in order to provide additional spectrum for a rapidly growing communications service and to enable 220 MHz licensees to compete more effectively in the wireless marketplace.

The Commission also decided to allow 220 MHz licensees to conduct fixed operations on a primary basis to provide them with the flexibility to offer a wider array of communications services to the public. Similarly, the Commission decided that 220 MHz licensees conducting geophysical telemetry operations should be permitted to obtain secondary authorizations to operate their fixed facilities on a non-interference basis to licensees authorized to operate on a primary basis. In making this decision, the Commission acknowledged concerns raised by commenters about possible interference to primary operations, but concluded that the risk of interference from secondary, geophysical telemetry operations was minimal, and that such operations should therefore be allowed.

In prescribing rules for the 220 MHz service auction, we initially proposed to begin by auctioning the nationwide licenses and the Regional licenses in one simultaneous multiple round auction. We proposed to then auction the economic area (EA) licenses in a subsequent auction. The SMR Advisory Group supported this approach. After further consideration, however, we concluded that all three categories of licenses are highly interdependent. Grouping such licenses and putting them up for bid at the same time facilitates awarding licenses to bidders who value them the most highly by providing bidders, including small businesses, with information about the prices of complementary and substitutable licenses during the course of an auction. We therefore announced our plan to hold a single, simultaneous multiple round auction for all classes of licenses. We did, however, reserve the discretion to auction each of these license groupings (nationwide, Regional, EA) separately or in different combinations (*e.g.*, nationwide and Regional together) if there are administrative reasons for doing so.

In establishing bidding procedures, the Commission proposed the use of the Milgrom-Wilson activity rule. We proposed a minimum activity level requiring bidders to be active on at least one-third of the MHz-pops for which they are eligible in Stage I, two-thirds of the MHz-pops for which they are eligible in Stage II, and 100 percent of the MHz-pops for which they are eligible in Stage III. The SMR Advisory Group and AMTA supported use of the Milgrom-Wilson activity rule. However, NTIA stated that requiring a 100 percent level of activity in Stage III may inhibit bidder flexibility and be unduly restrictive. We agree with NTIA and decided not to require a 100 percent level of activity in Stage III. Moreover, in order to enhance bidder flexibility at the end of the auction and to make the figures easier to administer, we eliminated the use of fractions. Thus, we adopted eligibility levels of 60

percent, 80 percent, and 98 percent, for Stages I, II, and III, respectively. This change will benefit all bidders, including small businesses.

In establishing auction rules for the 220 MHz service, the Commission adopted a number of provisions to support the participation of small businesses. For example, the Commission established bidding credits and an installment payment plan, designed to increase the opportunities for small businesses to become 220 MHz service providers. In addition, the Commission established rules for the partitioning of geographic area licenses, which will increase opportunities for small businesses to participate in the 220 MHz service. Through partitioning, small businesses may acquire licenses for portions of geographic areas, a less expensive alternative to acquiring a license for an entire area.

The Commission initially proposed to define small business, for purposes of eligibility for such provisions as bidding credits and installment payments as follows: for companies wishing to bid on nationwide and Regional licenses, we proposed to define small businesses as those entities with $15 million or less in average annual gross revenues for the preceding three years. For EA licenses, we proposed to define small businesses as those entities with $6 million or less in average annual gross revenues for the preceding three years. AMTA and the SMR Advisory Group agreed with this definition. We concluded, however, that while the nationwide and Regional Phase II 220 MHz licenses would have higher build-out and operational costs than would the EA licenses, it is likely that bidders will attempt to aggregate licenses across regions or EAs to establish their markets. Thus, for example, bidders may elect to aggregate EA licenses to create a Regional market, rather than bid for the Regional license itself. In order to ensure the meaningful participation of small business entities in the auction, we adopted a two-tiered definition of small business with gross revenues limits applicable across all three categories of license. This approach will give qualifying small businesses flexibility to bid for a Regional license or, on the other hand, elect to bid for several EAs, without having to choose which type of license to bid for prior to the start of the auction. For purposes of bidding for the nationwide, Regional and EA licenses, therefore, we defined (1) a very small business as an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of no more than $3 million and (2) a small business as an entity that, together with affiliates and controlling principals, has average gross revenues for the preceding three years of no more than $15 million. Defining a "very small business" at the $3 million threshold, rather than at the $6 million threshold, is consistent with the definitions successfully used in the 900 MHz SMR service, where build-out costs are similar to those in the 220 MHz service. Bidding credits are based upon this two-tiered approach.

We disagreed with the suggestion of Metricom that we should increase the gross revenues threshold of our small business definition to $25 million, because, based upon our experience in the 900 MHz SMR auction, such an increase would be far too inclusive. In the 900 MHz SMR auction, we established small business definitions of $15 million and $3 million. Of the 128 applicants that qualified to participate in the auction, 101 qualified for the small business or very small business bidding credits. Because we believe the cost of building out a 220 MHz system most closely resembles the cost of a 900 MHz SMR system, and because it would substantially dilute the value of the small business preferences for virtually all applicants to qualify for them, we declined to adopt the Metricom proposal.

For purposes of determining small business status, we will attribute the gross revenues of the applicant, all controlling principals of the applicant, and their affiliates. This is a much simpler approach than we utilized in broadband PCS, because it does not require a control group. We will still require, however, that in order for an applicant to qualify as a small business, qualifying small business principals must maintain "control" of the applicant, including both *de facto* and *de jure* control. Thus, small businesses will have less difficulty determining their eligibility. We declined to adopt Comtech's suggestion that, for determining whether an entity qualifies as a small business, revenues and assets of investors holding more than 25 percent of an applicant's voting stock and revenues and assets of all affiliates should be attributable to the applicant. Our approach is a more accurate indicator of the control of an applicant.

With respect to bidding credits, in order to ensure that small businesses have a realistic opportunity to acquire Phase II 220 MHz nationwide and Regional licenses, we proposed a 40 percent bidding credit for all qualified designated entities. For Phase II 220 MHz nationwide licenses, we proposed, *inter alia,* to offer this bidding credit on only one of the available channel blocks. For Phase II 220 MHz Regional licenses, we proposed to offer the bidding credit on all available channel blocks. Because we believed that the Phase II 220 MHz EA licenses are similar in their number and in the level of incumbency to the licenses offered in the 900 MHz SMR service, we proposed offering the same 10 percent bidding credit to qualified small businesses bidding on Phase II 220 MHz EA licenses as we did in the 900 MHz SMR auction. SMR Advisory Group supported these proposals. AMTA, U.S. MobilComm, Roamer, and Incom also supported these proposals, although they supported bidding credits solely for regional and EA licenses. Comtech agreed with a 40 percent bidding credit for Regional licenses, but suggested this credit should be extended to all nationwide licenses as well.

We concluded, however, that small businesses are in the best position to decide which blocks of licenses to bid on. As we have stated, based upon our experience in prior auctions, it is very likely that bidders will attempt to aggregate Regional and EA licenses in the development of their bidding strategies, particularly if these licenses are auctioned together. Thus, in order to enhance bidder flexibility, we elected to establish bidding credits consistent with our two-tiered definition of small business that will apply to all three license groups. For very small businesses that, together with affiliates and controlling principals, have average gross revenues for the three preceding years of not more than $3 million, we will give a 25 percent bidding credit, applicable for all three categories of licenses. Likewise, we will give small businesses that, together with affiliates and controlling principals, have average gross revenues for the three preceding years of not more than $15 million, a bidding credit of 10 percent, available for all three categories of licenses. While the 25 percent bidding credit is less than originally proposed for the nationwide and Regional licenses, we believe it is appropriate since we are now going to offer bidding credits generally for all channel blocks. Moreover, we had favorable results -- *i.e.,* a significant number of small business applicants were winning bidders -- in previous auctions with bidding credits at this level or lower.

We initially proposed the use of installment payments and reduced down payments for all small businesses bidding for any of the Phase II 220 MHz nationwide, Regional and EA

licenses. The SMR Advisory Group supported these positions. We also tentatively concluded that reduced upfront payments for small businesses would be unnecessary.

We adopted an installment payment plan for small businesses and very small businesses participating in the 220 MHz auction. We declined to provide very small businesses with a longer interest-only period than the two-year period provided for small businesses. We determined that a two-year interest-only period in the single plan we adopted provides all small businesses with the appropriate level of financing to overcome difficulties in attracting capital. Given that we are making additional financial assistance available to very small businesses in the form of a 25 percent bidding credit, we concluded that a longer interest-only period is not needed. We also concluded that small businesses should not be permitted to pay a reduced down payment. As we stated in the case of the broadband PCS D, E and F Block auction, we believe that a substantial down payment is necessary to ensure that winning bidders have the financial capability of building out their systems, and will provide us with stronger assurance against defaults than a reduced down payment. Increasing the amount of the bidder's funds at risk in the event of default discourages insincere bidding and therefore increases the likelihood that licenses are awarded to parties who are best able to serve the public. We also believe that a 20 percent down payment should cover the required payments in the unlikely event of default.

Finally, we elected not to adopt a spectrum set-aside for designated entities, including small businesses. Because there will be both a large number and a large variety of licenses available in the Phase II 220 MHz auction, we decided not to adopt an entrepreneur's block for this service. Small businesses, we concluded, will have a significant opportunity to compete for Phase II 220 MHz licenses, particularly given the special provisions adopted for small businesses.

In making its various decisions in this proceeding, the Commission considered all available alternatives. It believes that the rules it has adopted in this decision represent the best balance of providing licensees, many of whom are small businesses, with the most flexibility and the smallest regulatory burden, and enables them to offer a variety of radio services to the public and compete effectively in the mobile communications marketplace.

VI. Report to Congress

The Commission shall send a copy of this Final Regulatory Flexibility Analysis (FRFA) along with this *220 MHz Third Report and Order*, in a report to Congress pursuant to 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also be published in the *Federal Register*.

International table			United States table		FCC use designators	
Region 1 – allocation MHz	Region 2 – allocation MHz	Region 3 – allocation MHz	Government	Non-Government	Rule part(s)	Special-use frequencies
			Allocation MHz	Allocation MHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
• • • • •	• • • • •	• • • • •	• • • • •	• • • • •	• • • • •	• • • • •
220 - 222 BROADCASTING 621 623 628 629	220 - 222 AMATEUR FIXED MOBILE Radiolocation 627	220 - 222 FIXED MOBILE BROADCASTING 626	220 - 222 FIXED LAND MOBILE Radiolocation 627 G2 US335	220 - 222 FIXED LAND MOBILE 627 US335	PRIVATE LAND MOBILE (90)	
• • • • •	• • • • •	• • • • •	• • • • •	• • • • •	• • • • •	• • • • •

APPENDIX B

REVISIONS TO COMMISSION RULES

Parts 2 and 90 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 2 -- FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read as follows:

AUTHORITY: Sections 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 302, 303, and 307, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

   a. Revise entries for 220-222 MHz;

   b. Remove international footnote 625; and

   c. Add United States footnote US335.

§ 2.106 Table of Frequency Allocations.

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UNITED STATES (US) FOOTNOTES

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US335 The primary Government and non-Government allocations for the various segments of the 220-222 MHz band are divided as follows: (1) the 220.0-220.55/221.0-221.55, 220.6-220.8/221.6-221.8, 220.85-220.90/221.85-221.90 and 220.925-221.0/221.925-222.0 MHz bands (Channels 1-110, 121-160, 171-180 and 186-200, respectively) are available for exclusive non-Government use; (2) the 220.55-220.60/221.55-221.60 MHz bands (Channels 111-120) are available for exclusive Government use; and (3) the 220.80-220.85/221.80-221.85 and 220.900-220.925/221.900-221.925 MHz bands (Channels 161-170 and 181-185, respectively) are available for shared Government and non-Government use. The exclusive non-Government band segments are also available for temporary fixed geophysical telemetry operations on a secondary basis to the fixed and mobile services.

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PART 90 - PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, 309 and 332, unless otherwise noted.

2. Section 90.7 is amended by revising the definitions for "EA-based or EA license" and "Economic Areas (EAs)," and by adding definitions for "Geophysical Telemetry," "Regional Economic Area Groupings (REAGs)," "Regional License," and "220 MHz Service" in alphabetical order to read as follows:

Section 90.7 Definitions.

* * * * *

EA-based or EA license. A license authorizing the right to use a specified block of SMR and 220-222 MHz spectrum within one of 175 Economic Areas (EAs) as defined by the Department of Commerce Bureau of Economic Analysis. The EA Listings and the EA Map are available for public inspection at the Wireless Telecommunications Bureau's public reference room, Room 5608, 2025 M St. NW, Washington, DC 20554 and Office of Operations -- Gettysburg, 1270 Fairfield Road, Gettysburg, PA 17325.

Economic Areas (EAs). A total of 175 licensing regions based on the United States Department of Commerce Bureau of Economic Analysis Economic Areas (see 60 FR 13114 (March 10, 1995)) defined as of February 1995, with the following exceptions:

(1) Guam and Northern Mariana Islands are licensed as a single EA-like area (identified as EA 173 in the 220 MHz Service);

(2) Puerto Rico and the U.S. Virgin Islands are licensed as a single EA-like area (identified as EA 174 in the 220 MHz Service); and

(3) American Samoa is licensed as a single EA-like area (identified as EA 175 in the 220 MHz Service).

* * * * *

Geophysical Telemetry. Telemetry involving the simultaneous transmission of seismic data from numerous locations to a central receiver and digital recording unit.

* * * * *

Regional Economic Area Groupings (REAGs). The six geographic areas for Regional licensing in the 220-222 MHz band, based on the United States Department of Commerce Bureau of Economic Analysis Economic Areas (see 60 FR 13114 (March 10, 1995)) defined as of February 1995, and specified as follows:

REAG 1 (Northeast): REAG 1 consists of the following EAs: EA 001 (Bangor, ME) through EA 011 (Harrisburg-Lebanon-Carlisle, PA); and EA 054 (Erie, PA).

REAG 2 (Mid-Atlantic): REAG 2 consists of the following EAs: EA 012 (Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD) through EA 026 (Charleston-North Charleston, SC); EA 041 (Greenville-Spartanburg-Anderson, SC-NC); EA 042 (Asheville, NC); EA 044 (Knoxville, TN) through EA 053 (Pittsburgh, PA-WV); and EA 070 (Louisville, KY-IN).

REAG 3 (Southeast): REAG 3 consists of the following EAs: EA 027 (Augusta-Aiken, GA-SC) through EA 040 (Atlanta, GA-AL-NC); EA 043 (Chattanooga, TN-GA); EA 069 (Evansville-Henderson, IN-KY-IL); EA 071 (Nashville, TN-KY) through EA 086 (Lake Charles, LA); EA 088 (Shreveport-Bossier City, LA-AR) through EA 090 (Little Rock-North Little Rock, AR); EA 095 (Jonesboro, AR-MO); EA 096 (St. Louis, MO-IL); and EA 174 (Puerto Rico and the U.S. Virgin Islands).

REAG 4 (Great Lakes): REAG 4 consists of the following EAs: EA 055 Cleveland-Akron, OH-PA) through EA 068 (Champaign-Urbana, IL); EA 097 (Springfield, IL-MO); and EA 100 (Des Moines, IA-IL-MO) through EA 109 (Duluth-Superior, MN-WI).

REAG 5 (Central/Mountain): REAG 5 consists of the following EAs: EA 087 (Beaumont-Port Arthur, TX); EA 091 (Forth Smith, AR-OK) through EA 094 (Springfield, MO); EA 098 (Colombia, MO); EA 099 (Kansas City, MO-KS); EA 110 (Grand Forks, ND-MN) through EA 146 (Missoula, MT); EA 148 (Idaho Falls, ID-WY); EA 149 (Twin Falls, ID); EA 152 (Salt Lake City-Ogden, UT-ID); and EA 154 (Flagstaff, AZ-UT) through EA 159 (Tucson, AZ).

REAG 6 (Pacific): REAG 6 consists of the following EAs: EA 147 (Spokane, WA-ID); EA 150 (Boise City, ID-OR); EA 151 (Reno, NV-CA); EA 153 (Las Vegas, NV-AZ-UT); EA 160 (Los Angeles-Riverside-Orange County, CA-AZ) through EA 173 (Guam and the Northern Mariana Islands); and EA 175 (American Samoa).

Regional License. A license authorizing the right to use a specified block of 220-222 MHz spectrum within one of six Regional Economic Area Groupings (REAGs).

* * * * *

220 MHz Service. The radio service for the licensing of frequencies in the 220-222 MHz band.

* * * * *

3. Section 90.41(a) is revised to read as follows:

Section 90.41 Disaster relief organizations.

(a) Eligibility. Organizations established for disaster relief purposes having an emergency radio communications plan are eligible to hold authorizations to operate radio stations for the transmission of communications relating to the safety of life or property, the establishment and maintenance of temporary relief facilities, and the alleviation of emergency situations during periods of actual or impending emergency, or disaster, and until substantially normal conditions are restored. In addition, the stations may be used for training exercises, incidental to the emergency communications plan, and for operational communications of the disaster relief organization or its chapter affiliates.

* * * * *

4. Section 90.137 is amended by revising paragraph (a)(3) to read as follows:

Section 90.137 Applications for operation at temporary locations.

(a) * * *

(3) Applications for operation at temporary locations exceeding 180 days must be accompanied by evidence of frequency coordination, except that applications for operation at temporary locations exceeding 180 days by applicants using 220-222 MHz spectrum for geophysical telemetry operations need not be accompanied by evidence of frequency coordination.

* * * * *

5. Section 90.203 is amended by adding paragraph (k) to read as follows:

Section 90.203 Type acceptance required.

* * * * *

(k) (1) For transmitters operating on frequencies in the 220-222 MHz band, type acceptance will only be granted for equipment with channel bandwidths up to 5 kHz, except that type acceptance will be granted for equipment operating on 220-222 MHz band Channels 1 through 160 (220.0025 through 220.7975/221.0025 through 221.7975), 171 through 180 (220.8525 through 220.8975/221.8525 through 221.8975), and 186 through 200 (220.9275 through 220.9975/221.9275 through 221.9975) with channel bandwidths greater than 5 kHz if the equipment meets the following spectrum efficiency standard: applications for Part 90 type acceptance of transmitters designed to operate on frequencies in the 220-222 MHz band must include a statement that the equipment meets a spectrum efficiency standard of at least one voice channel per 5 kHz of channel bandwidth (for voice communications), and a data rate of at least 4,800 bits per second per 5 kHz of channel bandwidth (for data communications). Type acceptance for transmitters operating on 220-222 MHz band Channels 1 through 160 (220.0025 through 220.7975/221.0025 through 221.7975), 171 through 180 (220.8525 through 220.8975/221.8525 through 221.8975), and 186 through 200 (220.9275 through 220.9975/221.9275 through 221.9975) with channel bandwidths greater than 5 kHz will be granted without the requirement that a statement be included that the equipment meets the spectrum efficiency standard if the requests for type acceptance of such transmitters are filed after December 31, 2001.

(2) Type acceptance may be granted on a case-by-case basis by the Commission's Equipment Authorization Division for equipment operating on 220-222 MHz band Channels 1 through 160 (220.0025 through 220.7975/221.0025 through 221.7975), 171 through 180 (220.8525 through 220.8975/221.8525 through 221.8975), and 186 through 200 (220.9275 through 220.9975/221.9275 through 221.9975) with channel bandwidths greater than 5 kHz and <u>not</u> satisfying the spectrum efficiency standard identified in paragraph (k)(1) of this section, if requests for Part 90 type acceptance of such transmitters are accompanied by a technical analysis that satisfactorily demonstrates that the transmitters will provide more spectral efficiency than that which would be provided by use of the spectrum efficiency standard.

6. Section 90.701 is revised to read as follows:

Section 90.701 Scope.

(a) Frequencies in the 220-222 MHz band are available for land mobile and fixed use for both Government and non-Government operations. This subpart sets out the regulations governing the licensing and operation of non-Government systems operating in the 220-222 MHz band. It includes eligibility requirements, application procedures, and operational and technical standards for stations licensed in these bands. The rules in this subpart are to be read in

conjunction with the applicable requirements contained elsewhere in this part; however, in case of conflicts, the provisions of this subpart shall govern with respect to licensing and operation in this frequency band.

(b) (1) Licensees granted initial authorizations for operations in the 220-222 MHz band from among applications filed on or before May 24, 1991 are referred to in this subpart as "Phase I" licensees;

(2) Applicants that filed initial applications for operations in the 220-222 MHz band on or before May 24, 1991 are referred to in this subpart as "Phase I" applicants; and

(3) All assignments, operations, stations, and systems of licensees granted authorizations from among applications filed for operations in the 220-222 MHz band on or before May 24, 1991 are referred to in this subpart as "Phase I" assignments, operations, stations, and systems, respectively.

(c) (1) Licensees granted initial authorizations for operations in the 220-222 MHz band from among applications filed after May 24, 1991 are referred to in this subpart as "Phase II" licensees;

(2) Applicants that filed initial applications for operations in the 220-222 MHz band after May 24, 1991 are referred to in this subpart as "Phase II" applicants; and

(3) All assignments, operations, stations, and systems of licensees granted authorizations from among applications filed for operations in the 220-222 MHz band after May 24, 1991 are referred to in this subpart as "Phase II" assignments, operations, stations, and systems, respectively.

(d) The rules in this subpart apply to both Phase I and Phase II licensees, applicants, assignments, operations, stations, and systems, unless otherwise specified.

7. Section 90.705 is revised to read as follows:

Section 90.705 Forms to be used.

Phase II applications for EA, Regional, or Nationwide radio facilities under this subpart must be prepared in accordance with Section 90.1009 and 90.1013. Phase II applications for radio facilities operating on public safety/mutual aid channels (Channels 161 through 170) or Emergency Medical Radio Service channels (Channels 181 through 185) under this subpart must be prepared on FCC Form 600 and submitted or filed in accordance with Section 90.127.

8. Paragraphs (a) and (c) of Section 90.709 are revised and paragraph (e) is added to read as follows:

Section 90.709 Special limitations on amendment of applications and on assignment or transfer of authorizations licensed under this subpart.

(a) Except as indicated in paragraph (b) of this section, the Commission

will not consent to the following:

(1) Any request to amend an application so as to substitute a new entity as the applicant;

(2) Any application to assign or transfer a license for a Phase I, non-nationwide system prior to the completion of construction of facilities; or

(3) Any application to transfer or assign a license for a Phase I nationwide system before the licensee has constructed at least 40 percent of the proposed system pursuant to the provisions of Section 90.725(a) or Section 90.725(h), as applicable.

* * * * *

(c) The assignee or transferee of a Phase I nationwide system is subject to the construction benchmarks and reporting requirements of Section 90.725. The assignee or transferee of a Phase I nationwide system is not subject to the entry criteria described in Section 90.713.

* * * * *

(e) The assignee or transferee of a Phase II system is subject to the provisions of Section 90.1017 and Section 1.2111(a) of this chapter.

9. Section 90.711 is revised to read as follows:

Section 90.711 Processing of Phase II applications.

(a) Phase II applications for authorizations on Channels 166 through 170 and Channels 181 through 185 will be processed on a first-come, first-served basis. When multiple applications are filed on the same day for these frequencies in the same geographic area, and insufficient frequencies are available to grant all applications (*i.e.*, if all applications were granted, violation of the station separation provisions of Sec. 90.723(i) would result), these applications will be considered mutually exclusive and will be subject to random selection procedures pursuant to Section 1.972 of this chapter.

(1) All applications will first be considered to determine whether they are substantially complete and acceptable for filing. If so, they will be assigned a file number and put in pending status. If not, they will be dismissed.

(2) Except as otherwise provided in this section, all applications in pending status will be processed in the order in which they are received, determined by the date on which the application was received by the Commission in its Gettysburg, Pennsylvania office (or the address set forth at Section 1.1102 of this chapter for applications requiring the fees established by part 1, subpart G of this chapter).

(3) Each application that is accepted for filing will then be reviewed to determine whether it can be granted. Frequencies will be assigned by the Commission pursuant to the provisions of Section 90.723.

(4) An application which is dismissed will lose its place in the processing

line.

(5) If an application is returned for correction and resubmitted and received by the Commission within 60 days from the date on which it was returned to the applicant, it will retain its place in the processing line. If it is not received within 60 days, it will lose its place in the processing line.

(b) All applications for Channels 161 through 165 that comply with the applicable rules of this part shall be granted. Licensees operating on such channels shall cooperate in the selection and use of frequencies and resolve any instances of interference in accordance with the provisions of Section 90.173.

(c) Phase II applications for authorization on all non-Government channels other than Channels 161 through 170 and 181 through 185 shall be processed in accordance with the provisions of Subpart W of this part.

10. Section 90.713 is revised to read as follows:

Section 90.713 Entry criteria.

(a) As set forth in Section 90.717, four 5-channel blocks are available for nationwide, commercial use to non-Government, Phase I applicants. Applicants for these nationwide channel blocks must comply with paragraphs (b), (c), and (d) of this section.

(b) (1) An applicant must include certification that, within ten years of receiving a license, it will construct a minimum of one base station in a least 70 different geographic areas designated in the application; that base stations will be located in a minimum of 28 of the 100 urban areas listed in Section 90.741; and that each base station will have all five assigned nationwide channels constructed and placed in operation (regularly interacting with mobile and/or portable units).

(2) An applicant must include certification that it will meet the construction requirements set forth in Section 90.725.

(3) An applicant must include a ten-year schedule detailing plans for construction of the proposed system.

(4) An applicant must include an itemized estimate of the cost of constructing 40 percent of the system and operating the system during the first four years of the license term.

(5) An applicant must include proof that the applicant has sufficient financial resources to construct 40 percent of the system and operate the proposed land mobile system for the first four years of the license term; *i.e.*, that the applicant has net current assets sufficient to cover estimated costs or a firm financial commitment sufficient to cover estimated costs.

(c) An applicant relying on personal or internal resources for the showing required in paragraph (b) of this section must submit independently audited financial statements certified within one year of the date of the application showing net current assets sufficient to meet estimated construction and operating costs. An applicant must also submit an unaudited balance sheet, current within 60 days of the date of submission, that clearly shows the continued availability of sufficient net current assets to construct and operate the proposed system, and a certification by the applicant or an officer of the applicant organization attesting to the validity of the balance sheet.

(d) An applicant submitting evidence of a firm financial commitment for the

showing required in paragraph (b) of this section must obtain the commitment from a bona fide commercially acceptable source, *e.g.*, a state or federally chartered bank or savings and loan institution, other recognized financial institution, the financial arm of a capital equipment supplier, or an investment banking house. If the lender is not a state or federally chartered bank or savings and loan institution, other recognized financial institution, the financial arm of a capital equipment supplier, or an investment banking house, the lender must also demonstrate that it has funds available to cover the total commitments it has made. The lender's commitment shall contain a statement that the lender:

(1) Has examined the financial condition of the applicant including an audited financial statement, and has determined that the applicant is creditworthy;

(2) Has examined the financial viability of the proposed system for which the applicant intends to use the commitment; and

(3) Is willing, if the applicant is seeking a Phase I, commercial nationwide license, to provide a sum to the applicant sufficient to cover the realistic and prudent estimated costs of construction of 40 percent of the system and operation of the system for the first four years of the license term.

(e) A Phase II applicant for authorization in a geographic area for Channels 166 through 170 in the public safety/mutual aid category may not have any interest in another pending application in the same geographic area for Channels 166 through 170 in the public safety/mutual aid category, and a Phase II applicant for authorization in a geographic area for channels in the Emergency Medical Radio Service (EMRS) category may not have any interest in another pending application in the same geographic area for channels in the EMRS category.

11. Section 90.717 is revised to read as follows:

Section 90.717 Channels available for nationwide systems in the 220-222 MHz band.

(a) Channels 51-60, 81-90, and 141-150 are 10-channel blocks available to non-Government applicants only for nationwide Phase II systems.

(b) Channels 21-25, 26-30, 151-155, and 156-160 are 5-channel blocks available to non-Government applicants only for nationwide, commercial Phase I systems.

(c) Channels 111-115 and 116-120 are 5-channel blocks available for Government nationwide use only.

12. Section 90.719 is revised to read as follows:

Section 90.719 Individual channels available for assignment in the 220-222 MHz band.

(a) Channels 171 through 200 are available to both Government and non-Government Phase I applicants, and may be assigned singly or in contiguous channel groups.

(b) Channels 171 through 180 are available for any use by Phase I applicants consistent with this subpart.

(c) Channels 181 through 185 are set aside for Phase II Emergency Medical Radio Service (EMRS) use under subpart B of this part.

(d) Channels 161 through 170 and 181 through 185 are the only 220-222 MHz channels available to Phase II non-nationwide, Government users.

13. Section 90.720 is revised to read as follows:

Section 90.720 Channels available for public safety/mutual aid.

(a) Part 90 licensees whose licenses reflect a two-letter radio service code beginning with the letter "P" (except for licensees whose licenses reflect a two-letter radio service code beginning with the letters "PS" and are not eligible under Sections 90.35, 90.37, 90.41, and 90.45) are authorized by this rule to use mobile and/or portable units on Channels 161-170 throughout the United States, its territories, and possessions to transmit:

(1) Communications relating to the immediate safety of life;

(2) Communications to facilitate interoperability among public safety entities and Special Emergency Radio Service (SERS) entities eligible under Sections 90.35, 90.37, 90.41 and 90.45; or

(3) Communications on behalf of and by members of organizations established for disaster relief purposes having an emergency radio communications plan (*i.e.*, licensees eligible under Section 90.41) for the transmission of communications relating to the safety of life or property, the establishment and maintenance of temporary relief facilities, and the alleviation of emergency conditions during periods of actual or impending emergency, or disaster, until substantially normal conditions are restored; for limited training exercises incidental to an emergency radio communications plan, and for necessary operational communications of the disaster relief organization or its chapter affiliates.

(b) Any Government entity and any non-Government entity eligible to obtain a license under Subpart B of this part or eligible to obtain a license under Sections 90.35, 90.37, 90.41 and 90.45 is also eligible to obtain a license for base/mobile operations on Channels 161 through 170. Base/mobile or base/portable communications on these channels that do not relate to the immediate safety of life or to communications interoperability among public safety entities and the above- specified SERS entities, may only be conducted on a secondary non-interference basis to such communications.

14. Section 90.721 is revised to read as follows:

Section 90.721 Other channels available for non-nationwide systems in the 220-222 MHz band.

(a) The channel groups listed in the following Table are available to both Government and non-Government Phase I applicants for trunked operations or operations of equivalent or greater efficiency for non-commercial or commercial operations.

Table 1--Phase I Trunked Channel Groups

Group No.	Channel Nos.
1	1-31-61-91-121
2	2-32-62-92-122
3	3-33-63-93-123
4	4-34-64-94-124
5	5-35-65-95-125
6	6-36-66-96-126
7	7-37-67-97-127
8	8-38-68-98-128
9	9-39-69-99-129
10	10-40-70-100-130
11	11-41-71-101-131
12	12-42-72-102-132
13	13-43-73-103-133
14	14-44-74-104-134
15	15-45-75-105-135
16	16-46-76-106-136
17	17-47-77-107-137
18	18-48-78-108-138
19	19-49-79-109-139
20	20-50-80-110-140

(b) The channels listed in the following Table are available to non-Government applicants for Phase II assignments in Economic Areas (EAs) and Regional Economic Area Groupings (REAGs) (see Sections 90.761 and 90.763).

Table 2

Phase II EA and Regional Channel Assignments

Assignment	Assignment Area	Group Nos. (from Table 1)	Channel Nos.
A	EA	2 and 13	
B	EA	3 and 16	
C	EA	5 and 18	
D	EA	8 and 19	
E	EA		171-180
F	REAG	1, 6, and 11	
G	REAG	4, 9, and 14	
H	REAG	7, 12, and 17	
I	REAG	10, 15, and 20	
J	REAG		186-200

15. Section 90.723 is revised to read as follows:

Section 90.723 Selection and assignment of frequencies.

(a) Phase II applications for frequencies in the 220-222 MHz band shall specify whether their intended use is for 10-channel nationwide systems, 10-channel EA systems, 15-channel Regional systems, public safety/mutual aid use, or EMRS use. Phase II applicants for frequencies for public safety/mutual aid use or EMRS use shall specify the number of frequencies requested. All frequencies in this band will be assigned by the Commission.

(b) Phase II channels will be assigned pursuant to Sections 90.717, 90.719, 90.720, 90.721, 90.761 and 90.763.

(c) Phase II applicants for public safety/mutual aid and EMRS channels will be assigned only the number of channels justified to meet their requirements.

(d) Phase I base or fixed station receivers utilizing 221-222 MHz frequencies assigned from Sub-band A as designated in Section 90.715(b) will be geographically separated from those Phase I base or fixed station transmitters utilizing 220-221 MHz frequencies removed 200 kHz or less and assigned from Sub-band B as follows: