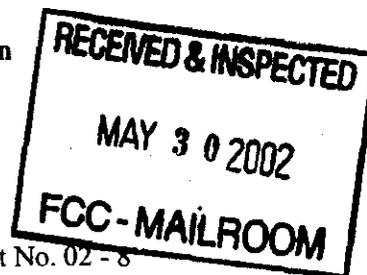


Before the
 Federal Communications Commission
 Washington, D.C. 20554



In the Matter of)	
)	
Amendments to Parts 1, 2, 27 and 90 of the)	WT Docket No. 02 - 8
Commission's Rules to License Services in the)	RM-9267
216-220 MHz, 1390-1395 MHz, 1427-1429 MHz,)	RM-9692
1429-1432 MHz, 1432-1435 MHz, 1670-1675)	RM-9797
MHz, and 2385-2390 MHz Government Transfer)	RM-9854
Bands)	RM-9882

REPORT AND ORDER

Adopted: May 16, 2002

Released: May 24, 2002

By the Commission: Commissioner Abernathy issuing a statement; Commissioner Copps approving in part, dissenting in part, and issuing a statement.

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I. INTRODUCTION

1. By this action, we adopt, in part, service rules proposed in the *Service Rules Notice*¹ to govern the licensing of 27 MHz of electromagnetic spectrum in the 216-220 MHz, 1390-1395 MHz,

¹ Reallocation of the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands, WT Docket No. 02-8, *Notice of Proposed Rulemaking*, 17 FCC Rcd 2500 (2002) (*Service Rules Notice*).

1427-1429.5 MHz, 1429.5-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz bands, which was recently reallocated for non-Government use.² The licensing plan we adopt in the instant proceeding continues the implementation of the framework articulated in the Commission's November 1999 *Spectrum Policy Statement*.³ Further, the service rules we adopt today establish a flexible regulatory and licensing framework. We believe that our decision will provide opportunities for new services to utilize this spectrum to address spectrum scarcity concerns as well as to promote the delivery of technologically innovative services to the public.

2. Of the seven frequency bands subject to this proceeding, the 216-220 MHz, 1432-1435 MHz, and 2385-2390 MHz bands are subject to the provisions of the National Telecommunications and Information Administration Organization Act (NTIA Organization Act), as added by the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (NDAA-99), Pub. L. 105-261, 112 Stat. 1920 (1999).⁴ Section 113(g) of the NTIA Organization Act requires new non-Government licensees to reimburse Federal users for their relocation costs.⁵ It also requires the Federal user to notify the National Telecommunications and Information Administration (NTIA) prior to auction of the "marginal costs anticipated to be associated with such relocation or with modifications necessary to accommodate prospective licensees," and requires the NTIA to provide the Commission with that information prior to auction.⁶ The NDAA-99 also directs the NTIA and the Commission to develop reimbursement procedures.⁷ Our implementation of NDAA-99 is heavily dependent on reimbursement procedures being promulgated by the NTIA, which have not yet been released.⁸ Following the release of NTIA's rulemaking, any actions necessary for the Commission to adopt additional rules or procedures to supplement NTIA's reimbursement regulations will be resolved in a separate proceeding.

² Reallocation of the 216-220 MHz, 1390-1392 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands, ET Docket No. 00-221, *Report and Order and Memorandum Opinion and Order*, 17 FCC Rcd 368 (2002) (*Reallocation Report and Order*). The Commission reallocated these bands pursuant to the provisions of the Omnibus Budget Reconciliation Act of 1993 (OBRA-93), Pub. L. 103-66, 107 Stat. 312 (1993), and the Balanced Budget Act of 1997 (BBA-97), Pub. L. 105-33, 111 Stat. 251 (1997). Section 6001(a) of the OBRA-93 (codified at 47 U.S.C. § 925(b)(1)) and Section 3002(e) of the BBA-97 (codified at 47 U.S.C. § 925 (c)(1)).

³ *Principles for Reallocation of Spectrum to Encourage the Development of Telecommunications Technologies for the New Millennium, Policy Statement*, 14 FCC Rcd 19868 (1999) (*Spectrum Policy Statement*).

⁴ *Reallocation Report and Order*, 17 FCC Rcd at 372 ¶ 7.

⁵ 47 U.S.C. § 923(g)(1)(A).

⁶ *Id.* In a recent letter from NTIA to the Commission, NTIA reports that there are "no longer any marginal costs subject to mandatory federal reimbursement for the 216-220 and 1432-1435 MHz bands." NTIA noted, however, that the projected costs for the 2385-2390 MHz band "have been more difficult to finalize." See Letter to Bruce Franca, Acting Chief, Office of Engineering and Technology, Federal Communications Commission, from William T. Hatch, Associate Administrator, Office of Spectrum Management, National Telecommunications and Information Administration (dated December 19, 2001).

⁷ 47 U.S.C. § 923(g)(1)(E).

⁸ See Mandatory Reimbursement Rules for Frequency Band or Geographic Relocation of Federal Spectrum-Dependent Systems, National Telecommunications and Information Administration, Docket No. 001206341-0341-01, *Notice of Proposed Rule Making*, 66 Fed. Reg. 4771 (Jan. 18, 2001). We previously sought comment on proposed general rules and guidelines to implement NDAA-99. Reallocation of the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands, *Notice of Proposed Rulemaking*, ET Docket No. 00-221, 15 FCC Rcd 22657, 22677-22682 ¶¶ 54-66 (2000) (*Reallocation Notice*).

II. EXECUTIVE SUMMARY

3. In this *Report and Order*, we make the following major determinations regarding the subject bands:

- Assign the 1390-1392 MHz band by Major Economic Areas (MEAs), the paired 1392-1395 MHz and 1432-1435 MHz bands by Economic Area Groups (EAGs), the 1670-1675 MHz and the 2385-2390 MHz bands on a single, nationwide basis, and the 1429.5-1432 MHz band on a site-by-site basis with frequency coordination.
- Permit open eligibility for initial licenses assigned by geographic area licensing in the paired 1392-1395 MHz and 1432-1435 MHz bands and in the unpaired 1390-1392 MHz, 1670-1675 MHz, and the 2385-2390 MHz bands.⁹ Adopt technical standards that are both consistent with our Part 27 rules and provide licensees flexibility.
- License telemetry on a primary basis in the 1429.5-1432 MHz band and on a secondary basis in the 217-220 MHz and 1427-1429.5 MHz bands using a frequency coordinated site-by-site approach consistent with the technical specifications provided for telemetry operations under our Part 90 rules, as modified herein.¹⁰
- Adopt our proposed framework for a ten-year license term from the date of grant in the paired 1392-1395 MHz and 1432-1435 MHz bands and in the unpaired 1390-1392 MHz, 1670-1675 MHz, and the 2385-2390 MHz bands. Require licensees to demonstrate that they are providing substantial service when they file their renewal application.
- Allow licensees in the paired 1392-1395 MHz and 1432-1435 MHz bands and in the unpaired 1390-1392 MHz, 1670-1675 MHz, and the 2385-2390 MHz bands to partition and/or disaggregate their licenses.
- Apply the general competitive bidding rules set forth in Part 1, Subpart Q, of the Commission's Rules to the paired 1392-1395 and 1432-1435 MHz bands and in the unpaired 1390-1392 MHz, 1670-1675 MHz, and the 2385-2390 MHz bands.¹¹

⁹ In the *Reallocation Report and Order*, we stated that we would not allow new, co-primary services in either the 216-217 MHz band or the 217-220 MHz band. *Reallocation Report and Order*, 17 FCC Rcd at 380 ¶¶ 26-27. The 216-217 MHz band is licensed by rule on a primary basis to the Low Power Radio Services (LPRS). *See id.* The 217-218 MHz and 219-220 MHz bands are subject to auction and licensed to the Automated Maritime Telecommunication System (AMTS) Service. *See* Amendment of the Commission's Rules Concerning Maritime Communications, WT Docket No. 92-257, *Fourth Report and Order and Third Further Notice of Proposed Rule Making*, 15 FCC Rcd 22585 (2000). The 218-219 MHz service has already been assigned, in part, by auction. *See* Announcing High Bidders for 594 Interactive Video and Data Services (IVDS) Licenses, *Public Notice*, Mimeo No. 44160 (rel. Aug. 2, 1994), *erratum*, *Public Notice*, Mimeo No. 44265 (rel. Aug. 9, 1994) (awarding MSA licenses by both lottery and auction); Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, *Report and Order and Memorandum Opinion and Order*, WT Docket No. 98-169, 15 FCC Rcd 1497 (1999) (modifying the regulations governing the licensing of the 218-219 MHz Service).

¹⁰ Prior to the release of the *Reallocation Report and Order*, Section 90.259 of our Rules permitted secondary telemetry operations throughout the entire 216-220 MHz band and in the 1427-1435 MHz band. *See* 47 C.F.R. § 90.259 (2000). We note that as a result of our decision in the *Reallocation Report and Order*, telemetry is authorized on a secondary basis in the 216-220 MHz and 1427-1429.5 MHz bands and on a primary basis in the 1429.5-1432 MHz band. However, as of January 2, 2002, new telemetry operations in the 216-217 MHz portion of the 216-220 MHz band are not permitted in order to protect LPRS from harmful interference. *See Reallocation Report and Order*, 17 FCC Rcd at 380 ¶ 26.

¹¹ 47 C.F.R. § Part 1, Subpart Q.

- Require non-Government users to file an application on the Universal Licensing System (ULS) requesting Frequency Assignment Subcommittee (FAS) coordination of fixed sites and mobile operations within the protection radii of co-primary Government incumbents. We specify that geographic area licensees are responsible for determining whether a particular operation requires FAS approval. We also clarify that a licensee may request coordination of multiple fixed and mobile stations via a single application. Finally, we indicate that users of the Low Power Radio Services (LPRS) are not required to coordinate with FAS.
- Establish coordination procedures for licensees in the 2385-2390 MHz band operating near non-Government aeronautical flight-test telemetry sites and interim coordination procedures for terrestrial licenses along the Canadian and Mexican borders.
- Implement the band "flip" portion of the AHA-Itron Joint Agreement and switch the primary allocation between Wireless Medical Telemetry Service (WMTS) in the 1427-1429.5 MHz band and Telemetry in the 1429.5-1432 MHz band, in seven defined geographic areas.¹²

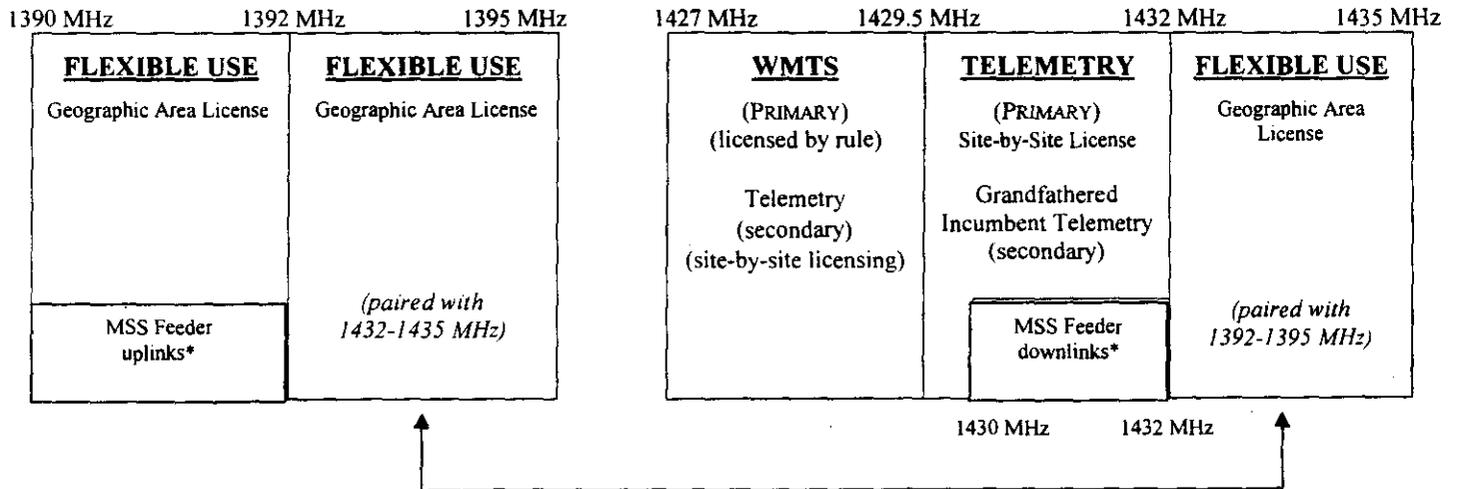
The following chart summarizes the licensing approaches we adopt herein.

¹² This particular aspect of the AHA-Itron band "flip" agreement is discussed further in Section IV.A.3.c, *infra*.

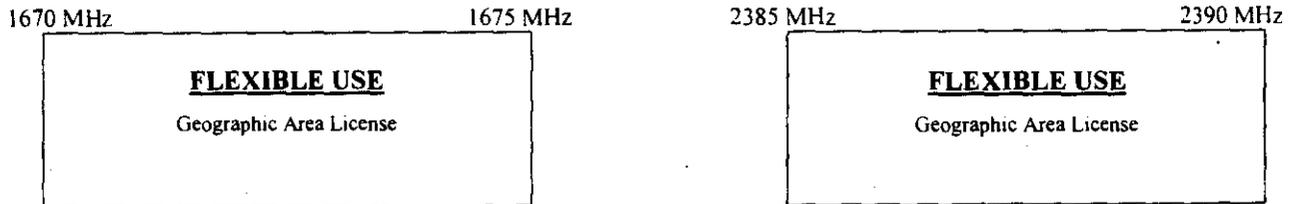
216-220 MHz Band

216 MHz	217 MHz	218 MHz	219 MHz	220 MHz
LPRS (PRIMARY) (licensed by rule)	AMTS (PRIMARY) (geographic area licensing)	218-219 MHz Service (PRIMARY) (geographic area licensing)	AMTS (PRIMARY) (geographic area licensing)	
Telemetry Incumbents Grandfathered (Secondary) (site-by-site licensing)	Telemetry (Secondary) (site-by-site licensing)			

1.4 GHz Bands



1670-1675 MHz Band and 2385-2390 MHz Band



*MSS Feeder Uplinks and Downlinks are contingent on the adoption of an international allocation and other conditions.¹³

¹³ 47 C.F.R. § 2.106, footnote US368. See *Reallocation Report and Order*, 17 FCC Rcd at 392 ¶ 52.

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SEE DOCKET NO. 02-8 FOR THE DOCUMENT.

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