negotiation period for MSS and BAS licensees in markets 1-30 and all BAS fixed stations, regardless of market size, ended on December 8, 2004. Therefore, any MSS entrant may now involuntarily relocate these incumbent BAS operations.[322] Under involuntary relocation, a new MSS entrant may, at its own expense, make necessary modifications to or replace an incumbent licensee's BAS equipment such that the BAS licensee receives comparable performance from the modified or replaced equipment.[323] Accordingly, we decline, without prejudice, to provide the relief sought by TMI and TerreStar.

3. Cost Accounting and Reporting

115. In the *800 MHz R&O*, the Commission required Nextel to provide annual audited accounting statements of funds spent on the overall 800 MHz band reconfiguration process, including the determination of Nextel's cost of clearing the 1.9 GHz spectrum, and to provide a final audited report prior to the time the true-up calculations are made.[324] The TA has requested guidance on its role relative to the expenses that Nextel incurs in connection with clearing the 1.9 GHz spectrum and reports to the TA. The TA submits that Nextel is responsible for all administrative, operational and financial aspects of clearing the 1.9 GHz band and that the TA's responsibility therefore extends only to receiving Nextel's financial reports and attaching them to the TA's quarterly and annual reports filed with the Commission and to the final report used to determine the true-up amount, if any. We confirm the TA's understanding, but with two qualifications: (a) the TA should integrate the Nextel data into the TA's required reports, *e.g.* when it sums up the costs of band reconfiguration, it should include and itemize the data relating to 1.9 GHz band clearance provided by Nextel; and (b) although the *800 MHz R&O* and *Supplemental Order* are silent on whether Nextel must file quarterly reports of 1.9 GHz clearing costs, the TA, at its discretion, may request such quarterly data from Nextel. We also confirm that the TA is under no obligation to analyze, audit or verify the data that Nextel supplies on the cost of clearing the 1.9 GHz spectrum.[325]

O. Clarifications

1. Site-Based SMR Facilities

116. ConEd notes that the *800 MHz R&O* established grandfathering rules for EA licensees that operate in the non-cellular portion of the 800 MHz band and seeks clarification that its site-based SMR facilities will also be grandfathered and that it will not be required to change frequency simply because it did not acquire its licenses in a spectrum auction.[326] The *800 MHz R&O* did nothing to change

[322] Under the *800 MHz R&O,* if MSS licensees choose not to trigger involuntary relocation, Nextel could proceed under its plan to relocate BAS incumbents. *See 800 MHz R&O*, 19 FCC Rcd at 15098 ¶ 257.

[323] *See MSS Second R&O*, 15 FCC Rcd at 12331 ¶ 48.

[324] The Commission required Nextel to maintain accurate records of all labor and material expenses in connection with clearance of the 1.9 GHz band and to supply an annual independent audit, and a final audit, by an auditing firm satisfactory to the Commission. *See 800 MHz R&O*, 19 FCC Rcd at 14989, 15124 ¶¶ 35, 330. Nextel must also submit to the Commission, "progress reports within twelve months and twenty-four months after the effective date of [the *800 MHz R&*O] on the status of the 1.9 GHz transition...." *Id.*, 19 FCC Rcd 15096-97 ¶ 254.

[325] *See* TA Interim Status Report, Appendix 6.

[326] *See* ConEd PFR (of R&O) at 5.

the grandfathering rights of site-based SMR incumbents operating in the non-ESMR portion of the band. Therefore, ConEd and similarly situated licensees may continue to operate under the grandfathering provisions established when the EA licensing scheme was first adopted for SMR channels.[327] However we note that some site-based incumbents, *e.g.* those operating on some of the current General Category channels are subject to relocation and will be provided with comparable facilities.[328]

2. Definition of Unacceptable Interference

117. In the *800 MHz R&O*, the Commission adopted an objective standard for defining what constitutes "unacceptable interference" to public safety and other high-site systems in the 800 MHz band.[329] Entergy requests that we clarify that the "unacceptable interference" standard will apply only to interference created by licensees employing cellular architecture systems.[330] Specifically, Entergy notes that the heading of Section 90.672 states that "unacceptable interference" applies only to interference created by ESMR or Part 22 Cellular Radiotelephone systems.[331] Nonetheless, Entergy notes that the language of Section 90.672 implies that "unacceptable interference" could be created by any type of licensee, including non-cellular licensees.[332] Entergy also notes that the text of the notification procedures in Section 90.674 contains a reference to non-cellular licensees receiving "harmful interference."[333]

118. Although the Commission has used the term "unacceptable interference" in this proceeding in the context of interference created by 800 MHz cellular-architecture systems to 800 MHz non-cellular systems,[334] the Commission did not intend by this usage to limit "unacceptable interference" to that caused by "high density cellular systems" sometimes employed by ESMR and Part 22 Radiotelephone licensees.[335] Therefore, we grant Entergy's request and amend Section 90.672 to specify that "unacceptable interference" to 800 MHz non-cellular licensees is that which originates from one or a combination of 800 MHz cellular-architecture licensees, regardless of whether the cellular-architecture licensee employs a "high-density" or "low-density" cellular system.[336] We will also amend

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[327] They may not, however, operate "high-density cellular"systems in the non-ESMR portion of the band. *See* n. 10 *supra*.

[328] *See* 47 C.F.R. § 90.693.

[329] *See 800 MHz R&O*, 19 FCC Rcd 15024-34 ¶¶ 92-114. *See also* 47 C.F.R. § 90.672.

[330] Entergy PFR (of R&O) at 3-5.

[331] *Id.* at 4.

[332] *Id.* at 3.

[333] *Id.* at 13 *citing* 69 Fed Reg, 67823, 67850 *to be codified at* 47 C.F.R. § 90.674(a).

[334] *See 800 MHz R&O*, 19 FCC Rcd 15024-34 ¶¶ 92-114.

[335] As noted in ¶ 7 *supra*, the term "high density cellular systems" was initially coined for the limited purpose of defining which cellular architecture systems may operate below the non-ESMR/ESMR band segment dividing line.

[336] *See* 47 C.F.R. § 90.672 (as amended in Appendix B *infra*).

Section 90.674 to replace the inadvertent use of the term "harmful interference" with the correct phrase "unacceptable" interference."[337]

3. Definition of Critical Infrastructure Industry

119. Entergy correctly notes that in the *800 MHz R&O*, the Commission imprecisely defined Critical Infrastructure Industries (CII) in Section 90.7 of its rules as: "Private internal radio services operated by State, local governments and non-government entities, including utilities, railroads, metropolitan transit systems, pipelines, private ambulances, volunteer fire departments, and not-for-profit organizations that offer emergency road services, provided these private internal radio services (i) are used to protect safety of life, health, or property; and (ii) are not made commercially available to the public."[338] Thus, the Commission's definition incorrectly defined CII as "radio services . . ." rather than as the entities that provide and use such radio services. We therefore amend Section 90.7 to define CII licensees as "entities;" specifically thus: "State, local government and non-government entities, including utilities, railroads, metropolitan transit systems, pipelines, private ambulances, volunteer fire departments, and not-for-profit organizations that provide private internal radio services, provided these private internal radio services (i) are used to protect safety of life, health, or property; and are (ii) are not made commercially available to the public."[339]

4. Dispute Resolution Processes

120. Entergy notes an internal contradiction in section 90.677(d) of the Commission's rules. Although the rule section requires the TA to resolve any disputed issues remaining at the end of the mandatory negotiation period "within thirty working days," it, inconsistently, requires the TA to forward any unresolved issues to the Wireless Telecommunications Bureau "within thirty days after the end of the mandatory negotiation period."[340] Additionally, Entergy also notes that, in the text of the *800 MHz R&O*, the Commission established procedures for review of disputed issues that arise during the negotiation period, but did not codify those procedures in the rules.[341] We agree with Entergy and will modify section 90.677(d) of our rules to codify the dispute resolution procedures set forth in the text of the *800 MHz R&O* and to clarify that the Transition Administrator must forward unresolved disputed issues remaining at the end of the mandatory negotiation period within thirty working days of the end of the mandatory negotiation period.[342]

5. Frequency Coordination of EA-based SMR Frequencies

121. In the *Supplemental Order*, the Commission stated that, after band reconfiguration, all applications for site-based SMR channels in the non-cellular portion of the 800 MHz band would be

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[337] *See* 47 C.F.R. § 90.674(a) (as amended in Appendix B *infra*).

[338] *See* Entergy PFR (of R&O) at 12-13.

[339] *See* 47 C.F.R. § 90.7 (as amended in Appendix B *infra*).

[340] *See* Entergy PFR (of R&O) at 9-10 *citing* 47 C.F.R. § 90.677(d).

[341] *See* Entergy PFR (of R&O) at 11-12 *citing 800 MHz R&O*, 19 FCC Rcd 15071-72 ¶ 194.

[342] *See* 47 C.F.R. § 90.677(d) (as amended in Appendix B *infra*).

subject to frequency coordination.[343] In making this clarification, a conforming change was not made to Section 90.175 of the rules, which continues to provide that both 800 MHz and 900 MHz SMR licensees are exempt from frequency coordination. Accordingly, we amend section 90.175, herein, to specify that only applicants for EA-based 800 MHz SMR and 900 MHz SMR frequencies will continue to be exempt from the frequency coordination requirements.[344]

6. Reconfiguration of Areas That Do Not Have Associated NPSPAC Regions

122. In establishing the rules governing 800 MHz band reconfiguration, the Commission stated that relocation will proceed in discrete areas defined by the boundaries of the fifty-five 800 MHz National Public Safety Planning Advisory Committee (NPSPAC) regions. The TA then recommended, and the Commission concurred in, a schedule detailing when band reconfiguration will commence in each of those NPSPAC regions.[345] When the TA submitted its plan, it noted that because American Samoa, Guam, the Northern Mariana Islands, and the Gulf of Mexico are not associated with NPSPAC regions, it would defer developing 800 MHz band relocation plans for these areas pending direction from the Commission.[346]

123. The Commission's 800 MHz rules both prior to and subsequent to the *800 MHz R&O* and the *Supplemental Order* apply to American Samoa, Guam, the Northern Mariana Islands, and to facilities located in the Gulf of Mexico, regardless of whether such areas have an associated NPSPAC region.[347] Accordingly, we hereby recommend that the TA include these areas in "Wave 4" of its reconfiguration schedule. Although this will result in these areas being among the last to be reconfigured, we note that there are relatively few 800 MHz systems in the territories, and, in the case of the Gulf of Mexico, few if any public safety facilities, and we therefore anticipate no untoward effects from placing these areas in Wave 4.

7. 900 MHz Interference and Spectrum Trafficking

124. Numerous parties have asked us to apply the 800 MHz interference rules to licensees in the 900 MHz band.[348] Although the Commission has addressed in this proceeding, the consolidation of

[343] *See Supplemental Order*, 19 FCC Rcd 25149 ¶ 67. *See also* 47 C.F.R. § 90.175.

[344] *See* Appendix B, *infra*.

[345] *See* Regional Prioritization Plan of the 800 MHz Transition Administrator, filed January 31, 2005; Wireless Telecommunications Bureau Approves the Basic Reconfiguration Schedule put Forth in the Transition Administrator's 800 MHz Regional Prioritization Plan, WT Docket No. 02-55, *Public Notice*, DA 05-619, 70 Fed. Reg. 21786 WTB (2005).

[346] *See* Regional Prioritization Plan of the 800 MHz Transition Administrator, filed January 31, 2005 at pg 23, n 40.

[347] *See* 47 U.S.C. § 152(a) (giving the FCC authority to regulate all interstate and foreign communication by wire and radio originating in or received by the United States). *See also* 47 U.S.C. § 153(22)(defining "interstate communication" or "interstate transmission" as communication or transmission from or to any State, Territory, or possession of the United States (other than the Canal Zone) or the District of Columbia.)

[348] *See* Petition for Reconsideration, filed Dec. 17, 2004, by the Association of American Railroads (AAR PRF (of R&O)) at 4-7; Petition for Reconsideration, filed Dec. 22, 2004, by the National Association of Manufacturers and MRFAC, Inc. (NAM/MRFAC PFR (of R&O)) at 4-10; Exelon PFR (of R&O) at 4-5.

the Business and Industrial/Land Transportation channels in both the 800 MHz and 900 MHz bands, the Commission limited its consideration of 900 MHz matters in the *800 MHz NPRM* and subsequent orders to that specific issue. Accordingly, we decline to address petitioners' requests to address 900 MHz interference issues because they are outside the scope of the instant proceeding. Petitioners may raise 900 MHz interference issues, and other issues related to the 900 MHz band, in WT Docket No. 05-62, the *900 MHz Flexible Use Proceeding*. The Commission issued a *Notice of Proposed Rulemaking* in that docket on February 16, 2005.[349] We will incorporate the comments into the docket in that proceeding.

V. ORDERING CLAUSES

125. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 303(f), 332, 337 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(f), 332, 337 and 405, this *Memorandum Opinion and Order* IS HEREBY ADOPTED.

126. IT IS FURTHER ORDERED that, pursuant to Sections 1, 4(i), 303(f) and (r), 332, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 1, 154(i), 303(f) and (r), 332, and 405, the Petition for Reconsideration filed by Southern Communications Services, Inc. d/b/a/ SoutherLINC on December 22, 2004, IS GRANTED to the extent described herein.

127. IT IS FURTHER ORDERED that, pursuant to Sections 1, 4(i), 303(f) and (r), 332, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 1, 154(i), 303(f) and (r), 332, and 405, the Petition for Clarification filed by American Electric Power Company, Inc., on December 21, 2004; the Petition for Reconsideration filed by Entergy Corporation and Entergy Services, Inc. on December 22, 2004; the Petition for Reconsideration filed by AIRPEAK Communications, LLC on March 10, 2005, the Joint Petition for Partial Reconsideration jointly filed by Coastal SMR Network, L.L.C./A.R.C., Inc. and Scott C. MacIntyre on December 22, 2004; and the Petition for Partial Reconsideration filed by the Safety and Frequency Equity Competition Coalition on March 10, 2005 ARE GRANTED to the extent described herein and DENIED in all other respects.

128. IT IS FURTHER ORDERED that the Request for Waiver, filed by AIRPEAK Communications, LLC on March 10, 2005, IS GRANTED to the extent described herein and DENIED to the extent described herein and DISMISSED in all other respects.

129. IT IS FURTHER ORDERED that the Request for Waiver, filed by Airtel Wireless, LLC on March 10, 2005, IS GRANTED to the extent described herein.

130. IT IS FURTHER ORDERED that the Petitions for Reconsideration jointly filed by the National Association of Broadcasters, the Association for Maximum Service Television, the Society of Broadcast Engineers on December 2, 2004; the Joint Request for Clarification filed by TMI Communications and Company, a Limited Partnership and TerreStar Networks, Inc. on December 22, 2004; the Petition for Partial Reconsideration filed by James A. Kay, Jr. on December 22, 2004; the Petition for Reconsideration jointly filed by the American Petroleum Institute and the United Telecom Council on Mar. 10, 2005; the Petition for Partial Reconsideration filed by the Association of Public-Safety Communications Officials International, Inc., International Association of Chiefs of Police, International Association of Fire Chiefs, International Municipal Signal Association, Inc., Major Cities

[349] *See* Amendment of Part 90 of the Commission's Rules to Provide For Flexible Use of the 896-901 MHz and 935 and 940 MHz Bands Allotted to the Business and Industrial Land Transportation Pool, WT Docket 05-62, Notice of Proposed Rulemaking, FCC 05-31 (2005).

Chiefs Association, Major County Sheriffs' Association, and National Sheriffs' Association, on February 1, 2005; the Petition for Clarification and Reconsideration, filed by Consolidated Edison Company of New York, Inc., on December 22, 2004; the Petition for Reconsideration, filed by Consolidated Edison Company of New York, Inc., on March 10, 2005; the Petition for Reconsideration, filed by Peter W. Meade, Chairman, Region 8, on January 21, 2005 and the Petition for Clarification or Partial Reconsideration of Freeze Process for Implementation of 800 MHz Band Reconfiguration, filed by the Association of Public-Safety Communications Officials-International Inc., the International Association of Chiefs of Police, the International Association of Fire Chiefs, the International Municipal Signal Association, Inc., the Major Cities Chiefs Association, Major County Sheriff's Association and the National Sheriff's Association on May 16, 2005, ARE DENIED.

131. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by Richard W. Duncan d/b/a Anderson Communications is RESOLVED to the extent indicated herein.

132. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by Exelon Corporation on December 22, 2004; the Petition for Reconsideration filed by Charles D. Guskey on December 22, 2004; the Petition for Reconsideration filed by Nextel Communications, Inc. on December 22, 2004 and the Petition for Reconsideration jointly filed by Preferred Communications Systems, Inc. and Silver Palm Communications, Inc., on Dec. 22, 2004 ARE DENIED IN PART AND DISMISSED IN PART to the extent described herein.

133. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by CTIA-the Wireless Association on December 22, 2004; the Petition for Reconsideration filed by the Association of American Railroads on December 17, 2004 and the Petition for Reconsideration filed by the National Association of Manufacturers and MRFAC, Inc. on December 22, 2004 ARE DISMISSED AS MOOT.

134. IT IS FURTHER ORDERED that the Request for Declaratory Ruling, jointly filed by Nextel, the Association for Maximum Service Television and the National Association of Broadcasters, on June 20, 2005, IS GRANTED to the extent described herein and DISMISSED in all other respects.

135. IT IS FURTHER ORDERED that, pursuant to Sections 309 and 316 of the Communications Act of 1934, as amended, 47 U.S.C. § § 309, 316, the licenses of all 800 MHz band licensees (including, but not limited to, Nextel Communications, Inc.), are hereby modified as specified in this Memorandum Opinion and Order. Pursuant to Section 316(a)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 316(a)(1), publication of this Memorandum Opinion and Order in the Federal Register shall constitute notification in writing of our Order modifying Nextel's 800 MHz licenses and those of all other 800 MHz licenses, and of the grounds and reasons therefore, and Nextel and these other 800 MHz licensees shall have thirty days from the date of such publication to protest such Order.

136. IT IS FURTHER ORDERED that the amendments of the Commission's Rules as set forth in Appendix B ARE ADOPTED, effective thirty days from the date of publication in the Federal Register.

137. IT IS FURTHER ORDERED that the Final Regulatory Flexibility Analysis, required by Section 604 of the Regulatory Flexibility Act, 5 U.S.C. § 604, and as set forth in Appendix A herein is ADOPTED.

138. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Memorandum Opinion and*

Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary

APPENDIX A

PROCEDURAL MATTERS

A. Supplemental Final Regulatory Flexibility Analysis

139. The Regulatory Flexibility Act (RFA)[350] requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[351] As required by the RFA an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *Notice of Proposed Rulemaking* ("*800 MHz NPRM*") in this proceeding. The Commission sought written public comment on the proposals in the *800 MHz NPRM*, including comment on the IRFA. Based upon the comments in response to the *800 MHz NPRM* and the IRFA, the Commission included a Final Regulatory Flexibility Analysis ("FRFA") in the *Report and Order* (*800 MHz R&O)* in this proceeding. The Commission subsequently sought comment on *ex parte* presentations filed in this proceeding. In the *Supplemental Order and Order on Reconsideration* (*Supplemental Order*), the Commission, on its own motion, amended the rules in a manner that did not significantly affect small entities beyond the terms set forth in the FRFA. Accordingly, the Commission included a Supplemental Regulatory Flexibility Analysis ("Supplemental FRFA") addressing those amendments consistent with the RFA.

140. This *Memorandum Opinion and Order* (*MO&O*) clarifies portions of the *800 MHz R&O* and companion *Supplemental Order* and addresses petitions for reconsideration of the Commission's decisions in the *800 MHz R&O* and the *Supplemental Order*. Interested parties were afforded notice and opportunity to comment on the petitions for reconsideration of the *800 MHz R&O* and *Supplemental Order*. *See* 70 FR 17327. Several parties filed oppositions to the petitions for reconsideration and replies to the oppositions. The clarifications we make in this *MO&O* are in response to the various petitions for reconsideration, oppositions and replies that have been filed thus far. Accordingly, this Supplemental Regulatory Flexibility Analysis ("Supplemental FRFA") addresses those clarifications and conforms to the RFA.

141. ***Need for, and Objectives of, the Order on Reconsideration.*** By way of background the *800 MHz R&O* adopted a plan comprised of both long-term and short-term components that the Commission concluded represented the most effective solution to the problem of interference to public safety licensees in the 800 MHz band. The Commission addressed the ongoing interference problem over the short-term by adopting technical standards defining unacceptable interference in the 800 MHz band and detailing responsibility for interference abatement. The long-term component augmented the short-term component by reconfiguring the 800 MHz band to separate generally incompatible technologies whose current proximity to each other is the identified root cause of unacceptable interference.

142. *Enhanced Specialized Mobile Radio Systems.* In this proceeding the Commission divided the 800 MHz band into a cellular portion and non-cellular portion to create spectral separation

[350] The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[351] *See* 5 U.S.C. § 605(b).

between incompatible technologies. Section 90.614 provides that the cellular portion would be reserved for licensees that operate cellular high-density systems. Several parties sought reconsideration of the eligibility and operating requirements applicable to the cellular band arguing that these requirements are overly restrictive.

143. On our own motion we clarify the definition of ESMR system in order to resolve an ambiguity between the text of the *800 MHz R&O* and Section 90.7 of the accompanying rules. This clarification is significant to the extent that it defines those licensees that may elect to be relocated into the cellular portion of the band. When the Commission first established the eligibility criteria for relocation into the cellular portion of the band, it spoke to existing "ESMR" systems. The 800 MHz R&O inadvertently defined ESMR systems as those that employ "high density" cellular architecture. However the *800 MHz R&O* had also referred to an "ESMR system," more generally, as a term to describe systems that use multiple, interconnected, multi-channel transmit/receive cells and employ frequency reuse to serve a larger number of subscribers than is possible using non-cellular technology. We resolve this contradiction by amending rule section 90.7 to eliminate the "high density" qualification for ESMR status. The practical effect of this clarification is to ensure licensees operating in the ESMR band have a fair amount of flexibility in the management of their systems. The purpose of this clarification is to distinguish between high-density systems that may not be operated in the non-ESMR portion of the band not to require EA licensees that relocate to the ESMR band to operate high-density systems should they elect to operate in the ESMR band. To this end we also adopt a definition of "800 MHz high-density cellular system" and "800 MHz cellular system" and revise several Part 22 and 90 rules to incorporate the distinction between 800 MHz cellular systems and high-density cellular systems in order to more efficiently implement our band reconfiguration plan.

144. *Economic Area Licensees.* We also clarify that Economic Area (EA) licensees that elect to relocate to the cellular band may relocate site-based systems so long as they deploy a cellular system on their combined facilities by the end of their EA license term. We also clarify that those incumbent EA licensees that operate non-cellular systems in that portion of the cellular band known as the "Upper 200 band," must relocate from the cellular band unless they deploy a cellular system. Failure to construct a cellular system will result in automatic cancellation of the relocated EA license and any site-based facilities relocated to the cellular band. The purpose of this clarification is to: (1) avoid replicating in the cellular band the same incompatible mix of technologies that resulted in this proceeding; (2) ensure that licensees genuinely interested in competing with cellular operators have the opportunity to move forward with their business plans and (3) inhibit the ability of speculative licensees to allow valuable spectrum to lie fallow or under utilized in an attempt to maximize resale value. In this connection, EA licensees, consistent with their existing construction and operational obligations, must notify the Commission whether they have constructed in accordance with the operational rules governing the ESMR band. Overall, this clarification confers upon EA licensees the benefit of added flexibility.

145. *Unacceptable Interference.* In the *800 MHz R&O*, the Commission adopted an objective standard for defining what constitutes "unacceptable interference" to public safety and other non-cellular systems in the 800 MHz band. The purpose of defining unacceptable interference is to determine the rights and responsibilities of parties to alleviate interference. One petitioner requested that we clarify that the "unacceptable interference" standard will apply only to interference created by licensees employing cellular architecture systems. According to this petitioner the heading and text of Section 90.672 implies that "unacceptable interference" could be created by any type of licensee including non-cellular licensees. We clarify the heading and text of Section 90.672 to specify that "unacceptable interference" to 800 MHz non-cellular licensees is that which originates from one or a combination of 800 MHz cellular-architecture licensees, regardless of whether the cellular-architecture licensee employs

a "high-density" or "low-density" cellular system. In this connection we replace the reference to harmful interference in Section 90.672 with the term unacceptable interference.

146. *Critical Infrastructure Industry.* One Petitioner pointed out that Section 90.7 imprecisely defined Critical Infrastructure Industries (CII). Accordingly we clarify the definition of CII.

147. *Southeast Region Band Plan.* Section 90.617 is updated to reflect the distribution of channels between the various pool categories in the SouthernLINC/Nextel counties listed in Section 90.614(c). In the *800 MHz R&O* the Commission adopted a band plan for the Southeast Region. Part of this band plan included a 1 MHz Expansion band, designed to create spectral separation between public safety and ESMR operations. Subsequently we have received petitions for reconsideration seeking to eliminate or reduce the size of the Expansion band because there is insufficient amount of spectrum to accommodate Public Safety and cellular operations in the Atlanta market. Accordingly, we reduce the size of the Expansion band in the Atlanta market and up to seventy miles outside Atlanta.

148. *Transition Administrator Reports.* Sections 90.676(b)(3) and (4) are revised to allow the Transition Administrator to choose the date for filing quarterly and annual reports regarding band reconfiguration. Previously Section 90.676 required that the TA submit its reports based on the effective date of the *Report and Order*. We have since learned that this requirement would be complicated by Nextel Communications, Inc.'s obligations to the Securities and Exchange Commission. We therefore modify our rules to permit the TA to file its quarterly and annual reports with the Commission on the first business day following Nextel's quarterly and annual filings with the Securities and Exchange Commission.

149. *Dispute Resolution.* One petitioner pointed out an ambiguity and inadvertent omission in our 800 MHz band reconfiguration dispute resolution procedures. Accordingly we revise section 90.677(d) of our rules to clarify that the Transition Administrator must forward unresolved disputed issues remaining at the end of the mandatory negotiation period within thirty days of the end of the mandatory negotiation period. We also will modify section 90.674 of our rules to codify the dispute resolution procedures set forth in the text of the *800 MHz R&O.*

150. *Frequency Coordination.* Section 90.175 is revised to clarify that 800 MHz Economic Area licensees and 900 MHz SMR licensees will continue to be exempt from frequency coordination requirements. Previously, in the *Supplemental Order* we provided that 800 MHz site-based SMR licensees will be subject to frequency coordination in the 800 MHz band but inadvertently omitted this requirement from the rules. Accordingly we correct this omission.

151. ***Summary of Significant Issues Raised in Response to the FRFA.*** No parties have addressed the FRFA in any subsequent filings.

152. ***Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.*** The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[352] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[353] A "small business concern" is one which: (1) is independently owned and operated; (2) is not

[352] 5 U.S.C. § 601(6).

[353] 5 U.S.C § 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies (continued....)

dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[354]

153. In this *MO&O*, the Commission is amending the final rules adopted in the *800 MHz R&O* and *Supplemental Order*. In this Further FRFA, we incorporate by reference the description and estimate of the number of small entities from the FRFA in the *800 MHz R&O*, which identifies as potentially affected entities Governmental Licensees, Public Safety Radio Licensees, Wireless Telecommunications, Business, Industrial and Land Transportation Licensees, and Specialized Mobile Radio Licensees.[355]

154. A small organization is generally "any not-for-profit enterprise which is independently owned and operates and is not dominant in its field."[356] Nationwide as of 2002, there were approximately 1.6 million small organizations.[357] The term "small governmental jurisdiction" is defined as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[358] As of 1997, there were approximately 87,453 governmental jurisdictions in the United States.[359] This number includes 39,044 county governments, municipalities and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.[360]

155. ***Description of Projected Reporting, Recordkeeping and other Compliance Requirements.*** We do not adopt new reporting, recordkeeping or other compliance requirement in this *MO&O*.

156. ***Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.*** The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance,

(Continued from previous page)
"unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[354] 15 U.S.C. § 632.

[355] *See 800 MHz R&O* at Appendix A.

[356] 5 U.S.C. § 601(4).

[357] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[358] 5 U.S.C. § 601(5).

[359] U.S. Census Bureau, Statistical Abstract of the United States: 2000, Section 9, pages 299-300, Tables 490 and 492.

[360] *See* SBA, Programs and Services, SBA Pamphlet No. CO-0028, at page 40 (July 2002).

rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

157. As noted above, we reduce the size of the Expansion band in Atlanta, rather than eliminating the Expansion band in the Atlanta area. Although we reduce the Expansion band in Atlanta by .5 MHz, we maintain spectral separation between public safety and ESMR band operations. The purpose of maintaining spectral separation between public safety licensees operating in the non-cellular band and ESMR licensees operating in the cellular band is to reduce the incidence of interference to public safety. In contrast, if we had eliminated the Expansion band, we would have eliminated any spectral separation between public safety and ESMR systems operating in the cellular portion of the band. Further, public safety will continue to be entitled to interference protection from unacceptable interference. As a concession, however, some Atlanta-based B/ILT incumbents who would otherwise not be required to change frequencies will be required to relocate to the Expansion Band in order to accommodate public safety licensees relocating below the Expansion Band.

158. ***Report to Congress.*** The Commission will send a copy of this *MO&O*, including this Further Final Regulatory Flexibility Analysis (Further FRFA), in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act.[361] In addition the Commission will send a copy of the *MO&O* including a copy of this Further Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the SBA.[362] A summary of this *MO&O* and this analysis will also be published in the Federal Register.[363]

159. ***Paperwork Reduction Act Analysis.*** This document does not contain [new or modified] information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.[364]

[361] *See* 5 U.S.C. § 801(a)(1)(A).

[362] *See* 5 U.S.C. § 605(b).

[363] *Id.*

[364] *See* 44 U.S.C. 3506(c)(4).

APPENDIX B

FINAL RULES

PART 22 – PUBLIC MOBILE SERVICES

160. The authority citation for Part 22 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 222, 303, 309 and 332.

161. The title for Section 22.970 is amended to replace the term "Part 90 ESMR systems" with "Part 90 – 800 MHz cellular systems." The definition for unacceptable interference in paragraph (a) of Section 22.970 is amended to reference "Part 90 – 800 MHz cellular systems" and "cellular radiotelephone systems."

§ 22.970 Unacceptable interference to Part 90 non-cellular 800 MHz licensees from cellular radiotelephone or Part 90 – 800 MHz cellular systems.

(a) *Definition.* Except as provided in 47 C.F.R. §90.617(k), unacceptable interference to non-cellular Part 90 licensees in the 800 MHz band from cellular radiotelephone or Part 90 – 800 MHz cellular systems will be deemed to occur when the below conditions are met:

* * * * *

162. In paragraph (a) of Section 22.971 the cross reference to Section 22.972 is replaced with a cross reference to 22.972(c).

§ 22.971 Obligation to abate unacceptable interference.

(a) *Strict Responsibility.* Any licensee who, knowingly or unknowingly, directly or indirectly, causes or contributes to causing unacceptable interference to a non-cellular Part 90 licensee in the 800 MHz band, as defined in § 22.970 of this chapter, shall be strictly accountable to abate the interference, with full cooperation and utmost diligence, in the shortest time practicable. Interfering licensees shall consider all feasible interference abatement measures, including, but not limited to, the remedies specified in the interference resolution procedures set forth in § 22.972(c) of this chapter. This strict responsibility obligation applies to all forms of interference, including out-of-band emissions and intermodulation.

* * * * *

163. In paragraph (c) of Section 22.972 the term "Part 90 ESMR systems" is replaced with the term "Part 90 – 800 MHz cellular systems."

§ 22.972 Interference resolution procedures.

* * * * *

(c) *Mitigation Steps.* (1) All Cellular Radiotelephone and Part 90 – 800 MHz cellular system licensees who are responsible for causing unacceptable interference shall take all affirmative measures to resolve such interference. Cellular Radiotelephone licensees found to contribute to unacceptable interference, as defined in § 22.970, shall resolve such interference in the shortest time

practicable. Cellular Radiotelephone licensees and Part 90 – 800 MHz cellular system licensees must provide all necessary test apparatus and technical personnel skilled in the operation of such equipment as may be necessary to determine the most appropriate means of timely eliminating the interference. However, the means whereby interference is abated or the cell parameters that may need to be adjusted is left to the discretion of the Cellular Radiotelephone and/or Part 90 – 800 MHz cellular system licensees, whose affirmative measures may include, but not be limited to, the following techniques:

* * * * *

PART 90 – PRIVATE LAND MOBILE RADIO SERVICES

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

AUTHORITY: 4(i), 11, 303(g), 303(r), and 302(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

165. In Section 90.7, the definition for "800 MHz Cellular System" is changed, a new definition for "800 MHz High Density Cellular System" is added and the definition for "Critical Infrastructure Industry" is modified.

§ 90.7 Definitions.

800 MHz Cellular System. In the 806-824 MHz/ 851-869 MHz band, a system that uses multiple, interconnected, multi-channel transmit/receive cells capable of frequency reuse and automatic handoff between cell sites to serve a larger number of subscribers than is possible using non-cellular technology.

800 MHz High Density Cellular System. In the 806-824 MHz/ 851-869 MHz band, a high density cellular system is defined as a cellular system which:

(1) has more than five overlapping interactive sites featuring hand-off capability; and

(2) any one of such sites has an antenna height of less than 30.4 meters (100 feet) above ground level with an antenna height above average terrain (HAAT) of less than 152.4 meters (500 feet) and twenty or more paired frequencies.

* * * * *

Critical Infrastructure Industry (CII). State, local government and non-government entities, including utilities, railroads, metropolitan transit systems, pipelines, private ambulances, volunteer fire departments, and not-for-profit organizations that offer emergency road services, providing private internal radio services provided these private internal radio services (i) are used to protect safety of life, health, or property; and (ii) are not made commercially available to the public.

* * * * *

166. Paragraph (j)(8) of Section 90.175 is updated to indicate that—in the 800 MHz band—only EA-based applicants for SMR frequencies will be exempt from frequency coordination. SMR applicants in the 900 MHz band will continue to be exempt from frequency coordination.

*

(j) * * *

(8) Applications for SMR frequencies contained in §§ 90.617(d) Table 4A, 90.617(e), 90.617(f) and 90.619(b)(2).

167. In the title of Section 90.614, the terms "cellular" and "non-cellular" are removed. In paragraphs (a), (b) and (c) of Sections 90.614, the term "800 MHz cellular systems" is replaced by the term "800 MHz high density cellular systems."

§ 90.614 Segments of the 806-824/851-869 MHz band for non-border areas.

The 806-824/851-869 MHz band ("800 MHz band") will be divided as follows at locations farther then 110 km (68.4 miles) from the U.S./Mexico border and 140 km (87 miles) from the U.S./Canadian border ("non-border areas")

(a) 800 MHz high density cellular systems – as defined in § 90.7 – are prohibited from operating on channels 1-550 in non-border areas.

(b) 800 MHz high density cellular systems – as defined in § 90.7 – are permitted to operate on channels 551-830 in non-border areas.

(c) In the following counties and parishes, 800 MHz high density cellular systems – as defined in § 90.7 – are permitted to operate on channels 411-830: ***

168. In paragraph (a) of Section 90.615 the term "ESMR" is replaced with the term "licensee relocating to channels 551-830."

§ 90.615 Individual channels available in the General Category in 806-824/851-869 MHz band.

* * * * *

(a) In a given 800 MHz NPSPAC region, any channel in the 231-260 range which is vacated by a licensee relocating to channels 551-830 and which remains vacant after band reconfiguration will be available as follows:***

* * * * *

169. In paragraphs (a), (b), (d), (e), (i), (j) and (k) of Section 90.617 the term "800 MHz cellular systems" is replaced by the term "800 MHz high density cellular systems." In paragraphs (a), (b), (d), (i), and (j) the term "non-cellular" is removed. New paragraphs (a)(2), (a)(3), (b)(1), (b)(2), (d)(1) and (d)(2) are added to Section 90.617 to detail the distribution of channels between the various pool categories in the SouthernLINC/Nextel counties listed in Section 90.614(c). In paragraph (j) of Section 90.617 the term "ESMR systems" is replaced by the term "800 MHz high density cellular systems." In paragraph (g) and (h) the reference to channel "470" is replaced with a reference to channel "471. In paragraph (g) the reference to "ESMR" is replaced with the term "licensees relocating to channels 511-830."

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

* * * * *

(a) Unless otherwise specified, the channels listed in Table 1 and paragraph (a)(1) of this section are available for to eligible applicants in the Public Safety Category which consists of licensees eligible in the Public Safety Pool of subpart B of this part. 800 MHz high density cellular systems as defined in § 90.7 are prohibited on these channels. These frequencies are available in non-border areas. Specialized Mobile Radio Systems will not be authorized in this category. These channels are available for intercategory sharing as indicated in §90.621(e).

TABLE 1 – PUBLIC SAFETY POOL 806-816/851-861 MHZ BAND CHANNELS (70 CHANNELS)

Group No.	Channel Nos.
269	269-289-311-399-439
270	270-290-312-400-440
279	279-299-319-339-359
280	280-300-320-340-360
309	309-329-349-369-389
310	310-330-350-370-390
313	313-353-393-441-461
314	314-354-394-448-468
321	321-341-361-381-419
328	328-348-368-388-420
351	351-379-409-429-449
332	352-380-410-430-450
Single Channels	391, 392, 401, 408, 421, 428, 459, 460, 469, 470

(1) Channels numbers 1–230 are also available to eligible applicants in the Public Safety Category in non-border areas. The assignment of these channels will be done in accordance with the policies defined in the Report and Order of Gen. Docket No. 87–112 (See §90.16). The following channels are available only for mutual aid purposes as defined in Gen. Docket No. 87-112: channels 1, 39, 77, 115, 153.

(2) Except as provided in paragraph (a)(3), the channels listed in Table 1A are available in the counties listed in § 90.614(c) to eligible applicants in the Public Safety Category. 800 MHz high density cellular systems as defined in § 90.7 are prohibited on these channels. These channels are available for intercategory sharing as indicated in §90.621(e).

TABLE 1A – PUBLIC SAFETY POOL 806-816/851-861 MHZ BAND CHANNELS FOR COUNTIES IN SOUTHEASTERN U.S. (70 CHANNELS)

Group No.	Channel Nos.
261	261-313-324-335-353
262	262-314-325-336-354
265	265-285-315-333-351

266	266-286-316-334-352
269	269-289-311-322-357
270	270-290-312-323-355
271	271-328-348-358-368
279	279-299-317-339-359
280	280-300-318-340-360
309	309-319-329-349-369
310	310-320-330-350-370
321	321-331-341-361-372
Single Channels	326, 327, 332, 337, 338, 342, 343, 344, 345, 356,

(3) The channels listed in Table 1B are available within 113 km (70 mi) of the center city coordinates of Atlanta, GA to eligible applicants in the Public Safety Category. The center city coordinates of Atlanta, GA—for the purposes of the rule—are defined as 33° 44' 55" NL, 84° 23' 17" WL. 800 MHz high density cellular systems as defined in § 90.7 are prohibited on these channels. These channels are available for intercategory sharing as indicated in §90.621(e).

TABLE 1B – PUBLIC SAFETY POOL 806-816/851-861 MHZ BAND CHANNELS FOR ATLANTA, GA (70 CHANNELS)

Group No.	Channel Nos.
261	261-313-324-335-353
262	262-314-325-336-354
269	269-289-311-322-357
270	270-290-312-323-355
279	279-299-319-339-359
280	280-300-320-340-360
285	285-315-333-351-379
286	286-316-334-352-380
309	309-329-349-369-389
310	310-330-350-370-390
321	321-331-341-361-381
328	328-348-358-368-388
Single Channels	317, 318, 326, 327, 332, 337, 338, 356, 371, 372

(b) Unless otherwise specified, the channels listed in Table 2 are available to applicants eligible in the Industrial/Business Pool of subpart C of this part but exclude Special Mobilized Radio Systems as defined in §90.603(c). 800 MHz high density cellular systems as defined in § 90.7 are prohibited on these channels. These frequencies are available in non-border areas. 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(e).

TABLE 2 – BUSINESS/INDUSTRIAL/LAND TRANSPORTATION POOL 806-816/851-861 MHZ BAND CHANNELS (100 CHANNELS)

Group No.	Channel Nos.
322	322-362-402-442-482
323	323-363-403-443-483
324	324-364-404-444-484
325	325-365-405-445-485
326	326-366-406-446-486
327	327-367-407-447-487
342	342-382-422-462-502
343	343-383-423-463-503
344	344-384-424-464-504
345	345-385-425-465-505
346	346-386-426-466-506
347	347-387-427-467-507
Single Channels	261, 271, 281, 291, 301, 262, 272, 282, 292, 302, 263, 273, 283, 293, 303, 264, 274, 284, 294, 304, 265, 275, 285, 295, 305, 266, 276, 286, 296, 306, 267, 277, 287, 297, 307, 268, 278, 288, 298, 308

(1) Except as provided in paragraph (b)(2), the channels listed in Table 2A are available in the counties listed in § 90.614(c) to eligible applicants [illegible] Industrial/Business Pool of subpart C of this part but exclude Special Mobilized Radio Systems as defined in §90.603(c). 800 MHz high density cellular systems as defined in § 90.7 are prohibited on these channels. These channels are available for intercategory sharing as indicated in §90.621(e).

TABLE 2A – BUSINESS/INDUSTRIAL/LAND TRANSPORTATION POOL 806-816/851-861 MHZ BAND FOR CHANNESL IN SOUTHEASTERN U.S (69 CHANNELS)

Single Channels	Channel Nos.

	263, 264, 267, 268, 272, 273, 274, 275, 276, 277, 278, 281, 282, 283, 284, 287, 288, 291, 292, 293, 294, 295, 296, 297, 298, 301, 302, 303, 304, 305, 306, 307, 308, 346, 347, 362, 363, 364, 365, 366, 367, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410.

(2) The channels listed in Table 2B are available within 113 km (70 mi) of the center city coordinates of Atlanta, GA to eligible applicants in the Industrial/Business Pool of subpart C of this part but exclude Special Mobilized Radio Systems as defined in §90.603(c). The center city coordinates of Atlanta, GA—for the purposes of the rule—are defined as 33° 44' 55" NL, 84° 23' 17" WL. 800 MHz high density cellular systems as defined in § 90.7 are prohibited on these channels. These channels are available for intercategory sharing as indicated in §90.621(e).

TABLE 2B – BUSINESS/INDUSTRIAL/LAND TRANSPORTATION POOL 806-816/851-861 MHZ BAND FOR CHANNELS IN ATLANTA, GA (69 CHANNELS)

	Channel Nos.
Single Channels	263, 264, 265, 266, 267, 268, 271, 272, 273, 274, 275, 276, 277, 278, 281, 282, 283, 284, 287, 288, 291, 292, 293, 294, 295, 296, 297, 298, 301, 302, 303, 304, 305, 306, 307, 308, 342, 343, 344, 345, 346, 347, 362, 363, 364, 365, 366, 367, 382, 383, 384, 385, 386, 387, 391, 392, 393, 394, 399, 400, 401, 402, 403, 404, 405, 406, 407, 409, 410

* * * * *

(d) Unless otherwise specified, 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. 800 MHz high density cellular systems, as defined in §90.7, are prohibited on these channels. These frequencies are available in non-border areas. The spectrum blocks listed in

Table 4A are available for EA-based services (as defined by §90.681) prior to January 21, 2005. No new EA-based services will be authorized after January 21, 2005. EA-based licensees who operate non-high-density cellular systems prior to January 21, 2005 may choose to remain on these channels in the non-high-density cellular portion of the 800 MHz band (as defined in §90.614). These licensees may continue to operate non-high-density cellular systems and will be grandfathered indefinitely. The channels listed in Table 4B will be available for site-based licensing after January 21, 2005 in any Economic Area where no EA-based licensee is authorized for these channels.

TABLE 4A – EA-BASED SMR CATEGORY 806-816/851-861 MHZ BAND CHANNELS, AVAILABLE PRIOR TO JANUARY 21, 2005 (80 CHANNELS.)

Spectrum Block	Channel Nos.
G	311-351-391-431-471
H	312-352-392-432-472
I	313-353-393-433-473
J	314-354-394-434-474
K	315-355-395-435-475
L	316-356-396-436-476
M	317-357-397-437-477
N	318-358-398-438-478
O	331-371-411-451-491
P	332-372-412-452-492
Q	333-373-413-453-493
R	334-374-414-454-494
S	335-375-415-455-495
T	336-376-416-456-496
U	337-377-417-457-497
V	338-378-418-458-498

TABLE 4B – SMR CATEGORY 806-816/851-861 MHZ BAND CHANNELS, AVAILABLE AFTER JANUARY 21, 2005, FOR SITE-BASED LICENSING (80 CHANNELS.)

Group No.	Channel Nos.
315	315-355-395-435-475
316	316-356-396-436-476
317	317-357-397-437-477
318	318-358-398-438-478
331	331-371-411-451-491
332	332-372-412-452-492
333	333-373-413-453-493
334	334-374-414-454-494
335	335-375-415-455-495
336	336-376-416-456-496
337	337-377-417-457-497
338	338-378-418-458-498

Single Channels	*431, 432, 433, 434, 471,* 472, 473, 474, 479, 480, 481, 488, 489, 490, 499, 500, 501, 508, 509, 510

(1) Except as provided in paragraph (d)(2), the channels listed in Table 4C are available in the counties listed in § 90.614(c) for non-high-density cellular operations only to eligibles in the SMR category—which consists of Specialized Mobile Radio (SMR) stations and eligible end users. 800 MHz high density cellular systems as defined in § 90.7 are prohibited on these channels. These channels are available for intercategory sharing as indicated in §90.621(e).

TABLE 4C – SMR CATEGORY 806-816/851-861 MHZ BAND CHANNELS AVAILABLE FOR SITE-BASED LICENSING IN SOUTHEASTERN U.S. AFTER JANUARY 21, 2005 (11 CHANNELS.)

Single Channels	Channel Nos.
	371, 373, 374, 375, 376, 377, 378, 395, 396, 397, 398

(2) The channels listed in Table 4D are available within 113 km (70 mi) of the center city coordinates of Atlanta, GA only to eligibles in the SMR category—which consists of Specialized Mobile Radio (SMR) stations and eligible end users. The center city coordinates of Atlanta, GA—for the purposes of this rule—are defined as 33° 44' 55" NL, 84° 23' 17" WL. 800 MHz high density cellular systems as defined in § 90.7 are prohibited on these channels. These channels are available for intercategory sharing as indicated in §90.621(e). 800 MHz high density cellular systems as defined in § 90.7 are prohibited on these channels. These channels are available for intercategory sharing as indicated in §90.621(e).

TABLE 4D – SMR CATEGORY 806-816/851-861 MHZ BAND CHANNELS AVAILABLE FOR SITE-BASED LICENSING IN ATLANTA, GA AFTER JANUARY 21, 2005 (11 CHANNELS.)

	Channel Nos.
Single Channels	373, 374, 375, 376, 377, 378, 395, 396, 397, 398, 408

(e) The Channels listed in §90.614(b) and (c) are available to eligibles in the SMR category—which consists of Specialized Mobile Radio (SMR) stations and eligible end users. ESMR licensees which employ an 800 MHz high density cellular system, as defined in §90.7, are permitted to operate on these channels in non-border areas. ESMR licensees authorized prior to January 21, 2005 may continue to operate, if they so choose, on the channels listed in Table 5. These licensees will be grandfathered indefinitely.

TABLE 5 – ESMR CATEGORY 816-821/861-866 MHZ BAND CHANNELS FOR CELLULAR OPERATIONS IN NON-BORDER AREAS AVAILABLE PRIOR TO January 21, 2005. (200 CHANNELS)

Spectrum Block	Channel Nos.
A	511 through 530
B	531 through 590
C	591 through 710

* * * * *

(g) In a given 800 MHz NPSPAC region, channels below 471 listed in Tables 2 and 4B which are vacated by licensees relocating to channels 511-830 and which remain vacant after band reconfiguration will be available as follows: ***

(h) In a given 800 MHz NPSPAC region, channels below 471 listed in Tables 2 and 4B which are vacated by a licensee relocating to channels 511-550 and remain vacant after band reconfiguration will be available as follows: ***

(i) Special Mobilized Radio Systems licensees who operate systems, other than 800 MHz high density cellular systems, on any of the public safety channels listed in Table 1 prior to January 21, 2005 are grandfathered and may continue to operate on these channels indefinitely. These grandfathered licensees will be prohibited from operating 800 MHz high density cellular systems as defined in §90.7. Site-based licensees who are grandfathered on any of the public safety channels listed in Table 1 may modify their license only if they obtain concurrence from a certified public safety coordinator in accordance with §90.175(c). Grandfathered EA-based licensees, however, are exempt from any of the frequency coordination requirements of §90.175 as long as their operations remain within the Economic Area defined by their license in accordance with the requirements of §90.683(a).

(j) Licensees operating 800 MHz high density cellular systems on the channels listed in § 90.614(a), prior to January 21, 2005, may elect to continue operating on these channels and will be permitted to continue operating 800 MHz high density cellular systems (as defined in §90.7) in this portion of the band. These licensees will be grandfathered indefinitely subject to the provisions of §§90.673, 90.674 and 90.675.

(k) Licensees may operate systems other than 800 MHz high density cellular systems (as defined in §90.7) on Channels 511–550 at any location vacated by an EA-based SMR licensee. For operations on these channels, unacceptable interference (as defined in §22.970 of this chapter and §90.672) will be deemed to occur only at sites where the following median desired signals are received (rather than those specified in §22.970(a)(1)(i) of this chapter and §90.672(a)(1)(i)). The minimum required median desired signal, as measured at the R.F. input of the receiver, will be as follows:***

* * * * *

170. In paragraph (d)(2) of Section 90.619 the cross reference to Section 90.619(b)(2) is replaced with a cross reference to Section 90.619(b).

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

* * * * *

(d) * * *

(2) All frequency assignments made pursuant to paragraph (d)(1) of this section shall comply with the requirements of §90.619(b).

171. The title for Section 90.672 is amended to replace the term "ESMR systems" with the term "800 MHz cellular systems." In paragraph (a) of Section 90.672 a reference to "800 MHz cellular systems" and "Part 22 Cellular Radiotelephone systems" is added.

§ 90.672 Unacceptable interference to non-cellular 800 MHz licensees from 800 MHz cellular systems or Part 22 Cellular Radiotelephone systems.

(a) *Definition.* Except as provided in 47 C.F.R. §90.617(k), unacceptable interference to non-cellular licensees in the 800 MHz band from 800 MHz cellular systems or Part 22 Cellular Radiotelephone systems will be deemed to occur when the below conditions are met: ***

* * * * *

172. In paragraph (a) of Section 90.674 the term "harmful interference" is replaced with the term "unacceptable interference." In paragraph (c) of Section 90.674 the term "ESMR licensees" is replaced with "800 MHz cellular system licensees"

§ 90.674 Interference resolution procedures before, during and after band reconfiguration.

(a) *Initial Notification.* Any non-cellular licensee operating in the 806-824/851-869 MHz band who reasonably believes it is receiving unacceptable interference, as described in § 90.672, shall provide an initial notification of the interference incident. This initial notification of an interference incident shall be sent to all Part 22 Cellular Radiotelephone licensees and ESMR licensees who operate cellular base stations ("cell sites") within 1,524 meters (5,000 feet) of the interference incident.

* * * * *

(c) *Mitigation Steps.* (1) All 800 MHz cellular system licensees and Part 22 Cellular Radiotelephone licensees who are responsible for causing unacceptable interference shall take all affirmative measures to resolve such interference. 800 MHz cellular system licensees found to contribute to harmful interference, as defined in § 90.672, shall resolve such interference in the shortest time practicable. 800 MHz cellular system licensees and Part 22 Cellular Radiotelephone licensees must provide all necessary test apparatus and technical personnel skilled in the operation of such equipment as may be necessary to determine the most appropriate means of timely eliminating the interference. However, the means whereby interference is abated or the cell parameters that may need to be adjusted is left to the discretion of involved 800 MHz cellular system licensees and/or Part 22 Cellular Radiotelephone licensees, whose affirmative measures may include, but not be limited to, the following techniques:

* * * * *

173. In the title of Section 90.676 the term "cellular systems" is replaced by the term "high-density cellular systems." Paragraphs (b)(3) and (4) of Section 90.676 are updated to allow the Transition Administrator to choose the date for filing quarterly and annual reports. Paragraph (b)(5) of Section 90.676 is updated to clarify the procedures for dispute resolution.

§ 90.676 Transition administrator for reconfiguration of the 806-824/851-869 MHz band in order to separate high-density cellular systems from non-cellular systems.

* * * * *

(b) * * *

(3) Provide quarterly progress reports to the Commission in such detail as the Commission may require and include, with such reports, certifications by Nextel and the relevant licensees that relocation has been completed and that both parties agree on the amount received from the letter of credit proceeds in connection with relocation of the licensees' facilities. The report shall include description of any disputes that have arisen and the manner in which they were resolved. These quarterly reports need not be audited. The Transition Administrator may select the dates for filing the quarterly progress reports;

(4) Provide to the Public Safety and Critical Infrastructure Division with an annual audited statement of relocation funds expended to date, including salaries and expenses of Transition Administrator. The Transition Administrator may select the date for filing the annual audited statement;

(5) Facilitate resolution of disputes by mediation; or referral of the parties to alternative dispute resolution services as described in §90.677(d).

* * * * *

174. In the title and opening paragraph of Section 90.677 the term "cellular systems" is replaced by the term "high-density cellular systems." Paragraph (d) in Section 90.677 is amended to remove a reference to the Transition Administrator resolving conflicts within 30-working days.

§ 90.677 Reconfiguration of the 806-824/851-869 MHz band in order to separate high-density cellular systems from non-cellular systems.

In order to facilitate reconfiguration of the 806-824/851-869 MHz band ("800 MHz band") to separate high-density cellular systems from non-cellular systems, Nextel Communications, Inc. (Nextel) may relocate incumbents within the 800 MHz band by providing "comparable facilities." For the limited purpose of band reconfiguration, the provisions of § 90.157 shall not apply and inter-category sharing will be permitted under all circumstances. Such relocation is subject to the following provisions:

* * * * *

(d) *Transition Administrator.*

(1) The Transition Administrator, or other mediator, shall attempt to resolve disputes referred to it before the conclusion of the mandatory negotiation period as described in § 90.677(c) within thirty working days after the Transition Administrator has received a submission by one party and a

response from the other party. Any party thereafter may seek expedited non-binding arbitration which must be completed within thirty days of the Transition Administrator's, or other mediator's recommended decision or advice. Should issues still remain unresolved they may be referred to the Chief of the Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau within thirty days of the Transition Administrator's, or other mediator's recommended decision or advice. When referring an unresolved matter to the Chief of the Public Safety and Critical Infrastructure Division, the Transition Administrator shall forward the entire record on any disputed issues, including such dispositions thereof that the Transition Administrator has considered. Upon receipt of such record and advice, the Commission will decide the disputed issues based on the record submitted. The authority to make such decisions is delegated to the Chief of the Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau who may decide the disputed issue or designate it for an evidentiary hearing before an Administrative Law Judge. If the Chief of the Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau decides an issue, any party to the dispute wishing to appeal the decision may do so by filing with the Commission, within ten days of the effective date of the initial decision, a Petition for *de novo* review; whereupon the matter will be set for an evidentiary hearing before an Administrative Law Judge. Any disputes submitted to the Transition Administrator after the conclusion of the mandatory negotiation period as described in § 90.677(c) shall be resolved as described in § 90.677(d)(2).

(2) If no agreement is reached during either the voluntary or mandatory negotiating periods, all disputed issues shall be referred to the Transition Administrator who shall attempt to resolve them. If disputed issues remain thirty working days after the end of the mandatory negotiation period; the Transition Administrator shall forward the record to the Chief of the Public Safety and Critical Infrastructure Division, together with advice on how the matter(s) may be resolved. The Chief of the Public Safety and Critical Infrastructure Division is hereby delegated the authority to rule on disputed issues, *de novo*. If the Chief of the Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau decides an issue, any party to the dispute wishing to appeal the decision may do so by filing with the Commission, within ten days of the effective date of the initial decision, a Petition for *de novo* review; whereupon the matter will be set for an evidentiary hearing before an Administrative Law Judge.

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175. A new paragraph (e) is added to Section 90.685 as follows:

§ 90.685 Authorization, construction and implementation of EA licenses.

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(e) EA licensees operating on channels listed in § 90.614 (b) and (c) must implement an Enhanced Specialized Mobile Radio (ESMR) system—as defined in § 90.7—on their EA license and any associated site-based licenses prior to the expiration date of the EA license. EA licensees operating on these channels shall follow the construction notification procedures set forth in § 1.946(d) of this chapter. Failure to implement an ESMR system on their EA and site-based licenses before the expiration date of the EA license will result in termination of the EA license and any associated site-based licenses pursuant to § 1.946(c) of this chapter.