

conditions. Terrain elevation data must be obtained from the U.S. Geological Survey (USGS) 3-second database. All coordinates used in carrying out the required analysis shall be based upon use of NAD-83.

(2) For all other BRS systems using the 2150-2160/62 MHz band, the AWS licensee will determine whether there is an unobstructed signal path (line of sight) to the incumbent licensee's receive station hub using the method prescribed in "Methods for Predicting Interference from Response Station Transmitters and to Response Station Hubs and for Supplying Data on Response Station Systems. MM Docket 97-217," in Amendment of Parts 1, 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, MM Docket No. 97-217, *Report and Order on Further Reconsideration and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 14566 at 14610, Appendix D.

(b) Any AWS licensee in the 2110-2180 MHz band that causes actual and demonstrable interference to a BRS licensee in the 2150-2160/62 MHz band must take steps to eliminate the harmful interference, up to and including relocation of the BRS licensee, regardless of whether it would be required to do so under paragraph (a), above.

* * * * *

PART 101 – FIXED MICROWAVE SERVICES

7. The authority citation for Part 101 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303.

8. Section 101.69 is amended by removing and reserving paragraphs (b) and (c) and adding paragraph (g) to read as follows:

§ 101.69 Transition of the 1850-1990 MHz, 2110-2150 MHz, and 2160-2200 MHz bands from the fixed microwave services to personal communications services and emerging technologies.

(b) [Reserved]

(c) [Reserved]

* * *

(g) If no agreement is reached during the mandatory negotiation period, an ET licensee may initiate involuntary relocation procedures. Under involuntary relocation, the incumbent is required to relocate, provided that the ET licensee meets the conditions of § 101.75.

9. Section 101.71 is reserved.

§ 101.71 [Reserved]

10. Section 101.73 is amended by revising paragraphs (a) and (d) to read as follows:

§ 101.73 Mandatory Negotiations.

(a) A mandatory negotiation period may be initiated at the option of the ET licensee. Relocation of FMS licensees by Mobile Satellite Service (MSS) operators (including MSS operators providing

Ancillary Terrestrial Component (ATC) service) and AWS licensees in the 2110-2150 MHz and 2160-2200 MHz bands will be subject to mandatory negotiations only.

* * *

(d) *Provisions for Relocation of Fixed Microwave Licensees in the 2110-2150 and 2160-2200 MHz bands.* Except as otherwise provided in §101.69(e) pertaining to FMS relocations by MSS/ATC operators, a separate mandatory negotiation period will commence for each FMS licensee when an ET licensee informs that FMS licensee in writing of its desire to negotiate. Mandatory negotiations will be conducted with the goal of providing the FMS licensee with comparable facilities defined as facilities possessing the following characteristics: ***

11. Section 101.75 is amended by revising paragraph (a) to read as follows:

§ 101.75 Involuntary relocation procedures.

(a) If no agreement is reached during the mandatory negotiation period, an ET licensee may initiate involuntary relocation procedures under the Commission's rules. ***

12. Section 101.77 is amended by revising paragraph (a) to read as follows:

§ 101.77 Public safety licensees in the 1850-1990 MHz, 2110-2150 MHz, and 2160-2200 MHz bands.

(a) In order for public safety licensees to qualify for a three year mandatory negotiation period as defined in § 101.69(d)(2), the department head responsible for system oversight must certify to the ET licensee requesting relocation that: ***

13. Section 101.79 is amended by revising paragraph (a) to read as follows:

§ 101.79 Sunset provisions for licensees in the 1850-1990 MHz, 2110-2150 MHz, and 2160-2200 MHz bands.

(a) FMS licensees will maintain primary status in the 1850-1990 MHz, 2110-2150 MHz, and 2160-2200 MHz bands unless and until an ET licensee (including MSS/ATC operator) requires use of the spectrum. ET licensees are not required to pay relocation costs after the relocation rules sunset. Once the relocation rules sunset, an ET licensee may require the incumbent to cease operations, provided that the ET licensee intends to turn on a system within interference range of the incumbent, as determined by TIA TSB 10-F (for terrestrial-to-terrestrial situations) or TIA TSB 86 (for MSS satellite-to-terrestrial situations) or any standard successor. ET licensee notification to the affected FMS licensee must be in writing and must provide the incumbent with no less than six months to vacate the spectrum. After the six-month notice period has expired, the FMS licensee must turn its license back into the Commission, unless the parties have entered into an agreement which allows the FMS licensee to continue to operate on a mutually agreed upon basis. The date that the relocation rules sunset is determined as follows:

(1) For the 2110-2150 MHz and 2160-2175 MHz and 2175-2180 MHz bands, ten years after the first ET license is issued in the respective band; and

(2) For the 2180–2200 MHz band, December 8, 2013 (*i.e.*, ten years after the mandatory negotiation period begins for MSS/ATC operators in the service).

14. Section 101.82 is amended to read as follows:

§ 101.82 Reimbursement and relocation expenses in the 2110-2150 MHz and 2160-2200 MHz bands.

(a) Reimbursement and relocation expenses for the 2110-2130 MHz and 2160-2180 MHz bands are addressed in §§ 27.1160 – 27.1174.

(b) *Cost-sharing obligations between AWS and MSS (space-to-Earth downlink).* Whenever an ET licensee (AWS or Mobile Satellite Service for space-to-Earth downlink in the 2130–2150 or 2180–2200 MHz bands) relocates an incumbent paired microwave link with one path in the 2130–2150 MHz band and the paired path in the 2180–2200 MHz band, the relocater is entitled to reimbursement of 50 percent of its relocation costs (see paragraph (e)) from any other AWS licensee or MSS space-to-Earth downlink operator which would have been required to relocate the same fixed microwave link as set forth in paragraphs (c) and (d).

(c) *Cost-sharing obligations for MSS (space-to-Earth downlinks).* For an MSS space-to-Earth downlink, the cost-sharing obligation is based on the interference criteria for relocation, *i.e.*, TIA TSB 86 or any standard successor, relative to the relocated microwave link. Subsequently entering MSS space-to-Earth downlink operators must reimburse AWS or MSS space-to-Earth relocators (see paragraph (e)) before the later entrant may begin operations in these bands, unless the later entrant can demonstrate that it would not have interfered with the microwave link in question.

(d) *Cost-sharing obligations among terrestrial stations.* For terrestrial stations (AWS and MSS Ancillary Terrestrial Component (ATC)), cost-sharing obligations are governed by §§ 27.1160 – 27.1174 of this chapter; provided, however, that MSS operators (including MSS/ATC operators) are not obligated to reimburse voluntarily relocating FMS incumbents in the 2180-2200 MHz band. (AWS reimbursement and cost-sharing obligations relative to voluntarily relocating FMS incumbents are governed by § 27.1166 of this chapter).

(e) The total costs of which 50 percent is to be reimbursed will not exceed \$250,000 per paired fixed microwave link relocated, with an additional \$150,000 permitted if a new or modified tower is required.

APPENDIX B

FINAL REGULATORY FLEXIBILITY ANALYSIS

(For Ninth Report and Order)

As required by the Regulatory Flexibility Act, as amended (RFA),⁴⁰⁹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Fifth Notice of Proposed Rule Making (Fifth Notice)* in ET Docket 00-258.⁴¹⁰ The Commission sought written public comment on the proposals in the *Fifth Notice*, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.⁴¹¹

A. Need for, and Objectives of, the Ninth Report and Order

The *Ninth Report and Order (Ninth R&O)* adopts relocation procedures to govern the relocation of: (1) Broadband Radio Service (BRS)⁴¹² licensees in the 2150-2160/62 MHz band; and (2) Fixed Microwave Service (FS) licensees in the 2110-2150 MHz and 2160-2180 MHz bands. The *Ninth R&O* also adopts cost sharing rules that identify the reimbursement obligations for Advanced Wireless Service (AWS) and Mobile Satellite Service (MSS) entrants benefiting from the relocation of FS operations in the 2110-2150 MHz band 2160-2200 MHz band and AWS entrants benefiting from the relocation of BRS operations in the 2150-2160/62 MHz band. The adopted relocation and cost sharing procedures generally follow the Commission's relocation and cost sharing policies delineated in the *Emerging Technologies* proceeding, and as modified by subsequent decisions.⁴¹³ These relocation policies are designed to allow early entry for new technology providers by allowing providers of new services to negotiate financial arrangements for reaccommodation of incumbent licensees, and have been tailored to set forth specific relocation schemes appropriate for a variety of different new entrants, including AWS, MSS, Personal Communications Service (PCS) licensees, 18 GHz Fixed Satellite Service (FSS) licensees, and Sprint Nextel. While these new entrants occupy different frequency bands, each entrant has had to relocate

⁴⁰⁹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

⁴¹⁰ Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, ET Docket No. 00-258, *Eighth Report and Order, Fifth Notice of Proposed Rule Making and Order*, 20 FCC Rcd 15866 (2005).

⁴¹¹ 5 U.S.C. § 604.

⁴¹² The Multipoint Distribution Service (MDS) was renamed the Broadband Radio Service (BRS). See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 MHz Band, WT Docket No. 03-66, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 (2004).

⁴¹³ See Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, ET Docket No. 92-9, *First Report and Order and Third Notice of Proposed Rule Making*, 7 FCC Rcd 6886 (1992); *Second Report and Order*, 8 FCC Rcd 6495 (1993); *Third Report and Order and Memorandum Opinion and Order*, 8 FCC Rcd 6589 (1993); *Memorandum Opinion and Order*, 9 FCC Rcd 1943 (1994); *Second Memorandum Opinion and Order*, 9 FCC Rcd 7797 (1994); *aff'd Association of Public Safety Communications Officials-International, Inc. v. FCC*, 76 F.3d 395 (D.C. Cir. 1996) (collectively, "*Emerging Technologies* proceeding"). See also *Teledesic, LLC v. FCC*, 275 F.3d 75 (D.C. Cir. 2001) (affirming modified relocation scheme for new satellite entrants to the 17.7 – 19.7 GHz band). See also Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, WT Docket No. 95-157, *First Report and Order and Further Notice of Proposed Rule Making*, 11 FCC Rcd 8825 (1996); *Second Report and Order*, 12 FCC Rcd 2705 (1997) (collectively, *Microwave Cost Sharing* proceeding).

incumbent operations. The relocation and cost sharing procedures we adopt in the *Ninth R&O* are designed to ensure an orderly and expeditious transition of, with minimal disruption to, incumbent BRS operations from the 2150-2160/62 MHz band and FS operations from the 2110-2150 MHz and 2160-2180 MHz bands, in order to allow early entry for new AWS licensees into these bands.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

One comment was filed in response to the *Order* portion of the *Eighth Report and Order, Fifth Notice of Proposed Rule Making and Order*, objecting to the suggestion by some commenters to the *Fifth Notice* that the BRS entities should submit an estimate of the costs necessary to relocate the BRS entities' stations. The Wireless Communications Association International, Inc. objects to the imposition of any future information disclosure obligations on BRS channel 1 and 2 licensees regarding their relocation costs because it would require BRS licensees to speculate as to future events, conduct extensive due diligence to identify information that is not presently within their possession, or provide AWS auction participants with commercially sensitive information that could be utilized by AWS auction winners to the detriment of BRS licensees and lessees. In this *Ninth R&O*, the Commission decides not to require BRS licensees to submit an estimate of their relocation costs. Accordingly, we need not further address WCA's comments for purposes of this FRFA.

C. Description and Estimate of the Number of Small Entities To Which Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of entities that will be affected by the rules adopted herein.⁴¹⁴ The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁴¹⁵ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.⁴¹⁶ Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).⁴¹⁷

Broadband Radio Service. The Broadband Radio Service (BRS) consists of Multichannel Multipoint Distribution Service (MMDS) systems, which were originally licensed to transmit video programming to subscribers using the microwave frequencies of Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS).⁴¹⁸ In connection with the 1996 MDS auction, the

⁴¹⁴ 5 U.S.C. § 604(a)(3).

⁴¹⁵ 5 U.S.C. § 601(6).

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

⁴¹⁷ 15 U.S.C. § 632.

⁴¹⁸ Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act - Competitive Bidding, *Report and Order*, 10 FCC Rcd 9589, 9593, ¶ 7 (1995) ("*MDS Auction R&O*"). The MDS and ITFS was renamed the Broadband Radio Service (BRS) and Educational Broadband Service (EBS), respectively. See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 MHz Band, WT Docket No. 03-66, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd (continued....)

Commission defined "small business" as an entity that, together with its affiliates, has average gross annual revenues that are not more than \$40 million for the preceding three calendar years. The SBA has approved of this standard.⁴¹⁹ The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs).⁴²⁰ Of the 67 auction winners, 61 claimed status as a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than \$40 million and are thus considered small entities.⁴²¹

In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution,⁴²² which includes all such companies generating \$13.5 million or less in annual receipts.⁴²³ According to Census Bureau data for 1997, there were a total of 1,311 firms in this category that had operated for the entire year.⁴²⁴ Of this total, 1,180 firms had annual receipts of under \$10 million, and an additional 52 firms had receipts of \$10 million or more but less than \$25 million.⁴²⁵ Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the proposed rules and policies. Because the Commission's action only affects MDS operations in the 2155-2160/62 MHz band, the actual number of MDS providers who will be affected by the proposed reallocation will only represent a small fraction of these small businesses.

Fixed Microwave Services. Microwave services include common carrier,⁴²⁶ private-operational fixed,⁴²⁷ and broadcast auxiliary radio services.⁴²⁸ At present, there are approximately 36,708 common
(Continued from previous page) _____
14165 (2004).

⁴¹⁹ See Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Gary Jackson, Assistant Administrator for Size Standards, Small Business Administration (dated Mar. 20, 2003) (noting approval of \$40 million size standard for MDS auction).

⁴²⁰ Basic Trading Areas (BTAs) were designed by Rand McNally and are the geographic areas by which MDS was auctioned and authorized. See *MDS Auction R&O*, 10 FCC Rcd at 9608, ¶ 34.

⁴²¹ 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard for "other telecommunications" (annual receipts of \$13.5 million or less). See 13 C.F.R. § 121.201, NAICS code 517910.

⁴²² 13 C.F.R. § 121.201, NAICS code 517510.

⁴²³ *Id.*

⁴²⁴ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4 (issued October 2000).

⁴²⁵ *Id.*

⁴²⁶ 47 C.F.R. Part 101 *et seq.* (formerly, part 21 of the Commission's Rules) for common carrier fixed microwave services (except MDS).

⁴²⁷ Persons eligible under Parts 80 and 90 of the Commission's rules can use Private-Operational Fixed Microwave services. See 47 C.F.R. Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

⁴²⁸ Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. See 47 C.F.R. Part 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or (continued....)

carrier fixed licensees and 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of the FRFA, we will use the SBA's definition applicable to Cellular and other Wireless Telecommunications companies – *i.e.*, an entity with no more than 1,500 persons.⁴²⁹ According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.⁴³⁰ Of this total, 965 firms had employment of 999 or fewer employees, and an additional twelve firms had employment of 1,000 employees or more.⁴³¹ Thus, under this size standard, majority of firms can be considered small. We note that the number of firms does not necessarily track the number of licensees. We estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

Advanced Wireless Service (AWS). We do not yet know how many applicants or licensees in the 2110-2150 MHz and 2160-2200 MHz bands will be small entities. Thus, the Commission assumes, for purposes of this FRFA, that all prospective licensees are small entities as that term is defined by the SBA or by our two special small business size standards for these bands. Although we do not know for certain which entities are likely to apply for these frequencies, we note that the AWS bands are comparable to those used for cellular service and personal communications service.

Wireless Telephony Including Cellular, Personal Communications Service (PCS) and SMR Telephony Carriers. The SBA has developed a small business size standard for wireless small businesses within the two separate categories of *Paging*⁴³² and *Cellular and Other Wireless Telecommunications*.⁴³³ Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. According to the Commission's most recent data,⁴³⁴ 1,012 companies reported that they were engaged in the provision of wireless service. Of these 1,012 companies, an estimated 829 have 1,500 or fewer employees and 183 have more than 1,500 employees.⁴³⁵ Consequently, the Commission estimates that most wireless service providers are small entities that may be affected by the rules and policies adopted herein.

Mobile Satellite Service. There are currently two space-station authorizations for Mobile Satellite Service (MSS) systems that would operate with 2 GHz mobile Earth stations. Although we know the number and identity of the space-station operators, neither the number nor the identity of future 2 GHz mobile-Earth-station licensees can be determined from that data. The Commission notes that small businesses are not likely to have the financial ability to become MSS system operators because of the high implementation costs, including construction of satellite space stations and rocket launch, associated with satellite systems and services.

(Continued from previous page) _____

between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

⁴²⁹ 13 C.F.R. § 121.201, NAICS code 517212.

⁴³⁰ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Employment Size of Firms Subject to Federal Income Tax: 1997," Table 5 (issued Oct. 2000).

⁴³¹ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

⁴³² 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517211 (changed from 513321 in October 2002).

⁴³³ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517212 (changed from 513322 in October 2002).

⁴³⁴ FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service", Table 5.3, page 5-5 (June 2005). This source uses data that are current as of October 1, 2004.

⁴³⁵ *Id.*

D. Description of Projected Reporting, Record Keeping, and Other Compliance Requirements for Small Entities

The *Ninth R&O* adopts relocation and cost-sharing procedures applicable to AWS licensees relative to incumbent BRS licensees in the 2150-2160/62 MHz band and incumbent FS licensees in the 2110-2130 MHz and 2160-2180 MHz bands, and AWS and MSS/ATC relative to incumbent FS licensees in the 2130-2150 MHz and 2180-2200 MHz bands, but does not adopt service rules. The *Ninth R&O* includes requirements for interference analyses (for FS) and line-of-sight determinations (for BRS), as well as good faith negotiations for relocation purposes. All AWS entities that benefit from the clearance of this spectrum by other AWS entities or by a voluntarily relocating microwave incumbent must contribute to such relocation costs. AWS entities may satisfy their reimbursement requirement by entering into private cost-sharing agreements. These negotiations are likely to require the skills of accountants and engineers to evaluate the economic and technical requirements of relocation. AWS entities are required to reimburse other AWS entities or voluntarily relocating microwave incumbents that incur relocation costs and are not parties to the alternative agreement. In addition, parties to a private cost-sharing agreement may seek reimbursement through the clearinghouse. To obtain reimbursement, the relocator must submit documentation itemizing relocation costs to the clearinghouse in the form of uniform cost data along with a copy, without redaction, of the relocation agreement, if relocation was undertaken pursuant to a negotiated contract. A third party appraisal of relocation costs must be prepared and submitted to the clearinghouse by AWS relocators of BRS systems and by voluntarily relocating microwave incumbents. AWS relocators, MSS/ATC relocators and voluntarily relocating microwave incumbents must maintain documentation of cost-related issues until the applicable sunset date and provide such documentation upon request, to the clearinghouse, the Commission, or entrants that trigger a cost sharing obligation.

AWS entities and MSS/ATC operators are required to file a notice containing site-specific data with the clearinghouse prior to initiating operations in the subject bands for newly constructed sites and for modified existing sites. However, AWS entities and MSS/ATC operators may satisfy this requirement by submitting a prior coordination notice (PCN) to the clearinghouse if a PCN was prepared in order to comply with coordination requirements previously adopted by the Commission. AWS entities and MSS/ATC operators that file either a notice or a PCN have a continuing duty to maintain the accuracy of the site-specific data on file with the clearinghouse until the sunset date specified in the Commission's Rules. AWS entities and MSS/ATC operators must pay the amount owed within 30 calendar days of receiving written notification of an outstanding reimbursement obligation. Parties of interest contesting the clearinghouse's determination of specific cost sharing obligations must provide evidentiary support to demonstrate that their calculation is reasonable and made in good faith. Specifically, these parties are expected to exercise due diligence to obtain the information necessary to prepare an independent estimate of the relocation costs in question and to file the independent estimate and supporting documentation with the clearinghouse.

E. Steps Taken to Minimize Significant Economic 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 rather

than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.⁴³⁶

In this *Ninth R&O*, the Commission decides to adopt relocation and cost sharing rules that are designed to support the introduction of AWS, with minimal disruption to incumbent BRS and FS operations, because doing so will promote the rapid deployment of efficient radio communications but won't interrupt incumbents' provision of service to subscribers. An alternative option would have been to offer no relocation or cost sharing processes, and instead require incumbent licensees to cease use of the band by a date certain and prohibit new licensees from entering the band until that date. We believe that an *Emerging Technologies*-based relocation and cost sharing procedure is preferable, as it draws on established and well known principles (such as time-based negotiation periods and the requirement of negotiating in good faith), benefits small BRS and FS licensees because the proposals would require new AWS licensees to pay for the costs to relocate their incumbent operations to comparable facilities, and – for small AWS licensees – offers a process by which new services can be brought to the market expeditiously. Moreover, we believe that the provision of additional spectrum that can be used to support AWS will directly benefit small business entities by providing new opportunities for the provision of innovative new fixed and mobile wireless services.

In the *Ninth R&O*, the Commission also avoids imposing additional burdens on licensees by adopting rules that permit, to the extent practicable, licensees to satisfy certain requirements by using documents that are prepared in compliance with other Commission Rules. For example, AWS entities and MSS/ATC operators are required to file a notice containing site-specific data with the clearinghouse prior to initiating operations in the subject bands for newly constructed sites and for modified existing sites. However, AWS entities and MSS/ATC operators may satisfy this requirement by submitting a prior coordination notice (PCN) to the clearinghouse if a PCN was prepared in order to comply with coordination requirements previously adopted by the Commission. In addition, the *Ninth R&O* adopts a rule that allows an AWS relocater of a BRS system to avoid incurring the costs of preparing and submitting a third party appraisal of relocation costs if it consents to binding resolution by the clearinghouse of any good faith cost disputes regarding the reimbursement claim.

F. Report to Congress

The Commission will send a copy of the *Ninth R&O*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.⁴³⁷ In addition, the Commission will send a copy of the *Ninth R&O*, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Ninth R&O* and the FRFA (or summaries thereof) will also be published in the Federal Register.⁴³⁸

⁴³⁶ 5 U.S.C. § 603(c).

⁴³⁷ See 5 U.S.C. § 801(a)(1)(A).

⁴³⁸ See 5 U.S.C. § 604(b).

APPENDIX C

LIST OF COMMENTERS AND REPLY COMMENTERS

Commenters to Fifth Notice of Proposed Rulemaking (ET Docket No. 00-258)Comments

SpeedNet, LLC ("SpeedNet")
Verizon Wireless ("Verizon Wireless")
TMI Communications and Company, LP and TerreStar Networks, Inc. ("TMI/TerreStar")
BellSouth Corp., BellSouth Wireless Cable, Inc., and South Florida Television, Inc. (collectively, "BellSouth")
CTIA – The Wireless Association ("CTIA")
T-Mobile USA, Inc. ("T-Mobile")
PCIA, the Wireless Infrastructure Association ("PCIA")
C&W Enterprises, Inc. ("C&W")
Wireless Communications Association International, Inc. ("WCA")
Comsearch ("Comsearch")
Sprint Nextel Corp. ("Sprint Nextel")

Letter Comments (6)

Reply Comments

Radiofone ("Radiofone")
ArrayComm, LLC ("ArrayComm")
SpeedNet
WCA
T-Mobile
United States Cellular Corp. ("US Cellular")
Sprint Nextel
Sioux Valley Wireless ("Sioux Valley Wireless")
Polar Communications and Northern Wireless Communications, Inc. ("Polar/Northern Wireless")
PCIA
Evertex, Inc. ("Evertex")
Comsearch
CTIA
C&W
BellSouth
W.A.T.C.H. TV Co. ("W.A.T.C.H. TV")

STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN

Re: Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems; Ninth Report and Order; ET Docket No. 00-258

I am pleased to support this item because it puts in place important relocation procedures that will apply to a number of services in the 2.1 GHz band, in particular Broadband Radio Service (BRS) licensees in the 2150-2160/62 MHz band. Our decision is particularly significant because the adopted procedures are another important step in our efforts to prepare for the upcoming Advanced Wireless Services (AWS) auction later this summer, as a subgroup of AWS licensees ultimately will be responsible for relocation of these BRS operators.

While we generally adopt our Emerging Technology (ET) policies for relocation that have served the Commission so well over the past decade, we make a number of important adjustments to this overall structure to reflect the specific types of services offered by existing BRS operators. For example, we will allow BRS incumbents to fully use existing throughput by adding customers even if such changes would increase the size of service area subject to relocation. We also will require that BRS operators be relocated on a system-by-system basis, not link by link as we have done with other relocation efforts. These are important changes to our ET policies that were critical for my support of our decision today. I very much appreciate the effort of our Office of Engineering and Technology staff in crafting this carefully balanced item that considers the needs and requirements of both new AWS entrants and current BRS licensees with operational subscriber-based systems.

I do have one lingering concern, though, because we were unable to adopt self-relocation procedures that would have allowed BRS operators to initiate involuntary relocation after some type of waiting period. Self-relocation procedures have proven to be a useful tool in promoting timely and prompt spectrum relocation proceedings in the past. I am hopeful that my concerns are misplaced and that relocation will occur on an expedited basis notwithstanding our lack of a self-relocation policy.

**STATEMENT OF
COMMISSIONER DEBORAH TAYLOR TATE**

Re: *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems (ET Docket No. 00-258); Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands (WT Docket No. 02-353).*

Advanced Wireless Services (AWS) are new and innovative fixed and mobile terrestrial wireless applications using bandwidth that is sufficient for the provision of a variety of voice and data applications, such as video telephony, wireless Internet access, multimedia streaming, and other high-speed information and entertainment services. These and other advanced services are essential to the future of our economy as we compete in a world increasingly dependent upon the immediate availability and exchange of vast amounts of information.

The future of wireless services will include the existing services of Broadband Radio Service (BRS) and Fixed Microwave Service (FS), but it will also – and must also – include AWS. Today, we take a significant step toward that future. Our action today represents a balancing of interests, as we help to facilitate the introduction of AWS in certain spectrum bands, yet take steps to ensure the continuation of BRS and FS service to the public. Those steps include cost sharing rules requiring relocation reimbursement from AWS and Mobile-Satellite Services (MSS) entering the bands, as well as relocation policies designed to minimize interference and provide relocating incumbents the right to comparable facilities.

I have always believed that the parties are in the best position to formulate resolutions, through negotiation, that take into account their individual business plans. I agree, however, that, as provided in this Order, regulatory intervention is appropriate where the parties fail to reach such resolution. Therefore, we also establish a mandatory negotiation period in which the parties must negotiate for relocation in good faith *before* a new entrant can trigger the involuntary relocation process.

For all these reasons, I support this Order.