

this technology. We also seek comment on other possible block sizes – either larger or smaller than the current blocks sizes – that might be supported by other existing or potential technologies. In addition, we seek comment generally on any potential benefits unrelated to technology, *e.g.*, increased competition, that may result from making more than one additional license available in the Upper 700 MHz Band.

54. On the other hand, we seek comment on any disadvantages that may result from sub-dividing Upper 700 MHz Band Block D into two or more blocks. Comments should address whether the two licenses in the Upper 700 MHz Band (along with the five total licenses in the Lower 700 MHz Band) are sufficient to help enhance competition among a wide variety of providers and applicants. Although the Commission has indicated that a bandwidth of at least 5 megahertz is required to accommodate 3G services¹⁴¹ and 10 megahertz paired blocks can be used for certain new technologies, the Commission has also recently determined that wider bandwidths (*i.e.*, 20 megahertz paired blocks) licensed on a CMA basis will be “beneficial to carriers of various sizes.”¹⁴² We ask that comments consider whether a 20 megahertz paired block licensed on, *e.g.*, CMAs, in the Upper 700 MHz Band would help enhance competition among a wider variety of providers and applicants.¹⁴³

55. We also seek comment on whether we should sub-divide Block D into two 10 megahertz paired blocks given that, in doing so, the overall spectrum efficiency of the band may be decreased. For example, if 1xEV-DO technology were employed, the data throughput of the current 20 megahertz paired block would be more than twice the throughput of each of the two new 10 megahertz paired blocks.¹⁴⁴ We seek comment as well on whether, if we sub-divide Block D into two blocks, we should necessarily divide the block into two equal-sized 10 megahertz block pairs. WiMax, for example, may be able to be accommodated on 5 megahertz blocks, but the WiMax Forum¹⁴⁵ has certified the use of 3.5, 7, and 10 megahertz bandwidths for 802.16-based equipment.¹⁴⁶ Thus, by dividing Block D into two equal-sized 10 megahertz paired blocks, we would prevent an Upper 700 MHz Band licensee with only one license in

¹⁴¹ See *AWS-1 Order on Reconsideration*, 2005 WL 1964113, at *5 ¶ 12 (citing *AWS-1 Report and Order*, 18 FCC Rcd at 25178 ¶ 44 (2003)).

¹⁴² *Id.* at *5 ¶ 14 (discussing that including 20 megahertz licensed on a CMA basis in that band plan will foster service to rural areas and tribal lands, and acknowledging that CMAs allow the mixing and matching of areas to fit business plans).

¹⁴³ *Id.* at *4, 7 ¶¶ 10, 18 (reducing the spectrum attributable to an REAG area and creating an additional EA block adding 176 licenses).

¹⁴⁴ Specifically, if Block D were divided into two paired 10 megahertz blocks, 1xEV-DO transmissions on those two blocks would produce an overall data throughput 14 percent less than that of a single paired 20 megahertz block. This lower throughput level is due to the need to place 0.625 megahertz guard bands at both ends of 5 and 10 megahertz blocks and the loss of usable spectrum that then results from having four, rather than two guard bands in a 10 megahertz segment (*i.e.*, a 10 MHz block can accommodate seven 1.25 MHz emissions, while two 5 MHz blocks can accommodate only three 1.25 MHz emissions each). Thus, as the CDMA Development Group (a consortium comprised of CDMA service providers and manufacturers, application developers, and content providers) reports, a single 1xEV-DO (Rev. 0) emission on a 10 MHz block produces a throughput of 4200-6090 kb/s, but two 1xEV-DO (Rev. 0) emissions on two 5 MHz blocks produce a throughput of only 3600-5220 kb/s. See *Delivering Voice and Data: Comparing CDMA2000 and GSM/GPRS/EDGE/UMTS*, CDMA Development Group, Dec. 2005 available at http://www.cdg.org/resources/white_papers/files/Capacity%20Dec%202005.pdf (last visited Aug. 6, 2006).

¹⁴⁵ The WiMAX Forum is a non-profit organization whose mission is to promote the adoption of IEEE 802.16 compliant equipment and to facilitate the deployment of broadband wireless networks based on IEEE 802.16 standards. See *About the WiMAX Forum* at <http://www.wimaxforum.org/about/> (last visited Aug. 6, 2006).

¹⁴⁶ See *Fixed, nomadic, portable and mobile applications for 802.16 – 2004 and 802.16e WiMAX networks*, WiMAX Forum, at 6, Nov. 2005 available at http://www.wimaxforum.org/news/downloads/Applications_for_802.16-2004_and_802.16e_WiMAX_networks_final.pdf, (last visited Aug. 6, 2006).

any geographic area from employing 802.16-based equipment on bandwidths greater than 5 megahertz. We also seek comment on the effect of changing the block sizes on the overall spectrum efficiency of the band based on other existing or potential technologies.

56. Finally, we ask that commenters addressing proposals to reconfigure existing spectrum blocks in the 700 MHz Band also address existing and/or potential opportunities to aggregate new licenses and existing licenses. We note that licensees may be able to obtain a combination of spectrum blocks that meet their specific needs, even if individual licenses themselves do not comprise optimally sized blocks. For example, in any auction of new licenses, participants may be able to aggregate licenses, and thus spectrum blocks, in a market.¹⁴⁷ We seek comment on whether, for 700 MHz Band licenses, any changes to Commission competitive bidding rules are necessary or desirable in order to facilitate the efficient aggregation of new licenses, in light of the existing spectrum blocks for 700 MHz Band licenses and any spectrum blocks that may be proposed.

57. We further note that, following an auction, parties that wish to do so may aggregate spectrum covered by new 700 MHz Band licenses with spectrum covered by existing 700 MHz Band licenses available in the secondary market. We seek comment on whether any Commission action is necessary or desirable to facilitate the aggregation of new and existing 700 MHz Band licenses in the secondary market, in light of the existing and/or proposed 700 MHz Band spectrum blocks. If so, we ask that commenters address whether any such steps require changes to existing Commission competitive bidding or secondary market rules. We seek comment on the extent and nature of any benefits that may result from Commission action to facilitate aggregation of spectrum currently unassigned and previously licensed in the 700 MHz Band.

58. Alternatively, the Commission could facilitate such aggregation of spectrum by enabling an auction in which licenses for currently unassigned spectrum as well as licenses for spectrum previously assigned in the 700 MHz Band could be offered for sale in a single auction, a mechanism sometimes referred to as a "two-sided auction." Such a "two-sided auction" could be implemented in several ways. As one example, the Commission might allow incumbent licensees to return their licenses to the Commission in exchange for a credit, which could be based on the prices of licenses for spectrum formerly associated with the returned licenses as determined in an auction. Alternatively, the Commission might allow existing licensees to offer their licenses in the auction, but relinquish the licenses in exchange for a credit only if prices (and related credit values) reached a certain level. A variation on this approach would be to allow incumbents to include their licenses in the auction inventory but "pay themselves" the winning bid if they chose to outbid other participants. In any of these alternatives, the Commission could provide that credits received in exchange for returned spectrum licenses would be transferable, and that bidders could use the credits to obtain other spectrum licenses in the same auction or another auction of spectrum licenses for the same or a different service. Consequently, incumbent licensees could exchange their current licenses for other spectrum licenses using credits, or transfer the credits to other bidders wishing to obtain licenses.¹⁴⁸

59. Commenters addressing actions the Commission might take to create a two-sided auction should address details of how the existing licenses could be incorporated into the auction, how the incumbent licensees could be compensated for "selling" a license, and whether any particular aspects of such an auction, either discussed here or proposed by commenters, might exceed the Commission's competitive bidding authority, under either the Commission's current rules or the Communications Act.

¹⁴⁷ In addition, current Commission rules enable licensees to disaggregate spectrum covered by a single license.

¹⁴⁸ We note that the Commission previously sought comment on a similar approach in another proceeding. 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 and 2500-2690 Bands, WT Docket No. 03-66, *Notice of Proposed Rule Making and Memorandum Opinion and Order*, 18 FCC Rcd 6722, 6820-6822 ¶¶ 241-46 (2003).

In particular, commenters should consider whether the use of credits, or other means of compensating incumbents for their licenses, may require additional authority or the adoption of new Commission rules or procedures.¹⁴⁹ Among other things, commenters should consider whether there are particular design elements of a two-sided auction that would help such a mechanism work more efficiently. Commenters also should address the extent to which a two-sided auction, by offering all available (Commission-held and previously assigned) spectrum simultaneously, may provide an alternative with lower transaction costs as compared to the secondary market and whether such an alternative is needed. In addition, we seek comment on whether the use of a two-sided auction could or would promote opportunities for interested parties to better meet their needs for particular amounts of spectrum in this band. Would an ability to acquire more spectrum or aggregate it differently help promote service, especially in rural areas? Finally, commenters should address any issues or other matters which may relate to competitive bidding as a result of conducting a two-sided auction in the 700 MHz Band.

C. Facilitating Access to Spectrum and Provision of Service to Consumers

60. In this section, we seek comment on whether the Commission should take additional action with regard to the spectrum in the 700 MHz Band so as to help facilitate access to that spectrum and the provision of service to all consumers, including those in rural areas.¹⁵⁰ Above, we sought comment on whether changes to the size of geographic service areas and/or spectrum blocks may help increase access to spectrum for a wide variety of entities, especially those seeking to provide service in rural areas. In this section, we seek comment on whether our existing “substantial service” performance requirements and related policies pertaining to these 700 MHz Band licenses serve to facilitate rural deployment of wireless services in the 700 MHz Band. We request comment on whether additional steps need to be considered to ensure the Commission’s goal of achieving rapid deployment of advanced services is met, both in the nation’s cities and more remote areas. First, we consider the possibility of modifying performance requirements for unauctioned licenses to the extent they could better promote both spectrum access and service provision. Second, for all 700 MHz Band licensees, we seek comment on options that may facilitate access to spectrum in the secondary market for all potential service providers, including those specifically seeking to deliver service to rural areas. Finally, we seek comment on policies the Commission could implement to promote service on tribal lands.

1. Performance Requirements

61. We seek comment on whether we need to revise the existing “substantial service” performance requirement, or possibly adopt alternative build-out rules, for unauctioned licenses in the 700 MHz Band in order to further access to spectrum and provision of service to consumers, including those in rural areas. To the extent commenters believe the current requirement, or its safe harbors, should be revised, we seek comment below on whether other approaches may offer certain additional benefits that outweigh possible additional costs. These options could involve adopting rules that require specific actions by licensees in order to retain their licenses. For each of the proposals below, commenters should address the potential advantages to consumers in the license service areas, including those in rural areas, as well as any possible disadvantages, such as possibly limiting the flexibility of licensees to deploy services under time frames responsive to market conditions.

62. *Substantial Service.* The current performance requirement for the 700 MHz Band, as described above,¹⁵¹ is based on the “substantial service” standard defined in Section 27.14(a).¹⁵² We seek

¹⁴⁹ The Commission’s options with respect to competitive bidding are limited, of course, by the extent of its statutory authority. See 47 U.S.C. § 309(j).

¹⁵⁰ Section 309(j)(4)(B) of the Communications Act requires the Commission to prescribe regulations that include “performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services.” 47 U.S.C. § 309(j)(4)(B).

¹⁵¹ See *supra* para. 16.

comment as to the effectiveness of this approach in promoting service in the unauctioned portions of the 700 MHz Band, especially in rural areas. Under this standard, the Commission established “safe harbors” to provide examples of what would be considered substantial service in the 700 MHz Band. We seek comment below on whether any changes to these safe harbors are warranted to better promote service to all areas. To the extent commenters address whether Section 27.14(a) or its safe harbors should be revised, they should also consider whether any other provisions in the existing Part 27 rules require specific recognition or adjustment to comport with the potential application of those performance requirements for 700 MHz Band licensees. For example, we seek comment on whether we need to clarify the extent to which certain of the Commission’s non-Part 27 rule parts, as listed in Section 27.3, apply to 700 MHz Band licensees with regard to performance requirements relating to build-out and/or provision of service.¹⁵³ In addition, we note that Section 27.15 describes *inter alia* elections for “geographic partitioning and spectrum disaggregation” to ensure the Commission’s performance requirements are met when licenses are divided spectrally or geographically between two or more parties.¹⁵⁴ We seek comment on whether to change any aspect of Section 27.15 in order to help ensure the provision of service to consumers, including any rural areas that are part of a partitioned or disaggregated license.¹⁵⁵

63. We also seek comment on whether the Commission should further define safe harbors for licensees seeking to meet the Part 27 “substantial service” standard on 700 MHz Band spectrum. We note, for example, that the Commission’s safe harbors for 700 MHz Band licensees did not specifically mandate that a particular level of service be provided in rural areas. Rather, the Commission stated in the *Upper 700 MHz Report and Order* that a licensee “that limits buildout to urban areas and areas with high density population, will not necessarily be ensured of license renewal, even if otherwise compliant with the construction benchmarks,” and added its belief that substantial service “requires the licensee to buildout in rural areas as well.”¹⁵⁶ The Commission provided some guidance on rural construction in the *Rural Report and Order*, which established a safe harbor for providing mobile service to rural areas.¹⁵⁷ In particular, it stated that a mobile wireless service licensee in various bands, including the 700 MHz Band, “will be deemed to have met the substantial service requirement if it provides coverage to at least 75 percent of the geographic area of at least 20 percent of the ‘rural areas’ within its licensed area.”¹⁵⁸ We seek comment on whether this “rural safe harbor” for mobile wireless services should continue to apply to the 700 MHz Band licenses that have not been auctioned, or whether it should be revised. We also seek

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¹⁵² 47 C.F.R. § 27.14(a).

¹⁵³ Section 27.3, entitled “Other applicable rule parts,” lists various of the Commission’s other, non-Part 27 rule parts that are applicable to Wireless Communications Services. See 47 C.F.R. § 27.3.

¹⁵⁴ *Id.* § 27.15(d).

¹⁵⁵ Under the current rule in Section 27.15(d), licensees in some cases are able to decide that one party has the performance obligation regardless of the amount of spectrum or area held by that party. *Id.*

¹⁵⁶ *Upper 700 MHz First Report and Order*, 15 FCC Rcd at 505 ¶ 71.

¹⁵⁷ The order defines “rural areas” as “those counties (or equivalent) with a population density of 100 persons per square mile or less, based upon the most recently available Census data.” *Rural Report and Order*, 19 FCC Rcd at 19087 ¶ 11.

¹⁵⁸ *Rural Report and Order*, 19 FCC Rcd at 19123 ¶ 79. We note that the Commission, in adopting substantial service requirements and safe harbors for the Broadband Radio Service (BRS) and the Educational Broadband Service (EBS), stated that “the traditional safe harbors associated with other Part 27 services are too lenient given the particular circumstances of BRS and EBS.” 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 and 2500-2690 MHz Bands, WT Docket No. 03-66, *Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order*, 21 FCC Rcd 5606, 5722-26 ¶¶ 281-290 (2006) (quoting para. 286). In addition, the Commission adopted modified versions of the safe harbors which had been adopted in the *Rural Report and Order*. *Id.* at 5728 ¶ 294.

comment as to whether to apply a safe harbor to other types of services (*e.g.*, fixed) in the 700 MHz Band and, if so, what other services should be included and how the safe harbor should be defined. In addition, we ask how “coverage” would be measured for these other services so as to improve incentives to serve rural areas. Finally, we seek comment on whether there are other safe harbors pertaining to construction in rural areas that should fulfill the substantial service requirement and that would provide additional regulatory certainty regarding the Commission’s performance requirements.

64. *Construction Benchmarks.* As an alternative to maintaining the substantial service standard that the Commission previously determined should apply to the 700 MHz Band,¹⁵⁹ we seek comment on whether we should apply more specific construction benchmarks to the unauctioned licenses in the 700 MHz Band. In the past, such construction benchmarks have required a licensee to make service available to a certain percentage of the population or geographic area. For example, some broadband PCS licensees originally were required to build out their networks sufficient to serve one-third of the population of the license area within five years and two-thirds within ten years.¹⁶⁰ In contrast, narrowband PCS licensees were given the option of constructing networks sufficient to serve at least a minimum amount of the geographic area of the license, or constructing networks sufficient to serve 37.5 percent of the population of the license area within five years and 75 percent within ten years, or meeting a substantial service requirement.¹⁶¹

65. We seek comment on whether the Commission should adopt a population-based construction requirement as part of any possible revisions to the licensing rules in some or all of the spectrum bands to be auctioned in the 700 MHz Band. We ask for comment on the advantages of adopting this type of benchmark. If such a benchmark were adopted, we seek comment on the precise population benchmark that should be adopted, and whether it should be more extensive than the previous PCS rules, such as requiring coverage sufficient to provide service to one-half of the population of the license area within five years and three-fourths within ten years. We also request comment on the disadvantages that adoption of population-based benchmarks might cause, such as the risk that licensees would focus first on the most economically viable build-out and would be less likely to serve less-populous areas, at least during the initial license term.

66. As another option, we seek comment on whether a benchmark based on geography for 700 MHz Band unauctioned licenses would be more effective in promoting service to underserved areas without offsetting disadvantages. We note that, in the *Rural Report and Order*, the Commission considered in 2004 whether it should adopt geographic based benchmarks for any particular service, but declined at that time to adopt such a policy based on the record in that proceeding.¹⁶² In the instant

¹⁵⁹ *Upper 700 MHz First Report and Order*, 15 FCC Rcd at 505 ¶ 70 (adopting the “substantial service” standard for the Upper 700 MHz Band); *Lower 700 MHz Report and Order*, 17 FCC Rcd at 1079 ¶ 149 (later adopting the same “substantial service” standard for the Lower 700 MHz Band). In choosing to apply the “substantial service” standard, the Commission stated that the policy, together with its auction rules, service rules, and overall competition and universal service policies, constitute “effective safeguards and performance requirements for licensing this spectrum.” *Upper 700 MHz First Report and Order*, 15 FCC Rcd at 505-06 ¶ 72. In applying the “substantial service” standard in lieu of other performance requirements, such as a construction benchmark, for the Lower 700 MHz Band, the Commission observed that a “substantial service” standard “provides the flexibility required to accommodate the new and innovative services that are permitted by the Lower 700 MHz Band’s reallocation.” *Lower 700 MHz Report and Order*, 17 FCC Rcd at 1079 ¶ 150.

¹⁶⁰ See 47 C.F.R. § 24.203.

¹⁶¹ See 47 C.F.R. § 24.103. Nationwide narrowband PCS licensees that chose to meet the geographic requirement had to construct sufficient to serve a composite area of 750,000 square kilometers, regional licensees that chose this option had to construct sufficient to serve a composite area of 150,000 square kilometers, and MTA licensees in the service that chose this option had to construct sufficient to serve a composite area of 75,000 square kilometers.

¹⁶² *Rural Report and Order*, 19 FCC Rcd at 19124-25 ¶ 82. In the *Rural NPRM*, the Commission had sought comment on whether it should adopt geographic-based benchmarks for certain services that are licensed on a geographic area basis and that do not have such a requirement. Facilitating the Provision of Spectrum-Based

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rulemaking, we seek comment on whether geographic-based benchmarks warrant further consideration and, in particular, whether these rules could be designed to promote build-out in rural portions of these licenses yet to be auctioned. If so, we seek comment on how such a geography-based benchmark could or should be structured. We also seek comment on any other geographic benchmarks that would be appropriate for these licenses. For any proposed benchmark, we ask commenters to describe how the Commission should apply it to the variety of fixed, mobile, broadcast, and private services that are authorized in this spectrum.

67. *“Keep What You Use.”* We also seek comment on whether the Commission should consider adopting a “keep what you use” re-licensing mechanism¹⁶³ for the unauctioned spectrum in the 700 MHz Band, similar to the approach adopted for cellular service in the 1980s.¹⁶⁴ Under a “keep what you use” rule, the Commission would reclaim any “unused” spectrum in a license area after a pre-defined period of time. We also seek comment on whether the Commission should consider a modified version of this rule, such as a “triggered keep what you use” rule, in which the Commission, rather than reclaiming “unused” spectrum after a period of time, would reclaim spectrum only in the event a party other than the licensee (e.g., a spectrum lessee) seeks access to the licensed spectrum in an unserved portion of the license area. Similarly, we seek comment on whether the Commission should consider applying either the “keep what you use” rule or “triggered keep what you use” rule only to a portion of the spectrum (e.g., one-half) of the spectrum that otherwise would be reclaimed, or eligible for reclamation, by the Commission.

68. Given that these variations of the “keep what you use” approach may make unused spectrum available to other parties interested in gaining access to spectrum, we seek comment on whether it may be an effective means to provide additional service, including in rural areas. If commenters believe licensees are less likely to use spectrum in rural portions of their license areas, would such a mechanism be an efficient way to provide spectrum access to other potential service providers? To the extent that licensees may be less likely to use the spectrum in rural portions of their license areas, we also seek comment as to whether the Commission should apply this approach only to licenses covering rural areas, or only to that portion of licenses that covers rural areas.¹⁶⁵

69. To the extent commenters believe a “keep what you use” mechanism is appropriate, we seek comment on how “use” could or should be defined, given the goals we here seek to further. In particular, we seek comment on how the Commission should define what type of activities demonstrate that the spectrum is being “used” in this context, considering that the Part 27 rules that the Commission adopted facilitate a wide variety of services and uses in this band.

2. Facilitating Access to Spectrum in the Secondary Market

70. In addition to facilitating access to spectrum based on Commission rules relating to the size of geographic license areas and spectrum blocks, we also seek comment on the extent to which the Commission could facilitate access through possible revisions to our existing secondary markets policies

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Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services, WT Docket No. 02-381, *Notice of Proposed Rulemaking*, 18 FCC Rcd 20802, 20824-25 ¶¶ 41-42 (2003) (*Rural NPRM*).

¹⁶³ See generally *Rural Further Notice*, 19 FCC Rcd at 19156-59 ¶¶ 151-156.

¹⁶⁴ Licensees for the cellular service, which are geographically based, are given five years to construct facilities and provide service. After the end of this period, those portions of the license area that have been constructed are retained by the licensee, while those portions that are not constructed revert back to the Commission for re-licensing. 47 C.F.R. §§ 22.947, 22.949.

¹⁶⁵ As noted above, *supra* note 159, the Commission specifically rejected the use of a “keep what you use” standard, as well as population- or geography-based construction requirements, for the 700 MHz Band. See *Lower 700 MHz Report and Order*, 17 FCC Rcd at 1079 ¶ 150.

and rules applicable to both unauctioned and previously auctioned licenses in the 700 MHz Band. In 2003 and 2004, in its *Secondary Markets* proceeding, the Commission took significant steps to facilitate the ability of entities, through spectrum leasing arrangements, to gain access to licensed spectrum in areas and amounts suited to their particular spectrum needs.¹⁶⁶ In addition, that proceeding established a streamlined or immediate approval process for transfers and assignments of licenses.¹⁶⁷ In earlier proceedings, the Commission had established policies that permit partitioning and disaggregation of geographic area licenses.¹⁶⁸ Among the Commission's goals with these policies has been to create an efficient secondary market that can move spectrum to its highest valued end use and to increase the number and/or level of wireless providers and services, including in rural areas.¹⁶⁹

71. In the *Rural Report and Order* issued in 2004, the Commission determined that it was premature to evaluate its secondary markets policies in comparison to other spectrum access mechanisms. In particular, it noted that more time was needed for an efficient secondary market to develop and for its impact to be seen.¹⁷⁰ At that time, some commenters suggested that secondary market policies are insufficient when it comes to enabling access to spectrum.¹⁷¹ Given the passage of time, we now seek comment on whether there are additional mechanisms relating to our secondary market policies that should be adopted so as to help move spectrum from licensees to other entities that place a higher value on its use. For instance, we seek comment on whether requiring licensees to make "good faith" efforts to negotiate with potential spectrum lessees could help increase access to spectrum, including in rural areas, and thus promote the development of these markets. Potential "good faith" requirements could take one of several forms. At a minimal level, licensees could be required to establish a contact point for potential lessees, *e.g.*, providing the name and contact information of a designated representative in the licensee's organization who would accept inquiries from potential spectrum lessees. Under an alternative approach, licensees could be required to engage in "good faith" negotiations with potential spectrum lessees, with the Commission determining the minimum steps necessary to meet this requirement. For example, 700 MHz Band licensees could be required to have a minimum number of meetings with potential spectrum lessees and/or provide their terms for an acceptable spectrum leasing arrangement. Would the use of such requirements for licensees in the 700 MHz Band encourage licensees to more seriously consider the opportunity cost of the spectrum they hold but do not use? On the other hand, given the large number and diverse nature of potential users in this band, we seek comment on whether a requirement to, *e.g.*, establish contact and/or communicate with all interested parties would be unduly burdensome or subject to abuse. We also seek comment on whether the Commission should adopt additional mechanisms to encourage partitioning and/or disaggregation of 700 MHz Band spectrum and the extent to which such policies ultimately may promote more service, especially in rural areas.

¹⁶⁶ See Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, WT Docket No. 00-230, *Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 20604 (2003) (*Secondary Markets First Report and Order*); Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, WT Docket No. 00-230, *Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking*, 19 FCC Rcd 17503 (2004) (*Secondary Markets Second Report and Order*).

¹⁶⁷ See generally *Secondary Markets First Report and Order*, 18 FCC Rcd 20604; *Secondary Markets Second Report and Order*, 19 FCC Rcd 17503.

¹⁶⁸ See, *e.g.*, *Upper 700 MHz First Report and Order*, 15 FCC Rcd at 506 ¶ 74, *Lower 700 MHz Report and Order*, 17 FCC Rcd at 1080-81 ¶¶ 154-57.

¹⁶⁹ *Rural Report and Order*, 19 FCC Rcd at 19097, 19098-99, ¶ 33, ¶ 38.

¹⁷⁰ *Id.* at 19099-19100 ¶ 40.

¹⁷¹ We note that some commenters in the rural proceeding, especially those representing rural interests, argued that existing secondary market mechanisms are insufficient to promote access to spectrum. See, *e.g.*, *Rural Further Notice*, 19 FCC Rcd at 19153-56 ¶¶ 147-50.

72. In addition, we seek comment on whether the Commission could use its existing oversight role during the license renewal process to review a 700 MHz Band licensee's actions during its license term, including its participation in secondary market transactions, and evaluate issues related to spectrum access, service to rural areas, or both. As we discuss below,¹⁷² under this approach, licensees of unauctioned and auctioned 700 MHz Band spectrum would be subject to greater informational filings and Commission review at renewal even if they are not "involved in a comparative renewal proceeding."¹⁷³ We seek comment on the advantages and disadvantages of this approach in promoting service to rural areas, and we ask commenters to compare it to "keep what you use" and other mechanisms designed to promote access to spectrum during the license term.

3. Facilitating Access to Spectrum and the Provision of Service to Tribal Lands

73. Ensuring that qualifying tribal lands have access to affordable, quality telecommunications services continues to be a goal of the Commission.¹⁷⁴ Promoting access to spectrum and the provision of service on tribal lands is an important means to meet that goal. Accordingly, we seek comment on what steps, if any, we can take with regard to the 700 MHz Band to further facilitate access to spectrum and the provision of service to tribal lands. Some of these steps, such as the performance requirements discussed above, generally would be applicable to the unauctioned spectrum in the 700 MHz Band. In contrast, policies to facilitate access to spectrum in tribal lands could be applied to both unauctioned and the already auctioned spectrum in this band.

74. The Commission's rules currently promote deployment of wireless services on tribal lands through its Tribal Lands Bidding Credit.¹⁷⁵ Pursuant to this program, the Commission grants bidding credits to winning bidders who deploy wireless facilities and provide service to federally-recognized tribal areas that have a wireline telephone subscription or penetration rate equal to or below 85 percent. The credit provides qualifying winning bidders \$500,000 for the first two hundred square miles of qualifying tribal land and \$2,500 for each additional square mile. Within 180 days after the filing deadline for long-form applications, a winning bidder that wishes to receive this credit must certify to the Commission that it has complied with various requirements, which include obtaining certification from the tribal government to provide service on its tribal land. Following satisfactory completion of this process, the amount of the bidding credit is subtracted from the gross bid amount,¹⁷⁶ and once this amount is paid, the license is issued.

75. We seek comment on whether the Commission should make any potential adjustments to its Tribal Land Bidding Credit rules as they apply to the 700 MHz Band licenses to be auctioned in order to further the deployment of wireless services to tribal lands. We also seek comment on use of the Tribal Land Bidding Credit in this context given statutory requirements that the Commission commence the

¹⁷² See *infra* section III.D.

¹⁷³ See 47 C.F.R. § 27.14(b).

¹⁷⁴ Section 1.2110(f)(3)(i) of the Commission's rules provide that a qualifying tribal land is any federally recognized Indian tribe's reservation, Pueblo, or Colony, including former reservations in Oklahoma, Alaskan Native regions established pursuant to the Alaskan Native Claims Settlement Act (85 Stat. 688), and Indian allotments, that has a wireline telephone subscription rate equal to or less than 85 percent, based on the most recently available U.S. Census Data. 47 C.F.R. § 1.2110(f)(3)(i) (2005).

¹⁷⁵ See 47 C.F.R. § 1.2110(f)(3). See *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 11794 (2000) (*Tribal Lands Bidding Credit Report and Order*); *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 4775 (2003) (*Tribal Lands Bidding Credit Second Report and Order*); *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, *Third Report and Order*, 19 FCC Rcd 17652 (2004) (*Tribal Lands Bidding Credit Third Report and Order*).

¹⁷⁶ See 47 C.F.R. § 1.2110(f).

auction for recovered analog broadcast spectrum no later than January 28, 2008, and deposit the proceeds from such an auction in the Digital Television Transition and Public Safety Fund no later than June 30, 2008.¹⁷⁷ For instance, do we need to reduce for the 700 MHz Band auction the 180 day period that winning bidders currently have to obtain a Tribal Lands Bidding Credit? Alternatively, should we accept as sufficient from winning bidders in a 700 MHz Band auction either self-certification or a promise to negotiate in good faith with the tribal government? In either case, we would thereby rely, at least in part, on the winning bidder's need to obtain consent of the tribal government to ensure that the tribes are adequately included in the process.¹⁷⁸ What, if any, other changes should we make to the Tribal Lands Bidding Credit process in light of the special circumstances for the 700 MHz Band? In addition, given the statutory deadlines, we seek comment on whether our goal of promoting the deployment of wireless services to tribal lands would be better served with respect to the 700 MHz Band by exploring other means to promote access to spectrum and the provision of service in tribal lands, as discussed below.

76. We seek comment as well on whether there are other steps the Commission should take to promote service in tribal lands. In particular, we seek comment on whether the performance requirements and/or policies to facilitate access to spectrum, discussed in Section C.1 and C.2 above, should be specifically tailored for tribal lands. For example, should the Commission consider applying a "keep what you use" performance requirement to the tribal lands portion of geographic license areas, even if it decides to apply some other standard, such as substantial service, to all other areas of a license that are not tribal lands? We seek comment on whether such an approach would promote access to spectrum and the provision of service on tribal lands. In addition, we seek comment on whether any policies designed to facilitate access to spectrum, such as requiring "good faith" negotiations or other efforts by licensees in response to a request for a spectrum lease, should be applied specifically to tribal lands, even if the Commission decides not to apply these policies to non-tribal license areas. Similarly, are there other steps we could take to revise our partitioning and disaggregation rules in order to better facilitate access to spectrum on tribal lands? Commenters also should consider, as discussed below in Section D, whether the provision of service to tribal lands could be codified as a criteria or factor relevant to a licensee's demonstration that renewal is in the public interest.

77. To the extent the Commission should revise its performance requirements and/or policies to facilitate access to spectrum and apply these policies only to tribal lands, we seek comment generally on how such a process should be implemented. For instance, we seek comment on how a "keep what you use" approach for tribal lands would operate in the event all other license areas were subject to different performance requirements. Similarly, we seek comment on the feasibility of applying one set of secondary markets rules to those portions of a license that cover tribal lands while applying different rules to the rest of a licensee's geographic area.

78. We also seek comment on whether it would facilitate access to spectrum and promote service to tribal lands to create license areas based on the contours of a reservation or any tribal boundary line. We note that, in creating the Tribal Lands Bidding Credit program, the Commission considered and declined to adopt this policy in the *Tribal Lands Bidding Credit Report and Order*.¹⁷⁹ We seek comment whether adopting this policy would have the unintended consequence of partitioning off licenses covering tribal lands such that the newly created license areas will remain unbuilt, because companies will bid only for the licenses not covering the tribal lands. For instance, would it generally be economically feasible to

¹⁷⁷ DTV Act §§ 3003(a), 3004 (establishing a Digital Television and Public Safety Fund); *see supra* para. 9.

¹⁷⁸ In 2004, the Commission decided not to accept applicant self-certification generally as sufficient for obtaining Tribal Lands Bidding Credits. *See Tribal Lands Bidding Credit Third Report and Order*, 19 FCC Rcd at 17656-57 ¶ 9.

¹⁷⁹ *Tribal Lands Bidding Credit Report and Order*, 15 FCC Rcd at 11816 ¶ 64. In this order, the Commission stated: "[W]e do not favor creating small license areas comprised exclusively or primarily of tribal lands. We find that tribal lands should generally be included in a larger licensing area to enable licensees to use profits derived from serving lower cost areas to provide service to typically high cost, tribal areas." *Id.*

provide service only within a tribal land service area? We note that, unlike other service areas, many tribal land service areas would result in licensed areas wholly contained within the larger geographic area of other licensees. We ask whether: (1) interference issues would be more significant because of the greater number of borders between licensed service areas; and (2) limitations of system design may make it difficult to engineer solutions around multiple small areas. Could any of these technical obstacles be mitigated by limiting tribal land license areas to tribal lands of a particular size or greater, or to those not contained wholly within another license area? We also ask commenters to address possible auction-related difficulties caused by this approach, especially those for potential bidders. For instance, if we were to implement this approach for a single spectrum block for which the basic geographic area was CMAs, the 585 federally recognized tribal lands, combined with the 734 CMAs, would result in 1319 separate licenses being offered for that one block.

79. Finally, in the event the Commission adopts other policies discussed above, such as increasing the number of spectrum blocks made available and/or the amount of spectrum assigned by small geographic license areas in the 700 MHz Band, we seek comment on whether policies focused solely on tribal lands would be necessary. We note that, in Auction No. 44, two CMA-based licenses for the Lower 700 MHz Band were won by San Carlos Apache Telecommunications Utility, Inc.,¹⁸⁰ and we therefore inquire whether further use of such small geographic areas may be the most effective means to promote service on tribal lands.

D. Criteria for Renewal

80. In this section, we seek comment on whether to amend our rules to clarify or modify the requirements and procedures of the renewal process for licenses in the 700 MHz Band, including both licenses that have already been auctioned and those that have yet to be auctioned. We seek comment on the possibility of amending the Commission's rules to state more explicitly the criteria for renewal that apply to 700 MHz Band authorizations under Part 27, regardless of whether licensees are involved in a comparative hearing. In addition, to the extent the Commission's renewal requirements and at least some of its performance requirements apply at the end of a license term, we seek comment on the advantages and disadvantages of combining any performance requirements applicable to 700 MHz Band licensees with the criteria that the Commission would review in a license renewal application. We also seek comment on whether to use these criteria to replace the procedures for the filing of competing applications at renewal time. For instance, the licenses could revert to the Commission for re-auction should a license not be renewed. We also ask commenters to address whether any amendments of our rules on the renewal process should be limited to the unauctioned 700 MHz Band licenses, or whether any such amendments also should apply to those 700 MHz Band licenses which already have been auctioned in order to have a unitary regime for these licenses.¹⁸¹

81. We first seek comment on whether 700 MHz Band licensees should be subject to requirements at renewal in addition to any end-of-term performance requirements.¹⁸² As stated above, licensees are required to meet "substantial service" under the performance requirements of Section 27.14(a) as well as in the context of any renewal proceedings under Section 27.14(b) of the Commission's

¹⁸⁰ See Wireless Telecommunications Bureau Grants Lower 700 MHz Band Licenses, Auction Event No. 44, *Public Notice*, 18 FCC Rcd 4584 attachment A (2003).

¹⁸¹ If applied to the unauctioned 700 MHz Band licenses, this policy would include Lower 700 MHz Band Blocks A, B, and E, as well as Upper 700 MHz Band Blocks C and D. If applied to the 700 MHz Band licenses that already have been auctioned, this policy also would include the Lower 700 MHz Band Blocks C and D. We could also apply the same rules for all Lower 700 MHz Band licenses, and different rules for the Upper 700 MHz Band licenses. The renewal criteria and process for authorizations for the 700 MHz Guard Bands at Blocks A and B in the Upper 700 MHz Band are beyond the scope of this Notice.

¹⁸² See *supra* section III.C.1.

rules.¹⁸³ Although renewal of 700 MHz Band licensees is governed under Section 27.14(b)-(d) of the Commission's rules, which indicates that a comparative process is used to choose among renewal applicants based on certain showings, the rule does not describe the factors that the Commission will consider in connection with a license renewal application to the extent no competing application is filed. When establishing the Part 27 rules that apply to the 700 MHz Band, the Commission stated only that: "We will *require* that a [Part 27] licensee's *renewal application include* at a minimum the following showing to claim renewal expectancy: (1) a description of current service in terms of geographic coverage and population served or links installed; (2) an explanation of the licensee's record of expansion, including a timetable for the construction of new base sites or links to meet changes in demand for service; (3) a description of the licensee's investments in its system; and (4) copies of any FCC orders finding the licensee to have violated the Communications Act or any FCC rule or policy, and a list of any pending proceedings that relate to any matter described by the requirements for the renewal expectancy."¹⁸⁴ Accordingly, we seek comment on whether we should amend our rules to define the standards and informational filings that apply to license renewal applications for these licenses.¹⁸⁵ In particular, we seek comment on the requirements (or factors) that should be considered for 700 MHz Band licensees at renewal, including: the level of service and whether it was "substantial"; whether service was ever interrupted and discontinued; whether service has been provided to any rural areas; whether a licensee has received any requests from others seeking to enter into spectrum leasing arrangements, and whether it has entered into any such arrangements; and any other factors typically associated with assessments of a licensee's level of service to the public. Commenters should address which, if any, of these or other elements should be codified as requirements for renewal or, in the alternative, whether the Commission should list factors that are relevant to a licensee's demonstration that renewal is in the public interest.

82. In addition, we seek comment on whether the Commission should integrate Section 27.14(a)'s "substantial service" performance requirement, and any new end-of-term requirements,¹⁸⁶ into the renewal process for 700 MHz Band licenses.¹⁸⁷ We note that, in its orders, the Commission focused

¹⁸³ See *supra* paras. 16-17 (discussing "substantial service" under both Section 27.14(a) and 27.14(b) of the Commission's rules).

¹⁸⁴ Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS"), GN Docket No. 96-228, *Report and Order*, 12 FCC Rcd 10785, 10840-41 ¶ 107 (1997) (*Part 27 R&O*) (establishing Sections 27.14(b)-(d)) (emphasis added). These renewal provisions were later adopted for licenses in the 700 MHz Band. See *Upper 700 MHz First Report and Order*, 15 FCC Rcd at 503-04 ¶¶ 66, 68 & n.163 (adopting the renewal provisions in existing Part 27 and citing *Part 27 R&O*); *Lower 700 MHz Report and Order*, 17 FCC Rcd at 1076-77, 1077-78 ¶¶ 143, 146 (adopting the renewal provisions in existing Part 27). Although the Part 27 rule adopted only stated that these showings were required for renewal applicants involved in a comparative renewal proceeding, see 47 C.F.R. § 27.14(c), we note that in its Part 27 notice of proposed rulemaking, the Commission stated that "we propose to consider *the amount and type of service* being provided by the licensee *in connection with its license renewal application*," Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS"), GN Docket No. 96-228, *Notice of Proposed Rulemaking*, 11 FCC Rcd 21713, 21728 ¶ 30 (1996) (emphasis added) (describing proposed factors that Commission would review during license renewal); see also *Part 27 R&O*, 12 FCC Rcd at 10840 ¶ 106 ("We will adopt our proposals regarding . . . the renewal expectancy."). Although the Commission did not codify any special informational showings from 700 MHz renewal applicants unless they are "involved in a comparative renewal proceeding" triggered by the filing of a competing application, 47 C.F.R. § 27.14(b), licensees' renewal applications are nevertheless subject to Commission's review and approval based on general public interest factors (*e.g.*, amount and type of service provided by the licensee during its license term).

¹⁸⁵ These criteria for renewal would apply to 700 MHz authorizations that have been assigned, transferred, partitioned or disaggregated during their license terms.

¹⁸⁶ See *supra* section III.C.1.

¹⁸⁷ We note that the license term for Multichannel Video Distribution & Data Service (MVDDS) is ten years, and that a renewal expectancy for MVDDS is based on a showing of substantial service at the end of five years into the

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on renewal in the context of partitioned and disaggregated licenses,¹⁸⁸ and stated that to the extent a licensee meets “the [substantial service] performance requirement[] . . . , [it] will be deemed to have met this element of the renewal expectancy requirement regardless of which of the construction options . . . the licensee has chosen.”¹⁸⁹ Accordingly, to the extent the Commission’s renewal requirements and at least some of its performance requirements apply at the end of a license term,¹⁹⁰ we seek comment on the advantages and disadvantages of combining these requirements into, for example, a single substantial service provision in Section 27.14 of the Commission’s rules. For instance, instead of requiring the enforcement of separate rules regulating construction or discontinuance of service,¹⁹¹ the Commission could replace such end-of-term / mid-term requirement(s) and require 700 MHz Band licensees to submit informational showings in their renewal applications based on factors that could be used to determine whether a grant of renewal is in the public interest. Under this approach, all licensees, included those holding authorizations that have been assigned, transferred, partitioned or disaggregated during their license terms, would be subject to review on these criteria, and the Commission would not need to have separate procedures for assessing satisfaction of construction standards (*e.g.*, standards pertaining to partitioned licenses under Section 27.15(d)(1)), and for determining whether renewal criteria have been met.¹⁹² In the event that we decide to integrate performance requirements and end-of-term requirements into the renewal process for 700 MHz Band licensees, we seek comment on whether licensees who fail to meet such requirements could be subject to potential forfeiture penalties.¹⁹³ If, for example, a licensee files for renewal, but fails to meet the substantial service requirement, we seek comment on whether it could be subject to forfeiture penalties under this approach.

83. Finally, under a modified or combined Section 27.14 standard,¹⁹⁴ we seek comment on whether to use codified renewal criteria to measure the 700 MHz Band licensees’ level of service instead of relying on any performance incentives that may arise due to the possibility of competing applications being filed against a renewal (with the concomitant need for the incumbent to demonstrate “substantial

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license period and ten years into the license period. 47 C.F.R. § 101.1413(a),(b); *see* Amendment of Parts 2 and 25 of the Commission’s Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the KU-Band Frequency Range; Amendment of the Commission’s Rules to Authorize Subsidiary Terrestrial Use of the 12.2-12.7 Ghz Band by Direct Broadcast Satellite Licensees and Their Affiliates; Applications of Broadwave Usa, PDC Broadband Corporation, and Satellite Receivers, Ltd. To Provide a Fixed Service in the 12.2-12.7 GHz Band, ET Docket No. 98-206, *Memorandum Opinion and Order and Second Report and Order*, 17 FCC Rcd 9614, 9683-85 ¶¶ 175-77 (2002), *amended by*, Amendment of Parts 25 and 101 of the Commission’s Rules Governing Multichannel Video Distribution and Data Service in the 12.2-12.7 GHz Band, ET Docket No. 98-206, *Order*, 19 FCC Rcd 9727 (2004) (adopting rules).

¹⁸⁸ *See supra* para. 17 (explaining that the Commission’s orders did not discuss the details of its renewal criteria).

¹⁸⁹ *See, e.g., Lower 700 MHz Report and Order*, 17 FCC Rcd at 1078 ¶ 146 (emphasis added; footnote omitted).

¹⁹⁰ Sections 27.14(a) and (b) require that licensees demonstrate “substantial” service both as a “construction requirement” “within the prescribed license term” and to obtain a renewal expectancy preference in a comparative hearing. 47 C.F.R. § 27.14(a), (b). Thus, the Commission’s rules require substantial service by the end of a 700 MHz Band licensee’s term, the same point at which renewal filings would be reviewed and potentially granted. *See* 47 C.F.R. § 27.14(a).

¹⁹¹ *See* 47 C.F.R. § 1.955(a)(3) (providing that wireless licenses automatically terminate if service is permanently discontinued and stating that “permanent discontinuance” is defined in either the specific authorization or the service rules governing that authorization); *but see* § 27.66 (requiring Part 27 licensees that discontinue service to notify the Commission in certain contexts, but not providing a definition of “permanent discontinuance”).

¹⁹² *See* 47 C.F.R. § 27.15(d)(1).

¹⁹³ The Communications Act provides the Commission with authority to assess monetary penalties for willful and knowing violations of its rules *See* 47 U.S.C. §§ 502, 503(b).

¹⁹⁴ *See* 47 C.F.R. § 27.14.

service” to receive a renewal expectancy preference). Although Section 27.14(b)-(d) of Commission rules indicates that a comparative process is used to choose among renewal and competing applicants, it is unclear what type of comparative hearing is to be employed. Under a modified Section 27.14 of the Commission’s rules, the Commission could eliminate the filing of competing applications at renewal time and, for example, adopt a process by which licenses revert to the Commission for re-auction if a license is not renewed. To the extent such an approach is adopted, commenters should address the procedures for renewal processing, the components of a renewal filing and any demonstrations of “substantial” service or other requirements, provisions for petitions to deny renewal applications, and procedures governing dismissal/denial of renewal applications and subsequent re-licensing through competitive bidding to competing bidders.¹⁹⁵ In addition, we seek comment on whether the petition to deny process, coupled with the ability of a petitioner to participate in any subsequent auction to re-license spectrum that reverts to the Commission for lack of renewal, creates sufficient incentives to challenge inferior service or poor qualifications of licensees at renewal and thereby protect the public interest.

E. Length of License Terms

84. In this section, we seek comment on whether the license terms applicable to both the unauctioned and auctioned spectrum in the 700 MHz Band should be revised and, if so, in what manner.¹⁹⁶ Section 27.13(b) of the Commission’s rules provides that initial license authorizations for spectrum in the 700 MHz Band will extend until January 1, 2015, except that a Part 27 licensee commencing broadcast services will be required to seek renewal of its license for such services at the termination of the eight-year term following commencement of such operations.¹⁹⁷ We also ask whether the Commission should establish a uniform license term regardless of regulatory status associated with the services being provided.

85. We seek comment on whether the license terms for both the unauctioned and already auctioned 700 MHz Band licenses should be revised in consideration of the delays in auctioning most of the licenses in the 700 MHz Band,¹⁹⁸ the new mandate under the DTV Act to auction all spectrum in the 700 MHz Band by a date certain,¹⁹⁹ and/or the establishment in the DTV Act of a date certain for the end of the DTV transition.²⁰⁰ Comments should address the impact that these factors may have on the development and use of the spectrum in the context of the appropriate license term length for the 700

¹⁹⁵ For example, if the Commission dismisses or denies a renewal application, the spectrum could automatically revert to either the Commission (in the case of geographic-area licenses) to re-license using competitive bidding or to the geographic-overlay licensee (in the case of site-specific licenses subject to reversionary rights for geographic-overlay licensees) as part of its licensed service area. Moreover, the petitioner could be eligible to participate in any auction of the non-renewed license.

¹⁹⁶ As noted earlier, the Guard Band spectrum, and the rules applicable thereto, is not within the scope of this Notice.

¹⁹⁷ 47 C.F.R. § 27.13(b). Other Part 27 services generally have license terms which extend for terms not to exceed ten years. *See id.* § 27.13(a), (c)-(e). For AWS at 1710-1755 and 2110-2155 MHz, authorizations issued on or before December 31, 2009, have a term of fifteen years, and other authorizations in that band will have a ten year license term. *Id.* at § 27.13(g).

¹⁹⁸ After the current license term was adopted, the Commission was directed not to auction certain portions of the spectrum in the 700 MHz Band; *see supra* para. 8 (discussing the Auction Reform Act’s direction that the Commission not commence or conduct auctions for certain Upper and Lower 700 MHz band licenses). However, certain other licenses in the Lower 700 MHz Band were auctioned pursuant to the Auction Reform Act. *Id.*

¹⁹⁹ The DTV Act now mandates that the Commission conduct an auction of this spectrum. *See* DTV Act § 3003(a)(2).

²⁰⁰ The DTV Act establishes a firm deadline of February 17, 2009, for the DTV transition, with the auction of the spectrum to commence no later than January 28, 2008. As a result, the statutory provision that allowed the transition to be extended in certain circumstances, *see* 47 U.S.C. § 309(j)(14)(B) (2005), and thus provided an opportunity for the continued presence of TV broadcasters in the band, has been eliminated.

MHz Band. We note that the period extending from the new firm deadline for the DTV transition, February 17, 2009, to the current January 1, 2015, termination date set forth in Section 27.13(b) is shorter than both the ten-year license term generally afforded to many other (including CMRS) licensees and the eight-year average time for complying with the performance requirements which the Commission considered when the current rule was first adopted in 2000.²⁰¹ We seek comment on whether the changes to the DTV transition mandated by the DTV Act warrant a modification of the license terms currently in Section 27.13(b) of the rules. We also seek comment on other considerations and developments that would support (or not support) extending or revising the license terms of these licenses.

86. In the event that a change in the license term for these 700 MHz Band licenses is warranted, we seek comment on what new license terms should be adopted. First, we invite comment on whether the Commission should adopt a new initial license term that would extend to a date certain, and what that date should be. For instance, we seek comment on whether the license term should extend until February 18, 2017. Consistent with the Commission's adoption of a license term that recognized an eight-year period after the then-target date for the end of the DTV transition,²⁰² a new license term extending until February 18, 2017 would cover a period of eight years after the new firm deadline for the transition. We also seek comment on whether some other specific date may be more appropriate. In addressing this or any other potential license term, including those considered below, we ask that commenters favoring a particular proposal specify the appropriate license term and include a basis for the term proposed. We ask that commenters discuss whether and how any proposal suggested might provide regulatory certainty and stability, encourage investment in and development of the 700 MHz Band, and better serve the public interest.

87. In the alternative, we seek comment on whether a new license term should extend for a specified period of time rather than be tied to a specific termination date and, if so, what that period of time should be. For instance, we seek comment on whether the license term should be amended to extend for a period not to exceed ten years from the date of initial issuance or renewal. In the Lower 700 MHz Band, the Commission declined to adopt a ten-year license term because the eight additional years beyond the earliest date that incumbents could then have been required to vacate the band was seen as providing new licensees a reasonable period to meet performance requirements.²⁰³ We note that many of the Part 27 services covered under Section 27.13 generally have a ten-year license term,²⁰⁴ and there have been significant changes to the DTV transition and delays in auctioning the majority of the 700 MHz Band. There may also be factors that relate specifically to the 700 MHz Band that support adopting a license term of some other length than ten years.²⁰⁵ Thus, we seek comment on whether Section 27.13(b) should

²⁰¹ See *Upper 700 MHz First Report and Order*, 15 FCC Rcd at 504 ¶ 67 (finding that an average of eight years was a reasonable time to comply with the performance requirements, and that the license term should extend eight years beyond the then target date of 2006 for the DTV transition); see also *supra* para. 18 (discussing license term).

²⁰² See, e.g., *Upper 700 MHz First Report and Order*, 15 FCC Rcd at 504 ¶ 67.

²⁰³ See *Lower 700 MHz Report and Order*, 17 FCC Rcd at 1077 ¶ 145.

²⁰⁴ These include initial authorizations for the 2305-2320 MHz and 2345-2360 MHz bands, the 1390-1392 MHz bands, the paired 1392-1395 and 1432-1435 MHz bands, the 1670-1675 MHz band, and the AWS authorizations in the 1710-1755 and 2110-2155 MHz bands that are issued after December 31, 2009. See 47 C.F.R. §§ 27.13(a),(c)-(e),(g). The Commission also has adopted a ten year license term for other services. See, e.g., *Wireless Operations in the 3650-3700 MHz Band*, ET Docket No. 04-151, *Rules for Wireless Broadband Services in the 3650-3700 MHz Band*, WT Docket No. 05-96, *Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band*, ET Docket No. 02-380, *Amendment of the Commission's Rules with Regard to the 3650-3700 MHz Government Transfer Band*, ET Docket No. 98-237, *Report and Order and Memorandum Opinion and Order*, 20 FCC Rcd 6502, 6516 ¶ 39 (2005) (stating that adoption of ten year license term in that proceeding is consistent with license terms adopted for other services) (modified by Erratum, DA 05-1186 (rel. April 28, 2005)).

²⁰⁵ For example, the Commission adopted a 15 year license term for AWS spectrum in the 1710-1755 and 2110-2155 MHz bands, but only for initial licenses issued on or before December 31, 2009. See 47 C.F.R. § 27.13(g). The Commission stated that the circumstances surrounding the future development and deployment of service in

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be revised to provide a different term, either longer than ten years (*e.g.*, 15 years), or less than ten years if conditions warrant such a change.

88. We ask that comments on the length of license terms also address our discussion in this Notice concerning potential revisions to the performance requirements for licensees in the 700 MHz Band.²⁰⁶ The “substantial service” construction requirement in Section 27.14(a) of our rules requires that licensees make a “substantial service” showing “within the prescribed license term set forth in § 27.13.”²⁰⁷ If we alter the length of license term, commenters should consider whether we should modify or amend the existing performance requirements in Section 27.14.

89. Finally, we seek comment on whether to establish a uniform license term for all services provided by 700 MHz Band licensees, regardless of regulatory status. Licensees in the 700 MHz Band are authorized to provide a combination of different services in a single license: common carrier, non-common carrier, private internal communications, and broadcast services.²⁰⁸ These licensees also are permitted, consistent with Commission rules, to switch their regulatory status at any time prior to the end of their license period.²⁰⁹ As reflected in Section 27.13(b) of our rules, to the extent licensees offer services that qualify as broadcasting under the Communications Act, an eight-year license term applies from the onset of broadcast operations, whereas the license term extends until January 1, 2015 for non-broadcast operations.²¹⁰ We seek comment on the impact of the two different license terms set forth in Section 27.13(b), depending on the service offered, on those situations where a licensee deploys services with both broadcast and non-broadcast components under a single license authorization. We also seek comment on the operation and impact of the two license terms on those situations where a licensee changes the type of service offered between broadcast and non-broadcast services during the term of the license. We ask that commenters address the effect that these dual license terms applicable to the same license authorization have had, or will have, on matters such as licensing, development, use, and renewal with respect to these 700 MHz Band licensees. We seek comment on whether the Commission should consider implementing a uniform license term for all services and, if so, how any such uniformity could be realized given legal and/or regulatory requirements.²¹¹ Comment also is requested on whether the Commission should maintain a distinct term for licenses in which licensees offer broadcast services. We also seek comment on what changes, if any, should be made to our current approach of administering different license terms within a single authorization.

F. Power Limits and Related Requirements

90. In this section of the Notice we seek comment on whether to modify the power limits that apply to base stations operating in either the unauctioned or auctioned spectrum in the 700 MHz Band. Currently, the power limit for base stations operating in the Upper 700 MHz Band is 1 kW ERP²¹²

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those bands warranted a license term longer than ten years in order to encourage the investment necessary for the bands' development. *See AWS-1 Report and Order*, 18 FCC Rcd at 25190 ¶ 70 & n.182.

²⁰⁶ *See supra* section III.C.

²⁰⁷ 47 C.F.R. § 27.14(a).

²⁰⁸ *See* 47 C.F.R. § 27.10(a).

²⁰⁹ *See* 47 C.F.R. § 27.10(d).

²¹⁰ *See* 47 C.F.R. § 27.13(b).

²¹¹ *See, e.g.*, 47 U.S.C. § 307(c)(1) (license for operation of a broadcasting station shall be for a term not to exceed 8 years).

²¹² *See Upper 700 MHz First Report and Order*, 15 FCC Rcd at 521 ¶ 109. The 1 kW ERP power limit applies to commercial, Guard Band and Public Safety base stations operating in the Upper 700 MHz Band. However, any discussion of the power limit for the Guard Band and Public Safety spectrum is beyond the scope of this Notice.

and the power limit for base stations operating in the Lower 700 MHz Band is 50 kW ERP.²¹³ The 1 kW ERP power limit in the Upper 700 MHz Band, along with other technical safeguards, was designed to enable commercial licensees to implement mobile and fixed systems without causing harmful interference to adjacent band Upper 700 MHz Band Public Safety and Guard Band operations.²¹⁴ The 50 kW ERP power limit in the Lower 700 MHz Band was adopted to allow high-power broadcast, as well as mobile and fixed services, in the band.²¹⁵ To ensure that transmissions in excess of 1 kW in the Lower 700 MHz Band would not cause interference to adjacent band operations, the Commission required Lower 700 MHz Band licensees operating base stations at power levels above 1 kW ERP to comply with a power flux density (PFD) limit at all locations on the ground within one kilometer of their base stations.²¹⁶

91. *Upper 700 MHz Band.* We seek comment on whether, and to what extent, the power limit of 1 kW ERP, which currently applies to base stations operating in Blocks C and D of the Upper 700 MHz Band, should be revised. Specifically, commenters should address whether a need or demand exists for a higher power limit in the Upper 700 MHz Band and what additional types of services could be implemented in the band if a higher power limit is permitted. We request that any commenters that propose raising the power limit in the Upper 700 MHz Band submit a technical analysis showing how their proposal would not increase the risk of interference to adjacent operations. Because we are concerned that any increase in power beyond the current 1 kW ERP limit could cause interference to Public Safety and Guard Band systems operating in the Upper 700 MHz Band, commenters should address whether permitting higher powered transmissions could cause interference to Public Safety or Guard Band operations.²¹⁷ Specifically, we seek comment on whether a higher power limit, along with a

²¹³ See *Lower 700 MHz Report and Order*, 17 FCC Rcd at 1062-65 ¶¶ 99-107; 47 C.F.R. § 27.50(c).

²¹⁴ For example to prevent commercial stations from causing interference to Public Safety operations, commercial base and mobile stations are required to meet strict out-of-band emission ("OOBE") limits with respect to the Public Safety bands. See *Upper 700 MHz First Report and Order*, 15 FCC Rcd at 518-20 ¶¶ 103-107. To prevent commercial stations from causing overload interference to Public Safety operations, guard bands were established between the commercial blocks and the Public Safety bands. *Id.* at 478 ¶¶ 2, 3.

²¹⁵ We note that maximum power applies per RF emission, not per polarization; thus, multiple antenna elements radiating the same radio wave (*e.g.*, a power divider feeding multiple polarizations) would be considered a single RF emission. Therefore, if, for example, a Lower 700 MHz licensee employs a circularly polarized transmission, the power of the transmission would be limited to its combined horizontal and vertical polarizations, up to a total of 50 kW ERP (*i.e.*, the transmission would be limited to no greater than 25 kW ERP in each of the horizontal and vertical planes).

²¹⁶ The Commission concluded that mobiles would be protected from interference from adjacent band base stations operating at power levels greater than 1 kW ERP if such base stations produced the same PFD on the ground near the base station that they would produce if they operated at power levels of 1 kW ERP or less. See *Lower 700 MHz Report and Order*, 17 FCC Rcd at 1064 ¶ 104. The Commission decided that that power flux density would be the PFD that would be generated by a base station operating at 1 kW ERP and employing a half-wave dipole antenna located 75 meters above ground; the PFD limit that the Commission adopted was 3 milliwatts/m². *Id.* at 1121 app. D ¶ 2. As to the protection of adjacent band base stations from interference from high-power base transmissions, the Commission noted that in order for high-powered base stations to meet the required PFD limit, such stations would have to employ antennas that were: 1) located very high above ground; and 2) able to greatly attenuate the station's signal in the area near the antenna. The Commission further concluded that in using such antennas, high-powered base stations would also be able to provide appropriate protection to nearby adjacent band base stations. The Commission reached this conclusion based on the assumption that the receive antenna of an adjacent band base station would, if part of a cellular network, likely operate at a relatively low height, and that the height differential that would then exist between the high-powered base station antenna and the adjacent band base station receive antenna would enable the signal to be greatly attenuated at the receive antenna. *Id.* at 1121 app. D.

²¹⁷ In establishing Upper 700 MHz Band rules, the Commission took steps to ensure that Public Safety operations would be protected from interference. Specifically, the Commission required base station transmitters operating on Blocks C and D to meet a $76 + 10 \log P$ OOBE limit and required C and D block mobile transmitters to meet a $65 + 10 \log P$ limit, for all emissions into the 764-776 and 794-806 MHz Public Safety bands. *Upper 700 MHz First*

(continued....)

3 milliwatts/m² or similar PFD limit, will adequately protect Public Safety and Guard Band mobile and base station operations from interference. If not, what PFD limits, or other restrictions, would be necessary to protect such operations?²¹⁸ Of course, given the importance we attach to preventing interference to Public Safety operations,²¹⁹ we will not adopt any modifications to our power limit rules that would cause interference to such operations in the Upper 700 MHz Band.

92. We seek comment as well on whether a PFD limit would necessarily have to be applied to high-powered transmissions originating in *all* upper and lower C and D block spectrum in the Upper 700 MHz Band,²²⁰ or whether it might be necessary to apply PFD limits to stations operating in only certain Upper 700 MHz Band spectrum blocks to protect Public Safety and Guard Band operations. In the event the Commission finds that certain spectrum blocks could accommodate such transmissions without the need for a PFD limit, we ask commenters whether we should permit high-powered transmissions only on these spectrum blocks.

93. We also ask whether, if commenters believe that a general approach of employing PFD limits may not be sufficiently effective in preventing interference from higher-powered transmissions to adjacent channel operations, or if such transmissions could potentially cause interference to co-channel operations, we should limit any increase in permissible power to, *e.g.*, 20 kW, 10 kW, or 5 kW ERP, or not modify the current 1 kW ERP power limit at all. Commenters should also address whether such “intermediate” power limits in the Upper 700 MHz Band might be able to be implemented in some, or all, of the commercial Upper 700 MHz Band spectrum without the need for PFD limits to protect adjacent channel operations. In addition, regardless of whether we decide to increase the power limit for base stations in the Upper 700 MHz Band, we ask if we should, consistent with PCS and AWS, double the existing power limit, to 2 kW ERP, for rural areas only in the Upper 700 MHz Band (without the need for a PFD limit) and what benefit such an increase might provide in the provision of service in rural areas.²²¹

94. Finally, we seek comment on whether any additional modifications to our Upper 700 MHz Band power limit rules would be appropriate. For example, in the event that we authorize base stations operating in all or in portions of the commercial blocks in the Upper 700 MHz Band to employ higher powered transmissions, should we adopt the same notification procedures for high-powered Upper 700 Band operations that we currently apply to high-powered Lower 700 MHz Band operations, and will

(...continued from previous page)

Report and Order, 15 FCC Rcd at 519-20 ¶¶ 105, 106. These limits are considerably stronger than the $43 + 10 \log P$ OOB limit generally applied to stations operating in the land mobile services. The Commission also placed one and two megahertz guard bands between the C and D blocks and the Public Safety bands in order to reduce the likelihood for overload interference into Public Safety receivers.

²¹⁸ As we have discussed, *see supra* note 216, the protection of commercial base stations from high-powered adjacent band transmissions is achieved through, among other things, the significant height differential that is likely to exist between high-powered transmitting antennas and commercial base station receive antennas. However, because Public Safety and Guard Band base station antennas may not operate at the same low heights as commercial base station antennas, Public Safety and Guard Band base stations could be susceptible to interference from adjacent band, high-powered base stations. Thus, more stringent technical requirements would appear to be needed to protect such stations.

²¹⁹ *See, e.g.*, Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, *Report and Order*, *Fifth Report and Order*, *Fourth Memorandum Opinion and Order*, and *Order*, 19 FCC Rcd 14969 (2004) (amended by Erratum, 19 FCC Rcd 19651 (2004), and Erratum, 19 FCC Rcd 21818 (2004)) (*800 MHz Report and Order*).

²²⁰ Base station transmissions are currently permitted in both the lower and upper C and D blocks.

²²¹ *See Rural Report and Order*, 19 FCC Rcd at 19131-32 ¶ 95, 19133-34 ¶ 100 (adopting 3280 watt EIRP power limits for base station operating in the PCS and AWS bands).

such notification procedures adequately protect other Upper 700 MHz Band licensees from interference?²²²

95. *Lower 700 MHz Band.* We also seek comment on whether to revise the 50 kW ERP power limit that applies to base stations operating in the Lower 700 MHz Band. In the first instance, we seek comment on whether to revise the power limit with respect to the unauctioned portion of the Lower 700 MHz Band. For example, commenters should discuss whether a need or demand exists for such high-powered transmissions in the band, and the impact, if any, a reduction in the power limit would have on current and future services and the efficient utilization of this spectrum. Commenters also should address the extent to which current and anticipated use of the Lower 700 MHz Band would require a 50 kW ERP power limit.

96. We also ask whether we should reduce the current power limit to, *e.g.*, 20 kW, 10 kW, 5 kW ERP, or even to 1 kW ERP because of possible concerns that the Lower 700 MHz Band PFD limit does not adequately limit adjacent channel interference from 50 kW ERP transmissions or believe that the potential exists for co-channel interference from transmissions at that power level. Commenters, in responding to this request for comment, should indicate what types of services they believe might benefit from and/or require the use of power levels lower than 50 kW ERP. Finally, commenters should address whether we should, consistent with PCS and AWS, adopt a power limit of 2 kW ERP for rural areas only (without the need for a PFD limit) for base stations operating in the Lower 700 MHz Band.²²³

97. We also seek comment on whether any revisions to the Lower 700 MHz Band power limit should be uniformly applied across the entire band, *i.e.*, including the existing licenses in Blocks C and D as well as the unauctioned Blocks A, B, and E. We seek comment on whether, and to what extent, applying a revised power limit to existing licenses in Blocks C and D to provide for uniform treatment across the band, will promote the public interest, convenience, and necessity, or the provisions of the Communications Act, as amended.²²⁴ We also ask that commenters address whether any public interest benefits resulting from a change in the Lower 700 MHz Band power limit would outweigh any additional costs that may be associated with such a change.

98. Finally, we seek comment on whether any additional modifications to our Lower 700 MHz Band power limit rules would be appropriate. For example, we seek comment on whether the current notification procedures that apply to high-powered Lower 700 MHz Band operations will adequately protect adjacent band Lower 700 MHz Band licensees from interference.²²⁵

G. 911/E911 and Hearing Aid-Compatible Wireless Handsets

99. In this section, we tentatively conclude that we should amend our Part 20 rules to clarify that certain services offered using both unauctioned and previously auctioned spectrum in the 700 MHz Band and spectrum in other bands subject to Part 27, such as AWS-1, should be subject to the 911/E911²²⁶ and hearing aid-compatibility requirements.²²⁷

²²² In the *Lower 700 MHz Report and Order*, the Commission required licensees intending to operate base or fixed stations in excess of 1 kW ERP to file notifications with the Commission and provide notifications to all Part 27 licensees authorized on adjacent blocks in their area of operation. See *Lower 700 MHz Report and Order*, 17 FCC Rcd at 1066 ¶ 110; 47 C.F.R. § 27.50(c)(5).

²²³ See *supra* para. 93.

²²⁴ See 47 U.S.C. § 316.

²²⁵ See *supra* para. 94.

²²⁶ See 47 C.F.R. § 20.18.

²²⁷ See 47 C.F.R. § 20.19.

100. With regard to 911 and E911, the Commission previously has recognized the critical public safety benefits of these services:

Wireless E911 is a vital step toward applying wireless technology to improving public safety. For many Americans, the ability to call for help in an emergency is the principal reason they own a wireless phone. A significant percentage of all 911 calls nationwide are made from wireless phones, and this percentage is growing. E911 will save lives and property by helping emergency services personnel do their jobs more quickly and efficiently. Automatic Location Identification (ALI) capability will permit rapid response in situations where callers are disoriented, disabled, unable to speak, or do not know their location by allowing for the immediate dispatch of emergency assistance to the location of the emergency. Wireless E911 provides a critical safety-of-life feature, and it should be deployed as quickly and ubiquitously as possible.²²⁸

The Commission also has noted that “911 service is critical to our Nation’s ability to respond to a host of crises,”²²⁹ and that “access to 911 service has dramatically improved the ability of emergency personnel to respond quickly to people in distress.”²³⁰

101. In addition, the hearing aid-compatibility requirements imposed on digital wireless phone manufacturers and digital wireless service providers ensure access to telecommunications services by individuals with hearing disabilities. The Commission has noted that, in addition to the public safety benefits such access affords, enhancing the ability of individuals with hearing disabilities to access wireless telecommunications services would extend to those individuals “the social, professional, and convenience benefits” that accrue to other wireless telecommunications users.²³¹

102. In the *E911 Scope Order* adopted in 2003, the Commission broadened the scope of its wireless E911 rules, which applied only to licensees of particular services specified in the rules, so that the requirements extended to various other services and devices to the extent that they met certain specified criteria.²³² Under that order, a service or device provider, whether or not it is a licensee, is to be subject to E911 rules based on whether: (1) it offers real-time, two-way voice service that is interconnected to the public switched network on either a stand-alone basis or packaged with other telecommunications services; (2) the customers using the service or device have a reasonable expectation of access to 911 and E911 services; (3) the service competes with traditional CMRS or wireline local exchange service; and (4) it is technically and operationally feasible for the service or device to support E911.²³³ Applying these criteria, the Commission determined in the *E911 Scope Order* to amend its rules to include additional service offerings within the scope of the E911 requirements, including telematics, and resold and prepaid mobile wireless services.

103. Sections 20.18(a) and 20.19(a) currently specify that service providers within certain enumerated radio services (cellular, PCS, and SMR) are subject to the 911/E911 and hearing aid-

²²⁸ See Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers, CC Docket No. 94-102, *Order to Stay*, 17 FCC Rcd 14841, 14842 ¶ 4 (2002). See also Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Phase II Compliance Deadlines for Tier III Carriers, *Order*, 20 FCC Rcd 7709, 7709 ¶ 1 (2005) (reaffirming the Commission’s commitment to ensuring that the Nation’s wireless telephone users have timely access to emergency services using E911 technology).

²²⁹ See *E911 Scope Order*, 18 FCC Rcd at 25341 ¶ 1.

²³⁰ See *E911 Scope NPRM*, 17 FCC Rcd at 25577 ¶ 1.

²³¹ See *Hearing Aid Compatibility Report and Order*, 18 FCC Rcd at 16755 ¶ 4.

²³² See *E911 Scope Order*, 18 FCC Rcd at 25346 ¶ 15.

²³³ *Id.* at 25347 ¶ 18. The Commission also may use other factors in making its determination. *Id.* at 25347 ¶ 19.

compatibility requirements.²³⁴ These rule sections have not been expanded to include licensees providing service in later authorized, additional wireless services such as in the 700 MHz Band, although many of the services permitted in the 700 MHz Band can be expected to be very similar to services presently subject to the 911/E911 and hearing aid-compatibility requirements.

104. Based on the criteria established in the *E911 Scope Order*, we tentatively conclude that services provided in the 700 MHz Band that meet these criteria should be subject to the 911/E911 requirements. We also tentatively conclude that services provided in the 700 MHz Band that meet these same criteria, with some minor adjustments respecting access to hearing aid-compatible phones, should be subject to the hearing aid-compatibility requirements. Further, we tentatively conclude that the public safety and accessibility objectives of the 911/E911 and hearing aid compatibility rules would be served by application of these rules to services provided in the 700 MHz Band and meeting the above criteria. We seek comment on these tentative conclusions.

105. We expect as well that other services provided, at least in part, using spectrum subject to Part 27, such as AWS-1, may meet the above criteria and thus also should be subject to 911/E911 and hearing aid-compatibility requirements. Accordingly, we seek comment on a tentative conclusion that services provided using bands subject to Part 27, including AWS-1, that meet these criteria should also be subject to the 911/E911 and hearing aid-compatibility requirements. We also seek comment on what changes to the industry standard governing digital wireless handsets compatibility with hearing aids, ANSI C63.19-2006, would be necessary in order to establish measurement methods and parametric requirements for services provided in the 700 MHz Band.²³⁵ In addition, we seek comment on the time necessary to complete such changes to the standard.

106. Finally, as noted above, Sections 20.18(a) and 20.19(a) presently limit the applicability of the 911/E911 and hearing aid compatibility requirements to specific radio services. As a result, we would need to propose rule amendments to apply the 911/E911 and hearing aid-compatibility requirements each time a new service is authorized in the future that would meet the criteria discussed above. Therefore, we seek comment on whether we should amend Sections 20.18(a) and 20.19(a) to ensure that all similar wireless services that meet the four criteria discussed above will be subject to the 911/E911 and hearing aid-compatibility requirements.

IV. PROCEDURAL MATTERS

A. Regulatory Flexibility Act

107. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic

²³⁴ Section 20.18(a) states that the scope of 911 requirements “are only applicable to Broadband PCS Services, Cellular Radio Telephone Service, Geographic Area Specialized Mobile Radio Services, Incumbent Wide Area SMR licensees in the 800 and 900 MHz bands and those entities that offer voice service to customers by purchasing airtime or capacity at wholesale rates from these licensees, collectively CMRS providers.” 47 C.F.R. § 20.18(a). This rule further provides that service providers “in these enumerated services” are subject to the 911 requirements solely to the extent that they offer real-time, two-way, switched voice service that is interconnected with the public switched network and utilizes an in-network switching facility which enables the provider to reuse frequencies and accomplish seamless hand-off of subscriber calls. *See id.* Section 20.19(a) states that the scope of the hearing aid-compatible handset requirements extends “to providers of Broadband Personal Communications Services (part 24, subpart E of this chapter), Cellular Radio Telephone Service (part 22, subpart H of this chapter), and Specialized Mobile Radio Services in the 800 MHz and 900 MHz bands (included in part 90, subpart S of this chapter) if such providers offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. This section also applies to the manufacturers of the wireless phones used in delivery of these services.”

²³⁵ *See supra* note 82.

impact on small entities of the policies and rules addressed in this Notice. The IRFA is set forth in the Appendix. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to the Notice, and must have a separate and distinct heading designating them as responses to the IRFA. Although Section 213 of the Consolidated Appropriations Act 2000 provides that the RFA shall not apply to the rules and competitive bidding procedures for frequencies in the 746-806 MHz Band,²³⁶ we nevertheless believe that it would serve the public interest to analyze the possible significant economic impact of the proposed policy and rule changes in this band on small entities. Accordingly, the IRFA in the Appendix of this Notice includes an analysis of (and seeks comment on) this impact in connection with all spectrum that falls within the scope of this Notice, including spectrum in the 746-806 MHz Band.

B. Paperwork Reduction Act of 1995

108. This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due 30 days after date of publication in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees." We note, however, that Section 213 of the Consolidated Appropriations Act 2000 provides that rules governing frequencies in the 746-806 MHz Band become effective immediately upon publication in the Federal Register without regard to certain sections of the Paperwork Reduction Act.²³⁷ We are therefore not inviting comment on any information collections that concern frequencies in the 746-806 MHz Band.

C. Other Procedural Matters

1. Ex Parte Presentations

109. The rulemaking this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.²³⁸ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required.²³⁹ Other requirements pertaining to oral and written presentations are set forth in Section 1.1206(b) of the Commission's rules.²⁴⁰

²³⁶ In particular, this exemption extends to the requirements imposed by Chapter 6 of Title 5, United States Code, Section 3 of the Small Business Act (15 U.S.C. 632) and Section 3507 and 3512 of Title 44, United States Code. Consolidated Appropriations Act 2000, Pub. L. No. 106-113, 113 Stat. 2502, Appendix E, Sec. 213(a)(4)(A)-(B); *see* 145 Cong. Rec. H12493-94 (Nov. 17, 1999); 47 U.S.C.A. 337 note at Sec. 213(a)(4)(A)-(B).

²³⁷ *Id.*

²³⁸ 47 C.F.R. §§ 1.200 *et. seq.*

²³⁹ *See* 47 C.F.R. § 1.1206(b)(2).

²⁴⁰ 47 C.F.R. § 1.1206(b).

2. Comment Filing Procedures

110. Pursuant to Sections 1.415 and 1.419 of the Commission's rules,²⁴¹ interested parties may file comments and reply comments regarding the Notice on or before the dates indicated on the first page of this document. All filings related to this Notice of Proposed Rulemaking should refer to WT Docket No. 06-150, CC Docket No. 94-102, and WT Docket No. 01-309. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.²⁴²

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
 - ECFS filers must transmit one electronic copy of the comments for WT Docket No. 06-150, CC Docket No. 94-102, and WT Docket No. 01-309. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and WT Docket No. 06-150, CC Docket No. 94-102, and WT Docket No. 01-309. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, DC, 20554. Parties who choose to file by paper should also send a copy of their comments to: Michael Rowan, Special Counsel, Spectrum & Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, S.W., Portals I, Room 6315, Washington, DC, 20554; and Bill Stafford, Special Counsel, Spectrum & Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, S.W., Portals I, Room 6221, Washington, DC, 20554.
 - The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
 - U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington DC 20554.

²⁴¹ 47 C.F.R. §§ 1.415, 1.419.

²⁴² See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

111. Parties shall serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, Room CY-B402, 445 12th Street, S.W., Washington, D.C. 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

112. Documents in WT Docket No. 06-150, CC Docket No. 94-102, and WT Docket No. 01-309 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, Room CY-A257, 445 12th Street, S.W., Washington, D.C. 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail fcc@bcpiweb.com.

3. Accessible Formats

113. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to FCC504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CARTS, etc.) by e-mail: FCC504@fcc.gov; phone: 202-418-0530 (voice), 202-418-0432 (TTY).

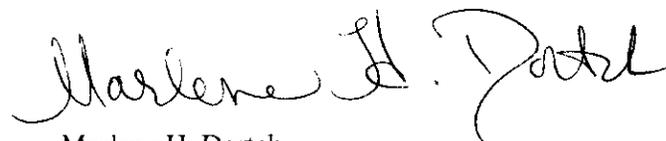
V. ORDERING CLAUSES

114. Accordingly, IT IS ORDERED, pursuant to sections 1, 2, 4(i), 5(c), 7, 10, 201, 202, 208, 214, 222(d)(4)(A)-(C), 222(f), 222(g), 222(h)(1)(A), 222(h)(4)-(5), 251(e)(3), 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336, 337, 614, 615, and 710 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 155(c), 157, 160, 201, 202, 208, 214, 222(d)(4)(A)-(C), 222(f), 222(g), 222(h)(1)(A), 222(h)(4)-(5), 251(e)(3), 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336, 337, 534, 535, and 610 that this NOTICE OF PROPOSED RULEMAKING, FOURTH FURTHER NOTICE OF PROPOSED RULEMAKING, AND SECOND FURTHER NOTICE OF PROPOSED RULEMAKING are hereby ADOPTED.

115. IT IS FURTHER ORDERED that pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on the NOTICE OF PROPOSED RULEMAKING, FOURTH FURTHER NOTICE OF PROPOSED RULEMAKING, AND SECOND FURTHER NOTICE OF PROPOSED RULEMAKING on or before 30 days after publication in the Federal Register and reply comments on or before 60 days after publication in the Federal Register.

116. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of these Notices, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

APPENDIX

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules considered in this Notice of Proposed Rulemaking, WT Docket No. 06-150, Fourth Further Notice of Proposed Rulemaking, CC Docket No. 94-102, and Second Further Notice of Proposed Rulemaking, WT Docket No. 01-309.² Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Notice* provided on page one of this *Notice*. The Commission will send a copy of this *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).³ In addition, this *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.⁴

2. Although Section 213 of the Consolidated Appropriations Act 2000 provides that the RFA shall not apply to the rules and competitive bidding procedures for frequencies in the 746-806 MHz Band,⁵ the Commission believes that it would serve the public interest to analyze the possible significant economic impact of the proposed policy and rule changes in this band on small entities. Accordingly, this IRFA contains an analysis of this impact in connection with all spectrum that falls within the scope of this *Notice*, including spectrum in the 746-806 MHz Band.

A. Need for, and Objectives of, the Proposed Rules

3. In the *Notice*, the Commission seeks comment on possible changes to the rules governing wireless licenses in the 698-746, 747-762, and 777-792 MHz spectrum bands (herein, the "700 MHz Band"), spectrum that does not include the Upper 700 MHz Guard Bands nor the portions of the Upper 700 MHz Band that have been allocated for public safety services. These spectrum bands in the 698-806 MHz band have been allocated to new fixed, mobile, and broadcast services. Under the Digital Television and Public Safety Act of 2005 (DTV Act), the Commission is required to commence an auction of previously unauctioned spectrum in the 700 MHz Band no later than January 28, 2008. In response to the changes made by the DTV Act affecting the 700 MHz Band, and because more than four years have passed since the Commission previously established band plans and service rules for this spectrum, the *Notice* revisits some of the Commission's earlier decisions regarding the service rules for licenses in this band.

4. Specifically, the *Notice* seeks comment on whether there is a need to revise the size of the geographic service areas for the remaining unauctioned spectrum in the band, including the possibility of using smaller areas, such as the 734 Cellular Market Areas (CMAs) composed of Metropolitan Statistical

¹ 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).

² Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, *Notice of Proposed Rulemaking*; Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Fourth Further Notice of Proposed Rulemaking*; Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, *Second Further Notice of Proposed Rulemaking*; FCC 06-114, (rel. Aug. 10, 2006) (*Notice*).

³ See 5 U.S.C. § 603(a).

⁴ *Id.*

⁵ In particular, this exemption extends to the requirements imposed by Chapter 6 of Title 5, United States Code, Section 3 of the Small Business Act (15 U.S.C. 632) and Section 3507 and 3512 of Title 44, United States Code. Consolidated Appropriations Act 2000, Pub. L. No. 106-113, 113 Stat. 2502, Appendix E, Sec. 213(a)(4)(A)-(B); see 145 Cong. Rec. H12493-94 (Nov. 17, 1999); 47 U.S.C.A. 337 note at Sec. 213(a)(4)(A)-(B).

Areas (MSAs) and Rural Service Areas (RSAs). The *Notice* then seeks comment on whether to modify the size of certain 700 MHz Band spectrum blocks, including the possibility of dividing Block D in the Upper 700 MHz Band into smaller blocks. The *Notice* also requests input on whether to add or revise performance requirements for unauctioned spectrum, including such alternatives as specific construction benchmarks. In addition, the *Notice* seeks comment on options that may facilitate access to spectrum in the secondary market for all licenses in the 700 MHz Band, as well as on policies the Commission could implement to promote service to tribal lands.

5. The *Notice* then seeks comment on several additional issues relating to both auctioned and unauctioned licenses in the 700 MHz Band. For these licenses, comment is sought on whether to clarify or modify the rules and criteria for license renewal. The *Notice* also seeks comment on whether to revise and possibly extend the term of licenses, as well as whether to modify the existing power limits in both the Upper 700 MHz and the Lower 700 MHz Bands. In light of the importance of public safety operations in the 700 MHz Band, the Commission states that it would take no action that would cause harmful interference to public safety licensees in the band.

6. Finally, the *Notice* requests comment on the tentative conclusion that services provided by licensees in the 700 MHz Band, and in other bands subject to Part 27 of the rules, should be subject to E911 and hearing aid-compatibility requirements to the same extent that such services would be covered if provided in other bands. It then seeks comment on how to modify Commission rules to ensure that they include all similar wireless services, herein referred to as Wireless Radio Services (WRS).

B. Legal Basis

7. The potential actions about which comment is sought in this *Notice* would be authorized pursuant to the authority contained in Sections 1, 2, 4(i), 5(c), 7, 10, 201, 202, 208, 214, 222(d)(4)(A)-(C), 222(f), 222(g), 222(h)(1)(A), 222(h)(4)-(5), 251(e)(3), 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336, 337, 614, 615, and 710 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 155(c), 157, 160, 201, 202, 208, 214, 222(d)(4)(A)-(C), 222(f), 222(g), 222(h)(1)(A), 222(h)(4)-(5), 251(e)(3), 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336, 337, 534, 535, and 610.

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

8. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted.⁶ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁷ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁸ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁹

9. This *Notice* could result in rule changes that, if adopted, would create new opportunities and obligations for Commission wireless licensees. Under the *Notice*, any of the changes to the

⁶ 5 U.S.C. § 604(a)(3).

⁷ 5 U.S.C. § 601(6).

⁸ 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.”

⁹ 15 U.S.C. § 632.