

equipment choice concerning the attachment of devices or multiple devices to the network.⁵⁸⁵ It also states that this proposal would provide non-discriminatory access, and that the "E Block" licensee could not discriminate against any retail service provider,⁵⁸⁶ and would operate "as an open network available on a wholesale basis to a host of innovative service providers."⁵⁸⁷ We seek comment on these issues. We also seek comment on proposals filed by Media Access Project and the Ad Hoc Public Interest Spectrum Coalition, which support a condition on licenses for at least 30 megahertz of 700 MHz Commercial Services spectrum that would require a licensee to provide "open access," including the right of a consumer to use any equipment, content, application or service on a non-discriminatory basis.⁵⁸⁸

V. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

291. Pursuant to the Regulatory Flexibility Act of 1980, as amended (RFA),⁵⁸⁹ the Final Regulatory Flexibility Analysis (FRFA) for the Report and Order is set forth in Appendix C. 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,⁵⁹⁰ 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 FRFA in Appendix C of this Report and Order includes an analysis of this impact in connection with all spectrum that falls within the scope of the Report and Order, including spectrum in the 746-806 MHz Band.

B. Final Paperwork Reduction Act of 1995 Analysis

292. The Report and Order contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding. Public and agency comments are due sixty days from publication of a summary of the Report and Order in the Federal Register. Comments should address the following: (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 respondents, including the use of automated collection techniques or other forms of information technology. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees." In this present document, we have assessed the potential effects of the various policy

⁵⁸⁵ *See* Frontline Comments in PS Docket No. 06-229 at 30; Frontline Mar. 6 Comments in WT Docket No. 06-150 at 16-17.

⁵⁸⁶ Frontline Mar. 6 Comments in WT Docket No. 06-150 at 17.

⁵⁸⁷ *Id.* at 18.

⁵⁸⁸ *See* Media Access Project Mar. 22 *Ex Parte* in WT Docket Nos. 05-211 and 06-150 and PS Docket No. 06-229; Ad Hoc Public Interest Spectrum Coalition Apr. 5 *Ex Parte* in PS Docket No. 06-229, WT Docket Nos. 06-150, 05-211, 96-86, at 8.

⁵⁸⁹ *See* 5 U.S.C. § 604.

⁵⁹⁰ 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 Sections 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).

changes with regard to information collection burdens on small business concerns, and find that there are no results specific to businesses 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.⁵⁹¹ We are therefore not inviting comment on any information collections that concern frequencies in the 746-806 MHz Band.

C. Initial Regulatory Flexibility Analysis

293. As required by the Regulatory Flexibility Act (RFA), *see* 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in the Further Notice. The IRFA is set forth in Appendix D. 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 Further 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,⁵⁹² 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 Appendix C of the Further Notice includes an analysis of (and seeks comment on) this impact in connection with all spectrum that falls within the scope of the Further Notice, including spectrum in the 746-806 MHz Band.

D. Initial Paperwork Reduction Act Analysis of 1995 Analysis

294. 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." In this present document, we have assessed the potential effects of the various proposals with regard to information collection burdens on small business concerns, and find that there are no results specific to businesses 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.⁵⁹³ We are therefore not inviting comment on any information collections that concern frequencies in the 746-806 MHz Band.

⁵⁹¹ *Id.*

⁵⁹² *Id.*

⁵⁹³ *Id.*

E. Other Procedural Matters

1. Ex Parte Presentations

295. The rulemaking shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁵⁹⁴ 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.⁵⁹⁵ Other requirements pertaining to oral and written presentations are set forth in Section 1.1206(b) of the Commission's rules.⁵⁹⁶

2. Comment Filing Procedures

296. Pursuant to Sections 1.415 and 1.419 of the Commission's rules,⁵⁹⁷ interested parties may file comments on or before 21 days after publication of the Further Notice in the Federal Register and reply comments regarding the Further Notice may be filed on or before 28 days after publication of the Further Notice in the Federal Register. All filings related to this Further Notice should refer to WT Docket No. 06-150, WT Docket No. 06-169, PS Docket No. 06-229, and WT Docket No. 96-86. 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.⁵⁹⁸

- 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, WT Docket No. 06-169, PS Docket No. 06-229, and WT Docket No. 96-86. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and WT Docket No. 06-150, WT Docket No. 06-169, PS Docket No. 06-229, and WT Docket No. 96-86. 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.
 - 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

⁵⁹⁴ 47 C.F.R. §§ 1.200 *et. seq.*

⁵⁹⁵ See 47 C.F.R. § 1.1206(b)(2).

⁵⁹⁶ 47 C.F.R. § 1.1206(b).

⁵⁹⁷ 47 C.F.R. §§ 1.415, 1.419.

⁵⁹⁸ See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

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.

297. Parties should send a copy of their filings to: Paul D'Ari, Wireless Telecommunications Bureau, 445 12th Street, S.W., Washington, D.C. 20554, or by e-mail to paul.dari@fcc.gov; Linda Chang, Wireless Telecommunications Bureau, 445 12th Street, S.W., Washington, D.C. 20554, or by e-mail to linda.chang@fcc.gov; and Jeff Cohen, Public Safety and Homeland Security Bureau, 445 12th Street, S.W., Washington, D.C. 20554, or by e-mail to jeff.cohen@fcc.gov. Parties shall also 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.

298. Documents in WT Docket No. 06-150, WT Docket No. 06-169, PS Docket No. 06-229, and WT Docket No. 96-86 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

299. 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).

VI. ORDERING CLAUSES

300. Accordingly, IT IS ORDERED that pursuant to sections Sections 1, 4(i), 7, 10, 201, 202, 208, 214, 215, 222(d)(4)(A)-(C), 222(f), 222(g), 222(h)(1)(A), 222(h)(4)-(5), 251(e)(3), 301, 303, 307, 308, 309, 310, 311, 315, 316, 317, 324, 331, 332, 336, 337 and 710, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 157, 160, 201, 202, 208, 214, 215, 222(d)(4)(A)-(C), 222(f), 222(g), 222(h)(1)(A), 222(h)(4)-(5), 251(e)(3), 301, 303, 307, 308, 309, 310, 311, 315, 317, 324, 331, 332, 336, 337, and 610; this REPORT AND ORDER in WT Docket No. 06-150, CC Docket No. 94-102, WT Docket No. 01-309, WT Docket No. 03-264, WT Docket No. 06-169, WT Docket No. 96-86 and PS Docket No. 06-229 IS ADOPTED, and that Part 1, Part 20, Part 27 and Part 90 of the Commission's rules, 47 C.F.R. Part 1, 47 C.F.R. Part 20, 47 C.F.R. Part 27 and 47 C.F.R. Part 90, ARE AMENDED as set forth in Appendix B. The REPORT AND ORDER shall become effective upon publication in the Federal Register subject to OMB approval for new information collection requirements.

301. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this REPORT AND ORDER, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

302. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this REPORT AND ORDER in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

303. IT IS FURTHER ORDERED pursuant to sections 1, 2, 4(i), 5(c), 7, 10, 201, 202, 208, 214, 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, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336, and 337, that this FURTHER NOTICE OF PROPOSED RULEMAKING in WT Docket No. 06-150, CC Docket No. 94-102, WT Docket No. 01-309, WT Docket No. 03-264, WT Docket No. 06-169, WT Docket No. 96-86 and PS Docket No. 06-229 IS ADOPTED. The FURTHER NOTICE OF PROPOSED RULEMAKING shall become effective upon publication in the Federal Register.

304. 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 FURTHER NOTICE OF PROPOSED RULEMAKING on or before 21 days after publication in the Federal Register and reply comments on or before 28 days after publication in the Federal Register.

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

306. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this FURTHER NOTICE OF PROPOSED RULEMAKING in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

APPENDIX A

Comments and Reply Comments

**List of Comments and Reply Comments
in the 700 MHz Commercial Services Proceeding
(WT Docket No. 06-150, CC Docket No. 94-102, WT Docket No. 01-39)**

Comments

Access Spectrum LLC, Columbia Capital III, LLC, Pegasus Communications Corporation, and Telcom Ventures, LLC ("Access Spectrum/Pegasus")
Aloha Partners, L.P. ("Aloha")
Alltel, Aloha, Blooston, C&W, ConnectME Authority, Corr, Dobson, Leap, Maine Office of Chief Information Officer, MetroPCS, NTCA, Nebraska PSC, North Dakota PSC, RCA, RTG, Union, U.S. Cellular, Vermont et al., Vermont Telephone Company ("Alltel *et al.*") (filing the "Balanced Consensus Plan")
AT&T Inc. ("AT&T")
Blooston Rural Carriers ("Blooston")
C&W Enterprises ("C&W")
Cingular Wireless LLC ("Cingular")
Consumer Federation of America, Consumers Union, and Free Press ("Consumer Federation of America, et al.")
Corr Wireless Communications, LLC ("Corr")
Council Tree Communications, Inc. ("Council Tree")
CTIA – The Wireless Association ("CTIA")
DIRECTV, Inc. and EchoStar Satellite L.L.C. ("DIRECTV/EchoStar")
Dobson Communications Corporation ("Dobson")
Doug Howard and Farooq Javed ("Howard/Javed")
Frontier Communications ("Frontier")
Hearing Industries Association ("Hearing Industries Association")
Hearing Loss Association of America ("Hearing Loss Association")
Leap Wireless International, Inc. ("Leap")
MetroPCS Communications, Inc. ("MetroPCS")
MilkyWay Broadband, LLC ("MilkyWay")
Motorola, Inc. ("Motorola")
National Telecommunications Cooperative Association ("NTCA")
Navajo Nation Telecommunications Regulatory Commission ("Navajo Nation")
Navini Networks, Inc. ("Navini")
National Emergency Number Association ("NENA")
NextWave Broadband Inc. ("NextWave")
Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO")
Paul Milgrom and Karen Wrege ("Milgrom/Wrege")
Polar Communications ("Polar")
Qualcomm Incorporated ("Qualcomm")
Region 24 700 MHz Regional Planning Committee ("Region 24")
Rural Cellular Association ("RCA")
Rural Telecommunications Group, Inc. ("RTG")
Sprint Nextel Corporation ("Sprint Nextel")
Telecommunications Industry Association ("TIA")
Tropos Networks ("Tropos")

Union Telephone Company ("Union")

United States Cellular Corporation ("U.S. Cellular")

Verizon Wireless ("Verizon Wireless")

Vermont Department of Public Service, Vermont Public Service Board, Vermont Office of the Chief Information Officer, North Dakota Public Service Commission, Nebraska Public Service Commission, ConnectME Authority, Maine Office of the Chief Information Officer ("Vermont Department of Public Service, et al.")

Reply Comments

Alcatel North America ("Alcatel")

AllTel Corporation ("AllTel")

Aloha Partners, L.P. ("Aloha")

Association for Maximum Service Television, Inc. and National Association of Broadcasters ("MSTV/NAB")

Association of Public-Safety Communications Officials-International, Inc., International Association of Fire Chiefs, Major Cities Chiefs Association, Major County Sheriffs Association, and National Sheriffs Association ("Public Safety Organizations")

AT&T Inc. ("AT&T")

Blooston Rural Carriers ("Blooston")

Cingular Wireless LLC ("Cingular")

Corr Wireless Communications, LLC ("Corr")

Council Tree Communications, Inc. ("Council Tree")

CTIA - The Wireless Association ("CTIA")

Cyren Call Communications Corporation ("Cyren Call")

DIRECTV, Inc. and EchoStar Satellite L.L.C. ("DIRECTV/EchoStar")

Doug Howard and Farooq Javed ("Howard/Javed")

Hearing Industries Association ("Hearing Industries Association")

Leap Wireless International, Inc. ("Leap")

MetroPCS Communications, Inc. ("MetroPCS")

Motorola, Inc. ("Motorola")

National Telecommunications Cooperative Association ("NTCA")

NextWave Broadband Inc. ("NextWave")

Multiple Parties (filing Balanced Consensus Plan) ("Balanced Consensus Plan")

Paul Milgrom and Karen Wrege ("Milgrom/Wrege")

Qualcomm Incorporated ("Qualcomm")

Region 24 700 MHz Regional Planning Committee ("700 MHz Regional Planning Committee")

Rural Cellular Association ("RCA")

Rural Telecommunications Group, Inc. ("RTG")

T-Mobile USA, Inc. ("T-Mobile")

Tropos Networks ("Tropos")

United States Cellular Corporation ("U.S. Cellular")

Verizon Wireless ("Verizon Wireless")

Vermont Department of Public Service, Vermont Public Service Board, Vermont Office of the Chief Information Officer, North Dakota Public Service Commission, Nebraska Public Service Commission, ConnectME Authority, Maine Office of the Chief Information Officer ("Vermont Department of Public Service, et al.")

Vermont Telephone Company, Inc. ("Vermont Telephone")

WiMAX Forum ("WiMAX Forum")

**List of Comments and Reply Comments in 700 MHz Guard Bands Proceeding
(WT Docket No. 06-169)**

Comments

Access Spectrum, LLC and Pegasus Communications ("Access Spectrum/Pegasus")
Access Spectrum, LLC and Pegasus Communications/700 MHz Technical Working Group ("700 MHz
TWG")
Association of Public Safety Communications Officials-International (APCO)
Commonwealth of Virginia ("CoVa")
Critical Infrastructure Communications Coalition ("CICC")
CTIA – The Wireless Association ("CICC")
Enterprise Wireless Alliance ("EWA")
Ericsson Inc. ("Ericsson")
G. Edward Ryan, II
Gary P. McKelvey
Gregory J. Urban – State of Maryland ("State of Maryland")
Motorola, Inc. ("Motorola")
National Public Safety Telecommunications Council ("NPSTC")
Prince George's County, Maryland ("Prince George's County")
Radiofone Nationwide PCS, L.L.C. ("Radiofone")
Region 24 700 MHz Regional Planning Committee ("Region 24")
Verizon Wireless ("Verizon Wireless")

Reply Comments

Access Spectrum, LLC and Pegasus Communications ("Access Spectrum/Pegasus")
Access Spectrum, LLC and Pegasus Communications/700 MHz Technical Working Group ("700 MHz
TWG")
Arcadian Networks ("Arcadian")
Cyren Call Communications Corporation ("Cyren Call")
Ericsson Inc. ("Ericsson")
Lucent Technologies, Inc. ("Lucent")
National Public Safety Telecommunications Council ("NPSTC")
Northrop Grumman Information Technology ("Northrop Grumman")
Prince George's County, Maryland ("Prince George's County")
Region 20 RPC, Region 42 RPC, State of Maryland, Commonwealth of Virginia
Region 24 700 MHz Regional Planning Committee ("Region 24")
Regional Planning Committee 42 ("Region 42")
Stafford County, VA Sheriff's Department ("Stafford County")
United Telecom Council ("UTC")

**List of Comments and Reply Comments in the 700 MHz Public Safety Proceeding
(WT Docket No. 96-86)**

3G Americas, LLC ("3G Americas")
Access Spectrum, LLC ("Access Spectrum")
Alan Bull ("Alan Bull")
Association of Public Safety Communications Officials-International, Inc. ("APCO")
California Highway Patrol ("CHP")
City and County of Denver Colorado ("Denver")
Columbia Capital III, LLC ("Columbia Capital")

Cyren Call Communications Corporation ("Cyren Call")

DataRadio ("DataRadio")

EADS Public Safety, Inc. ("EADS")

Enterprise Wireless Alliance ("EWA")

Ericsson, Inc. ("Ericsson")

Intel Corporation ("Intel")

Intelligent Transportation Society of America ("ITS")

International Association of Chiefs of Police ("IACP")

International Association of Fire Chiefs ("IAFC")

Joe Kuran ("Joe Kuran")

Lockheed Martin Corporation ("Lockheed Martin")

Lucent Technologies, Inc. ("Lucent")

M/A-COM, Inc. ("M/A-COM")

Major Cities Chiefs Association ("MCCA")

Motorola, Inc. ("Motorola")

National Association of Regional Planning Committees ("NARPC")

National Emergency Number Association ("NENA")

National Public Safety Telecommunications Council ("NPSTC")

National Sheriffs Association, Major Cities Sheriffs Association ("NSA/MCSA")

North Carolina State Highway Patrol ("NCSHP")

Northrop Grumman Information Technology, Inc. ("Northrop Grumman")

Ohio State-Wide Interoperability Executive Committee ("Ohio SIEC")

Pegasus Communications Corporation ("Pegasus")

Pinellas County Emergency Communications ("Pinellas County")

Qualcomm, Inc. ("Qualcomm")

Radiofone Nationwide PCS, LLC ("Radiofone")

Region 12 700 MHz Regional Planning Committee ("Region 12")

Region 24 700 MHz Regional Planning Committee ("Region 24")

Region 26 700 MHz Regional Planning Committee ("Region 26")

Region 39 700 MHz Regional Planning Committee ("Region 39")

Region 40 700 MHz Regional Planning Committee ("Region 40")

Region 45 700 MHz Regional Planning Committee ("Region 45")

Region 49 700 MHz Regional Planning Committee ("Region 49")

Spectrum Coalition for Public Safety ("Spectrum Coalition")

Sprint Nextel Corporation ("Sprint Nextel")

State of California: Department of General Services-Telecommunications Division ("State of California")

State of Hawaii: Department of Accounting and General Services ("State of Hawaii")

WiMax Forum ("WiMax Forum")

APPENDIX B

Rule Changes

Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

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

AUTHORITY: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Section 1.955 is amended by revising paragraph (a)(1) to read as follows:

§ 1.955 Termination of Authorizations

(a) *****

(1) *Expiration.* Authorizations automatically terminate, without specific Commission action, on the expiration date specified therein, unless a timely application for renewal is filed. See § 1.949 of this part. No authorization granted under the provisions of this part shall be for a term longer than ten years, except to the extent a longer term is authorized under § 27.13 of Part 27 of this chapter.

3. Section 1.9005 is amended by revising paragraphs (gg) and (hh) and adding paragraph (ii) to read as follows:

§ 1.9005 Included services.

(gg) The Common Carrier Fixed Point-to-Point Microwave Service (part 101 of this chapter);

(hh) The Multipoint Video Distribution and Data Service (part 101 of this chapter); and,

(ii) The 700 MHz Guard Bands Service (part 27 of this chapter).

Part 20 of Title 47 of the Code of Federal Regulations is amended as follows:

4. The authority citation for Part 20 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 160, 201, 251-254, 303, and 332 unless otherwise noted.

5. Section 20.18 is amended by revising paragraph (a) to read as follows:

§ 20.18 911 Service.

(a) *Scope of Section.* The following requirements are only applicable to CMRS providers, excluding mobile satellite service (MSS) operators, to the extent that they (1) offer real-time, two way switched voice service that is interconnected with the public switched network and (2) utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. These requirements are applicable to entities that offer voice service to consumers by purchasing airtime or capacity at wholesale rates from CMRS licensees.

6. Section 20.19 is amended by revising paragraphs (a) and (b) as follows:

§ 20.19 Hearing aid-compatible mobile handsets.

(a) *Scope of Section.* Providers of digital CMRS are subject to hearing aid-compatibility requirements to the extent that they (1) offer real-time, two way switched voice or data service that is interconnected with the public switched network and (2) utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. Such providers are subject to the requirements set forth in this section to the extent that the established technical standard or standards specified in paragraph (b) are applicable to the service provided. This section also applies to the manufacturers of the wireless phones used in delivery of the services specified in this paragraph.

(b) *Technical standard for hearing aid compatibility.* The technical standard set forth in the standard document ANSI C63.19-2001 "American National Standard for Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids, ANSI C63.19-2001" (published October 8, 2001—available for purchase from the American National Standards Institute) is applicable 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 (including in part 980, subpart S of this chapter). A wireless phone used for these services is hearing aid compatible for the purposes of this section if it meets, at a minimum:

Part 27 of Title 47 of the Code of Federal Regulations is amended as follows:

7. The authority citation for Part 27 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

8. The table of contents for Part 27 is amended by revising Subpart F and Subpart G as follows:

Subpart F – Competitive Bidding Procedures for the 698-806 MHz Band

Subpart G – Guard Band Service (746-747/776-777 MHz and 762-764/792-794 MHz Bands)

9. Section 27.4 is amended by deleting the definition of Guard Band Manager.

10. Section 27.10 is amended by revising the introductory paragraph to read as follows:

§ 27.10 Regulatory status.

The following rules apply concerning the regulatory status in the frequency bands specified

in § 27.5.

11. Section 27.13 is amended by revising paragraph (b) to read as follows:

§ 27.13 License Period.

(b) *698-764 MHz and 776-794 MHz bands.* Initial authorizations for the 698-764 MHz, 747-762 MHz, and 777-792 MHz bands, will extend for a term not to exceed ten years from February 17, 2009, except that initial authorizations for a Part 27 licensee that provides broadcast services, whether exclusively or in combination with other services, will not exceed eight years. Initial authorizations for the 746-747 MHz, 776-777 MHz, 762-764 MHz, and 792-794 MHz bands shall not exceed January 1, 2015. Subsequent license terms shall be for a term not to exceed ten years. Licensees that initiate the provision of a broadcast service, whether exclusively or in combination with other services, may not provide this service for more than eight years or beyond the end of the license term if no broadcast service had been provided, whichever period is shorter in length.

12. Section 27.14 is amended redesignating paragraph (e) as paragraph (f), and by adding new paragraphs (e), (g), (h), (i), and (j) to read as follows:

§ 27.14 Construction requirements; Criteria for renewal.

(e) Comparative renewal proceedings do not apply to WCS licensees holding authorizations for the 698-746 MHz, 747-762 MHz, and 777-792 MHz bands. These licensees must file a renewal application in accordance with the provisions set forth in § 1.949.

13. Section 27.50 is amended by redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(9) and (b)(10), respectively, and redesignating paragraphs (c)(2) and (c)(3) as paragraphs (c)(9) and (c)(10), respectively, deleting paragraphs (b)(1), (b)(4), (c)(1), (c)(4), and (c)(5), adding new paragraphs (b)(1) through (b)(8), (b)(11), (b)(12), (c)(1) through (c)(8), and (c)(11) to read as follows:

§ 27.50 Power and antenna height limits.

(b)*****

(1) Fixed and base stations transmitting a signal in the 746-747 and 762-764 MHz bands must not exceed an effective radiated power (ERP) of 1000 watts and an antenna height of 305 m height above average terrain (HAAT), except that antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 1000 watts ERP in accordance with Table 1 of this section.

(2) Fixed and base stations transmitting a signal in the 747-762 MHz and 777-792 MHz bands with an emission bandwidth of 1 MHz or less must not exceed an ERP of 1000 watts and an antenna height of 305 m HAAT, except that antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 1000 watts ERP in accordance with Table 1 of this section.

- (3) Fixed and base stations located in a county with population density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census, and transmitting a signal in the 747-762 MHz and 777-792 MHz bands with an emission bandwidth of 1 MHz or less must not exceed an ERP of 2000 watts and an antenna height of 305 m HAAT, except that antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 2000 watts ERP in accordance with Table 2 of this section.
- (4) Fixed and base stations transmitting a signal in the 747-762 MHz and 777-792 MHz bands with an emission bandwidth greater than 1 MHz must not exceed an ERP of 1000 watts/MHz and an antenna height of 305 m HAAT, except that antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 1000 watts/MHz ERP accordance with Table 3 of this section.
- (5) Fixed and base stations located in a county with population density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census, and transmitting a signal in the 747-762 MHz and 777-792 MHz bands with an emission bandwidth greater than 1 MHz must not exceed an ERP of 2000 watts/MHz and an antenna height of 305 m HAAT, except that antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 2000 watts/MHz ERP in accordance with Table 4 of this section.
- (6) Licensees of fixed or base stations transmitting a signal in the 747-762 or 777-792 MHz bands at an ERP greater than 1000 watts must comply with the provisions set forth in paragraph (b)(8) and §27.55(c).
- (7) Licensees seeking to operate a fixed or base station located in a county with population density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census, and transmitting a signal in the 747-762 MHz or 777-792 MHz bands at an ERP greater than 1000 watts must:
- (i) coordinate in advance with all licensees authorized to operate in the 698-764 MHz and 776-794 MHz bands within 120 kilometers (75 miles) of the base or fixed station;
 - (ii) coordinate in advance with all regional planning committees, as identified in §90.527 of this chapter, with jurisdiction within 120 kilometers (75 miles) of the base or fixed station.
- (8) Licensees authorized to transmit in the 747-762 or 777-792 MHz bands and intending to operate a base or fixed station at a power level permitted under the provisions of paragraph (b)(6) of this section must provide advanced notice of such operation to the Commission and to licensees authorized in their area of operation. Licensees who must be notified are all licensees authorized to operate in the 764-776 MHz and 794-806 MHz bands under Part 90 of this chapter within 75 km of the base or fixed station and all regional planning committees, as identified in §90.527 of this chapter, with jurisdiction within 75 km of the base or fixed station. Notifications must provide the location and operating parameters of the base or fixed station, including the station's ERP, antenna coordinates, antenna height above ground, and vertical antenna pattern, and such notifications must be provided at least 90 days prior to the commencement of station operation

(11) For transmissions in the 746-747 MHz, 762-764 MHz, 776-777 MHz, and 792-794 MHz bands, maximum composite transmit power shall be measured over any interval of continuous transmission using instrumentation calibrated in terms of RMS-equivalent voltage. The measurement results shall be properly adjusted for any instrument limitations, such as detector response times, limited resolution bandwidth capability when compared to the emission bandwidth, etc., so as to obtain a true maximum composite measurement for the emission in question over the full bandwidth of the channel.

(12) For transmissions in the 747-762 MHz and 777-792 MHz bands, licensees may employ equipment operating in compliance with either the measurement techniques described in paragraph (b)(11) or a Commission-approved average power technique. In both instances, equipment employed must be authorized in accordance with the provisions of 27.51.

(c) * * *

(1) Fixed and base stations transmitting a signal with an emission bandwidth of 1 MHz or less must not exceed an effective radiated power (ERP) of 1000 watts and an antenna height of 305 m height above average terrain (HAAT), except that antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 1000 watts ERP in accordance with Table 1 of this section.

(2) Fixed and base stations located in a county with population density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census, and transmitting a signal with an emission bandwidth of 1 MHz or less must not exceed an ERP of 2000 watts and an antenna height of 305 m HAAT, except that antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 2000 watts ERP in accordance with Table 2 of this section.

(3) Fixed and base stations transmitting a signal with an emission bandwidth greater than 1 MHz must not exceed an ERP of 1000 watts/MHz and an antenna height of 305 m HAAT, except that antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 1000 watts/MHz ERP in accordance with Table 3 of this section.

(4) Fixed and base stations located in a county with population density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census, and transmitting a signal with an emission bandwidth greater than 1 MHz must not exceed an ERP of 2000 watts/MHz and an antenna height of 305 m HAAT, except that antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 2000 watts/MHz ERP in accordance with Table 4 of this section.

(5) Licensees seeking to operate a fixed or base station located in a county with population density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census, and transmitting a signal at an ERP greater than 1000 watts must:

(i) coordinate in advance with all licensees authorized to operate in the 698-764 MHz and 776-794 MHz bands within 120 kilometers (75 miles) of the base or fixed station;

(ii) coordinate in advance with all regional planning committees, as identified in §90.527 of this chapter, with jurisdiction within 120 kilometers (75 miles) of the base or fixed station.

(6) Licensees of fixed or base stations transmitting a signal at an ERP greater than 1000 watts and greater than 1000 watts/MHz must comply with the provisions of paragraph (c)(8) and §27.55(b), except that licensees of fixed or base stations located in a county with population density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census, must comply with the provisions of paragraph (c)(8) and §27.55(b) only if transmitting a signal at an ERP greater than 2000 watts and greater than 2000 watts/MHz.

(7) A licensee authorized to operate in the 710-716, 716-722, or 740-746 MHz bands, or in any unpaired spectrum blocks within the 698-746 MHz band, may operate a fixed or base station at an ERP up to a total of 50 kW within its authorized, 6 MHz spectrum block if the licensee complies with the provisions of §27.55(b). The antenna height for such stations is limited only to the extent required to satisfy the requirements of §27.55(b).

(8) Licensees intending to operate a base or fixed station at a power level permitted under the provisions of paragraph (c)(6) must provide advanced notice of such operation to the Commission and to licensees authorized in their area of operation. Licensees who must be notified are all licensees authorized under this part to operate on an adjacent spectrum block within 75 km of the base or fixed station. Notifications must provide the location and operating parameters of the base or fixed station, including the station's ERP, antenna coordinates, antenna height above ground, and vertical antenna pattern, and such notifications must be provided at least 90 days prior to the commencement of station operation.

* * * * *

(11) Licensees may employ equipment operating in compliance with either the measurement techniques described in paragraph (b)(11) or a Commission-approved average power technique. In both instances, equipment employed must be authorized in accordance with the provisions of 27.51.

Table 1 - Permissible Power and Antenna Heights for Base and Fixed Stations in the 746-747 MHz and 762-764 MHz Bands and for Base and Fixed Stations in the 698-746 MHz, 747-762 MHz, and 777-792 MHz Bands Transmitting a Signal with an Emission Bandwidth of 1 MHz or Less	
Antenna height (AAT) in meters (feet)	Effective radiated power (ERP) (watts)
Above 1372 (4500)	65
Above 1220 (4000) To 1372 (4500)	70
Above 1067 (3500) To 1220 (4000)	75
Above 915 (3000) To 1067 (3500)	100
Above 763 (2500) To 915 (3000)	140
Above 610 (2000) To 763 (2500)	200

Above 458 (1500) To 610 (2000)	350
Above 305 (1000) To 458 (1500)	600
Up to 305 (1000)	1000

Table 2 – Permissible Power and Antenna Heights for Base and Fixed Stations in the 698-746 MHz, 747-762 MHz, and 777-792 MHz Bands Transmitting a Signal with an Emission Bandwidth of 1 MHz or Less

Antenna height (AAT) in meters (feet)	Effective radiated power (ERP) (watts)
Above 1372 (4500)	130
Above 1220 (4000) To 1372 (4500)	140
Above 1067 (3500) To 1220 (4000)	150
Above 915 (3000) To 1067 (3500)	200
Above 763 (2500) To 915 (3000)	280
Above 610 (2000) To 763 (2500)	400
Above 458 (1500) To 610 (2000)	700
Above 305 (1000) To 458 (1500)	1200
Up to 305 (1000)	2000

Table 3 – Permissible Power and Antenna Heights for Base and Fixed Stations in the 698-746 MHz, 747-762 MHz and 777-792 MHz Bands Transmitting a Signal with an Emission Bandwidth Greater than 1 MHz

Antenna height (AAT) in meters (feet)	Effective radiated power (ERP) per MHz (watts/MHz)
Above 1372 (4500)	65
Above 1220 (4000) To 1372 (4500)	70
Above 1067 (3500) To 1220 (4000)	75
Above 915 (3000) To 1067 (3500)	100
Above 763 (2500) To 915 (3000)	140

Above 610 (2000) To 763 (2500)	200
Above 458 (1500) To 610 (2000)	350
Above 305 (1000) To 458 (1500)	600
Up to 305 (1000)	1000

Table 4 – Permissible Power and Antenna Heights for Base and Fixed Stations in the 698-746 MHz, 747-762 MHz and 777-792 MHz Bands Transmitting a Signal with an Emission Bandwidth Greater than 1 MHz

Antenna height (AAT) in meters (feet)	Effective radiated power (ERP) per MHz (watts/MHz)
Above 1372 (4500)	130
Above 1220 (4000) To 1372 (4500)	140
Above 1067 (3500) To 1220 (4000)	150
Above 915 (3000) To 1067 (3500)	200
Above 763 (2500) To 915 (3000)	280
Above 610 (2000) To 763 (2500)	400
Above 458 (1500) To 610 (2000)	700
Above 305 (1000) To 458 (1500)	1200
Up to 305 (1000)	2000

14. Section 27.55 is amended by revising paragraph (b) and adding new paragraph (c) to read as follows:

§ 27.55 Power strength limits.

(b) *Power flux density limit for stations operating in the 698-746 MHz bands.* For base and fixed stations operating in the 698-746 MHz band in accordance with the provisions of §27.50(c)(6) of this chapter, the power flux density that would be produced by such stations through a combination of antenna height and vertical gain pattern must not exceed 3000 microwatts per square meter on the ground over the area extending to 1 km from the base of the antenna mounting structure.

(c) *Power flux density limit for stations operating in the 747-762 and 777-792 MHz bands.* For base and fixed stations operating in the 747-762 and 777-792 MHz bands in accordance with the provisions of

§27.50(b)(6) of this chapter, the power flux density that would be produced by such stations through a combination of antenna height and vertical gain pattern must not exceed 3000 microwatts per square meter on the ground over the area extending to 1 km from the base of the antenna mounting structure.

15. Section 27.70 is added to read as follows:

§ 27.70 Information exchange.

(a) *Prior notification.* Public safety licensees authorized to operate in the 764-776 MHz and 794-806 MHz bands may notify any licensee authorized to operate in the 747-762 or 777-792 MHz bands that they wish to receive prior notification of the activation or modification of the licensee's base or fixed stations in their area. Thereafter, the 747-762 or 777-792 MHz band licensee must provide the following information to the public safety licensee at least 10 business days before a new base or fixed station is activated or an existing base or fixed station is modified:

- (1) Location;
- (2) Effective radiated power;
- (3) Antenna height; and,
- (4) Channels available for use.

(b) *Purpose of prior notification.* The prior coordination of base or fixed stations is for informational purposes only. Public safety licensees are not afforded the right to accept or reject the activation of a proposed base or fixed station or to unilaterally require changes in its operating parameters. The principal purposes of notification are to:

- (1) Allow a public safety licensee to advise the 747-762 or 777-792 MHz band licensee whether it believes a proposed base or fixed station will generate unacceptable interference;
- (2) Permit 747-762 and 777-792 MHz band licensees to make voluntary changes in base or fixed station parameters when a public safety licensee alerts them to possible interference; and,
- (3) Rapidly identify the source if interference is encountered when the base or fixed station is activated.

16. Section 27.601 is amended by deleting paragraph (c), redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively, and revising the title, paragraphs (a) and (b), and redesignated paragraph (d) to read as follows:

§ 27.601 Authority and coordination requirements.

(a) Subject to the provisions of §27.2(b), a Guard Band licensee may allow a spectrum lessee, pursuant to a spectrum lease arrangement under part 1, subpart X of this chapter, to construct and operate stations at any available site within the licensed area and on any channel for which the Guard Band licensee is licensed, provided such stations comply with Commission Rules and coordination requirements.

(b) Subject to the provisions of §27.2(b), a Guard Band licensee may allow a spectrum lessee, pursuant to a spectrum lease arrangement under part 1, subpart X of this chapter, to delete, move or change the operating parameters of any of the user's stations that are covered under the Guard Band licensee's authorization without prior Commission approval, provided such stations comply with Commission Rules

and coordination requirements.

(c) *Frequency Coordination.*

(1) A Guard Band licensee, or a spectrum lessee operating pursuant to a spectrum lease arrangement under §§ 1.9030 and 1.9035 of this chapter, must notify Commission-recognized public safety frequency coordinators for the 700 MHz Public Safety band and adjacent-area Guard Band licensees within one business day after the licensee or the spectrum lessee has:

- (i) Coordinated a new station or modification of an existing station; or
- (ii) Filed an application for an individual station license with the Commission.

(2) The notification required in paragraph (c)(1) of this section must include, at a minimum—

- (i) The frequency or frequencies coordinated;
- (ii) Antenna location and height;
- (iii) Type of emission;
- (iv) Effective radiated power;
- (v) A description of the service area, date of coordination, and user name or, in the alternative, a description of the type of operation.

(3) In the event a licensee partitions its service area or disaggregates its spectrum, it is required to submit the notification required in paragraph (c)(1) of this section to other Guard Band licensees in the same geographic area.

(4) Entities coordinated by a Guard Band licensee, or a spectrum lessee operating pursuant to a spectrum lease arrangement under §§ 1.9030 and 1.9035 of this chapter, must wait at least 10 business days after the notification required in paragraph (c)(1) of this section before operating under the license.

(d) Where a deletion, move or change authorized under paragraph (b) of this section constitutes a discontinuance, reduction, or impairment of service under §27.66 or where discontinuance, reduction or impairment of service results from an involuntary act subject to §27.66(a), the licensee must comply with the notification and authorization requirements set forth in that section.

17. Section 27.602 is amended by deleting paragraphs (a), (d), (e), (f), (g) and (h), redesignating paragraphs (b) and (c) as paragraphs (a) and (b), and revising the title, the introductory language, and redesignated paragraphs (a) and (b) to read as follows:

§ 27.602 Lease agreements.

Guard Band licensees may enter into spectrum leasing arrangements under part 1, subpart X of this chapter regarding the use of their licensed spectrum by spectrum lessees, subject to the following conditions:

(a) The spectrum lease agreement between the licensee and the spectrum lessee must specify in detail the operating parameters of the spectrum lessee's system, including power, maximum antenna heights,

frequencies of operation, base station location(s), area(s) of operation, and other parameters specified in Commission rules for the use of spectrum identified in §27.5(b)(1) and (b)(2).

(b) The spectrum lease agreement must require the spectrum lessee to use Commission-approved equipment where appropriate and to complete post-construction proofs of system performance prior to system activation.

18. Section 27.603 is deleted.

19. Section 27.605 is deleted.

20. Section 27.606 is deleted.

21. Section 27.607 is amended by deleting paragraphs (c)(2), redesignating paragraph (c)(1) as paragraph (c)(2), adding a new paragraph (c)(1), and revising the title, the introductory text in paragraph (c), paragraphs (b), (c)(3), (c)(4) and (c)(5), and redesignated paragraph (c)(2) to read as follows:

§ 27.607 Performance requirements and annual reporting requirement.

* * * * *

(b) Guard Band licensee are required to file an annual report providing the Commission with information about the manner in which their spectrum is being utilized. * * *

(c) Guard Band licensees must, at a minimum, include the following information in their annual reports:

- (1) The total number of spectrum lessees;
- (2) The amount of the licensee's spectrum being used pursuant to spectrum lease agreements;
- (3) The nature of the spectrum use of the licensee's customers; and,
- (4) The length of term of each spectrum lease agreement, and whether the agreement is a spectrum manager lease agreement, or a *de facto* transfer lease agreement.

(d) The specific information that licensees will provide and the procedures that they will follow in submitting their annual reports will be announced in a Public Notice issued by the Wireless Telecommunications Bureau.

Part 90 of Title 47 of the Code of Federal Regulations is amended as follows:

22. The authority citation for Part 27 continues to read as follows:

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

23. Part 90 is amended by adding new Section 90.555 to read as follows:

§ 90.555 Information exchange.

a) *Prior notification.* Public safety licensees authorized to operate in the 764-776 MHz and 794-806 MHz bands may notify any licensee authorized to operate in the 747-762 or 777-792 MHz bands that they

wish to receive prior notification of the activation or modification of the licensee's base or fixed stations in their area. Thereafter, the 747-762 or 777-792 MHz band licensee must provide the following information to the public safety licensee at least 10 business days before a new base or fixed station is activated or an existing base or fixed station is modified:

- (1) Location;
- (2) Effective radiated power;
- (3) Antenna height; and,
- (4) Channels available for use.

(b) *Purpose of prior notification.* The prior coordination of base or fixed stations is for informational purposes only. Public safety licensees are not afforded the right to accept or reject the activation of a proposed base or fixed station or to unilaterally require changes in its operating parameters. The principal purposes of notification are to:

- (1) Allow a public safety licensee to advise the 747-762 or 777-792 MHz band licensee whether it believes a proposed base or fixed station will generate unacceptable interference;
- (2) Permit 747-762 and 777-792 MHz band licensees to make voluntary changes in base or fixed station parameters when a public safety licensee alerts them to possible interference; and
- (3) Rapidly identify the source if interference is encountered when the base or fixed station is activated.

(c) *Public Safety Information Exchange.*

- (1) Upon request by a 747-762 or 777-792 MHz band licensee, public safety licensees authorized to operate radio systems in the 764-776 and 794-806 MHz bands shall provide the operating parameters of their radio system to the 747-762 or 777-792 MHz band licensee.
- (2) Public safety licensees who perform the information exchange described in this section must notify the appropriate 747-762 or 777-792 MHz band licensees prior to any technical changes to their radio system.

APPENDIX C

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ separate Initial Regulatory Flexibility Analyses (IRFA) were incorporated in the *700 MHz Commercial Services Notice* in WT Docket No. 06-150, CC Docket No. 94-102, and WT Docket No. 01-309; the *700 MHz Guard Band Notice*, WT Docket Nos. 06-169 and 96-86; and the *700 MHz Public Safety Notice*, PS Docket No. 06-229 and WT Docket No. 96-86.² The Commission sought written public comment on the proposals in these dockets, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

2. Although Section 213 of the Consolidated Appropriations Act of 2000 provides that the RFA shall not apply to the rules and competitive bidding procedures for frequencies in the 746-806 MHz Band,⁴ 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 FRFA contains an analysis of this impact in connection with all spectrum that falls within the scope of this *Report and Order*, including spectrum in the 746-806 MHz Band.

A. Need for, and Objectives of, the Rules

3. In the *Report and Order*, with regard to commercial services, the Commission takes a number of steps to facilitate access to spectrum and the provision of service to consumers, especially those in rural areas, and to simplify and clarify our rules related to the commercial 700 MHz spectrum. The Commission decides that it will auction the Commercial Services licenses across a mix of geographic service area definitions. The Commission also extends the date for initial license terms from January 15, 2015, to the end of the DTV transition on February 17, 2019. With regard to radiated power limits, the Commission generally adopts a power spectral density model, with certain limitations, to provide greater operational flexibility to licensees operating at wider bandwidths, and provides for higher radiated power levels for those 700 MHz licensees operating in rural areas under the current 1 kW per MHz power limit.

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 See Service Rules for the 698-749, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, and Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, *Notice of Proposed Rule Making, Fourth Further Notice of Proposed Rule Making, and Second Further Notice of Proposed Rule Making*, 21 FCC Rcd 9345, 9394 (2006) ("*700 MHz Commercial Services Notice*"); Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket Nos. 06-169 and 96-86, *Notice of Proposed Rule Making*, 21 FCC Rcd 10413, 10440 (2006) ("*700 MHz Guard Bands Notice*"); Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, *Ninth Notice of Proposed Rule Making*, 21 FCC Rcd 14837, 14853 (2006) ("*700 MHz Public Safety Ninth Notice*").

³ See § 5 U.S.C. § 604.

⁴ 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 Sections 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).

The Commission also modifies the 911/E911 rules to remove the service- and band-specific limitations on the applicability of those requirements. Further, the Commission finds that all digital CMRS providers, including providers in the 700 MHz, Advanced Wireless Services, and the Broadband Radio Service/Educational Broadband Service bands, along with manufacturers of handsets capable of providing such services, should be subject to the Commission's hearing aid compatibility requirements to the extent that a service satisfies the scope provision the current rules.

4. The Commission also adopts rules to enhance spectrum usage in the 700 MHz Guard Bands by replacing the Guard Band Manager spectrum leasing regime with the Secondary Markets spectrum leasing policies and rules. Guard bands licensees will have the option of entering into spectrum manager and *de facto* transfer leasing arrangements. By permitting Guard Band licensees and spectrum lessees to choose between the two different options, the Commission affords licensees and spectrum lessees significant flexibility to craft the type of leasing arrangement that best matches their particular needs and the demands of the marketplace.

B. Legal Basis

5. The authority for the actions taken in this *Report and Order* is contained in Sections 1, 4(i), 7, 10, 201, 202, 208, 214, 215, 222(d)(4)(A)-(C), 222(f), 222(g), 222(h)(1)(A), 222(h)(4)-(5), 251(e)(3), 301, 303, 307, 308, 309, 310, 311, 315, 316, 317, 324, 331, 332, 336, 337 and 710, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 157, 160, 201, 202, 208, 214, 215, 222(d)(4)(A)-(C), 222(f), 222(g), 222(h)(1)(A), 222(h)(4)-(5), 251(e)(3), 301, 303, 307, 308, 309, 310, 311, 315, 317, 324, 331, 332, 336, 337, and 610.

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

6. No comments specifically addressed the IRFAs from any of the respective proceedings. We have nonetheless addressed small entity issues found in comments in this FRFA.

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

7. 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.⁵ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁶ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁷ 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).⁸

8. Governmental Entities. The term "small governmental jurisdiction" is defined as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."⁹ As of 2002, there were approximately 87,525 governmental jurisdictions in

⁵ 5 U.S.C. § 604(a)(3).

⁶ 5 U.S.C. § 601(6).

⁷ 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."

⁸ 15 U.S.C. § 632.

⁹ 5 U.S.C. § 601(5).

the United States.¹⁰ This number includes 38,967 county governments, municipalities, and townships, of which 37,373 (approximately 95.9%) have populations of fewer than 50,000, and of which 1,594 have populations of 50,000 or more. Thus, the Commission estimates the number of small governmental jurisdictions overall to be 85,931 or fewer.

9. In the following paragraphs, the Commission further describes and estimates the number of small entity licensees that may be affected by the rules the Commission adopts in this *Report and Order*. The rule changes affect Upper 700 MHz and Lower 700 MHz Band licensees in the 698-746, 747-762, and 777-792 MHz spectrum bands, as well as all commercial mobile radio services (CMRS) with respect to 911/E911 requirements adopted in this *Report and Order*.

10. Since this *Report and Order* applies to multiple services, this FRFA analyzes the number of small entities affected on a service-by-service basis. When identifying small entities that could be affected by the Commission's new rules, this FRFA provides information that describes auctions results, including the number of small entities that were winning bidders. However, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily reflect the total number of small entities currently in a particular service. The Commission does not generally require that licensees later provide business size information, except in the context of an assignment or a transfer of control application that involves unjust enrichment issues.

Part 27 Miscellaneous Wireless Communications Services (MWCS)

11. Wireless Communications Services. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting-satellite uses in the 2305-2320 MHz and 2345-2360 MHz bands. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15 million for each of the three preceding years.¹¹ The SBA has approved these definitions.¹² The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

12. 700 MHz Guard Band Licenses. In the *700 MHz Guard Band Order*, the Commission adopted size standards for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.¹³ A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.¹⁴ Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.¹⁵ SBA approval of these

¹⁰ U.S. Census Bureau, Statistical Abstract of the United States: 2006, Section 8, pages 272-273, Tables 415 and 417.

¹¹ Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS), *Report and Order*, 12 FCC Rcd 10785, 10879 ¶ 194 (1997).

¹² See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

¹³ See Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order*, 15 FCC Rcd 5299 (2000).

¹⁴ *Id.* at 5343 ¶ 108.

¹⁵ *Id.*

definitions is not required.¹⁶ An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.¹⁷ Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.¹⁸

13. Upper 700 MHz Band Licenses. The Commission released a *Report and Order* authorizing service in the Upper 700 MHz band.¹⁹ An auction for these licenses, previously scheduled for January 13, 2003, was postponed.²⁰

14. Lower 700 MHz Band Licenses. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.²¹ The Commission has defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.²² A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.²³ Additionally, the Lower 700 MHz Band has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is entrepreneur, which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.²⁴ The SBA has approved these small size standards.²⁵ An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.²⁶ A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses

¹⁶ *Id.* At 5343 ¶ 108 n.246 (for the 746-764 MHz and 776-704 MHz bands, the Commission is exempt from 15 U.S.C. § 632, which requires Federal agencies to obtain Small Business Administration approval before adopting small business size standards).

¹⁷ See "700 MHz Guard Bands Auction Closes: Winning Bidders Announced," *Public Notice*, 15 FCC Rcd 18026 (2000).

¹⁸ See "700 MHz Guard Bands Auctions Closes: Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 4590 (WTB 2001).

¹⁹ Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Memorandum Opinion and Order*, 16 FCC Rcd 1239 (2001).

²⁰ See "Auction of Licenses for 747-762 and 777-792 MHz Bands (Auction No. 31) Is Rescheduled," *Public Notice*, 16 FCC Rcd 13079 (WTB 2003).

²¹ See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, 17 FCC Rcd 1022 (2002).

²² *Id.* at 1087-88 ¶ 172.

²³ *Id.*

²⁴ *Id.* at 1088 ¶ 173.

²⁵ See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999.

²⁶ See "Lower 700 MHz Band Auction Closes," *Public Notice*, 17 FCC Rcd 17272 (WTB 2002).