

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

In the Matter of)	
)	
Improving Public Safety Communications in the 800 MHz Band)	WT Docket 02-55
)	
New 800 MHz Band Plan for Puerto Rico)	

SECOND FURTHER NOTICE OF PROPOSED RULE MAKING

Adopted: June 30, 2008

Released: June 30, 2008

Comment Date: August 8, 2008

Reply Comment Date: August 22, 2008

By the Chief, Public Safety and Homeland Security Bureau:

1. The Federal Communications Commission's Public Safety and Homeland Security Bureau (PSHSB), on delegated authority, seeks comment on proposals for establishing a reconfigured 800 MHz band plan in Puerto Rico.

I. BACKGROUND

2. On May 24, 2007, the Commission adopted a *Second Memorandum Opinion and Order* in this proceeding (*800 MHz Second MO&O*).¹ In the *800 MHz Second MO&O*, the Commission determined that an alternative band plan was appropriate for Puerto Rico due to the unique nature of 800 MHz incumbency in the Puerto Rico market compared to other markets.² Rather than specify a band plan for Puerto Rico, the Commission directed the 800 MHz Transition Administrator (TA) to propose an alternative band plan and negotiation timetable for Puerto Rico.³ The Commission stated that the TA's proposal should comply with the following criteria:

- Although the Commission did not specify the size of the non-ESMR band,⁴ the band plan must ensure that the non-ESMR band fully accommodates all non-ESMR licensees, including those that need to be relocated from the Upper 200 channels.
- The band plan must include a guard band between the ESMR and non-ESMR bands; however, if there is insufficient spectrum to accommodate a guard band, the Commission directed the TA to take such measures as are necessary to protect public safety systems from interference, e.g., by separating mission-critical public safety systems as far as feasible from the ESMR band.
- Replacement spectrum in the ESMR band is to be assigned to ESMR licensees and ESMR-eligibles in accordance with the Commission's rules governing Economic Area (EA) and site-

¹ Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Second Memorandum Opinion and Order*, 22 FCC Rcd 10467 (*800 MHz Second MO&O*).

² *Id.*, 22 FCC Rcd at 10479 ¶ 32.

³ *Id.* at 10479-10480 ¶ 33.

⁴ "ESMR" refers to "Enhanced Specialized Mobile Radio," a term that is used to designate 800 MHz systems that use cellular system architecture. See Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Report and Order*, 19 FCC Rcd 14969, 14972 ¶ 2 n.6 (2004).

based licensees. Because of the relatively small amount of spectrum that Sprint Nextel Corporation (Sprint) holds in Puerto Rico, Sprint is to be assigned replacement spectrum on the same basis as other ESMR licensees, *i.e.*, Sprint will receive no more spectrum in the ESMR band than it holds currently.

- If there is insufficient spectrum in the ESMR band to accommodate all ESMRs and ESMR-eligibles, Sprint must surrender spectrum on a *pro rata* basis to the other licensees to meet the shortfall. If insufficient spectrum remains after Sprint has surrendered spectrum, *pro rata* apportionment may be used to determine each licensee's share of the ESMR band. All ESMR and ESMR-eligible licensees must participate in such apportionment.⁵

3. The Commission delegated authority to the Public Safety and Homeland Security Bureau to approve or modify the proposed band plan and timetable, and suspended the rebanding timetable for Puerto Rico until a new band plan is adopted.⁶ On October 19, 2007, the TA filed the requested band plan proposal in this docket (TA Proposal).⁷

II. DISCUSSION

4. We seek comment on the TA Proposal for 800 MHz band reconfiguration in Puerto Rico, and on potential alternatives. As in other areas of the U.S., our goal is to separate—to the greatest extent possible—public safety and other non-cellular licensees from licensees that employ cellular technology in the 800 MHz band. We request comments from interested parties and the public on each of the elements of the TA Proposal discussed below.

5. *Expansion Band.* Under the TA Proposal, the Puerto Rico band plan would be the same as the band plan for non-border regions of the United States (US Band Plan), except that the Expansion Band would be expanded by 0.5 MHz in bandwidth through elimination of the lower 0.5 MHz portion of the Guard Band.⁸ The TA determined that extending the Expansion Band by 0.5 MHz would best fulfill the Commission's requirements.⁹ For example, under the TA Proposal, all non-ESMR incumbents can be accommodated in the non-ESMR portion of the band and no incumbent that has been reconfigured will encounter additional reconfiguration.¹⁰ The TA submits that this extension would not only provide non-ESMR licensees with sufficient spectrum, but would also provide the spectrum required to allow licensees to be cleared from the remaining portion of the Guard Band, resolve combiner spacing issues

⁵ 800 MHz Second MO&O, 22 FCC Rcd at 10479-10480 ¶ 33.

⁶ *Id.*

⁷ Proposal for Adoption of an Alternative 800 MHz Band Plan and Negotiation Timetable for the Puerto Rico and U.S. Virgin Islands Economic Area, WT Docket 02-55, filed October 19, 2007 (TA Proposal). In the TA Proposal, the TA included the U.S. Virgin Islands (USVI) as well as Puerto Rico in its band plan proposal. The TA noted that the USVI and Puerto Rico are in the same EA (EA 174) and have the same EA licensees, and that the USVI faces a similar shortage of ESMR spectrum as Puerto Rico. TA Proposal at 11. The TA also noted that as in Puerto Rico, there are high-site incumbents in the USVI that will need to be relocated from the ESMR Band. *Id.* Accordingly, the TA proposed modifying the band plan for the USVI to conform to the band plan for Puerto Rico. *Id.* PSHSB, however, lacks delegated authority to act on this aspect of the TA Proposal, because the Commission expressly excluded the USVI from its delegation in the *Second Memorandum Opinion and Order, 800 MHz Second MO&O, 22 FCC Rcd at 10479, n.72.* Therefore, this issue must be addressed separately by the Commission. The Bureau does have delegated authority, however, to grant waivers of the June 26, 2008, deadline. Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Third Memorandum Opinion and Order, 22 FCC Rcd 17209, 17223 ¶ 48 (2007).* Therefore, we waive the June 26, 2008 deadline as it applies to 800 MHz licensees in the USVI pending Commission action on the TA's proposed USVI band plan.

⁸ A diagram of the proposed Puerto Rico band plan is provided in Appendix B.

⁹ TA Proposal at 4.

¹⁰ *Id.*

and provide some future system expansion.¹¹ The TA adds that this extension would still preserve a one MHz separation between ESMR systems and existing public safety licensees that might elect to remain in the Expansion Band.¹² Thus, the Puerto Rico Expansion Band would be located at 815-816.5/860-861.5 MHz, and the Puerto Rico Guard Band would be located at 816.5-817/861.5-862 MHz.¹³ We seek comment on this proposal.

6. *Relocation of Incumbents.* Consistent with the US Band Plan, all Puerto Rico incumbents in the 806-809/851-854 MHz (Channel 1-120) band segment would be relocated to comparable spectrum in the Interleaved, Expansion, or ESMR Band, depending on their eligibility.¹⁴ All NPSPAC licensees would be relocated from their 821-824/866-869 MHz channel assignments to channel assignments 15 MHz downward in the 806-809/851-854 MHz band segment.¹⁵ All non-ESMR incumbents that are not public safety entities and currently operating on frequencies in the Expansion Band as extended would remain on their current frequencies.¹⁶ Licensees in the smaller Guard Band would be cleared.¹⁷ Additionally, all non-ESMR incumbents between 817-821/862-866 MHz will be relocated to the non-ESMR band.¹⁸ We seek comment on this proposal.

7. *Assignment of Frequencies in ESMR Band.* Under the TA Proposal, the Puerto Rico ESMR Band would remain in the same channels as in the U.S. Band Plan.¹⁹ However, the TA has determined that there will not be sufficient capacity to accommodate fully all ESMR and ESMR-eligible licensees in the Puerto Rico ESMR Band.²⁰ The TA Proposal provides that the TA will apportion the Puerto Rico ESMR Band (817-824/862-869 MHz) in accordance with the provisions set forth by the Commission's *800 MHz Second MO&O*.²¹ As described above, if there is insufficient spectrum in the ESMR band to accommodate all ESMRs and ESMR-eligibles, Sprint must surrender spectrum on a *pro rata* basis to the other licensees to meet the shortfall. If insufficient spectrum remains after Sprint has surrendered spectrum, *pro rata* apportionment may be used to determine each licensee's share of the ESMR band.²² We seek comment on this proposal.

8. *Timetable.* The TA proposes that all Puerto Rico licensees would be subject to a single 90-day mandatory negotiation period, after which any licensee that fails to negotiate a Frequency Reconfiguration Agreement with Sprint would enter TA-sponsored mediation.²³ We seek comment on this proposal. We also seek comment on the sequence and timing of rebanding activity in Puerto Rico

¹¹ *Id.* at 4-5. Notwithstanding the proximity to the ESMR band, the TA notes that licensees in the Expansion Band receive full interference protection from ESMR operations. *Id.* at 5 and 8.

¹² *Id.* at 5 and 8. The TA adds that there would also remain a 0.5 MHz Guard Band of separation between the Expansion Band and the ESMR Band to provide better interference protection to other licensees in the Expansion Band. *Id.* at 5.

¹³ TA Proposal at 8.

¹⁴ *Id.* at 7.

¹⁵ *Id.*

¹⁶ *Id.* at 8.

¹⁷ *Id.* at 5.

¹⁸ *Id.* at 10.

¹⁹ *Id.*

²⁰ *Id.* at 3.

²¹ *Id.*

²² See ¶ 2, *supra*.

²³ TA Proposal at 11-12.

once a final band plan is adopted. It is our intent to proceed with rebanding in Puerto Rico as quickly as is feasible consistent with the Commission's goals in this proceeding.²⁴ We anticipate that rebanding will need to proceed in stages similar to Stage 1 and Stage 2 in the rest of the U.S., but the staging sequence must also take into account the large number of site-licensed systems that will need to be relocated out of the ESMR band to non-ESMR channels. We seek comment on this staged approach, the amount of time that should be allotted for each stage, and whether any adjustments to this approach are needed due to the unique disposition of 800 MHz licensees in Puerto Rico.

III. PROCEDURAL MATTERS

A. Comment Filing Procedures

9. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All filings related to this Second Further Notice of Proposed Rulemaking (Second FNPRM) should refer to **WT Docket No. 02-55**. 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. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998).

- **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.
 - For ECFS filers, if multiple dockets or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. 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. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

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, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E.,

²⁴ Six NPSAC licensees in Puerto Rico (Bayamon Municipal Government, Municipality of Guaynabo, Puerto Rico Police Communication Division, Puerto Rico Highway and Transportation Authority, Puerto Rico Administration of Courts, and Toa Baja Municipal Government) filed requests for waiver of the June 26, 2008 deadline. Because the Commission previously suspended the rebanding timetable for Puerto Rico, *800 MHz Second MO&O*, 22 FCC Rcd at 10479-10480 ¶ 33, we dismiss these requests as moot. We will establish the rebanding timetable for these licensees upon adoption of the revised Puerto Rico Band plan.

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 must be addressed to 445 12th Street, S.W., Washington, DC 20554.

10. Comments and reply comments and any other filed documents in this matter may be obtained from Best Copy and Printing, Inc., in person at 445 12th Street, S.W., Room CY-B402, Washington, DC 20554, via telephone at (202) 488-5300, via facsimile at (202) 488-5563, or via e-mail at FCC@BCPIWEB.COM. The pleadings will be also available for public inspection and copying during regular business hours in the FCC Reference Information Center, Room CY-A257, 445 12th Street, S.W., Washington, DC 20554, and through the Commission's Electronic Filing System (ECFS) accessible on the Commission's Web site, <http://www.fcc.gov/cgb/ecfs>.

11. 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).

12. Commenters who file information that they believe should be withheld from public inspection may request confidential treatment pursuant to Section 0.459 of the Commission's rules. Commenters should file both their original comments for which they request confidentiality and redacted comments, along with their request for confidential treatment. Commenters should not file proprietary information electronically. *See Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, Report and Order*, 13 FCC Rcd 24816 (1998), *Order on Reconsideration*, 14 FCC Rcd 20128 (1999). Even if the Commission grants confidential treatment, information that does not fall within a specific exemption pursuant to the Freedom of Information Act (FOIA) must be publicly disclosed pursuant to an appropriate request. *See* 47 C.F.R. § 0.461; 5 U.S.C. § 552. We note that the Commission may grant requests for confidential treatment either conditionally or unconditionally. As such, we note that the Commission has the discretion to release information on public interest grounds that does fall within the scope of a FOIA exemption.

B. Initial Regulatory Flexibility Analysis

13. Pursuant to the Regulatory Flexibility Act (RFA),²⁵ the Bureau has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the proposals considered in this Second FNPRM. The text of the IRFA is set forth in Appendix A. Written public comments are requested on this IRFA. Comments must be filed in accordance with the same filing deadlines for comments on the Second FNPRM, and they should have a separate and distinct heading designating them as responses to the IRFA. The Bureau will send a copy of the Second FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.²⁶

C. Initial Paperwork Reduction Act of 1995 Analysis

14. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain

²⁵ *See* 5 U.S.C. § 603. The RFA has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

²⁶ 5 U.S.C. § 603(a).

any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).

IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 332, that this Second Further Notice of Proposed Rulemaking IS ADOPTED.

16. IT IS FURTHER ORDERED that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Second Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

17. 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 this Second Further Notice of Proposed Rulemaking on August 8, 2008, and reply comments on August 22, 2008.

FEDERAL COMMUNICATIONS COMMISSION

Derek K. Poarch
Chief
Public Safety and Homeland Security Bureau

APPENDIX A

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),²⁷ the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (Notice). 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 first page of the Notice. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).²⁸ In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.²⁹

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

2. In this *Second Further Notice of Proposed Rulemaking (Second FNPRM)*, we consider the 800 MHz Transition Administrator's (TA) proposal to reconfigure the band plan for Puerto Rico. Consistent with the US Band Plan, all Puerto Rico incumbents in the 806-809/851-854 MHz (Channel 1-120) band segment would be relocated to comparable spectrum in the Interleaved, Expansion, or ESMR Band, depending on their eligibility. All NPSPAC licensees would be relocated from their 821-824/866-869 MHz channel assignments to channel assignments 15 MHz downward in the 806-809/851-854 MHz band segment. Under the TA Proposal, the Puerto Rico band plan would be the same as the band plan for non-border regions of the United States (US Band Plan), except that the Expansion Band would be expanded by 0.5 MHz in bandwidth through elimination of the lower 0.5 MHz portion of the Guard Band. Under the TA Proposal, the ESMR Band in EA 174 would remain in the same channels as in the U.S. Band Plan. The TA has determined that there will not be sufficient capacity to accommodate fully all ESMR and ESMR-eligible licensees in the ESMR Band. The TA Proposal provides that the TA will apportion the Puerto Rico ESMR Band (817-824/862-869 MHz) in accordance with the provisions set forth by the Commission the *800 MHz Second Memorandum Opinion and Order*. The TA proposes that all Puerto Rico licensees would be subject to a single 90-day mandatory negotiation period, after which any licensee that fails to negotiate a Frequency Reconfiguration Agreement with Sprint Nextel would enter TA-sponsored mediation. The reconfiguration of the 800 MHz band in the Puerto Rico is in the public interest because it will allow the Commission to eliminate interference in these regions to public safety and other land mobile communication systems. Interference is eliminated by separating—to the greatest extent possible—public safety and other non-cellular licensees from licensees that employ cellular technology in the 800 MHz band. In that connection, it is our intent to proceed with rebanding in Puerto Rico as quickly as is feasible consistent with the Commission's goals in this proceeding.

B. Legal Basis

3. The legal basis for any action that may be taken pursuant to this Notice is contained in Sections 4(i), 303(f) and (r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(f) and (r), and 332.

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

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of

²⁷ 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).

²⁸ See 5 U.S.C. § 603(a).

²⁹ See *id.*

the number of small entities that may be affected by the proposed rules.³⁰ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”³¹ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.³² 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).³³

5. A small organization is generally any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.³⁴ Nationwide, as of 1992, there were approximately 275,801 small organizations.³⁵ A “small governmental jurisdiction” generally means “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.”³⁶ As of 1992, there were approximately 85,006 such jurisdictions in the United States.³⁷ This number included 38,978 counties, cities, and towns; of these, 37,566, or ninety-six percent, have populations of fewer than 50,000.³⁸ The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that that 81,600 (ninety-one percent) are small entities. Below, we further describe and estimate the number of small entities - - applicants and licensees - - that may be affected by the proposals, if adopted, in this Notice.

6. *Public Safety Radio Licensees.* Public safety licensees who operate 800 MHz systems in the Puerto Rico region would be required to relocate their station facilities according to the band plan proposed in this *Second FNPRM*. As indicated above, all governmental entities with populations of less than 50,000 fall within the definition of a small entity.³⁹

7. *Business, I/ILT, and SMR licensees.* Business and Industrial Land Transportation (B/ILT) and Special Mobile Radio (SMR) licensees who operate 800 MHz systems in the Puerto Rico region would be required to relocate their station facilities according to the band plans proposed in this *Second FNPRM*. Neither the Commission nor the SBA has developed a definition of small businesses directed specifically toward these licensees.

8. *ESMR Licensees.* Enhanced Specialized Mobile Radio (ESMR) licensees and ESMR-eligible licensees who operate 800 MHz systems in the Puerto Rico region would be required to relocate their station facilities according to the band plans proposed in this *Second FNPRM*. Neither the Commission nor the SBA has developed a definition of small businesses directed specifically toward

³⁰ 5 U.S.C. §§ 603(b)(3), 604(a)(3).

³¹ 5 U.S.C. § 601(6).

³² 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 terms which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

³³ 15 U.S.C. § 632.

³⁴ *Id.* § 601(4).

³⁵ U.S. Department of Commerce, Bureau of the Census, *1992 Economic Census*, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

³⁶ 5 U.S.C. § 601(5).

³⁷ U.S. Department of Commerce, Bureau of the Census, *1992 Census of Governments*.

³⁸ *Id.*

³⁹ 5 U.S.C. § 601(5).

these licensees.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

9. The *Second FNPRM* does not propose a rule that will entail additional reporting, recordkeeping, and/or third-party consultation or other compliance efforts.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

10. The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) exemption from coverage of the rule, or any part thereof, for small entities.”⁴⁰

11. The Puerto Rico market presents a unique situation that is distinct from other markets. Sprint holds considerably less spectrum in Puerto Rico than it does elsewhere, and there are several other licensees who have acquired significant EA license holdings in Puerto Rico at auction and seek to operate as ESMRs. In addition, Puerto Rico has numerous site-based incumbents that will need to be relocated to the non-ESMR block. Thus, an alternative band plan is appropriate here. Accordingly the Commission provided the 800 MHz Transition Administrator (TA) with specific criteria and directed the TA to propose an alternative band plan, including, if necessary, a *pro rata* distribution of ESMR spectrum. At the time the Commission adopted these criteria, it had no basis for anticipating that any future decision by the TA in either proposing an alternative band plan or proposing a *pro rata* distribution would adversely affect any small entities. The TA proposes to apportion the Puerto Rico Band Plan consistent with these criteria.

12. To the extent that adoption of the TA’s Puerto Rico Band Plan may impose an economic impact in Puerto Rico on relocating non-ESMR and site-based incumbents, including public safety, to the non-ESMR band, that impact will be borne by Sprint because Sprint must pay the costs of 800 MHz band reconfiguration. Under Small Business Administration criteria, Sprint is a large entity. Further, there is no evidence in the record that non-Sprint licensees in the Puerto Rico market, including small wireless cellular, public safety, governmental entities or other wireless entities, would suffer adverse economic consequences. Indeed, these licensees are likely to enjoy several benefits, including improved interference protection as a result of band reconfiguration.

13. Additionally, while apportioning spectrum in the ESMR band may result in a reduction in ESMR spectrum availability, these reductions can be accommodated when a licensee employs more spectrum-efficient technologies and higher-quality digital technologies. ESMR and ESMR-eligible licensees are also likely to receive a number of benefits as a result of modifying the Puerto Rico Band Plan. For example, as a consequence of 800 MHz band reconfiguration ESMR-eligible licensees will be able to relocate EA and site-based facilities to the ESMR band that are currently located below the ESMR band. If these facilities are relocated and integrated into an ESMR band system, these licensees will be relieved of the cost and limitations associated with abating interference created by ESMR stations being interleaved with high-site systems used by public safety and others in the non-ESMR portion of the band, while taking advantage of spectrally efficient technologies.

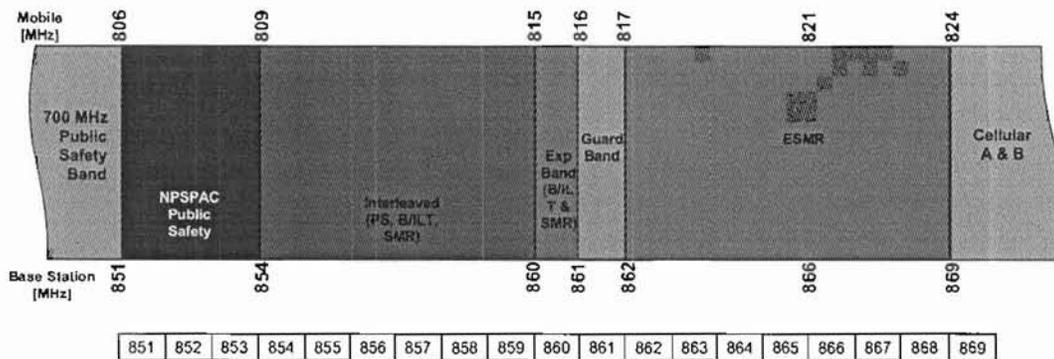
⁴⁰ 5 U.S.C. §§ 603(c)(1)-(c)(4).

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

14. None.

APPENDIX B

Standard U.S. 800 MHz
Post Reconfiguration Band Plan



Proposed Puerto Rico Alternative Band Plan

