

Dated: June 28, 2004.

**Susan B. Hazen,**

*Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.*

■ Therefore, 40 CFR parts 152, 154, 158, 159, 168, and 178 are amended as follows:

#### **PART 152—[AMENDED]**

■ 1. The authority citation for part 152 continues to read as follows:

**Authority:** 7 U.S.C. 136–136y; Subpart U is also issued under 31 U.S.C. 9701.

#### **§§152.55 and 152.414 [Amended]**

■ 2. Sections 152.55 and 152.414 are amended by changing the phrase “TS–767C” to read “7505C”.

#### **PART 154—[AMENDED]**

■ 3. The authority citation for part 154 continues to read as follows:

**Authority:** 15 U.S.C. 136a, d, and w.

■ 4. Section 154.15 is amended by revising paragraph (f)(1)(ii) to read as follows:

#### **§ 154.15 Docket for the Special Review.**

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(ii) The docket and index will be available at the Program Management and Support Division, in Rm. 236, Crystal Mall #2, 1801 South Bell St., Arlington, VA, from 8 a.m. to 4 p.m. Monday through Friday, excluding legal holidays.

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#### **PART 158—[AMENDED]**

■ 5. The authority citation for part 158 continues to read as follows:

**Authority:** 7 U.S.C. 136–136y.

■ 6. Section 158.45 is amended by revising paragraph (d) to read as follows:

#### **§ 158.45 Waivers.**

\* \* \* \* \*

(d) *Availability of waiver decisions.* Agency decisions under this section granting waiver requests will be available to the public at the Office of Pesticide Programs Reading Room, Rm. 236, Crystal Mall #2, 1801 South Bell St., Arlington, VA 22202 from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. Any person may obtain a copy of any waiver decision by written request in the manner set forth in 40 CFR part 2.

#### **PART 159—[AMENDED]**

■ 7. The authority citation for part 159 continues to read as follows:

**Authority:** 7 U.S.C. 136–136y.

■ 8. Section 159.156 is amended by revising paragraph (b) to read as follows:

#### **§ 159.156 How information must be submitted.**

\* \* \* \* \*

(b) Be delivered in person or by courier service or by such other methods as the Agency deems appropriate to the following address, or to such other address as the Agency may subsequently specify in writing: Document Processing Desk-6(a)(2), Office of Pesticide Programs, Room 266A, Crystal Mall #2, 1801 South Bell St., Arlington, Virginia 22202.

\* \* \* \* \*

#### **PART 168—[AMENDED]**

■ 9. The authority citation for part 168 continues to read as follows:

**Authority:** 7 U.S.C. 136–136y.

■ 10. Section 168.65 is amended by revising paragraph (b)(1)(iii)(A)(2)(i) and (iii) to read as follows:

#### **§ 168.65 Pesticide export label and labeling requirements.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iii) \* \* \*

(A) \* \* \*

(2) \* \* \*

(i) The change in color must result only from the addition of a dye included on the list of the chemicals exempted from the requirement of a tolerance at 40 CFR 180.910, 180.920, 180.930, and 180.950, and the dye must not be a List 1 inert. (List 1 inerts are those inerts which the Agency has identified as presenting toxicological concerns. The classification of inerts is explained in EPA's Policy Statement on Inert Ingredients in Pesticide Products, which can be obtained from the Office of Pesticide Programs public docket, Room 119, Crystal Mall # 2, 1801 South Bell St., Arlington, Virginia 22202.)

\* \* \* \* \*

(iii) The change in fragrance must not result in a pesticide product containing a food or food-like fragrance. (See “Food Fragrances in Pesticide Formulations,” EPA's Office of Pesticide Programs Policy and Criteria Notice number 2155.1, November 20, 1975 which can be obtained from the Office of Pesticide Programs public docket, Room 119, Crystal Mall #2, 1801 South Bell St., Arlington, Virginia 22202.)

\* \* \* \* \*

#### **PART 178—[AMENDED]**

■ 11. The authority citation for part 178 continues to read as follows:

**Authority:** 7 U.S.C. 346a, 348, 371(a); Reorg. Plan No. 3 of 1970.

■ 12. Section 178.25 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

#### **§ 178.25 Form and manner of submission of objections.**

\* \* \* \* \*

(b) \* \* \*

(1) Mailed submissions should be addressed to: Office of the Hearing Clerk (1900L), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

(2) For personal delivery, the Office of the Hearing Clerk is located at: Suite 350, 1099 14th St., NW., Washington, DC.

[FR Doc. 04–15059 Filed 6–29–04; 1:40 p.m.]

BILLING CODE 6560–50–S

### **FEDERAL COMMUNICATIONS COMMISSION**

#### **47 CFR Parts 1, 27, 90, and 95**

[WT Docket No. 02–8; FCC 03–204]

#### **License Services in the 216–220 MHz, 1390–1395 MHz, 1427–1429 MHz, 1429–1432 MHz, 1432–1435 MHz, 1670–1675 MHz, and 2385–2390 MHz Government Transfer Bands**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document the Commission addresses three petitions for reconsideration and two petitions for clarification of the *Report and Order* in this proceeding to govern the licensing of 27 MHz of electromagnetic spectrum in the 216–220 MHz, 1390–1395 MHz, 1427–1429 MHz, 1429–1432 MHz, 1670–1675 MHz, and 2385–2390 MHz bands, which were reallocated for non-Government use. The Commission also on its own motion corrects certain rules adopted in the *Report and Order*, and adopts further rule amendments codifying decisions made in the *Report and Order*.

**DATES:** Effective August 30, 2004.

#### **FOR FURTHER INFORMATION CONTACT:**

*Technical information:* Brian Marengo, [brian.marengo@fcc.gov](mailto:brian.marengo@fcc.gov), Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau (202) 418–0680, or TTY (202) 418–7233.

*Legal information:* Scot Stone, [scot.stone@fcc.gov](mailto:scot.stone@fcc.gov), Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau (202) 418–0680, or TTY (202) 418–7233.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's Order, FCC 03-204, adopted on August 7, 2003, and released on August 19, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: [www.fcc.gov](http://www.fcc.gov). Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365 or at [bmillin@fcc.gov](mailto:bmillin@fcc.gov).

1. The Order (a) declines to require that each 1392-1395 MHz band station register with the American Society of Health Care Engineering of the American Hospital Association (ASHE) upon initiating operations, as such a requirement would be contrary to the regulatory flexibility that is inherent with a geographic area license; (b) instructs ASHE and the Land Mobile Communications Council to present a joint coordination plan for the 1427-1432 MHz band, which is used by both Wireless Medical Telemetry Service (WMTS) and site-based non-medical telemetry, within one year of the release date of the Order (c) declines to impose coordination procedures on the 1432-1435 MHz band licensees that operate within a hundred miles of 1435-1525 MHz flight test sites; and (d) modifies the channel plans that were adopted in the *Report and Order* for the 217-220 MHz and 1427-1432 MHz bands so that licensees can employ 25 kHz or 50 kHz bandwidths with center frequencies that require no more than three decimal places of accuracy (e.g., 217.025 MHz), rather than five to six decimal places of accuracy (e.g., 217.015625 MHz).

## I. Procedural Matters

### A. Paperwork Reduction Act

3. The Order does not contain any new or modified information collection.

### B. Supplemental Regulatory Flexibility Analysis

4. As required by the Regulatory Flexibility Act ("RFA"), a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the *Report and Order*, 67 FR 41847. In view of the fact that we have adopted further rule amendments in this Order, we have included this Supplemental Final Regulatory Flexibility Analysis

(SFRFA). This present SFRFA conforms to the RFA.

### Need for, and Objectives of the Order

5. In this Order, on our own motion, we correct certain rules that were adopted in the *Report and Order*, and adopt further rule amendments that the Commission inadvertently failed to adopt in the *Report and Order*. In the *Report and Order*, the Commission adopted rules for the licensing and operation of fixed and mobile services in the 216-220 MHz, 1390-1395 MHz, 1427-1429.5 MHz, 1429.5-1432 MHz, 1432-1435 MHz, 1670-1675 MHz and 2385-2390 MHz bands pursuant to the provisions of the Communications Act of 1934, as amended, the Omnibus Budget Reconciliation Act of 1993 (OBRA-93), and the Balanced Budget Act of 1997 (BBA-97). The transfer of these bands to non-Government use should enable the development of new technologies and services, provide additional spectrum relief for congested private land mobile frequencies, and fulfill our obligations as mandated by Congress to assign this spectrum for non-Government use.

6. The *Report and Order* established competitive bidding rules and small business definitions for the unpaired 1390-1392 MHz, 1670-1675 MHz, and 2385-2390 MHz bands, and the paired 1392-1395 MHz and 1432-1435 MHz bands similar to those applied to the WCS 2.3 GHz band and the 700 MHz Guard Bands. Consistent with the Commission's responsibility under section 309(j) to promote opportunities for, and disseminate licenses to, a wide variety of applicants, the *Report and Order* adopted small business size standards and bidding preferences for qualifying bidders that will provide such bidders with opportunities to compete successfully against large, well-financed entities. Specifically, with respect to the aforementioned bands, we define a "small business" as any entity with average annual gross revenues for the three preceding years not exceeding \$40 million, and a "very small business" as any entity with average annual gross revenues for the three preceding years not exceeding \$15 million. Correspondingly, the Commission adopted a bidding credit of 15 percent for "small businesses" and a bidding credit of 25 percent for "very small businesses." This bidding credit structure is consistent with the Commission's standard schedule of bidding credits, which may be found at § 1.2110(f)(2) of the Commission's rules.

### Summary of Significant Issues Raised by Public Comments in Response to the FRFA

7. We received no comments in response to the FRFA in the *Report and Order*. We continue to believe that the policies and rules adopted in this *Report and Order* will better enable small entities to compete for licenses in the unpaired 1390-1392 MHz, 1670-1675 MHz, and 2385-2390 MHz bands, and the paired 1392-1395 MHz and 1432-1435 MHz bands.

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

8. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act. A small business concern is one which: (i) Is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the SBA. Nationwide, as of 1992, there were approximately 275,801 small organizations. "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." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (ninety-one percent) are small entities.

9. *Wireless Service Providers*. The SBA has developed a definition for small business within the two separate categories of cellular and other wireless telecommunications or paging. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's *Telephone Trends Report* data, 1,495 companies reported that they were engaged in the provision of wireless service. Of these 1,495 companies, 989 reported that they have 1,500 or fewer employees and 506 reported that, alone or in combination with affiliates, they have more than 1,500 employees. We do

not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireless service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 989 or fewer small wireless service providers that may be affected by the rules adopted in this proceeding. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the rules adopted in this proceeding. Except as noted, these services are associated with the above SBA small business size standard.

10. With respect to the 1390–1392 MHz band, the Commission will award a single 2 MHz license in each of fifty-two Major Economic Areas (MEAs). For the 1670–1675 MHz, and 2385–2390 MHz bands, the Commission will award a single nationwide license in each band. For the paired 1392–1395 MHz and 1432–1435 MHz bands, the Commission will award a pair of 1.5 MHz licenses in each of six Economic Area Groupings (EAGs). For the 1432–1435 MHz band, the Commission will award licenses on a site by-site basis. The Commission does not yet know how many applicants or licensees in any of these bands will be small entities.

11. Existing services in other bands include entities that might be affected by the rules, either as existing licensees or potential applicants or licensees. Incumbent services in the 1427–1429.5 MHz and 1429.5–1432 MHz bands include wireless medical telemetry (WMTS) and general telemetry.

12. *Telemetry.* Incumbent non-medical telemetry operators in the 1427–1429.5 MHz and 1429.5–1432 MHz bands include Itron, Inc., Pueblo Service Company of Colorado and E Prime, Inc., and large manufacturers such as Deere and Company, Caterpillar, and General Dynamics. None of these licensees are likely to be small businesses. Itron, Inc. is the primary user of the 1427–1429.5 MHz and 1429.5–1432 MHz bands. Itron, Inc., with an investment of \$100 million in equipment development, is not likely to be a small business. One licensee, Zytex, a manufacturer of high-speed telemetry systems, may be a small business. The Commission does not yet know how many applicants or licensees in these bands will be small entities.

13. *WMTS.* Users of medical telemetry are hospitals and medical care facilities, some of which are likely to be small businesses. The broad category of Hospitals consists of the following

categories and the following small business providers with annual receipts of \$29 million or less: General Medical and Surgical Hospitals, Psychiatric and Substance Abuse Hospitals, and Specialty Hospitals. For all these health care providers, census data indicate that there is a combined total of 330 firms that operated in 1997, of which 237 or fewer had revenues of less than \$25 million. An additional 45 firms had annual receipts of \$25 million to \$49.99 million. We therefore estimate that most Hospitals are small, given SBA's size categories.

14. The broad category of Nursing and Residential Care Facilities consists of the following categories and the following small business size standards. The category of Nursing and Residential Care Facilities with annual receipts of \$6 million or less consists of: Residential Mental Health and Substance Abuse Facilities, Homes for the Elderly, and Other Residential Care Facilities. The category of Nursing and Residential Care Facilities with annual receipts of \$8.5 million or less consists of Residential Mental Retardation Facilities. The category of Nursing and Residential Care Facilities with annual receipts of less than \$11.5 million consists of: Nursing Care Facilities and Continuing Care Retirement Communities. For all of these health care providers, census data indicate that there is a combined total of 18,011 firms that operated in 1997. Of these, 16,165 or fewer firms had annual receipts of below \$5 million. In addition, 1,205 firms had annual receipts of \$5 million to \$9.99 million, and 450 firms had receipts of \$10 million to \$24.99 million. We therefore estimate that a great majority of Nursing and Residential Care Facilities are small, given SBA's size categories.

#### Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

15. The Order imposes no new reporting, recordkeeping or other compliance requirements not previously adopted in this proceeding.

#### Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

16. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification,

consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (iii) the use of performance, rather than design standards; and (iv) an exemption from coverage of the rule, or any part thereof, for small entities.

17. Regarding our affirmation in the Order of the Commission's decision in the *Report and Order* to require frequency coordination for primary and secondary telemetry operations in the 1427–1429.5 MHz and 1429.5–1432 MHz bands, we do not anticipate any adverse impact on small entities. Although there are certain costs associated with filing an application through an FCC-certified frequency coordinator, on balance, the benefits of frequency coordination, especially the avoidance of harmful interference, outweigh any costs. An alternative to this approach would have been to not require frequency coordination, but this is unacceptable because of high congestion, primary incumbent operations that must be protected, and the fact that licensees in these bands must share frequencies. Our amendment to the channel plans for telemetry operations in the 217–220 MHz and 1427–1432 MHz bands will benefit small entities by requiring less precise, and thus, less expensive equipment.

#### Report to Congress

18. The Commission will send a copy of the Order, including this SFRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Order, including this SFRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Order and SFRFA (or summaries thereof) will also be published in the **Federal Register**.

### III. Ordering Clauses

19. Accordingly, parts 1, 27, 90, and 95 of the Commission's Rules are amended effective August 30, 2004.

20. Pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 405, and § 1.429 of the Commission's Rules, 47 CFR 1.429, that the petition for reconsideration filed by Aerospace and Flight Test Radio Coordinating Council on July 22, 2002 is denied in part to the extent set forth above.

21. Pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 405, and § 1.429 of the Commission's Rules, 47 CFR 1.429, that the petition for reconsideration filed by

the American Society for Health Care Engineering of the American Hospital Association on July 22, 2002 is denied.

22. Pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 405, and § 1.429 of the Commission's Rules, 47 CFR 1.429, that the petition for reconsideration filed by Celtronix Telemetry, Inc. on July 22, 2002 is granted to the extent set forth above.

23. Pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 405, that the petition for clarification filed by Final Analysis Communication Services, Inc. on July 22, 2002 is partially granted and partially denied to the extent set forth above.

24. Pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 405, and § 1.429 of the Commission's Rules, 47 CFR 1.429, that the petition for reconsideration filed by Itron, Inc. on July 22, 2002 is dismissed.

25. Pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 405, that the petition for clarification filed by the Ornithological Council on November 5, 2002 is granted.

#### List of Subjects

##### 47 CFR Part 1

Administrative practice and procedure, Radio.

##### 47 CFR Part 27

Communications common carriers, Radio.

##### 47 CFR Part 90

Communications equipment, Radio, Reporting and recordkeeping requirements.

##### 47 CFR Part 95

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

#### Rule Changes

■ For the reasons discussed in the preamble, 47 CFR parts 1, 27, 90, and 95 are amended as follows:

#### PART 1—PRACTICE AND PROCEDURE

■ 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 1.1307(b)(1) is amended by revising the entry in Table 1 for the "Wireless Communications Service (Part 27)" to read as follows:

**§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assignments (EAs) must be prepared.**

*	*	*	*	*
(b)	*	*	*	*
(1)	*	*	*	*

TABLE 1.—TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION

Service (title 47 CFR rule part)	Evaluation required if:
<div style="text-align: center;">* * * * *</div> Wireless Communications Service (Part 27) .....	<div style="text-align: center;">* * * * *</div> (1) for the 1390–1392 MHz, 1392–1395 MHz, 1432–1435 MHz 1670–1675 MHz and 2385–2390 MHz bands: Non-building-mounted antennas: Height above ground level to lowest point of antenna < 10 m and total power of all channels > 2000 W ERP (3280 W EIRP). Building-mounted antennas: Total power of all channels > 2000 W ERP (3280 W EIRP). (2) for the 698–746 MHz, 746–764 MHz, 776–794 MHz, 2305–2320 MHz, and 2345–2360 MHz bands. Total power of all channels > 1000 W ERP (1640 W EIRP).
<div style="text-align: center;">* * * * *</div>	<div style="text-align: center;">* * * * *</div>

#### PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

■ 3. 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.

■ 4. Section 27.11 is amended by revising paragraphs (e) through (h) to read as follows:

##### § 27.11 Initial authorization.

\* \* \* \* \*

(e) *1390–1392 MHz band.* Initial authorizations for the 1390–1392 MHz band shall be for 2 megahertz of spectrum in accordance with § 27.5(d). Authorizations will be based on Major

Economic Areas (MEAs), as specified in § 27.6(d).

(f) *The paired 1392–1395 MHz and 1432–1435 MHz bands.* Initial authorizations for the paired 1392–1395 MHz and 1432–1435 MHz bands shall be for 3 megahertz of paired spectrum in accordance with § 27.5(e). Authorization for Blocks A and B will be based on Economic Areas Groupings (EAGs), as specified in § 27.6(e).

(g) *1670–1675 MHz band.* Initial authorizations for the 1670–1675 MHz band shall be for 5 megahertz of spectrum in accordance with § 27.5(f). Authorizations will be on a nationwide basis.

(h) *2385–2390 MHz band.* Initial authorizations for the 2385–2390 MHz band shall be for 5 megahertz of spectrum in accordance with § 27.5(g).

Authorizations will be on a nationwide basis.

\* \* \* \* \*

#### PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 5. The authority citation for part 90 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).

##### § 90.175 [Amended]

■ 6. Section 90.175 is revised by removing paragraph (j)(13) and redesignating paragraphs (j)(14) through (17) as (j)(13) through (16).

■ 7. Section 90.209 is amended by revising the entry for "216–2205" in the

table in paragraph (b)(5) to read as follows:

**§ 90.209 Bandwidth limitations.**

(b) \* \* \*

(5) \* \* \*

**STANDARD CHANNEL SPACING/BANDWIDTH**

Frequency band (MHz)	Channel spacing (kHz)	Authorized bandwidth (kHz)
216–2205 .....	6.25	20/11.25/6 <sup>5</sup>

<sup>5</sup> Licensees will be allowed to combine contiguous channels up to 50 kHz, and more than 50 kHz only upon a showing of adequate justification per § 90.259(b)(10).

\* \* \* \* \*

■ 8. Section 90.259 is amended by revising paragraphs (a)(7), (a)(8), (b)(7), (b)(9), and (c)(3) to read as follows:

**§ 90.259 Assignment and use of frequencies in the bands 216–220 MHz and 1427–1432 MHz.**

(a) \* \* \*

(7) Frequencies will be assigned with a 6.25 kHz, 12.5 kHz, 25 kHz or 50 kHz channel bandwidth. Frequencies may be assigned with a channel bandwidth

exceeding 50 kHz only upon a showing of adequate justification.

(8) Assignable 6.25 kHz channels will occur in increments of 6.25 kHz from 217.00625 MHz to 219.99375 MHz. Assignable 12.5 kHz channels will occur in increments of 12.5 kHz from 217.0125 MHz to 219.9875 MHz. Assignable 25 kHz channels will occur in increments of 25 kHz from 217.025 MHz to 219.975 MHz. Assignable 50 kHz channels will occur in increments

of 50 kHz from 217.025 MHz to 219.975 MHz.

\* \* \* \* \*

(b) \* \* \*

(7) For primary operations base, mobile, operational fixed and temporary fixed operations are permitted.

(i) At the locations specified in paragraph (b)(4) of this section, primary operations are performed in the 1427–1429 MHz and 1431.5–1432 MHz bands. The maximum ERP limitations are as follows:

Operation	Frequency range (MHz)			
	1427–1428	1428–1428.5	1428.5–1429	1431.5–1432
Fixed (watts) .....	61.1	6.11	0.611	0.611
Mobile (watts) .....	0.611	0.611	0.015	0.015
Temporary fixed (watts) .....	0.611	0.611	0.611	0.611

(ii) For all other locations, primary operations are performed in the 1429.5–

1432 MHz band. The maximum ERP limitations are as follows:

Operation	Frequency range (MHz)			
	1429.5–1430	1430–1430.5	1430.5–1431.5	1431.5–1432
Fixed (watts) .....	0.611	0.611	6.11	61.1
Mobile (watts) .....	0.015	0.611	0.611	0.611
Temporary fixed (watts) .....	0.611	0.611	0.611	0.611

\* \* \* \* \*

(9) Assignable frequencies occur in increments of 12.5 kHz from 1427.00625 MHz to 1431.99375 MHz.

\* \* \* \* \*

(c) \* \* \*

(3) Except for the transmissions that are permitted under § 90.248(f) of this chapter, airborne use is prohibited.

\* \* \* \* \*

**PART 95—PERSONAL RADIO SERVICES**

■ 9. The authority citation for part 95 continues to read as follows:

**Authority:** Sections 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303.

■ 10. Section 95.630 is revised to read as follows:

**§ 95.630 WMTS Transmitter frequencies.**

WMTS transmitters may operate in the frequency bands specified as follows:

608–614 MHz

1395–1400 MHz

1427–1429.5 MHz except at the locations listed in § 90.259(b)(4) where WMTS may operate in the 1429–1431.5 MHz band.

[FR Doc. 04–14480 Filed 6–30–04; 8:45 am]

**BILLING CODE 6712–01–U**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

[DA 04–1201, MM Docket No. 01–43, RM–10041]

**Digital Television Broadcast Service; Jackson, MS**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of CivCo, Inc., grants the petition for reconsideration of the *Report and Order*, which dismissed CivCo's request seeking the substitution