

## FY 2006 RADIO STATION REGULATORY FEES—Continued

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
500,001–1,200,000 .....	4,000	3,100	2,000	2,375	3,875	4,700
1,200,001–3,000,00 .....	6,150	4,750	3,000	3,800	6,325	7,500
≤3,000,000 .....	7,375	5,700	3,800	4,750	8,050	9,750

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BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 27

[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; PS Docket No. 06–229; WT Docket No. 96–86; FCC No. 07–72]

### Service Rules for the 698–806 MHz Band and Revision of the Commission’s Rules Regarding Enhanced 911 Emergency Calling Systems, Hearing Aid-Compatible Telephones, and Public Safety Spectrum Requirements

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this Further Notice of Proposed Rulemaking (FNPRM), the Federal Communications Commission (FCC) seeks comment on rules governing wireless licenses in the 698–806 MHz Band (*i.e.*, the 700 MHz Band). This spectrum is currently occupied by television broadcasters and is being made available for wireless services, including public safety and commercial services, as a result of the digital television (“DTV”) transition.

**DATES:** Comments due on or before May 23, 2007 and reply comments are due on or before May 30, 2007. Section 213 of the Consolidated Appropriations Act 2000 provides that rules governing frequencies in the 746–806 MHz Band are not subject to certain sections of the Paperwork Reduction Act.<sup>1</sup> The Commission is therefore not inviting comment on any information collections that concern frequencies in the 746–806 MHz Band.

**ADDRESSES:** You may submit comments, identified by 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; PS Docket No. 06–229; WT Docket No. 96–86, by any of the following methods:

• Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

• Federal Communications Commission’s Web site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

• E-mail: Include the docket numbers in the subject line of the message.

• People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by E-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Paul Moon at (202) 418–1793, [paul.moon@fcc.gov](mailto:paul.moon@fcc.gov), Mobility Division, Wireless Telecommunications Bureau; Paul D’Ari at (202) 418–1550, [paul.d'ari@fcc.gov](mailto:paul.d'ari@fcc.gov), Spectrum and Competition Policy Division, Wireless Telecommunications Bureau; John Evanoff at (202) 418–0848, [john.evanoff@fcc.gov](mailto:john.evanoff@fcc.gov), Public Safety and Homeland Security Bureau.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Further Notice of Proposed Rulemaking (FNPRM), 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; PS Docket No. 06–229; WT Docket No. 96–86, FCC No. 07–72, adopted April 25, 2007 and released April 27, 2007. The full text of the FNPRM is available for public inspection on the Commission’s Internet site at <http://www.fcc.gov>. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission’s duplication contractor, Best Copy and Printing Inc., Portals II,

445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 488–5300; fax (202) 488–5563; e-mail [FCC@BCPIWEB.COM](mailto:FCC@BCPIWEB.COM).

### Initial Paperwork Reduction Act of 1995 Analysis

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. The Commission notes, 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

<sup>1</sup> In particular, this exemption extends to the requirements imposed by Chapter 6 of Title 5, United States Code, Section 3 of the Small Business Act (15 U.S.C. 632) and Section 3507 and 3512 of Title 44, United States Code. Consolidated Appropriations Act 2000, Pub. L. 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).

certain sections of the Paperwork Reduction Act.<sup>2</sup> The Commission, therefore, is not inviting comment on any information collections that concern frequencies in the 746–806 MHz Band.

### Synopsis

1. In the Further Notice of Proposed Rulemaking (FNPRM), the FCC reaches tentative conclusions and makes proposals with respect to a limited number of key issues affecting licensing, service and technical rules for the 698–806 MHz Band (*i.e.*, the 700 MHz Band). In addition, the FCC seeks comment on the “Public Safety Broadband Deployment Plan” proposal submitted by Frontline Wireless, LLC (Frontline). In seeking additional comment in this FNPRM, the FCC intends to rely on the extensive record that has already been developed in the three pending 700 MHz Band proceedings to inform its ultimate decisions.

2. In addition to the recently filed Frontline proposal, the three pending 700 MHz Band proceedings are: (1) The 700 MHz Commercial Services proceeding,<sup>3</sup> (2) the 700 MHz Guard Bands proceeding,<sup>4</sup> and (3) the 700 MHz Public Safety proceeding.<sup>5</sup> Because decisions on certain issues in the three proceedings are potentially interrelated, the FCC chooses to address them jointly in the FNPRM. In so doing, the FCC seeks to promote access to 700 MHz Band spectrum and the provision of service to consumers across the country, including in rural areas, as well as

opportunities for broadband service for public safety users.

#### 1. 700 MHz Band Commercial Services

##### A. Lower 700 MHz Band

3. In the existing band plan for the Lower 700 MHz Band, the 48 megahertz of spectrum is divided into five blocks: three 12-megahertz paired blocks, each consisting of two 6-megahertz segments (Blocks A, B, and C); and two 6-megahertz unpaired blocks (Blocks D and E). The FCC proposes not to alter the spectrum blocks as currently sized and aligned. The spectrum comprising Lower 700 MHz Band Blocks C and D, consisting of 18 of the 48 megahertz in that band, has already been auctioned, and the remainder of the Lower 700 MHz Band is subject to a statutorily imposed auction schedule. The FCC also notes that a number of parties support retaining the current size of spectrum blocks in the Lower 700 MHz Band, including Blocks C and D of that Band. The FCC therefore proposes not to change the bandwidth of this licensed spectrum, but seeks further comment on this proposal.

4. The FCC also proposes that the unpaired spectrum in the E Block of the Lower 700 MHz Band remain over larger regional areas, licensed on an REAG basis. As the FCC has found before with respect to the 700 MHz band and to the AWS–1 band, and as supported by several commenters in this record, licenses based on large geographic areas offer certain benefits, such as allowing licensees to more easily take advantage of economies of scale to develop new technologies and services. The FCC seeks comment on whether this proposal would serve the public interest.

5. The FCC also proposes to adopt EAs as the geographic area for licenses in the A Block in the Lower 700 MHz Band. The FCC makes this proposal because there is significant support in the record for a mix of licenses, including EA licenses. Given the potential public interest benefits of placing one additional spectrum block over small geographic service areas (in addition to the B Block of the Lower 700 MHz Band), while also retaining significant portions of spectrum licenses in large geographic areas, the FCC seeks comment on whether it would serve the public interest to license the A Block across EAs.

6. In addition, the FCC proposes that CMAs be adopted as the geographic service area for licenses in the B Block of the Lower 700 MHz Band, which results in the availability of 734 CMA licenses in this block as opposed to 6

EAG licenses. In seeking comment on this proposal, the FCC notes that certain commenters specifically favor the B Block for reassignment on the basis of CMAs. The FCC also notes that, if it assigns CMAs in the Lower 700 MHz Band B Block, licensees will be afforded the opportunity to combine the B Block licenses with licenses in the adjacent C Block, which already have been licensed over CMAs (Metropolitan Statistical Areas and Rural Service Areas (MSAs/RSAs)). Accordingly, the FCC seeks comment on whether converting the B Block to CMA licensing could create opportunities for existing licensees in the C Block of the Lower 700 MHz Band, many of which include small or rural service providers, to create a larger block by acquiring another similarly sized spectrum block in the auction.

##### B. Upper 700 MHz Band Commercial Services Band

7. The following proposals would make several changes to the size and location of the spectrum blocks in the band plan currently associated with the Upper 700 MHz Commercial Services Band and the 700 MHz Guard Bands, as well as the geographic area basis on which the various blocks should be licensed. The FCC considers these changes in large part because it is tentatively concluding to consolidate the proposed broadband portion of the 700 MHz Public Safety Band at the lower portion of the Public Safety spectrum, as discussed below, while consolidating narrowband operations to the upper portion of the Public Safety spectrum. If the FCC adopts such a proposal, the adjacency of Public Safety broadband spectrum to commercial broadband spectrum in the Upper 700 MHz Band may make it possible to make adjustments to the Guard Bands spectrum, rendering additional spectrum available for commercial use. Under one scenario, the existing Guard Band B block would be eliminated entirely, and the spectrum subsumed within the commercial spectrum in the Upper 700 MHz Band, resulting in a total of 34 megahertz available for auction. Under another scenario, the Guard Band B Block would be reduced from four to two megahertz, and the location of both the Guard Band A and B blocks would be shifted within the Upper 700 MHz Band. The FCC discusses the proposals below on this basis.

##### (i) Proposals Based on Elimination of the Guard Band B Block

8. *Elimination of the Guard Band B Block.* As noted, adoption of the FCC’s

<sup>2</sup> *Id.*

<sup>3</sup> 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 (2006).

<sup>4</sup> See 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 (2006).

<sup>5</sup> See Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, PS Docket 06–229, WT Docket No. 96–86, *Ninth Notice of Proposed Rule Making*, 21 FCC Rcd 14837 (2006); Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, *Eighth Notice of Proposed Rulemaking*, WT Docket Nos. 96–86 and 05–157, 21 FCC Rcd 3668 (2006).

proposal to consolidate the broadband Public Safety spectrum in the lower portion of the 700 MHz Public Safety Band may mean that the four megahertz of spectrum in the existing Guard Band B Block is no longer needed for use as a guard band for the adjacent 700 MHz public safety users, and may be consolidated with the rest of the commercial spectrum for more efficient and effective use. The following proposals would reconfigure the band plan associated with the 30 megahertz of commercial spectrum in the Upper 700 MHz Commercial Services Band and the four megahertz of commercial spectrum in the 700 MHz Guard Band B Block, providing 34 megahertz of commercial spectrum in the Upper 700 MHz Band available for auction throughout most of the nation. These proposals also contemplate the creation of a 12 megahertz paired block of commercial spectrum (758–764 MHz/788–794 MHz) adjacent to the 700 MHz Public Safety Band (hereinafter the “adjacent block”).

9. In addition to providing additional spectrum for wireless broadband services, the new adjacent block could help facilitate the transition to wireless broadband for public safety in its 700 MHz spectrum. Under these proposals, the adjacent block auction winner(s) would have to pay the costs of consolidating the 700 MHz Public Safety spectrum with the narrowband allocation at the upper end and the broadband allocation at the lower end. The FCC seeks comment on whether the adjacent block auction winner(s) should, as a license condition, be required to post a letter of credit or place certain funds in escrow to ensure the availability of funds to fulfill this obligation. The FCC also seeks comment on how to establish the amount and mechanism for implementing such an obligation. For example, how should the FCC assess the responsibility for relocating public safety operations if there are multiple adjacent block auction winners?

10. As mentioned above, the FCC currently holds 42 of the 52 Guard Band B Block licenses. These proposals would grandfather the remaining B Block licenses by allowing them to continue to operate in this spectrum under current rules. The FCC seeks comment on whether it should permit existing Guard Band B Block licensees to operate pursuant to the current technical specifications for the Guard Band B Block, which contemplate that Guard Band B Block licensees operate high-site, high-power communications. The FCC seeks comment on whether there would be potential for harmful

interference to new, co-channel adjacent block licensees, or to public safety broadband operations, if the FCC adopts its proposals for the 700 MHz Public Safety spectrum. Similarly, if the FCC eliminates the existing Guard Band B block, resulting in a 12-megahertz 700 MHz commercial block immediately adjacent to the 700 MHz Public Safety block, the FCC seeks comment on whether any technical or operational restrictions or limitations would need to be adopted to protect against interference to the proposed broadband public safety operations.

11. In addition, the FCC seeks comment on whether it could facilitate clearing of the existing Guard Band B Block licensees by allowing the incumbents to include their licenses in the auction inventory in a “two-sided” auction, which would make available licenses currently held by incumbent Guard Band B Block licensees. Commenters should address details of how the existing licenses could be incorporated into the auction, and how the incumbent licensees could be compensated for “selling” a license. Are there other ways we should consider transitioning the existing Guard Band B Block licensees to the proposed band plan?

12. The FCC notes that a reconfiguration of the band plan for the 700 MHz Public Safety Band, as discussed below, may result in the relocated narrowband channels being blocked by existing Canadian TV broadcasters in certain border areas. Although the Canadian government has agreed to clear broadcasters from TV channels 63 and 68, there is as yet no such agreement for TV channels 64 and 69, where the narrowband channels would rest in their entirety after the proposed band plan reconfiguration. As a temporary solution to this problem, the FCC is also seeking comment below in this FNPRM on whether to allow, in border areas, narrowband voice communications within the 1 megahertz internal guard band that is designed (under a band reconfiguration) to protect the narrowband channels from the proposed broadband channels. The result of this option would be a corresponding loss of available spectrum for broadband communications, since a 1 megahertz internal guard band would still be necessary to protect the shifted narrowband channels from public safety broadband operations.

13. As a result, under these proposals, the FCC would impose a license condition upon the adjacent block licensee, creating a temporary easement into the adjacent block to facilitate the

full 5 megahertz bandwidth of the proposed public safety broadband allocation under a band reconfiguration. This easement would terminate upon transition of the border broadcast operations and the subsequent transition of any relevant public safety users operating on the easement. The FCC also seeks comment on whether this easement should be triggered in all adjacent block licenses that share a border with Canada or Mexico, within each licensee’s entire service area or within the portion that is within range of the conflicting broadcaster’s service contour. In such a circumstance, should the adjacent block licensee be allowed to operate on a secondary basis within the easement spectrum, or not at all? Finally, the FCC seeks comment on whether we have the authority to impose this license condition on new adjacent block licensees.

14. *Proposal 1.* In the first proposal, the FCC would establish a new 22-megahertz C Block (comprised of two 11-megahertz blocks of paired spectrum), and a new 12-megahertz D Block (comprised of two 6-megahertz blocks of paired spectrum). Both the C and D Blocks in the Upper 700 MHz Band would be licensed on a REAG basis.

15. Creating a paired, 22-megahertz block of spectrum in a newly configured C Block would be responsive to the desires of some potential new entrants, as well as many other commenters who favored a large 20 megahertz block of spectrum in the Upper 700 MHz Band. For example, the Coalition for 4G in America has specifically advocated that we adopt a paired, 22-megahertz license in the Upper 700 MHz Band to support new entry. Under this proposal, licensees could purchase licenses in these contiguous blocks to create 34-megahertz licenses, which could provide unique opportunities to offer broadband services. Further, with regard to the larger 22-megahertz C Block REAG licenses, the FCC proposes, consistent with the desires expressed by the Coalition for 4G America, to auction this block on a combinatorial basis, which would further facilitate the aggregation of licenses at auction to create a nationwide footprint. The FCC seeks comment on this proposal.

16. *Proposal 2.* This proposed band plan contemplates licensing 34 megahertz of commercial spectrum in the Upper 700 MHz Band using a mix of REAG, EA and CMA geographic licensing areas. In conjunction with the proposed mix of geographic licensing areas in the Lower 700 MHz Band, this proposal seeks to approximate the balanced mix of geographic licensing

sizes adopted by the FCC in the recent AWS-1 auction. It is intended to provide opportunities for small providers in rural areas, as well as new entrants seeking to establish a nationwide wireless footprint, and to afford bidders flexibility to aggregate smaller markets to create either a nationwide market, or large regional or other customized markets.

17. Specifically, this proposal would create two 11-megahertz licenses (each composed of two 5.5-megahertz paired blocks)—the C and D blocks—and a 12-megahertz E block (composed of two 6-megahertz paired blocks) similar to the block that is the subject of the Frontline proposal discussed below. Under this proposal, the FCC would license the C and D Blocks both on an EA basis, or the C Block on a CMA basis and the D Block on an EA basis. The FCC would license the E Block on a REAG basis. This band plan is not tied to adoption of either the Broadband Optimization Plan or the recently filed alternative plan. The FCC seeks specific comment on whether this proposal provides interested bidders with the flexibility to aggregate smaller markets to create either a nationwide market, large regional or other customized markets, as advocated by a broad array of parties. Also, the FCC seeks comment as to whether this band plan would offer some potential new entrants an opportunity to provide broadband services. Finally, the FCC seeks comment on whether to consider licensing these spectrum blocks set forth in this proposal on a different geographic basis.

(ii) Proposals Based on Modified 700 MHz Guard Bands

18. *Modification of the 700 MHz Guard Bands.* The following three proposals are premised on: 1) a shift of the Guard Band A Block from 746–747/776–777 MHz to 762–763/792–793 MHz; 2) a reduction of the Guard Band B Block from 4 megahertz to 2 megahertz; and 3) a shift of the Guard Band B Block from 762–764/792–794 MHz to 775–776 MHz/805–806 MHz. These actions would make 32 megahertz of spectrum in the Upper 700 MHz Band (746–762 MHz/776–792 MHz) available for commercial licensing.

19. *Proposal 3.* Access Spectrum/Pegasus have submitted an alternative proposal to the Commission for modification of the Guard Bands in the Upper 700 MHz Band, which could also impact the configuration of the Upper 700 MHz Band. According to Access Spectrum/Pegasus, its alternative plan would permit the auction of 32 megahertz of commercial broadband spectrum but leave the size of the public

safety allocation unchanged. They also argue that it would accommodate the consolidation of the public safety narrowband spectrum by addressing the Canadian interference issues and public safety relocation costs, discussed above. Finally, by proposing an 11 megahertz block immediately adjacent to the Lower 700 MHz C Block, Access Spectrum/Pegasus assert that the alternative proposal addresses interference concerns on the record by moving the Guard Band A Block.

20. Access Spectrum/Pegasus propose to “shift” down the 700 MHz Public Safety Band by 1 megahertz to remedy potential narrowband interference issues with Canada and Mexico, if the FCC determines that a consolidation of the narrowband channels to the top of the public safety allocation is in the public interest. In implementing the “shift,” the current A Block at 746–747 MHz and 776–777 MHz would be displaced and relocated, and the Upper 700 MHz C Block would become a 22-megahertz block (comprised of two 11-megahertz paired blocks) through redistribution of a total of 2 megahertz of current B Block spectrum. According to Access Spectrum/Pegasus, a 22-megahertz C Block would address potential interference concerns and would be responsive to record support for an 11-megahertz paired block. The alternative plan proposes that the D Block would be a 10-megahertz block, (comprised of two 5-megahertz paired blocks) and that the newly configured A Block would be reduced from a total of 4 megahertz to 2 megahertz. In addition, with the displacement of the A Block, Access Spectrum/Pegasus propose that the FCC modify the licenses of the incumbent A Block licensees, essentially “repacking” the newly configured A Block with all current A and B Block licensees.

21. Access Spectrum/Pegasus propose to work with the FCC to ensure that all current A Block and B Block licensees can be accommodated in the newly configured A Block. Subject to certain conditions, Access Spectrum/Pegasus would also agree to pay for the transition of public safety narrowband operations in the band. Their proposed conditions include: (a) the newly configured A Block sharing the same service rules as the Upper 700 MHz C and D Blocks, including application of our Secondary Markets rules; and (b) the Commission removing the cellular architecture restrictions on the newly configured A Block.

22. The FCC seeks comment on Access Spectrum/Pegasus’ alternative proposal and its likely effects on both the commercial and public safety users

in the 700 MHz Band. The FCC also seeks comment on whether, and to what extent, the Commission should: (a) Adopt certain, but not all, elements of the Access Spectrum/Pegasus alternative proposal; (b) modify any elements of the proposal, adopt any additional requirements, or adopt any alternative requirements to achieve the same or similar public interest goals; and (c) consider alternative approaches to encourage public-private partnerships for sharing spectrum between public safety users and commercial licensees in the 700 MHz Band.

23. The Access Spectrum/Pegasus proposal to shift down the public safety block by 1 megahertz would result in the overlap of public safety spectrum onto 1 megahertz of each pair of the current Guard Bands B Block licenses, including licenses that are currently encumbered in certain areas of the country. As a proposed solution to this problem, Access Spectrum/Pegasus offers to work with the FCC and the current Guard Bands B Block licensees to repack all of the current Guard Bands licensees into the newly configured A Block. The FCC notes that, in addition to Access Spectrum/Pegasus, two other current Guard Bands B Block license holders, PTPMS II and Harbor Guard Band, LLC, have indicated that they will work with the Commission to develop a plan that treats each party fairly. The FCC seeks comment on the extent to which it may rely on these private negotiations to resolve the spectrum overlap problem. The FCC is concerned that, if all incumbent Guard Bands licensees do not come to an agreement consistent with Access Spectrum/Pegasus’ alternative proposal, public safety and commercial operations in areas with incumbent B Block licensees would be significantly curtailed. The FCC tentatively concludes that the Commission should reject Access Spectrum/Pegasus’ alternative proposal if the incumbent licensees are unable to come to an agreement.

24. *Proposal 4.* If the FCC determines that it is able to modify the Upper 700 MHz Guard Bands in the manner proposed by Access Spectrum/Pegasus in connection with their alternative band plan proposal, it seeks comment on other options the Commission may take. For example, the FCC seeks specific comment on a band plan composed of a mix of REAG and EA geographic licensing areas for the Upper 700 MHz Band. In conjunction with the tentative conclusion regarding the mix of geographic licensing areas in the Lower 700 MHz Band, this band plan closely approximates the balanced mix of geographic licensing sizes adopted by

the Commission in the recent AWS auction. This band plan will provide opportunities for small providers in rural areas, as well as new entrants seeking to establish a nationwide wireless footprint.

25. Specifically, this band plan proposes to license the C and D Blocks as two separate 11-megahertz licenses (each composed of two 5.5-megahertz paired blocks) on a REAG basis, with an E Block similar to the block that is the subject of the Frontline proposal discussed below licensed as a 10-megahertz license (composed of paired 5-megahertz blocks) on an EA basis. The FCC seeks specific comment on whether this proposal regarding the C and D Blocks will provide interested bidders with an opportunity to combine the two blocks into a single 22-megahertz license, which some potential new entrants have suggested would provide unique opportunities to provide broadband services. The FCC also seeks specific comment on whether one or both of the C and D Blocks should be auctioned on a combinatorial basis in order to further facilitate the aggregation of a nationwide footprint, and if so, how this should be accomplished.

26. In addition, the FCC proposes that if the Commission were to adopt the Frontline proposal discussed below (effectively treating the E block as a single national geographic license), it would license the D Block on an EA basis (and maintain the C Block on a REAG basis) in order to maintain a balanced mix of geographic license sizes. The FCC seeks comment on this proposal.

27. *Proposal 5.* Finally, the FCC seeks comment on an additional alternative proposal that assumes that we modify the guard bands. As set out below, under this band plan the FCC would license the C and D blocks as two 11-megahertz licenses (each composed of two 5.5-megahertz paired blocks), with a 10-megahertz E Block (composed of paired 5-megahertz block). The C Block would be licensed on a REAG basis, and the D and E Blocks would be licensed on an EA basis.

28. A number of parties have argued that a more flexible Upper 700 MHz band plan that includes a mix of licenses could better support a variety of business plans and ensures that the spectrum is made available to the bidders that value it most. There is a concern that a band plan with only REAGs in the Upper 700 MHz Band may artificially favor only the largest wireless incumbents or particular business models. These principles have been supported by a large number of commenters including large wireless

providers, tribal governments, state regulators, and a large coalition of wireless providers.<sup>6</sup> These principles reflect the Commission's statutory obligation to ensure "an equitable distribution of licenses and services among geographic areas" and to "avoid [ ] excessive concentration of licenses \* \* \* by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women."<sup>7</sup>

29. The above band plan takes into account these several positions by providing for a mix of REAGs and EAs in the upper band plan based in part on the 700 MHz guard band and public safety spectrum restructuring advocated by Access Spectrum and Pegasus. By splitting the larger 22-megahertz block into two 11-megahertz blocks, the FCC increases the opportunity for all providers to actively participate in the auction. The FCC also would allow for combinatorial bidding on the C Block to facilitate the ability of entities to secure a national license. The FCC seeks comment on the merits of this proposal and on the specific areas selected for the blocks: two EAs and one REAG. Parties are also encouraged to comment on possible changes to this band plan in the event the FCC adopts a proposal similar to the one advanced by Frontline. Finally, the FCC seeks comment on the impact of this band plan on potential new entrants, some of which have argued that a larger 22-megahertz block is critical for their market entry business plans.

#### C. Performance Requirements

30. Given the numerous and competing arguments offered by commenters, and considering the importance of rules that promote access to spectrum and the provision of service, the FCC seeks further comment on the performance requirements for the 700 MHz Commercial Services licensees. As the basis for its consideration, the FCC proposes to combine performance requirements based on geographic benchmarks and a "keep what you use" rule. Specifically, the FCC proposes that each licensee provide coverage of 25 percent of the geographic area of the license within three years of the grant of the initial license, 50 percent of this area within five years, and 75 percent of the area within eight years. The FCC seeks comment on this proposal, including its

advantages and disadvantages. To the extent commenters believe these proposed benchmarks should be higher or lower, the FCC requests that they provide information that would corroborate the benefits of their proposed benchmarks and the costs and benefits of alternative approaches. Comments should address whether these specific geographic benchmarks would promote access to spectrum and the provision of service.

31. The FCC also proposes to consider the relevant service area to exclude all government land. Under this approach, a licensee with a geographic service area that includes land owned or leased by government would be able to meet the build-out benchmarks by employing a signal level that is sufficient to provide service to the relevant percentages of land in the service area that is not owned or leased by government. If a licensee employs a signal level that provides coverage to land that is owned or leased by government, the FCC seeks comment on whether the licensee could count this land area and coverage as part of its service area for purposes of measuring compliance with the performance benchmark. Similarly, the FCC seeks comment on whether it should adopt a "keep what you use" standard that also excludes those portions of the licensed areas that encompass land owned or leased by government. In particular, the Commission asks how a "keep what you use" rule that excluded government land would be applied in areas, such as Alaska, in which vast portions of the state or region include such land.

32. The FCC also seeks comment on the potential consequences for licensees that fail to meet the interim requirements to cover a minimum percentage of the geographic area of their license area. For example, licensees that fail to meet these benchmarks could have the length of their license term reduced. Alternatively, licensees that fail to meet the benchmarks could have their license area reduced under a proportionate "keep what you use" approach. Under this alternative, the reduction of the license area would be sufficient to create a resulting license area in which the area currently covered meets the relevant interim benchmark. For example, if a licensee employs a signal level sufficient to provide service to only 20 percent of the geographic area by the three-year benchmark, the licensee would be required to return a portion of the licensee's unserved area to the Commission, so that the covered area equals at least 25 percent of the remaining portion of the license area. A

<sup>6</sup> Balanced Consensus Plan Comments in WT Docket No. 06-150 at Attachment.

<sup>7</sup> 47 U.S.C. 309(j)(3).

similar process would be used if a licensee fails to meet the five- and eight-year benchmarks.

33. The FCC also seeks comment on how it might apply a “keep what you use” rule to this proposal. In particular, the FCC asks whether it should apply such a standard to all of the licensees for the unauctioned 700 MHz Band Commercial Services or only to those licensees that fail to meet their geographic benchmarks. For example, the FCC could apply the “keep what you use” rule at the end of the license term, regardless of the level of construction by the licensee.

Alternatively, licensees that fail to meet the 75 percent geographic area coverage requirement could be subject to a “keep what you use” rule applied either at the 8-year benchmark or at the end of the license term, while licensees that meet the 8-year benchmark could be exempt from a “keep what you use” rule.

34. In addition, the FCC asks commenters to address the process by which it should reclaim unused spectrum under a “keep what you use” rule, and specifically, how such spectrum should be made available to new users. For example, the FCC seeks comment on whether parties that hold licenses for other spectrum in the same geographic area should be eligible to acquire the unused spectrum of another licensee after the Commission reclaims this spectrum and makes it available via competitive bidding. Similarly, the FCC seeks comment on whether the initial licensee should be eligible to bid on spectrum that it previously held as part of its original license. For both these alternatives, the FCC asks that commenters address how a particular policy would help promote service to the unserved area and whether there would be a risk of negative effects, such as a loss of potential competition.

35. The FCC also proposes to apply its performance requirements on an EA and CMA basis only. Under such an approach, licensees with REAGs would be required to employ a signal level sufficient to provide adequate service to at least 25 percent of the geographic area of each EA in its license area within three years, 50 percent of the geographic area of each of these EAs within five years, and 75 percent of the geographic area of each of these EAs within eight years. REAG licensees that fail to meet the interim requirement in any EA within their license areas would lose a portion of the geographic area of that EA, such that the coverage of the remaining portion of the EA would be sufficient to meet the relevant benchmark.

36. The FCC proposes that licensees demonstrate their compliance with benchmarks by filing maps and other supporting documents with the Commission. Would such information be sufficient to provide the FCC with easily identified areas, which could be reclaimed and reassigned via competitive bidding under a “keep what you use” approach? The FCC also asks for comment on whether it should reclaim the spectrum in unused areas in pre-defined units, such as counties. Those commenters that recommend a county-based “keep what you use” standard also should provide recommendations on how the FCC should apply this standard in the event a licensee serves only a small portion of a county, such as a highway or an area that is adjacent to a county that has more coverage by the licensee. The FCC seeks comment on these alternatives.

37. In addition, assuming licensees with REAGs are required to meet the performance requirements on an EA basis, the FCC proposes that these licensees would have to demonstrate coverage for each EA within their license area. Licenses based on EAs or CMAs would have to demonstrate coverage for their respective geographic license areas.

38. Finally, the FCC seeks comment on any other proposal that would similarly apply build-out requirements to these licensees more stringent than the substantial service standard applied under our current rules, and on how such proposals could be implemented. For example, should the FCC use population rather than geographic benchmarks?

#### D. Incumbent Eligibility

39. The FCC also seeks comment on the proposal presented by Media Access Project and the Ad Hoc Public Interest Spectrum Coalition (PISC) to encourage the entry of new competitors by excluding incumbent local exchange carriers (ILECs), incumbent cable operators, and large wireless carriers from eligibility for licenses in the 700 MHz Band. In the alternative, PISC suggests that these incumbents only be eligible for licenses in the 700 MHz band through structurally separate affiliates, which it contends would make it possible to detect whether the incumbent receives more favorable treatment than unaffiliated providers. The FCC also seeks comment on whether it should encourage the entry of new broadband competitors through lesser restrictions on eligibility for obtaining new licenses, both at auction and in the secondary market. More particularly, it seeks comment on

whether only parties not affiliated with existing wireline broadband service providers, including both DSL and cable providers, should be eligible to hold one or more blocks of the Upper 700 MHz C Block spectrum. Alternatively, should the FCC restrict eligibility for the Upper 700 MHz C Block licenses to parties not affiliated with in-region wireline broadband service providers? Finally, as an alternative to limiting the parties eligible for new licenses in the 700 MHz Band, the FCC seeks comment on whether parties unaffiliated with incumbent wireline broadband service providers should receive a bidding credit on licenses in the Upper 700 MHz C Block. The FCC also seeks comment on how such new entrant bidding credits should be coordinated with existing bidding credits for small businesses, *i.e.*, should new entrant credits be cumulative or exclusive of small business bidding credits.

## 2. 700 MHz Guard Bands

### A. Band Plan Proposals

40. The FCC tentatively concludes that it will not adopt the Broadband Optimization Plan (BOP), or other proposals, to the extent that they propose a reallocation of commercial spectrum for public safety use, or the reassignment of spectrum outside of the competitive bidding process. The FCC believes that Congress’s express instructions regarding the allocation of commercial and public safety spectrum in the 700 MHz Band statutorily prohibits it from reallocating this spectrum at this time, and it therefore cannot reallocate commercial spectrum for public safety use as proposed by the BOP and other plans. Similarly, the FCC believes that it is required to use a competitive bidding process to assign the spectrum that has been allocated for commercial use pursuant to these statutory instructions, and therefore must also deny the BOP and the critical infrastructure industries (CII) proposals on this basis. Even if the FCC possessed legal authority to adopt the BOP and CII proposals, the FCC believes these proposals are not in the public interest because they would assign additional spectrum to current licensees without competitive bidding. The FCC is also concerned that the BOP could result in interference between 700 MHz Band public safety and commercial operations.

41. In Section 337(a) of the Communications Act, Congress mandated that the FCC allocate “spectrum between 746 MHz and 806 MHz, inclusive” (*i.e.*, the Upper 700 MHz Band) by designating 24 megahertz

of the spectrum “for public safety services” and 36 megahertz of the spectrum “for commercial use to be assigned by competitive bidding pursuant to Section 309(j).” As directed by Congress, the FCC allocated 24 megahertz of this spectrum for public safety use at 764–776 MHz and 794–806 MHz and 36 megahertz of this spectrum for commercial use at 746–764 MHz and 776–794 MHz. The 36 megahertz of Upper 700 MHz Band spectrum allocated for commercial use included the Guard Bands. The FCC finds that the reallocation of commercial spectrum to public safety contemplated by the various Guard Bands proposals—in particular, the BOP, the Ericsson plan, and the revised Alcatel-Lucent plan—would appear to be inconsistent with Section 337. Even if Section 337(a) does not establish a permanent legislative bar on reallocating the Upper 700 MHz Band, the FCC believes that it would be contrary to Congress’ intent in enacting Section 337 to consider modifying the commercial and public safety allocations in the band before the licensees have had a meaningful opportunity to use unencumbered spectrum as initially envisioned (an opportunity that is unlikely to be fully available before the end of the DTV transition in 2009).

42. In accordance with Section 337’s mandate that commercial spectrum in the 700 MHz Band be assigned by competitive bidding, the FCC established a licensing framework providing that mutually exclusive applications in this band would be subject to competitive bidding pursuant to Section 309(j) of the Act. This licensing scheme resulted in two auctions of the Guard Band licenses. The FCC finds that it lacks legal authority to assign to proponents of the BOP, or CII, additional commercial spectrum in the Upper 700 MHz Band absent competitive bidding, because any such action would be inconsistent with the auction requirements in Sections 337(a). Section 337(a)(2) prescribes competitive bidding as the method of assigning commercial spectrum in the Upper 700 MHz Band. The FCC finds that for the same reasons that it cannot reallocate the band at this time, it cannot alter the method of assignment at this time.

43. The FCC also believes that the BOP proposal for assigning licenses outside the competitive bidding process would not serve the public interest. The FCC seeks comment on its public policy concerns and any similar policy concerns, including its assessment that license assignment by auction is preferable to license assignment by

private negotiation or other non-auction methods. The FCC also seeks comment on potential interference concerns, including the possibility that operations in the proposed internal public safety guard band could be undertaken by public safety licensees. In addition, the FCC seeks comment on the possibility that a C Block licensee might have to limit emissions at the lower portion of its authorized spectrum block in some manner, which could limit its ability to fully utilize its block and thereby limit service offerings.

44. *Access Spectrum/Pegasus Alternative Proposal.* Acknowledging potential legal concerns with the BOP, especially with respect to the proposed reallocation of spectrum from commercial use to public safety services, Access Spectrum/Pegasus have submitted an alternative proposal to the Commission for modification of the Guard Bands in the Upper 700 MHz Band, which is discussed in detail above. In addition to the FCC’s discussion of this proposal above, it notes its tentative conclusion above that Section 337 and the public interest weigh against awarding 700 MHz spectrum outside of the competitive bidding process at this time. The FCC also notes, however, that Access Spectrum/Pegasus do not seek any additional spectrum in their alternative proposal, but instead seek to have the FCC modify their 1 megahertz paired A Block license to specify operations in a new 1 megahertz paired A Block license at different frequencies. The FCC seeks comment on whether the alternative proposal sufficiently addresses Section 337 and public interest concerns regarding the assignment of spectrum outside of the competitive bidding process. The FCC also seeks comment on whether the licensed geographic areas in the new A Block should be the same as in the current A Block.

#### B. Other Guard Band Issues

45. The FCC seeks further, limited comment on what it should do if it decides to leave the existing Guard Bands substantially intact. For example, assuming the FCC modifies the public safety allocation, the B Block’s role as a critical juncture between adjacent commercial and public safety broadband spectrum would potentially be enhanced. After a reconfiguration of the public safety allocation, the B Block would rest between large commercial and public safety spectrum blocks, both of which are well-suited for broadband communications. In that context, the FCC could provide incumbent B Block licensees, as well as future licensees via auction, greater technical and

operational flexibility than currently exists by revising its rules regarding restrictions on cellular architectures, and mandating low-site, low-power system architectures. Such initiatives could afford B Block licensees the previously unavailable potential to offer compatible broadband services within their paired 2 megahertz of spectrum, thereby creating additional opportunities for efficient and effective use of the spectrum. These opportunities could include entering into public/private partnerships with the adjacent public safety broadband operator(s), partnering with other commercial licensees to deploy commercial broadband systems, and attracting a broader pool of potential leasing partners interested in deploying broadband.

46. Because the FCC is committed to resolving the issues raised in this FNPRM on an expedited basis, the Commission notes that if it were to retain the existing band plan, it could simultaneously require that the B Block licensees deploy low-site, low-power system architectures, and permit them to deploy cellular systems. At the same time, the FCC would likely request detailed comment on these and any additional prospects for enhancing the utility of the B Block in order to augment the record developed in response to the *700 MHz Guard Bands Notice*. The FCC seeks comment on these ideas, specifically whether the low-site, low-power system architecture requirement, together with removal of the restriction on cellular architectures, is a positive step toward enhancing the B Block should the Commission ultimately decide not to adopt any proposal to eliminate or substantially modify the Guard Band B Block.

47. The FCC also seeks comment on whether it should make changes to the A Block Guard Bands spectrum under the current band plan. For example, the FCC seeks comment on whether the technical flexibility it might allow for the B Block would also be possible in the A Block. Are low-site, low-power system architectures technically feasible for the upper Guard Bands A Block immediately adjacent to the Public Safety spectrum allocation? If not, would it nevertheless be useful to provide such flexibility for the lower Guard Bands A Block? With the lower A Block’s proximity to both the Lower 700 MHz C Block and the Upper 700 MHz C Block, certain technical modifications might improve compatibilities in the band. The FCC also seeks comment on whether, similar to its discussion above for the Guard Bands B Block, there would be a public

interest benefit to allowing the current A Block licensees to include their spectrum in the auction inventory in a "two-sided" auction.

### 3. *Competitive Bidding Procedures*

48. The FCC seeks comment on whether it should use limited information (or "anonymous bidding") procedures in the upcoming auction of new 700 MHz licenses, in order to deter anticompetitive behavior that may be facilitated by the release of information on bidder interests and identities. Current competitive bidding rules permit withholding information on bidder interests and identities prior to the close of bidding. Accordingly, the FCC can make a final decision regarding the procedures for the auction as part of the regular pre-auction process. The FCC seeks comment here in light of the potential importance of this band with respect to competition in broadband services and in order to assess whether the use of anonymous bidding should be a factor in determining the final band plan for new 700 MHz licenses.

49. In prior auctions, the FCC has adopted procedures, contingent on pre-auction assessments of likely competition in the auction, for withholding public release until the close of the auction of: (1) Bidders' license selections and the amount of their upfront payments; and (2) the identities of bidders placing bids. In the context of those prior auctions, the FCC noted that there may be potential harms as well as benefits from publicly revealing all information during the auction process. In this proceeding, the Ad Hoc Public Interest Spectrum Coalition asserts that anonymous bidding for new 700 MHz licenses is critical to promoting competitive entry in wireless broadband. In contrast, United States Cellular Corporation contends that smaller auction participants need information about larger entities' bids during the auction and that smaller auction participants may encounter difficulties with financing, if the FCC withholds the information during the auction.

50. The FCC seeks comment on the balance of potential harms and potential benefits from releasing information on bidder identities and interests during the auction of new 700 MHz licenses. In recent auctions where the FCC has considered withholding information about bidder identities and interests during the auction, it has assessed likely competition in the auction and determined that, given the anticipated level of competition, the benefits of releasing the information outweighed

the potential harms. However, if the potential harms of releasing the information are substantial enough, or the potential benefits of releasing the information so slight, it may be appropriate to withhold the information regardless of the likely level of competition. For this auction, the FCC seeks comment on whether the potential to use new 700 MHz licenses to create alternatives to existing broadband networks increases the benefits from anonymous bidding by making it harder for existing providers to identify and impede the efforts of potential new entrants to win. Does the lack of readily available technologies for use in the band, relative to existing broadband networks in other bands, reduce the potential benefit of using bidders' identities to guess what technologies will be deployed? Given the potential harms and benefits from releasing information on bidder identities and interests during the auction of new 700 MHz licenses, should the Commission make its decision regarding the release of the information contingent on an assessment of likely competition? If so, should the Commission change how it makes its pre-auction assessment of likely competition?

51. The FCC also seeks comment on whether the potential use of anonymous bidding should be a factor in determining the final band plan. Would a band plan with a greater number of small licenses be more or less appropriate if bidders are able to bid anonymously for those licenses? Commenters should make clear what factors support their position on anonymous bidding, how these factors apply to this auction, and the extent to which these factors may depend upon the final band plan adopted. Commenters should address whether their views are dependent on whether the FCC conditions the implementation of such limits on a measure of the anticipated competitiveness of the auction, such as the eligibility ratio or a modified version of the eligibility ratio.

### 4. *700 MHz Public Safety Spectrum*

52. The FCC tentatively concludes to redesignate the public safety wideband spectrum for broadband use consistent with a nationwide interoperability standard, and to prohibit wideband operations on a going forward basis. Further, should the FCC adopt this broadband approach, it tentatively concludes that the Commission should consolidate the existing narrowband allocations to the upper half of the 700 MHz Public Safety Band, and locate broadband communications in the lower

half of this band. In addition, the FCC tentatively concludes that it should establish an internal guard band between the narrowband and broadband allocations. The FCC also seeks comment on a limited number of issues relating to use of the 700 MHz public safety spectrum, should it reallocate the wideband spectrum to broadband use.

#### A. Broadband

53. The current distribution of channels in the 700 MHz Public Safety Band includes a mix of narrowband and wideband channels. The FCC tentatively concludes that providing broadband spectrum for advanced public safety communications would best serve its goal of enabling first responders to protect safety of life, health and property. While some commenters argue that the FCC should continue to allow public safety entities the flexibility to deploy either wideband or broadband applications, the FCC tentatively concludes that providing such flexibility could hinder efforts to deploy a nationwide, interoperable broadband network by perpetuating a balkanization of public safety spectrum licenses, networks, and technology deployment. Further, only through use of broadband networks could public safety leverage advanced commercial technologies and infrastructure to reduce costs and speed deployment, and enable the potential for priority access to commercial networks during emergencies. Accordingly, the FCC believes that only broadband applications consistent with a nationwide interoperability standard should be deployed in the current wideband allocation of the 700 MHz Band. The FCC thus tentatively concludes to reallocate spectrum previously designated for wideband use to broadband use only, and prohibit wideband operations on a going forward basis. The FCC seeks comment on these tentative conclusions.

#### B. Band Plan Issues

54. Having tentatively concluded that only broadband applications consistent with a nationwide interoperability standard may be deployed in the current wideband allocation for public safety in the 700 MHz Band, the FCC seeks to take further steps to optimize the band plan for this spectrum, essentially building upon the public safety-related proposals in the BOP and the record developed pursuant to the *700 MHz Guard Bands Notice* and *700 MHz Public Safety Eighth Notice*. Specifically, the FCC tentatively concludes that, assuming it decides to adopt this broadband approach, it will consolidate the existing narrowband

allocations to the upper half of the 700 MHz Public Safety block, and will designate the lower half of the block for broadband operations. Additionally, it tentatively concludes that it will adopt a 1 megahertz internal guard band at the top of the resulting broadband allocation to buffer it from the narrowband allocation and thus prevent interference.

55. In addition, the FCC seeks comment on whether it should revise the out-of-band emission (OOBE) limit required for Upper 700 MHz Commercial Services Band base stations to protect public safety operations in the band if it adopts the tentative conclusions discussed above. In particular, the FCC seeks comment on whether it should replace the existing limit of  $76 + 10 \log P$  applicable to emissions into the 700 MHz Public Safety spectrum with the  $43 + 10 \log P$  OOBE standard that protects commercial services in the 700 MHz Band.

56. It also seeks comment on a limited number of related questions regarding: (1) Whether to allow limited use of the internal guard band in areas along the Canadian border to the extent that Canadian broadcasters cause interference to the relocated narrowband channels; (2) whether to adopt a transition plan, and what that plan should be; and (3) whether and how such transition should be funded.

#### C. Power Limits for Public Safety Broadband

57. The FCC has modified its power limit rules for the Upper and Lower 700 MHz Commercial Services Band by implementing a PSD model for defining power limits, permitting increased power in rural areas, and permitting radiated power levels to be measured on an average, rather than peak, basis. This action will permit higher power and increased flexibility for 700 MHz Commercial Services Band licensees implementing wider band technologies, with certain measures in place to protect against any possible increased interference, especially to 700 MHz public safety users.

58. The FCC also tentatively concludes to permit only broadband applications in the 700 MHz Public Safety Band consistent with a nationwide interoperability standard in the channels presently allocated for wideband. The FCC seeks comment on whether it is appropriate to provide the same flexibility to 700 MHz Public Safety broadband operations as that afforded 700 MHz Commercial Services Band licensees by implementing a PSD model for defining power limits,

permitting increased power in rural areas, and permitting measurement of power levels on an average, versus peak, basis. The FCC also seeks comment on whether the technical restrictions adopted today for the 700 MHz Commercial Services Band with respect to interference protection, if applied to public safety broadband spectrum, will protect adjacent band operations.

#### 5. Frontline's Proposal

59. The FCC seeks comment on Frontline's proposed "Public Safety Broadband Deployment Plan" and associated service rules. Under Frontline's proposal, the FCC would alter the upper portion of the Upper 700 MHz Commercial Services Band to designate a 10 megahertz "E Block" for a commercial licensee and impose specific conditions on that licensee requiring it to construct and operate a nationwide, interoperable broadband network for sharing with a national public safety licensee providing broadband service in the lower portion of the 700 MHz Public Safety spectrum. The "E Block" would consist of the paired 757–762 MHz and 787–792 MHz frequencies. The FCC also seeks comment on service rules proposed by Frontline.

60. With respect to the newly created "E Block," Frontline proposes imposing the following obligations, among others, on this nationwide licensee:

61. The "E Block" licensee would be required to construct a common, interoperable network infrastructure that can be used by both the public safety broadband network and the "E Block" licensee's commercial network. The details of the network would be specified in a Network Sharing Agreement negotiated by the "E Block" licensee and the National Public Safety Licensee.

62. The "E Block" licensee would be required to provide coverage to 75 percent of the United States population within four years of the 700 MHz "auction clearing date"; provide coverage to 95 percent of the United States population within seven years; and provide coverage to 98 percent of the United States population within 10 years. As regards Alaska, the licensee would be required to provide coverage to all Alaskan cities of 10,000 or more within four years of the 700 MHz auction clearing date.

63. The "E Block" licensee would be responsible for managing and operating the public safety broadband network, and would be permitted to collect a reasonable network management fee. This fee, and the terms and conditions governing the "E Block" licensee's

management of the network, would be specified in the Network Sharing Agreement.

64. The "E Block" licensee would be required to provide priority access to public safety broadband operations during times of emergency. These requirements would be specified in the Network Sharing Agreement.

65. Frontline also sets forth several additional elements of its proposal. The term of the "E Block" license would be for 15 years, and would be subject to a renewal expectancy upon the completion of "substantial service." Participation by public safety would be purely voluntary, and that public safety would remain free to build its own network in the 700 MHz spectrum. In addition, Frontline proposes that the "E Block" licensee be required to operate as a wholesale provider with respect to commercial use of the "E Block" spectrum. Frontline also proposes that the "E Block" licensee be required to provide open access to its network, allowing the attachment of any device to the network and permitting users to access services and content provided by unaffiliated parties. As proposed, this requirement would apply not only to the "E Block" license, but to all other licenses owned or controlled by the "E Block" licensee. Similarly, Frontline recommends that the "E Block" licensee be required to offer roaming to any provider with customers utilizing devices compatible with the "E Block" network, and that such obligation be extended to all spectrum holdings of the "E Block" licensee.

66. The FCC seeks comment on the proposal's likely effects on both the commercial and public safety users in the 700 MHz Band, and whether it would be in the public interest for the FCC to adopt such a proposal, or alternatives to achieve the same or similar public interest goals. The FCC also seeks comment on whether, and to what extent, it should: (a) Adopt certain, but not all, elements of the Frontline proposal; (b) modify any elements of the proposal, adopt any additional requirements, or adopt any alternative requirements to achieve the same or similar public interest goals; and (c) consider alternative approaches to encourage public-private partnerships for sharing spectrum between public safety users and commercial licensees in the 700 MHz Band.

67. The FCC seeks comment on the extent to which adoption of the Frontline, or similar, proposal should have an impact on its decisions regarding the Guard Bands. Under Frontline's proposal, Guard Band B Block would be located between the

new “E Block” and the public safety spectrum. The FCC seeks comment on whether the Guard Band B Block should be integrated with a new block of spectrum to be made available in the Upper 700 MHz Band for purposes of implementing the Frontline Plan or similar proposal.

68. Similarly, the FCC seeks comment on the extent to which adoption of the Frontline, or similar, proposal should affect its decisions regarding the remainder of the commercial spectrum blocks in the Upper 700 MHz Band that it is required to auction. The FCC asks that Frontline’s proposal be evaluated within the context of the Commission’s other proposals expressed in the FNPRM regarding the size of spectrum blocks and geographic service areas, including a comparison of Frontline’s proposal that the 757–762 MHz and 787–792 MHz spectrum be designated for the new “E Block.” If the FCC adopted the Frontline proposal, the amount of spectrum to be auctioned for commercial services pursuant to flexible service and technical rules in the Upper and Lower 700 MHz Band would decrease by ten megahertz, from 60 to 50 megahertz.

69. The FCC seeks comment as well on Frontline’s view that there is no need to impose any CALEA, E911, or similar obligations on the “E Block” licensee because it believes that retail service providers using the “E Block” spectrum will already be subject to those requirements. Should the FCC adopt any specific requirements applicable to retail service providers or equipment manufacturers in regard to the “E Block?” For example, should some or all public safety equipment operating on an “E Block” built network be capable of accessing satellite communications (including handsets and other mobile or fixed receivers)? Should the FCC require the “E Block” licensee to incorporate satellite-based technology into its network infrastructure?

70. The FCC notes Frontline’s view that the proposed “E Block” licensee and a potential national public safety licensee would have strong incentives to reach agreement on suitable terms for a lease and that the Commission should not attempt to adopt detailed rules to implement its proposal but should rely on a requirement that the “E Block” licensee negotiate in good faith. Frontline proposes that the FCC should leave to the “Network Sharing Agreement” negotiations the definition of “emergency” for purposes of the requirement that the “E Block” licensee provide priority access to affected public safety broadband operations during emergencies.

71. The FCC tentatively concludes that if it adopted Frontline’s proposal or some similar proposal, it will need to impose conditions on the “E Block” license as well as the national public safety license to deal with the circumstance where the bidder winning the new “E Block” at auction and the national public safety licensee are unable to reach agreement on a Network Sharing Agreement. Successful negotiation of that agreement is a critical first step to achieving the benefits to public safety under the Frontline proposal. The FCC is concerned that under certain circumstances the parties may not be able to reach agreement, which could result in a significant delay in implementation. To avoid this result, the FCC tentatively concludes that it will not grant a license to the bidder winning the “E Block” at auction until the winning bidder files a Network Sharing Agreement with the Commission for approval. The FCC would also condition the national public safety license on the licensee submitting to binding arbitration in the event it cannot reach agreement with the “E Block” winner. If the winning bidder and the national public safety licensee are unable to reach agreement, they would be required to enter into binding arbitration to resolve outstanding issues.

72. The FCC seeks comment on this tentative conclusion, and whether imposing such conditions would be an incentive for the parties to reach a suitable and speedy resolution in order to avoid arbitration. If the parties are unable to reach an agreement and thus have to submit to binding arbitration, would this condition then facilitate the ability of the parties to reach such an agreement? The FCC seeks comment on whether any particular requirements should be adopted in connection with such conditions, including a requirement that the parties report to the FCC on the status of the negotiations. The FCC also asks commenters to consider whether there are other conditions that should be placed on an “E Block” licensee to ensure that an agreement is reached quickly and in a manner that is satisfactory to public safety, or if there is additional oversight that the Commission should exercise. Should the FCC require that an agreement to be reached by a certain date? Should the FCC require status reports or other periodic reporting from the “E Block” licensee? If the FCC does not adopt a binding arbitration proposal, what should be the consequence for failing to

reach agreement in a timely manner, or for otherwise failing to comply with the Network Sharing Agreement requirement? Should the FCC have authority to appoint board members to the governance of the “E Block” licensee?

73. The FCC also has serious concerns, based on Frontline’s proposed requirements, about whether it should offer any bidding preferences, such as bidding credits, to applicants for the “E Block” license, based on their status as a small business, or designated entity. The FCC finds that the capital requirements for effective use of the proposed nationwide “E Block” license likely will be very high. In the past, the FCC has declined to adopt designated entity provisions for certain services, such as the direct broadcast satellite service and the digital audio radio service, which have extremely high implementation costs.

74. The FCC’s concerns regarding the capital needed to implement a nationwide service are especially acute in this instance because the “E Block” licensee would be responsible for constructing a robust network to meet the needs of critical public safety service providers—and the public—in times of emergency. The FCC finds that in these circumstances, the public interest would not appear to favor giving applicants a preference when bidding for the “E Block” license based on their limited financial resources.

75. The FCC finds that the proposed restriction on such a licensee’s ability to provide spectrum-based services directly to the public is also of concern when considering whether to offer such benefits. The FCC prohibits licensees from both receiving designated entity benefits and having wholesale agreements for more than fifty percent (50%) of the spectrum capacity of any license that they hold, which are defined as impermissible material relationships. In the event that the FCC offered bidding preferences with respect to such an “E Block” license, the existing rule plainly would preclude any licensee that is required to operate only as a wholesale provider from receiving designated entity benefits. For all these reasons, the FCC tentatively concludes that designated entity benefits for the “E Block” license proposed by Frontline, would not be available, and seeks comment on this tentative conclusion.

76. The FCC also seeks comment on whether any service specific rules are needed to address what actions the Commission may or must take in the event that the “E Block” licensee encounters financial or other problems

that prevent compliance with any of its obligations, regarding build-out or other duties. Frontline contends that the Commission's general rules regarding reclaiming and re-auctioning the spectrum are sufficient to address this possibility. The FCC seeks comment on whether the particular obligations proposed for the "E Block" would make additional provisions in the public interest. For example, should there be some special process for public safety entities or others to challenge the "E Block" licensee's compliance with its public safety or wholesale obligations? Should the "E Block" license cancel automatically based on failure to comply with specified obligations? Should the FCC establish an unjust enrichment requirement to be paid in the event the Commission is unable to reclaim the license for any reason upon failure of the "E Block" licensee to comply with its obligations? If so, how should the amount of such a payment be calculated? If the FCC were to reclaim the license, could it also hold any network infrastructure built by the licensee in trust for public safety to avoid interruption of service to first responders? Alternatively, should the FCC provide for a rebate of a portion of the net bid amount paid by the "E Block" licensee at auction upon satisfaction of the conditions of the license and, if so, what should be the amount of such rebate? What other enforcement mechanisms might be appropriate?

77. The FCC also seeks comment on Frontline's proposal that the "E Block" licensee be required to operate a wholesale network. Frontline claims that this requirement would encompass freedom of equipment choice concerning the attachment of devices or multiple devices to the network. 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, and would operate "as an open network available on a wholesale basis to a host of innovative service providers." The FCC seeks comment on these issues. The FCC also seeks 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.

### Ex Parte Presentations

78. The rulemaking shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules.<sup>8</sup> 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.<sup>9</sup> Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules.<sup>10</sup>

### Comment Period and Procedures

79. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 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. 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 FR 24121 (1998).

<bullet≤ 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.

<bullet≤ For ECFS filers, if multiple docket 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](mailto: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.

<bullet≤ 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.

<bullet≤ The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

<bullet≤ 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.

<bullet≤ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

<bullet≤ Parties should send a copy of their filings to Paul D'Ari, Wireless Telecommunications Bureau, 445 12th Street, SW., Washington, DC 20554, or by e-mail to [paul.d'ari@fcc.gov](mailto:paul.d'ari@fcc.gov).

People with Disabilities: 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](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

### Initial Regulatory Flexibility Act Analysis

80. As required by the Regulatory Flexibility Act of 1980, as amended (the "RFA"),<sup>11</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact of the policies and rules proposed in the Further Notice of Proposed Rulemaking ("FNPRM") on a substantial number of small entities.<sup>12</sup> Written public comments are requested on this IRFA.

<sup>11</sup> 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).

<sup>12</sup> See 5 U.S.C. 603. Although we are conducting an IRFA at this stage in the process, it is foreseeable that ultimately we will certify this action pursuant to the RFA, because we anticipate at this time that any rules adopted pursuant to this Notice will have no significant economic impact on a substantial number of small entities. See 5 U.S.C. 605(b).

<sup>8</sup> 47 CFR 1.200 *et seq.*

<sup>9</sup> See 47 CFR 1.1206(b)(2).

<sup>10</sup> 47 CFR 1.1206(b).

Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided in paragraph 297 of the item. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (“SBA”).<sup>13</sup> In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.<sup>14</sup>

81. 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,<sup>15</sup> the Commission believes that it would serve the public interest to analyze the possible significant economic impact of the proposed policy and rule changes in this band on small entities. Accordingly, this IRFA contains an analysis of this impact in connection with all spectrum that falls within the scope of this FNPRM, including spectrum in the 746–806 MHz Band.

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

82. The FNPRM encompasses issues pertinent to all three of our 700 MHz proceedings, as well as to Frontline’s proposal. First, based on the record developed in connection with the *700 MHz Commercial Services Notice*, the FNPRM proposes several band plans that include a mix of small, medium and large geographic area licenses.

83. Second, the FNPRM also proposes to replace the current substantial service requirement with a geographic-based performance requirement, and seeks comment on this suggestion.

84. Third, the FNPRM tentatively concludes that the Commission can adopt neither the Broadband Optimization Plan (BOP), nor the proposals to reallocate and reassign commercial spectrum to critical infrastructure industries (CII) or public safety entities, because we do not have the statutory authority to adopt key components of the proposals. Irrespective of the lack of statutory authority, the FNPRM also tentatively concludes that the BOP and CII proposals would not be in the public interest, because of the manner in which

they propose to assign commercial licenses outside of a competitive bidding context, and because they could introduce an increased possibility of interference.

85. Fourth, the FNPRM asks certain questions specifically related to the current Upper 700 MHz Guard Bands, in the event that the Commission maintains the current sizes and locations of either block of the Guard Bands licenses. The FNPRM also seeks comment on the alternative Guard Bands proposal recently submitted by Access Spectrum and Pegasus, as well as variations on that proposal.

86. Fifth, the FNPRM seeks to achieve broadband communications capabilities consistent with a nationwide interoperability standard for public safety. The Commission expects that modern public safety services will increasingly depend on the advanced communications capabilities afforded by wireless broadband technologies, which should enable first responders to perform their vital safety-of-life and other critical roles. The FNPRM tentatively concludes to redesignate the wideband spectrum to broadband use that would be consistent with a nationwide interoperability standard, and to prohibit wideband operations on a going forward basis. The FNPRM then seeks comment on a tentative conclusion to consolidate the narrowband spectrum to the top of the Public Safety Band, locate the broadband spectrum at the bottom of the Public Safety Band, and divide these segments with an internal guard band. Given this tentative conclusion, the FNPRM also seeks comment on a limited set of issues that would need to be resolved in order to effectuate the reconfiguration. This proposed reconfiguration would reduce the amount of spectrum necessary to separate and protect the public safety broadband and narrowband allocations, and could facilitate partnerships between public safety broadband operations and adjacent commercial broadband technologies, thereby optimizing the 700 MHz public safety band plan.

87. Finally, the FNPRM seeks comment on the “Public Safety Broadband Deployment Plan” proposal submitted very recently by Frontline Wireless, which if adopted in some form potentially would affect decisions in all three proceedings.

#### *B. Legal Basis*

88. The legal authority for the actions proposed in this rulemaking are contained in 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.

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

89. 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.<sup>16</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>17</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>18</sup> 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”).<sup>19</sup>

90. *Small Businesses*. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.<sup>20</sup>

91. *Small Organizations*. Nationwide, there are approximately 1.6 million small organizations.<sup>21</sup>

92. *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.”<sup>22</sup> As of 2002, there were approximately 87,525 governmental jurisdictions in the United States.<sup>23</sup> This number includes 38,967 county

<sup>16</sup> 5 U.S.C. 603(b)(3).

<sup>17</sup> 5 U.S.C. 601(6).

<sup>18</sup> 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**.”

<sup>19</sup> 15 U.S.C. 632.

<sup>20</sup> See SBA, Programs and Services, SBA Pamphlet No. CO–0028, at page 40 (July 2002).

<sup>21</sup> Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

<sup>22</sup> 5 U.S.C. 601(5).

<sup>23</sup> U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, pages 272–273, Tables 415 and 417.

<sup>13</sup> See 5 U.S.C. 603(a).

<sup>14</sup> See 5 U.S.C. 603(a).

<sup>15</sup> 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).

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, we estimate the number of small governmental jurisdictions overall to be 85,931 or fewer.

93. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging"<sup>24</sup> and "Cellular and Other Wireless Telecommunications."<sup>25</sup> Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.<sup>26</sup> Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.<sup>27</sup> Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.<sup>28</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>29</sup> Thus, under this second category and size standard, the majority of firms can, again, be considered small.

94. Under this FNPRM, any of the changes to the Commission's rules which may occur as a result of the FNPRM would be limited to the 698–806 MHz spectrum band. Since this rulemaking proceeding applies to services in that band, this IRFA 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 IRFA provides information

describing 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 transfer of control application where unjust enrichment issues are implicated. Consequently, to assist the Commission in analyzing the total number of potentially affected small entities, the Commission requests commenters to estimate the number of small entities that may be affected by any rule changes that might result from this FNPRM.

95. *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.<sup>30</sup> 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.<sup>31</sup> 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.<sup>32</sup> SBA approval of these definitions is not required.<sup>33</sup> An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.<sup>34</sup> 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.<sup>35</sup>

96. *Upper 700 MHz Band Licenses.* The Commission released a *Report and Order* authorizing service in the Upper 700 MHz band.<sup>36</sup> An auction for these licenses, previously scheduled for January 13, 2003, was postponed.<sup>37</sup>

97. *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.<sup>38</sup> 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.<sup>39</sup> 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.<sup>40</sup> 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.<sup>41</sup> The SBA has approved these small size standards.<sup>42</sup> 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.<sup>43</sup> A second auction

<sup>35</sup> See "700 MHz Guard Bands Auctions Closes: Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 4590 (WTB 2001).

<sup>36</sup> 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).

<sup>37</sup> 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).

<sup>38</sup> See *Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59)*, *Report and Order*, 17 FCC Rcd 1022 (2002).

<sup>39</sup> *Id.* at 1087–88 [ 172.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 1088 [ 173.

<sup>42</sup> See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999.

<sup>43</sup> See "Lower 700 MHz Band Auction Closes," *Public Notice*, 17 FCC Rcd 17272 (WTB 2002).

<sup>24</sup> 13 CFR 121.201, NAICS code 517211.

<sup>25</sup> 13 CFR 121.201, NAICS code 517212.

<sup>26</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517211 (issued Nov. 2005).

<sup>27</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

<sup>28</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517212 (issued Nov. 2005).

<sup>29</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

<sup>30</sup> 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).

<sup>31</sup> *Id.* at 5343 [ 108.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* At 5343 [ 108 n.246 (for the 746–764 MHz and 776–794 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).

<sup>34</sup> See "700 MHz Guard Bands Auction Closes: Winning Bidders Announced," *Public Notice*, 15 FCC Rcd 18026 (2000).

commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 CMA licenses.<sup>44</sup> Seventeen winning bidders claimed small or very small business status and won sixty licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.<sup>45</sup>

98. *Public Safety Radio Licensees.* As a general matter, public safety radio licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.<sup>46</sup> The SBA rules contain a small business size standard for cellular and other wireless telecommunications companies, which encompasses business entities engaged in wireless communications employing no more than 1,500 persons.<sup>47</sup> According to Census Bureau data for 2002, in this category there were 8,863 firms that operated for the entire year.<sup>48</sup> Of this total, 401 firms had 100 or more employees, and the remainder had fewer than 100 employees.<sup>49</sup> With respect to local governments, in particular, since many governmental entities as well as private businesses comprise the licensees for these services, we include under public safety

<sup>44</sup> See "Lower 700 MHz Band Auction Closes," *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

<sup>45</sup> *Id.*

<sup>46</sup> See subparts A and B of Part 90 of the Commission's Rules, 47 CFR 90.1-90.22. Police licensees include 26,608 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code), and teletype and facsimile (printed material). Fire licensees include 22,677 licensees comprised of private volunteer or professional fire companies, as well as units under governmental control. Public Safety Radio Pool licensees also include 40,512 licensees that are state, county, or municipal entities that use radio for official purposes. There are also 7,325 forestry service licensees comprised of licensees from state departments of conservation and private forest organizations that set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are highway maintenance licensees that provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. Emergency medical licensees (1,460) use these channels for emergency medical service communications related to the delivery of emergency medical treatment. Another 19,478 licensees include medical services, rescue organizations, veterinarians, persons with disabilities, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities.

<sup>47</sup> See 13 CFR 121.201 (NAICS code 517212); U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Employment Size of Establishments for the United States: 2002," Table 2, NAICS code 517212.

<sup>48</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Employment Size of Establishments for the United States: 2002," Table 2, NAICS code 517212.

<sup>49</sup> *Id.*

services the number of government entities affected.

99. *Wireless Communications Equipment Manufacturers; Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment."<sup>50</sup> The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees.<sup>51</sup> According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year.<sup>52</sup> Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999.<sup>53</sup> Thus, under this size standard, the majority of firms can be considered small.

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

100. *Performance Requirements.* The FNPRM proposes to replace the current substantial service requirement with a geographic-based performance requirement, and seeks comment on this suggestion.

101. *Incumbent Eligibility.* The FNPRM seeks comment on a proposal to encourage the entry of new competitors

<sup>50</sup> U.S. Census Bureau, 2002 NAICS Definitions, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing"; <http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342>.

<sup>51</sup> 13 CFR 121.201, NAICS code 334220.

<sup>52</sup> U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334220 (released May 26, 2005); <http://factfinder.census.gov>. The number of "establishments" is a less helpful indicator of small business prevalence in this context than would be the number of "firms" or "companies," because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks out data for firms or companies only to give the total number of such entities for 2002, which was 929.

<sup>53</sup> *Id.* An additional 18 establishments had employment of 1,000 or more.

by excluding incumbent local exchange carriers (ILECs), incumbent cable operators, and large wireless carriers from eligibility for licenses in the 700 MHz Band. The FNPRM also seeks comment on whether incumbents should only be eligible for licenses in the 700 MHz band through structurally separate affiliates, which would make it possible to detect whether the incumbent receives more favorable treatment than unaffiliated providers. The FNPRM seeks comment on whether the Commission should encourage the entry of new broadband competitors through lesser restrictions on eligibility for obtaining new licenses, both at auction and in the secondary market. Finally, as an alternative to limiting the parties eligible for new licenses in the 700 MHz Band, the FNPRM seeks comment on whether parties unaffiliated with incumbent wireline broadband service providers should receive a bidding credit on licenses in the Upper 700 MHz C Block, and how such new entrant bidding credits should be coordinated with existing bidding credits for small businesses (*i.e.*, whether new entrant credits should be cumulative or exclusive of small business bidding credits).

102. *Anonymous Bidding.* The FNPRM seeks comment on whether the Commission should use limited information (or "anonymous bidding") procedures in the upcoming auction of new 700 MHz licenses, in order to deter anticompetitive behavior that may be facilitated by the release of information on bidder interests and identities.

103. *Public Safety Broadband.* The FNPRM tentatively concludes to redesignate the wideband spectrum to broadband use that would be consistent with a nationwide interoperability standard, and to prohibit wideband operations on a going forward basis. The Commission has issued no licenses for wideband channels. Furthermore, although two special temporary authorizations (STAs) have been issued for wideband operations, to the extent a public safety entity has constructed, deployed and is currently operating, as of the release date of the accompanying *Report and Order*, a wideband system pursuant to a grant of STA, and has reason to continue such operations beyond the current term of the STA, the FNPRM states that the Commission will work with such entity to extend such authority. The FNPRM also seeks comment on a tentative conclusion to consolidate the narrowband channels to the top of the public safety band, locate the broadband spectrum at the bottom of the public safety band, and divide these segments with an internal guard band.

These tentative conclusions may entail additional reporting, recordkeeping or other compliance efforts by existing public safety entities. The FNPRM does not otherwise propose any additional reporting, recordkeeping or other compliance requirements.

104. *Frontline Proposal.* The FNPRM seeks comment on Frontline's proposed "Public Safety Broadband Deployment Plan." This plan would alter the upper portion of the band plan and service rules in order to auction a single nationwide 10-megahertz license (a new "E Block"). The "E Block" licensee would be required to meet certain build-out benchmarks, and would be required to provide priority access for public safety broadband operations during times of emergency as specified in a Network Sharing Agreement. Under the proposal, the "E Block" licensee would be required to operate as a wholesale provider with respect to commercial use of the "E Block" spectrum. It also would be required to provide open access to its network, allowing the attachment of any device to the network and permitting users to access services and content provided by unaffiliated parties. In addition, Frontline's proposal would require the "E Block" licensee to offer roaming to any provider with customers utilizing devices compatible with the "E Block" network, with such obligation extended to all spectrum holdings of the "E Block" licensee. Frontline's proposal also would require the "E Block" licensee to operate only as a wholesale provider with respect to commercial use of the "E Block" license, *i.e.*, it must have wholesale agreements for 100 percent of its spectrum capacity.

*E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered*

105. 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 and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."<sup>54</sup>

106. *Performance Requirements.* Commenters who are small carriers

could be found among commenters who supported both a substantial service requirement and a "keep what you use" framework. Some small CMRS providers recommended a combination of both population- and geography-based construction benchmark in the context of a "keep-what-you-use" approach.<sup>55</sup> The FNPRM proposes to replace the current substantial service requirement with a geographic-based performance requirement, and seeks comment on this suggestion.

107. By establishing clear benchmarks, the Commission would provide small licensees with regulatory certainty regarding the requirements that they must meet or, if they do not, permit other providers to gain access to the spectrum to provide services to consumers. The adoption of more stringent benchmarks also would complement the Commission's determination to auction additional licenses based on smaller geographic areas to promote access to spectrum and the provision of service, especially in rural areas.

108. The Commission recognizes that the existing substantial service standard could allow providers, including small carriers, additional flexibility with regard to their development and deployment of certain services.<sup>56</sup> The Commission determines, however, that given the excellent propagation characteristics of this spectrum, the benefits of service being offered before the end of the license term, and the public interest that would be served by ensuring additional service in the more rural and remote areas of this country, more rigorous requirements may be appropriate for these 700 MHz Commercial Services licenses.<sup>57</sup>

109. *Incumbent Eligibility.* The proposals to prevent incumbents from being eligible to participate in the 700 MHz auctions can benefit small entities to the extent that they find less competition at auction from large

entities such as established incumbent licensees, including wireline providers. Additionally, the proposal to provide bidding credits with regard to the Upper 700 MHz C Block for parties unaffiliated with incumbent wireline broadband service providers could encourage new entry by small entities.

110. *Anonymous Bidding.* Smaller auction participants can benefit from having access to information about larger entities' bids during the auction, and smaller auction participants may encounter difficulties with financing if the Commission withholds the information during the auction. However, the potential to use new 700 MHz licenses to create alternatives to existing broadband networks increases the benefits from anonymous bidding by making it harder for existing providers to identify and impede the efforts of potential new entrants to win. Accordingly, in seeking comment on whether to require anonymous bidding for 700 MHz auctions, the Commission balances the difficulties it may cause to smaller auction participants, against the opportunities for new entrants—including small entities—that may result from anonymous bidding.

111. *700 MHz Band Plan Proposals.* The FNPRM includes several proposals to reconfigure the 700 MHz Band plan. Under any revised band plan, the Commission seeks comment on whether the spectrum block adjacent to the Public Safety Band's lower half would, pursuant to another tentative conclusion, be responsible for funding the reconfiguration of the public safety spectrum with the narrowband channels at the upper end and a broadband allocation at the lower end. This proposal would, if adopted, impose additional economic burdens on any small business that procured the spectrum block adjacent to the Public Safety Band's proposed broadband allocation.

112. The FNPRM also proposes to license the 700 MHz Band using a mix of small, medium and large geographic areas. These proposed service area definitions should benefit small businesses, because they would enhance the mix of licenses to be made available in the 700 MHz Band, and are consistent with the goals of providing greater access to spectrum for small providers and parties in rural areas, and improving the opportunity for a wider range of potential licensees to access this spectrum.

113. *Public Safety Broadband.* The FNPRM tentatively concludes to reallocate the wideband spectrum to broadband use that would be consistent with a nationwide interoperability

<sup>55</sup> See, e.g., DirecTV/EchoStar Comments in WT Docket 06-150 at 9; Navajo Nation Comments in WT Docket 06-150 at 2-3; RCA Comments in WT Docket 06-150 at 8-10; Vermont Department of Public Service, *et al.* Comments in WT Docket 06-150 at 5-8. The Navajo Nation, RCA, and the Vermont Department of Public Service, *et al.* favorably discuss both benchmarks and a "keep-what-you-use" approach.

<sup>56</sup> See AT&T Comments in WT Docket 06-150 at 12-13; CTIA Comments in WT Docket 06-150 at 10; Dobson Comments in WT Docket 06-150 at 5; Leap Comments in WT Docket 06-150 at 10.

<sup>57</sup> See, e.g., Aloha Comments in WT Docket 06-150 at 2; Blooston Comments in WT Docket 06-150 at 3; Dobson Comments in WT Docket 06-150 at 3; Frontier Comments in WT Docket 06-150 at 4; NTCA Comments in WT Docket 06-150 at 3-5; RCA Comments in WT Docket 06-150 at 3-4; RTG Comments in WT Docket 06-150 at 4-5.

<sup>54</sup> 5 U.S.C. 603(c)(1)-(4).

standard, and prohibit wideband operations on a going forward basis. The public safety community expressed broad support for a broadband allocation to enable advanced communications capabilities. The availability of a contiguous block of broadband spectrum, subject to a nationwide interoperability standard, would enable partnerships with commercial licensees in adjacent broadband spectrum. As a result, the proposed band plan would ultimately enable public safety entities to utilize the 700 MHz spectrum in a more cost-effective and spectrally efficient manner to address their homeland security and emergency response roles. Because the Commission does not anticipate that the proposal will impose additional economic burdens on public safety, and is in fact designed to reduce economic burdens on public safety, the Commission has taken steps to minimize any adverse impact of the rule changes.

114. The FNPRM also seeks comment on its tentative conclusion to consolidate the narrowband spectrum to the top of the public safety band and locate the broadband spectrum at the bottom of the public safety band, in light of the potentially significant benefits such reconfiguration would afford the public safety community. The alternative would be to retain the existing band plan. The FNPRM seeks comment on how to implement reconfiguration of the narrowband channels with minimum disruption to incumbent operations. The FNPRM invites comment on an appropriate transition mechanism, including how to accommodate public safety operations in the border areas with Canada and Mexico, and the costs of relocation and how such costs will be covered. The Commission expects that the number of entities impacted and expected cost of reconfiguration should be relatively minor. To assist the Commission in its analysis, however, commenters are requested to provide information regarding the number of narrowband radios that are deployed, as well as the number of radios that are in active use, and thus would be affected by the proposed changes to the 700 MHz public safety band plan as described in the FNPRM. The FNPRM recognizes that the public safety community's ability to fund the reconfiguration may be limited. Thus, in addition to considering whether public safety should pay for its own relocation costs, the FNPRM seeks comment on several alternatives, including whether to impose funding requirements on 700

MHz commercial licensees, and whether Federal or other grant monies could be used. In the event the Commission determines to license the broadband allocation to a nationwide public safety broadband licensee, the FNPRM also invites comment on whether that licensee should be assigned responsibility for funding the reconfiguration.

115. Although the economic burden on public safety to effectuate reconfiguration is expected to be relatively small, the FNPRM will develop a record on the true costs that would be implicated. The Commission remains open to considering alternatives, however, should an alternative be stated in comments that would reach our objectives and minimize the impact on public safety entities.

116. *Frontline Proposal.* In the FNPRM, the Commission seeks comment on Frontline's proposed "Public Safety Broadband Deployment Plan." Although Frontline proposes that the Commission offer bidding credits to applicants based on their status as a small business, the Commission tentatively concludes in the FNPRM that it should not offer any bidding preferences, such as bidding credits, to applicants for the "E Block" license. The FNPRM states, however, that the public interest would not appear to favor giving applicants a preference when bidding for the "E Block" license based on their limited financial resources, as the Commission does when it offers bidding credits to small businesses in these circumstances. The Commission stated that its concerns regarding the capital needed to implement a nationwide service are especially acute in this instance, because the "E Block" licensee would be responsible for constructing a network to meet the needs of critical public safety providers. The Commission seeks comment on this tentative conclusion.

*F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

117. None.

**Ordering Clauses**

118. *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.

119. *It is further ordered* that pursuant to applicable procedures set forth in § § 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on the further notice of proposed rulemaking on or before May 23, 2007 and reply comments on or before May 30, 2007.

120. *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.

121. *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.*

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to List the Sand Mountain Blue Butterfly (*Euphilotes pallescens* ssp. *arenamontana*) as Threatened or Endangered with Critical Habitat**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 12-month petition finding.

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**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce our 12-month finding on a petition to list the Sand Mountain blue butterfly (*Euphilotes pallescens arenamontana*) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). After a thorough review of all available scientific and commercial information, we find that the petitioned action is not warranted. We ask the public to continue to submit to us any new information concerning