

days after the publication date of the final results of this review excluding any reported sales that entered during the gap period. In accordance with 19 CFR 351.212(b)(1), we calculated exporter/importer (or customer)-specific assessment rates for the merchandise subject to this review. Where the respondent has reported reliable entered values, we calculated importer (or customer)-specific ad valorem rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer). See 19 CFR 351.212(b)(1). Where an importer (or customer)-specific ad valorem rate is greater than *de minimis*, we will apply the assessment rate to the entered value of the importers'/customers' entries during the POR. See 19 CFR 351.212(b)(1).

Where we do not have entered values for all U.S. sales, we calculated a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). See 19 CFR 351.212(b)(1). To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific ad valorem ratios based on the estimated entered value. Where an importer (or customer)-specific ad valorem rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. See 19 CFR 351.106(c)(2).

For the companies receiving a separate rate that were not selected for individual review, the assessment rate will be based on the rate from the investigation or, if appropriate, a simple average of the cash deposit rates calculated for the companies selected for individual review pursuant to section 735(c)(5)(B) of the Act.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for the exporters listed above, the cash deposit rate will be established in the final results of this review (except, if the rate is zero or *de minimis*, i.e., less than 0.5 percent, no cash deposit will be required for that company); (2) for

previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 44.3 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: June 30, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9-15964 Filed 7-6-09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 0906231085-91085-01]

Relocation of Federal Systems in the 1710-1755 MHz Frequency Band: Review of the Initial Implementation of the Commercial Spectrum Enhancement Act

AGENCY: National Telecommunications and Information Administration.

ACTION: Notice of Inquiry.

SUMMARY: The U.S. Department of Commerce's National Telecommunications and Information Administration (NTIA) seeks comment on the initial implementation of the Commercial Spectrum Enhancement

Act (CSEA).¹ The CSEA, which was enacted in 2004, created an innovative funding mechanism allowing Federal agencies to recover the costs of relocating their radio systems from the proceeds of the auction of the radio spectrum vacated. The first auction under the CSEA, that of the 1710-1755 MHz band, concluded in 2006, providing new opportunities for Advanced Wireless Services (AWS-1). Over two years into the relocation of Federal systems from this band, NTIA requests information on what implementation steps should be retained as best practices, what lessons have been learned, and what, if any, improvements should be made in future relocations under the CSEA.

DATE: Comments are requested on or before August 21, 2009, 2009.

ADDRESSES: Parties may mail written comments to Gary Patrick, Spectrum Engineering and Analysis Division, Office of Spectrum Management, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Room 6725, Washington, DC 20230, with copies to Gina Harrison, Esq., Office of Spectrum Management, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Room 4099, Washington, DC 20230. Alternatively, comments may be submitted in Microsoft Word format electronically to csealelessonslearned@ntia.doc.gov. Comments will be posted on NTIA's website at <http://www.ntia.doc.gov> and regulations.gov.

FOR FURTHER INFORMATION CONTACT: Gary Patrick, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Room 6725, Washington, DC 20230 or Gina Harrison, Esq., National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Room 4099, Washington, DC 20230; telephone (202) 482-9132 or (202) 482-2695; or email: gpatrick@ntia.doc.gov or rharrison@ntia.doc.gov.

SUPPLEMENTARY INFORMATION:

Overview

NTIA decided to reallocate the 1710-1755 MHz band to commercial use in

¹ Title II, Pub. Law No. 108-494, 118 Stat. 3986, 47 U.S.C. §§ 309 (j) (3), 921, 923, 928 and note (annual report requirement).

1995.² However, the decision could not be implemented until 2004, when enactment of the CSEA provided a streamlined means to pay for the relocation of Federal systems. The CSEA created the Spectrum Relocation Fund (SRF).³ The SRF uses the proceeds from the commercial auction of relinquished spectrum to reimburse Federal agencies required to vacate the spectrum.

The CSEA and the SRF it created help solve a recurrent spectrum management dilemma, the problem of clearing incumbents from a portion of the spectrum. Such transition issues can stymie efforts to bring new, improved uses of spectrum into service.⁴ By enhancing the efficiency of the Federal relocation process, the CSEA provides three concurrent benefits. Commercial firms and consumers benefit from expediting the process for freeing additional radio frequencies for new or expanded services. Federal agencies benefit from the funds the SRF provides for state-of-the-art systems they will use in new spectrum locations. Finally, the CSEA assists in the Federal budget process by providing that unused spectrum auction receipts revert to the Treasury's general fund.

On September 18, 2006, the Federal Communications Commission (FCC) concluded the first auction conducted under the CSEA, the AWS-1 auction, including 1710-1755 MHz. The auction of the Federal spectrum raised \$6.85 billion out of \$13.7 billion in net winning bids from Federal and non-Federal auctioned spectrum combined. Opening the band to commercial use will spur new wireless services.

In March 2007, the Office of Management and Budget (OMB), in consultation with NTIA and based on Federal agency estimates of relocation costs, transferred slightly over \$1 billion from the SRF to 12 Federal agencies to relocate their systems out of the 1710-1755 MHz band.⁵ This first

implementation of the CSEA has been ongoing for over two years. NTIA takes this opportunity to solicit public comment on how the CSEA has functioned so far.

This Notice of Inquiry (NOI) first invites interested parties to comment on the overall performance of the Federal relocation process. The NOI then divides the issues among those arising before and after the auction. Issues regarding the adequacy and transparency of data, sufficiency of communications, guidance with respect to the relocation process, and NTIA's role, arise both "Pre-Auction" and "Post-Auction." The Post-Auction section addresses a number of additional issues, including "early entry" of licensees prior to a Federal agency's scheduled date to vacate the band. In some cases, "Pre-Auction" events may have had "Post-Auction" effects. In other cases, "Post-Auction" circumstances may shed light on the value of pre-auction information and on the level of bidding. Thus, NTIA asks commenters to analyze CSEA implementation from both cause-and-effect and "feedback" perspectives.

Chronology

The CSEA requires the FCC to notify NTIA at least 18 months in advance of an auction of eligible frequency bands.⁶ In December 2004, the FCC notified NTIA that the auction of the 1710-1755 MHz band would begin as early as June 2006.⁷

Under the CSEA, at least six months prior to the auction, NTIA, on behalf of the Federal agencies and after review by OMB, must provide the FCC and Congress the estimated costs and time lines for relocating Federal agencies from affected spectrum.⁸ NTIA complied with these requirements in December 2005.⁹

Urban Development, Department of the Interior, Department of Justice, National Aeronautics and Space Administration, Department of the Treasury, Tennessee Valley Authority, and United States Postal Service. As of December 2008, Federal agencies had spent \$174,126,082 from the SRF. NTIA, *1710-1755 MHz Band Relocation: Second Annual Progress Report* (Mar. 2009) ("*Second Annual Relocation Report*"), available at <http://www.ntia.doc.gov/reports/Final2ndAnnualRelocationReport20090416.pdf>.

⁶ CSEA, § 202, 118 Stat. 3992, 47 U.S.C. § 923 (g) (4) (A).

⁷ Letter from Michael K. Powell, Chairman, Federal Communications Commission to the Honorable Michael D. Gallagher, Assistant Secretary for Communications and Information, and Administrator, National Telecommunications and Information Administration (Dec. 29, 2004).

⁸ CSEA, § 202, 118 Stat. 2992-93, 47 U.S.C. § 923 (g) (4) (A) (5).

⁹ Public Notice, "Commerce Releases Costs to Open Up Spectrum for Advanced Wireless Broadband Services," available at http://www.ntia.doc.gov/ntiahome/press/2005/relo_12282005.htm. See generally "1710-1755 MHz Introduction," available at <http://www.ntia.doc.gov/osmhome/reports/specrelo/index.htm> (updated list of affected Federal frequency assignments and other data). For a related discussion, see *infra* Section 2.a.

In April 2006, prior to the auction, NTIA and the FCC published a Joint Public Notice providing guidance to assist AWS-1 licensees and Federal incumbents in the post-auction coordination process. One of the purposes of that Joint Public Notice was to permit licensees access to the band in advance of estimated relocation dates, subject to the completion of successful coordination with the incumbents.¹⁰ The FCC concluded the auction on September 18, 2006.¹¹

On February 16, 2007, OMB reported the cost and time estimates of relocating incumbent systems in the 1710-1755 MHz band to Congress. The CSEA provides that unless disapproved within 30 days, SRF funds shall be available immediately.¹² OMB consequently transferred funds from the SRF to individual agencies, and calculated the start time for relocation activities as the date the funds transferred to the agency's account.¹³

The CSEA sets no firm date by which incumbent Federal agencies must vacate spectrum. Pursuant to the CSEA, however, Federal agencies in the 1710-1755 MHz band estimated relocation times from one to six years.¹⁴ The CSEA provides that eight years after deposit of auction proceeds into the SRF, any remaining proceeds revert to the general fund of the Treasury.¹⁵

¹⁰ *Federal Communications Commission and NTIA — Coordination Procedures in the 1710-1755 MHz Band*, 21 FCC Rcd 4730 (Apr. 20, 2006) ("Joint Public Notice"). Access to a band by licensees prior to relocation of incumbents is sometimes referred to as "early entry."

¹¹ "Auction 66, Advanced Wireless Services (AWS-1)," available at http://wireless.fcc.gov/auctions/default.htm?job=auction_factsheet&id=66.

¹² CSEA, § 204, 118 Stat. 3995, 47 U.S.C. § 928(d) (2).

¹³ The CSEA provides that amounts transferred from the SRF to a Federal agency be credited to the appropriations "account" of the agency. *Id.* § 928 (e) (C).

¹⁴ "Report to Congress by the Office of Management and Budget on Agency Plans for Spectrum Relocation Funds Pursuant to the Commercial Spectrum Enhancement Act" (Feb. 16, 2007) available at http://www.ntia.doc.gov/reports/2007/OMBSPpectrumRelocationCongressionalNotification_final.pdf.

¹⁵ CSEA, § 204 (d) (3), 118 Stat. 3995, 47 U.S.C. § 928 (d) (3). NTIA may terminate a frequency authorization if it finds that an agency has unreasonably failed to comply with OMB-approved time lines. CSEA, §§ 202, 203(b), 118 Stat. 3993-94, 47 U.S.C. §§ 923 (g) (6), 309(j) (15) (D). See generally *Manual of Regulations and Procedures for Federal Radio Frequency Management* ("NTIA Manual"), Chapter O, Relocation of Federal Government Radio Systems in Accordance with the Commercial Spectrum Enhancement Act, available at <http://www.ntia.doc.gov/osmhome/redbook/O.pdf>.

² NTIA, *Spectrum Reallocation Final Report: Response to Title IV-Omnibus Budget Reconciliation Act of 1993* (Feb. 1995), available at <http://www.ntia.doc.gov/openness/contents.html>.

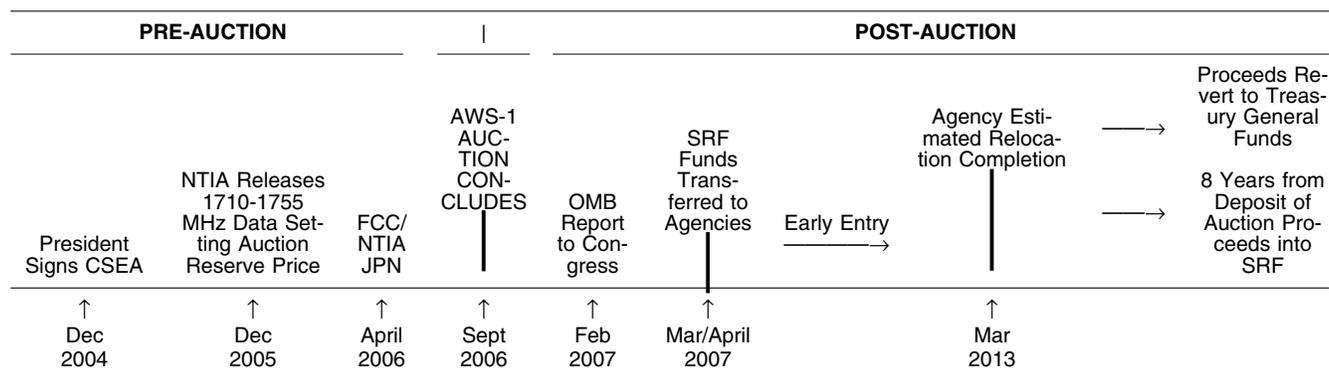
³ CSEA, § 204, 118 Stat. 3994, 47 U.S.C. § 928.

⁴ "800 MHz Transition May Drag on Until 2012, Some Say," TR Daily (Feb. 17, 2009); *Order, Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55, FCC 08-253 (rel. Oct. 30, 2008), available at 2008 Lexis 7625; *Order, Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55, FCC 09-35 (Apr. 20, 2009), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-35A1.doc.

⁵ There are 1,990 frequency assignments associated with the Federal systems to be relocated from the 1710-1755 MHz band. The 12 relocating agencies are Department of Agriculture (USDA), Department of Defense, Department of Energy, Federal Aviation Administration, Department of Homeland Security, Department of Housing and

The time line below describes the principal stages in the 1710–1755 MHz band relocation.

TIME LINE — PRINCIPAL STAGES IN THE 1710–1755 MHz BAND RELOCATION



REQUEST FOR COMMENT:

NTIA requests comment on the questions below to assist in identifying lessons to be learned and other issues and suggestions related to the implementation of the CSEA. These questions are not a limitation on comments that may be submitted. When references are made to studies, research, and other empirical data that are not widely published, commenters are asked to provide copies of the referenced material with the submitted comments.

1. Overall Performance

As of December 31, 2008, Federal agencies had relocated approximately 933 or 47 percent of the 1,990 Federal frequency assignments in the 1710–1755 MHz band.¹⁶ Also, as of December 31, 2008, licensees registered expenses with private sector clearinghouses for relocating a total of approximately 765 or approximately 15 percent of the approximately 5,000 non-Federal radio frequency links in the 2110–2155 MHz band, which was paired for auction with the 1710–1755 MHz band.¹⁷ Non-Federal relocation typically occurs on a link-by-link basis at the initiation of the AWS–1 licensee, when attempts to “engineer around” an incumbent microwave licensee fail. Apart from

moves made in response to requests for early entry, Federal agencies relocate on a system-wide basis under established time frames and SRF funding. NTIA asks parties to provide their perspectives on the overall Federal relocation effort. NTIA also seeks comment on how the nature and speed of the Federal relocation process compares with relocation of private sector incumbents in the 2110–2155 MHz band.

2. Pre-Auction Issues

a. Adequacy of Data

The CSEA requires NTIA, at least six months prior to an auction, “[t]o the extent practicable and consistent with national security considerations” to provide the FCC with relocation cost and time estimates “by the geographic location of the Federal entities’ facilities or systems and the frequency bands used by such facilities or systems.”¹⁸ The cost data are used to set the reserve price for the auction.¹⁹

NTIA compiled cost and time estimates developed by the agencies in compliance with this requirement, along with a list of affected Federal assignments and other information. NTIA submitted these to the FCC and to Congress in December 2005.²⁰ NTIA also published these data on its website and updated these published data before

and after the auction. NTIA continues to update the data periodically.²¹

In addition, prior to the auction, in April 2006, NTIA and the FCC published a Joint Public Notice. The Joint Public Notice detailed the early entry coordination process between AWS–1 licensees and Federal incumbents.²² The early entry process has raised a number of concerns from both Federal agencies and AWS–1 licensees.²³ Was the Joint Public Notice useful to AWS–1 auction bidders and, later, to licensees? How might future such Notices be improved?

NTIA seeks comment on whether the information provided prior to the auction, both with respect to the Federal systems’ relocation plans and the process for early entry, was adequate.²⁴ Commenters should specify the type of additional information, if any, that would have been helpful. What technical and operational information, if any, would have better described the nature of systems to be relocated? Would additional technical details, a glossary of spectrum management terms, references to the NTIA Manual, or a description of the geographic area authorized for each Federal system, have better apprised potential bidders of the various types of operations in the

²¹ *Id.*

²² Joint Public Notice, *supra* note 10.

²³ See generally Commerce Spectrum Management Advisory Committee (“CSMAC”): “Recommendations for Improving the Process for Identifying Spectrum for Future Reallocation or Sharing,” at 12–15, 19 (Aug. 22, 2008) (“CSMAC Reallocation Report”) available at [http://www.ntia.doc.gov/advisory/spectrum/meeting_files/081508_csmac_WG3_Report_Revised_\(clean_final\).pdf](http://www.ntia.doc.gov/advisory/spectrum/meeting_files/081508_csmac_WG3_Report_Revised_(clean_final).pdf).

²⁴ Issues regarding the adequacy of information provided for purposes of coordinating early entry and permitting service initiation are discussed *infra*, Section 3.

¹⁶ NTIA, *1710–1755 MHz Relocation and Schedule Summary*, available at http://www.ntia.doc.gov/osmhome/reports/specrelo/pdf_20081209/1710_1755_Relo_Costs_2008_12.pdf. One fixed microwave link and one land mobile link each comprise two Federal assignments. Fixed transportable and aeronautical mobile links each constitute a single assignment.

¹⁷ Report of the CTIA Spectrum Clearinghouse, LLC (Jan. 30, 2009); Semi-Annual Report of the PCIA — The Wireless Infrastructure Association on the Status of the PCIA AWS Clearinghouse (Jan. 30, 2009), both reports available at <http://www.fcc.gov/cgb/ecfs/> (search Docket 02–353).

¹⁸ CSEA, § 202, 118 Stat. 3992–93, 47 U.S.C. § 923 (g) (4) (A), (C).

¹⁹ CSEA, § 203 (b), 118 Stat. 3994, 47 U.S.C. § 309 (j) (15) (B). “A ‘reserve price’ is defined as an absolute minimum price below which an auctioneer will not sell an object being auctioned.” Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Procedures, *Third Report and Order and Second Further Notice of Proposed Rulemaking*, 13 FCC Rcd 374, ¶ 140 (1997), *recon. denied*, 15 FCC Rcd 15293 (2000).

²⁰ See *supra* note 9.

band?²⁵ Should Federal agencies be required to highlight particular circumstances about which licensees might not otherwise know, such as the fact that replacement equipment is under development and is not commercially available, or the existence of nationwide, airborne, or classified systems?

Under existing procedures, OMB reviews agency cost and time estimates in consultation with NTIA before they are submitted to Congress.²⁶ Would future relocations benefit from more detailed information regarding agency transition plans in addition to what is currently incorporated in CSEA?

Federal agencies have estimated time lines for vacating the spectrum to which they are expected to adhere. Are details regarding agency transition plans relevant primarily to an assessment of the possibility of early entry? If so, to what extent would the disclosure of such details prior to the auction affect auction bidding?

b. Transparency

i. Effect on bidding

Security requirements necessitated the classification of some information regarding affected Federal systems. That information was therefore withheld prior to the auction.²⁷ Other data in NTIA files related to many other Federal systems that have been treated previously as “Freedom of Information Act (FOIA) Exempt.”²⁸ However, to support the implementation of the CSEA, NTIA released these data prior to the auction.²⁹

To what extent (if any) did a lack of access to “classified” information prior to the auction affect bidders’ ability to participate in the auction? Is there a way to ensure that commercial entities understand whether sharing with classified systems will be possible before Federal systems are fully moved? Can agencies, while avoiding prohibited disclosure of classified information, still objectively describe the risks that

relocation time lines will not be met or that early entry coordination will not be possible? Must commercial entities have such an understanding in order to bid in the auction? Was the release of FOIA-exempt information prior to the auction helpful?

ii. Qualitative assessment

Would bidders benefit from a qualitative assessment by NTIA of the ease or difficulty of early entry? What would such an assessment entail? What factors would need to be analyzed? What would make early entry “easy” or “difficult”? How would such an assessment affect auction bidders’ due diligence obligations?³⁰

iii. Post-auction techniques

After the AWS–1 auction, Federal agencies formulated Non-Disclosure Agreements (NDAs) and web-based capabilities for information dissemination. These steps provided additional information to a limited set of winning bidders/licensees in support of the early entry coordination process.³¹ These tools were not available prior to the auction. In some cases, they included information previously treated as FOIA exempt. No classified material was provided via these additional mechanisms. NTIA seeks comment on whether, subject to the appropriate restrictions, disclosure of such unclassified FOIA-exempt information could or should be made available prior to the auction.³² Could any additional post-auction techniques to provide additional information be used in advance of the auction? Parties commenting on this question should detail the types of practices and methods, including legal instruments and information technology-based

mechanisms that would be helpful here. To what extent do pre-auction competitive and anti-collusion concerns hinder the use of such techniques?

c. Communications

i. Information exchange

Prior to the AWS–1 auction, NTIA scheduled meetings with affected Federal agencies, and initially consulted with wireless associations regarding relocation efforts. Should NTIA expand its pre-auction procedures in the future to encompass regular information exchanges among potential bidders or wireless associations and affected agencies? How can NTIA ensure that it reaches small and minority-owned businesses that may benefit from purchasing auctioned spectrum? Would future relocation efforts benefit from outreach to wireless associations prior to the auction? Would such an effort help centralize, prioritize, and expedite requests for early entry from forthcoming auction winners?³³ Parties commenting on this question should specify the type of information that should be exchanged, the appropriate parties and groups to be included, and the venue and frequency for such exchanges.

ii. Standardization

For AWS–1, some agencies developed templates and forms expanding the licensee data required in the Joint Public Notice and related FCC rules.³⁴ Were these templates useful without being overly burdensome? What aspects of these forms should be retained? Are there ways in which they can be improved? Should they remain ad hoc in nature or be standardized across all agencies? Can such standardized forms be developed prior to future auctions, to eliminate any lag in the early entry coordination process?

The 1710–1755 MHz band incumbents are largely fixed microwave operations. The Joint Public Notice and FCC rules require the interference analysis methodology and criteria specified in Telecommunications Industry Association (TIA) Telecommunications Systems (TSB) Bulletin 10–F.³⁵ That analysis applies to sharing between fixed systems and between fixed and mobile systems. It was used to assess potential interference

²⁵ Some AWS–1 licensees attempting early entry apparently were unprepared for the challenges involved in relocating incumbent video surveillance systems that use large bandwidths and are authorized for nationwide operation. These characteristics significantly complicate coordination.

²⁶ For more explanation on this process, see the “Chronology” section above.

²⁷ See generally Executive Order No. 12,958, as amended by Executive Order No. 13,292 (2003); 68 F.R. 15,315 (Mar. 28, 2003) (procedures for classifying, safeguarding and declassifying information) (“Classification Order”).

²⁸ 5 U.S.C. § 552.

²⁹ See generally “1710–1755 MHz Data — Prior to May 22, 2006,” available at http://www.ntia.doc.gov/osmhome/reports/specrelo/pdf_Prior%20to%2020060614/data_2005.htm.

³⁰ Under the FCC due diligence obligations applicable to the AWS–1 auction, potential bidders are solely responsible for investigating the factors that may bear on the value of the licenses.

Applicants in the AWS–1 auction were cautioned that operations had to be protected or relocated and that such limitations could restrict the ability to use certain portions of the spectrum or to provide service in certain geographic areas. Public Notice, “Auction of Advanced Wireless Services Scheduled for June 29, 2006,” AU Docket No. 06–30, FCC 06–47 (Apr. 12, 2006), ¶¶ 37–47, http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-06-47A1.pdf, modified on other grounds, Public Notice, “Auction of Advanced Wireless Services Licenses Rescheduled for August 9, 2006,” AU Docket No. 06–30, FCC 06–71 (May 19, 2006).

³¹ An NDA allowed an agency, prior to complete relocation, to share additional technical material on its operations as well as further information on sensitive operations, subject to certain conditions. See *infra* Section 3.a.v.B.

³² See generally “Memorandum for the Heads of Executive Departments and Agencies: Freedom of Information Act” (Jan. 21, 2009), available at http://www.whitehouse.gov/the_press_office/FreedomofInformationAct/.

³³ Issues related to the possible value of expanded communications with licensees after the auction in connection with early entry issues are discussed further *infra* Section 3.a.vi.

³⁴ See *infra* Section 3.a.vi.B.

³⁵ See Joint Public Notice, *supra* note 10. See also 47 C.F.R. § 27.1134(b). The Joint Public Notice noted that the parties could agree to an alternative method where this standard did not apply.

arising from licensee operations prior to the scheduled relocation date. Did this analysis prove useful, and should it be used in future, similar auctions? If not, what would help?

NTIA also seeks comment on how to address coordination between licensees and incumbents in future relocations where established sharing methodology or criteria does not exist. Would over-the-air testing prior to the auction and prior to a determination of winning bidders and their specific technical plans provide useful information?³⁶ What role, if any, should NTIA play in any such testing?

iii. Guidance

Successful spectrum relocation under the CSEA necessitates that diverse Federal and non-Federal entities harmonize procedures and terminology. Is there a need for NTIA, the FCC, and OMB to provide clarifying guidance to both licensees and agencies before the auction beyond what has been provided in OMB Circular A-11 and OMB Memorandum M-09-01, as well as through informal channels such as interagency meetings?³⁷ Would such guidance ensure that all affected parties understand terminology and processes?

Should NTIA, alone or in collaboration with other oversight agencies, sponsor training for agency headquarters and field personnel? Should NTIA prepare or collaborate with wireless industry associations to provide training for relevant commercial entities? Such pre-auction training might also clarify terminology, interpretation, and procedure. Would such training improve the auction and early-entry processes? Interested parties are asked to comment on appropriate sponsors and topics for such training, and whether it should be mandatory.

d. Starting the Clock

Under the CSEA, the auction of Federal frequencies must raise at least 110 percent of the estimated relocation costs of affected agencies, or the auction will be canceled.³⁸ Until that threshold

is reached, Federal agencies cannot be sure that their expenses will be reimbursed. Thus, an agency undertaking initial tasks in advance of an auction does so at the risk of not being recompensed. Such tasks may include project management, technical studies, training, development of software tools, or the hiring of additional personnel. Can Federal agencies draw from private-sector experience and methodology to ensure that their estimated costs and time lines are as accurate as possible, and that they are prepared to tackle relocation in a timely manner? If so, what should be done?

e. NTIA's Role

NTIA regulates the Federal government's use of radio stations and associated radio frequency spectrum.³⁹ The CSEA confers oversight powers on NTIA, in consultation with OMB, with respect to relocation efforts.⁴⁰ Prior to the AWS-1 auction, NTIA compiled estimated relocation costs and time lines, as the CSEA requires, and consulted with Federal agencies and the industry. NTIA published these data on its website and continues to update this material periodically.⁴¹ Parties are asked to comment on NTIA's role in the pre-auction phase of CSEA implementation. Is there additional or different information NTIA should provide? In retrospect, was the information accurate? What could be done to make the information more accurate or useful? Are post-auction updates useful to licensees? To others?

3. Post-Auction Issues

a. Early Entry

i. Background

The CSEA permits the grant of an FCC license to auction winners on reallocated spectrum even if agencies continue to operate in the band, provided there is no harmful interference to agency operations.⁴² Under the CSEA, "eligible costs" subject to SRF reimbursement may include "one-time costs of any modification of equipment" reasonably necessary to accommodate early entry.⁴³ They also include costs associated with

"accelerated replacement" if necessary for "timely relocation of systems to a new frequency assignment."⁴⁴

As permitted under the CSEA, several AWS-1 licensees sought to begin operations before the estimated relocation dates established by the agencies.⁴⁵ Licensees particularly focused on major metropolitan areas. Licensees expressed frustration at the delays they encountered in coordinating with Federal agencies.⁴⁶ On the other hand, it is NTIA's understanding that Federal agencies found themselves overwhelmed by industry requests and pressure to allow early entry. Has early entry by licensees beginning to implement their systems proven important in the successful implementation of the CSEA?

The Joint Public Notice provided a structured process for early entry coordination. Parties are asked to comment on whether this created a reasonable expectation of successful coordination. For Federal agencies, the CSEA requires that they meet their estimated relocation dates and coordinate in good faith for early entry prior to their scheduled moves. The agencies do not believe that the CSEA requires that they vacate the band prior to their estimated relocation dates at the licensee's request, nor that the law guarantees successful early entry coordination.⁴⁷ In some cases, licensees negotiated with Federal agencies in order to expedite band clearance. However, existing Federal operations sometimes precluded early entry by the licensees.⁴⁸ Were Federal agencies reasonably diligent in their early relocation efforts? How could they be more so? Did an expectation of successful coordination form part of the basis for AWS-1 auction bids? Should bidders expect to bear all the risks associated with early entry? What options should be available to facilitate early entry?

ii. FCC Process for Non-Federal Incumbents

The FCC transitional rules applicable to non-Federal incumbents differ from the CSEA procedures described above. Under the FCC rules, AWS-1 licensees trigger the start of non-Federal incumbent relocation efforts in the form

³⁶ See *infra* Section 3.a.vi.B for a related discussion from a post-auction perspective.

³⁷ Executive Office of the President, Office of Management and Budget, Circular No. A-11, Preparation, Submission, and Execution of the Budget, (June 2008 rev.), available at http://www.whitehouse.gov/omb/circulars/a11/current_year/a_11_2008.pdf; Executive Office of the President, Office of Management and Budget, Memorandum for Heads of Executive Departments and Agencies, M-09-01, available at <http://www.whitehouse.gov/omb/assets/omb/memoranda/fy2009/m09-01.pdf>. See *infra* Section 3.b for a related discussion from the post-auction perspective.

³⁸ CSEA, § 203 (b) 118 Stat. 3994, 47 U.S.C. § 309 (j) (15) (B).

³⁹ NTIA Manual, *supra* note 15, § 1.1.

⁴⁰ See *supra* note 15.

⁴¹ See generally "1710-1755 MHz Introduction," available at <http://www.ntia.doc.gov/osmhome/reports/specrelo/index.htm>. See also Section 2.a, *supra*.

⁴² CSEA, § 203 (b) (C), 118 Stat. 3994, 47 U.S.C. § 309 (j) (15) (c). The Joint Public Notice established coordination procedures for early entry. See "Chronology," Section 2.a, and note 10, *supra*.

⁴³ CSEA, § 202, 118 Stat. 3992, 47 U.S.C. § 923 (g) (3) (D).

⁴⁴ CSEA, § 202, 118 Stat. 3992, 47 U.S.C. § 923 (g) (3) (E).

⁴⁵ Agencies estimated relocation times from one to six years. See "Chronology," *supra*.

⁴⁶ CSMAC Reallocation Report, *supra* note 23, at 18-21.

⁴⁷ See generally *id.*, at 19.

⁴⁸ See generally *id.*, at 18-21.

of mandatory negotiations.⁴⁹ Private clearinghouses allow AWS-1 licensees to share commonly incurred reimbursement costs.⁵⁰ An AWS-1 licensee may pay a premium to expedite a non-Federal incumbent's move. If the payment, however, exceeds the clearinghouse "cost-sharing cap," other AWS-1 licensees also benefitting from the relocation would only have to make payments on a pro-rata basis up to the cap. We seek comment on how the Federal and non-Federal approaches to compensating incumbents for relocation expenses compare.⁵¹

iii. Incentives

A. Market-based incentives

NTIA seeks comment on whether any of the market-based incentives operative in the non-Federal clearance process could be applied to expedite Federal agency relocation. The CSEA allows recovery of some costs associated with interim changes accommodating early entry prior to scheduled Federal relocation. These include one-time costs of equipment modification necessary for early entry and costs associated with accelerated replacement of systems and equipment.⁵² Are these provisions sufficient?

B. Benchmarks and other non-economic approaches

The CSEA requires agencies to estimate relocation times. Were relocation estimates for AWS-1 generally accurate? How might they be improved in the future? NTIA seeks comment on whether standards, expressed or implied, for assessing the reasonableness of these times, can be drawn from the statute. How, as a practical matter, might NTIA and OMB ensure that relocation time estimates provide that agencies vacate the spectrum as expeditiously as possible?

⁴⁹This period is two years for fixed microwave incumbents and three years for Broadband Radio Service (BRS) licensees. 47 C.F.R. § 101.69; 47 C.F.R. § 1250. Fixed microwave services operate in the 2110–2150 MHz band. BRS operates at 2150–2155 MHz. Parties are free to negotiate voluntarily at any time. If the parties fail to agree within the mandatory period, the AWS licensee may initiate involuntary relocation procedures. The microwave relocation rules sunset 10 years, and the BRS rules 15 years, after the first AWS-1 license is issued. At this point, an AWS-1 licensee starting up service within interference range may require an incumbent to cease operation. 47 C.F.R. § 101.79(a)(1); 47 C.F.R. § 27.1253.

⁵⁰AWS-1 licensees benefitting from another licensee's relocation of an incumbent share in those expenses, pro-rata, subject to a "cap." The FCC established maximum amounts or "caps" on what the clearinghouse could pay. "FAQs — AWS Licensees," available at <http://www.ctiaspectrumclearinghouse.org/ctia/aws-lic.jsp>.

⁵¹ See also Section 1, *supra*.

⁵² See Section 3.a.1, *supra*.

The Commerce Spectrum Management Advisory Committee (CSMAC) recommended the adoption of "benchmarks" or interim clearance requirements by which gradually increasing percentages of a Federal system would be vacated at certain specified dates.⁵³ Should NTIA establish mandatory "benchmarks" or other non-market-based incentives for Federal agencies to use in vacating the spectrum? Would benchmarks of this nature help move relocation forward or provide meaningful certainty to bidders? What other benchmarks might be useful? Would benchmarks contradict the CSEA procedures allowing agencies to estimate their own relocation times, subject to OMB and NTIA review? Should any such benchmarks be service-specific, taking account of the relative ease or difficulty of relocating different types of operations? Parties advocating for benchmarks should indicate how an entrant would use them, point to analogous FCC or other precedent, and explain how benchmarks have been used in the past. In particular, NTIA seeks input on how benchmarks could be enforced in a meaningful way.

iv. Adequacy of Data

The Joint Public Notice detailed the coordination process for licensees to use in early entry. This process, if successful, permits AWS-1 licensees to access the 1710–1755 MHz band prior to the estimated agency relocation dates. The Joint Public Notice referenced additional material available on NTIA's website providing geographic location, frequency bands, and other information.⁵⁴ NTIA seeks comment on the adequacy of this information for purposes of coordinating early entry and permitting licensees to begin deployment.⁵⁵ What information might be added? What aspects of the coordination process established in the Joint Public Notice succeeded and which might be improved?

Parties are asked to detail any supplementary information that would facilitate sharing of the spectrum prior to the agency's scheduled relocation time. Once winning bidders are determined, should commercial entities be required to exchange information regarding their operational plans as part of the coordination process? Such information might enable Federal agencies to reduce the additional agency

data needed to facilitate early entry. Parties are asked to comment on this tentative view, and on any competitive or proprietary issues it may raise. What licensee information, if any, should be shared, and if so, at what point and by what mechanisms?

v. Transparency

A. Post-auction considerations

After a successful auction, the number of commercial entities potentially interested in classified or otherwise restricted data on incumbent Federal operations narrows to a group of successful bidders with specific deployment plans and operational needs. The Federal agencies developed distinct techniques for releasing additional information to this smaller group. NTIA seeks comment on the validity of this general distinction between pre-auction and post-auction releasability of data. Does this distinction generally allow Federal agencies to provide more data after the auction? Did these post-auction techniques succeed, and how might they be improved? Should there be a standardized process for releasing otherwise restricted data after licenses are awarded?

B. Non-disclosure agreements

The Joint Public Notice provided that AWS-1 licensees could enter into Non-Disclosure Agreements (NDAs) with Federal agencies after the auction.⁵⁶ An NDA allowed an agency, prior to complete relocation, to share additional technical material on its operations as well as further information on otherwise sensitive data. NTIA seeks comment on whether this process should be retained. Can it be improved? If so, how?

C. Other mechanisms

NTIA seeks comment on other possible mechanisms for exchanging information on classified or otherwise restricted data. In lieu of NDAs, some agencies developed web-based capabilities to facilitate coordination with licensees.⁵⁷ This allowed an assessment of potential interference to Federal systems without revealing restricted material. Were these techniques successful? Such web-based capabilities require licensees to provide detailed, accurate data regarding their operational plans. Provision of this data may permit an agency to assess accurately and quickly the potential for interference to their operations, and to

⁵³ CSMAC Reallocation Report, *supra* note 23 at 24–25.

⁵⁴ Joint Public Notice, *supra* note 10.

⁵⁵ For a discussion of how adequacy of this information might affect bidding, see *supra* Section 2.a.

⁵⁶ Joint Public Notice, *supra* note 10, at 4.

⁵⁷ The CSMAC has recommended the use of automated procedures or other secure online capabilities for facilitating the sharing of classified information. See CSMAC Reallocation Report, *supra* note 23, at 21–22.

notify the licensee accordingly. Does this additional data demand raise competitive and proprietary concerns for licensees? If so, how can such concerns be lessened?

Parties addressing the disclosure of classified or otherwise sensitive information should reference relevant Federal rules and statutes.⁵⁸ Commenters are encouraged to cite specific examples of mechanisms that have either worked or failed.

vi. Communications

Both Federal agencies and licensees cite poor communications as a fundamental cause of early entry issues. It is NTIA's understanding that Federal agencies noted intense pressure, floods of requests, and inaccurate data from licensees. Licensees, in turn, remark about bureaucratic delays, lack of assigned agency staff, and divergent agency practices.⁵⁹ In general, how could communications related to early entry activities be improved?

A. Information exchange

NTIA has held monthly meetings among affected Federal agencies since the AWS-1 auction. Should NTIA expand these to include regular information exchanges among both licensees and agencies to address problems and assess progress? How would such meetings affect licensees' competitive concerns? Parties are asked to comment on what the frequency and scope of such meetings would be.

Agencies claim that they were inundated with simultaneous early entry requests.⁶⁰ Would it help to require a date certain notification to agencies of license award, company, and contact information and the need for coordination? Should licensees be required to prioritize when submitting large numbers of such requests at the same time?

Some agencies maintain that inadequate data from licensees for coordination purposes hindered early deployment. To what extent did this inadequacy proceed from competitive or proprietary concerns which hampered full information exchange? What types of data — for example, contact information, implementation schedules, network characteristics, technical parameters, duty cycles — would be of assistance? How can agencies correctly understand licensee early entry aims, while at the same time protect

competitive sensitivities? What types of information or procedures might help?

B. Standardization and centralization

Parties are asked to comment on the value of automation in improving transparency of communications.⁶¹ Web-based capabilities and other Information Technology-based mechanisms may provide a way to streamline the coordination process. Should Federal agencies be encouraged to adopt these? Should OMB, the FCC, and NTIA create a centralized Federal website to provide uniform guidance on process, eligible costs, coordination, and other CSEA implementation matters?

The methodology and interference criteria specified in TIA TSB 10-F provided a standard approach for assessing potential interference to Federal fixed microwave systems.⁶² Some agencies also developed templates and forms for licensee interactions, following agency-specific testing and determination of particular interference parameters. Such uniformity can help avoid time-consuming case-by-case analyses. Is there a way to standardize interference parameters across agencies for the same incumbent service? What if a widely accepted standard, such as the TIA TSB 10-F, is not available for the service at issue?

Would it be useful to permit testing as a means of verifying the results of interference analyses in "real world" conditions? If so, when should such testing be permitted?

b. Guidance

Licensees have noted the lack of agency personnel dedicated to relocation matters, with the result that agency interactions may prove dilatory or unproductive.⁶³ Section 2.c.iii above addresses the need for pre-auction training and guidance. Is there a need for ongoing and standardized guidance as the relocation process progresses post-auction? What sort of guidance would prove useful in answering specific or novel implementation questions regarding early entry and related matters as they occur?

c. NTIA's Role

Where necessary, NTIA facilitated coordination efforts between AWS-1 licensees and Federal incumbents, and left the ultimate decision-making to the parties themselves. On the non-Federal side, AWS-1 licensees are required to negotiate directly with individual

incumbents. Please comment regarding the adequacy of NTIA's efforts to support coordination. The CSMAC has suggested that relocation activities, including licensee interface, be centralized in NTIA.⁶⁴ Do circumstances differ for direct licensee-Federal incumbent interaction such that NTIA should increase its leadership role?

Throughout the 1710–1755 MHz relocation process, NTIA has served multiple roles. Often, NTIA acts as a liaison for licensees seeking additional information or accelerated clearance from agencies. NTIA also coordinates with OMB and the FCC regarding appropriate policies and procedures. NTIA provides guidance to the Federal agencies based on its own expertise, and the advice of OMB and the FCC. In light of NTIA's institutional expertise, the CSMAC recommended that NTIA assume a greater leadership role in this process.⁶⁵ NTIA seeks comment on its role as a liaison between AWS-1 licensees and Federal agencies in early entry matters. What additional responsibilities or roles should NTIA assume in this process? What are the potential benefits or pitfalls of such additional responsibility(ies)? With respect to offering guidance on relocation policies and procedures, are there ways in which NTIA might improve its efforts?⁶⁶

d. Other Funding and Administrative Issues

i. Long-term lease costs

Federal spectrum management policies encourage Federal agencies to use commercial services whenever feasible.⁶⁷ One Federal agency replaced existing fixed microwave systems having an estimated 12-year life with commercial telephony leases entailing recurring monthly charges. However, in the 1710–1755 MHz relocation, payment of costs is limited to one-time relocation costs.⁶⁸ Does this limitation hinder or delay the entry of commercial services in the band?⁶⁹

ii. Spectrum-efficient technologies

The CSEA is based on payment of costs to relocate Federal systems to new

⁶⁴ *Id.*, at 23.

⁶⁵ *Id.*

⁶⁶ See *supra* Section 3.b.

⁶⁷ NTIA Manual, *supra* note 15, § 2.3.3.

⁶⁸ The SRF may pay "relocation" costs. These include costs necessary to achieve "comparable capability" regardless if that entails a new frequency assignment or use of an alternative technology. CSEA, §§ 204 (c), 202, 118 Stat. 3994, 3992, 47 U.S.C. §§ 928, 923 (g) (3).

⁶⁹ One alternative might be to use the eight-year CSEA "sunset" date. See "Chronology," *supra*.

⁵⁸ See, e.g., Classification Order, *supra* note 27; 5 U.S.C. § 552.

⁵⁹ See generally CSMAC Reallocation Report, *supra* note 23 at 18–21.

⁶⁰ See generally *id.*, at 13, 19.

⁶¹ See also *supra* Section 3.a.v.C.

⁶² See *supra* Section 2.c.ii.

⁶³ CSMAC Reallocation Report, *supra* note 23, at 13.

spectrum. In the case of the 1710–1755 MHz band, this involved moving Federal systems completely out of the allocated band. It is possible, however, that technological advances or more spectrum-efficient techniques, if implemented across all Federal agencies or entire services, may permit increased consolidation or sharing among Federal agencies. This, in turn, could result in release of additional spectrum that could be auctioned for commercial services. Under this approach the Federal users might still remain in the band. Could this approach result in the potential for increased opportunities to accommodate new commercial services? Are there other approaches to accommodating new commercial services in bands used by the Federal government?

e. Urban versus Rural Relocation

Federal policies favor nationwide availability of advanced services.⁷⁰ Advanced wireless industry efforts to transition agencies thus far, however, appear to have concentrated on populated areas. To date, agencies in remote areas for the most part have been able to accommodate buildouts through the coordination process.⁷¹ In the future, should Federal/non-Federal sharing in remote regions substitute for outright reallocation? How would continued Federal use hinder commercial deployment in remote areas?

Dated: June 30, 2009.

Anna M. Gomez,

*Deputy Assistant Secretary for
Communications and Information.*

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⁷⁰ See generally White House, Technology, “Drive Economic Growth and Solve National Problems by Deploying a 21st Century Infrastructure,” available at www.whitehouse.gov/issues/technology; Press Release, NTIA, “Vilsack, Copps and Wade Kick Off American Recovery and Reinvestment Act’s Broadband Initiative” (Mar. 10, 2009) available at http://www.ntia.doc.gov/press/2009/BTOP_RFI_090310.pdf.

⁷¹ See generally *Second Annual Relocation Report*, supra note 5, at A–1 and n. 2 (USDA extensions of relocation time lines in remote areas did not impact commercial deployment).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3633–037]

Alternative Energy Associates Limited Partnership; KC Brighton LLC; Notice of Application for Transfer of License, and Soliciting Comments, Motions To Intervene, and Protests

June 26, 2009.

On June 8, 2009, Alternative Energy Associates Limited Partnership (Transferor) and KC Brighton LLC (Transferee) filed a joint application for transfer of license of the Brighton Dam Project. The Project is located on the Patuxent River in Howard and Montgomery Counties, Maryland.

Applicants seek Commission approval to transfer the license for Brighton Dam Project from Alternative Energy Associates Limited Partnership to KC Brighton LLC.

Applicant Contact: For Transferor, Alternative Energy Associates Limited Partnership, Barbara Exter, Alternative Energy Associates Limited Partnership, 123 Piano Drive, Newark, DE 19713–1984, telephone (302) 293–9544.

For Transferee, KC Brighton LLC, Kelly W. Sackheim, KC Brighton LLC, 5096 Cocoa Palm Way, Fair Oaks, CA 95628–519, telephone (916) 267–5937.

FERC Contact: Patricia W. Gillis, (202) 502–8735.

Deadline for filing comments, protests, and motions to intervene: 30 days from the issuance of this notice. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission’s Web site under the “e-Filing” link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission’s Web site located at <http://www.ferc.gov/filing-comments.asp>. More information about this project can be viewed or printed on the “eLibrary” link of Commission’s Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P–3633–037) in the docket number field to access the document.

For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–433–000; PF09–4–000]

Fayetteville Express Pipeline LLC; Notice of Application

June 26, 2009.

Take notice that on June 15, 2009, Fayetteville Express Pipeline LLC (Fayetteville Express), 500 Dallas Street, Suite 1000, Houston, Texas 77002, filed an application in Docket No. CP09–433–000 pursuant to section 7(c) of the Natural Gas Act (NGA), and parts 157 and 284 of the Commission’s regulations requesting: (1) Authorization to construct and operate a new approximately 185-mile, 42-inch natural gas pipeline located in Arkansas and Mississippi capable of transporting up to 2,000,000 Dth/day; (2) a blanket certificate authorizing Fayetteville Express to engage in certain self-implementing routine activities under part 157, subpart F, of the Commission’s regulations; and (3) a blanket certificate authorizing Fayetteville Express to transport natural gas, on an open access and self-implementing basis, under part 284, subpart G of the Commission’s regulations. Additionally, Fayetteville Express seeks approval of its proposed recourse rates, and *pro forma* tariff, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Any questions regarding the applications should be directed to Ronald Brown, Vice President, Fayetteville Express Pipeline LLC, 500 Dallas Street, Suite 1000, Houston, Texas 77002; telephone: (713) 369–9290 or e-mail: ronald_brown@kindermorgan.com.

The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission’s Web site at <http://www.ferc.gov> using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.