

controlling interests, has average gross revenues not to exceed \$15 million for the preceding three years.

(2) A very small business is an entity that, together with its affiliates and controlling interests, has average gross revenues not to exceed \$3 million for the preceding three years.

(c) A winning bidder that qualifies as a small business, as defined in paragraph (b)(1) of this section, or a consortium of small businesses may use the bidding credit specified in §1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as a very small business, as defined in paragraph (b)(2) of this section, or a consortium of very small businesses may use the bidding credit specified in §1.2110(f)(2)(i) of this chapter.

[63 FR 40664, July 30, 1998, as amended at 67 FR 45379, July 9, 2002; 68 FR 43001, July 21, 2003]

### Subpart Y—Regulations Governing Licensing and Use of Frequencies in the 4940–4990 MHz Band

SOURCE: 68 FR 38639, June 30, 2003, unless otherwise noted.

#### § 90.1201 Scope.

This subpart sets out the regulations governing use of the 4940–4990 MHz (4.9 GHz) band. It includes eligibility requirements, and specific operational and technical standards for stations licensed in this band. The rules in this subpart are to be read in conjunction with the applicable requirements contained elsewhere in this part; however, in case of conflict, the provisions of this subpart shall govern with respect to licensing and operation in this band.

#### § 90.1203 Eligibility.

(a) Entities providing public safety services as defined under section 90.523 are eligible to hold a Commission license for systems operating in the 4940–4990 MHz band. All of the requirements and conditions set forth in that section also govern authorizations in the 4940–4990 MHz band.

(b) 4.9 GHz band licensees may enter into sharing agreements or other arrangements for use of the spectrum

with entities that do not meet these eligibility requirements. However, all applications in the band are limited to operations in support of public safety.

#### § 90.1205 Permissible operations.

(a) Unattended and continuous operation is permitted.

(b) Voice, data and video operations are permitted.

(c) Aeronautical mobile operations are prohibited.

#### § 90.1207 Licensing.

(a) A 4940–4990 MHz band license gives the licensee authority to operate on any authorized channel in this band within its licensed area of operation. See §90.1213. A 4940–4990 MHz band license will be issued for the geographic area encompassing the legal jurisdiction of the licensee or, in case of a non-governmental organization, the legal jurisdiction of the state or local governmental entity supporting the non-governmental organization.

(b) Subject to §90.1209, a 4940–4990 MHz band license gives the licensee authority to construct and operate any number of base stations anywhere within the area authorized by the license, except as follows:

(1) A station is required to be individually licensed if:

(i) International agreements require coordination;

(ii) Submission of an environmental assessment is required under §1.1307 of this chapter; or

(iii) The station would affect areas identified in §1.924 of this chapter.

(2) Any antenna structure that requires notification to the Federal Aviation Administration (FAA) must be registered with the Commission prior to construction under §17.4 of this chapter.

(c) A 4940–4990 MHz band license gives the licensee authority to operate base and mobile units (including portable and handheld units) and operate temporary (1 year or less) fixed stations anywhere within the area authorized by the license. Such licensees may operate base and mobile units and/or temporary fixed stations outside their authorized area to assist public safety operations with the permission of the jurisdiction in which the radio station is

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to be operated. Base and temporary fixed stations are subject to the requirements of paragraph (b) of this section.

(d) A 4940–4990 MHz band license does not give the licensee authority to operate permanent fixed point-to-point stations. Licensees choosing to operate such fixed stations must license them individually on a site-by-site basis. Such fixed operation will be authorized only on a secondary, non-interference basis to base, mobile and temporary fixed operations.

[68 FR 38639, June 30, 2003, as amended at 69 FR 17959, Apr. 6, 2004]

### § 90.1209 Policies governing the use of the 4940–4990 MHz band.

(a) Channels in this band are available on a shared basis only and will not be assigned for the exclusive use of any licensee.

(b) All licensees shall cooperate in the selection and use of channels in order to reduce interference and make the most effective use of the authorized facilities. Licensees of stations suffering or causing harmful interference are expected to cooperate and resolve this problem by mutually satisfactory arrangements. If licensees are unable to do so, the Commission may impose restrictions including specifying the transmitter power, antenna height, or area or hours of operation of the stations concerned. Further, the Commission may prohibit the use of any 4.9 GHz channel under a system license at a given geographical location when, in the judgment of the Commission, its use in that location is not in the public interest.

(c) Licensees will make every practical effort to protect radio astronomy operations as specified in § 2.106, footnote US311 of this chapter.

(d) There is no time limit for which base and temporary fixed stations authorized under a 4940–4990 MHz band license must be placed in operation. Fixed point-to-point stations which are licensed on a site-by-site basis must be placed in operation within 18 months of the grant date or the authorization for that station cancels automatically.

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### § 90.1211 Regional plan.

(a) To facilitate the shared use of the 4.9 GHz band, each region may submit a plan on guidelines to be used for sharing the spectrum within the region. Any such plan must be submitted to the Commission within 12 months of the effective date of the rules.

(b) Such plans must incorporate the following common elements:

(1) Identification of the document as a plan for sharing the 4.9 GHz band with the region specified along with the names, business addresses, business telephone numbers and organizational affiliations of the chairperson(s) and all members of the planning committee.

(2) A summary of the major elements of the plan and an explanation of how all eligible entities within the region were given an opportunity to participate in the planning process and to have their positions heard and considered fairly.

(3) An explanation of how the plan was coordinated with adjacent regions.

(4) A description of the coordination procedures for both temporary fixed and mobile operations, including but not limited to, mechanisms for incident management protocols, interference avoidance and interoperability.

(c) Regional plans may be modified by submitting a written request, signed by the regional planning committee, to the Chief, Wireless Telecommunications Bureau. The request must contain the full text of the modification, and a certification that all eligible entities had a chance to participate in discussions concerning the modification and that any changes have been coordinated with adjacent regions.

EFFECTIVE DATE NOTE: At 69 FR 51959, Sept. 23, 2004, paragraph (a) of § 90.1211 was stayed indefinitely.

### § 90.1213 Band plan.

The following channel center frequencies are permitted to be aggregated for channel bandwidths of 5, 10, 15 or 20 MHz. Channel numbers 1 through 5 and 15 through 18 are 1 MHz channels and channels numbers 6 through 14 are 5 MHz channels.