2. Appendix A of Part 1611 is revised to read as follows:

APPENDIX A OF PART 1611—LEGAL SERVICES CORPORATION 1997 POVERTY GUIDELINES*

Size of family unit	All states but Alaska and Hawaii [1]	Alaska [2]	Hawaii [3]
1	$9,863	$12,338	$11,338
2	13,263	16,588	15,250
3	16,663	20,838	19,163
4	20,063	25,088	23,075
5	23,463	29,338	26,988
6	26,863	33,588	30,900
7	30,263	37,838	34,813
8	33,663	42,088	38,725

*The figures in this table represent 125% of the poverty guidelines by family size as determined by the Department of Health and Human Services.

[1] For family units with more than eight members, add $3,400 for each additional member in a family.

[2] For family units with more than eight members, add $4,250 for each additional member in a family.

[3] For family units with more than eight members, add $3,913 for each additional member in a family.

Dated: March 13, 1997.

Victor M. Fortuno,

General Counsel.

[FR Doc. 97–6830 Filed 3–17–97; 8:45 am]

BILLING CODE 7050–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 24 and 101

[WT Docket No. 95–157; FCC 97–48]

Plan for Sharing the Costs of Microwave Relocation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this Second Report and Order, the Commission amends certain aspects of the microwave relocation rules, which were first established in the Emerging Technologies proceeding and were modified and clarified in the First Report and Order and Further Notice of Proposed Rule Making in this docket. Specifically, the Commission adjusts the relocation timetables for the broadband PCS C, D, E, and F blocks by shortening the voluntary negotiation period applicable to each block for non-public safety incumbents by one year. This change will facilitate the relocation process for the most recently licensed PCS blocks and will create incentives for all parties to enter into early negotiations. The Commission does not alter the timetable for public safety incumbents in the broadband PCS C, D, E, and F blocks. In addition, the Commission permits microwave incumbents to participate in the cost-sharing program adopted in the First Report and Order. The cost-sharing program currently allows PCS licensees who relocate microwave incumbents to obtain reimbursement rights and collect reimbursement under the cost-sharing plan from later-entrant PCS licensees that benefit from the relocation.

EFFECTIVE DATE: May 19, 1997.

FOR FURTHER INFORMATION CONTACT: Michael Hamra, Wireless Telecommunications Bureau, (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Second Report and Order, adopted February 13, 1997 and released February 27, 1997. The complete text of this Second Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center, Room 230, 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

I. Background

1. In the Emerging Technologies proceeding, ET Docket No. 92–9, 57 FR 49020 (October 29, 1992) the Commission reallocated the 1850–1990, 2110–2150, and 2160–2200 MHz bands from private and common carrier fixed microwave services to emerging technology services. In that proceeding the Commission established the procedures for relocating 2 GHz microwave incumbents to available frequencies in higher bands or to other media. These procedures are intended to encourage incumbents to negotiate relocation agreements with emerging technology licensees or manufacturers of unlicensed devices to accelerate the deployment of emerging technologies.

2. The relocation process established in that proceeding provided two negotiation periods that must expire before an emerging technology licensee may request involuntary relocation of the incumbent. The first is a fixed two-year period for voluntary negotiations—three years for public safety incumbents, *e.g.*, police, fire, and emergency medical licensees—commencing with the Commission's acceptance of long form (Form 600) applications for emerging technology services. During that time period, the emerging technology providers and microwave licensees may negotiate any mutually acceptable relocation agreement. Such negotiations are strictly voluntary. At any time following the conclusion of the voluntary negotiation period, the emerging technology licensee may initiate a one-year mandatory negotiation period—two years for public safety licensees. During this period the parties are required to negotiate in good faith. If the parties fail to reach an agreement during these periods, the emerging technology provider may request involuntary relocation of the existing facility. As a condition of relocation, however, the emerging technology licensee is required to pay the cost of relocating the incumbent to a comparable facility.

3. In the Commission's First Report and Order in WT Docket 95–157, 61 FR 29679 (June 12, 1996) the Commission adopted a cost-sharing formula that allows a PCS licensee who relocates an incumbent microwave system to obtain reimbursement rights and collect reimbursement from later-entrant PCS licensees that benefit from the relocation under a cost-sharing plan administered by the industry. The Commission also addressed concerns

raised by PCS licensees that negotiations during the voluntary period for the A and B blocks were not progressing as fast as they should and were potentially delaying the deployment of PCS service to the public. The Commission decided that altering the timetable for A and B block negotiation periods at that time would not be in the public interest because ongoing negotiations were likely to be interrupted, while parties re-assessed their positions to the detriment of the process and ultimately, the public interest. In the Further Notice of Proposed Rule Making (Further NPRM) 61 FR 24470 (May 15, 1996) accompanying the First Report and Order, however, the Commission sought comment on a proposal to shorten the voluntary negotiation period and lengthen the mandatory negotiation period for the D, E, and F blocks and on whether these same changes should apply to the C block.

4. In the Further NPRM, the Commission also considered whether to allow microwave incumbents who pay their own relocation expenses to participate in the cost-sharing plan adopted in the First Report and Order under certain conditions. To further expedite clearing of the band, the Commission tentatively concluded that incumbents should be permitted to relocate their own links and obtain reimbursement rights pursuant to the cost-sharing plan.

II. Discussion

A. Voluntary and Mandatory Negotiation Periods for D, E, and F Blocks

5. The comments of both PCS licensees and microwave incumbents have confirmed that most incumbents are willing to negotiate reasonable relocation agreements during the voluntary negotiation period. As many PCS licensees argue, however, the current length of the voluntary period unnecessarily provides opportunities for some incumbents to demand excessive premiums from PCS licensees after they have invested substantial amounts at auction and face competitive pressure to construct their systems and enter the market, particularly on 10 MHz blocks where PCS licensees have limited flexibility to build around incumbents. In addition, because of the staggered timing of PCS licensing, D, E, and F block licensees who are unable to negotiate voluntary agreements cannot initiate mandatory negotiations for more than a year after their A and B block competitors have begun such negotiations. Thus, the current rules give the A and B block licensees a significant ''head start'' in the relocation process.

6. The Commission agrees that shortening the voluntary period for non-public safety incumbents in the D, E, and F blocks by one year will spur voluntary negotiations and speed the deployment of PCS services to the public. This modification will also enhance competitive parity by reducing the A and B block licensees' head start in the relocation process. The voluntary period for the A and B block licensees expires on April 5, 1997 (with respect to non-public safety incumbents), at which point A and B block licensees may begin mandatory negotiations. Shortening the voluntary period for D, E, and F blocks will help licensees in those blocks to initiate mandatory negotiations a year earlier than under the current rules, providing some compensation for the fact that the D, E, and F block voluntary negotiation period commenced approximately twenty-one months after the A and B block voluntary negotiation period. The A and B block voluntary negotiation period commenced April 5, 1995. The D, E, and F block voluntary negotiation period will commence January 30, 1997, when long forms are filed. The Commission therefore amends the rules and shortens the voluntary negotiation period for the D, E, and F blocks by one year for non-public safety incumbents.

7. The Commission concludes that shortening the voluntary negotiation period for non-public safety incumbents in the D, E, and F blocks at this juncture will not adversely affect such incumbents. The Commission notes that microwave incumbents have been on notice since October 1992 that they will be required to relocate to alternative spectrum. Moreover, the Commission's experience with voluntary negotiations in the A and B blocks indicates that most incumbents who are motivated to enter into voluntary agreements are willing to do so early in the voluntary period and do not require prolonged negotiations to reach an agreement. Under the timetables adopted here, D, E, and F block incumbents will continue to have a reasonable window for voluntary negotiations and may continue to negotiate in the mandatory negotiation period. Moreover, if parties are successfully negotiating an agreement during the voluntary negotiation period and believe that more time is needed, they may agree to postpone commencement of the mandatory period. Finally, shortening of the voluntary period does not alter the Commission's fundamental policy that incumbents must be made whole for the reasonable expense of being relocated to comparable facilities, regardless of whether relocation occurs in the voluntary period, the mandatory period, or as a result of involuntary relocation.

8. While the Commission adopts it's proposal to shorten the voluntary negotiation period for non-public safety incumbents in the D, E, and F blocks, the Commission concludes it is unnecessary to lengthen the one-year mandatory negotiation period. Because the D, E, and F blocks are 10 MHz blocks, there are fewer links to relocate than in the 30 MHz A, B, and C blocks. In addition, no additional time should be required for mandatory negotiation in the D, E, and F blocks because many of the links will have been relocated by A, B, and C block licensees by the time the D, E, and F block licensees commence negotiations. The Commission is encouraged, from our discussions with industry, by the speed with which relocation agreements are being negotiated and believe that a total of two years, (one year voluntary and one year mandatory) is sufficient to accommodate negotiations between non-public safety incumbents and D, E, and F block licensees. Lengthening the mandatory negotiation period by one year, on the other hand, will do little to accomplish the Commission's objective of speeding the deployment of PCS services to the public. The Commission also do not believe that non-public safety incumbents will be harmed by a shorter combined negotiation period because in conjunction with these changes, the Commission is providing microwave incumbents more flexibility to self-relocate by permitting them to participate in the Commission's cost-sharing plan (see, *infra*, ¶ 22). Consequently, the Commission declines to increase the amount of time in the mandatory period needed to complete the relocation process for these blocks.

9. The Commission declines to alter the voluntary or mandatory negotiation periods for public safety incumbents in the D, E, and F blocks. Under the Commission's current rules, public safety incumbents in the 2 GHz band are distinguished from non-public safety 2 GHz incumbents in that they have a three-year voluntary and a two-year mandatory negotiation period. The Commission has given public safety incumbents more time to negotiate and relocate because of the importance of ensuring a seamless transition for facilities that support vital emergency services such as police, fire, and emergency medical treatment. In addition, the longer negotiation timetable reflects the fact that public safety agencies typically operate under

greater budgetary constraints and longer planning cycles than non-public safety entities. For example, the LA Sheriff's Department notes that replacing its 2 GHz simulcast mobile network entails a lengthy review and approval process in which numerous county personnel must participate at all stages. APCO contends that for public safety agencies, the relocation process requires significant commitment of scarce agency time and resources to ensure that vital emergency communications will not be compromised or disrupted. The Commission agrees that these continue to be significant concerns that distinguish public safety incumbents from other incumbents. The Commission further concludes that there is insufficient support in the record for modifying the negotiation timetable for public safety incumbents at this time. Even prior to the commencement of negotiations, many public safety agencies have begun to plan for relocation in reliance on the existing rules. Because changing the rules could disrupt this process, and because of the vital importance of providing the public with reliable emergency communications, the Commission concludes that the current relocation timetable for public safety agencies in the D, E, and F blocks should be retained.

10. The Commission does not believe that retaining the current relocation rules for public safety incumbents will adversely affect PCS licensees in the D, E, and F blocks. Because public safety incumbents account for fewer than 20 percent of the microwave facilities in all PCS blocks, PCS licensees will be able to clear most of their spectrum under the shorter timetable applicable to non-public safety licensees. In addition, the Commission's experience after twenty-one months of voluntary negotiations in the A and B blocks indicates that most public safety incumbents in those blocks have entered into voluntary negotiations with PCS licensees and are cooperating in the relocation process. Based on this experience, the Commission anticipates that public safety agencies in the D, E, and F blocks will not wait until the conclusion of the voluntary period to begin negotiations requested by D, E, and F block licensees and will make good-faith efforts to complete the relocation process in a reasonable time. Because the Commission believes that the current rules fairly balance the interests of PCS licensees and public safety incumbents, the Commission concludes that further alteration to the voluntary or mandatory negotiation periods for public safety incumbents is unnecessary.

B. Voluntary and Mandatory Negotiation Periods for C Block

11. The C block winners are potentially at a greater disadvantage compared to A and B block winners under the current voluntary negotiation timetable. Currently the voluntary negotiation period for non-public safety incumbents and A and B block licensees will expire April 5, 1997, whereas the equivalent voluntary negotiation period for C block will expire May 22, 1998. The C block winners are small businesses that do not have financial resources similar to their A and B block competitors. The C block is an entrepreneurs block that restricted eligibility to applicants with gross revenues of less than $125 million in each of the last two years and total assets of less than $500 million at the time the applicants' short-form application (Form 175) was filed. It is not as feasible for a small business to pay premiums to accelerate negotiations. The purpose of the special C block bidding rules is to encourage small business participation in PCS. The Commission believes an extended voluntary negotiation period could hinder or deter small businesses from effectively participating in the PCS business because it increases the likelihood that they will incur start-up business expenses such as relocation premiums and related costs due to extended negotiations. The Communications Act requires the Commission to eliminate market entry barriers for entrepreneurs and small businesses. The Commission believes that modifying the negotiation periods will eliminate market entry barriers pursuant to Section 257 of the Communications Act and will assist small businesses in C block to deploy service to the consumer faster. The Commission concludes that these factors are sufficiently compelling to justify modification of the voluntary negotiation period for non-public safety incumbents, even though negotiations have commenced. The Commission therefore shortens the voluntary negotiation period for C block to one year for non-public safety incumbents, which will cause it to terminate on May 22, 1997.

12. Similar to the Commission's decision not to extend the mandatory negotiation period in the D, E, and F blocks, the Commission also conclude that it is unnecessary to extend the mandatory negotiation period for non-public safety incumbents in the C block. As in the case of the D, E, and F blocks, the Commission believe that no additional time is required for mandatory negotiations in the C block because many C block links will have been relocated by A and B block licensees by the time C block licensees commence mandatory negotiations. The Commission also believes that a combined two-year negotiation period will be sufficient for negotiations between C block licensees and non-public safety incumbents, whereas lengthening the mandatory period by one year could delay the deployment of PCS services to the public. Also, microwave incumbents will have greater flexibility in the relocation process because the Commission is permitting them to participate in the Commission's cost-sharing plan (see, *infra*, ¶ 22). In addition, by retaining the one-year mandatory negotiation period for C block, the Commission achieves greater symmetry with the negotiations period for A and B blocks: the earliest that the mandatory negotiation period for C block will expire is now May 22, 1998 for non-public safety incumbents—approximately the same time as the A and B block mandatory negotiation periods, which in most cases should expire April 5, 1998. This will create greater parity between C block entrepreneurs and their A and B block competitors in terms of clearing the band and offering service to the public.

13. The Commission declines to alter the voluntary or mandatory negotiation periods for public safety incumbents in the C block for the same reasons the Commission has articulated for the D, E, and F blocks. As modified, the voluntary negotiation period for the C block will expire on May 22, 1997 for non-public safety incumbents—approximately the same time as the A and B block voluntary negotiation periods, which end April 5, 1997. The voluntary negotiation period for public safety incumbents in the C block will remain unchanged and will end May 22, 1999—approximately one year after the voluntary negotiation period for public safety incumbents in the A and B block voluntary negotiation periods end, which is April 5, 1998.

C. Microwave Incumbent Participation in Cost-Sharing Plan

14. The Commission adopts it's tentative conclusion from the Further Notice of Proposed Rule Making, to permit microwave incumbents that relocate themselves to obtain reimbursement rights and collect reimbursement under the Commission's cost-sharing plan from subsequent PCS licensees that would have interfered with the relocated link had it not been

moved. The Commission agrees with PCS licensees and microwave incumbents who argue that incumbent participation will accelerate the relocation process by promoting system-wide relocations. Incumbent participation will also give microwave incumbents the option of avoiding time-consuming negotiations, allowing for faster clearing of the 2 GHz band in some instances. The Commission believes that promoting system-wide relocation in this way may even reduce the overall cost of clearing the 2 GHz band.

15. In concluding that microwave incumbents should be allowed to participate in cost-sharing, the Commission agrees with commenters that some safeguards are needed to ensure that voluntarily relocating microwave incumbents do not seek reimbursement for unreasonable expenses. The Commission therefore will impose the same restrictions on reimbursement of incumbents that apply to PCS licensees. These include the limitations under the cost-sharing plan on links for which reimbursement may be sought, and the monetary cap on the amount a relocator may be reimbursed for the relocation of each individual microwave link.

16. The Commission also concludes that the cost-sharing formula, when applied to microwave incumbents, should include depreciation. First, a microwave incumbent who voluntarily relocates itself may obtain benefits it would not realize if it waited to be relocated by a PCS licensee. Early relocation by the incumbent on a voluntary basis provides more options for obtaining alternative spectrum, more control over the relocation process, and reduces uncertainty about further operations. Depreciation ensures that the self-relocation pays for these benefits rather than passing them on to a PCS licensee who otherwise would not have relocated the incumbent until later. Second, the Commission observed in the First Report and Order that depreciation creates an incentive for the relocator to minimize costs because its own share of the cost is not depreciated. The Commission concludes that this element of the cost-sharing plan applies equally to microwave incumbents who relocate themselves. Therefore, the Commission retains depreciation as an incentive for microwave incumbents who relocate themselves to minimize their relocation costs.

17. Finally, the Commission concludes that microwave incumbents who self-relocate should be required to provide independent verification of their relocation costs. Although the cost-sharing plan already requires all relocators to keep documents of all expenses, the Commission believe this additional safeguard is appropriate in the case of incumbents seeking reimbursement. In the case of an incumbent who self-relocates, it may be difficult for subsequent PCS licensees to verify the incumbent's costs to determine whether they are compensable under the cost-sharing plan. Therefore, any incumbent seeking reimbursement under the cost-sharing plan must submit to the clearinghouse an independent third party appraisal of its compensable relocation costs. The appraisal should be based on the actual cost of replacing the incumbent's system with comparable facilities, and should exclude the cost of any equipment upgrades that would not be reimbursable under the cost-sharing plan.

III. Conclusion

18.The changes the Commission makes to the timetables for the voluntary and mandatory negotiation periods for the broadband PCS C, D, E, and F blocks will facilitate negotiations between microwave incumbents and PCS licensees. Allowing microwave incumbents to participate in the cost-sharing plan will also encourage more rapid system relocation and will reduce relocation costs. As a result of these changes, PCS licensees will be able to speed their deployment of service to the public.

IV. Procedural Matters

A. Regulatory Flexibility Act

As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rule Making in WT Docket No. 95–157. The Commission sought written comments on the proposals in the NPRM, including the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996.

Need for and Purpose of the Action: This Second Report and Order (i) shortens the voluntary negotiation period for all non-public safety microwave incumbents in the C, D, E, and F blocks by one year, (ii) allows the microwave incumbents who self-relocate to obtain reimbursement rights and collect reimbursement under the cost-sharing formula. The changes adopted herein will facilitate the rapid relocation of microwave facilities in the 2 GHz band and will accelerate the deployment of PCS services to the public.

Summary of Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis: No comments were submitted in response to the IRFA. However, two commenters to the Further Notice of Proposed Rule Making, raised an issue that might affect small business entities. The commenters, American Petroleum Institute (API) and the American Public Power Association (APPA) argued that shortening the voluntary negotiation periods would disrupt and impose a significant burden on microwave incumbent businesses by forcing them to negotiate an agreement during a shorter voluntary negotiation period. Both commenters believe that without a two-year voluntary negotiation period, incumbents will be forced to negotiate during the mandatory negotiation period. The Commission does not believe that successful negotiations will be forced into the mandatory negotiation period. If successful negotiations are occurring, parties may agree not to commence with the mandatory negotiation period and may continue to negotiate successfully throughout a voluntary negotiation period.

Description and Estimate of the Number of Small Entities To Which Rule Will Apply: For purposes of this Order, the Small Business Administration (SBA) has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications Except Radiotelephone) to be a small entity when it has fewer than 1,500 employees.

Estimates for Broadband PCS Services: The broadband PCS spectrum is divided into six frequency blocks designated A through F. As set forth in 47 CFR 24.720(b), the Commission has defined small businesses in the C and F block auctions to mean a firm that had average gross revenues of less than $40 million in the three previous calendar years. The Commission's definition of a small business has been approved by the SBA.

The Commission has auctioned broadband PCS licenses in the A, B, C, D, E, and F blocks. The Commission does not have sufficient data to determine how many small businesses bid successfully for licenses in the A and B blocks. There are 81 non-defaulting winning bidders that qualify as small entities in the C block PCS auctions. Based on this information, the Commission conclude that the number of broadband PCS licensees affected by the decisions in this Order includes, at

a minimum, the 81 non-defaulting winning bidders that qualified as small entities in the C block broadband PCS auction.

The D, E, and F block auction closed January 14, 1997, but presently there have been no licenses awarded for the D, E, and F block auctions. Therefore, there are no small businesses providing these services. However, there were 125 winning bidders and the Commission anticipates a total of 1,479 licenses will be awarded in the D, E, and F blocks. Participation in the F block was limited to entrepreneurs with under $125 million in average gross revenues over the past three years. More than 40 percent of the licenses in the D, E, and F blocks were won by 93 small businesses. The Commission estimate that most, if not all, of the small businesses will be awarded licenses.

Estimates for Microwave Services: Due to the nature of this private service, the Commission does not have a definition for small business with respect to microwave services. Therefore, the Commission will utilize the SBA's definition applicable to radiotelephone companies—*i.e.* an entity with less than 1,500 persons. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. Also, the Federal Communication Commission's Office of Engineering and Technology developed a study in 1992 that provides statistical data for all microwave incumbents in 1850 MHz to 1990 MHz bands. Specifically, the study finds that in the 1850 MHz to 1990 MHz, local governments, including public safety entities have 168 licensees; petroleum companies have 67 licenses; power companies have 164 licenses; railroad companies have 18 licenses; and all other microwave incumbents in this band have 143 licenses. However, the Commission does not have specific statistics that determine how many of these companies are small businesses. In addition, this Second Report and Order only affects microwave incumbents in PCS blocks C, D, E, and F. Therefore, this Second Report and Order does not affect all microwave incumbents in the 1850 MHz to 1990 MHz band.

However, the Commission recognizes that a number of microwave incumbents have already relocated due to the current negotiations of A, B, and C block PCS licensees. The Commission cannot determine at this time how many licensees have moved. The Commission therefore is unable to estimate the number of microwave service providers that qualify under the SBA's definition.

Description, Projected Reporting, Record keeping and Other Compliance Requirements: In this Second Report and Order the Commission allows microwave incumbents who voluntarily relocate their links to obtain reimbursement from subsequent PCS licensees under the cost-sharing plan. Microwave incumbents that participate in the cost-sharing plan will be required to submit documentation itemizing the amount spent for the actual cost of relocating the links. The voluntarily relocating microwave incumbent will also be required to submit an independent third party appraisal of its compensable costs. See, *supra*, IV., C, paragraph 27.

Significant Alternatives and Steps Taken By Agency to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives: In the Further Notice of Proposed Rule Making the Commission sought comment on adjusting the negotiation periods for the D, E, and F blocks by shortening the voluntary negotiation period and lengthening the mandatory negotiation period by the corresponding amount. The Commission also sought comment on whether the same adjustments should be made in the C block. This Second Report and Order shortens the voluntary negotiation period for the C, D, E, and F blocks by one year and lengthens the mandatory negotiation period for C block by one year. The Commission did not lengthen the mandatory negotiation period for the D, E, and F blocks because these are 10 MHz blocks and have fewer links to relocate than in the 30 MHz blocks that C block has. These alterations were made to diminish the opportunity of a few incumbents that were delaying negotiations by demanding excessive premiums from PCS licensees during the voluntary negotiation periods.

Commenters to the Further NPRM generally indicated that microwave incumbents were negotiating successfully during the voluntary negotiation period and did not require prolonged negotiations to reach agreement. The Commission believes that these changes do not affect an incumbent's ability to negotiate an agreement during the voluntary negotiation period. If parties are successfully negotiating an agreement during the voluntary negotiation period, they may agree that more time is needed, thereby agreeing to postpone the commencement of the mandatory negotiation period. See, supra, IV., A, paragraph 13.

These alterations will accelerate the deployment of PCS services to the consumer and still guarantee microwave incumbents full compensation for relocating.

Report to Congress: The Commission shall send a copy of this Final Regulatory Flexibility Analysis with this Second Report and Order in a report to Congress pursuant to Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this Regulatory Flexibility Analysis will also be published in the Federal Register.

B. Authority

Authority for issuance of this Second Report and Order is contained in the Communications Act, Sections 4(i), 7, 303(c), 303(f), 303(g), 303(r), and 332, 47 U.S.C. 154(i), 157, 303(c), 303(f), 303(g), 303(r), 332, as amended.

C. Ordering Clauses

Accordingly, *it is ordered* That Parts 24 and 101 of the Commission's rules are amended as set forth below and will become effective May 19, 1997.

It is further ordered That the Regulatory Flexibility Analysis, as required by Section 604 of the Regulatory Flexibility Act, and as set forth herein is *Adopted.*

It is further ordered That the Secretary shall send a copy of this Second Report and Order to the Chief Counsel for Advocacy of the Small Business Administration.

D. Further Information

For further information concerning this proceeding, contact Michael Hamra, Wireless Telecommunications Bureau, Commercial Wireless Division at (202) 418–0620.

List of Subjects

47 CFR Part 24

Personal communications services, Radio.

47 CFR Part 101

Fixed microwave services, Radio.

Federal Communications Commission

William F. Caton,

Acting Secretary.

Rule Changes

Parts 24 and 101 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

Part 24 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 24—PERSONAL COMMUNICATIONS SERVICES

1. The authority citation for Part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309 and 332, unless otherwise noted.

2. Section 24.5 is amended by adding the definition for ''Voluntarily Relocating Microwave Incumbent'' in alphabetical order to read as follows:

§ 24.5 Terms and definitions.

* * * * *

Voluntarily Relocating Microwave Incumbent. A microwave incumbent that voluntarily relocates its licensed facilities to other media or fixed channels.

3. Section 24.239 is revised to read as follows:

§ 24.239 Cost-sharing requirements for broadband PCS.

Frequencies in the 1850–1990 MHz band listed in § 101.147(c) of this chapter have been allocated for use by PCS. In accordance with procedures specified in §§ 101.69 through 101.81 of this chapter, PCS entities (both licensed and unlicensed) are required to relocate the existing Fixed Microwave Services (FMS) licensees in these bands if interference to the existing FMS operations would occur. All PCS entities who benefit from spectrum clearance by other PCS entities or a voluntarily relocating microwave incumbent, must contribute to such relocation costs. PCS entities may satisfy this requirement by entering into private cost-sharing agreements or agreeing to terms other than those specified in § 24.243. However, PCS entities are required to reimburse other PCS entities or voluntarily relocating microwave incumbents that incur relocation costs and are not parties to the alternative agreement. In addition, parties to a private cost-sharing agreement may seek reimbursement through the clearinghouse (as discussed in § 24.241) from PCS entities that are not parties to the agreement. The cost-sharing plan is in effect during all phases of microwave relocation specified in § 101.69 of this chapter.

4. Section 24.243 is revised to read as follows:

§ 24.243 The cost-sharing formula.

A PCS relocator who relocates an interfering microwave link, *i.e.* one that is in all or part of its market area and in all or part of its frequency band or a voluntarily relocating microwave incumbent, is entitled to *pro rata* reimbursement based on the following formula:

$$RN = \frac{C}{N} \times \frac{\left[120 - \left(T_m\right)\right]}{120}$$

(a) *RN* equals the amount of reimbursement.

(b) *C* equals the actual cost of relocating the link. Actual relocation costs include, but are not limited to, such items as: Radio terminal equipment (TX and/or RX—antenna, necessary feed lines, MUX/Modems); towers and/or modifications; back-up power equipment; monitoring or control equipment; engineering costs (design/path survey); installation; systems testing; FCC filing costs; site acquisition and civil works; zoning costs; training; disposal of old equipment; test equipment (vendor required); spare equipment; project management; prior coordination notification under § 101.103(d) of this chapter; site lease renegotiation; required antenna upgrades for interference control; power plant upgrade (if required); electrical grounding systems; Heating Ventilation and Air Conditioning (HVAC) (if required); alternate transport equipment; and leased facilities. C also includes voluntarily relocating microwave incumbent's independent third party appraisal of its compensable relocation costs and incumbent transaction expenses that are directly attributable to the relocation, subject to a cap of two percent of the ''hard'' costs involved. C may not exceed $250,000 per link, with an additional $150,000 permitted if a new or modified tower is required.

(c) *N* equals the number of PCS entities that would have interfered with the link. For the PCS relocator, N = 1. For the next PCS entity that would have interfered with the link, N=2, and so on.

(d) *Tm* equals the number of months that have elapsed between the month the PCS relocator obtains reimbursement rights and the month that the clearinghouse notifies a later-entrant of its reimbursement obligation. A PCS relocator obtains reimbursement rights on the date that it signs a relocation agreement with a microwave incumbent.

5. Section 24.245 is amended by revising paragraphs (a) and (b) to read as follows:

§ 24.245 Reimbursement under the cost-sharing plan.

(a) *Registration of reimbursement rights.* (1) To obtain reimbursement, a PCS relocator must submit documentation of the relocation agreement to the clearinghouse within ten business days of the date a relocation agreement is signed with an incumbent.

(2) To obtain reimbursement, a voluntarily relocating microwave incumbent must submit documentation of the relocation to the clearinghouse within ten business days of the date that relocation occurs.

(b) *Documentation of expenses.* Once relocation occurs, the PCS relocator or the voluntarily relocating microwave incumbent, must submit documentation itemizing the amount spent for items listed in § 24.243(b). The voluntarily relocating microwave incumbent, must also submit an independent third party appraisal of its compensable relocation costs. The appraisal should be based on the actual cost of replacing the incumbent's system with comparable facilities and should exclude the cost of any equipment upgrades or items outside the scope of § 24.243(b). The PCS relocator or the voluntarily relocating microwave incumbent, must identify the particular link associated with appropriate expenses (*i.e.*, costs may not be averaged over numerous links). If a PCS relocator pays a microwave incumbent a monetary sum to relocate its own facilities, the PCS relocator must estimate the costs associated with relocating the incumbent by itemizing the anticipated cost for items listed in § 24.243(b). If the sum paid to the incumbent cannot be accounted for, the remaining amount is not eligible for reimbursement. A PCS relocator may submit receipts or other documentation to the clearinghouse for all relocation expenses incurred since April 5, 1995.

* * * * *

6. Section 24.247 is amended by revising the introductory text of paragraph (a) to read as follow:

§ 24.247 Triggering a reimbursement obligation.

(a) *Licensed PCS.* The clearinghouse will apply the following test to determine if a PCS entity preparing to initiate operations must pay a PCS relocator or a voluntarily relocating microwave incumbent in accordance with the formula detailed in § 24.243:

* * * * *

7. Section 24.249 is amended by revising paragraph (a) to read as follows:

§ 24.249 Payment issues.

(a) *Timing.* On the day that a PCS entity files its prior coordination notice (PCN) in accordance with § 101.103(d) of this chapter, it must file a copy of the PCN with the clearinghouse. The clearinghouse will determine if any reimbursement obligation exists and notify the PCS entity in writing of its repayment obligation, if any. When the PCS entity receives a written copy of such obligation, it must pay directly to the PCS relocator or the voluntarily relocating microwave incumbent the

amount owed within thirty days, with the exception of those businesses that qualify for installment payments. A business that qualifies for an installment payment plan must make its first installment payment within thirty days of notice from the clearinghouse. UTAM's first payment will be due thirty days after its reimbursement obligation is triggered as described in § 24.247(b).

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PART 101—FIXED MICROWAVE SERVICES

8. The authority citation for Part 101 continues to read as follows:

Authority: 47 U.S.C. §§ 154, 303, unless otherwise noted.

9. Section 101.69 is revised to read as follows:

§ 101.69 Transition of the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands from the fixed microwave services to personal communications services and emerging technologies.

Fixed Microwave Services (FMS) frequencies in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands listed in §§ 101.147(c), (d) and (e) have been allocated for use by emerging technology (ET) services, including Personal Communications Services (PCS). The rules in this section provide for a transition period during which ET licensees may relocate existing FMS licensees using these frequencies to other media or other fixed channels, including those in other microwave bands.

(a) ET licensees may negotiate with FMS licensees authorized to use frequencies in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands, for the purpose of agreeing to terms under which the FMS licensees would:

(1) Relocate their operations to other fixed microwave bands or other media; or alternatively

(2) Accept a sharing arrangement with the ET licensee that may result in an otherwise impermissible level of interference to the FMS operations.

(b) Except as provided in paragraph (c) of this section, FMS operations in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands, with the exception of public safety facilities defined in § 101.77, will continue to be co-primary with other users of this spectrum until two years after the FCC commences acceptance of applications for ET services (voluntary negotiation period), and until one year after an ET licensee initiates negotiations for relocation of the fixed microwave licensee's operations (mandatory negotiation period). In the 1910–1930 MHz band allocated for unlicensed PCS, FMS operations will continue to be co-primary until one year after UTAM, Inc. initiates negotiations for relocation of the fixed microwave licensee's operations. Except as provided in paragraph (c) of this section, public safety facilities defined in § 101.77 will continue to be co-primary in these bands until three years after the Commission commences acceptance of applications for an emerging technology service (voluntary negotiation period), and until two years after an emerging technology service licensee or an emerging technology unlicensed equipment supplier or representative initiates negotiations for relocation of the fixed microwave licensee's operations (mandatory negotiation period). If no agreement is reached during either the voluntary or mandatory negotiation periods, an ET licensee may initiate involuntary relocation procedures. Under involuntary relocation, the incumbent is required to relocate, provided that the ET licensee meets the conditions of § 101.75.

(c) Voluntary and mandatory negotiation periods for PCS C, D, E, and F blocks are defined as follows:

(1) Non-public safety incumbents will have a one-year voluntary negotiation period and a one-year mandatory negotiation period; and

(2) Public safety incumbents will have a three-year voluntary negotiation period and a two-year mandatory negotiation period.

10. Section 101.71 is revised to read as follows:

§ 101.71 Voluntary negotiations.

During the voluntary negotiation period, negotiations are strictly voluntary and are not defined by any parameters. However, if the parties have not reached an agreement within one year after the commencement of the voluntary period for non-public safety entities, or within three years after the commencement of the voluntary period for public safety entities, the FMS licensee must allow the ET licensee if it so chooses to gain access to the existing facilities to be relocated so that an independent third party can examine the FMS licensee's 2 GHz system and prepare an estimate of the cost and the time needed to relocate the FMS licensee to comparable facilities. The ET licensee must pay for any such estimate.

11. Section 101.73 is amended by revising paragraph (a) to read as follows:

§ 101.73 Mandatory negotiations.

(a) If a relocation agreement is not reached during the voluntary period, the ET licensee may initiate a mandatory negotiation period. This mandatory period is triggered at the option of the ET licensee, but ET licensees may not invoke their right to mandatory negotiation until the voluntary negotiation period has expired.

* * * * *

12. Section 101.77 is amended by revising the section heading and paragraph (a) to read as follows:

§ 101.77 Public safety licensees in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands.

(a) Public safety facilities are subject to the three-year voluntary and two-year mandatory negotiation period, except as otherwise defined in paragraph 101.69(c). In order for public safety licensees to qualify for extended negotiation periods, the department head responsible for system oversight must certify to the ET licensee requesting relocation that:

(1) The agency is a licensee in the Police Radio, Fire Radio, Emergency Medical, Special Emergency Radio Services, or that it is a licensee of other part 101 facilities licensed on a primary basis under the eligibility requirements of part 90, subparts B and C; and

(2) The majority of communications carried on the facilities at issue involve safety of life and property.

* * * * *

13. Section 101.79 is amended by revising the section heading and paragraph (a) to read as follows:

§ 101.79 Sunset provisions for licensees in the 1850–1990 MHz, 2110–2150 MHz, and 2150–2160 MHz bands.

(a) FMS licensees will maintain primary status in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands unless and until an ET licensee requires use of the spectrum. ET licensees are not required to pay relocation costs after the relocation rules sunset (*i.e.* ten years after the voluntary period begins for the first ET licensees in the service). Once the relocation rules sunset, an ET licensee may require the incumbent to cease operations, provided that the ET licensee intends to turn on a system within interference range of the incumbent, as determined by TIA Bulletin 10-F of any standard successor. ET licensee notification to the affected FMS licensee must be in writing and must provide the incumbent with no less than six months to vacate the spectrum. After the six-month notice period has expired, the FMS licensee must turn its license back into the

Commission, unless the parties have entered into an agreement which allows the FMS licensee to continue to operate on a mutually agreed upon basis.

* * * * *

14. Section 101.81 is amended by revising the section heading and the introductory paragraph to read as follows:

§ 101.81 Future licensing in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands.

After April 25, 1996, all major modifications and extensions to existing FMS systems in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands will be authorized on a secondary basis to ET systems. All other modifications will render the modified FMS license secondary to ET operations, unless the incumbent affirmatively justifies primary status and the incumbent FMS licensee establishes that the modification would add to the relocation costs of ET licensees. Incumbent FMS licensees will maintain primary status for the following technical changes:

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[FR Doc. 97–6751 Filed 3–17–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 961217359–7050–02; I.D. 121196B]

RIN 0648–AJ11

Pacific Halibut Fisheries; Catch Sharing Plans

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Annual management measures and approval of catch sharing plans.

SUMMARY: The Assistant Administrator for Fisheries, NOAA (AA), on behalf of the International Pacific Halibut Commission (IPHC), publishes annual management measures promulgated as regulations by the IPHC and approved by the Secretary of State governing the Pacific halibut fishery. The AA also announces the approval of modifications to the Catch Sharing Plan for Area 2A, and implementing regulations for 1997. These actions are intended to enhance the conservation of Pacific halibut stocks in order to help rebuild and sustain them at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: March 15, 1997.

ADDRESSES: NMFS Alaska Region, 709 W. 9th St., P.O. Box 21668, Juneau, AK 99802–1668; or NMFS Northwest Region, 7600 Sand Point Way NE, Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: Joe Scordino, 206–526–6143 or Jay Ginter, 907–586–7228.

SUPPLEMENTARY INFORMATION: The IPHC has promulgated regulations governing the Pacific halibut fishery in 1997, under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, D.C., on March 29, 1979). The IPHC regulations have been approved by the Secretary of State of the United States under section 4 of the Northern Pacific Halibut Act (Halibut Act, 16 U.S.C. 773–773k). Pursuant to regulations at 50 CFR section 300.62, the approved IPHC regulations setting forth the 1997 IPHC annual management measures are published in the Federal Register to provide notice of their effectiveness, and to inform persons subject to the regulations of the restrictions and requirements.

The IPHC held its annual meeting on January 27–30, 1997, in Victoria, British Columbia, and adopted regulations for 1997. The substantive changes to the previous IPHC regulations (61 FR 11337, March 20, 1996) include: (1) New catch limits for all areas; (2) elimination of the commercial IPHC license requirement for U.S. vessels fishing in Alaska; (3) allowance for possessing halibut from multiple fishing areas onboard the vessel under specified conditions; (4) elimination of the requirement to maintain halibut log information separate from other records onboard the vessel; and (5) opening dates for the Area 2A commercial directed fishery.

In addition, this action implements Catch Sharing Plans (Plans) for regulatory Areas 2A and 4. These Plans were developed respectively by the Pacific Fishery Management Council (PFMC) and the North Pacific Fishery Management Council (NPFMC) under authority of the Halibut Act. Section 5 of the Halibut Act (16 U.S.C. 773c) provides that the Secretary of Commerce (Secretary) shall have general responsibility to carry out the Halibut Convention (Convention) between the United States and Canada, and that the Secretary shall adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. The Secretary's authority has been delegated to the AA. Section 5 of the Halibut Act (16 U.S.C. 773c(c)) also authorizes the Regional Fishery Management Council having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in U.S. Convention waters that are in addition to, but not in conflict with, regulations of the IPHC. Pursuant to this authority, NMFS requested the PFMC and NPFMC to allocate halibut catches should such allocation be necessary.

Catch Sharing Plan for Area 2A

The PFMC has prepared annual Plans since 1988 to allocate the halibut catch limit for Area 2A among treaty Indian, non-Indian commercial, and non-Indian sport fisheries in and off Washington, Oregon, and California. In 1995, NMFS implemented a Council-recommended long-term Plan (60 FR 14651, March 20, 1995), which was revised in 1996 (61 FR 11337, March 20, 1996). The Plan allocates 35 percent of the Area 2A total allowable catch (TAC) to Washington treaty Indian tribes in Subarea 2A–1, and 65 percent to non-Indian fisheries in Area 2A. The allocation to non-Indian fisheries is divided into 3 shares, with the Washington sport fishery (north of the Columbia River) receiving 36.6 percent, the Oregon/California sport fishery receiving 31.7 percent, and the commercial fishery receiving 31.7 percent. The commercial fishery is further divided into 2 sectors; a directed (traditional longline) commercial fishery that is allocated 85 percent of the non-Indian commercial harvest, and 15 percent for harvests of halibut caught incidental to the salmon troll fishery. The directed commercial fishery in Area 2A is confined to southern Washington (south of 46°5′18″ N. lat.), Oregon and California. The Plan also divides the sport fisheries into seven geographic areas each with separate allocations, seasons, and bag limits.

For 1997, PFMC recommended changes to the Plan to restructure the May and August seasons in the Oregon Central Coast subarea sport fishery (Cape Falcon to Florence north jetty) from a quota managed to a fixed-length season fishery. A complete description of the PFMC recommended changes to the Plan and implementing regulations was published in the Federal Register on January 3, 1997 (62 FR 382) with a request for public comments. No comments were received on the proposed changes to the Plan, and