

should be noted that, under the SBA's definitions, revenues of affiliates that are not television stations should be aggregated with the television station revenues in determining whether a concern is small. The estimates overstate the number of small entities since the revenue figures on which they are based do not include or aggregate such revenues from nontelevision affiliated companies.

36. *Reporting, Recordkeeping and Compliance Requirements:* The *Further Notice* seeks comment on whether we should require video programming providers (including broadcast licensees and MVPDs) to closed caption or otherwise visually display emergency programming and similar special reports to ensure the accessibility of these types of video programs to viewers with hearing disabilities. If this proposal is adopted, video programming providers may choose to maintain records of the closed captioned emergency programming carried in order to resolve any disputes which may arise regarding compliance.

37. *Federal Rules Which Overlap, Duplicate or Conflict With the Commission's Proposal:* None.

38. *Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent With the Stated Objectives:* The *Closed Captioning Order* directs us to initiate proceedings to establish captioning requirements for emergency programming. We seek comment on proposals to promote and ensure the accessibility of emergency programming and other special reports to persons with hearing disabilities. We also seek comment on methods of visually displaying emergency information to viewers other than closed captioning which may be less costly or burdensome than captioning.

#### Ex Parte

39. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

#### Comment Dates

40. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before February 25, 1998 and reply comments on or before March 27, 1998. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all

comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

41. Accordingly, *It is ordered* that pursuant to the authority contained in Sections 4(i), 303(r), and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 613, the *Further Notice of Proposed Rulemaking* IS ADOPTED.

42. *It is further ordered* that the Office of Public Affairs shall send a copy of this *Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601 *et seq.* (1981).

#### List of Subjects in 47 CFR Part 79

Closed Captioning of Video Programming.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98-1394 Filed 1-20-98; 8:45 am]

BILLING CODE 6712-01-P

#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 101

[ET Docket No. 95-183; PP Docket No. 93-253; FCC 97-391]

#### Use of the 38.6-40.0 GHz Band for Fixed Microwave Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

**SUMMARY:** The Commission adopts a *Second Notice of Proposed Rule Making* regarding the use of the 38.6-40.0 GHz Band for fixed microwave services. Specifically, the Commission seeks comment on the appropriate unjust enrichment requirements for approving partitioning and disaggregation arrangements involving a complete or partial transfer of a license owned by a qualified small business to a non-small

business or a small business eligible for a smaller bidding credit.

**DATES:** Comments are due on or before February 20, 1998, and reply comments are due on or before March 9, 1998.

**ADDRESSES:** Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Susan Magnotti, Public Safety and Private Wireless Division, (202) 418-0871, or Christina Eads Clearwater, Auctions Division, (202) 418-0660.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Second Notice of Proposed Rule Making* in the *Report and Order and Second Notice of Proposed Rule Making*, ET Docket No. 95-183, PP Docket No. 93-253, FCC 97-391, adopted October 24, 1997, and released November 3, 1997. The complete text of this *Report and Order and Second Notice of Proposed Rule Making* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 1231 20th Street, N.W., Washington, DC 20036.

#### Synopsis of the Second Notice of Proposed Rule Making in the Report and Order and Second Notice of Proposed Rule Making

1. The Commission has concluded in the *Report and Order* that any 39 GHz licensee will be permitted to partition or disaggregate portions of its authorization. In the *Second Notice of Proposed Rule Making*, the Commission seeks comment regarding what restrictions to impose on partitioning and/or disaggregation by licensees that have received bidding credits when the buyer is a small business subject to less favorable bidding credits or a non-small business not eligible for bidding credits.

2. The Commission seeks comment on the type of unjust enrichment requirements that should be placed as a condition for approval of partitioning and disaggregation arrangements, *e.g.*, an application for a partial transfer of a license owned by a qualified small business to a non-small business. The Commission tentatively concludes that these unjust enrichment provisions would include payment of any bidding credit that it may adopt for small business and would be applied on a proportional basis. The Commission seeks comment on how such unjust enrichment amounts should be calculated, especially in light of the difficulty of devising a methodology or

formula that will differentiate the relative market value of the opportunities to provide service to various partitioned areas within a geographic or market area. The Commission seeks comment on whether it should consider the price paid by the partitionee in determining the percentage of the outstanding principal balance to be repaid.

3. The Commission tentatively concludes that if it permits a small business licensee to disaggregate to another qualified small business that would not qualify for the same level of bidding credit as the disaggregating licensee, the disaggregating licensee will be required to repay a portion of the benefit it received. The Commission seeks comment on how that amount should be calculated. The Commission seeks comment on what provisions, if any, it should adopt to address the situation of a small business licensee's disaggregation followed by default in payment of a winning bid at auction.

#### **Regulatory Flexibility Act/Initial Regulatory Flexibility Analysis**

4. As required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in the *Second Notice of Proposed Rule Making*. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on this *Second Notice of Proposed Rule Making*, but they must have a separate and distinct heading designating them as responses to the IRFA. The Secretary shall send a copy of this *Second Notice of Proposed Rule Making*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

5. *Need for and Objectives of the Action.* In the companion *Report and Order*, the Commission expanded the Commission's geographic partitioning provisions to all 39 GHz licensees and permitted spectrum disaggregation. The Commission seeks further comment on the use of partitioning and disaggregation by parties taking advantage of bidding credits under the Commission's competitive bidding licensing rules, and certain technical rules. The expansion of the partitioning and disaggregation rules in the *Report and Order* to include all 39 GHz licensees implements, in part, the requirements of section 257 of the Telecommunications Act of 1996, which

requires that the Commission eliminate entry barriers into the telecommunications market for small businesses. In the *Second Notice of Proposed Rule Making*, the Commission tentatively concludes that unjust enrichment provisions should apply when a licensee has benefitted from the small business provisions (*i.e.*, installment plans and bidding credits) in the auction rules and then partitions a portion of the license area to another entity that would not qualify for such benefits or would not qualify for the same level of benefits. The Commission seeks comment on how such unjust enrichment should be calculated under each scenario. The Commission further seeks comments on what the respective obligations of the participants in partitioning transfer should be.

6. *Legal Basis.* The proposed action is authorized under sections 4(i), 257, 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 257, 303(r), and 309(j).

7. *Description and Number of Small Entities Involved.* The unjust enrichment proposals with respect to partitioning and disaggregation will affect all small businesses that avail themselves of partitioning and/or disaggregation, including small businesses currently holding 39 GHz licenses who choose to partition and/or disaggregate and small businesses who may acquire licenses through partitioning and/or disaggregation. The Commission is required to estimate in its Final Regulatory Flexibility Analysis the number of small entities to which a rule will apply, provide a description of such entities, and assess the impact of the rule on such entities.

8. To assist the Commission in this analysis, commenters are requested to provide information regarding how many total entities, existing and potential, would be affected by the proposed rules in the *Second Notice of Proposed Rule Making*. In particular, the Commission seeks estimates of how many such entities will be considered small businesses. As explained in the Final Regulatory Flexibility Analysis in the *Report and Order*, the Commission is utilizing the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing less than 1,500 persons. The Commission seeks comment on whether this definition is appropriate for 39 GHz licensees in this context. Additionally, the Commission requests each commenter to identify whether it is a "small business" under this definition. If a commenter is a subsidiary of another entity, this information should be provided for both

the subsidiary and the parent corporation or entity.

9. *Reporting, Recordkeeping, and Other Compliance Requirements.* The proposals in the *Second Notice of Proposed Rule Making* include the possibility of imposing additional reporting and/or recordkeeping requirements in connection with businesses obtaining licenses through the partitioning and disaggregation rules. The information requirements placed on businesses seeking to obtain licenses through partitioning or disaggregation will be used to determine if the licensee is a qualifying entity to obtain a partitioned license or disaggregated spectrum. Those reporting requirements are stated in the companion Final Regulatory Flexibility Act. Those reporting requirements also will likely be used to ensure that a licensee is not unjustly enriched by a partitioning or disaggregation arrangement.

10. *Federal Rules that Overlap, Duplicate, or Conflict with These Proposals.* None.

11. *Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives.* In the *Second Notice of Proposed Rule Making*, the Commission tentatively concludes that unjust enrichment provisions should apply when a licensee has benefitted from the small business provisions in the auctions rules and partitions a portion of the license area to another entity that would not qualify for such benefits. The alternative to applying the unjust enrichment provisions would be to allow an entity who had benefitted from the special bidding provisions for small businesses to become unjustly enriched by partitioning a portion of their license area to parties that do not qualify for such benefits.

12. *Paperwork Reduction Act.* This *Second Notice of Proposed Rule Making* contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this *Second Notice of Proposed Rule Making*, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13. Public and agency comments are due at the same time as other comments on this *Second Notice of Proposed Rule Making*; OMB comments are due March 23, 1998. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the

Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

13. *Ex Parte Rules*. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See generally* 47 CFR 1.1201, 1.1203, 1.1206(a).

14. *Comment Filing Procedures*. Pursuant to applicable procedures set

forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before February 20, 1998, and reply comments on or before March 9, 1998. To file formally in this proceeding, interested parties must file an original plus four copies of all comments, reply comments, and supporting comments. If commenters want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Comments and reply comments should be sent to: the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference

Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554.

15. Authority for issuance of this *Report and Order and Second Notice of Proposed Rule Making*, is contained in §§ 4(i), 257, 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 257, 303(r), and 309(j).

#### **List of Subjects in 47 CFR 101**

Communications common carriers, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

**Magalie Roman Salas,**  
*Secretary.*

[FR Doc. 98-1393 Filed 1-20-98; 8:45 am]

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