adverse comments. A detailed rationale for the authorization is set forth in the immediate final rule. If no adverse written comments are received on this action, the immediate final rule will become effective and no further activity will occur in relation to this proposal. If EPA receives adverse written comments, EPA will withdraw the immediate final rule before its effective date by publishing a notice of withdrawal in the **Federal Register**. EPA will then respond to public comments in a later final rule based on this proposal. EPA may not provide further opportunity for comment. Any parties interested in commenting on this action should do so at this time.

**DATES:** Written comments on this proposed rule must be received on or before October 30, 1998.

**ADDRESSES:** You can examine copies of the materials submitted by The Commonwealth of Massachusetts during normal business hours at the following locations: EPA Region I Library, One Congress Street—11th Floor, Boston, MA 02203–0001, Telephone: (617) 565–3300 and Massachusetts Department of Environmental Protection Library, One Winter Street—2nd Floor, Boston, MA 02108, business hours: 9 a.m. to 5 p.m., Telephone: (617) 292–5802. Mail written comments to Robin Biscaia, at the address below.

**FOR FURTHER INFORMATION CONTACT:** Robin Biscaia, EPA Region I, JFK Federal Bldg. (CHW), Boston, MA 02203–0001, Telephone: (617) 565–3265.

**SUPPLEMENTARY INFORMATION:** For additional information see the immediate final rule published in the rules section of this **Federal Register**.

Dated: August 25, 1998.

**John P. DeVillars,**

*Regional Administrator, Region I.*

[FR Doc. 98–25886 Filed 9–29–98; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 20 and 95

**[WT Docket No. 98–169; WT Docket No. 95–47; FCC 98–228]**

### Interactive Video and Data Service (218–219 MHz Service)

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this Notice of Proposed Rule Making (''NPRM''), the Commission examines ways to maximize the efficient and effective use of the 218–219 MHz Service (formerly, Interactive Video and Data Service (IVDS)), both on its own motion, and in response to issues raised in a Petition for Rulemaking, RM–8951. The Commission also seeks comment on whether any of the general competitive bidding rules would be inappropriate for future auctions of 218–219 MHz Service licenses. The Commission believes that these actions will result in a regulatory framework that will promote efficient use of spectrum, foster competition, and facilitate technological innovation in the 218–219 MHz band.

**DATES:** Interested parties may file comments on or before October 30, 1998, and reply comments on or before November 25, 1998.

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

**FOR FURTHER INFORMATION CONTACT:** Bob Allen at (202) 418–0660 (Auctions & Industry Analysis Division) or James Moskowitz at (202) 418–0680 (Public Safety & Private Wireless Division), Wireless Telecommunications Bureau.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, WT Docket No. 98–169, RM–8951, adopted September 15, 1998, released September 17, 1998. The full text of this Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street, N.W., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857–3800.

1. As the agency charged with management of the non-government radio frequency spectrum, the Commission continually seeks to improve the efficiency of spectrum use, reduce the regulatory burden on spectrum users, encourage competition and provide services to the largest feasible number of users. The Commission believes its proposals herein help further these goals. While its proposals are designed to foster service in the 218–219 MHz band, the Commission makes no representations or warranties about the use of this spectrum for particular services. An FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations, and does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants for an auction of FCC licenses should perform their individual due diligence before proceeding as they would with any new business venture.

2. This *NPRM* revisits the regulatory status and permissible role of licensee in the 218–219 MHz service. The Commission initiates this rulemaking on its own motion and in response to the issues raised by the Petitioners. In their September 4, 1996 filing, Petitioners request that the Commission amend § 95.811(d) of its rules to extend the term of a 218–219 MHz Service station license from five to ten years. Petitioners further request that the Commission allow 218–219 MHz Service licensees that qualify for installment payments to extend the installment payment period over the new ten-year license term.

3. In their January 28, 1997 amendment, Petitioners also request the following: (1) a reamortization plan consisting of interest-only payments for the first five years, followed by principal and interest payments over the final five years; (2) elimination of the construction benchmarks set forth in § 95.833; (3) elimination of § 95.813(b)(1), which precludes one 218–219 MHz Service licensee from having any financial interest in the other 218–219 MHz Service license in the same market; (4) grant of the then-pending petition for reconsideration of the *Mobility Report and Order* with regard to elimination of the 100 milliwatt ERP limit on mobile response transmitter unit (RTU) operation; (5) elimination of § 95.863(a), the duty cycle limitations; and (6) elimination of § 95.859(a)(2), the height and power limitations for cell transmitter station (CTS) antennas located beyond a boundary line 10 miles outside the predicted Grade B contour of a TV Channel 13 station.

4. Petitioners added three requests in their supplement filed on February 26, 1997: (1) elimination of the prohibition on RTU-to-RTU communications; (2) an additional spectrum allocation; and (3) clarification of several engineering issues in demonstrating compliance with construction benchmarks. Finally, Petitioners supplemented their Petition for Rulemaking on March 13, 1998 with the following requests: (1) clarification that one-way transmission from two or more RTUs to a CTS is a permissible communication that would satisfy any construction requirements; (2) modification of § 95.855 to delete the word ''automatic'' from the power control rule; (3) clarification of

§ 95.861(c) concerning notification of potential interference from 218–219 MHz Service systems; and (4) the opportunity to choose among ''work out'' options for making installment payments that would include an amnesty component.

5. The Commission's decision to postpone the February 1997 auction of Rural Service Area (RSA) and defaulted Metropolitan Statistical Area (MSA) licenses was guided by its concern that its assessment to date regarding the principal uses and regulatory structure of the 218–219 MHz Service may not accurately reflect the breadth of services being developed in the 218–219 MHz band. The Commission has observed the evolution of the wireless telecommunications industry since our *Report and Order,* 57 FR 8272 (March 9, 1992) (''*1992 Allocation Report and Order*''), and the Commission agrees with Petitioners that it is appropriate to reexamine the current and future uses of, and demand for, the 218–219 MHz band, and to determine the appropriate regulatory models to be used for future licensing and regulation of this spectrum. Therefore, in this *NPRM,* the Commission seeks to examine its rules to determine whether they should be modified to provide for maximum flexibility for 218–219 MHz Service licensees, and a regulatory structure that will enable these licensees to meet the public's current and future needs through the most technically and economically efficient use of this spectrum practicable.

**A. Regulatory Status and Permissible Communications**

6. In the *1992 Allocation Report and Order,* the Commission classified the 218–219 MHz band as a private radio service regulated under Part 95 of our rules (*i.e.,* Personal Radio Services), primarily because the proposed uses were to provide services ''of a personal nature and offered on a subscription basis.'' With the recent addition of mobile services as permissible communications, licensees can provide a variety of mobile, fixed, point-to-point, point-to-multipoint, and multipoint-to-point services.

7. The Commission believes that in order to fully accommodate the wide array of service offerings emerging in the 218–219 MHz Service, and those contemplated for future development, the Commission should change its approach to determining the regulatory status of 218–219 MHz Service licensees. Specifically, the Commission proposes to redesignate the 218–219 MHz Service from a strictly private radio service to a service that can be used for both common carrier and private operations, depending on the services offered by the licensee. This is consistent with Commission precedent, in which the Commission has concluded that authorizing a wide variety of services comports with our statutory authority and serves the public interest by fostering the provision of a mix of services. In its regulation of other bands designated for both common carrier and private operations, the Commission permits licensees to elect common carrier or private status in a manner that allows for a broad range of uses. Similarly, for the 218–219 MHz Service, the Commission proposes to rely on applicants and licensees to specifically identify the type of service or services they intend to provide within the technical parameters of the spectrum allocation, and to require that they include sufficient detail to enable the Commission to determine whether the service will be offered as commercial mobile radio services (CMRS), private mobile radio services (PMRS), a common carrier fixed service, or a private fixed service. The Commission proposes that 218–219 MHz Service mobile service providers elect regulatory status as commercial mobile or private land mobile based on the three-prong statutory definition of CMRS, as interpreted by the Commission in the *CMRS Second Report and Order,* 59 FR 18493 (April 19, 1994), (''*CMRS Second Report and Order*'') and for fixed operations, elect common carrier or private status based on the nature of their service offerings under the definitions set forth in Section 3 of the Communications Act of 1934, as amended (''Communications Act''). The regulatory status that the provider elects would determine the extent to which the applicant or licensee is subject to common carrier regulation. The Commission also proposes to apply regulatory fees and license application requirements consistent with the election of common carrier or private status made by the licensee.

8. This approach should allow the Commission to carry out its regulatory responsibilities without imposing an unnecessary regulatory limitation upon licensees. The Commission notes that its final determination of permissible communications in the 218–219 MHz Service will depend on its conclusions after reviewing the record in this proceeding. The Commission seeks comment on these proposals, or any alternatives, that will ensure that licensees can design their service offerings in response to market demand.

**B. License Term**

9. Under the Commission's current rules, the term of each system or CTS licensed to operate in the 218–219 MHz Service is five years. The Commission adopted this license term in the *1992 Allocation Report and Order* in the context of awarding licenses by lottery ''to reduce any potential for trafficking in licenses by persons who have no real interest in constructing,'' and as ''consistent with the license term used in most other private radio services.'' To support their request for a ten-year license term, Petitioners note that (1) in services with similar technologies and market areas, the license term is ten years; (2) the use of auctions to award licenses negates the original intent of the five-year term (*i.e.,* discouraging trafficking of lottery-won licenses); and (3) awarding licenses by auction requires a longer license term in which licensees (many of whom are small businesses) may secure adequate financing, develop viable services, and eventually recoup their initial investment. Petitioners also contend that the extension of the license term would trigger a reamortization of the installment payments over the longer license term, and request that the Commission offer 218–219 MHz Service licensees a choice of (i) fulfilling payment obligations with any changes thereto associated with adjustments adopted through this *NPRM;* (ii) amnesty; or (iii) payment through a royalty-based schedule as an alternative to auction payments.

*i. Extension of the License Term*

10. The Commission agrees with Petitioners that auctionable service licensees should have consistent license terms. The Commission continues to believe that licenses in the 218–219 MHz Service can attract small businesses interested in opportunities to participate in the provision of spectrum-based services. In this regard, a five-year term is particularly burdensome on small businesses paying for licenses using installment payments; to date, the Commission has held auctions in four other wireless services in which certain designated entities were eligible for installment payment plans, and each of those services has a ten-year license term. Therefore, the Commission proposes to amend § 95.811(d) of the Commission's rules to extend the term of 218–219 MHz Service licenses to ten years from the date of license grant. In doing so, the Commission notes that a ten-year license term comports with its proposal to redesignate the 218–219 MHz Service from a private radio

service (generally licensed for a five-year term) to a service that can also provide common carrier services (generally licensed for a ten-year term). Since all 218–219 MHz Service licensees will face the same competitive setting and opportunity costs going forward under the regulatory flexibility the Commission proposes today (irrespective of whether they acquired their licenses by auction or lottery), the Commission proposes to extend the license term of all licenses in the 218–219 MHz Service to ten years to ensure regulatory parity. The Commission seeks comment on these proposals.

*ii. Reamortization of Installment Payment Debt and Financing Options*

11. The Commission also tentatively concludes that it is in the public interest to permit reamortization of principal and interest installment payments for non-defaulted 218–219 MHz Service licensees in conjunction with the extension of the license term from five to ten years, an approach that is consistent with our general auction rules. Therefore, the Commission proposes reamortization of installment payment terms for 218–219 MHz Service licensees to allow for two years of interest-only payments, followed by payments consisting of interest and principal over the remaining eight years of the license term, an approach that is also consistent with the Commission's general auction rules. Based on the Commission's structure of installment payment plans in other services in which it has limited the interest-only period to two years, the Commission believes that the two-year interest-only period currently applicable to 218–219 MHz Service licensees provides small businesses with the appropriate level of U.S. government assisted financing. The Commission's proposal here is inextricably tied to the requested extension of the license term from five to ten years, in contrast to prior requests to extend payment terms beyond the five year license term based on market considerations, which the Commission denied.

12. To ensure that all 218–219 MHz Service licensees that are not currently in default can take advantage of the proposed reamortization of installment payments, the Commission proposes to grant all properly filed grace period requests as of the effective date of reamortization. At that time, the Commission would recalculate every non-defaulting licensee's installment payment obligations as reamortized, and credit all payments already received under the revised schedule, with any additional funds held in reserve for application against future payments. With regard to interest calculations for 218–219 MHz Service licensees, the Commission notes that § 95.816(d)(2) of its rules require the fixing of such calculations at the time of licensing at a rate equal to the rate for five-year U.S. Treasury obligations. If the Commission adopts its proposal to reamortize the 218–219 MHz Service installment payments over a ten-year license term, then it would impose an interest rate for those plans based on the rate for ten-year U.S. Treasury obligations at the time of licensing. All Suspension Interest (i.e., interest payments back-due from September 30, 1995 and December 31, 1995) would be submitted in eight equal payments over a two-year period, due and payable with each of the first eight scheduled installment payments, as reamortized.

13. The Commission understands that this proposal may trigger the payment of back due amounts, including accrued interest, earlier than expected for some 218–219 MHz Service licensees. Therefore, the Commission proposes to offer licensees two financing options, with such election to be made on a license-by-license basis 90 days from the release date of any Report and Order promulgating the proposed reamortization. First, licensees may choose to continue making installment payments by submitting a payment consisting of all accrued interest and principal (as reamortized) due and owing as of that date. At that time, if necessary, licensees would be able to utilize the 180-day late payment period in the Commission's revised installment payment rules, subject to the applicable late payment fees, before their licenses would automatically cancel as being in default. Alternatively, per Petitioners' request, licensees may surrender any licenses they choose to the Commission for reauction and, in return, have all of the outstanding debt on those licenses forgiven (*i.e.,* an amnesty option much like that offered to broadband personal communication services (PCS) C block licensees). For each license returned under the amnesty option, the licensee would choose either to (1) receive no credit for its down payment but remain eligible to bid on the surrendered licenses in the reauction, with no restriction on after-market acquisitions; or (2) obtain credit for 70 percent of its down payment and forego for a period of two years from the start date of the reauction eligibility to reacquire the licenses surrendered through either reauction or any other secondary market transaction. Under either option, all installment payments made on surrendered licenses, plus the 70 percent credit under the second option, would be applied to previously accrued interest for retained markets, with any excess installment payments (but not down payments) refunded, subject to applicable federal debt collection laws. Every licensee electing to continue making installment payments would be required to execute appropriate loan documentation, that may include a note and security agreement, as a condition of the reamortization of its installment payment plan under the revised ten-year term, pursuant to § 1.2110(f)(3) of the Commission's rules. Licensees that fail to elect a financing option on a timely basis, and licensees who do not complete the requisite loan documentation, would be held to the original five-year payment schedule. The Commission believes that providing this choice would substantially increase licensees' flexibility to make market driven decisions regarding their licenses and enable them to revise their business plans to make them more attractive to lenders and investors. The Commission seeks comment on these proposals.

**C. Service and Construction Requirements**

14. Section 95.831 of the Commission's rules provides that 218–219 MHz Service licensees make service available to at least 50 percent of the population or land area located within the service area. To accomplish this service level requirement, The Commission sets construction benchmarks as follows: service to at least 10 percent of the population or geographic area within the license service area within one year of the grant of the license; 30 percent within three years; and, 50 percent within five years. Under the Commission rules, failure to meet these build-out requirements results in automatic cancellation of the 218–219 MHz Service system license. For purposes of this benchmark, service is provided by a CTS when two associated RTUs are placed in operation. Each 218–219 MHz Service system licensee must file a progress report at the conclusion of each benchmark period to inform the Commission of the construction status of the system.

15. These rules were crafted in the *1992 Allocation Report and Order* in the context of awarding licenses by lottery, and were intended ''to reduce the filing of speculative applications by entities that have no real intention of implementing [218–219 MHz Service] systems.'' The Commission eliminated the one-year construction benchmark in early 1996, at the request of several

licensees that won their licenses in the July 1994 auction. At that time, the Commission stated that the use of auctions to award licenses reduces the incentives for speculation, and therefore, concluded that the one-year benchmark was unnecessary. The Commission further stated that ''eliminating the one-year construction requirement will provide licensees with greater flexibility in selecting service options, obtaining financing, selecting equipment, and other considerations related to construction of their systems.'' More recently, the Bureau waived the three-year construction benchmark date for all licenses because it would have been unreasonable and contrary to the public interest to enforce the benchmark while relevant Commission policy was subject to review in this rulemaking proceeding.

16. Section 309(j)(3) of the Communications Act states, in part, that when designing competitive bidding systems, ''the Commission shall include safeguards to protect the public interest in the use of the spectrum * * *.'' In addition, Section 309(j)(4)(B) provides that the Commission shall promote investment in, and rapid deployment of, new technologies and services by means of performance requirements, such as deadlines and penalties for performance failures. The Commission previously found that these provisions could be satisfied through construction requirements.

17. The Commission continues to seek to provide 218–219 MHz Service licensees with optimal flexibility in selecting service options, obtaining financing, selecting equipment, and other considerations regarding construction of systems. This interest must be balanced, however, by the mandate of Section 309(j) of the Communications Act. Given the Commission's belief that many of the service offerings that could be provided by 218–219 MHz Service licensees could also be provided by licensees of other services, the Commission believes it is appropriate to revisit the service and construction requirements in the 218–219 MHz Service to ensure that 218–219 MHz Service licensees are subject to consistent policies. Although the Commission disagrees with Petitioners that all construction benchmarks should be eliminated, the Commission believes that strict construction requirements are not the most suitable and effective means of addressing these statutory obligations given that the 218–219 MHz Service spectrum may be used to offer a variety of fixed and mobile services that may compete with capabilities of other wireless services.

18. Balancing these factors, the Commission tentatively concludes that 218–219 MHz Service licensees should be subject to construction requirements consistent with those presently used in other services. Specifically, the Commission proposes to eliminate the three-year and five-year construction benchmarks currently provided in its rules, and instead require that 218–219 MHz Service licensees provide ''substantial service'' to their service areas within five years of license grant. In past Orders, the Commission has defined ''substantial service'' as ''service that is sound, favorable, and substantially above a level of mediocre service, which would barely warrant renewal,'' and the Commission has provided safe harbor examples of substantial service showings, such as licensees offering specialized or technologically sophisticated service that does not require a high level of coverage to be of benefit to customers, or licensees providing a niche service to businesses or focusing on serving populations outside of areas currently serviced by other licensees. The Commission seeks comment on whether this definition or some other articulable standard should be adopted to define substantial service for the 218–219 MHz Service.

19. If the Commission amends its rules to extend 218–219 MHz Service licenses to a ten-year term, it further proposes to require that all 218–219 MHz Service licensees either make service available to at least 20 percent of the population or land area, or demonstrate substantial service, within ten years of license grant. Licensees would demonstrate compliance with the construction requirements by basing their calculations on signal field strengths that ensure reliable service for the technology utilized, using any service radius contour formula developed or generally used by industry, provided that such formula is based on the technical characteristics of their systems. In the alternative, under a ten-year license term scenario, the Commission asks whether, in lieu of establishing benchmarks, it should require licensees to provide substantial service to their service area within ten years of license grant as a condition of renewal. Finally, under a ten-year license term scenario, the Commission proposes to assess compliance of incumbent 218–219 MHz Service licensees with the five-year substantial service benchmark five years from the effective date of such rules promulgated pursuant to this *NPRM,* and the ten-year requirement at the end of their ten-year license term. Under any of these proposals, licensees will be required to file supporting documentation showing compliance with the construction requirements. Failure to meet the benchmark would result in automatic termination of the license, which is consistent with the Commissions current rules for this service.

20. The Commission believes that a substantial service construction requirement can promote efficient use of the spectrum and encourage broad deployment of service. The Commission further believes that this approach will permit a variety of service offerings, facilitate market development, provide a clear and expeditious accounting of spectrum use by licensees, and ensure that meaningful service is being provided without unduly restricting service offerings. The Commission seeks comment on these tentative conclusions and proposals, and any alternatives thereto.

**D. License Transferability**

21. The Commission adopted a restriction on 218–219 MHz block license transferability in the *1992 Allocation Report and Order* as an anti-trafficking rule governing the award of licenses by lottery. Under the rule, 218–219 MHz Service licensees may not transfer, assign, sell, or give the licenses to any other entity until the five year (50 percent coverage) construction benchmark has been met. In the *Fourth Report and Order,* 59 FR 24947 (May 13, 1994), (''*Competitive Bidding Fourth Report and Order*''), the Commission specifically amended the rule to exclude its application to licenses acquired through auction. Thus, the transferability restriction applies only to the 18 licenses won in the September 1993 lottery. The Commission seeks comment on whether this transfer restriction should be retained. Further, assuming the rule is retained, the Commission seeks comment on determining whether and when a lottery-won license may be transferred in light of its proposed changes to the service and construction rules, and its proposal to permit partitioning and disaggregation of 218–219 MHz Service licenses.

**E. Spectrum Aggregation**

22. In establishing rules for the 218–219 MHz band, the Commission concluded that the best way to promote competition in the developing marketplace would be ''to make at least two facilities available in each market.'' Therefore, the Commission's cross-ownership rule prohibits an entity from

holding or having an interest in the licenses for both frequency segment A (218.0–218.5 MHz) and frequency segment B (218.5–219 MHz) in the same service area.

23. Petitioners seek elimination of the cross-ownership rule, stating, *inter alia*, that competing services with larger bandwidth and greater capitalization provide the necessary competition to alleviate any concern that a 218–219 MHz Service licensee would exert monopoly power by aggregating one megahertz of spectrum, and that a full one megahertz of spectrum would enhance spectrum flexibility through expanded applications and services. In 1996, the Commission denied a request for rulemaking on this issue. In deciding not to grant the petition for rulemaking, the Commission observed that the ''interactive television marketplace is in a relatively early state of competition,'' and that ''allowing a single entity to acquire both licenses in a service area would limit the opportunity for other potential competitors to emerge.'' That notwithstanding, restricting the competitive analysis of the 218–219 MHz band to the interactive television marketplace is inconsistent with the myriad of services evolving in the 218–219 MHz Service. The Commission believes that the new regulatory environment it seeks to establish with its proposals in this *NPRM* will broaden the field of potential competitors providing services similar to those in the 218–219 MHz Service. Therefore, it is now appropriate to reexamine the cross-ownership prohibition.

24. The Commission seeks comment on whether it should allow licensees to aggregate spectrum in the 218–219 MHz Service without restriction. Would removal of the current cross-ownership prohibition pose a risk of significant competitive harm in some markets? The Commission's goal in managing spectrum efficiently and fostering competition is to license the maximum number of commercially viable competitors per region. Commenters should address whether the 500 kilohertz spectrum capacity limit of one license per market renders these licenses not commercially viable, and why. What other technologies provide, or may in the future provide, comparable services to those currently provided or proposed for this spectrum? The Commission also seeks comment on whether it would be appropriate to include 218–219 MHz in the calculation of spectrum aggregation limits, given its proposal to expand service options to common carrier or CMRS operations.

**F. Partitioning and Disaggregation**

25. In the *Report and Order and Further Notice of Proposed Rulemaking*, 62 FR 653, 62 FR 696 (January 6, 1997), (''*Partitioning Report and Order*''), the Commission expanded its rules to permit geographic partitioning and spectrum disaggregation for broadband PCS licensees. Consistent with these broadband PCS rules, the Commission proposes to permit partitioning and disaggregation for the 218–219 MHz Service. The Commission tentatively concludes that a flexible approach to partitioned areas, similar to the one it adopted for broadband PCS, is appropriate for the 218–219 MHz Service. The Commission therefore proposes to permit partitioning of 218–219 MHz Service licenses based on any area defined by the parties within the licensee's service area. The Commission seeks comment on this proposal, and in particular on whether there are any technical or other issues unique to the 218–219 MHz Service that might impede the adoption of such a flexible approach. With regard to disaggregation, the Commission notes that even if it permits ownership of both licenses in a market by one entity as proposed above, there would still be only one megahertz of spectrum to disaggregate. Given this relatively narrow frequency segment, and the propagation and technological limitations of the 218–219 MHz band, the Commission seeks comment on the feasibility of spectrum disaggregation in the 218–219 MHz Service, and particularly, whether minimum disaggregation standards are necessary. Commenters should provide technical justifications and other relevant support in responding to this issue. The Commission tentatively concludes that combined partitioning and disaggregation should also be permitted for the 218–219 MHz Service. This approach would afford parties optimal flexibility to respond to market forces and demands for service relevant to their particular locations and service offerings. Further, the Commission proposes to authorize a partitionee and disaggregatee to hold its license for the remainder of the original licensee's term, with renewal expectancy. The Commission believes that this approach would prevent licensees from using partitioning and disaggregation to circumvent our established license term rules. Additionally, by limiting the license term of the partitionee or disaggregatee, the Commission ensures that there will be maximum incentive for parties to pursue available spectrum as quickly as practicable, thus expediting the delivery of service to the public. The Commission seeks comment on these proposals and tentative conclusions.

26. In the *Partitioning Report and Order*, the Commission concluded that allowing partitioning and disaggregation would help to (1) remove potential barriers to entry, thereby increasing competition; (2) encourage parties to use spectrum more efficiently; and (3) speed service to unserved and underserved areas. Similarly, the Commission believes that such an approach for the 218–219 MHz Service would result in the same public interest benefits. The Commission notes that small businesses may face certain barriers to entry into the provision of spectrum-based services, which it believes may be addressed by its partitioning and disaggregation proposals. Providing licensees with the flexibility to partition and disaggregate would create smaller areas that could be licensed to small businesses, including those entities that previously may not have had the resources to participate successfully in spectrum auctions. The Commission seeks comment on these tentative conclusions. In particular, commenters are invited to address whether partitioning and disaggregation will help eliminate market entry barriers for small businesses consistent with Section 257 of the Communications Act. The Commission further invites comment as to the exact mechanisms for apportioning and paying the remaining government obligation between the parties, and whether there are any unique circumstances that would make devising such a scheme for the 218–219 MHz Service more difficult than for broadband PCS.

27. In this *NPRM*, the Commission seeks comment on a new set of construction requirements for 218–219 MHz Service licensees. In other wireless services, the Commission has allowed licensees the flexibility to negotiate which party will be responsible for meeting the applicable construction requirements. In each of those cases, the Commission's goals has been to ensure that licensees had the flexibility to structure their business plans while ensuring that partitioning and disaggregation not be used as a vehicle to circumvent the applicable construction requirements, and that service be offered over the relevant population, even if not on the entire spectrum. The Commission proposes that parties to partitioning and disaggregation in the 218–219 MHz Service have comparable flexibility in meeting construction requirements. Parties to partitioning would be allowed to choose between both parties

satisfying build-out requirements within their respective service areas, or having the partitionor build-out the entire market. Parties to disaggregation would choose whether one or both parties would be obligated to satisfy build-out requirements within the geographic service area. Non-performing licensees' authorizations would be subject to cancellation at the end of the license term. The Commission seeks comment on these proposals.

**G. Technical Standards**

28. In light of the fact that the Commission's primary goal in this rulemaking is to provide additional flexibility for 218–219 MHz Service licensees, the Commission must also seek to reexamine the technical restrictions currently applicable to the 218–219 MHz Service to determine whether it can enhance the technical flexibility of these licensees, particularly in light of the proposals contained in this *NPRM.* The technical restrictions, including rules requiring automatic power control capability, antenna height and transmitter power limitations, duty cycle limitations, and other interference protection standards, were based on an agreement between TV Answer and the Association for Maximum Service Television that IVDS (as proposed by TV Answer, now known as EON Corporation) and TV Channel 13 operations could co-exist. Interference was of particular concern since the RTU proposed for use by TV Answer was planned to be co-located with the subscriber/viewer's television set. However, the potential applications for the 218–219 MHz Service go far beyond the service envisioned by TV Answer when these rules were designed. The Commission also notes that other services are authorized to transmit in frequencies adjacent to or nearby 218–219 MHz with higher power levels than allowed at 218–219 MHz and no duty cycle restrictions, and that the Commission has not received any complaints of interference to TV Channel 13 from any of these operations.

29. These facts prompt the Commission to seek comment as to whether it should relax some or all of the following technical restrictions, as requested by Petitioners: (a) automatic power control in RTUs with power in excess of 100 milliwatts; (b) limits on transmitter effective radiated power, including the 100 milliwatt power limitation on mobile RTUs; (c) CTS antenna height and transmitter power ratios, whether or not the CTS is located beyond a boundary line 10 miles outside the Grade B contour of a TV Channel 13 station; and (d) duty cycle limitations. The Commission also notes that it has received various requests for waiver of these technical standards that it choose to address in the larger context of this rulemaking, and therefore invite comment on these proposed operations in conjunction with the comments addressing the issues raised in this *NPRM.* The Commission requests that commenters provide empirical data and analysis of the expected effect on interference of changes they recommend. Commenters suggesting specific limits are urged to provide support for their choices, recognizing that the Commission is seeking to provide technical flexibility to coincide with the regulatory flexibility it proposes. Alternatively, comments are sought on whether the interference provisions of § 95.861 of the Commission's rules, which require 218–219 MHz Service licensees to resolve interference problems to television broadcast reception or discontinue operation, are sufficient to protect broadcast reception. The Commission tentatively concludes that the evolution toward precise digital technology, both within the evolving 218–219 MHz Service industry, and on the part of the broadcast industry, will further reduce interference potential, and the Commission seeks comment on this tentative conclusion. Commenters should also address any other technical standards that could be reexamined in this rulemaking that inhibit flexible use of the spectrum and technological innovation.

**H. Incorporation by Reference of Part 1 Standardized Auction Rules**

30. In the *Part 1 Third Report and Order,* the Commission streamlined its auction procedures by adopting general competitive bidding rules applicable to all auctionable services. These procedures, set forth in Part 1, subpart Q of the Commission's rules, supersede previously-adopted service-specific rules, unless the Commission determines that with regard to particular matters, the retention or adoption of service-specific rules is warranted.

31. The Commission proposes to conduct all future auctions for licenses in the 218–219 MHz Service (both auctions of initial licenses and reauctions of defaulted licenses) in conformity with the general competitive bidding rules set forth in Part 1, subpart Q of the Commission's rules. Specifically, the Commission proposes to employ the Part 1 rules governing designated entities, application issues, payment issues, competitive bidding design, procedure and timing issues, and anti-collusion. In this regard, consistent with the Commission's decision in the *Part 1 Third Report and Order,* the Commission would no longer offer installment payments as a means of financing small business participation in the 218–219 MHz Service auction. Instead, the Commission would retain the two tiers of small business size standards currently set for 218–219 MHz Service licensees, and utilize the standard schedule of bidding credits set forth in the *Part 1 Third Report and Order* as applied to those two tiers of small businesses, which would allow for somewhat higher bidding credits in light of the suspension of installment payment financing. The Commission seeks comment on these proposals and on whether any of our Part 1 rules would be inappropriate in an auction for this service.

32. The Commission adopts this *NPRM* as part of its comprehensive examination of regulations governing the licensing and use of frequencies in the 218–219 MHz band. These actions are intended to establish a flexible regulatory framework for the 218–219 MHz Service that will encourage spectrum efficiency, technical innovation, and competition by these licensees in the wireless marketplace, and serve the ultimate goal of ensuring that the spectrum at 218–219 MHz provides the greatest benefit to the public.

**Procedural Matters and Ordering Clauses**

**I. Ex Parte Rules—Non-Restricted Proceeding**

33. 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 Commission rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a).

**B. Initial Regulatory Flexibility Analysis**

34. As required by the Regulatory Flexibility Act of 1980, Public Law 96–354, 94 Stat. 1164, as amended by the Contract with America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847, 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the proposals suggested in this document. The IRFA is set forth immediately below the Ordering Clause. Written public comments are requested with respect to the IRFA. These comments must be filed

in accordance with the same filing deadlines for comments on the rest of this *NPRM,* but they must have a separate and distinct heading, designating the comments as responses to the IRFA. The Office of Public Affairs, Reference Operations Division, shall send a copy of this *NPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

**C. Initial Paperwork Reduction Act of 1995 Analysis**

35. This *NPRM* contains either a proposed or modified information collection. As part of the Commission's continuing effort to reduce paperwork burdens, we invite the general public, the Office of Management and Budget (OMB), and other agencies to take this opportunity to comment on the information collections contained in this *NPRM,* as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this *NPRM;* OMB comments are due November 30, 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. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to both of the following: Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov, and Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, D.C. 20503, or via the Internet to fain__t@al.eop.gov.

**D. Notice and Comment Provisions**

36. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before October 30, 1998, and reply comments on or before November 25, 1998. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (May 1, 1998).

37. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

38. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 1919 M St. N.W., Room 222, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center of the Federal Communications Commission, Room 239, 1919 M Street, N.W., Washington, DC 20554.

39. Authority for issuance of this *Notice of Proposed Rulemaking* is contained in Sections 4(i), 257, 303(b), 303(g), 303(r), 309(j), and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 257, 303(b), 303(g), 303(r), 309(j), and 332(a).

40. Accordingly, it is ordered that this *Notice of Proposed Rulemaking* is adopted. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this *Notice of Proposed Rulemaking,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

41. It is further ordered that notice is hereby given of the proposed amendments to Parts 20 and 95 of the Commission's rules, 47 CFR Parts 20 and 95, in accordance with the proposals in this *Notice of Proposed Rulemaking,* and that comment is sought regarding such proposals. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before October 30, 1998, and reply comments on or before November 25, 1998.

42. It is further ordered that the Petition for Rulemaking and associated amendments filed is granted in part to the extent described above and is denied in all other respects.

**Initial Regulatory Flexibility Analysis (IRFA)**

43. The Commission has prepared this IRFA of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking,* Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service (*Notice*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on the *NPRM,* as described supra. The Commission will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). See 5 U.S.C. 603(a).

**I. Need for, and Objectives of, the Proposed Rules**

44. This rulemaking proceeding was initiated to secure public comment on proposals to maximize the efficient and effective use of spectrum in the 218–219 MHz band, allocated in 1992 to the Interactive Video and Data Service (IVDS) in the Personal Radio Services, now redesignated as the 218–219 MHz Service. In attempting to maximize the use of the 218–219 MHz band, the Commission continues its efforts to improve the efficiency of spectrum use, reduce the regulatory burden on spectrum users, facilitate technological innovation, and provide opportunities for development of competitive new service offerings. The proposals advanced in the *NPRM* are also designed to implement Congress' goal of giving small businesses the opportunity to participate in the provision of spectrum-based services in accordance with Section 309(j) of the Communications Act of 1934, as amended (the Communications Act).

**II. Legal Basis**

45. This action, including publication of proposed rules, is authorized under Sections 4(i), 257, 303(b), 303(g), 303(r), 309(j), and 332(a) of the Communications Act, 47 U.S.C. 154(i), 257, 303(b), 303(g), 303(r), 309(j), and 332(a).

**III. Description and Estimate of the Number of Small Entities to which the Proposed Rules Will Apply**

46. The Regulatory Flexibility Act directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The Regulatory Flexibility Act generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. Below, the Commission further describes and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

47. There are three ways that may be applicable to define small entities for these proposed rules: (1) the U.S. Small Business Administration's (SBA) size standards under the SBA's Standard Industrial Classifications (SIC), 13 CFR 121.201; (2) the Small Business Act's definition of small entities under 15 U.S.C. 632(a); and (3) the Commission's refined definition of small business for a particular service for the purposes of competitive bidding.

48. The proposals in the *NPRM* would affect a number of small entities who are either licensees, or who may choose to become applicants for licenses, in the 218–219 MHz Service. Such entities fall into two categories: (1) those using the 218–219 MHz Service for providing interactivity capabilities in conjunction with broadcast services; and (2) those using the 218–219 MHz Service to operate other types of wireless communications services with a wide variety of uses, such as commercial data applications and two-way telemetry services. Theoretically, an entity could fall into both categories. The spectrum uses in the two categories differ markedly.

49. With respect to the first category, the provision of interactivity capabilities in conjunction with broadcast services could be described as a wireless provider of subscription television service. The SBA's rules applicable to subscription television services define small entities as those with annual gross revenues of $11 million or less. In the *Tenth Report and Order*, 61 FR 60198 (November 27, 1996), (''*Competitive Bidding Tenth Report and Order*''), the Commission extended special competitive bidding provisions to small businesses with annual gross revenues that are not more than $15 million, and additional benefits to very small businesses with annual gross revenues that are not more than $3 million. On January 6, 1998, the SBA approved of the small business size standards established in the *Competitive Bidding Tenth Report and Order.*

50. The Commission's estimate of the number of small business entities operating in the 218–219 MHz band for interactivity capabilities with television viewers begins with the 1992 Bureau of Census report on businesses listed under SIC Code 4841, subscription television services, which is the most recent information available. The total number of entities under this category is 1,788. There are 1,463 companies in the 1992 Census Bureau report which are categorized as small businesses providing cable and pay TV services. The Commission knows that many of these businesses are cable and television service businesses, rather than businesses operating in the 218–219 MHz band. The Commission also knows that, to date, it has issued 612 licenses in the 218–219 MHz Service. Therefore, the number of small entities currently providing interactivity capability to television viewers in the 218–219 MHz Service which will be subject to the rules will be less than 612.

51. With respect to the second category, neither the Commission nor the SBA has developed a specific definition of small entities applicable to 218–219 MHz band licensees that would provide wireless communications services other than that described above. Generally, the applicable definition of a small entity in this instance appears to be the definition under the SBA rules applicable to establishments primarily engaged in furnishing telegraph and other message communications, SIC Code 4822. This definition provides that a small entity is an entity with annual receipts of $5 million or less. The 1992 Census data, which is the most recent information available, indicates that of the 286 firms under this category, 247 had annual receipts of $4.999 million or less. The Commission seeks comment on whether the appropriate definition for such licensees in the 218–219 MHz Service is SIC Code 4822, or whether it should conclude, for purposes of the Final Regulatory Flexibility Analysis (FRFA) in this matter, that the appropriate definition for all providers of services in the 218–219 MHz Service is the Commission's definition of small businesses for the purposes of competitive bidding in this service.

52. The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the Commission defined a small business as an entity, together with its affiliates, that has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. The Commission cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under its rules in future auctions of 218–219 MHz spectrum. Given the success of small businesses in the previous auction, and the above discussion regarding the prevalence of small businesses in the subscription television services and message communications industries, the Commission assumes for purposes of this IRFA that in future auctions, all of the licenses may be awarded to small businesses, which would be affected by the rule changes it proposes.

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

53. The proposed rules under consideration in this *NPRM* include the possibility of altered reporting and recordkeeping requirements for a number of small business entities. Specifically, under the proposals contained in the *NPRM*: (1) 218–219 MHz Service licensees and applicants will be required to elect regulatory status (common carrier, private,

commercial mobile radio service, private mobile radio service) and file appropriate documentation coincident with the regulatory status elected; (2) 218–219 MHz Service licensees will not be required to file a license renewal application after five years from the date of grant of the license, but will be required to file a license renewal application after ten years after the date of grant of the license; (3) non-defaulting 218–219 MHz Service licensees currently participating in the installment payment plan will be required to elect either to continue making payments as reamortized under the revised ten-year term or surrender any licenses it chooses to the Commission for reauction; (4) 218–219 MHz Service licensees electing to continue making installment payments will be required to execute a note and security agreement as a condition of the reamortization of its installment payment plan under the revised ten-year term; (5) 218–219 MHz Service licensees will not be required to file a construction report after the third year of being licensed, but will be obligated to file construction reports in accordance with the benchmarks to be adopted under the proposals herein; and (6) acquisitions by partitioning or disaggregation will be treated as assignments of a license and parties will be required to comply with construction requirements, and to submit a certification to that effect. The Commission requests comment on how these requirements can be modified to reduce the burden on small entities and still meet the objectives of the proceeding.

## V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

54. The *NPRM* solicits comment on a variety of proposals, some of which are described below. Rather than having a significant economic impact on small entities, the *NPRM* is written toward maximizing opportunities for participation by, and growth of, small businesses in providing wireless services. The Commission has requested comment regarding the appropriate definition of small business to be applied under the expanded nature of the 218–219 MHz Service it proposes in the *NPRM*. The Commission expects that its proposals in this *NPRM* regarding extension of license terms from five to ten years, with a corresponding reamortization of installment payment debt, and allowing partitioning and disaggregation of licenses, will specifically assist small businesses. The Commission also believes that its proposals regarding permissible uses of 218–219 MHz Service, liberalization of construction requirements and technical restrictions, and elimination of the cross-ownership restriction, will make expansion of 218–219 MHz Service operations easier, and this flexibility assists all licensees, including small business licensees. The Commission tentatively concludes that a flexible approach to regulation of the 218–219 MHz Service will afford all providers, including small businesses, the ability to respond to market forces and demands for service relevant to their particular locations and service offerings. The regulatory burdens the Commission proposes are necessary in order to ensure that the public receives the benefits of innovative new services in a prompt and efficient manner. The Commission seeks comment on, and will consider, any significant alternatives that are consistent with the objectives set forth in the *NPRM*.

## VI. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

## List of Subjects

*47 CFR Part 20*

Communications common carrier, Communications equipment, Radio.

*47 CFR Part 95*

Communications equipment, Penalties, Radio, Report and record keeping requirements.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

## Proposed Rules

Parts 20 and 95 of Chapter I of Title 47 of the Code of Federal Regulations are proposed to be amended as follows:

## PART 20—COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for part 20 would be revised to read as follows:

**Authority:** Secs. 4, 251, 252, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 251, 252, 303, and 332, unless otherwise noted.

2. Section 20.9 would be amended by redesignating paragraphs (a)(12) and (a)(13), as (a)(13) and (a)(14), and adding a new paragraph (a)(12) to read as follows:

### § 20.9 Commercial mobile radio services.

(a) * * *

(12) Mobile operations in the 218–219 MHz Service (part 95, subpart F of this chapter) that provide for-profit interconnected service to the public;

* * * * *

## PART 95—PERSONAL RADIO SERVICES

3. The authority citation for part 95 would be revised to read as follows:

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

4. Section 95.1 would be amended by revising paragraph (b) to read as follows:

### § 95.1 The General Mobile Radio Service (GMRS).

* * * * *

(b) The 218–219 MHz Service is a two-way radio service authorized for system licensees to provide communication service to subscribers in a specific service area. The rules for this service are contained in subpart F of this part.

5. Section 95.803 would be amended by revising the section heading and paragraphs (a) and (b) to read as follows:

### § 95.803 218–219 MHz Service description.

(a) The 218–219 MHz Service is a two-way radio service authorized for system licensees to provide communication service to subscribers in a specific service area.

(b) The components of each 218–219 MHz Service system are its administrative apparatus, its response transmitter units (RTUs), and one or more cell transmitter stations (CTSs). RTUs may be used in any location within the service area.

* * * * *

6. Section 95.805 would be revised to read as follows:

### § 95.805 Permissible communications.

A 218–219 MHz Service system may provide any fixed or mobile communications service to subscribers within its service area on its assigned spectrum, consistent with the Commission's rules and the regulatory status of the system to provide services on a common carrier or private basis.

7. A new § 95.807 would be added to read as follows:

### § 95.807 Requesting regulatory status.

(a) Authorizations for systems in the 218–219 MHz Service will be granted to provide services on a common carrier basis or a private basis, or on both a common carrier and private basis in a single authorization.

(1) Initial applications. An applicant will specify on FCC Form 601 if it is requesting authorization to provide services on a common carrier basis, a

private basis, or on both a common carrier and private basis.

(2) Amendment of pending applications. Any pending application may be amended to: (i) change the carrier status requested; or (ii) add to the pending request in order to obtain both common carrier and private status in a single license.

(3) Modification of license. A licensee may modify a license to: (i) change the carrier status authorized; or (ii) add to the status authorized in order to obtain both common carrier and private status in a single license. Applications to change, or add to, carrier status in a license must be submitted on FCC Form 601 in accordance with § 1.1102 of this chapter.

(b) An applicant or licensee may submit a petition at any time requesting clarification of the regulatory status required to provide a specific communications service.

8. Section 95.811, would be amended by removing paragraph (d) and revising paragraphs (b) and (c) to read as follows:

**§ 95.811 License requirements.**

* * * * *

(b) Each CTS that is in the vicinity of certain receiving locations (see § 1.923(f) of this chapter), or that may have significant environmental effect (see part 1, subpart I of this chapter), or that requires notification to the Federal Aviation Administration (see part 17, subpart B of this chapter), or that has an antenna that exceeds 6.1 meters (m) (20 feet) above ground or an existing man-made structure (other than an antenna structure), must be individually licensed to the 218–219 MHz Service licensee for the service area in which the CTS is located. All other CTSs are authorized under the 218–219 MHz Service system license.

(c) Each component RTU in a 218–219 MHz Service system is authorized under the system license or if associated with an individually licensed CTS, under that CTS license.

9. A new § 95.812 would be added to read as follows:

**§ 95.812 License term.**

(a) The term of each 218–219 MHz Service system license is ten years from the date of original issuance or renewal.

(b) Licenses for individually licensed CTSs will be issued for a period running concurrently with the license of the associated 218–219 MHz Service system with which it is licensed.

10. Section 95.813 would be amended by revising paragaph (b) and removing paragraph (c) to read as follows:

**§ 95.813 Eligibility.**

* * * * *

(b) An entity that loses its 218–219 MHz Service authorization due to failure to meet the construction requirements specified in § 95.833 may not apply for a 218–219 MHz Service system license for three years from the date the Commission takes final action affirming that the 218–219 MHz Service license has been canceled.

11. Section 95.815 would be amended by revising paragraph (a) to read as follows:

**§ 95.815 License application.**

(a) In addition to the requirements of part 1, subpart F of this chapter, each application for a 218–219 MHz Service system license must include a plan showing how the applicant intends to minimize co-channel interference and interference to adjacent channel users and a showing that the proposed system will meet the service requirements set forth in § 95.831 of this part.

* * * * *

12. Section 95.816 would be amended by revising paragraphs (a), (b), (c), (d) introductory text, (d)(1), (d)(2) and (d)(3) to read as follows:

**§ 95.816 Competitive bidding proceedings.**

(a) Mutually exclusive initial applications for 218–219 MHz Service system licenses are subject to competitive bidding. The procedures set forth in part 1, subpart Q, of this chapter will apply unless otherwise provided in this part.

(b) The Wireless Telecommunications Bureau will select competitive bidding designs and mechanisms in accordance with §§ 1.2103 and 1.2104 of this chapter.

(c) The specific procedures applicable to auctioning particular 218–219 MHz Service licenses will be set forth by Public Notice. Generally, the following competitive bidding procedures will be used to auction mutually exclusive 218–219 MHz Service licenses.

(1) *Forms.* (i) Short-form application. See § 1.2105 of this chapter.

(ii) Long-form application. See § 1.2107 (c) and (d) of this chapter.

(2) *Upfront payments.* Each applicant to participate in a 218–219 MHz Service auction will be required to submit an upfront payment of $9,000 per Metropolitan Statistical Area license and $2,500 per Rural Service Area license for the maximum number of licenses on which it intends to bid pursuant to § 1.2106 of this chapter and procedures specified by Public Notice.

(3) *Down payments.* See § 1.2107(b) of this chapter.

(4) *Full payment.* See § 1.2109(a) of this chapter.

(5) *Default or disqualification.* See §§ 1.2104(g)(2) of this chapter.

(d) *Designated entities.* Designated entities are small businesses and very small businesses, as defined in 95.816(d)(4) of this section, and businesses owned by members of minority groups and/or women, as defined in § 1.2110(b) of this chapter.

(1) *Bidding credits.* (i) A winning bidder that qualifies as a small business (as defined in 95.816(d)(4)(i) of this section) may use a bidding credit of 25 percent to lower the cost of its winning bid.

(ii) A winning bidder that qualifies as a very small business (as defined in 95.816(d)(4)(i)(ii) of this section) may use a bidding credit of 35 percent to lower the cost of its winning bid.

(iii) The bidding credits referenced in paragraphs (1) and (2) of this subsection are not cumulative.

(2) *Installment payments.* See § 1.2110(f) of this chapter.

**Note to paragraph (d)(2):** Each 218–219 MHz Service system licensee already utilizing an installment payment plan as of the effective date of these rules will be notified by the Commission of the revised terms of its installment payment plan. The Commission may require that such licensee execute appropriate loan documentation, that may include promissory notes, security agreements, and other related agreements as a condition of the revised installment payment plan.

(3) *Audits.* See § 1.2110(l) of this chapter.

* * * * *

13. Section 95.819 would be revised to read as follows:

**§ 95.819 License transferability.**

(a) A 218–219 MHz Service system license acquired through competitive bidding procedures (including licenses obtained in cases of no mutual exclusivity), together with all of its component CTS licenses, may be transferred, assigned, sold, or given away only in accordance with the provisions and procedures set forth in § 1.2111 of this chapter.

(b) A 218–219 MHz Service system license obtained through random selection procedures, together with all of its component CTS licenses, may be transferred, assigned, sold, or given away to any other entity once the five year construction benchmark (substantial service) has been met, in accordance with the provisions of § 1.948 of this chapter.

(c) If the transfer, assignment, sale, or gift of a license is approved, the new licensee is held to the original construction requirements set forth in § 95.833 of this subpart.

14. A new § 95.823 would be added to read as follows:

**§ 95.823 Geographic partitioning and spectrum disaggregation.**

(a) *Eligibility.* Parties seeking Commission approval of geographic partitioning or spectrum disaggregation of 218–219 MHz Service system licenses shall request an authorization for partial assignment of license pursuant to § 1.948 of this chapter.

(b) *Technical standards.*—(1) *Partitioning.* In the case of partitioning, requests for authorization of partial assignment of a license must include, as attachments, a description of the partitioned service area and a calculation of the population of the partitioned service area and the licensed geographic service area. The partitioned service area shall be defined by coordinate points at every 3 seconds along the partitioned service area unless an FCC-recognized service area is utilized (i.e., Major Trading Area, Basic Trading Area, Metropolitan Service Area, Rural Service Area, Economic Area) or county lines are followed. The geographic coordinates must be specified in degrees, minutes, and seconds, to the nearest second of latitude and longitude, and must be based upon the 1927 North American Datum (NAD27). Applicants may supply geographical coordinates based on the 1983 North American Datum (NAD83) in addition to those required (NAD27). In the case where an FCC-recognized service area or county lines are utilized, applicants need only list the specific area(s) (through use of FCC designations or county names) that constitute the partitioned area.

(2) *Disaggregation.* Spectrum maybe disaggregated in any amount.

(3) *Combined partitioning and disaggregation.* The Commission will consider requests for partial assignments of licenses that propose combinations of partitioning and disaggregation.

(c) *Provisions applicable to designated entities.*—(1) *Unjust Enrichment.* See § 1.2111(e) of this chapter.

(2) *Parties not qualified for installment payment plans.* (i) When a winning bidder that elected to pay for its license through an installment payment plan partitions its license or disaggregates spectrum to another party that would not qualify for an installment payment plan, or elects not to pay for its share of the license through installment payments, the outstanding balance owed by the licensee (including accrued and unpaid interest) shall be apportioned according to § 1.2111(e)(3) of this chapter.

(ii) The partitionee or disaggregatee shall, as a condition of the approval of the partial assignment application, pay its entire pro rata amount within 30 days of Public Notice conditionally granting the partial assignment application. Failure to meet this condition will result in cancellation of the grant of the partial assignment application.

(iii) The partitionor or disaggregator shall be permitted to continue to pay its pro rata share of the outstanding balance and shall receive new financing documents (promissory note, security agreement) with a revised payment obligation, based on the remaining amount of time on the original installment payment schedule. These financing documents will replace the partitionor's or disaggregator's existing financing documents which shall be marked ''superseded'' and returned to the licensee upon receipt of the new financing documents. The original interest rate, established pursuant to § 1.2110(f)(3)(i) of this chapter at the time of the grant of the initial license in the market, shall continue to be applied to the partitionor's or disaggregator's portion of the remaining government obligation.

(iv) A default on the partitionor's or disaggregator's payment obligation will affect only the partitionor's or disaggregator's portion of the market.

(3) *Parties qualified for installment payment plans.* (i) Where both parties to a partitioning or disaggregation agreement qualify for installment payments, the partitionee or disaggregatee will be permitted to make installment payments on its portion of the remaining government obligation.

(ii) Each party will be required, as a condition to approval of the partial assignment application, to execute separate financing documents (promissory note, security agreement) agreeing to pay its pro rata portion of the balance due (including accrued and unpaid interest), as apportioned according to § 1.2111(e)(3) of this chapter, based upon the installment payment terms for which it qualifies under the rules. The financing documents must be returned to the U.S. Treasury within thirty (30) days of the Public Notice conditionally granting the partial assignment application. Failure by either party to meet this condition will result in the automatic cancellation of the grant of the partial assignment application. The interest rate, established pursuant to § 1.2110(f)(3)(i) of this chapter at the time of the grant of the initial license in the market, shall continue to be applied to both parties' portion of the balance due. Each party will receive a license for its portion of the partitioned market.

(iii) A default on an obligation will affect only that portion of the market area held by the defaulting party.

(iv) Partitionees or disaggregatees that qualify for installment payment plans may elect to pay some of their pro rata portion of the balance due in a lump sum payment to the U.S. Treasury and to pay the remainder in installments as set forth in § 1.2110(f) of this chapter.

(d) *Construction Requirements.*—(1) *Partitioning.* Partial assignors and assignees for license partitioning have two options to meet construction requirements. Under the first option, the partitionor and partitionee would each certify that they will independently satisfy the applicable construction requirements set forth in § 95.833 for their respective partitioned areas. If either licensee failed to meet its § 95.833 requirement, only the non-performing licensee's renewal application would be subject to dismissal. Under the second option, the partitionor certifies that it has met or will meet the § 95.833 requirement for the entire market. If the partitionor fails to meet the § 95.833 requirement, however, only its renewal application would be subject to forfeiture at renewal.

(2) *Disaggregation.* Partial assignors and assignees for license disaggregation have two options to meet construction requirements. Under the first option, the disaggregator and disaggregatee would certify that they each will share responsibility for meeting the applicable construction requirements set forth in § 95.833 for the geographic service area. If parties choose this option and either party fails to do so, both licenses would be subject to forfeiture at renewal. The second option would allow the parties to agree that either the disaggregator or the disaggregatee would be responsible for meeting the § 95.833 requirement for the geographic service area. If parties choose this option, and the party responsible for meeting the construction requirement fails to do so, only the license of the nonperforming party would be subject to forfeiture at renewal.

(3) All applications requesting partial assignments of license for partitioning or disaggregation must include the above-referenced certification as to which of the construction options is selected.

(4) Responsible parties must submit supporting documents showing compliance with the respective construction requirements within the

appropriate construction benchmarks set forth in § 95.833.

15. Section 95.831 would be revised to read as follows:

**§ 95.831 Service requirements.**

Subject to the initial construction requirements of § 95.833 of this subpart, each 218–219 MHz Service system licensee must either demonstrate that it provides substantial service, or make service available to at least 20 percent of the population or land area located within the service area. ''Substantial service'' means service that is sound, favorable, and substantially above a level of mediocre service that would barely warrant renewal.

16. Section 95.833 would be revised to read as follows:

**§ 95.833 Construction requirements.**

(a) Each 218–219 MHz Service system licensee must demonstrate that it provides substantial service to its service area within five years of license grant.

**Note to paragraph (a):** Each 218–219 MHz Service system licensed as of the effective date of these rules must demonstrate that it provides substantial service to its service area within five years of the effective date of these rules.

(b) Each 218–219 MHz Service system licensee must make service available to at least 20 percent of the population or land area within the service area within ten years of grant of the 218–219 MHz Service system license. As an alternative to the coverage requirement of this paragraph, the 218–219 MHz Service system licensee may demonstrate that it provides substantial service to its service area within ten years of license grant.

(c) In demonstrating compliance with the construction requirements set forth in this section, licensees must base their calculations on signal field strengths that ensure reliable service for the technology utilized. Licensees may use any service radius contour formula developed or generally used by industry, provided that such formula is based on the technical characteristics of their system.

(d) Failure to meet the construction requirements set forth in this section will result in automatic cancellation of the 218–219 MHz Service system license, and will result in the licensee's ineligibility to apply for 218–219 MHz Service licenses for three years from the date the Commission takes final action affirming that the 218–219 MHz Service license has been canceled. See 47 CFR § 95.813(b). For the purposes of this section, a CTS is not considered as providing service unless that CTS and two associated RTUs are placed in operation.

(e) Each 218–219 MHz Service system licensee must file a progress report at the conclusion of each of the two benchmark periods to inform the Commission of the construction status of the system. The report must include:

(1) A showing of how the system meets the benchmark; and

(2) A list, including addresses, of all component CTSs constructed.

17. Section 95.853 would be amended by adding a new first sentence to paragraph (a) to read as follows:

**§ 95.853 Frequency segments.**

(a) There are two frequency segments available for assignment to the 218–219 MHz Service in each service area. * * * * * * * * * *

[FR Doc. 98–26168 Filed 9–29–98; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 23

**RIN 1018–AF23**

## Export of River Otters Taken in Missouri in the 1998–1999 and Subsequent Seasons

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

**ACTION:** Proposed rule.

**SUMMARY:** The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is a treaty that regulates international trade in certain species of animals and plants. Exports of specimens (live, dead, or parts and products thereof) of animals and plants listed in Appendix II of CITES require an export permit from the country of origin. Export permits for specimens of species listed in CITES Appendix II are issued by a country's CITES Management Authority after two conditions are met: the country's CITES Scientific Authority must determine that the exports will not be detrimental to the survival of the species. This is known as a ''non-detriment finding''; the CITES Management Authority must determine that the specimens were not obtained in violation of laws for their protection. Live animals or plants require additional findings. For exports from the United States, the U.S. Fish and Wildlife Service's Office of Management Authority and Office of Scientific Authority make these findings.

The purpose of this proposed rule is to announce proposed findings by the CITES Scientific and Management Authorities of the United States on the export of river otters taken in the State of Missouri, and to propose the addition of Missouri to the list of States and Indian Nations approved for export of river otter skins. This approval is on a multi-year basis. The Service proposes to apply these findings to river otters taken in Missouri during the 1998–1999 season and subsequent seasons, subject to the conditions applying to other approved States. We appreciate your comments on this proposed rule.

**DATES:** The Service will consider comments received on or before October 30, 1998 in making its final determination on this proposed rule.

**ADDRESSES:** Please send your correspondence concerning this proposed rule to: Office of Scientific Authority; U.S. Fish and Wildlife Service; Mail Stop ARLSQ 750; 1849 C Street, NW; Washington, DC 20240; or via E-mail to: r9osa@mail.fws.gov. Comments and materials received will be available for public inspection, by appointment, from 8:00 am to 4:00 pm, Monday through Friday, at the same address.

**FOR FURTHER INFORMATION CONTACT:** Scientific Authority finding: Dr. Susan Lieberman, Chief, Office of Scientific Authority; phone: 703–358–1708; fax: 703–358–2276; E-mail: r9osa@mail.fws.gov. Management Authority finding: Ms. Teiko Saito, Chief, Office of Management Authority; U.S. Fish and Wildlife Service; Mail Stop ARLSQ 700; 1849 C Street, NW, Washington, DC 20240; phone: 703–358–2095; fax: 703–358–2280.

**SUPPLEMENTARY INFORMATION:** On January 5, 1984 (49 FR 590), we published a rule granting approval for the export of pelts of North American river otters (*Lontra canadensis*) and certain other CITES-listed Appendix-II species of furbearing mammals from specified States and Indian Nations, Tribes, and Reservations (hereafter referred to as Indian Nations). That rule covered the 1983–1984 season as well as subsequent seasons. In succeeding years, we have approved the export of pelts of one or more species of furbearing mammals listed in CITES Appendix II from other States and Indian Nations, through the rule-making process. These approvals were and continue to be subject to certain population monitoring and export requirements. The purposes of this proposed rule are to: (1) Announce proposed findings by the Scientific and Management Authorities of the United