

In addition, this proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require special OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions was published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

#### B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal

governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's proposed rule does not create an unfunded Federal mandate on State, local, or tribal governments. The proposed rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this proposed rule.

#### C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

#### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 22, 1999.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

#### PART 180—[AMENDED]

1. The authority citation for part 180 would continue to read as follows:

**Authority:** 15 U.S.C. 321(q), 346(a) and 371.

2. By adding new § 180.1207 to read as follows:

#### **§ 180.1207 N-acyl sarconsines and sodium N-acyl sarcosinates; exemption from requirement of a tolerance.**

An exemption from the requirement of a tolerance is established for residues of the following substances when used as inert ingredients (surfactants) at levels not to exceed 10% in pesticide formulations containing glyphosate:

Name	CAS Reg. No.
N-acyl sarcosines.	
N-oleoyl sarcosine .....	110-25-8
N-stearoyl sarcosine .....	142-48-3
N-lauroyl sarcosine .....	97-78-9
N-myristoyl sarcosine .....	52558-73-3
N-cocoyl sarcosine mixture	68411-97-2
Sodium N-acyl sarcosinates.	
N-methyl-N-(1-oxo-9-octadecenyl) glycine .....	3624-77-9
N-methyl-N-(1-oxooctadecyl) glycine ....	5136-55-0
N-methyl-N-(1-oxododecyl) glycine .....	137-16-6
N-methyl-N-(1-oxotetradecyl) glycine ....	30364-51-3
N-cocoyl sarcosine sodium salt mixture .....	61791-59-1

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#### **FEDERAL COMMUNICATIONS COMMISSION**

#### **47 CFR Parts 27 and 73**

[WT Docket No. 99-168; FCC 99-97]

#### **Service Rules for the 746-764 and 776-794 MHz Bands and Revisions to the Commission's Rules Regarding Wireless Communications Service**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes new service rules for commercial licensing in the 746-764 and 776-794 MHz bands

that have been reallocated from use solely for the Broadcasting service. These proposed service rules include provisions for application licensing, technical and operating rules and competitive bidding. This action is another step in the Commission's program to implement sections of the Balanced Budget Act of 1997 which direct the Commission to complete reallocation of this spectrum by December 31, 1997, and commence competitive bidding for the commercial licenses of the reallocated spectrum after January 1, 2001. This document contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. The general public and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

**DATES:** Comments are due on or before July 19, 1999 and reply comments are due on or before August 13, 1999. Written comments by the public and by other Government agencies on the proposed information collections are due September 7, 1999.

**ADDRESSES:** Federal Communications Commission, Office of the Secretary, 445 12th Street, S.W., Washington, D.C. 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained in the NPRM should be submitted to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, S.W., Washington, D.C. 20554, or via the Internet to [lesmith@fcc.gov](mailto:lesmith@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** Legal Information: Stan Wiggins, 202-418-1310. Technical Information: Ed Jacobs, 202-418-1310. For additional information concerning the information collections contained in the NPRM, contact Les Smith at 202-418-0217, or via the Internet at [lesmith@fcc.gov](mailto:lesmith@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the NPRM in WT Docket No. 99-168, FCC 99-97, adopted May 13, 1999, and released June 3, 1999. The complete text of the NPRM is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, S.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), (202) 857-3800, CY-B400, 445 12th Street, S.W., Washington, D.C. 20054.

## Introduction; Background

1. This Notice of Proposed Rulemaking (NPRM) proposes new service rules for commercial licensing in the 746-764 MHz and 776-794 MHz bands that have been reallocated from use solely for the Broadcasting service. These proposed service rules include provisions for application licensing, technical and operating rules, and competitive bidding. The revised spectrum allocation in the Reallocation Report and Order<sup>1</sup> provided for the potential provision of Fixed, Mobile, and Broadcasting services on these bands. This NPRM seeks comment on the degree of flexibility that should be afforded new licensees using this spectrum, and the technical and other service rules that should govern the range of services enabled. This NPRM also seeks comment on methods to assure continued protection of existing full service television stations that will continue to operate on these bands during the transition to digital television (DTV).<sup>2</sup> This NPRM is a further step in the Commission's proceeding to comply with section 337 of the Communications Act.<sup>3</sup> That section directs the Commission to complete the reallocation of this spectrum by December 31, 1997, and authorizes competitive bidding for commercial licenses on the reallocated spectrum after January 1, 2001. The Balanced Budget Act also expanded the Commission's competitive bidding authority to comprise mutually exclusive broadcast licenses, and the Commission recently implemented that authority in the Competitive Bidding (Broadcast) Order.<sup>4</sup>

## Service Rules

### A. In General

1. Permitted Services.  
2. The NPRM first seeks comment on whether our service rules should permit a licensee to use the 746-764 MHz and 776-794 MHz spectrum bands for any use permitted within the United States Table of Frequency Allocations contained in part 2 of the Commission's Rules (*i.e.*, Fixed, Mobile, and Broadcasting services),<sup>5</sup> subject to

international requirements and coordination.<sup>6</sup>

3. The Commission's allocation and designation decisions retained Broadcast services in the Table of Allocations, and so preserved the potential for service rules that would enable the full range of commercial broadcast services to the public. The extent to which the potential flexibility established for these bands by revisions to the Table of Allocations will ultimately be implemented by the service rules will respect the requirements stated in section 303(y) of the Communications Act, that such flexibility must not establish harmful interference, or discourage investment and development of new technologies. In accord with past Commission practice, inclusion of specific services in the Table of Allocations does not necessarily entail that service rules will be drafted to accommodate each such service, or that even flexible service rules will enable provision of the full range of allocated services.

4. The NPRM also states the Commission's continued interest in broader aspects of spectrum management. While the allocations involved here were specifically mandated by the Balanced Budget Act, commenters are encouraged to consider how innovative service rules developed for such a flexible use allocation might maximize the uses made of this spectrum. There is clear potential in this context for new technologies to affect the extent to which service rules effectively provide for flexible use. Thus, the NPRM seeks comment on how the Commission's rules might provide for such developments. Commenters who consider this issue should address what impact their suggested approaches would have on broadcasters also using the band, both during the transition to DTV and to the extent the service rules may provide for new broadcast services.

5. Whether the service rules developed will provide for sharing between broadcast and fixed and mobile wireless services, including the prospect of audio, video, or data services that may not closely resemble existing broadcasting configurations, depends in part on the resolution of several issues

<sup>1</sup> See 63 FR 6669, February 10, 1998.

<sup>2</sup> See *Memorandum Opinion and Order*, 63 FR 63798, November 17, 1998.

<sup>3</sup> section 3004 of the Balanced Budget Act of 1997, which added 47 U.S.C. 337(a) and 337(b).

<sup>4</sup> See *First Report and Order*, 63 FR 48615, September 11, 1998, *recon.*, 64 FR 24523, May 7, 1999.

<sup>5</sup> The United States Table of Frequency Allocations is at 47 CFR 2.106. See generally 47 CFR part 2, Frequency Allocations and Ratio Treaty Matters; General Rules and Regulations. 00

<sup>6</sup> Section 303(y)(1) of the Communications Act, 47 U.S.C. 303(y)(1), limits the Commission's authority to allocate spectrum so as to provide flexibility of use to situations in which "such use is consistent with international agreements to which the United States is a party."

The NPRM uses the term "sharing" to refer to the use of spectrum bands by a variety of services, under licensing rules that accord each licensee exclusive use of specific spectrum blocks. The NPRM does not consider in this context the sharing of specific spectrum blocks.

that are not raised by flexible use allocations of narrower scope. These issues include the managing of interference between technically dissimilar services (at least in the familiar configurations of broadcast and wireless service), and the development and application of regulatory mechanisms suited to the range of services on these bands. To the extent that commenters suggest that the technical service rules enable services that closely resemble existing broadcast services, we start from the presumption that such services would be fully subject to part 73 of our Rules. The Commission asks that commenters consider whether there are any reasons that particular elements of part 73 should not similarly be applied to such services when provided on these spectrum blocks. Other prospective licensees might offer services that more closely resemble the existing fixed and mobile wireless services provided on other spectrum bands. As an initial matter the Commission would expect such services are more appropriately regulated by the framework of part 27.

6. Another respect in which broadcast and non-broadcast services operate in different regulatory contexts are the distinctive approaches to accessibility. The NPRM asks whether and how these differing accessibility requirements should affect the development of service rules for these spectrum bands. Additionally, the NPRM seeks comment on the implications of the Commission's service rule proposals, including technical and regulatory aspects, for the implementation of third generation wireless technology in this spectrum.

7. The full flexibility of use being considered for these bands may also require the Commission to develop auction procedures that recognize and reconcile the characteristic regulatory elements of broadcast and wireless licenses, and perhaps consider distinctive approaches.<sup>7</sup> In developing service rules for the commercial spectrum involved here, and determining the extent to which they can or should accommodate both familiar broadcast services and innovative services that would be licensed under parts 73 and 27 of the Commission's Rules, we are required by section 303(y) of the Communications Act to find that such a flexible approach: (1) would not result in harmful interference among users, (2) would not deter investment in

communications services and systems, or technology development, and that (3) the allocation would be in the public interest. The Commission recognizes that proposals involving such a range of services make it especially important that our consideration of proposed "flexible use" allocations, mandated by section 303(y) of the Act, examine the elements of that statutory review in light of the specific factual considerations raised by the scope of these proposals.

8. In broad terms, the NPRM initially proposes to permit licensees to determine the services they will provide within their assigned spectrum and geographic areas, subject to the service rules, and to subject these licensees generally to part 27 of the Commission's Rules, which governs Wireless Communications Service.<sup>8</sup> Exceptions to this approach, if any, would arise from modifications the Commission may adopt to reflect: (1) the particular circumstances of this spectrum; and (2) statutory and other public interest requirements, gathered in part 73 of our Rules, that govern broadcasting. Thus, the NPRM asks whether broadcast services on these bands, to whatever extent they are subject to part 73 in other respects, can or should be subject to the part 27 licensing framework to facilitate the administrative coordination of these varied uses. Commenters are also invited to address whether broadcast services, if provided in the context of spectrum blocks governed generally by part 27, should be subject to different rules than now apply under part 73 to broadcast licensees.<sup>9</sup> Broadcast use of this spectrum in any case would necessarily be subject to broadcast-specific statutory provisions. The NPRM requests comment on the type of services that could be offered in this commercial spectrum, and on our proposal generally to subject the spectrum to part 27 and, when applicable, to other parts of the rules, including part 73. The Commission also seeks comment on alternative provisions that may minimize the economic impact of the proposals, if any, on small entities.

9. The NPRM seeks specific comment on whether this approach is consistent with the elements of section 303(y)(2) of the Communications Act. For example, section 303(y)(2)(B) of the Act addresses the possibility that too broad an approach to flexibility in spectrum use

may have the undesired effect of deterring investments needed to provide communications services and develop new technologies on the newly allocated spectrum. The NPRM solicits comments from interested parties concerning what restrictions, if any, should be placed on licensee flexibility in order to ensure that the needed investments are made. Where commenters suggest that the Commission restrict how spectrum may be used by a licensee, the Commission is particularly interested in detailed quantitative analyses of the anticipated economic trade-offs between flexibility and investment that led to the proposed constraints. The NPRM also seeks specific comment on ways to ensure that the technical rules for the 746–764 MHz and 776–794 MHz bands satisfy the requirement of section 303(y)(2)(C), that flexible use allocations not result in harmful interference among users.

10. Finally, the NPRM seeks comment on the extent to which, consistent with the statute, the spectrum bands involved here can and should be available for private mobile and private fixed radio services. Commenters in this proceeding who are interested in bidding on these bands in order to provide private mobile or private fixed services, functioning as a Band Manager or through some other mechanism, should address the range of issues raised by the Balanced Budget Notice (64 FR 23571, May 3, 1999) in this regard.

11. The NPRM tentatively finds that making the spectrum available for flexible commercial use under part 27 of the rules is in the public interest because it will contribute to technological and service innovation, the creation of new jobs for the American workforce, the fostering of national economic growth, and the enhancement of opportunities for all Americans to utilize, and realize the benefits of, the national telecommunications infrastructure. The NPRM seeks comment on this tentative finding.

12. The Commission seeks to develop service rules that are not based on a Commission prediction of how these bands will ultimately be used, but instead reflect a record that enables the Commission to establish maximum practicable flexibility. The Commission will determine whether implementing the full range of allocated services is practicable on the basis of the record developed with regard to both technical rules, and to the application of policies and rules that are governed by the classification of the service in legal and administrative terms.

<sup>7</sup> The procedures for broadcast auctions are set forth by public notice prior to the individual auction, 47 CFR 73.5001. General procedures for wireless auctions are specified in part 1 of the Commission's Rules, 47 CFR part 1.

<sup>8</sup> For wireless services, a part 27 licensee could also be subject to part 22 if providing public mobile services, to part 90 if providing private land mobile services, and to part 101 if providing fixed microwave services. For broadcasting services, a part 27 licensee could be subject to part 73.

<sup>9</sup> See 47 CFR 73.1001 through 73.4280.

## 2. Spectrum for Each License

13. The NPRM requests comment on the appropriate amount of spectrum to be provided for each licensee in the two 18 megahertz spectrum blocks, and on the viability of licensees competing with existing fixed and mobile service providers. The NPRM further seeks comment on whether the spectrum should be licensed as one large block, or broken down into two or more bandwidths, and whether there should be a mixture of spectrum blocks.

14. The NPRM also seeks comment on the minimum spectrum blocks needed to enable competitive commercial services. Spectrum blocks of 1 or 2 megahertz may be sufficient to provide for paging and other messaging services, and the higher bound of our estimates of licensees affected is based on the pairs of 1 megahertz blocks as the minimum. Blocks of 6 or 9 megahertz may enable mobile voice service, analog or digital video services, or point-to-point microwave service. Existing analog and digital television broadcasters use 6 megahertz spectrum blocks, and the lower bound of our estimate of affected licensees is based on the use of 6 megahertz blocks as a minimum. Commenters should also consider the relationship between the amount of spectrum per license and the ability to coordinate operations with other licensees in this spectrum, including the protection of existing broadcast operations in this band during the transition to DTV.<sup>10</sup>

15. The Commission tentatively concludes that this spectrum should be licensed on a paired basis. While broadcasting would not require paired spectrum, it is essential that the spectrum be paired to enable a viable commercial mobile service. The separation of the 746–764 MHz and 776–794 MHz bands by 30 megahertz of spectrum is optimal for paired, two-way operations. The NPRM requests comment on whether the amount of spectrum for each license would affect the decision to license paired spectrum, and specifically whether a decision to license blocks large enough for conventional broadcast service should affect the decision to license paired spectrum. The NPRM particularly asks commenters to address how spectrum block issues relate to the specific findings required by review of flexible use allocations pursuant to section 303(y) of the Act. The NPRM thus requests comment on how the number

of licensees and spectrum blocks established could affect the investment in and deployment of new services and technologies using these frequencies, and the extent to which new services offered in this spectrum would compete with other services. Whatever initial licensing approach is chosen, the Commission proposes to permit parties to bid for multiple licenses.

## 3. Size of Service Areas for Geographic-Area Licensing

16. Part 27 spectrum is licensed based on one of two kinds of service areas. Spectrum in the C and D frequency blocks is licensed using the 12 Regional Economic Area Groupings (REAGs). Spectrum in the A and B frequency blocks is licensed using the 52 Major Economic Areas (MEAs). REAGs and MEAs are based on the 172 Economic Areas (EAs) defined by the U.S. Department of Commerce, as modified by the Commission. The Commission has, however, licensed other wireless services occupying spectrum near the newly allocated commercial spectrum using other service areas. The NPRM requests comment on the type of service area or areas that should be used to license the 746–764 MHz and 776–794 MHz bands. (The Commission has used the Economic Areas in this summary to develop estimates of affected licensees, but has not specifically proposed any service area approach in the NPRM.)

17. The NPRM also seeks comment on how the possible use of this spectrum for broadcasting might affect our decision on service areas generally, and specifically on how the Commission could apply the concept of a broadcast station's serving the needs and interests of its community of license to a part 27 service area, depending on our geographic area and spectrum block choices. The relation between the geographic service area and the size of spectrum blocks is especially germane to the sharing of these bands between Commercial Mobile Radio Service (CMRS) and conventional broadcast services, which operate using significantly different power levels. The NPRM seeks comment on how such sharing would affect the overall relation between service areas, spectrum channelization, and power levels, compared to service rules that would constrain or preclude broadcast use.

18. The NPRM also seeks comment on procedures that would allow prospective bidders to bid on combinations or groups of licenses in a single bid, and to enter multiple alternative bids within a single bidding round, as well as alternatives that would rely on licensing by geographic area, by

community of license, or by some combination of these approaches.

## B. Licensing Rules

### 1. Regulatory Status

19. As noted, the NPRM seeks comment on whether to apply the existing licensing framework for part 27 services to the 746–764 MHz and 776–794 MHz bands. The Communications Act applies requirements to broadcasters or common carriers that are not applied to other licensees. The licensing framework for part 27 permits applicants to request common carrier status as well as non-common carrier status for authorization in a single license, rather than require the applicant to choose between common carrier and non-common services, and the Commission proposes that licensees in these redesignated spectrum bands similarly be authorized to provide a variety or combination of fixed and mobile, common carrier and non-common carrier, and broadcast services. The Commission tentatively concludes that this approach, as applied to the range of fixed and mobile wireless services, is likely to achieve efficiencies in the licensing and administrative process. The possible further inclusion of broadcasting service appears more problematic in this regard, and the NPRM seeks comment on the effect that enabling such services would have on the licensing and administrative process. In order to fulfill our enforcement obligations and ensure compliance with the statutory requirements of Titles II and III of the Communications Act, the Commission proposes to require applicants to identify whether they seek to provide common carrier services, broadcast service, or other service as permitted by the final Rules in this proceeding. The NPRM additionally seeks comment on the need to modify any appropriate form(s) for an applicant seeking to provide broadcast service, either solely or in conjunction with other services under a single license.

20. Under the existing part 27 framework, the Commission does not require applicants to describe the services they seek to provide beyond designating their regulatory status. The NPRM proposes that applicants and licensees in this 36 megahertz of commercial spectrum similarly be required only to indicate the regulatory status of any services they choose to provide. The NPRM also proposes that licensees must notify the Commission within 30 days of service changes that alter the regulatory status of their services. When the change results in the

<sup>10</sup> Commission records indicate that as of November 1998, there were 105 full power TV licensees and 1232 low power and translator TV licensees operating on these bands.

discontinuance, reduction, or impairment of the existing service, a different approach may apply. The NPRM also seeks comment regarding whether the inclusion of broadcast services may sometimes require the Commission to modify this approach. Conventional broadcast licensees are subject to different ownership rules and attribution standards than wireless licensees.

## 2. Eligibility; Spectrum Aggregation

21. Sections 27.12 and 27.302 of the Commission's Rules impose no restrictions on eligibility, other than the foreign ownership restrictions set forth in section 310 of the Communications Act. Thus, the NPRM proposes that there be no restrictions on eligibility for a license in the 746–764 MHz and 776–794 MHz bands. The NPRM seeks comment on whether opening this spectrum to as wide a range of applicants as possible will encourage entrepreneurial efforts to develop new technologies and services, while helping to ensure the most efficient use of this spectrum. Commenters also should address whether the Commission's proposed policy of universal eligibility should apply to broadcasting on these spectrum bands.<sup>11</sup> The NPRM also asks whether there are any reasons not to apply part 73 multiple ownership rules to part 27 licensees providing conventional broadcasting services.

22. Another example of broadcast-specific eligibility issues involves character qualifications. While the character qualification standards applied to broadcasters have provided guidance in common carrier proceedings, they are not directly applicable to that context. The NPRM seeks comment on whether there is any reason that conventional broadcasters who share spectrum with Part 27 wireless services, including wireless common carrier offerings, should not be governed by the existing standards applied to part 73 licensees. The Commission also seeks comment on whether there is any reason the Commission cannot apply our current rules to decide whether an entity that has been disqualified from holding a conventional part 73 broadcasting license pursuant to the character qualification rules should be eligible to

provide non-broadcasting services pursuant to a part 27 license.

23. Currently, part 27 services do not count against the spectrum cap on CMRS spectrum licensees. The 746–764 MHz and 776–794 MHz bands may be used for mobile services that are comparable to the cellular, broadband Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) spectrum for which the CMRS cap was devised. While the Commission does not propose a spectrum cap for part 27 services generally, the NPRM seeks comment on whether these commercial spectrum bands, if used to provide CMRS, should count against the 45 megahertz spectrum cap that applies to certain CMRS licensees. If the CMRS spectrum cap is applied to this spectrum, the NPRM seeks comment on whether the spectrum cap should be adjusted in any way. The NPRM also seeks comment on whether there should be any restriction on the amount of spectrum that any one licensee may obtain in the 746–764 MHz and 776–794 MHz bands in the same licensed geographic service area. Commenters addressing this aggregation issue should consider the varying bandwidth requirements of the different types of services that could use the 36 megahertz of commercial spectrum.

## 3. Foreign Ownership Restrictions

24. Sections 310(a) and 310(b) of the Communications Act (47 U.S.C. 310(a) and (b)) impose foreign ownership and citizenship requirements that restrict the issuance of licenses to certain applicants. Section 27.12 of the Commission's Rules,<sup>12</sup> which implements section 310 of the Act, would by its terms apply to applicants for licenses in the 746–764 MHz and 776–794 MHz bands. An applicant requesting authorization only for non-common carrier or non-broadcast services would be subject to section 310(a), but not to the additional prohibitions of section 310(b). An applicant requesting authorization for broadcast or common carrier services would be subject to both sections 310(a) and 310(b).

25. The statutory foreign ownership restrictions will be applicable to the extent the restrictions apply to a particular service being offered in this commercial spectrum. In response to the World Trade Organization (WTO) Basic Telecommunications Agreement, the Commission recently liberalized its policy for applying its discretion with respect to foreign ownership of common carrier radio licensees under section

310(b)(4).<sup>13</sup> The Commission now presumes that ownership by entities from countries that are WTO members serves the public interest. Ownership by entities from countries that are not WTO members continues to be subject to the "effective competitive opportunities" test established by the Commission.

26. In the filing of an application under the Multipoint Distribution Service (MDS), Satellite, and Local Multipoint Distribution Service (LMDS) rules, the Commission requires any applicant electing non-common carrier status to submit the same information that common carrier applicants submit to address the alien ownership restrictions under section 310(b) of the Act.<sup>14</sup> The NPRM proposes to follow the same approach in the case of applicants for licenses in the 746–764 MHz and 776–794 MHz spectrum. Broadcasters, common carriers, and non-common carriers would not be subject to varied reporting obligations, but would all be required to file changes in foreign ownership information to the extent required by part 27 of the Commission's Rules. By establishing parity in reporting obligations, however, the Commission would not establish a single substantive standard for compliance. The Commission does not and would not disqualify an applicant requesting authorization exclusively to provide non-common carrier and non-broadcast services from obtaining a license simply because its citizenship information would disqualify it from a common carrier or broadcast license. The NPRM requests comment on this proposal.

## 4. Performance Requirements

27. Section 27.14(a) of the Commission's Rules requires Wireless Communications Service (WCS) licensees to provide "substantial service" to their service area within 10 years of being licensed; a failure to meet this requirement results in forfeiture of the license and the licensee's ineligibility to regain it. The Commission has stated that the construction requirement provides licensees with the flexibility to offer the full range of services under the allocations table, and to accommodate new and innovative services. The Commission proposes generally to subject licensees in the 36 megahertz of commercial spectrum to the same standard, and we propose and seek comment on the following "safe

<sup>11</sup> See, e.g., 47 CFR 73.3555. The Commission has underway a review of its broadcast ownership rules. See 1998 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MM Docket No. 98–35, Notice of Inquiry, 63 FR 15353, March 31, 1998.

<sup>12</sup> 47 CFR 27.12; see also 47 CFR 27.302.

<sup>13</sup> The Commission's rules for broadcast licenses, which are not covered by the WTO Basic Telecommunications Agreement, were not amended.

<sup>14</sup> See 47 U.S.C. 310(b).

harbors'' for the 746–764 MHz and 776–794 MHz bands: (1) For a licensee that chooses to offer fixed services or point-to-point services, the construction of four permanent links per one million people in its licensed service area at the 10-year renewal mark would constitute substantial service; (2) For a licensee that chooses to offer mobile services or point-to-multipoint services, a demonstration of coverage to 20 percent of the population of its licensed service area at the 10-year renewal mark would constitute substantial service. The NPRM also seeks comment on the distinct issues raised by applying this proposal to potential broadcast use of the spectrum. Broadcast permittees operating pursuant to part 73 are required to construct their facilities within three years. The NPRM requests comment on whether there are any reasons not to apply the part 27 construction rules to broadcasters on these bands.

28. The Commission tentatively concludes that the existing part 27 build-out requirements applied to wireless licensees, and the part 73 construction requirements applied to Broadcast permittees, fulfill the Commission's obligations under section 309(j)(4)(B) of the Act to establish performance requirements for licenses obtained by competitive bidding. The Commission also tentatively concludes that the auction rules that we propose to apply to these services, together with the service rules that we are proposing and our overall competition and universal service policies, constitute effective safeguards and performance requirements for licensing this spectrum. The Commission would reserve the right to review our construction requirements in the future if we receive complaints related to section 309(j)(4)(B), or if a reassessment is warranted because spectrum is being warehoused or otherwise is not being used despite demand. The Commission also will reserve the right to impose additional, more stringent construction requirements on licenses in the future in the event of actual anticompetitive or universal service problems. The NPRM solicits comment on these proposals and views regarding performance requirements.

#### 5. Disaggregation and Partitioning of Licenses

29. The NPRM next proposes to permit licensees in the 746–764 MHz and 776–794 MHz bands to partition their service areas and to disaggregate their spectrum. The Commission tentatively concludes that geographic partitioning and spectrum

disaggregation can result in efficient spectrum use and economic opportunity for a wide variety of applicants, including small business, rural telephone, minority-owned, and women-owned applicants, as required by section 309(j)(4)(C) of the Communications Act. The Commission also tentatively concludes that this proposed approach will provide a means to overcome entry barriers through the creation of smaller licenses that require less capital, thereby facilitating greater participation by rural telephone companies and other smaller entities, many of which are owned by minorities and women.

30. Section 27.15 of the Commission's Rules provides that licensees may apply to partition their licensed geographic service areas or disaggregate their licensed spectrum at any time following the grant of their licenses. The part 27 rules permit: (1) geographic partitioning of any service area defined by the partitioner and partitionee, (2) spectrum disaggregation without restriction on the amount of spectrum to be disaggregated, and (3) combined partitioning and disaggregation. The NPRM requests comment on the Commission's proposal that licensees in the 746–764 MHz and 776–794 MHz bands be similarly eligible to partition service areas and disaggregate spectrum.

31. Pursuant to § 27.15, the partitioning licensee must include with its request a description of the partitioned service area and a calculation of the population of the licensed geographic service area, and the partitioned service area. Section 27.15 also contains provisions against unjust enrichment. The NPRM proposes to adopt these provisions, as well as the remaining provisions governing partitioning and disaggregation in § 27.15, for licensees in the 746–764 MHz and 776–794 MHz bands.

32. The NPRM proposes to allow parties to partitioning agreements to choose between two options for satisfying the construction requirements. Under the first option, the partitioner and partitionee would each certify that it will independently satisfy the substantial service requirement for its respective partitioned area. If a licensee fails to meet its substantial service requirement during the relevant license term, the non-performing licensee's authorization would be subject to cancellation at the end of the license term. Under the second option, the partitioner certifies that it has met or will meet the substantial service requirement for the entire market. If the partitioner fails to meet the substantial service standard during the relevant

license term, however, only its license would be subject to cancellation at the end of the license term. The partitionee's license would not be affected by that failure.

33. The NPRM similarly proposes to allow parties to disaggregation agreements to choose between two options for satisfying the construction requirements. Under the first option, the disaggregator and disaggreatee would certify that they each will share responsibility for meeting the substantial service requirement for the geographic service area. If parties choose this option, both parties' performance will be evaluated at the end of the relevant license term and both licenses could be subject to cancellation. The second option would allow the parties to agree that either the disaggregator or the disaggreatee would be responsible for meeting the substantial service 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 non-performing party would be subject to cancellation.

#### 6. License Term; Renewal Expectancy

34. Part 27 of the Commission's Rules limits license terms to 10 years from the date of original issuance or renewal. Section 27.14(c) establishes a right to a renewal expectancy. The Communications Act, however, states that the license term for a broadcast station shall not exceed eight years, and specifies renewal criteria for broadcast stations.<sup>15</sup> The NPRM seeks comment on the appropriate license term for all licensees in the proposed 746–764 MHz and 776–794 MHz bands, including those potentially offering broadcast service. The NPRM further seeks comment on whether it would be appropriate to have different license terms, depending on the type of service offered by the licensee, and on the distinctions between the statutory and part 73 renewal criteria for conventional broadcast stations and our part 27 renewal expectancy criteria for, e.g., datacasting and other wireless services. The NPRM additionally seeks comment on how the Commission should administer such an approach, particularly if licensees provide more than one service in their service area, or decide to change the type of service they plan to offer.

35. The NPRM proposes, in the event that a license is partitioned or disaggregated, that any partitioner or disaggreatee be authorized to hold its

<sup>15</sup> 47 U.S.C. 307(a).

license for the remainder of the original licensee's term, and that the partitionee or disaggregatee may obtain a renewal expectancy on the same basis as other part 27 licensees (or, if subject to part 73, on the same basis as other part 73 licensees). The NPRM further proposes that all licensees meeting the substantial service requirement will be deemed to have met this facet of the renewal expectancy requirement regardless of which of the part 27 construction options the licensees chose. The Commission tentatively concludes that this approach is appropriate because a licensee, through partitioning, should not be able to confer greater rights than it was awarded under the terms of its license grant. The NPRM also seeks comment on whether a non-broadcast renewal applicant involved in a comparative renewal proceeding should include at a minimum the showing in § 27.14(c) of the Commission's Rules to claim a renewal expectancy, and similarly, what showing a broadcast renewal applicant should include to claim the renewal expectancy established by section 309(k) of the Act.

#### 7. Public Notice

36. Sections 309(b) and 309(d) of the Communications Act require public notice for initial applications and substantial amendments filed by broadcasters or radio common carriers. These requirements state that no such application shall be granted earlier than 30 days following the issuance of public notice by the Commission, and that the Commission may not require petitions to deny such applications to be filed earlier than 30 days following the public notice. The same provision also grants the Commission the authority to impose public notice requirements for other licenses, even though public notice is not required by the statute. However, the administrative procedures for spectrum auctions adopted by section 3008 of the Balanced Budget Act of 1997 permit the Commission to shorten notice periods in the auction context to a five-day petition to deny period and a seven-day public notice period, notwithstanding the provisions of section 309(b) of the Communications Act.<sup>16</sup> The Commission tentatively concludes that services in the 746–764 MHz and 776–794 MHz spectrum will be auctionable services, so that the seven-day public notice period is applicable. We note, however, that in the Part 1 Second Further Notice the Commission has sought comment on

whether longer periods should be generally applicable for some services.<sup>17</sup>

37. In light of the potential for sharing of this spectrum between broadcast and wireless services, and the differences between their regulatory requirements, the NPRM seeks comment on whether the Commission should exercise our statutory discretion to require a minimum period of 15 days for public notice of applications of wireless common carriers and broadcast stations, in instances where the Commission's Rules establish a notice requirement, and a minimum period of 10 days for the filing of petitions to deny the applications of wireless common carriers and broadcast stations. Commenters should address whether imposing a 15-day notice requirement would be an undue burden on such applicants, and whether it would be administratively useful by enabling the Commission to ensure that any applicant filing for both common carrier and non-common carrier authorizations in a single license is in compliance with (1) the licensing requirements for common carriers and broadcasters established in Title III of the Communications Act; and (2) any related requirements the Commission may adopt. Commenters also should address whether the Commission should allow all licensees to make subsequent status changes under reduced notification requirements.

#### C. Operating Rules

38. The NPRM proposes to subject licensees in the 746–764 MHz and 776–794 MHz bands to the part 27 rules that govern operations, except for modifications that the Commission may adopt for this spectrum as a result of this proceeding. The NPRM seeks comment generally on the applicability of these rules to this spectrum. Additionally, the NPRM seeks comment on whether any operating rules contained in other parts of the Commission's Rules should be adopted for the 746–764 MHz and 776–794 MHz bands. The NPRM further asks commenters to suggest any alternatives to such regulations governing a licensee's operations in order to minimize the potential significant economic impact, if any, from such rules on small entities.

#### 1. Applicability of General Common Carrier Obligations

39. Title II of the Communications Act imposes a variety of obligations on the operations of common carriers that are not otherwise imposed on wireless

communications services. There are a number of statutory operational requirements that apply generally to common carriers concerning the filing of tariffs, maintaining of records, liabilities, and discontinuance of service, among others. The Commission has previously forbore from applying many of those requirements in certain situations, and section 10 of the Communications Act (47 U.S.C. 160) directs the Commission to forbear from additional provisions of the Communications Act when specific criteria are satisfied.

40. The NPRM thus seeks comment in this context on whether the Commission should exercise our authority under section 10 of the Act to forbear from applying to non-CMRS licensees of this spectrum the specific Title II requirements that the Commission previously has determined to forbear from applying to CMRS licensees. Specifically, the NPRM seeks comment on application of each of the three elements of the forbearance standards specified by section 10 of the Act, in the context of services in the 746–764 MHz and 776–794 MHz bands. Under the first two parts of the test, the NPRM requests comment on the definition of “consumer,” what information the Commission should consider when performing these evaluations, and examples of applying these tests in order to evaluate whether forbearance would be appropriate. With respect to the third condition, the NPRM seeks comment on the appropriate market that would apply to fixed, common carrier licensees in the 746–764 MHz and 776–794 MHz bands. The NPRM notes that the Commission has not forbore from regulation of fixed wireless services in service rule proceedings for the 24, 28, and 39 GHz bands. The NPRM therefore also asks commenters to address how, if at all, that should affect the Commission's forbearance decisions in this proceeding.

41. Because it may take longer for the Commission to conduct this forbearance analysis than to adopt service rules for the 746–764 MHz and 776–794 MHz bands, the NPRM proposes during the interim: (1) to adopt a discontinuance provision that is consistent with the common carrier obligations set forth in subpart E of part 1 and in part 61 through part 64 of the Commission's Rules; and (2) to apply other parts of the Commission's Rules to ensure compliance of fixed common carriers with Title II of the Communications Act.

42. Section 214(a) of the Communications Act requires that no common carrier may discontinue, reduce, or impair service without

<sup>16</sup> 47 U.S.C. 309(j) nt 3.

<sup>17</sup> 63 FR 770, January 7, 1998.



Commission approval. The NPRM proposes that if a fixed, common carrier part 27 licensee voluntarily discontinues, reduces, or impairs service to a community or part of a community, it must obtain prior authorization as provided under § 63.71 of the Commission's Rules, but an application would be granted within 30 days after filing if no objections were received. The NPRM additionally proposes that if a non-common carrier part 27 licensee voluntarily discontinues, reduces, or impairs service to a community or part of a community, it must give written notice to the Commission within seven days. The NPRM also proposes, however, that neither a fixed common carrier, nor non-common carrier part 27 licensee, need surrender its license for cancellation if discontinuance is a result of a change in status from common carrier to non-common carrier or the reverse.

43. The NPRM further proposes that if the service provided by a fixed common carrier part 27 licensee is involuntarily discontinued, reduced, or impaired for a period exceeding 48 hours, the licensee must promptly notify the Commission, in writing, as to the reasons for the discontinuance, reduction, or impairment of service, including a statement indicating when normal service is to be resumed. The NPRM proposes that when normal service is resumed, the licensee must promptly notify the Commission. The NPRM seeks comment on these proposals.

44. Section 312(g) of the Communications Act provides that the license of any broadcasting station that fails to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period. In addition, § 3.1750 of the Commission's Rules states that a licensee of a broadcast station shall notify the Commission of permanent discontinuance of operation at least two days before operation is discontinued. The NPRM asks whether any considerations may suggest that the Commission should adopt different provisions for broadcast services provided over this spectrum under part 27.

## 2. Equal Employment Opportunity

45. Part 27 does not include an explicit Equal Employment Opportunity (EEO) provision. Nor do parts 24 (PCS) or 26 (General Wireless Communications Service). The NPRM notes that there are specific EEO provisions for fixed service providers in parts 21 and 101, including both

common carrier and non-common carrier LMDS licensees;<sup>18</sup> and for common carrier mobile service providers in parts 22 and 90, though these latter provisions do not apply to PMRS providers because they are not common carriers. In addition, part 25 contains EEO rules for entities that use an owned or leased fixed satellite service facility to provide more than one channel of video programming directly to the public,<sup>19</sup> and part 73 contains rules for broadcasters.<sup>20</sup>

46. The Commission has initiated a rulemaking on our part 73 EEO rules,<sup>21</sup> and in the present proceeding, seeks comment on whether there are any reasons not to apply part 73 EEO rules to conventional broadcasters operating in these spectrum bands and licensed under part 27. As to non-broadcast services on these bands, the NPRM seeks comment on whether the Commission should include a separate EEO provision in part 27 and, if so, which of the Commission's EEO rules we should adopt. Commenters should address the advisability of having different EEO requirements depending on the service a licensee provides. Commenters who support the adoption of EEO requirements should comment on what statutory authority should be invoked to support these requirements and how these rules should be tailored.

## D. Technical Rules

47. The general provisions of part 27 include rules related to equipment authorization, frequency stability, antenna structures and air navigation, international coordination, environmental requirements, quiet zones, and disturbance of AM broadcast antenna patterns. The NPRM seeks comment on applying these rules to the spectrum that is the subject of this NPRM, and specifically on any rules that would be affected by the Commission's proposal to apply elements of the part 27 framework, whether separately or in conjunction with part 73 requirements, to conventional broadcast services. The

<sup>18</sup> See, e.g., 47 CFR 101.311.

<sup>19</sup> 47 CFR 25.601.

<sup>20</sup> Section 73.2080 of the Commission's Rules was struck down as unconstitutional as respects the outreach portions of the Commission's EEO program requirements for broadcast stations, and remanded to the Commission for a determination whether the non-discrimination rule is within its statutory authority. See *Lutheran Church-Missouri Synod v. FCC*, Case No. 97-1116, 141 F.3d 344, *reh'g denied*, 154 F.3d 487 (D.C. Cir 1998).

<sup>21</sup> Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies, MM Docket No. 98-204, and Termination of the EEO Stream-lining Proceeding, MM Docket No. 96-16, Notice of Proposed Rulemaking, 63 FR 66104, December 1, 1998.

NPRM also seeks comment on proposals to adopt the rules concerning in-band interference control, out-of-band and spurious emission limits, special considerations for use of channels 66 and 67, and Radiofrequency (RF) safety requirements. The NPRM proposes that all of these technical rules would apply to all licensees in the 746-764 MHz and 776-794 MHz bands, including licensees who acquire their licenses through partitioning or disaggregation.

## 1. In-Band Interference Control

48. The Commission does not have reliable information at this time on the technical parameters for services that will be provided in the 746-764 MHz and 776-794 MHz bands. Our allocation and designation decision permits the range of uses in the Allocation Table, and we also cannot be certain what wireless services will be operating in adjacent spectrum. A broad range of technologies may share this spectrum, and the nature of the services and technologies can affect the potential for interference between licensees using the same spectrum in adjacent service areas. The Commission is particularly interested in potential interference issues should the range of uses extend to full power broadcast service.

49. While the Commission has considered a range of approaches to managing interference in other service rule proceedings, these spectrum bands present an additional consideration. Section 337(d)(1) requires the Commission to establish "interference limits at the boundaries of the spectrum block and service area." One possible interpretation of this provision is that the Commission is directed to adopt field strength limits, or some similarly generic requirement, even if it considers that a coordination approach establishes sufficient, and more flexible, protection against interference.

50. The Commission tentatively concludes that either a coordination or field strength method, when properly applied, can provide a satisfactory means of controlling harmful interference or determining the interaction between systems, although there may be reasons to prefer one method over the other in the 746-764 MHz and 776-794 MHz bands. Even with a boundary limit, some degree of coordination and joint planning between bordering licensees appears likely to be needed to ensure efficient use across the boundary.

51. Parties are therefore asked to provide their analysis of the advantages and disadvantages of both approaches, or approaches that combine a boundary limit and a coordination procedure.



Comments should address the advantages of different approaches in managing the electromagnetic environment at geographic boundaries in the 746–764 MHz and 776–794 MHz bands, the kinds of incentives each may create for undesirable strategic or anti-competitive behavior, and the effects on licensee costs.

52. The NPRM also seeks comment regarding whether to permit licensees in adjacent service areas to coordinate their operations and agree to an alternative field strength along their shared border. The NPRM invites comment on this approach to control of interference in the context of the 746–764 MHz and 776–794 MHz bands, both generally and if used in conjunction with power flux density or field strength standards. If commenters suggest that power flux densities or field strength standards should be established as interference limits, in conjunction with a coordination process, they should propose specific values for such limits. Commenters should also address any special considerations that might be appropriate in an environment where disparate services might be using the same spectrum in adjacent service areas.

53. Regarding whether a general coordination approach should be used, comments are invited on specific aspects of procedures. While § 101.103 of the Commission's Rules can serve as a useful framework for coordination in the 746–764 MHz and 776–794 MHz bands, our objective is to ensure that licensees receive protection from harmful interference with the minimum regulation necessary. If a general coordination approach is adopted, the Commission tentatively concludes that the coordination concepts of § 101.103 generally should be applied to licensees in the 746–764 MHz and 776–794 MHz bands and should be incorporated into part 27 of the Rules for these bands. The NPRM seeks comment on the best way to effect this incorporation, including comment on which provisions of § 101.103 may be appropriate for incorporation into part 27. For purposes of the Commission's considering a coordination approach for the 746–764 MHz and 776–794 MHz bands, the NPRM seeks comment on what the appropriate distance should be to trigger this coordination, and whether there should be any other criteria, in addition to distance to the service area boundary, that would trigger a need to coordinate.

54. The NPRM seeks comment on what, if any, limits for equivalent isotopically radiated power (EIRP) are necessary or appropriate under either a coordination or field strength limit approach. Transmitters used in the

private land mobile service, cellular radio service, and fixed microwave services typically employ substantially different output powers. The substantial differences between these services, however, are minor in comparison to the output powers of full power broadcast services. Accordingly, if commenters believe that power limits are necessary, they should comment as to what those limits should be and the basis for the suggested limits. The NPRM also solicits views as to whether the Commission should establish limits on output power for all transmitters, or just mobile equipment.

55. Finally, § 27.64 of the Commission's Rules states generally that part 27 stations operating in full accordance with applicable Commission rules and the terms and conditions of their authorizations are normally considered to be non-interfering, and provides for Commission action, after notice and hearing, to require modifications to eliminate significant interference. In view of the variety of services that might be provided by part 27 licensees on these bands, the NPRM solicits comment on whether the Commission should apply this rule to these spectrum bands. The NPRM also seeks comment regarding whether interference protection can be guaranteed and whether § 27.64 of the Rules, if retained, should be changed to direct adjacent service area licensees to cooperate to eliminate or ameliorate interference. The Commission also seeks comment on whether the Commission should apply any changes with respect to § 27.64 to the 2.3 GHz band.

## 2. Out-of-Band and Spurious Emission Limits

56. Generally, different types of technical parameters would be used to limit out-of-band and spurious emissions to ensure interference protection of services outside the licensee's assigned spectrum, depending on whether the system involves fixed, mobile, or other communications. Because the Commission may permit licensees in the 746–764 MHz and 776–794 MHz bands to use the spectrum for the various services in the Table of Allocations, it would appear we should develop technical operating parameters that can accommodate the several types of communications.

57. In addition to the characteristics of different technical approaches, section 337(d)(4) of the Act emphasizes the importance of avoiding harmful interference from television broadcasters to public safety licensees in adjacent bands. Section 337(d)(4) refers explicitly to the spectrum bands

reallocated and reserved for public safety services, and we have already adopted service rules for the public safety bands. The potential for new broadcasting services on the commercial 746–764 MHz and 776–794 MHz bands, however, raises the further issue of whether a more stringent approach to interference may be required on the commercial bands, to ensure that public safety licensees in adjacent bands do not experience harmful interference. The NPRM therefore seeks comment on the relation of section 337(d)(4) to protection of public safety licensees from interference caused by broadcast services that may be permitted to operate on the 36 megahertz of commercial spectrum.

58. The NPRM proposes to require licensees in the proposed commercial spectrum to attenuate the power below the transmitter power (P) by at least  $43 + 10 \log_{10}(P)$  watts or 80 decibels, whichever is less, for any emission on all frequencies outside the licensee's authorized spectrum. To implement sharing between conventional broadcast and other commercial services, different interference limits may be indicated. The NPRM requests comment on this proposal and any other emission limits that commenters believe are appropriate.

## 3. RF Safety

59. Section 27.52 of the Commission's Rules subjects licensees and manufacturers to the RF radiation exposure requirements specified in §§ 1.1307(b), 2.1091, and 2.1093 of the Commission's Rules, which list the services and devices for which an environmental evaluation must be performed. Routine environmental evaluations for RF exposure are required by applicants desiring to use the following types of transmitters: (1) fixed operations, including base stations and radiolocation transmitters, when the effective radiated power (ERP) is greater than 1,000 watts; (2) all portable devices; and (3) mobile devices, if the ERP of the station, in its normal configuration, will be 1.5 watts or greater.

60. With regard to RF safety requirements, the NPRM proposes to treat services and devices in the 746–764 MHz and 776–794 MHz bands in a comparable manner to other services and devices that have similar operating characteristics. The Commission tentatively concludes that the requirements in § 27.52, adopted for licensees in the 2.3 GHz band, will apply to the same extent to licensees in the 746–764 MHz and 776–794 MHz bands. Guidance on acceptable methods

of evaluating compliance with the Commission's exposure limits is contained in OET Bulletin No. 65.<sup>22</sup>

61. The NPRM proposed to adopt the 1,000 watts ERP threshold for operation in the 746–764 MHz and 776–794 MHz bands to recognize the flexibility with respect to use, power, location, and other factors that will presumably be accorded licensees operating in these bands. The NPRM also proposed to modify §§ 1.1307(b), 2.1091, and 2.1093 of the Commission's Rules to include services and devices applicable to the 746–764 MHz and 776–794 MHz bands. The NPRM invites comment on these proposals and any alternatives.

#### 4. Special Considerations for Use of Channels 65, 66 and 67

62. In the Public Safety Spectrum Second Notice on the use of channels 63, 64, 68, and 69 by Public Safety Services,<sup>23</sup> the Commission sought comment on the potential for interference to GLONASS<sup>24</sup> and GPS<sup>25</sup> satellites from public safety systems operating in the 794–806 MHz band (TV channels 68–69). In the present context, as with public safety systems, the second harmonic transmissions of commercial services operating on TV channels 65–67 fall within the bandwidth identified by NTIA as being used by the GPS (1563.42–1587.42 MHz). Therefore, the use of the 776–794 MHz band by commercial services raises many of the same concerns. NTIA recommends that stringent standards be adopted to ensure that equipment operating in these bands does not cause radio frequency interference to the Global Navigation Satellite System (GNSS) when used for precision approach and landing. The Commission recognizes that this issue will be of critical importance to both navigation and commercial interests, and therefore we desire to obtain as complete a record

as possible before making a decision. The Commission believes that additional information is needed before we arrive at a final decision with respect to this matter.

63. Of particular concern is the impact of imposing the standards recommended by NTIA on the design of commercial equipment. NTIA specifically advocates that out-of-band emissions be limited to -70 dBW/MHz equivalent isotropically radiated power (EIRP) for wideband emissions, and -80 dBW/700 Hz EIRP for narrowband emissions, and that these limits be applied to all spurious emissions, including second harmonics in the 1559–1610 MHz range. These limits are based on international recommendations by RTCA and ETSI specifically for mobile earth terminals in the Mobile Satellite Service (MSS). Full power broadcast use of this spectrum could pose additional difficulties for the GNSS system. Because conventional full power broadcast stations would operate at power levels several orders of magnitude larger than those used by commercial fixed and mobile stations, additional attenuation of out-of-band emissions may be required to protect the GNSS systems. NTIA has recommended, in this case, that an emission limit of -110 dB below the average transmitter power should be included as the proposed unwanted emission limit, including harmonics, for DTV transmitters operating in the 746–764 MHz and 776–794 MHz bands. NTIA notes that the current DTV mask requires that emissions, including harmonics that are more than 6 MHz from the channel edge, must be attenuated by this amount. It believes that this value is consistent with the current harmonic suppression levels that can be achieved by television transmitters, and will protect GNSS precision approach landing operations.

64. The Commission is committed to ensuring that the GNSS is protected adequately against interference. We note that the standard recommended by NTIA is necessary only to protect the GNSS band at 1559–1605 MHz. Based on the information before us at this time, we tentatively propose to adopt the NTIA recommended emissions limits, but to apply them only to emissions that fall within the GNSS band. Outside the 1559–1605 MHz GNSS band, we propose that the standard addressed earlier in the section on out-of-band spurious emissions (i.e., 43 + 10 log P) would apply. The Commission believes that it is imperative that all parties fully understand the need for and

ramifications of the NTIA proposed standard on use of the 700 MHz band for commercial wireless services. Therefore, the NPRM requests comment on the standard recommended by NTIA to protect GNSS operations. The NPRM also invites comment as to whether extenuating conditions such as low antenna height, propagation losses, body suppression of signals, and wall attenuation should be taken into account in calculating the out-of-band emission requirements. In addition, the Commission is interested in obtaining a better understanding of the levels of radio energy that currently exist in the GNSS spectrum as a result of spurious emissions from other communications systems and electronic equipment.

65. The Commission observes that stringent out-of-band emissions limits are generally more difficult to meet for mobile and hand-held transmitters than for base and control stations or for fixed service stations. The standard recommended by NTIA would require approximately 85–90 dB suppression for typical full-power mobile equipment, and approximately 75–80 dB for handhelds and portables.<sup>26</sup> The NPRM expresses concern about whether the proposed emissions standard would severely curtail the availability of the 36 MHz of spectrum designated by Congress for commercial use, and requests factual data and technical information as to the impact this proposal may have on the use of the 700 MHz band for commercial wireless services. The NPRM also seeks information on how the proposed emissions standard may affect the equipment cost, size, weight and battery life of handheld or portable equipment. Global Mobile Personal Communications via Satellite (GMPCS) terminals have been proposed to meet the same standard proposed in the NPRM. The NPRM invites comment as to whether it is feasible for commercial fixed and mobile equipment to meet the same standards as these commercial mobile satellite systems. The NPRM solicits suggestions as to any and all alternative approaches or measures that the Commission can take to alleviate the impact of the proposed standard.

#### E. Competitive Bidding

##### 1. Statutory Requirements

66. Section 337 of the Communications Act requires that the licenses for this proposed commercial spectrum be granted through

<sup>22</sup> OET Bulletin No. 65 (Edition 97–01) was issued on August 25, 1997. It is available for downloading at the FCC Web Site: [www.fcc.gov/oet/rfsafety](http://www.fcc.gov/oet/rfsafety). Copies of OET Bulletin No. 65 also may be obtained by calling the FCC RF Safety Line at (202) 418–2464.

<sup>23</sup> Second Notice of Proposed Rulemaking, in WT Docket No. 96–86, 62 FR 60199, November 7, 1997 (Public Safety Spectrum Second Notice).

<sup>24</sup> GLONASS is the Russian Federation Global Orbiting Navigation Satellite System which will use the 1598–1605 MHz portion of the Radionavigation-Satellite Service (space-to-Earth) allocation at 1559–1610 MHz, when the GLONASS system reaches its final frequency configuration after 2005.

<sup>25</sup> GPS (Global Positioning System) is also in operation, and it will be the United States component of the Global Navigation Satellite System (GNSS). GPS utilizes the lower portion of the Radionavigation-Satellite Service (space-to-Earth) allocation from 1559–1610 MHz on a primary basis, and is maintained by the United States Department of Defense.

<sup>26</sup> For the purposes of the GLONASS standard, the Commission has assumed the narrowband limit of -80 dBW/700 Hz would be sufficient for commercial services bandwidths of up to 150 kHz.

competitive bidding. Section 337(a)(2) directs how the commercial segment of the spectrum between 746 megahertz and 806 megahertz is to be assigned: "6 megahertz of that spectrum for commercial use [is] to be assigned by competitive bidding pursuant to section 309(j)." Section 337(b)(2) further directs the Commission to "commence competitive bidding for the commercial licenses created pursuant to subsection (a) after January 1, 2001." The proposed commercial spectrum therefore is not to be licensed for public safety radio services, which are excluded from spectrum auction authority by section 3002 of the Communications Act.

67. Although this spectrum is dedicated by statute for commercial rather than public safety licenses, the issue arises whether public safety entities might successfully bid for and be licensed to use the spectrum. The Commission is concerned that the exclusion from our statutory auction authority might: (1) preclude us from licensing a public safety entity that participated in an auction of commercial spectrum; or (2) nullify or otherwise adversely affect our authority to license the spectrum involved through competitive bidding, if public safety entities participate in such an auction.

68. The Commission has not previously addressed the issue whether public safety entities are prohibited from participation as bidders in an auction process. The Commission believes that such participation, subject to the same bidding and service rules applicable to commercial applicants, cannot compromise the Commission's auction authority where, as here, that authority has been directly conferred by statute. We are considering in a separate proceeding the broader issue of exemption from our general auction authority of some public safety services. In light of the importance attached by the Congress to ensuring the availability of reallocated spectrum to public safety uses, however, the Commission believes these commercial bands should be open to application by any public safety entities that are qualified and prepared to bid under the same rules applied to commercial applicants. The NPRM therefore requests comment on what effect the changes in Commission auction authority, made by section 3002 of the Communications Act have on: (a) the possible participation of public safety entities in an auction of commercial spectrum, and on (b) their eligibility to obtain a license through the subsequent acquisition of spectrum initially assigned by auction.

69. The Communications Act (at 47 U.S.C. 309(j)(3)) also directs the Commission to provide for the "design and conduct (for purposes of testing) of competitive bidding using a contingent combinatorial bidding system that permits prospective bidders to bid on combinations or groups of licenses in a single bid and to enter multiple alternative bids within a single bidding round." The Commission has contracted for the development of such procedures. The NPRM seeks comment on whether the auction of these spectrum bands, especially if our service rules provide for broadcast services, may present a suitable context for combinatorial procedures. Commenters should consider: (a) whether, absent the application of combinatorial rules, the existing standardized auction rules in Part 1 are adequate for the juxtaposition of broadcast and wireless bidding entities; or (b) whether modifications of standardized Part 1 auction rules, to facilitate participation by entities interested in providing broadcast service, are desirable. The Commission is especially interested in comment on how, absent combinatorial rules, our auction methodology should recognize the divergence between geographic licensing applied to wireless spectrum bands, and the focus on communities of license in the assignment of broadcast spectrum.

## 2. Incorporation by Reference of Part 1 Standardized Auction Rules

70. The NPRM proposes to conduct the auction for initial licenses in the 746–764 MHz and 776–794 MHz bands in conformity with the general competitive bidding rules set forth in part 1, subpart Q of the Commission's Rules, which are substantially consistent with the bidding procedures that have been employed in previous Commission auctions. Specifically, the NPRM proposes to employ the part 1 rules governing designated entities, application issues, payment issues, competitive bidding design, procedure and timing issues, and anti-collusion, subject to possible modification. The NPRM seeks comment on this proposal, and on whether any of the part 1 rules would be inappropriate in an auction for these spectrum blocks, especially with regard to possible inclusion of broadcast services in our auction methodology.

## 3. Provisions for Designated Entities

71. The Communications Act provides that, in developing competitive bidding procedures, the Commission shall consider various statutory objectives and consider several

alternative methods for achieving them.<sup>27</sup>

a. *Small Business Definitions.* 72. In the Competitive Bidding Second Memorandum Opinion and Order, the Commission stated that it would define eligibility requirements for small businesses on a service-specific basis, taking into account the capital requirements and other characteristics of each particular service in establishing the appropriate threshold.<sup>28</sup> The Part 1 Third Report and Order,<sup>29</sup> while it standardizes many auction rules, continues a service-by-service approach to defining small businesses. For the 36 megahertz of commercial spectrum, the NPRM proposes to define a small business as any firm with average annual gross revenues for the three preceding years not in excess of \$40 million.

73. The Commission observes that the capital costs of operational facilities in the 746–764 MHz and 776–794 MHz bands are likely to vary widely based on the services provided. Accordingly, the NPRM proposes to adopt small business size standards that afford licensees the greatest flexibility. Thus, in addition to our proposal to adopt the general small business standard used in broadband PCS, 2.3 GHz, and 39 GHz service rules, the NPRM also proposes to adopt the definition for very small businesses used for 39 GHz licenses and for the PCS F Block licenses, namely, businesses with average annual gross revenues for the three preceding years not in excess of \$15 million.

74. The NPRM seeks comment on the use of these standards, with particular focus on the appropriate definitions of small and very small businesses as they relate to the size of the geographic area to be covered, and the spectrum allocated to each license. For the proposed definitions of small business and very small business, the NPRM proposes to include the entity's affiliates and controlling interests when determining eligibility by gross revenue criteria. In discussing these issues, commenters are requested to address the expected capital requirements for services in the 746–764 MHz and 776–794 MHz bands. Commenters also are invited to compare these proposals with other services for which the Commission has established auction procedures, as a basis for their comments regarding the appropriate definitions for small and very small

<sup>27</sup> See 47 U.S.C. 309(j)(3), 309(j)(4).

<sup>28</sup> Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, Second Memorandum Opinion and Order, 59 FR 44272, August 26, 1994.

<sup>29</sup> See 63 FR 2315, January 15, 1999.

businesses. The NPRM also seeks comment on whether the proposed designated entity provisions, if adopted and applied to the services in these bands, would be sufficient to promote participation by businesses owned by minorities and by women, and participation by rural telephone companies. To the extent that commenters propose additional provisions to ensure participation by minority-owned and women-owned businesses, they are also invited to address how such provisions should be crafted to meet the relevant standards of judicial review.<sup>30</sup> In all other respects, the Commission proposes to apply the competitive bidding procedures that the Commission adopted in the Part 1 Third Report and Order, subject to (1) any modifications the Commission may adopt in response to the Second Further Notice and (2) pending petitions for reconsideration of the Part 1 Third Report and Order.

### III. Protection of Television Services

#### A. Background

75. The NPRM discusses technical requirements for protecting incumbent broadcast licensees and planned DTV allotments against interference. The Commission tentatively concludes that the factors and considerations examined in the Public Safety Spectrum Report and Order<sup>31</sup> are equally relevant with respect to the use of the 746–764 MHz and 776–794 MHz bands for commercial mobile services.<sup>32</sup> Thus, the NPRM proposes to adopt the same criteria to protect TV and DTV operations from commercial mobile operations that were adopted in the Public Safety Spectrum Report and Order.<sup>33</sup> The Commission tentatively concludes that the sharing criteria applicable to mobile service base stations would be sufficient to protect TV and DTV operations from fixed service operations also, but seeks

comment on this tentative conclusion. With respect to protection of TV and DTV operations from new broadcast operations on these frequencies, however, the Public Safety Spectrum Report and Order provides no guidance, since broadcasting stations and services are not permitted on the public safety frequencies. A different approach or criteria may therefore be appropriate, depending on the types of broadcasting services permitted.

#### B. Protection of TV Stations

76. The Commission concluded in the Public Safety Spectrum Report and Order that the use of a 40 dB D/U signal ratio for co-channel operations and a 0 dB D/U signal ratio for adjacent channel operations was supported by our experience using this standard to protect TV service from interference from land mobile operations in the New York metropolitan area without serious adverse consequences, and that the Commission would, therefore, adopt such standards for calculating geographic separation requirements. The Commission concluded that the 40 dB D/U signal ratio is a reasonable value that will provide sufficient TV protection, as required by the Balanced Budget Act of 1997.<sup>34</sup> Co-channel land mobile base station transmitters would be limited to producing a maximum signal strength at the hypothetical TV Grade B contour 40 dB below 64 dBu, or 24 dBu. The Commission also adopted a 0 dB D/U signal ratio for adjacent channel operations. Adjacent channel land mobile transmitters would be limited to a maximum signal that can equal the TV Grade B signal of 64 dBu at the TV station Grade B contour, defined here as 87.7 km (55 miles).<sup>35</sup> The Commission tentatively concludes in this NPRM that the same criteria should be applied to commercial mobile and fixed operations in the 746–764 MHz and 776–794 MHz bands. The NPRM thus proposes to adopt rules similar to those reflected in § 90.545 of the Commission's Rules,<sup>36</sup> with the following proposed modification. Because the Commission is not proposing any specific antenna height or transmitter power limitations for part 27 licensees, part 27 licensees who propose to operate stations with antenna heights or transmitter powers that exceed those specified in § 90.545(b) must provide to the Commission for approval a detailed technical analysis demonstrating that the required interference protection criteria are met

prior to placing such stations into operation. The NPRM invites comment as to the appropriate criteria that should be used to protect TV broadcasting against interference from fixed operations.

#### C. Protection of DTV Stations

77. In the Public Safety Spectrum Second Notice, the Commission noted that its proposals were based on protecting analog TV, and asked for comments on the appropriate D/U signal ratios that should be applied to protect DTV. After examining the record, the Commission decided to apply similar criteria, adopted in the Public Safety Spectrum Report and Order for protecting reception of analog TV stations, to protecting DTV reception.<sup>37</sup> Since the Commission allocated DTV channels to replicate existing TV station service areas, it allowed public safety stations to provide the same field strength at the equivalent Grade B contour of the DTV station as they do for an analog TV station, and adjust the D/U ratio accordingly. The Commission therefore provided for a TV station to have protection ratios of 40 dB for co-channel and 0 dB for adjacent channel at its 64 dBu field strength contour. The equivalent ratios for a DTV station that has a Grade B signal strength contour of 41 dBu are 17 dB and -23 dB, respectively.

78. In making this determination, the Commission noted that in the DTV Sixth Report and Order it had specified a minimum geographic separation of 250 kilometers (155 miles) between: (1) DTV stations and (2) the city-center in areas where there are existing land mobile co-channel operations. Section 90.305(a) of the Commission's Rules provides that maximum facility land mobile base stations can be located up to 80.5 km (50 mi) from the city-center of one of the specified cities. Consequently, under the geographic separation adopted in the DTV Sixth Report and Order, a maximum facility land mobile base station could choose to locate its station as close as 169.5 km (250 km–80.5 km), or 105 mi. At this distance, the land mobile base station would provide a co-channel signal at the DTV station's 88.5 km (55 mi) equivalent Grade B contour that would provide less than a 40 dB D/U protection ratio to a DTV receiver. Thus, the Commission's decision to require 700 MHz land mobile systems to

<sup>30</sup> See *Adarand Constructors v. Peña*, 515 U.S. 200 (1995); *United States v. Virginia*, 518 U.S. 515 (1996).

<sup>31</sup> 63 FR 58685, November 2, 1998.

<sup>32</sup> This would include consideration of TV stations outside this spectrum, i.e., on Channel 59. The adjacent channel protection criteria proposed to be established herein would apply equally to Channel 59 stations, and new licensees in the Channel 60 spectrum block will need to recognize the existence of such adjacent channel use in designing their systems and services. Moreover, use of Channel 59 may change as DTV service is relocated to the core digital channels. Any interference or protection criteria involving different uses of Channel 59 would necessarily be established in a later proceeding.

<sup>33</sup> To the extent that our pending reconsideration of that Order results in subsequent changes to the rules adopted in that proceeding, those changes may need to be reflected as they apply or are relevant here.

<sup>34</sup> See 47 U.S.C. 337(d).

<sup>35</sup> See 47 CFR 73.610.

<sup>36</sup> 47 CFR 90.545.

<sup>37</sup> A TV station's hypothetical Grade B contour is plotted based on a 64 dBu signal strength using the F(50,50) curve. See 47 CFR 73.699. A DTV station's equivalent contour is based on a 41 dBu signal strength using the F(50,90) curve. See 47 CFR 73.625.

provide signal ratios for DTV stations that will allow approximately the same separation distance as we did for analog TV stations represented a reasonable balance between the needs of both DTV stations and public safety entities.

79. The Commission tentatively concludes that the same criteria should be applied to commercial mobile and fixed operations in the 746–764 MHz and 776–794 MHz bands. The NPRM thus proposes to adopt rules similar to those reflected in § 90.545 of the Commission's Rules, with the following proposed modification. Part 27 licensees who propose to operate stations with antenna heights or transmitter powers that exceed those specified in § 90.545(b) must provide to the Commission for approval a detailed technical analysis demonstrating that the required interference protection criteria are met, prior to placing such stations into operation.

#### *D. TV Protected Service Contour Alternatives*

80. In the Public Safety Spectrum Report and Order the Commission found that a geographic separation distance table based on a standard 88.5 km Grade B service contour (equivalent Grade B for DTV) would be the most convenient form. Limiting TV/land mobile separation to distances specified in a table, however, may prevent public safety entities from fully utilizing the spectrum in a number of major metropolitan areas until after the transition period. Thus, the Commission allowed public safety applicants to select one of three ways to meet the TV/DTV protection requirements: (1) utilize the geographic separation specified in the Table; (2) submit an engineering study to justify other separations, which is subject to Commission approval; or (3) obtain concurrence from any applicable TV/DTV station. The NPRM proposes that these same alternatives be available to Part 27 licensees and seeks comment on this approach.

81. Also, in the Public Safety Spectrum Second Notice the Commission requested comment on whether the size of the reference TV contour should be increased because some TV stations have facilities exceeding those upon which the 88.5 km (55 mi) contour was based. The Commission stated that a TV station with parameters of 5 megawatts with an antenna height above average terrain (HAAT) of 610 meters could have a Grade B contour distance of 107 km (66.5 mi). In order to protect certain TV/DTV stations, which have extremely large contours due to unusual height situations, the Commission incorporated

an additional factor that must be used by all public safety base, control, and mobile stations to protect these few TV/DTV stations and afford the land mobile stations the necessary protection from the TV/DTV stations. The NPRM proposes that this additional factor also be applicable to all Part 27 licensees operating in these bands. The NPRM thus proposes to adopt a rule similar to that reflected in § 90.545(c)(2)(iii) of the Commission's Rules<sup>38</sup> to address this situation.

#### *E. Other Issues*

82. In the DTV Sixth Report and Order,<sup>39</sup> the Commission raised the possibility that, in negotiating among themselves for changes in allotments and assignments, TV licensees could include agreements for compensation. The NPRM proposes to permit new licensees in this spectrum similarly to reach agreements with licensees of protected TV stations, including holders of construction permits, compensating them for converting to solely DTV transmission before the end of the DTV transition period, accepting higher levels of interference than those allowed by the protection standards, or otherwise accommodating new licensees in these bands.

83. Finally, because the NPRM proposes to license this spectrum for broadcasting, as well as for the fixed and mobile uses, comment is also requested on interference protection standards for any new broadcast operations that may be licensed in this spectrum.<sup>40</sup> The NPRM further requests comment on whether the Commission should establish standards for geographic separations between any TV broadcasting in this spectrum, authorized pursuant to this or a successor rulemaking proceeding, and from current analog TV or new DTV stations authorized before this proceeding; whether the Commission should treat any broadcast licenses on a case-by-case basis; or whether there are other approaches we should use to consider interference to and from broadcast operations.

### **V. Administrative Matters**

#### *A. Ex Parte Presentations*

84. For purposes of this permit-but-disclose notice and comment rulemaking proceeding, members of the public are advised that *ex parte*

<sup>38</sup> See 47 CFR 90.545(c)(2)(iii).

<sup>39</sup> 62 FR 26684, May 14, 1997.

<sup>40</sup> Stations transmitting broadcast signals are likely to produce interference effects to analog TV and DTV stations that differ from those of land mobile or fixed stations.

presentations are permitted, except during the "Sunshine Agenda" period, provided they are disclosed under the Commission's Rules. See generally 47 CFR 1.1202, 1.1203, 1.1206(a).

#### *D. Pleading Dates*

85. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules (47 CFR 1.415, 1.419) interested parties may file comments on or before July 19, 1999, and reply comments on or before August 13, 1999. Comments and reply comments should be filed in WT Docket No. 99–168. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally, interested parties must file an original and four copies of all comments, reply comments, and supporting comments. If interested parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Interested parties should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, with a copy to Stan Wiggins, Policy Division, Wireless Telecommunications Bureau, 445 12th Street, S.W., Washington, D.C. 20554.

86. Comments may also be filed using the Commission's Electronic Comment Filing System (ECFS). 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. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and a reference to WT Docket No. 99–168. Parties may also submit an electronic comment by Internet E-Mail. To obtain filing instructions for E-Mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your E-Mail address>."

87. Comments and reply comments will be available for public inspection during regular business hours at the FCC Reference Information Center, 445 12th Street, S.W., Washington, D.C. 20554. Copies of comments and reply comments are available through the Commission's duplicating contractor: International Transcription Services, Inc., (202) 857–3800, CY–B400, 445 12th Street, S.W., Washington, D.C. 20554.

#### *B. Initial Regulatory Flexibility Analysis*

88. As required by section 603 of the Regulatory Flexibility Act, the

Commission has prepared the following Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the NPRM but they must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of the NPRM, 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).

### Initial Regulatory Flexibility Analysis Statement

#### A. Need for, and Objectives of, the Proposed Rules

89. This rulemaking is being initiated to adopt certain service, licensing, and competitive bidding rules for the 746-764 and 776-794 MHz segments of the 746-806 MHz band. The Congress directed the Commission, in the Balanced Budget Act of 1997, to allocate 36 megahertz of this band for commercial use, and to license that spectrum by competitive bidding. In the Reallocation Report and Order, the Commission reallocated 36 megahertz of this band to commercial use and determined that the potential range of commercial services would include all services permitted under the U.S. Table of Allocations—Fixed, Mobile, and Broadcasting services. In this NPRM, we propose to license the 746-764 MHz and 776-794 MHz commercial bands under a flexible framework established in part 27 of the Commission's Rules. We expect that provisions of part 27 will be modified to reflect the particular characteristics and circumstances of services offered through the use of spectrum on these bands. These modifications may also reference or incorporate rules in other parts of the Commission's Rules, such as part 73 governing broadcast services. We believe that this flexible approach will encourage new and innovative services and technologies in this band without significantly limiting the range of potential uses for this spectrum.

90. Our objectives for the NPRM are: (1) to auction licenses for these commercial spectrum blocks as directed by the Balanced Budget Act; (2) to accommodate the introduction of new uses of spectrum and the enhancement

of existing uses; (3) to implement the section 303(y) requirement that flexible use allocations not create harmful interference or discourage investment; (4) to facilitate the awarding of licenses to entities that value them the most. The Commission seeks to develop a regulatory plan for these commercial spectrum blocks that will allow for efficient licensing and intensive use of the band, eliminate unnecessary regulatory burdens, enhance the competitive potential of the band, and provide a wide variety of radio services to the public.

#### B. Legal Basis for Proposed Rules

91. The proposed action is authorized under sections 1, 4(i), 7, 10, 201, 202, 208, 214, 301, 303, 307, 308, 309(j), 309(k), 310, 311, 315, 317, 324, 331, 332 and 336 of the Communications Act of 1934, 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 208, 214, 301, 303, 307, 308, 309(j), 309(k), 310, 311, 315, 317, 324, 331, 332, 336.

#### C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

92. For the purposes of this NPRM, the RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act,<sup>41</sup> unless the Commission has developed one or more definitions that are appropriate to its activities.<sup>42</sup> Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).<sup>43</sup>

93. The proposals in this NPRM affect applicants who wish to provide services in the 746-764 and 776-794 MHz bands. Pursuant to 47 CFR 24.720(b), the Commission has defined "small entity" for Blocks C and F broadband PCS licensees as firms that had average gross revenues of less than \$40 million in the three previous calendar years. This regulation defining "small entity" in the context of broadband PCS auctions has been approved by the SBA. With respect to applicants for licenses in the 746-764 and 776-794 MHz bands, we propose to use the small entity definition adopted in the Broadband PCS proceeding.

94. The Commission, however, has not yet determined or proposed how many licenses will be awarded, nor will

it know how many licensees will be small businesses until the auction is held. Even after that, the Commission will not know how many licensees will partition their license areas or disaggregate their spectrum blocks, if partitioning and disaggregation are allowed. In view of this uncertainty regarding the number of entities that will be granted licenses in the 746-764 and 776-794 MHz bands, we have assumed, for purposes of our evaluations and conclusions in the IRFA, that all of the prospective licenses are small entities, as that term is defined by the SBA or our proposed definitions for these bands. We invite comment on this analysis.

#### D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

95. Entities interested in acquiring spectrum in the 746-764 and 776-794 MHz bands will be required to submit license applications, and high bidders will be required to apply for their individual licenses. The proposals under consideration in this item also include requiring commercial licensees to make showings that they are in compliance with construction requirements, file applications for license renewals, and make certain other filings as required by the Communications Act and Commission regulations. In addition to the general licensing requirements of parts 27 and 73 of the Commission's Rules, other parts may be applicable to commercial licensees, depending on the nature of service provided. We request comment on how these requirements can be modified to reduce the burden on small entities and still meet the objectives of the proceeding.

#### E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

96. We have reduced burdens wherever possible. With specific regard to the potential for use of these bands by dissimilar services such as broadcast and commercial fixed and mobile, we have sought comment on different approaches to minimizing the burdens of interference management, consistent with the statutory mandate to protect both public safety uses and television service. To minimize any negative impact, we have also proposed certain incentives for the benefit of small entities. These provisions include partitioning and spectrum disaggregation. We have also sought comment on combinatorial auction procedures, which may enable small entities to participate in the licensing

<sup>41</sup> 15 U.S.C. 632.

<sup>42</sup> See 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. 632).

<sup>43</sup> 15 U.S.C. 632.

process with more flexibility. The regulatory burdens we have retained, such as filing applications on appropriate forms, are necessary in order to ensure that the public receives the benefits of innovative new services, or enhanced existing services, in a prompt and efficient manner, and generally apply existing regulatory procedures to the new licensees expected to occupy these bands. We will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities. We seek comment on significant alternatives commenters believe we should adopt.

*F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules*

97. None.

**VI. Ordering Clauses**

98. Accordingly, *it is ordered* that these actions are taken pursuant to sections 1, 4(i), 7, 10, 201, 202, 208, 214, 301, 303, 307, 308, 309(j), 309(k), 310, 311, 315, 317, 324, 331, 332 and 336 of the Communications Act of 1934, 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 208, 214, 301, 303, 307, 308, 309(j), 309(k), 310, 311, 315, 317, 324, 331, 332, 336.

99. *It is further ordered* that notice is hereby given of the proposed regulatory changes described in this NPRM, and that comment is sought on these proposals.

100. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act of 1980, Public Law 96-354, 94 Stat. 1164, 5 U.S.C. 601-612 (1980).

**Paperwork Reduction Act**

101. This NPRM contains a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the possible information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Written comments must be submitted by the public and by other Agencies on the proposed information collections on or before September 7, 1999. Comments should address: (1) 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; (2) the accuracy of the Commission's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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.

*OMB Approval Number:*

*Title:* Service Rules for the 746-764 and 764-794 MHz Bands and Revisions to Part 27.

*Form No.:* FCC Forms 175, 301, 302, 346, 347, 601, and 603 will almost surely be affected either by revision to the form or revision of the number of respondents subject to the requirement. Other FCC Forms may also be modified or the number of respondents increased, depending on the final rules adopted in this proceeding.

*Type of Review:* New Collection.

*Respondents:* Business and other for-profit and non-profit institutions.

*Number of Respondents:* The Commission expects a range of between 1,056 and 3,168 respondents.

*Estimated Time Per Response:* Between 4 hours and thirty minutes (cumulative figure based on the time to fill out several of the wireless universal service forms rather than any one form) and 115 hours and 12 minutes. (based on the time to fill out several broadcast forms rather than any one form). Note these estimates are not based on the time needed to complete any individual form, but are cumulative figures.

*Needs and Uses:* This Notice of Proposed Rulemaking seeks comment on the service rules and auction procedures to be developed for the licensing of spectrum bands recently allocated to fixed and mobile wireless use, as well as broadcasting. The service rules will encompass a variety of technical and interference provisions, as well as substantive policy deriving from both statutory and regulatory requirements. In the latter regard, the rules will need to consider the requirements applicable to common carrier and non-common carrier services, and the broadcast-specific requirements established in the Communications Act and by Commission regulations. In recognizing the potential convergence of the wireless and broadcast regulatory contexts, the service rules will address a wide range of requirements, such as license eligibility and attribution of ownership interests. The primary effect of these rules will be to enable licensing of these spectrum bands, and thus to

expand the number of licensees affected by existing regulatory requirements, including both service rules and auction procedures. The initial burden estimate that follows is developed from that premise, and relies on the straightforward extension of paperwork burdens associated with existing Commission licensing requirements to entities that will bid in the auction and, if successful, obtain licenses on these spectrum bands. Assumptions about the number of entities that will be licensed on this spectrum to provide particular categories of service are necessarily speculative, because the proposed service rules would not determine the extent to which these bands may be used for specific service applications, or the method of spectrum use adopted by licensees. The burden estimate was instead developed to specify in terms that describe the potential range of paperwork burdens associated with different uses of the spectrum.

Depending on the record developed, especially with regard to new services and technologies on these bands, the Commission may, for example, develop and implement auction procedures that vary from existing broadcast or wireless procedures. Other existing requirements may be altered, depending on the record developed and the types of service expected to be licensed. Disclosure of ownership interests germane to eligibility determinations, compliance with existing Commission reporting requirements for EEO obligations, and statutory accessibility and political broadcast requirements suggest, but do not exhaust, the range of requirements potentially affected. A more thorough listing of those requirements is contained in the synopsis of the full text of the NPRM, as well as in the NPRM itself. The NPRM seeks comment on means by which to minimize the effect of any paperwork burdens arising from the accommodation of divergent technical and regulatory requirements for these different services. The Commission generally expects that such burdens will, overall, not exceed existing burdens for established services, excepting the proposed requirement that licensees apprise the Commission of changes in service offerings that entail changes in their regulatory status. In developing an initial burden estimate, the Commission has assumed that the bands will initially be licensed to 176 geographic areas, based on Department of Commerce Economic Areas (EAs), following Commission practice.<sup>44</sup> The Commission has assumed, solely for the

<sup>44</sup> See 47 CFR 26.102 and 27.6.



purpose of preparing its estimate of affected entities, that licensing in each geographic area will be exclusively based on either a broadcast or non-broadcast structure. Under the conventional broadcast structure, each geographic area would include six spectrum blocks, each occupying six megahertz. That assumed emphasis on broadcast services generates the following burden estimate. Assuming 176 licensed areas, and 6 licensees per area, broadcast licensing burdens would be extended to approximately 1056 licensees. For a nonbroadcast structure, again using the EA figure of 176 licensed areas but assuming 18 licensees per area, based on each licensee implementing a paired wireless service using 1 MHz in each direction, the expected number of licensees affected would be about 3,168.

#### List of Subjects

##### 47 CFR Part 27

Communications common carriers, Communications equipment, Reporting and recordkeeping requirements.

##### 47 CFR Part 73

Communications equipment, Equal employment opportunity, Reporting and recordkeeping requirements, Television.

Federal Communications Commission.

**Magalie Roman Salas,**

Secretary.

[FR Doc. 99-17143 Filed 7-6-99; 8:45 am]

BILLING CODE 6712-01-U

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. 99-5891]

RIN 2127-AH14

### Federal Motor Vehicle Safety Standards; Child Restraint Systems

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Request for comments.

**SUMMARY:** The agency is issuing this document to obtain information that will help NHTSA determine whether Safety Standard No. 213, "Child Restraint Systems," should be amended in response to a petition for rulemaking from Kathleen Weber of Ann Arbor, Michigan. The petition concerns the availability of child booster seats for older children (ages about 4 and older)

that can be used in older cars whose rear seats are equipped with only lap belts instead of both lap and shoulder belts. To make it easier for child restraint manufacturers to produce child restraints for these children, the petition asks that Standard 213 be amended such that compliance tests of booster seats may be conducted with a top tether attached.

In the past, many drivers did not attach tethers when they used tether-equipped child restraints in vehicles that lack user-ready tether anchorages. Given that the vehicles in question lack user-ready tether anchorages, the agency seeks comments on the extent to which vehicle drivers would attach the booster seat's top tether. The agency also seeks comments on the extent to which currently available vests, harnesses, and other restraint systems (e.g., shoulder belt retrofits) address the problem raised by the petitioner. Comments are requested on the feasibility of redesigning boosters such that the restraints can meet Standard 213's requirements when attached to the vehicle with only a lap belt, and without the use of a tether.

**DATES:** You should submit your comments early enough to ensure that Docket Management receives them not later than September 7, 1999.

**ADDRESSES:** You should mention the docket number of this document in your comments and submit your comments in writing to: Docket Management, Room PL-401, 400 Seventh Street, SW, Washington, DC, 20590.

You may call Docket Management at 202-366-9324. You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may call Mike Huntley of the NHTSA Office of Crashworthiness Standards, at 202-366-0029.

For legal issues, you may call Deirdre Fujita of the NHTSA Office of Chief Counsel at 202-366-2992.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC., 20590.

#### SUPPLEMENTARY INFORMATION:

##### Table of Contents

##### I. Background

- The booster seats in question became unavailable after upgrade to Standard 213
- Petitioner seeks to make boosters available by allowing them to be tethered in compliance test
- The safety concern is that tethers often were not used in vehicles lacking a user-ready tether anchorage, even by parents

who were aware of the importance of attaching the tether

- The recent regulation requiring user-ready tether anchorages to improve tether use will not apply to vehicles manufactured before September 1999

##### II. Issues

##### III. Comments

Appendix A—Calspan Study

APPENDIX B-NHTSA TEST PROGRAM

#### I. Background

On December 4, 1997, Ms. Kathleen Weber of the University of Michigan Child Passenger Protection Research Program, submitted a petition for rulemaking to amend Federal Motor Vehicle Safety Standard No. 213, "Child Restraint Systems" (49 CFR 571.213). The petition, which NHTSA granted on January 30, 1998, concerns the manufacture of booster seats that can be used by families using pre-1989 model year vehicles. These vehicles have only lap belts in rear seating positions.

##### a. *The Booster Seats in Question Became Unavailable After Upgrade to Standard 213*

Booster seats are designed for children who have outgrown a convertible or toddler child restraint system. They are generally designed for children who are about 4 to 8 years old. There are two main types of booster seats currently produced. One type is called a "shield booster" due to use of a shield-like barrier to restrain the upper torso of a child in a crash. Shield boosters attach to the vehicle by the vehicle's lap belt (Type I belt) or lap belt portion of a lap and shoulder belt (Type II belt). The other type of booster is called a "belt-positioning seat," which is a booster designed to use both portions of a vehicle's Type II belt to restrain the child. A belt-positioning seat is not directly attached to the vehicle seat, but is held in place by the child's mass and the vehicle's Type II belt, which is strapped over the child's lap and torso, just as the Type II belt is used to restrain an adult occupant. A belt-positioning seat must not be used with a vehicle's lap belt alone, since the seat lacks structure or an internal belt to restrain the child's upper torso.

Shield booster seats, which are capable of being used with only a vehicle's lap belt, were available in the past, but became unavailable for children weighing over 18 kilograms (kg) (approximately 40 pounds, lb) subsequent to an upgrade that NHTSA made to the standard pursuant to the Intermodal Surface Transportation Efficiency Act ("ISTEA") of 1991 (Pub. L. 102-240). That Act directed NHTSA to initiate rulemaking on a number of safety matters, including child booster seat safety (section 250). The legislative