

publication of this NPRM in the **Federal Register**. All filings should refer to CC Docket No. 96–128. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through 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 the applicable docket number, which in this instance is CC Docket No. 96–128. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message: "get form<your e-mail address>." A sample form and directions will be sent in reply.

1. Parties that choose to file comments or reply comments by paper must file an original and four copies of each, and are hereby notified that effective December 18, 2001, the Commission's contractor, Vistrionix, Inc., receives hand-delivered or messenger-delivered paper filings for the Commission's Secretary at a new location in downtown Washington, DC. The address is 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. This facility is the only location where hand-delivered or messenger-delivered paper filings for the Commission's Secretary will be accepted. Accordingly, the Commission will no longer accept these filings at 9300 East Hampton Drive, Capitol Heights, MD 20743. In addition, this is a reminder that, effective October 18, 2001, the Commission discontinued receiving hand-delivered or messenger-delivered filings for the Secretary at its headquarters location at 445 12th Street, SW, Washington, DC 20554.

2. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service (USPS) Express Mail and Priority Mail), must be addressed to 9300 East Hampton Drive, Capitol Heights, MD 20743. This location will be open 8:00 a.m. to 5:30 p.m. The USPS first-class mail, Express Mail, and Priority Mail should continue to be addressed to the Commission's headquarters at 445 12th Street, SW, Washington, DC 20554. The USPS mail addressed to the Commission's

headquarters is delivered to our Capitol Heights facility for screening prior to delivery at the Commission.

3. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to the Chief, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, at the filing window at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number, in this case, CC Docket No. 96–128), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: "Disk Copy—Not an Original." Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW, CY-B402, Washington, DC 20554.

4. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW, CY-B402, Washington, DC 20554 (telephone 202–863–2893; facsimile 202–863–2898) or via e-mail at [qualexint@aol.com](mailto:qualexint@aol.com).

5. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.48 and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

### C. Ex Parte Presentations

This matter shall be treated as a "permit but disclose" proceeding in accordance with the Commission's *ex parte* rules. See 47 CFR 1.1200, 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries

of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b). Alternate formats (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 voice, (202) 418–7365 TTY, or [bmillin@fcc.gov](mailto:bmillin@fcc.gov). This NPRM can also be downloaded in Microsoft Word and ASCII formats at <http://www.fcc.gov/ccb/cpd>.

### D. Ordering Clause

It is ordered that, pursuant to the authority contained in sections 1, 4(i)–4(j), 201, 226 and 276 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), 201, 226, 276, this Notice of Proposed Rulemaking is *Adopted*.

### List of Subjects

#### 47 CFR Part 61

Access Charges, Communications common carriers, Telephone.

#### 47 CFR Part 69

Communications common carriers, Telephone.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 02–8344 Filed 4–8–02; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 2

[WT Docket No. 00–32; FCC 02–47]

### The 4.9 GHz Band Transferred from Federal Government Use

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission seeks comment on the establishment of licensing and service rules for the 4.9 GHz band. The comments will aid the Commission in defining eligibility to use the band and devising innovative licensing approaches to serve public safety. Furthermore, the Commission seeks comments that will help it to devise

methods to minimize the impact of interference on the 4.9 GHz band from adjacent band U.S. Navy operations, as well as ensuring that the band is utilized in a manner that will not interfere with adjacent band radio astronomy operations. Finally, comments will aid the Commission with the implementation of technical standards for both fixed and mobile operations on the band. Our goal is to establish rules that will result in the most efficient and innovative use of the 4.9GHz band.

**DATES:** Written comments are due on or before July 8, 2002 and reply comments are due on or before August 7, 2002.

**ADDRESSES:** Commission's Acting Secretary, William F. Caton, Office of the Secretary, Federal Communications Commission, 445 12th St., SW., Washington, DC 20554. Filings can be sent first class by the U.S. Postal Service, by an overnight courier or hand and messenger-delivered. Hand and message-delivered paper filings must be delivered to 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. Overnight courier (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

**FOR FURTHER INFORMATION CONTACT:**

Genevieve Augustin, Esq., [gaugusti@fcc.gov](mailto:gaugusti@fcc.gov), or Roberto Mussenden, Esq., [rmussend@fcc.gov](mailto:rmussend@fcc.gov), Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418-0680, or TTY (202) 418-7233.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's Further Notice of Proposed Rule Making, FCC 02-47, adopted on February 14, 2002, and released on February 27, 2002. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: [www.fcc.gov](http://www.fcc.gov).

Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365.

1. In our *Further Notice of Proposed Rulemaking (FNPRM)*, we seek comment on the establishment of licensing and service rules for the 4.9 GHz band. Further, we solicit comment on defining eligibility to use the band.

We seek to develop a record on specific segmentation or channeling plans for use of the band. We also request comment on ways to minimize the impact of interference from adjacent band U.S. Navy operations on the 4.9 GHz band. Finally, we solicit suggestions on how to utilize the band in a manner that will not interfere with adjacent band radio astronomy operations.

*A. Eligibility to Use the 4.9 GHz Band*

2. The Commission seeks comment on the criteria to use to determine eligibility to operate equipment within the 4.9 GHz band. Specifically, the Commission seeks comment on whether to define eligibility to use the 4.9 GHz band pursuant to the definition of public safety contained in Section 337 of the Communications Act (Act), or pursuant to the definition of public safety contained in Section 309(j)(2) of the Act, or both. Further, the Commission seeks comment on allowing commercial use in support of public safety in this band, and whether commercial uses should be permitted on a secondary basis. Moreover, the Commission seeks comment on its tentative conclusion to allow Federal use of the spectrum, as well as whether it should require sharing agreements between public safety entities and Federal users as a prerequisite to Federal use.

*B. Fixed and Mobile Use of the 4.9 GHz Band*

3. We seek comment on the circumstances under which we should permit fixed operations in the 4.9 GHz band. We seek information on whether fixed applications on the band would consist of the traditional point-to-point microwave operations, more advanced point-to-multipoint services, or temporary fixed links. Furthermore, we specifically seek comment on whether any proposed fixed operations would interfere with the use of the emerging mobile technologies discussed herein. We solicit suggestions on a name for this new service, as well as comment on which section of our Rules is most appropriate for regulation of this new service.

*C. Channel Plan*

4. The Commission seeks comment on band plans for the 4.9 GHz spectrum. The Commission also seeks comment on whether it should require coordination of fixed and mobile services.

*D. Licensing*

5. The Commission seeks comment on the appropriate means of licensing the

4.9 GHz spectrum. The FNPRM explores a number of licensing options for mobile use, such as state licensing, blanket licensing or unlicensed operations, the use of regional planning committees or band managers.

*E. Interference*

6. The Commission seeks comment on its tentative conclusion that the low power operations contemplated for the band will not interfere with the Navy's Cooperative Engagement Capability (CEC) system, which operates on the band immediately below the 4.9 GHz band. The Commission also seeks comment on the Navy's plans for the CEC system in the band below the 4.9 GHz band and the impact that the CEC operations will have on provision of service in the 4.9 GHz band. Additionally the Commission seeks comment on the effect CEC operations would have on any segmentation or channelization plans adopted for this band, and what steps public safety licensees in the 4.9 GHz band could take to minimize the impact of CEC operations on their services.

*F. Technical Standards for Mobile Equipment*

7. The Commission seeks comment on whether to establish technical standards for mobile equipment operating in the 4.9 GHz band, and if so, what standards should be included in our Rules. The Commission also seeks comment on other means by which we can craft our Rules to permit operational flexibility while ensuring interoperability between different agencies. Further the Commission seeks comment on whether the setting of performance standards will delay the production of equipment that will be operated on this band, and if so, what we can do to prevent any such delays. The Commission also seeks comment on its analysis of the technologies envisioned by the current record.

*G. Technical Rules for Fixed Operations in the 4.9 GHz Band*

8. The Commission seeks comment on possible technical requirements for fixed operation on the band. The Commission also seeks comment on whether to make the emission mask requirements for fixed microwave services in the 4.9 GHz band consistent with the emission mask requirements for fixed microwave services.

**II. Procedural Matters**

*A. Ex Parte Rules—Permit-But-Disclose Proceeding*

9. This is a permit-but-disclose notice and comment rule making proceeding.

*Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in our Rules.

#### *B. Regulatory Flexibility Act*

10. The Regulatory Flexibility Act (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Accordingly, we have prepared an Initial Regulatory Flexibility Certification concerning the impact on small entities of the policies and rules proposed by this *FNPRM*. The Initial Regulatory Flexibility Certification is set forth below in Section III.

#### *C. Paperwork Reduction Act*

11. This *Notice* does not contain either a proposed or modified information collection.

#### *D. Comment Dates*

12. Pursuant to §§ 1.415 and 1.419 of our Rules, interested parties may file comments on or before July 8, 2002 and reply comments on or before August 7, 2002. Comments may be filed using the Commission's Electronic Filing System (ECFS) or by filing paper copies.

13. 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. However, if multiple docket or rulemaking numbers appear in the caption of this proceeding, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To 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>." A sample form and directions will be sent in reply.

14. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Acting Secretary, William F. Caton, Office of

the Secretary, Federal Communications Commission, 445 12th St., SW., Room TW-A325, Washington, DC 20554.

15. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Genevieve Augustin, Esq., Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, 445 12th St., SW., Room 3-A431, Washington, DC 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Microsoft Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, WT Docket No. 00-32), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters should send diskette copies to the Commission's copy contractor, Qualex International, Inc., 445 12th St., SW., Room CY-B402, Washington, DC 20554.

### **III. Initial Regulatory Flexibility Analysis for Notice of Proposed Rule Making**

16. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *FNPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *FNPRM* provided in paragraph 72 of the item. The Commission will send a copy of the *FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

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

17. In this *FNPRM*, we solicit comment on: the establishment of licensing and service rules for the 4.9 GHz band; defining eligibility to use the band; segmentation or channeling plans for use of the band; ways to mitigate interference on the 4.9 GHz band from

adjacent band U.S. Navy operations; and ways to utilize the band in a manner that will not interfere with adjacent band radio astronomy operations.

18. Our objectives for the Notice are to: (1) Set the framework for the establishment of a new public safety radio service in the 4.9 GHz band; (2) encourage flexible and efficient use of the 4.9 GHz spectrum; (3) encourage innovative applications in support of public safety; and (4) improve access to communications and state of the art first responder tools for entities engaged in public safety operations. The Commission also seeks to ensure a regulatory plan for the 4.9 GHz band that will allow for the efficient licensing and use of the band, and eliminate unnecessary regulatory burdens.

#### *B. Legal Basis*

19. The proposed action is authorized under sections 1, 4(i), 7, 10, 201, 202, 208, 214, 301, 303, 308, 309(j), and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 208, 214, 301, 303, 308, 309(j), 310.

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

20. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

21. Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the

85,006 governmental entities, we estimate that 81,600 (ninety-one percent) are small entities.

22. The proposed radio service may affect users of public safety radio services, the extent of which is not defined in this proceeding. This service may also affect manufacturers of radio communications equipment. An analysis of the number of small businesses that may be affected follows. We also note that according to SBA data, there are approximately 4.44 million small businesses nationwide.

23. *Public Safety Radio Services and Governmental entities.* As a general matter, Public Safety Radio Services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. Non-Federal governmental entities, as well as private businesses, are potential licensees for these services in this proceeding. Neither the Commission nor the SBA has developed a definition of small businesses directed specifically toward public service licensees. Therefore, the applicable definition of small business is the definition under the SBA rules applicable to Cellular and other Wireless Telecommunications. This provides that a small business is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all twelve of these firms were public safety licensees, nearly all would be small businesses under the SBA's definition, if independently owned and operated.

24. *Equipment Manufacturers.* We anticipate that at least six radio equipment manufacturers will be affected by our decisions in this proceeding. According to the Small Business Administration's regulations, a Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing businesses must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicate that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would therefore be classified as small entities. We do not have information that indicates how many of the six radio equipment manufacturers associated with this proceeding are among these 778 firms. Motorola and Ericsson, however, are major, nationwide radio equipment manufacturers, and thus, we conclude

that they would not qualify as small businesses.

25. We invite comment on this analysis.

*D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities*

26. We note that in this FNPRM, we propose a variety of licensing approaches we could employ on this band, but formulate no tentative conclusions on this matter. Possible requirements under consideration in this Further Notice include: recordkeeping and reporting requirements, and/or third-party consultation, if state licensing is ultimately utilized; compliance with part 101 of our Rules, in the event that fixed operations are licensed on the 4.9 GHz band; compliance with part 90 of our Rules, if mobile operations are licensed individually; compliance with part 27 of our Rules, if 4.9 GHz band operations are licensed pursuant thereto; and compliance with part 15 of our Rules, in the event that mobile operations on the 4.9 GHz band are unlicensed. Applicants and licensees would possibly be required to follow current service rules for such approaches, if ultimately chosen.

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

27. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."

28. The possible regulatory burdens we have described above, such as recordkeeping, recording, and filing requirements, if implemented, are necessary in order to ensure that the public safety operations benefit from the innovative new services described herein, in a prompt and efficient manner. 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 should be adopted in this proceeding.

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

None.

**IV. Ordering Clauses**

29. Pursuant to sections 4(i), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 403, this *Further Notice of Proposed Rule Making* is hereby adopted.

30. The Commission's Consumer and Government Affairs Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rule Making*, including the Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 02-8483 Filed 4-8-02; 8:45 am]

**BILLING CODE 6712-01-P**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

**[DA 02-749, MB Docket No. 02-75, RM-10151]**

**Digital Television Broadcast Service; Lynchburg, VA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by WSET, Inc., licensee of station WSET-TV, NTSC channel 13, Lynchburg, Virginia, requesting the substitution of DTV channel 34 for station WSET-TV assigned DTV channel 56. DTV Channel 34 can be allotted to Lynchburg, Virginia, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (37-18-52 N. and 79-38-04 W.). As requested, we propose to allot DTV Channel 34 to Lynchburg with a power of 660 and a height above average terrain (HAAT) of 625 meters.

**DATES:** Comments must be filed on or before May 30, 2002, and reply comments on or before June 14, 2002.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Room TW-A325, Washington, DC