

Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have considered the environmental impact of this rule and concluded that under figure 2-1, paragraph (34)(g), of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation because we are establishing security zones. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05-1(g), 6.04-1, 6.04-6, 160.5; 49 CFR 1.46.

2. Revise temporary § 165.T11-030(c) to read as follows:

#### § 165.T11-030 Security Zones; Cruise ships, Port of San Diego.

\* \* \* \* \*

(c) *Effective Dates.* This section is effective at 11:59 p.m. PST on November 5, 2001 and will terminate at 11:59 p.m. PST on December 21, 2002.

\* \* \* \* \*

Dated: June 12, 2002.

**S.P. Metruck,**

*Commander, Coast Guard, Captain of the Port, San Diego, California.*

[FR Doc. 02-15605 Filed 6-19-02; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 46 CFR Part 45

[USCG-1998-4623]

RIN 2115-AF38

#### Limited Service Domestic Voyage Load Lines for River Barges on Lake Michigan

**AGENCY:** Coast Guard, DOT.

**ACTION:** Interim rule; announcement of effective date.

**SUMMARY:** The Coast Guard is announcing the approval of a collection-of-information requirement pertaining to the special load line regime that was established for Lake Michigan by an interim rule published in April 2002. Owners or operators of dry cargo river barges desiring to operate on certain Lake Michigan routes must submit barge information in order to qualify for the special regime.

**DATES:** 46 CFR 45.181 and 45.183, as published April 23, 2002 (67 FR 19692), are effective June 20, 2002.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this document, call Thomas Jordan, Naval Architecture Division (G-MSE-2), telephone 202-267-0142 or fax 202-267-4816. If you have questions on viewing the docket [USCG-1998-4623], call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202-366-5149.

#### SUPPLEMENTARY INFORMATION:

Administration of the U.S. load line regulations requires vessel owners or operators to submit certain information to the Coast Guard or the American Bureau of Shipping (which issues load lines on behalf of the Coast Guard). This load line collection of information is

controlled by the Office of Management and Budget under the Office of Management and Budget (OMB) control no. 2115-0043.

Recently, a special load line regime was established through an interim rule for river barges operating on certain Lake Michigan routes. This interim rule was published in the **Federal Register** on April 23, 2002 (67 FR 19685), and is available electronically through the docket [USCG-1998-4623] web site at <http://dms.dot.gov>. It became effective on May 23, 2002, with the exception of two sections, 46 CFR 45.181 and 45.183, that contain collection-of-information requirements associated with the new regime.

Because these two sections required the collection of information, they could not become effective until they were reviewed and approved by the Office of Management and Budget. As required by 44 U.S.C. 3507(d), we submitted a copy of this interim rule to OMB for its review. On May 28, 2002, after reviewing the rule and the overall load line collection-of-information burden under control no. 2115-0043, OMB approved the collection of information required by this interim rule.

Dated: June 14, 2002.

**Joseph J. Angelo,**

*Director of Standards, Marine Safety, Security and Environmental Protection.*

[FR Doc. 02-15603 Filed 6-19-02; 8:45 am]

**BILLING CODE 4910-15-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1, 2, 27, 87, 90 and 95

[WT Docket No. 02-08; FCC 02-152]

#### License Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission adopts service rules for 27 megahertz of electromagnetic spectrum in the 216-220 MHz, 1390-1395 MHz, 1427-1429.5 MHz, 1429.5-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz bands, recently reallocated for non-Government use. The licensing plan adopted in this proceeding implements, in part, the Commission's November 1999 Spectrum Policy Statement. The service rules adopted herein establish a flexible

regulatory and licensing framework. The Commission believes that this decision will provide opportunities for new services to utilize this spectrum, thus addressing spectrum scarcity concerns, as well as to promote the delivery of technologically innovative services to the public.

**DATES:** Effective August 19, 2002, except for §§ 27.602 and 90.176 which contains information collection requirements that have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date. Written comments by the public on the proposed and/or modified information collections are due on or before August 19, 2002.

**ADDRESSES:** In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy B. Herman, Federal Communications Commission, Room 1-C804, 445 Twelfth Street, SW., Washington, DC 20554, or via the Internet to [jherman@fcc.gov](mailto:jherman@fcc.gov), and to Edward Springer, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW., Washington, DC 20503 or to [Edward.Springer@omb.eop.gov](mailto:Edward.Springer@omb.eop.gov) via the Internet.

**FOR FURTHER INFORMATION CONTACT:** Zenji Nakazawa or Keith Fickner regarding legal matters, and/or Brian Marenco or Tim Maguire regarding engineering matters via phone at (202) 418-0680, via TTY (202) 418-7233, or via e-mail at [znakazaw@fcc.gov](mailto:znakazaw@fcc.gov), [kfickner@fcc.gov](mailto:kfickner@fcc.gov), [bmarenco@fcc.gov](mailto:bmarenco@fcc.gov) or [tmaguire@fcc.gov](mailto:tmaguire@fcc.gov), respectively, Wireless Telecommunications Bureau, Federal Communications Commission, Washington, DC 20554.

### Paperwork Reduction Analysis

1. This *Report and Order* contains either a new or modified information collection. As part of the Commission's continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on revision to the information collections contained in the *Report and Order* as required by the Paperwork Reduction Act of 1995. Public and agency comments are due August 19, 2002. Comments should address:

- 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.
- The accuracy of the Commission's burden estimates.

- Ways to enhance the quality, utility, and clarity of the information collected.
- 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.

Written comments by the public on the proposed and/or modified information collections are due 60 days after the date of publication in the **Federal Register**. Written comments must be submitted by the OMB on the proposed and/or modified information collections on or before 120 days after the date of publication in the **Federal Register**. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-445 12th Street, SW, Washington, DC 20554, or via the Internet to [jherman@fcc.gov](mailto:jherman@fcc.gov), and to Ed Springer, OMB Desk Officer, Room 10236 New Executive Office Building, 725 Seventeenth Street, NW., Washington, DC 20503, or to [Edward.Springer@omb.eop.gov](mailto:Edward.Springer@omb.eop.gov) via the Internet.

*OMB Control No.:* 3060-0783.

*Title:* 90.176 Coordinator notification requirements on frequencies below 512 MHz, at 764-776/794-806 MHz, or at 1427-1432 MHz.

*Form No:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Frequency of Response:* On occasion.

*Total Annual Burden:* 2925.

*Total Annual Cost:* 0.

*Needs and Uses:* This Rule is necessary to require each Private Land Mobile frequency coordinator to provide, within one business day, a listing of their frequency recommendations to all other frequency coordinators in their respective pools, and, if necessary, an engineering analysis.

*OMB Control No.:* 3060-xxxx.

*Title:* 27.602 Guard Band Manager agreements.

*Form No:* N/A.

*Type of Review:* New.

*Frequency of Response:* On occasion.

*Total Annual Burden:* 216.

*Total Annual Cost:* 0.

*Needs and Uses:* This rule is necessary for Guard Band Managers to maintain their written agreements with spectrum users at their principal place of business, and retain such records for at least two years after the date such agreements expire. Such records need to be kept current and be made available upon request for inspection by the Commission or its representatives.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's Report and Order, FCC 02-152, adopted on May 16, 2002 and released on May 24, 2002. The full text of this document including the chart summary of the band 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) via the Internet. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365.

2. In this *Report and Order*, we make the following major determinations regarding the subject bands:

- Assign the 1390-1392 MHz band by Major Economic Areas (MEAs), the paired 1392-1395 MHz and 1432-1435 MHz bands by Economic Area Groups (EAGs), the 1670-1675 MHz and the 2385-2390 MHz bands on a single, nationwide basis, and the 1429.5-1432 MHz band on a site-by-site basis with frequency coordination.

- Permit open eligibility for initial licenses assigned by geographic area licensing in the paired 1392-1395 MHz and 1432-1435 MHz bands and in the unpaired 1390-1392 MHz, 1670-1675 MHz, and the 2385-2390 MHz bands. Adopt technical standards that are both consistent with our part 27 rules and provide licensees flexibility.

- License telemetry on a primary basis in the 1429.5-1432 MHz band and on a secondary basis in the 217-220 MHz and 1427-1429.5 MHz bands using a frequency coordinated site-by-site approach consistent with the technical specifications provided for telemetry operations under our part 90 rules, as modified herein.

- Adopt our proposed framework for a ten-year license term from the date of grant in the paired 1392-1395 MHz and 1432-1435 MHz bands and in the unpaired 1390-1392 MHz, 1670-1675 MHz, and the 2385-2390 MHz bands. Require licensees to demonstrate that they are providing substantial service when they file their renewal application.

- Allow licensees in the paired 1392-1395 MHz and 1432-1435 MHz bands and in the unpaired 1390-1392 MHz, 1670-1675 MHz, and the 2385-2390 MHz bands to partition and/or disaggregate their licenses.

- Apply the general competitive bidding rules set forth in part 1, subpart Q, of the Commission's Rules to the paired 1392–1395 and 1432–1435 MHz bands and in the unpaired 1390–1392 MHz, 1670–1675 MHz, and the 2385–2390 MHz bands. Adopt small business size standards for these bands, but decline to adopt a public safety bidding credit.

- Require non-Government users to file an application on the Universal Licensing System (ULS) requesting Frequency Assignment Subcommittee (FAS) coordination of fixed sites and mobile operations within the protection radii of co-primary Government incumbents. We specify that geographic area licensees are responsible for determining whether a particular operation requires FAS approval. We also clarify that a licensee may request coordination of multiple fixed and mobile stations via a single application. Finally, we indicate that users of the Low Power Radio Services (LPRS) are not required to coordinate with FAS.

- Hold that radioastronomy, radiosondes, and the Earth Exploration Satellite Service operations will be protected by out-of-band emission limits.

- Establish coordination procedures for licensees in the 2385–2390 MHz band operating near non-Government aeronautical flight-test telemetry sites and interim coordination procedures for terrestrial licenses along the Canadian and Mexican borders.

- Implement the band “flip” portion of the AHA-Itron Joint Agreement and switch the primary allocation between Wireless Medical Telemetry Service (WMTS) in the 1427–1429.5 MHz band and Telemetry in the 1429.5–1432 MHz band, in seven defined geographic areas.

- Limit the field strength telemetry in the 1427–1432 MHz band may radiate—into the WMTS portion of the band—to a measured or predicted field strength of 150 uV/m at the site of any WMTS operation.

- Limit the field strength that facilities in the 1392–1395 MHz band may radiate—into the WMTS band at 1395–1400 MHz—to a measured or predicted field strength of 150 uV/m at the site of any WMTS operation.

### I. Final Regulatory Flexibility Analysis

3. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making* 67 FR 7113, February 15, 2002, (*Service Rules Notice*). The Commission sought written public comment on the proposals in the *Service Rules Notice*, including

comment on the IRFA. The comments received are discussed further. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

#### *Need for, and Objectives of, the Report and Order*

4. In this Report and Order, we adopt rules for the licensing and operation of fixed and mobile services in the 216–220 MHz, 1390–1395 MHz, 1427–1429.5 MHz, 1429.5–1432 MHz, 1432–1435 MHz, 1670–1675 MHz and 2385–2390 MHz bands, pursuant to the provisions of the Communications Act of 1934, as amended, the Omnibus Budget Reconciliation Act of 1993 (OBRA–93), and the Balanced Budget Act of 1997 (BBA–97). These seven frequency bands have a variety of continuing Government protection requirements and incumbent Government and non-Government uses. Despite these constraints and the relatively narrow bandwidth contained in each of the bands, we believe that the rules adopted herein will foster a variety of potential applications in both new and existing services. The transfer of these bands to non-Government use should enable the development of new technologies and services, provide additional spectrum relief for congested private land mobile frequencies, and fulfill our obligations as mandated by Congress to assign this spectrum for non-Government use.

5. The *Report and Order* also establishes competitive bidding rules and small business definitions for the unpaired 1390–1392 MHz, 1670–1675 MHz, and 2385–2390 MHz bands, and the paired 1392–1395 MHz and 1432–1435 MHz bands similar to those applied to the WCS 2.3 GHz band and the 700 MHz Guard Bands. Consistent with the Commission's responsibility under Section 309(j) to promote opportunities for, and disseminate licenses to, a wide variety of applicants, the *Report and Order* adopts small business size standards and bidding preferences for qualifying bidders that will provide such bidders with opportunities to compete successfully against large, well-financed entities. Specifically, with respect to the aforementioned bands, we will define a “small business” as any entity with average annual gross revenues for the three preceding years not exceeding \$40 million, and a “very small business” as any entity with average annual gross revenues for the three preceding years not exceeding \$15 million. Correspondingly, we will adopt a bidding credit of 15 percent for “small businesses” and a bidding credit of 25 percent for “very small businesses.” This bidding credit structure is

consistent with our standard schedule of bidding credits, which may be found at § 1.2110(f)(2) of the Commission's rules. All of the commenters addressing this issue support our proposal to adopt the two small business size standards that the Commission adopted for the WCS 2.3 GHz band and the 700 MHz Guard Bands. As we noted in the *Service Rules Notice*, the capital requirements and characteristics of the services proposed in the aforementioned bands are comparable to those found in the WCS 2.3 GHz band and 700 MHz Guard Bands. Consequently, as with the WCS 2.3 GHz band and 700 MHz Guard Bands, we believe that these two size standards will provide a variety of businesses with the opportunity to participate in the auction of licenses for this spectrum and will afford such licensees, who may have varying capital costs, substantial flexibility for the provision of services. The Commission has long recognized that bidding preferences for qualifying bidders provides such bidders with an opportunity to compete successfully against large, well-financed entities. The Commission also has found that the use of tiered or graduated small business definitions is useful in furthering our mandate under Section 309(j) to promote opportunities for and disseminate licenses to a wide variety of applicants.

#### *Summary of Significant Issues Raised by Public Comments in Response to the IRFA*

6. Although no comments were submitted specifically in response to the IRFA, some commenters expressed concern with our proposals to license new services on a wide geographic area basis. For example, the National Telecommunications Cooperative Association (NTCA) and the Rural Telecommunications Group (RTG) support smaller geographic area licensing, rather than the use of nationwide or very large economic areas, in order to promote smaller carriers and rural telecommunications development. We have considered the effect of these rule changes on small entities and considered other alternatives. We expect, however, that our actions will benefit all entities subject to these rule changes, including small entities.

7. The policies and rules adopted in this *Report and Order* affect all small entities that seek to acquire licenses in the unpaired 1390–1392 MHz, 1670–1675 MHz, and 2385–2390 MHz bands, and the paired 1392–1395 MHz and 1432–1435 MHz bands. As noted above, the Commission has adopted small

business size standards that define a "small business" as any entity with average annual gross revenues for the three preceding years not exceeding \$40 million and a "very small business" as any entity with average annual gross revenues for the three preceding years not exceeding \$15 million. The Small Business Administration (SBA) has approved these small business size standards for the aforementioned bands. However, the Commission cannot know until the auction begins how many entities will seek small or very small business status. The Commission will allow partitioning and disaggregation, yet it cannot determine in advance how many licensees will partition their license areas or disaggregate their spectrum blocks. In view of our lack of knowledge of these factors, it is therefore assumed that, for purposes of our evaluations and conclusions in the FRFA, all of the prospective licenses are small entities, as that term is defined by the SBA or the Commission's small business definitions for these bands.

*Description and Estimate of the Number of Small Entities to Which the Rules Will Apply*

8. 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 defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under Section 3 of 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 SBA. 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.

9. *Wireless Service Providers.* The SBA has developed a definition for small business within the two separate

categories of (1) Cellular and (2) Other Wireless Telecommunications or Paging. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's *Telephone Trends Report* data, 1,495 companies reported that they were engaged in the provision of wireless service. Of these 1,495 companies, 989 reported that they have 1,500 or fewer employees and 506 reported that, alone or in combination with affiliates, they have more than 1,500 employees. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireless service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 989 or fewer small wireless service providers that may be affected by the rules. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the rules adopted herein. Except as noted, these services are associated with the above SBA small business size standard.

10. With respect to the 1390–1392 MHz band, the Commission will award a single 2 MHz license in each of fifty-two Major Economic Areas (MEAs). For the 1670–1675 MHz, and 2385–2390 MHz bands, the Commission will award a single nationwide license in each band. For the paired 1392–1395 MHz and 1432–1435 MHz bands, the Commission will award a pair of 1.5 MHz licenses in each of six Economic Area Groupings (EAGs). For the 1432–1435 MHz band, the Commission will award licenses on a site by-site basis. The Commission does not yet know how many applicants or licensees in any of these bands will be small entities.

11. Existing services in other bands include entities that might be affected by the rules, either as existing licensees or potential applicants or licensees. Incumbent services in the 1427–1429.5 MHz and 1429.5–1432 MHz bands include wireless medical telemetry (WMTS) and general telemetry.

12. *Telemetry.* Incumbent non-medical telemetry operators in the 1427–1429.5 MHz and 1429.5–1432 MHz bands include Itron, Inc., Pueblo Service Company of Colorado, E Prime, Inc., and large manufacturers such as Deere and Company, Caterpillar, and General Dynamics. None of these licensees are likely to be small businesses. Itron, Inc. is the primary user of the 1427–1429.5 MHz and 1429.5–1432 MHz bands. Itron, Inc., with an investment of \$100 million in

equipment development, is not likely to be a small business. One licensee, Zytex, a manufacturer of high-speed telemetry systems, may be a small business. The Commission does not yet know how many applicants or licensees in these bands will be small entities.

13. *WMTS.* Users of medical telemetry are hospitals and medical care facilities, some of which are likely to be small businesses. The broad category of "Hospitals" consists of the following categories and the following small business providers with Annual Receipts of \$29 million or less: "General Medical and Surgical Hospitals," "Psychiatric and Substance Abuse Hospitals," and "Specialty Hospitals." For all these health care providers, census data indicate that there is a combined total of 330 firms that operated in 1997, of which 237 or fewer had revenues of less than \$25 million. An additional 45 firms had annual receipts of \$25 million to \$49.99 million. We therefore estimate that most Hospitals are small, given SBA's size categories.

14. The broad category of "Nursing and Residential Care Facilities" consists of the following categories and the following small business size standards. The category of "Nursing and Residential Care Facilities with Annual Receipts of \$6 million or less" consists of: Residential Mental Health and Substance Abuse Facilities, Homes for the Elderly, and Other Residential Care Facilities. The category of "Nursing and Residential Care Facilities with Annual Receipts of \$8.5 million or less" consists of Residential Mental Retardation Facilities. The category of "Nursing and Residential Care Facilities with Annual Receipts of less than \$11.5 million" consists of: Nursing Care Facilities and Continuing Care Retirement Communities. For all of these health care providers, census data indicate that there is a combined total of 18,011 firms that operated in 1997. Of these, 16,165 or fewer firms had annual receipts of below \$5 million. In addition, 1,205 firms had annual receipts of \$5 million to \$9.99 million, and 450 firms had receipts of \$10 million to \$24.99 million. We therefore estimate that a great majority of Nursing and Residential Care Facilities are small, given SBA's size categories.

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

15. Applicants for licenses to provide terrestrial fixed and mobile services in the paired 1392–1395 MHz and 1432–1435 MHz bands, and the unpaired 1390–1392 MHz, 1670–1675 MHz, and

2385–2390 MHz bands will be required to submit short-form auction applications using FCC Form 175. In addition, winning bidders must submit long-form license applications through the Universal Licensing System using FCC Form 601, FCC Ownership Disclosure Information for the Wireless Telecommunications Services using FCC Form 602, and other appropriate forms. Licensees will also be required to apply for an individual station license by filing FCC Form 601 for those individual stations that (1) require submission of an Environmental Assessment under § 1.1307 of our Rules; (2) require international coordination; (3) would operate in the quiet zones listed in § 1.924 of our Rules; or (4) require coordination with the Frequency Assignment Subcommittee (FAS) of the Interdepartment Radio Advisory Committee (IRAC).

*Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

16. The RFA requires an agency to describe any significant 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 or reporting requirements under the rule for 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 small entities.

17. Regarding our decision to apply generally our part 27 rules to the unpaired 1390–1392 MHz, 1670–1675 MHz, and 2385–2390 MHz bands, and to the paired 1392–1395 MHz and 1432–1435 MHz bands, we do not anticipate any adverse impact on small entities. The flexibility afforded by part 27 of our rules should benefit large and small entities alike, because licensees will be in a stronger position to meet changes in demand for services. Under this approach, all licensees will have the freedom to determine the services to be offered and the technologies to be used in providing those services. An alternative to this decision would have been to determine specific allowable services in each frequency band and apply the applicable rule part to the licensing of such services. This approach, however, would be unsatisfactory because it is too restrictive, and in any event, it is unclear that this would benefit small

entities more than the flexible licensing approach we have decided upon today.

18. Regarding our decision to license the unpaired 1390–1392 MHz, 1670–1675 MHz, and 2385–2390 MHz bands and the paired 1392–1395 MHz and 1432–1435 MHz bands by geographic area, we anticipate that, on balance small entities will benefit from this licensing approach. A geographic licensing approach in these bands is consistent with the Commission's overall spectrum management goals in that it allows licensees to quickly respond to market demand. Small entities that acquire spectrum licensed on a geographic area basis, will benefit from such flexibility. Moreover, we have attempted to strike a balance here by using varying sizes of geographic areas. For example, small entities may be more interested in spectrum licensed by smaller geographic areas rather than in spectrum licensed on a nationwide basis. Consequently, we have decided to license the 1390–1392 MHz band using fifty-two MEAs, and license the paired 1392–1395 MHz and 1432–1435 MHz bands using six EAGs. Combined with our decision to employ flexible use licensing, which includes band manager licensing (see discussion below), small entities should be able to acquire spectrum that fits their individual needs. An alternative to our decision to use geographic areas to license the subject frequency bands would have been to employ a site-by-site licensing approach. Site-by-site licensing, however, would be an inefficient licensing method for the unpaired 1390–1392 MHz, 1670–1675 MHz, and 2385–2390 MHz bands and the paired 1392–1395 MHz and 1432–1435 MHz bands, because it would cause a greater strain on Commission resources and have less flexibility for licensees.

19. Regarding our decision to license secondary telemetry in the 217–220 MHz and 1427–1429.5 MHz bands and primary telemetry in the 1429.5–1432 MHz band on a site-by-site basis, we anticipate no adverse impact on small entities. In fact, our approach here is particularly beneficial for small entities that have more localized spectrum needs, because such entities can apply for just the site that is needed for their communications systems. An alternative to this approach would have been to license telemetry in these bands on a geographic area basis. This is unsatisfactory, however, because, inter alia, of potential harmful interference issues that a geographic overlay would entail.

20. Regarding our decision to license the 1390–1392 MHz band using a single 2 MHz block in each MEA, we do not

anticipate any adverse impact on small entities. Our approach here provides maximum flexibility for both small and large entities to offer a wide range of communications services. In addition, in those cases in which less than 2 MHz is required, band managers would be able to coordinate spectrum under their control so as to maximize its use. An alternative to this decision would have been to divide the spectrum available in the 1390–1392 MHz band into two or more blocks. While this might promote diversity, it makes more sense to license this band using a single 2 MHz spectrum block in order to allow both small and large entities the opportunity to offer a wider range of services and to quickly meet changes in market demand.

21. Regarding our decision to license the paired 1392–1395 MHz and 1432–1435 MHz bands using two pairs of 1.5 MHz spectrum blocks, we do not anticipate any adverse impact to small entities. Our approach here promotes competition by allowing more than one licensee in each market and thus offers a greater opportunity for small entities to acquire spectrum. An alternative to this approach would have been to license these bands using a single pair of 3 MHz spectrum blocks. This approach, however, is less desirable than the one we adopt today because of the competition and diversity benefits realized by dividing the spectrum into two blocks.

22. Regarding our decision to adopt the AHA-Itron Joint Agreement's band flip proposal, we do not anticipate any adverse impact to small entities. Our implementation of this private agreement should benefit small and large entities by allowing telemetry and WMTS to operate where such services are needed the most. An alternative to this approach would have been to keep telemetry primary only in the 1429.5–1432 MHz band and WMTS primary only in the 1427–1429.5 MHz band. However, allowing telemetry and WMTS to operate in the seven geographic "carve-out" areas in each other's primary allocation, allows greater flexibility in operations while avoiding harmful interference. The geographic "carve-out" areas refer to those service areas specifically designated in the AHA-Itron Joint Agreement where telemetry may operate on a primary basis in the 1427–1429 MHz band and 1431.5–1432 MHz band; and where WMTS may operate on a primary basis in the 1429–1431.5 MHz band.

23. Regarding our decision to license the 1670–1675 MHz band using a single 5 MHz spectrum block, we do not

believe that there will be any adverse impact on small entities. Although dividing this spectrum into two or more blocks might offer more opportunities for small entities to compete for a license, we agree with the commenters that a single 5 MHz spectrum block will promote the development of new technologies and services and therefore, promotes the public interest.

24. Regarding our decision to license the 2385–2390 MHz band using a single 5 MHz spectrum block, we do not believe that there will be any adverse impact on small entities. Although dividing this spectrum into two or more blocks might offer more opportunities for small entities to compete for a license, this is outweighed by the benefits that a larger spectrum block provides in terms of flexibility. In addition, we note that no commenters, including small entities, proposed an alternate spectrum block size for this frequency band.

25. Regarding our decision to employ a flexible use licensing scheme for the unpaired 1390–1392 MHz, 1670–1675 MHz, and 2385–2390 MHz bands and the paired 1392–1394 MHz and 1432–1435 MHz bands (see paras. 38–39, *supra*) we do not anticipate any adverse impact on small entities. In fact, this approach should generally provide small entities with greater opportunities to acquire spectrum specifically tailored for their needs. For example, through a band manager licensee, small entities can obtain spectrum rights that are suited for operations of a local nature, rather than obtaining an entire geographic area that would result in less efficient spectrum use. An alternative to this approach would have been to prohibit band managers from being licensed in these frequency bands. We find that this would be unsatisfactory, however, because the results would have been less efficient spectrum markets and less spectrum access for small entities.

26. Regarding our decision to require a showing of “substantial service” at license renewal time, (see paras. 72–73, *supra*) we do not anticipate any adverse impact on small entities. An alternative would have been to adopt a “minimal coverage” requirement. We believe, however, that the substantial service standard is better because it will provide both small and large entities the flexibility to determine how to best implement their business plans based on actual service to end users.

27. Regarding our decision to allow licensees in the unpaired 1390–1392 MHz, 1670–1675 MHz, and 2385–2390 MHz bands and the paired 1392–1395 MHz and 1432–1435 MHz bands to

partition and/or disaggregate their spectrum, (see paras. 80–83, *supra*) we do not anticipate any adverse impact on small entities. In fact, allowing licensees to partition/disaggregate their licensed spectrum should improve opportunities for small entities to acquire spectrum for their particular needs. An alternative to this approach would have been to prohibit partitioning/disaggregation, but we received no comments proposing such a prohibition.

28. Regarding our decision to require frequency coordination for primary and secondary telemetry operations in the 217–220 MHz, 1427–1429.5 MHz and 1429.5–1432 MHz bands (see paras. 88–98, *supra*) we do not anticipate any adverse impact on small entities. Although there are certain costs associated with filing an application through an FCC-certified frequency coordinator, on balance, the benefits of frequency coordination, especially the avoidance of harmful interference, outweigh any costs. An alternative to this approach would have been to not require frequency coordination, but this is unacceptable because of high congestion, primary incumbent operations that must be protected, and the fact that licensees in these bands must share frequencies.

## II. Ordering Clause

1. Pursuant to Sections 1, 4(i), 301, 302, 303(f) and (r), 309(j) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 301, 302, 303(f) and (r), 309(j) and 332, this *Report and Order* is adopted.

2. Parts 1, 2, 27, 90, and 95 of the Commission’s Rules are amended as specified in Appendix E, effective 60 days after publication in the **Federal Register**. Information collections contained in §§ 27.106 and 90.176 will be effective upon OMB approval.

3. The Petition for Rulemaking filed by Data Flow Systems, *is granted, in part, and denied in part* as described herein.

4. The Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this report and order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

## List of Subjects

### 47 CFR Part 1

Administrative practice and procedure, Radio.

### 47 CFR Part 2

Communications equipment, Radio.

### 47 CFR Part 27

Communications common carriers, Radio.

### 47 CFR Part 87

Communications equipment, Radio, Reporting and recordkeeping requirements.

### 47 CFR Part 90

Communications equipment, Radio, Reporting and recordkeeping requirements.

### 47 CFR Part 95

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

## Rule Changes

For the reasons discussed in the preamble the Federal Communications Commission proposes to amend 47 CFR parts 1, 2, 27, 87, 90 and 95 as follows:

## PART 1—PRACTICE AND PROCEDURE

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

**Authority:** 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309, and 325(e) unless otherwise noted.

2. Section 1.924(f) is revised to read as follows:

### § 1.924 Quiet zones.

\* \* \* \* \*

(f) *GOES*. The requirements of this paragraph are intended to minimize harmful interference to Geostationary Operational Environmental Satellite earth stations receiving in the band 1670–1675 MHz, which are located at Wallops Island, Virginia; Fairbanks, Alaska; and Greenbelt, Maryland.

(1) Applicants and licensees planning to construct and operate a new or modified station within the area bounded by a circle with a radius of 100 kilometers (62.1 miles) that is centered on 37°56’47” N, 75°27’37” W (Wallops Island) or 64°58’36” N, 147°31’03” W (Fairbanks) or within the area bounded by a circle with a radius of 65 kilometers (40.4 miles) that is centered on 39°00’02” N, 76°50’31” W (Greenbelt) must notify the National Oceanic and Atmospheric Administration (NOAA) of the proposed operation. For this purpose, NOAA maintains the GOES coordination web page at <http://www.osd.noaa.gov/radio/frequency.htm>, which provides the technical parameters of the earth

stations and the point-of-contact for the notification. The notification shall include the following information: requested frequency, geographical coordinates of the antenna location, antenna height above mean sea level, antenna directivity, emission type, equivalent isotropically radiated power, antenna make and model, and transmitter make and model.

(2) *Protection.* (i) *Wallops Island and Fairbanks.* Licensees are required to protect the Wallops Island and Fairbanks sites at all times.

(ii) *Greenbelt.* Licensees are required to protect the Greenbelt site only when it is active. Licensees should coordinate

appropriate procedures directly with NOAA for receiving notification of times when this site is active.

(3) When an application for authority to operate a station is filed with the FCC, the notification required in paragraph (f)(1) of this section should be sent at the same time. The application must state the date that notification in accordance with paragraph (f)(1) of this section was made. After receipt of such an application, the FCC will allow a period of 20 days for comments or objections in response to the notification.

(4) If an objection is received during the 20-day period from NOAA, the FCC

will, after consideration of the record, take whatever action is deemed appropriate.

\* \* \* \* \*

3. Section 1.1307(b)(1) is amended by revising the entry of “Wireless Communications Service (part 27)” to read as follows:

**§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assignments (EAs) must be prepared.**

\* \* \* \* \*

(b) \* \* \*

TABLE 1.—TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION

Service (Title 47 CFR Rule Part)	Evaluation required if . . .
* * * * *	* * * * *
Wireless Communications Service (Part 27) .....	(1) For the 1390–1392 MHz, 1392–1395 MHz, 1432–1435 MHz 1670–1675 MHz and 2385–2390 MHz bands: <i>Non-building-mounted antennas:</i> height above ground level to lowest point of antenna <10m and total power of all channels > 2000 W ERP (3280 W EIRP). <i>Building-mounted antennas:</i> total power of all channels >2000 W ERP (3280 W EIRP). (2) For the 746–764 MHz, 776–794 MHz, 2305–2320 MHz, and 2345–2360 MHz bands. Total power of all channels >1000 W ERP (1640 W EIRP).
* * * * *	* * * * *

**PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS**

4. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

**§ 2.106 Table of Frequency Allocations.**

5. In § 2.106 in the Table of Frequency Allocations, footnotes US74, US350 and US362 are revised to read as follows:

\* \* \* \* \*

UNITED STATES (US) FOOTNOTES

\* \* \* \* \*

<sup>US74</sup>In the bands 25.55–25.67, 73.0–74.6, 406.1–410.0, 608–614, 1400–1427, 1660.5–1670.0, 2690–2700 and 4990–5000 MHz and in the bands 10.68–10.7, 15.35–15.4, 23.6–24.0, 31.3–31.5, 86–92, 105–116 and 217–231 GHz, the radio astronomy service shall be protected from extraband radiation only to the extent that such radiation exceeds the level which would be present if the offending station were operating in compliance with the technical standards or criteria applicable to the service in which it operates. Radio astronomy observations in these bands are performed at the locations listed in US311.

\* \* \* \* \*

<sup>US350</sup>In the bands 608–614 MHz and 1395–1400 MHz the Government and non-Government land mobile service is limited to medical telemetry and medical telecommand operations. Availability and use of medical telemetry and telecommand and non-medical telemetry and telecommand in the band 1427–1432 MHz are described further:

Location (see §§ 90.259(b)(4) and 95.630(b) of this chapter for a detailed description)	1427–1429 MHz 1431.5–1432 MHz	1429–1431.5 MHz
Austin/Georgetown, Texas .....	Non-Government land mobile service is limited to telemetry and telecommand operations.	Government and non-Government land mobile service is limited to medical telemetry and telecommand operations.
Battle Creek, Michigan .....		
Detroit, Michigan .....		
Pittsburgh, Pennsylvania .....		
Richmond/Norfolk, Virginia .....		
Spokane, Washington .....	Non-Government telemetry and telecommand use is permitted on a secondary basis.	
Washington, DC metropolitan area .....		

Location (see §§ 90.259(b)(4) and 95.630(b) of this chapter for a detailed description)	1427–1429 MHz 1431.5–1432 MHz	1429–1431.5 MHz
Rest of U.S. ....	Government and non-Government land mobile service is limited to medical telemetry and telecommand operations. Non-Government telemetry and telecommand use is permitted on a secondary basis.	Non-Government land mobile service is limited to telemetry and telecommand operations.
* * *	* * *	* *

US362 The band 1670–1675 MHz is allocated to the meteorological-satellite service (space-to-Earth) on a primary basis for Government use. Earth station use of this allocation is limited to Wallops Island, VA (37°56'47" N, 75°27'37" W), Fairbanks, AK (64°58'36" N, 147°31'03" W), and Greenbelt, MD (39°00'02" N, 76°50'31" W). Applicants for non-Government stations within 100 kilometers of the Wallops Island or Fairbanks coordinates and within 65 kilometers of the Greenbelt coordinates shall notify NOAA in accordance with the procedures specified in 47 CFR 1.924.

**PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES**

6. The authority citation for part 27 continues to read as follows:

**Authority:** 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337, unless otherwise noted.

7. Section 27.1 is amended by adding paragraphs (b)(4) through (b)(7) to read as follows:

**§ 27.1 Basis and purpose.**

\* \* \* \* \*

(b) \* \* \*

(4) 1390–1392 MHz.

(5) 1392–1395 MHz and 1432–1435 MHz.

(6) 1670–1675 MHz.

(7) 2385–2390 MHz.

8. Section 27.4 is amended by revising the definition of “Affiliate” and by adding a definition in alphabetical order to read as follows:

**§ 27.4 Terms and definitions.**

\* \* \* \* \*

*Affiliate.* This term shall have the same meaning as that for “affiliate” in part 1, § 1.2110(b)(5) of this chapter.

\* \* \* \* \*

*Band Manager.* The term *Band Manager* refers to a licensee in the paired 1392–1395 MHz and 1432–1435 MHz bands and the unpaired 1390–1392 MHz, 1670–1675 MHz and 2385–2390 MHz bands that functions solely as a spectrum broker by subdividing its licensed spectrum and making it available to system operators or directly to end users for fixed or mobile communications consistent with Commission Rules. A *Band Manager* is directly responsible for any interference or misuse of its licensed frequency arising from its use by such non-licensed entities.

\* \* \* \* \*

9. Section 27.5 is amended by adding paragraphs (d) through (g) to read as follows:

**§ 27.5 Frequencies.**

\* \* \* \* \*

(d) *1390–1392 MHz band.* The 1390–1392 MHz band is available for assignment on a Major Economic Area basis.

(e) *The paired 1392–1395 and 1432–1435 MHz bands.* The paired 1392–1395 MHz and 1432–1435 MHz bands are available for assignment on an Economic Area Grouping basis as follows: Block A: 1392–1393.5 MHz and 1432–1433.5 MHz; and Block B: 1393.5–1395 MHz and 1433.5–1435 MHz.

(f) *1670–1675 MHz band.* The 1670–1675 MHz band is available for assignment on a nationwide basis.

(g) *2385–2390 MHz band.* The 2385–2390 MHz band is available for assignment on a nationwide basis.

10. Section 27.6 is amended by adding paragraphs (d) through (g) to read as follows:

**§ 27.6 Service areas.**

\* \* \* \* \*

(d) *1390–1392 MHz band.* Service areas for the 1390–1392 MHz band is based on Major Economic Areas (MEAs), as defined in paragraphs (a)(1) and (a)(2) of this section.

(e) *The paired 1392–1395 and 1432–1435 MHz bands.* Service areas for the paired 1392–1395 and 1432–1435 MHz bands are as follows. Service areas for Block A in the 1392–1393.5 MHz and 1432–1433.5 MHz bands and Block B in the 1393.5–1395 MHz and 1433.5–1435 MHz bands are based on Economic Area Groupings (EAGs) as defined in paragraph (b)(2) of this section.

(f) *1670–1675 MHz band.* Service areas for the 1670–1675 MHz band are available on a nationwide basis.

(g) *2385–2390 MHz band.* Service areas for the 2385–2390 MHz band are available on a nationwide basis.

11. Section 27.10 is amended by revising the introductory text to read as follows:

**§ 27.10 Regulatory status.**

Except with respect to *Band Manager* licenses and *Guard Band Manager* licenses, which are subject to subpart G of this part, the following rules apply concerning the regulatory status of licensees in the frequency bands specified in § 27.5.

\* \* \* \* \*

12. Section 27.11 is amended by adding paragraphs (e) through (h) to read as follows:

**§ 27.11 Initial authorization.**

\* \* \* \* \*

(e) *1390–1392 MHz band.* Initial authorizations for the 1390–1392 MHz band shall be for 2 megahertz of spectrum in accordance with § 27.5(c). Authorizations will be based on Major Economic Areas (MEAs), as specified in § 27.6(c).

(f) *The paired 1392–1395 MHz and 1432–1435 MHz bands.* Initial authorizations for the paired 1392–1395 MHz and 1432–1435 MHz bands shall be for 3 megahertz of paired spectrum in accordance with § 27.5(d). Authorization for Blocks A and B will be based on Economic Areas Groupings (EAGs), as specified in § 27.6(d).

(g) *1670–1675 MHz band.* Initial authorizations for the 1670–1675 MHz band shall be for 5 megahertz of spectrum in accordance with § 27.5(e). Authorizations will be on a nationwide basis.

(h) *2385–2390 MHz band.* Initial authorizations for the 2385–2390 MHz band shall be for 5 megahertz of spectrum in accordance with § 27.5(f). Authorizations will be on a nationwide basis.

13. Section 27.12 is revised to read as follows:

**§ 27.12 Eligibility.**

(a) Except as provided in § 27.604, any entity other than those precluded by section 310 of the Communications Act of 1934, as amended, 47 U.S.C. 310, is eligible to hold a license under this part.

(b) *Band Manager licenses.* For the 1392–1395 MHz, 1670–1675 MHz, and 2385–2390 MHz bands and the paired 1392–1395 MHz and 1432–1435 MHz bands, applicants applying for an initial license may elect to operate as a Band Manager, subject to the rules governing Guard Band Managers under subpart G of part 27, provided however, that the following rules do not apply to Band Managers:

(1) The prohibition in §§ 27.601(a) and (b) against employing a cellular system architecture;

(2) The requirement in § 27.601(d)(1) to notify Public Safety frequency coordinators;

(3) The requirement in § 27.603(c) to lease the predominant amount of its spectrum to non-affiliates;

(4) The prohibition in § 27.604 against a single applicant becoming the winning bidder of both blocks A and B in a single geographic service area; and

(5) The requirement in § 27.605 that any entity that acquires a portion of a Guard Band Manager's spectrum or geographic area through partitioning or disaggregation must also act as a band manager.

14. Section 27.13 is amended by adding paragraphs (c) through (f) to read as follows:

**§ 27.13 License period.**

\* \* \* \* \*

(c) *1390–1392 MHz band.* Initial authorizations for the 1390–1392 MHz band will have a term not to exceed ten years from the date of initial issuance or renewal.

(d) *The paired 1392–1395 and 1432–1435 MHz bands.* Initial WCS authorizations for the paired 1392–1395 MHz and 1432–1435 MHz bands will have a term not to exceed ten years from the date of initial issuance or renewal.

(e) *1670–1675 MHz band.* Initial authorizations for the 1670–1675 MHz band will have a term not to exceed ten years from the date of initial issuance or renewal.

(f) *2385–2390 MHz band.* Initial authorizations for the 2385–2390 MHz band will have a term not to exceed ten years from the date of initial issuance or renewal.

15. Section 27.50 is amended by redesignating paragraph (d) as paragraph (g) and by adding new paragraphs (d), (e), and (f) to read as follows:

**§ 27.50 Power and antenna height limits.**

\* \* \* \* \*

(d) The following power limits apply to the paired 1392–1395 MHz and 1432–1435 MHz bands as well as the unpaired 1390–1392 MHz band (1.4 GHz band):

(1) Fixed stations transmitting in the 1390–1392 MHz and 1432–1435 MHz bands are limited to 2000 watts EIRP peak power. Fixed stations transmitting in the 1392–1395 MHz band are limited to 100 watts EIRP peak power.

(2) Mobile stations transmitting in the 1390–1392 MHz and 1432–1435 MHz bands are limited to 4 watts EIRP peak power. Mobile stations transmitting in the 1392–1395 MHz band are limited to 1 watt EIRP peak power.

(e) The following power limits apply to the 1670–1675 MHz band:

(1) Fixed and base stations are limited to 2000 watts EIRP peak power.

(2) Mobile stations are limited to 4 watts EIRP peak power.

(f) The following power limits apply to the 2385–2390 MHz band:

(1) Fixed and base stations are limited to 2000 watts EIRP peak power.

(2) Mobile and aeronautical mobile stations are limited to 4 watts EIRP peak power.

\* \* \* \* \*

16. Section 27.53 is amended by adding paragraphs (h) through (k) to read as follows:

**§ 27.53 Emission limits.**

\* \* \* \* \*

(h) For operations in the unpaired 1390–1392 MHz band and the paired 1392–1395 MHz and 1432–1435 MHz bands, the power of any emission outside the licensee's frequency band(s) of operation shall be attenuated below the transmitter power (P) by at least  $43 + 10 \log(P)$  dB. Compliance with these provisions is based on the procedures described in paragraph (a)(4) of this section.

(i) For operations in the 1670–1675 MHz band, the power of any emission outside the licensee's frequency band(s) of operation shall be attenuated below the transmitter power (P) by at least  $43 + 10 \log(P)$  dB. Compliance with these provisions is based on the procedures described in paragraph (a)(4) of this section.

(j) For operations in the 2385–2390 MHz band, the power of any emission outside the licensee's frequency band(s) of operation shall be attenuated below the transmitter power (P) by at least  $43 + 10 \log(P)$  dB. Compliance with these provisions is based on the procedures described in paragraph (a)(4) of this section.

(k) When an emission outside of the authorized bandwidth causes harmful

interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

17. Section 27.55(a) is amended by adding paragraph (a)(3) to read as follows:

**§ 27.55 Field strength limits.**

\* \* \* \* \*

(a) \* \* \*

(3) The paired 1392–1395 MHz and 1432–1435 MHz bands and the unpaired 1390–1392 MHz band (1.4 GHz band): 47 dBuV/m.

\* \* \* \* \*

18. Subpart I is added to read as follows:

**Subpart I—1.4 GHz Band****§ 27.801 Scope.**

This subpart sets out the regulations governing service in the paired 1392–1395 MHz and 1432–1435 MHz bands as well as the unpaired 1390–1392 MHz band (1.4 GHz band).

**§ 27.802 Permissible communications.**

Licensees in the paired 1392–1395 MHz and 1432–1435 MHz bands and unpaired 1390–1392 MHz band are authorized to provide fixed or mobile service, except aeronautical mobile service, subject to the technical requirements of this subpart.

**§ 27.803 Coordination requirements.**

(a) Licensees in the 1.4 GHz band will be issued geographic area licenses in accordance with the service areas listed in § 27.6(d) and (e).

(b) Licensees in the 1.4 GHz Service must file a separate station application with the Commission and obtain an individual station license, prior to construction or operation, of any station:

(1) That requires submission of an Environmental Assessment under part 1, § 1.1307 of this chapter;

(2) That requires international coordination;

(3) That operates in the quiet zones listed in part 1, § 1.924 of this chapter; or

(4) That requires approval of the Frequency Advisory Subcommittee (FAS) of the Interdepartment Radio Advisory Committee (IRAC). Stations that require FAS approval are as follows:

(i) Licensees in the 1390–1392 MHz and 1392–1395 MHz band must receive FAS approval prior to operation of fixed sites or mobile units within the NTIA recommended protection radii of the Government sites listed in footnote US351 of § 2.106 of this chapter.

(ii) Licensees in the 1432–1435 MHz band must receive FAS approval, prior

to operation of fixed sites or mobile units within the NTIA recommended protection radii of the Government sites listed in footnote US361 of § 2.106 of this chapter.

(c) Prior to construction of a station, a licensee in the 1.4 GHz Band must register with the Commission any station antenna structure for which notification to the Federal Aviation Administration is required by part 17 of this chapter.

(d) It is the licensee's responsibility to determine whether an individual station needs referral to the Commission.

(e) The application required in paragraph (b) of this chapter must be filed on the Universal Licensing System.

#### **§ 27.804 Field Strength Limits at WMTS Facility.**

For any operation in the 1392–1395 MHz band, the predicted or measured field strength—into the WMTS band at 1395–1400 MHz—shall not exceed 150 uV/m at the location of any registered WMTS healthcare facility. When performing measurements to determine compliance with this provision, measurement instrumentation employing an average detector and a resolution bandwidth of 1 MHz may be used, provided it accurately represents the true interference potential of the equipment.

#### **§ 27.805 Geographic partitioning and spectrum disaggregation.**

An entity that acquires a portion of a 1.4 GHz band licensee's geographic area or spectrum subject to a geographic partitioning or spectrum disaggregation agreement under § 27.15 must function as a 1.4 GHz band licensee and is subject to the obligations and restrictions on the 1.4 GHz band license as set forth in this subpart.

#### **§ 27.806 1.4 GHz Service licenses subject to competitive bidding.**

Mutually exclusive initial applications for 1.4 GHz Band licenses in the paired 1392–1395 MHz and 1432–1435 MHz bands as well as the unpaired 1390–1392 MHz band are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

#### **§ 27.807 Designated entities.**

(a) Eligibility for small business provisions for 1.4 GHz band licenses in the paired 1392–1395 MHz and 1432–1435 MHz bands and the unpaired 1390–1392 MHz band.

(1) A very small business is an entity that, together with its controlling interests and affiliates, has average

annual gross revenues not exceeding \$15 million for the preceding three years.

(2) A small business is an entity that, together with its controlling interests and affiliates, has average annual gross revenues not exceeding \$40 million for the preceding three years.

(3) A consortium of very small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(1) of this section. A consortium of small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(2) of this section.

(4) For purposes of determining whether an entity meets any of the definitions set forth in paragraphs (a)(1), (a)(2), or (a)(3) of this section, the gross revenues of the entity, its controlling interests and affiliates shall be considered in the manner set forth in § 1.2110(b) and (c) of this chapter.

(b) *Bidding credits.* A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as a small business or a consortium of small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter.

#### **Subpart J—1670–1675 MHz Band**

##### **§ 27.901 Scope.**

This subpart sets out the regulations governing service in the 1670–1675 MHz band (1670–1675 MHz band).

##### **§ 27.902 Permissible communications.**

Licensees in the 1670–1675 MHz band are authorized to provide fixed or mobile service, except aeronautical mobile service, subject to the technical requirements of this subpart.

##### **§ 27.903 Coordination requirements.**

(a) The licensee in the 1670–1675 MHz band will be issued a geographic area license on a nationwide basis in accordance with § 27.6(f).

(b) Licensees in the 1670–1675 MHz band must file a separate station application with the Commission and obtain an individual station license, prior to construction or operation, of any station:

(1) That requires submission of an Environmental Assessment under part 1, § 1.1307 of this chapter;

(2) That requires international coordination;

(3) That operates in the quiet zones listed under part 1, § 1.924 of this chapter.

(c) The application required in paragraph (b) of this section must be filed on the Universal Licensing System.

(d) Prior to construction of a station, a licensee must register with the Commission any station antenna structure for which notification to the Federal Aviation Administration is required by part 17 of this chapter.

(e) It is the licensee's responsibility to determine whether an individual station requires referral to the Commission.

#### **§ 27.904 Geographic partitioning and spectrum disaggregation.**

An entity that acquires a portion of a 1670–1675 MHz band licensee's geographic area or spectrum subject to a geographic partitioning or spectrum disaggregation agreement under § 27.15 must function as a 1670–1675 MHz licensee and is subject to the obligations and restrictions on the 1670–1675 MHz license as set forth in this subpart.

#### **§ 27.905 1670–1675 MHz Service licenses subject to competitive bidding.**

Mutually exclusive initial applications for the 1670–1675 MHz Band license are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

#### **§ 27.906 Designated entities.**

(a) *Eligibility for small business provisions.*

(1) A very small business is an entity that, together with its controlling interests and affiliates, has average annual gross revenues not exceeding \$15 million for the preceding three years.

(2) A small business is an entity that, together with its controlling interests and affiliates, has average annual gross revenues not exceeding \$40 million for the preceding three years.

(3) A consortium of very small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(1) of this section. A consortium of small businesses is a conglomerate organization formed as a joint venture between or among mutually

independent business firms, each of which individually satisfies the definition in paragraph (a)(2) of this section.

(4) For purposes of determining whether an entity meets any of the definitions set forth in paragraphs (a)(1), (a)(2), or (a)(3) of this section, the gross revenues of the entity, its controlling interests and affiliates shall be considered in the manner set forth in § 1.2110(b) and (c) of this chapter.

(b) *Bidding credits.* A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as a small business or a consortium of small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter.

20. Subpart K is added to read as follows:

#### **Subpart K—2385–2390 MHz Band.**

##### **§ 27.1001 Scope.**

This subpart sets out the regulations governing service in the 2385–2390 MHz band (2385–2390 MHz band).

##### **§ 27.1002 Permissible communications.**

Licensees in the 2385–2390 MHz band are authorized to provide fixed or mobile service, including aeronautical mobile, subject to the technical requirements of this subpart.

##### **§ 27.1003 Coordination requirements.**

(a) The licensee in the 2385–2390 MHz band will be issued a geographic area license on a nationwide basis in accordance with § 27.6(g).

(b) The licensee in the 2385–2390 MHz Band must file a separate station application with the Commission and obtain an individual station license, prior to construction or operation, of any station:

(1) That requires submission of an Environmental Assessment under part 1, § 1.1307 of this chapter;

(2) That requires international coordination;

(3) That operates in the quiet zones listed in part 1, § 1.924 of this chapter;

(4) That requires approval of the Frequency Advisory Subcommittee (FAS) of the Interdepartment Radio Advisory Committee (IRAC). The Licensee in the 2385–2390 MHz Band must receive FAS approval prior to

operation of fixed sites or mobile units within the NTIA recommended protection radii of the Government aeronautical telemetry sites listed in footnote US363 of § 2.106 of this chapter.

(c) The licensee in the 2385–2390 MHz Band must file a separate station application with the Commission and obtain an individual station license prior to construction or operation of any station that would require approval of the Aeronautical Flight Test Radio Coordinating Council (AFTRCC). Any fixed sites or mobile units within the protection radii of the non-Government flight test operations listed in footnote US363 of § 2.106 of this chapter will require AFTRCC approval. The licensee in the 2385–2390 MHz Band must receive AFTRCC approval prior to filing an application and the application must contain a showing of AFTRCC approval.

(d) Prior to construction of a station, the 2385–2390 MHz licensee must register with the Commission any station antenna structure for which notification to the Federal Aviation Administration is required by part 17 of this chapter.

(e) It is the licensee's responsibility to determine whether a referral to the Commission is needed for any individual station constructed.

(f) The application required in paragraphs (b) and (c) of this section must be filed on the Universal Licensing System.

##### **§ 27.1004 Geographic partitioning and spectrum disaggregation.**

An entity that acquires a portion of a 2385–2390 MHz licensee's geographic area or spectrum subject to a geographic partitioning or spectrum disaggregation agreement under § 27.15 must function as a 2385–2390 MHz licensee and is subject to the obligations and restrictions on the 2385–2390 MHz license as set forth in this subpart.

##### **§ 27.1005 2385–2390 MHz Service licenses subject to competitive bidding.**

Mutually exclusive initial applications for the 2385–2390 MHz Band license are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

##### **§ 27.1006 Designated entities.**

(a) *Eligibility for small business provisions.*

(1) A very small business is an entity that, together with its controlling interests and affiliates, has average annual gross revenues not exceeding \$15 million for the preceding three years.

(2) A small business is an entity that, together with its controlling interests and affiliates, has average annual gross revenues not exceeding \$40 million for the preceding three years.

(3) A consortium of very small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(1) of this section. A consortium of small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(2) of this section.

(4) For purposes of determining whether an entity meets any of the definitions set forth in paragraphs (a)(1), (a)(2), or (a)(3) of this section, the gross revenues of the entity, its controlling interests and affiliates shall be considered in the manner set forth in § 1.2110(b) and (c) of this chapter.

(b) *Bidding credits.* A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as a small business or a consortium of small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter.

#### **PART 87—AVIATION SERVICES**

21. The authority citation for part 87 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303 and 307(e) unless otherwise noted.

22. Section 87.173(b), in the Frequency table, is amended by adding an entry in numerical order to read as follows:

##### **§ 87.173 Frequencies.**

\* \* \* \* \*

(b) \* \* \*

Frequency or frequency band	Subpart	Class of station	Remarks
* * * * *			
2310–2390 MHz <sup>3</sup> .....	J	MA,FAT .....	Aeronautical telemetry and telecommand operations.
* * * * *			

<sup>3</sup>All operation in the 2385–2390 MHz portion of the 2310–2390 MHz band are secondary to WCS operations in accordance with subpart K of Part 27 except at the locations listed in footnote US363 of § 2.106. Operations at the locations listed in footnote US363 of § 2.106 will remain primary until January 1, 2007. After January 1, 2007, all operations in the 2385–2390 MHz portion of the 2310–2390 MHz band will be secondary to WCS operations in accordance with subpart K of part 27 of this chapter.

**PART 90—PRIVATE LAND MOBILE RADIO SERVICES**

23. The authority citation for part 90 continues to read as follows:

**Authority:** Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of

1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

24. Section 90.20(c)(3), Public Safety Pool Frequency Table, is amended removing frequency 1427 to 1435 and

by adding one new entry in numerical order to read as follows:

**§ 90.20 Public Safety Pool.**

- \* \* \* \* \*
- (c) \* \* \*
- (3) *Frequencies.*

**PUBLIC SAFETY POOL FREQUENCY TABLE**

Frequency or band	Class of station(s)	Limitations	Coordinator
<b>Kilohertz</b>			
* * * * *			
<b>Megahertz</b>			
1427 to 1432 .....	Base, mobile or operational fixed .....	72	*
* * * * *			

25. Section 90.35(b)(3), Industrial/Business Pool Table, is amended by removing frequency 216 to 220 and 1427 to 1435 and by adding three new

entries in numerical order to read as follows:

**§ 90.35 Industrial/Business Pool.**

- \* \* \* \* \*
- (b) \* \* \*
- (3) \* \* \*

**INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE**

Frequency or band	Class of station(s)	Limitations	Coordinator
<b>Kilohertz</b>			
* * * * *			
<b>Megahertz</b>			
216 to 217 .....	Base or mobile .....	55	
217 to 220 .....	Base, mobile, or operational fixed .....	55	
* * * * *			
1427 to 1432 .....	Base, mobile or operational fixed. 55.		*
* * * * *			

26. Section 90.175 is revised to read as follows:

**§ 90.175 Frequency coordinator requirements.**

Except for applications listed in paragraph (j) of this section, each

application for a new frequency assignment, for a change in existing facilities as listed in § 90.135(a), or for operation at temporary locations in accordance with § 90.137 must include a showing of frequency coordination as set forth further.

(a) Frequency coordinators may request, and applicants are required to provide, all appropriate technical information, system requirements, and justification for requested station parameters when such information is necessary to identify and recommend

the most appropriate frequency. Additionally, applicants bear the burden of proceeding and the burden of proof in requesting the Commission to overturn a coordinator's recommendation.

(b) *For frequencies between 25 and 470 MHz:* (1) A statement is required from the applicable frequency coordinator as specified in §§ 90.20(c)(2) and 90.35(b) recommending the most appropriate frequency. In addition, if the interference contour of a proposed station would overlap the service contour of a station on a frequency formerly shared prior to radio service consolidation by licensees in the Manufacturers Radio Service, the Forest Products Radio Service, the Power Radio Service, the Petroleum Radio Service, the Motor Carrier Radio Service, the Railroad Radio Service or the Automobile Emergency Radio Service, the written concurrence of the coordinator for the industry-specific service, or the written concurrence of the licensee itself, must be obtained. Requests for concurrence must be responded to within 20 days of receipt of the request. The written request for concurrence shall advise the receiving party of the maximum 20 day response period. The coordinator's recommendation may include comments on technical factors such as power, antenna height and gain, terrain and other factors which may serve to minimize potential interference. In addition:

(2) On frequencies designated for coordination or concurrence by a specific frequency coordinator as specified in §§ 90.20(c)(3) and 90.35(b), the applicable frequency coordinator shall provide a written supporting statement in instances in which coordination or concurrence is denied. The supporting statement shall contain sufficient detail to permit discernment of the technical basis for the denial of concurrence. Concurrence may be denied only when a grant of the underlying application would have a demonstrable, material, adverse effect on safety.

(3) In instances in which a frequency coordinator determines that an applicant's requested frequency or the most appropriate frequency is one designated for coordination or concurrence by a specific frequency coordinator as specified in §§ 90.20(c)(3) or 90.35(b), that frequency coordinator may forward the application directly to the appropriate frequency coordinator. A frequency coordinator may only forward an application as specified above if consent is received from the applicant.

(c) *For frequencies above 800 MHz:* When frequencies are shared by more than one service, concurrence must be obtained from the other applicable certified coordinators.

(d) *For frequencies in the 450–470 MHz band:* When used for secondary fixed operations, frequencies shall be assigned and coordinated pursuant to § 90.261.

(e) *For frequencies between 470 and 512 MHz, 764–776/794–806 MHz, 806–824/851–869 MHz, and 896–901/935–940 MHz:* A recommendation of the specific frequencies that are available for assignment in accordance with the loading standards and mileage separations applicable to the specific radio service, frequency pool, or category of user involved is required from an applicable frequency coordinator.

(f) *For frequencies in the 929–930 MHz band listed in paragraph (b) of § 90.494:* A statement is required from the coordinator recommending the most appropriate frequency.

(g) *For frequencies between 1427–1432 MHz:* A statement is required from the coordinator recommending the most appropriate frequency, operating power and area of operation in accordance with the requirements of § 90.259(b).

(h) Any recommendation submitted in accordance with paragraphs (a), (c), (d), or (e) of this section is advisory in character and is not an assurance that the Commission will grant a license for operation on that frequency. Therefore, applicants are strongly advised not to purchase radio equipment operating on specific frequencies until a valid authorization has been obtained from the Commission.

(i) Applications for facilities near the Canadian border north of line A or east of line C in Alaska may require coordination with the Canadian government. See § 1.955 of this chapter.

(j) The following applications need not be accompanied by evidence of frequency coordination:

(1) Applications for frequencies below 25 MHz.

(2) Applications for a Federal Government frequency.

(3) Applications for frequencies in the 72–76 MHz band except for mobile frequencies subject to § 90.35(c)(77).

(4) Applications for a frequency to be used for developmental purposes.

(5) Applications in the Industrial/Business Pool requesting a frequency designated for itinerant operations, and applications requesting operation on 154.570 MHz, 154.600 MHz, 151.820 MHz, 151.880 MHz, and 151.940 MHz.

(6) Applications in the Radiolocation Service.

(7) [Reserved]

(8) Applications for frequencies listed in the SMR tables contained in §§ 90.617 and 90.619.

(9) Applications indicating license assignments such as change in ownership, control or corporate structure if there is no change in technical parameters.

(10) Applications for mobile stations operating in the 470–512 MHz band, 764–776/794–806 MHz band, or above 800 MHz if the frequency pair is assigned to a single system on an exclusive basis in the proposed area of operation.

(11) Applications for add-on base stations in multiple licensed systems operating in the 470–512 MHz, 764–776/794–806 MHz band, or above 800 MHz if the frequency pair is assigned to a single system on an exclusive basis.

(12) Applications for control stations operating below 470 MHz, 764–776/794–806 MHz, or above 800 MHz and meeting the requirements of § 90.119(b).

(13) Applications for itinerant operation in the 217–220 MHz band.

(14) Except for applications for the frequencies set forth in §§ 90.719(c) and 90.720, applications for frequencies in the 220–222 MHz band.

(15) Applications for a state license under § 90.529.

(16) Applications for narrowband low power channels listed for itinerant use in § 90.531(b)(4)

23. Section 90.176 is revised as follows:

**§ 90.176 Coordinator notification requirements on frequencies below 512 MHz, at 764–776/794–806 MHz, or at 1427–1432 MHz.**

(a) *Frequencies below 470 MHz.* Within one business day of making a frequency recommendation, each frequency coordinator must notify and provide the information indicated in paragraph (g) of this section to all other frequency coordinators who are also certified to coordinate that frequency.

(1) The applicable frequency coordinator for each frequency is specified in the coordinator column of the frequency tables of §§ 90.20(c)(3) and 90.35(b)(3).

(2) For frequencies that do not specify any frequency coordinator, all certified in-pool coordinators must be notified.

(3) For frequencies that are shared between the Public Safety Pool and the Industrial/Business Pool (frequencies subject to §§ 90.20(d)(7), (d)(25), (d)(34), or (d)(46) in the Public Safety Pool, and subject to §§ 90.35(c)(13), (c)(25), or (d)(4) in the Industrial/Business Pool), all certified coordinators of both pools must be notified.

(b) *Frequencies in the 470–512 MHz band.* Within one business day of making a frequency recommendation, each frequency coordinator must notify and provide the information indicated in paragraph (g) of this section to all other certified frequency coordinators in the Public Safety Pool and the Industrial/Business Pool.

(c) *Frequencies in the 764–776/794–806 MHz band.* Within one business day of making a frequency recommendation, each frequency coordinator must notify and provide the information indicated in paragraph (g) of this section to all other certified frequency coordinators in the Public Safety Pool.

(d) *Frequencies in the 1427–1432 MHz band.* Within one business day of making a frequency recommendation, each frequency coordinator must notify and provide the information indicated in paragraph (g) of this section to the WMTS frequency coordinator designated in § 95.113 and to all other frequency coordinators who are also certified to coordinate that frequency.

(e) Each frequency coordinator must also notify all other certified in-pool coordinators on any day that the frequency coordinator does not make any frequency recommendations.

(f) Notification must be made to all coordinators at approximately the same time and can be made using any method that ensures compliance with the one business day requirement.

(g) At a minimum the following information must be included in each notification:

- (1) Name of applicant;
- (2) Frequency or frequencies recommended;
- (3) Antenna locations and heights;
- (4) Effective radiated power (ERP);
- (5) Type(s) of emissions;

- (6) Description of the service area; and
- (7) Date and time of recommendation.

(h) Upon request, each coordinator must provide any additional information requested from another certified coordinator regarding a pending recommendation that it has processed but has not yet been granted by the Commission.

(i) It is the responsibility of each coordinator to insure that its frequency recommendations do not conflict with the frequency recommendations of any other frequency coordinator. Should a conflict arise, the affected coordinators are jointly responsible for taking action to resolve the conflict, up to and including notifying the Commission that an application may have to be returned.

28. Section 90.203(a)(1) is revised to read as follows:

**§ 90.203 Certification required.**

(a) \* \* \*

(1) Effective October 16, 2002, except in the 1427–1432 MHz band, an equipment approval may no longer be obtained for in-hospital medical telemetry equipment operating under the provisions of this part. The requirements for obtaining an approval for medical telemetry equipment after this date are found in subpart H of part 95 of this chapter.

\* \* \* \* \*

29. Section 90.205 is amended by redesignating paragraphs (e) through (k) as paragraphs (f) through (l), redesignating paragraphs (l) through (o) as paragraphs (n) through (q), and adding new paragraphs (e) and (m) to read as follows:

**§ 90.205 Power and antenna height limits.**

\* \* \* \* \*

(e) *217–220 MHz.* Limitations on power and antenna heights are specified in § 90.259.

\* \* \* \* \*

(m) *1427–1429.5 MHz and 1429.5–1432 MHz.* Limitations on power are specified in § 90.259.

\* \* \* \* \*

30. Section 90.209(b)(5) in the Standard Channel Spacing/Bandwidth, is amended by removing frequency 1427–1435 and by adding two new entries in numerical order and to read as follows:

**§ 90.209 Bandwidth limitations.**

\* \* \* \* \*

(b) \* \* \*

(5) \* \* \*

**STANDARD CHANNEL SPACING/  
BANDWIDTH**

Frequency band (MHz)	Channel spacing (kHz)	Authorized bandwidth (kHz)
216–220 <sup>5</sup> .....	6.25	6.25
1427–1432 <sup>5</sup> .....	12.5	12.5

\* \* \* \* \*

<sup>5</sup> Licensees will be allowed to combine contiguous channels up to 50 kHz, and more than 50 kHz only upon a showing of adequate justification per § 90.259(a)(8) and (b)(10).

31. Section 90.213(a) in the Minimum Frequency Stability, a new an entry is added in numerical order to read as follows:

**§ 90.213 Frequency stability.**

(a) \* \* \*

**MINIMUM FREQUENCY STABILITY**

[Parts per million (ppm)]

Frequency range (MHz)	Fixed and base stations	Mobile stations	
		Over 2 watts output power	2 watts or less output power
216–220 .....	1.0	1.0	1.0

\* \* \* \* \*

32. Section 90.259 is revised to read as follows:

**§ 90.259 Assignment and use of frequencies in the bands 216–220 MHz and 1427–1432 MHz.**

(a) *216–220 MHz band.* (1) Frequencies in the 216–220 MHz band may be assigned to applicants that

establish eligibility in the Industrial/Business Pool.

(2) All operation is secondary to the fixed and mobile services, including the Low Power Radio Service.

(3) In the 216–217 MHz band, no new assignments will be made after January 1, 2002.

(4) In the 217–220 MHz band, the maximum transmitter output power is 2 watts. The maximum antenna height above average terrain (HAAT) is 152 m (500 feet).

(5) In the 217–220 MHz band, base, mobile, and operational fixed is permitted.

(6) Wide area operations will not be authorized. The area of normal day-to-day operations will be described in the application in terms of maximum distance from a geographical center (latitude and longitude).

(7) Assignable frequencies occur in increments of 6.25 kHz from 217.0625 MHz to 219.99375 MHz.

(8) Licensees may combine contiguous channels up to 50 kHz, and more than 50 kHz only upon a showing of adequate justification.

(b) *1427–1432 MHz band.* (1) Frequencies in the 1427–1432 MHz band may be assigned to applicants that establish eligibility in the Public Safety Pool or the Industrial/Business Pool.

(2) All operations in the 1427–1429.5 MHz band are secondary to the Wireless Medical Telemetry Service except in the locations specified in paragraph (b)(4) of

this section. At the locations specified in paragraph (b)(4) of this section, all operations are secondary to the Wireless Medical Telemetry Service in the 1429–1431.5 MHz band.

(3) All operations in the 1429.5–1432 MHz band are primary in status except in the locations specified in paragraph (b)(4) of this section, all operations are primary in status in the 1427–1429 MHz and 1431.5–1432 MHz bands.

(4) *Locations:* (i) Pittsburgh, Pennsylvania—Counties of Westmoreland, Washington, Beaver, Allegheny and Butler;

(ii) Washington, DC metropolitan area—Counties of Montgomery, Prince George’s, Charles, Arlington, Prince William, Fauquier, Loudon, and Fairfax; Cities of Alexandria, Falls Church, Fairfax, and District of Columbia;

(iii) Richmond/Norfolk, Virginia—Counties of Charles City, Chesterfield, Dinwiddie, Goochland, Hanover, Henrico, Isle of Wight, James City, New Kent, Powhatan, Prince George, Southhampton, Surrey, Sussex, and York; Cities of Chesapeake, Colonial Heights, Franklin, Hampton, Hopewell, Newport News, Norfolk, Petersburg,

Poquoson, Portsmouth, Richmond, Suffolk, Virginia Beach, and Williamsburg;

(iv) Austin/Georgetown, Texas—Counties of Williamson and Travis;

(v) Battle Creek, Michigan—County of Calhoun;

(vi) Detroit, Michigan—Counties of Oakland, Wayne, Washtenaw, Macomb and Livingston;

(vii) Spokane, Washington—Counties of Spokane, WA and Kootenai, ID.

(5) All operations in the 1429.5–1432 MHz band authorized prior to April 12, 2002 are on a secondary basis.

(6) For secondary operations only fixed stations are permitted. At the locations specified in (b)(4) of this section, secondary operations are performed in the 1429–1431.5 MHz band. For all other locations, secondary operations are performed in the 1427–1429.5 MHz band. The maximum power is 1 watt EIRP.

(7) For primary operations base, mobile, operational fixed and temporary fixed operations are permitted.

(i) At the locations specified in (b)(4) of this section, primary operations are performed in the 1427–1429 MHz and 1431.5–1432 MHz bands. The maximum EIRP limitations are as follows:

Operation	Frequency range (MHz)			
	1427–1428 MHz	1428–1428.5	1428.5–1429	1431.5–1432
Fixed .....	100 watts .....	10 watts .....	1 watt .....	1 watt.
Mobile .....	1 watt .....	1 watt .....	25 milliwatts .....	25 milliwatts.
Temporary fixed .....	1 watt .....	1 watt .....	1 watt .....	1 watt.

(ii) For all other locations, primary operations are performed in the 1429.5–1432 MHz band. The maximum EIRP limitations are as follows:

Operation	Frequency range (MHz)			
	1429.5–1430	1430–1430.5	1430.5–1431.5	1431.5–1432
Fixed .....	1 watt .....	1 watt .....	10 watts .....	100 watts.
Mobile .....	25 milliwatts .....	1 watt .....	1 watt .....	1 watt.
Temporary fixed .....	1 watt .....	1 watt .....	1 watt .....	1 watt.

(8) Wide area operations will not be authorized. The area of normal day-to-day operations will be described in the application in terms of maximum distance from a geographical center (latitude and longitude).

(9) Assignable frequencies occur in increments of 12.5 kHz from 1427.0125 MHz to 1431.9875 MHz.

(10) Licensees, however, may combine contiguous channels up to 50 kHz, and more than 50 kHz only upon a showing of adequate justification.

(11) For any operation in the 1427–1432 MHz band, the predicted or measured field strength—in the WMTS

primary band—at the location of any registered WMTS healthcare facility shall not exceed 150 uV/m. For the locations specified in (b)(4) of this section, WMTS is primary in the 1429–1431.5 MHz band. For all other locations, WMTS is primary in the 1427–1429.5 MHz band.

(c) *Authorized uses.* (1) Use of these bands is limited to telemetering purposes.

(2) Base stations authorized in these bands shall be used to perform telecommand functions with associated mobile telemetering stations. Base stations may also command actions by

the vehicle itself, but will not be authorized solely to perform this function.

(3) Airborne use is prohibited.

33. Part 95 of title 47 of the Code of Federal Regulations, is amended to read as follows:

**PART 95—PERSONAL RADIO SERVICES**

The authority citation for part 95 continues to read as follows:

**Authority:** Sections 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303.

34. Section 95.630 is revised to read as follows:

**§ 95.630 WMTS Transmitter frequencies.**

WMTS transmitters may operate in the frequency bands specified as follows:

608–614 MHz  
1395–1400 MHz  
1427–1432 MHz

35. Section 95.1113 is amended by adding paragraphs (b)(5) and (b)(6) to read as follows:

**§ 95.1113 Frequency coordinator.**

\* \* \* \* \*

(b) \* \* \*

(5) Notify licensees—who are operating in accordance with § 90.259(b)—of the need to comply with the field strength limit of § 90.259(b)(11) prior to initial activation of WMTS equipment in the 1427–1432 MHz band.

(6) Notify licensees—who are operating in 1392–1395 MHz band in accordance with subpart I of part 27—of the need to comply with the field strength limit of § 27.804 prior to initial activation of WMTS equipment in the 1395–1400 MHz band.

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 54**

[CC Docket No. 02–6; FCC 02–175]

**Schools and Libraries Universal Service Support Mechanism**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission adopts a framework for the treatment of funds collected for the schools and libraries support mechanism that have, through the normal operation of the program, not been disbursed. In taking this action, the Commission balances the statutory requirements of providing eligible schools and libraries with access to discounted telecommunications services and of ensuring that the universal service support mechanisms are specific and predictable.

**DATES:** Effective June 20, 2002.

**FOR FURTHER INFORMATION CONTACT:** Diane Law Hsu or Kathy Tofigh, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's First Report and Order in CC Docket No. 02–6 released on June 13, 2002. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554.

**I. Introduction**

1. In this Order, we adopt a framework for the treatment of funds collected for the schools and libraries support mechanism that have, through the normal operation of the program, not been disbursed. In taking this action today, we balance the statutory requirements in section 254 of providing eligible schools and libraries with access to discounted telecommunications services and of ensuring that the universal service support mechanisms are specific and predictable. This, in turn, will allow contributions to universal service to remain predictable for carriers and, ultimately, will inure to the benefit of their customers. We are committed to ensuring that eligible schools and libraries have access to sufficient universal service support consistent with the statute and therefore adopt a rule to ensure that unused schools and libraries funds are carried forward for disbursement in subsequent funding years. At the same time, we find that the public interest is best served by our action to stabilize contributions to universal service for the immediate future, while we consider fundamental reform to the way in which universal service contributions are assessed on contributors and recovered from consumers. As we explained in the *Contribution FNPRM*, 67 FR 11268, March 13, 2002, numerous changes in the marketplace and the operation of the current assessment system have contributed to broad fluctuations in the contribution base of the universal service support mechanisms since our adoption of the current assessment methodology. These fluctuations require us to consider reform to ensure stability of the universal service fund, which should help ensure predictability in that fund. We conclude that our actions today strike an appropriate balance by helping to minimize and stabilize the contribution factor for the immediate future, while maintaining an appropriate level of support for all universal service support mechanisms, including the schools and libraries program.

2. Consistent with the congressional mandate in section 254 that carriers contribute to the “specific [and]

predictable” universal service support mechanisms, the Commission has endeavored to ensure that universal service contribution obligations remain predictable so that carriers anticipate their payments appropriately. Over the past several years, however, we have witnessed increasing upward pressure on contributions caused by a variety of events, including declining interstate revenues coupled with increased demand for universal service support. For example, consistent with section 254(e) of the Act, the Commission recently took steps to replace implicit subsidies in interstate access charges with explicit universal service support. Implementation of these statutory requirements coupled with changes in the telecommunications marketplace have led to broad fluctuations in the contribution base and rising contribution obligations. For these reasons, we recently sought comment on whether and how to change the existing contribution methodology.

3. While we are examining whether more fundamental reform of the basis for assessing universal service contributions is warranted, we believe it is important at this time to stabilize universal service contributions and maintain predictability for the universal service support mechanisms for the immediate future. This, in turn, will allow contributions to remain predictable for carriers, and, ultimately, benefit consumers. We therefore conclude that, in order to maintain fund predictability for the immediate future, unused funds from the schools and libraries support mechanism shall, in accordance with the public interest, be applied to stabilize or reduce the amount of contributions to the universal service fund for no more than the next three quarters, which should provide us sufficient time to complete our review of the contribution methodology and implement any changes adopted in that proceeding. Specifically, we shall apply unused funds to reduce the contribution factors for the third and fourth quarters of 2002, and first quarter 2003, if necessary. We intend to complete our examination of the issues in the contribution methodology proceeding and implement appropriate rules no later than first quarter 2003. We will endeavor, however, to complete the proceeding at an earlier date. In that event, such unused funds from the schools and libraries support mechanism would be carried forward for use by eligible schools and libraries in subsequent funding years. Consistent with the requirement that carriers contribute to a specific and predictable