

federally recognized Native American Tribes and Alaska Native Villages ("Tribal Nations") and entities owned or controlled by Native Nations (collectively, "Tribal Nation Applicants") to hold LPFM licenses. The FCC also revised its definition of local to specify that Tribal Nation Applicants are considered local throughout their Tribal lands. We have revised FCC Form 318 to reflect these changes.

In the Order, the FCC also modified its ownership rules. First, the FCC revised its cross-ownership rule to permit cross-ownership of an LPFM station and up to two FM translator stations. Second, the FCC modified its cross-ownership rule to permit Tribal Nation Applicants to seek up to two LPFM construction permits to ensure adequate coverage of tribal lands. We have revised FCC Form 318 to reflect these changes.

The FCC further modified the point system used to select among mutually exclusive LPFM applicants and set forth in § 73.872 of the rules. First, the FCC revised the "established community presence" criterion to extend the "established community presence" standard in rural areas. Under the earlier version of the rule, an LPFM applicant was deemed to have an established community presence if it was physically headquartered or had a campus within ten miles of the proposed LPFM transmitter site, or if 75 percent of its board members resided within ten miles of the proposed LPFM transmitter site. The FCC changed the standard from ten to twenty miles for all LPFM applicants proposing facilities located outside the top fifty urban markets, for both the distance from transmitter and residence of board member standards. Second, the FCC modified the point system to award a point to Tribal Nation Applicants, when they propose to provide LPFM service to Tribal Nation communities. Third, the FCC established additional points criteria related to maintenance and staffing of a main studio, commitments to locally originate programming and maintain and staff a main studio, and new entry into the broadcasting field. We have revised the Form 318 to reflect these changes to the point system.

The FCC made a number of changes related to time-sharing. It adopted a requirement that parties submit voluntary time-sharing agreements via the Consolidated Database System. It also revised the Commission's involuntary time-sharing policy. As a result of these changes, an LPFM applicant must submit the date on which it qualified as having an

"established community presence." The FCC also may require certain LPFM applicants to indicate which 8-hour and 12-hour time slots they prefer. Finally, the FCC adopted a mandatory time-sharing policy similar to that applicable to full-service noncommercial educational FM stations. We have revised the Form 318 to reflect these changes.

Finally, the FCC modified the manner in which it processes requests for waiver of the second-adjacent channel minimum distance separation requirement, amended the rule related to third-adjacent channel interference, and amended the rule that sets forth the obligations of LPFM stations with respect to interference to the input signals of FM translator or FM booster stations. We have revised the Form 318 to reflect these proposed changes.

Federal Communications Commission.

**Gloria J. Miles,**

*Federal Register Liaison, Office of the Secretary, Office of Managing Director.*

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## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Part 90**

**[WT Docket No. 02-55; DA 13-586]**

#### **Improving Public Safety Communications in the 800 MHz Band; New 800 MHz Band Plan for U.S.-Mexico Sharing Zone**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document establishes a reconfigured 800 MHz band plan for the National Public Safety Planning Advisory Committee Regions bordering Mexico. This action is necessary to meet the Commission's goals to improve public safety communications in the 800 MHz band. This order ensures an orderly and efficient transition to the new 800 MHz band plan along the Mexico border.

**DATES:** Effective June 24, 2013.

**FOR FURTHER INFORMATION CONTACT:** Brian Marengo, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418-0838.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Fifth Report and Order, DA 13-586, released on April 1, 2013. The complete text of the Fifth Report and Order is available for inspection and copying during normal business hours in the FCC Reference Information

Center, Portals II, 445 12th Street SW., Room CY-A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY). It is also available on the Commission's Web site at <http://www.fcc.gov>.

1. In a July 2004 Report and Order, the Commission reconfigured the 800 MHz band to eliminate interference to public safety and other land mobile communication systems operating in the band, 69 FR 67823, November 22, 2004. The Commission, however, deferred consideration of band reconfiguration plans for the border areas, noting that "implementing the band plan in areas of the United States bordering Mexico and Canada will require modifications to international agreements for use of the 800 MHz band in the border areas." The Commission stated that "the details of the border plans will be determined in our ongoing discussions with the Mexican and Canadian governments."

2. In a Second Memorandum Opinion and Order, adopted in May 2007, the Commission delegated authority to the Public Safety and Homeland Security Bureau (Bureau) to propose and adopt border area band plans once agreements are reached with Canada and Mexico, 72 FR 39756, July 20, 2007.

3. On June 8, 2012, the United States and Mexico signed an agreement modifying the international allocation of 800 MHz spectrum along the U.S.-Mexico border enabling the U.S. to proceed with 800 MHz band reconfiguration in regions bordering Mexico.

4. Consequently, on August 17, 2012, the Bureau released a Fourth Further Notice of Proposed Rulemaking seeking comment on establishing and implementing a reconfigured 800 MHz channel plan for the National Public Safety Planning Advisory Committee (NPCPAC) Regions bordering Mexico, 77 FR 52633, August 30, 2012. The Bureau received seven comments and four reply comments.

5. Based on the record, on April 1, 2013, the Bureau released a Fifth Report and Order establishing a reconfigured channel plan for each NPSPAC region bordering Mexico. As with channel plans previously adopted for non-border regions and the Canada border region, the Bureau's goal is to reconfigure licensees within the band in a manner which separates—to the greatest extent possible—public safety and other non-cellular licensees from licensees in the band that employ cellular technology.

6. In the Fifth Report and Order, the Bureau also established a 30-month transition period for licensees along the border with Mexico to complete the rebanding process. The Bureau will, however, evaluate the progress of rebanding as of the 18th month of the transition period to determine whether additional time is needed based upon circumstances beyond licensees' control.

## Procedural Matters

### A. Final Regulatory Flexibility Analysis

7. The Final Regulatory Flexibility Analysis required by section 604 of the Regulatory Flexibility Act, 5 U.S.C. 604, is included in the Fifth Report and Order.

### B. Paperwork Reduction Act of 1995 Analysis

8. The Fifth Report and Order contains no new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. Therefore it contains no new or modified “information burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198.

### Final Regulatory Flexibility Analysis

9. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Fourth Further Notice of Proposed Rule Making (Fourth FNPRM)* of this proceeding. The Bureau sought written public comment on the IRFA. The RFA requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

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

10. In the *Fifth Report and Order*, the Bureau adopts a channel plan for reconfiguring the 800 MHz band along the U.S.-Mexico border. The channel plan the Bureau adopts in the *Fifth Report and Order* will be incorporated into the Commission's rules and is needed to implement and complete the Commission's band reconfiguration program along the U.S.-Mexico border. The Commission ordered reconfiguration of the 800 MHz band to address an ongoing nationwide problem of interference created by a fundamentally incompatible mix of technologies in the band. The Commission determined to resolve the interference by reconfiguring the band to spectrally separate incompatible technologies. The Commission delegated authority to the Bureau in May 2007 to propose and adopt a channel plan for implementing band reconfiguration along the U.S.-Mexico border. The band plan the Bureau adopts in the *Fifth Report and Order* will separate incompatible technologies along the U.S.-Mexico border and thus resolve the ongoing interference problem in that region.

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

11. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

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

12. The RFA directs agencies to provide a description of and an estimate of the number of small entities to which the rules will apply. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Below, we provide an estimate of the number of small entities to which the rules the adopted in this *Fifth Report and Order* will apply.

13. *Private Land Mobile Radio Licensees (PLMR)*. PLMR systems serve an essential role in a range of industrial, business, land transportation, and

public safety activities. These radios are used by entities of all sizes operating in all U.S. business and public sector categories, and are often used in support of the licensee's primary (non-telecommunications) operations. For the purpose of determining whether a licensee of a PLMR system is a small entity as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business and governmental activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

14. As of March 2013, there were approximately 250 PLMR licensees operating in the PLMR band between 806–824/851–869 MHz along the U.S.-Mexico border.

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

15. The *Fifth Report and Order* does not adopt a rule that will entail additional reporting, recordkeeping, and/or third-party consultation or other compliance efforts beyond those already approved for this proceeding. See OMB Control No. 3060–1080 for Improving Public Safety Communications in the 800 MHz Band (exp. September 30, 2014).

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

16. The RFA requires an agency to describe the steps it has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including the agency's reasoning for not adopting significant alternatives to the rules adopted.

17. The *Fifth Report and Order* creates no significant economic impact on small entities because Sprint Nextel Corporation will pay all reasonable costs associated with retuning incumbent licensees to the post-reconfiguration channel plan adopted by the Bureau. Further, once the channel plan adopted in the *Fifth*

Report and Order is implemented, PLMR licensees will no longer be subject to on-going interference in the band and will therefore save costs that would otherwise be associated with resolving interference.

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

18. None.

#### Ordering Clauses

19. Accordingly, *it is ordered*, pursuant to sections 4(i), 303(b), 316, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(b), 316, 332, that the Fifth Report and Order *is adopted*.

20. *It is further ordered* that the amendments of the Commission's rules set forth in the Fifth Report and Order *are adopted*, effective sixty days from the date of publication in the **Federal Register**.

21. *It is further ordered* that the Final Regulatory Flexibility required by section 604 of the Regulatory Flexibility Act, 5 U.S.C. 604, and as set forth in the Fifth Report and Order *is adopted*.

22. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Fifth Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects in 47 CFR Part 90

Radio.

Federal Communications Commission.

**David S. Turetsky,**

*Chief, Public Safety and Homeland Security Bureau.*

#### Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission's Public Safety and Homeland Security Bureau amends 47 CFR part 90 as follows:

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

■ 1. 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), and 332(c)(7), and Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, 126 Stat. 156.

■ 2. Section 90.619 is amended by revising paragraph (a) to read as follows:

#### **§ 90.619 Operations within the U.S./Mexico and U.S./Canada border areas.**

(a) *Use of frequencies in 800 MHz band in Mexico border region.* All operations in the 806–824/851–869 MHz band within 110 km (68.35 miles) of the U.S./Mexico border (“Sharing Zone”) shall be in accordance with international agreements between the U.S. and Mexico.

(1) The U.S. and Mexico divide primary access to channels in the Sharing Zone as indicated in Table A1 below.

**TABLE A1—U.S. AND MEXICO PRIMARY CHANNELS IN SHARING ZONE**

Channels	Primary access
1–360 .....	U.S.
361–610 .....	Mexico.
611–830 .....	U.S.-Mexico Co-Primary.

(2) Stations authorized on U.S. primary channels in the Sharing Zone are subject to the effective radiated power (ERP) and antenna height limits listed below in Table A2.

**TABLE A2—LIMITS ON EFFECTIVE RADIATED POWER (ERP) AND ANTENNA HEIGHT**

Average of the antenna height above average terrain on standard radials in the direction of the common border (meters) <sup>1</sup>	Maximum ERP in any direction toward the common border per 25 kHz (watts)
0 to 503 .....	500
Above 503 to 609 .....	350
Above 609 to 762 .....	200
Above 762 to 914 .....	140
Above 914 to 1066 .....	100
Above 1066 to 1219 .....	75
Above 1219 to 1371 .....	70
Above 1371 to 1523 .....	65
Above 1523 .....	5

<sup>1</sup> Standard radials are 0°, 45°, 90°, 135°, 180°, 225°, 270° and 315° to True North. The height above average terrain on any standard radial is based upon the average terrain elevation above mean sea level.

(3) Stations may be authorized on channels primary to Mexico in the Sharing Zone provided the maximum power flux density (PFD) at any point at or beyond the border does not exceed –107 dB(W/m<sup>2</sup>) per 25 kHz of bandwidth. Licensees may exceed this value only if all potentially affected counterpart operators in the other country agree to a higher PFD level.

(4) Stations authorized on U.S.-Mexico co-primary channels in the Sharing Zone are permitted to exceed a maximum power flux density (PFD) of –107 dB(W/m<sup>2</sup>) per 25 kHz of bandwidth at any point at or beyond the

border only if all potentially affected counterpart operators of 800 MHz high density cellular systems, as defined in § 90.7, agree.

(5) Channels in the Sharing Zone are available for licensing as indicated in Table A3 below.

**TABLE A3—ELIGIBILITY REQUIREMENTS FOR CHANNELS IN SHARING ZONE**

Channels	Eligibility requirements
1–230 .....	Report and Order of Gen. Docket No. 87–112.
231–315 ...	Public Safety Pool.
316–550 ...	General Category.
551–830 ...	Special Mobilized Radio for 800 MHz High Density Cellular.

(i) Channels 1–230 are available to applicants eligible in the Public Safety Category. The assignment of these channels will be done in accordance with the policies defined in the Report and Order of Gen. Docket No. 87–112 (See § 90.16). The following channels are available only for mutual aid purposes as defined in Gen. Docket No. 87–112: channels 1, 39, 77, 115, 153. 800 MHz high density cellular systems as defined in § 90.7 are prohibited on these channels.

(ii) Channels 231–315 are available to applicants eligible in the Public Safety Category which consists of licensees eligible in the Public Safety Pool of subpart B of this part. 800 MHz high density cellular systems as defined in § 90.7 are prohibited on these channels.

(iii) Channels 316–550 are available in the General Category. All entities are eligible for licensing on these channels. 800 MHz high density cellular systems as defined in § 90.7 are prohibited on these channels.

(iv) Channels 551–830 are available to applicants eligible in the SMR category—which consists of Specialized Mobile Radio (SMR) stations and eligible end users. ESMR licensees who employ 800 MHz high density cellular systems, as defined in § 90.7, are permitted to operate on these channels.

(6) Stations located outside the Sharing Zone (*i.e.* greater than 110 km from the border) are subject to the channel eligibility requirements and provisions listed in §§ 90.615 and 90.617 except that stations in the following counties are exempt from the requirements of paragraph (k) of § 90.617:

*California:* San Luis Obispo, Kern, San Bernardino, Santa Barbara, Ventura, Los Angeles, Orange and Riverside.

\* \* \* \* \*

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