

Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: March 16, 2012.

Al Armendariz,

Regional Administrator, EPA Region 6.

[FR Doc. 2012-7562 Filed 3-28-12; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 12-64; WT Docket No. 11-110; FCC 12-25]

Channel Spacing and Bandwidth Limitations for Certain Economic Area (EA)-Based 800 MHz Specialized Mobile Radio (SMR) Licensees

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to modify the Commission's rules to allow Economic Area (EA)-based 800 MHz Specialized Mobile Radio (SMR) licensees to exceed a channel spacing and bandwidth limitation, subject to two conditions. The Commission proposes to allow licensees to exceed the channel spacing and bandwidth limitation in the 813.5–824/858.5–869 MHz band in National Public Safety Planning Advisory Committee (NPSPAC) regions where 800 MHz public safety licensee reconfiguration is complete. In areas where 800 MHz public safety reconfiguration is incomplete, EA-based 800 MHz licensees would only be allowed to exceed the channel spacing and

bandwidth limitation in the 813.5–821/858.5–866 MHz band. Further, the Commission proposes to require any EA-based 800 MHz SMR licensee that intends to exceed the channel spacing and bandwidth limitation of its rules, which govern the above-listed MHz bands, to provide 30 days written notice to public safety licensees with base stations in the NPSPAC region and within 113 kilometers (70 miles) of the affected NPSPAC region. The Commission seeks comment on any additional steps that may need to be taken to protect 800 MHz public safety licensees against any possible increased interference. The proposed rule changes would allow geographic-based 800 MHz SMR licensees the flexibility to deploy new technologies and to better utilize their licensed spectrum, while also protecting 800 MHz public safety entities.

DATES: Submit comments on or before April 13, 2012 and reply comments are due on or before April 23, 2012.

ADDRESSES: You may submit comments, identified by WT Docket No. 12-64; WT Docket No. 11-110; FCC 12-25, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- *People With Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: FCC504@fcc.gov or phone 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Brian Regan, Mobility Division, Wireless Telecommunications Bureau, brian.regan@fcc.gov, (202) 418-2849.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking (Notice)* in WT Docket No. 12-64, WT Docket No. 11-110; FCC 12-25, adopted March 7, 2012, and released March 9, 2012. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street

SW., Room CY-B402, Washington, DC 20554, (202) 488-5300, facsimile (202) 488-5563, or via email at fcc@bcpiweb.com. The full text may also be downloaded at: www.fcc.gov. Alternative formats are available to persons with disabilities by sending an email to fcc504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due May 29, 2012.

Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

OMB Control Number: 3060-xxxx.

Title: Section 90.209(b)(7)—

Bandwidth limitations.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 27 respondents, 27 responses.

Estimated Time per Response: .50 up to 9 hours.

Frequency of Response: On occasion, third party disclosure requirement.

Obligation to Respond: Mandatory.

Total Annual Burden: 232 hours.

Total Annual Costs: \$52,500.00.

Privacy Act Impact Assessment: N/A.
Nature and Extent of Confidentiality: None.

Needs and Uses: This information will be used to ensure that 800 MHz public safety licensees are not impacted by EA-based 800 MHz SMR licensees exceeding the channel spacing and bandwidth requirement in the Commission's rules.

Summary

I. Introduction and Background

1. In an effort to reduce barriers to innovation and investment in new technologies and to promote greater spectrum efficiency, we propose to eliminate a legacy channel spacing and bandwidth limitation for Economic Area market (EA)-based 800 MHz Specialized Mobile Radio (SMR) licensees in the 813.5–824/858.5–869 MHz band. Subject to certain protections to safeguard 800 MHz public safety licensees, elimination of the legacy channel spacing and bandwidth limitation should provide greater flexibility to EA-based 800 MHz SMR licensees to deploy competitive wireless services over contiguous channels.

2. In 1995, the Commission established a new licensing framework for 800 MHz SMR and designated 10 megahertz of contiguous spectrum in the 800 MHz band for EA-based licensing in the *800 MHz SMR First Report and Order*, at 61 FR 6138, Feb. 16, 1996. In doing so, the Commission transitioned the 800 MHz SMR service from a site-by-site licensing process that required licensees to seek prior authorization to add or modify individual frequency channels and transmitter sites to a geographic-based licensing mechanism that provides licensees with the flexibility to add transmitters or modify operations within their licensed market and licensed spectrum as market conditions dictate.

3. In the *800 MHz SMR First Report and Order* the Commission determined that wide-area licensing would “give licensees the flexibility to use technologies that can operate on either contiguous or non-contiguous spectrum” and that large spectrum blocks were necessary for “broadband technologies such as CDMA and GSM.” With wide-area licenses, the Commission believed licensees would be able to “compete effectively with other CMRS providers, such as cellular and broadband PCS systems.” Further, the Commission stated its intent in the Executive Summary of the *800 MHz SMR First Report and Order* that EA-based licensees would have “full

discretion over channelization of available spectrum within the block.” The Commission also adopted an out-of-band emission requirement that applies to the outer channels of the spectrum block and to spectrum adjacent to interior channels used by incumbents.

4. While the Commission may have intended to provide EA-based 800 MHz SMR licensees discretion over channelization within the channel block, it left unchanged an existing channelization scheme and bandwidth limitation in its rules for the relevant portion of the 800 MHz band. Section 90.209 of the Commission's rules establishes channel spacing and authorized bandwidths for particular frequencies, unless specified elsewhere. Under § 90.209, frequencies in 809–824/854–869 MHz are limited to 25 kHz channels with an authorized bandwidth of 20 kHz.

5. In 2004, the Commission initiated a process to reconfigure the 800 MHz band in the *800 MHz Reconfiguration Report and Order*, at 69 FR 67823, Nov. 22, 2004, to “address the [then] ongoing and growing problem of interference to public safety communications in the 800 MHz band.” The interference problem was caused “by a fundamentally incompatible mix of two types of communications systems: cellular-architecture multi cell systems * * * and high-site non-cellular systems.” In the short term, the Commission implemented technical standards that defined unacceptable interference in 800 MHz, while also reconfiguring the 800 MHz band to separate commercial wireless systems from public safety systems on a separate track. Under the reconfiguration plan, SMR and other cellular-system operators including Sprint Nextel Corp. (Sprint Nextel) were required to vacate the 806–817/851–862 MHz band and relocate to the 817–824/862–869 MHz band.

6. Sprint Nextel holds the majority of the EA-based 800 MHz SMR licenses (commonly referred to as Enhanced SMR or ESMR) and reported as of June 2011 that it held or will soon hold “14 [megahertz] of geographically licensed contiguous 800 MHz channels across much of the nation.” Sprint Nextel has used its licenses at 817–824/862–869 MHz primarily for its iDEN operations, which it describes as “a 2G technology that uses non-contiguous channels to provide cellular, messaging and push-to-talk services.”

7. In December 2010, Sprint Nextel announced that it was transitioning its existing operations off of some of its EA-based 800 MHz licenses in order to incorporate the spectrum into its CDMA

network, which it claims requires contiguous spectrum and “occupies a 1.25 [megahertz] bandwidth.” However, under the channelization scheme and bandwidth limitation in § 90.209 of the Commission's rules, Sprint Nextel is unable to aggregate the channels in its EA-based 800 MHz SMR licenses to provide CDMA.

8. In June 2011, Sprint Nextel filed a petition for declaratory ruling (WT Docket No. 11–110) asking the Commission to “clarify and declare that its rules permit larger than 25 kHz bandwidth operations in the [ESMR] portion of the 800 MHz band.” Sprint Nextel requested in the alternative that the Commission issue a notice of proposed rulemaking “to revise § 90.209 to the extent necessary to expressly authorize ESMR band EA licensees to deploy technologies using bandwidths greater than 25 kHz on their contiguous spectrum assignments.” Sprint Nextel argues that the Commission never intended for the 25 kHz channel spacing and 20 kHz bandwidth limitation to apply to geographically licensed 800 MHz SMR spectrum and that such application will frustrate the Commission's intent of providing flexibility to EA-based 800 MHz SMR licensees. Sprint Nextel also contends that the bandwidth limitation in § 90.209 and the out-of-band emission requirement in § 90.691 of the Commission's rules are apparently inconsistent and in conflict. The Wireless Telecommunications Bureau released a *Public Notice* seeking comment on Sprint Nextel's petition in June 2011.

9. Several commenters in response to the *Public Notice* support Sprint Nextel's request. SouthernLINC Wireless and Southern Company urge the Commission to also eliminate the bandwidth limitation and channel spacing in § 90.209 for the “expanded” SMR band in the southeastern United States, a request that Sprint Nextel supports. The Association of Public-Safety Communications Officials-International, Inc. (APCO) and the National Public Safety Telecommunications Council (NPSTC) do not object to Sprint Nextel's request on the condition that certain steps are taken to avoid interference with 800 MHz public safety licensees. While AT&T generally supports efforts to “provide flexibility to exclusive geographic area licensees of commercial mobile services,” it and Motorola Solutions Inc. urge the Commission to adopt a rulemaking to explore any possible technical issues that may arise from wider-bandwidth operations in EA-licensed 800 MHz SMR spectrum.

II. Notice of Proposed Rulemaking

10. In this *Notice of Proposed Rulemaking (Notice)*, we propose to grant EA-based 800 MHz SMR licensees the flexibility to deploy CDMA or other wireless technologies that operate on greater than 25 kHz channels with greater than 20 kHz bandwidth. We do not, however, find any controversy or uncertainty regarding §§ 90.209 or 90.691 of the Commission's rules that can be resolved or clarified through a declaratory ruling. We therefore initiate this *Notice* and propose to allow EA-based 800 MHz SMR licensees to exceed the channel spacing and bandwidth limitation in § 90.209, subject to two conditions we propose to protect against any potential for increased interference with 800 MHz public safety licensees.

11. The Commission is authorized to issue declaratory rulings to terminate controversies or remove uncertainty. While it has broad discretion in deciding whether to exercise such authority, the Commission will generally decline to issue such a ruling when there appears to be no significant controversy or uncertainty. Here, the record does not demonstrate any such controversy or uncertainty regarding the application of § 90.209 to EA-based 800 MHz SMR licensees or the relationship between §§ 90.209 and 90.691. Section 90.209 is clear on its face that the channel spacings and authorized bandwidth for the listed frequencies, which include the frequencies assigned to EA-based 800 MHz SMR licenses, apply "unless specified elsewhere." A different bandwidth authorization for this band is not listed elsewhere in the Commission's rules, including in § 90.691. As some commenters point out, in instances when the Commission has established different bandwidth limitations for frequencies listed in § 90.209, the Commission has done so explicitly. The out-of-band emission requirement in § 90.691 is intended to protect against adjacent channel interference, which is unnecessary for sequential channels licensed as a block and has no bearing on whether a spectrum block can be channelized or have a bandwidth limitation.

12. In lieu of a declaratory ruling, through the instant *Notice*, we propose to eliminate the channel spacing and bandwidth limitation in § 90.209 of the Commission's rules for EA-based 800 MHz SMR licenses in the frequencies 813.5–824/858.5–869 MHz, subject to two proposed conditions outlined below. The record suggests that eliminating these limitations may serve the public interest by allowing licensees to deploy more advanced wireless

technologies, to consumers' benefit, while continuing to ensure such operations do not increase interference to 800 MHz public safety licensees through the conditions proposed below. As set forth below, we seek comment on this proposal and on the type and magnitude of any accompanying costs or benefits.

13. We recognize that protection of public safety licensees in the 800 MHz band is essential and do not intend to take any actions that might negatively impact the progress made through the 800 MHz reconfiguration process. APCO and NPSTC assert that in order to protect against interference with 800 MHz public safety licensees, operations using greater than 25 kHz bandwidth should only be allowed in National Public Safety Planning Advisory Committee (NPSPAC) regions where public safety reconfiguration is complete. Accordingly, we propose to allow EA-based 800 MHz SMR licensees to exceed the channel spacing and bandwidth limitation in § 90.209 in the 813.5–824/858.5–869 MHz band in NPSPAC regions where all 800 MHz public safety licensees in the region have completed band reconfiguration. Further, in NPSPAC regions where reconfiguration is incomplete, we propose to allow EA-based 800 MHz SMR licensees to exceed the channel spacing and bandwidth limitation only in the 813.5–821/858.5–866 MHz band. Public safety users are being relocated from 821–824/866–869 MHz to the new band of 806–809/851–854 MHz. Sprint Nextel asserts that it will not—and cannot—deploy CDMA in the "old" public safety band until the public safety users in the NPSPAC region have moved to the "new" band. Upon all 800 MHz public safety licensees in a region completing band reconfiguration, EA-based 800 MHz SMR licensees in the 821–824/866–869 MHz band would then be allowed to exceed the channel spacing and bandwidth limitation.

14. Additionally, we propose to require all EA-based 800 MHz SMR licensees to provide at least 30 days written notice to public safety licensees with base stations in the NPSPAC region where an EA-based 800 MHz SMR licensee intends to exceed the channel spacing and bandwidth limitation and to public safety licensees with base stations within 113 kilometers (70 miles) of the affected NPSPAC region border. These conditions appear to balance the need to protect 800 MHz public safety licensees from any possible increased interference, while enabling 800 MHz SMR licensees to efficiently utilize their spectrum to provide more advanced wireless

services. We seek comment on these proposed conditions, including with respect to any costs that these conditions might impose.

15. We encourage commenters to explain any interference issues they claim may arise—even with conditions—with specificity, including any relevant data supporting such claims. We also encourage commenters to describe in detail and to justify fully any modification to these or additional conditions they argue may be necessary to protect 800 MHz public safety licensees from increased interference. For example, NPSTC suggests that the Commission should impose a one megahertz guard band at 820–821/865–866 MHz between EA-based 800 MHz SMR operations that exceed the channel spacing and bandwidth limitation and public safety operations where band reconfiguration is incomplete. Similarly, APCO suggests that EA-based 800 MHz SMR licensees that exceed the channel spacing and bandwidth limitation "maintain a minimum of 1.0 MHz separation from any public safety operation in the upper portion of the interleaved band (*i.e.*, above 860 MHz) in the service area of the * * * cellular site." APCO also suggests that EA-based 800 MHz SMR operations that exceed the channel spacing and bandwidth limitation and are near a public safety system in a NPSPAC region where reconfiguration is incomplete must protect public safety operations "both on-channel and on the 12.5 kHz offset to the 5 dBu." We seek comment on these suggested conditions, as well as any other proposals. Commenters should include technical justifications for why additional or alternative conditions may be necessary, and should identify any costs that additional or alternative conditions might impose.

III. Procedural Matters

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

16. The proceeding this *Notice* initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte*

presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f), for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Comment Dates

17. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, and 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, at 63 FR 24121 (1998).

■ **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.

■ **Paper Filers:** Parties that choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

■ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW-A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

■ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive Capitol Heights, MD 20743.

■ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

C. Initial Paperwork Reduction Act Analysis

18. This document contains a proposed new information collection requirement. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

IV. Initial Regulatory Flexibility Analysis

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

addition, the *Notice* and IRFA (or summaries thereof) will be published in the **Federal Register**.

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

20. The proposed rule eliminates legacy channel spacing and bandwidth limitation governing Economic Area (EA)-based 800 MHz specialized mobile radio (SMR) licensees. Further, the proposed rule provides licensees the flexibility to deploy competitive wireless services, while also continuing to protect 800 MHz public safety licensees from any potential interference.

21. The proposed rule allow EA-based 800 MHz SMR licensees in the 813.5–824/858.5–869 MHz band to exceed the channel spacing and bandwidth limits in § 90.209 of the Commission's rules, subject to two conditions. We propose to allow EA-based 800 MHz SMR licensees to exceed the channel spacing and bandwidth limitation in the 813.5–824/858.5–869 MHz band in National Public Safety Planning Advisory Committee (NPSPAC) regions where 800 MHz reconfiguration is complete. In NPSPAC regions where 800 MHz reconfiguration is incomplete, we propose to allow EA-based 800 MHz licensees to exceed the channel spacing and bandwidth limitation only in the 813.5–821/858.5–866 MHz band. Upon all 800 MHz public safety licensees in a region completing band reconfiguration, EA-based 800 MHz SMR licensees in the 821–824/866–869 MHz band would also be allowed to exceed the channel spacing and bandwidth limitation. We also propose to require EA-based 800 MHz SMR licensees to provide 30 days written notice to 800 MHz public safety licensees with base stations in the NPSPAC region where an EA-based 800 MHz SMR licensee intends to exceed the channel spacing and bandwidth limitation, and to public safety licensees with base stations within 113 kilometers (70 miles) of the affected NPSPAC region border.

22. We believe the proposed rule will reduce barriers to innovation and investment and allow EA-based 800 MHz SMR licensees to deploy competitive wireless services, to consumers' benefit.

B. Legal Basis

23. The legal basis for any action that may be taken pursuant to the *Notice* is contained in sections 1, 2, 4(i), 4(j), 301, 302, 303, 307, and 308 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 301, 302, 303, 307, and 308.

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

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

25. *Small Businesses.* Nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.

26. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had 999 or fewer employees, and 15 had 1,000 employees or more. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

27. *Specialized Mobile Radio.* The Commission awards small business bidding credits in auctions for Specialized Mobile Radio (“SMR”) geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than \$15 million in each of the three previous calendar years. The Commission awards very small business bidding credits to

entities that had revenues of no more than \$3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

28. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders that won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard. In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

29. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

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

30. The proposed rule provides regulatory flexibility to all EA-based 800 MHz SMR licensees. The proposed rule would impose limited reporting or recordkeeping requirements to the extent an EA-based 800 MHz SMR licensee seeks to exceed the channel spacing and bandwidth limitation in § 90.209 of the Commission’s rules. In such cases, the licensee must provide 30 days advanced written notice to all public safety licensees with a base station in the affected NPSPAC region and within 113 kilometers (70 miles) of the border of the affected NPSPAC region. Otherwise, the proposed rule would impose only a small compliance burden.

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

31. 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.

32. The *Notice* is deregulatory in nature and imposes only a minor compliance requirement on all affected entities, including small entities. In recognition of the resources available to small entities, and in the interest of simplified compliance obligations, the *Notice* does not mandate any specific form or manner in which entities must comply with the reporting requirement. Specifically, the *Notice* proposes to require EA-based 800 MHz SMR licensees to provide written notice to all public safety licensees with a base station in the affected NPSPAC region and within 113 kilometers (70 miles) of the border of the affected NPSPAC region if the licensee intends to exceed the channel spacing and bandwidth limitation. Licensees have the flexibility to provide written notice through whatever means the licensee chooses. We believe this notice is necessary to ensure that public safety licensees are aware of the operation and can actively

monitor for any interference issues that may arise. While we strive to provide flexibility to small entities, because we believe that protection of public safety licensees is essential and in the public interest, we do not propose any exemption for small entities.

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

33. None.

V. Ordering Clauses

34. Pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 301, 302, 303, 307, and 308 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 301, 302, 303, 307, and 308, this *Notice of Proposed Rulemaking* is adopted.

35. Pursuant to sections 1, 2, 4(i), 4(j), 301, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 301, 303 and § 1.2 of the Commission's rules, 47 CFR 1.2, the Petition for Declaratory Ruling filed on June 3, 2011 by Sprint Nextel Corp. is denied.

36. Pursuant to sections 1, 2, 4(i), 4(j), 301, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 301, 303, and § 1.407 of the Commission's rules, 47 CFR 1.407, the Petition for Rulemaking in the alternative filed on June 3, 2011 by Sprint Nextel Corp. is granted.

37. The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 90

Communications equipment, Common carriers, Business and industry, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons set forth in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 90 as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICE

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), 332(c)(7).

2. Section 90.209 is amended by adding paragraph (b)(7) to read as follows:

§ 90.209 Bandwidth limitations.

* * * * *

(b) * * *

(7) Economic Area (EA)-based licensees in frequencies 813.5–824/

858.5–869 may exceed the standard channel spacing and authorized bandwidth listed in paragraph (b)(5) of this section in any National Public Safety Planning Advisory Committee Region when all 800 MHz public safety licensees in the Region have completed band reconfiguration. In any National Public Safety Planning Advisory Committee Region where the band reconfiguration is incomplete, EA-based licensees in frequencies 813.5–821/858.5–866 MHz may exceed the standard channel spacing and authorized bandwidth listed in paragraph (b)(5) of this section. Upon all 800 MHz public safety licensees in a region completing band reconfiguration, EA-based 800 MHz SMR licensees in the 821–824/866–869 MHz band would also be allowed to exceed the channel spacing and authorized bandwidth. Licensees authorized to exceed the standard channel spacing and authorized bandwidth under this paragraph must provide at least 30 days written notice prior to initiating service in the bands listed herein to every 800 MHz public safety licensee with a base station in the affected National Public Safety Planning Advisory Committee Region, and every 800 MHz public safety licensee within 113 kilometers (70 miles) of the affected Region.

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