

Source of flooding and location of referenced elevation	*Elevation in feet (NGVD)		Communities affected
	Existing	Modified	

Maps are available for inspection at the Municipality of New Lebanon Village Offices, 198 South Clayton Road, New Lebanon, Ohio.

Send comments to Mr. Allen Moe, Village Engineer, 3939 Vanco Lane, Vandalia, Ohio 45377.

#### City of Trotwood, Ohio

Maps are available for inspection at the Department of Public Works, Trotwood Government Center, 4 Strader Drive, Trotwood, Ohio.

Send comments to Mr. Thomas Odenigbo, Public Works Director, Department of Public Works, Trotwood Government Center, 4 Strader Drive, Trotwood, Ohio 45426-2600.

#### City of Vandalia, Ohio

Maps are available for inspection at the City of Vandalia City Building, 333 James E. Bohanan Memorial Drive, Vandalia, Ohio 45377.

Send comments to Mr. Robert G. Galvin, P.E., Deputy City Engineer, City of Vandalia, City Engineer's Office, 333 James E. Bohanan Memorial Drive, Vandalia, Ohio 45449.

#### City of West Carrollton, Ohio

Maps are available for inspection at the City of West Carrollton Civic Center, 300 East Central Avenue, West Carrollton, Ohio.

Send comments to Mr. David Humphreys, Director of Planning and Economic Development, City of West Carrollton Civic Center, 300 East Central Avenue, West Carrollton, Ohio 45449.

#### Montgomery County, Ohio

Maps are available for inspection at Montgomery County Administration Building, 451 West Third Street, Room 800, Dayton, Ohio.

Send comments to Mr. Joseph Litvin, Montgomery County Engineer, Montgomery County Administration Building, 451 West Third Street, Room 800, Dayton, Ohio 45422.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: February 11, 2004.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1, 22, 24, 27 and 90

[WT Docket No. 03-264; FCC 03-334]

#### Biennial Regulatory Review—Streamlining and Harmonizing Various Rules Affecting Wireless Radio Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission opens a proceeding to streamline and harmonize licensing provisions in the wireless radio services (WRS) that were identified in part during the Commission's 2000 and 2002 biennial regulatory reviews pursuant to the Communications Act of 1934, as amended ("Communications Act" or "Act"). Specifically, the Commission proposes various amendments to the rules to modify or eliminate provisions that treat licensees differently and/or have become outdated as a result of technological change, supervening changes to related Commission rules, and/or increased competition within WRS.

**DATES:** Comments are due on or before April 23, 2004 and reply comments are due on or before May 24, 2004.

**FOR FURTHER INFORMATION CONTACT:** Jay Jackson, Wireless Telecommunications Bureau, at (202) 418-0620.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's *Notice of Proposed Rulemaking (NPRM)*, FCC 03-334, in WT Docket No. 03-264, adopted on December 29, 2003, and released on January 7, 2004. The full text of the *NPRM* is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor, Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, (202) 863-2893. The complete text may also be downloaded at: [www.fcc.gov](http://www.fcc.gov).

#### Synopsis of MO&O

1. In the *2000 Biennial Review Report* and *2002 Biennial Review Report*, the Commission supported proposals to streamline, harmonize, and update a number of regulations after reviewing various WRS rule parts pursuant to section 11 of the Act. Section 11 of the Act requires the Commission to review biennially its regulations that are applicable to providers of telecommunications service in order to determine whether any rule is "no longer necessary in the public interest as the result of meaningful economic competition." Following such reviews, the Commission is required to modify or

repeal any such regulations that are no longer in the public interest. Since the release of the biennial review reports, the Commission has considered modifying or repealing certain regulations by issuing notices of proposed rulemakings as appropriate. This *NPRM* addresses additional proposals, identified in the 2000 and/or 2002 biennial review reports, to streamline and harmonize WRS rules that may no longer be necessary in the public interest pursuant to section 11 of the Act.

2. To a great extent, technological changes and/or successive changes to various Commission licensing rules have made it appropriate to review whether many of these rules are obsolete and no longer in the public interest. Accordingly, the *NPRM* seeks comment on streamlining and harmonizing these rules if they no longer serve the public interest in their current form notwithstanding any findings regarding the level of competition among existing services. In its *2002 Biennial Review Report*, the Commission clarified the scope and standard of review for future proceedings conducted pursuant to section 11. In so doing, the Commission acknowledged that it has broad discretion to review the continued need for any rule even in the absence of a congressional mandate such as section 11. Accordingly, this *NPRM* seeks comment pursuant to the Commission's broad authority to consider any proposed modifications to or eliminations of these existing rules under the Commission's general public interest standard. Under this broader

standard for review, this *NPRM* generally seeks comment on *inter alia* the appropriateness of certain rules in light of key principles underlying the Commission's approach to spectrum management.

#### Discussion

3. The Commission solicits comment on various amendments to provisions in parts 1, 22, 24, 27, and 90 of the rules. The Commission seeks comment generally whether these provisions should be (1) streamlined as a result of competitive, technological, or subsequent administrative rule changes and/or (2) harmonized because they treat similarly situated services differently. Although many of these proposals are technical in nature and/or limited in application to particular WRS, they nonetheless are consistent with the Commission's goal to harmonize rules and streamline the licensing obligations for all WRS licensees by eliminating unnecessary rules, as appropriate. In addition, the proposals are consistent with continued Commission efforts to move toward innovative approaches to spectrum policy that are designed to maximize the public interest benefits derived from the use of radio spectrum. The Commission also provides notice of and invites the public to review various administrative corrections that it intends to make at the conclusion of this proceeding to update and/or clarify certain WRS rules. While it is not necessary pursuant to the Administrative Procedure Act to seek comment on all of the proposed rule changes in this item, the Commission does so to facilitate administrative efficiency.

#### Classification of Part 90 Frequency and/or Transmitter Site Deletions as Minor Modifications Under Part 1

4. Section 1.929(c)(4) of the Commission's rules requires that certain requests for modification to a site-specific part 90 authorization, including changes to the frequencies or locations of base stations, are considered major modifications to the license which require prior Commission approval. Pursuant to § 90.135(b) of the rules, a site-specific part 90 licensee that makes a modification request listed in § 1.929(c)(4) must submit its request to the applicable frequency coordinator, unless the request falls within one of the specific exemptions listed in § 90.175 of the rules.

5. In the 2002 biennial review proceeding, the Cellular Telecommunications & Internet Association (CTIA) asks the Commission to clarify that applications

requesting only that a frequency be deleted from an authorization fall under the exemptions of § 90.175(i) and thus are exempt from the coordination process. As support, CTIA argues that the deletion of some frequencies from an authorization is no different than the cancellation of an entire authorization, which currently does not require any frequency coordination before being submitted to the Commission.

6. The American Petroleum Institute (API) makes a similar request that the Commission modify § 1.929(c)(4)(v) and/or § 1.929(k) of the rules to categorize the deletion of a site from a multi-site part 90 authorization as a minor modification which would require neither frequency coordination nor prior Commission approval. In lieu of coordination and prior approval, API advocates that such a change could be achieved by filing a notification through the Universal Licensing System (ULS). API contends that ULS eliminated the traditional reason to inform frequency coordinators when a licensee proposes to delete a site (*i.e.*, so they know when spectrum is available) because they can now access the information immediately in ULS. As a result, API concludes that the requirement is now "an unnecessary administrative burden upon the licensee, with no corresponding public or private benefit."

7. In the 2002 *BR Staff Report*, Commission staff recommends that the Commission consider both CTIA's and API's proposals to determine whether rule changes are warranted. Staff found that requiring frequency coordination and prior Commission approval for deletions of a frequency or a transmitter site may no longer be in the public interest. For example, staff states that not applying the frequency coordination requirement to frequency deletion could "reduce the processing burden on both applicants and frequency coordinators in cases in which the frequency coordination function is unnecessary."

8. The Commission tentatively concludes that a request to delete a frequency or a site from a multi-site authorization under part 90 should be considered a minor modification that requires neither frequency coordination nor the Commission's prior approval. The Commission agrees that frequency coordination in these cases is unnecessary given that ULS now provides frequency coordinators with immediate access to frequency and site information. It would be inconsistent to require coordination for a deletion of a site or a frequency when it is not required for a request to cancel an entire authorization. The Commission therefore proposes to amend its rules

such that these actions will be treated as minor modifications under part 1 of the Commission's rules. The Commission invites comment on this tentative conclusion. The Commission also seeks comment on whether there remains any need for licensees to notify the applicable frequency coordinator of any given deletion, if the rules are modified as proposed.

#### Effective Radiated Power/Equivalent Isotropically Radiated Power

9. In its comments in the 2000 biennial review proceeding, the Wireless Communications Division of the Telecommunications Industry Association (TIA) states that designating FCC power limits in terms of ERP in the Cellular Radiotelephone Service (cellular) rules and EIRP in the broadband Personal Communications Service (PCS) rules is "confusing to [its members'] customers since it appears that a dual mode phone [transmits] at different power levels at different frequencies." TIA argues that having two different types of power limits in the same device could be confusing to those who do not possess a scientific or engineering background. Therefore, TIA requests that the Commission specify all power limits in parts 22 and 24 of the rules in terms of EIRP. TIA further recommends that EIRP be used universally in all parts of the Commission's rules to end any confusion regarding ERP and EIRP.

10. Although the Commission recommended in the 2000 *Biennial Review Report* that a rulemaking proposal be initiated to consider using EIRP exclusively in Commission rules, the Commission tentatively concludes that the costs of implementation and potential for greater confusion that would likely be associated with making a wholesale conversion from ERP limits to EIRP limits outweigh the potential benefits to those licensees who do not possess the scientific or engineering expertise to distinguish between the two standards. As TIA notes in its comments, the conversion from ERP to EIRP is a simple calculation and "manufacturers realize that radio waves propagate differently above and below 1 GHz." Such a change in the rules would require extensive modifications, not only for the Commission (*e.g.*, reprogramming the Universal Licensing System (ULS), amending international agreements negotiated in terms of ERP, *etc.*), but also for licensees, frequency coordinators, manufacturers, and others in the wireless industry. Moreover, because an EIRP limit is always a larger number than the equivalent ERP limit, the Commission believes that restating

all ERP limits as EIRP limits could likely cause some entities (*e.g.*, licensees, frequency coordinators, *etc.*) to mistakenly think that the Commission has increased the permitted power. The Commission seeks comment on this tentative conclusion. If parties disagree with this tentative conclusion, they should provide specific examples of how the benefits of such a harmonization outweigh the inevitable costs and potentially greater confusion among the public from such a conversion in the rules.

## Part 22 Transmitter Identification

11. Section 22.303 of the Commission's rules provides, *inter alia*, that "[t]he station call sign must be clearly and legibly marked on or near every transmitting facility, other than mobile transmitters, of the station." In the 2002 biennial review proceeding, CTIA and the Rural Cellular Association (RCA) recommend that the Commission eliminate this requirement in the interest of commercial wireless regulatory parity, since wireless services regulated under other parts of the Commission's rules are not subject to a comparable obligation to post call sign information on each transmitter. The Commission agrees with CTIA and RCA that these rules should be harmonized and tentatively concludes to delete the last sentence of § 22.303, thereby eliminating the transmitter-specific posting requirement for cellular and other part 22 licensees. The Commission requests comment on this proposal, including whether the absence of call sign information on transmitting facilities associated with other WRS that are not subject to part 22 has proved problematic to the public or other carriers in any way.

## Part 24 Power and Antenna Height Limits

12. Section 24.232(a) of the Commission's rules contains, *inter alia*, power limitations for broadband PCS. Specifically, base stations are limited to 1640 watts peak EIRP with an antenna height up to 300 meters height above average terrain (HAAT) and base station transmitters are limited to 100 watts peak output power. When the Commission adopted the 100 watt transmitter power output limit in 1994, it did so to ensure that broadband PCS licensees utilizing the concurrent increase in EIRP limit for base stations from 100 to 1640 watts would use low power transmitters with high-gain, directional antennas, rather than high power transmitters with low-gain, non-directional antennas. Such use of

directional antennas, the Commission stated, would help reduce the likelihood that PCS licensees would deploy base stations that could transmit a strong signal over distances well beyond a mobile unit's capability to respond. The Commission later clarified in 1994 that the power limits contained in 47 CFR 24.232 "apply to [ ] individual components and not to the sum of all components at the entire base station."

13. In comments filed in the 2002 biennial review proceeding, Powerwave asserts that the power limitations contained in this rule section are overly restrictive. According to Powerwave, as subscriber growth in PCS has increased dramatically since broadband PCS systems were first authorized, the number of carriers (*i.e.*, the individual electrical signals that carry information) required to provide the additional voice channels has also increased. Powerwave contends that, in order to "provide the same level of service over more carriers at the same distance, it is necessary to increase power." Moreover, Powerwave asserts that the need for higher power levels has also increased because, due to increased local resistance to base station construction, more PCS stations must be collocated with cellular stations and, therefore, are spaced on a cellular design. As a result, PCS licensees, according to Powerwave, are increasingly using multi-carrier power amplifiers (MCPAs) to operate their systems.

14. Powerwave contends that § 24.232(a) generally has the unintended effect of thwarting PCS carriers' response to this increased demand by unfairly penalizing the use of MCPAs because the rule limits power per transmitter rather than per carrier. Powerwave asserts that the Commission's clarification in 1994 supports its position, but that the clarification was not incorporated into the Commission's rules. Therefore, Powerwave requests that the Commission, at the very least, amend § 24.232 to provide that the output power of each carrier must not exceed 100 watts, instead of each transmitter. Powerwave, however, suggests that such a restriction is nevertheless insufficient in today's PCS environment, and instead, proposes that the Commission eliminate the output power restriction entirely and rely solely on the limit on radiated power. Either change, Powerwave contends, would not affect the Commission's intent to prevent PCS licensees from operating a base station with a signal too powerful such that it would "outrun its mobile units," because it is by now recognized that it is in the carrier's self-interest to

"optimally balance the link between its base stations and mobile units."

15. In the 2002 *BR Staff Report*, Commission staff agrees with Powerwave and concludes that § 24.232(a) should be modified in order to regulate PCS base station transmissions in a technologically-neutral manner. Staff believes that "the current rule may hinder the development and deployment of technologies (*e.g.*, the multi-carrier amplifiers described by Powerwave) that combine signals in innovative ways yet do not increase the potential for harmful interference to neighboring systems."

16. Given the case presented by Powerwave and subsequent recommendations of staff, the Commission seeks comment on whether to relax the power limitations in § 24.232(a) by either amending the rule to clarify that the output power limit of 100 watts applies on a per carrier basis in the case of MCPAs or eliminating the transmitter output power restriction in its entirety. In view of the Commission's goal to harmonize rules and promote the efficient use of spectrum across comparable WRS, the Commission seeks comment on whether there is any need for the transmitter power output restriction in part 24, and if so, whether it can be modified to increase flexibility for PCS licensees to employ MCPAs. The Commission seeks comment on which approach is more desirable given the potential benefits to the public that would result from implementing either revision to the PCS power limits. The Commission also requests comment on the likelihood of interference or potential impact to the quality of PCS service associated with the two approaches.

17. Parties favoring retaining the output power limit on a "per carrier" basis instead of a "per transmitter" basis should provide definitions of the term "carrier" for a rule that would not be ambiguous for any of the various types of modulation technology that could be used and that can be complied with without difficulty. In this regard, the Commission notes that compliance with the output power rule occurs mainly through the equipment authorization process. This process places the burden of compliance through measurements on equipment manufacturers (such as Powerwave) as opposed to PCS licensees. While compliance with the current rule is easily determined (*i.e.*, measuring the power capability of a transmitter is a well-established laboratory procedure), the Commission is concerned that if the rule were revised to state a limit on a per carrier

basis, it may no longer be possible to determine compliance through the equipment authorization process, because neither the manufacturer, the measurement laboratory, nor the Commission can know in advance how many carriers the future owner of the MPCA (*i.e.*, the PCS licensee) would use. The Commission therefore asks parties to comment on how difficult and expensive it might be for a PCS licensee to monitor the power of each individual carrier to ensure compliance with the rule. In addition, commenters should address whether or not a “per carrier” rule would be technology-neutral if it permitted licensees utilizing relatively narrower bandwidth technologies (*e.g.*, GSM) to operate with higher aggregate power across their authorized spectrum than licensees utilizing relative broader bandwidth technologies such as CDMA. In their comments, parties should consider other alternatives, including whether or not a power spectral density limit (*i.e.*, power per unit bandwidth) would be more equitable and thus preferable than a per-carrier wording.

#### Proposed Modifications to Part 90

##### *Frequency Coordination*

18. Section 90.175(i) includes exemptions from the general coordination obligation of part 90 license applications. Among these exceptions, the Commission does not require evidence of frequency coordination to accompany applications for 800 MHz Upper 200 and Lower 80 SMR frequencies. In the 2002 biennial review proceeding, CTIA asks the Commission to expand the exceptions to the coordination requirements to include the 800 MHz General Category frequencies. CTIA argues that because the 800 MHz General Category channels are now subject to competitive bidding and are authorized by exclusive geographic areas, as the 800 MHz Upper 200 and Lower 80 SMR frequencies are, the need for frequency coordination is no longer necessary.

19. In the *2002 BR Staff Report*, Commission staff finds that the frequency coordination requirements of § 90.175 may no longer be in the public interest for certain 800 MHz General Category frequencies. However, staff states that “the possible conversion of existing site-by-site licensed general category frequencies to a different mode of operation (*e.g.*, from conventional to trunked use), and the potential shared use environment of the frequencies, makes [wholesale] elimination of the coordination requirement a concern.” Staff also states that frequency coordination “remains beneficial in a

shared use environment to ensure efficient use and prevent interference.” Therefore, the Commission seeks comment on whether to eliminate the frequency coordination requirement for incumbent licensees operating on 800 MHz General Category frequencies on a non-shared basis, where such licensees propose new and/or modified facilities that do not expand the applicable interference contour. By limiting proposed elimination of the frequency coordination requirement to certain categories, the Commission addresses the staff’s concern that a number of shared use systems, including private, public safety and SMR incumbents, are protected. The Commission asks that parties take this into consideration in their comments to the extent they support modification or elimination of the frequency coordination requirement for certain 800 MHz General Category frequencies.

##### **Emission Masks**

20. Section 90.210 of the Commission’s rules describes several emission masks applicable to part 90 transmitters. In comments in the 2002 biennial review proceeding, Motorola notes that, while the standards imposed by this rule section generally serve the public interest by limiting unwanted emissions outside the authorized bandwidth and thus minimizing adjacent channel interference, Emission Mask G, set forth in § 90.210(g), limits design flexibility without any corresponding value in improved interference control. Motorola recommends that the Commission conform the Emission Mask G rule to the steps it has taken in recent years in adopting modulation-independent masks (emission masks D, E, and F) that place no limitation on the spectral power density profile within the maximum authorized bandwidth. Commission staff agrees with Motorola in its *2002 BR Staff Report* and recommends that the Commission consider adopting Motorola’s request in order to potentially enhance design flexibility without diminishing interference protection.

21. The Commission proposes to revise § 90.210(g) to eliminate paragraph (g)(1) and renumber the remaining subsections. Not only will this change afford greater flexibility to equipment manufacturers, but it will conform the Commission’s approach for this emission mask with its rules governing a number of other emission masks applicable to part 90 services. The Commission requests comment on the potential benefits to the public of making this change, and whether this

proposed revision would, despite its intent, potentially increase interference.

22. In addition, § 90.210(m) specifies a resolution bandwidth of at least 10 kHz when performing measurements under the condition of the unwanted emission being on a frequency below 1 GHz that is more than 50 kHz removed from the edge of the authorized bandwidth. Both Motorola and TIA request that the Commission revise § 90.210(m) to conform the emission mask measurement method to the standards set forth in Appendix S3, Article 10 of the International Telecommunications Union (ITU) Radio Regulations (ITU Regulation S3.10) which became effective on January 1, 2003. According to Motorola, ITU Regulation S3.10 “serves to control unwanted out-of-band emissions more stringently by increasing the resolution bandwidth under that condition to be 100 kHz, not 10 kHz.” The Commission tentatively concludes that it should revise § 90.210(m) of its rules to conform to ITU Regulation S3.10, because it believes this revision will provide greater protection against interference. The Commission requests comment on this tentative conclusion.

##### *800 MHz and 900 MHz Supplemental Information*

23. Section 90.607 of the Commission’s rules describes the supplemental information that must be furnished by applicants for 800 MHz and 900 MHz SMR systems. Under paragraph (a) of this rule, applicants proposing to provide service on a commercial basis in these bands must supply, among other things, a statement of their “planned mode of operation” and a statement certifying that only eligible persons would be provided service on the licensee’s base station facility.

24. In comments filed in the 2002 biennial review proceeding, PCIA—the Wireless Infrastructure Association (PCIA) advocates eliminating § 90.607(a). Specifically, PCIA states that the system diagrams that were used when the 800 MHz band was originally conceived have not been used by the Commission for years and are no longer necessary. Moreover, PCIA asserts that the eligibility statement is no longer needed because the eligibility rules for SMR end-users have been eliminated. In the *2000 BR Staff Report*, Commission staff recommends the removal of § 90.607(a) because it appears to serve no regulatory purpose and is inconsistent with the Commission’s policies regarding the flexible use of spectrum. The Commission believes that meaningful competition among the

various wireless services has rendered such requirements no longer necessary in the public interest because it believes market forces will encourage applicants to operate their facilities in the proper manner without Commission involvement. The Commission, therefore, tentatively concludes that it should delete § 90.607(a) to eliminate the reporting requirements. The Commission invites comment on this tentative conclusion.

#### *800 MHz and 900 MHz Trunked Systems Loading, Construction and Authorization Requirements*

25. Section 90.631 of the Commission's rules contains various requirements for the authorization, construction, and loading of 800 MHz and 900 MHz trunked systems. PCIA and CTIA request that the Commission modify two of these requirements that they assert are no longer necessary. Section 90.631(d) of the Commission's rules allows a licensee of an 800 MHz and 900 MHz SMR trunked system to request an additional five channels than it has constructed without meeting the loading requirements if the licensee operates in a "rural area." The rule defines a "rural area" as either (1) an area which is beyond the 100-mile radius of the designated center of urbanized areas listed in the rule, or (2) an area that has a "waiting list." In comments in the 2002 biennial review proceeding, PCIA notes that waiting lists for 800 MHz and 900 MHz SMR frequencies were eliminated by the Commission in 1995 when the Commission switched to competitive bidding and geographic area licensing. As a result, PCIA requests that the Commission amend § 90.631(d) to delete the "waiting list" exception to the definition of a rural area. The Commission agrees with PCIA and seeks comment on a tentative conclusion to delete this exception to the definition of a rural area. The Commission also seeks comment on eliminating other references to waiting lists contained in § 90.631(d) of the rules.

26. Section 90.631(i) provides that an incumbent (*i.e.*, pre-auction) 900 MHz SMR licensee that has not met the loading requirements set forth in § 90.631(b) at the end of its initial five-year license term will only be granted a renewal period of two years, in which time the licensee must satisfy the loading requirements. CTIA states that the requirement is obsolete because the "timeframe for site-specific SMR 900 MHz systems to meet the loading requirements has since expired." The Commission agrees that the period of renewing incumbent 900 MHz SMR

licenses subject to this requirement has ended. Therefore, the Commission tentatively concludes to eliminate paragraph (i) of § 90.631 from its rules, as well as references to paragraph (i) in § 90.631(b) of the rules. The Commission seeks comment on this tentative conclusion.

#### *800 MHz and 900 MHz Power and Antenna Height*

27. Section 90.635 of the Commission's rules sets forth the limitations on power and antenna height for 800 MHz and 900 MHz systems. In its comments in the 2002 biennial review proceeding, PCIA asks the Commission to modify or eliminate the restrictions placed on two particular types of 800 MHz and 900 MHz systems—those located in "suburban" areas as defined in the rule and those whose service area requirements are less than 32 kilometers (*i.e.*, what PCIA refers to as "campus-type" radio systems).

28. First, § 90.635(a) through (c) differentiates between "urban" and "suburban" conventional (*i.e.*, non-trunked) systems, allowing a greater maximum power (1000 watts vs. 500 watts) and higher maximum antenna height (304 meters vs. 152 meters) for urban conventional systems than suburban conventional systems. PCIA argues that such a distinction "no longer serves a useful purpose and should be eliminated." PCIA justifies this conclusion by asserting that suburban systems frequently must cover larger service areas than urban systems, and therefore, a smaller maximum power limit economically restricts the ability of these licensees to serve the suburban areas. Moreover, PCIA asserts that the restrictions on suburban sites also prevent these licensees from counteracting interference from cellular systems to the same extent as urban sites. The Commission seeks comment on PCIA's proposal to modify § 90.635 to remove the distinction between urban and suburban sites when setting the maximum power and antenna height limits for conventional 800 MHz and 900 MHz systems. The Commission believes there is a significant question as to whether the justification for such distinction remains relevant in today's marketplace.

29. Second, PCIA asks the Commission to eliminate the power restrictions on 800 MHz and 900 MHz systems with an operational radius of less than 32 kilometers in radius, which PCIA refers to as "campus-type" radio systems. PCIA states that although it "appreciates the Commission's original goal to maximize the number of radio

systems that could be accommodated on a single frequency, by limiting the ERP of small footprint systems," the possibility of additional channel use is effectively prohibited by the requirement in § 90.621(b)(4) that applicants protect all existing stations as if the incumbent system was operating at 1000 watts ERP. PCIA also asserts that the power limitation prevents these smaller systems from limiting interference from cellular systems. Therefore, PCIA requests that the power limitations on 800 MHz and 900 MHz systems with an operational radius below 32 kilometers be eliminated. The Commission seeks comment on this proposal and asks that interested parties address the use of such systems in light of the Commission's original goal of increasing the use of single frequencies, and whether lifting of these restrictions will help eliminate interference from cellular systems.

#### *System Authorization Limit in Geographic Areas*

30. Section 90.653 of the rules states that "[t]here shall be no limit on the number of systems authorized to operate in any one given area except that imposed by allocation limitations." The Commission adopted this rule in 1982 pursuant to its decision to not restrict equipment manufacturers from holding 800 MHz SMR licenses. CTIA asserts that "[t]he rule is redundant and no longer serves any regulatory purpose." Based on the fact that s have licensed and will continue to license 800 and 900 MHz SMR frequencies using competitive bidding for geographic-area authorizations, the Commission agrees with CTIA that this rule is no longer in the public interest. Therefore, the Commission tentatively concludes that § 90.653 should be removed. The Commission seeks comment on this tentative conclusion.

#### *Reporting Requirement for Trunked SMR Loading Data*

31. Section 90.658 of the Commission's rules provides that site-based licensees of trunked SMR systems licensed before June 1, 1993 must provide loading data in order to either acquire additional channels or renew their authorizations. Both PCIA and CTIA note that all SMR licenses issued prior to June 1, 1993 have now been through at least one renewal period, and therefore, advocate eliminating the rule. In the *2002 BR Staff Report*, Commission staff finds this provision may be an outdated and burdensome requirement on SMR licensees, especially in light of the competition among cellular, PCS, and 800/900 MHz

SMR services. Accordingly, the Commission tentatively concludes that it will eliminate § 90.658 as no longer necessary in the public interest. The Commission seeks comment on this proposal.

#### *220 MHz Phase I Supplemental Progress Reports*

32. Section 90.737 of the Commission's rules sets forth the supplemental progress reports that 220 MHz Phase I licensees must file with the Commission. In the *2002 BR Staff Report*, staff recommends that the Commission consider whether certain rules applicable to the 220 MHz Phase I licensees continue to be necessary in the public interest in light of increased competition among CMRS providers. In particular, staff identifies § 90.737 as imposing certain reporting requirements and restrictions on assignments of unconstructed, site-based, 220 MHz Phase I licenses that were intended to prevent speculation and trafficking in licenses awarded by lottery. The Commission tentatively concludes that § 90.737 should be eliminated as no longer necessary in the public interest given recent competitive and other developments. Licensing by lottery has been eliminated in the 220 MHz Service and the Commission believes that these reporting requirements may "impede the transferability of 220 MHz spectrum" in a competitive CMRS marketplace. The Commission seeks comment on this tentative conclusion.

#### *Corrections and Updates to WRS Rules*

33. In a Report and Order in this proceeding, the Commission intends to correct, update, or eliminate various rules in parts 1, 22, 24, 27, and 90. While the Commission is not seeking specific comment on these changes, it includes them to provide notice to the public. The following are the administrative changes it plans to make:

34. Part 1, subpart F—Title. Correct the term "Wireless Telecommunications Services" to read "Wireless Radio Services."

35. Section 1.927(g). Replace the cross-reference to § 1.948(h)(2) with § 1.948(i)(2).

36. Section 1.939(b). Eliminate the third sentence which states that manually filed petitions to deny can be filed at the Commission's former office location.

37. Section 1.955(a)(2). Replace the cross-reference to § 1.948(c) with § 1.946(c).

38. Section 22.946(b)(2). Replace the reference to Form 489 with Form 601.

39. Section 22.946(c). Replace the cross-reference to § 22.144(b) with § 1.955.

40. Section 22.947(c). Update the location for filing a cellular system information update (SIU) to "Federal Communications Commission, Wireless Telecommunications Bureau, Mobility Division, 445 12th Street, SW., Washington, DC 20554."

41. Section 22.948(d). Delete the cross-reference to § 22.144(a).

42. Section 22.949(d). Replace the cross-reference to § 22.122 with § 1.927.

43. Section 22.953(b). Replace the cross-reference to § 1.929(h) with § 1.929(a)–(b).

44. Section 22.953(c). Replace the cross-reference to § 1.929(h) with § 1.929(k) of the Commission's rules.

45. Section 24.12. Delete the cross-references to §§ 99.202(c) and 99.204.

46. Section 24.843. Delete the entire section because similar "extension of time to construct" rules for other wireless services, including narrowband PCS, were consolidated into § 1.946, which applies to all Wireless Radio Services.

47. Section 27.3. Add "Part 74" to the list of other applicable rule parts and renumber.

48. Section 90.20(c)(3). Replace limitation 77 with 78 for frequency 35.02; replace limitation 27 with 17 for frequency 42.40; replace limitation 19 with 29 for frequency 152.0075; replace frequency 158.4725 with 159.4725; remove limitation 43 for frequencies 156.165, 156.1725, 156.180, 156.1875, 156.195, 156.2025, 156.225, 156.2325, 156.240, 158.985, 158.9925, 159.000, 159.0075, 159.015, 159.0225, 159.045, 159.0525, 159.060, 159.0675, 159.075, 159.0825, 159.105, 159.1125, 159.120, 159.1275, 159.135, 159.1425, 159.165, 159.1725; and remove the frequency coordinator designation for frequencies 220.8025, 220.8075, 220.8125, 220.8175, 220.8225, 220.8275, 220.8325, 220.8375, 220.8425, 220.8475, 221.8025, 221.8075, 221.8125, 221.8175, 221.8225, 221.8275, 221.8325, 221.8375, 221.8425, 221.8475.

49. Section 90.20(d). Eliminate redundancy by consolidating limitations 10 and 38 and update frequency table(s) accordingly.

50. Section 90.35(b)(3). Eliminate redundancy by deleting one of the two entries for frequency 35.48.

51. Section 90.35(c). Remove limitation 45.

52. Section 90.149. Add "Except as provided in subpart R of this part," to the beginning of Section 90.149(a) and eliminate 90.149(d).

53. Section 90.743(a). Replace the cross-reference to § 90.149 with § 1.949.

54. Section 90.743(c). Update the license term for Phase I non-nationwide licensees from five years to ten years.

#### **Procedural Matters**

##### *Initial Regulatory Flexibility Analysis*

55. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present 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 *NPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided in paragraph 56 of the item. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

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

56. The Commission believes that streamlining and harmonizing certain licensing provisions in the wireless radio services (WRS) would further Commission efforts to maintain clear spectrum rights and obligations for these licensees, fulfill the Commission's mandate under section 11 of the Communications Act to conduct biennial reviews, and support recent efforts to maximize the public benefits derived from the use of the radio spectrum. Thus, in the Notice, the Commission seeks comment on proposals—identified in the *2002 Biennial Review Report* and related *2002 BR Staff Report*, as well as the *2000 Biennial Review Report* and related *2000 BR Staff Report*—to streamline and harmonize WRS rules that are no longer in the public interest and/or may be obsolete as the result of increased competition within WRS pursuant to section 11 of the Act. The Commission discusses the potential impact of these on small entities in the paragraphs that follow.

##### *Legal Basis*

57. The potential actions on which comment is sought in this Notice would be authorized under sections 1, 4(i), 11, and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 161, and 303(r).

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

58. The RFA requires that an initial regulatory flexibility analysis be prepared for notice-and-comment

rulemaking proceedings, unless the Agency certifies that "the rule will not, if promulgated, have a significant impact on a substantial number of small entities." 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: (i) Is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." This IRFA describes and estimates the number of small entity licensees that may be affected if the proposals in this Notice are adopted.

59. When identifying small entities that could be affected by the Commission's new rules, the Commission provides information describing auctions results, including the number of small entities that are winning bidders. The Commission notes, however, that the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily reflect the total number of small entities currently in a particular service. The Commission does not generally require that applicants provide business size information, except in the context of an assignment or transfer of control application where unjust enrichment issues are implicated. Consequently, to assist the Commission in analyzing the total number of potentially affected small entities, the Commission requests commenters to estimate the number of small entities that may be affected by any rule changes resulting from this Notice.

60. The potential rules on which comment is sought in this *NPRM*, if adopted, would affect small entity licensees of the services identified.

#### *Wireless Radio Services*

61. *Cellular Licensees.* The SBA has developed a small business size standard for small businesses in the category "Cellular and Other Wireless Telecommunications." Under that SBA category, a business is small if it has 1,500 or fewer employees. According to the Bureau of the Census, only twelve firms out of a total of 977 cellular and other wireless telecommunications firms that operated for the entire year in

1997 had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers are small businesses under the SBA's definition.

62. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. This category provides that a small business is a wireless company employing no more than 1,500 persons. According to the Census Bureau data for 1997, only twelve firms out of a total of 977 such firms that operated for the entire year in 1997, had 1,000 or more employees. If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business standard.

63. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. The Commission has adopted a small business size standard for defining "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years. The SBA has approved these small size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: Three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won

373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses. A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.

64. *Lower 700 MHz Band Licenses.* The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission has defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. Additionally, the lower 700 MHz Service has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is entrepreneur, which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA has approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 CMA licenses. Seventeen winning bidders claimed small or very small business status and won sixty licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.

65. *Upper 700 MHz Band Licenses.* The Commission has authorized service in the upper 700 MHz band. This auction, previously scheduled for January 13, 2003, has been postponed.

66. *Paging.* The Commission has adopted a size standard for "small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment



payments. A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. The SBA has approved this definition. An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. An auction of Metropolitan Economic Area (MEA) and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold. 132 companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. Currently, there are approximately 24,000 Private Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service*, 608 private and common carriers reported that they were engaged in the provision of either paging or "other mobile" services. Of these, the Commission estimates that 589 are small, under the SBA-approved small business size standard. The Commission estimates that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

67. *Broadband Personal Communications Service (PCS)*. The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. For Block F, an additional small business size standard for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total

of 93 "small" and "very small" business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.

68. *Narrowband PCS*. The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, "small businesses" were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission awarded a total of forty-one licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard. A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards. A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (MTA and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

69. *Specialized Mobile Radio (SMR)*. The Commission awards "small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years. The Commission awards "very small entity" bidding credits to firms 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 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 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 began on October 28, 1997, and was

completed on December 8, 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 held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

70. The auction of the 1,050 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders 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 on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. 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.

71. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Commission does 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. The Commission assumes, 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 established by the SBA.

72. *Private Land Mobile Radio (PLMR)*. PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, the Commission could use the definition for "Cellular and Other Wireless Telecommunications." 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. Moreover, because PLMR licensees generally are not in the business of providing cellular or other wireless telecommunications services but instead use the licensed facilities in support of other business activities, the Commission is not certain that the Cellular and Other Wireless Telecommunications category is appropriate for determining how many PLMR licensees are small entities for this analysis. Rather, it may be more appropriate to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

73. The Commission's 1994 Annual Report on PLMRs indicates that at the end of fiscal year 1994, there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the revised rules in this context could potentially impact every small business in the United States.

74. *Fixed Microwave Services.* Fixed microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. Currently, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this FRFA, the Commission will use the SBA's definition applicable to "Cellular and Other Wireless Telecommunications" companies—that is, an entity with no more than 1,500 persons. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are 22,015 or fewer small common carrier fixed licensees and 61,670 or fewer small private operational-fixed licensees and small broadcast auxiliary radio licensees in the microwave services that may be affected by the rules and policies adopted herein. The Commission notes, however, that the common carrier

microwave fixed licensee category includes some large entities.

75. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these definitions. The FCC auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity. An auction for one license in the 1670–1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

76. *39 GHz Service.* The Commission defines "small entity" for 39 GHz licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. "Very small business" is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. The SBA has approved these definitions. The auction of the 2,173 39 GHz licenses began on April 12, 2000, and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses.

77. *Local Multipoint Distribution Service.* An auction of the 986 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. An additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. These regulations defining "small entity" in the context of LMDS auctions have been approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 32

small and very small business winning bidders that won 119 licenses.

78. *218–219 MHz Service.* The first auction of 218–219 MHz (previously referred to as the Interactive and Video Data Service or IVDS) spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas (MSAs). Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, the Commission defined a small business as an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years. The Commission has defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding \$15 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding \$3 million for the preceding three years. The SBA has approved of these definitions. At this time, the Commission cannot estimate the number of licenses that will be won by entities qualifying as small or very small businesses under its rules in future auctions of 218–219 MHz spectrum. Given the success of small businesses in the previous auction, and the prevalence of small businesses in the subscription television services and message communications industries, the Commission assumes for purposes of this FRFA that in future auctions, many, and perhaps all, of the licenses may be awarded to small businesses.

79. *Location and Monitoring Service (LMS).* Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$15 million. A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$3 million. These definitions have been approved by the SBA. An auction for LMS licenses commenced on February 23, 1999, and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses. The

Commission cannot accurately predict the number of remaining licenses that could be awarded to small entities in future LMS auctions.

80. *Rural Radiotelephone Service.* The Commission uses the SBA definition applicable to cellular and other wireless telecommunication companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

81. *Air-Ground Radiotelephone Service.* The Commission uses the SBA definition applicable to cellular and other wireless telecommunication companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

82. *Offshore Radiotelephone Service.* This service operates on several ultra high frequency (UHF) TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. The Commission uses the SBA definition applicable to cellular and other wireless telecommunication companies, *i.e.*, an entity employing no more than 1,500 persons. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition. The Commission assumes, for purposes of this FRFA, that all of the 55 licensees are small entities, as that term is defined by the SBA.

83. *Multiple Address Systems (MAS).* Entities using MAS spectrum, in general, fall into two categories: (1) Those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, the Commission defines "small entity" for MAS licenses as an entity that has average gross revenues of less than \$15 million in the three previous calendar years. "Very small business" is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$3 million for the preceding three calendar years. The SBA has approved of these definitions. The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive

bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of January 20, 1999, there were a total of 8,670 MAS station authorizations. Of these, 260 authorizations were associated with common carrier service. In addition, an auction for 5,104 MAS licenses in 176 EAs began November 14, 2001, and closed on November 27, 2001. Seven winning bidders claimed status as small or very small businesses and won 611 licenses.

84. With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate their own internal communications needs, the Commission notes that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the definitions developed by the SBA would be more appropriate. The applicable definition of small entity in this instance appears to be the "Cellular and Other Wireless Telecommunications" definition under the SBA rules. This definition provides that a small entity is any entity employing no more than 1,500 persons. The Commission's licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

85. *Incumbent 24 GHz Licensees.* The rules that the Commission adopts could affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The Commission did not develop a definition of small entities applicable to existing licensees in the 24 GHz band. Therefore, the applicable definition of small entity is the definition under the SBA rules for "Cellular and Other Wireless Telecommunications." This definition provides that a small entity is any entity employing no more than 1,500 persons. The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is the Commission's understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

86. *Future 24 GHz Licensees.* With respect to new applicants in the 24 GHz band, the Commission has defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding \$15 million. "Very small business" in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years. The SBA has approved these definitions. The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

87. *700 MHz Guard Band Licenses.* The Commission has adopted size standards for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. SBA approval of these definitions is not required. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

88. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and Instructional Television Fixed Service.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the Commission defined "small business" as an entity that, together with its affiliates, has average gross annual revenues that are not more than \$40 million for the preceding three calendar years. The SBA has approved

of this standard. The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than \$40 million and are thus considered small entities.

89. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating \$12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under \$10 million, and an additional 52 firms had receipts of \$10 million or more but less than \$25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies proposed in the Notice.

90. Finally, while SBA approval for a Commission-defined small business size standard applicable to ITFS is pending, educational institutions are included in this analysis as small entities. There are currently 2,032 ITFS licensees, and all but 100 of these licenses are held by educational institutions. Thus, the Commission tentatively concludes that at least 1,932 ITFS licensees are small businesses.

91. *Cable Television Relay Service.* This service includes transmitters generally used to relay cable programming within cable television system distribution systems. The SBA has defined a small business size standard for Cable and Other Program Distribution, consisting of all such companies having annual receipts of no more than \$12.5 million. According to Census Bureau data for 1997, there were 1,311 firms in the industry category Cable and Other Program Distribution, total, that operated for the entire year. Of this total, 1,180 firms had annual receipts of \$10 million or less, and an additional 52 firms had receipts of \$10 million or more but less than \$25 million. Thus, under this standard, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies proposed in the Notice.

92. *Cable System Operators (Rate Regulation Standard).* The Commission has developed, with SBA approval, its own definition of a small cable system operator for purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. Based on the Commission's most recent information, the Commission estimates that there were 1,439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. The Commission's rules define a "small system," for purposes of rate regulation, as a cable system with 15,000 or fewer subscribers. The Commission does not request nor does the Commission collect information concerning cable systems serving 15,000 or fewer subscribers, and thus is unable to estimate, at this time, the number of small cable systems nationwide.

93. *Cable System Operators (Telecom Act Standard).* The Communications Act, as amended, also contains a size standard for a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that there are 68,500,000 subscribers in the United States. Therefore, an operator serving fewer than 685,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate. Based on available data, the Commission finds that the number of cable operators serving 685,000 subscribers or less totals approximately 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, the Commission is unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

94. *Multichannel Video Distribution and Data Service.* MVDDS is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. No auction has yet been held in this service, although an action has been scheduled for

January 14, 2004. Accordingly, there are no licensees in this service.

#### Private Wireless Radio Services

95. *Amateur Radio Service.* These licensees are believed to be individuals, and therefore are not small entities.

96. *Aviation and Marine Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of the Commission's evaluations in this analysis, the Commission estimates that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the special small business size standards.

97. *Personal Radio Services.* Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under part 95 of its rules. These services include Citizen Band Radio Service (CB), General Mobile Radio Service (GMRS), Radio Control Radio Service

(R/C), Family Radio Service (FRS), Wireless Medical Telemetry Service (WMTS), Medical Implant Communications Service (MICS), Low Power Radio Service (LPRS), and Multi-Use Radio Service (MURS). There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules being adopted. Since all such entities are wireless, the Commission applies the definition of cellular and other wireless telecommunications, pursuant to which a small entity is defined as employing 1,500 or fewer persons. Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by the proposed rules.

98. Despite the paucity, or in some instances, total absence, of information about their status as licensees or regulatees or the number of operators in each such service, users of spectrum in these services are listed here as a matter of Commission discretion in order to fulfill the mandate imposed on the Commission by the Regulatory Flexibility Act to regulate small business entities with an understanding towards preventing the possible differential and adverse impact of the Commission's rules on smaller entities. Further, the listing of such entities, despite their indeterminate status, should provide them with fair and adequate notice of the possible impact of the proposals contained in the Notice.

99. *Public Safety Radio Services.* Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. There are a total of approximately 127,540 licensees in these services. Governmental entities as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.

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

100. The policies proposals in this NPRM could apply to a significant

number of Commission licensees of wireless services. Specifically, the NPRM proposes various amendments to parts 1, 22, 24, 27, and 90 of the rules to modify or eliminate provisions that (i) have become outdated as a result of technological change, supervening changes to related Commission rules, or increased competition within WRS, and/or (ii) should be harmonized because they treat similarly situated services differently. Although many of these proposals are technical in nature and/or limited in application to specific WRS, they nonetheless are consistent with the Commission's spectrum policy goals to harmonize rules and streamline the licensing obligations for all WRS licensees by eliminating unnecessary rules, as appropriate. The NPRM also seeks comment on various administrative corrections to update and/or clarify certain rules affecting a broad range of WRS.

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

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

102. A number of the Commission's technical, operational and service rules affecting various WRS may be determined to be inconsistent or outdated. Therefore, modifying or eliminating these rules should decrease the costs associated with regulatory compliance for service providers, provide additional flexibility in the provision of service and manufacturing of equipment, and enhance the market demand for some services. The Commission therefore anticipates that, although it seems likely that there will be a significant economic impact on a substantial number of small entities, there will be no adverse economic impact on small entities. In fact, the proposed rule changes may particularly benefit small entities. For example, the Notice proposes to delete the last sentence of § 22.303, thereby eliminating the transmitter-specific

posting requirement for cellular and other part 22 licensees. Although adoption of such an amendment would benefit both small and large entities, many of the businesses in these radio services are small entities. The NPRM also proposes *inter alia* that a request to delete a frequency or a site from a multi-site authorization under part 90 should be considered a minor modification that requires neither frequency coordination nor the Commission's prior approval. Many part 90 licensees are small entities that could benefit from this rule change.

103. In the NPRM, then, the Commission has set forth various options it is considering for each rule, from modifying rules to eliminating them altogether. As discussed in the Notice, the effect of any rule change on the regulatory burden of licensees will be a significant criterion in determining appropriate Commission action. The Commission notes that the entire intent underlying its actions here is to lessen the levels of regulation, consistent with its mandate for undertaking biennial reviews. The Commission seeks comment on any additional appropriate alternatives and especially alternatives that may further reduce economic impacts on small entities.

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

104. None.

#### **Initial Paperwork Reduction Act Analysis**

105. This NPRM contains either a proposed or modified information collection. As part of the continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due April 23, 2004. Comments should address: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (2) the accuracy of the Commission's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. A copy of any comments on the

information collections contained herein should be submitted to Judith B. Herman, Federal Communications Commission, 445 12th St., SW., Room 1-C804, Washington, DC 20554, or via the Internet to [Judith-B.Herman@fcc.gov](mailto:Judith-B.Herman@fcc.gov), and to Kristy L. LaLonde, OMB Desk Officer, 10236 New Executive Office Building, 724 17th St., NW., Washington, DC 20503, or via the Internet to [Kristy\\_L.Londe@omb.eop.gov](mailto:Kristy_L.Londe@omb.eop.gov).

### Comment Filing Procedures

106. *Comments and reply comments.* Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments in response to this NPRM in WT Docket No. 03-264 on or before April 23, 2004 and reply comments on or before May 24, 2004.

107. *Form of comments.* In order to facilitate staff review of the record in this proceeding, parties that submit comments or reply comments in this proceeding are requested to provide a table of contents with their comments. Such a table of contents should, where applicable, parallel the table of contents of the NPRM.

108. *How to file comments.* Comments may be filed either by filing electronically, such as by using the Commission's Electronic Comment Filing System (ECFS), or by filing paper copies.

109. Parties are strongly urged to file their comments using ECFS (given recent changes in the Commission's mail delivery system). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Only one copy of an electronic submission must be filed. In completing the transmittal screen, the electronic filer should include its full name, Postal Service mailing address, and the applicable docket or rulemaking number, WT Docket No. 03-264. Parties also may submit comments electronically by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

110. Parties who choose to file by paper may submit such filings by hand or messenger delivery, by U.S. Postal Service mail (First Class, Priority, or Express Mail), or by commercial overnight courier. Parties must file an original and four copies of each filing in WT Docket No. 03-264. Parties that want each Commissioner to receive a

personal copy of their comments must file an original plus nine copies. If paper filings are hand-delivered or messenger-delivered for the Commission's Secretary, they must be delivered to the Commission's contractor, Natek, Inc., at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002-4913. To receive an official "Office of the Secretary" date stamp, documents must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission. (The filing hours at this facility are 8 a.m. to 7 p.m.) If paper filings are submitted by mail through the U.S. Postal Service (First Class mail, Priority Mail, and Express Mail), they must be sent to the Commission's Secretary, Marlene H. Dortch, Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington DC 20554. If paper filings are submitted by commercial overnight courier (*i.e.*, by overnight delivery other than through the U.S. Postal Service), such as by Federal Express or United Parcel Service, they must be sent to the Commission's Secretary, Marlene H. Dortch, Federal Communications Commission, Office of the Secretary, 9300 East Hampton Drive, Capitol Heights, MD 20743. (The filing hours at this facility are 8 a.m. to 5:30 p.m.)

111. Parties may also file with the Commission some form of electronic media submission (*e.g.*, diskettes, CDs, tapes, *etc.*) as part of their filings. In order to avoid possible adverse affects on such media submissions (potentially caused by irradiation techniques used to ensure that mail is not contaminated), the Commission advises that they should not be sent through the U.S. Postal Service. Hand-delivered or messenger-delivered electronic media submissions should be delivered to the Commission's contractor, Natek, Inc., at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002-4913. Electronic media sent by commercial overnight courier should be sent to the Commission's Secretary, Marlene H. Dortch, Federal Communications Commission, Office of the Secretary, 9300 East Hampton Drive, Capitol Heights, MD 20743.

112. Regardless of whether parties choose to file electronically or by paper, they should also send one copy of any documents filed, either by paper or by e-mail, to each of the following: (1) Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, facsimile (202) 863-2898, or e-mail at [qualexint@aol.com](mailto:qualexint@aol.com); and (2) Jay Jackson, Mobility Division, Wireless Telecommunications Bureau, 445 12th

Street, SW., Washington, DC, 20554, or e-mail at [Jay.Jackson@fcc.gov](mailto:Jay.Jackson@fcc.gov).

113. *Availability of documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW., Room CY-A257, Washington, D.C. 20554. These documents also will be available electronically at the Commission's Disabilities Issues Task Force Web site, [www.fcc.gov/dtf](http://www.fcc.gov/dtf), and from the Commission's Electronic Comment Filing System. Documents are available electronically in ASCII text, Word 97, and Adobe Acrobat. Copies of filings in this proceeding may be obtained from Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail at [qualexint@aol.com](mailto:qualexint@aol.com). This document is also available in alternative formats (computer diskette, large print, audio cassette, and Braille). Persons who need documents in such formats may contact Brian Millin at (202) 418-7426, TTY (202) 418-7365, [Brian.Millin@fcc.gov](mailto:Brian.Millin@fcc.gov), or send an e-mail to [access@fcc.gov](mailto:access@fcc.gov).

### Ex Parte Presentations

114. This is a permit-but-disclose rulemaking proceeding, subject to the "permit-but-disclose" requirements under § 1.1206(b) of the Commission's rules. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in 47 CFR 1.1206(b) of the Commission's rules. Parties submitting written *ex parte* presentations or summaries of oral *ex parte* presentations are urged to use the ECFS in accordance with the Commission rules discussed. Parties filing paper *ex parte* submissions must file an original and one copy of each submission with the Commission's Secretary, Marlene H. Dortch, at the appropriate address for filings sent by either U.S. mail, overnight delivery, or hand or messenger delivery. Parties must also serve the following with

either one copy of each *ex parte* filing via e-mail or two paper copies: (1) Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or e-mail at [qualexint@aol.com](mailto:qualexint@aol.com); and (2) Jay Jackson, Mobility Division, Wireless Telecommunications Bureau, 445 12th Street, SW., Washington, DC, 20554, or e-mail at [Jay.Jackson@fcc.gov](mailto:Jay.Jackson@fcc.gov).

#### Contact Information

115. The Wireless Telecommunications Bureau contact for this proceeding is Jay Jackson at (202) 418-0620, e-mail at [Jay.Jackson@fcc.gov](mailto:Jay.Jackson@fcc.gov). Press inquiries should be directed to Lauren K. Patrich, Wireless Telecommunications Bureau, at (202) 418-7944, TTY at (202) 418-7233, or e-mail at [Lauren.Patrich@fcc.gov](mailto:Lauren.Patrich@fcc.gov).

#### Ordering Clauses

116. Pursuant to the authority contained in §§ 1, 4(i), 11, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 161, and 303(r), this notice of proposed rulemaking is hereby adopted.

117. The Commission's Consumer Information 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

##### 47 CFR Part 1

Communications common carriers, Radio, Telecommunications.

##### 47 CFR Part 22

Communications common carriers, Radio, Reporting and recordkeeping requirements.

##### 47 CFR Part 24

Personal Communications Services, Radio.

##### 47 CFR Part 27

Wireless Communications Services.

##### 47 CFR Part 90

Administrative practice and procedure, Reporting and recordkeeping requirements.

Federal Communications Commission.

**Marlene H. Dortch,**  
Secretary.

[FR Doc. 04-3730 Filed 2-20-04; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF DEFENSE

### 48 CFR Parts 201 and 202

#### [DFARS Case 2003-D090]

### Defense Federal Acquisition Regulation Supplement; Procedures, Guidance, and Information

**AGENCY:** Department of Defense (DoD).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to define a companion resource to the DFARS that will contain mandatory and non-mandatory internal DoD procedures, non-mandatory guidance, and supplemental information. This new resource, entitled Procedures, Guidance, and Information, is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before April 23, 2004, to be considered in the formation of the final rule.

**ADDRESSES:** Respondents may submit comments via the Internet at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: [dfars@osd.mil](mailto:dfars@osd.mil). Please cite DFARS Case 2003-D090 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Michele Peterson, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062; facsimile (703) 602-0350. Please cite DFARS Case 2003-D090.

At the end of the comment period, interested parties may view public comments on the Internet at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Michele Peterson, (703) 602-0311.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR

requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dp/dars/transf.htm>.

This proposed rule establishes the framework for a new DFARS companion resource, Procedures, Guidance, and Information (PGI), which will contain mandatory and non-mandatory internal DoD procedures, non-mandatory guidance, and supplemental information. PGI will not be published in the Code of Federal Regulations, but will be available electronically at <http://www.acq.osd.mil/dp/dars/dfars.html>. Use of PGI will enable DoD to more rapidly convey internal administrative and procedural information to the acquisition workforce. The HTML version of the DFARS available at <http://www.acq.osd.mil/dp/dars/dfars.html> will contain computerized links to the corresponding PGI sections.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

#### B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the new DFARS companion resource will contain only procedures, guidance, and information that have no significant effect beyond the internal operating procedures of DoD and no significant cost or administrative impact on contractors or offerors. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003-D090.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*