

**Appendix A to Subpart O—Regulated Contaminants**

Contaminant (units)	Traditional MCL in mg/L	To convert for CCR multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
* Inorganic contaminants:	*		*		*	*
Arsenic .....	10.010	1000	110.	10	Erosion of natural deposits; Runoff from orchards; Runoff from glass and electronics production wastes.	Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.
*	*		*		*	*

\* These arsenic values are effective January 23, 2006. Until then, the MCL is 0.05 mg/L and there is no MCLG.

**Subpart Q—[Amended]**

6. Amend Appendix B to Subpart Q by revising entry “9. Arsenic” under “C.

Inorganic Chemicals (IOCs)”, to read as follows:

**Appendix B to Subpart Q of Part 141—Standard Health Effects Language for Public Notification**

Contaminant	MCLG <sup>1</sup> mg/L	MCL <sup>2</sup> mg/L	Standard health effects language for public notification
* 9. Arsenic <sup>11</sup> .....	*	*	*
	0	0.010	Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.
*	*	*	*

**Appendix B—Endnotes**

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1. MCLG—Maximum contaminant level goal.

2. MCL—Maximum contaminant level.

\* \* \* \* \*

11. These arsenic values are effective January 23, 2006. Until then, the MCL is 0.05 mg/L and there is no MCLG.

\* \* \* \* \*

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BILLING CODE 6560–50–P

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Parts 22, 24 and 27**

[WT Docket No. 02–353; FCC 02–305]

**Service Rules for Advanced Wireless Services**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document solicits comment on service rules for Advanced Wireless Services in the 1710–1755 MHz and 2110–2155 MHz bands, including provisions for application, licensing, operating and technical rules, and for competitive bidding. These frequency bands have previously been used for a variety of Government and non-Government services. Concurrently with this document, the Commission adopted another decision, published elsewhere in this **Federal Register**, allocating these frequency bands for fixed and mobile services to provide for the introduction of new advanced wireless services to the public. The Commission takes this action to eliminate barriers to and facilitate the provision of new services to the public, and to encourage optimum use of these frequencies.

**DATES:** Comments are due on or before February 7, 2003, and reply comments are due on or before March 14, 2003. Public comments on the information

collections are due on or before February 28, 2003, and comments by the Office of Management and Budget (OMB) are due on or before April 28, 2003.

**ADDRESSES:** Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** for filing instructions.

**FOR FURTHER INFORMATION CONTACT:** John Spencer or Eli Johnson, Staff Attorneys, 202–418–1310. For additional information concerning the information collections contained in this document, contact Judith Boley Herman at 202–418–0214, or via the Internet at [jboley@fcc.gov](mailto:jboley@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Notice of Proposed Rulemaking (NPRM) in WT Docket No. 02–353, FCC 02–305, adopted November 7, 2002, and released November 22, 2002. The complete text of the NPRM and Initial Regulatory Flexibility Analysis is available on the Commission’s Internet site, at <http://>

[www.fcc.gov](http://www.fcc.gov). It is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., CY-B4202, Washington, DC 20554 (telephone 202-863-2893). Comments may be filed using the Commission's Electronic Comments Filing System (ECFS) or by filing paper copies.

1. In this NPRM, the Commission seeks comment on service rules for Advanced Wireless Services (AWS) in the 1710-1755 MHz and 2110-2155 MHz bands, including provisions for application, licensing, operating and technical rules, and for competitive bidding. These frequency bands have previously been used for a variety of Government and non-governmental services. Concurrently with the NPRM, the Commission is adopting a Report and Order (R&O) allocating these frequency bands for fixed and mobile services so as to provide for the introduction of new AWS to the public. The Commission, in taking these actions, emphasizes its belief that in order to best serve the public, regulatory policy should strive to eliminate barriers to and facilitate the provision of new services. The 1710-1755 MHz and 2110-2155 MHz spectrum provides a significant opportunity to achieve such service advances. The Commission hopes that the licensing and service rules proposed in the NPRM will benefit consumers by giving them the services and value that they demand, and thereby provide the new business opportunities necessary to support continued service enhancements by licensees.

2. In paragraphs 10 through 15 of the NPRM, the Commission proposes a flexible use approach to spectrum allocation in these bands and discusses its tentative approach to assigning licenses. The Commission believes that its proposal to permit flexible use would eliminate uncertainties about the outcome of the competitive bidding process and promote the Commission's goals of assigning licenses expeditiously and promoting the intensive and efficient use of this spectrum. With these goals in mind, the Commission, in the NPRM, tentatively concludes that the service rules for the 1710-1755 MHz and 2110-2155 MHz bands should permit a licensee to use this spectrum for any use permitted by the United States Table of Frequency Allocations contained in part 2 of the Commission's rules. The NPRM solicits comments on a range of issues relative to its flexible

use framework and also on the Commission's proposal to resolve mutually exclusive applications for these bands by competitive bidding.

3. The Commission, in paragraphs 16 through 25 of the NPRM, proposes to adopt a geographic area licensing scheme for the 1710-1755 MHz and 2110-2155 MHz bands, and seeks comment on appropriate geographic licensing areas for these bands and how such a licensing scheme can promote the objectives of 47 U.S.C. 309(j)(3), including promotion of economic opportunities and competition by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and minority- and women-owned applicants. The NPRM, among other things, also seeks comment on including the Gulf of Mexico in the Commission's licensing scheme for these bands. Also, while the NPRM solicits comment from the public in general on the Commission's proposals, as discussed in paragraph 25 of the NPRM, the Commission specifically seeks comment from Indian Tribal governments on the effect various geographic licensing options may have on the deployment of service to tribal lands, as well as on other issues raised in the NPRM.

4. In addition to seeking comment on the appropriate geographic licensing area or areas to be used to license spectrum in the 1710-1755 MHz and 2110-2155 MHz bands, the NPRM, as addressed in paragraphs 26 through 32, seeks comment on the amount of spectrum that should be included in each license, and the related issue of whether this spectrum should be paired.

5. The NPRM next considers licensing and operating rules. Paragraphs 36 through 38 of the NPRM proposes to allow licensees in the 1710-1755 MHz and 2110-2155 MHz bands to provide all allowable services anywhere within their licensed area at any time, consistent with their regulatory status. It also recommends that these applicants be able to request common carrier status as well as non-common carrier status for authorization in a single license, rather than to require the applicant to choose between common carrier and non-common carrier services. The NPRM further proposes that applicants and licensees in these bands be required to indicate a regulatory status based on any services they choose to provide. Lastly in this regard, the NPRM proposes that, if a licensee operating in this spectrum changes the service or services it offers, such that its regulatory status would change, that licensee must notify the Commission of the change.

6. The NPRM, in paragraphs 39 through 42, discusses ownership restrictions in the 1710-1755 MHz and 2110-2155 MHz bands. The NPRM proposes to establish parity in foreign ownership reporting requirements, but does not suggest a single, substantive standard for compliance. For example, the Commission would not deny a license to an applicant requesting authorization exclusively to provide services not enumerated in section 310(b) of the Communications Act, solely because its foreign ownership would disqualify it from receiving a license if the applicant had applied for a license to provide the services enumerated in section 310(b).

7. The NPRM further proposes not to adopt band-specific service rules addressing spectrum aggregation limits applicable to the initial licensing of the 1710-1755 MHz and 2110-2155 MHz bands, but seeks comment on whether any such limits are necessary or appropriate. In particular, the NPRM solicits comment on whether the Commission should limit the amount of spectrum in these bands that any one entity (or related entities) may acquire at auction in the same geographic area.

8. Paragraphs 43 through 45 of the NPRM discusses license term renewal expectancy, and proposes that in the 1710-1755 MHz and 2110-2155 MHz spectrum, the license term be 10 years. The NPRM further proposes that a licensee in this spectrum applying for renewal receive a preference or renewal expectancy if the applicant has provided substantial service during its past license term and has complied with the Communications Act and applicable Commission rules and policies.

9. In addition, the NPRM, in paragraphs 46 through 49, seeks comment on whether licensees in the 1710-1755 MHz and 2110-2155 MHz bands should be subject to any performance requirements, in addition to a substantial service requirement, at license renewal. The NPRM, in particular, questions whether the Commission should establish any specific coverage requirements in this spectrum, or whether coverage criteria should be adopted as one means, but not the exclusive means, of meeting a substantial service requirement. The NPRM invites comment on this and other issues related to possible performance requirements.

10. The NPRM, in paragraphs 50 and 51, asks whether the Commission should allow licensees in the 1710-1755 MHz and 2110-2155 MHz bands to partition their service areas and to disaggregate their spectrum. If so, the NPRM proposes to apply section 27.15

of the Commission's rules to this spectrum. Section 27.15, among other things, provides that licensees may apply to partition their licensed geographic service areas or disaggregate their licensed spectrum at any time following the grant of their license.

11. As indicated in paragraphs 13 and 14 and paragraph 52 of the NPRM, even though licenses in the 1710–1755 MHz and 2110–2155 MHz bands may be issued pursuant to one part of the Commission's rules, licensees in these bands may be required to comply with rules contained in other parts of the Commission's rules. The NPRM therefore solicits comment generally on any provisions in existing, service-specific rules that may require specific recognition or adjustment to comport with the supervening application of another rule part, as well as any provisions that may be necessary in this other rule part to fully describe the scope of covered services and technologies.

12. The NPRM next looks at technical rules for the 1710–1755 MHz and 2110–2155 MHz bands and the potential for interference between licensees using the same spectrum in adjacent service areas, or adjacent spectrum. Paragraphs 55 through 59 consider in-band interference control. In that regard, the Commission, in the NPRM, tentatively concludes that either a boundary limit or a coordination method, when properly applied, can provide a satisfactory means of controlling harmful interference or determining the interaction between systems, although there may be reasons to prefer one or the other for the spectrum under consideration. Commenters should provide an analysis of the advantages and disadvantages of the boundary limit and coordination approaches, or approaches that combine features of both. The NPRM, in paragraphs 61 and 62 also invites comment on ways of avoiding interference with incumbent licensees in the spectrum.

13. Paragraphs 63 and 64 of the NPRM solicit comment regarding out-of-band and spurious emission limits. The NPRM cites the need to consider interference protection for operations adjacent to the 1710–1755 MHz and 2110–2155 MHz bands and tentatively concludes that the Commission should develop out-of-band emission limits that can accommodate each type of communications.

14. Next, the NPRM, in paragraphs 65 through 67, invites comment on what limits for effective isotropic radiated power are necessary or appropriate under either a coordination or a field strength limit approach. The NPRM

requests comment on a number of connected issues such as if such limits are necessary, what should they be and the basis for the suggested limits. The NPRM also seeks comment on the extent to which the power limits that are established in this rulemaking should affect the Commission's adoption of a paired or unpaired band structure, and vice versa. If the Commission, as suggested in paragraph 66, decides to adopt a paired band architecture for this spectrum, should it also allow the use of both base and mobile transmitters in both bands. Finally, in this regard, the NPRM invites comment on the technical ramifications of potential band segmentation plans, and on techniques for dual use based on advance modulation techniques, antenna technology, or other advanced methods for channelization.

15. The NPRM, in paragraphs 68 and 69, considers radiofrequency (RF) radiation safety requirements and proposes to amend its rules to provide a 1,000 watts effective radiated power threshold for fixed operations in the 1710–1755 MHz and 2110–2155 MHz bands.

16. In paragraph 70 of the NPRM, the Commission requests comment on applying existing rules related to equipment authorization, frequency stability, antenna structures and air navigation, environmental requirements, quiet zones, and disturbance of AM broadcast antenna patterns to licensees in the 1710–1755 MHz and 2110–2155 MHz bands, including licensees who acquire their licenses through partitioning or disaggregation. Further, the NPRM proposes, in paragraph 71, that until agreements between the United States, Mexico, and Canada become effective, to apply, as an interim requirement, for terrestrial licensees operating in the 1710–1755 MHz and the 2110–2155 MHz bands along the borders of the United States, Mexico, and Canada, the same technical restrictions at the border that the Commission adopts for operations between geographic service areas, to the extent they are not in violation of current bilateral agreements and arrangements.

17. Finally, paragraphs 72 through 80 discuss competitive bidding issues. For example, the NPRM proposes to conduct the auction of initial licenses in the 1710–1755 MHz and 2110–2155 MHz bands in conformity with the general competitive bidding rules set forth in part 1, subpart Q of the Commission's rules, and substantially consistent with the bidding procedures that have been employed in previous auctions. Thus, the NPRM solicits

comment on whether any of the Commission's part 1 rules or other auction procedures would be inappropriate or should be modified for an auction of licenses in these bands.

18. In paragraphs 74 through 80, the NPRM proposes to adopt a small business size standard which defines a small business as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a very small business as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million. The NPRM also proposes to provide small businesses with a bidding credit of 15 percent, and very small businesses with a bidding credit of 25 percent. The Commission seeks comment on these size standards and on whether the proposed small business provisions are sufficient to promote participation by businesses owned by minorities and women, as well as rural telephone companies. To the extent that commenters propose additional provisions to ensure participation by minority-owned or women-owned businesses, they should address how such provisions should be crafted to meet the relevant standards of judicial review.

## Administrative Matters

### *Ex Parte Rules*

19. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules. (See generally 47 CFR 1.1202, 1.1203, 1.1206.)

### *Comment Information*

20. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on this NPRM on or before February 7, 2003, and reply comments on or before March 14, 2003. Comments and reply comments should be filed in WT Docket No. 02–353, and may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

21. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by e-mail via the

Internet. To obtain filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message: "get form <your e-mail address>." A sample form and directions will be sent in reply.

22. Parties who choose to file by paper must file an original and four copies of each filing. If parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW-A325, Washington, DC 20554. Furthermore, parties are requested to provide courtesy copies for the following Commission staff: (1) John Spencer and Eli Johnson, Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room. 3-C124, Washington, DC 20554; and (2) Gary Michaels and Andrea Kelly, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room. 4-A760, Washington, DC 20554. One copy of each filing (together with a diskette copy, as indicated below) should also be sent to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., CY-B4202, Washington, DC 20554.

23. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be attached to the original paper filing submitted to the Office of the Secretary. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft™ Word 97 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters should send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., CY-B4202, Washington, DC 20554.

24. The public may view the documents filed in this proceeding during regular business hours in the

FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW., Room CY-A257, Washington, DC 20554, and on the Commission's Internet Home Page: <<http://www.fcc.gov>>. Copies of comments and reply comments are also available through the Commission's duplicating contractor: Qualex International, Portals II, 445 12th Street, SW., CY-B4202, Washington, DC 20554 (telephone 202-863-2893). Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202) 418-7426, TTY (202) 418-7365, or at [bmillin@fcc.gov](mailto:bmillin@fcc.gov).

#### *Paperwork Reduction Act*

25. This NPRM may contain proposed information collections. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

26. Written comments by the public and agencies on the proposed information collections are due February 14, 2003. Written comments by the OMB on the proposed and/or modified information collections are due on or before April 21, 2003. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith Boley Herman, Federal Communications Commission, 445 12th Street, SW., Room 1-C804, Washington, DC 20554, or via the Internet to [jboley@fcc.gov](mailto:jboley@fcc.gov), and to Kim A. Johnson, Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), Docket Library, Room 10236, New Executive Office Building (NEOB), 725 17th Street, NW., Washington, DC 20503 or via the Internet at

[Kim\\_A.Johnson@omb.eop.gov](mailto:Kim_A.Johnson@omb.eop.gov).

OMB Approval Number: 3060-XXXX.

*Title:* Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands.

*Form No.:* FCC Forms 601, 602, 603, 604, 605.

*Type of Review:* New collection.

*Respondents:* Business or other for profit, federal government, state, local or tribal government.

*Number of Respondents:* 200.

*Estimated Time Per Response:* 30 minutes to 10 hours (The reporting and coordination are all one time or occasional burdens that will only occur under certain conditions.)

*Frequency of Response:* On occasion and one-time reporting requirements, third party disclosure requirement, recordkeeping requirement.

*Total Annual Cost Burden:* N/A.

*Total Annual Burden:* 830 hours (approximate total for three year term of OMB approval).

*Needs and Uses:* The various information reporting and verification requirements, and the prospective coordination requirement, if ultimately adopted, will be used by the Commission to verify licensee compliance with Commission rules and regulations, and to ensure that licensees continue to fulfill their statutory responsibilities in accordance with the Communications Act of 1934. Such information has been used in the past and will continue to be used to minimize interference, verify that applicants are legally and technically qualified to hold licenses, and to determine compliance with Commission Rules.

#### *Initial Regulatory Flexibility Act Analysis*

27. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). This is a summary of that IRFA. The complete text of the IRFA may be found in Appendix B of the full NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments provided in paragraph 87 of the full text of the NPRM. The Commission will send a copy of the NPRM, including the full text of the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

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

28. The NPRM seeks comment on service rules for Advanced Wireless Services (AWS) in the 1710–1755 MHz and 2110–2155 MHz bands, including provisions for application, licensing, technical and operating rules, and for competitive bidding. These frequency bands have previously been used for a variety of Government and non-government services. The Commission's goal in proposing the licensing and service rules detailed in the NPRM is to enable service providers to put this spectrum to its highest value use with minimal transaction costs. The Commission's proposals for service rules allow for flexibility and permit this spectrum to be used for any purpose consistent with its allocation, including third generation (3G) and other advanced wireless services.

### B. Legal Basis

29. The proposed action is authorized pursuant to sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332 and 333 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333.

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

30. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small government 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 is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Nationwide, there are 4.44 million small business firms, according to SBA reporting data.

31. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. Last, the definition of "small governmental jurisdiction" is one with populations of fewer than 50,000. There are 85,006 governmental jurisdictions in the nation. This number

includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number have populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, we estimate that ninety-six percent, or about 81,600, are small entities that may be affected by our rules.

32. The proposals in the NPRM affect applicants who wish to provide service in the 1710–1755 MHz and 2110–2155 MHz bands. The Commission does not know precisely the type of service that a licensee in these bands might seek to provide. Nonetheless, the Commission anticipates that the services that will be deployed in these bands may have capital requirements comparable to those in the broadband Personal Communications Service (PCS), and that the licensees in these bands will be presented with issues and costs similar to those presented to broadband PCS licensees. Therefore, the NPRM proposes to adopt the same small business size standards here that the Commission adopted for the broadband PCS service. In particular, the NPRM proposes to define a "small business" as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a "very small business" as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million. The NPRM also proposes to provide small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent. The NPRM seeks comment on the use of these business size standards and also on the associated bidding credits for small business applicants to be licensed in the 1710–1755 MHz and 2110–2155 MHz bands, with particular focus on the appropriate definitions of small and very small businesses as they relate to the size of the geographic area to be covered and the spectrum allocated to each licensee.

33. The Commission has not yet determined how many licenses will be awarded in the 1710–1755 MHz and 2110–2155 MHz bands. Moreover, the Commission does not yet know how many applicants or licensees in these bands will be small entities. Thus, the Commission assumes, for purposes of this IRFA, that all prospective licensees are small entities as that term is defined by the SBA or by our proposed small

business definitions for these bands. The Commission invites comment on this analysis.

34. Although the Commission does not know for certain which entities are likely to apply for these frequencies, we note that the 1710–1755 MHz and 2110–2155 MHz bands are comparable to cellular service and personal communications service.

35. Wireless Telephone Including Cellular, Personal Communications Service (PCS) and SMR Telephony Carriers. The Commission's most recent data, as reported in Table 5.3 of *Trends in Telephone Service*, estimates that there are 858 wireless telephone carriers and that 291 of these carriers in combination with their affiliates have 1,500 or fewer employees. In addition, the SBA has developed size standards for wireless small businesses within the two separate Economic Census categories of: (1) Paging and (2) Cellular and Other Wireless Telecommunications. For both of those categories, the SBA considers a business to be small if it has 1,500 or fewer employees. According to the Commission's most recent *Trends in Telephone Service* data, 1,761 companies reported that they were engaged in the provision of wireless service. Of these 1,761 companies, an estimated 1,175 have 1,500 or fewer employees and 586 have more than 1,500 employees. Consequently, the Commission estimates that most wireless service providers are small entities.

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

36. The NPRM proposes a number of rule changes that will affect reporting, recordkeeping and other compliance requirements. The Commission will provide time for public comment on and seek Office of Management and Budget approval for any proposals that entail Paperwork Reduction Act burdens.

37. The NPRM first proposes flexible use of the bands under the regulatory framework contained in part 27 of the Commission's rules, or alternatively seeks comment on governing the services in these bands by the part 24 or part 22 rules, or by a newly created rule part. (Paragraphs 13–14 of the NPRM.) Also, as discussed in paragraphs 16–18, the NPRM proposes a geographic area licensing scheme for the 1710–1755 MHz and 2110–2155 MHz bands. The transfer of the 1710–1755 MHz band from Federal Government use to non-Government commercial use is subject to the provisions of the National Telecommunications and Information

Administration Organization Act, as amended by the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (NDAA-99). NDAA-99 requires new non-Governmental licensees to reimburse Federal users for their relocation costs. (Paragraphs 33-34 of the NPRM.) NDAA-99 also grants the Federal user a limited reclamation right.

38. Entities interested in acquiring initial licenses to use spectrum in the 1710-1755 MHz and 2110-2155 MHz bands will be required to file using the Universal Licensing System, as discussed in paragraph 52 of the NPRM. As in other services, the licensees in these bands would be allowed to provide all allowable services anywhere within their licensed area. The Commission's current mobile service license application requires an applicant for mobile services to indicate whether the service it intends to offer will be Commercial Mobile Radio Service (CMRS), Private Mobile Radio Service (PMRS), or both, since service offerings may bear on eligibility and other statutory and regulatory requirements. The NPRM also proposes to permit applicants to request common carrier status as well as non-common carrier status for authorization in a single license, rather than to require the applicant to choose between common carrier and non-common services. These proposed regulatory status obligations are discussed at paragraphs 36-38 of the NPRM.

39. Also, as stated in paragraph 39 of the NPRM, sections 310(a) and 310(b) of the Communications Act, as modified by the Telecommunications Act of 1996, impose foreign ownership and citizenship requirements that restrict the issuance of licenses to certain applicants. An applicant requesting authorization for other than broadcast, common carrier, or aeronautical en route or fixed services would be subject to section 310(a), but not to the additional prohibitions of section 310(b). An applicant requesting authorization for these particular services would be subject to both sections 310(a) and 310(b). The NPRM provides, however, that common carriers and non-common carriers filing an application should not be subject to varied reporting obligations. The NPRM does not propose a single, substantive standard for compliance. For example, the NPRM states that the Commission would not deny a license to an applicant requesting authorization exclusively to provide services not enumerated in section 310(b), solely because its foreign ownership would disqualify it from receiving a license if the applicant had applied for a license

to provide the services enumerated in section 310(b).

40. In paragraphs 46-49 of the NPRM, the Commission seeks comment on whether licensees in the 1710-1755 MHz and 2110-2155 MHz bands should be subject to any performance requirements in addition to a substantial service requirement at license renewal. The NPRM notes that in some services the Commission has imposed minimum coverage requirements on licensees to ensure that spectrum is used effectively and service is implemented promptly. The NPRM seeks comment on whether the Commission should establish any specific coverage requirements in the 1710-1755 MHz and 2110-2155 MHz bands, or whether coverage criteria should be adopted as one means, but not the exclusive means, of meeting a substantial service requirement. The NPRM also seeks comment on whether licensees should be subject to interim performance requirements prior to the end of the license term.

41. In paragraphs 50-51 of the NPRM, the Commission seeks comment on allowing licensees in the 1710-1755 MHz and 2110-2155 MHz bands to partition their service areas and to disaggregate their spectrum. If the Commission permits partitioning, then the partitioning licensee would have to include with its request a description of the partitioned service area and a calculation of the population of the partitioned service area and the licensed geographic service area.

42. In paragraphs 54-71, the NPRM seeks comment on a number of technical issues and licensing obligations. The NPRM requests information on how best to control in-band and out-of-band interference, appropriate power limits, RF safety limits, and Canadian and Mexican coordination.

43. The Commission requests comment on how all of these requirements may be modified to reduce the burden on small entities and still meet the objectives of the proceeding.

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

44. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements

under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof for small entities.

45. The NPRM solicits comment on a number of proposals and alternatives regarding the reallocation of, and service rules for, the 1710-1755 MHz and 2110-2155 MHz bands. The NPRM seeks to adopt rules that will reduce regulatory burdens, promote innovative services and encourage flexible use of this spectrum. It opens up economic opportunities to a variety of spectrum users, including small businesses. The Commission considers various proposals and alternatives partly because we seek to minimize, to the extent possible, the economic impact on small businesses.

46. Paragraph 74 of the NPRM takes particular note of the Commission's legislative obligation to promote "economic opportunity and competition by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women." In recognition of this obligation and as discussed above, the NPRM first proposes to establish size standards for small and very small businesses based on the definitions used for the broadband PCS service. The NPRM also proposes to provide small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent.

47. As indicated in paragraph 79 of the NPRM, the Commission believes that the small business size standards and corresponding bidding credits proposed in the NPRM would provide a variety of businesses with opportunities to participate in the auction of licenses for these bands, and afford licensees substantial flexibility for the provision of services with varying capital costs. However, the Commission recognizes that the capital costs of operational facilities in the 1710-1755 MHz and 2110-2155 MHz bands may vary widely. Thus, the NPRM particularly seeks comment on whether there may be any distinctive characteristics to the AWS service or these bands that suggest that the adoption of small business size definitions and the use of bidding credits would be inappropriate in this instance. Further, in paragraph 80, the Commission seeks comment on whether the small business provisions proposed in the NPRM are sufficient to promote participation by businesses owned by minorities and women, as well as rural telephone companies and small entities.

48. The NPRM invites comment on various alternative licensing and service rules and on a number of issues relating to how the Commission should craft service rules for this spectrum, that could have an impact on small entities. For example, the Commission seeks comment on the size of spectrum blocks for these frequencies and how the size of spectrum blocks would impact small entities. (Paragraphs 26–32 of the NPRM.) The NPRM also proposes a geographic area approach to service areas, as opposed to a station-defined licensing approach, and seeks comment on the appropriate size of service areas. Specifically, the NPRM asks for comment on whether smaller geographic areas would better serve the needs of small entities. As explained in paragraph 20 of the NPRM, the Commission's approach to determining optimum geographic area license size(s) attempts to accommodate the likely range of applicant desires by balancing efficiency with the policy goal of disseminating licenses among a wide variety of applicants. The NPRM notes that the Commission wishes to foster service to rural areas and tribal lands, and to promote investment in and rapid deployment of new technologies and services. The NPRM also notes that small license areas may favor smaller entities with regional business plans and no interest in providing large-area service. In summary, the NPRM seeks comment on the advantages and disadvantages to small entities of a large geographic licensing scheme over a small one in terms of impact on rural and small entities. (Paragraphs 19–25 of the NPRM.)

49. The NPRM seeks comment on permitting geographic partitioning and spectrum disaggregation. The NPRM notes that geographic partitioning and spectrum disaggregation is a tool utilized by the Commission to promote efficient spectrum use and economic opportunity for a wide variety of applicants, including small business, rural telephone, minority-owned, and women-owned applicants. (Paragraphs 50–51 of the NPRM.) The NPRM seeks comment on the benefits and costs of partitioning and disaggregation, and whether it promotes the public interest. Finally, the NPRM, in paragraphs 40–42, seeks comment on whether any band-specific limits on spectrum aggregation are necessary or appropriate in this case, and how this would impact the marketplace, including small entities.

50. The regulatory burdens proposed in the NPRM, such as filing applications on appropriate forms, appear necessary in order to ensure that the public

receives the benefits of innovative new services, or enhanced existing services, in a prompt and efficient manner. The Commission will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities. The Commission invites comment on any additional significant alternatives parties believe should be considered and on how the approach outlined in the NPRM will impact small entities, including small businesses and small government entities.

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

51. None.

#### **Ordering Clauses**

52. Therefore, pursuant to sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332 and 333 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333, that this Notice of Proposed Rulemaking is adopted.

53. Additionally, notice is given of the proposed regulatory changes described in the NPRM, and that comment is sought on these proposals.

54. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of the NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 02–32213 Filed 12–20–02; 8:45 am]

**BILLING CODE 6712–01–P**

## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Part 73**

**[DA 02–3380, MB Docket No. 02–375, RM–10605]**

### **Digital Television Broadcast Service; Jackson, WY**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Two Ocean Broadcasting Company, licensee of station KJWY-TV, NTSC 2, Jackson, Wyoming, proposing the substitution of DTV channel 4 for station KJWY's assigned DTV channel 14. DTV Channel

4 can be allotted to at reference coordinates 43–20–42 N. and 110–45–10 W. with a power of 1, a height above average terrain HAAT of 300 meters.

**DATES:** Comments must be filed on or before February 3, 2003, and reply comments on or before February 18, 2003.

**ADDRESSES:** The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). See *Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: J. Dominic Monahan, Luvass, Cobb, Richard & Fraser, PC, 777 High Street, Suite 300, Eugene, Oregon 97401 (Counsel for Two Ocean Broadcasting Company).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–375, adopted December 6, 2002, and released December 13, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document