

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WT Docket Nos. 03-66; 03-67; 02-68; IB Docket No. 02-364; ET Docket No. 00-258; FCC 08-83]

Facilitating the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands; Reviewing of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule; declaratory ruling.

SUMMARY: In this document, the Commission continues its efforts to transform its rules and policies governing the licensing of the Educational Broadband Service (EBS) and the Broadband Radio Service (BRS) in the 2495-2690 MHz (2.5 GHz) band, with respect to petitions for reconsideration filed in response to the *Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order (Big LEO Order on Reconsideration and AWS 5th MO&O and BRS/EBS 3rd MO&O and 2nd R&O)*. Also, the Commission's actions in this proceeding further refine its rules to enable licensees to deploy new and innovative wireless services in the 2.5 GHz band. We believe that these actions will facilitate the promotion of broadband service to all Americans.

DATES: Effective June 9, 2008, except for § 27.1221(f), which contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). The FCC will publish a document in the **Federal Register** announcing the effective date for that section.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. A copy of any comments on the Paperwork Reduction

Act information collection requirements contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-B441, 445 12th Street, SW., Washington, DC 20554 or via the Internet at Judith-B.Herman@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For further information regarding the *Big LEO Third Order on Reconsideration and Sixth Memorandum Opinion and Order*, please contact Howard Griboff, Policy Division, International Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, at 202-418-0657 or via the Internet at Howard.Griboff@fcc.gov or Jamison Prime, Policy and Rules Division, Office of Engineering and Technology, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, at 202-418-7474 or via the Internet at Jamison.Prime@fcc.gov. For further information concerning the *BRS/EBS Fourth Memorandum Opinion and Order and Declaratory Ruling* contact John Schauble, Deputy Chief, Broadband Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, at (202) 418-0797 or via the Internet to John.Schauble@fcc.gov. For additional information concerning Paperwork Reduction Act information collection requirements contained in this document, contact Judith B. Herman at (202) 418-0214, or via the Internet at PRA@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Order on Reconsideration and Sixth Memorandum Opinion and Order and Fourth Memorandum Opinion and Order (Big LEO 3rd Order on Reconsideration and AWS 6th MO&O and BRS/EBS 4th MO&O and Declaratory Ruling*, FCC 08-83, adopted on March 18, 2008 and released on March 20, 2008. The full text of this document, including attachments and related documents, is available for public inspection and copying during normal business hours in the FCC Reference Information Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554. The complete text of these documents and related Commission documents may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, (202) 488-5300 or (800) 387-3160, contact BCPI at its Web site: <http://www.bcpweb.com>. When ordering documents from BCPI,

please provide the appropriate FCC document number, for example, FCC 08-83. The complete text of these documents is also available on the Commission's Web site at http://wireless.fcc.gov/edocs_public/attachment/FCC-08-83A1doc. This full text may also be downloaded at: <http://wireless.fcc.gov/releases.html>. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available by contacting Brian Millin at (202) 418-7426, TTY (202) 418-7365, or via e-mail to bmillin@fcc.gov.

Summary

I. Introduction and Executive Summary

1. In this *Big LEO 3rd Order on Reconsideration and AWS 6th MO&O and Order and BRS/EBS 4th MO&O*, the Commission takes the following actions with respect to petitions for reconsideration filed in response to the *Big LEO Order on Reconsideration and AWS 5th MO&O and BRS/EBS 3rd MO&O and 2nd R&O*:

- Grant a petition, in part, by adopting the part 1, subpart Q competitive bidding rules for future BRS auctions, seeking further comment on rules for future licenses for EBS spectrum, and directing WTB to review inventory and schedule auction(s) of unassigned BRS spectrum as soon as practicable.

- Adopt the small business size standards and bidding credits proposed in the *BRS/EBS FNPRM* ("small business"—an entity with attributed average annual gross revenues not exceeding \$40 million for the preceding three years; "very small business"—an entity with attributed average annual gross revenues not exceeding \$15 million for the same period; and an "entrepreneur"—an entity with attributed annual average gross revenues not exceeding \$3 million for the same period).

- Deny a petition requesting that the Commission permit licensees to self-transition before January 21, 2009, the deadline for proponents to file an Initiation Plan with the Commission.

- Grant a petition asking the Commission to correct the inconsistency between the *BRS/EBS 3rd MO&O* and the text of § 27.1236(b)(6), and on the Commission's own motion, change references in §§ 27.1231(f), 27.1236(a), 27.1236(b)(1) and 27.1236(b)(6) to dates certain.

- Deny as moot a petition requesting that the Commission clarify the requirements for multichannel video programming distribution (MVPD) operators seeking to opt out of the transition.

- Deny a petition seeking reconsideration on the effect of MVPD opt-out on adjacent licensees with overlapping Geographic Service Areas (GSAs).
- Grant a petition asking the Commission to modify the height benchmarking rule to establish deadlines for compliance.
- Grant a petition asking the Commission to modify the out-of-band emissions rule to establish deadlines for compliance.
- Grant a petition asking the Commission to modify the out-of-band emissions rule to provide that out-of-band emissions are to be measured from the outermost edge of the channels when two or more channels are combined.
- Deny a petition and reaffirm that only first adjacent channel licensees may file an interference complaint concerning adjacent channel interference.
- Deny a petition and affirm the Commission's decision regarding out-of-band emissions for mobile digital stations.
- Deny a petition asking to establish different deadlines for user stations to cure interference where an existing base station suffers interference from an outdoor antenna user station.
- Grant a petition and allow licensees to maintain existing operations post-transition in the mid-band segment (MBS) at 2572–2614 MHz, even if such operations exceed the current -73.0 dBW/m² contour limit.
- Deny a petition asking the Commission to adopt technical standards should it become necessary to “split the football” to determine each licensee's GSA.
- Grant a petition and permit BRS Channels No. 1 and 2/2A licensees to operate simultaneously in the 2150–2160/62 MHz and 2496–2690 MHz bands until every subscriber is relocated to the 2496–2690 MHz band.
- Deny a petition asking the Commission to provide greater protection to BRS Channel No. 1 operations by reducing the power flux density (PFD) radiated from the Mobile Satellite Service (MSS) in the 2496–2500 MHz band.
- Deny a petition and affirm the use of splitting the football for BRS Channels No. 2 and 2A licensees.
- Deny petitions concerning overlaps between grandfathered EBS E and F Group licensees and co-channel BRS E and F Group licensees and affirm the existing rule.
- Deny a petition asking for procedural changes to the 90-day negotiation period for significant GSA

overlaps (more than 50 percent) between grandfathered EBS E and F Group channel licensees and incumbent BRS E and F Group channel licensees.

- Grant a petition and reinstate a Gulf of Mexico Service Area.
- Establish the Gulf of Mexico boundary 12 nautical miles from the shore.
- Apply the existing technical rules to the Gulf of Mexico Service Area.
- Grant a petition and affirm that EBS excess capacity leases executed before January 10, 2005, are limited to 15 years.
- Deny a petition relating to pre-1998 legacy, video-only excess capacity leases but affirm that leases executed before January 10, 2005, are limited to 15 years.
- Grant a petition and amend rules to permit lessees to offer EBS licensees/lessors the actual equipment used or comparable equipment on lease termination.
- Deny a petition asking that licensees be permitted to demonstrate substantial service based on past-discontinued service.
- Grant a petition asking for a new safe harbor for heavily encumbered or highly truncated Basic Trading Areas (BTAs) and GSAs.
- Grant a petition seeking minor changes in the EBS eligibility rule to conform it to other changes made by the Commission.
- Grant a petition asking the Commission to adopt a rule that clarifies that commercial EBS licensees are not subject to educational programming requirements or the special EBS leasing restrictions.
- Deny a petition asking the Commission to reinstate pending mutually exclusive applications for new EBS stations.
- Grant in part requests for declaratory ruling and clarify how the splitting the football process for determining GSAs works with respect to licenses that were expired on January 10, 2005.

II. BRS/EBS Fourth Memorandum Opinion and Order

A. Licensing Unassigned Spectrum in the Band

2. In the *BRS/EBS 4th MO&O*, with respect to licensing unassigned spectrum in the band, the Commission adopts rules providing that new licenses for unassigned BRS spectrum will be assigned by BTA, with each license authorizing access for all BRS spectrum not otherwise assigned either at the time of licensing or in the future. Transitions in adjacent BTAs will be protected by

the requirements in our technical rules that new BTA licensees operate pursuant to the post-transition band plan and provide protection to adjacent operations. We will require new licensees to operate pursuant to the new band plan. This requirement will protect existing licensees by ensuring that any future high-power video operations are restricted to the MBS.

B. BRS Competitive Bidding Rules

3. With respect to the assignment of new BRS licenses, we adopt the competitive bidding rules set forth in part 1, subpart Q, of the Commission's rules, consistent with the bidding procedures that have been employed in many previous auctions. Specifically, we will adopt the part 1 rules governing, among other things, competitive bidding design, designated entities, application and payment procedures, collusion issues, and unjust enrichment. We note that such rules would be subject to any modifications by the Commission in our ongoing part 1 proceeding. In addition, consistent with current practice, matters such as the appropriate competitive bidding design, minimum opening bids and reserve prices, will be determined by the Wireless Telecommunications Bureau pursuant to its delegated authority.

4. With respect to bidding credits, we adopt the proposal contained in the *BRS/EBS FNPRM* to define three categories: “small business”—an entity with average annual gross revenues not exceeding \$40 million for the preceding three years; “very small business”—an entity with average gross revenues not exceeding \$15 million for the same period; and “entrepreneur”—an entity with average gross revenues not exceeding \$3 million for the same period. We also adopt the proposal to provide qualifying “small businesses” with a bidding credit of 15%, qualifying “very small businesses” with a bidding credit of 25%; and qualifying “entrepreneurs” with a bidding credit of 35%, consistent with § 1.2110(f)(2) of the Commission's rules.

C. Transition

5. We reaffirm our decision that a licensee may not self-transition before January 21, 2009 and reiterate that a proponent-driven transition is the most efficient method of transitioning a BTA. In particular, we find that early self-transitions would complicate the transition process for the proponent and would not provide sufficient benefits to the self-transitioning licensee to offset those additional complications.

6. We grant a petition asking the Commission to correct the inconsistency

between the *BRS/EBS 3rd MO&O* and the text of § 27.1236(b)(6), and on the Commission's own motion, change references in §§ 27.1231(f), 27.1236(a), 27.1236(b)(1) and 27.1236(b)(6) to dates certain. Also, we amend §§ 27.1231(f) and 27.1236(a), 27.1236(b)(1), and 27.1236(b)(6) to specify dates certain. Thus, §§ 27.1231(f) and 27.1236(a) reference January 21, 2009, the date the Initiation Plan must be filed with the Commission; § 27.1236(b)(1) references April 21, 2009, the date a self-transitioning licensee must notify the Commission; and § 27.1236(b)(6) references October 20, 2010, the date self-transitions must be completed. Because the time line for self-transitions parallels the timeline for proponent-driven transitions, we note that proponent-driven transitions must also be completed on or before October 20, 2010, unless stayed pending alternative dispute resolution.

D. Multichannel Video Programming Distributors (MVPD) Opt-Out

7. We dismiss as moot a petition for reconsideration asking us to adopt additional requirements for MVPD opt-out waiver requests because, at this point, such changes are unnecessary. The last date for filing requests to opt out of the transition plan was April 30, 2007, and that date has passed. To the extent the petitioner contends that a specific showing is defective, we will consider its arguments in the context of any opposition or petitions filed against specific waiver requests.

8. We also conclude that foreclosing an opt-out in the case of overlapping GSAs is unnecessary. Instead, the transitioning operator and the non-transitioning operator may resolve this situation among themselves or the transitioning licensee may file comments for Commission consideration in response to the non-transitioning operator's opt-out waiver request.

E. Technical Issues

9. In the *BRS/EBS 4th MO&O*, we take the following actions with respect to the technical rules:

- *Height Benchmarking Rule.* Requires a new or modified base station operating outside its height benchmark to cure interference to a base station operating within its height benchmark within 24 hours, either by limiting its received signal at the other party's base station to no more than -107 dBm/5.5 MHz or by reducing its antenna height to comply with the height benchmark. If the interferer is an existing base station that is causing interference to a new base station, the existing licensee has 90

days to comply; modifies the formula to calculate the height benchmark as proposed by Wireless Communications Association International, Inc. (WCA); declines to establish a rule requiring that parties cooperate in good faith to avoid interference.

- *Out-of-band Emissions.* Declines to require all user stations, as opposed to mobile digital user stations, to attenuate their emissions at least $55 + 10 (\log P)$ dB measured 5.5 megahertz from the channel edge; clarifies that when two or more contiguous channels are combined to form a single channel, out-of-band emissions are to be measured three megahertz from the outermost edges of the combined channel; requires that a new or modified base station comply with the out-of-band emission within 24 hours of receipt of a documented interference complaint from the first adjacent channel licensee. If the interferer is an existing base station that is causing interference to a new base station, the existing licensee has 60 days to comply; affirms the decision to limit the right to file a documented interference complaint to first adjacent channel licensees.

- *Geographic Service Area Boundaries.* Declines to modify the methodology used to divide overlapping geographic service areas; affirms the policies adopted for treating pending applications for new or modified stations in the geographic service area framework.

- *Grandfathering EBS Facilities.* Allows EBS facilities in the Middle Band Segment to exceed the -73.0 dBW/m² signal strength limit post-transition if needed to comply with the mandate that an EBS licensee be provided with facilities substantially similar to its pre-transition facilities.

- *Technical Corrections.* Corrects various typographical errors in the existing rules.

- *Simultaneous Operation on Old and New BRS Channels 1 and 2/2A.* Allows BRS Channel 1 and 2/2A licensees to operate simultaneously in their old channel locations in the 2150–2160/62 MHz band and their temporary, pre-transition locations at 2496–2500 MHz and 2686–2690 MHz band until every subscriber is relocated to the 2.5 GHz band.

10. In the *Big LEO 3rd Order on Reconsideration and AWS 6th MO&O*, we defer consideration of a petition for reconsideration filed by the Society of Broadcast Engineers asking us to adopt a revised band plan for Broadcast Auxiliary Service (BAS) Channels A8–A10 that would remove BAS operations from the 2496–2502 MHz band. We deny BellSouth's request that we modify

the pfd limits applicable to Code Division Multiple Access Mobile Satellite Service licensees in the 2496–2500 MHz band to correspond to the more stringent limits set forth in United States proposals to the World Radio Conference regarding protection of terrestrial operations in the 2500–2690 MHz band.

11. In the *BRS/EBS 4th MO&O*, we deny a request that primary BRS Channel 2 licensees not be required to split the football with secondary BRS Channel 2 licensees or with BRS Channel 2A licensees.

F. Grandfathered E and F Group Channel EBS Stations

12. In the *4th MO&O*, the Commission denies petitions concerning overlaps between grandfathered EBS E and F Group licensees and co-channel BRS E and F Group licensees and affirm the existing rule § 27.1206 to eliminate overlaps of 50 percent or greater between grandfathered E and F Group channel EBS stations and co-channel incumbent BRS stations by splitting the football. Also, the Commission denies a petition asking for procedural changes to the 90-day negotiation period for significant GSA overlaps (more than 50 percent) between grandfathered EBS E and F Group channel licensees and incumbent BRS E and F Group channel licensees. In the case where the GSAs overlap 50% or greater, the Commission concluded that different treatment was warranted. Where there is a major overlap of service areas, splitting the football may no longer be the best solution for accommodating the needs of both licensees. In those cases, the Commission established a 90-day mandatory negotiation period during which both the BRS and EBS licensees have an explicit duty to work to accommodate each other's communications requirements. If, at the end of 90 days, the parties cannot reach a mutual agreement, the Commission then will split the football on its own accord.

13. All BRS and EBS licensees, including grandfathered E and F Group channel EBS licensees and incumbent BRS licenses that “split-the-football” with such licensees, may partition, disaggregate, assign, or transfer their spectrum. The use of the splitting the football mechanism to divide overlapping service areas does not preclude subsequent agreements to partition, disaggregate, assign, or transfer spectrum. The E and F channels, however, are classified as both EBS and BRS spectrum. We have granted waivers to allow assignments or transfers of grandfathered EBS stations

to BRS licensees upon a suitable public interest showing. Similarly, upon a similar showing, an EBS licensee could partition part of its service area or disaggregate its spectrum to its co-channel BRS licensee.

G. Gulf of Mexico Proceeding and Related Issues

14. In this *4th MO&O*, we reestablish three service areas in the Gulf of Mexico as requested by the American Petroleum Institute, establish the boundary of those service areas 12 nautical miles from the shore, and apply our existing technical rules to the Gulf Service Area which will provide Gulf licensees with the flexibility necessary to provide service.

H. Leasing

15. The Commission clarifies that EBS excess capacity leases entered into prior to January 10, 2005 and that contain an automatic renewal clause, are grandfathered after January 10, 2005 if they have an automatic renewal clause effective after January 10, 2005, only to the extent that such leases do not exceed 15 years in total length (including the automatic renewal period(s)). This decision is consistent with our decision in the *Two-Way Order on Reconsideration*. Thus, these leases cannot be extended in perpetuity. To further clarify, lease terms for EBS leases entered under the rules and policies of the *BRS/EBS R&O* (those entered into between January 10, 2005 and July 18, 2006) are not limited by the Commission's rules (but are subject to relevant state laws limiting the length of contracts). Leases entered into under the rules and policies of the *BRS/EBS 3rd MO&O* (on or after July 19, 2006) may be up to 30 years in length, so long as the EBS licensee retains the right at year 15 and every 5 years thereafter to review its educational needs.

16. The Commission declines to void EBS leases for one-way only video services entered into prior to the release of the *Two-Way Order*. While we are concerned by the situation, we do not have the authority to void contracts executed by two private parties under the laws of individual states. We find, however, that the alleged unknown start date is contrary to the rules and policies adopted by the Commission in the *Two-Way Order*, which limited the term of EBS leases to 15 years from the date they are executed between the parties. Any other interpretation of the *Two-Way Order* would permit the warehousing of valuable spectrum for decades and is contrary to the underlying purpose of the rule.

17. In the *4th MO&O*, the Commission grants a petition and amends rules to permit lessees to offer EBS licensees/lessors the actual equipment used or comparable equipment on lease termination. In the *BRS/EBS 3rd MO&O*, the Commission amended § 27.1214(c) to clarify that the EBS licensee/lessor could "purchase or lease dedicated common equipment used for educational purposes in the event that the spectrum leasing arrangement" was terminated by either the EBS licensee/lessor or the lessee. We agree that the proposed rule change is an appropriate modification that reflects the fact that equipment is often shared among multiple licensees.

I. Substantial Service

18. In the *4th MO&O*, the Commission denies a petition asking that licensees be permitted to demonstrate substantial service based solely on past-discontinued service. The Commission adopted a substantial service standard to ensure the prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, to promote investment in and rapid deployment of new technologies and services, and to facilitate the availability of broadband to all Americans. Permitting licensees to demonstrate substantial service by using past-discontinued service alone would not achieve any of these goals. Nevertheless, the Commission, by permitting the use of past-discontinued service as a factor in the substantial service determination, struck the appropriate balance between encouraging broadband development in the 2.5 GHz band and recognizing that licensees were permitted to discontinue service in anticipation of the transition to the new band plan and technical rules.

19. In the *4th MO&O*, the Commission agrees that it is appropriate to give some relief to licensees whose GSAs are heavily truncated to remedy a situation created by several factors and grants a petition asking for a new safe harbor for heavily encumbered or highly truncated BTAs and GSAs. We adopt a rule allowing licensees whose GSA is less than 1924 square miles in size to demonstrate substantial service by combining its GSA with an overlapping co-channel station licensed or leased by the licensee or its affiliate.

J. EBS Eligibility

20. We grant a petition asking us to update the EBS eligibility rules to reflect the wider variety of services EBS licensees will use and offer. In particular, as written, the rules

contemplate video programming where the licensee will know the specific content being offered in advance. We amend § 27.1201(a)(3) of the Commission's rules to clarify that an educational institution may receive education-enhancing broadband services, which it intends to use in furtherance of its educational mission. We also amend the language in § 27.1201(a)(3) regarding the distance from the transmit site for qualified schools supplying letters to be based on distance from the proposed center reference point, and should be further qualified to ensure that such school will be within the proposed geographic service area.

21. The Commission amends paragraph (d) of § 27.1201 of the Commission's rules to clarify that commercial EBS licensees are not subject to the educational programming requirements in § 27.1203(b) through (d) of the Commission's rules or the special EBS leasing requirements contained in § 27.1214 of the Commission's rules.

K. Mutually Exclusive Applications

22. In the *4th MO&O*, the Commission denies a petition asking the Commission to reinstate pending mutually exclusive applications for new EBS stations. The Commission rejects the argument that D.C. Circuit's holding in *Kessler v. FCC* prohibited the dismissal of mutually exclusive applications. The dismissal of the mutually exclusive applications was necessary because neither the Commission nor the parties could resolve this mutual exclusivity under the then applicable site-based licensing scheme. The dismissal of those applications, therefore, furthers the Commission's goal of developing a licensing scheme that not only resolves issues of mutual exclusivity, but also ensures the efficient use of EBS spectrum by educators. Allowing the mutually exclusive applications to remain on file would create considerable uncertainty for potential proponents who would be uncertain of the ultimate licensee in a market.

III. Declaratory Ruling

23. In this *Declaratory Ruling*, we clarify the treatment of the splitting the football policy for overlapping GSAs. On January 25, 2007, the Broadband Division of the Wireless Telecommunications Bureau granted waivers *nunc pro tunc* to 41 late-filed EBS renewal applications. On September 28, 2007, Clearwire, Catholic Television Network/National ITFS Association (CTN/NIA), WCA, NextWave, Sprint Nextel, and Xanadoo (the Joint Commenters) filed a letter

proposing clarifications that they believe represent a consensus position of a majority of the 2.5 GHz industry and that, on balance, most effectively and fairly advance the Commission's 2.5 GHz band goals and objectives. The Joint Commenters ask that we clarify our splitting the football treatment of expired licenses.

24. In addition, four licensees—Instructional Telecommunications Foundation, Inc. (ITF), New Trier Township, High School District 203 (New Trier), Shekinah Network (Shekinah) and Boston Catholic Television Center (BCTC)—have asked the Commission to issue a declaratory ruling that their Stations do not have to split the football with overlapping stations that were expired on January 10, 2005.

25. In response to the petitions for declaratory ruling and other filings we have considered, we issue the following clarifications of our splitting the football policy:

- An active BRS or EBS licensee whose former protected service area overlapped with a co-channel license that was expired on January 10, 2005 need not split the football with such expired license if the licensee has not had its license reinstated.
- If a BRS or EBS license was expired on January 10, 2005, and such license is later reinstated *nunc pro tunc* pursuant to a waiver granted for a late-filed renewal application granted after the adoption date of this *BRS/EBS Fourth Memorandum Opinion and Order*, that licensee's geographic service shall not include any portion of its former protected service area that overlapped with another licensee whose license was in active status on January 10, 2005 and on the date the expired licensee's late-filed renewal application was granted, unless a finding is made that splitting the football is appropriate because of manifest Commission error or other unique circumstances.

IV. Procedural Matters

26. *Paperwork Reduction Analysis*: This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4),

we previously sought specific comment on how the Commission might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

27. In this present document, we have assessed the effects of requiring licensees to provide information concerning their base stations to any nearby licensee upon request, and find that this requirement will benefit companies with fewer than 25 employees because it will help them to enjoy interference-free operations. We anticipate that the information exchange will consist of a limited number of technical parameters of a licensee's operations that licensees will have already established and recorded for their own operational purposes. Because licensees will already have such information at their disposal, it will not be burdensome to convey such information when requested. Additionally, because licensees will only be required to submit such information upon request from a neighboring licensee, this significantly limits the amount of potential requests for information. Therefore, we conclude that this information exchange will not burden companies with fewer than 25 employees.

28. 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–B441, Washington, DC 20554, or via the Internet to <Judith-B.Herman@fcc.gov>, and to Nicholas Fraser, Office of Management and Budget (OMB), via e-mail to *Nicholas_A.Fraser@omb.eop.gov* or via fax at 202–395–5167.

V. Final Regulatory Flexibility Analysis for BRS/EBS Fourth Memorandum Opinion and Order

29. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), we incorporated an 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 the *Further Notice of Proposed Rule Making (FNPRM)*. Because we amend the rules in this *BRS/EBS 4th MO&O*, we have included this Final Regulatory Flexibility Analysis (FRFA). This present FRFA conforms to the RFA.

A. Need for, and Objectives of the Rules

30. In the *BRS/EBS 4th MO&O*, we continue to modify our rules to enable the transition of the 2.5 GHz band and

the provision of new and innovative wireless services. Today, we adopt part I, subpart Q as the competitive bidding rules for available and unassigned Broadband Radio Service (BRS) spectrum; designated entity rules to provide bidding credits for small businesses, very small businesses, and entrepreneurs; modify technical rules concerning emission limits, signal strength limits, and height benchmarking; special safe harbors for licensees whose Geographic Service Area (GSA) is heavily encumbered or highly truncated; and create three Gulf of Mexico Service Area zones.

31. We believe the rules we adopt today will both encourage the enhancement of existing services using this band and promote the development of new innovative services to the public, such as providing wireless broadband services, including high-speed Internet access and mobile services. We also believe that our new rules will allow licensees to adapt quickly to changing market conditions and the marketplace, rather than to government regulation, in determining how this band can best be used.

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

32. No comments were submitted specifically in response to the IRFA.

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

33. 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. The RFA generally defines the term “small entity” as having the same meaning as the terms, “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term small business concern” under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. 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 2002, there were approximately 1.6 million small organizations. The term “small governmental jurisdiction” is defined as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”

The term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were “small governmental jurisdictions.” Thus, we estimate that most governmental jurisdictions are small. Below, we discuss the total estimated numbers of small businesses that might be affected by our actions.

34. Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and “wireless cable,” transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission’s rules. Some of those 440 small business licensees may be affected by the decisions in this *BRS/EBS 4th MO&O*.

35. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating \$13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. Of this

total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we estimate that at least 1,932 licensees are small businesses.

36. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions may be included in the definition of a small entity. EBS is a non-profit non-broadcast service. We do not collect, nor are we aware of other collections of, annual revenue data for EBS licensees. We find that up to 1,932 of these educational institutions are small entities that may take advantage of our amended rules to provide additional flexibility to EBS.

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

37. This *BRS/EBS 4th MO&O* modifies the reporting, recordkeeping, or other compliance requirements previously adopted in this proceeding. We are adopting competitive bidding procedures for available and unassigned BRS spectrum, including small business size standards and bidding credits for a “small business” (an entity with attributed average annual gross revenues not exceeding \$40 million for the preceding three years), a “very small business” (an entity with attributed average gross revenues not exceeding \$15 million for the preceding three years), and an “entrepreneur” (an entity with attributed average gross revenues not exceeding \$3 million the preceding three years). We are also adopting two new safe harbors to enable BRS and EBS licensees whose GSA is heavily encumbered or highly truncated to meet the performance requirements for the 2.5 GHz band. We are also creating three new Gulf of Mexico GSAs, which will enable the provision of 2.5 GHz band wireless services in the Gulf of Mexico in the future. We are changing the technical rules concerning emission limits, signal strength limits, and antenna height benchmarking, including requiring licensees to exchange information.

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

38. 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 such 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.”

39. Regarding our decision to adopt competitive bidding rules, we anticipate that our decision to adopt small business size standards and bidding credits for entities that meet the definition of small business, very small business, or entrepreneur will not have a significant economic impact on small entities. Because the BRS spectrum in the 2.5 GHz band was auctioned in 1996, only 70 BTA licenses (of the 493 licenses originally available in 1996) are available for reassignment by competitive bidding.

40. Regarding our decision to adopt two new safe harbors for the demonstration of substantial service compliance, we do not anticipate any significant economic impact on small entities. These two safe harbors apply only to licensees that have heavily encumbered or highly truncated GSAs. Although the applicability of these two safe harbors is limited, they will enable licensees to meet both our performance requirements and our interference protection rules.

41. Regarding our decision to adopt three new Gulf of Mexico Service Area Zones, we do not anticipate any significant impact on small entities. We anticipate that spectrum in these GSAs will be used on oil platforms in the Gulf of Mexico.

42. Regarding our decision to modify various technical rules, we do not anticipate any significant impact on small entities. These modifications are minor.

43. The rules set forth in the *BRS/EBS 4th MO&O* will affect all entities that intend to provide BRS or EBS service in the 2.5 GHz band.

VI. Report to Congress

44. The Commission will send a copy of this *Fourth Memorandum Opinion and Order*, including this FRFA, in a

report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. In addition, the Commission will send a copy of this *Fourth Memorandum Opinion and Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this *Fourth Memorandum Opinion and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

VII. Ordering Clauses

45. Accordingly, *it is ordered*, pursuant to sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333 and 706 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, and 706, that this *Third Order on Reconsideration, Sixth Memorandum Opinion and Order*, and *Fourth Memorandum Opinion and Order* is hereby adopted.

46. It is further ordered that the Petitions for Reconsideration filed in these proceedings are granted to the extent indicated and are otherwise denied.

47. It is further ordered, pursuant to section 4(i) of the Communications Act of 1934, 47 U.S.C. 154(i), and § 1.2 of the Commission's rules, 47 CFR 1.2, that the petitions for declaratory ruling filed by Instructional Telecommunications Foundation, Inc. on March 13, 2007, New Trier High School District #203 on July 26, 2007, Shekinah Network on November 27, 2007, and Boston Catholic Television Center, Inc. on December 14, 2007 are granted to the extent indicated herein and are otherwise denied.

48. *It is further ordered* that the proceeding entitled Amendment of parts 21 and 74 of the Commission's rules with regard to licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico, WT Docket No. 02–68 is reinstated.

49. *It is further ordered* that the Final Regulatory Flexibility Analysis is adopted.

50. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Third Order on Reconsideration, Sixth Memorandum Opinion and Order*, and *Fourth Memorandum Opinion and Order* and *Second Notice of Proposed Rulemaking and Declaratory Ruling*, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the

Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 27

Communications common carriers, Communications equipment, Equal employment opportunity, Radio, Reporting and recordkeeping requirements, Satellites, Securities, Telecommunications.

Federal Communications Commission.
Marlene H. Dortch,
Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 27 as follows:

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

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

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

■ 2. Amend § 27.5 by revising paragraph (i)(2)(iii) and the note to paragraph (i)(2) to read as follows:

§ 27.5 Frequencies.

(i) * * *

(2) * * *

(iii) Upper Band Segment (UBS): The following channels shall constitute the Upper Band Segment:

BRS Channel KH1: 2614.00000–2614.33333 MHz.

BRS Channel KH2: 2614.33333–2614.66666 MHz.

BRS Channel KH3: 2614.66666–2615.00000 MHz.

EBS Channel KG1: 2615.00000–2615.33333 MHz.

EBS Channel KG2: 2615.33333–2615.66666 MHz.

EBS Channel KG3: 2615.66666–2616.00000 MHz.

BRS Channel KF1: 2616.00000–2616.33333 MHz.

BRS Channel KF2: 2616.33333–2616.66666 MHz.

BRS Channel KF3: 2616.66666–2617.00000 MHz.

BRS Channel KE1: 2617.00000–2617.33333 MHz.

BRS Channel KE2: 2617.33333–2617.66666 MHz.

BRS Channel KE3: 2617.66666–2618.00000 MHz.

BRS Channel 2: 2618–2624 MHz.

BRS/EBS Channel E1: 2624–2629.5 MHz.

BRS/EBS Channel E2: 2629.5–2635 MHz.

BRS/EBS Channel E3: 2635–2640.5 MHz.

BRS/EBS Channel F1: 2640.5–2646 MHz.

BRS/EBS Channel F2: 2646–2651.5 MHz.

BRS/EBS Channel F3: 2651.5–2657 MHz.

BRS Channel H1: 2657–2662.5 MHz.

BRS Channel H2: 2662.5–2668 MHz.

BRS Channel H3: 2668–2673.5 MHz.

EBS Channel G1: 2673.5–2679 MHz.

EBS Channel G2: 2679–2684.5 MHz.

EBS Channel G3: 2684.5–2690 MHz.

Note to paragraph (i)(2): No 125 kHz channels are provided for channels in operation in this service. The 125 kHz channels previously associated with these channels have been reallocated to Channel G3 in the upper band segment.

* * * * *

■ 3. Amend § 27.13 by adding new paragraph (h) to read as follows:

§ 27.13 License period.

* * * * *

(h) *BRS and EBS.* BRS and EBS authorizations shall have a term not to exceed ten years from the date of original issuance or renewal. Unless otherwise specified by the Commission, incumbent BRS authorizations shall expire on May 1 in the year of expiration.

■ 4. Amend § 27.14 by adding new paragraph (o) to read as follows:

§ 27.14 Construction requirements; Criteria for renewal.

* * * * *

(o) BRS and EBS licensees must make a showing of “substantial service” no later than May 1, 2011. Incumbent BRS licensees must file their “substantial service” showing with their renewal application. “Substantial service” is defined as service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal. Substantial service for BRS and EBS licensees is satisfied if a licensee meets the requirements of paragraph (o)(1) or (o)(2) of this section. If a licensee has not met the requirements of paragraph (o)(1) or (o)(2) of this section, then demonstration of “substantial service” shall proceed on a case-by-case basis. All substantial service determinations will be made on a license-by-license basis. Except for BTA licenses, BRS licensees must file their “substantial service” showing with their renewal applications. Failure by any licensee to meet this requirement will result in forfeiture of the license and the licensee will be ineligible to regain it.

(1) A BRS or EBS licensee has provided “substantial service” by:

(i) Constructing six permanent links per one million people for licensees providing fixed point-to-point services;

(ii) Providing coverage of at least 30 percent of the population of the licensed area for licensees providing mobile services or fixed point-to-multipoint services;

(iii) Providing service to "rural areas" (a county (or equivalent) with a population density of 100 persons per square mile or less, based upon the most recently available Census data) and areas with limited access to telecommunications services:

(A) For mobile service, where coverage is provided to at least 75% of the geographic area of at least 30% of the rural areas within its service area; or

(B) for fixed service, where the BRS or EBS licensee has constructed at least one end of a permanent link in at least 30% of the rural areas within its licensed area.

(iv) Providing specialized or technologically sophisticated service that does not require a high level of coverage to benefit consumers; or

(v) Providing service to niche markets or areas outside the areas served by other licensees.

(2) An EBS licensee has provided "substantial service" when:

(i) The EBS licensee is using its spectrum (or spectrum to which the EBS licensee's educational services are shifted) to provide educational services within the EBS licensee's GSA;

(ii) the EBS licensee's license is actually being used to serve the educational mission of one or more accredited public or private schools, colleges or universities providing formal educational and cultural development to enrolled students; or

(iii) the level of service provided by the EBS licensee meets or exceeds the minimum usage requirements specified in § 27.1214.

(3) An EBS or BRS licensee may be deemed to provide substantial service through a leasing arrangement if the lessee is providing substantial service under paragraph (o)(1) of this section. The EBS licensee must also be otherwise in compliance with this Chapter (including the programming requirements in § 27.1203 of this subpart).

(4) If the GSA of a licensee is less than 1924 square miles in size, and there is an overlapping co-channel station licensed or leased by the licensee or its affiliate, substantial service may be demonstrated by meeting the requirements of paragraph (o)(1) or (o)(2) of this section with respect to the combined GSAs of both stations.

(5) If the GSA of a BTA authorization holder, is less than one-half of the area within the BTA for every BRS channel, substantial service may be demonstrated for the licenses in question by meeting the requirements of paragraph (o)(1) or (o)(2) of this section with respect to the combined GSAs of the BTA authorization holder, together with any incumbent authorizations licensed or leased by the licensee or its affiliates.

■ 5. Amend § 27.53 by revising paragraph (m) introductory text and paragraphs (m)(2) and (m)(4) to read as follows:

§ 27.53 Emission limits.

* * * * *

(m) For BRS and EBS stations, the power of any emissions outside the licensee's frequency bands of operation shall be attenuated below the transmitter power (P) measured in watts in accordance with the standards below. If a licensee has multiple contiguous channels, out-of-band emissions shall be measured from the upper and lower edges of the contiguous channels.

* * * * *

(2) For digital base stations, the attenuation shall be not less than $43 + 10 \log (P)$ dB, unless a documented interference complaint is received from an adjacent channel licensee with an overlapping Geographic Service Area. Mobile Satellite Service licensees operating on frequencies below 2495 MHz may also submit a documented interference complaint against BRS licensees operating on channel BRS No. 1 on the same terms and conditions as adjacent channel BRS or EBS licensees. Provided that a documented interference complaint cannot be mutually resolved between the parties prior to the applicable deadline, then the following additional attenuation requirements shall apply:

(i) If a pre-existing base station suffers harmful interference from emissions caused by a new or modified base station located 1.5 km or more away, within 24 hours of the receipt of a documented interference complaint the licensee of the new or modified base station must attenuate its emissions by at least $67 + 10 \log (P)$ dB measured at 3 megahertz, above or below, from the channel edge of its frequency block and shall immediately notify the complaining licensee upon implementation of the additional attenuation. No later than 60 days after the implementation of such additional attenuation, the licensee of the complaining base station must attenuate its base station emissions by at least $67 + 10 \log (P)$ dB measured at 3

megahertz, above or below, from the channel edge of its frequency block of the new or modified base station.

(ii) If a pre-existing base station suffers harmful interference from emissions caused by a new or modified base station located less than 1.5 km away, within 24 hours of receipt of a documented interference complaint the licensee of the new or modified base station must attenuate its emissions by at least $67 + 10 \log (P) - 20 \log (D_{km}/1.5)$ dB measured at 3 megahertz, above or below, from the channel edge of its frequency block of the complaining licensee, or if both base stations are co-located, limit its undesired signal level at the pre-existing base station receiver(s) to no more than -107 dBm measured in a 5.5 megahertz bandwidth and shall immediately notify the complaining licensee upon such reduction in the undesired signal level. No later than 60 days after such reduction in the undesired signal level, the complaining licensee must attenuate its base station emissions by at least $67 + 10 \log (P)$ dB measured at 3 megahertz, above or below, from the channel edge of its frequency block of the new or modified base station.

(iii) If a new or modified base station suffers harmful interference from emissions caused by a pre-existing base station located 1.5 km or more away, within 60 days of receipt of a documented interference complaint the licensee of each base station must attenuate its base station emissions by at least $67 + 10 \log (P)$ dB measured at 3 megahertz, above or below, from the channel edge of its frequency block of the other licensee.

(iv) If a new or modified base station suffers harmful interference from emissions caused by a pre-existing base station located less than 1.5 km away, within 60 days of receipt of a documented interference complaint: (a) The licensee of the new or modified base station must attenuate its OOB by at least $67 + 10 \log (P) - 20 \log (D_{km}/1.5)$ measured 3 megahertz above or below, from the channel edge of its frequency block of the other licensee, or if the base stations are co-located, limit its undesired signal level at the other base station receiver(s) to no more than -107 dBm measured in a 5.5-megahertz bandwidth; and (b) the licensee causing the interference must attenuate its emissions by at least $67 + 10 \log (P)$ dB measured at 3 megahertz, above or below, from the channel edge of its frequency block of the new or modified base station.

(v) For all fixed digital user stations, the attenuation factor shall be not less

than $43 + 10 \log (P)$ dB at the channel edge.

* * * * *

(4) For mobile digital stations, the attenuation factor shall be not less than $43 + 10 \log (P)$ dB at the channel edge and $55 + 10 \log (P)$ dB at 5.5 megahertz from the channel edges. Mobile Satellite Service licensees operating on frequencies below 2495 MHz may also submit a documented interference complaint against BRS licensees operating on BRS Channel 1 on the same terms and conditions as adjacent channel BRS or EBS licensees.

* * * * *

■ 6. Amend § 27.55 by revising paragraphs (a)(4)(i), (ii), and (iii) to read as follows:

§ 27.55 Power strength limits.

(a) * * *

(4) * * *

(i) Prior to transition, the signal strength at any point along the licensee's GSA boundary does not exceed the greater of that permitted under the licensee's Commission authorizations as of January 10, 2005 or 47 dBμV/m.

(ii) Following transition, for stations in the LBS and UBS, the signal strength at any point along the licensee's GSA boundary must not exceed 47 dBμV/m. This field strength is to be measured at 1.5 meters above the ground over the channel bandwidth (*i.e.*, each 5.5 MHz channel for licensees that hold a full channel block, and for the 5.5 MHz channel for licensees that hold individual channels).

(iii) Following transition, for stations in the MBS, the signal strength at any point along the licensee's GSA boundary must not exceed the greater of $-73.0 + 10 \log(X/6)$ dBW/m², where X is the bandwidth in megahertz of the channel, or for facilities that are substantially similar to the licensee's pre-transition facilities (including modifications that do not alter the fundamental nature or use of the transmissions), the signal strength at such point that resulted from the station's operations immediately prior to the transition, provided that such operations complied with paragraph (a)(4)(i) of this section.

* * * * *

■ 7. Amend § 27.1201 by revising paragraphs (a)(3) and (d) to read as follows:

§ 27.1201 EBS eligibility.

(a) * * *

(3) Those applicant organizations whose eligibility is established by service to accredited institutional or

governmental organizations must submit documentation from proposed receive sites demonstrating that they will receive and use the applicant's educational usage. In place of this documentation, a State educational television (ETV) commission may demonstrate that the public schools it proposes to serve are required to use its proposed educational usage. Documentation from proposed receive sites which are to establish the eligibility of an entity not serving its own enrolled students for credit should be in letter form, written and signed by an administrator or authority who is responsible for the receive site's curriculum planning. No receive site more than 35 miles from the proposed station's central reference point, or outside the applicants' proposed GSA, shall be used to establish basic eligibility. Where broadband or data services are proposed, the letter should indicate that the data services will be used in furtherance of the institution's educational mission and will be provided to enrolled students, faculty and staff in a manner and in a setting conducive to educational usage. Where traditional educational or instructional video services are proposed, the letter should indicate that the applicant's program offerings have been viewed and that such programming will be incorporated in the site's curriculum. Where educational or instructional video services are proposed, the letter should discuss the types of programming and hours per week of formal and informal programming expected to be used and the site's involvement in the planning, scheduling and production of programming. If other levels of authority must be obtained before a firm commitment to utilize the service can be made, the nature and extent of such additional authorization(s) must be provided.

* * * * *

(d) This paragraph applies to EBS licensees and applications licensed or filed pursuant to the provisions of § 27.1201(c) contained in the edition of 47 CFR parts 20 through 39, revised as of October 1, 2005, or §§ 74.990 through 74.992 contained in the edition of 47 CFR parts 70 through 79, revised as of October 1, 2004, and that do not meet the eligibility requirements of paragraph (a) of this section. Such licensees may continue to operate pursuant to the terms of their existing licenses, and their licenses may be renewed, assigned, or transferred, so long as the licensee is otherwise in compliance with this chapter. Applications filed pursuant to

the provisions of § 27.1201(c) contained in the edition of 47 CFR parts 20 through 39, revised as of October 1, 2005 or §§ 74.990 through 74.992 contained in the edition of 47 CFR parts 70 through 79, revised as of October 1, 2004 may be processed and granted, so long as such applications were filed prior to July 19, 2006. The provisions of §§ 27.1203(b) through (d) and 27.1214 of this subpart do not apply to licenses governed by this paragraph.

■ 8. Amend § 27.1207 by revising paragraph (a) and the introductory text of paragraph (b) to read as follows:

§ 27.1207 BTA license authorization.

(a) Winning bidders must file an application (FCC Form 601) for an initial authorization.

(b) Initial authorizations for BRS granted after January 1, 2008, shall be blanket licenses for all BRS frequencies identified in § 27.5(i)(2) and based on the geographic areas identified in § 27.1208. Blanket licenses cover all mobile and response stations.

* * * * *

■ 9. Revise § 27.1208 to read as follows:

§ 27.1208 BTA Service areas.

Except for incumbent BRS licenses, BRS service areas are Basic Trading Areas (BTAs) or additional service areas similar to BTAs adopted by the Commission. BTAs are based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 38–39. The following are additional BRS service areas in places where Rand McNally has not defined BTAs: American Samoa; Guam; Gulf of Mexico Zone A; Gulf of Mexico Zone B; Gulf of Mexico Zone C; Northern Mariana Islands; Mayaguez/Aguadilla-Ponce, Puerto Rico; San Juan, Puerto Rico; and the United States Virgin Islands. The boundaries of Gulf of Mexico Zone A are from an area twelve nautical miles from the shoreline at mean high tide on the north and east, to the limit of the Outer Continental Shelf to the south, and to longitude 91°00' to the west. The boundaries of Gulf of Mexico Zone B are from an area twelve nautical miles from the shoreline at mean high tide on the north, to the limit of the Outer Continental Shelf to the south, to longitude 91°00' to the east, and to longitude 94°00' to the west. The boundaries of Gulf of Mexico Zone C are from an area twelve nautical miles from the shoreline at mean high tide on the north and west, to longitude 94°00' to the east, and to a line 281 kilometers from the reference point at Linares, N.L., Mexico on the southwest. The Mayaguez/Aguadilla-Ponce, PR, service

area consists of the following municipios: Adjuntas, Aguada, Aguadilla, Anasco, Arroyo, Cabo Rojo, Coamo, Guanica, Guayama, Guayanilla, Hormigueros, Isabela, Jayuya, Juana Diaz, Lajas, Las Marias, Maricao, Maunabo, Mayaguez, Moca, Patillas, Penuelas, Ponce, Quebradillas, Rincón, Sabana Grande, Salinas, San German, Santa Isabel, Villalba and Yauco. The San Juan service area consists of all other municipios in Puerto Rico.

■ 10. Amend § 27.1214 by revising paragraph (c) to read as follows:

§ 27.1214 EBS spectrum leasing arrangements and grandfathered leases.

* * * * *

(c) All spectrum leasing arrangements involving EBS spectrum must afford the EBS licensee an opportunity to purchase or to lease the dedicated or common EBS equipment used for educational purposes, or comparable equipment in the event that the spectrum leasing arrangement is terminated.

* * * * *

■ 11. Add § 27.1217 to read as follows:

§ 27.1217 Competitive Bidding Procedures for the Broadband Radio Service.

Mutually exclusive initial applications for BRS licenses in the 2500–2690 MHz band are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

■ 12. Add § 27.1218 to read as follows:

§ 27.1218 Designated Entities.

(a) *Eligibility for small business provisions.* (1) A small business is an entity that, together with all attributed parties, has average gross revenues that are not more than \$40 million for the preceding three years.

(2) A very small business is an entity that, together with all attributed parties, has average gross revenues that are not more than \$15 million for the preceding three years.

(3) An entrepreneur is an entity that, together with all attributed parties, has average gross revenues that are not more than \$3 million for the preceding three years.

(b) *Bidding credits.* (1) A winning bidder that qualifies as a small business, as defined in this section, or a consortium of small businesses, may use a bidding credit of 15 percent, as specified in § 1.2110(f)(2)(iii) of this chapter, to lower the cost of its winning bid on any of the licenses in this subpart.

(2) A winning bidder that qualifies as a very small business, as defined in this

section, or a consortium of very small businesses, may use a bidding credit of 25 percent, as specified in

§ 1.2110(f)(2)(ii) of this chapter, to lower the cost of its winning bid on any of the licenses in this subpart.

(3) A winning bidder that qualifies as an entrepreneur, as defined in this section, or a consortium of entrepreneurs, may use a bidding credit of 15 percent, as specified in § 1.2110(f)(2)(i) of this chapter, to lower the cost of its winning bid on any of the licenses in this subpart.

■ 13. Amend § 27.1221 by revising paragraphs (b) through (e) and adding a new paragraph (f) to read as follows:

§ 27.1221 Interference protection.

* * * * *

(b) *Height Benchmarking.* Height benchmarking is defined for pairs of base stations, one in each of two proximate geographic service areas (GSAs). The height benchmark, which is defined in meters (hb_m) for a particular base station relative to a base station in another GSA, is equal to the distance, in kilometers, from the base station along a radial to the nearest point on the GSA boundary of the other base station squared (D_{km}^2) and then divided by 17. That is, $hb_m = D_{km}^2/17$. A base station antenna will be considered to be within its applicable height benchmark relative to another base station if the height in meters of its centerline of radiation above average elevation (HAAE) calculated along the straight line between the two base stations in accordance with §§ 24.53(b) and (c) of this chapter does not exceed the height benchmark (hb_m). A base station antenna will be considered to exceed its applicable height benchmark relative to another base station if the HAAE of its centerline of radiation calculated along the straight line between the two base stations in accordance with §§ 24.53(b) and (c) of this chapter exceeds the height benchmark (hb_m).

(c) *Protection for Receiving Antennas not Exceeding the Height Benchmark.*

Absent agreement between the two licensees to the contrary, if a transmitting antenna of one BRS/EBS licensee's base station exceeds its applicable height benchmark and such licensee is notified by another BRS/EBS licensee that it is generating an undesired signal level in excess of -107 dBm/5.5 megahertz at the receiver of a co-channel base station that is within its applicable height benchmark, then the licensee of the base station that exceeds its applicable height benchmark shall either limit the undesired signal at the receiver of the protected base station to -107 dBm/5.5 megahertz or less or

reduce the height of its transmission antenna to no more than the height benchmark. If the interfering base station has been modified to increase the EIRP transmitted in the direction of the protected base station, it shall be deemed to have commenced operations on the date of such modification. Such corrective action shall be completed no later than:

(i) 24 hours after receiving such notification, if the base station that exceeds its height benchmark commenced operations after the station that is within its applicable height benchmark; or

(ii) 90 days after receiving such notification, if the base station that exceeds its height commenced operations prior to the station that is within its applicable height benchmark. For purposes of this section, if the interfering base station has been modified to increase the EIRP transmitted in the direction of the victim base station, it shall be deemed to have commenced operations on the date of such modification.

(d) *No Protection from a Transmitting Antenna not Exceeding the Height Benchmark.* The licensee of a base station transmitting antenna less than or equal to its applicable height benchmark shall not be required pursuant to paragraph (c) of this section to limit that antennas undesired signal level to -107 dBm/5.5 megahertz or less at the receiver of any co-channel base station.

(e) *No Protection for a Receiving-Antenna Exceeding the Height Benchmark.* The licensee of a base station receive antenna that exceeds its applicable height benchmark shall not be entitled pursuant to paragraph (c) of this section to insist that any co-channel base station limit its undesired signal level to -107 dBm/5.5 megahertz or less at the receiver.

(f) *Information Exchange.* A BRS/EBS licensee shall provide the geographic coordinates, the height above ground level of the center of radiation for each transmit and receive antenna, and the date transmissions commenced for each of the base stations in its GSA within 30 days of receipt of a request from a co-channel BRS/EBS licensee with an operational base station located in a proximate GSA. Information shared pursuant to this section shall not be disclosed to other parties except as required to ensure compliance with this section.

■ 14. Amend § 27.1231 by revising paragraph (f) introductory text to read as follows:

§ 27.1231 Initiating the transition.

* * * * *

(f) *Initiation Plan.* To initiate a transition, a potential proponent(s) must submit an Initiation Plan to the Commission at the Office of the Secretary in Washington, DC on or before January 21, 2009.

* * * * *

■ 15. Amend § 27.1236 by revising paragraphs (a), (b)(1), and (b)(6) to read as follows:

§ 27.1236 Self-transitions.

(a) If an Initiation Plan is not filed on or before January 21, 2009 for a BTA, BRS and EBS licensees in that BTA may self-transition by relocating to their default channel locations specified in § 27.5(i)(2) and complying with §§ 27.50(h), 27.53, 27.55 and 27.1221.

* * * * *

(b) * * *

(1) Notify the Secretary of the Commission on or before April 21, 2009 that it will self-transition (see paragraph (a) of this section);

* * * * *

(6) Complete the self-transition on or before October 20, 2010.

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