

analysis are available for inspection at the above address. (Please telephone Christos Panos at (312) 353-8328 before visiting the Region 5 Office.)

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: October 27, 2000.

**Gary Gulezian,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 01-5851 Filed 3-8-01; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1 and 22

[WT Docket No. 01-32; FCC 01-36]

#### Implementation of Competitive Bidding Rules To License Certain Rural Service Areas

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, we propose rules for awarding licenses for four cellular rural service areas (RSAs) that remain unlicensed because the initial lottery winner was disqualified or otherwise withdrew its application. Specifically, we propose competitive bidding rules for these licenses and seek comment on our proposals.

**DATES:** Comments are due on or before March 19, 2001 and reply comments are due on or before April 3, 2001.

**ADDRESSES:** Federal Communications Commission, 445 12th St., SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:**

Katherine M. Harris, Wireless Telecommunications Bureau, Commercial Wireless Division at (202) 418-0609.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's Notice of Proposed Rule Making (NPRM), FCC 01-36, in WT Docket No. 01-32, adopted on January 31, 2001, and released on February 12, 2001. The full text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW, Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20037. The full text may also be downloaded at: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by contacting

Martha Contee at (202) 418-0260 or TTY (202) 418-2555.

#### Synopsis of Notice of Proposed Rule Making

##### I. Introduction

1. In this Notice of Proposed Rule Making (NPRM), we propose rules for awarding licenses for four cellular Rural Service Areas (RSAs) that remain unlicensed because the initial lottery winner was disqualified or has otherwise withdrawn its application. Under the Balanced Budget Act of 1997 (1997 Budget Act), we are now required, with certain exceptions not applicable here, to resolve mutually exclusive applications for initial licenses by competitive bidding. Balanced Budget Act of 1997, Public Law 105-33, section 3002(a), 111 Stat. 251, at 258-60 (1997). We propose to: (1) Allow all eligible parties to apply for these initial licenses; and (2) license these markets on an RSA basis under our Part 22 rules. As discussed below, we also propose to use our Part 1 competitive bidding rules to auction these licenses.

##### II. Background

2. The Commission has been awarding cellular licenses since 1982. Although we awarded the first thirty Metropolitan Statistical Area (MSA) licenses pursuant to comparative hearing rules, we adopted rules in 1984 to award the remaining cellular MSA and RSA licenses through lotteries. By 1991, lotteries had been held for every MSA and RSA, and licenses were awarded to the lottery winners in most instances. In some RSA markets, however, the initial RSA license was never awarded.

3. On August 5, 1997, President Clinton signed the 1997 Budget Act into law, which modified the Commission's auction authority by amending Section 309(j) of the Communications Act to require that all mutually exclusive applications for initial licenses or construction permits be auctioned, with certain exceptions not applicable here. 1997 Budget Act, Public Law 105-33, section 3002(a), 111 Stat. 251, 258-60 (1997) (amending 47 U.S.C. 309(j)). The 1997 Budget Act expressly repealed Section 6002(e) of the 1993 Budget Act, *id.* at Section 3002(a)(4), and terminated the Commission's authority to award licenses through random selection, even in the case of applications filed prior to July 26, 1993, except for licenses for noncommercial educational and public broadcast stations. *Id.* at Section 3002(a)(2)(B). Because the 1997 Budget Act terminated the Commission's remaining lottery authority, the

Commission's Wireless Telecommunications Bureau dismissed all pending RSA lottery applications by separate orders released April 2, 1999, and April 29, 1999. *See* Certain Cellular Rural Service Area Applications, *Order*, 14 FCC Rcd 4619 (1999); Certain Cellular Rural Service Area Applications in Market Nos. 599A and 672A, *Order*, DA 99-814 (rel. Apr. 29, 1999).

##### III. Discussion

4. We propose to allow all eligible applicants to apply for licenses for the four remaining unlicensed cellular RSAs. Further, we propose to license these markets on an RSA basis, subject to the same construction and operational rules as previously licensed RSAs. Finally, if there are mutually exclusive applications for these markets, we propose to use the general competitive bidding rules set forth in Part 1, Subpart Q, of the Commission's rules to conduct the auction. We seek comment on these issues, which we address in greater detail below.

##### A. Eligibility for Licenses

5. We propose to allow all eligible entities and persons to apply for the licenses at issue in this proceeding. Our competitive bidding program seeks to award each license to the applicant who values it most highly, as determined by the marketplace, and who is therefore most likely to offer valued service to the public. To the extent that former lottery applicants continue to have an interest in applying for these markets, open eligibility allows them to do so. We therefore tentatively conclude that it would be in the public interest to permit all eligible entities to participate in an RSA auction. We seek comment on this proposal.

6. In all of the four unlicensed RSAs, the Commission has granted interim operating authority (IOA) to one or more cellular operators to provide cellular service on the Channel A block pending the ultimate permanent licensing of these RSAs. We propose to permit current IOA holders to participate in the auction of licenses for the unlicensed RSAs on an equal basis with other applicants. We also note that under the terms of each of the existing IOAs, the IOA operator must cease operations immediately upon initiation of service by the new licensee, provided that the new licensee gives at least 30 days written notice of its intent to provide service. In order to prevent unnecessary interruption of service to existing cellular customers, we propose that, in the event that any of the current IOA holders do not obtain the RSA license

for their markets, they should be allowed to continue providing service on a temporary basis subject to these conditions, *i.e.*, until the auction winner provides the required notice and is prepared to commence service. We seek comment on these proposals.

#### B. Market Areas To Be Auctioned

7. We also seek comment on whether the unlicensed markets for which licenses are to be awarded through competitive bidding should be licensed on an RSA basis, or whether alternative licensing models should be considered. For the reasons discussed below, we tentatively conclude that the unlicensed cellular markets should be licensed on an RSA basis under our Part 22 rules.

8. We also propose that licenses awarded for these markets would be subject to the same construction and operational rules as licenses granted to prior RSA lottery winners, including the exclusive right of the licensee of the first cellular system on each channel block to expand its system within that market for a period of five years. *See* 47 CFR 22.947. After the expiration of the five-year expansion period, any areas within the RSA market that remained unserved would be available for licensing pursuant to our Part 22 unserved areas Phase I and Phase II filing procedures. *See* 47 CFR 22.949.

#### C. Competitive Bidding Procedures

9. We propose to conduct the auction of cellular RSA licenses in conformity with the general competitive bidding rules set forth in Part 1, Subpart Q, of the Commission's rules, and consistent with the bidding procedures that have been employed in previous auctions. Specifically, we propose to employ the Part 1 rules governing competitive bidding design, designated entities, application and payment procedures, reporting requirements, collusion issues, and unjust enrichment. Under this proposal, such rules would be subject to any modifications that the Commission may adopt in the Part 1 proceeding. We also note that under the Part 1 rules, winning bidders would be eligible to obtain a bidding credit for serving qualifying tribal lands pursuant to Section 1.2110(f)(3). *See* 47 CFR 1.2110(f)(3). In this regard, we note that only one RSA subject to these proposals—RSA 582A—Barnes, ND—contains any federally recognized tribal lands. In addition, consistent with current practice, matters such as the appropriate competitive bidding design, as well as minimum opening bids and reserve prices, would be determined by WTB pursuant to its delegated authority. Amendment of Part 1 of the

Commission's Rules—Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 448–49, 454–55, paragraphs 125, 139 (1997), modified by Erratum, DA 98–419 (rel. Mar. 2, 1998). We seek comment on this approach.

10. We also seek comment on whether to adopt special provisions for small businesses that participate in the auction of cellular RSA licenses. We propose to provide small businesses with bidding credits in order to meet our Congressional mandate to promote competition and to disseminate licenses among a wide variety of applicants. *See* 47 U.S.C. 309(j)(3)(B). Specifically, we propose to establish three small business definitions. We would define an entrepreneur as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, a small business as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million, and a very small business as an entity with average annual gross revenues for the preceding three years not exceeding \$3 million. As provided in 47 CFR 1.2110(f)(2) of our rules, we propose to offer entrepreneurs a bidding credit of 15 percent, small businesses a bidding credit of 25 percent, and very small businesses a bidding credit of 35 percent. We seek comment on whether this approach is appropriate here, or whether there is anything about the characteristics and capital requirements of cellular service that would require a different approach.

11. We also seek comment on whether the small business provisions we propose today 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. *See Adarand Constructors v. Peña*, 515 U.S. 200 (1995) (requiring a strict scrutiny standard of review for Congressionally mandated race-conscious measures); *United States v. Virginia*, 518 U.S. 515 (1996) (applying an intermediate standard of review to a state program based on gender classification).

## IV. Procedural Matters

### A. Ex Parte Rules

12. Pursuant to 47 CFR 1.1206 of the Commission's *ex parte* rules, this rulemaking proceeding proposing rules for awarding licenses for cellular RSAs for which the tentative selectee has been disqualified is a permit-but-disclose proceeding. Provided they are disclosed in accordance with the Commission's rules, *ex parte* presentations are permitted, except during the Sunshine Agenda period.

### B. Filing Procedures

13. Pursuant to 47 CFR 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on this *NPRM* on or before March 19, 2001, and reply comments on or before April 3, 2001. Comments and reply comments should be filed in WT Docket No. 01–32. All relevant and timely filings will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, interested parties must file an original and four copies of each comment or reply comment. Commenters who wish each Commissioner to receive personal copies of their submissions must file an original and nine copies of each comment and reply comment. Comments and reply comments must be directed to the Office of the Secretary, Federal Communications Commission, 445 12th St., SW., Room TW–A325, Washington, DC 20554. Copies of all comments also should be provided to (1) the Commission's copy contractor, and (2) Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

14. Comments may also be filed using the Commission's Electronic Comment Filing System (ECFS). Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. Parties may also submit an electronic comment by Internet e-mail. 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. Or you may obtain a copy of the ASCII Electronic Transmittal Form (FORM-ET) at <<http://www.fcc.gov/e-file/email.html>>.

15. Comments and reply comments will be available for public inspection during regular business hours at the

FCC Reference Information Center, Room CY-A257, at the Federal Communications Commission, 445 12th St., SW., Washington, DC 20554. Copies of comments and reply comments are available through the Commission's duplicating contractor: International Transcription Service, Inc. (ITS, Inc.), 1231 20th Street, NW., Washington, DC 20037, (202) 857-3800.

## V. Initial Regulatory Flexibility Analysis

16. As required by Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this NPRM. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as the comments on the rest of the NPRM, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 603(a). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**. See *id.*

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

17. We originally initiated this rulemaking proceeding in response to a petition filed by Cellular Communications of Puerto Rico, Inc. (CCPR) on September 9, 1996, which requested that the Commission award certain RSA licenses through competitive bidding, rather than random selection. Cellular Communications of Puerto Rico, Inc. Petition for Declaratory Ruling, Or, in the Alternative, for Rulemaking, RM-8897 (filed Sept. 9, 1996). However, we dismissed CCPR's petition as moot in response to the enactment of the Balanced Budget Act of 1997, which requires the Commission to resolve mutually exclusive applications for initial licenses through competitive bidding instead of random selection, with certain exceptions not applicable here. See *Certain Cellular Rural Service Area Applications*, Order, 14 FCC Rcd 4619 (1999); *Certain Cellular Rural Service Area Applications in Market Nos. 599A and 672A*, Order, DA 99-814 (rel. April 29, 1999). Our objective in this rulemaking proceeding is to determine, for cellular RSA markets for

which a tentative selectee has been disqualified, whether to allow all eligible applicants to participate in the auction of licenses, which competitive bidding rules to use, and the type of market area to be used for licensing.

### B. Legal Basis

18. The proposed action is authorized under the Communications Act of 1934 as amended, Sections 4(i), 303(r), 303(c) and 309(j), 47 U.S.C. 154(i), 303(c), 303(r) and 309(j), as amended.

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

19. 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. 5 U.S.C. 603(b)(3). The Regulatory Flexibility Act defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act. *Id.* at 601(3). 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. *Id.* at 632.

20. The Commission is required to estimate in its Final Regulatory Flexibility Analysis the number of small entities to which any new rules would apply, provide a description of such entities, and assess the impact of the rule on such entities. To assist in this analysis, commenters are requested to provide information regarding how many total entities, existing and potential, will be considered small businesses.

21. According to the most recent Telecommunications Industry Revenue data, 808 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Services (PCS), which are placed together in that data. Trends in Telephone Service, Table 19.3 (March 2000). The rules proposed in the NPRM would affect all small entities that seek to acquire any of the four cellular RSA licenses discussed therein. In the NPRM, we propose to define three tiers of small businesses for the purpose of providing bidding credits to small entities. We propose to define these three tiers of small businesses as follows: an "entrepreneur" would be an entity with average annual gross revenues not exceeding \$40 million for the preceding three years; a "small business" would be an entity with average annual gross revenues not

exceeding \$15 million for the preceding three years; and a "very small business" would be an entity with average annual gross revenues not exceeding \$3 million for the preceding three years. The Small Business Administration approved these proposed small business definitions on January 30, 2001. See Letter from Fred P. Hochberg, Acting Administrator, Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, dated Jan. 30, 2001. We will not know how many entities meeting these proposed definitions will apply for or win cellular RSA licenses until an auction is held. In view of our lack of knowledge about the entities that will seek to acquire the cellular RSA licenses in question, we assume that, for purposes of our evaluations and conclusions in this IRFA, all prospective licensees are entrepreneurs, small businesses, or very small businesses under our proposed definitions. We invite comment on this analysis.

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

22. In making the transition to award the cellular RSA licenses at issue in this proceeding by competitive bidding, the NPRM proposes (1) to accept new license applications, and (2) to use our general Part 1 competitive bidding rules to conduct the auction. If adopted, these proposals would require all applicants to electronically submit FCC Form 175 in order to participate in the auction and, at the conclusion of the auction, all high bidders to electronically submit FCC Form 601 to apply for a license. The purposes of these forms are to ensure that applicants are eligible to participate in the auction and that high bidders are eligible to hold the cellular RSA licenses at issue. The Office of Management and Budget has already approved both of these forms. Under our Part 1 rules, any entity wishing to receive a bidding credit for serving qualifying lands must comply with 47 CFR 1.2110(f)(3).

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

23. 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.

24. To provide opportunities for small entities to participate in the auction of cellular RSA licenses discussed in the NPRM, we propose to provide bidding credits for entrepreneurs, small businesses, and very small businesses as defined in Section C of this IRFA. The bidding credits proposed are 15 percent for entrepreneurs, 25 percent for small businesses, and 35 percent for very small businesses. We believe these bidding credits will benefit a range of small entities. In the NPRM, we seek comment on these proposed small business definitions and bidding credits, thus providing interested parties with an opportunity to suggest alternatives.

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

25. None.

## VI. Ordering Clauses

26. Authority for the issuance of this NPRM is contained in Sections 4(i), 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 309(j).

27. The Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Magalie Roman Salas,**  
*Secretary.*

[FR Doc. 01-5830 Filed 3-8-01; 8:45 am]

BILLING CODE 6712-01-U

**ACTION:** Proposed rule; availability of supplemental information.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to reintroduce whooping cranes (*Grus americana*) into historic habitat in the eastern United States with the intent to establish a migratory flock that would summer and breed in Wisconsin, and winter in west-central Florida. We propose that this reintroduced population be designated a nonessential experimental population (NEP) according to section 10(j) of the Endangered Species Act of 1973 (Act), as amended. We also announce the availability of the draft environmental assessment for this action. The area proposed for NEP designation includes the States of Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, North Carolina, Ohio, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin. We are considering including the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, New Jersey, Pennsylvania, Rhode Island, and Vermont within the eastern United States NEP area.

The objectives of the reintroduction are: to advance recovery of the endangered whooping crane; to further assess the suitability of Wisconsin and west-central Florida as whooping crane habitat; and to evaluate the merit of releasing captive-reared whooping cranes, conditioned for wild release, as a technique for establishing a self-sustaining, migratory population. The only natural wild population of whooping cranes remains vulnerable to extirpation through a natural catastrophe or contaminant spill, due primarily to its limited wintering distribution along the Texas gulf coast. If successful, this action will result in the establishment of an additional self-sustaining population, and contribute towards the recovery of the species. No conflicts are envisioned between the whooping crane's reintroduction and any existing or anticipated Federal, State, Tribal, local government, or private actions such as agricultural practices, pesticide application, water management, construction, recreation, trapping, or hunting.

**DATES:** Comments on both the proposed rule and the draft environmental assessment must be received by April 23, 2001. We will hold public hearings at the following locations within the proposed NEP area on the dates indicated.

1. Stevens Point, Wisconsin on April 5, 2001 at the Laird Room in the University Center at the University of Wisconsin-Stevens Point, 1015 Reserve Street, Stevens Point, Wisconsin.

2. Indianapolis, Indiana on April 4, 2001 at the Holliday Park Nature Center, 6345 Spring Mill Road—2 blocks west of the Meridian and 64th Street intersection, Indianapolis, Indiana

3. Nashville, Tennessee on April 3, 2001 at the Union Station Hotel, 1001 Broadway, Nashville, Tennessee

4. Crystal River, Florida on April 2, 2001 at the Plantation Inn and Golf Resort, 9301 West Fort Island Trail, Crystal River, Florida

We will hold public informational open houses at the same locations prior to each public hearing. The informational open houses will be held from 6:00 p.m. to 7:00 p.m. The public hearings will be held from 7:00 p.m. to 9:00 p.m. See additional information on these public hearings in **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** Send your comments on this proposed rule or on the draft environmental assessment to Janet M. Smith, Field Supervisor, U.S. Fish and Wildlife Service, 1015 Challenger Court, Green Bay, Wisconsin 54311. You may also send comments by facsimile equipment to 920-465-7410 or by email to the following address: whoopingcrane@fws.gov. We request that you identify whether you are commenting on the proposed rule or draft environmental assessment. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address. You may obtain copies of the draft environmental assessment from the above address or by calling 920-465-7440, or from our World Wide Web site at <http://midwest.fws.gov/whoopingcrane>.

**FOR FURTHER INFORMATION CONTACT:** Janet M. Smith, Field Supervisor, Green Bay Field Office, (telephone 920-465-7440, facsimile 920-465-7410). Additional information is also available on our World Wide Web site at <http://midwest.fws.gov/whoopingcrane>.

## SUPPLEMENTARY INFORMATION:

### Background

#### 1. Legislative

Congress made significant changes to the Endangered Species Act of 1973, as amended (Act), with the addition of section 10(j), which provides for the designation of specific reintroduced populations of listed species as "experimental populations." Previously, we had authority to reintroduce populations into unoccupied portions of

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AH46

### Endangered and Threatened Wildlife and Plants; Proposal To Establish a Nonessential Experimental Population of Whooping Cranes in the Eastern United States

**AGENCY:** Fish and Wildlife Service, Interior.