and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

We reached this conclusion based on the fact that the proposed changes will not impede maritime traffic transiting the bridge, but merely require mariners to plan their transits in accordance with the scheduled bridge openings, while still providing for the needs of the bridge owner.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we consider whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. There are 15 waterborne companies (Charter and Fishing vessels) that transit through the Beaufort Channel Bridge. These companies were contacted and everyone within those agencies agreed to the proposed restrictions. Commercial waterway users have an alternate route around the Beaufort Channel Bridge will not have an adverse effect on these small entities due to their ability to time their transits through the bridge during the specified opening periods.

If you think your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Commander (Aowb), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in Section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32) (e), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. This proposed rule only deals with the operating schedule of an existing drawbridge and will have no impact on the environment. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–4587, 106 Stat. 5039.

2. Section 117.822 is revised to read as follows:

117.822 Beaufort Channel, NC.

The draw of the US 70 bridge, mile 0.1., at Beaufort, shall open as follows:

(a) From 6 a.m. to 10 p.m., the draw need only open every hour on the hour, and on the half hour; except that Monday through Friday the bridge need not open from 6:30 a.m. to 8 a.m. and from 4:30 p.m. to 6 p.m.

(b) From 10 p.m. to 6 a.m., the bridge shall open on signal.

Dated: March 9, 2001.

John E. Shkor,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 01–9176 Filed 4–12–01; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 27, and 73

[GN Docket No. 01–74; FCC 01–91]

Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59)

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Federal Communications Commission (''the Commission'') proposes to reallocate the 698–746 MHz spectrum band, currently comprising television Channels 52–59. The Commission also proposes a co-primary allocation for the fixed, mobile, and broadcasting services. Further, the

Commission is reclaiming this spectrum for new commercial services as part of the Commission's transition of TV broadcasting from analog to digital transmission systems. The Commission also examines possible licensing, operating, and competitive bidding rules for wireless and other services in this spectrum band. Further considered are measures to protect the incumbent analog and digital broadcast television services from interference until the transition to digital television is complete.

DATES: Comments are due on or before May 14, 2001. Reply comments are due on or before June 4, 2001. Written comments by the public on the proposed information collections are due on or before May 14, 2001. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before June 12, 2001.

ADDRESSES: Comments filed through the Commission's Electronic Comment Filing System (ECFS) can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Parties who choose to file comments by paper should send comments to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W.; TW–A325; Washington, D.C. 20554. In addition to filing comments with the Secretary, copies of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 12th Street, S.W., Room 1–C804, Washington, D.C. 20554, or via the Internet to jboley@fcc.gov, and to Edward C. Springer, OMB Desk Officer, 10236 New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503 or via the Internet to *Edward.Springer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Allocation Issues: Lisa Gaisford at (202) 418–7280, or via the Internet at *lgaisfor@fcc.gov* (Office of Engineering and Technology); Service Rules Issues: G. William Stafford at (202) 418–0563; or via the Internet at *wstaffor@fcc.gov* (Wireless Telecommunications Bureau).

SUPPLEMENTARY INFORMATION: This is a summary of the Notice of Proposed Rulemaking (''Notice'') in GN Docket No. 01–74, FCC 01–91, adopted March 16, 2001 and released March 28, 2001. The complete text of the document is available to the public on the Commission's Internet Home Page: http://www.fcc.gov (including at http://www.fcc.gov/Bureaus/Wireless/Orders/2001/fcc0191.pdf). The document is also available for public inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, S.W., Room CY–A257, Washington, D.C. and may be purchased from the Commission's copy contractor, International Transcription Services (''ITS, Inc.''), (202) 857–3800, 445 12th Street, S.W., CY–B400, Washington, D.C. 20554. This Notice may contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (''PRA''). It has been submitted to the Office of Management and Budget (''OMB'') for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collection(s) contained in this proceeding.

Paperwork Reduction Act

This NPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due June 12, 2001. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Synopsis of Further Notice of Proposed Rulemaking

The Notice is part of the Commission's plan to reclaim the 698–746 MHz band (''698–746 MHz band'' or ''Lower 700 MHz Band''), currently used for television (''TV'') Channels 52–59, for new commercial services as part of the transition of TV broadcasting from analog to digital transmission systems, consistent with the statutory directives enacted in the Balanced Budget Act of 1997. The Notice consists of two parts. First, the Notice proposes to reallocate the 698–746 MHz band, currently used for TV Channels 52–59, from use solely for broadcast services to Fixed, Mobile, and Broadcast services. Second, the Notice proposes to adopt certain service, licensing, and competitive bidding rules for the 698–746 MHz band. The Notice proposes to reallocate the entire 48 megahertz of spectrum in the 698–746 MHz band to the fixed and mobile services, and retain the existing broadcast allocation. The Notice also seeks comment on whether the band should also be allocated for satellite services. This Notice also proposes to license the 698–746 MHz commercial band under a flexible framework established in part 27 of the Commission's rules. The Commission expects that provisions of part 27 will be modified to reflect the particular characteristics and circumstances of services offered through the use of spectrum on these bands. Depending on the extent and nature of provisions in the service rules that enable broadcast services, these modifications may also reference or incorporate rules in other parts of the Commission's rules, such as part 73 governing broadcast services. The flexible approach contained in the Notice will encourage new and innovative services and technologies in this band without significantly limiting the range of potential uses for this spectrum.

I. Introduction

1. The Notice proposes to reallocate the 698–746 MHz spectrum band, currently comprising television (''TV'') Channels 52–59. The Commission is reclaiming this spectrum for new commercial services as part of the Commission's transition of TV broadcasting from analog to digital transmission systems. Digital television (''DTV'') technology is more spectrally efficient thus allowing the same amount of television service to operate in a reduced allocation, *i.e.,* TV Channels 2–51, after the transition. The Notice proposes a co-primary allocation for the fixed, mobile, and broadcasting services for this 48 megahertz band. This flexible allocation will enable service providers to select the technology they wish to use to provide new broadband services in order to make the best use of this spectrum. The Notice also examines possible licensing, operating, and competitive bidding rules for wireless and other services in this spectrum band. The Notice anticipates that licenses will be assigned by competitive bidding consistent with statutory requirements.[1] The Notice also

[1] *See* Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251 at 3003 (1997) (adding new section 309(j)(14) to the Communications Act of

Continued

considers measures to protect the incumbent analog and digital broadcast television services from interference until the transition to digital television is complete. The Commission believes these measures will enable an orderly transition for broadcasters while permitting the introduction of new services into the band.

II. Background

2. Section 309(j)(14) of the Communications Act of 1934, as amended (''Communications Act'') requires the Commission to assign spectrum recaptured from broadcast television as a result of the transition from analog to digital transmission systems by competitive bidding by September 30, 2002.[2] The statute requires that analog broadcasters cease operation on the recaptured spectrum in 2006 unless one or more of the four largest network stations or affiliates are not broadcasting in digital, digital-to-analog converter technology is not generally available, or 15% or more television households are not receiving a digital signal. Thus, while the end of the transition is targeted for 2006, and may extend beyond that date, the Commission must reallocate spectrum and assign commercial licenses in the encumbered television spectrum by September 30, 2002. New licensees may operate in the band prior to the end of the transition to the extent they do not cause interference to existing analog and digital broadcasters, *see DTV Sixth Report and Order,* 62 FR 26684, May 14, 1997.

3. Under section 309(j)(3) of the Communications Act, in developing a competitive bidding methodology and specifying the characteristics of licenses to be assigned by auction, the Commission are required to promote a number of objectives, including the development and rapid deployment of new technologies, products, and services for the benefit of the public, the promotion of economic opportunity and competition, the recovery of a portion of the value of the spectrum made available for commercial use, and the efficient and intensive use of the spectrum, in a manner that provides adequate time for interested parties to develop their business plans.[3] The Commission's regulations shall prescribe area designations and bandwidth assignments that promote (a) equitable distribution of licenses and services among geographic areas, (b) economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women, and (c) investment in and rapid deployment of new technologies and services.

4. Section 303(y)(2) of the Communications Act authorizes the Commission to allocate spectrum to provide flexibility of use if certain conditions are met. Specifically, the Commission must make affirmative findings that such flexibility: (1) Is consistent with international agreements; (2) would be in the public interest; (3) would not deter investment in communications services and systems, or technology development; and (4) would not result in harmful interference among users.

5. Pursuant to legislative mandates, the Commission is requiring that the broadcast television service convert from the existing analog television transmission system to a new digital television system that will allow broadcasters the flexibility to provide a variety of new services, including high definition television service, multicasting of multiple programs, data services and other enhancements. Broadcasters have been provided a second channel to operate their DTV service during the transition from analog to digital service, *see generally DTV Second MO&O of the Fifth and Sixth Report and Orders,* 64 FR 4322, January 28, 1999; *DTV MO&O of the Sixth Report and Order,* 63 FR 13546, March 20, 1998; *DTV MO&O of the Fifth Report and Order,* 63 FR 15774, April 1, 1998; *DTV Sixth Report and Order, DTV Fifth Report and Order,* 62 FR 26966, May 16, 1997 (collectively *DTV Proceeding*). At the end of this transition, analog service will cease and one of each broadcaster's two channels will be recovered. Because the DTV transmission system is more spectrally efficient than the analog system, less spectrum will be needed for broadcast television service after the transition. A portion of the TV spectrum, *i.e.,* Channels 52–69, is therefore being recovered for new uses. Spectrum currently allocated to Channels 2–51 will remain ''core'' television broadcast spectrum. Analog services on all TV Channels will cease operations at the end of the transition. Digital services on out-of-core stations will be relocated into the core spectrum (Channels 2–51).

6. The Commission is addressing the spectrum reclamation in two parts—Channels 60–69 (''Upper 700 MHz Band'' or ''746–806 MHz band'') and Channels 52–59 (''Lower 700 MHz Band'' or ''698–746 MHz band'') primarily as a result of unique statutory requirements and varying degrees of incumbency. In ET Docket 97–157, the Commission reallocated the 746–806 MHz (TV Channels 60–69) band for new services. As required by statute, it reallocated 24 megahertz for public safety and 36 megahertz for new commercial services. The reallocation of the 698–746 MHz band (TV Channels 52–59) is addressed in this proceeding.

III. Discussion

7. The Commission's framework for consideration of both allocation and service rules for the Lower 700 MHz Band is modeled on the approach taken in the Upper 700 MHz proceeding, *see Upper 700 MHz Third Report and Order,* 66 FR 10204, February 14, 2001; *Upper 700 MHz Second MO&O,* 66 FR 9035, February 6, 2001; *Upper 700 MHz MO&O and FNPRM,* 65 FR 42960, July 12, 2000; *Upper 700 MHz Second Report and Order,* 65 FR 17594, April 4, 2000; *Upper 700 MHz First Report and Order,* 65 FR 3139, January 20, 2000, corrected by 65 FR 12483, March 9, 2000; *Upper 700 MHz NPRM,* 64 FR 36642, July 7, 1999 (collectively Upper 700 MHz proceeding). The Commission seeks comment generally on whether the considerations that the Commission found to be appropriate for the 746–806 MHz bands are equally applicable to the Lower 700 MHz spectrum once it has been reallocated, or whether, given the differences in the two bands, the Commission should apply other approaches.

A. Allocation Proceeding

1. Reallocation

8. The Commission had anticipated, given the degree of incumbency, that this band likely would remain principally a television band until the end of the digital transition. However, given the statutory requirement to auction this spectrum several years in advance of the end of the transition, the Commission seeks comment generally on the reallocation plans and service rules necessary to license the spectrum consistent with the Congressional mandate. The Commission also seeks comment on whether the Commission should consider ways to facilitate the DTV transition and the availability of this band to auction bidders sooner. In making proposals, commenters should address consistency with the statutory requirements of section 309(j)(14) and other relevant provisions of the Communications Act.

1934, as amended) (''BBA 97'') 3007 (uncodified, reproduced at 47 U.S.C. 309(j) note 3).

[2] *See id.* at 3003 and 3007.

[3] *See* 47 U.S.C. 309(j)(3) (A)–(E).

a. Current Allocation

9. Domestically, the 698–746 MHz band is currently allocated on a primary basis to non-government broadcasting, *i.e.,* TV Channels 52–59, each having a bandwidth of six megahertz. TV broadcast services are also permitted to use TV subcarrier frequencies, and more generally the TV channel, on a secondary basis for other broadcast-related (*e.g.,* datacasting) and non-broadcast purposes.[4] Further, the band is allocated to the fixed service for subscription television operations in accordance with part 73 of the Commission's rules.[5] Internationally, the band is allocated worldwide on a primary basis to the broadcasting service. The band is also allocated to the fixed and mobile services in Region 2 (which includes the United States) on a secondary basis and in Region 3 on a co-primary basis. A footnote to the International Table of Frequency Allocations elevates the allocation to the fixed and mobile services to primary status in the United States, Mexico, and several other Region 2 countries, but has not been implemented domestically.[6]

10. In its 1999 *Spectrum Reallocation Policy Statement,* the Commission noted that it planned to consider reallocating the 698–746 MHz band for Fixed, Mobile and new Broadcast services for commercial uses following the same approach it adopted for reallocating the 36 megahertz at 746–764 MHz and 776–794 MHz, *see Spectrum Reallocation Policy Statement,* FCC 99–354, 14 FCC Rcd 19868, November 22, 1999 (not published in **Federal Register**). In the Commission's recently adopted 3G Notice on Advanced Fixed and Mobile Services, the 698–746 MHz band was identified as a possible candidate for third-generation (''3G'') mobile services, *see 3G Notice of Proposed Rulemaking,* 66 FR 7438, January 23, 2001 (*3G Notice*). Further, a resolution adopted at World Radiocommunication Conference (''WRC'')–2000 recognized that some administrations may use the 698–746 MHz band for 3G services.

b. Fixed, Mobile, and Broadcast Allocation

11. Consistent with the Commission's *Spectrum Reallocation Policy Statement,* the allocation for the 746–806 MHz band, and U.S. positions taken at WRC, the Commission proposes to reallocate the entire 48 megahertz of spectrum in the 698–746 MHz band to the fixed and mobile services, and retain the existing broadcast allocation. This allocation will support a family of services, including next generation broadband operations, and permit the maximum diversity in service offerings and the broadest licensee discretion, consistent with international allocations. The Commission requests comment on whether this broad allocation is appropriate, or whether some other allocation would better serve the public interest. The Commission also seeks comment with respect to each of the findings required under section 303(y) of the Communications Act with respect to the Commission's proposed allocation of the 698–746 MHz band.

c. Special Considerations for Broadcast Allocation

12. The DTV transition plan anticipates that broadcasters will vacate this spectrum by the end of the DTV transition period. For this reason, the Commission would distinguish between broadcasters authorized pursuant to the current allocation and service rules from new licensees who may provide broadcasting service. New licensees will be subject to the rules the Commission will adopt for the regulation of the reallocated spectrum. Broadcasters authorized under the current rules are entitled to protection or accommodation from new licensees and will have to vacate this spectrum by the end of the transition period.

13. At the end of the transition, television broadcasting will remain adjacent to the 698–746 MHz band on channel 51. While the Commission will consider issues such as field strength limitations in the Commission's service rules, the Commission seeks comment on whether restrictions to the allocation are necessary to protect adjacent channel broadcast television operations. Comments should address whether fixed services may be more successful than mobile services in structuring their systems to avoid interference with incumbent broadcasters, and thus be able to use the spectrum more efficiently. The Commission is also concerned about the effects of adjacent channel television broadcasting on low power mobile operations in the 698–746 MHz band, for example mobile receive antennas. The Commission seeks comment on whether the Commission should adjust the Commission's allocation to perhaps minimize the presence of systems with low immunity to high-powered signals.

d. Low Power Television Service

14. The low power television (''LPTV'') service currently operates on a secondary basis in the 698–746 MHz band. Thus, LPTV stations are allowed to operate to the extent they do not interfere with full power stations. In the Commission's *DTV Proceeding,* the Commission determined that there is insufficient spectrum to preserve all existing LPTV and TV translator stations, and decided that LPTV and TV translator stations will retain their secondary allocation status. In the 746–806 MHz proceeding, the Commission permitted continuing operations on a secondary basis for existing low power services in that band. The Commission believes that low power television should be permitted to continue to operate on the 698–746 MHz band on a secondary basis. Accordingly, the Commission proposed that LPTV and TV translator stations not be permitted to cause harmful interference to stations of primary services, including new licensees in Channels 52–59, and cannot claim protection from harmful interference from stations of primary services, including new licensees in Channels 52–59. However, as set forth in the *DTV Sixth Report and Order,* the Commission proposed that LPTV and TV translator operations will not be required to alter or cease their operations until they actually cause interference to a DTV station or new service provider's operations in the 698–746 MHz band. Further, as the Commission did in the 746–806 MHz band, the Commission proposed that LPTV stations be permitted to negotiate interference agreements with new service providers, *see Upper 700 MHz Reallocation Order,* 63 FR 63798, November 17, 1998. Although the Commission recognized that LPTV and TV translator stations retain this secondary status, the Commission seeks comment on these proposals and any additional considerations that might mitigate the impact on low power operations on Channels 52–59 during the transition period.

e. Satellite Services

15. While the Commission is not making a specific proposal at this time concerning an allocation in this band for satellite services, the Commission seeks comment on this issue. The Commission seeks comment on whether satellite operations are technically feasible in this band. In addition, while the BBA 97 requires that the Commission assign spectrum reclaimed from broadcasters as a result of the digital transition by competitive bidding, subsequently-enacted legislation restricts the use of competitive bidding to license spectrum used for the provision of certain

[4] *See* 47 CFR 2.106 note NG128.

[5] *See id.* at. 2.106 note NG149.

[6] *Id.* at 2.106 note S5.293.

international satellite services.[7] The Commission seeks comment on whether these statutory provisions would affect the Commission's ability to allocate spectrum for flexible uses that would include the ability to deploy satellite services, subject to appropriate interference and other technical limitations, *Cf. 3650–3700 MHz First Report and Order,* 65 FR 69612, November 17, 2000.

2. Transition Issues

a. Incumbent Broadcasters

16. Incumbent broadcasters may remain on the 698–746 MHz band until the end of the digital transition targeted for 2006. The significant degree of incumbency will pose considerable challenges to the provision of viable new commercial services prior to the end of the transition. The Commission seeks comment generally on how the Commission can further the viability of auction of this spectrum consistent with the Commission's statutory obligations and sound principles of spectrum management.

(i) Analog Stations

17. Currently, there are 89 licensed full service NTSC analog stations and 12 approved analog construction permits on the 698–746 MHz band. For the 746–806 MHz band, the Commission concluded that stations for which a construction permit has been granted are sufficiently far enough along the licensing process that they should be treated the same as operating TV stations and receive protection from new service providers during the DTV transition period. The Commission has established a three-year construction requirement to ensure that holders of construction permits, both for new facilities and modification of existing facilities, progress in construction.[8] The Commission proposes to treat construction permits in the 698–746 MHz band in the same manner the Commission adopted in the 746–806 MHz band and seeks comment on this proposal.

18. In the *DTV Sixth Further Notice of Proposed Rulemaking,* 61 FR 43209, August 21, 1996, in order to accommodate parties who were in the process of preparing applications, the Commission established a final opportunity for the filing of new applications for analog stations for vacant allotments. Applications could be submitted during this filing window for (1) amendments (other than channel changes) to pending applications for new full-service NTSC television stations on Channel 2–59, (2) petitions for rule making seeking a new channel below Channel 60 for those applicants with pending applications for new full-service NTSC television stations on Channels 60–69, (3) petitions for rule making seeking a new channel below channel 60 for those applicants with pending applications for new full-service NTSC television stations on Channels 2–59 at locations inside of the ''TV Freeze Areas'' and (4) amendments to pending rule making petitions to amend the TV Table of Allotments to add NTSC television allotments, *see Analog TV Filing Public Notice (DA 99–2605),* 64 FR 67267, December 1, 1999 *(Analog TV Filing Public Notice).*

19. There are pending requests for approximately 57 new NTSC stations in this band, either with applications or allotment petitions originally filed during the filing windows established by the Commission. Some of the requests have been pending on these channels since they were filed, while others were amended to specify a channel in this band under procedures announced in the *Analog TV Filing Public Notice.* Previously, those new station proposals had been for stations on Channels 2 through 59 at locations where they would have conflicted with one or more DTV allotments or for use of TV Channels 60 through 69. The Commission recognizes that those persons with pending applications and/or petitions for new full-service NTSC television stations on those channels had already invested time, money and effort into their applications and petitions. Therefore, the Commission stated that it would not summarily terminate the pending applications and petitions, and it would, at a later date, provide applicants and petitioners an opportunity to amend their applications and petitions, if possible, to a channel below Channel 60.

20. The Commission recognizes that continuing to process these applications could result in greater incumbency on the 698–746 MHz band, which may make new service operations more difficult. This band was originally intended to remain principally a television band until the end of the transition and the Commission recognizes that it may be inequitable not to process these applications, or a subset of them. In addition, given the significant number of analog and DTV incumbents that already exist on this band, the impact on the provision of new services may be marginal. Therefore, while the Commission is not directing the Mass Media Bureau to suspend processing of applications (with the exception of stations on Channel 59) for new analog stations, the Commission seeks comment on the Commission's ultimate treatment of the remaining pending applications. For example, the Commission seeks comment on whether there are stronger equities for continuing to process any particular subcategory of these pending applications. In addition, if such applications are granted, the Commission seeks comment on whether the Commission could require these stations to transition to available frequencies below 698 MHz by a date certain, *i.e.,* 2006, to ensure that these stations do not encumber the provision of new services. The Commission particularly seeks comment on whether such a requirement would be consistent with the Commission's statutory requirements in section 309(j)(14) of the Communications Act. The Commission also seeks comment on whether these applicants (or a particular subset thereof) should be allowed to amend their pending applications through a channel allotment rule making petition to specify a new digital channel in the core that may become available later. With regard to applications pending for stations on Channel 59, the Commission believes that granting more analog station licenses could impact the licensing of new services in the Upper 700 MHz Band due to adjacent channel interference problems. Therefore, for the pendency of this rulemaking proceeding, the Commission directs the Mass Media Bureau to suspend processing of applications and channel allotment petitions for new analog stations on Channel 59, but to allow limited amendments to specify another channel, if available.

(ii) Digital Stations

21. Because the Commission was unable to accommodate a second digital channel for all broadcasters within the ''core'' broadcast spectrum, there are a substantial number of digital channels on Channels 52–59 as well. While the planning for the DTV Table of Allotments sought to minimize use of out-of-core channels, it was necessary to make allotments outside this range, particularly in the most congested areas of the country. Thus, there are 165 DTV assignments on Channels 52–59 (includes licenses, construction permits, and pending applications). Also pending, are four DTV allotment petitions filed by entities that originally proposed NTSC operations. While there are roughly the same number of analog

[7] *See* Open-Market Reorganization for the Betterment of International Telecommunications Act, Public Law 106–180, 114 Stat. 48 (2000) (''ORBIT Act'').

[8] 47 CFR 73.3598.

stations on Channels 52–59 as there are on Channels 60–69, there are significantly more digital television incumbents. In particular, there are only 20 digital assignments on Channels 60–69 compared to the 165 assignments on Channels 52–59 and this number may increase.

(iii) Low Power Stations

22. There are currently 835 licenses and 244 construction permits for low power television operations on Channels 52–59. In addition, there are 607 applications pending for new low power stations. Many of these pending applications involve requests for replacement channels by low power stations displaced by DTV stations or seeking to vacate the use of TV Channels 60–69 (746–806 MHz). Section 3004 of the BBA 97 states that anyone holding a television broadcast license in the 746–806 MHz band ''may not operate at that frequency after the date on which the digital television transition period terminates, as determined by the Commission.'' In the Commission's reallocation proceeding for Channels 60–69, the Commission found that this provision leaves us no latitude in clearing LPTV and TV translator stations from the band at the end of the DTV transition period. Throughout the DTV and related proceedings, the Commission has recognized that the DTV transition and the reallocation of spectrum to other services will have a significant impact on LPTV and TV translators. Further, the Commission has recognized that LPTV operators offer important services to specialized and minority audiences, foreign language communities, and rural areas. In this regard, the Commission adopted a number of rule changes in the *DTV Proceeding* to mitigate the impact on these stations. The Commission seeks comment on whether there are additional measures the Commission should consider for LPTV in the 698–746 MHz band.

SUMMARY OF CHANNELS 52–59 INCUMBENTS

	Licenses	Construction permits	Applicants & allotment petitions	Total	New [9]
NTSC	89	12	57	158	Not Permitted.
DTV	17	95	53	165	Not Permitted.
LPTV	835	244	607	1,686	Permitted.

b. Interference Protection for Television Services

23. In the *DTV Proceeding,* the Commission stated that all existing analog TV and new DTV stations in the 698–746 MHz band would be fully protected during the DTV transition period. Thus, it will be necessary for licensees in the reallocated spectrum to protect both analog TV and DTV stations in the 698–746 MHz band from interference. If any additional NTSC licenses or construction permits or DTV full service allotments are made as a result of pending petitions, they would be afforded full protection during the DTV transition period.

(i) Protection of Analog Stations

24. For the 746–806 MHz (Channels 60–69) band, the Commission adopted a methodology that specifies minimum separation distances based on the various heights and powers of land mobile stations to prevent harmful interference to incumbent analog television operations from new service providers. This methodology has been successfully used in existing land mobile-broadcasting sharing arrangements in the 470–512 MHz band. The Commission used a 40 dB desired-to-undesired (D/U) signal ratio for calculating the co-channel geographic separation requirements, *see Public Safety Service Rule First Report and Order and Third Notice of Proposed Rulemaking,* 63 FR 58645, November 2, 1998, 63 FR 58685, November 2, 1998 *(Public Safety Service Rule Order).* The Commission found this to be a reasonable value that will provide sufficient protection for TV stations, as prescribed by the BBA 97. Co-channel land mobile base station transmitters will be limited to a maximum signal strength at the assumed TV Grade B contour that is 40 dB below the 64 dBu Grade B contour signal strength value, or 24 dBu. The Commission adopted a 0 dB D/U signal ratio for adjacent channel operations. Adjacent channel land mobile transmitters are thus limited to a maximum signal which can equal the TV Grade B signal of 64 dBu at the TV station assumed Grade B contour of 88.5 km (55 miles). A typical TV receiver's adjacent channel rejection is at least 10–20 dB, which will further safeguard TV from land mobile interference. The analog TV protections adopted in the 746–806 MHz reallocation proceeding were based on the need to balance protection for existing broadcasting services, while making this spectrum viable for new services, including public safety. The Commission seeks comment on whether the Commission should employ the same method for protecting analog TV stations in the 698–746 MHz band.

(ii) Protection of Digital Stations

25. In the Commission's public safety proceeding, the Commission determined that the same signal strength limits for land mobile operation criteria used for protection of analog stations, *i.e.*, 24 dBμ co-channel and 64 dBμ adjacent channel, should also apply for digital stations. These field strength values correspond to co-channel and adjacent channel protection ratios for a DTV station at its 41 dBμ field strength service contour of 17 dB and − 23 dB, respectively. The Commission notes that these determinations are consistent with the *DTV Sixth Report and Order*. There, the Commission specified a minimum geographic separation of 250 km (155 miles) for co-channel operations between DTV stations and the city-center in the areas where there are existing land mobile operations. Section 90.305(a) of the Commission's rules provides that full power land mobile base stations can be located up to 80.5 km (50 miles) from the city-center of one of the specified cities.[10] Consequently, under the geographic separation standards adopted in the *DTV Sixth Report and Order*, a land

[9] The Commission ended filing opportunities for new NTSC stations effective September 20, 1996. Amendments to certain of these applications and allotment petitions to change channels, filed prior to the freeze were accepted until July 15, 2000. All requests for new DTV allotments must be filed for in-core channels. However, initially eligible DTV broadcasters are permitted to seek modified allotments, including Channels 52–59. *See* 47 CFR 73.622(a). Not included in the counts above are four petitions for NTSC assignments, which have requested to convert their station proposals.

[10] *See* 47 CFR 90.305(a).

mobile base station could choose to locate its station as close as 169.5 km (250 km − 80.5 km), or 105 miles to a neighboring DTV station. At this distance, a typical land mobile base station would produce an interfering signal at the DTV station's 88.5 km (55 miles) equivalent Grade B contour corresponding to the 17 dB D/U protection ratio specified in the *Public Safety Service Rule Order* to a DTV receiver. Thus, the Commission's decision to require land mobile systems to provide signal ratios for DTV stations which will afford approximately the same separation distance as the Commission did for analog TV stations, was considered to represent a reasonable balance between the needs of both DTV stations and new services.

26. With regard to this new allocation of the 698–746 MHz band, the Commission seeks comment on whether to adopt the same criteria for protection of DTV stations as the Commission used for protection of analog stations. The Commission is particularly interested in comments addressing the provisions for transmissions that may have the characteristics of a wide band-noise like emission. As demonstrated by the table in § 73.623(c)(3)(ii), DTV receivers treat co-channel DTV signals as an increase in the noise floor of the desired signal. This increase in noise floor is proportional to the power received from the undesired station. Therefore, in order to maintain the minimum necessary signal-to-noise (S/N) ratio of 15.19 dB, the desired signal level must be increased. Section 73.623(c)(2) of the rules sets forth a value of 15 dB for co-channel interference for DTV into DTV which are only valid at receiving locations where the S/N ratio for the desired DTV signal is 28 dB or greater.[11] At the edge of the DTV noise-limited service area, where the S/N ratio is 16 dB, the value of D/U is 23 dB for interference protection from another DTV station. New land mobile systems operating in this band employing wide band noise like signals may need to provide DTV stations the same increases in protection as indicated in § 73.623(c)(3)(ii) of the rules.[12]

27. Since the Commission does not know the characteristics (bandwidth and power spectrum shape) of the co-channel threat to DTV in the re-allocated Channels 52–59, the Commission seeks comment on whether digital, wide-band emissions from these services in this band could cause interference to possible co-channel DTV operations, and may require the imposition of more restrictive criteria than those provided for under § 90.545 of the Commission's rules. In particular, the Commission seeks comment on the adequacy of 17 dB for co-channel protection of DTV from wide band transmissions or whether the Commission should consider more conservative protection levels.

c. Coordination With Canada and Mexico

28. The United States has bilateral agreements with both Canada and Mexico setting forth allotment and assignment plans for TV broadcast stations covering the 698–746 MHz band (Channels 52–59). While the U.S. has identified this band for reallocation to new services, neither Canada nor Mexico has done so to date.[13] Pursuant to these agreements, the U.S. must protect the signals of Canadian and Mexican TV broadcast stations located in the border areas, and such operations will therefore affect U.S. non-broadcast use and services in this band. Accordingly, the Commission tentatively concludes that licenses issued for this band will be subject to whatever future agreements the United States develops with these two countries. The Commission further tentatively conclude that, until such time as existing agreements are replaced or modified to reflect the new uses, licenses in this band will be subject to existing agreements and the condition that harmful interference not be caused to, and must be accepted from, TV operations originating in Canada and Mexico. The Commission seeks comment on the Commission's tentative conclusions.

B. Service Rules

29. One of the primary goals in this proceeding is to establish service rules that will promote innovative services and encourage the flexible and efficient use of this spectrum. In recent years the Commission has implemented the statutory directives under section 309(j) of the Communications Act by addressing the growing complexities of spectrum management using approaches consistent with general market-based principles. Consistent with the principles underlying the *Spectrum Reallocation Policy Statement* and the *Secondary Markets Policy Statement*, 65 FR 80367, December 21, 2000, the Commission tentatively concludes that the service rules for this band should implement flexible use for the full range of proposed allocated services, consistent with necessary interference requirements.

30. In seeking to achieve the above objectives, the Commission recognizes that the service rules must also take into account the presence of incumbent broadcasters on the Lower 700 MHz Band and the processes established in the *DTV proceeding* for relocating incumbent broadcasters into the DTV core spectrum. The 698–746 MHz band is currently used as Channels 52–59 by a significant number of existing full service analog stations, LPTV stations, TV translator and booster stations, and by new DTV stations. These incumbent broadcasters, both analog and digital, may continue to operate on channel allotments in this band until at least December 31, 2006,[14] or the relevant statutory conditions are met that allow incumbents to be relocated to channels in the DTV core spectrum of Channels 2–51. Therefore, the service rules for any new services on the Lower 700 MHz Band must provide for the protection of incumbent television stations during the DTV transition period.

31. The Commission also seeks to establish rules that will facilitate, rather than hinder, the clearing of incumbent broadcasters from this spectrum in a manner consistent with the policy goal of locating all television channels in the DTV core spectrum, thus making the band available for a wide range of advanced services. While the Commission recognizes that different circumstances apply to the Lower 700 MHz Band, the Commission seeks comment on potential mechanisms, with the focus on voluntary mechanisms, to encourage the smooth transition from incumbent broadcast services to new services due to the particular circumstances relating to the Lower 700 MHz Band.

32. The Commission requests comment on a number of issues, such as the appropriate relationship between potential uses of the spectrum, the optimal size of the spectrum blocks available for auction, the appropriate size of geographic service areas, any channelization plan, and other characteristics that it should use to define licenses in the Lower 700 MHz Band. Comments should address whether particular characteristics would encourage a variety of technologies and

[11] *See id*. 73.623(c)(2).

[12] *See id*. at 73.623(c)(3)(iii).

[13] A recently-signed Letter of Understanding (''LOU'') with Canada recognizes U.S. plans to use this band for other than broadcasting services, and notes that Canada is independently considering a reduction of the spectrum in this band allocated to television. This LOU also specifically provides for non-broadcast allocations and services in the 746–806 MHz bands (Channels 60–69) by establishing criteria to protect DTV stations and analog TV stations established in accordance with the existing TV Agreement (Nov. 3, 1993—Jan. 5, 1994).

[14] *See* 47 U.S.C. 309(j)(14)(A).

entrants, foster overall licensee flexibility, provide licensees with the maximum number of options to provide service, and promote the other objectives of the Communications Act. In addition, if the Commission was to adopt allocations other than those proposed in this Notice, the Commission seeks comment on whether the service rules should provide for all allocated services including, for example, satellite service.

33. While the Commission seeks comment from the public in general concerning the matters set forth in the Notice, comment is specifically sought from Indian Tribal governments on the matters contained in the Notice. In keeping with the principles of the *Tribal Government Policy Statement*, 65 FR 41668, July 6, 2000, the Commission welcomes the opportunity to consult with Tribal governments on the issues raised by the Notice and seeks comment both from Tribal governments and other interested parties on the potential for the spectrum considerations set forth herein to serve the communications needs of tribal communities.

1. Scope of Licenses

a. Permissible Licensed Services

34. The Commission seeks comment on the scope of services that should be licensed under the service rules adopted for the Lower 700 MHz Band. Comments that are submitted in response to the Notice should address whether the service rules would encourage the active and efficient use of the Lower 700 MHz Band and enable new technologies and services.

35. The Commission emphasizes its continued interest in the development of a variety of mechanisms to make spectrum markets more flexible and efficient in the choice of service to be offered by licensees and in the applicable service rules. The Commission seeks comment on whether to reallocate this spectrum in the 698–746 MHz band to permit fixed, mobile, and broadcast services on the 698–746 MHz band. The Commission seeks to develop service rules that are not based on its prediction of how these bands will ultimately be used, but instead enables the Commission to establish maximum practicable flexibility. Accordingly, the Commission requests comment on how innovative service rules and assignment mechanisms can maximize the use of this spectrum. The Commission also seeks comment on how new technologies may affect the extent to which service rules effectively provide for flexible, efficient, and intensive use of the spectrum.[15]

36. In the *Upper 700 MHz First Report and Order,* The Commission decided not to adopt service rules that would permit both full power television and wireless services to operate on the Upper 700 MHz Band. The Commission found that the contrasting technical characteristics of full power television broadcasting, using power levels authorized by part 73,[16] and wireless services effectively preclude the development of interference rules that would enable the practicable provision of both sets of services on the spectrum under consideration in that proceeding. In the Notice, the Commission solicits comment on the extent to which the service rules can permit both new full power broadcasting, in particular DTV and other digital broadcast operations, and wireless services to operate on the Lower 700 MHz Band. Commenters should consider the interference concerns that were addressed in the Upper 700 MHz proceeding, as well as any other relevant factors. The Commission seeks comment on whether the possible technology or technologies used to provide digital broadcast services, such as those using a cellular architecture, would be compatible with wireless services operating on the spectrum. In that regard, the Commission seeks comment on whether a 50 kW limit for full power broadcasting would permit both broadcasting operations and wireless services to use this spectrum, yet still allow flexible use of the spectrum consistent with technical and interference requirements. The Commission also requests comment on whether service rules that allow licensing of full power broadcasting on the band would affect the efficient use of the spectrum. To what extent would efforts to manage interference between such dissimilar transmissions as full power television and wireless services increase the possibility of substantial spectrum inefficiencies in the band? The Commission also seeks comment on whether the licensing of full power broadcasters on this band would impose disproportionate, offsetting burdens on wireless services, both fixed and mobile, and whether full power broadcasting would have a substantial impact on the technical effectiveness and economic practicability of wireless service providers operating on this band. In addition, the Commission seeks comment on whether any differences between the part 27 and part 73 rules that may affect the determination as to whether the service rules for the 698–746 MHz band should permit both full power television and wireless providers to operate on this band. The Commission notes that sections 309(j)(14)(C) and (D) of the Act, which apply to all spectrum reclaimed as part of the DTV transition, prevents the Commission from declaring any party ineligible, for ''any license that may be used for any digital television service'' in certain cities, on the basis of the duopoly rule and newspaper cross-ownership rule.[17] The Commission seeks comment on the impact of these provisions on the determination of whether and how the service rules can and should permit broadcast and wireless providers to operate on the Lower 700 MHz Band.

37. In the *Upper 700 MHz First Report and Order,* the Commission adopted service rules that addressed the need for a range of wireless applications and recast the part 27 rules to reflect their revised scope. The Commission decided to allow any new broadcast-type services consistent with the Table of Allocations, provided that such services satisfied the technical and service rules. The Commission seeks comment on whether to license new broadcast-type service on the Lower 700 MHz Band.

38. The Notice does not make a specific proposal concerning an allocation in the Lower 700 MHz Band for satellite service, but requests comment on the matter. In the event that an allocation is made in this band for satellite service, the Commission seeks comment on whether auction winners should be afforded the flexibility to deploy satellite services, either themselves or by agreement with a satellite operator, within their licenses' geographic area, provided that such operations do not cause unacceptable interference to services operating in adjacent geographic areas. Further, if an allocation is made in this band for satellite service, the Commission seeks comment on the service rules that would apply to such service.

b. Size of Spectrum Blocks for Each License

39. The Commission seeks comment on the appropriate amount of spectrum for each license in the 698–746 MHz band. Should the Commission license, for example, the spectrum as a single 48 megahertz block or should it be licensed as two or more smaller blocks?

[15] *See* 47 U.S.C. 309(j)(3)(D).

[16] *See* 47 CFR Part 73 (Broadcast Radio Services).

[17] *See* 47 U.S.C. 309(j)(14)(C)–(D); 47 CFR 73.3555(b), (d).

40. The Commission seeks comment first on whether the utility, and therefore value, of the spectrum would be enhanced by providing for the auction of a single block. A spectrum block of such size would seem to minimize the potential for third-party interference and thereby minimize the needed scope of the interference rules. In this regard, given the difficult incumbency issues associated with this band, the Commission seeks comment on whether economics associated with being a licensee of a large block of spectrum would make it easier for the licensee to develop services around existing incumbents, clear the band of incumbents, and generally deal with interference issues in the band. The Commission also requests comment on whether a single licensee, as opposed to numerous licensees, would be more likely to successfully negotiate the clearing of incumbent broadcasters from the spectrum. Would it be in the public interest to leave the determination of the internal framework of the 698–746 MHz band to one licensee? Comments should address both the possible and expected scope of use by a single 48 megahertz licensee. Commenters should identify the range of services that could be offered if the Commission employs a license of this size. In addition, the Commission seeks comment on what spectrum block size would best facilitate the ''reasonable and timely'' [18] deployment of broadband applications which may be spectrum-intensive.

41. The Commission seeks comment, alternatively, on whether to establish two or more blocks to license this spectrum, and what should be their size. The Commission seeks comment, for instance, on whether the spectrum should be licensed in two blocks of 24 megahertz each. Commenters also should address whether a block of 12 megahertz or more is required to provide access to a wide range of advanced telecommunications services. In addition, they should explain whether a block of six megahertz is necessary to enable wireless telecommunications services, or a viable digital television service. Licensing based on smaller spectrum blocks may be preferable for rural and small carriers. Parties who prefer smaller spectrum block sizes to larger blocks should identify the advantages that licensing based on smaller spectrum blocks would have on potential auction participants. If commenters support licensing based on spectrum blocks other than those discussed herein, they should state why other size spectrum blocks are more appropriate. The comments also should address the impact that the size of the spectrum blocks will have on the services that may be provided on this band, especially given the difficult incumbency issues.

42. Comments are invited on whether to adopt a licensing plan for this band that provides for different sized blocks. The comments should address whether this approach could improve spectrum efficiency, offer greater flexibility in the use of spectrum, increase the diversity of services offered to consumers, and facilitate the development of advanced telecommunications services.

43. The Commission also seeks comment generally on the minimum size of spectrum blocks needed to enable competitive commercial services. In this regard, the Commission notes that the simultaneous multiple round and combinatorial (or ''package'') auction design generally offers bidders substantial flexibility to aggregate blocks of spectrum for their particular uses. The Commission seeks comment on whether in light of the auction designs that may be available, the Commission should define spectrum block sizes that would require bidders to aggregate spectrum at auction to achieve the most efficient result. Such an approach may provide bidders with greater flexibility to implement their plans, as compared with the Commission's traditional approach toward defining spectrum blocks, which attempts to define optimal block size and allows adjustments through secondary market mechanisms, such as disaggregation, if such fine-tuning is necessary.

44. Commenters should consider the relationship between the amount of spectrum per license and the ability to protect existing broadcast operations in this band during the transition to DTV. The comments should address how the size of the spectrum blocks will affect the licensees' ability to deploy new, innovative services and the impact that the size of the spectrum blocks may have on the ability of licensees to compete with existing fixed and mobile service providers. The comments also should consider the need to preserve licensee flexibility in technical and service application choices.

45. In light of the presence of incumbent broadcasters on this band, the Commission seeks comment on whether spectrum blocks of six megahertz could be aligned in the 698–746 MHz band plan to correspond with individual six megahertz television channels. The Commission requests comment on whether the adoption of six megahertz blocks as an appropriately-sized spectrum block would facilitate clearing of the band by incumbent broadcasters or otherwise enhance the value of the spectrum. In addition, in this Notice, the Commission seeks comment on the possibility of a guard band or some other form of protection for services provided below this 698–746 MHz band, on television Channel 51. The Commission requests comments on the impact of the adoption of service rules in this proceeding on the incumbent use of Channel 51.

c. Size of Service Areas for Geographic-Area Licensing

46. The Commission tentatively concludes that it should adopt a geographic area licensing approach to assign licenses in the 698–746 MHz band. In contrast to station-defined licensing (i.e., site-by-site licensing), the experience has been that geographic area licensing affords licensees substantial flexibility to respond to market demand and may result in significant improvements in spectrum utilization.

47. Assuming that the Commission utilizes a geographic area approach for the 698–746 MHz band, the Commission seeks comment on the appropriate size of service areas on which licenses should be based. Should the Commission license, for example, all or part of the 48 megahertz of reallocated spectrum on a nationwide basis, or would smaller geographic license sizes be more appropriate for this spectrum?

48. The Commission seeks comment, first, on a possible nationwide license. Nationwide licenses have the advantage of providing carriers with more flexibility in the buildout of their services, as well as in coordinating with incumbents. In this regard, the Commission seeks comment on whether any problems associated with the operation of the many incumbent TV stations in this band may be better addressed by licensing this spectrum in larger areas where there may be less of a need for complicated protection agreements. Does the presence of a large number of broadcasters in the 698–746 MHz band make nationwide licenses more desirable than regional or other license sizes? The Commission also seeks comment on the extent to which nationwide licenses maximize the opportunity to provide the widest array of services and business plans. Do nationwide geographic licensing areas, especially in light of the proposal to

[18] *See* section 706 of the Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 153 at 706 (set forth at 47 U.S.C. 157 nt.)

permit partitioning [19] and the Commission's request for comments in the Notice about spectrum leasing, provide the necessary incentives for fostering the growth of existing technologies while encouraging the development of new applications? Would the adoption of nationwide geographic licensing areas provide potential savings to the time and cost of developing applications and manufacturing equipment to operate in the 698–746 MHz band?

49. In the Upper 700 MHz proceeding, the Commission chose six large, regional Economic Area Groupings (''EAGs'') for the 747–762 MHz and 777–792 MHz bands. The use of regional licenses may permit licensees to take advantage of the opportunities afforded by licensing spectrum on a wide regional basis. Accordingly, the Commission requests comments that address the possibility of issuing large, regional licenses in the 698–746 MHz band. Are the six EAGs the appropriate license size for this reallocated band? Are EAGs (or other regional licenses) preferable to nationwide licenses because they may more easily allow partitioning to serve the needs of smaller users and regional communities? If the Commission adopts six regional EAGs, the Commission seeks comment on what would be the optimal spectrum block size. Commenters should address whether blocks of 48 megahertz, 24 megahertz, or smaller sizes would be appropriate for regional EAGs. The Commission notes that the simultaneous multiple round and combinatorial or package bidding auction designs generally offer bidders flexibility to aggregate multiple licenses to cover larger geographic areas for their particular uses. Would the opportunity to aggregate a small number of regional licenses be sufficient for those seeking to build a nationwide footprint? The Commission invites comment on how to define an appropriate geographic service area in light of the various types of bidding procedures that the Wireless Telecommunications Bureau now has at its disposal.

50. Commenters should also address whether smaller geographic license sizes are appropriate for all or a subset of this spectrum. For example, the Commission has licensed spectrum using smaller territories defined by the 306 Metropolitan Statistical Areas (''MSAs'') and 428 Rural Statistical Areas (''RSAs''), and the 172 EAs and three EA-like areas. When combined, the MSA and RSA service areas create the 734 geographic areas that were originally used to license cellular service. Rural and smaller carriers may prefer licensing based on small geographic areas. If so, which license sizes are preferable to the larger, regional license sizes? Should the Commission license part of the 48 megahertz of spectrum on a large regional (or national) basis and the remaining part of the band in geographic areas of a medium or smaller scale? If commenters support licensing based on service territories other than those discussed previously, they should discuss why other types of service areas are more appropriate. In addition, the Commission seeks comment on the impact that the size of the service area will have on the participation in the auction by parties that may be eligible for the Commission's designated entities provisions.

51. The Commission also seeks comment on whether to license the Gulf of Mexico as part of larger service areas, as the Commission did for the Upper 700 MHz Band, or whether to separately license a service area or service areas to cover the Gulf of Mexico. Commenters who advocate a separate service area or areas to cover the Gulf of Mexico should discuss what boundaries should be used and whether special interference protection criteria or performance requirements are necessary due to the unique radio propagation characteristics and antenna siting challenges that exist for Gulf licensees.

52. The Commission seeks comment on the possible impact that broadcast use of this spectrum would have on the determination of the appropriate geographic service area. The Commission seeks comment elsewhere in the Notice on service rules that may permit the 698–746 MHz band to be used by both full power broadcasting and wireless services. Parties who believe that such combined use should be permitted should first comment on the various choices the Commission is considering in this proceeding for part 27 geographic license areas and spectrum blocks and the impact that this scheme would have on the concept of a station's serving the needs and interests of its community of license pursuant to part 73. Those parties should also comment on any relation between the geographic service area and spectrum block decisions and the combined use of these bands by CMRS and full power broadcast services, which operate using significantly different power levels. The Commission seeks comment on how any decisions regarding spectrum channelization and power levels, if combined use were to be permitted, would affect the appropriate size of geographic licenses, in contrast to limiting or precluding broadcast use of the spectrum. The Commission also seeks comment on alternatives that would rely on licensing by geographic area, by community of license, or by some combination of these approaches.

d. Paired or Unpaired Spectrum Bands

53. In the Upper 700 MHz proceeding, the Commission determined that spectrum blocks be established and licenses be assigned on the basis of paired bands. The Commission configured the 30 megahertz of spectrum in two paired bands: a 10 megahertz band, designated Block C, and a 20 megahertz band, designated Block D. Each paired band constituted a spectrum block on which auction bids would be based in an EAG. The decision to adopt this paired band architecture reflected an assessment that the most commonly-used transmission procedure for Personal Communications Services (''PCS''), cellular, and other established mobile and fixed wireless applications, Frequency Division Duplex (''FDD''), requires paired spectrum.

54. If the Commission decides that the spectrum in the 698–746 MHz band should be licensed in two or more blocks, should the spectrum be offered as contiguous or paired blocks and, if paired blocks, should the blocks be symmetric or asymmetric in size? The Commission seeks comment on the extent to which the spectrum should be paired or unpaired to enable viable commercial wireless services. Given bidders' opportunities to aggregate licenses under the simultaneous multiple round, combinatorial, and package auction designs, how would the adoption of either a paired or unpaired band structure impact the Commission's ability to achieve its spectrum management goals, including flexible and efficient spectrum use.[20] The Commission requests comment on the degree to which paired or unpaired bands are suited to new technologies, particularly such technologies that would enhance the offering of advanced wireless telecommunications services. Comments should address the particular requirements of the various services and their technologies, including

[19] In light of the variety of potential services that the Commission envisions will be used in this reallocated band, including emerging technologies or next-generation applications, the most desirable or efficient scale of service area may vary according to the business plan of the potential licensee. Therefore, some licensees may need smaller service areas. The Notice tentatively concludes below to allow post-auction partitioning of licenses for bidders whose business plans require different size geographic areas than are adopted here.

[20] *See* 47 U.S.C. 309(j)(3)(D).

transmission procedures such as FDD or Time Division Duplex (''TDD''), that would use this spectrum, and the impact on such services and technologies of the adopting either a paired or unpaired band architecture.

55. The Commission seeks comment on the extent to which the power limits that are to be established in this rulemaking should affect the adoption of a paired or unpaired band structure. In the Upper 700 MHz proceeding, the Commission allowed 1000 watt effective radiated power (''ERP'') base and fixed stations in both the lower and upper bands, and 30 watt ERP mobile and control station, as well as 3 Watts ERP portables, in both the upper and lower bands. If the Commission decides to adopt a paired band architecture for the 698–746 MHz band, should the Commission enable the use of both base and mobile transmitters on both bands? Furthermore, should the Commission use the same power limits as the Commission adopted in the Upper 700 MHz proceeding, or should some other power limits be authorized instead? To what extent should the Commission adopt power limits or out-of-band emission limits for the 698–746 MHz spectrum that are aimed at enabling TDD operations, or operations that are based on some other form of technology? Comments should address both the methodology to be used, e.g., whether the power limits should be the same or different for the two bands, and the specific power levels to be adopted.

56. The Commission requests comment on the impact that the decisions on the size of spectrum blocks and of the service area should have on the decision on whether to adopt paired or unpaired spectrum bands. For example, would the adoption of smaller spectrum blocks be more or less appropriate in a paired band structure than in an unpaired band structure? Would a decision to license blocks that are large enough for full power broadcast service and to permit sharing of the spectrum by wireless and full power broadcast providers have an impact on the decision to license spectrum on a paired or unpaired basis?

57. The Commission also solicits comment on whether and to what extent the use of paired or unpaired spectrum bands would accommodate entities seeking to negotiate voluntary transition agreements with incumbent television licensees that could enable the clearing of such incumbent licensees from the 698–746 MHz band. Comments should address whether such efforts to facilitate transition agreements are consistent with the objectives of seeking to promote the rapid development of new technologies and the efficient and effective use of the spectrum.[21]

2. Technical Rules

a. General Technical Rules

58. The Commission seeks comment on whether the general provisions of part 27 of the rules should be applied to the 698–746 MHz band, and specifically on any rules that would be affected by the proposal to apply elements of the part 27 framework, whether separately or in conjunction with part 73 requirements, to full power broadcast services, or to any other parts of the rules. The Commission solicits comment concerning the appropriate rules to adopt for co-channel interference control, out-of-band[22] and spurious emission[23] limits, and power limits and radiofrequency (RF) safety requirements. The comments also should address whether all of these technical rules would apply to all licensees in the 698–746 MHz band, including licensees who acquire their licenses through partitioning or disaggregation.

b. Co-Channel Interference Control

59. Historically, the Commission has issued rules governing the technical and operating parameters of radio transmitters in order to reduce to a pre-determined level the interference between licensees using the same spectrum assignment in adjacent geographical locations.

60. Recently, the Commission has established new broadband wireless services wherein licensees are authorized to utilize any technology satisfying basic technical rules to provide any type of fixed or mobile service. In the Notice, the Commission seeks comment on a wide range of uses in the Allocation Table. Accordingly, the Commission is potentially allowing a broad range of technologies and services for possible co-existence within this spectrum, and the nature of the services and technologies can affect the potential for interference between licensees using the same spectrum in adjacent service areas. The Commission is particularly interested in receiving comments on potential interference issues that could arise in the event that the Commission decides to reallocate the 698–746 MHz band for use by fixed, mobile, and broadcast services or any combination of these services.

61. The Commission has adopted rules employing one or the other of two methods for broadband fixed and mobile services in regard to addressing the issue of co-channel interference between adjacent systems. In the Cellular Radiotelephone Service, the Commission has mandated that adjacent users coordinate spectrum usage by facilities within 121 kilometers (75 miles) of each other and to resolve technical problems that may inhibit effective and efficient use of the spectrum.[24] This method is a coordination requirement. In the Personal Communications Service and the Wireless Communications Service, the Commission has instead adopted rules requiring that the licensees limit the strength of their signals (''field strength'') to some prescribed value at the boundary of their geographical license area.[25] Provided that the specified field strength limit is met, licensees may unilaterally deploy facilities in the boundary area without coordinating with adjacent licensees. This latter method is the field strength limit.

62. In the Upper 700 MHz proceeding, the Commission adopted a field strength limit rather than a coordination requirement to control co-channel interference in the band. The Commission found that a coordination method could impose unnecessary coordination costs in the case of facilities that were unlikely to cause interference, and possibly could lead to anti-competitive activities. The Commission also determined that the field strength limit will apply to base and fixed stations, the maximum field strength permitted along the geographic area border will be 40 dBμV/m, and that issues of compliance will be determined by calculations using the TV broadcast field strength curves. The use of this procedure was found to potentially enable licensees to deploy their facilities effectively, while minimizing interference to co-channel licensees in adjacent areas. The Commission seeks comment on whether this universal field strength limit rule will in fact *minimize* interference between all adjacent systems using the same or overlapping spectrum regardless of what types of service, technologies, emission types or power levels are used.

63. The Commission seeks comment on whether to adopt rules establishing a boundary field strength limit to control co-channel interference in the 698–746 MHz band. If the Commission was to choose this method, what should be the field strength limit? Should it be 40 dBμV/m or some other value? The Commission requests comment on

[21] *See* 47 U.S.C. 309(j)(3)(A), (D).

[22] 47 CFR 2.1(c).

[23] *Id.* 2.1(c).

[24] *See* 47 CFR 22.907.

[25] *See* 47 CFR 24.236, 27.55.

whether a field strength limit would reduce the need for coordination by giving licensees the ability unilaterally to deploy facilities in boundary areas as long as the limit is met. The Commission also seeks comment on whether a field strength limit by itself may provide insufficient assurance against interference among co-channel licensees. Even with a boundary limit, would some degree of coordination and joint planning between bordering licensees be needed to ensure efficient use across the boundary? To the extent such coordination between adjacent licensees is likely to be needed, to what extent can the Commission rely on purely voluntary procedures to reach efficient results? Would any rules or guidelines be beneficial in facilitating such coordination? The Commission also seeks comment on whether to adopt criteria to protect Lower 700 MHz stations employing video broadcasting similar to the protection criteria that the Commission establishes herein to protect incumbent DTV stations.

64. The Commission seeks comment on whether to adopt a coordination requirement instead of a field strength limit to control co-channel interference in this band. In the event the Commission decides to use a coordination requirement, how far from the boundary should the coordination zone be located? Would a general coordination requirement minimize the potential for interference or impose unnecessary coordination for facilities with a low potential for interference under either approach?

65. Commenters should provide an analysis of the advantages and disadvantages of both approaches, or approaches that combine a boundary limit and coordination procedure. The Commission seeks comment, for example, on whether anti-competitive behavior could result from the adoption of either approach. Moreover, how do the two methodologies compare in terms of their effect on licensee costs? The comments should address these questions in the context of whether one method or the other would enable licensees to deploy their facilities effectively, while minimizing interference to co-channel licensees in adjacent geographic areas. The Commission also seeks comment on whether there are methods to control interference in the Lower 700 MHz Band that would be more effective than coordination or boundary field strength limits.

66. In the event that the Commission adopts a field strength methodology, the Commission seeks comment on whether licensees in adjoining areas should be permitted to agree to alternative field strengths at their common border. If the Commission was to agree to such a procedure, what would be the impact in terms of increased flexibility and harmful interference? The Commission invites comment on this approach to control interference in the context of the 698–746 MHz band, both generally and if used in conjunction with field strength standards. Should the Commission adopt a general coordination approach is adopted, comments are requested on whether specific aspects of procedures, such as those contained in § 22.150 of the Commission's rules,[26] should apply or, alternatively, whether a general requirement such as the cellular rule [27] should apply.

67. Section 27.64 of the Commission's rules [28] states generally that part 27 stations operating in full accordance with applicable Commission rules and the terms and conditions of their authorizations are normally considered to be non-interfering, and provides for Commission action, after notice and hearing, to require modifications to eliminate significant interference. In view of the variety of services that might be provided by part 27 licensees on this band, including broadcasting, the Commission solicits comment on whether to apply this rule for this spectrum. The Commission also seeks comment regarding whether interference protection can be achieved and whether § 27.64 of the rules should be modified to direct adjacent service area licensees to cooperate to eliminate or ameliorate interference. This alternative would require each licensee ultimately to assume responsibility for protecting its own receiving system from interference from transmitters in adjoining areas that meet the standards.

68. The Commission seeks comment on what interference criteria should be established in the event the Commission adopts service rules that permit full power broadcasting and wireless services to sharing the 698–746 MHz band. The Commission also seeks comment on whether to adopt any protection of television service provisions addressed elsewhere in the Notice into the co-channel interference rule.

c. Out-of-Band and Spurious Emission Limits

69. In many of the radio services, the Commission often requires that out-of-band emissions be limited to no more than 50 microWatts (50 μW) of transmitter output power over a typical instrument measurement bandwidth. The rules that implement this requirement generally do so in the form of an attenuation requirement of 43 + 10 log P dB. In the Upper 700 MHz proceeding, the Commission adopted this general out-of-band emission limit to apply to equipment transmitting in the 747–762 and 777–792 MHz bands that were the subject of the service rules under consideration. However, the Commission also adopted more strict limits for out-of-band emissions that fall within the Global Positioning Service (''GPS'') band and within the 764–776 MHz and 794–806 MHz public safety bands. The Commission invites comment on what out-of-band emission standards should be established in the service rules for the Lower 700 MHz Band. The Commission seeks comment on whether to adopt a rule applying the general out-of-band emission attenuation requirement of 43 + 10 log P dB to equipment used in the 698–746 MHz band. What are the potential costs and benefits of requiring greater or lesser attenuation of out-of-band emissions? The Commission also requests comment on any other emission limits that commenters believe to be appropriate. For example, should the limit specify a single out-of-band attenuation level or should it specify a power roll-off that increases attenuation as frequency separation from the channel boundary increases?

70. In the Upper 700 MHz proceeding the Commission found that stricter attenuation requirements were required to adequately protect the public safety bands from interference. The Commission adopted an attenuation requirement of 65 + 10 log P dB per 6.25 kHz for mobile and portable transmitters, and an attenuation requirement of 76 + 10 log P dB per 6.25 kHz for base and fixed transmitters for out-of-band emissions that fall within the 764–776 MHz and 794–806 MHz public safety bands. The Commission requests comment on whether it is necessary to adopt a rule, applicable to equipment transmitting in the 698–746 MHz band, that provides more stringent attenuation requirements for out-of-band emissions that fall within the 764–776 MHz and 794–806 MHz public safety bands. The Commission seeks comment on whether equipment transmitting in the upper portion of the 698–746 MHz commercial band poses a risk of interference to public safety operations that justifies adoption of these more stringent attenuation requirements. The Commission also

[26] 47 CFR 22.150.

[27] *See id.* at 22.907.

[28] *Id.* at 27.64.

seeks comment on what resolution bandwidth should be used for measurements to determine compliance with the out-of-band emission limits.

d. Power Limits and RF Safety

71. In the Upper 700 MHz proceeding, the Commission concluded that with regard to communications power requirements, equipment transmitting in the 747–762 MHz and 777–792 MHz bands will have characteristics similar to equipment used in other services in the sub-microwave UHF frequency bands. Accordingly, rules were adopted that provided a maximum power limit of 1000 Watts ERP for base and fixed stations, 30 Watts ERP for vehicular mobile transmitters and 3 Watts ERP for hand held portable transmitters. The Commission requests comment on whether these limits are also appropriate for base, fixed, mobile and portable transmitters operating in the 698–746 MHz band, or whether some other limits should be adopted. The Commission also seeks comment on the use of up to 50 kW ERP for video broadcasting in this band.

72. The Commission considers RF safety procedures to be essential in protecting human beings from excessive exposure to RF energy. Accordingly, the Commission proposes to require that facilities and devices operating in the Lower 700 MHz Band be subject to the existing RF safety criteria and procedures applicable to facilities and devices having similar technical parameters and operating characteristics.[29] The Commission seeks comment on this proposal.

3. Licensing Rules

73. The Commission seeks comment below on the licensing rules for a full range of possible licensees, in accordance with the stated intention to permit as much flexibility in the use of this spectrum as is consistent with the requirements of section 303(y) of the Communications Act. The Commission seeks comment generally on whether licensees in the reallocated 698–746 MHz band should be governed by part 27 of the Commission's rules. Part 27 was established to satisfy the requirement in section 3001 of the Omnibus Consolidated Appropriations Act of 1997 to reallocate and assign the use of the frequencies at 2305–2320 MHz and 2345–2360 MHz. Part 27 was initially adopted to govern services offered on those bands, and accorded licensees the flexibility to provide any fixed, mobile or radiolocation service contained in the Table of Allocations in part 2 of the Commission's rules. The regulatory framework of part 27 includes, *inter alia:* (i) the limitation of eligibility requirements to foreign ownership restrictions set forth in section 310 of the Communications Act; (ii) exclusion of part 27 spectrum holdings from application of the CMRS spectrum cap; (iii) flexibility to partition geographic service areas and disaggregate spectrum blocks; (iv) determination of regulatory status by licensee's designation in their long-form applications; and (v) incorporation, with some exceptions, of the competitive bidding rules set forth in part 1 of the Commission's rules. The Commission adapted and applied the part 27 licensing procedures to the 746–764 MHz and 776–794 MHz bands in the Upper 700 MHz proceeding.

a. Regulatory Status

74. The Commission tentatively concludes that a licensee in the 698–746 MHz band may include any or a combination of services with more than one regulatory status in a single license. In adopting a flexible licensing framework for part 27, the Commission permitted applicants to request more than one regulatory status for authorization in a single license, rather than require the applicant to choose a single status for its proposed services. Thus, a part 27 license may authorize a combination of common carrier, non-common carrier and broadcast services in a single license, and the part 27 licensee may render any kind of communications service consistent with that regulatory status. As the Commission tentatively concludes to authorize licensees in the 698–746 MHz band to provide a variety of services (*e.g.,* fixed, mobile, etc.) under more than one regulatory status (*i.e.,* common carrier, non-common carrier, and/or broadcast), any one licensee would be permitted to provide any combination of services, anywhere within its licensed area at any time, consistent with its regulatory status and interference protection requirements. Given the decision to apply this part 27 licensing framework in the Upper 700 MHz proceeding, the Commission seeks comment on the tentative conclusion to adopt this same framework for licensing services in the 698–746 MHz band. Does applying the same approach used for the Upper 700 MHz Band to this reallocated 698–746 MHz spectrum achieve efficiencies in the licensing and administrative processes?

75. Assuming that a 698–746 MHz licensee regulated under part 27 may provide any communications service consistent with its authorized regulatory status, the Commission seeks comment on whether that licensee should be subject to other Commission rules specifically applicable to the nature of the service provided. Alternatively, the Commission seeks comment on whether to amend part 27 to include any other obligations for certain services authorized on this band. For example, the Communications Act applies specific requirements to broadcasters and common carriers that are not applied to other part 27 licensees. In the *Upper 700 MHz First Report and Order,* the Commission determined that the provision of ''new broadcast-type'' services does not alter the underlying broadcast nature of such services on the Upper 700 MHz Band, and as a result, such services are subject to the regulatory and statutory provisions governing broadcast service. However, in the *Upper 700 MHz MO&O and FNPRM,* the Commission declined to go so far as to apply an ''equivalent regulatory regime'' from part 73 of the rules to part 27 broadcast licensees in the Upper 700 MHz band, stating that the Commission would determine the applicable regulatory framework in the context of the offering of specific, actual new broadcast-type services. The Commission tentatively concludes that the Commission will adopt the same approach for part 27 broadcast licensees on the 698–746 MHz band as the Commission did for the Upper 700 MHz Band. The Commission seeks comment generally on any provisions in existing, service-specific rules that may require specific recognition or adjustment to comport with the potential supervening application of part 27, as well as any provisions that would be necessary in part 27 to fully describe the scope of covered service and technologies.

76. The possible inclusion of full power broadcasting within the reallocated 698–746 MHz band is more problematic with respect to the licensing and administrative process. The Commission asks commenters to address whether a decision to permit full power broadcasting within this band affects the tentative conclusion that there should be no additional requirements for new broadcast-type licensees operating under part 27.[30] If the Commission decides to permit full

[29] *See* 47 CFR 1.1307(b), 1.1310, 2.1091, 2.1093.

[30] This discussion is limited to the question of whether different Commission-imposed regulations should apply to broadcasters depending on whether they are providing new broadcast-type services or full power broadcasting on the 698–746 MHz band. To the extent that a Lower 700 MHz licensee's services (either new broadcast-type services or full power broadcasting) fall within the statutory definition of broadcasting, they will be subject to the statutory provisions of the Communications Act governing broadcasting.

power broadcasting in this reallocated spectrum, should part 73 apply to licensees to the extent they provide any broadcast services (including full power broadcasting as well as new broadcast-type services) and should part 27 apply to the extent licensees provide other wireless services?

77. Consistent with the part 27 framework adopted for the Upper 700 MHz Band, the Commission seeks comment on whether applicants and licensees in the 698–746 MHz band should also be required to indicate to the Commission the regulatory status of any services that they choose to provide. To ensure compliance with the statutory requirements of Titles II and III of the Communications Act, the Commission has often required applicants to designate the regulatory status of the services they intend to provide. For example, the Commission's current Form 601 Application for Wireless Telecommunications Bureau—Radio Service Authorization requires an applicant to indicate whether the service it intends to offer will be common carrier, non-common carrier, private, broadcast, and/or band manager. If the Commission decides to require 698–746 MHz applicants and licensees to designate their regulatory status, does the Form 601 need to be revised in any way? To the extent that full power broadcast service is included in this reallocated spectrum, is there a need to modify the Form 601 or any other appropriate form(s) that an applicant may use to seek these services, either solely or in conjunction with other services under a single license?

78. The Commission seeks comment on whether applicants and licensees in the 698–746 MHz band should be required to describe their proposed services. In adopting part 27, the Commission stated that, apart from this designation of regulatory status, the Commission would not require applicants to describe the services they seek to provide. Likewise, in the Upper 700 MHz proceeding, the Commission stated that it is sufficient that an applicant indicate its choice of regulatory status in a streamlined application process. Should the Commission apply a similar approach to services provided in the Lower 700 MHz Band, including full power broadcast as well as new broadcast-type services? If potential applicants are unsure of the nature of their services and their classification, the Commission seeks comment on whether to require applicants to submit a petition with their applications requesting clarification and including service descriptions for that purpose.

79. The Commission also seeks comment on whether to permit licensees to change their service in such a way that it alters their regulatory status. If the Commission permits licensees to alter their regulatory status, what procedures should it adopt to provide for this change? The Commission seeks comment on whether to require such licensees to notify the Commission that they have altered their status, even if such change would not require prior Commission authorization. Similar to Upper 700 MHz Band licensees, should licensees in the Lower 700 MHz Band be required to notify the Commission within 30 days of the change, unless the change results in the discontinuance, reduction, or impairment of the existing service, in which case a different time period may apply? In these situations, how can the Commission best maximize a carriers' flexibility in service offerings while also implementing, for example, the requirement in section 214(a) of the Communications Act that the Commission certify that the public convenience and necessity will not be adversely affected by such actions initiated by carriers? [31] Does the potential inclusion of broadcasting, including full power broadcast services, require us to modify this approach? Because full power broadcast licensees are subject to different ownership rules and attribution standards than wireless licensees, the Commission requests comment on what procedures should apply when a licensee changes its offerings between these regulatory classifications.

80. The Commission seeks comment on whether to permit licensees to lease their licensed spectrum usage rights in accordance with the proposals may be adopted in the *Secondary Markets NPRM*, 65 FR 81475, December 26, 2000, corrected by 66 FR 8149, January 29, 2001. In the alternative, the Commission asks commenters to address any unique attributes of the Lower 700 MHz Band (*e.g.,* level of incumbency) that would justify a level of flexibility different from what the Commission adopts generally in that proceeding. In considering leasing arrangements in the *Secondary Markets NPRM*, the Commission stated the primary issue may be whether all licensees in certain services should have the option to use some or all of their licensed spectrum in the same manner as a band manager, *i.e.,* to make spectrum available to third party users without the need for prior Commission approval, while retaining primary responsibility for compliance with the Commission's rules. The Commission also seeks comment on the potential for band manager licensing to provide flexibility for the Lower 700 MHz Band given the distinctive technical and/or policy issues associated with its reallocation. Because the Commission has not issued a decision in the Secondary Markets proceeding, the Commission seeks comment on the extent to which leasing arrangements and/or band manager licensing would help achieve the maximum flexibility possible for the use of this spectrum, consistent with technical and regulatory constraints.

81. The Commission also seeks comment on whether the service and auction rules should have any special provisions for private radio and/or public safety services on the 698–746 MHz band. For example, should parties who would function as band managers with the ability to lease their spectrum rights to various types of users, including private radio and/or public safety users, be eligible to bid for this spectrum? To enable the full and flexible use of this reallocated spectrum, the Commission asks commenters to address any specific measures that should be taken to accommodate the provision of private and public safety regulatory classes of services.

b. Eligibility

82. In the *Upper 700 MHz First Report and Order*, the Commission decided to impose no restrictions on eligibility for a license in the 747–762 MHz and 777–792 MHz bands, other than the foreign ownership restrictions set forth in section 310 of the Communications Act. Consistent with this approach, the Commission proposes that there be no restrictions on eligibility for a license in the 698–746 MHz band. The Commission seeks comment on the view that opening this spectrum to as wide a range of applicants as possible will encourage entrepreneurial efforts to develop new technologies and services, while helping to ensure efficient use of this spectrum. Commenters also should address how the proposed policy to not impose restrictions on eligibility should apply to possible use of this spectrum for broadcasting.

83. The Commission also seeks comment on the character qualification standard that should be applied to licensees in the 698–746 MHz band. While the character qualification standards applied to broadcasters have provided guidance in common carrier proceedings, the Commission has said

[31] *See* 47 U.S.C. 214(a).

that these standards are not ''directly applicable'' to common carriers. The Commission seeks comment on whether there is any reason that full power broadcasters who share spectrum with part 27 wireless services, including wireless common carrier offerings, should not be governed by the existing standards applied to part 73 licensees. The Commission also seeks comment on whether there is any reason the Commission cannot apply the current rules to decide whether an entity that has been disqualified from holding a full power part 73 broadcasting license pursuant to the character qualification rules should be eligible to provide non-broadcasting services pursuant to a part 27 license.

c. Spectrum Aggregation Limits

84. To the extent that the Commission allocates spectrum within the 698–746 MHz band for the provision of CMRS, the Commission seeks comment on whether spectrum in this band, if used to provide CMRS, should be subject to the Commission's 45/55 MHz CMRS spectrum cap.[32] Currently, 180 MHz of broadband PCS, cellular, and SMR spectrum regulated as CMRS is subject to the Commission's 45 MHz (55 MHz in rural areas) spectrum cap. Part 27 of the Commission's rules does not limit the amount of spectrum that an entity may aggregate in any given geographic area. In the Upper 700 MHz proceeding, the Commission refrained from extending the CMRS spectrum cap to the newly reallocated 746–764 and 776–794 MHz bands.

85. In light of the findings in the Upper 700 MHz proceeding, the Commission seeks comment on whether to abstain from counting the 698–746 MHz band against the CMRS spectrum cap. Alternatively, if the Commission decides to apply the spectrum cap to this spectrum, the Commission seeks comment on whether and if so, how much, the Commission should increase the amount of spectrum a single entity can hold beyond the 45/55 MHz threshold. In this regard, it has been the expectation that newly available CMRS-suitable spectrum either should be excluded from the cap, or if it is included, that the cap should be adjusted accordingly. Under the former alternative, if the spectrum does not count towards the cap and licensees use it for provision of CMRS, what impact will that have on competition in the CMRS marketplace? Under the latter alternative, what impact would an increase of the cap have on the reduction or concentration of competition and on changes in the prices or to the quality of services. Commenters should address the relevance of the factors that the Commission considered in the decision not to apply the spectrum cap to the 746–764 and 776–794 MHz bands, including (1) whether applying the spectrum cap would be consistent with the goals of seeking flexible use of this spectrum; (2) whether permitting licensees to acquire all of the available lower 700 MHz spectrum in a given geographic area would result in economies of scale that could promote a variety of services, including advanced wireless services; and (3) whether it makes sense to count this spectrum against the cap if the extent to which the 698–746 MHz band will be used for CMRS services is not clear.

86. The Commission also seeks comment on whether spectrum in the 698–746 MHz band should be subject to any other aggregation limits. The Commission decided not to adopt any in-band spectrum aggregation limits for the 747–762 MHz and 777–792 MHz bands. Similarly, should the Commission not restrict the amount of commercial spectrum that any one licensee may obtain in the 698–746 MHz band in the same licensed geographic service area? If so, comment is then sought on whether there should be any cross-band aggregation limits between the 747–762 MHz and 777–792 MHz bands, and the 698–746 MHz band. Should the Commission preclude or otherwise limit an entity from obtaining all 78 MHz of spectrum in the combined Upper and Lower 700 MHz Bands in the same geographic area?

d. Foreign Ownership Restrictions

87. In the *Upper 700 MHz First Report and Order,* the Commission concluded that § 27.12 of the Commission's rules, which implements section 310 of the Act,[33] should apply to applicants for licenses in the 747–762 MHz and 777–792 MHz bands. The Commission tentatively concludes that § 27.12 of the Commission's Rules should apply to applicants for 698–746 MHz band licenses. With respect to the alien ownership reporting requirements, the Commission tentatively concludes that it will require all licensees in the 698–746 MHz band spectrum to file changes in foreign ownership information to the extent required by part 27 of the rules. The Commission requests comment on this approach.

e. License Term; Renewal Expectancy

88. The Communications Act imposes no term limit on licenses issued by the Commission, other than those for broadcast services, which are limited to an eight-year license term.[34] The statute also specifies renewal criteria for broadcast stations.[35] Part 27 of the Commission's rules provides for license term limits and renewal expectancy for other than new broadcast-type services. Section 27.13(a) limits license terms for certain licensees to 10 years from the date of original issuance or renewal,[36] and § 27.14(b) establishes a right to a renewal expectancy.[37]

89. In the *Upper 700 MHz First Report and Order,* the Commission modified the license term as it relates to the 747–762 MHz and 777–792 MHz bands, to accommodate licensees' need for additional time to develop and use this spectrum, in light of its continued use by broadcasters until 2006. The Commission decided that initial licenses for the 746–764 MHz and 776–794 MHz bands would extend eight years beyond the year 2006, the date as of which incumbent broadcasters are required to have relocated to other portions of the spectrum, (*i.e.,* January 1, 2015, *see Upper 700 MHz Errata,* 65 FR 57267, September 21, 2000) subject to certain conditions. However, a licensee that commences new broadcast-type operations on or before January 1, 2006, will be required to seek renewal of its license at the end of the eight-year term following commencement of such broadcast operations.[38]

90. The Commission seeks comment on the appropriate license term to apply with respect to licensees in the 698–746 MHz band. The Commission seeks comment on whether to adopt the license term and renewal provisions in part 27 of the Commission's Rules, for other than new broadcast-type services.[39] The Commission therefore seeks specific comment on whether the initial license term for licenses, other than new broadcast-type services, should expire on January 1, 2015. In addition, the Commission seeks comment on other alternatives, such as a 10-year license term. Commenters should also address whether it would be possible to have different license terms, depending on the type of service offered by the licensee. The Commission also seeks comment on how the Commission

[32] *See* 47 CFR 20.6.

[33] 47 U.S.C. § 310.

[34] *See* 47 U.S.C. 307(c)(1); *see also* 47 CFR 73.1020(a).

[35] *See* 47 U.S.C. 309(k).

[36] 47 CFR 27.13(a).

[37] *See id.* 27.14(b).

[38] *See* 47 CFR 27.13(b).

[39] *See* 47 CFR 27.13(b).

would administer such an approach, particularly if licensees provide more than one service in their service area, or decide to change the type of service they plan to offer.

91. Furthermore, in the *Upper 700 MHz First Report and Order,* the Commission adopted the right to a renewal expectancy established in § 27.14(b).[40] The Commission found that in order for a licensee involved in a comparative renewal proceeding to claim a renewal expectancy that licensee must include, at a minimum, the showing required by § 27.14(c) of the Commission's rules. The Commission seeks comment on whether to likewise adopt the right to a renewal expectancy established in § 27.14 for licensees in the 698–746 MHz band.

92. The Commission also seeks comment on whether a new broadcast licensee operating in the Lower 700 MHz Band would be able to claim the renewal expectancy established by section 309(k) of the Act.[41] The Commission seeks comment on whether there should be a distinction between the renewal expectancy that the Commission will provide to new broadcasters in the Lower 700 MHz Band and licensees offering other services (*i.e.,* datacasting and other wireless services) on this band.

93. Consistent with part 27, in the *Upper 700 MHz First Report and Order,* the Commission found that in the event that a license is partitioned or disaggregated, any partitionee or disaggregatee shall be authorized to hold its license for the remainder of the original licensee's term, and the partitionee or disaggregatee may obtain a renewal expectancy on the same basis as other licensees in the band.[42] Further, the Commission decided that all licensees meeting the substantial service requirement will be deemed to have met this part of the renewal expectancy requirement regardless of which of the construction options the licensees have chosen. The Commission concluded that this approach is appropriate because a licensee, through partitioning, should not be able to confer greater rights than it has been awarded under the terms of its license grant. The Commission seeks comment on taking this approach with respect to 698–746 MHz licensees.

f. Performance Requirements

94. Section 27.14(a) of the Commission's rules requires licensees to provide ''substantial service'' in their service areas within their prescribed license term. Failure to meet this requirement will result in forfeiture of the license.[43] In the *Upper 700 MHz First Report and Order,* the Commission amended the performance requirement in § 27.14(a) as it relates to the 747–762 MHz and 777–792 MHz bands. The Commission required in the 747–762 MHz and 777–792 MHz bands to provide substantial service to their service areas no later than January 1, 2015, eight years after December 31, 2006, the date as of which incumbent broadcasters are required to have relocated to other portions of the spectrum. This section defines substantial service ''as service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal.'' In the *Part 27 Report and Order,* 62 FR 9636, March 3, 1997, the *LMDS Second Report and Order,* 62 FR 23148, April 29, 1997, and the *Upper 700 MHz First Report and Order,* the Commission adopted safe harbors that would demonstrate substantial service. In implementing its auction procedures, section 309(j)(4)(B) of the Communications Act requires the Commission to include safeguards to protect the public interest in the use of the spectrum and performance requirements ''to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services.'' [44] In addition, the Commission seeks to promote the efficient and effective use of the spectrum.[45] The Commission invites comment on the development of service rules to meet these objectives.

95. The Commission seeks comment on whether to require licensees in the 698–746 MHz band to provide substantial service on January 1, 2015, the date that the Commission requires licensees in the 747–762 and 777–792 MHz band to provide substantial service. The Commission also seeks comment on whether to adopt any safe harbors for licensees in the 698–746 MHz band. In the *Upper 700 MHz First Report and Order,* the Commission adopted two safe harbors for fixed services: (1) for a licensee who chooses to offer fixed, point-to-point services, the construction of the permanent links per one million people in its licensed service area during its license term or at the license-renewal mark would constitute substantial service; and (2) for a licensee who chooses to offer fixed, point-to-multipoint services, a demonstration of coverage for 20 percent of the population of its licensed service area during its licensed term or at the license-renewal mark would constitute substantial service. The Commission also there encouraged licensees to build out not only in urban areas and areas of high density population but in rural areas as well, or to partition their license to allow others to do so. In addition, the Commission seeks comment on whether to adopt safe harbors for mobile services (assuming the Commission adopts the substantial service requirement for mobile services) and, if so, what safe harbors would be appropriate. If commenters support safe harbors other than those listed above, they should discuss what other safe harbors should be adopted.

96. The Commission also seeks comment on distinct issues raised by applying this proposal to new potential broadcast use of the spectrum. Broadcast permittees operating pursuant to part 73 are required to construct their facilities within three years.[46] The Commission requests comment on whether there are any reasons not to apply these rules to new broadcasters on these bands. Further, the Commission seeks comment on whether to adopt a substantial service test for broadcasters operating on this band and, if so, what safe harbors would be appropriate.

g. Disaggregation and Partitioning of Spectrum

97. In the *Upper 700 MHz First Report and Order,* the Commission provided licensees in the 746–764 MHz and 776–794 MHz bands flexibility by permitting geographic partitioning of any service area defined by the partitioner and partitionee and spectrum disaggregation without restriction on the amount of spectrum to be disaggregated. The Commission tentatively concludes that the Commission also should permit licensees in the 698–746 MHz band to partition and disaggregate their licenses. The Commission tentatively concludes that geographic partitioning and spectrum disaggregation can result in efficient spectrum use and economic opportunity for a wide variety of applicants, including small business, rural telephone, minority-owned, and women-owned applicants.[47] The Commission also tentatively concludes that this approach will provide a means to overcome entry barriers through the creation of smaller licenses that require

[40] 47 CFR 27.14(b).

[41] *See* 47 U.S.C. 309(k).

[42] *See* 47 CFR 27.15(d), 27.324(b)(4).

[43] *See* 47 CFR 27.14(a).

[44] 47 U.S.C. 309(j)(4)(B); *see id.* 309(j)(3).

[45] *See* 47 U.S.C. 309(j)(3)(D).

[46] *See* 47 CFR 73.3598.

[47] *See* 47 U.S.C. 309(j)(4)(C).

less capital, thereby facilitating greater participation by rural telephone companies and other smaller entities, many of which are owned by minorities and women. The Commission seeks comment on each of these matters.

98. Section 27.15 of the Commission's rules [48] permits licensees seeking approval for partitioning and disaggregation arrangements to request authorization from the Commission for partial assignment of a license, and provides that licensees may apply to partition their licensed geographic service areas or disaggregate their licensed spectrum at any time following the grant of their licenses. In the *Upper 700 MHz First Report and Order,* the Commission decided to permit geographic partitioning of any service area defined by the partitioner and partitionee, to permit spectrum disaggregation without restriction on the amount of spectrum to be disaggregated, and to permit combined partitioning and disaggregation. Pursuant to § 27.15, the partitioning licensee must include with its request a description of the partitioned service area and calculations of the population of the partitioned service area and the licensed geographic service area.[49] Licenses that partition and disaggregate also are subject to the provisions against unjust enrichment set forth in § 27.15(c).[50] The Commission requests comment on whether licensees in the 698–746 MHz band should be eligible to partition service areas and disaggregate spectrum to the same extent that licensees in the 746–764 MHz and 776–794 MHz bands are permitted to do so. The Commission also requests comment on what limits, if any, should be placed on the ability of licensees to partition service areas and disaggregate spectrum.

99. The Commission also proposes to adopt the methods that the Commission adopted in the *Upper 700 MHz First Report and Order* for parties to partitioning, disaggregation, or combined partitioning and disaggregation agreements to meet construction requirements. Specifically, the Commission proposes that parties to partitioning agreements be permitted to choose between two options for satisfying the construction requirements. Under the first option, the partitioner and partitionee would each certify that it will independently satisfy the substantial service requirement for its respective partitioned area. If a licensee fails to meet its substantial service requirement during the relevant license term, the non-performing licensee's authorization would be subject to cancellation at the end of the license term. Under the second option, the partitioner certifies that the requirement has been or will be met for the entire market. If the partitioner fails to meet the substantial service standard during the relevant license term, only its license would be subject to cancellation at the end of the license term. The partitionee's license would not be affected by such failure.

100. Finally, the Commission proposes to allow parties to disaggregation agreements to choose between two options for satisfying the construction requirements. Under the first option, the disaggregator and disaggregatee would certify that they will share responsibility for meeting the substantial service requirement for the geographic service area. If parties choose this option, both parties' performance will be evaluated at the end of the relevant license term and both licenses could be subject to cancellation. The second option would allow the parties to agree that either the disaggregator or the disaggregatee would be responsible for meeting the substantial service requirement for the geographic service area. If parties choose this option, and the party responsible for meeting the construction requirement fails to do so, only the license of the non-performing party would be subject to cancellation.

4. Operating Rules

101. In the *Upper 700 MHz First Report and Order,* the Commission decided that licensees in the 747–762 MHz and 777–792 MHz bands would be subject to the operational rules contained in part 27 that govern operations, modified to accommodate the particular circumstances of the Upper 700 MHz proceeding. The Commission seeks comment generally on the applicability of these rules to the 698–746 MHz band and whether any operating rules contained in other parts of the Commission's rules should be adopted for the 698–746 MHz band. In addition, the Commission asks commenters to suggest any alternatives to such regulations governing a licensee's operations in order to minimize the potential significant economic impact, if any, from such rules on small entities.

a. Forbearance

102. The Commission seeks comment on whether to consider forbearance initiatives that are targeted specifically to new licensees that will operate in the Lower 700 MHz Band. Commenters should address how forbearance might apply to the various services that might be offered in the Lower 700 MHz Band, including CMRS, fixed wireless and new broadcast-type service.

b. Equal Employment Opportunity

103. The Commission tentatively concludes that for the Lower 700 MHz Band an applicant's EEO requirements will be determined by the type of service an applicant chooses to provide. The Commission seeks comment on this matter.

5. Competitive Bidding Procedures

104. Section 309(j)(14)(C) requires the Commission to assign licenses for the 698–746 MHz band by means of the competitive bidding procedures adopted pursuant to section 309(j) of the Act. Consistent with that directive, the Commission requests comment on a number of issues relating to the competitive bidding procedures for the 698–746 MHz band.

a. Incorporation by Reference of the Part 1 Standardized Auction Rules

105. The Commission proposes to conduct the auction of initial licenses in the 698–746 MHz band in conformity with the general competitive bidding rules set forth in part 1, subpart Q, of the Commission's rules, and substantially consistent with the bidding procedures that have been employed in previous auctions.[51] Specifically, the Commission proposes 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. In addition, consistent with current practice, matters such as the appropriate competitive bidding design for the auction of 698–746 MHz band licenses, as well as minimum opening bids and reserve prices, would be determined by the Wireless Telecommunications Bureau pursuant to its delegated authority, *see Part 1 Third Report and Order,* 63 FR 770, January 7, 1998, 63 FR 2315, January 15, 1998 corrected by 63 FR 12658, March 16, 1998. The Commission seeks comment on whether any of the part 1 rules would be inappropriate in an auction of licenses in the 698–746 MHz band.

[48] *See* 47 CFR 27.15.

[49] *See* 47 CFR 27.15(b)(1).

[50] *Id.* at 27.15(c).

[51] *See* 47 CFR 1.2101 et seq. (Part 1, Subpart Q).

b. Provisions for Designated Entities

106. In authorizing the Commission to use competitive bidding, Congress mandated that the Commission ''ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services.'' [52] In addition, section 309(j)(3)(B) of the Act provides that in establishing eligibility criteria and bidding methodologies the Commission shall promote ''economic opportunity and competition * * * by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.'' [53]

107. The Commission's designated entity preferences apply based on an entity's qualification as a small business.[54] The Commission notes that minority- and women-owned businesses and rural telephone companies that qualify as small businesses may take advantage of the special provisions the Commission has adopted for small businesses. The Commission tentatively concludes that the small business provisions are sufficient to promote participation by businesses owned by minorities and women, as well as rural telephone companies. To the extent that commenters propose additional provisions to ensure participation by minority- or women-owned businesses, they should address how such provisions should be crafted to meet the relevant constitutional standards.

108. The Commission seeks comment on the appropriate definitions of small businesses that should be used to determine eligibility for bidding credits in the 698–746 MHz band. In the *Competitive Bidding Second Memorandum Opinion and Order,* 59 FR 44272, August 26, 1994, the Commission stated that it would define eligibility requirements for small businesses on a service-specific basis, taking into account the capital requirements and other characteristics of each particular service in establishing the appropriate threshold. The *Part 1 Third Report and Order,* while it standardizes many auction rules, provides that the Commission will continue a service-by-service approach to defining small businesses.

109. The Commission proposes to apply the same small business definitions here that the Commission adopted for the Upper 700 MHz Band. In the *Upper 700 MHz First Report and Order,* the Commission defined a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million.[55] The Commission believes the services that will be deployed in this band will have similar capital requirements to the commercial services in the Upper 700 MHz Band, and thus the same small business definitions should apply. The Commission believes that new licensees both in this band and the Upper 700 MHz Band may be presented with similar issues and costs, including those involved in relocating incumbents and developing markets, technologies, and services. The Commission invites comment on this analysis. In further support of the proposed definitions, the Commission notes that a majority of winning bidders in the auctions for licenses in the Upper 700 MHz guard bands claimed eligibility as small businesses. These results appear to confirm the belief, as stated in the *Upper 700 MHz First Report and Order,* that ''these two definitions will provide businesses seeking to provide a variety of services with opportunities to participate in the auction of licenses for this spectrum.''

110. Commenters proposing alternative standards should give careful consideration to the likely capital requirements for developing services in this spectrum. For example, interested parties should consider the impact of the band plan on small business size standards. In this regard, the Commission seeks comment on whether the band plan or any other factors that might have an impact on capital requirements warrant the adoption of an additional definition for entities with average annual gross revenues for the three preceding years of not more than $3 million. Commenters should also consider whether the band plan and characteristics of the Lower 700 MHz Band suggest that the adoption of small business size definitions and the use of bidding credits would be inappropriate in this instance.

111. In the *Part 1 Third Report and Order,* the Commission adopted a standard schedule of bidding credits for certain small business definitions, the levels of which were developed based on the auction experience. The standard schedule may be found at § 1.2110(f)(2) of the Commission's rules.[56] The Commission continues to believe that these levels of bidding credits will provide adequate opportunities for small businesses of varying sizes to participate in spectrum auctions. Assuming that the Commission adopts the proposal to define for the services in this band a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million, the Commission proposes to provide qualifying ''small businesses'' with a bidding credit of 15% and ''very small businesses'' a 25% bidding credit, consistent with § 1.2110(f)(2).[57] The Commission seeks comment on this proposal. The Commission also seeks comment on whether, if the Commission adopts a third small business definition for entities with average annual gross revenues of not more than $3 million for the past three years, the 35% bidding credit set out in § 1.2110(f)(2)(i) should be made available to such entities.[58] Finally, the Commission invites comment on whether there may be any distinctive characteristics to this band that might suggest a more limited use of bidding credits here.

c. Public Notice of Initial Applications/ Petitions To Deny

112. Section 309(b) and section 309(c) of the Communications Act require public notice for initial applications, and substantial amendments thereof.[59] These requirements provide that no such application shall be granted earlier than 30 days following the issuance of public notice by the Commission, and that the Commission may not require petitions to deny such applications to be filed earlier than 30 days following the public notice. The same provision also grants the Commission the authority to impose public notice requirements for other licenses, even though the statute does not require public notice. However, the administrative procedures for spectrum auctions adopted in section 3008 of the BBA 97 [60] and Consolidated Appropriations Act, 2000, permit the Commission to shorten notice periods in the auction context to five days for petitions to deny and seven days for public notice, notwithstanding the provisions of section 309(b) of the Communications Act. In the *Part 1 Third Report and Order,* the

[52] *See* 47 U.S.C. 309)(j)(4)(D).

[53] *See id.* 309(j)(B).

[54] *See* 47 CFR 1.2110(a).

[55] *See* 47 CFR 27.502(a)(1)–(2).

[56] *See* 47 CFR 1.2110(f)(2).

[57] 47 CFR 1.2110(f)(2)(ii) and (iii).

[58] *Id* at 1.2110(f)(2)(i).

[59] 47 U.S.C. 309(b) and (c).

[60] *Id.* at 309(j) note 3.

Commission exercised this statutory authority by amending §§ 1.2108(b) and 1.2108(c) of the Commission's rules to provide for a five-day period for filing petitions to deny and a seven-day public notice period for all auctionable services.

113. In the *Upper 700 MHz First Report and Order,* the Commission adopted the seven-day notice requirement for initial applications and the five-day deadline for petitions to deny. The Commission also determined that an applicant filing for both common carrier and non-common carrier authorizations in a single license and wishing to make subsequent status changes will be subject to the seven-day public notice requirement. The Commission tentatively concludes in the Notice that services in the 698–746 MHz spectrum will be auctionable services. Therefore, the Commission proposes that a seven-day notice period for initial applications and a five-day deadline for petitions to deny would be applicable. The Commission requests comments on this proposal and whether longer periods should apply for some services. Commenters should address whether imposing the proposed seven-day notice requirement and five-day petition to deny period would be an undue burden on parties, and whether it would be administratively useful by enabling us to ensure that any applicant filing for both common carrier and non-common carrier authorizations in a single license is in compliance with (1) the licensing requirements for common carriers and broadcasters established in Title III of the Communications Act; and (2) any related requirements the Commission may adopt. Commenters also should address whether to allow all licensees to make subsequent status changes under reduced notification requirements.

6. Possible Measures To Facilitate Clearing of 698–746 MHz Band and Accelerate DTV Transition

114. The 698–746 MHz band at issue here has historically been used exclusively by television stations (Channels 52–59). In developing the DTV transition plan, the Commission announced its belief that ''the recovery of spectrum continue[s] to be a key component of the implementation of DTV service. In this regard, the Commission remains committed to the recovery of the channels temporarily assigned for the transition and to ensuring that the spectrum is used efficiently.'' The Commission also announced that the DTV transition plan would ''permit the eventual recovery'' of additional spectrum nationwide while minimizing disruptions to broadcasters, and identified only the Channels 60–69 portion of the spectrum for ''early recovery,'' noting that under the plan ''it may be possible to recover 60 MHz of spectrum almost immediately from the band 746–806 MHz, *i.e.,* UHF Channels 60–69, while protecting the relatively few full-service analog and digital broadcasters in that spectrum.'' The incumbent television broadcasters are permitted by statute to continue operations until their markets are converted to DTV,[61] which is not scheduled to occur until December 31, 2006, and that date may be extended under certain circumstances.[62] Congress has, however, directed the Commission to commence competitive bidding for licenses to use the lower 700 MHz spectrum well before the scheduled termination date of the DTV transition.[63] Thus, in the event that the Commission decides to reallocate this spectrum, the Commission will be faced with a situation that is in many respects similar to that which the Commission has recently addressed in regard to the Upper 700 MHz Band, which is currently used by Channels 60–69. In the Upper 700 MHz proceeding, the Commission announced policies and adopted mechanisms to facilitate the voluntary clearing of the 740–806 MHz band to allow for the introduction of new wireless services, and to promote the early transition of analog television licensees to DTV. The Commission solicits comment as to the band clearing mechanisms and policies that would be appropriate for the 698–746 MHz band.

115. With respect to the Upper 700 MHz Band, the Commission adopted rules and policies that allow the private sector to determine the band-clearing mechanisms that will best suit broadcasters' and potential new 700 MHz licensees' needs. In the *Upper 700 MHz Third Report and Order,* the Commission announced the intention to rely upon voluntary band clearing agreements among incumbent broadcasters and new Upper 700 MHz licensees to open that band to new uses and accelerate the transition to DTV. In so doing, the Commission was guided by the conclusion in the *Spectrum Reallocation Policy Statement* that a flexible, market-based approach is the most appropriate method for establishing service rules for this band. Here, the Commission proposes to extend the rules and policies adopted in the Upper 700 MHz proceeding to voluntary clearing of the 698–746 MHz spectrum, and seek comment on this proposal.

116. Incumbent full-power broadcast stations are entitled to interference protection throughout the DTV transition. The Commission acknowledges that, as a practical matter, it may be difficult to identify vacant allotments into which broadcasters may feasibly relocate, particularly in light of the larger number of incumbent analog and DTV stations on the Lower 700 MHz Band than on the Upper 700 MHz Band. In the later stages of the DTV transition, however, the Commission expect that such opportunities will increase as other broadcasters begin to surrender analog allotments (consistent with the policies the Commission adopted in the *Upper 700 MHz Third Report and Order*) and the DTV transition and band clearing processes gain momentum. The Commission seeks comment as to whether any particular characteristics of broadcast operations on the Lower 700 MHz Band may make it more difficult to clear this spectrum when compared with the Upper 700 MHz Band. In addition, the Commission poses a number of questions on issues relating to band clearing that are designed to elicit comment on whether the policies adopted in the Upper 700 MHz proceeding should be extended to the 698–746 MHz spectrum.

a. Voluntary Transition Agreements

117. In the Upper 700 MHz proceeding, the Commission adopted certain policies regarding the Commission's review of regulatory requests submitted in connection with voluntary clearing agreements that are intended to facilitate clearing and streamline the review process. Among these policies were a general presumption, standards of review, and procedural policies concerning bilateral and three-way agreements. Under bilateral agreements, broadcasters might relinquish one of their two television allotments for use by new wireless licensees. Three-way clearing agreements would provide for TV incumbents on television Channels 52–69 to relocate to lower band TV channels that, in turn, would be voluntarily cleared by the lower band TV incumbents.

118. In the Upper 700 MHz proceeding, the Commission stated that it generally does not intend to review the wisdom of private parties' business decisions in reaching agreements, and that the role would be limited to weighing the effect on the public interest of regulatory requests made in connection with such agreements. With respect to the review of such regulatory

[61] *See* 47 U.S.C. 309(j)(14).

[62] *See id.*

[63] *See id.* at 309(j)(14)(C).

requests, the Commission established a rebuttable presumption that, in certain circumstances, substantial public interest benefits will arise from a voluntary agreement between a 700 MHz licensee and an incumbent broadcast licensee on Channels 59–69 that clears the Upper 700 MHz Band of incumbent television licensee(s). The Commission stated that it would presume that the public interest is substantially furthered when an applicant demonstrates that the grant of its request will both result in certain specific benefits and avoid specific detriments. In particular, to obtain this presumption, an applicant must first demonstrate that grant of its request would result in one of the following: (1) Make new or expanded wireless service, such as ''2.5G'' or ''3G'' services, available to consumers; (2) clear commercial frequencies that enable provision of public safety services; or (3) result in the provision of wireless service to rural or other underserved communities. To obtain the presumption, the applicant must also show that grant of its request would not result in any one of the following: (1) the loss of any of the stations in the designated market area with the largest audience share; (2) the loss of the sole service licensed to the local community; or (3) the loss of a community's sole service on a channel reserved for noncommercial educational broadcast service. However, this presumption is not conclusive or dispositive. When the presumption is not established or is rebutted, the Commission will review regulatory requests by weighing the loss of service and the advent of new wireless service on a case-by-case basis. In addition, the Commission adopted various procedural changes in order to streamline the process of reviewing regulatory requests that are necessary to effectuate private band-clearing agreements, and affirmed the commitment to process regulatory requests associated with relocation agreements expeditiously.

119. The Commission proposes to extend these policies to band clearing agreements involving broadcasters in the 698–740 MHz band. The Commission seeks comment on this proposal. The Commission also requests input as to whether the streamlined procedural policies could be improved to facilitate such agreements. While the Commission does not intend to entertain collateral attacks on the Upper 700 MHz policy, the Commission invites commenters to explain any particular differences about Channels 52–58, such as the impact that the greater numbers of broadcast incumbents may have on the recovery of this band, which may warrant a change from the policy with regard to the voluntary band clearing agreements for Channels 59–69.

b. Secondary Auctions

120. A secondary band clearing auction would be a mechanism to determine the price that would be paid by new licensees to TV incumbents who agree to clear their channels. The Commission recognized in the Upper 700 MHz proceeding that a secondary auction mechanism may produce significant benefits. The Commission proposes here to leave any such auction to private, voluntary efforts that are otherwise consistent with the stated policies and do not interfere with the proper functioning of the Commission's spectrum auction processes. The proposal is based on the belief that, as the Commission stated in the *Upper 700 MHz Third Report and Order,* ''the private sector is better suited to determine what mechanisms interested parties might demand and to implement a secondary auction in a manner that is most responsive to broadcasters' and potential bidders' needs.''

121. The Commission seeks comment on all aspects of this approach. In this regard, the Commission invites commenters to identify any existing regulations or policies that may unnecessarily restrict the operation of such private, voluntary band clearing mechanisms.

c. Additional Proposals To Facilitate Band Clearing Accelerate the Digital Television Transition

122. In the Upper 700 MHz proceeding, the Commission solicited ideas on additional proposals that might accelerate the DTV transition. A number of commenters used that opportunity to request relief on a number of issues related to the DTV transition, such as urging the adoption of DTV must-carry rules, in order to encourage clearing. To the extent that these issues are before the Commission in separate proceedings, they will not be addressed here. As the Commission did in the Upper 700 MHz proceeding, the Commission invites comment on other related proposals to facilitate band clearing and expedite the DTV transition, such as the possible use of cost-sharing rules, cost recovery limitations, or band sharing. The Commission notes that financial payments to cable operators or satellite carriers for the voluntary carriage of broadcast signals might facilitate clearance of the band on a more rapid basis.

123. *Cost-Sharing Rules and Limitations on Cost Recovery.* While the Commission has at times relied on cost-sharing rules and limitations on cost recovery to assist in clearing other bands so as to enable faster deployment of new services, in the *Upper 700 MHz Third Report and Order,* the Commission concluded that it would not be necessary or appropriate to adopt cost-sharing rules or caps on clearing costs. The Commission tentatively concludes that the Commission should similarly rely on market forces to apportion all costs to facilitate clearing of the 698–746 MHz band, and that limitations on the recovery of such costs would not be appropriate at this time. The Commission seeks comment on this tentative conclusion and on whether to consider other alternative approaches.

124. *Spectrum Sharing and Other Proposals to Facilitate Early Transition.* In the *Upper 700 MHz MO&O and FNPRM,* the Commission sought comment on two additional proposals to accelerate the digital television transition: sharing of the 700 MHz spectrum between broadcasters and new wireless licensees, and sharing between broadcasters during the transition. The Commission received no comments on the possible sharing of 700 MHz spectrum between incumbent broadcasters and new licensees, and one comment in support of sharing by a broadcaster of another television station's digital spectrum under certain circumstances.

125. In this regard, the Commission seeks comment as to whether the Commission should allow incumbent broadcasters and new service providers to share spectrum in time and/or bits, provided such arrangements are otherwise consistent with the objectives of this proceeding and the DTV transition. This proposal would preserve broadcast service while also providing opportunity for new service providers to commence service. In addition, sharing arrangements may assist broadcasters in rapidly transitioning to digital service. Similarly, the Commission requests comment on whether to permit broadcasters to share DTV facilities and spectrum during the transition. This proposal may facilitate clearing of in-core channels for relocation of television operations on out-of-core channels.

IV. Procedural Matters

A. Ex Parte Rules—Permit-But-Disclose

126. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules.[64]

B. Initial Regulatory Flexibility Analysis

127. As required by the Regulatory Flexibility Act of 1980 (RFA),[65] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the Notice. The analysis is found below. The Commission requests written public comment on the analysis. Comments must be filed in accordance with the same filing deadlines as comments filed in this rulemaking proceeding, and must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer Information Bureau, Reference Information Center, will send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

128. The Commission has prepared this Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (''Notice''), GN Docket No. 01–74. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice as provided above. The Commission will send a copy of the Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA'').[66]

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

129. The Notice is part of the Commission's plan to reclaim the 698–746 MHz band (''698–746 MHz band'' or ''Lower 700 MHz Band''), currently used for television (''TV'') Channels 52–59, for new commercial services as part of the transition of TV broadcasting from analog to digital transmission systems, consistent with the statutory directives enacted in the Balanced Budget Act of 1997.[67] The Notice consists of two parts. First, the Notice proposes to reallocate the 698–746 MHz band, currently used for TV Channels 52–59, from use solely for broadcast services to Fixed, Mobile, and Broadcast services. Second, the Notice proposes to adopt certain service, licensing, and competitive bidding rules for the 698–746 MHz band.

130. The Commission proposes to reallocate the entire 48 megahertz of spectrum in the 698–746 MHz band to the fixed and mobile services, and retain the existing broadcast allocation. The Commission also seeks comment on whether the band should also be allocated for satellite services.

131. The Commission also proposes to license the 698–746 MHz commercial band under a flexible framework established in part 27 of the Commission's rules. It is expected that provisions of part 27 will be modified to reflect the particular characteristics and circumstances of services offered through the use of spectrum on these bands. Depending on the extent and nature of provisions in the service rules that enable broadcast services, these modifications may also reference or incorporate rules in other parts of the Commission's Rules, such as part 73 governing broadcast services. The Commission believes that this flexible approach will encourage new and innovative services and technologies in this band without significantly limiting the range of potential uses for this spectrum.

132. The Commission proposes to apply the same small business definitions here that the Commission adopted for the Upper 700 MHz Band. In particular, the Commission proposes to define a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. The Notice reflects the Commission's belief that the services that will be deployed in this band will have similar capital requirements to the commercial services in the Upper 700 MHz Band, and thus proposes to apply the same small business definitions. The Commission also observes that new licensees both in this band and the Upper 700 MHz Band may be presented with similar issues and costs, including those involved in relocating incumbents and developing markets, technologies, and services. The Commission also seeks alternative standards proposals, and specifically seeks comment on whether to adopt an additional definition for entities with average annual gross revenues for the three preceding years of not more than $3 million.

133. Among the principal objectives in this proceeding are: (1) to license these commercial spectrum blocks through competitive bidding, as directed by the Balanced Budget Act of 1997; (2) to accommodate the introduction of new uses of spectrum and the enhancement of existing uses; (3) to implement the section 303(y) requirement that flexible use allocations not create harmful interference or discourage investment; (4) to facilitate the awarding of licenses to entities that value them the most. The Commission seeks to develop a regulatory plan for these commercial spectrum blocks that will allow for efficient licensing and intensive use of the band, eliminate unnecessary regulatory burdens, enhance the competitive potential of the band, and provide a wide variety of radio services to the public.

2. Legal Basis for Proposed Rules

134. This action is authorized under sections 1, 2, 4(i), 7, 10, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 316, 319, 324, 331, 332, 333, 336, 337, 614 and 615 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 202, 208, 214, 301, 302a, 303, 307, 308, 309, 310, 311, 316, 319, 324, 331, 332, 333, 336, 337, 534, 535.

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

135. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.[68] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction'' under section 3 of the Small Business Act.[69] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[70] Under the Small Business Act, a ''small business concern'' is one which:

[64] *See generally* 47 CFR 1.1202, 1.1206.

[65] 5 U.S.C. 603.

[66] *See* U.S.C. 603(a).

[67] *See* Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251 (1997).

[68] *See* 5 U.S.C. 604(a)(3).

[69] *See id.* 601(6).

[70] *See id.* 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definitions(s) in the **Federal Register**.

(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.[71] According to SBA reporting data, there were approximately 4.44 million small business firms nationwide in 1992.[72] A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''[73] Nationwide, as of 1992, there were approximately 275,801 small organizations.[74] ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.''[75] As of 1992, there were approximately 85,006 local governments in the United States.[76] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.[77] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimates that 81,600 (96 percent) are small entities. Below, the Commission further describes and estimates the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

136. The proposals in the Notice affect applicants who wish to provide services in the 698–746 MHz band. The Commission proposes to apply the same small business definitions here that the Commission adopted for the Upper 700 MHz Band. In particular, the Commission proposes to define a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million.[78] The Notice reflects the Commission's belief that the services that will be deployed in this band will have similar capital requirements to the commercial services in the Upper 700 MHz Band, and thus proposes to apply the same small business definitions. The Commission also observes that new licensees both in this band and the Upper 700 MHz Band may be presented with similar issues and costs, including those involved in relocating incumbents and developing markets, technologies, and services. The Commission also seeks alternative standards proposals, which consider the impact of the band plan on small business size standards. The Commission specifically seeks comment on whether to adopt an additional definition for entities with average annual gross revenues for the three preceding years of not more than $3 million.

137. The Commission used these same small business size definitions for Blocks C and F broadband PCS licensees.[79] This regulation defining ''small business'' and ''very small business'' in the context of broadband PCS auctions has been approved by the SBA, *see Competitive Bidding Fifth Report and Order,* 59 FR 37566, July 22, 1994. The Commission has also adopted this same definition for 746–764 and 776–794 MHz applicants.[80]

138. The Commission, however, has not yet determined or proposed how many licenses will be awarded, nor will it know how many entities will seek small business or very small business status until the auction process begins. Even after that, the Commission will not know how many licensees will partition their license areas or disaggregate their spectrum blocks, if partitioning and disaggregation are allowed. In view of the lack of knowledge of the entities which will seek licenses in the 698–746 MHz band, the Commission therefore assumes that, for purposes of the evaluations and conclusions in the IRFA, all of the prospective licenses are small entities, as that term is defined by the SBA or the proposed definitions for these bands.

139. Wireless services. The policies and rules proposed in the Notice would affect all small entities that seek to acquire licenses in wireless services in the Lower 700 MHz Band currently used for television broadcasts on Channels 52–58, or are incumbent television broadcasters on Channels 52–58. The Commission proposes to use the small and very small business size standard adopted in the PCS proceeding.[81] No channelization plan or licensing plan has been proposed or adopted for the Lower 700 MHz Band. Therefore, no reasonable estimate can be made at this time of the potential number of small entities that might become licensees in the Lower 700 MHz Band.

140. Television Broadcast. The SBA defines a television broadcasting station as a small business where it is independently owned and operated, is not dominant in its field of operation, and has no more than $10.5 million in annual receipts.[82] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[83] Included in this industry are commercial, religious, educational, and other television stations.[84] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[85] There were 1,509 television stations operating in the nation in 1992, of which 1,155 produced less than $10.0 million in revenue (76.5 percent)[86] As of May 31, 1998, official Commission records indicate that 1,579 full power television stations, 2,089 low power television stations, and 4,924 television translator stations were licensed.[87] Using the percentage of television broadcasting licensees that were small entities in 1992 (76.5 percent), the Commission concludes that there are approximately 1,208 full power television stations that are small entities.

141. The rules may affect approximately 1,663 television stations, approximately 1,281 of which are considered small businesses.[88] The

[71] *See* 15 U.S.C. 632.

[72] *See* 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[73] *See* 5 U.S.C. 601(4).

[74] *See* 1992 Economic Census, U.S. Bureau of the Census, Table 6.

[75] *See* 5 U.S.C. 601(5).

[76] *See* U.S. Dept. of Commerce, Bureau of the Census, ''1992 Census of Governments.''

[77] *Id.*

[78] *See* 47 CFR 27.502(a)(1)–(2). These definitions are consistent with the Commission's approach in the broadband PCS services. *See* 47 CFR 24.720(b).

[79] *See* 47 CFR 24.720(b).

[80] *See* 47 CFR 27.210(b)(1)–(2).

[81] The Commission notes that the SBA generic size standard applicable to Radiotelephone (Wireless) companies provides that a small entity is a radiotelephone company employing no more than 1,500 persons. *See* 13 CFR 121.201 (NAICS code 513322). According to the Bureau of the Census, only 12 radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. *See* 1992 Census, Series UC92–S–I, at Table 5 (SIC code 4812). Therefore, even if all 12 of these firms were wireless companies, nearly all wireless carriers were small businesses under the SBA's definition.

[82] *See* 13 CFR 121.201 (NAICS code 51312).

[83] Economics and Statistics Administraiton, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Estabslihment and Firm Size, Series UC92–S–1, Appendix A–9 (1995).

[84] *Id.*

[85] *Id.*

[86] FCC news Release No. 31327, Jan. 13, 1993: Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, Appendix A–9. The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[87] FCC News Release, June 19, 1998.

[88] We use the 77 percent figure of TV stations operating at less than $10 million for 1992 and

Continued

proposed rules will affect some 12,717 radio stations, approximately 12,209 of which are small businesses.[89] These estimates may overstate the number of small entities because the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. There are also 2,366 LPTV stations.[90] Given the nature of this service, the Commission will presume that all LPTV licensees qualify as small entities under the SBA definition.

142. Auxiliary or Special Broadcast. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable SBA definition is that noted previously, under the SBA rules applicable to television broadcasting stations.[91] The Commission estimates that there are approximately 2,700 translators and boosters. The FCC does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. The Commission believes that most, if not all, of these auxiliary facilities could be classified as small businesses if viewed apart from any associated broadcasters. The Commission also recognizes that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business ($10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a ''small business concern'' because they are not independently owned and operated.[92]

143. The Commission invites comment on this analysis.

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

144. Entities interested in acquiring initial licenses to use spectrum in the 698–746 MHz band will be required to submit short form applications to participate in an auction and high bidders will be required to apply for their individual licenses. The proposals under consideration in this item also include requiring commercial licenses to make showings that they are in compliance with construction requirements, file applications for license renewals, and make certain other filings as required by the Communications Act and Commission regulations. In addition to the general licensing requirements of part 27 of the Commission's Rules, other parts may be applicable to commercial licensees, depending on the nature of service provided. For example, commercial licensees proposing to provide broadcast services on these bands may be required to comply with all or part of the broadcast-specific regulations in part 73 of the Commission's Rules. The Commission requests comment on how these requirements can be modified to reduce the burden on small entities and still meet the objectives of the proceeding.

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

145. 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.[93]

146. The Commission seeks comment on a number of proposals and alternatives regarding the reallocation of, and service rules for, the 698–746 MHz band. The Commission seeks to adopt rules that will reduce regulatory burdens, promote innovative services and encourage flexible use of this spectrum. It opens up economic opportunities to a variety of spectrum users, including small businesses. The Commission considers various proposals and alternatives partly because the Notice seeks to minimize, to the extent possible, the economic impact on small businesses.

147. The Commission proposes to reallocate the entire 48 megahertz of spectrum in the 698–746 MHz band to the fixed and mobile services, and to retain the existing broadcast allocation. The Commission tentatively concludes that service rules for this band should implement flexible use for the full range of proposed allocated services consistent with necessary interference requirements. The Commission seeks comment on how this approach will impact small entities.

148. The Commission seeks comment on various alternative licensing and service rules. The Commission seeks comment on a number of issues relating to how the Commission should craft service rules for this spectrum, that could have an impact on small entities. With respect to the size of spectrum blocks for licensees, the Commission seeks comment on whether to license the spectrum as a single 48 megahertz block or as two or more blocks, and how the size of spectrum blocks would impact small entities. With respect to service areas, the Commission proposes a geographic area approach and seek comment on the appropriate size of service areas. The Commission asks for comment on whether smaller geographic areas would better serve the needs of small entities. The Commission proposes to permit geographic partitioning and spectrum disaggregation, which promotes efficient spectrum use and economic opportunity for small business entities. The Commission also seeks comment on whether to permit licensees to lease their licensed spectrum usage rights. Spectrum leasing could benefit small businesses because many different types of spectrum users (including small businesses) would be permitted to satisfy their spectrum needs without having to acquire a license or go through the Commission's procedures for assigning or transferring control of a license or a partial license through partitioning, disaggregation, or partial assignment. With respect to spectrum aggregation, the Commission seeks comment on whether to abstain from counting the 698–746 MHz band against the Commercial Mobile Radio Services (''CMRS'') spectrum cap, and how this would impact the marketplace, which includes the impact on small entities.

149. The Commission proposes the small business definitions for bidders in auctions of licenses in the counting the 698–746 MHz band: a ''small business''

apply it to the 2000 total of 1,663 TV stations to arrive at 1,281 stations categorized as small businesses.

[89] We use the 96% figure of radio station establsihments with less than $5 million revenue from data presented in the year 2000 estimate (FCC News Release, September 30, 2000) and apply it to the 12,717 individual station count to arrive at 12,209 individual stations as small businesses.

[90] FCC News Release, ''Broadcast Station Totals as of September 30, 2000.''

[91] 13 CFR 121.201 (NAICS code 51312).

[92] 15 U.S.C. 632.

[93] 5 U.S.C. 603(c).

would be defined as an entity with average annual gross revenues for the three preceding years not exceeding $40 million, and a ''very small business'' would be defined as an entity with average annual gross revenues for the three preceding years not exceeding $15 million. As discussed previously, these definitions are consistent with the definitions the Commission applied to broadband PCS and the Upper 700 MHz Band. The Commission has also sought comment on whether alternative approaches may be appropriate in light of the particular characteristics of this band. For example, the Commission seeks comment on whether to adopt an additional definition for entities with average annual gross revenues for the three preceding years of not more than $3 million. The Commission also proposes to provide qualifying ''small businesses'' that participate in an auction with a bidding credit of 15%, and ''very small businesses'' with a 25% bidding credit. The Commission has previously found that bidding credits provide adequate opportunities for small businesses of varying sizes to participate in spectrum auctions. The Commission also seeks comment on whether, if the Commission adopts a third small business definition for entities with average annual gross revenues of not more than $3 million for the past three years, the 35% bidding credit set out in § 1.2110(f)(2)(i) should be made available to such entities. In addition, small business may combine any additional tribal lands bidding credits pursuant to § 1.2110(f)(3) of the rules with the proposed small business bidding credits.

150. The regulatory burdens contained in the Notice, such as filing applications on appropriate forms, are necessary in order to ensure that the public receives the benefits of innovative new services, or enhanced existing services, in a prompt and efficient manner. The Commission will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities. The Commission seeks comment on significant alternatives that commenters believe should be adopted.

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

151. None.

C. Initial Paperwork Reduction Analysis

152. The Notice may contain a proposed information collection. As part of the continuing effort to reduce paperwork burdens, the Notice invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this Notice, as required by the Paperwork Reduction Act of 1995.[94] Public and agency comments are due at the same time as other comments on this Notice; OMB comments are due June 12, 2001. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

153. Written comments by the public on the proposed information collections are due May 14, 2001. Written comments must be submitted by the OMB on the proposed and/or modified information collections on or before June 12, 2001. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Edward C. Springer, OMB Desk Officer, 10236 New Executive Office Building, 725 17th Street, NW., Washington, DC 20503 or via the Internet to Edward.Springer@omb.eop.gov.

D. Comment Period and Procedures

154. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules,[95] interested parties may file comments on this Notice on or before May 14, 2001 and reply comments on or before June 4, 2001. Comments and reply comments should be filed in GN Docket No. 01–74, and may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies, *see Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

155. 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. However, if multiple docket or rulemaking numbers appear in the caption of this proceeding, commenters must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by e-mail via the Internet. To obtain filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message: ''get form <ythe e-mail address>.'' A sample form and directions will be sent in reply.

156. Parties who choose to file by paper must file an original and the copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. If parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW-A325, Washington, DC 20554. Furthermore, parties are requested to provide courtesy copies for the following Commission staff: (1) Lisa Gaisford, Office of Engineering and Technology, Federal Communications Commission, 445 12th Street, SW., Room. 7–C115, Washington, DC 20554; and (2) G. William Stafford, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room. 4–B455, Washington, DC 20554. One copy of each filing (together with a diskette copy, as indicated below) should also be sent to the Commission's copy contractor, International Transcription Service, Inc., (ITS, Inc.), 1231 20th Street, NW., Washington, DC 20036.

157. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be attached to the original paper filing submitted to the Office of the Secretary. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft™ Word 97 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only''

[94] Public Law 104–13.

[95] 47 CFR 1.415, 1.419.

mode. The diskette should be clearly labeled with the commenter's name, proceeding, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters should send diskette copies to the Commission's copy contractor, ITS, Inc., 1231 20th Street, NW., Washington, DC 20036.

158. The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, and on the Commission's Internet Home Page: *http://www.fcc.gov*. Copies of comments and reply comments are also available through the Commission's duplicating contractor: ITS, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

E. Further Information

159. For further information concerning this rulemaking proceeding, contact the following for: Allocation Issues: Lisa Gaisford at (202) 418–7280, Office of Engineering and Technology, Federal Communications Commission, Washington, DC 20554; or via the Internet to lgaisfor@fcc.gov Service Rules Issues: G. William Stafford at (202) 418–0563, Wireless Telecommunications Bureau, Federal Communications Commission, Washington, DC 20554; or via the Internet to wstaffor@fcc.gov.

V. Ordering Clauses

160. Pursuant to sections 1, 2, 4(i), 7, 10, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 316, 319, 324, 331, 332, 333, 336, 337, 614 and 615 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 202, 208, 214, 301, 302a, 303, 307, 308, 309, 310, 311, 316, 319, 324, 331, 332, 333, 336, 337, 534, 535, that this Notice of Proposed Rulemaking is hereby *Adopted*.

161. *Notice is hereby given* of the proposed regulatory changes described in this Notice, and that comment is sought on these proposals.

162. The Commission's Consumer Information Bureau, Reference Information Center, *Shall Send* a copy of this Notice, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 2

Reporting and recordkeeping requirements, Telecommunications, Television.

47 CFR Part 27

Communications common carriers, Television.

47 CFR Part 73

Communications equipment, Reporting and recordkeeping requirements, Television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Proposed Rule Changes

In addition to the proposed changes to 47 CFR parts 27 and 73 discussed in the preamble, part 2 of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Amend § 2.106 as follows:

a. Revise page 37 of the Table.

b. In the International Footnotes under heading I., revise footnotes S5.293, S5.296, and S5.297.

c. In the list of Non-Federal Government (NG) Footnotes, revise footnotes NG149 and NG159.

The revisions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

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International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
470-790 BROADCASTING	470-512 BROADCASTING Fixed Mobile S5.292 S5.293	470-585 FIXED MOBILE BROADCASTING S5.291 S5.298	470-608	470-512 BROADCASTING NG128 NG149 FIXED NG127 LAND MOBILE NG66 NG114	Public Mobile (22) Broadcast Radio (TV) (73) Auxiliary Broadcasting (74) Private Land Mobile (90)
	512-608 BROADCASTING S5.297	585-610 FIXED MOBILE BROADCASTING RADIONAVIGATION S5.149 S5.305 S5.306 S5.307		512-608 BROADCASTING NG128 NG149	Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)
	608-614 RADIO ASTRONOMY Mobile-satellite except aeronautical mobile-satellite (Earth-to-space)	610-890 FIXED MOBILE S5.317A BROADCASTING	608-614 RADIO ASTRONOMY US74 LAND MOBILE US350 US246		Personal (95)
	614-806 BROADCASTING Fixed Mobile		614-890	614-698 BROADCASTING NG128 NG149	Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)
				698-746 BROADCASTING NG128 FIXED MOBILE NG159	Wireless Communications (27) Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)

* * * * *

International Footnotes

* * * * *

I. New ''S'' Numbering Scheme

* * * * *

S5.293 *Different category of service:* in Canada, Chile, Colombia, Cuba, the United States, Guyana, Honduras, Jamaica, Mexico, Panama and Peru, the allocation of the bands 470–512 MHz and 614–806 MHz to the fixed and mobile services is on a primary basis (see No. S5.33), subject to agreement obtained under No. S9.21. In Argentina and Ecuador, the allocation of the band 470–512 MHz to the fixed and mobile services is on a primary basis (see No. S5.33), subject to agreement obtained under No. S9.21.

* * * * *

S5.296 *Additional allocation:* in Germany, Austria, Belgium, Cyprus, Denmark, Spain, Finland, France, Ireland, Israel, Italy, Libya, Lithuania, Malta, Morocco, Monaco, Norway, the Netherlands, Portugal, Syria, the United Kingdom, Sweden, Switzerland, Swaziland and Tunisia, the band 470–790 MHz is also allocated on a secondary basis to the land mobile service, intended for applications ancillary to broadcasting. Stations of the land mobile service in the countries listed in this footnote shall not cause harmful interference to existing or planned stations operating in accordance with the Table in countries other than those listed in this footnote.

S5.297 *Additional allocation:* in Costa Rica, Cuba, El Salvador, the United States, Guatemala, Guyana, Honduras, Jamaica and Mexico, the band 512–608 MHz is also allocated to the fixed and mobile services on a primary basis, subject to agreement obtained under No. S9.21.

* * * * *

Non-Federal Government (NG) Footnotes

* * * * *

NG149 The frequency bands 54–72 MHz, 76–88 MHz, 174–216 MHz, 470–512 MHz, 512–608 MHz, and 614–698 MHz are also allocated to the fixed service to permit subscription television operations in accordance with Part 73 of the rules.

* * * * *

NG159 Full power analog television stations licensed and new digital television (DTV) broadcasting operations in the band 698–806 MHz shall be entitled to protection from harmful interference until the end of the DTV transition period. Low power television and television translators in the band 746–806 MHz must cease operations in the band at the end of the DTV transition period. Low power television and television translators in the band 698–746 MHz are secondary to all other operations in the band 698–746 MHz.

* * * * *

[FR Doc. 01–9039 Filed 4–12–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 537

[Docket No. NHTSA–98–3965, Notice 01]

RIN 2127–AG00

Automotive Fuel Economy; Semi-Annual Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Termination of proposed rulemaking.

SUMMARY: This document terminates a rulemaking proceeding to amend the required form and content of the semi-annual reports that automobile manufacturers are required to submit under the Federal automotive fuel economy program. The purpose of the proposal was to simplify the existing reporting requirements and thereby reduce the paperwork burdens imposed on manufacturers, without inhibiting the agency's ability to comply with its statutory requirements. The agency undertook this action as part of an effort to make its regulations easier to understand and apply. However, the agency has determined that the changes it proposed would increase, rather than reduce, the regulatory burdens of the manufacturers (e.g., computer reprogramming costs) and the administrative tasks of NHTSA, and the Environmental Protection Agency (EPA). Accordingly, we are terminating the rulemaking proceeding.

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Ms. Henrietta L. Spinner, Office of Planning and Consumer Programs, Safety Performance Standards, NPS–32, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4802.

For legal issues: Otto Matheke, Office of the Chief Counsel, NCC–20, telephone (202) 366–5253, facsimile (202) 366–3820.

SUPPLEMENTARY INFORMATION: NHTSA undertook a review of its regulations and directives and identified rules that it could propose to eliminate as unnecessary or to amend to improve their comprehensibility, usefulness, and appropriateness. NHTSA identified the Semi-Annual Reports for Automotive Fuel Economy as a candidate for review and, as noted below, issued a proposal to amend the semi-annual report requirements.

Background

Section 32907 of title 49, United States Code (49 U.S.C. 32907) requires automobile manufacturers to submit semi-annual reports to NHTSA. These reports indicate whether the manufacturer will comply with applicable fuel economy standards for a model year, state the actions that the manufacturer has taken or intends to take to comply with the standard, and provide other information required by regulation (49 U.S.C. 32907(a)(1)). Section 32907(a)(2) specifies that two reports must be filed for each model year (49 U.S.C. 32907(a)(2)). One report is due before the beginning of each model year, and the second is due within 30 days of the 180th day of the model year. In the event that a manufacturer determines, after having previously reported that it would comply with the applicable standard for that model year, that the actions it has taken in an effort to comply with an applicable fuel economy standard are not sufficient to ensure compliance with that standard, the manufacturer is required by section 32907(a)(3) (49 U.S.C. 32907(a)(3)) to report additional actions that the manufacturer intends to take to comply and whether those actions will be sufficient to ensure compliance. However, if a manufacturer is subject to an alternative fuel economy standard under Section 32902(d)(2) (49 U.S.C. 32902(d)(2)), it is not required to submit any of the foregoing reports.

NHTSA published a final rule in the **Federal Register** on December 12, 1977 (42 FR 62374), implementing the provisions of Section 32907 and adding several requirements to those expressly contemplated by that section's provisions. In the final rule, the agency observed that since manufacturers have different annual production periods, there was no single model year designation applicable to all companies. Accordingly, NHTSA determined to use the calendar year to specify the timing of the section 32907 reports, making the pre-model year report for a model year due in December (49 CFR 537.5(b)(1)) (e.g., the pre-model year report for the 2001 model year was due in December 2000) and the mid-model year report for that model year due in July (49 CFR 537.5(b)(2)) (e.g., the mid-model year report for the 2001 model year is due in July 2001). For the major domestic manufacturers, this means that the pre-model year report is submitted during the early part of their production period and the mid-model year report is due near the end of that period. The final rule also established requirements for the content of the reports (49 CFR 537.6,