

Authority: Sec. 1006(b)(1), 42 U.S.C. 2996e(b)(1); sec. 1006(b)(3), 42 U.S.C. 2996e(b)(3); sec. 1007(a)(1), 42 U.S.C. 2996f(a)(1).

§ 1621.1 Purpose.

The part is intended to help ensure that recipients provide the highest quality legal assistance to clients as required by the LSC Act and are accountable to clients and applicants for legal assistance by requiring recipients to establish grievance procedures to process complaints by applicants about the denial of legal assistance and clients about the manner or quality of legal assistance provided.

§ 1621.2 Grievance Committee.

The governing body of a recipient shall establish a grievance committee or committees, composed of lawyer and client members of the governing body, in approximately the same proportion in which they are on the governing body.

§ 1621.3 Complaints by applicants about denial of legal assistance.

A recipient shall establish a simple procedure for review of decisions to deny legal assistance to applicants. The procedure shall, at a minimum, provide: A method for the recipient to provide applicants with adequate notice as practicable of the complaint procedures; information about how to make a complaint; and an opportunity for applicants to confer with Executive Director or the Executive Director's designee, and, to the extent practicable, with a representative of the governing body. The procedure must be designed to foster effective communications between the recipient and complaining applicants.

§ 1621.4 Complaints by clients about manner or quality of legal assistance.

(a) A recipient shall establish procedures for the review of complaints by clients about the manner or quality of legal assistance that has been rendered by the recipient to the client.

(b) The procedures shall be designed to foster effective communications between the recipient and the complaining client and, at a minimum, provide:

(1) A method for providing a client, at the time the person is accepted as a client or as soon thereafter as practicable, with adequate notice of the complaint procedures and how to make a complaint;

(2) For prompt consideration of each complaint by the Executive Director of the recipient, or the Executive Director's designee,

(3) An opportunity for the complainant, if the Executive Director

or the Executive Director's designee is unable to resolve the matter, to submit an oral and written statement to a grievance committee established by the governing body as required by section 1621.2 of this part. The procedures shall also: Provide that the opportunity to submit an oral statement may be accomplished in person, by teleconference, or through some other reasonable alternative, permit a complainant to be accompanied by another person who may speak on that complainant's behalf; and provide that, upon request of the complainant, the recipient shall transcribe a brief written statement, dictated by the complainant for inclusion in the recipient's complaint file.

(c) Consistent with its responsibilities under 45 CFR 1614.3(d)(3), a recipient shall establish a procedure to review complaints by clients about the manner or quality of legal assistance that has been rendered by a private attorney pursuant to the recipient's private attorney involvement program under 45 CFR part 1614.

(d) A file containing every complaint and a statement of its disposition shall be preserved for examination by LSC. The file shall include any written statement submitted by the complainant or transcribed by the recipient from a complainant's oral statement.

Dated: August 14, 2006.

Victor M. Fortunato,

Vice President and General Counsel.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 6, 7, 9, 13, 20, 22, 24, 27, 68, 73, 74, 78, 80, 87, 90, 95, 97, and 101

[WT Docket No. 06-150, CC Docket No. 94-102, WT Docket No. 01-309; FCC 06-114]

Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; Revision of the Commission's Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems; Hearing Aid-Compatible Telephones

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) undertakes an examination of possible changes to service rules that primarily govern wireless licenses in the 698-746, 747-

762, and 777-792 MHz bands (700 MHz Band) currently occupied by television (TV) broadcasters and being made available for new services as a result of the digital television (DTV) transition. Because of statutory changes, industry developments, and the fact more than four years have passed since the Commission adopted its initial band plans and service rules governing these licenses, the Commission is revisiting various of its earlier rule decisions regarding these 700 MHz Band licenses. The Commission also is requesting comment on: the tentative conclusion that services provided by licensees in the 700 MHz Band, and in other bands subject to Miscellaneous Wireless Communications Services rules including the Advanced Wireless Services in the 1710-1755 MHz and 2110-2155 MHz bands (AWS-1), should be subject to 911 and enhanced 911 (911/E911) and hearing aid-compatibility requirements to the same extent that such services would be covered if provided in other bands; and how to modify Commission rules to ensure that they include all similar wireless services.

DATES: Comments due on or before September 20, 2006. Reply comments are due on or before October 20, 2006.

ADDRESSES: You may submit comments, identified by WT Docket No. 06-150, CC Docket No. 94-102, WT Docket No. 01-309, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- *E-mail:* ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- *Mail:* Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

- *Hand Delivery/Courier:* 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

- *Accessible Formats:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) for filing comments either by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.fcc.gov/cgb/ecfs> including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

Michael Rowan, Special Counsel, Spectrum & Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Portals I, Room 6315, Washington, DC, 20554; and Bill Stafford, Special Counsel, Spectrum & Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Portals I, Room 6221, Washington, DC, 20554.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking, Fourth Further Notice of Proposed Rulemaking, and Second Further Notice of Proposed Rulemaking (NPRM)* in WT Docket No. 06–150, CC Docket No. 94–102, and WT Docket No. 01–309 released August 10, 2006. The complete text of the *NPRM* is available for public inspection and copying from 8 a.m. to 4:30 p.m.

Monday through Thursday or from 8 a.m. to 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *NPRM* may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site: <http://www.BCPIWEB.com>. When ordering documents from BCPI please provide the appropriate FCC document number, FCC 06–114. The *NPRM* is also available on the Internet at the Commission's Web site through its Electronic Document Management System (EDOCs): http://hraunfoss.fcc.gov/edocs_public/SilverStream/Pages/edocs.html.

Initial Paperwork Reduction Act of 1995 Analysis: This document contains proposed new or modified information collection requirements. 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 requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due on or before September 20, 2006. 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. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198 (see 44 U.S.C. 3506(c)(4)), the Commission seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.” The Commission notes, however, that section 213 of the Consolidated Appropriations Act 2000, Public Law 106–113, provides that rules governing frequencies in the 746–806 MHz Band become effective immediately upon publication in the **Federal Register** without regard to certain sections of the Paperwork Reduction Act. The Commission is therefore not inviting comment on any information collections that concern frequencies in the 746–806 MHz Band.

I. Introduction

1. In this *NPRM*, the Commission seeks comment on possible changes to the part 27 service rules governing wireless licenses in the 700 MHz Band currently occupied by TV broadcasters and being made available for new services as a result of the DTV transition. More than four years have passed since the Commission adopted its initial band plans and service rules governing these licenses. During that time, Congress enacted significant statutory changes to the DTV transition in the Digital Television and Public Safety Act of 2005 (DTV Act). The DTV Act could affect the Commission's existing regulatory approach to the 698–806 MHz Band, which had envisioned “early” recovery of TV Channels 60–69 (Upper 700 MHz Band), but had anticipated recovery of TV Channels 52–59 (Lower 700 MHz Band) after the DTV transition was complete. In addition, during the past four years, U.S. consumers have been introduced to a variety of innovative wireless services and technologies at the same time that the number of subscribers for mobile telephone services has increased by approximately 50 percent. The Commission therefore is revisiting various of its earlier decisions regarding these 700 MHz Band licenses.

2. This *NPRM* addresses many of the rules applicable to certain spectrum in the Upper 700 MHz Band (Television Channels 60–69 in the 746–806 MHz band) and the Lower 700 MHz Band (TV Channels 52–59 in the 698–746 MHz

band). This includes licenses yet to be auctioned in 30 megahertz of spectrum in the Upper 700 MHz Band and in 30 megahertz of spectrum in the Lower 700 MHz Band, as well as licenses that already have been auctioned in 18 megahertz in the Lower 700 MHz Band. Rules applicable to spectrum currently occupied by TV Channels 63–64 (764–776 MHz band) and 68–69 (794–806 MHz band) are not considered in this *NPRM* because that spectrum has been allocated to public safety (and thus is not included within the term of the 700 MHz Band as defined in this *NPRM*). Also, the rules applicable to the Guard Band spectrum at 746–747/776–777 MHz and 762–764/792–794 MHz (which also are not included within the definition of the 700 MHz Band) are not considered in this *NPRM* except insofar as it is a part 27 service to which 911 and enhanced 911 and hearing aid compatibility rules may potentially be applied. Finally, in this *NPRM* the Commission does not seek comment on the allocation or service rules for broadcasting or other legacy operations in these bands.

II. Discussion

3. Given that seven years have passed since the Commission first initiated a proceeding on the 700 MHz Band, the Commission seeks to evaluate whether changes to the existing service rules pertaining to 700 MHz Band licenses—including 48 megahertz of Lower 700 MHz Band spectrum (Blocks A–E), and the 30 megahertz of Upper 700 MHz Band spectrum (Blocks C and D)—may ultimately permit more effective use of this spectrum to better meet the needs of today's consumers.

A. Size of Service Areas

1. Need for Additional Access to Spectrum Licensed Over Small Service Areas

4. The Commission seeks comment on whether, in order to further enhance access to spectrum in rural areas, the service areas sizes of the licenses to be auctioned should be smaller than the EAGs provided for under existing rules. The Commission seeks comment on the extent to which the assignment of spectrum over smaller service areas could lead to increased and better service in these areas. In addition, parties should comment on possible transaction costs associated with the assignment of additional spectrum over small service areas on those service providers with business plans to provide service to rural areas as part of regional or national footprints. The Commission seeks comment on the

factors that the Commission should use in balancing the needs of small and rural carriers as well as large and national carriers as they seek to provide service to their rural customers.

5. When addressing whether to license additional 700 MHz Band spectrum over small service areas, commenting parties should address the relationship between their ability to obtain licenses at auction and their ultimate deployment of service in rural areas. For example, the Commission seeks comment on whether certain areas may continue to have high costs of providing service that are unrelated to spectrum acquisition costs. The Commission seeks comment on whether certain areas may continue to have high costs of providing service that are unrelated to spectrum acquisition costs and whether or not there is a point at which the advantages of assigning additional small-area licenses diminish relative to the disadvantages.

6. In assessing any particular need and/or amount of spectrum, commenters should consider the 700 MHz Band's potential suitability for more rapid deployment of mobile and other advanced services in high-cost areas given its propagation and other technical characteristics. The Commission seeks comment on whether the benefits due to the propagation characteristics of this spectrum make it appropriate to assign an additional amount of 700 MHz Band spectrum over small areas, or whether other considerations support licensing the bands over EAGs or other large areas.

7. As compared to other bands, the Commission seeks comment on the potential of 700 MHz Band spectrum to support broadband and other new applications. Commenters should explain how much additional 700 MHz Band spectrum licensed over areas other than EAGs may be necessary to support spectrum-based broadband applications in rural areas.

8. The Commission seeks comment on the need for greater access to 700 MHz Band spectrum on a smaller-area basis. In 2005, the Commission increased the amount of AWS spectrum to be assigned over CMAs due to market developments and the support of several commenters, including parties representing small and larger carriers. Commenters should also consider the Commission's decision to assign 12 megahertz of 700 MHz Band spectrum over CMAs. To the extent the Commission decides not to assign additional 700 MHz spectrum over small areas, the Commission seeks comment on whether at some point in the future (e.g., five years, ten years, twenty years) consumer demand and

spectrum-intensive applications and technologies could exhaust the capacity of spectrum in rural areas that is currently assigned over CMAs.

2. Optimal Service Area Size(s) for Remaining Licenses

9. In the event the Commission decides that there is a need for license sizes other than EAGs for the 700 MHz Band licenses that have yet to be auctioned, the Commission must determine the appropriate initial service area size, or combination of sizes, for those licenses. For instance, the Commission could modify the current service area designations for the 700 MHz Band to include one or more license sizes other than EAGs, or a combination thereof, or keep in place the service areas currently reflected in its rules. The Commission therefore seeks comment on the license size or combination of license sizes that should be provided.

10. First, the Commission seeks general comment on the costs associated with the initial service area sizes the Commission adopts in the 700 MHz Band. The Commission recognizes that consumer needs and geographic coverage will change over time, and the Commission anticipates that there will be a need for providers to aggregate or disaggregate spectrum holdings as they address these evolving needs and market demands. Accordingly, the Commission seeks comment on the transaction costs associated with pre- and post-auction aggregation and disaggregation. Both large nationwide providers as well as small regional and rural providers may be able to make use of this spectrum, yet the optimal size of geographic service area is different for these two types of providers, and licenses for areas that are larger or smaller than desired will impose transaction costs on those parties that wish to acquire them. Thus, the Commission considers the degree and likelihood of such costs as 700 MHz Band spectrum is licensed in the future, and the extent to which the transaction costs of aggregating, disaggregating, or partitioning spectrum are a significant concern for those parties that most highly value this spectrum. Parties should also address any costs resulting from the unwillingness to divide spectrum and service areas due to a lack of license marketability or other financial considerations.

11. In addition to seeking comment on the continued use of the EAGs in the band, which consist of six geographic service areas, the Commission seeks comment on whether to license the unauctioned spectrum, for example, by

using the twelve Regional Economic Area Groupings (REAGs), the 52 Major Economic Areas (MEAs), or some other large regional licensing area. To the extent the Commission adopts large geographic service areas for the 700 MHz Band other than EAGs, the Commission seeks comment on whether REAGs may have advantages over EAGs. On the other hand, the Commission requests comment on whether substituting REAGs for EAGs may have disadvantages.

12. If the Commission determines that smaller areas should be provided, it could license the spectrum or some part thereof on the basis of local areas, such as Metropolitan Statistical Areas (MSAs), Rural Service Areas (RSAs), or EAs. The Commission seeks comment on the use of smaller, local license areas based on these, or some other small area sizes. In particular, the Commission asks that commenters address the request by Rural Cellular Association (RCA), as supported by other parties, that the Commission assign additional CMA-sized licenses in the 700 MHz Band. Finally, the Commission seeks comment on whether a combination of different license sizes should be adopted and, if so, what combination should be reflected in its rules for the spectrum.

13. Notwithstanding the flexibility of use that permits 700 MHz Band spectrum to be used for any service consistent with the band's allocation, commenting parties should describe any anticipated 700 MHz Band service offerings that demonstrate a need for greater access to this spectrum on a specific geographic basis. Commenters should explain how certain service area sizes correspond to the business plans of potential licensees and thus avoid the transaction costs that could be associated with aggregation, disaggregation, or partitioning. Commenters should also identify the service area sizes that best suit the anticipated uses for 700 MHz Band spectrum. The Commission could assign all remaining spectrum in the 700 MHz Band using a combination of larger and smaller areas. Alternatively, it could employ medium-sized license areas (e.g., MEAs). In such a case, commenters should consider whether the use of medium-sized initial service areas would be less efficient than a combination of differently sized service areas, given that transaction costs would be potentially incurred by auction winners of both small and large service areas that may have to aggregate, partition, or disaggregate spectrum in order to meet their particular spectrum needs.

14. The Commission seeks comment on the type of services that commenters believe will be accommodated in the service areas they favor, the economic advantages of adopting their favored approach, and what sized service area would be most advantageous for the particular service. The Commission also seeks comment on whether changes related to developments in technology should affect the appropriate size of initial service areas. If there are different types of new technologies and services being created for these markets, commenters should address whether such developments support a certain service area size for portions of the 700 MHz Band.

15. In addressing the appropriate size(s) of service areas for 700 MHz Band licenses, the Commission seeks comment on any impact of using smaller service areas that cannot be used as building blocks to create larger service areas should the Commission adopt a combination of license area sizes for the unauctioned spectrum in the 700 MHz Band. Specifically, under a combination approach, the Commission seeks comment on whether it would be preferable to assign licenses over large and small areas that are based on the same geographic unit (*e.g.*, MEAs and EAs).

16. In the 700 MHz Band, the Gulf of Mexico was divided between two EAGs for EAG licensing, whereas it was designated as a separate area for CMA licensing. In the event that the Commission decides to revise its prior determinations regarding license sizes in the 700 MHz Band, the Commission seek comment on including the Gulf of Mexico as part of larger service areas, or whether the Commission should separately license one or more service areas to cover the Gulf of Mexico.

3. Spectrum Block(s) Suitable for Potential Reassignment

17. In the event that the Commission decides to provide for service area sizes other than EAGs in future 700 MHz Band auctions, the Commission seeks comment on which of the spectrum block(s) in the band that have not been auctioned should be re-designated to a different service area size or sizes. The Commission seeks comment, for example, on the Rural Telecommunications Group's (RTG) suggestion that the Commission provide CMA licensing in the Lower 700 MHz Band's Block B and in the Upper 700 MHz Band's Block C.

18. With respect to the blocks in the Upper 700 MHz Band, the Commission seeks comment on the use of CMA or other small service area licenses, and

which spectrum block or blocks in that band, if any, should be licensed on that basis. The Commission asks commenters to consider the presence of public safety systems, which, under Commission rules, receive special protection against harmful interference. For example, equipment operating in the Upper 700 MHz Band Blocks C and D must meet strict out-of-band emission (OOBE) limits to protect public safety operations. Due to the relatively small spectral separation between these blocks and the public safety spectrum, such equipment may have to employ enhanced filtering, which would likely add to the cost of base and mobile equipment. On the other hand, there may be certain spectrum blocks within the Upper 700 MHz Band that, because they are farther removed from the public safety spectrum, will require less costly equipment than equipment operating in spectrum blocks closer to the public safety bands. Thus, the Commission seeks comment on the impact of equipment costs in general if the Commission decides to revise the size of service area for Upper 700 MHz Band spectrum. The Commission seeks comment on which spectrum blocks in the current Upper 700 MHz band plan (*i.e.*, Blocks C or D), or in any revised band plan, would incur the greatest and least equipment costs and the extent to which such additional costs could affect the provision of service.

19. Given these possible considerations relating to equipment costs, the Commission also seeks comment on whether any new CMA or other small service area licenses should be located in the Lower 700 MHz Band, rather than the Upper 700 MHz Band, if the Commission decides to revise existing band plans to provide for small area licenses. In the event that additional equipment cost issues might make it preferable to locate new small-area licenses in the Lower 700 MHz Band, the Commission seeks comment on whether its 6 megahertz spectrum blocks would efficiently facilitate the implementation of 1xEV-DO and Wideband Code Division Multiple Access (CDMA) technologies—the third-generation (3G) technologies of CDMA and GSM networks—in the Lower 700 MHz Band. The Commission also seeks comment on whether 802.16 (WiMax), a possible alternative to 1xEV-DO and Wideband CDMA technologies, would support a variety of bandwidths, including 6 megahertz, and whether WiMax potentially could be readily accommodated on Lower 700 MHz Band spectrum blocks. In addition, the Commission seeks comment on the

ability of 6 megahertz segments to accommodate high-speed data systems similar to the MediaFLO multi-media system being implemented by Qualcomm Inc. (Qualcomm) on Block D in the Lower 700 MHz Band.

20. In the event the Commission decides to locate additional CMA or other small service area licenses in the Lower 700 MHz Band, the Commission seeks comment on which spectrum blocks in that band should be licensed on that basis. The Commission asks that comments address whether any particular spectrum blocks in the Lower 700 MHz Band (*i.e.*, Blocks A, B, and/or E) would be better suited for small-area licensing than other blocks, and to state the reasons for supporting the use of any one or more of these spectrum blocks for this purpose.

21. Specifically, the Commission seeks comment on the impact of designating the unpaired 6 megahertz Block E in the Lower 700 MHz Band for small-area licensing. If 6 megahertz is sufficient to meet small and/or rural carriers' spectrum needs, commenters should address whether there are broadband technologies that can operate on unpaired spectrum such that the 6 megahertz of spectrum in Block E would be suitable for potential reassignment. On the other hand, the Commission seeks comment on what spectrum in the Lower 700 MHz Band should be licensed over CMAs or other small service areas if additional paired spectrum is determined to be necessary and/or appropriate for small service areas.

22. The Commission notes that if it locates a CMA-based license adjacent to an EAG (or other differently sized area) in the Lower or Upper 700 MHz Band, there may be an impact on aggregation, including on the level of transaction costs. Thus, the Commission seeks comment on whether aggregation may be more difficult and complicated to accomplish if spectrum blocks of differing geographic sizes are located adjacent to one another, and what effect those factors should have on its consideration of the current band plan.

23. The Commission also seeks comment on whether, and to what extent, there would be an impact on the need to provide protection to TV Channel 51 if the Commission were to provide for licensing areas that are smaller than EAGs in the adjacent Lower 700 MHz Band Block A.

B. Size of Spectrum Blocks

24. To the extent the Commission decides to auction and assign additional licenses over service area sizes other than the six EAGs, the Commission also

seeks comment on whether the Commission could better accommodate such assignments by reconfiguring or sub-dividing existing spectrum blocks in the band plans in the 700 MHz Band. The Commission seeks comment generally on whether the Commission should reconfigure the license blocks in the Upper 700 MHz Band, the Lower 700 MHz Band, or both. Although the Commission believes the Commission should retain the current band plan in the Lower 700 MHz Band, the Commission nevertheless seeks comment on potential changes to the size of the spectrum blocks in the Lower 700 MHz Band. The Commission also discusses the possibility of revising the size and pairing of licensed spectrum blocks in the Upper 700 MHz Band. In particular, the Commission seeks comment on dividing the 20-megahertz Block D license in the Upper 700 MHz Band into two or more license blocks. In addition, the Commission seeks comment on whether and how to make more licenses available to be potentially assigned on a geographic basis or bases smaller than EAGs, and on ways to provide licenses that may better reflect recent developments. Although the Commission seeks comment on this issue primarily with respect to unauctioned licenses, there are certain issues which the Commission seeks comment on that relate to already auctioned spectrum, *i.e.*, whether to change the size and location of the spectrum blocks in the Lower 700 MHz Band, and the use of a “two-sided auction.”

25. The Commission seeks comment on whether the spectrum blocks in the Lower 700 MHz Band should be maintained at their current 6 megahertz alignment and sizes. The spectrum comprising Lower 700 MHz Band Blocks C and D, consisting of 18 of the 48 megahertz in the Lower 700 MHz Band, has already been auctioned, and the Commission believes that the location of these auctioned blocks limits its ability to reconfigure the remaining spectrum blocks in the Lower 700 MHz Band. The Commission is seeking comment in this *NPRM* on the use of 5 megahertz blocks in the Upper 700 MHz Band. However, the use of 5 megahertz blocks in the Lower 700 MHz Band appears to be problematic. For example, considering only the 12 megahertz of spectrum located at 698–710 MHz (*i.e.*, Blocks A and B), if the Commission were to place two 5 megahertz blocks in this band, this would leave two megahertz of spectrum in the band that would have to be separately assigned. Also, because the 698–710 MHz band is

paired with the 728–740 MHz band, this circumstance would apply to the 728–740 MHz band as well. The Commission nevertheless seeks comment on whether the Commission should make any changes to the size and location of spectrum blocks in the Lower 700 MHz Band and, if so, what those changes should be.

26. With respect to the Upper 700 MHz Band, the Commission seeks comment on U.S. Cellular Corporation’s (USCC) proposal to divide the current 20 megahertz Block D into two separate 10 megahertz blocks. USCC proposes that one of the new 10 megahertz blocks be assigned over EAs, and the other new 10 megahertz block be assigned over EAGs. The Commission seeks comment on possibly increasing the overall number of licenses available in any given geographic area by dividing Upper 700 MHz Band Block D into two or more smaller-sized blocks, and thus provide one or more additional licenses.

27. The Commission seeks comment on whether the provision of an additional 10 megahertz paired block in the Upper 700 MHz Band (by dividing the current Block D into two such blocks) would facilitate the implementation of a wider variety of technologies in the band. A 10 megahertz paired block can readily accommodate Wideband CDMA and 1xEV-DO technologies, and dividing Block D into two such blocks would, therefore, provide an additional license that could employ one of these technologies. In addition, commenters should address whether 5 megahertz segments accommodate other systems that have recently been developed.

28. The Commission also seeks comment on whether to divide the current 20 megahertz paired Block D into more than two smaller paired blocks to better accommodate other new technologies. For example, systems based on 802.16 standards (WiMax) could potentially operate on a variety of bandwidths ranging from 1.25 to 20 megahertz, including a number of bandwidths that are 5 megahertz or smaller. Accordingly, the Commission seeks comment on whether a division of the 10 megahertz segments of paired Block D to create two or more smaller blocks—*e.g.*, 1.25, 1.75, and 7 megahertz blocks—might better accommodate this technology. The Commission also seeks comment on other possible block sizes—either larger or smaller than the current blocks sizes—that might be supported by other existing or potential technologies.

29. On the other hand, the Commission seeks comment on any disadvantages that may result from sub-

dividing Upper 700 MHz Band Block D into two or more blocks. Comments should address whether the two licenses in the Upper 700 MHz Band (along with the five total licenses in the Lower 700 MHz Band) are sufficient to help enhance competition among a wide variety of providers and applicants. The Commission asks that comments consider whether a 20 megahertz paired block licensed on, *e.g.*, CMAs, in the Upper 700 MHz Band would help enhance competition among a wider variety of providers and applicants.

30. The Commission also seeks comment on whether it should sub-divide Block D into two 10 megahertz paired blocks given that, in doing so, the overall spectrum efficiency of the band may be decreased. The Commission seeks comment as well on whether, if it sub-divides Block D into two blocks, it should necessarily divide the block into two equal-sized 10 megahertz block pairs. WiMax, for example, may be able to be accommodated on 5 megahertz blocks, but the WiMax Forum has certified the use of 3.5, 7, and 10 megahertz bandwidths for 802.16-based equipment. The Commission also seeks comment on the effect of changing the block sizes on the overall spectrum efficiency of the band based on other existing or potential technologies.

31. Finally, the Commission asks that commenters addressing proposals to reconfigure existing spectrum blocks in the 700 MHz Band also address existing and/or potential opportunities to aggregate new licenses and existing licenses. The Commission seeks comment on whether, for 700 MHz Band licenses, any changes to Commission competitive bidding rules are necessary or desirable in order to facilitate the efficient aggregation of new licenses, in light of the existing spectrum blocks for 700 MHz Band licenses and any spectrum blocks that may be proposed.

32. The Commission further notes that, following an auction, parties that wish to do so may aggregate spectrum covered by new 700 MHz Band licenses with spectrum covered by existing 700 MHz Band licenses available in the secondary market. The Commission seeks comment on whether any Commission action is necessary or desirable to facilitate the aggregation of new and existing 700 MHz Band licenses in the secondary market, in light of the existing and/or proposed 700 MHz Band spectrum blocks. If so, the Commission asks that commenters address whether any such steps require changes to existing Commission competitive bidding or secondary market rules.

33. Alternatively, the Commission could facilitate such aggregation of spectrum by enabling an auction in which licenses for currently unassigned spectrum as well as licenses for spectrum previously assigned in the 700 MHz Band could be offered for sale in a single auction, a mechanism sometimes referred to as a "two-sided auction." Such a "two-sided auction" could be implemented in several ways. As one example, the Commission might allow incumbent licensees to return their licenses to the Commission in exchange for a credit, which could be based on the prices of licenses for spectrum formerly associated with the returned licenses as determined in an auction. Alternatively, the Commission might allow existing licensees to offer their licenses in the auction, but relinquish the licenses in exchange for a credit only if prices (and related credit values) reached a certain level. A variation on this approach would be to allow incumbents to include their licenses in the auction inventory but "pay themselves" the winning bid if they chose to outbid other participants. In any of these alternatives, the Commission could provide that credits received in exchange for returned spectrum licenses would be transferable, and that bidders could use the credits to obtain other spectrum licenses in the same auction or another auction of spectrum licenses for the same or a different service. Consequently, incumbent licensees could exchange their current licenses for other spectrum licenses using credits, or transfer the credits to other bidders wishing to obtain licenses.

34. Commenters addressing actions the Commission might take to create a two-sided auction should address details of how the existing licenses could be incorporated into the auction, how the incumbent licensees could be compensated for "selling" a license, and whether any particular aspects of such an auction, either discussed in the *NPRM* or proposed by commenters, might exceed the Commission's competitive bidding authority, under either the Commission's current rules or the Communications Act. In particular, commenters should consider whether the use of credits, or other means of compensating incumbents for their licenses, may require additional authority or the adoption of new Commission rules or procedures. Among other things, commenters should consider whether there are particular design elements of a two-sided auction that would help such a mechanism work more efficiently.

Commenters also should address the extent to which a two-sided auction, by offering all available (Commission-held and previously assigned) spectrum simultaneously, may provide an alternative with lower transaction costs as compared to the secondary market and whether such an alternative is needed. In addition, the Commission seeks comment on whether the use of a two-sided auction could or would promote opportunities for interested parties to better meet their needs for particular amounts of spectrum in this band. The Commission asks whether an ability to acquire more spectrum or aggregate it differently would help promote service, especially in rural areas. Finally, commenters should address any issues or other matters which may relate to competitive bidding as a result of conducting a two-sided auction in the 700 MHz Band.

C. Facilitating Access to Spectrum and Provision of Service to Consumers

35. First, the Commission considers the possibility of modifying performance requirements for unauctioned licenses to the extent they could better promote both spectrum access and service provision. Second, for all 700 MHz Band licensees, the Commission seeks comment on options that may facilitate access to spectrum in the secondary market for all potential service providers, including those specifically seeking to deliver service to rural areas. Finally, the Commission seeks comment on policies the Commission could implement to promote service on tribal lands.

1. Performance Requirements

36. The Commission seeks comment on whether it needs to revise the existing "substantial service" performance requirement, or possibly adopt alternative build-out rules, for unauctioned licenses in the 700 MHz Band in order to further access to spectrum and provision of service to consumers, including those in rural areas. To the extent commenters believe the current requirement, or its safe harbors, should be revised, the Commission seeks comment on whether other approaches may offer certain additional benefits that outweigh possible additional costs. These options could involve adopting rules that require specific actions by licensees in order to retain their licenses.

37. The current performance requirement for the 700 MHz Band is based on the "substantial service" standard defined in 47 CFR 27.14(a). The Commission seeks comment as to the effectiveness of this approach in

promoting service in the unauctioned portions of the 700 MHz Band, especially in rural areas. Under this standard, the Commission established "safe harbors" to provide examples of what would be considered substantial service in the 700 MHz Band. The Commission seeks comment on whether any changes to these safe harbors are warranted to better promote service to all areas. To the extent commenters address whether 47 CFR 27.14(a) or its safe harbors should be revised, they should also consider whether any other provisions in the existing part 27 rules require specific recognition or adjustment to comport with the potential application of those performance requirements for 700 MHz Band licensees. For example, the Commission seeks comment on whether it needs to clarify the extent to which certain of the Commission's non-part 27 rule parts, as listed in 47 CFR 27.3, apply to 700 MHz Band licensees with regard to performance requirements relating to build-out and/or provision of service. In addition, the Commission notes that 47 CFR 27.15 describes inter alia elections for geographic partitioning and spectrum disaggregation to ensure the Commission's performance requirements are met when licenses are divided spectrally or geographically between two or more parties. The Commission seeks comment on whether to change any aspect of 47 CFR 27.15 in order to help ensure the provision of service to consumers, including any rural areas that are part of a partitioned or disaggregated license.

38. The Commission also seeks comment on whether it should further define safe harbors for licensees seeking to meet the part 27 "substantial service" standard on 700 MHz Band spectrum. The Commission notes, for example, that the Commission's safe harbors for 700 MHz Band licensees did not specifically mandate that a particular level of service be provided in rural areas. Rather, the Commission cites past statements that a licensee that limits buildout to urban and high density areas will not necessarily be ensured of license renewal even if it meets the construction benchmarks, as well as past statements that it believed substantial service requires the licensee to buildout in rural areas as well. The Commission cites past guidance on rural construction which established a safe harbor for providing mobile service to rural areas. In particular, the Commission cites statements that a mobile wireless service licensee in various bands, including the 700 MHz Band, can provide substantial service by

servicing at least 75 percent of the geographic area of at least 20 percent of the 'rural areas' within its licensed area. The Commission seeks comment on whether this "rural safe harbor" for mobile wireless services should continue to apply to the 700 MHz Band licenses that have not been auctioned, or whether it should be revised. The Commission also seeks comment as to whether to apply a safe harbor to other types of services (e.g., fixed) in the 700 MHz Band and, if so, what other services should be included and how the safe harbor should be defined. In addition, the Commission asks how "coverage" would be measured for these other services so as to improve incentives to serve rural areas. Finally, the Commission seeks comment on whether there are other safe harbors pertaining to construction in rural areas that should fulfill the substantial service requirement and that would provide additional regulatory certainty regarding the Commission's performance requirements.

39. As an alternative to maintaining the substantial service standard that the Commission previously determined should apply to the 700 MHz Band, the Commission seeks comment on whether it should apply more specific construction benchmarks to the unauctioned licenses in the 700 MHz Band. In the past, such construction benchmarks have required a licensee to make service available to a certain percentage of the population or geographic area.

40. The Commission seeks comment on whether it should adopt a population-based construction requirement as part of any possible revisions to the licensing rules in some or all of the spectrum bands to be auctioned in the 700 MHz Band. If such a benchmark were adopted, the Commission seeks comment on the precise population benchmark that should be adopted, and whether it should be more extensive than the previous Personal Communications Service (PCS) rules, such as requiring coverage sufficient to provide service to one-half of the population of the license area within five years and three-fourths within ten years.

41. As another option, the Commission seeks comment on whether a benchmark based on geography for 700 MHz Band unauctioned licenses would be more effective in promoting service to underserved areas without offsetting disadvantages. In this *NPRM*, the Commission seeks comment on whether geographic-based benchmarks warrant further consideration and, in particular, whether these rules could be

designed to promote build-out in rural portions of these licenses yet to be auctioned. If so, the Commission seeks comment on how such a geography-based benchmark could or should be structured. The Commission also seeks comment on any other geographic benchmarks that would be appropriate for these licenses. For any proposed benchmark, the Commission asks commenters to describe how the Commission should apply it to the variety of fixed, mobile, broadcast, and private services that are authorized in this spectrum.

42. The Commission also seeks comment on whether it should consider adopting a "keep what you use" relicensing mechanism for the unauctioned spectrum in the 700 MHz Band, similar to the approach adopted for Cellular Radiotelephone Service (cellular) service in the 1980s. Under a "keep what you use" rule, the Commission would reclaim any "unused" spectrum in a license area after a pre-defined period of time. The Commission also seeks comment on whether it should consider a modified version of this rule, such as a "triggered keep what you use" rule, in which the Commission, rather than reclaiming "unused" spectrum after a period of time, would reclaim spectrum only in the event a party other than the licensee (e.g., a spectrum lessee) seeks access to the licensed spectrum in an unserved portion of the license area. Similarly, the Commission seeks comment on whether the Commission should consider applying either the "keep what you use" rule or "triggered keep what you use" rule only to a portion of the spectrum (e.g., one-half) of the spectrum that otherwise would be reclaimed, or eligible for reclamation, by the Commission.

43. Given that these variations of the "keep what you use" approach may make unused spectrum available to other parties interested in gaining access to spectrum, the Commission seeks comment on whether it may be an effective means to provide additional service, including in rural areas. To the extent that licensees may be less likely to use the spectrum in rural portions of their license areas, the Commission also seeks comment as to whether the Commission should apply this approach only to licenses covering rural areas, or only to that portion of licenses that covers rural areas.

44. To the extent commenters believe a "keep what you use" mechanism is appropriate, the Commission seeks comment on how "use" could or should be defined, given the goals the Commission seeks to further. In

particular, the Commission seeks comment on how it should define what type of activities demonstrate that the spectrum is being "used" in this context, considering that the part 27 rules facilitate a wide variety of services and uses in this band.

2. Facilitating Access to Spectrum in the Secondary Market

45. In addition to facilitating access to spectrum based on Commission rules relating to the size of geographic license areas and spectrum blocks, the Commission also seeks comment on the extent to which it could facilitate access through possible revisions to its existing secondary markets policies and rules applicable to both unauctioned and previously auctioned licenses in the 700 MHz Band. The Commission notes that it took significant steps in 2003 and 2004 to facilitate the ability of entities, through spectrum leasing arrangements, to gain access to licensed spectrum in areas and amounts suited to their particular spectrum needs, including through a streamlined or immediate approval process for transfers and assignments of licenses.

46. Given the passage of time, the Commission now seeks comment on whether there are additional mechanisms relating to its secondary market policies that should be adopted so as to help move spectrum from licensees to other entities that place a higher value on its use. For instance, the Commission seeks comment on whether requiring licensees to make "good faith" efforts to negotiate with potential spectrum lessees could help increase access to spectrum, including in rural areas, and thus promote the development of these markets. Potential "good faith" requirements could take one of several forms. At a minimal level, licensees could be required to establish a contact point for potential lessees, e.g., providing the name and contact information of a designated representative in the licensee's organization who would accept inquiries from potential spectrum lessees. Under an alternative approach, licensees could be required to engage in "good faith" negotiations with potential spectrum lessees, with the Commission determining the minimum steps necessary to meet this requirement. For example, 700 MHz Band licensees could be required to have a minimum number of meetings with potential spectrum lessees and/or provide their terms for an acceptable spectrum leasing arrangement. Would the use of such requirements for licensees in the 700 MHz Band encourage licensees to more seriously consider the opportunity cost

of the spectrum they hold but do not use? On the other hand, given the large number and diverse nature of potential users in this band, the Commission seeks comment on whether a requirement to, *e.g.*, establish contact and/or communicate with all interested parties would be unduly burdensome or subject to abuse. The Commission also seeks comment on whether it should adopt additional mechanisms to encourage partitioning and/or disaggregation of 700 MHz Band spectrum and the extent to which such policies ultimately may promote more service, especially in rural areas.

47. In addition, the Commission seeks comment on whether it could use its existing oversight role during the license renewal process to review a 700 MHz Band licensee's actions during its license term, including its participation in secondary market transactions, and evaluate issues related to spectrum access, service to rural areas, or both. Under this approach, licensees of unauctioned and auctioned 700 MHz Band spectrum would be subject to greater informational filings and Commission review at renewal even if they are not involved in a comparative renewal proceeding.

3. Facilitating Access to Spectrum and the Provision of Service to Tribal Lands

48. Ensuring that qualifying tribal lands have access to affordable, quality telecommunications services continues to be a goal of the Commission. Promoting access to spectrum and the provision of service on tribal lands is an important means to meet that goal. Accordingly, the Commission seeks comment on what steps, if any, it can take with regard to the 700 MHz Band to further facilitate access to spectrum and the provision of service to tribal lands. Some of these steps, such as the performance requirements discussed in this *NPRM*, generally would be applicable to the unauctioned spectrum in the 700 MHz Band. In contrast, policies to facilitate access to spectrum in tribal lands could be applied to both unauctioned and the already auctioned spectrum in this band.

49. The Commission's rules currently promote deployment of wireless services on tribal lands through its Tribal Lands Bidding Credit. The Commission seeks comment on whether it should make any potential adjustments to its Tribal Land Bidding Credit rules as they apply to the 700 MHz Band licenses to be auctioned in order to further the deployment of wireless services to tribal lands. The Commission also seeks comment on use of the Tribal Land Bidding Credit in this

context given statutory requirements that the Commission commence the auction for recovered analog broadcast spectrum no later than January 28, 2008, and deposit the proceeds from such an auction in the Digital Television Transition and Public Safety Fund no later than June 30, 2008. For instance, the Commission asks whether it needs to reduce for the 700 MHz Band auction the 180 day period that winning bidders currently have to obtain a Tribal Lands Bidding Credit. Alternatively, the Commission asks whether it should accept as sufficient from winning bidders in a 700 MHz Band auction either self-certification or a promise to negotiate in good faith with the tribal government. In either case, the Commission would thereby rely, at least in part, on the winning bidder's need to obtain consent of the tribal government to ensure that the tribes are adequately included in the process. The Commission asks what, if any, other changes should be made to the Tribal Lands Bidding Credit process in light of the special circumstances for the 700 MHz Band. In addition, given the statutory deadlines, the Commission seeks comment on whether its goal of promoting the deployment of wireless services to tribal lands would be better served with respect to the 700 MHz Band by exploring other means to promote access to spectrum and the provision of service in tribal lands.

50. The Commission also seeks comment on whether it should consider applying a "keep what you use" performance requirement to the tribal lands portion of geographic license areas, even if it decides to apply some other standard, such as substantial service, to all other areas of a license that are not tribal lands. In addition, the Commission seeks comment on whether any policies designed to facilitate access to spectrum, such as requiring "good faith" negotiations or other efforts by licensees in response to a request for a spectrum lease, should be applied specifically to tribal lands, even if the Commission decides not to apply these policies to non-tribal license areas. Similarly, the Commission asks whether there are other steps that it could take to revise its partitioning and disaggregation rules in order to better facilitate access to spectrum on tribal lands. Commenters also should consider, as discussed in this *NPRM*, whether the provision of service to tribal lands could be codified as a criteria or factor relevant to a licensee's public interest.

51. To the extent the Commission should revise its performance

requirements and/or policies to facilitate access to spectrum and apply these policies only to tribal lands, it seeks comment generally on how such a process should be implemented. For instance, the Commission seeks comment on how a "keep what you use" approach for tribal lands would operate in the event all other license areas were subject to different performance requirements. Similarly, the Commission seeks comment on the feasibility of applying one set of secondary markets rules to those portions of a license that cover tribal lands while applying different rules to the rest of a licensee's geographic area.

52. The Commission also seeks comment on whether it would facilitate access to spectrum and promote service to tribal lands to create license areas based on the contours of a reservation or any tribal boundary line. The Commission seeks comment whether adopting this policy would have the unintended consequence of partitioning off licenses covering tribal lands such that the newly created license areas will remain unbuilt, because companies will bid only for the licenses not covering the tribal lands. For instance, the Commission asks whether it would generally be economically feasible to provide service only within a tribal land service area. The Commission notes that, unlike other service areas, many tribal land service areas would result in licensed areas wholly contained within the larger geographic area of other licensees. The Commission asks whether: (1) Interference issues would be more significant because of the greater number of borders between licensed service areas; and (2) limitations of system design may make it difficult to engineer solutions around multiple small areas. It asks whether any of these technical obstacles could be mitigated by limiting tribal land license areas to tribal lands of a particular size or greater, or to those not contained wholly within another license area. The Commission also asks commenters to address possible auction-related difficulties caused by this approach, especially those for potential bidders. For instance, if the Commission were to implement this approach for a single spectrum block for which the basic geographic area was CMAs, the 585 federally recognized tribal lands, combined with the 734 CMAs, would result in 1319 separate licenses being offered for that one block.

53. Finally, in the event the Commission adopts other policies discussed in this *NPRM*, such as increasing the number of spectrum blocks made available and/or the

amount of spectrum assigned by small geographic license areas in the 700 MHz Band, the Commission seeks comment on whether policies focused solely on tribal lands would be necessary.

D. Criteria for Renewal

54. The Commission seeks comment on whether to amend its rules to clarify or modify the requirements and procedures of the renewal process for licenses in the 700 MHz Band, including both licenses that have already been auctioned and those that have yet to be auctioned. For example, the Commission seeks comment on whether to use renewal criteria to replace the procedures for the filing of competing applications at renewal time. For instance, the licenses could revert to the Commission for re-auction should a license not be renewed. The Commission also asks commenters to address whether any amendments of its rules on the renewal process should be limited to the unauctioned 700 MHz Band licenses, or whether any such amendments also should apply to those 700 MHz Band licenses which already have been auctioned in order to have a unitary regime for these licenses. The renewal criteria and process for authorizations for the 700 MHz Guard Bands at Blocks A and B in the Upper 700 MHz Band are beyond the scope of this *NPRM*.

55. The Commission first seeks comment on whether 700 MHz Band licensees should be subject to requirements at renewal in addition to any end-of-term performance requirements. Licensees are required to meet "substantial service" under the performance requirements of 47 CFR 27.14(a) as well as in the context of any renewal proceedings under 47 CFR 27.14(b) of the Commission's rules. Although renewal of 700 MHz Band licenses is governed under 47 CFR 27.14(b) through (d) of the Commission's rules, which indicates that a comparative process is used to choose among renewal applicants based on certain showings, the rule does not describe the factors that the Commission will consider in connection with a license renewal application to the extent no competing application is filed. When establishing the part 27 rules that apply to the 700 MHz Band, the Commission notes that it stated only that it will require that a renewal application include at a minimum the following showing for a renewal expectancy: (1) A description of current service in terms of geographic coverage and population served or links installed; (2) an explanation of the licensee's record of expansion, including a timetable for the

construction of new base sites or links to meet changes in demand for service; (3) a description of the licensee's investments in its system; and (4) copies of any Commission orders finding the licensee to have violated the Communications Act or any Commission rule or policy, and a list of any pending proceedings that relate to any matter described by the requirements for the renewal expectancy. Although the Commission did not codify any special informational showings from 700 MHz renewal applicants unless they are "involved in a comparative renewal proceeding" triggered by the filing of a competing application, 47 CFR 27.14(b), licensees' renewal applications are nevertheless subject to Commission's review and approval based on general public interest factors (e.g., amount and type of service provided by the licensee during its license term). Accordingly, the Commission seeks comment on whether it should amend its rules to define the standards and informational filings that apply to license renewal applications for these licenses. These criteria for renewal would apply to 700 MHz authorizations that have been assigned, transferred, partitioned or disaggregated during their license terms. In particular, the Commission seeks comment on the requirements (or factors) that should be considered for 700 MHz Band licensees at renewal, including: the level of service and whether it was "substantial"; whether service was ever interrupted and discontinued; whether service has been provided to any rural areas; whether a licensee has received any requests from others seeking to enter into spectrum leasing arrangements, and whether it has entered into any such arrangements; and any other factors typically associated with assessments of a licensee's level of service to the public. Commenters should address which, if any, of these or other elements should be codified as requirements for renewal or, in the alternative, whether the Commission should list factors that are relevant to a licensee's demonstration that renewal is in the public interest.

56. In addition, the Commission seeks comment on whether it should integrate 47 CFR 27.14(a)'s "substantial service" performance requirement, and any new end-of-term requirements, into the renewal process for 700 MHz Band licenses. The Commission notes that, in its past orders, it focused on renewal in the context of partitioned and disaggregated licenses, and stated that to the extent a licensee meets the substantial service performance

requirement, it will be deemed to have met this element of the renewal expectancy requirement regardless of which of the construction options it has chosen. Accordingly, to the extent the Commission's renewal requirements and at least some of its performance requirements apply at the end of a license term, the Commission seeks comment on the advantages and disadvantages of combining these requirements into, for example, a single substantial service provision in 47 CFR 27.14 of the Commission's rules. This rule section requires that licensees demonstrate "substantial" service both as a "construction requirement" "within the prescribed license term" and to obtain a renewal expectancy preference in a comparative hearing, 47 CFR 27.14(a) and (b). Thus, the Commission's rules require substantial service by the end of a 700 MHz Band licensee's term, the same point at which renewal filings would be reviewed and potentially granted. See 47 CFR 27.14(a).

57. For instance, instead of requiring the enforcement of separate rules regulating construction or discontinuance of service, see 47 CFR 1.955(a)(3) (providing that wireless licenses automatically terminate if service is permanently discontinued and stating that "permanent discontinuance" is defined in either the specific authorization or the service rules governing that authorization); but see 47 CFR 27.66 (requiring Part 27 licensees that discontinue service to notify the Commission in certain contexts, but not providing a definition of "permanent discontinuance"), the Commission could replace such end-of-term/mid-term requirement(s) and require 700 MHz Band licensees to submit informational showings in their renewal applications based on factors that could be used to determine whether a grant of renewal is in the public interest. Under this approach, all licensees, included those holding authorizations that have been assigned, transferred, partitioned or disaggregated during their license terms, would be subject to review on these criteria, and the Commission would not need to have separate procedures for assessing satisfaction of construction standards (e.g., standards pertaining to partitioned licenses under 47 CFR 27.15(d)(1)), and for determining whether renewal criteria have been met. In the event that the Commission decides to integrate performance requirements and end-of-term requirements into the renewal process for 700 MHz Band licensees, the Commission seeks comment on whether

licensees who fail to meet such requirements could be subject to potential forfeiture penalties. If, for example, a licensee files for renewal, but fails to meet the substantial service requirement, the Commission seeks comment on whether it could be subject to forfeiture penalties under this approach.

58. Finally, under a modified or combined 47 CFR 27.14 standard, the Commission seeks comment on whether to use codified renewal criteria to measure the 700 MHz Band licensees' level of service instead of relying on any performance incentives that may arise due to the possibility of competing applications being filed against a renewal (with the concomitant need for the incumbent to demonstrate "substantial service" to receive a renewal expectancy preference). Although 47 CFR 27.14(b) through (d) of Commission rules indicates that a comparative process is used to choose among renewal and competing applicants, it is unclear what type of comparative hearing is to be employed. Under a modified 47 CFR 27.14 of the Commission's rules, the Commission could eliminate the filing of competing applications at renewal time and, for example, adopt a process by which licenses revert to the Commission for re-auction if a license is not renewed. To the extent such an approach is adopted, commenters should address the procedures for renewal processing, the components of a renewal filing and any demonstrations of "substantial" service or other requirements, provisions for petitions to deny renewal applications, and procedures governing dismissal/denial of renewal applications and subsequent re-licensing through competitive bidding to competing bidders. For example, if the Commission dismisses or denies a renewal application, the spectrum could automatically revert to either the Commission (in the case of geographic-area licenses) to re-license using competitive bidding or to the geographic-overlay licensee (in the case of site-specific licenses subject to reversionary rights for geographic-overlay licensees) as part of its licensed service area. Moreover, the petitioner could be eligible to participate in any auction of the non-renewed license. In addition, the Commission seeks comment on whether the petition to deny process, coupled with the ability of a petitioner to participate in any subsequent auction to re-license spectrum that reverts to the Commission for lack of renewal, creates sufficient incentives to challenge inferior service

or poor qualifications of licensees at renewal and thereby protect the public interest.

E. Length of License Terms

59. The Commission seeks comment on whether the license terms applicable to both the unauctioned and auctioned spectrum in the 700 MHz Band should be revised and, if so, in what manner. As the Commission notes, the Guard Band spectrum, and the rules applicable thereto, is not within the scope of this *NPRM*. Section 27.13(b), 47 CFR 27.13(b), of the Commission's rules provides that initial license authorizations for spectrum in the 700 MHz Band will extend until January 1, 2015, except that a part 27 licensee commencing broadcast services will be required to seek renewal of its license for such services at the termination of the eight-year term following commencement of such operations. The Commission also asks whether the Commission should establish a uniform license term regardless of regulatory status associated with the services being provided.

60. The Commission seeks comment on whether the license terms for both the unauctioned and already auctioned 700 MHz Band licenses should be revised in consideration of the delays in auctioning most of the licenses in the 700 MHz Band, the new mandate under the DTV Act to auction all spectrum in the 700 MHz Band by a date certain, and/or the establishment in the DTV Act of a date certain for the end of the DTV transition. Comments should address the impact that these factors may have on the development and use of the spectrum in the context of the appropriate license term length for the 700 MHz Band. The Commission notes that the period extending from the new firm deadline for the DTV transition, February 17, 2009, to the current January 1, 2015, termination date set forth in 47 CFR 27.13(b) is shorter than both the ten-year license term generally afforded to many other (including CMRS) licensees and the eight-year average time for complying with the performance requirements which the Commission considered when the current rule was first adopted in 2000. The Commission seeks comment on whether the changes to the DTV transition mandated by the DTV Act warrant a modification of the license terms currently in 47 CFR 27.13(b) of the rules. The Commission also seeks comment on other considerations and developments that would support (or not support) extending or revising the license terms of these licenses.

61. In the event that a change in the license term for these 700 MHz Band licenses is warranted, the Commission seeks comment on what new license terms should be adopted. First, the Commission invites comment on whether it should adopt a new initial license term that would extend to a date certain, and what that date should be. For instance, the Commission seeks comment on whether the license term should extend until February 18, 2017. Consistent with the Commission's adoption of a license term that recognized an eight-year period after the then-target date for the end of the DTV transition, a new license term extending until February 18, 2017 would cover a period of eight years after the new firm deadline for the transition. The Commission also seeks comment on whether some other specific date may be more appropriate.

62. In the alternative, the Commission seeks comment on whether a new license term should extend for a specified period of time rather than be tied to a specific termination date and, if so, what that period of time should be. For instance, the Commission seeks comment on whether the license term should be amended to extend for a period not to exceed ten years from the date of initial issuance or renewal. There may also be factors that relate specifically to the 700 MHz Band that support adopting a license term of some other length than ten years. Thus, the Commission seeks comment on whether 47 CFR 27.13(b) should be revised to provide a different term, either longer than ten years (e.g., 15 years), or less than ten years if conditions warrant such a change.

63. The Commission asks that comments on the length of license terms also address its discussion in this *NPRM* concerning potential revisions to the performance requirements for licensees in the 700 MHz Band. The "substantial service" construction requirement in Section 27.14(a) of the rules requires that licensees make a "substantial service" showing "within the prescribed license term set forth in § 27.13." See 47 CFR 27.14(a). If the Commission alters the length of license term, commenters should consider whether the Commission should modify or amend the existing performance requirements in 47 CFR 27.14.

64. Finally, the Commission seeks comment on whether to establish a uniform license term for all services provided by 700 MHz Band licensees, regardless of regulatory status. Licensees in the 700 MHz Band are authorized to provide a combination of different services in a single license: Common

carrier, non-common carrier, private internal communications, and broadcast services. These licensees also are permitted, consistent with Commission rules, to switch their regulatory status at any time prior to the end of their license period. As reflected in 47 CFR 27.13(b) of the rules, to the extent licensees offer services that qualify as broadcasting under the Communications Act, an eight-year license term applies from the onset of broadcast operations, whereas the license term extends until January 1, 2015 for non-broadcast operations. The Commission seeks comment on the impact of the two different license terms set forth in 47 CFR 27.13(b), depending on the service offered, on those situations where a licensee deploys services with both broadcast and non-broadcast components under a single license authorization. The Commission also seeks comment on the operation and impact of the two license terms on those situations where a licensee changes the type of service offered between broadcast and non-broadcast services during the term of the license. The Commission also seeks comment on what changes, if any, should be made to its current approach of administering different license terms within a single authorization.

F. Power Limits and Related Requirements

65. The Commission seeks comment on whether to modify the power limits that apply to base stations operating in either the unauctioned or auctioned spectrum in the 700 MHz Band. Power limits for the Guard Band and Public Safety spectrum is beyond the scope of this *NPRM*.

66. The Commission seeks comment on whether, and to what extent, the power limit of 1 kW ERP, which currently applies to base stations operating in Blocks C and D of the Upper 700 MHz Band, should be revised. Specifically, commenters should address whether a need or demand exists for a higher power limit in the Upper 700 MHz Band and what additional types of services could be implemented in the band if a higher power limit is permitted. The Commission requests that any commenters that propose raising the power limit in the Upper 700 MHz Band submit a technical analysis showing how their proposal would not increase the risk of interference to adjacent operations. Because the Commission is concerned that any increase in power beyond the current 1 kW ERP limit could cause interference to Public Safety and Guard Band systems operating in the Upper 700 MHz Band,

commenters should address whether permitting higher powered transmissions could cause interference to Public Safety or Guard Band operations. Specifically, the Commission seeks comment on whether a higher power limit, along with a 3 milliwatts/m² or similar PFD limit, will adequately protect Public Safety and Guard Band mobile and base station operations from interference. If not, the Commission asks what PFD limits, or other restrictions, would be necessary to protect such operations. As the Commission discusses in the *NPRM*, the protection of commercial base stations from high-powered adjacent band transmissions is achieved through, among other things, the significant height differential that is likely to exist between high-powered transmitting antennas and commercial base station receive antennas. However, because Public Safety and Guard Band base station antennas may not operate at the same low heights as commercial base station antennas, Public Safety and Guard Band base stations could be susceptible to interference from adjacent band, high-powered base stations. Thus, more stringent technical requirements would appear to be needed to protect such stations. Given the importance the Commission attaches to preventing interference to Public Safety operations, the Commission will not adopt any modifications to its power limit rules that would cause interference to such operations in the Upper 700 MHz Band.

67. The Commission seeks comment as well on whether a PFD limit would necessarily have to be applied to high-powered transmissions originating in all upper and lower C and D block spectrum in the Upper 700 MHz Band, or whether it might be necessary to apply PFD limits to stations operating in only certain Upper 700 MHz Band spectrum blocks to protect Public Safety and Guard Band operations. In the event the Commission finds that certain spectrum blocks could accommodate such transmissions without the need for a PFD limit, the Commission asks commenters whether it should permit high-powered transmissions only on these spectrum blocks.

68. The Commission also asks whether, if commenters believe that a general approach of employing PFD limits may not be sufficiently effective in preventing interference from higher-powered transmissions to adjacent channel operations, or if such transmissions could potentially cause interference to co-channel operations, the Commission should limit any increase in permissible power to, *e.g.*, 20 kW, 10 kW, or 5 kW ERP, or not

modify the current 1 kW ERP power limit at all. Commenters should also address whether such "intermediate" power limits in the Upper 700 MHz Band might be able to be implemented in some, or all, of the commercial Upper 700 MHz Band spectrum without the need for PFD limits to protect adjacent channel operations. In addition, regardless of whether the Commission decides to increase the power limit for base stations in the Upper 700 MHz Band, the Commission asks if it should, consistent with PCS and AWS, double the existing power limit, to 2 kW ERP, for rural areas only in the Upper 700 MHz Band (without the need for a PFD limit) and what benefit such an increase might provide in the provision of service in rural areas.

69. Finally, the Commission seeks comment on whether any additional modifications to its Upper 700 MHz Band power limit rules would be appropriate. For example, in the event that the Commission authorizes base stations operating in all or in portions of the commercial blocks in the Upper 700 MHz Band to employ higher powered transmissions, the Commission asks whether it should adopt the same notification procedures for high-powered Upper 700 MHz Band operations that the Commission currently applies to high-powered Lower 700 MHz Band operations, and asks whether such notification procedures will adequately protect other Upper 700 MHz Band licensees from interference.

70. The Commission also seeks comment on whether to revise the 50 kW ERP power limit that applies to base stations operating in the Lower 700 MHz Band. In the first instance, the Commission seeks comment on whether to revise the power limit with respect to the unauctioned portion of the Lower 700 MHz Band.

71. The Commission also asks whether it should reduce the current power limit to, *e.g.*, 20 kW, 10 kW, 5 kW ERP, or even to 1 kW ERP because of possible concerns that the Lower 700 MHz Band PFD limit does not adequately limit adjacent channel interference from 50 kW ERP transmissions or believe that the potential exists for co-channel interference from transmissions at that power level. Finally, commenters should address whether the Commission should, consistent with PCS and AWS, adopt a power limit of 2 kW ERP for rural areas only (without the need for a PFD limit) for base stations operating in the Lower 700 MHz Band.

72. The Commission also seeks comment on whether any revisions to the Lower 700 MHz Band power limit should be uniformly applied across the entire band, *i.e.*, including the existing licenses in Blocks C and D as well as the unauctioned Blocks A, B, and E. The Commission seeks comment on whether, and to what extent, applying a revised power limit to existing licenses in Blocks C and D to provide for uniform treatment across the band, will promote the public interest, convenience, and necessity, or the provisions of the Communications Act, as amended. The Commission also asks that commenters address whether any public interest benefits resulting from a change in the Lower 700 MHz Band power limit would outweigh any additional costs that may be associated with such a change.

73. Finally, the Commission seeks comment on whether any additional modifications to its Lower 700 MHz Band power limit rules would be appropriate. For example, the Commission seeks comment on whether the current notification procedures that apply to high-powered Lower 700 MHz Band operations will adequately protect adjacent band Lower 700 MHz Band licensees from interference.

G. 911/E911 and Hearing Aid-Compatible Wireless Handsets

74. The Commission tentatively concludes that it should amend its part 20 rules to clarify that certain services offered using both unauctioned and previously auctioned spectrum in the 700 MHz Band and spectrum in other bands subject to part 27, such as AWS-1, should be subject to the 911/E911 and hearing aid-compatibility requirements.

75. Sections 20.18(a) and 20.19(a), 47 CFR 20.18(a) and 20.19(a), currently specify that service providers within certain enumerated radio services (cellular, PCS, and Specialized Mobile Radio (SMR)) are subject to the 911/E911 and hearing aid-compatibility requirements. These rule sections have not been expanded to include licensees providing service in later authorized, additional wireless services such as in the 700 MHz Band, although many of the services permitted in the 700 MHz Band can be expected to be very similar to services presently subject to the 911/E911 and hearing aid-compatibility requirements.

76. In 2003, the Commission broadened the scope of its wireless E911 rules, which applied only to licensees of particular services specified in the rules, so that the requirements extended to various other services and devices to the extent that they met certain specified

criteria. Under that action, a service or device provider, whether or not it is a licensee, is to be subject to E911 rules based on whether: (1) It offers real-time, two-way voice service that is interconnected to the public switched network on either a stand-alone basis or packaged with other telecommunications services; (2) the customers using the service or device have a reasonable expectation of access to 911 and E911 services; (3) the service competes with traditional CMRS or wireline local exchange service; and (4) it is technically and operationally feasible for the service or device to support E911. The Commission also may use other factors in making its determination. Applying these criteria, the Commission determined in 2003 to amend its rules to include additional service offerings within the scope of the E911 requirements, including telematics, and resold and prepaid mobile wireless services.

77. Based on the past establishment of these criteria, the Commission tentatively concludes that services provided in the 700 MHz Band that meet these criteria should be subject to the 911/E911 requirements. The Commission also tentatively concludes that services provided in the 700 MHz Band that meet these same criteria, with some minor adjustments respecting access to hearing aid-compatible phones, should be subject to the hearing aid-compatibility requirements. Further, the Commission tentatively concludes that the public safety and accessibility objectives of the 911/E911 and hearing aid compatibility rules would be served by application of these rules to services provided in the 700 MHz Band and meeting the above criteria. The Commission seeks comment on these tentative conclusions.

78. The Commission expects as well that other services provided, at least in part, using spectrum subject to part 27, such as AWS-1, may meet the above criteria and thus also should be subject to 911/E911 and hearing aid-compatibility requirements. Accordingly, the Commission seeks comment on a tentative conclusion that services provided using bands subject to part 27, including AWS-1, that meet these criteria should also be subject to the 911/E911 and hearing aid-compatibility requirements. The Commission also seeks comment on what changes to the industry standard governing digital wireless handsets compatibility with hearing aids, ANSI C63.19-2006, would be necessary in order to establish measurement methods and parametric requirements for services provided in the 700 MHz Band.

In addition, the Commission seeks comment on the time necessary to complete such changes to the standard.

79. Finally, 47 CFR 20.18(a) and 20.19(a) presently limit the applicability of the 911/E911 and hearing aid compatibility requirements to specific radio services. As a result, the Commission would need to propose rule amendments to apply the 911/E911 and hearing aid-compatibility requirements each time a new service is authorized in the future that would meet the above criteria. Therefore, the Commission seeks comment on whether the Commission should amend 47 CFR 20.18(a) and 20.19(a) to ensure that all similar wireless services that meet the four above criteria will be subject to the 911/E911 and hearing aid-compatibility requirements.

III. Procedural Matters

A. Regulatory Flexibility Act

80. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this *NPRM*. The IRFA is set forth in the Appendix to the *NPRM*. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to the *NPRM*, and must have a separate and distinct heading designating them as responses to the IRFA. Section 213 of the Consolidated Appropriations Act 2000 provides that the RFA shall not apply to the rules and competitive bidding procedures for frequencies in the 746-806 MHz Band. In particular, this exemption extends to the requirements imposed by Chapter 6 of Title 5, United States Code, Section 3 of the Small Business Act (15 U.S.C. 632) and Section 3507 and 3512 of Title 44, United States Code. Consolidated Appropriations Act 2000, Public Law 106-113, 113 Stat. 2502, Appendix E, Sec. 213(a)(4)(A) through (B); see 145 Cong. Rec. H12493-94 (Nov. 17, 1999); 47 U.S.C.A. 337 note at Sec. 213(a)(4)(A) through (B). The Commission nevertheless believes that it would serve the public interest to analyze the possible significant economic impact of the proposed policy and rule changes in this band on small entities. Accordingly, the IRFA in the Appendix of the *NPRM* includes an analysis of (and seeks comment on) this impact in connection with all spectrum that falls within the scope of this *NPRM*, including spectrum in the 746-806 MHz Band.

B. Paperwork Reduction Act of 1995

81. This *NPRM* contains proposed new or modified information collection requirements. 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 requirements contained in this *NPRM*, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due on or before September 20, 2006. 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. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198 (see 44 U.S.C. 3506(c)(4)), the Commission seeks specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees." The Commission notes, however, that Section 213 of the Consolidated Appropriations Act 2000 provides that rules governing frequencies in the 746-806 MHz Band become effective immediately upon publication in the **Federal Register** without regard to certain sections of the Paperwork Reduction Act. Consolidated Appropriations Act 2000, Public Law 106-113, 113 Stat. 2502, Appendix E, Sec. 213(a)(4)(A) through (B); see 145 Cong. Rec. H12493-94 (Nov. 17, 1999); 47 U.S.C.A. 337 note at Sec. 213(a)(4)(A) through (B). The Commission is therefore not inviting comment on any information collections that concern frequencies in the 746-806 MHz Band.

C. Other Procedural Matters

1. Ex Parte Presentations

82. The rulemaking this *NPRM* initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two

sentence description of the views and arguments presented generally is required. Other requirements pertaining to oral and written presentations are set forth in 47 CFR 1.1206(b) of the Commission's rules.

2. Comment Filing Procedures

83. Pursuant to 47 CFR 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before September 20, 2006 and reply comments on or before October 20, 2006. All filings related to this *NPRM* should refer to WT Docket No. 06-150, CC Docket No. 94-102, and WT Docket No. 01-309. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.

84. Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments. ECFS filers must transmit one electronic copy of the comments for WT Docket No. 06-150, CC Docket No. 94-102, and WT Docket No. 01-309. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and WT Docket No. 06-150, CC Docket No. 94-102, and WT Docket No. 01-309. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

85. Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties who choose to file by paper should also send a copy of their comments to: Michael Rowan, Special Counsel, Spectrum & Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Portals I, Room 6315, Washington, DC 20554; and Bill Stafford, Special Counsel, Spectrum &

Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Portals I, Room 6221, Washington, DC 20554. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554.

86. Parties shall serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, Room CY-B402, 445 12th Street, SW., Washington, DC 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

87. Documents in WT Docket No. 06-150, CC Docket No. 94-102, and WT Docket No. 01-309 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, Room CY-A257, 445 12th Street, SW., Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail fcc@bcpiweb.com.

3. Accessible Formats

88. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to FCC504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY). Contact the Commission to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CARTS, etc.) by e-mail: FCC504@fcc.gov; phone: 202-418-0530 (voice), 202-418-0432 (TTY).

IV. Initial Regulatory Flexibility Analysis

89. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules considered in this *NPRM*. Written public comments are

requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM*. The Commission will send a copy of this *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, this *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

90. Section 213 of the Consolidated Appropriations Act 2000 provides that the RFA shall not apply to the rules and competitive bidding procedures for frequencies in the 746–806 MHz Band. In particular, this exemption extends to the requirements imposed by Chapter 6 of Title 5, United States Code, Section 3 of the Small Business Act (15 U.S.C. 632) and Section 3507 and 3512 of Title 44, United States Code. Consolidated Appropriations Act 2000, Public Law 106–113, 113 Stat. 2502, Appendix E, Sec. 213(a)(4)(A) through (B); see 145 Cong. Rec. H12493–94 (Nov. 17, 1999); 47 U.S.C.A. 337 note at Sec. 213(a)(4)(A) through (B). The Commission nevertheless believes that it would serve the public interest to analyze the possible significant economic impact of the proposed policy and rule changes in this band on small entities. Accordingly, this IRFA contains an analysis of this impact in connection with all spectrum that falls within the scope of this *NPRM*, including spectrum in the 746–806 MHz Band.

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

91. In the *NPRM*, the Commission seeks comment on possible changes to the rules governing wireless licenses in the 700 MHz Band, spectrum that does not include the Upper 700 MHz Guard Bands nor the portions of the Upper 700 MHz Band that have been allocated for public safety services. These spectrum bands in the 698–806 MHz band have been allocated to new fixed, mobile, and broadcast services. Under the DTV Act, the Commission is required to commence an auction of previously unauctioned spectrum in the 700 MHz Band no later than January 28, 2008. In response to the changes made by the DTV Act affecting the 700 MHz Band, and because more than four years have passed since the Commission previously established band plans and service rules for this spectrum, the *NPRM* revisits some of the Commission's earlier decisions regarding the service rules for licenses in this band.

92. Specifically, the *NPRM* seeks comment on whether there is a need to revise the size of the geographic service areas for the remaining unauctioned

spectrum in the band, including the possibility of using smaller areas, such as the 734 CMAs composed of MSAs and RSAs. The *NPRM* then seeks comment on whether to modify the size of certain 700 MHz Band spectrum blocks, including the possibility of dividing Block D in the Upper 700 MHz Band into smaller blocks. The *NPRM* also requests input on whether to add or revise performance requirements for unauctioned spectrum, including such alternatives as specific construction benchmarks. In addition, the *NPRM* seeks comment on options that may facilitate access to spectrum in the secondary market for all licenses in the 700 MHz Band, as well as on policies the Commission could implement to promote service to tribal lands.

93. The *NPRM* then seeks comment on several additional issues relating to both auctioned and unauctioned licenses in the 700 MHz Band. For these licenses, comment is sought on whether to clarify or modify the rules and criteria for license renewal. The *NPRM* also seeks comment on whether to revise and possibly extend the term of licenses, as well as whether to modify the existing power limits in both the Upper 700 MHz and the Lower 700 MHz Bands. In light of the importance of public safety operations in the 700 MHz Band, the Commission states that it would take no action that would cause harmful interference to public safety licensees in the band.

94. Finally, the *NPRM* requests comment on the tentative conclusion that services provided by licensees in the 700 MHz Band, and in other bands subject to part 27 of the rules, should be subject to E911 and hearing aid-compatibility requirements to the same extent that such services would be covered if provided in other bands. It then seeks comment on how to modify Commission rules to ensure that they include all similar wireless services, referred to as Wireless Radio Services (WRS).

B. Legal Basis

95. The potential actions about which comment is sought in this *NPRM* would be authorized pursuant to the authority contained in Sections 1, 2, 4(i), 5(c), 7, 10, 201, 202, 208, 214, 222(d)(4)(A)–(C), 222(f), 222(g), 222(h)(1)(A), 222(h)(4)–(5), 251(e)(3), 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336, 337, 614, 615, and 710 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 155(c), 157, 160, 201, 202, 208, 214, 222(d)(4)(A)–(C), 222(f), 222(g), 222(h)(1)(A), 222(h)(4)–(5), 251(e)(3), 301, 302, 303, 307, 308, 309, 310, 311,

314, 316, 319, 324, 332, 333, 336, 337, 534, 535, and 610.

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

96. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

97. This *NPRM* could result in rule changes that, if adopted, would create new opportunities and obligations for Commission wireless licensees. Under the *NPRM*, any of the changes to the Commission's rules which may occur as a result of the *NPRM* would be limited to Upper 700 MHz and Lower 700 MHz Band licensees in the 698–746, 747–762, and 777–792 MHz spectrum bands, with one exception. In the *NPRM*, the Commission seeks comment on the tentative conclusion that services provided in the 700 MHz Band, and in other bands subject to part 27, should be subject to requirements concerning 911/E911 and hearing aid-compatible handsets to the extent they meet certain criteria. The *NPRM* then seeks comment on how to modify Commission rules to ensure that they include all similar WRS. Thus, because such revisions potentially could affect small entity licensees holding licenses in many wireless services (and not just bands which are subject to part 27 of the Commission's rules), this IRFA includes estimates of the number of small entities in each of the categories of WRS identified below.

98. Since this rulemaking proceeding applies to multiple services, this IRFA analyzes the number of small entities affected on a service-by-service basis. When identifying small entities that could be affected by the Commission's new rules, this IRFA provides information describing auctions results, including the number of small entities that were winning bidders. However, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily reflect the total number of small entities

currently in a particular service. The Commission does not generally require that licensees later provide business size information, except in the context of an assignment or transfer of control application where unjust enrichment issues are implicated. Consequently, to assist the Commission in analyzing the total number of potentially affected small entities, the Commission requests commenters to estimate the number of small entities that may be affected by any rule changes that might result from this NPRM.

1. Part 27 Miscellaneous Wireless Communications Services (MWCS)

99. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses in the 2305–2320 MHz and 2345–2360 MHz bands. The Commission defined “small business” for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

100. *700 MHz Guard Band Licenses.* In the 700 MHz Guard Band Order, the Commission adopted size standards for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. SBA approval of these definitions is not required. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13,

2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

101. *Upper 700 MHz Band Licenses.* The Commission released a Report and Order authorizing service in the Upper 700 MHz band. An auction for these licenses, previously scheduled for January 13, 2003, was postponed.

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

103. *Government Transfer Bands.* The Commission adopted small business size standards for the unpaired 1390–1392 MHz, 1670–1675 MHz, and the paired 1392–1395 MHz and 1432–1435 MHz bands. Specifically, with respect to these bands, the Commission defined an entity with average annual gross revenues for the three preceding years not exceeding \$40 million as a “small

business,” and an entity with average annual gross revenues for the three preceding years not exceeding \$15 million as a “very small business.” Correspondingly, the Commission adopted a bidding credit of 15 percent for “small businesses” and a bidding credit of 25 percent for “very small businesses.” This bidding credit structure was found to have been consistent with the Commission’s schedule of bidding credits, which may be found at Section 1.2110(f)(2) of the Commission’s rules. The Commission found that these two definitions will provide a variety of businesses seeking to provide a variety of services with opportunities to participate in the auction of licenses for this spectrum and will afford such licensees, who may have varying capital costs, substantial flexibility for the provision of services. The Commission noted that it had long recognized that bidding preferences for qualifying bidders provides such bidders with an opportunity to compete successfully against large, well-financed entities. The Commission also noted that it had found that the use of tiered or graduated small business definitions is useful in furthering its mandate under Section 309(j) to promote opportunities for and disseminate licenses to a wide variety of applicants. An auction for one license in the 1670–1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

104. *Advanced Wireless Services.* In the AWS–1 Report and Order, the Commission adopted rules that affect applicants who wish to provide service in the 1710–1755 MHz and 2110–2155 MHz bands. The Commission did not know precisely the type of service that a licensee in these bands might seek to provide. Nonetheless, the Commission anticipated that the services that will be deployed in these bands may have capital requirements comparable to those in the broadband Personal Communications Service (PCS), and that the licensees in these bands will be presented with issues and costs similar to those presented to broadband PCS licensees. Further, at the time the broadband PCS service was established, it was similarly anticipated that it would facilitate the introduction of a new generation of service. Therefore, the AWS–1 Report and Order adopts the same small business size standards that the Commission adopted for the broadband PCS service. In particular, the AWS–1 Report and Order defines a “small business” as an entity with average annual gross revenues for the

preceding three years not exceeding \$40 million, and a "very small business" as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million. The AWS-1 Report and Order also provides small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent.

105. Broadband Radio Service (formerly Multipoint Distribution Service) and Educational Broadband Service (formerly Instructional Television Fixed Service). Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In its recently issued BRS/EBS Report and Order in WT Docket No. 03-66, the Commission comprehensively reviewed its policies and rules relating to the ITFS and MDS services, and replaced the MDS with the Broadband Radio Service and ITFS with the Educational Broadband Service in a new band plan at 2495-2690 MHz. In connection with the 1996 MDS auction, the Commission defined "small business" as an entity that, together with its affiliates, has average gross annual revenues that are not more than \$40 million for the preceding three calendar years. The SBA has approved of this standard. The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than \$40 million and are thus considered small entities.

106. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which is: All such firms having \$13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million. Thus, under this size standard, the majority of firms can be considered small.

2. Additional Wireless Radio Services (WRS)

107. *Cellular Licensees*. The SBA has developed a small business size standard for small businesses in the category "Cellular and Other Wireless Telecommunications." Under that SBA category, a business is small if it has 1,500 or fewer employees. For the census category of "Cellular and Other Wireless Telecommunications," Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this category and size standard, the majority of firms can be considered small.

108. *220 MHz Radio Service—Phase I Licensees*. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz Band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. This category provides that a small business is a wireless company employing no more than 1,500 persons. For the census category of "Cellular and Other Wireless Telecommunications," Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this category and size standard, the majority of firms can be considered small.

109. *220 MHz Radio Service—Phase II Licensees*. The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the 220 MHz Third Report and Order, the Commission adopted a small business size standard for defining "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross

revenues not exceeding \$15 million for the preceding three years. A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years. The SBA has approved these small size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses. A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.

110. *Paging*. In the Paging Second Report and Order, the Commission adopted a size standard for "small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. The SBA has approved this definition. An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. An auction of MEA and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold. 132 companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. Currently, there are approximately 24,000 Private Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the Commission's Trends in Telephone Service, 375 such carriers reported that they were engaged in the provision of either paging or "messaging service." Of

these, the Commission estimates that 370 are small, under the SBA-approved small business size standard. The Commission estimates that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

111. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. For Block F, an additional small business size standard for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 "small" and "very small" business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

112. *Narrowband Personal Communications Service.* The Commission held an auction for Narrowband Personal Communications Service (PCS) licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, "small businesses" were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission awarded a total of forty-one licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the

Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards. A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (MTA and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

113. *Specialized Mobile Radio.* The Commission awards "small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years. The Commission awards "very small entity" bidding credits to firms that had revenues of no more than \$3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

114. The auction of the 1,050 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard. In an auction completed on December 5, 2000, a total of 2,800

Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed "small business" status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

115. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. The Commission assumes, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is established by the SBA.

116. *Private Land Mobile Radio.* Private Land Mobile Radio (PLMR) systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, the Commission could use the definition for "Cellular and Other Wireless Telecommunications." This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. Moreover, because PLMR licensees generally are not in the business of providing cellular services but instead use the licensed facilities in support of other business activities, the Commission notes that the current Census numbers are likely overbroad. The Commission also notes that, for some such licensees, it might be appropriate to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

117. *Fixed Microwave Services.* Fixed microwave services include common

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

118. *39 GHz Service*. The Commission defines "small entity" for 39 GHz licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. "Very small business" is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. The SBA has approved these definitions. The auction of the 2,173 39 GHz licenses began on April 12, 2000, and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses.

119. *Local Multipoint Distribution Service*. An auction of the 986 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. An additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. These regulations defining "small entity" in the context of LMDS auctions have been

approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small business winning bidders that won 119 licenses.

120. *218–219 MHz Service*. The first auction of 218–219 MHz (previously referred to as the Interactive and Video Data Service or IVDS) spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas (MSAs). Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, the Commission defined a small business as an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years. In the 218–219 MHz Report and Order and Memorandum Opinion and Order, the Commission defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding \$15 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding \$3 million for the preceding three years. The SBA has approved of these definitions. At this time, the Commission cannot estimate the number of licenses that will be won by entities qualifying as small or very small businesses under its rules in future auctions of 218–219 MHz spectrum. Given the success of small businesses in the previous auction, and the prevalence of small businesses in the subscription television services and message communications industries, the Commission assumes for purposes of this analysis that in future auctions, many, and perhaps all, of the licenses may be awarded to small businesses.

121. *Location and Monitoring Service*. Multilateration Location and Monitoring Service (LMS) systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$15 million. A "very

small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$3 million. These definitions have been approved by the SBA. An auction for multilateration LMS licenses commenced on February 23, 1999, and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses. The Commission cannot accurately predict the number of remaining licenses that could be awarded to small entities in future LMS auctions. In addition, there are numerous site-by-site non-multilateration licensees, and the Commission does not know how many of these providers have annual revenues of no more than \$15 million. The Commission assumes, for purposes of this analysis, that all of these licenses are held by small entities, as that small business size standard is established by the SBA.

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

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

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

are small entities, as that term is defined by the SBA.

125. *Multiple Address Systems.* Entities using Multiple Address Systems (MAS) spectrum, in general, fall into two categories: (1) Those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, the Commission defines "small entity" for MAS licenses as an entity that has average gross revenues of less than \$15 million in the three previous calendar years. "Very small business" is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$3 million for the preceding three calendar years. The SBA has approved of these definitions. The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of January 20, 1999, there were a total of 8,670 MAS station authorizations. Of these, 260 authorizations were associated with common carrier service. In addition, an auction for 5,104 MAS licenses in 176 EAs began November 14, 2001, and closed on November 27, 2001. Seven winning bidders claimed status as small or very small businesses and won 611 licenses.

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

127. *Incumbent 24 GHz Licensees.* The rules at issue could affect

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

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

129. *Cable Television Relay Service.* This service includes transmitters generally used to relay cable programming within cable television system distribution systems. The Census Bureau has defined a category of Cable and Other Program Distribution as follows: "This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material." The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: All such firms having \$13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. Of this

total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million. Thus, under this size standard, the majority of firms can be considered small.

130. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

131. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, and therefore it is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

132. *Multichannel Video Distribution and Data Service.* Multichannel Video Distribution and Data Service (MVDDS) is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. Licenses in this service were auctioned in January 2004, with 10 winning bidders for 192 licenses. Eight of these 10 winning bidders claimed small businesses status for 144 of these licenses.

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

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

135. *Personal Radio Services.* Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under part 95 of the rules. These services include Citizen Band Radio Service (CB), General Mobile Radio Service (GMRS), Radio Control Radio Service (R/C), Family Radio Service (FRS), Wireless Medical Telemetry Service (WMTS), Medical Implant Communications Service (MICS), Low

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

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

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

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

138. The *NPRM* seeks to evaluate whether changes to the existing service rules pertaining to 700 MHz Band licenses may ultimately permit more effective use of this spectrum to better meet the needs of today's consumers. To the extent the Commission's past

decisions no longer reflect the best approach with regard to the license area sizes, band plan, performance requirements, renewal criteria, length of license terms, power limits, and 911/E911 & hearing aid-compatibility requirements, the *NPRM* seeks comment on the possibility of making appropriate adjustments to various requirements that will serve the public interest.

139. Although the *NPRM* does not propose any specific rules with new reporting, recordkeeping or other compliance requirements for small entities on the aforementioned issues, the Commission is open to comment on what, if any, requirements it should, or should not, impose for small entities if it adopts new rules based on the proposals in the *NPRM*. For example, there is the possibility that modifying performance requirements and secondary market provisions for certain 700 MHz Band licenses could require new reporting and recordkeeping practices for small entities regarding where and how spectrum is used. In addition, new renewal criteria could possibly be established such that the Commission would codify new requirements for renewal or, in the alternative, list factors that are relevant to licensees' (including small entities') informational showings that renewal is in the public interest. Under such a proposal, the *NPRM* states that such licensees may have to report on factors such as the level of service and whether it was "substantial"; whether service was ever interrupted and discontinued; whether service has been provided to any rural or tribal areas; whether a licensee has received any requests from others seeking to enter into spectrum leasing arrangements, and whether it has entered into any such arrangements; and any other factors typically associated with assessments of a licensee's level of service to the public. The *NPRM* also seeks comment on whether any additional modifications to 700 MHz Band power limit rules would be appropriate; in this regard, it states that such action could result in, e.g., the use of the notification procedures for high-powered Upper 700 MHz Band operations that are currently applied to high-powered Lower 700 MHz Band operations. A tentative conclusion to require certain 700 MHz Band, and part 27, licensees to comply with the 911/E911 and hearing aid-compatibility requirements (as well as seeking comment on whether to apply these requirements to licensees in other WRS) is another example of a projected compliance requirement that could affect small entities.

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

140. The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (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) and exemption from coverage of the rule, or any part thereof, for small entities.

141. In the *NPRM*, the Commission specifically considers small business alternatives in seeking comment on the existing size of geographic service areas for the 700 MHz Band. Specifically, the *NPRM* seeks comment on whether there is a need for additional small geographic service area licenses in the band, such as the 734 CMAs. The Commission notes that the Rural Cellular Association claims that small entities are unable to compete effectively for licenses that combine rural and major metropolitan areas and the availability of RSAs (as opposed to other small units) is especially important to small and rural carriers given their potential greater interest in serving these high-cost areas than large regional and nationwide carriers.

142. On this question of the optimal size of the service areas for the 700 MHz Band, the *NPRM* seeks comment on whether firms, including small entities, need additional access to spectrum over small service areas. It considers in general the economic impact to small entities of the possible transaction costs associated with the assignment of additional spectrum over small and large service areas alike. For example, the *NPRM* seeks comment on the factors that the Commission should use in balancing the needs of small and rural carriers as well as large and national carriers as they seek to provide service to their rural customers.

143. The *NPRM* also seeks comment on the optimal service area size(s) for the remaining unauctioned licenses to the extent a demonstrated need exists for smaller or other sized areas. With respect to impacts to small entities, the *NPRM* states that both large nationwide providers as well as small regional and rural providers may be able to make use of the 700 MHz Band, yet explains that

the optimal size of geographic service area is different for these two types of providers, and licenses for areas that are larger or smaller than desired will impose transaction costs on those parties that wish to acquire them. The *NPRM* seeks comment on the degree and likelihood of such economic costs as 700 MHz Band spectrum is licensed in the future, and the extent to which the transaction costs of aggregating, disaggregating, or partitioning spectrum are a significant concern for those parties that most highly value this spectrum, including small entities. The *NPRM* also discusses how certain providers in the 700 MHz Band have focused on smaller sized service areas, and it notes that a number of small providers have acquired Lower 700 MHz Block C spectrum apparently to provide services specifically to rural areas over RSAs. Thus, the *NPRM* seeks comment on what the optimal size for smaller areas would be, as well as how the size of licensed geographic service area impacts the services that are currently being developed, and which may be developed, for use of the 700 MHz Band.

144. The *NPRM* then seeks comment on which spectrum blocks in the 700 MHz Band would be suitable for licensing over small or other sized areas. Specifically, the Commission seeks comment on the impact of designating the unpaired 6 megahertz Block E in the Lower 700 MHz Band for small-area licensing. Regarding this significant alternative, the *NPRM* inquires if 6 megahertz is sufficient to meet small and/or rural carriers' spectrum needs, and asks commenters to address whether there are broadband technologies that can operate on unpaired spectrum such that the 6 megahertz of spectrum in Block E would be suitable for potential reassignment. Taking into account the resources available to small entities, the *NPRM* also addresses how any need for small and rural carriers to provide adjacent TV Channel 51 protection might affect their ability to provide service to those areas if Block A were designated for small area licensing.

145. In addition to seeking comment on the size of service areas, the Commission seeks comment on possibly changing the size of spectrum blocks in the 700 MHz Band plan. To the extent the Commission decides to auction and assign additional licenses over service area sizes other than the six EAGs, the *NPRM* seeks comment on whether reconfiguring or sub-dividing existing spectrum blocks in the band plans in the 700 MHz Band could better accommodate such assignments and

thereby facilitate access to spectrum by small entities. In particular, the *NPRM* seeks comment on dividing the 20-megahertz Block D license in the Upper 700 MHz Band into two or more license blocks to create additional opportunities for firms to acquire spectrum, including small business and rural providers.

146. In the next section of the *NPRM*, the Commission seeks comment on whether it should take additional action with regard to the spectrum in the 700 MHz Band so as to help facilitate access to that spectrum and the provision of service to all consumers, including those in rural areas. In contrast to the significant alternatives on the size of geographic service areas and/or spectrum blocks that may help increase access to spectrum at auction for a wide variety of entities, this section seeks comment on whether the Commission's existing "substantial service" performance requirements and related policies pertaining to 700 MHz Band licenses serve to facilitate deployment of wireless services in the 700 MHz Band. For example, the *NPRM* seeks comment on significant alternatives that impact small entities, such as the possibility of adopting "keep what you use" re-licensing mechanisms. It also seeks comment on options that may facilitate access to spectrum in the secondary market for all potential service providers, including small entities and those specifically seeking to deliver service to rural areas and tribal lands.

147. The next portions of the *NPRM* seek comment on potential changes to several of the Commission's initial determinations applicable to 700 MHz Band licenses, changes which could affect small entities. First, the *NPRM* requests comment on whether to amend Commission rules to clarify the requirements and procedures of the renewal process for 700 MHz Band licenses, particularly as they relate to existing rules requiring demonstrations of "substantial service" for renewal applicants involved in comparative proceedings. Second, the *NPRM* invites comment on extending the license terms of 700 MHz Band licenses to an expiration date beyond 2015 in order to afford licensees a sufficient period of time for deployment of new 700 MHz Band services once the DTV transition is complete. Third, the *NPRM* seeks comment on whether the power limits in the existing rules for the 700 MHz Band spectrum should be revised. In addition to the possible new reporting, recordkeeping or other compliance requirements that could impact small entities, it is not anticipated that any rules adopted in this area would

adversely impact small entities. Both small and large entities may benefit from changes to these rules.

148. Finally, because Commission rules have not been expanded to include licensees (including small entities) providing service in later authorized, additional WRS such as the 700 MHz Band, the *NPRM* seeks comment on the tentative conclusion that services provided by licensees in the 700 MHz Band, and in other bands subject to part 27 of the rules such as AWS-1, should be subject to E911 and hearing aid-compatibility requirements to the same extent that such services would be covered if provided in other bands. It then seeks comment on how to modify Commission rules to ensure that they include all similar WRS. Because many of the services permitted across the WRS can be expected to be similar to services presently subject to the 911/E911 and hearing aid-compatibility requirements, the *NPRM* seeks comment on whether to amend the rules to ensure that all similar wireless services that meet certain criteria discussed in the *NPRM* will be subject to the 911/E911 and hearing aid-compatibility requirements. To minimize significant economic impact to the many firms, including small entities, that are or will become licensees in the various WRS, the *NPRM* seeks comment on impacts including, *e.g.*, the time necessary to complete such changes to the standards.

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

149. None.

V. Ordering Clauses

150. Accordingly, *it is ordered*, pursuant to Sections 1, 2, 4(i), 5(c), 7, 10, 201, 202, 208, 214, 222(d)(4)(A) through (C), 222(f), 222(g), 222(h)(1)(A), 222(h)(4) through (5), 251(e)(3), 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336, 337, 614, 615, and 710 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 155(c), 157, 160, 201, 202, 208, 214, 222(d)(4)(A) through (C), 222(f), 222(g), 222(h)(1)(A), 222(h)(4) through (5), 251(e)(3), 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336, 337, 534, 535, and 610 that this *Notice of Proposed Rulemaking, Fourth Further Notice of Proposed Rulemaking, and Second Further Notice of Proposed Rulemaking* are hereby adopted.

151. *It is further ordered* that pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file

comments on the *Notice of Proposed Rulemaking, Fourth Further Notice of Proposed Rulemaking, and Second Further Notice of Proposed Rulemaking* on or before September 20, 2006 and reply comments on or before October 20, 2006.

152. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rulemaking, Fourth Further Notice of Proposed Rulemaking, and Second Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

William F. Caton,
Deputy Secretary.

[FR Doc. 06-7051 Filed 8-17-06; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Parts 1515, 1570, and 1572

Coast Guard

33 CFR Parts 101, 103, 104, 105, 106, and 125; 46 CFR Parts 10, 12, and 15

[Docket Nos. TSA-2006-24191; USCG-2006-24196]

RIN 1652-AA41

Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License

AGENCY: Transportation Security Administration, United States Coast Guard, DHS.

ACTION: Proposed rule; notice of comment.

SUMMARY: The Department of Homeland Security, through the Transportation Security Administration and the United States Coast Guard, published an Notice of Proposed Rulemaking titled "Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License" on May 22, 2006. In response to letters from Congress about the proposed rule, we sent out the letter below and want to make the public aware of this correspondence.

ADDRESSES: Copies of this Notice as well as the Notice of Proposed Rulemaking and Comments received are all available in the dockets for this rulemaking. The dockets are available electronically at <http://dms.dot.gov> as well as at the Docket Management Facility located in the U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001. The dockets may be located by the following docket numbers: TSA docket number TSA-2006-24191 or Coast Guard docket number USCG-2006-24196.

FOR FURTHER INFORMATION CONTACT: For questions related to TSA's proposed TWIC standards: Greg Fisher, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202-4220, TWIC Program, 571-227-4545; e-mail: credentialing@dhs.gov.

For legal questions regarding the proposed TWIC rule: Christine Beyer, TSA-2, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202-4220; telephone (571) 227-2657; facsimile (571) 571-1380; e-mail Christine.Beyer@dhs.gov.

For questions concerning the Coast Guard provisions of the proposed TWIC rule: LCDR Jonathan Maiorine, Commandant (G-PCP-2), United States Coast Guard, 2100 Second Street, SW., Washington, DC 20593; telephone 1-877-687-2243.

For questions concerning viewing or submitting material to the docket: Renee V. Wright, Program Manager, Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001; telephone (202) 493-0402.

SUPPLEMENTARY INFORMATION: On May 22, 2006, the Transportation Security Administration (TSA) and the United States Coast Guard (Coast Guard) published a joint Notice of Proposed Rulemaking in the **Federal Register** titled "Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License." 71 FR 29396. This NPRM included a 45-day comment period and announced four public meetings to be held in Newark, NJ, Tampa, FL, St. Louis, MO, and Long Beach, CA.

Since that time, TSA and Coast Guard have received several letters from Members of Congress on the NPRM. We recently responded to these letters and wanted to share our response with the public. The body of the letter, which can also be found in the dockets for this rulemaking, reads as follows:

Thank you for your comments on the Notice of Proposed Rulemaking (NPRM)