

b. In the body, in the rules, and on the order or entry form that a purchase will not increase the odds of winning.

c. All terms and conditions, including rules and entry procedures of the sweepstakes.

d. The sponsor or mailer, with the principal place of business or address at which the sponsor or mailer may be contacted.

e. Sweepstakes rules, including the odds of winning, quantity, value, and nature of the prize and the schedule of any payments over time.

6.3 Nonmailable Matter

Sweepstakes matter is nonmailable if it does any of the following:

a. Represents that individuals not making a purchase may be disqualified from receiving future solicitations.

b. Requires that the entry be accompanied by an order or payment for a product or service previously ordered.

c. Represents that the recipient has won a prize unless that individual has won such prize.

d. Otherwise contradicts or is inconsistent with any disclosure required by 6.2 or 6.3.

7.0 SKILL CONTESTS (39 USC 3001(k)(3)(B))

7.1 Definition

The term skill contest means a puzzle, game, competition, or other contest in which a prize is awarded, the outcome depends upon the skill of the contestant, and for which a payment, purchase, or donation is required to enter.

7.2 Mailable Matter

Skill contests are mailable only if they include all of the following:

a. Disclose the terms and conditions of the contest, including the rules and entry procedures.

b. Disclose the sponsor or mailer, with the principal place of business or address at which the sponsor or mailer may be contacted.

c. Contain rules that state all of the following:

- (1) Number of rounds or levels and the cost to enter each round.
- (2) If subsequent rounds will be more difficult.
- (3) Maximum cost to enter all rounds.
- (4) Number of entrants or percentage expected to correctly solve the contest.
- (5) Identity or qualifications of the judges, if judged by other than the sponsor.
- (6) Method of judging.
- (7) Dates the winners will be determined and the prizes awarded.
- (8) Quantity, value, and nature of the prize.

(9) Schedule of any payments over time.

8.0 FACSIMILE CHECKS (39 USC § 3001(k)(3)(C))

A facsimile check is nonmailable unless it states on the face of the check that it is not a negotiable instrument and has no cash value.

9.0 EXCLUSIONS AND DISCLOSURES (39 USC §§ 3001(k)(4) & 3001(k)(5))

9.1 Mailable Matter

Matter described in 6.0, 7.0, and 8.0 is mailable if it appears in a magazine, newspaper, or other periodical if the promotions are not directed to a named individual, or the promotions do not include the opportunity to make a payment or order a product or service.

9.2 Notices and Disclaimers

Any notice or disclaimer required under 6.0, 7.0, or 8.0 shall be clearly and conspicuously displayed. Disclaimers required by 6.2a and 6.2b must be more conspicuously displayed than any other disclaimer.

10.0 REMOVAL OF NAMES FROM MAILING LISTS (39 USC § 3001(l))

10.1 Lists

In general, any person who uses the mails for any mailing falling under 2.0, 6.0, 7.0, or 8.0 shall adopt reasonable practices or procedures to prevent the mailing of such matter to any person who, personally or through their legal representative, submits a written request that no such matter shall be mailed to that person. Such request may be made either to the mailer, or the Attorney General, or their representative, of the appropriate state. Such requests shall be honored for a period of five years from the date of the request. The mailer shall maintain a record of all such written requests.

10.2 Special Requirements for Sweepstakes and Skill Contests (Effective December 12, 2000.)

Any promoter of sweepstakes or skill contests must make a clear and conspicuous disclosure of the address or toll-free telephone number by which an individual, or their duly authorized representative, may notify a promoter to have that individual's name and address removed from all lists of names and addresses used by that promoter to mail any skill contest or sweepstakes. Promoters have 60 days from the date of receipt of the removal request to effect the removal of the name and address from all mailing lists used by that

promoter for any skill contest or sweepstakes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00-8261 Filed 4-3-00; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[CC Docket No. 99-168; FCC 00-90]

Service Rules for the 746-764 and 776-794 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document establishes service rules for licensing Guard Bands that encompass six megahertz of spectrum in the 746-764 MHz and 776-794 MHz bands which have been reallocated for commercial use from their previous use for the broadcasting service. The Commission previously established service rules for thirty of the thirty-six megahertz reallocated for commercial use, and established two paired Guard Bands, one of 4 megahertz and one of 2 megahertz. This document adopts licensing, technical, and operational rules for these Guard Bands.

DATES: Effective April 4, 2000.

FOR FURTHER INFORMATION CONTACT:

Legal Information: Gary Michaels, 202-418-0660; Technical Information: Marty Liebman, 202-418-1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order (*Second R&O*) in WT Docket No. 99-168; FCC 00-90, adopted March 8, 2000, and released March 9, 2000. The complete text of this *Second R&O* is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW, Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY-B400, 445 12th Street, SW, Washington, DC.

Synopsis of the Second Report and Order

1. The Commission adopts a *Second R&O* in WT Docket No. 99-168, establishing service and auction rules for the commercial licensing of 6 megahertz of spectrum in the 746-764 and 776-794 MHz bands (700 MHz band) formerly reserved for analog UHF

television service. The Notice of Proposed Rulemaking, *NPRM*, initiating this proceeding may be found at 64 FR 36686, July 7, 1999. The First Report and Order in this proceeding, *First R&O*, 65 FR 3139, (January 20, 2000) adopted service and auction rules for thirty of the thirty-six megahertz reallocated for commercial use, and established two paired Guard Bands, one of 4 megahertz and one of 2 megahertz, located adjacent to spectrum allocated for public safety use. This *Second R&O* adopts licensing, technical, and operational rules for these Guard Bands. The 2 megahertz Guard Band includes 746–747 MHz and 776–777 MHz, and the 4 megahertz Guard Band includes 762–764 MHz and 792–794 MHz.

2. The *Second R&O* seeks to minimize the potential for harmful interference to public safety operations in the immediately adjacent 700 MHz spectrum by adopting a package of interference protections modeled on the interference standards within the 700 MHz public safety spectrum. Thus, 700 MHz public safety licensees should experience no greater interference risk from Guard Band users than from public safety licensees. Accordingly, entities operating in the Guard Bands must comply with specified “out-of-band emission” criteria, and with prescribed frequency coordination procedures that include advance notification to the Commission-recognized public safety frequency coordinators and adjacent area Guard Band users. To reduce the potential for such harmful interference to public safety operations, the Commission also finds that entities operating in the Guard Bands should not be permitted to employ a cellular system architecture, an architecture not used by public safety licensees. Entities using cellular architectures may, however, participate in the 30 megahertz band auction. Additionally, the Commission recently announced an auction of broadband Personal Communications Service (PCS) licenses that would make additional spectrum available for systems using cellular architectures. The technical and operational requirements for Guard Band systems are discussed in more detail in paragraphs 14 through 24 of the full text of the *Second R&O*.

3. The Commission will assign licenses in the Guard Bands to Guard Band Managers using competitive bidding. The Guard Band Manager will be a new class of commercial licensee who will be engaged in the business of leasing spectrum for value to third parties on a for-profit basis. Guard Band Managers will be required to adhere to strict frequency coordination and

interference rules, and control use of the spectrum so as to facilitate protection for public safety. The Guard Band Manager may subdivide its spectrum in any manner it chooses and make it available to any system operator, or directly to any end user for fixed or mobile communications, consistent with the frequency coordination and interference rules specified for these bands.

4. Guard Band Managers will be allowed the flexibility to subdivide their spectrum, and lease it to third party users without having to secure approval for the transfer or assignment of their license. Additionally, although the Commission adopts a performance standard under which the Guard Band Manager will be required to provide substantial service during the term of its license, the Guard Band Manager will be able to meet that standard by leasing spectrum, rather than by incurring the substantial capital costs associated with system buildout. This licensing represents an innovative spectrum management approach that should enable parties to acquire spectrum more readily for varied uses, while streamlining the Commission’s spectrum management responsibilities.

5. The Commission will not impose any restrictions on the type of customers with whom Guard Band Managers may seek to do business, and will provide Guard Band Manager licensees significant flexibility, within the technical constraints necessary to protect public safety, to tailor use of their assigned spectrum. The Commission’s principal reason for licensing Guard Band spectrum to Guard Band Managers is that this is the most effective and efficient way to manage this spectrum while protecting public safety operations in adjacent bands. The Commission also believes that there is a significant benefit to having a single entity in a service area that is responsible for coordinating the selection of Guard Band frequencies to be used and the operating parameters of the sites to be constructed. The use of Guard Band Managers will also enable end users to acquire spectrum that can meet unique geographic requirements. The Guard Band Manager license will also enable small businesses to acquire spectrum in amounts, and for periods of time, that better suit their unique characteristics and specialized communications needs.

6. Each Guard Band Manager will be granted a license under which it will allow others to construct and operate stations at any available site within the licensed area and on any channel for which the Guard Band Manager is

licensed. The only exception to this blanket license approach is for stations that require individual Commission review, because submission of an Environmental Assessment is required under § 1.1307 of the Commission’s rules; international coordination is required; or the station would affect the radio frequency quiet zones described in § 90.177 of the Commission’s rules. Additionally, station antenna structures that require notification to the Federal Aviation Administration must be registered with the Commission prior to construction. In cases where individual Commission review is required, the Guard Band Manager must file a separate application and obtain appropriate approvals or authorizations. Guard Band Managers may allow third-party system operators or end users to modify stations that are covered under a Guard Band Manager’s blanket license without prior Commission approval. In all instances, however, a primary responsibility of the Guard Band Manager will be to coordinate carefully operations and modifications of systems in the Guard Bands to ensure non-interference with public safety.

7. To minimize the potential for interference to public safety operations in the adjacent 700 MHz bands, as well as adjacent channel and co-channel operations in adjacent geographic areas, the Commission adopts coordination requirements. Under these coordination requirements, Guard Band Managers must notify Commission-recognized public safety frequency coordinators in the 700 MHz public safety band and adjacent-area Guard Band Managers of the technical parameters of any site constructed in the Guard Band Manager’s license area. This notification requirement applies to the coordination of both new stations and station modifications. At a minimum, each notification must include the frequency or frequencies coordinated, antenna height, antenna location, type of emission, effective radiated power, a description of the service area, date of coordination and user name or, in the alternative, a description of the type of operation.

8. Such notifications must be made within one business day after a Guard Band Manager has coordinated the station. To allow the public safety community and other Guard Band Managers time to evaluate the coordinations, entities coordinated by a Guard Band Manager must wait at least ten business days after notification before they can begin operating under the Guard Band Manager’s license. Guard Band Managers must also notify the same entities when an application

for an individual station license is filed with the Commission and users must wait the same 10-day period. The Commission expects Guard Band Managers to cooperate with one another and the public safety community in the selection of frequencies. In the event of harmful interference, Guard Band Managers are expected to cooperate to resolve the problem by mutually satisfactory arrangements. If the parties involved are unable to reach a mutually satisfactory solution, the Commission may impose restrictions on the operation(s) of any of the parties involved, consistent with its enforcement powers under the Communications Act.

9. *Statutory Considerations.* The Commission finds that the licensing of spectrum in this band to Guard Band Managers is consistent with section 337 of the Communications Act, the Commission's spectrum management obligations, and the public interest. Congress instructed the Commission to reallocate 24 megahertz of the spectrum between 746 and 806 MHz for public safety services and 36 megahertz for commercial use. The Commission believes it is a reasonable interpretation of the "commercial use" requirement in section 337(a)(2) to permit non-public safety, commercial entities to lease spectrum within the 36 megahertz to third-party users (commercial or individual) upon which no end-use restrictions, except for certain technical restrictions set forth in the *Second R&O*, will be imposed.

10. The Commission's decision to reserve this spectrum for Guard Band Managers is consistent with Congress's direction in section 337(d)(4) of the Communications Act, and the Conference Report language pertaining to that section, that users of the public safety spectrum be protected from interference. Section 337 also supports licensing the Guard Bands to Guard Band Managers because this licensee is a commercial entity that will be engaged in a for-profit use of the spectrum. The Commission concludes that the Guard Band Manager's generation of revenues from its use of the licensed spectrum meets the section 337(a)(2) requirement that the spectrum be for commercial use.

11. The Commission also concludes that the creation of the Guard Band Manager as a new class of licensee is consistent with the Commission's broad licensing and spectrum management authority under sections 301, 303(b), and 309(j) of the Communications Act, and the Commission's broad authority to adopt reasonable rules in the public interest establishing licensing eligibility

criteria. Moreover, the Commission believes that the Guard Band Manager concept is consistent with the requirement in section 310(d) of the Communications Act that licensees retain ultimate *de facto* control of their licenses. Guard Band Managers will have full authority and the duty to take whatever actions are necessary to ensure third-party compliance with the Act and the Commission's rules. In establishing this new class of licensee, the Commission does not exceed its statutory authority or relinquish its statutory responsibilities pertaining to the licensing of wireless services. The Commission will continue to fulfill its statutory obligation under section 309(a) to determine whether the public interest, convenience, and necessity will be served by the granting of a Guard Band Manager's license application. As with any other licensee, the Commission will hold Guard Band Managers directly responsible for compliance with all obligations that the Communications Act imposes on licensees. The Commission will also hold Guard Band Managers directly responsible for any interference or misuse of the frequencies arising from their use by non-licensed entities. Further, the Commission intends to exercise its general enforcement powers under section 303 of the Act by imposing appropriate sanctions against noncomplying Guard Band Managers, and, where warranted, revoking licenses pursuant to section 312 of the Act, for violations of the Act or Commission regulations committed by the Guard Band Manager or third-party users of its licensed spectrum. Finally, the Commission emphasizes that third-party spectrum users who violate the Commission's rules or other federal laws are subject to forfeitures under section 503 of the Communications Act, other administrative sanctions, and criminal prosecution.

12. *Rules Governing Guard Band Manager Licenses.* Concerns regarding the Guard Band Manager's ability to manage the spectrum in the best interest of prospective eligible users can be addressed by Commission rules that will govern both the Guard Band Manager's operations and its contractual relationships with third-party users. Commenters suggested a number of terms and conditions that might be included in written agreements between Guard Band Managers and their customers. With respect to many of the contractual terms and conditions suggested in the comments, the Commission elects not to incorporate them in its service rules, but rather to

leave to the Guard Band Manager's discretion the decision whether such terms and conditions are necessary in the prudent structuring of the Guard Band Manager-customer relationship. Consistent with its decision to afford licensees in the 746–764 MHz and 776–794 MHz bands maximum practicable flexibility in the use of this spectrum, the Commission will not encumber Guard Band Managers with numerous regulations at this time. The Commission will, however, closely monitor how Guard Band Managers carry out their spectrum management responsibilities and will impose more detailed rules of general applicability if presented with evidence of specific conduct that would warrant imposition of such rules.

13. The Guard Band Manager will contractually provide customers the right to use certain frequencies in its service area, as identified in the contract. The duration of spectrum user agreements may vary; however, no agreement may extend beyond the term of the Guard Band Manager's FCC authorization. The Guard Band Manager may enter into contingent agreements providing any spectrum user with an option or right to renew its agreement if the Guard Band Manager is able to renew its authorization on similar terms and conditions with the Commission. The Commission will also require Guard Band Manager agreements to detail the operating parameters of the spectrum user's system, including power, maximum antenna heights, frequencies of operation, base station location(s), area(s) of operation, and other parameters as appropriate.

Additionally, the spectrum user must agree to operate its system in compliance with all technical specifications for the system consistent with Commission policy, and must use FCC-approved equipment where appropriate. Guard Band Managers will also be required to include provisions in their agreements that the spectrum user complete post-construction proofs of system performance prior to system activation.

14. Guard Band Manager contracts must include provisions that apply all existing licensee obligations to the spectrum user. The spectrum user must agree to comply with all applicable Commission rules, and accept FCC oversight and enforcement consistent with the Guard Band Manager's license. Guard Band Managers also must include provisions in their contracts obligating the spectrum user to cooperate fully with any investigation or inquiry conducted by either the Commission or the Guard Band Manager. In the event

that the Guard Band Manager has knowledge or reason to believe that its customer has committed a violation of the Commission's rules, or that the customer's system is causing harmful interference with other systems, the Guard Band Manager will have the right to conduct onsite inspections of all transmission facilities. If the Guard Band Manager determines that there is an ongoing violation of the Commission's rules or that the customer's system is causing harmful interference, the Guard Band Manager shall have the right to suspend or terminate the operation of the system, or take other measures to resolve the interference until the situation can be remedied. Third-party spectrum user agreements must also stipulate that if the customer refuses to comply with a suspension or termination order, the Guard Band Manager will be free to use all legal means necessary to enforce the order. Finally, Guard Band Managers will be required to maintain their written agreements with spectrum users at their principal place of business, and to retain these records for at least two years after the date such agreements expire. These records must be kept current and be made available upon request for inspection by the Commission or its representatives.

15. In the event that there is a dispute between a Guard Band Manager and one of its customers, or among multiple customers of the same Guard Band Manager, the Commission expects such disputes to be resolved by the Guard Band Manager in the same manner as would be used by the parties to resolve other commercial disputes arising under the contract. The Commission will consider any complaints filed against a Guard Band Manager for violating the Act or the Commission's policies. The Commission will resolve such complaints pursuant to its authority granted in sections 308(b) and 309(d) of the Act. With respect to disputes between non-contracting parties and a Guard Band Manager or the Guard Band Manager's customers, when the Guard Band Manager is unable or unwilling to resolve such disputes in a timely fashion, the aggrieved party may file a complaint with the Commission, to ensure that the Guard Band Manager and its customers are complying with the requirements of the Act, Commission rules, and the terms of the Guard Band Manager license. However, the Commission expects Guard Band Managers to coordinate use of their licensed frequencies carefully to ensure that their customers do not interfere

with public safety or other licensees on adjacent channels.

16. *Regulatory Status.* Because the Guard Band Manager licensee will act only as a spectrum broker and not as a wireless service provider, it will not be a carrier of any type. Accordingly, as licensed in the 6 megahertz block of the 700 MHz band, the Guard Band Manager will not be a common carrier as defined in section 3 of the Communications Act. Consistent with the Commission's decision to amend Form 601 to allow licensees in the 30 megahertz block to designate the regulatory status of the services they provide, the Commission has also amended item 35 of the Form 601 to add the Guard Band Manager classification.

17. Although Guard Band Managers will not provide services regulated as Commercial Mobile Radio Services (CMRS), they may lease their spectrum to customers that will provide CMRS and that will be required to comply with Commission rules applicable to CMRS providers. CMRS provided on the Guard Bands will not count against the 45/55 megahertz spectrum cap.

18. *Eligibility and Use Restrictions.* The Commission will assign licenses in the Guard Bands exclusively to Guard Band Managers. The Commission will not impose restrictions on the types of entities that may be licensed as Guard Band Managers. Instead it adopts certain basic requirements for Guard Band Managers that will further the Commission's objective of making the Guard Band Manager spectrum available to a wide range of users.

19. The Commission believes that assigning licenses in the 6 megahertz Guard Bands solely to Guard Band Managers will be the most efficient and effective way to manage spectrum that is subject to commercial uses for the protection of public safety licensees in the adjacent bands. Thus, the purpose of the Guard Band Manager will be to lease spectrum to third party, and in doing so, to manage the spectrum efficiently in a manner that also protects adjacent public safety bands from interference. Guard Band Managers will have a financial incentive to coordinate use of their frequencies to ensure non-interference. Guard Band Managers may subdivide their spectrum and make it available to end users for private internal use, or to service providers that may provide common carrier or non-common carrier services to their customers. A Guard Band Manager may also aggregate the various demands for spectrum within its service area to meet the unique needs of that service area. The Commission is currently considering innovative assignment

mechanisms that enable parties to more easily aggregate and disaggregate spectrum for alternative uses, and the Guard Band Manager approach adopted in the *Second R&O* can potentially be an important step in that direction.

20. Guard Band Managers will be permitted to lease some of their licensed spectrum to affiliated entities for the affiliate's own internal use or for its provision of commercial or private radio services. However, to ensure that the Commission conducts a useful test of the Band Manager concept and obtains the full benefits of this new licensing approach, a core feature of which is leasing spectrum to third parties, Guard Band Managers will be required to lease the predominant amount of their spectrum to non-affiliates. The Commission also provides Guard Band Managers with a "safe harbor" example of compliance with this requirement. To take advantage of this "safe harbor," a Guard Band Manager must lease no more than 49.9 percent of its licensed spectrum in a geographic service area to its affiliates. For the purpose of measuring the percent of spectrum leased under this rule, if a Guard Band Manager leases spectrum to an affiliate covering any portion of the defined geography of the service area, that spectrum will be considered to be leased to the affiliate.

21. The Commission clarifies that among those that may be licensed as Guard Band Managers in the Guard Bands are entities in the critical infrastructure industries—entities that utilize private communications systems to support their commercial operations. The critical infrastructure industries are not eligible for licensing in the 24 megahertz of spectrum allocated for public safety service providers. The Commission finds nothing in the language of section 337 or its legislative history that indicates Congress intended to treat the critical infrastructure industries differently from other commercial entities by excluding them from both the 24 megahertz of public safety spectrum and the 36 megahertz of commercial spectrum.

22. In the *Second R&O* the Commission considers whether to limit the number of channel blocks in a geographic service area that may be licensed to a Guard Band Manager. The Commission determines that, for the first auction of licenses in the 6 megahertz block, it will limit an entity and its affiliates to holding only one of the two Guard Band Manager licenses that will be available in a geographic service area. However, if any Guard Band Manager licenses remain unsold after the first auction, the Commission

intends to lift this “one-to-a-market” rule in any subsequent auctions in this band. Limiting the number of Guard Band Manager licenses that one entity may hold will provide the Commission with an ability to benchmark one Guard Band Manager against another serving the same geographic area.

23. The Commission anticipates that the competitive environment in which Guard Band Managers will operate will serve to constrain them from unreasonably restricting access to their spectrum. However, some general safeguards are appropriate for at least an initial period. The Commission expects Guard Band Managers to not engage in unjust or unreasonable discrimination among spectrum users and to honor all reasonable requests by potential users for access to the licensed spectrum. The Commission nevertheless recognizes that the number of users that can be granted exclusive use of a Guard Band Manager’s channels will be limited. The Commission also recognizes that a Guard Band Manager may have valid business reasons for denying a potential user’s request for spectrum. For example, denial of a request for spectrum might be reasonable when the request, if granted, would preclude the Guard Band Manager from entering into an agreement with another user needing coverage of a wider geographic area for a longer period of time.

24. Because the Guard Band Manager license is a new concept and we cannot predict the type or amount of demand that will exist for spectrum licensed in this manner, the Commission finds it appropriate to provide Guard Band Managers with a considerable amount of latitude to develop methods and procedures for determining the most efficient way to apportion their spectrum among prospective users. The Commission believes Guard Band Managers should be free to enter into as many user agreements as they determine to be feasible given the capacity and other technical limits on use of their spectrum, market demand, and the varied needs of their users for different amounts of spectrum for different periods of time. For this reason, the Commission is not imposing specific requirements on the number of users that must be provided access to their spectrum.

25. The Commission also recognizes the potential for Guard Band Managers to impose unnecessary conditions or restrictions on their spectrum users, which may have anticompetitive impacts on those entities with whom the Guard Band Manager is in competition. Therefore, it adopts a rule prohibiting Guard Band Managers from

imposing unduly restrictive requirements on use of its licensed frequencies. A requirement is unduly restrictive if it is not reasonably related to the efficient management of the spectrum licensed to the Guard Band Manager. Requirements that *are* reasonably related to the Guard Band Manager’s spectrum management responsibilities are those that are necessary to ensure efficient spectrum use or ensure compliance with the Commission’s rules, including those rules pertaining to field strength limits, power and antenna height limits, interference, emission limits, and radiofrequency (RF) safety requirements. For example, the Commission would consider it unduly restrictive for a Guard Band Manager to require a spectrum user to purchase telecommunications equipment only from one manufacturer or vendor, to require use of a particular technology, or to impose operating rules that would have the same practical effect. The Commission will consider any complaints filed against a Guard Band Manager for unreasonably denying access to its spectrum or imposing unreasonable terms and conditions on third-party service providers or end users, pursuant to its authority granted in sections 308(b) and 309(d) of the Communications Act.

26. The Commission is prepared to impose additional constraints if it receives complaints indicating that Guard Band Managers are unfairly denying access to spectrum, or imposing unreasonable terms and conditions on its use, thereby undermining the Commission’s objectives in licensing Guard Band Managers. Conversely, the Commission is prepared to lift these requirements if experience with the Guard Band Manager licensing approach proves them unnecessary.

27. *Size of Service Areas for Geographic Area Licensing.* The Commission will auction licenses for both the 2 megahertz and the 4 megahertz Guard Bands on the basis of 52 Major Economic Areas (MEAs), rather than Economic Areas (EAs) as proposed by some commenters. The use of MEAs will facilitate greater participation in the auction, and allow a larger number and more diverse pool of Guard Band Managers, than larger regional or nationwide licensing areas, while simultaneously giving medium-sized and larger companies the flexibility to aggregate spectrum to put together regional and nationwide licenses tailored to their particular business needs.

28. *License Term; Renewal Expectancy.* The Commission adopts a

license term for the Guard Bands that extends to January 1, 2015. This is eight years beyond the date as of which incumbent broadcasters are required to have relocated to other portions of the spectrum. The Commission also adopts for Guard Band licenses the right to a renewal expectancy established in § 27.14(b) of the Commission’s rules. In the event that a Guard Band license is partitioned or disaggregated, any partitionee or disaggregatee is authorized to hold its license for the remainder of the original licensee’s term, and the partitionee or disaggregatee may obtain a renewal expectancy on the same basis as other licensees in the band. Guard Band licensees meeting the substantial service requirement discussed herein will be deemed to have met this element of the renewal expectancy requirement.

29. *Performance Requirements.* In establishing the Guard Band Manager as a new class of licensee, the Commission will require Guard Band Managers to provide “substantial service” to their service areas no later than January 1, 2015. The Commission will not impose other build-out requirements or channel usage requirements. In lieu of these more stringent requirements, the Commission is imposing a reporting requirement. Guard Band Managers may avail themselves of either of the following “safe harbors” for the Guard Bands. A Guard Band Manager can satisfy the substantial service requirement by leasing the predominant amount of its licensed spectrum in at least 50 percent of the geographic area covered by its license at the license-renewal mark. A Guard Band Manager can also satisfy the substantial service requirement by providing coverage to 50 percent of the population of the Guard Band Manager’s service area at the license-renewal mark. These “safe harbor” examples are intended to provide Guard Band Managers a degree of certainty regarding how to comply with the substantial service requirement. The requirement can be met in other ways, which will vary depending on the market and type of spectrum users served, and the Commission will review licensees’ showings on a case-by-case basis.

30. The Commission will, however, reserve the right to review its service rules and impose more stringent performance requirements on Guard Band Managers in the future if it receives complaints from prospective users or determines that reassessment is warranted because spectrum is being anticompetitively warehoused or is otherwise not being made available despite existing demand. To facilitate

such review, the *Second R&O* adopts an annual reporting requirement that will obligate Guard Band Managers to provide the Commission with information about the manner in which their spectrum is being utilized. Guard Band Managers will be required to supply the Commission with basic information about the total number of users and the number of those users that are affiliates of the Guard Band Manager; the amount of spectrum being used by the Guard Band Manager's affiliates in any part of the licensed service area and the amount of spectrum being used pursuant to agreements with unaffiliated third parties; the general nature of its customers' spectrum use; and the length of the term of each user agreement. To minimize the burden placed on Guard Band Managers by this reporting requirement, the Commission anticipates collecting this information electronically, through the Universal Licensing System. The specific information that Guard Band Managers will provide and the procedures that Guard Band Managers will follow in filing this annual report will be announced in a subsequent Public Notice to be issued by the Wireless Telecommunications Bureau. The Commission will make this information available to the public in order to enhance prospective users' ability to determine the availability of frequencies in their service areas that will meet their needs. The Commission also reserves the authority to subject Guard Band Managers to audits using in-house and contract resources.

31. *Disaggregation and Partitioning of Licenses.* Guard Band Managers will be allowed to partition their service areas and to disaggregate their spectrum to any entity that would otherwise be eligible to hold an authorization as a Guard Band Manager for this spectrum. Licensees seeking to partition and disaggregate are required to obtain Commission authorization for partial assignment of their license. In reviewing requests for approval of partitioning and disaggregation, the Commission will consider the impact that such partitioning or disaggregation would have on public safety operations in the adjacent 700 MHz bands. Additionally, the partitioning licensee must include with its request a description of the partitioned service area and calculations of the population of the partitioned service area and the licensed geographic service area, and will be subject to the provisions against unjust enrichment set forth in § 27.15(c) of the Commission's rules.

32. The Commission will also allow partitioning Guard Band Managers to

choose between two options for satisfying the performance requirement in § 27.14 of the Commission's rules. Under the first option, the partitioner and partitionee would each certify that it will independently satisfy the substantial service requirement for its respective partitioned area. If a Guard Band Manager fails to meet its substantial service requirement during the relevant license term, the non-performing Guard Band Manager's authorization will be subject to cancellation at the end of the license term. Under the second option, the partitioner can certify that it has met or will meet the substantial service requirement for the entire market. If the partitioner fails to meet the substantial service standard during the relevant license term, only its license will be subject to cancellation at the end of the license term; the partitionee's license will not be affected by the failure.

33. In addition, parties to disaggregation agreements may choose between two options for satisfying the performance requirement. Under the first option, the disaggregator and disaggregatee would certify that they will share responsibility for meeting the performance requirement for the entire geographic service area. If the parties choose this option, both parties jointly will be required to meet the substantial service requirement at the end of the relevant license term, and both Guard Band Manager licenses will be subject to cancellation, if the requirement is not met. The second option allows the parties to agree that either the disaggregator or the disaggregatee will be responsible for meeting the substantial service requirement for the geographic service area. If the parties choose this option, and the Guard Band Manager responsible for meeting the performance requirement fails to do so, only the license of the non-performing Guard Band Manager will be subject to cancellation.

34. *Public Notice of Initial Applications; Petitions to Deny.* Sections 309(b) and 309(c) of the Communications Act require public notice for initial applications for authorizations in, *inter alia*, the broadcasting or common carrier services, and substantial amendments thereof. The administrative procedures for spectrum auctions adopted in section 3008 of the Balanced Budget Act of 1997 and the Consolidated Appropriations Act permit the Commission to shorten notice periods in the auction context to five days for petitions to deny and seven days for public notice, notwithstanding the provisions of section 309(b) of the

Communications Act. The Commission exercises its authority under section 309(b)(2)(F) and adopts a seven-day notice requirement for initial applications for Guard Band Manager licenses and a five-day period for petitions to deny such applications.

35. *Foreign Ownership Restrictions.* Section 310(a) of the Communications Act prohibits any foreign government or representative from holding a station license. Section 310(b) prohibits certain defined ownership interests in broadcast, common carrier, aeronautical en route or aeronautical fixed radio station licenses. The Commission determines that § 27.12 of the Commission's rules regarding foreign ownership will apply to applicants for Guard Band licenses. Because the Guard Band Manager is a non-common carrier, an applicant requesting authorization for a Guard Band Manager license will be subject to section 310(a) but not to the additional prohibitions of section 310(b). With respect to the Commission's alien ownership reporting requirements, applicants for the Guard Band spectrum must file changes in foreign ownership information to the extent required by part 27 of the Commission's rules.

36. *Applicability of General Common Carrier Obligations.* Based on the Commission's conclusions set forth in the *First R&O*, and on its assessment that the decisions adopted therein are appropriate for application to the Guard Bands, the Commission adopts for the Guard Bands the forbearance measures discussed in the *First R&O* with respect to tariff and contract filings, interlocking directors, new and discontinued facilities, service provider local number portability, section 226 of the Communications Act, franks, and *pro forma* transfer applications.

37. The Commission also adopts the provisions of § 27.66 of its rules for operations on the Guard Bands. Section 27.66 tracks the provisions of § 63.71, requiring a common carrier voluntarily discontinuing, reducing or impairing service to provide notice to affected customers and the Commission and providing for the automatic grant of a fixed service common carrier's application for discontinuance after 31 days. In the case of Guard Band operations, this notice to the Commission must be provided by the Guard Band Manager. If a non-common carrier voluntarily discontinues, reduces, or impairs service, § 27.66 requires the carrier to give written notice to the Commission within seven days. In the case of Guard Band operations, this notice to the Commission, as well, must be provided

by the Guard Band Manager. A mere change in common carrier or non-common carrier status does not constitute a "discontinuance." If fixed service common carrier operations are involuntarily discontinued, reduced, or impaired for a period exceeding 48 hours, the Guard Band Manager must promptly notify the Commission, in writing, of the reasons for the discontinuance, reduction, or impairment of service, including a statement indicating when normal service is to be resumed. When normal service is resumed, the Guard Band Manager must promptly notify the Commission. The Commission continues to invite suggestions on ways to alleviate or streamline regulations that would otherwise be applicable to fixed services provided on this spectrum.

38. *Equal Employment Opportunity.* Because the Commission's Equal Employment Opportunity (EEO) rules are service-specific, a Guard Band user's EEO requirements will depend on the type of service it chooses to provide. FCC Form 601, as amended, identifies five regulatory statuses: (a) Common carrier, (b) non-common carrier, (c) private, internal communications, (d) broadcast, and (e) Band Manager. However, Guard Band users do not file FCC Form 601, because they are not licensees. Nevertheless, these operators will be subject to such EEO requirements as the nature of the services they provide dictates.

39. *Other Technical Rules.* The Commission adopts a field strength limit for the Guard Bands of 40 dBu/m to control in-band interference. However, users in adjoining areas may agree to alternate field strengths at their common border. The predicted 40 dBu/m field strength shall be calculated using figure 10 in 47 CFR 73.699 with a correction factor for antenna height differential of -9 dB.

40. The Commission adopts a threshold of 1000 w ERP for categorical exclusion from routine evaluation for RF radiation exposure for base and fixed stations in the Guard Bands. The threshold for routine evaluation of mobile devices for RF safety purposes will be 1.5 w or greater, in conformance with § 2.1091. For portable devices in the Guard Bands, the Commission adopts a maximum power limit of 3 w ERP with the provision that these devices be evaluated for RF exposure in compliance with § 2.1093. The Commission is providing guidance on acceptable methods of evaluating compliance with the Commission's RF exposure limits in OET Bulletin No. 65,

which has replaced OST Bulletin No. 65.

41. The Commission adopts the following power limits for the Guard Bands:

(i) For base stations and fixed stations operating in the 746-747 MHz and 762-764 MHz bands, an ERP no greater than 1,000 watts and an antenna height above average terrain (HAAT) no greater than 305 m;

(ii) For mobile, fixed, and control stations operating in the 776-777 MHz and 792-794 MHz bands, an ERP no greater than 30 watts; and

(iii) For portable stations operating in the 776-777 MHz and 792-794 MHz bands, an ERP no greater than 3 watts.

42. The second harmonic transmissions of Guard Band services that will be operating on TV channels 65 and 67 fall within a band used for radionavigation in the Global Navigation Satellite System (GNSS), which includes the Global Positioning System (GPS) at 1563.42-1587.42 MHz. The Commission therefore adopts the following out-of-band-emissions limits for all spurious emissions, including harmonics, that fall within the 1559-1610 frequency range, from equipment operating in the 746-747 MHz, 762-764 MHz, 776-777 MHz and 792-794 MHz Guard Bands:

(i) For wideband emissions, -70 dBW/MHz equivalent isotropically radiated power (EIRP); and

(ii) For discrete emissions of less than 700 Hz bandwidth, an absolute EIRP limit of -80 dBW. Outside of emissions into the 1559-1610 MHz RNSS band, the out of band emission standards adopted in section III.A.1 of the *Second R&O* will apply.

43. *Competitive Bidding.* In light of the accelerated schedule for auction of the 746-764 MHz and 776-794 MHz bands the Commission believes that it should not use, combinatorial bidding for the auction of licenses in these bands. Consistent with its decision in the *First R&O*, the Commission will not prohibit any entities from participating in the auction of licenses for the Guard Bands.

44. Also consistent with its decision in the *First R&O*, the Commission will use for the Guard Bands the competitive bidding procedures contained in subpart Q of part 1 of the Commission's rules, including any amendments adopted in the ongoing part 1 proceeding. However, to facilitate the Commission's compliance with its statutory obligation to deposit the proceeds from the auction in the Treasury by September 30, 2000, the Commission delegates to the Wireless Telecommunications Bureau authority

to suspend the payment deadlines in §§ 1.2107(b) and 1.2109(a) of the Commission's rules and require that winning bidders on all licenses in the 700 MHz bands pay the full balance of their winning bids upon submission of their long-form applications pursuant to § 1.2107(c) of the Commission's rules.

45. The Commission adopts for the Guard Bands the same definitions of small and very small businesses that it adopted for the 747-762 MHz and 777-792 MHz bands in the *First R&O* in this proceeding. A small business is defined as an entity with average annual gross revenues for the three preceding years not in excess of \$40 million, and a very small business is defined as an entity with average annual gross revenues for the three preceding years not in excess of \$15 million. In calculating gross revenues for purposes of small business eligibility, the Commission will attribute the gross revenues of the applicant, its controlling interests and its affiliates. For the auction of licenses for the Guard Bands, the Commission also adopts tiered bidding credits for small and very small businesses. Accordingly, small businesses will receive a 15 percent bidding credit. Very small businesses will receive a 25 percent bidding credit.

46. The Commission declines to adopt special preferences for entities owned by minorities or women. The Commission believes the bidding credits adopted in this *Second R&O* for small businesses will further Congress's objective of disseminating licenses among a wide variety of applicants because many minority- and women-owned entities, as well as rural telephone companies, are small businesses and will therefore qualify for these special provisions. The Commission also declines to provide bidding credits to LPTV licensees or state and local governments seeking spectrum for public safety communications.

47. *Protection of Television Services.* In order to protect analog and TV and DTV operations during the DTV transition period, the Commission extends the protection criteria applicable to 30 megahertz spectrum operations to operations in the Guard Bands. Thus, § 27.60, as amended, requires 700 MHz commercial operations, including those in the Guard Bands, to comply with the provisions of § 90.545 of the Commission's rules. The Congressional plan set forth in sections 336 and 337 of the Act and in the 1997 Budget Act is to transition this spectrum from its current use for broadcast services to commercial use and public safety services. Congress also has

directed the Commission to auction the 36 megahertz of spectrum for commercial use six years before the relocation deadline for incumbent broadcasters in this spectrum, while adopting interference limits and other technical restrictions necessary to protect full-service analog television service during the transition to DTV. The extended license term specified for 700 MHz commercial services on these bands reflects, in part, the recognition that incumbent television licensees on these frequencies may, under the statutory provision for DTV transition, continue to broadcast for some years, delaying the time when new users have uncompromised use of the spectrum resource.

48. In addition, the Commission indicated in the *First R&O* that it will consider specific regulatory requests needed to implement voluntary agreements reached between incumbent licensees and new users in these bands, and it extends that policy to Guard Band operations.

49. *Canadian and Mexican Border Regions.* There are currently separate agreements with Canada and Mexico covering TV broadcast use of the UHF 470–806 MHz band. Such agreements do not reflect the additional use or services being adopted in the *First R&O* in this proceeding and in this *Second R&O*. While the Commission staff has been involved in discussions with both countries regarding coordination or interference criteria for the use of these bands in the border areas for the additional services, agreements have yet to be reached. Therefore, until such agreements have been finalized, the Commission believes it necessary to adopt certain interim requirements for operations in the Guard Bands along the Canada and Mexico borders. Accordingly, licenses issued for these bands within 120 km of the borders will be subject to whatever future agreements the United States develops with these two countries. In that the existing agreements for the protection of TV stations in these countries are still in effect and must be recognized until they are replaced or modified to reflect the new uses, licenses in the border areas will be granted on the condition that harmful interference may not be caused to, but must be accepted from, UHF TV transmitters in Canada and Mexico. Furthermore, modifications may be necessary to comply with whatever provisions are ultimately specified in future agreements with Canada and Mexico regarding the use of these bands. Pending further negotiations, the *Second R&O* also adopts the protection criteria described

in this *Second R&O* for domestic TV and DTV stations as interim criteria for Canadian and Mexican TV and DTV stations.

50. *Procedural Matters.* The *Second R&O* contains new and modified information collections. The actions contained in this *Second R&O* are, however, exempt from the provisions of the Paperwork Reduction Act of 1995, under the Consolidated Appropriations statute, *See Consolidated Appropriations, Appendix E, Sec. 213. See also 145 Cong. Rec. at H12493–94 (November 17, 1999).* Implementation of the revisions to part 27 required to assign licenses in these commercial spectrum bands, including revisions to information collections, are therefore not subject to approval by the Office of Management and Budget, and became effective upon adoption. Similarly, the Consolidated Appropriations statute exempts this decision from the Regulatory Flexibility Act provisions and from the Contract With America Advancement Act provisions.

51. *Authority Citation and Ordering Clauses.* This action is taken pursuant to sections 1, 4(i), 7, 10, 201, 202, 208, 214, 301, 303, 307, 308, 309(j), 309(k), 310, 311, 324, 332 and 336 and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 208, 214, 301, 303, 307, 308, 309(j), 309(k), 310, 311, 324, 332, and 336, and 337 and the Consolidated Appropriations Act, 2000, Public Law 106–113, 113 Stat. 1501, section 213.

52. Part 27 of the Commission's Rules is amended to establish service rules for the 746–747/ 776–777 MHz and 762–764/ 792–794 MHz bands, as set forth in this synopsis. In accordance with section 213 of the Consolidated Appropriations Act, 2000, Public Law 106–113, 113 Stat. 1501 (1999), these rules shall be effective April 4, 2000.

53. Further, pursuant to 47 U.S.C. 155(c), the Chief of the Wireless Telecommunications Bureau is granted delegated authority to implement and modify auction procedures in the Wireless Communications Services, including the general design and timing of the auction, the number and grouping of authorizations to be offered in any particular auction, the manner of submitting bids, the amount of any minimum opening bids and bid increments, activity and stopping rules, and application and payment requirements, including the amount of upfront payments, and to announce such procedures by Public Notice.

54. Finally, pursuant to 47 U.S.C. 155(c), the Chief of the Wireless Telecommunications Bureau is granted delegated authority to suspend the

payment deadlines in §§ 1.2107(b) and 1.2109(a) of the Commission's rules, 47 CFR 1.2107(b), 1.2109(a), and require that winning bidders on all licenses in the 746–764 and 776–794 MHz bands pay the full balance of their winning bids upon submission of their long-form applications pursuant to § 1.2107(c) of the Commission's rules, 47 CFR 1.2107(c).

List of Subjects in 47 CFR Part 27

Guard band managers, Radio, Reporting and recordkeeping requirements, Telecommunications. Federal Communications Commission.

Magalie Roman Salas,
Secretary.

Rule Changes

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

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

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

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

2. Section 27.1 is amended by revising paragraph (b)(2) to read as follows:

§ 27.1 Basis and purpose.

* * * * *

(b) * * *

(2) 746–764 MHz and 776–794 MHz.

* * * * *

3. Section 27.2 is amended by redesignating paragraph (b) as paragraph (c), revising paragraph (a), and adding a new paragraph (b) to read as follows:

§ 27.2 Permissible communications.

(a) *Miscellaneous wireless communications services.* Except as provided in paragraph (b) of this section and subject to technical and other rules contained in this part, a licensee in the frequency bands specified in § 27.5 may provide any services for which its frequency bands are allocated, as set forth in the non-Federal Government column of the Table of Allocations in § 2.106 of this chapter (column 5).

(b) *746–747 MHz, 776–777 MHz, 762–764 MHz and 792–794 MHz bands.* Operators in the 746–747 MHz, 776–777 MHz, 762–764 MHz and 792–794 MHz bands may not employ a cellular system architecture. A cellular system architecture is defined, for purposes of this part, as one that consists of many small areas or cells (segmented from a larger geographic service area), each of

which uses its own base station, to enable frequencies to be reused at relatively short distances.

* * * * *

4. Section 27.4 is amended by adding a new definition for “affiliate,” and “guard band manager” in alphabetical order to read as follows:

§ 27.4 Terms and definitions.

Affiliate. This term shall have the same meaning as that for “affiliate” in part 1, § 1.2110(b)(4) of this chapter.

* * * * *

Guard band manager. The term *Guard band manager* refers to a commercial licensee in the 746–747 MHz, 762–764 MHz, 776–777 MHz, and 792–794 MHz bands that functions solely as a spectrum broker by subdividing its licensed spectrum and making it available to system operators or directly to end users for fixed or mobile communications consistent with Commission Rules. A *Guard band manager* is directly responsible for any interference or misuse of its licensed frequency arising from its use by such non-licensed entities.

* * * * *

5. Section 27.5 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 27.5 Frequencies.

* * * * *

(b) * * *

(1) Two paired channels of 1 megahertz each are available for assignment solely to Guard band managers. Block A: 746–747 MHz and 776–777 MHz.

(2) Two paired channels of 2 megahertz each are available for assignment solely to Guard band managers. Block B: 762–764 MHz and 792–794 MHz.

* * * * *

6. Section 27.6 is amended by revising paragraph (b)(1) to read as follows:

§ 27.6 Service areas.

* * * * *

(b) * * *

(1) Service areas for Block A in the 746–747 and 776–777 MHz bands and Block B in the 762–764 and 792–794 MHz bands are based on Major Economic Areas (MEAs), as defined in paragraph (a)(1) of this section.

* * * * *

7. Section 27.10 is amended by adding the introductory text to read as follows:

§ 27.10 Regulatory status.

Except with respect to Guard band manager licenses, which are subject to subpart G of this part, the following rules apply concerning the regulatory status of licensees in the frequency bands specified in § 27.5.

* * * * *

8. Section 27.12 is revised to read as follows:

§ 27.12 Eligibility.

Except as provided in § 27.604 any entity other than those precluded by section 310 of the Communications Act of 1934, as amended, 47 U.S.C. 310, is eligible to hold a license under this part.

9. Section 27.13 is amended by revising paragraph (b) to read as follows:

§ 27.13 License period.

* * * * *

(b) *746–764 MHz and 776–794 MHz bands.* Initial authorizations for the 746–764 MHz and 776–794 MHz bands, 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.

10. Section 27.50 is amended by redesignating paragraph (a) as paragraph (b) and paragraph (b) as paragraph (a), revising newly redesignated paragraph (b) and revising the heading to the table in paragraph (c) to read as follows:

§ 27.50 Power limits.

* * * * *

(b) The following power and antenna height limits apply to transmitters operating in the 746–764 MHz and 776–794 MHz bands:

(1) Fixed and base stations transmitting in the 746–764 MHz band must not exceed an effective radiated power (ERP) of 1000 watts and an antenna height of 305 m height above average terrain (HAAT), except that antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 1000 watts ERP in accordance with Table 1 of this section;

(2) Fixed, control, and mobile stations transmitting in the 776–794 MHz band are limited to 30 watts ERP;

(3) Portable stations (hand-held devices) transmitting in the 776–794 MHz band are limited to 3 watts ERP;

(c) * * *

Table 1—Permissible Power and Antenna Heights for Base and Fixed Stations in the 746–764 MHz Band

* * * * *

11. Section 27.53 is amended by redesignating paragraphs (e) and (f) as paragraphs (f) and (g), revising newly redesignated paragraph (f) and adding a new paragraph (e) to read as follows:

§ 27.53 Emission limits.

* * * * *

(e) For operations in the 746–747 MHz, 762–764 MHz, 776–777 MHz, and 792–794 MHz bands, transmitters must meet the following emission limitations:

(1) The adjacent channel coupled power (ACCP) requirements for transmitters designed for various channel sizes are shown in the following tables. Mobile station requirements apply to handheld, car mounted and control station units. The tables specify a maximum value for the ACCP relative to maximum output power as a function of the displacement from the channel center frequency. In addition, the ACCP for a mobile station transmitter at the specified frequency displacement must not exceed the value shown in the tables. For transmitters that have power control, the latter ACCP requirement can be met at maximum power reduction. In the following charts, “(s)” means that a swept measurement is to be used.

6.25 KHZ MOBILE TRANSMITTER ACCP REQUIREMENTS

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACCP relative (dBc)	Maximum ACCP absolute (dBm)
6.25	6.25	–40	not specified
12.50	6.25	–60	–45
18.75	6.25	–60	–45
25.00	6.25	–65	–50
37.50	25.00	–65	–50
62.50	25.00	–65	–50
87.50	25.00	–65	–50

6.25 KHz MOBILE TRANSMITTER ACCP REQUIREMENTS—Continued

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACCP relative (dBc)	Maximum ACCP absolute (dBm)
150.00	100.00	–65	–50
250.00	100.00	–65	–50
>400 to receive band	30(s)	–75	–55
In the receive band	30(s)	–100	–70

12.5 KHz MOBILE TRANSMITTER ACCP REQUIREMENTS

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACCP relative (dBc)	Maximum ACCP absolute (dBm)
9.375	6.25	–40	not specified
15.625	6.25	–60	–45
21.875	6.25	–60	–45
37.500	25.00	–65	–50
62.500	25.00	–65	–50
87.500	25.00	–65	–50
150.000	100.00	–65	–50
250.000	100.00	–65	–50
>400 to receive band	30(s)	–75	–55
In the receive band	30(s)	–100	–70

25 KHz MOBILE TRANSMITTER ACCP REQUIREMENTS

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACCP relative (dBc)	Maximum ACCP absolute (dBm)
15.625	6.25	–40	not specified
21.875	6.25	–60	–45
37.500	25.00	–65	–50
62.500	25.00	–65	–50
87.500	25.00	–65	–50
150.000	100.00	–65	–50
250.000	100.00	–65	–50
>400 to receive band	30(s)	–75	–55
In the receive band	30(s)	–100	–70

150 KHz MOBILE TRANSMITTER ACCP REQUIREMENTS 12.5 KHz MOBILE TRANSMITTER ACCP REQUIREMENTS

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACCP relative (dBc)	Maximum ACCP absolute (dBm)
100	50	–40	not specified
200	50	–50	–35
300	50	–50	–35
400	50	–50	–35
600 to 1000	30(s)	–60	–45
1000 to receive band	30(s)	–70	–55
In the receive band	30(s)	–100	–75

6.25 KHz BASE TRANSMITTER ACCP REQUIREMENTS

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACCP (dBc)
6.25	6.25	–40
12.50	6.25	–60
18.75	6.25	–60
25.00	6.25	–65
37.50	25.00	–65
62.50	25.00	–65
87.50	25.00	–65
150.00	100.00	–65
250.00	100.00	–65

6.25 KHZ BASE TRANSMITTER ACCP REQUIREMENTS—Continued

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACCP (dBc)
>400 to receive band	30(s)	– 80 (continues @ – 6dB/oct)
In the receive band	30(s)	– 100

12.5 KHZ BASE TRANSMITTER ACCP REQUIREMENTS

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACCP (dBc)
9.375	6.25	– 40
15.625	6.25	– 60
21.875	6.25	– 60
37.500	25.00	– 60
62.500	25.00	– 65
87.500	25.00	– 65
150.000	100.00	– 65
250.000	100.00	– 65
>400 to receive band	30(s)	– 80 (continues @ – 6dB/oct)
In the receive band	30(s)	– 100

25 KHZ BASE TRANSMITTER ACCP REQUIREMENTS

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACCP (dBc)
15.625	6.25	– 40
21.875	6.25	– 60
37.500	25.00	– 60
62.500	25.00	– 65
87.500	25.00	– 65
150.000	100.00	– 65
250.000	100.00	– 65
>400 to receive band	30(s)	– 80 (continues @ – 6dB/oct)
In the receive band	30(s)	– 100

150 KHZ BASE TRANSMITTER ACCP REQUIREMENTS

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACCP (dBc)
100	50	– 40
200	50	– 50
300	50	– 55
400	50	– 60
600 to 1000	30(s)	– 65
1000 to receive band	30(s)	– 75 (continues @ – 6dB/oct)
In the receive band	30(s)	– 100

(2) *ACCP measurement procedure.*
The following procedures are to be followed for making ACCP transmitter

measurements. For time division multiple access (TDMA) systems, the measurements are to be made under

TDMA operation only during time slots when the transmitter is on. All measurements must be made at the

input to the transmitter's antenna. Measurement bandwidth used below implies an instrument that measures the power in many narrow bandwidths (e.g. 300 Hz) and integrates these powers across a larger band to determine power in the measurement bandwidth.

(i) *Setting reference level:* Using a spectrum analyzer capable of ACCP measurements, set the measurement bandwidth to the channel size. For example, for a 6.25 kHz transmitter, set the measurement bandwidth to 6.25 kHz; for a 150 kHz transmitter, set the measurement bandwidth to 150 kHz. Set the frequency offset of the measurement bandwidth to zero and adjust the center frequency of the spectrum analyzer to give the power level in the measurement bandwidth. Record this power level in dBm as the "reference power level".

(ii) *Measuring the power level at frequency offsets <600kHz:* Using a spectrum analyzer capable of ACCP measurements, set the measurement bandwidth as shown in the tables above. Measure the ACCP in dBm. These measurements should be made at maximum power. Calculate the coupled power by subtracting the measurements made in this step from the reference power measured in the previous step. The absolute ACCP values must be less than the values given in the table for each condition above.

(iii) *Measuring the power level at frequency offsets >600kHz:* Set a spectrum analyzer to 30 kHz resolution bandwidth, 1 MHz video bandwidth and sample mode detection. Sweep ± 6 MHz from the carrier frequency. Set the reference level to the RMS value of the transmitter power and note the absolute power. The response at frequencies greater than 600 kHz must be less than the values in the tables above.

(iv) *Upper Power Limit Measurement:* The absolute coupled power in dBm measured above must be compared to the table entry for each given frequency offset. For those mobile stations with power control, these measurements should be repeated with power control at maximum power reduction. The absolute ACCP at maximum power reduction must be less than the values in the tables above.

(3) *Out-of-band emission limit.* On any frequency outside of the frequency ranges covered by the ACCP tables in this section, the power of any emission must be reduced below the unmodulated carrier power (P) by at least $43 + 10 \log (P)$ dB.

(4) *Authorized bandwidth.* Provided that the ACCP requirements of this section are met, applicants may request any authorized bandwidth that does not exceed the channel size.

(f) For operations in the 746–764 MHz and 776–794 MHz bands, emissions in the band 1559–1610 MHz shall be limited to –70 dBW/MHz equivalent isotropically radiated power (EIRP) for wideband signals, and –80 dBW EIRP for discrete emissions of less than 700 Hz bandwidth. For the purpose of equipment authorization, a transmitter shall be tested with an antenna that is representative of the type that will be used with the equipment in normal operation.

* * * * *

12. Section 27.55 is amended by revising paragraph (b) to read as follows:

§ 27.55 Field strength limits.

* * * * *

(b) 746–764 and 776–794 MHz bands: 40dBu V/m

13. Section 27.60 is amended by removing the phrase "747–762 MHz and 777–792 MHz" from the introductory text and adding in its place the phrase "746–764 MHz and 776–794 MHz", removing the phrase "747–762 MHz and 777–792 MHz" and "747–762 MHz or 777–792 MHz" from paragraph (b) introductory text and adding in its place the phrase "746–764 MHz and 776–794 MHz" and "746–764 MHz or 776–794 MHz", respectively, removing the phrase "747–762 MHz" from paragraph (b)(2)(i) and adding in its place the phrase "746–764 MHz", and removing the phrase "777–792 MHz" from paragraph (b)(2)(ii) and adding in its place the phrase "776–794 MHz".

14. Section 27.66 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 27.66 Discontinuance, reduction, or impairment of service.

(a) *Involuntary act.* If the service provided by a fixed common carrier licensee, or a fixed common carrier operating on spectrum licensed to a Guard Band Manager, is involuntarily discontinued, reduced, or impaired for a period exceeding 48 hours, the licensee must promptly notify the Commission, in writing, as to the reasons for discontinuance, reduction, or impairment of service, including a statement when normal service is to be resumed. When normal service is resumed, the licensee must promptly notify the Commission.

(b) *Voluntary act by common carrier.* If a fixed common carrier licensee, or a fixed common carrier operating on spectrum licensed to a Guard Band Manager, voluntarily discontinues, reduces, or impairs service to a community or part of a community, it must obtain prior authorization as

provided under § 63.71 of this chapter. An application will be granted within 30 days after filing if no objections have been received.

(c) *Voluntary act by non-common carrier.* If a fixed non-common carrier licensee, or a fixed non-common carrier operating on spectrum licensed to a Guard Band Manager, voluntarily discontinues, reduces, or impairs service to a community or part of a community, it must give written notice to the Commission within seven days.

* * * * *

15. The heading for subpart F is revised to read as follows:

Subpart F—Competitive Bidding Procedures for the 746–764 MHz and 776–794 MHz Bands

* * * * *

16. Section 27.501 is revised to read as follows:

§ 27.501 746–764 MHz and 776–794 MHz bands subject to competitive bidding.

Mutually exclusive initial applications for licenses in the 746–764 MHz and 776–794 MHz bands are subject to competitive bidding procedures. The procedures set forth in part 1, subpart Q, of this chapter will apply unless otherwise provided in this part.

17. Part 27 is amended by adding subpart G to read as follows:

Subpart G—Guard Band Managers

Sec.

- 27.601 Guard Band Manager authority and coordination requirements.
- 27.602 Guard Band Manager agreements.
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Subpart G—Guard Band Managers

§ 27.601 Guard Band Manager authority and coordination requirements.

(a) Subject to the provisions of § 27.2(b) and paragraphs (c) and (d) of this section, a Guard Band Manager may allow a spectrum user, pursuant to a written agreement, to construct and operate stations at any available site within the licensed area and on any channel for which the Guard Band Manager is licensed, provided such stations comply with Commission Rules and coordination requirements.

(b) Subject to the provisions of § 27.2(b) and paragraphs (c) and (d) of

this section, a Guard Band Manager may allow a spectrum user, pursuant to a written agreement, to delete, move or change the operating parameters of any of the user's stations that are covered under the Guard Band Manager's license without prior Commission approval, provided such stations comply with Commission Rules and coordination requirements.

(c)(1) A Guard Band Manager must file a separate station application and obtain all appropriate Commission approvals or authorizations prior to construction of stations that—

(i) Require submission of an Environmental Assessment under § 1.1307 of this chapter;

(ii) Require international coordination; or

(iii) Would affect the radio frequency quiet zones described in § 90.177 of this chapter.

(2) Prior to construction of a station, a Guard Band Manager must register with the Commission any station antenna structure for which notification to the Federal Aviation Administration is required by part 17 of this chapter.

(3) It is the Guard Band Manager's responsibility to determine whether a referral to the Commission is needed for any individual station constructed in the Guard Band Manager's license area.

(d)(1) A Guard Band Manager must notify Commission-recognized public safety frequency coordinators for the 700 MHz public safety band and adjacent-area Guard Band Managers within one business day after the Guard Band Manager has:

(i) Coordinated a new station or modification of an existing station; or

(ii) Filed an application for an individual station license with the Commission.

(2) The notification required in paragraph (d)(1) of this section must include, at a minimum—

(i) The frequency or frequencies coordinated;

(ii) Antenna location and height;

(iii) Type of emission;

(iv) Effective radiated power;

(v) A description of the service area, date of coordination, and user name or, in the alternative, a description of the type of operation.

(3) In the event a Guard Band Manager partitions its service area or disaggregates its spectrum, it is required to submit the notification required in paragraph (d)(1) of this section to other Guard Band Managers in the same geographic area.

(4) Entities coordinated by a Guard Band Manager must wait at least 10 business days after the notification required in paragraph (d)(1) of this

section before operating under the Guard Band Manager's license;

(5) If, in the event of harmful interference, the Guard Band Manager is unable to resolve the problem by mutually satisfactory arrangements, the Commission may impose restrictions on the operations of any of the parties involved.

(e) Where a deletion, move or change authorized under paragraph (b) of this section constitutes a discontinuance, reduction, or impairment of service under § 27.66 or where discontinuance, reduction or impairment of service results from an involuntary act subject to § 27.66(a), the Guard Band Manager must comply with the notification and authorization requirements set forth in that section.

§ 27.602 Guard Band Manager agreements.

Guard Band Managers are required to enter into written agreements regarding the use of their licensed spectrum by others, subject to the following conditions:

(a) The duration of spectrum user agreements may not extend beyond the term of the Guard Band Manager's FCC license.

(b) The spectrum user agreement must specify in detail the operating parameters of the spectrum user's system, including power, maximum antenna heights, frequencies of operation, base station location(s), area(s) of operation, and other parameters specified in Commission rules for the use of spectrum identified in § 27.5(b)(1) and (b)(2).

(c) The spectrum user agreement must require the spectrum user to use Commission-approved equipment where appropriate and to complete post-construction proofs of system performance prior to system activation.

(d) The spectrum user must agree to operate its system in compliance with all technical specifications for the system contained in the agreement and agree to cooperate fully with any investigation or inquiry conducted by either the Commission or the Guard Band Manager.

(e) The spectrum user must agree to comply with all applicable Commission rules, and the spectrum user must accept Commission oversight and enforcement.

(f) The spectrum user agreement must stipulate that if the Guard Band Manager determines that there is an ongoing violation of the Commission's rules or that the spectrum user's system is causing harmful interference, the Guard Band Manager shall have the right to suspend or terminate operation

of the spectrum user's system. The spectrum user agreement must stipulate that if the spectrum user refuses to comply with a suspension or termination order, the Guard Band Manager will be free to use all legal means necessary to enforce the order.

(g) The spectrum user agreement may not impose unduly restrictive requirements on use of the licensed frequencies, including any requirement that is not reasonably related to the efficient management of the spectrum licensed to the Guard Band Manager.

(h) Guard Band Managers shall maintain their written agreements with spectrum users at their principal place of business, and retain such records for at least two years after the date such agreements expire. Such records shall be kept current and be made available upon request for inspection by the Commission or its representatives.

§ 27.603 Access to the Guard Band Manager's spectrum.

(a) A Guard Band Manager may not engage in unjust or unreasonable discrimination among spectrum users and may not unreasonably deny prospective spectrum users access to the Guard Band Manager's licensed spectrum.

(b) A Guard Band Manager may not impose unduly restrictive requirements on use of its licensed frequencies, including any requirement that is not reasonably related to the efficient management of the spectrum licensed to the Guard Band Manager.

(c) A Guard Band Manager may lease a reasonable amount of its spectrum to an affiliate for the affiliate's own internal use or for the affiliate's provision of commercial or private radio services. However, a Guard Band Manager must lease the predominant amount of its spectrum to non-affiliates.

§ 27.604 Limitation on licenses won at auction.

(a) For the first auction of licenses in Blocks A and B, as defined in § 27.5, no applicant may be deemed the winning bidder of both a Block A and a Block B license in a single geographic service area.

(b) For purposes of paragraph (a) of this section, licenses will be deemed to be won by the same bidder if an entity that wins one license at the auction is an affiliate of any other entity that wins a license at the auction.

§ 27.605 Geographic partitioning and spectrum disaggregation.

An entity that acquires a portion of a Guard Band Manager's geographic area or spectrum subject to a geographic partitioning or spectrum disaggregation

agreement under § 27.15 must function as a Guard Band Manager and is subject to the obligations and restrictions on Guard Band Manager licenses set forth in this subpart.

§ 27.606 Complaints against Guard Band Managers.

Guard Band Managers are expected to resolve disputes with their customers or disputes between multiple customers of the Guard Band Manager in the same manner that the parties would resolve other commercial disputes arising out of the spectrum user agreement. The Commission will also consider complaints filed against a Guard Band Manager for violating the Communications Act or the Commission's regulations or policies. When there is a dispute between a Guard Band Manager, or its spectrum user, and a non-contracting party, and the Guard Band Manager is unable or unwilling to resolve such dispute in a timely fashion, the non-contracting party may file a complaint with the Commission pursuant to § 1.41 of this chapter.

§ 27.607 Performance requirements and annual reporting requirement.

(a) Guard Band Managers are subject to the performance requirements specified in § 27.14(a).

(b) Guard Band Managers are required to file an annual report providing the Commission with information about the manner in which their spectrum is being utilized. Such reports shall be filed with the Commission on a calendar year basis, no later than the March 1 following the close of each calendar year, unless another filing date is specified by Public Notice.

(c) Guard Band Managers must, at a minimum, include the following information in their annual reports:

(1) The total number of spectrum users and the number of those users that are affiliates of the Guard Band Manager;

(2) The amount of the Guard Band Manager's spectrum being used by the Guard Band Manager's affiliates in any part of the licensed service area;

(3) The amount of Guard Band Manager's spectrum being used pursuant to agreements with unaffiliated third parties;

(4) The nature of the spectrum use of the Guard Band Manager's customers; and

(5) The length of the term of each spectrum user agreement.

(d) The specific information that Guard Band Managers will provide and the procedures that they will follow in submitting their annual reports will be

announced in a Public Notice issued by the Wireless Telecommunications Bureau.

[FR Doc. 00-8144 Filed 4-3-00; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00-574; MM Docket No. 99-181; RM-9584; RM-9700]

Radio Broadcasting Services; Merced and North Fork, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a proposal filed on behalf of San Joaquin Radio Company, LLC, licensee of Station KAJZ(FM), Merced, California, the Commission substitutes Channel 300B1 for Channel 299A at Merced and reallots Channel 300B1 to North Fork, California, as that community's first local aural transmission service, and modifies the license for Station KAJZ(FM) accordingly. (A competing proposal filed on behalf of Mountain West Broadcasting to allot Channel 300A to Easton, California, was denied.) See 64 FR 30291, June 7, 1999. Coordinates used for Channel 300B1 at North Fork are 37-14-39 NL and 119-33-58 WL.

Additionally, this document makes an editorial amendment to 47 CFR Part 73, Radio Broadcast Services, § 73.202(b), Table of FM Allotments, to include Channel 268B at Merced, California. Although Channel 268B was allotted to Merced in the original Table of Allotments, and is licensed at that community, it does not appear in § 73.202(b). With this action, the proceeding is terminated.

DATES: Effective May 1, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99-181, adopted March 8, 2000, and released March 17, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY-A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service,

Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 268B at Merced.

3. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 299A at Merced.

4. Section 73.202(b), the Table of FM Allotments under California is amended by adding North Fork, Channel 300B1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00-8174 Filed 4-3-00; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00-649; MM Docket No. 99-9; RM-9434, RM-9597]

Radio Broadcasting Services; Lancaster, Groveton and Milan, NH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of North Country Radio, Inc., allots Channel 229A to Groveton, NH, as the community's first local aural service, and denies the request of Dana Puopolo to allot Channel 229A to Lancaster, NH, as the community's second local FM service. See 64 FR 5625, February 4, 1999. This action also dismisses the counterproposal of Barry P. Lunderville to allot Channel 229A to Milan, NH, as the community's first local aural service, because Channel 229A, at the proposed coordinates, cannot provide the entire community with the required 70 dBu signal due to the intervening terrain. In addition, the counterproposal did not comply with the subscription and verification