

recordkeeping or recordkeeping requirements. While the modifications being considered in the Notice could have an impact on consumer electronics manufacturers and broadcasters, such impact would be similarly costly for both large and small entities. We seek comment on whether others perceive a need for more extensive recordkeeping under specific options for addressing the issues in the NPRM and, if so, whether the burden would fall on large and small entities differently.

E. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹⁶

The rule changes under consideration in this proceeding would revise the schedule for implementation of the requirement that new television receivers include the capability for reception of broadcast DTV signals. We requested comment on a suggestion for revising the schedule submitted by CEA-CERC in their petition for rulemaking. We also invited interested parties to submit alternative suggestions for revising the implementation schedule.¹⁷

F. Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals. None.

8. Ordering Clauses. Pursuant to the authority contained in sections 2(a), 4(i) & (j), 7, and 303 of the Communications Act of 1934 as amended, 47 U.S.C. 152(a), 154(i) & (j), 157, and 303, this Notice of Proposed Rule Making is adopted.

9. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

[FR Doc. 05-5402 Filed 3-17-05; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 05-62; FCC 05-31]

Amendment of the Commission's Rules to Provide for Flexible Use of the 896-901 MHz and 935-940 MHz Bands Allotted to the Business and Industrial Land Transportation Pool, and Oppositions

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes amendments of its rules to facilitate more flexible use of the 199 channels allocated to the Business and Industrial Land Transportation (B/ILT) Pools in the 896-901/935-940 MHz (900 MHz) bands, by permitting any use of the B/ILT channels in the 900 MHz band that is consistent with the band's fixed and mobile allocations. In addition, the Commission proposes to license the remaining spectrum using a geographic area licensing scheme, and to adopt service rules, including licensing, technical and operational rules for the new geographic licensees. Further, the Commission seeks comment on competitive bidding rules and procedures to be used in the event that mutually exclusive applications are filed for the 900 MHz proposed geographic licenses.

DATES: Comments are due on or before April 18, 2005. Reply comments are due May 2, 2005.

ADDRESSES: You may submit comments, identified by WT Docket No. 05-62, 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.

- Email: To receive filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Include the docket number(s) in the subject line of the message.

- Mail: Appropriate addresses for submitting comments and reply comments may be found in the **SUPPLEMENTARY INFORMATION** section of this document.

- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to Judith.B.Herman@fcc.gov, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, via the Internet to Kristy_L.LaLonde@omb.eop.gov, or via fax at 202-395-5167.

FOR FURTHER INFORMATION CONTACT:

Michael Connelly, Wireless Telecommunications Bureau, at (202) 418-0620.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Notice and Proposed Rulemaking (NPRM)*, FCC 05-31, in WT Docket No. 05-62, adopted February 10, 2005, and released February 16, 2005. The full text of this document is available for public inspection during regular business hours at the FCC Reference Information Center, 445 12th St., SW., Room CY-A257, Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor: Best Copy & Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 800-378-3160, facsimile 202-488-5563, or via e-mail at www.fcc@bcpweb.com.

Paperwork Reduction Act

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002,

¹⁶ 5 U.S.C. 603.

¹⁷ See *NPRM*, paragraph 8.

Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. 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. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- 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 website for submitting comments.

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. 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.

- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

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 we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- 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.

People with Disabilities: Contact the FCC to request materials in accessible formats (braille, large print, electronic files, audio format, etc.) by e-mail at FCC504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0531 (voice), 202–418–7365 (TTY).

Synopsis of Notice of Proposed Rulemaking

I. Background

1. In 1986, the Commission established a pool structure for the 900 MHz PLMR spectrum and allocated 2.5 MHz for the Industrial/Land Transportation Pool (99 channels) and 2.5 MHz for the Business Pool (100 channels) (collectively, the B/ILT Pools). The B/ILT Pools were established for use by site-by-site licensees engaged in commercial activities, the operation of educational, philanthropic, or ecclesiastical institutions, clergy activities, or the operation of hospitals, clinics, or medical associations. In addition, eligibility was also provided for any corporations furnishing nonprofit radio communication service to its parent corporation or subsidiary. Currently, applications for use of the B/ILT frequencies are limited to private, internal use systems.

2. On July 8, 2004, in its *800 MHz Report and Order*, 69 FR 67,823, the Commission adopted significant technical and procedural measures designed to address the problem of interference to public safety communications in the 800 MHz band. As part of its reconfiguration plan at 800 MHz, the Commission consolidated the B/ILT Pools in the 800 MHz and 900 MHz bands, allowing any eligible B/ILT licensee to be licensed on the consolidated channels. The Commission also provided for additional flexibility in the 900 MHz band by allowing 900 MHz PLMR licensees to initiate CMRS operations on their currently authorized spectrum or to assign their authorizations to others for CMRS use. The Commission reasoned that since it permitted CMRS use of PLMR frequencies in the 800 MHz land mobile band, similar rules should apply in the 900 MHz land mobile spectrum, in the

interest of regulatory symmetry. The Commission also noted that in order to provide the "green space" necessary to effect reconfiguration of the 800 MHz band, some operations may need to shift from the 800 MHz to 900 MHz band.

II. Discussion

A. Flexible Use, Regulatory Framework, and Assignment of Licenses

3. The Commission proposes service rules for the new 900 MHz channels that would provide licensees flexible use. The Commission expects the economic efficiencies of flexibility to foster, not deter, technology development and investment in communications services and systems. The Commission seeks comment on its tentative conclusion to continue to license these bands under the framework of part 90 of our rules.

B. Band Plan and Size of Geographic Service Areas

4. The Commission tentatively concludes that it should license this 900 MHz spectrum using a geographic area licensing scheme, believing that geographic area licensing will maximize flexibility, permit new and innovative technologies to rapidly develop in these bands, and allow a licensee substantial flexibility to respond to market demand, resulting in significant improvements in spectrum utilization. Should the Commission adopt a geographic area approach for licensing the flexible-use spectrum, it seeks comment on the appropriate size of that geographic area. In particular, the Commission asks whether it should adopt Major Economic Areas (MEAs) or Basic Economic Areas (EAs). The Commission notes that MEAs may have the effect of creating opportunities for both existing licensees and new entrants to meet customer demands for wide-area service, increasing spectrum efficiency, providing better quality service to end users, and allowing service to reach potential end users that may otherwise be without adequate communication options, while Basic Economic Areas (EAs) may provide greater opportunities for small and medium-sized businesses to successfully compete against larger, well-financed bidders, and that EAs may facilitate the ability of incumbents and other small and medium-sized operators of smaller systems to participate in geographic area licensing.

C. Channel Block Size

5. The Commission seeks comment on its proposal to license the 900 MHz flexible-use channels in nineteen blocks of ten contiguous channels each, and one block of nine contiguous channels.

The Commission believes the proposed configuration can provide operational flexibility and efficiency by allowing providers to use new technologies and compete effectively with other commercial providers, and avoids the transaction costs associated with reaggregation of spectrum, while promoting the flexibility necessary to facilitate secondary market uses. The Commission also asks whether a more viable option under an EA-based licensing approach might include nine blocks of twenty non-contiguous channels each and one block of nineteen non-contiguous channels, which would allow potential bidders to acquire a larger number of channels, albeit in smaller geographic areas. Commenters might also consider the option of dedicating the upper four channel blocks (*i.e.*, QQ, RR, SS, TT) to traditional B/ILT services. The Commission also asks commenters to consider whether to permit potential bidders to bid on licenses comprising multiple band plans according to the band plan configuration they prefer and use the bidders' collective valuation of licenses consistent with each band plan in determining which band plan to implement. The Commission seeks comment on its proposal to permit licensees to aggregate blocks and to allow both incumbents and new entrants to bid on the spectrum.

D. Operational Flexibility

6. The Commission seeks comment on its tentative conclusion that geographic area licensees in the 900 MHz band should be permitted to construct stations at any authorized site and on any available channel within their licensing area, and that geographic area licensees may expand or modify facilities throughout their service areas without prior Commission approval, so long as the systems continue to be in compliance with the Commission's technical and operational rules, protect incumbents, and are consistent with international requirements and approvals.

E. Treatment of Incumbent Systems

7. The Commission proposes that geographic area licensees afford the same protection to incumbent B/ILT systems as is provided to incumbents by existing 900 MHz SMR MTA licensees, and tentatively concludes that the geographic area licensee's co-channel obligations cease upon the deletion of a revoked or terminated co-channel station authorization from the Commission's licensing records. Although the Commission believes this interference protection proposal will

adequately protect incumbent operations, it asks commenters to consider whether additional interference protection requirements are needed. The Commission notes that licensees may be faced with the same interference problems that necessitated the remedies adopted in the 800 MHz R&O unless equivalent interference abatement requirements are established at 900 MHz. Also, the Commission proposes to define the existing service area of an incumbent B/ILT system by its originally-licensed 40 dBμV/m field strength contour, and to permit incumbent licensees to add or modify transmit sites in their existing service area, without prior approval or without post construction notification to the Commission, so long as their original 40 dBμV/m signal is not expanded.

8. The Commission also seeks comment on whether to provide an option for incumbent licensees to return their licensees through an auction that includes the new geographic area overlay licenses for white space as well as any site-based licenses currently held by incumbent licensees who may be willing to exchange or sell their licenses. In versions of this general form of auction discussed by the Commission, existing licensees would not be required to relinquish their rights, but they would be likely to do so if compensation for their license exceeded the value to them of continuing with their current use. Such a mechanism to promote the efficient transition of incumbent users may be most useful in situations in which the anticipated use of the spectrum under new service rules is incompatible with the continued existence of incumbents operating legacy systems in the band. While the Commission expects that the overlay licenses it makes available in this proceeding will be useful for providing new services regardless of the existence of site-based B/ILT users, the availability of incumbent providers' licenses may encourage a quicker and smoother transition of the 900 MHz spectrum to uses consistent with the more flexible service rules proposed here.

F. Emission and Field Strength Limits

9. Regarding emissions, the Commission seeks comment on its proposal that, on any frequency in a geographic area licensee's spectrum block that is adjacent to a non-geographic area frequency, the power of any emission shall be attenuated below the transmitter power (P) by at least $43 + 10 \log_{10}(P)$ decibels or 80 decibels, whichever is the lesser attenuation; the Commission tentatively concludes that

this emission mask would adequately protect licensees in neighboring spectrum. Regarding field strength limits, the Commission requests comment on whether 40 dBμV/m is an appropriate field strength level for a geographic area licensee's operations at its service area border, and asks commenters to address whether this limit furthers the Commission's goal of avoiding harmful interference or whether stricter requirements are necessary.

G. Performance Requirements and Other Operating and Technical Rules

10. The Commission proposes to require new 900 MHz licensees to submit to the Commission a showing of substantial service (as opposed to a population benchmark) in their licensed area within either five or ten years of being licensed, believing that this performance requirement could provide greater flexibility for parties interested in entering into spectrum leasing arrangements involving this spectrum, as well as for providing service to rural or sparsely populated areas. The Commission also seeks comment on whether it should modify existing coverage requirements for 900 MHz SMR services to mirror the proposed substantial service showing for those 900 MHz licensees permitted flexible spectrum use; whether to retain or eliminate loading requirements as they apply to existing B/ILT authorizations; and whether the general provisions of part 90 to the 900 MHz B/ILT "white space" spectrum is appropriate.

H. Competitive Bidding Procedures

11. The Commission proposes to conduct the auction for these 900 MHz channel licenses under the general competitive bidding rules established in part 1, subpart Q of the Commission's Rules, and substantially consistent with the bidding procedures that have been employed in previous Commission auctions, including rules governing designated entities, application and payment procedures, reporting requirements, collusion issues, and unjust enrichment. The Commission also proposes small business bidding credits to further the statutory goals of ensuring that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services. The Commission seeks comment on its proposal to define a small business as an entity with average annual gross revenues for the three preceding years not to exceed \$15 million, and to define a very small

business as an entity with average annual gross revenues for the three preceding years not to exceed \$3 million. The Commission seeks comment on these proposals.

III. Procedural Matters

A. Initial Regulatory Flexibility Act Analysis

12. As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the Notice. The analysis is found in Appendix B of the NPRM. The Commission requests written public comment on the analysis. Comments must be filed by the same dates as listed in paragraph 70 of the NPRM, and must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

B. Need for, and Objectives of, the Notice of Proposed Rulemaking and Memorandum Opinion and Order

13. In the NPRM, the Commission proposes amendments to part 90 of its rules to facilitate more flexible use of the 199 channels allocated to the Business and Industrial Land Transportation (B/ILT) Pool in the 896–901/935–940 MHz (900 MHz) bands. The Commission proposes to permit any use of the B/ILT channels in the 900 MHz band that is consistent with the band's fixed and mobile allocations, and to license the remaining spectrum or "white space" using a geographic area licensing scheme and propose competitive bidding rules to select from among mutually exclusive applicants. The Commission also sets forth proposals for auction procedures for the remaining 900 MHz spectrum in the B/ILT category channels. The Commission believes these proposed rules will serve its twin goals of providing service to the public consistently and expeditiously, and allowing the marketplace to respond to consumer demands, and notes that allowing for flexible use of this spectrum will greatly aid in facilitating band reconfiguration occurring at 800 MHz. The Commission believes that the rules and policies proposed in the NPRM strike a fair and equitable balance between the interests of incumbent B/ILT licensees, and those seeking to provide geographic area

service, and further believes that these rules and policies will promote competition, while providing opportunities for incumbents to continue to pursue their business plans.

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

14. 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 and policies, 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 SBA.

15. *Small Businesses.* Nationwide, there are a total of 22.4 million small businesses, according to SBA data.

16. *Small Organizations.* Nationwide, there are approximately 1.6 million small organizations.

17. *Small Governmental Jurisdictions.* The term "small governmental jurisdiction" is defined as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." As of 1997, there were approximately 87,453 governmental jurisdictions in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

18. The Commission has determined that 1,040, or more, licenses will be awarded in the 896–901 MHz and 935–940 MHz B/ILT MHz bands; the Commission does not yet know how many applicants or licensees in these bands will be small entities. Thus, the Commission assumes, for purposes of this IRFA, that all prospective licensees are small entities as that term is defined by the SBA or by our proposed small business definitions for these bands. The Commission invites comment on this analysis.

19. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within

the two broad economic census categories of "Paging" and "Cellular and Other Wireless Telecommunications." Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

20. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The SBA has developed a small business size standard for "Cellular and Other Wireless Telecommunications" services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 447 carriers reported that they were engaged in the provision of wireless telephony. We have estimated that 245 of these are small under the SBA small business size standard.

21. *Broadband Personal Communications Service.* The broadband personal communications services (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.

22. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 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.

23. *Cellular Licensees.* The SBA has developed a small business size standard for wireless firms within the broad economic census category "Cellular and Other Wireless Telecommunications." Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this category and size standard, the great majority of firms can be considered small. According to Commission data, 447 carriers reported that they were engaged in the provision of cellular service, personal communications service, or specialized mobile radio telephony services, which are placed together in the data. We have estimated that 245 of these are small, under the SBA small business size standard.

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

24. The *NPRM* proposes to amend part 90 of the Commission's rules to facilitate more flexible use of the 199 channels allocated to the Business and Industrial Land Transportation (B/ILT) Pools in the 896–901/935–940 MHz (900 MHz) bands, to permit any use of the B/ILT channels in the 900 MHz band that is consistent with the band's fixed and mobile allocations. It also proposes to license the unencumbered spectrum through geographic area licensing. Accordingly, the Commission proposes service rules, including licensing, technical and operational rules for the new geographic licensees, and seeks

comment on defining the rights of B/ILT licensees already operating in the 900 MHz band. The Commission also seeks comment on competitive bidding rules and procedures to be used in the event that mutually exclusive applications are filed for the 900 MHz proposed geographic licensees.

25. In paragraphs 12–14 of the *NPRM*, the Commission proposes service rules for the new 900 MHz channels that would provide licensees with the flexibility to employ this spectrum for any use permitted by the United States Table of Frequency Allocations contained in part 2 of our rules (*i.e.*, fixed or mobile services), believing that such flexibility fully meets criteria set forth in section 303(y) of the Communications Act of 1934, as amended. The *NPRM* tentatively concludes that such use would be consistent with applicable international agreements, and that the public interest benefits of flexibility are numerous, and notes that the Commission has identified the establishment of maximum feasible flexibility in both spectrum designations and allocations and service rules as a critical means of ensuring that spectrum is put to its most beneficial use.

The Commission believes that the economic efficiencies of flexibility foster, rather than deter, technology development and investment in communications services and systems.

26. In paragraphs 17–19 of the *NPRM*, the Commission seeks comment on its proposal to license this 900 MHz spectrum using geographic area licensing, believing that such a licensing scheme is well-suited for the types of fixed and mobile services that will likely develop in this overlay band. The Commission invites commenters to explain any opposition and the costs and benefits associated with any preferable licensing proposal. In paragraphs 21–25, the Commission seeks comment on its proposal to adopt Major Economic Areas ("MEAs"), or, in the alternative, Economic Areas ("EAs") as the appropriate geographic size. On the one hand, allowing the new 900 MHz licensees the use of frequencies for systems providing coverage across wide areas will increase spectrum efficiency, provide better quality service to end users, and allow service to reach potential end users that may otherwise be without adequate communication options, and that the MEA-based licensees will be in a better position to address the needs of system users, customers, or lessees that have wide-area requirements; on the other hand, EAs, which are more than three times the number of delineated economic

areas than MEAs, may facilitate the ability of incumbents and other small and medium-sized operators of smaller systems to participate in geographic area licensing. Adopting an EA-based licensing scheme may permit small bidders and rural companies wishing smaller license areas to obtain them directly at auction rather than facing the uncertainty and transaction costs of working out post-auction partitioning agreements.

27. In paragraphs 26–30 of the *NPRM*, the Commission proposes to license the 900 MHz flexible-use channels in nineteen blocks of ten contiguous channels each, and one block of nine contiguous channels, with each ten-channel block separately licensed. Under the Commission's proposal, applicants would be permitted to aggregate blocks if they wish, without eligibility restriction for any channel block. The Commission seeks comment on whether the proposed 900 MHz channel block plan strikes a balance in affording small, medium and large operators the opportunity to obtain sufficient spectrum to establish viable and competitive wide-area systems, and whether the plan offers a middle ground between larger channel blocks that may block entry to new, smaller operators, and smaller block sizes that may hinder wide-area operations.

28. In paragraphs 45–51 of the *NPRM*, the Commission proposes that the new 900 MHz licensees submit to the Commission a showing of substantial service in their licensed area within five or ten years of being licensed. In making this proposal, the Commission notes that a population-based benchmark may be a considerable obstacle for the provision of services in rural or sparsely populated areas, and that population-based coverage requirements may be difficult to achieve due to existing band encumbrances. The Commission also believes that the ten-year substantial service requirement provides greater flexibility for parties interested in entering into spectrum leasing arrangements involving this spectrum.

29. In paragraphs 58–63 of the *NPRM*, the Commission proposes small business bidding credits to further the goals of ensuring that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and promoting economic opportunity and competition by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies,

and businesses owned by members of minority groups and women. To that end, the Commission proposes a 10 percent bidding credit for small business and a 15 percent bidding credit for very small businesses.

30. The Commission requests comment on how these proposed rules may be modified to reduce the burden on small entities and still meet the objectives of the proceeding.

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

31. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof for small entities.

32. The *NPRM* proposes to establish small business bidding credits to further the goals of ensuring that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services, with a 10 percent bidding credit for small business and a 15 percent bidding credit for very small businesses. In addition, the *NPRM* solicits comment on a number of proposals and alternatives regarding the service rules for the 900 MHz band, and seeks to adopt rules that will reduce regulatory burdens, promote innovative services and encourage flexible use of this spectrum. The Commission believes the proposed rules will open up economic opportunities to a variety

of spectrum users, which could include small businesses. Because the Commission seeks to minimize, to the extent possible, the economic impact on small businesses, the *NPRM* sets forth various proposals and alternatives for parties to consider.

33. The *NPRM* invites comment on various alternative licensing and service rules and on a number of issues relating to how the Commission should craft service rules for this spectrum that could have an impact on small entities. The *NPRM* proposes a geographic area approach to service areas, as opposed to a station-defined licensing approach, and seeks comment on the appropriate size of service areas. Specifically, the *NPRM* asks for comment on whether smaller geographic areas would better serve the needs of small entities.

34. The regulatory burdens proposed in the *NPRM* appear necessary in order to ensure that the public receives the benefits of innovative new services, or enhanced existing services, in a prompt and efficient manner. The Commission will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities. The Commission invites comment on any additional significant alternatives parties believe should be considered and on how the approach outlined in the *NPRM* will impact small entities, including small businesses and small government entities.

IV. Ordering Clauses

35. Pursuant to the authority of sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332 and 333 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333, this *Notice of Proposed Rulemaking* is adopted.

List of Subjects of 47 CFR part 90

Communications common carriers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 90 as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation of part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

2. Amend § 90.7 by adding the definitions “Major Economic Area (MEA)” and “MEA-based license or MEA license” in alphabetical order to read as follows:

§ 90.7 Definitions.

* * * * *

Major Economic Area (MEA). An aggregation of Basic Economic Areas (BEAs) into 52 regions, including the Gulf of Mexico.

* * * * *

MEA-based license or MEA license. A license authorizing the right to use a specified block of SMR spectrum with one of the 52 Major Economic Areas (“MEAs”).

* * * * *

§ 90.210 [Amended]

3. Amend § 90.210 as follows:

(a) In the entry for 5850–5925 of the table “APPLICABLE EMISSIONS MASKS” redesignate footnote 4 as footnote 5; and

(b) In the same table amend the entry for 896–901/935–940 Frequency band MHz by adding a new footnote 4.

§ 90.210 Emission masks.

* * * * *

APPLICABLE EMISSION MASKS

Frequency band (MHz)	Mask for equipment with audio low pass filter	Mask for equipment without audio low pass filter
* * * * *		
896–901/935–940 ⁴	I	J
* * * * *		

⁴ Equipment used in this band licensed to MTA, EA or MEA or non geographic based systems shall comply with the emission mask provisions of § 90.669 of this chapter.

* * * * *

4. Amend § 90.617 by revising the section heading, revising paragraph (c) preceding Table 3, by removing the undesignated paragraph also preceding Table 3 (Table 3 remains unchanged), by revising paragraph (f) preceding Table 6 (Table 6 remains unchanged), and by adding Table 7 and a Note to Table 7 to paragraph (f) to read as follows:

§ 90.617 Frequencies in the 809.750–824/854.750–869 MHz, and 896–901/935–940 MHz bands available for trunked, conventional, or cellular system use in non-border areas.

* * * * *

(c) The channels listed in Table 3 are available to applicants eligible in the Industrial/Business Pool of subpart C of this part but exclude Special Mobilized Radio Systems as defined in § 90.603(c). These frequencies are available in non-border areas. Specialized Mobile Radio (SMR) systems may be authorized on these frequencies after [Effective date of Report and Order]. For multi-channel systems, channels may be grouped vertically or horizontally as they appear in the following table.

* * * * *

(f) The channels listed in Table 6 are available for operations only to eligibles

in the SMR category—which consists of Specialized Mobile Radio (SMR) stations and eligible end users. These frequencies are available in non-border areas.

* * * * *

Note to Table 7: The channels listed in Table 7 are available to Business/Industrial/Land Transportation of SMR eligibles for EA-based or MEA-based licensing.

TABLE 7.—896–901/935–940 MHz BAND CHANNELS (199 CHANNELS) AVAILABLE AFTER [EFFECTIVE DATE OF REPORT AND ORDER] FOR BUSINESS/INDUSTRIAL/LAND TRANSPORTATION OR SMR ELIGIBLES FOR EA-BASED OR MEA-BASED LICENSING

Block	Channel Nos.
AA	11–12–13–14–15–16–17–18–19–20
BB	31–32–33–34–35–36–37–38–39–40
CC	51–52–53–54–55–56–57–58–59–60
DD	71–72–73–74–75–76–77–78–79–80
EE	91–92–93–94–95–96–97–98–99–100
FF	111–112–113–114–115–116–117–118–119–120
GG	131–132–133–134–135–136–137–138–139–140
HH	151–152–153–154–155–156–157–158–159–160
II	171–172–173–174–175–176–177–178–179–180
JJ	191–192–193–194–195–196–197–198–199–200
KK	211–212–213–214–215–216–217–218–219–220
LL	231–232–233–234–235–236–237–238–239–240
MM	251–252–253–254–255–256–257–258–259–260
NN	271–272–273–274–275–276–277–278–279–280
OO	291–292–293–294–295–296–297–298–299–300
PP	311–312–313–314–315–316–317–318–319–320
QQ	331–332–333–334–335–336–337–338–339–340
RR	351–352–353–354–355–356–357–358–359–360
SS	371–372–373–374–375–376–377–378–379–380
TT	391–392–393–394–395–396–397–398–399

* * * * *

5. Amend § 90.619 by revising paragraph (b)(1) and removing the undesignated text following paragraph (b)(1) (Table 1 remains unchanged); revise paragraph (b)(2) and redesignate Table 2 in paragraph (b)(2) as Table 2A, and by adding Table 2B, and a Note to Table 2B in paragraph (b)(2) to read as follows:

§ 90.619 Frequencies available for use in the U.S./Mexico and U.S./Canada border areas.

* * * * *

(b) * * *

(1) The channels listed in Table 1 are available to applicants eligible in the

Industrial/Business Pool of subpart C of this part but exclude Special Mobilized Radio Systems as defined in § 90.603(c). These frequencies are available within the Mexico border region. Specialized Mobile Radio (SMR) systems may be authorized on these frequencies after [Effective date of Report and Order]. For multi-channel systems, channels may be grouped vertically or horizontally as they appear in the following table. Channels numbered above 200 may be used only subject to the power flux density limits stated in paragraph (a)(2) of this section.

* * * * *

(2) The channels listed in Table 2A below are available for operations only to eligibles in the SMR category—which consists of Specialized Mobile Radio (SMR) stations and eligible end users. These frequencies are available in the Mexico border region.

* * * * *

Note to Table 2B: The channels listed in Table 2B are available to Business/Industrial/Land Transportation or SMR eligibles for EA or MEA based licensing in the Mexico border region after [Effective date of Report and Order].

TABLE 2B.—896–901/935–940 MHz BAND CHANNELS (199 CHANNELS) AVAILABLE AFTER [EFFECTIVE DATE OF REPORT AND ORDER] FOR BUSINESS/INDUSTRIAL/LAND TRANSPORTATION OR SMR ELIGIBLES FOR EA-BASED OR MEA-BASED LICENSING IN UNITED STATES-MEXICO BORDER AREA

Block	Channel Nos.
AA	11–12–13–14–15–16–17–18–19–20

TABLE 2B.—896–901/935–940 MHz BAND CHANNELS (199 CHANNELS) AVAILABLE AFTER [EFFECTIVE DATE OF REPORT AND ORDER] FOR BUSINESS/INDUSTRIAL/LAND TRANSPORTATION OR SMR ELIGIBLES FOR EA-BASED OR MEA-BASED LICENSING IN UNITED STATES-MEXICO BORDER AREA—Continued

Block	Channel Nos.
BB	31–32–33–34–35–36–37–38–39–40
CC	51–52–53–54–55–56–57–58–59–60
DD	71–72–73–74–75–76–77–78–79–80
EE	91–92–93–94–95–96–97–98–99–100
FF	111–112–113–114–115–116–117–118–119–120
GG	131–132–133–134–135–136–137–138–139–140
HH	151–152–153–154–155–156–157–158–159–160
II	171–172–173–174–175–176–177–178–179–180
JJ	191–192–193–194–195–196–197–198–199–200
KK	211–212–213–214–215–216–217–218–219–220
LL	231–232–233–234–235–236–237–238–239–240
MM	251–252–253–254–255–256–257–258–259–260
NN	271–272–273–274–275–276–277–278–279–280
OO	291–292–293–294–295–296–297–298–299–300
PP	311–312–313–314–315–316–317–318–319–320
QQ	331–332–333–334–335–336–337–338–339–340
RR	351–352–353–354–355–356–357–358–359–360
SS	371–372–373–374–375–376–377–378–379–380
TT	391–392–393–394–395–396–397–398–399

Channels numbered above 200 may only be used subject to the power flux density limits at or beyond the Mexico border as stated in paragraph (4) of this section.

* * * * *

6. Amend § 90.621 by revising paragraph (b) introductory text to read as follows:

§ 90.621 Selection and assignment of frequencies.

* * * * *

(b) Stations authorized on frequencies listed in this subpart, except for those stations authorized pursuant to paragraph (g) of this section and geographic-area-based systems, will be assigned frequencies solely on the basis of fixed distance separation criteria. The separation between co-channel systems will be a minimum of 113 km (70 mi) with one exception. For incumbent licensees in Channel Blocks G through V, that have received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBµV/m signal strength interference contour (see § 90.693), the separation between co-channel systems will be a minimum of 173 km (107 mi). The following exceptions to these separations shall apply:

* * * * *

7. Amend § 90.669 by revising paragraph (a) to read as follows. The note following paragraph (a) remains unchanged.

§ 90.669 Emission limits.

(a) Out-of-band emission requirements shall apply only to the “outer” channels included in an MTA, EA, or MEA licensee and to spectrum adjacent to interior channels used by incumbent licensees. On any frequency in a MTA, EA, or MEA geographic-area-

based licensee’s spectrum block that is adjacent to another licensee’s frequency, the power of any emission shall be attenuated below the transmitter power (P) by at least 43 plus $10 \log_{10}(P)$ decibels or 80 decibels, whichever is the lesser attenuation.

* * * * *

8. Revise § 90.671 to read as follows:

§ 90.671 Field strength limits.

The predicted or measured field strength at any location on the border of the service area for 896–901/935–940 MHz geographic-area-based licensees shall not exceed 40 dBµV/m unless all co-channel bordering geographic-area-based licensees agree to a higher field strength. Geographic-area-based licensees are also required to coordinate their frequency usage with co-channel adjacent geographic-area-based licensees and all other affected parties. To the extent that a single entity obtains licenses for adjacent MTAs, EAs or MEAs on the same channel block, it will not be required to coordinate its operations in this manner. In the event that this standard conflicts with the geographic-area-based licensee’s obligation to provide co-channel protection to incumbent licensees under § 90.621(b), the requirements of § 90.621(b) shall prevail.

9. Amend subpart S by adding the undesignated center heading and §§ 90.678, 90.679, and 90.680 to read as follows:

Policies Governing Licensing and Use of EA-Based or MEA-Based Business/Industrial/Land Transportation or SMR Systems in the 896–901/935–940 MHz Band

§ 90.678 EA-Based or MEA-Based Business/Industrial/Land Transportation or SMR service areas.

EA or MEA licenses for spectrum blocks AA, BB, through TT, in the 896–940 MHz band listed in table 7 of § 90.617(f) are available in 175 Economic Areas (EAs) or 52 Major Economic Areas (MEAs) as defined in § 90.7. Within these EAs or MEAs, licenses will be authorized in ten channel blocks as specified in table 7 of § 90.617(f) through the competitive bidding procedures described in subpart U of this part.

§ 90.679 EA or MEA-based Business/Industrial/Land Transportation or SMR system operations.

(a) EA or MEA-based licensees authorized in the 896–901/935–940 MHz band pursuant to § 90.678 may construct and operate base stations using any frequency identified in their spectrum block anywhere within their authorized licensed area, provided that:

(1) The EA or MEA licensee complies with any rules and international agreements that restrict use of frequencies identified in their spectrum block, including the provisions of § 90.619 relating to U.S./Canadian and U.S./Mexican border areas.

(2) The EA or MEA licensee limits its field strength at any location on the border of the service area in accordance

with § 90.671 and masks its emissions in accordance with § 90.669.

(b) In the event that the authorization for a previously authorized co-channel station within the geographic-area-based licensee's authorized spectrum block is terminated or revoked, the licensee's co-channel obligations to such station will cease upon deletion of the facility from the Commission's licensing record. The EA or MEA licensee then will be able to construct and operate base stations using such frequency.

§ 90.680 Authorization, construction and implementation of EA or MEA-based licenses and Grandfathering provisions for incumbent licensees.

(a) Geographic-area-based licenses in the 896–901/935–940 MHz band will be issued for a term not to exceed ten years.

(b) Each geographic-area-based licensee in the 896–901/935–940 MHz band must demonstrate, through a showing to the Commission ten years from the date of license grant, that it is providing substantial service within its service area.

(c) Geographic-area-based licensees who fail to make a convincing showing of substantial service by the end of the tenth year after grant of authorization will forfeit the portion of the geographic-area-based license that exceeds licensed facilities constructed and operating on the date of the license grant.

(d) *Grandfathering provisions for incumbent licensees.* An incumbent licensee's service area shall be defined by its originally-licensed 40 dBμV/m field strength contour. Incumbent licensees are permitted to add new or modify transmit sites in this existing service area so long as the original 40 dBμV/m field strength contour is not expanded.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 050304058–5058–01; I.D. No. 060204C]

RIN 0648–XB29

Endangered and Threatened Wildlife and Plants; 12–Month Finding on a Petition To List Elkhorn Coral, Staghorn coral, and Fused-staghorn coral as Threatened or Endangered

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of petition finding and availability of a status review document.

SUMMARY: NMFS announces a 12-month finding on a petition to add the elkhorn coral (*Acropora palmata*), staghorn coral (*A. cervicornis*), and fused-staghorn coral (*A. prolifera*), throughout their known range, to the list of threatened and endangered wildlife and to designate critical habitat under the Endangered Species Act (ESA). Based on a review of the best available scientific and commercial information on the status of the species, NMFS finds that the petitioned action is warranted with respect to elkhorn and staghorn corals and will promptly publish a proposed rule to list these two species as threatened. Furthermore, NMFS concludes that listing fused-staghorn coral is not warranted as it is a hybrid and does not constitute a species.

DATES: The finding announced in this document was made on March 3, 2005.

ADDRESSES: Copies of the Atlantic *Acropora* status review document are available upon request from the Protected Resources Division, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702. After March 17, 2005, please direct requests to our new address: 263 13th Ave. South, St. Petersburg, FL 33701. The status review is also available on the NMFS website at <http://sero.nmfs.noaa.gov/pr/protres.htm>.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Moore or Dr. Stephania Bolden, NMFS Southeast Region, 727–570–5312, or Ms. Marta Nammack, HQ Office of Protected Resources, 301–713–1401, ext. 180. Please note the NMFS Southeast Regional Office is moving March 17, 2005 and after March 21, 2005, the new telephone exchange will be 727–824–5312.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the ESA (16 U.S.C. 1531 *et seq.*), for any petition to revise the List of Endangered or Threatened Wildlife and Plants which presents substantial scientific and commercial information, NMFS is required to make a finding within 12 months of the date of receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority.

On March 4, 2004, the Center for Biological Diversity (CBD) petitioned NMFS to list elkhorn (*Acropora palmata*), staghorn (*A. cervicornis*), and fused-staghorn (*A. prolifera*) coral as either threatened or endangered under the Endangered Species Act (ESA) and to designate critical habitat. On June 23, 2004, NMFS made a positive 90-day finding (69 FR 34995) that the CBD presented substantial information indicating that the petitioned actions may be warranted and announced the initiation of a formal status review as required by section 4(b)(3)(A) of the ESA.

In order to conduct a comprehensive review, NMFS convened an Atlantic *Acropora* Biological Review Team (BRT) to conduct the status review, which incorporates and summarizes the best available scientific and commercial data to date. It addresses the status of the species, the five ESA listing factors, and current regulatory, conservation and research efforts that may yield protection. The BRT also reviewed and considered materials received by NMFS as a result of a **Federal Register** notice and public meetings; substantive materials were incorporated into the status review. Copies of the status review are available upon request from the Protected Resources Division, NMFS (see **ADDRESSES**). NMFS finds that with respect to elkhorn and staghorn corals, the petitioned action is warranted at this time. NMFS will promptly publish a proposed rule to list these two species as threatened. Furthermore, NMFS concludes that listing fused-staghorn coral is not warranted as it is a hybrid and does not constitute a species.

According to section 4(b)(3)(B) of the ESA, 16 U.S.C. 4(b)(3)(B), when a petitioned action is warranted, a proposed regulation to implement the action shall be promptly published in the **Federal Register**. NMFS will immediately begin developing a proposed rule to list the two species as threatened to comply with the ESA's requirement to publish the proposed listing rule promptly. NMFS will also