Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 21, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 26, 2004.

Julie M. Hagensen,

Acting Regional Administrator, Region 10.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart MM—Oregon

■ 2. Section 52.1970 is amended by adding paragraph (c) (142) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(142) The Environmental Protection Agency (EPA) approves various amendments to the Oregon State Implementation Plan which are contained in four separate submittals to EPA, dated November 5, 1999, November 27, 2000, January 10, 2003 and April 19, 2004 which include revisions to the inspection and maintenance program.

(i) Incorporation by reference.

(A) The following sections of the Oregon Administrative Rules 340: 256–0200, 256–0310, 256–0330, 256–0340, 256–0350, 256–0370, 256–0380, 256–0390, 256–0400, 256–0410, 256–0420, 256–0450, 256–0460, and 256–0470, as effective October 14, 1999; 256–0355, 256–0440, and 256–0465, as effective October 25, 2000; 256–0356, as effective October 4, 2001; and 256–0010, 256–0300, as effective October 24, 2003.

(B) Remove the following old sections of the Oregon Administrative Rules 340 from the current incorporation by reference: 024–100, 024–300, 024–301, 024–305, 024–306, 024–307, 024–308, 024–309, 024–312, 024–314, 024–318, 024–320, 024–325, 024–330, 024–332, 024–335, 024–337, 024–340, 024–355, 024–357, and 024–360.

(ii) Additional Material:

(A) Oregon SIP Volume 2, Section 5.4, as effective October 24, 2003.

[FR Doc. 04–25629 Filed 11–19–04; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 22, 24, 74, 78 and 90

[WT Docket No. 02–55; ET Docket No. 00–258; ET Docket No. 95–18, RM–9498; RM–10024; FCC 04–168]

Private Land Mobile Services; 800 MHz Public Safety Interference Proceeding

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission amends its rules to adopt objective technical standards defining ''unacceptable interference'' to non-cellular licensees operating in the 800 MHz band and procedures detailing 800 MHz licensees' responsibilities and expectations regarding abatement of such interference. The Commission also adopts rules reconfiguring the 800 MHz band and designating ten megahertz of spectrum in the 1.9 GHz band available for the provision of commercial mobile radio services (CMRS). The Commission took these steps to solve the problem of increasing interference to public safety communications in the 800 MHz band. These rules are intended to abate this interference as well as making additional spectrum available for the provision of new services.

DATES: Effective January 21, 2005, except for §§ 22.972, 22.973, 90.674, 90.675, 90.676 and 90.677 which contain information collection requirements that have not been approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date for these sections.

FOR FURTHER INFORMATION CONTACT: Technical information: Brian Marenco, *Brian.Marenco@FCC.gov*, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418–0680, or TTY (202) 418–7233. Legal information: Roberto Mussenden, Esq. *Roberto.Mussenden@FCC.gov*, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau (202) 418–0680, or TTY (202) 418–7233. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judith B. Herman at (202) 418–0214, or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION: This document summarizes the Federal Communications Commission's Report and Order, Fifth R&O, Fourth MO&O, and Order, FCC 04–168, adopted on July 8, 2004, and released on August 6, 2004. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at *http://www.fcc.gov/wtb*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

Summary of Report and Order

1. In the Report and Order, the Commission adopts changes to parts 2, 22 and 90 of the Commission's rules that were either proposed in or suggested in response to the Notice of Proposed Rule Making (NPRM) and subsequent Public Notices in this proceeding. The NPRM, released on March 15, 2002, 67 FR 16351–02 (April 5, 2002), sought to explore all available options and alternatives for improving the spectrum environment for public safety operations in the 800 MHz Band and to ensure that public safety agencies have access to adequate spectrum resources in the 800 MHz band to support their critical missions. On

September 6, 2002, the Wireless Telecommunications Bureau (Bureau) released a public notice inviting comment on a ''Consensus Proposal'' band plan submitted by seventeen parties (Consensus Parties) in a reply comment in the proceeding. On January 3, 2003, the Bureau sought comment on the supplement, setting forth additional information about the Consensus Proposal, as supplemented on December 24, 2002, by the Consensus Parties, 68 FR 6687–01 (February 10, 2003).

2. The following is a summary of our major decisions. In the Report and Order, we: (i) Define ''unacceptable interference'' in the 800 MHz band as a function of the threshold received power levels of desired signals. Specifically, ''unacceptable interference'' occurs when the signals from a cellular architecture station or stations, cause the carrier-to-noise plus interference ratio of a radio meeting TIA-equivalent Class A standards to degrade below 20 dB in an area in which the median measured received signal power of the desired signal is equal to or greater than −104 dBm for mobile units or −101 dBm for portable units. In the case of data radios, unacceptable interference occurs when the received signal power criteria, above, are met and the bit error rate of the radio exceeds the value specified by the radio's manufacturer for reliable operations; (ii) require Enhanced Specialized Mobile Radio (ESMR) and cellular telephone licensees, on request, to notify public safety and CII licensees prior to activating new or modified cells; (iii) define relative responsibilities of ESMR and cellular telephone licensees for abatement of unacceptable interference both pre- and post-band reconfiguration; (iv) reconfigure the 800 MHz band by:

- Moving the public safety NPSPAC channels from 821–824 MHz/866–869 MHz to 806–809 MHz/851–854 MHz.
- Relocate all systems now operating in the current General Category band segment at 806–809.75 MHz/851–854.75 MHz elsewhere in the band.
- Certain existing non-cellular B/ILT systems and non-cellular SMR systems will continue to operate on interleaved channels between 809.75–816 MHz/ 854.75–861 MHz.
- Public safety systems will continue to operate on interleaved channels between 809–815 MHz/854–860 MHz. No public safety licensee will be required to operate in the 815–816 MHz/860–861 MHz segment that we have designated the ''Expansion Band'' or in the 816–817 MHz/861–862 MHz segment that we have designated the ''Guard Band.'' Every public safety system will be relocated from the Expansion Band unless a public safety licensee exercises its option to remain there.
- Relocate Nextel and other ESMR licensees to the 817–824 MHz/862–869 MHz band. Nextel will vacate all channels it now uses in the 806–817 MHz/851–862 MHz band segment.
- Public safety and later, CII licensees will have exclusive access to all channels in the 809–809.75 MHz/854–854.75 MHz band segment as well as the channels vacated by Nextel in the interleaved portion of the band below 815 MHz/860 MHz for a limited period of time.
- Unless the subject of mutual agreement among affected, parties, other CMRS ESMR Operations in the 800 MHz may stay where they are, subject to a stringent non-interference obligation, but will have the following relocation options: (1) relocate to non-cellular portion of the 800 MHz band at Nextel's expense, as close to ESMR band as possible in 814 MHz–816 MHz Expansion band; or (2) relocate at Nextel's expense in ESMR spectrum which they would share with Nextel on a pro-rata basis.
- In some markets where both Southern LINC and Nextel offer ESMR service insufficient spectrum exists in the 816–824 MHz/861–869 band segment to accommodate both the incumbent ESMR licensees already operating there and new ESMR entrants migrating from the lower channels. In order not to unduly restrict the operations of incumbent ESMR licensees we define the ESMR band in those markets as the band segment 813.5–824 MHz/858.5–869 MHz. The Expansion Band in this area shall extend from 812.5–813.5 MHz/857.5–858.5 MHz. All licensees operating in the band segment 806–813.5 MHz/851–858.5 MHz shall be afforded the same protection against unacceptable interference as specified in the Report and Order;

(v) Adopt financial and licensing safeguards directed to ensure completion of band reconfiguration regardless of Nextel's financial condition and that Nextel does not reap a financial windfall from our actions; (vi) accept Nextel's relinquishment of its current spectrum rights in the 700 MHz Guard Band in forty markets and contemplate a Further Notice of Proposed Rulemaking to determine future use of this spectrum; (vii) in exchange for the spectrum Nextel is surrendering coupled with the uncertain costs it must incur to accomplish 800 MHz band reconfiguration, clear the 1.9 GHz band of Broadcast Auxiliary Service (BAS) incumbents and reimburse UTAM Inc., (UTAM) for a portion of the costs it has incurred in clearing the 1910–1920 MHz and the 1920–1930 MHz band segments, the Commission will modify certain Nextel licenses to provide Nextel with a nationwide authority to operate in ten megahertz of spectrum in the 1.9 GHz band; (viii) establish a mechanism by which an independent Transition Administrator oversees the completion of band reconfiguration and records certain costs incurred by Nextel in connection therewith; (ix) consolidate the B/ILT Pools in the 800 MHz and 900 MHz bands; (x) allow 900 MHz Private Land Mobile Radio (PLMR) licensees to initiate CMRS operations on their currently authorized spectrum or to assign their authorizations to others for CMRS use.

3. In the Fifth Report and Order (Fifth R&O), Fourth Memorandum Opinion and Order (Fourth MO&O), and Order the Commission adopts changes to parts 15, 24, 74 and 78 of the Commission's rules that were either proposed in or suggested in response to the NPRM in WT Docket 02–55 or proposed in or suggested in the Third Notice of Proposed Rule Making (Third NPRM) in ET Docket No. 00–258. The Third NPRM, released on February 10, 2003, 68 FR 12015–03 (March 13, 2003), sought comments on the reallocation of spectrum in the 1910–1920 MHz band that can be paired with spectrum in the 1990–2000 MHz band to support fixed and mobile services, including Advanced Wireless Services. In the Fifth R&O, the Fourth MO&O, and Order we: (i) Designate two paired five megahertz blocks in the 1910–1915 MHz and 1990–1995 MHz bands for licensed Fixed and Mobile services; (ii) make the five megahertz block at 1910–1915 MHz available by re-designating the band from Unlicensed Personal Communications Services (UPCS) use to licensed Fixed and Mobile services; adopting a reimbursement plan to compensate UTAM, Inc., for relocation expenses it has incurred in relocating incumbents from the band; and addressing several pending petitions for rulemakings and petitions for waivers relating to new use of the 1910–1915 MHz band; (iii) address how Nextel will participate in the existing relocation and reimbursement plan for incumbent BAS licensees in the 1990–2025 MHz band—which has already been reallocated for Fixed and Mobile services—given our decision to provide Nextel access to the 1990–1995 MHz band; (iv) address Nextel's obligations to relocate incumbent BAS licensees in the 1990–

2025 MHz band, as well as address several petitions for reconsideration and clarification regarding the existing BAS relocation plan, given our decision to provide Nextel access to the 1990–1995 MHz band (which has already been reallocated for Fixed and Mobile Services).

I. Procedural Matters

A. Paperwork Reduction Act

4. This Report and Order contains new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this R&O as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due January 21, 2005. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

B. Final Regulatory Flexibility Certification

5. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM.[2] The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA.[3] Three commenting parties specifically addressed the IRFA.[4] We discuss those comments below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[5]

Need for, and Objectives of the Order

6. In the Report and Order, we have concluded that reconfiguration of the 800 MHz band is essential, over the long term, to assure that critical public safety communications may be accommodated without unacceptable interference, as that term is defined in the Report and Order. Because increasing instances of interference to 800 MHz public safety communications systems made it imperative that we act to stem such interference without delay, we adopted rules that hold the involved ESMR and cellular telephone licensees strictly responsible for abating interference by application of a variety of technical remedies which have been subsumed in this proceeding under the rubric of *Enhanced Best Practices*. Specifically, the Commission took the following actions: (i) Adopted a new 800 MHz band plan that, after a transition period, will separate high-density ESMR systems in the band, principally those operated by Nextel, from public safety and other non-cellular 800 MHz operations; (ii) require Nextel to relinquish all of its 800 MHz spectrum holdings below 817 MHz/862 MHz resulting in an additional average of 4.5 megahertz of 800 MHz band spectrum becoming available to the public safety and critical infrastructure community; (iii) established a transition mechanism for band reconfiguration with minimal disruption to the operations of all affected 800 MHz incumbents during the transition period; (iv) required Nextel to pay all band reconfiguration costs of public safety and other 800 MHz incumbents that result from transition to the new band plan; (v) defined unacceptable interference as a function of threshold received power levels of desired signals; (vi) placed strict responsibility for abatement of unacceptable interference on the licensees whose systems are the source of such interference; (vii) required prior notification, upon request, of the activation or modification of ESMR and cellular telephone cells; (viii) established firm rules—including response times of twenty-four hours and abatement initiation time of forty-eight—for procedures to be used to identify, report and remedy instances of unacceptable interference; (ix) modified certain Nextel licenses to accommodate a nationwide allocation in the 1910–1915 MHz/1990–1995 MHz paired spectrum block, in exchange for Nextel's surrendering spectrum, and bearing the financial burden and risk of reconfiguring the 800 MHz band; (x) consolidated the Business and Industrial/Land Transportation Pools in the 800 MHz and 900 MHz bands, and; (xi) allowed 900 MHz Private Land Mobile Radio (PLMR) licensees to initiate CMRS operations on their currently authorized spectrum or to assign their authorizations to others for CMRS use.

7. The Commission has taken these actions to immediately stem increasing instances of interference to 800 MHz public safety communications systems. The Commission has long recognized that the nation's public safety community requires effective radio communications systems free of unacceptable interference if public safety agencies are to adequately protect the safety of lives and property. The actions taken by the Commission in the Report and Order create a suitable spectrum environment for public safety and Critical Infrastructure Industries communications systems operating in the 800 MHz band.

8. In the Fourth Memorandum Opinion and Order, we both grant and deny petitions for reconsideration and clarification of the Third Report and Order and Third Memorandum Opinion and Order. We grant petitions to the extent described herein and clarify several points relating to BAS operations by licensees operating on different channel plans during the transition to the new BAS channel plan at 2025–2110 MHz. We otherwise deny the petitions relating to BAS relocation issues in the 1990–2025 MHz band. We also no longer require BAS licensees in TV markets 31–210 to cease operation on channels 1 and 2 (1990–2008 MHz and 2008–2025 MHz, respectively) until they have been relocated to their final channel plan in the 2025–2110 MHz band, but otherwise retain our previously adopted relocation rules for MSS licensees. The changes we adopt are necessary to allow Nextel, as a new entrant in the 1990–2025 MHz band, to participate in the relocation process we had previously established for BAS incumbents.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

9. Three parties submitted comments specifically in response to the IRFA: Business Autophones, Inc. (Business Autophones), Small Business in Telecommunications (SBT), and Skitronics, LLC (Skitronics).[6] Business Autophones opines that the Nextel Plan, which contemplated relocating B/ILT licensees from the 800 MHz band to the 700 MHz and 900 MHz at their own expense, would be financially devastating to small business B/ILT licensees and urges the Commission to

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[2] *See* Improving Public Safety Commission in the 800 MHz Band; Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels, WT Docket No. 02–55, *Notice of Proposed Rulemaking*, 17 FCC Rcd 4873, 4927 (2002) (*NPRM*).

[3] *See id*. at 4920 ¶93.

[4] Business Autophones, Inc., Comments on IRFA (May 6, 2002) Skitronics, LLC, Comments on IRFA (May 6, 2002); Small Business in Telecommunications, Comments on IRFA (May 6, 2002).

[5] *See* 5 U.S.C. 04.

[6] Business Autophones, Inc., Comments on IRFA (May 6, 2002) Skitronics, LLC, Comments on IRFA (May 6, 2002); Small Business in Telecommunications, Comments on IRFA (May 6, 2002).

either abate interference on a case-by-case basis or adopt the plan proposed by NAM/MRFAC which reconfigured the band but did not relocate B/ILT licensees.[7] For the reasons described *infra* we have adopted a band plan that does not relocate B/ILT licensees to the 700 MHz and 900 MHz band and requires Nextel to finance any necessary relocation of B/ILT licensees.

10. Skitronics posits on the impact of four separate alternatives set forth in the NPRM on small businesses: (i) Skitronics echoes Business Autophones concerns about the effect of the proposal to relocate B/ILT licensees from the 800 MHz band to the 700 MHz and 900 MHz at their own expense.[8] As we discuss at ¶ 30 *infra*, we did not choose this alternative. (ii) Skitronics argues that Nextel's alternative proposal, one that would allow incumbent 800 MHz operators to remain in the band on a secondary status, would deleteriously affect small business SMR operators by impacting these business' growth prospects as well as their ability to guarantee continuous service to their customers.[9] We note that although Nextel offered this alternative in its original White Paper proposal, Nextel removed it as part of the plan it submitted as a member of the Consensus Parties. Therefore, we ceased to consider this alternative at that time and we have not chosen to enact that alternative as a rule. (iii) Skitronics argues that the Commission's consideration of moving 800 MHz incumbents to the 2.1 GHz imposes significant costs on small business SMR licensees since the propagation qualities of the 2.1 GHz spectrum make it unsuitable for SMR use and there is a lack of available equipment suitable for SMR operations in this band.[10] As in the case of the alternative of allowing SMR licensees to remain in the 800 MHz band on a secondary basis, this alternative was superseded by the alternative set forth by the Consensus Parties in the Consensus Plan and we have not chosen to move 800 MHz incumbents to the 2.1 GHz band. (iv) Skitronics contends that the alternative mentioned in the NPRM that has the least impact on small business is enforcement of existing rules against those licensees responsible for causing interference to public safety on a case-by-case basis.[11] For the reasons discussed at ¶ 32 *infra*, we declined to adopt this alternative.

11. Unlike the two other comments received in response to the IRFA, SBT focuses its comments on the adequacy of the IRFA in terms of its compliance with the RFA. Specifically, SBT makes the following arguments: (i) The IRFA does not describe the significant or potential economic impact of the NPRM on small entities as required by the RFA; [12] (ii) the IRFA omits any description of the problem to be rectified by the regulation to be promulgated or an objective for any proposed rule as required by the RFA; [13] (iii) the Commission either relied on outdated statistical sources in calculating the number of affected small licensees or failed to cite to the source(s) entirely; [14] (iv) SBT agrees with the IRFA's conclusion that the NPRM does not propose a rule that will entail additional reporting, record-keeping, and other compliance requirements because the NPRM does not, in fact, propose any rules.[15] However, in Section D infra we add new reporting and other requirements; (v) SBT urges the Commission to amend the NPRM's IRFA in any subsequent IRFA or FRFA if a substantive rule emerges from this proceeding; [16] (vi) SBT contends that the Commission should convert the NPRM to a Notice of Inquiry (NOI) and issue a second NPRM to propose specific rules; [17] (vii) with regard to SBT's comments, as an initial matter we believe that we do not need to issue a NOI in this proceeding because the IRFA's description of the problem of interference to public safety systems in the 800 MHz band is a sufficient description of the problem to be rectified in this proceeding.[18] Moreover, we believe our description of the two plans under consideration in the NPRM adequately described the rules under consideration.[19] We also note that the Consensus Parties filed a plan superseding one of the plans discussed in the NPRM on September 23, 2002 and the major revision of that new plan on December 24, 2002. Both of these plans, as well as the comments received in response to these plans, proposed substantive rules. Moreover, in the interest of ensuring a complete record, the Commission opened two additional notice and comment rounds to obtain public comment on these two plans. Our position, therefore, is that the Commission clearly stated its proposals either in the NPRM and IRFA or fully clarified them in the two subsequent notice and comment rounds that permitted full comment on subsequently proposed plans. Indeed, the Commission received the bulk of all comments in this proceeding subsequent to the comment period initiated in the NPRM. Finally, we note that in Section C, infra, we are using updated statistical sources to assess the impact of the rules we adopt today on small businesses.

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

12. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one that is: (i) Is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the Small Business Administration (SBA). Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the rule changes adopted herein.

13. A ''small organization'' is generally any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.[20] Nationwide, there are approximately 1.6 million small

[7] *See* Business Autophones Comments on IRFA at 2–3.

[8] Skitronics Comments on IRFA at 6–10.

[9] *Id.* at 10–11.

[10] *Id.* at 11–13.

[11] *Id.* at 4, 16.

[12] SBT Comments at 3–4 (*citing* 5 U.S.C. 603(a)).

[13] *Id.* at 4. According to SBT, the Commission's tentative conclusion that spectrum reallocation serves the public interest because it would resolve harmful interference to 800 MHz public safety licensees ''falls far short'' of satisfying the requirements of 5 U.S.C. 603(b)(1). *See id.*

[14] *Id.* at 5–10.

[15] *Id.* at 10–11. For the same reason, SBT concurs with the IRFA's conclusion that the NPRM does not propose any rule that duplicates, overlaps, or conflicts with other federal rules. *See id.* at 12.

[16] *Id.* at 11, 12. In addition, SBT recommends that the Commission amend the IRFA to comply with 5 U.S.C. 603(c)(3) by discussing alternatives to rules proposed by the Commission. *See id.* at 11. Once again, SBT reiterates that the Commission has not proposed any rules and therefore could not have discussed alternatives to such rules. *Id.* To the extent that the IRFA discusses alternative proposals for rule changes that were *submitted to* the Commission, SBT contends that such ''alternatives'' do not qualify as alternatives *proposed by* the Commission *Id.*

[17] *Id.* at 12–13. SBT believes that the Commission should use a NOI ''whenever it lacks information about the industry to be regulated or the exact nature of the problem to be addressed.'' *Id.* at 13.

[18] *See NPRM* at 4927.

[19] *Id.*

[20] 5 U.S.C. 601(4).

organizations.[21] We note that, according to SBA data, there are approximately 22.4 million small businesses nationwide.[22] We describe and estimate, below, the number of small entities'applicants, licensees, and radio equipment manufacturers'that may be affected by this Report and Order.

14. *Governmental Entities.* 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.'' [23] As of 1997, there were approximately 87,453 governmental jurisdictions in the United States.[24] 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.

15. *Wireless Telecommunications.* The SBA has developed a small business size standard for wireless firms within the broad economic census category ''Cellular and Other Wireless Telecommunications.'' [25] 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.[26] 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.[27] Thus, under this category and size standard, the majority of firms can be considered small.

16. *Public Safety Radio Licensees.* As a general matter, Public Safety Radio Pool licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[28] The SBA rules contain a definition for cellular and other wireless telecommunications companies which encompasses business entities engaged in radiotelephone communications employing no more that 1,500 persons.[29] There are a total of approximately 127,540 licensees within these services.[30] With respect to local governments, in particular, since many governmental entities as well as private businesses comprise the licensees for these services, we include under public safety services the number of government entities affected.

17. *Business, Industrial and Land Transportation Licensees.* At present, there are 3239 Business and Industrial/Land Transportation (I/LT) licensees that may be affected by this Report and Order.[31] The Commission does not require B/ILT licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many B/ILT licensees constitute small entities under this definition. Moreover, we note that B/ILT licensees generally are not in the business of providing cellular or other wireless telecommunications services but instead use the licensed facilities in support of other business activities.

18. *Specialized Mobile Radio Licenses.* The Commission awards ''small entity'' and ''very small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the previous calendar years, respectively.[32] In the context of both the 800 MHz and 900 MHz service, the SBA has approved the definitions of ''small entity'' and ''very small entity.'' [33] These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz SMR band. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities.

19. *Wireless Communications Equipment Manufacturers.* The SBA has established a small business size standard for radio and television broadcasting and wireless communications equipment manufacturing. Under the standard, firms are considered small if they have 1000 or fewer employees.[34] Census Bureau data for 1997 indicates that, for that year, there were a total of 1,215 establishments [35] in this category.[36] Of

[21] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[22] *See* SBA, Programs and Services, SBA Pamphlet No. CO–0028, at page 40 (July 2002).

[23] 5 U.S.C. 601(5).

[24] U.S. Census Bureau, Statistical Abstract of the United States: 2000, Section 9, pages 299–300, Tables 490 and 492.

[25] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[26] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000).

[27] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1000 employees or more.''

[28] *See* subparts A and B of part 90 of the Commission's Rules, 47 CFR 90.1–90.22. Police licensees include 26,608 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code), and teletype and facsimile (printed material). Fire licensees include 22,677 licensees comprised of private volunteer or professional fire companies, as well as units under governmental control. Public Safety Radio Pool licensees also include 40,512 licensees that are state, county, or municipal entities that use radio for official purposes. There are also 7,325 forestry service licensees comprised of licensees from state departments of conservation and private forest organizations that set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are highway maintenance licensees that provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. Emergency medical licensees (1,460) use these channels for emergency medical service communications related to the delivery of emergency medical treatment. Another 19,478 licensees include medical services, rescue organizations, veterinarians, persons with disabilities, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities.

[29] *See* 13 CFR 121.201 (NAICS Code 517212).

[30] There is no information currently available about the number within the 127,540 that have less than 1500 employees.

[31] This number is based on the Commission's licensing database.

[32] 47 CFR 90.814(b)(1).

[33] *See* Letter, dated Aug. 10, 1999, from A. Alvarez, Administrator, Small Business Administration to Tom Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission.

[34] 13 CFR 121.201, NAICS code 334220.

[35] The number of ''establishments'' is a less helpful indicator of small business prevalence in this context than would be the number of ''firms'' or ''companies,'' because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the number given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census break-out data for firms or companies only gives the total number of such entities for 1997, which was 1,089.

[36] U.S. Census Bureau, *1997 Economic Census,* Industry Series: Manufacturing, ''Industry Statistics by Employment Size,'' Table 4, (issued August

Continued

those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The Commission estimates that the majority of wireless communications equipment manufacturers are small businesses.[37]

20. *Broadcast Auxiliary Service (BAS).* BAS involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the stations). The Commission has not developed a definition of small entities specific to broadcast auxiliary licensees. The U.S. Small Business Administration (SBA) has developed small business size standards, as follows: (1) For TV BAS, we will use the size standard for Television Broadcasting, which consists of all such companies having annual receipts of no more than $12.0 million; [38] (2) for Aural BAS, we will use the size standard for Radio Stations, which consists of all such companies having annual receipts of no more than $6 million; [39] (3) for Remote Pickup BAS we will use the small business size standard for Television Broadcasting when used by a TV station and that for Radio Stations when used by such a station.

21. According to Commission staff review of BIA Publications, Inc. Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States had revenues of $12 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations [40] must be included.[41] Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. There are also 2,127 low power television stations (LPTV).[42] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA size standard. According to Commission staff review of BIA Publications, Inc., Master Access Radio Analyzer Database, as of May 16, 2003, about 10,427 of the 10,945 commercial radio stations in the United States had revenue of $6 million or less. We note, however, that many radio stations are affiliated with much larger corporations with much higher revenue, and, that in assessing whether a business concern qualifies as small under the above definition, such business (control) affiliations [43] are included.[44] Our estimate, therefore, likely overstates the number of small businesses that might be affected by our action.

22. *Cable Antenna Relay Service (CARS).* CARS includes transmitters generally used to relay cable programming within cable television system distribution systems. The SBA has developed a small business size standard for Cable and other Program Distribution, which consists of all such companies having annual receipts of no more than $12.5 million. According to Census Bureau data for 1997, there were 1,311 firms within the industry category Cable and Other Program Distribution, total, that operated for the entire year.[45] Of this total, 1,180 firms had annual receipts of under $10 million, and an additional 52 firms had receipts of $10 million to $24,999,999.00.[46] Thus, under this standard, the majority of firms can be considered small.

23. *Geostationary, Non-Geostationary Orbit, Fixed Satellite, or Mobile Satellite Service Operators (including 2 GHz MSS systems).* The Commission has not developed a definition of small entities applicable to geostationary or non-geostationary orbit, fixed-satellite or mobile-satellite service operators. The SBA has developed a small business size standard for Satellite Telecommunications Carriers, which consists of all such companies having $12.5 million or less in annual receipts.[47] According to Census Bureau data for 1997, there were 324 firms that operated for the entire year.[48] Of this total, 273 firms had annual receipts under $10 million, and an additional twenty-four firms had annual receipts of $10 million to $24,999,990.[49] Thus, under this size standard, the majority of firms can be considered small.

24. *Fixed Microwave Services.* Microwave services include common carrier,[50] private-operational fixed,[51] and broadcast auxiliary radio services.[52] At present, there are approximately 36,708 common carrier fixed licensees and 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of the FRFA, we will use the SBA's definition applicable to wireless and other telecommunications companies—*i.e.*, an entity with no more than 1,500 persons.[53] According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.[54] 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.[55] Thus, under this size standard, majority of firms can be considered small.

25. We note that the number of firms does not necessarily track the number of

1999) NAICS code 334220. We note, however that the predominant manufacturers of 800 MHz equipment, Motorola and M/A COM Private Radio Systems, Inc. are not considered small businesses.

[37] We note, however that the predominant manufacturers of 800 MHz equipment, Motorola and M/A COM Private Radio Systems, Inc. are not considered small businesses.

[38] 13 CFR 121.201, NAICS code 515120.

[39] *Id.* NAICS code 515112.

[40] ''Concerns are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.'' 13 CFR 121.103(a)(1).

[41] ''SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic concern's size.'' 13 CFR 121.103(a)(4).

[42] FCC News Release, ''Broadcast Station Totals as of September 30, 2002'' (Nov. 6, 2002).

[43] ''Concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.'' 13 CFR 121.103(a)(1).

[44] ''SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size.'' 13 CFR 121.103(a)(4).

[45] 13 CFR 121.201, NAICS code 517510 (changed from 513220 in October 2002).

[46] *Id.*

[47] 13 CFR 121.201, NAICS code 517410 (changed from 513340 in October 2002).

[48] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Receipt Size of Firms Subject to Federal Income Tax: 1997,'' Table 4, NAICS code 513340 (issued October 2000).

[49] *Id.*

[50] 47 CFR part 101 *et seq.* (formerly, part 21 of the Commission's Rules).

[51] Persons eligible under parts 80 and 90 of the Commission's rules can use Private-Operational Fixed Microwave services. *See* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[52] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. *See* 47 CFR part 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[53] 13 CFR 121.201, NAICS code 517212 (formerly 213322).

[54] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Employment Size of Firms Subject to Federal Income Tax: 1997,'' Table 5, NAICS code 217212 (issues Oct. 2000).

[55] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1,000 employees or more.''

licensees. We estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition. Of these licenses, approximately 14 are issued for frequencies in the Emerging Technology bands affected by this proceeding. This, assuming that these entities also qualify as small businesses, as many as 14 small business licensees could be affected by the rules we adopt. We note that these entities have been subject to relocation by UTAM under rules originally adopted in the Commission's *Emerging Technologies* proceeding. UTAM is the Commission's frequency coordinator for UPCS devices in the 1910–1930 MHz band. The *Fifth Report and Order* anticipates that these general relocation rules will continue to apply to FS microwave licensees and does not propose to modify the class of licensees that are subject to these relocation provisions.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

26. We expect that, at most, the rules adopted herein will result in nominal new reporting, recordkeeping, or other compliance requirements imposed on entities affected in this proceeding. The rules we adopt herein require that any Cellular Radiotelephone and/or ESMR licensee that receives an interference complaint from a public safety/CII licensee shall promptly respond to such complaint. Cellular Radiotelephone licensees, in conjunction ESMR licensees, shall establish an electronic means of receiving the initial complaint and shall respond on an ''as soon as possible'' basis and no later than 24 hours after receipt of initial notification. The purpose of this notification rule is to provide public safety/CII licensees a means to communicate to Cellular Radio Telephone and/or ESMR licensees instances of interference and for Cellular Radiotelephone and/or ESMR licensees to immediately initiate corrective action.

27. Additionally, the rules we adopt today provide that, upon request by a public safety/CII licensee, Cellular Radiotelephone and/or ESMR licensees must provide to the public safety/CII licensee the following information before any new cell sites are constructed or any existing cells are modified: (i) Location; (ii) effective radiated power; (iii) antenna height; and (iv) channels in use. The purpose of this rule is for informational purposes only and does not entitle the public safety/CII licensee to approve or disapprove the activation of a proposed cell site or to demand changes to the proposed technical parameters. The principal purpose of this rule is to facilitate a dialogue between Cellular Radiotelephone licensees and public safety/CII licensees regarding potential interference, identification of interference, and voluntary corrective measures.

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

28. 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): (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (iii) the use of performance, rather than design standards; and (iv) an exemption from coverage of the rule, or any part thereof, for small entities.[56]

29. Our decision to reconfigure the 800 MHz band is generally size-neutral, but some aspects are beneficial to small entities for the following reasons: (i) Although there are significant short-term costs associated with band reconfiguration, it is the solution most likely to yield maximum interference protection benefits for the least cost over the long run. This cost savings are significant for small entities with limited resources; (ii) once implemented, a reconfigured band will reduce both the upfront amount of coordinated engineering work necessary to prevent interference and the burden of troubleshooting interference incidents on a case-by-case basis. This will allow small entities to utilize their scarce engineering resources more effectively.

30. We also considered proposals to reallocate (1) Nextel's 700 MHz Guard Band Block B spectrum, and the Upper 700 MHz band to public safety use; and (2) provide private radio licensees 2:1 access to 900 MHz spectrum. Our decision to decline to adopt these proposals was generally size-neutral but has the following impact on small entities: (i) Since the Upper 700 MHz band is designated for auction, our decision not to utilize this band will allow small entities to bid on it in the future. (ii) Because we contemplate a future rulemaking proceeding to determine the ultimate disposition of Nextel's 700 MHz Guard Band spectrum, we afford small businesses an opportunity to comment on the future use of this spectrum.

31. We have considered the costs of realignment and the limited resources of small entities, including public safety, in effectuating band realignment. We believe that our decision will not have a significant economic impact on small entities in this regard because the cost of 800 MHz realignment will be borne by Nextel (*i.e.*, Nextel will pay relocation costs). We reject the alternative of deferring final action on band reconfiguration, because deferral would increase the potential for increased interference to public safety systems because ESMR and Cellular telephone licensees would remain in close proximity to such systems while expanding their operations.

32. Although we have not codified the *Best Practices Guide,* we endorse the interference abatement strategies therein. However, when we considered the sole use of Enhanced Best Practices as an alternative to reconfiguring the 800 MHz band in its entirety, we found this alternative less effective and more costly over the long term than band reconfiguration, and therefore more likely to be harmful to smaller entities. Our finding in that regard rests on the following facts: (i) Addressing interference on a case-by-case basis is both labor-intensive and expensive, which puts smaller entities at risk due to their more limited resources; (ii) the transactional cost of applying Enhanced Best Practices as an exclusive remedy would increase as new public safety and other non-cellular systems came on line and ESMR and cellular telephone licensees increased the capacity of their systems by adding more cells; (iii) the increased cost and labor burden disproportionately affects public safety agencies, many of which are small entities operating with very limited human, technical and financial resources.

33. We have determined not to require public safety licensees to increase their signal strength. Such a requirement would impose a substantial burden on public safety licensees, including small entities, which would often continue to suffer from interference until the causes could be identified and until appropriate channels and sites for the construction of new base station facilities could be obtained.

34. Regarding our decision to permit negotiated agreements to swap or exchange channels as a means to resolve interference to public safety systems, we do not foresee any adverse impact on small entities. The channel swapping proposals to date have specified that

[56] *See* 5 U.S.C. 603(c)(1) through (c)(4).

Nextel will bear the costs thereof. To the extent that small entities bear channel swap expenses not assumed by Nextel, we believe, for the reasons discussed at ¶ 32 *supra*, the financial burden of these small-scale band reconfigurations should be less than the cost of reliance on Enhanced Best Practices for the long term abatement of unacceptable interference.

35. Regarding our decision to hold Cellular Radio Telephone and ESMR licensees strictly responsible for effectively abating actual or potential unacceptable interference to 800 MHz public safety systems in the shortest practicable time, we do not anticipate a significant burden on small entities. We recognize that our rule does not exempt small entities from its ambit. However, in eliminating the interference we afford licensees the flexibility to determine which system—ESMR, Cellular Telephone or CII/public safety—to modify and what particular technical parameters to change on these systems; and impose on the interfering licensee(s), the obligation to promptly implement such changes. Moreover, we note that small entities were generally not among the interfering parties in those instances of interference that were brought to our attention by parties in this proceeding. We considered the alternative of imposing system-wide, stringent technical limitations on ESMR and Cellular Telephone licensees; however, we found selection of that alternative unwarranted at this time. Such rules would have imposed a burden on all licensees, including small entities, which were not among those causing interference to 800 MHz public safety systems. In particular, we have heeded the filings of rural cellular telephone carriers who opposed imposition of out-of-band emission standards that would require them to add expensive equipment to their cell sites.

36. Regarding our adoption of rules establishing general standards and procedures to govern the abatement of interference to public safety systems, we recognize that they will apply equally to all licensees, including small entities, which cause interference to 800 MHz public safety systems. However, we do not anticipate any significant adverse impact on small entities. We adopted rules that were intentionally general in nature to confer considerable discretion on the parties involved in abating instances of interference to public safety systems. Moreover, as noted above, small entities were generally not among the interfering parties in those instances of interference that were brought to our attention by parties in this proceeding. To the extent that they can demonstrate that they are not contributing to the interference to the public safety systems, they will not be responsible for abating the interference. Therefore, the burden should be minimal for those small entities not contributing to the public safety interference problem in the 800 MHz band. The minimal burden imposed by these rules is necessary to ensure that critical public safety communications may be accommodated without unacceptable interference.

37. In this respect, we are mindful that a number of the public safety systems that are experiencing interference are small entities. We believe that the rules will impose a minimal burden on small public safety entities. First, because we will only require them to furnish certain necessary information to all licensees that may be responsible for causing the interference. Second, because this provision will assure them of timely responses to and analyses of their interference complaints. Ultimately, the burden of supplying this information will be significantly less than that associated with identifying each source of unacceptable interference and contacting such sources individually.

38. Regarding our decision to require notification of the activation of new or modified ESMR or cellular radiotelephone cells, we do not perceive any adverse impact on small entities. Indeed, the prior notification requirement will enable small entities, such as public safety/CII licensees, to take proactive, anticipatory steps to address potential interference. Without this requirement, public safety/CII licensees would first have to experience interference before taking recourse. Similarly, the requirement that Cellular Radiotelephone and/or ESMR licensees promptly initiate corrective actions after having been notified of interference by public safety/CII licensees minimizes the burden on small entities of having to endure prolonged periods of interference. Moreover, as noted above, small entities were generally not among the interfering parties in those instances of interference that were brought to our attention by parties in this proceeding.

39. Regarding our decision to consolidate the 800 MHz and 900 MHz Business and Industrial/Land Transportation Pools, we perceive no adverse impact on small entities. This decision will allow any eligible Business or Industrial/Land Transportation entity to be licensed on the consolidated channels. This consolidation will improve spectrum efficiency, promote the use of advanced technologies by affording licensees more contiguous spectrum, and reduce regulatory burdens on all licensees, including small entities. The alternative of retaining separate pools for each service would subject licensees to the unnecessary burden of seeking waivers to permit intercategory sharing, which may have been comparatively more onerous for smaller entities to prepare and file.

40. Regarding our decision to allow 900 MHz PLMR licensees to initiate CMRS operations on their currently authorized spectrum or to assign their authorizations to others for CMRS use, we perceive no adverse impact on small entities. This decision will improve spectrum efficiency, promote the use of advanced technologies by affording licensees access to addition spectrum.

41. Regarding our decision to allocate the 1910–1915 MHz/1990–1995 MHz paired spectrum blocks to Nextel, we perceive no adverse impact on small entities. Redesignating this spectrum for Nextel's use, for example, will facilitate 800 MHz realignment, by, among other things, introducing an additional entity that can participate in funding the relocation costs of public safety, critical infrastructure, and private wireless entities, including small entities. Alternatively, maintaining this spectrum without applying our relocation principles will expose such entities to continued interference without sufficient spectrum and funding to achieve realignment. Further, we are satisfied that our decision will not adversely impact BAS, UPCS, MSS, and microwave interests on account of expenditures in this spectrum. As noted in the *Report and Order,* Nextel has agreed to reimburse these interests or pay the upfront costs to relocate incumbents in the manner provided by our Rules, and we will hold Nextel to that agreement.

Report to Congress

42. The Commission will send a copy of this *Report and Order, Fifth R&O, Fourth MO&O, and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the *Report and Order, Fifth R&O, Fourth MO&O, and Order* and this final certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

Report to Small Business Administration

43. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Report and Order, Fifth R&O, Fourth MO&O, and Order* including the

Regulatory Flexibility Certification and to the Chief Counsel for Advocacy of the Small Business Administration.

44. Pursuant to the authority of Sections 1, 4(i), 303(f) and (r), 309, 316, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303(f) and (r), 309, 316, and 332, parts 2, 15, 22, 24, 74, 78, and 90 of the Commission's rules, 47 CFR parts 2, 22, 24, 74, 78, and 90, is amended as set forth in Rule Changes, January 21, 2005 except for §§ 22.972, 22.973, 90.674, 90.675, 90.676, and 90.677 which contain information collection requirements that have not been approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date for these sections.

List of Subjects

47 CFR Part 2

Frequency Allocations, General Rules and Regulations, Radio.

47 CFR Parts 22 and 90

Communications common carriers, Communications equipment, Reporting and recordkeeping requirements.

47 CFR Part 24

Communications common carriers.

47 CFR Part 74

Radio.

47 CFR Part 78

Cable television, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble 47 CFR parts 2, 22, 24, 74, 78, and 90 are amended as follows:

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

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

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

■ 2. Section 2.106, the Table of Frequency Allocations, is amended by revising pages 38 and 39.

§ 2.106 Table of Frequency Allocations.

BILLING CODE 6712–01–P

5.149 5.291A 5.294 5.296 5.300 5.302 5.304 5.306 5.311 5.312				776-794 FIXED MOBILE BROADCASTING	Wireless Communications (27) Broadcast Radio (TV) (73) Auxiliary Broadcasting (74) Private Land Mobile (90)
790-862 FIXED BROADCASTING	5.293 5.309 5.311			NG115 NG128 NG159	
				794-806 FIXED MOBILE	Auxiliary Broadcasting (74) Private Land Mobile (90)
	806-890 FIXED MOBILE BROADCASTING			NG115 NG128 NG158 NG159	
				806-809 LAND MOBILE	Private Land Mobile (90)
				NG31	
				809-824 FIXED LAND MOBILE	Public Mobile (22) Private Land Mobile (90)
				NG31	
				824-849 FIXED LAND MOBILE	Public Mobile (22)
5.312 5.314 5.315 5.316 5.319 5.321				NG151	
See next page for 862-890 MHz	5.317 5.318	5.149 5.305 5.306 5.307 5.311 5.320		See next page for 849-890 MHz	See next page for 849-890 MHz

849-941 MHz (UHF)					Page 39
International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 790-862 MHz	See previous page for 806-890 MHz	See previous page for 610-890 MHz	See previous page for 614-890 MHz	849-851 AERONAUTICAL MOBILE	Public Mobile (22)
				851-854 LAND MOBILE	Private Land Mobile (90)
862-890 FIXED MOBILE except aeronautical mobile BROADCASTING 5.322				854-869 FIXED LAND MOBILE NG31	Public Mobile (22) Private Land Mobile (90)
				869-894 FIXED LAND MOBILE	Public Mobile (22)
5.319 5.323				US116 US268 NG151	
890-942 FIXED MOBILE except aeronautical mobile 5.317A BROADCASTING 5.322 Radiolocation	890-902 FIXED MOBILE except aeronautical mobile 5.317A Radiolocation	890-942 FIXED MOBILE 5.317A BROADCASTING Radiolocation	890-902	894-896 AERONAUTICAL MOBILE US116 US268	
				896-901 FIXED LAND MOBILE US116 US268	Private Land Mobile (90)
	5.318 5.325			901-902 FIXED MOBILE US116 US268	Personal Communications (24)
			US116 US268 G2		

BILLING CODE 6712–01–C

PART 22—PUBLIC MOBILE SERVICES

■ 3. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 222, 303, 309 and 332.

■ 4. Add §§ 22.970 through 22.973 to subpart H to read as follows:

§ 22.970 Unacceptable interference to Part 90 non-cellular 800 MHz licensees from cellular radiotelephone or Part 90 ESMR systems.

(a) *Definition*. Except as provided in 47 CFR 90.617(k), unacceptable interference to non-cellular part 90 of this chapter licensees in the 800 MHz band will be deemed to occur when the below conditions are met:

(1) A transceiver at a site at which interference is encountered:

(i) Is in good repair and operating condition, and is receiving:

(A) A median desired signal of −104 dBm or higher, as measured at the R.F. input of the receiver of a mobile unit; or

(B) A median desired signal of −101 dBm or higher, as measured at the R.F. input of the receiver of a portable *i.e.* hand-held unit; and, either

(ii) Is a voice transceiver:

(A) With manufacturer published performance specifications for the receiver section of the transceiver equal to, or exceeding, the minimum standards set out in paragraph (b) of this section, below; and;

(B) Receiving an undesired signal or signals which cause the measured Carrier to Noise plus interference (C/(I+N)) ratio of the receiver section of said transceiver to be less than 20 dB, or,

(iii) Is a non-voice transceiver receiving an undesired signal or signals which cause the measured bit error rate (BER) (or some comparable specification) of the receiver section of said transceiver to be more than the value reasonably designated by the manufacturer.

(2) Provided, however, that if the receiver section of the mobile or portable voice transceiver does not conform to the standards set out in paragraph (b) of this section, then that transceiver shall be deemed subject to unacceptable interference only at sites where the median desired signal satisfies the applicable threshold measured signal power in paragraph (a)(1)(i) of this section after an upward adjustment to account for the difference in receiver section performance. The upward adjustment shall be equal to the increase in the desired signal required to restore the receiver section of the subject transceiver to the 20 dB C/(I+N) ratio of paragraph (a)(1)(ii)(B) of this section. The adjusted threshold levels shall then define the minimum measured signal power(s) in lieu of paragraphs (a)(1)(i) of this section at which the licensee using such non-compliant transceiver is entitled to interference protection.

(b) *Minimum receiver requirements*. Voice transceivers capable of operating in the 806–824 MHz portion of the 800 MHz band shall have the following minimum performance specifications in order for the system in which such transceivers are used to claim entitlement to full protection against unacceptable interference (See paragraph (a) (2) of this section).

(1) Voice units intended for mobile use: 75 dB intermodulation rejection ratio; 75 dB adjacent channel rejection ratio; −116 dBm reference sensitivity.

(2) Voice units intended for portable use: 70 dB intermodulation rejection ratio; 70 dB adjacent channel rejection ratio; −116 dBm reference sensitivity.

§ 22.971 Obligation to abate unacceptable interference.

(a) *Strict responsibility*. Any licensee who, knowingly or unknowingly, directly or indirectly, causes or contributes to causing unacceptable interference to a non-cellular Part 90 licensee in the 800 MHz band, as defined in § 22.970 shall be strictly accountable to abate the interference, with full cooperation and utmost diligence, in the shortest time practicable. Interfering licensees shall consider all feasible interference abatement measures, including, but not limited to, the remedies specified in the interference resolution procedures set forth in § 22.972. This strict responsibility obligation applies to all forms of interference, including out-of-band emissions and intermodulation.

(b) *Joint and several responsibility*. If two or more licensees knowingly or unknowingly, directly or indirectly, cause or contribute to causing unacceptable interference to a non-cellular part 90 of this chapter licensee in the 800 MHz band, as defined in § 22.970, such licensees shall be jointly and severally responsible for abating interference, with full cooperation and utmost diligence, in the shortest practicable time.

(1) This joint and several responsibility rule requires interfering licensees to consider all feasible interference abatement measures, including, but not limited to, the remedies specified in the interference resolution procedures set forth in § 22.972(c). This joint and several responsibility rule applies to all forms of interference, including out-of-band emissions and intermodulation.

(2) Any licensee that can show that its signal does not directly or indirectly, cause or contribute to causing unacceptable interference to a non-cellular part 90 of this chapter licensee in the 800 MHz band, as defined in this chapter, shall not be held responsible for resolving unacceptable interference. Notwithstanding, any licensee that receives an interference complaint from a public safety/CII licensee shall respond to such complaint consistent with the interference resolution procedures set forth in this chapter.

§ 22.972 Interference resolution procedures.

(a) *Initial notification*. (1) Cellular Radiotelephone licensees may receive initial notification of interference from non-cellular part 90 of this chapter licensees in the 800 MHz band pursuant to § 90.674(a) of this chapter.

(2) Cellular Radiotelephone licensees, in conjunction with part 90 ESMR licensees, shall establish an electronic means of receiving the initial notification described in § 90.674(a) of this chapter. The electronic system must be designed so that all appropriate Cellular Radiotelephone licensees and part 90 ESMR licensees can be contacted about the interference incident with a single notification. The electronic system for receipt of initial notification of interference complaints must be operating no later than February 22, 2005.

(3) Cellular Radiotelephone licensees must respond to the initial notification described in § 90.674(a) of this chapter, as soon as possible and no later than 24 hours after receipt of notification from a part 90 public safety/CII licensee. This response time may be extended to 48 hours after receipt from other part 90 non-cellular licensees provided affected communications on these systems are not safety related.

(b) *Interference analysis*. Cellular Radiotelephone licensees—who receive an initial notification described in § 90.674(a) of this chapter—shall perform a timely analysis of the interference to identify the possible source. Immediate on-site visits may be conducted when necessary to complete timely analysis. Interference analysis must be completed and corrective action initiated within 48 hours of the initial complaint from a part 90 of this chapter public safety/CII licensee. This response time may be extended to 96 hours after the initial complaint from other part 90 of this chapter non-cellular licensees provided affected communications on these systems are not safety related.

Corrective action may be delayed if the affected licensee agrees in writing (which may be, but is not required to be, recorded via e-mail or other electronic means) to a longer period.

(c) *Mitigation steps.* (1) All Cellular Radiotelephone and part 90 of this chapter ESMR licensees who are responsible for causing unacceptable interference shall take all affirmative measures to resolve such interference. Cellular Radiotelephone licensees found to contribute to unacceptable interference, as defined in § 22.970, shall resolve such interference in the shortest time practicable. Cellular Radiotelephone licensees and part 90 of this chapter ESMR licensees must provide all necessary test apparatus and technical personnel skilled in the operation of such equipment as may be necessary to determine the most appropriate means of timely eliminating the interference. However, the means whereby interference is abated or the cell parameters that may need to be adjusted is left to the discretion of the Cellular Radiotelephone and/or part 90 of this chapter ESMR licensees, whose affirmative measures may include, but not be limited to, the following techniques:

(i) Increasing the desired power of the public safety/CII signal;

(ii) Decreasing the power of the part 90 ESMR and/or Cellular Radiotelephone system signal;

(iii) Modifying the part 90 ESMR and/or Cellular Radiotelephone system antenna height;

(iv) Modifying the part 90 ESMR and/or Cellular Radiotelephone system antenna characteristics;

(v) Incorporating filters into part 90 ESMR and/or Cellular Radiotelephone transmission equipment;

(vi) Permanently changing part 90 ESMR and/or Cellular Radiotelephone frequencies; and

(vii) Supplying interference-resistant receivers to the affected public safety/CII licensee(s). If this technique is used, in all circumstances, Cellular Radiotelephone and/or part 90 of this chapter ESMR licensees shall be responsible for all costs thereof.

(2) Whenever short-term interference abatement measures prove inadequate, the affected part 90 of this chapter non-cellular licensee shall, consistent with but not compromising safety, make all necessary concessions to accepting interference until a longer-term remedy can be implemented.

(3) *Discontinuing operations when clear imminent danger exists.* When a part 90 of this chapter public safety licensee determines that a continuing presence of interference constitutes a clear and imminent danger to life or property, the licensee causing the interference must discontinue the associated operation immediately, until a remedy can be identified and applied. The determination that a continuing presence exists that constitutes a clear and imminent danger to life or property, must be made by written statement that:

(i) Is in the form of a declaration, notarized affidavit, or statement under penalty or perjury, from an officer or executive of the affected public safety licensee;

(ii) Thoroughly describes the basis of the claim of clear and imminent danger;

(iii) Was formulated on the basis of either personal knowledge or belief after due diligence;

(iv) Is not proffered by a contractor or other third party; and

(v) Has been approved by the Chief of the Wireless Telecommunication Bureau or other designated Commission official. Prior to the authorized official making a determination that a clear and imminent danger exists, the associated written statement must be served by hand-delivery or receipted fax on the applicable offending licensee, with a copy transmitted by the fastest available means to the Washington, DC office of the Commission's Wireless Telecommunications Bureau.

§ 22.973 Information exchange.

(a) *Prior notification.* Public safety/CII licensees may notify a part 90 ESMR or cellular radiotelephone licensee that they wish to receive prior notification of the activation or modification of part 90 ESMR or cellular radiotelephone cell sites in their area. Thereafter, the part 90 ESMR or cellular radiotelephone licensee must provide the following information to the public safety/CII licensee at least 10 business days before a new cell site is activated or an existing cell site is modified:

(1) Location;

(2) Effective radiated power;

(3) Antenna height;

(4) Channels available for use.

(b) *Purpose of prior notification.* The prior coordination of cell sites is for informational purposes only. Public safety/CII licensees are not afforded the right to accept or reject the activation of a proposed cell or to unilaterally require changes in its operating parameters. The principal purposes of notification are to:

(1) Allow a public safety licensee to advise the part 90 of this chapter ESMR or Cellular Radiotelephone licensee whether it believes a proposed cell will generate unacceptable interference;

(2) Permit Cellular Radiotelephone or part 90 of this chapter ESMR licensees to make voluntary changes in cell parameters when a public safety licensee alerts them to possible interference; and

(3) Rapidly identify the source if interference is encountered when the cell is activated.

PART 24—PERSONAL COMMUNICATIONS SERVICES

■ 5. The authority citation for part 24 continues to read as follows:

Authority: Sections 47 U.S.C. 154, 301, 302, 303, 309 and 332.

■ 6. Amend § 24.203 by revising paragraph (b) and adding paragraph (d) to read as follows:

§ 24.203 Construction requirements.

* * * * *

(b) Licensees of 10 MHz blocks except for the 1910–1915 MHz and 1990–1995 MHz, including 10 MHz C block licenses reconfigured pursuant to Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, WT Docket No. 97–82, Sixth Report and Order, FCC 00–313, and 15 MHz blocks resulting from the disaggregation option as provided in the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, Second Report and Order and Further Notice of Proposed Rule Making, WT Docket 97–82, 12 FCC Rcd 16436 (1997), as modified by Order on Reconsideration of the Second Report and Order, WT Docket 97–82, 13 FCC Rcd 8345 (1998), must serve with a signal level sufficient to provide adequate service to at least one-quarter of the population in their licensed area within five years of being licensed, or make a showing of substantial service in their licensed area within five years of being licensed. Population is defined as the 1990 population census. Licensees may elect to use the 2000 population census to determine the five-year construction requirement. Failure by any licensee to meet these requirements will result in forfeiture of the license and the licensee will be ineligible to regain it.

* * * * *

(d) Licensees in the paired 1910–1915 MHz and 1990–1995 MHz bands must make a showing of ''substantial service'' in their license area within ten years of the date of initial license issuance or renewal. ''Substantial service'' is defined as service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal. Failure by any licensee to meet this

requirement will result in forfeiture of the license and the licensee will be ineligible to regain it.

■ 7. Amend § 24.229 by adding paragraph (c) to read as follows:

§ 24.229 Frequencies.

* * * * *

(c) The paired frequency blocks 1910–1915 MHz and 1990–1995 MHz are available for assignment in the 175 Economic Areas defined in § 90.7 of this chapter. The 1910–1915 MHz block shall be used for mobile/portable station transmissions while the 1990–1995 MHz block shall be used for base station transmissions.

■ 8. Amend § 24.247 by adding paragraph (c) to read as follows:

§ 24.247 Triggering a reimbursement obligation.

* * * * *

(c) Any new entrants granted licenses for the 1910–1915 MHz band must reimburse UTAM a pro rata share of its total expenses incurred by UTAM as of the date that the new entrants gain access to the band. The percent required by new entrants to pay shall be calculated based upon the amount of spectrum granted to the new entrant as compared to the total amount of spectrum UTAM is responsible for clearing of incumbents (20 megahertz), and must be paid before a new entrant begins operations in the band. For example, if a new entrant obtains a license for 5 megahertz of spectrum in this band, it is required to reimburse UTAM one-quarter of UTAM's total costs to date on a pro rata shared basis. New entrants will be responsible for the actual costs associated with future relocation activities in their licensed spectrum, but will be entitled to seek reimbursement from UTAM for the proportion of those band clearing costs that benefit users of the 1915–1930 MHz band.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCASTING AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 9. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

■ 10. Amend § 74.602 by revising paragraph (a)(3)(iii) to read as follows:

§ 74.602 Frequency assignment.

(a) * * *

(3) * * *

(iii) Broadcast Auxiliary Service, Cable Television Remote Pickup Service, and Local Television Transmission Service licensees will be required to use the Band A channel plan in paragraph (a)(3)(i) of this section after completion of relocation by an Emerging Technologies licensee in accordance with § 74.690 or § 78.40. Licensees declining relocation may continue to use their existing channel plan but must discontinue use of the 1990–2025 MHz band when they indicate to an Emerging Technologies licensee, acting pursuant to § 74.690 or § 78.40 of this chapter, that they decline to be relocated.

* * * * *

■ 11. Amend § 74.690 by revising paragraphs (b), (c)(2), (c)(3), (d) and the introductory text of paragraph (e), and to remove and reserve section (e)(1)(ii) to read as follows:

§ 74.690 Transition of the 1990–2025 MHz band from the Broadcast Auxiliary Service to emerging technologies.

(a) * * *

(b) An Existing Licensee in the 1990–2025 MHz band allocated for licensed emerging technology services will maintain primary status in the band until the Existing Licensee's operations are relocated by a New Entrant, are discontinued under the terms of paragraph (a) of this section, or become secondary under the terms of paragraph (e)(6) of this section or the Existing Licensee indicates to a New Entrant that it declines to be relocated.

(c) * * *

(2) The New Entrant completes all activities necessary for implementing the replacement facilities, including engineering and cost analysis of the relocation procedure and, if radio facilities are used, identifying and obtaining, on the incumbents' behalf, new microwave or Local Television Transmission Service frequencies and frequency coordination.

(3) The New Entrant builds the replacement system and tests it for comparability with the existing system.

(d) The Existing Licensee is not required to relocate until the alternative facilities are available to it for a reasonable time to make adjustments, determine comparability, and ensure a seamless handoff. If, within one year after the relocation to new facilities the Existing Licensee demonstrates that the new facilities are not comparable to the former facilities, the New Entrant must remedy the defects.

(e) Subject to the terms of this paragraph (e), the relocation of Existing Licensees will be carried out by MSS licensees in the following manner:

(1) * * *

(ii) [Reserved]

* * * * *

PART 78—CABLE TELEVISION RELAY SERVICE

■ 12. The authority citation for part 78 continues to read as follows:

Authority: Sections 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

■ 13. Amend § 78.40 by revising paragraphs (b), (c)(2), (c)(3), (e) and the introductory text of paragraph (f), and by removing and reserving paragraph (f)(1)(ii) to read as follows:

§ 78.40 Transition of the 1990–2025 MHz band from the Cable Television Relay Service to emerging technologies.

(a) * * *

(b) Existing Licensees in the 1990–2025 MHz band allocated for licensed emerging technology services will maintain primary status in the band until a New Entrant completes relocation of the Existing Licensee's operations or the Existing Licensee indicates to a New Entrant that it declines to be relocated.

(c) * * *

(2) The New Entrant completes all activities necessary for implementing the replacement facilities, including engineering and cost analysis of the relocation procedure and, if radio facilities are used, identifying and obtaining, on the incumbents' behalf, new microwave or Cable Television Relay Service frequencies and frequency coordination.

(3) The New Entrant builds the replacement system and tests it for comparability with the existing system.

* * * * *

(e) If, within one year after the relocation to new facilities the Existing Licensee demonstrates that the new facilities are not comparable to the former facilities, the New Entrant must remedy the defect.

(f) Subject to the terms of this paragraph (f), the relocation of Existing Licensees will be carried out by MSS licensees in the following manner:

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 14. The authority citation for 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).

■ 15. Amend § 90.7 by adding the following definitions in alphabetical order to read as follows:

§ 90.7 Definitions.

Cellular System (800 MHz). In the 806–817 MHz/851–862 MHz band, a cellular system is defined as a high-density system which:

(1) Has more than five overlapping interactive sites featuring hand-off capability; and

(2) Any one of such sites has an antenna height of less than 30.4 meters (100 feet) above ground level with an antenna height above average terrain (HAAT) of less than 152.4 meters (500 feet) and twenty or more paired frequencies.

* * * * *

Critical Infrastructure Industry (CII). Private internal radio services operated by State, local governments and non-government entities, including utilities, railroads, metropolitan transit systems, pipelines, private ambulances, volunteer fire departments, and not-for-profit organizations that offer emergency road services, provided these private internal radio services are used to protect safety of life, health, or property; and are not made commercially available to the public.

* * * * *

Enhanced Specialized Mobile Radio System (ESMR). A specialized mobile radio (SMR) system operating in the 800 MHz band which employs an 800 MHz cellular system as defined in this section.

* * * * *

■ 16. Section 90.16 is revised to read as follows:

§ 90.16 Public Safety National Plan.

The Commission has established a National Plan which specifies special policies and procedures governing the Public Safety Pool (formally Public Safety Radio Services and the Special Emergency Radio Service). The National Plan is contained in the Report and Order in General Docket No. 87–112. The principal spectrum resource for the National Plan is the 806–809 MHz and the 851–854 MHz bands at locations farther then 110 km (68.4 miles) from the U.S./Mexico border and 140 km (87 miles) from the U.S./Canadian border (''border regions''). In the border regions, the principal spectrum for the National Plan may be different. The National plan establishes planning regions covering all parts of the United States, Puerto Rico, and the U.S. Virgin Islands. No assignments will be made in the spectrum designated for the National Plan until a regional plan for the area has been accepted by the Commission.

■ 17. Amend § 90.20(c)(3) by removing frequency bands ''806 to 824'' and ''851 to 859'' and by adding in its place ''806 to 821'' and ''851 to 862'' and by revising paragraph (d)(69) to read as follows:

§ 90.20 Public Safety Pool.

* * * * *

(c) * * *

(3) * * *

PUBLIC SAFETY POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
* *	* *	* *	* *
806 to 817	.....do	69	
851 to 862	Base or mobile	69	
* *	* *	* *	* *

(d) * * *

(69) Subpart S of this part contains rules for assignment of frequencies in the 806–817 MHz and 851–862 MHz bands.

* * * * *

■ 18. Amend § 90.35(b)(3) by removing frequency bands ''806 to 821'' and ''851 to 869'' and by adding in its place ''809 to 824'' and ''854 to 869'' and by revising paragraph (c)(71) to read as follows:

§ 90.35 Industrial/Business Pool.

* * * * *

(b) * * *

(3) * * *

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
* *	* *	* *	* *
809 to 824	Mobile	71	
854 to 869	Base or mobile	71	
* *	* *	* *	* *

(c) * * *

(71) Subpart S of this part contains rules for assignment of frequencies in the 809–824/854–869 and 896–901/935–940 MHz bands.

* * * * *

■ 19. Amend § 90.209(b)(5) by removing frequency bands ''806–821/851–866'' and ''821–824/866–869'' and by adding in its place ''806–809/851–854'' and ''809–824/854–869'' to read as follows:

§ 90.209 Bandwidth limitations.

* * * * *

(b) * * *

(5) * * *

STANDARD CHANNEL SPACING/BANDWIDTH

Frequency band (MHz)	Channel spacing (kHz)	Authorized bandwidth (kHz)
* * * * * * *	*	*
806–809/851–854	12.5	20
809–824/854–869	25	20
* * * * * * *	*	*

* * * * *

■ 20. In § 90.210, revise the table by removing frequency bands ''806–821/851–866'' [3] and ''821–824/866–869'' and by adding in its place ''806–809/851–854'' and ''809–824/854–869'' [3] to read as follows:

§ 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
* * * * * * *	*	*
806–809/851–854	B	H
809–824/854–869 [3]	B	G
* * * * * * *	*	*

* * * * *

[3] ESMR systems shall comply with the emission mask provisions of § 90.691.

* * * * *

■ 21. Amend § 90.213(a) by removing frequency bands ''806–821'', ''821–824'', ''851–866'', ''866–869'' and by adding in its place ''806–809'', ''809–824'', ''851–854'', ''854–869'' to read as follows:

§ 90.213 Frequency stability.

(a) * * *

MINIMUM FREQUENCY STABILITY

[Parts per million (ppm)]

Frequency range (MHz)	Fixed and base stations	Mobile stations	
		Over 2 watts output power	2 watts or less output power
* * * * * * *	*	*	
806–809	[14] 1.0	1.5	1.5
809–824	[14] 1.5	2.5	2.5
851–854	1.0	1.5	1.5
854–869	1.5	2.5	2.5
* * * * * * *	*	*	

* * * * *

■ 22. Amend § 90.607 by revising paragraph (e) to read as follows:

§ 90.607 Supplemental information to be furnished by applicants for facilities under this subpart.

* * * * *

(e) All applicants for frequencies governed by this subpart are subject to the frequency coordination requirements of § 90.175(b) except applicants requesting frequencies for EA-based SMR operations in the 806–824 MHz/851–869 MHz band or 896–901 MHz/935–940 MHz band.

■ 23. Amend § 90.609 by revising paragraph (c) to read as follows:

§ 90.609 Special limitations on amendment of applications for assignment or transfer of authorizations for radio systems above 800 MHz.

* * * * *

(c) Licensees of constructed systems in any category are permitted to make partial assignments of an authorized grant to an applicant proposing to create a new system or to an existing licensee that has loaded its system to 70 mobiles per channel and is expanding that system. An applicant authorized to expand an existing system or to create a new system with frequencies from any category obtained through partial assignment will receive the assignor's existing license expiration date and loading deadline for the frequencies that are assigned. A licensee that makes a

partial assignment of a station's frequencies will not be authorized to obtain additional frequencies for that station for a period of one year from the date of the partial assignment.

* * * * *

■ 24. Section 90.613 is revised to read as follows:

§ 90.613 Frequencies available.

The following table indicates the channel designations of frequencies available for assignment to eligible applicants under this subpart. Frequencies shall be assigned in pairs, with mobile and control station transmitting frequencies taken from the 806–824 MHz band with corresponding base station frequencies being 45 MHz higher and taken from the 851–869 MHz band, or with mobile and control station frequencies taken from the 896–901 MHz band with corresponding base station frequencies being 39 MHz higher and taken from the 935–940 MHz band. Only the base station transmitting frequency of each pair is listed in the following tables.

TABLE OF 806–824/851–869 MHz CHANNEL DESIGNATIONS

Channel No.	Base frequency (MHz)
1	851.0125
2	.0375
3	.0500
4	.0625
5	.0750
6	.0875
7	.1000
8	.1125
9	.1250
10	.1375
11	.1500
12	.1625
13	.1750
14	.1875
15	.2000
16	.2125
17	.2250
18	.2375
19	.2500
20	.2625
21	.2750
22	.2875
23	.3000
24	.3125
25	.3250
26	.3375
27	.3500
28	.3625
29	.3750
30	.3875
31	.4000
32	.4125
33	.4250
34	.4375
35	.4500
36	.4625
37	.4750
38	.4875
39	.5125
40	.5375
41	.5500
42	.5625
43	.5750
44	.5875
45	.6000
46	.6125
47	.6250
48	.6375
49	.6500
50	.6625
51	.6750
52	.6875
53	.7000
54	.7125
55	.7250
56	.7375
57	.7500
58	.7625
59	.7750
60	.7875
61	.8000
62	.8125
63	.8250
64	.8375
65	.8500
66	.8625
67	.8750
68	.8875
69	.9000
70	.9125
71	.9250
72	.9375
73	.9500
74	.9625
75	.9750
76	.9875
77	852.0125
78	.0375
79	.0500
80	.0625
81	.0750
82	.0875
83	.1000
84	.1125
85	.1250
86	.1375
87	.1500
88	.1625
89	.1750
90	.1875
91	.2000
92	.2125
93	.2250
94	.2375
95	.2500
96	.2625
97	.2750
98	.2875
99	.3000
100	.3125
101	.3250
102	.3375
103	.3500
104	.3625
105	.3750
106	.3875
107	.4000
108	.4125
109	.4250
110	.4375
111	.4500
112	.4625
113	.4750
114	.4875
115	.5125
116	.5375
117	.5500
118	.5625
119	.5750
120	.5875
121	.6000
122	.6125
123	.6250
124	.6375
125	.6500
126	.6625
127	.6750
128	.6875
129	.7000
130	.7125
131	.7250
132	.7375
133	.7500
134	.7625
135	.7750
136	.7875
137	.8000
138	.8125
139	.8250
140	.8375
141	.8500
142	.8625
143	.8750
144	.8875
145	.9000
146	.9125
147	.9250
148	.9375
149	.9500
150	.9625
151	.9750
152	.9875
153	.853.0125
154	.0375
155	.0500
156	.0625
157	.0750
158	.0875
159	.1000
160	.1125
161	.1250
162	.1375
163	.1500
164	.1625
165	.1750
166	.1875
167	.2000
168	.2125
169	.2250
170	.2375
171	.2500
172	.2625
173	.2750
174	.2875
175	.3000
176	.3125
177	.3250
178	.3375

TABLE OF 806–824/851–869 MHz CHANNEL DESIGNATIONS—Continued

Channel No.	Base frequency (MHz)
179	.3500
180	.3625
181	.3750
182	.3875
183	.4000
184	.4125
185	.4250
186	.4375
187	.4500
188	.4625
189	.4750
190	.4875
191	.5000
192	.5125
193	.5250
194	.5375
195	.5500
196	.5625
197	.5750
198	.5875
199	.6000
200	.6125
201	.6250
202	.6375
203	.6500
204	.6625
205	.6750
206	.6875
207	.7000
208	.7125
209	.7250
210	.7375
211	.7500
212	.7625
213	.7750
214	.7875
215	.8000
216	.8125
217	.8250
218	.8375
219	.8500
220	.8625
221	.8750
222	.8875
223	.9000
224	.9125
225	.9250
226	.9375
227	.9500
228	.9625
229	.9750
230	.9875
231	854.0125
232	.0375
233	.0625
234	.0875
235	.1125
236	.1375
237	.1625
238	.1875
239	.2125
240	.2375
241	.2625
242	.2875
243	.3125
244	.3375
245	.3625
246	.3875
247	.4125
248	.4375

TABLE OF 806–824/851–869 MHz CHANNEL DESIGNATIONS—Continued

Channel No.	Base frequency (MHz)
249	.4625
250	.4875
251	.5125
252	.5375
253	.5625
254	.5875
255	.6125
256	.6375
257	.6625
258	.6875
259	.7125
260	.7375
261	.7625
262	.7875
263	.8125
264	.8375
265	.8625
266	.8875
267	.9125
268	.9375
269	.9625
270	.9875
271	855.0125
272	.0375
273	.0625
274	.0875
275	.1125
276	.1375
277	.1625
278	.1875
279	.2125
280	.2375
281	.2625
282	.2875
283	.3125
284	.3375
285	.3625
286	.3875
287	.4125
288	.4375
289	.4625
290	.4875
291	.5125
292	.5375
293	.5625
294	.5875
295	.6125
296	.6375
297	.6625
298	.6875
299	.7125
300	.7375
301	.7625
302	.7875
303	.8125
304	.8375
305	.8625
306	.8875
307	.9125
308	.9375
309	.9625
310	.9875
311	856.0125
312	.0375
313	.0625
314	.0875
315	.1125
316	.1375
317	.1625
318	.1875

TABLE OF 806–824/851–869 MHz CHANNEL DESIGNATIONS—Continued

Channel No.	Base frequency (MHz)
319	.2125
320	.2375
321	.2625
322	.2875
323	.3125
324	.3375
325	.3625
326	.3875
327	.4125
328	.4375
329	.4625
330	.4875
331	.5125
332	.5375
333	.5625
334	.5875
335	.6125
336	.6375
337	.6625
338	.6875
339	.7125
340	.7375
341	.7625
342	.7875
343	.8125
344	.8375
345	.8625
346	.8875
347	.9125
348	.9375
349	.9625
350	.9875
351	857.0125
352	.0375
353	.0625
354	.0875
355	.1125
356	.1375
357	.1625
358	.1875
359	.2125
360	.2375
361	.2625
362	.2875
363	.3125
364	.3375
365	.3625
366	.3875
367	.4125
368	.4375
369	.4625
370	.4875
371	.5125
372	.5375
373	.5625
374	.5875
375	.6125
376	.6375
377	.6625
378	.6875
379	.7125
380	.7375
381	.7625
382	.7875
383	.8125
384	.8375
385	.8625
386	.8875
387	.9125
388	.9375

TABLE OF 806–824/851–869 MHZ CHANNEL DESIGNATIONS—Continued

Channel No.	Base frequency (MHz)
389	.9625
390	.9875
391	858.0125
392	.0375
393	.0625
394	.0875
395	.1125
396	.1375
397	.1625
398	.1875
399	.2125
400	.2375
401	.2625
402	.2875
403	.3125
404	.3375
405	.3625
406	.3875
407	.4125
408	.4375
409	.4625
410	.4875
411	.5125
412	.5375
413	.5625
414	.5875
415	.6125
416	.6375
417	.6625
418	.6875
419	.7125
420	.7375
421	.7625
422	.7875
423	.8125
424	.8375
425	.8625
426	.8875
427	.9125
428	.9375
429	.9625
430	.9875
431	859.0125
432	.0375
433	.0625
434	.0875
435	.1125
436	.1375
437	.1625
438	.1875
439	.2125
440	.2375
441	.2625
442	.2875
443	.3125
444	.3375
445	.3625
446	.3875
447	.4125
448	.4375
449	.4625
450	.4875
451	.5125
452	.5375
453	.5625
454	.5875
455	.6125
456	.6375
457	.6625
458	.6875

TABLE OF 806–824/851–869 MHZ CHANNEL DESIGNATIONS—Continued

Channel No.	Base frequency (MHz)
459	.7125
460	.7375
461	.7625
462	.7875
463	.8125
464	.8375
465	.8625
466	.8875
467	.9125
468	.9375
469	.9625
470	.9875
471	860.0125
472	.0375
473	.0625
474	.0875
475	.1125
476	.1375
477	.1625
478	.1875
479	.2125
480	.2375
481	.2625
482	.2875
483	.3125
484	.3375
485	.3625
486	.3875
487	.4125
488	.4375
489	.4625
490	.4875
491	.5125
492	.5375
493	.5625
494	.5875
495	.6125
496	.6375
497	.6625
498	.6875
499	.7125
500	.7375
501	.7625
502	.7875
503	.8125
504	.8375
505	.8625
506	.8875
507	.9125
508	.9375
509	.9625
510	.9875
511	861.0125
512	.0375
513	.0625
514	.0875
515	.1125
516	.1375
517	.1625
518	.1875
519	.2125
520	.2375
521	.2625
522	.2875
523	.3125
524	.3375
525	.3625
526	.3875
527	.4125
528	.4375

TABLE OF 806–824/851–869 MHZ CHANNEL DESIGNATIONS—Continued

Channel No.	Base frequency (MHz)
529	.4625
530	.4875
531	.5125
532	.5375
533	.5625
534	.5875
535	.6125
536	.6375
537	.6625
538	.6875
539	.7125
540	.7375
541	.7625
542	.7875
543	.8125
544	.8375
545	.8625
546	.8875
547	.9125
548	.9375
549	.9625
550	.9875
551	862.0125
552	.0375
553	.0625
554	.0875
555	.1125
556	.1375
557	.1625
558	.1875
559	.2125
560	.2375
561	.2625
562	.2875
563	.3125
564	.3375
565	.3625
566	.3875
567	.4125
568	.4375
569	.4625
570	.4875
571	.5125
572	.5375
573	.5625
574	.5875
575	.6125
576	.6375
577	.6625
578	.6875
579	.7125
580	.7375
581	.7625
582	.7875
583	.8125
584	.8375
585	.8625
586	.8875
587	.9125
588	.9375
589	.9625
590	.9875
591	863.0125
592	.0375
593	.0625
594	.0875
595	.1125
596	.1375
597	.1625
598	.1875

TABLE OF 806–824/851–869 MHZ CHANNEL DESIGNATIONS—Continued

Channel No.	Base frequency (MHz)
599	.2125
600	.2375
601	.2625
602	.2875
603	.3125
604	.3375
605	.3625
606	.3875
607	.4125
608	.4375
609	.4625
610	.4875
611	.5125
612	.5375
613	.5625
614	.5875
615	.6125
616	.6375
617	.6625
618	.6875
619	.7125
620	.7375
621	.7625
622	.7875
623	.8125
624	.8375
625	.8625
626	.8875
627	.9125
628	.9375
629	.9625
630	.9875
631	864.0125
632	.0375
633	.0625
634	.0875
635	.1125
636	.1375
637	.1625
638	.1875
639	.2125
640	.2375
641	.2625
642	.2875
643	.3125
644	.3375
645	.3625
646	.3875
647	.4125
648	.4375
649	.4625
650	.4875
651	.5125
652	.5375
653	.5625
654	.5875
655	.6125
656	.6375
657	.6625
658	.6875
659	.7125
660	.7375
661	.7625
662	.7875
663	.8125
664	.8375
665	.8625
666	.8875
667	.9125
668	.9375

TABLE OF 806–824/851–869 MHZ CHANNEL DESIGNATIONS—Continued

Channel No.	Base frequency (MHz)
669	.9625
670	.9875
671	865.0125
672	.0375
673	.0625
674	.0875
675	.1125
676	.1375
677	.1625
678	.1875
679	.2125
680	.2375
681	.2625
682	.2875
683	.3125
684	.3375
685	.3625
686	.3875
687	.4125
688	.4375
689	.4625
690	.4875
691	.5125
692	.5375
693	.5625
694	.5875
695	.6125
696	.6375
697	.6625
698	.6875
699	.7125
700	.7375
701	.7625
702	.7875
703	.8125
704	.8375
705	.8625
706	.8875
707	.9125
708	.9375
709	.9625
710	.9875
711	866.0125
712	.0375
713	.0625
714	.0875
715	.1125
716	.1375
717	.1625
718	.1875
719	.2125
720	.2375
721	.2625
722	.2875
723	.3125
724	.3375
725	.3625
726	.3875
727	.4125
728	.4375
729	.4625
730	.4875
731	.5125
732	.5375
733	.5625
734	.5875
735	.6125
736	.6375
737	.6625
738	.6875

TABLE OF 806–824/851–869 MHZ CHANNEL DESIGNATIONS—Continued

Channel No.	Base frequency (MHz)
739	.7125
740	.7375
741	.7625
742	.7875
743	.8125
744	.8375
745	.8625
746	.8875
747	.9125
748	.9375
749	.9625
750	.9875
751	867.0125
752	.0375
753	.0625
754	.0875
755	.1125
756	.1375
757	.1625
758	.1875
759	.2125
760	.2375
761	.2625
762	.2875
763	.3125
764	.3375
765	.3625
766	.3875
767	.4125
768	.4375
769	.4625
770	.4875
771	.5125
772	.5375
773	.5625
774	.5875
775	.6125
776	.6375
777	.6625
778	.6875
779	.7125
780	.7375
781	.7625
782	.7875
783	.8125
784	.8375
785	.8625
786	.8875
787	.9125
788	.9375
789	.9625
790	.9875
791	868.0125
792	.0375
793	.0625
794	.0875
795	.1125
796	.1375
797	.1625
798	.1875
799	.2125
800	.2375
801	.2625
802	.2875
803	.3125
804	.3375
805	.3625
806	.3875
807	.4125
808	.4375

TABLE OF 806–824/851–869 MHz CHANNEL DESIGNATIONS—Continued

Channel No.	Base frequency (MHz)
809	.4625
810	.4875
811	.5125
812	.5375
813	.5625
814	.5875
815	.6125
816	.6375
817	.6625
818	.6875
819	.7125
820	.7375
821	.7625
822	.7875
823	.8125
824	.8375
825	.8625
826	.8875
827	.9125
828	.9375
829	.9625
830	.9875

■ 25. Amend Subpart S by adding § 90.614 to read as follows:

§ 90.614 Cellular and non-cellular portions of 806–824/851–869 MHz band for non-border areas.

The 806–824/851–869 MHz band (''800 MHz band'') will be divided as follows at locations farther than 110 km (68.4 miles) from the U.S./Mexico border and 140 km (87 miles) from the U.S./Canadian border (''non-border areas''):

(a) 800 MHz cellular systems—as defined in § 90.7—are prohibited from operating on channels 1–550 in non-border areas.

(b) 800 MHz cellular systems—as defined in § 90.7—are permitted to operate on channels 551–830 in non-border areas.

(c) In the following counties and parishes, 800 MHz cellular systems—as defined in § 90.7—are permitted to operate on channels 411–830:

Alabama: Autauga, Baldwin, Barbour, Bibb, Blount, Bullock, Butler, Calhoun, Chambers, Cherokee, Chilton, Choctaw, Clarke, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dale, Dallas, DeKalb, Elmore, Escambia, Etowah, Fayette, Franklin, Geneva, Greene, Hale, Henry, Houston, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Lee, Limestone, Lowndes, Macon, Madison, Marengo, Marion, Marshall, Mobile, Monroe, Montgomery, Morgan, Perry, Pickens, Pike, Randolph, Russell, Shelby, St Clair, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, Washington, Wilcox, Winston.

Florida: Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Nassau, Okaloosa, Santa Rosa, Taylor, Wakulla, Walton, Washington.

Georgia: Appling, Atkinson, Bacon, Baker, Baldwin, Banks, Barrow, Bartow, Ben Hill, Berrien, Bibb, Bleckley, Brantley, Brooks, Bryan, Bulloch, Burke, Butts, Calhoun, Camden, Candler, Carroll, Catoosa, Charlton, Chatham, Chattahoochee, Chattooga, Cherokee, Clarke, Clay, Clayton, Clinch, Cobb, Coffee, Colquitt, Columbia, Cook, Coweta, Crawford, Crisp, Dade, Dawson, Decatur, DeKalb, Dodge, Dooly, Dougherty, Douglas, Early, Echols, Effingham, Elbert, Emanuel, Evans, Fannin, Fayette, Floyd, Forsyth, Franklin, Fulton, Gilmer, Glascock, Glynn, Gordon, Grady, Greene, Gwinnett, Habersham, Hall, Hancock, Haralson, Harris, Hart, Heard, Henry, Houston, Irwin, Jackson, Jasper, Jeff Davis, Jefferson, Jenkins, Johnson, Jones, Lamar, Lanier, Laurens, Lee, Liberty, Lincoln, Long, Lowndes, Lumpkin, Macon, Madison, Marion, McDuffie, McIntosh, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Murray, Muscogee, Newton, Oconee, Oglethorpe, Paulding, Peach, Pickens, Pierce, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Richmond, Rockdale, Schley, Screven, Seminole, Spalding, Stephens, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Thomas, Tift, Toombs, Towns, Treutlen, Troup, Turner, Twiggs, Union, Upson, Walker, Walton, Ware, Warren, Washington, Wayne, Webster, Wheeler, White, Whitfield, Wilcox, Wilkes, Wilkinson, Worth.

Louisiana: Catahoula, Concordia, Madison, Tensas.

Mississippi: Adams, Alcorn, Amite, Attala, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Copiah, Covington, Forrest, Franklin, George, Greene, Grenada, Hancock, Harrison, Hinds, Holmes, Itawamba, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lamar, Lauderdale, Lawrence, Leake, Lee, Lincoln, Lowndes, Madison, Marion, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Pearl River, Perry, Pike, Pontotoc, Prentiss, Rankin, Scott, Simpson, Smith, Stone, Tippah, Tishomingo, Union, Walthall, Warren, Wayne, Webster, Wilkinson, Winston, Yazoo.

North Carolina: Cherokee, Clay, Graham, Jackson, Macon.

South Carolina: Abbeville, Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Edgefield, Greenwood, Hampton, Jasper, McCormick, Oconee.

Tennessee: Bledsoe, Bradley, Franklin, Giles, Hamilton, Hardin, Lawrence, Lincoln, Marion, McMinn, McNairy, Meigs, Monroe, Moore, Polk, Rhea, Sequatchie, Wayne.

■ 26. Section 90.615 is revised to read as follows:

§ 90.615 Individual channels available in the General Category in 806–824/851–869 MHz band.

The General Category will consist of channels 231–260 at locations farther then 110 km (68.4 miles) from the U.S./Mexico border and 140 km (87 miles) from the U.S./Canadian border.

(a) Channels 231–260 will be available only to eligible applicants in the Public Safety Category until January 21, 2008. These same channels will be available only to eligible applicants in the Public Safety or Critical Infrastructure Industry Categories from January 21, 2008.

(b) All entities will be eligible for licensing on Channels 231–260 after January 20, 2010.

■ 27. Revise § 90.617 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.

Except for the counties and parishes listed in § 90.614(c), the following channels will be available at locations farther then 110 km (68.4 miles) from the U.S./Mexico border and 140 km (87 miles) from the U.S./Canadian border (''non-border areas''). The channels in the counties and parishes listed in § 90.614(c) will be available in accordance with an agreement between Southern LINC and Nextel Communications, Inc. The agreement will be approved by the Chief of the Wireless Telecommunications Bureau.

(a) The channels listed in Table 1 and paragraph (a)(1) of this section are available for non-cellular operations to eligible applicants in the Public Safety Category which consists of licensees eligible in the Public Safety Pool of subpart B of this part. 800 MHz cellular systems as defined in § 90.7 are prohibited on these channels. These frequencies are available in non-border areas. Specialized Mobile Radio Systems will not be authorized in this category. These channels are available for intercategory sharing as indicated in § 90.621(e).

TABLE 1.—PUBLIC SAFETY POOL 806–816/851–861 MHZ BAND CHANNELS

[70 channels]

Group No.	Channel Nos.
269	269–289–311–399–439

TABLE 1.—PUBLIC SAFETY POOL 806–816/851–861 MHZ BAND CHANNELS—Continued

[70 channels]

Group No.	Channel Nos.
270	270–290–312–400–440
279	279–299–319–339–359
280	280–300–320–340–360
309	309–329–349–369–389
310	310–330–350–370–390
313	313–353–393–441–461
314	314–354–394–448–468
321	321–341–361–381–419
328	328–348–368–388–420
351	351–379–409–429–449
332	352–380–410–430–450
Single Channels	391, 392, 401, 408, 421, 428, 459, 460, 469, 470

(1) Channel numbers 1–230 are also available to eligible applicants in the Public Safety Category in non-border areas. The assignment of these channels will be done in accordance with the policies defined in the Report and Order of Gen. Docket No. 87–112 (See § 90.16).

(2) [Reserved]

(b) Unless otherwise specified, the channels listed in Table 2 are available for non-cellular operations 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). 800 MHz cellular systems, as defined in § 90.7, are prohibited on these channels. These frequencies are available in non-border areas. Specialized Mobile Radio (SMR) systems will not be authorized on these frequencies. These channels are available for inter-category sharing as indicated in § 90.621(e).

TABLE 2.—BUSINESS/INDUSTRIAL/LAND TRANSPORTATION POOL 806–816/851–861 MHZ BAND CHANNELS

[100 channels]

Group No.	Channel Nos.
322	322–362–402–442–482
323	323–363–403–443–483
324	324–364–404–444–484

TABLE 2.—BUSINESS/INDUSTRIAL/LAND TRANSPORTATION POOL 806–816/851–861 MHZ BAND CHANNELS—Continued

[100 channels]

Group No.	Channel Nos.
325	325–365–405–445–485
326	326–366–406–446–486
327	327–367–407–447–487
342	342–382–422–462–502
343	343–383–423–463–503
344	344–384–424–464–504
345	345–385–425–465–505
346	346–386–426–466–506
347	347–387–427–467–507
Single Channels	261, 271, 281, 291, 301, 262, 272, 282, 292, 302, 263, 273, 283, 293, 303, 264, 274, 284, 294, 304, 265, 275, 285, 295, 305, 266, 276, 286, 296, 306, 267, 277, 287, 297, 307, 268, 278, 288, 298, 308

(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 will not be authorized on these frequencies. These channels are available for intercategory sharing as indicated in § 90.621(e).

For multi-channel systems, channels may be grouped vertically or horizontally as they appear in the following table.

TABLE 3.—BUSINESS/INDUSTRIAL/LAND TRANSPORTATION POOL 896–901/935–940 MHZ BAND CHANNELS

[199 channels]

Channel Nos.	
11–12–13–14–15	211–212–213–214–215
16–17–18–19–20	216–217–218–219–220
31–32–33–34–35	231–232–233–234–235
36–37–38–39–40	236–237–238–239–240
51–52–53–54–55	251–252–253–254–255
56–57–58–59–60	256–257–258–259–260

TABLE 3.—BUSINESS/INDUSTRIAL/LAND TRANSPORTATION POOL 896–901/935–940 MHZ BAND CHANNELS—Continued

[199 channels]

71–72–73–74–75	271–272–273–274–275
76–77–78–79–80	276–277–278–279–280
91–92–93–94–95	291–292–293–294–295
96–97–98–99–100	296–297–298–299–300
111–112–113–114–115.	311–312–313–314–315
116–117–118–119–120.	316–317–318–319–320
131–132–133–134–135.	331–332–333–334–335
136–137–138–139–140.	336–337–338–339–340
151–152–153–154–155.	351–352–353–354–355
156–157–158–159–160.	356–357–358–359–360
171–172–173–174–175.	371–372–373–374–375
176–177–178–179–180.	376–377–378–379–380
191–192–193–194–195.	391–392–393–394–395
196–197–198–199–200.	396–397–398–399

(d) Unless otherwise specified, the channels listed in Tables 4A and 4B are available for non-cellular operations only to eligibles in the SMR category—which consists of Specialized Mobile Radio (SMR) stations and eligible end users. 800 MHz cellular systems, as defined in § 90.7 are prohibited on these channels. These frequencies are available in non-border areas. The spectrum blocks listed in Table 4A are available for EA-based services (as defined by § 90.681) prior to January 21, 2005. No new EA-based services will be authorized after January 21, 2005. EA-based licensees who operate non-cellular systems prior to January 21, 2005 may choose to remain on these channels in the non-cellular portion of the 800 MHz band (as defined in § 90.614). These licensees may continue to operate non-cellular systems and will be grandfathered indefinitely. The channels listed in Table 4B will be available for site-based licensing after January 21, 2005 in any Economic Area where no EA-based licensee is authorized for these channels.

TABLE 4A.—EA-BASED SMR CATEGORY 806–816/851–861 MHZ BAND CHANNELS FOR NON-CELLULAR OPERATIONS AVAILABLE PRIOR TO JANUARY 21, 2005

[80 channels]

Spectrum block	Channel Nos.
G	311–351–391–431–471
H	312–352–392–432–472
I	313–353–393–433–473
J	314–354–394–434–474
K	315–355–395–435–475
L	316–356–396–436–476
M	317–357–397–437–477
N	318–358–398–438–478
O	331–371–411–451–491
P	332–372–412–452–492
Q	333–373–413–453–493
R	334–374–414–454–494
S	335–375–415–455–495
T	336–376–416–456–496
U	337–377–417–457–497
V	338–378–418–458–498

TABLE 4B.—SMR CATEGORY 806–816/851–861 MHZ BAND CHANNELS FOR NON-CELLULAR OPERATIONS AVAILABLE FOR SITE-BASED LICENSING AFTER JANUARY 21, 2005

[80 channels]

Spectrum block	Channel Nos.
315	315–355–395–435–475
316	316–356–396–436–476
317	317–357–397–437–477
318	318–358–398–438–478
331	331–371–411–451–491
332	332–372–412–452–492
333	333–373–413–453–493
334	334–374–414–454–494
335	335–375–415–455–495
336	336–376–416–456–496

TABLE 4B.—SMR CATEGORY 806–816/851–861 MHZ BAND CHANNELS FOR NON-CELLULAR OPERATIONS AVAILABLE FOR SITE-BASED LICENSING AFTER JANUARY 21, 2005—Continued

[80 channels]

Spectrum block	Channel Nos.
337	337–377–417–457–497
338	338–378–418–458–498
Single Channels	431, 432, 433, 434, 471, 472, 473, 474, 479, 480, 481, 488, 489, 490, 499, 500, 501, 508, 509, 510

(e) The Channels listed in § 90.614(b) and (c) are available to eligibles in the SMR category—which consists of Specialized Mobile Radio (SMR) stations and eligible end users. ESMR licensees which employ an 800 MHz cellular system, as defined in § 90.7, are permitted to operate on these channels in non-border areas. ESMR licensees authorized prior to January 21, 2005 may continue to operate, if they so choose, on the channels listed in Table 5. These licensees will be grandfathered indefinitely.

TABLE 5.—ESMR CATEGORY 816–821/861–866 MHZ BAND CHANNELS FOR CELLULAR OPERATIONS IN NON-BORDER AREAS AVAILABLE PRIOR TO JANUARY 21, 2005

[200 channels]

Spectrum block	Channel Nos.
A	511 through 530
B	531 through 590
C	591 through 710

(f) The channels listed in Tables 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. The spectrum blocks listed below are available for EA-based services according to § 90.681.

TABLE 6.—SMR CATEGORY 896–901/935–940 MHZ BAND CHANNELS

[200 channels]

Block	Channel Nos.
A	1–2–3–4–5–6–7–8–9–10
B	21–22–23–24–25–26–27–28–29–30

TABLE 6.—SMR CATEGORY 896–901/935–940 MHZ BAND CHANNELS—Continued

[200 channels]

Block	Channel Nos.
C	41–42–43–44–45–46–47–48–49–50
D	61–62–63–64–65–66–67–68–69–70
E	81–82–83–84–85–86–87–88–89–90
F	101–102–103–104–105–106–107–108–109–110
G	121–122–123–124–125–126–127–128–129–130
H	141–142–143–144–145–146–147–148–149–150
I	161–162–163–164–165–166–167–168–169–170
J	181–182–183–184–185–186–187–188–189–190
K	201–202–203–204–205–206–207–208–209–210
L	221–222–223–224–225–226–227–228–229–230
M	241–242–243–244–245–246–247–248–249–250
N	261–262–263–264–265–266–267–268–269–270
O	281–282–283–284–285–286–287–288–289–290
P	301–302–303–304–305–306–307–308–309–310
Q	321–322–323–324–325–326–327–328–329–330
R	341–342–343–344–345–346–347–348–349–350
S	361–362–363–364–365–366–367–368–369–370
T	381–382–383–384–385–386–387–388–389–390

(g) Channels below 470 listed in Tables 2 and 4B which are vacated by ESMR licensees after January 21, 2005 are available only to eligible applicants in the Public Safety Category until January 21, 2008. These same channels will be available only to eligible applicants in the Public Safety or Critical Infrastructure Industry Categories from January 21, 2008 until January 20, 2010. After January 20, 2010 these channels will revert back to their original pool categories.

(h) Channels below 470 listed in Tables 2 and 4B which are vacated by licensees relocating to Channels 511–550 after January 21, 2005 are available only to eligible applicants in the Public Safety Category until January 21, 2008. These same channels will be available only to eligible applicants in the Public Safety or Critical Infrastructure Industry Categories from January 21, 2008 until January 20, 2010. After January 20, 2010 these channels will revert back to their original pool categories.

(i) Special Mobilized Radio Systems licensees who operate non-cellular systems on any of the public safety channels listed in Table 1 prior to January 21, 2005 are grandfathered and may continue to operate on these channels indefinitely. These grandfathered licensees will be prohibited from operating 800 MHz cellular systems as defined in § 90.7. Site-based licensees who are grandfathered on any of the public safety channels listed in Table 1 may modify their license only if they obtain concurrence from a certified public safety coordinator in accordance with § 90.175(c). Grandfathered EA-based licensees, however, are exempt from any of the frequency coordination requirements of § 90.175 as long as their operations remain within the Economic Area defined by their license in accordance with the requirements of § 90.683(a).

(j) Licensees operating ESMR systems in the non-cellular portion of the band (as defined in § 90.614) prior to January 21, 2005 may elect to continue operating in the non-cellular portion of the band. These licensees will be permitted to continue operating 800 MHz cellular systems (as defined in § 90.7) in the non-cellular portion of the band. These licensees will be grandfathered indefinitely subject to the provisions of §§ 90.673, 90.674 and 90.675.

(k) Licensees may operate systems other than 800 MHz cellular systems (as defined in § 90.7) on Channels 511–550 at any location vacated by an EA-based SMR licensee. For operations on these channels, unacceptable interference (as defined in § 22.970 of this chapter and § 90.672) will be deemed to occur only at sites where the following median desired signals are received (rather than those specified in § 22.970(a)(1)(i) of this chapter and § 90.672(a)(1)(i)). The minimum required median desired signal, as measured at the R.F. input of the receiver, will be as follows:

(1) Mobile units:

(i) For channels 511 to 524—the minimum median desired signal levels specified in § 22.970(a)(1)(i) of this chapter and § 90.672(a)(1)(i) shall apply;

(ii) For channels 524 to 534—the minimum median desired signal level shall increase linearly from the values specified in § 22.970(a)(1)(i) of this chapter and § 90.672(a)(1)(i) to −70 dBm;

(iii) For channels 534 to 550—the minimum median desired signal level shall increase linearly from −70 dBm to −65 dBm.

(2) Portable units:

(i) For channels 511 to 524—the minimum median desired signal levels specified in § 22.970(a)(1)(i) of this chapter and § 90.672(a)(1)(i) shall apply;

(ii) For channels 524 to 530—the minimum median desired signal level shall increase linearly from the values specified in § 22.970(a)(1)(i) of this chapter and § 90.672(a)(1)(i) to −80 dBm;

(iii) For channels 530 to 534—the minimum median desired signal level shall increase linearly from −80 dBm to −70 dBm;

(iv) For channels 534 to 550—the minimum median desired signal level shall increase linearly from −70 dBm to −65 dBm.

■ 28. Amend § 90.619 by revising the section heading and paragraphs (a), (b), (c) and (d) introductory text to read as follows.

§ 90.619 Operations within the U.S./Mexico and U.S./Canada border areas.

(a) *Use of Frequencies in 800 MHz Band in Mexico Border Region.* All operations in the 806–824/851–869 MHz band within 110 km (68.4 miles) of the U.S./Mexico border (''Mexico border region'') shall be in accordance with international agreements between the U.S. and Mexico. Channels 231–710 are offset 12.5 kHz lower in frequency than those specified in the table in § 90.613. Stations located on Mt. Lemmon, serving the Tucson, AZ area, will only be authorized offset frequencies.

(b) *Use of Frequencies in 900 MHz Band in Mexico Border Region.* All operations in the 896–901/935–940 MHz band within the Mexico border region shall be in accordance with international agreements between the U.S. and Mexico.

(1) The channels listed in Table 1 below 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 will not be authorized on these frequencies.

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:

TABLE 1.—UNITED STATES/MEXICO BORDER AREA, BUSINESS/INDUSTRIAL/LAND TRANSPORTATION POOL 896–901/935–940 MHZ BAND

[199 Channels]

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

(2) The channels listed in Table 2 of this section 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. The spectrum blocks listed in the table below are available for EA-based services according to § 90.681.

TABLE 2.—UNITED STATES-MEXICO BORDER AREA, SMR CATEGORY 896–901/935–940 MHZ BAND

[200 Channels]

Block	Channel Nos.
A	1–2–3–4–5–6–7–8–9–10
B	21–22–23–24–25–26–27–28–29–30
C	41–42–43–44–45–46–47–48–49–50
D	61–62–63–64–65–66–67–68–69–70
E	81–82–83–84–85–86–87–88–89–90
F	101–102–103–104–105–106–107–108–109–110
G	121–122–123–124–125–126–127–128–129–130
H	141–142–143–144–145–146–147–148–149–150
I	161–162–163–164–165–166–167–168–169–170
J	181–182–183–184–185–186–187–188–189–190
K	201–202–203–204–205–206–207–208–209–210
L	221–222–223–224–225–226–227–228–229–230
M	241–242–243–244–245–246–247–248–249–250
N	261–262–263–264–265–266–267–268–269–270
O	281–282–283–284–285–286–287–288–289–290
P	301–302–303–304–305–306–307–308–309–310
Q	321–322–323–324–325–326–327–328–329–330
R	341–342–343–344–345–346–347–348–349–350
S	361–362–363–364–365–366–367–368–369–370
T	381–382–383–384–385–386–387–388–389–390

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.

(3) The specific channels that are available for licensing in the band 896–901/935–940 MHz within the Mexico border region are subject to Effective Radiated Power (ERP) and Antenna Height limitations as indicated in Table 3 below.

TABLE 3.—LIMITS OF EFFECTIVE RADIATED POWER (ERP) CORRESPONDING TO ANTENNA HEIGHTS OF BASE STATIONS IN THE 896–901/935–940 MHZ BANDS WITHIN 110 KILOMETERS (68.4 MILES) OF THE MEXICAN BORDER

Antenna height above mean sea level		ERP in watts (maximum)
Meters	Feet	
0–503	0–1650	500
504–609	1651–2000	350
610–762	2001–2500	200
764–914	2501–3000	140
915–1066	3001–3500	100

TABLE 3.—LIMITS OF EFFECTIVE RADIATED POWER (ERP) CORRESPONDING TO ANTENNA HEIGHTS OF BASE STATIONS IN THE 896–901/935–940 MHZ BANDS WITHIN 110 KILOMETERS (68.4 MILES) OF THE MEXICAN BORDER—Continued

Antenna height above mean sea level		ERP in watts (maximum)
Meters	Feet	
1067–1219	3501–4000	75
1220–1371	4000–4500	70
1372–1523	4501–5000	65
Above 1523	Above 5000	5

(4) All channels in the 896–901/935–940 MHz band are available for assignment to U.S. stations within the Mexico border region if the maximum power flux density (pfd) of the station's transmitted signal at any point at or beyond the border does not exceed −107 dB (W/m^2). The spreading loss must be calculated using the free space formula taking into account any antenna discrimination in the direction of the border. Authorizations for stations using channels allotted to Mexico on a primary basis will be secondary to Mexican operations and conditioned to require that licensees take immediate action to eliminate any harmful interference resulting from the station's transmitted signal exceeding −107 dB (W/m^2).

(c) *Use of 800 MHz Band in Canada Border Region.* All operations in the 806–824/851–869 MHz band within 140 km (87 miles) of the U.S./Canada border (''Canada border region'') shall be in accordance with international agreements between the U.S. and Canada.

(d) *Use of 900 MHz Band in Canada Border Region.* All operations in the 896–901/935–940 MHz band within the Canada border region shall be in accordance with international agreements between the U.S. and Canada. The following criteria shall govern the assignment of frequency pairs (channels) in the 896–901/935–940 MHz band for stations located in the U.S./Canada border area. They are available for assignments for conventional or trunked systems in accordance with applicable sections of this subpart.

* * * * *

■ 29. Amend § 90.621 by revising paragraphs (a), (b) introductory text, (b)(1), (b)(3), (c), (e) introductory text, (e)(1), (e)(2) introductory text, (e)(2)(i), (e)(2)(ii), (f), (g) and (h) to read as follows:

§ 90.621 Selection and assignment of frequencies.

(a) Applicants for frequencies in the Public Safety and Business/Industrial/Land Transportation Categories must specify on the application the frequencies on which the proposed system will operate pursuant to a recommendation by the applicable frequency coordinator. Applicants for frequencies in the SMR Category must request specific frequencies by including in their applications the frequencies requested.

* * * * *

(b) Stations authorized on frequencies listed in this subpart, except for those stations authorized pursuant to paragraph (g) of this section and EA-based and MTA-based SMR 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:

(1) Except as indicated in paragraph (b)(4) of this section, no station in Channel Blocks A through V shall be less than 169 km (105 mi) distant from a co-channel station that has been granted channel exclusivity and authorized 1 kW ERP on any of the following mountaintop sites: Santiago Peak, Sierra Peak, Mount Lukens, Mount Wilson (California). Except as indicated in paragraph (b)(4) of this section, no incumbent licensee in Channel Blocks G through V that has received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour shall be less than 229 km (142 mi) distant from a co-channel station that has been granted channel exclusivity and authorized 1 kW ERP on any of the following mountaintop sites: Santiago Peak, Sierra Peak, Mount Lukens, Mount Wilson (California).

* * * * *

(3) Except as indicated in paragraph (b)(4) of this section, stations in Channel Blocks A through V that have been granted channel exclusivity and are located in the State of Washington at the locations listed in the table below shall be separated from co-channel stations by a minimum of 169 km (105 mi).

Except as indicated in paragraph (b)(4) of this section, 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, have been granted channel exclusivity and are located in the State of Washington at the locations listed in the table below shall be separated from co-channel stations by a minimum of 229 km (142 mi). Locations within one mile of the geographical coordinates listed in the table below will be considered to be at that site.

Note: Coordinates are referenced to North American Datum 1983 (NAD83).

Site name	North latitude	West longitude
Mount Constitution	48° 40′ 47.4″	122° 50′ 28.7″
Lyman Mountain	48° 35′ 41.4″	122° 09′ 39.6″
Cultus Mountain	48° 25′ 30.4″	122° 08′ 58.5″
Gunsite Ridge	48° 03′ 22.4″	121° 51′ 41.5″
Gold Mountain	47° 32′ 51.3″	122° 46′ 56.5″
Buck Mountain	47° 47′ 05.3″	122° 59′ 34.6″
Cougar Mountain	47° 32′ 39.4″	122° 06′ 34.4″
Squak Mountain	47° 30′ 14.4″	122° 03′ 34.4″
Tiger Mountain	47° 30′ 13.4″	121° 58′ 32.4″
Devils Mountain	48° 21′ 52.4″	122° 16′ 06.6″
McDonald Mountain	47° 20′ 11.3″	122° 51′ 30.5″
Maynard Hill	48° 00′ 58.3″	122° 55′ 35.6″
North Mountain	47° 19′ 07.3″	123° 20′ 48.6″
Green Mountain	47° 33′ 40.3″	122° 48′ 31.5″
Capitol Peak	46° 58′ 21.3″	123° 08′ 21.5″
Rattlesnake Mountain	47° 28′ 09.4″	121° 49′ 17.4″
Three Sisters Mountain	47° 07′ 19.4″	121° 53′ 34.4″
Grass Mountain	47° 12′ 14.1″	121° 47′ 42.4″
Spar Pole Hill	47° 02′ 51.4″	122° 08′ 39.4″

* * * * *

(c) Conventional systems authorized on frequencies in the Public Safety (except for those systems that have participated in a formal regional planning process as described in § 90.16) and Business/Industrial/Land Transportation categories which have not met the loading levels necessary for channel exclusivity will not be afforded co-channel protection.

* * * * *

(e) Frequencies in the 809–817/854–862 MHz bands listed as available for eligibles in the Public Safety and Business/Industrial/Land Transportation Categories are available for inter-category sharing under the following conditions:

(1) Channels in the Public Safety and Business/Industrial/Land Transportation categories will be available to eligible applicants in those categories only if there are no frequencies in their own category and no public safety systems are authorized on those channels under consideration to be shared.

(2) Notwithstanding paragraph (e)(5) of this section, licensees of channels in the Business/Industrial/Land Transportation category may request a modification of the license, see § 1.947 of this chapter, to authorize use of the channels for commercial operation. The licensee may also, at the same time or thereafter, seek authorization to transfer or assign the license, see § 1.948 of this chapter, to any person eligible for licensing in the General or SMR categories. Applications submitted pursuant to this paragraph must be filed in accordance with the rules governing other applications for commercial channels, and will be processed in accordance with those rules. Grant of requests submitted pursuant to this paragraph is subject to the following conditions:

(i) A licensee that modifies its license to authorize commercial operations will not be authorized to obtain additional 800 MHz Business/Industrial/Land Transportation category channels for sites located within 113 km (70 mi.) of the station for which the license was modified, for a period of one year from the date the license is modified. This provision applies to the licensee, its controlling interests and their affiliates, as defined in § 1.2110 of this chapter.

(ii) With respect to licenses the initial application for which was filed on or after November 9, 2000, requests submitted pursuant to paragraph (e)(2) of this section may not be filed until five years after the date of the initial license grant. In the case of a license that is modified on or after November 9, 2000 to add 800 MHz Business/Industrial/Land Transportation frequencies or to add or relocate base stations that expand the licensee's interference contour, requests submitted pursuant to paragraph (e)(2) of this section for these frequencies or base stations may not be filed until five years after such modification.

* * * * *

(f) Licensees of channels in the Business/Industrial/Land Transportation Categories in the 896–901/935–940 MHz bands may request a modification of the license, *see* § 1.947 of this chapter, to authorize use of the channels for commercial operation. The licensee may also, at the same time, or thereafter, seek authorization to transfer or assign the license, *see* § 1.948 of this chapter, to any person eligible for licensing in the General or SMR categories. Applications submitted pursuant to this paragraph must be filed in accordance with the rules governing other applications for commercial channels, and will be processed in accordance with those rules.

(g) Applications for Public Safety systems (both trunked and conventional) in the 806–809/851–854 MHz bands will be assigned and protected based on the criteria established in the appropriate regional plan. See § 90.16 and the Report and Order in General Docket 87–112.

(h) Channel numbers 511–520, 551–560, 591–600, 631–640, and 671–680 are allocated for Basic Exchange Telecommunications Radio Service as described in § 22.757 of this chapter. The FCC has proposed to remove these channels from the rural radiotelephone service in WT Docket No. 03–103 (FCC 03–95) released April 28, 2003 (68 FR 4403 July 25, 2003) which is pending.

§ 90.629 [Amended]

■ 30. Remove and reserve § 90.629 paragraph (d).

■ 31. Amend § 90.631 by revising paragraph (b) to read as follows:

§ 90.631 Trunked systems loading, construction and authorization requirements.

* * * * *

(b) Each applicant for a non-SMR trunked system must certify that a minimum of seventy (70) mobiles for each channel authorized will be placed into operation within five (5) years of the initial license grant. Except for SMR systems licensed in the 809–816/854–861 MHz band and as indicated in paragraph (i) of this section, if at the end of five (5) years a trunked system is not loaded to the prescribed levels and all channels in the licensee's category are assigned in the system's geographic area, authorizations for trunked channels not loaded to seventy (70) mobile stations cancel automatically at a rate that allows the licensee to retain one channel for every one hundred (100) mobiles loaded, plus one additional channel. If a trunked system has channels from more than one category, General Category channels are the first channels considered to cancel automatically. All non-SMR licensees initially authorized before June 1, 1993, that are within their original license term, or SMR licensees that are within the term of a two-year authorization granted in accordance with paragraph (i) of this section, are subject to this condition. A licensee that has authorized channels cancelled due to failure to meet the loading requirements of this section will not be authorized additional channels to expand that same system for a period of six months from the date of cancellation.

* * * * *

■ 32. Amend § 90.645 by revising paragraph (g) to read as follows:

§ 90.645 Permissible operations.

* * * * *

(g) Up to five (5) contiguous 809–816/854–861 band channels as listed in §§ 90.615, 90.617, and 90.619 may be authorized after justification for systems requiring more than the normal single channel bandwidth. If necessary, licensees may trade channels amongst themselves in order to obtain contiguous frequencies. Notification of such proposed exchanges shall be made to the appropriate frequency coordinator(s) and to the Commission by filing an application for license modification.

* * * * *

■ 33. Add §§ 90.672 through 90.677 to subpart S and add an undesignated center heading before § 90.672 to read as follows:

Procedures and Process—Unacceptable Interference

§ 90.672 Unacceptable interference to non-cellular 800 MHz licensees from ESMR or Part 22 Cellular Radiotelephone systems.

(a) *Definition.* Except as provided in 47 CFR 90.617(k), unacceptable interference to non-cellular licensees in the 800 MHz band will be deemed to occur when the below conditions are met:

(1) A transceiver at a site at which interference is encountered:

(i) Is in good repair and operating condition, and is receiving:

(A) A median desired signal of −104 dBm or higher, as measured at the R.F. input of the receiver of a mobile unit; or

(B) A median desired signal of −101 dBm or higher, as measured at the R.F. input of the receiver of a portable *i.e.* hand-held unit; and, either

(ii) Is a voice transceiver:

(A) With manufacturer published performance specifications for the receiver section of the transceiver equal to, or exceeding, the minimum standards set out in paragraph (b) of this section, and;

(B) Receiving an undesired signal or signals which cause the measured Carrier to Noise plus Interference (C/(I+N)) ratio of the receiver section of said transceiver to be less than 20 dB, or;

(iii) Is a non-voice transceiver receiving an undesired signal or signals which cause the measured bit error rate (BER) (or some comparable specification) of the receiver section of said transceiver to be more than the value reasonably designated by the manufacturer.

(2) Provided, however, that if the receiver section of the mobile or portable voice transceiver does not conform to the standards set out in paragraph (b) of this section, then that transceiver shall be deemed subject to unacceptable interference only at sites where the median desired signal satisfies the applicable threshold measured signal power in paragraphs (a)(1)(i) of this section after an upward adjustment to account for the difference in receiver section performance. The upward adjustment shall be equal to the increase in the desired signal required to restore the receiver section of the subject transceiver to the 20 dB C/(I+N) ratio of paragraph (a)(1)(ii)(B) of this section. The adjusted threshold levels shall then define the minimum measured signal power(s) in lieu of paragraphs (a)(1)(i) of this section at which the licensee using such non-compliant transceiver is entitled to interference protection.

(b) *Minimum Receiver Requirements.* Voice transceivers capable of operating in the 806–824 MHz portion of the 800 MHz band shall have the following minimum performance specifications in order for the system in which such transceivers are used to claim entitlement to full protection against unacceptable interference. (See paragraph (a)(2) of this section.)

(1) Voice units intended for mobile use: 75 dB intermodulation rejection ratio; 75 dB adjacent channel rejection ratio; −116 dBm reference sensitivity.

(2) Voice units intended for portable use: 70 dB intermodulation rejection ratio; 70 dB adjacent channel rejection ratio; −116 dBm reference sensitivity.

§ 90.673 Obligation to abate unacceptable interference.

(a) *Strict Responsibility.* Any licensee who, knowingly or unknowingly, directly or indirectly, causes or contributes to causing unacceptable interference to a non-cellular licensee in the 800 MHz band, as defined in this chapter, shall be strictly accountable to abate the interference, with full cooperation and utmost diligence, in the shortest time practicable. Interfering licensees shall consider all feasible interference abatement measures, including, but not limited to, the remedies specified in the interference resolution procedures set forth in this chapter. This strict responsibility obligation applies to all forms of interference, including out-of-band emissions and intermodulation.

(b) *Joint and Several Responsibility.* If two or more licensees knowingly or unknowingly, directly or indirectly, cause or contribute to causing unacceptable interference to a non-cellular licensee in the 800 MHz band, as defined in this chapter, such licensees shall be jointly and severally responsible for abating interference, with full cooperation and utmost diligence, in the shortest practicable time. This joint and several responsibility rule requires interfering licensees to consider all feasible interference abatement measures, including, but not limited to, the remedies specified in the interference resolution procedures set forth in this chapter. This joint and several responsibility rule applies to all forms of interference, including out-of-band emissions and intermodulation.

(1) This joint and several responsibility rule requires interfering licensees to consider all feasible interference abatement measures, including, but not limited to, the

remedies specified in the interference resolution procedures set forth in § 90.674(c). This joint and several responsibility rule applies to all forms of interference, including out-of-band emissions and intermodulation.

(2) Any licensee that can show that its signal does not directly or indirectly, cause or contribute to causing unacceptable interference to a non-cellular licensee in the 800 MHz band, as defined in this chapter, shall not be held responsible for resolving unacceptable interference. Notwithstanding, any licensee that receives an interference complaint from a public safety/CII licensee shall respond to such complaint consistent with the interference resolution procedures set forth in this chapter.

§ 90.674 Interference resolution procedures before, during and after band reconfiguration.

(a) *Initial Notification.* Any non-cellular licensee operating in the 806–824/851–869 MHz band who reasonably believes it is receiving harmful interference, as described in § 90.672, shall provide an initial notification of the interference incident. This initial notification of an interference incident shall be sent to all part 22 Cellular Radiotelephone licensees and ESMR licensees who operate cellular base stations (''cell sites'') within 1,524 meters (5,000 feet) of the interference incident.

(1) The initial notification of interference shall include the following information on interference:

(i) The specific geographical location where the interference occurs, and the time or times at which the interference occurred or is occurring;

(ii) A description of its scope and severity, including its source, if known;

(iii) The relevant Commission licensing information of the party suffering the interference; and

(iv) A single point of contact for the party suffering the interference.

(2) ESMR licensees, in conjunction with part 22 Cellular Radiotelephone licensees, shall establish an electronic means of receiving the initial notification described in paragraph (a)(1) of this section. The electronic system must be designed so that all appropriate 800 MHz ESMR and part 22 Cellular Radiotelephone licensees can be contacted about the interference incident with a single notification. The electronic system for receipt of initial notification of interference complaints must be operating no later than February 22, 2005.

(3) ESMR licensees must respond to the initial notification described in paragraph (a)(1) of this section, as soon as possible and no later than 24 hours of receipt of notification from a public safety/CII licensee. This response time may be extended to 48 hours after receipt from other non-cellular licensees provided affected communications on these systems are not safety related.

(b) *Interference analysis.* ESMR licensees—who receive an initial notification described in paragraph (a) of this section—shall perform a timely analysis of the interference to identify the possible source. Immediate on-site visits may be conducted when necessary to complete timely analysis. Interference analysis must be completed and corrective action initiated within 48 hours of the initial complaint from a public safety/CII licensee. This response time may be extended to 96 hours after the initial complaint from other non-cellular licensees provided affected communications on these systems are not safety related. Corrective action may be delayed if the affected licensee agrees in writing (which may be, but is not required to be, recorded via e-mail or other electronic means) to a longer period.

(c) *Mitigation Steps.* (1) All ESMR and part 22 Cellular Radiotelephone licensees who are responsible for causing unacceptable interference shall take all affirmative measures to resolve such interference. ESMR licensees found to contribute to harmful interference, as defined in § 90.672, shall resolve such interference in the shortest time practicable. ESMR and part 22 Cellular Radiotelephone licensees must provide all necessary test apparatus and technical personnel skilled in the operation of such equipment as may be necessary to determine the most appropriate means of timely eliminating the interference. However, the means whereby interference is abated or the cell parameters that may need to be adjusted is left to the discretion of involved ESMR and/or part 22 Cellular Radiotelephone licensees, whose affirmative measures may include, but not be limited to, the following techniques:

(i) Increasing the desired power of the public safety signal;

(ii) Decreasing the power of the ESMR and/or part 22 Cellular Radiotelephone signal;

(iii) Modifying the ESMR and/or part 22 Cellular Radiotelephone systems antenna height;

(iv) Modifying the ESMR and/or part 22 Cellular Radiotelephone system antenna characteristics;

(v) Incorporating filters into ESMR and/or part 22 Cellular Radiotelephone system transmission equipment;

(vi) Permanently changing ESMR and/or part 22 Cellular Radiotelephone system frequencies; and

(vii) Supplying interference-resistant receivers to the affected public safety licensee(s). If this technique is used, in all circumstances, the ESMR and/or part 22 Cellular Radiotelephone licensees shall be responsible for all costs thereof.

(2) Whenever short-term interference abatement measures prove inadequate, the affected licensee shall, consistent with but not compromising safety, make all necessary concessions to accepting interference until a longer-term remedy can be implemented.

(3) *Discontinuing operations when clear and imminent danger exists.* When a public safety licensee determines that a continuing presence of interference constitutes a clear and imminent danger to life or property, the licensee causing the interference must discontinue the associated operation immediately, until a remedy can be identified and applied. The determination that a continuing presence exists that constitutes a clear and imminent danger to life or property, must be made by written statement that:

(i) Is in the form of a declaration, notarized affidavit, or statement under penalty or perjury, from an officer or executive of the affected public safety licensee;

(ii) Thoroughly describes the basis of the claim of clear and imminent danger;

(iii) Was formulated on the basis of either personal knowledge or belief after due diligence;

(iv) Is not proffered by a contractor or other third party; and

(v) Has been approved by the Chief of the Wireless Telecommunication Bureau or other designated Commission official. Prior to the authorized official making a determination that a clear and imminent danger exists, the associated written statement must be served by hand-delivery or receipted fax on the applicable offending licensee, with a copy transmitted by the fastest available means to the Washington, DC office of the Commission's Wireless Telecommunications Bureau.

§ 90.675 Information exchange.

(a) *Prior Coordination.* Public safety/CII licensees may notify an ESMR or part 22 Cellular Radiotelephone licensee that they wish to receive prior notification of the activation or modification of ESMR or part 22 Cellular Radiotelephone cell sites in their area. Thereafter, the ESMR or part 22 Cellular Radiotelephone licensee must provide the following information

to the public safety/CII licensee at least 10 business days before a new cell site is activated or an existing cell site is modified:

(1) Location;

(2) Effective radiated power;

(3) Antenna height;

(4) Channels available for use.

(b) *Purpose of Prior Coordination*. The coordination of cell sites is for informational purposes only: public safety/CII licensees are not afforded the right to accept or reject the activation of a proposed cell or to unilaterally require changes in its operating parameters. The principal purposes of notification are to:

(1) Allow a public safety/CII licensee to advise the ESMR or part 22 Cellular Radiotelephone licensee whether it believes a proposed cell will generate unacceptable interference;

(2) Permit ESMR or part 22 Cellular Radiotelephone licensees to make voluntary changes in cell parameters when a public safety licensee alerts them to possible interference; and

(3) Rapidly identify the source if interference is encountered when the cell is activated.

(c) *Public Safety Information Exchange*. (1) Upon request by an ESMR or part 22 Cellular Radiotelephone licensee, public safety/CII licensees who operate radio systems in the 806–824/851–869 MHz shall provide the operating parameters of their radio system to the ESMR or part 22 Cellular Radiotelephone licensee.

(2) Public safety licensees who perform the information exchange as described in this section must notify the appropriate ESMR and part 22 Cellular Radiotelephone licensees prior to any technical changes to their radio system.

§ 90.676 Transition administrator for reconfiguration of the 806–824/851–869 MHz band in order to separate cellular systems from non-cellular systems.

The Transition Administrator will be an independent party with no financial interest in any 800 MHz licensee; and will be selected by a committee representative of 800 MHz licensees. The Transition Administrator will serve both a ministerial role and a function similar to a special master in a judicial proceeding.

(a) The duties of the Transition Administrator will include, but not be limited to:

(1) Obtaining estimates from licensees regarding the cost of reconfiguring their systems and ensuring that estimates contain a firm work schedule. The Transition Administrator will retain copies of all estimates and make them available to the Commission on request.

(2) Mediating disputes regarding cost estimates for reconfiguring a system.

(3) Issuing the Draw Certificate to authorize and instruct the Letter of Credit Trustee to draw down on the Letter of Credit to pay relocation costs in connection with reconfiguring a licensee's system.

(4) Establishing a relocation schedule on a NPSPAC region-by-region basis, prioritizing the regions on the basis of population. However, should a given region be encountering unusually severe amounts of unacceptable interference, that region may be moved up in priority. Any party disputing such a change in priority may refer the matter to the Chief of the Public Safety and Critical Infrastructure Division, who hereby is delegated the authority to resolve such disputes. The Transition Administrator may direct that adjoining regions be reconfigured simultaneously when conditions so require.

(5) The Transition Administrator will coordinate relocation of a NPSPAC Region's NPSPAC channels with the relevant Regional Planning Committee(s) prior to commencing band reconfiguration in a NPSPAC Region.

(b) Once band reconfiguration commences in a given NPSPAC Region, the Transition Administrator will;

(1) Monitor the retuning schedule and resolve any schedule delays or refer same to the Public Safety and Critical Infrastructure Division for resolution;

(2) Coordinate with adjoining NPSPAC Regions to ensure that interference is not being caused to their existing facilities from relocated stations;

(3) Provide quarterly progress reports to the Commission in such detail as the Commission may require and include, with such reports, certifications by Nextel and the relevant licensees that relocation has been completed and that both parties agree on the amount received from the letter of credit proceeds in connection with relocation of the licensees' facilities. The report shall include description of any disputes that have arisen and the manner in which they were resolved. These quarterly reports need not be audited;

(4) Provide to the Public Safety and Critical Infrastructure Division, on the anniversary of January 21, 2005, an audited statement of relocation funds expended to date, including salaries and expenses of Transition Administrator;

(5) Facilitate resolution of disputes by mediation; or referral of the parties to alternative dispute resolution services;

(c) The Transition Administrator may not serve as the repository of funds used in band reconfiguration, excepting such sums as Nextel may pay for the Transition Administrator's services. Moreover, the Transition Administrator will not be certified by the Commission as a frequency coordinator.

§ 90.677 Reconfiguration of the 806–824/851–869 MHz band in order to separate cellular systems from non-cellular systems.

In order to facilitate reconfiguration of the 806–824/851–869 MHz band (''800 MHz band'') to separate cellular systems from non-cellular systems, Nextel Communications, Inc. (Nextel) may relocate incumbents within the 800 MHz band by providing ''comparable facilities.'' For the limited purpose of band reconfiguration, the provisions of § 90.157 shall not apply and inter-category sharing will be permitted under all circumstances. Such relocation is subject to the following provisions:

(a) Within thirty days of Commission approval of the Transition Administrator, the Transition Administrator described in § 90.676 will provide the Commission with a schedule detailing when band reconfiguration shall commence for each NPSPAC Region. The plan should also detail—by NPSPAC Region—which relocation option each non-Nextel ESMR licensees has chosen. The Chief of the Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau will finalize and approve such a plan. The schedule shall provide for completion of band reconfiguration in no more than thirty-six months following release of a public notice announcing the start date of reconfiguration in the first NPSPAC region. Relocation will commence according to the schedule set by the Transition Administrator but all systems must have commenced reconfiguration within thirty months of release of a public notice announcing the start date of reconfiguration in the first NPSPAC region.

(b) *Voluntary negotiations*. Thirty days before the start date for each NPSPAC region, the Chief of the Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau will issue a public notice initiating a three-month voluntary negotiation period. During this voluntary negotiation period, Nextel and all incumbents may negotiate any mutually agreeable relocation agreement. Nextel and relocating incumbents may agree to conduct face-to-face negotiations or either party may elect to communicate with the other party through the Transition Administrator.

(c) *Mandatory negotiations*. If no agreement is reached by the end of the voluntary period, a three-month

mandatory negotiation period will begin during which both Nextel and the incumbents must negotiate in ''good faith.'' Nextel and relocating incumbents may agree to conduct face-to-face negotiations or either party may elect to communicate with the other party through the Transition Administrator. All parties are charged with the obligation of utmost ''good faith'' in the negotiation process. Among the factors relevant to a ''good-faith'' determination are:

(1) Whether the party responsible for paying the cost of band reconfiguration has made a *bona fide* offer to relocate the incumbent to comparable facilities;

(2) The steps the parties have taken to determine the actual cost of relocation to comparable facilities; and

(3) Whether either party has unreasonably withheld information, essential to the accurate estimation of relocation costs and procedures, requested by the other party. The Transition Administrator may schedule mandatory settlement negotiations and mediation sessions and the parties must conform to such schedules.

(d) *Transition Administrator.* If no agreement is reached during either the voluntary or mandatory negotiating periods, all disputed issues shall be referred to the Transition Administrator who shall mediate and attempt to resolve them within thirty working days. If disputed issues remain thirty days after the end of the mandatory negotiation period; the Transition Administrator shall forward the record to the Chief of the Public Safety and Critical Infrastructure Division, together with advice on how the matter(s) may be resolved. The Chief of the Public Safety and Critical Infrastructure Division is hereby delegated the authority to rule on disputed issues, *de novo.*

(e) *Waiver Requests.* Incumbents who wish not to relocate according to the schedule may petition the Commission for a waiver of the relocation obligation. Such a waiver would only be granted on a strict non-interference basis.

(f) *Comparable Facilities.* The replacement system provided to an incumbent must be at least equivalent to the existing 800 MHz system with respect to the four factors described in § 90.699(d) part.

(g) *Information Exchange.* Absent agreement between parties, the Transition Administrator will be responsible for determining the information that relocating incumbents must supply in support of a relocation agreement.

(h) The relevant Regional Planning Committee shall be informed of any proposed changes to any NPSPAC channel.

■ 34. Amend subpart S by revising the undesignated center heading before § 90.681 to read as follows:

Policies Governing the Licensing and Use of EA-Based SMR Systems in the 809–824/851–869 MHz Band

■ 35. Revise § 90.681 to read as follows:

§ 90.681 EA-based SMR service areas.

EA licenses in for channels 711 through 830 and Spectrum Blocks A through V listed in Tables 4 and 5 of § 90.617 are available in 175 Economic Areas (EAs) as defined in § 90.7.

■ 36. Amend § 90.683 by revising paragraph (a) introductory text to read as follows:

§ 90.683 EA-based SMR system operations.

(a) EA-based licensees authorized in the 809–824/854–869 MHz band pursuant to § 90.681 of this part may construct and operate base stations using any of the base station frequencies identified in their spectrum block anywhere within their authorized EA, provided that:

* * * * *

■ 37. Amend § 90.685 by revising paragraphs (a) and (b) to read as follows:

§ 90.685 Authorization, construction and implementation of EA licenses.

(a) EA licenses in the 809–824/854–869 MHz band will be issued for a term not to exceed ten years. Additionally, EA licensees generally will be afforded a renewal expectancy only for those stations put into service after August 10, 1996.

(b) EA licensees in the 809–824/854–869 MHz band must, within three years of the grant of their initial license, construct and place into operation a sufficient number of base stations to provide coverage to at least one-third of the population of its EA-based service area. Further, each EA licensee must provide coverage to at least two-thirds of the population of the EA-based service area within five years of the grant of their initial license. Alternatively, EA licensees in Channel blocks G through V in the 809–824/854–869 MHz band must provide substantial service to their markets within five years of the grant of their initial license. Substantial service shall be defined as: ''Service which is sound, favorable, and substantially above a level of mediocre service.''

* * * * *

■ 38. Revise § 90.687 to read as follows:

§ 90.687 Special provisions regarding assignments and transfers of authorizations for incumbent SMR licensees in the 809–824/854–869 MHz band.

An SMR license initially authorized on any of the channels listed in Tables 4 and 5 of § 90.617 may transfer or assign its channel(s) to another entity subject to the provisions of § 1.948 of this chapter and § 90.609(b). If the proposed transferee or assignee is the EA licensee for the spectrum block to which the channel is allocated, such transfer or assignment presumptively will be deemed to be in the public interest. However, such presumption will be rebuttable.

■ 39. Amend § 90.693 by revising paragraphs (a), (c), and (d)(2) to read as follows:

§ 90.693 Grandfathering provisions for incumbent licensees.

(a) *General provisions.* These provisions apply to ''incumbent licensees,'' all 800 MHz licensees authorized in the 809–821/854–866 MHz band who obtained licenses or filed applications on or before December 15, 1995.

* * * * *

(c) *Special provisions for spectrum blocks G through V.* Incumbent licensees that have received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour shall have their service area defined by their originally-licensed 36 dBμV/m field strength contour and their interference contour shall be defined as their originally-licensed 18 dBμV/m field strength contour. The originally-licensed contour shall be calculated using the maximum ERP and the actual HAAT along each radial. Incumbent licensees seeking to utilize an 18 dBμV/m signal strength interference contour shall first seek to obtain the consent of affected co-channel incumbents. When the consent of a co-channel licensee is withheld, an incumbent licensee may submit to any certified frequency coordinator an engineering study showing that interference will not occur, together with proof that the incumbent licensee has sought consent. Incumbent licensees are permitted to add, remove or modify transmitter sites within their original 18 dBμV/m field strength contour without prior notification to the Commission so long as their original 18 dBμV/m field strength contour is not expanded and the station complies with the Commission's short-spacing criteria in §§ 90.621(b)(4) through 90.621(b)(6). Incumbent licensee protection extends

only to its 36 dBμV/m signal strength contour. Pursuant to the minor modification notification procedure set forth in § 1.947(b) of this chapter, the incumbent licensee must notify the Commission within 30 days of any changes in technical parameters or additional stations constructed that fall within the short-spacing criteria. See 47 CFR 90.621(b).

(d) * * *

(2) *Special Provisions for Spectrum Blocks G through V.* Incumbent licensees that have received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour operating at multiple sites may, after grant of EA licenses has been completed, exchange multiple site licenses for a single license. This single site license will authorize operations throughout the contiguous and overlapping 36 dBμV/m field strength contours of the multiple sites. Incumbents exercising this license exchange option must submit specific information on Form 601 for each of their external base sites after the close of the 800 SMR auction. The incumbent's geographic license area is defined by the contiguous and overlapping 18 dBμV/m contours of its constructed and operational external base stations and interior sites that are constructed within the construction period applicable to the incumbent. Once the geographic license is issued, facilities that are added within an incumbent's existing footprint and that are not subject to prior approval by the Commission will not be subject to construction requirements.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 22, 24, 74, 78 and 90

[WT Docket No. 02–55; ET Docket No. 00–258; ET Docket No. 95–18, RM–9498; RM–10024; FCC 04–253]

The 800 MHz Public Safety Interference Proceeding; Extension of Deadlines

AGENCY: Federal Communications Commission.

ACTION: Final rule; extension of compliance deadlines.

SUMMARY: The Federal Communications Commission extends certain deadlines set out in the Commission's initial *800 MHz Report and Order* (*Order*) released on August 6, 2004. The summary of the order and the rules issued pursuant to the order are published in the Rules and Regulations section in this issue. The Commission extended the deadlines in order to afford interested parties to the proceeding additional time to comply with certain deadlines that are set forth in the full text version of the *Order*, released August 6, 2004.

DATES: The deadlines, as described in **SUPPLEMENTARY INFORMATION**, are extended an additional forty-five (45) days. For example, actions that previously were required within thirty (30) or sixty (60) days of **Federal Register** publication of the *Order* are now required by February 7, 2005, or March 7, 2005, respectively. The Commission is not deferring the effective date of the rules in this proceeding published elsewhere in this issue.

ADDRESSES: All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Suite TW–A325, Washington, DC 20554. One (1) courtesy copy must be delivered to Roberto Mussenden, Esq. at the Federal Communications Commission, Wireless Telecommunications Bureau, Public Safety and Critical Infrastructure Division, 445 12th Street, SW., Suite 5–C140, Washington, DC 20554, or via e-mail, *roberto.mussenden@fcc.gov*, and one (1) copy must be sent to Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160, or via e-mail, *http://www.bcpiweb.com*.

FOR FURTHER INFORMATION CONTACT: John Evanoff, Esq. or Roberto Mussenden, Esq., Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau at (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released by the Federal Communications Commission on October 22, 2004, extending certain deadlines set forth in the *Order*.

1. The extension of deadlines was prompted in order to avoid uncertainty for Nextel Communications, Inc. (Nextel) and certain other 800 MHz licensees, while the Commission seeks expedited comment on issues raised in certain *ex parte* presentations. The request for comments is designed to develop a full and complete record and to further the effective implementation of the 800 MHz band reconfiguration process. These issues are published in the Proposed Rules section of this issue. Therefore, the Commission believes it is appropriate to provide affected parties additional time in which to comply with certain deadlines set forth in the *Order*, released on August 6, 2004, a summary of which is published in the Rules and Regulations section of this issue. For this reason, with the exception of the statutory deadlines for filing petitions for reconsideration and for seeking judicial review of the *Order*, the Commission extends these deadlines by 45 days. For example, actions that previously were required within thirty (30) or sixty (60) days of **Federal Register** publication of the *800 MHz Report and Order* are now required by February 7, 2005, or March 7, 2005, respectively. The Commission is not deferring the effective date of the rules in this proceeding published elsewhere in this issue. Specifically, the Commission extends the following deadlines an additional 45 days:

2. The Commission extends the deadlines contained in paragraph 342 of the *Order*. Paragraph 342 of the *Order* provides that:

> ''pursuant to Section 309 and 316 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 309, and 316, the licenses of all 800 MHz band licensees (including, but not limited to, Nextel Communications, Inc.), are hereby modified as specified in this Report and Order; provided, however, that in the event Nextel rejects any of the conditions for modification required in this Report and Order, all the modifications of all the 800 MHz licenses specified in this Report and Order are suspended unless and until the Commission orders otherwise. Nextel will be deemed to have rejected such conditions (a) unless it files with the Commission a written acceptance of all such conditions within thirty days of the publication of this Report and Order in the **Federal Register**, or (b) if it files a judicial appeal of this Report and Order within thirty days of the publication of this Report and Order in the **Federal Register**. Pursuant to Section 316(a)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 316(a)(1), publication of this Report and Order in the **Federal Register** shall constitute notification in writing of our Order modifying Nextel's 800 MHz licenses and those of all other 800 MHz licenses, and of the grounds and reasons therefore, and Nextel and these other 800 MHz licensees shall have thirty days from the date of such publication to protest such Order.''

3. The Commission extends the deadlines contained and referenced in paragraph 344 of the *Order* (as amended by the *Second Erratum* in this docket released October 6, 2004). Paragraph 344, as amended, provides that:

> ''within sixty days of the publication of this *Report and Order* in the **Federal Register**, Nextel shall comply with the following conditions precedent to its operations on the 1.9 GHz band:
>
> • Nextel shall certify that it has obtained an irrevocable letter of credit, in all material