Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph 34(h), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 100.35T–07–152 to read as follows:

§ 100.35T–07–152 2003 Boca Raton Holiday Boat Parade, Riviera Beach, FL.

(a) *Regulated area.* The regulated area encompasses the staging area and parade route for the 2003 Boca Raton Holiday Boat Parade, which includes all waters of the Intracoastal Waterway from the C–15 Canal south to the Hillsboro Boulevard Bridge.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated patrol commander for the event by Commander, Coast Guard Group Miami, Florida.

(c) *Special Local Regulations.* (1) *Staging area.* Entry or anchoring in the staging area, in the vicinity of the mouth of the C–15 canal where it intersects the Intracoastal Waterway, by non-participating vessels is prohibited, unless authorized by the patrol commander.

(2) *Parade route.* During the transit of parade vessels, non-participating vessels are prohibited from approaching within 500 feet ahead of the lead parade vessel, 500 feet astern of the last participating vessel in the parade, or within 50 feet either side of the outboard parade vessels, unless authorized by the patrol commander.

(c) *Effective period:* This section becomes effective at 6 p.m. and terminates at 9 p.m. on December 20, 2003.

Dated: November 24, 2003.

Harvey E. Johnson, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 03–30376 Filed 12–5–03; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 74, 78 and 101

[ET Docket No. 95–18, ET Docket No. 00–258, IB Docket No. 01–185; FCC 03–280]

Allocation of Spectrum at 2 GHz for Use by the Mobile-Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document modifies the rules that new 2 GHz Mobile-Satellite Service (MSS) licensees are to follow when relocating incumbent Broadcast Auxiliary Service (BAS) licensees in the 1990–2025 MHz band and Fixed Service (FS) microwave licensees in the 2180–2200 MHz band. These actions are taken in light of our recent decision to reallocate 30 megahertz of 2 GHz MSS spectrum to new Fixed and Mobile services as part of our Advanced Wireless Services (AWS) proceeding, and to allow MSS licensees to provide an Ancillary Terrestrial Component (ATC) in conjunction with their MSS networks. We have also considered a number of outstanding petitions for reconsideration filed in response to our initial decision to reallocate these bands to MSS. Together, these decisions will resolve outstanding issues relating to the introduction of MSS at 2 GHz and the consequential relocation of BAS and FS licensees in these bands, which in turn will set the stage for the introduction of a variety of new and highly anticipated advanced services into these bands.

DATES: Effective January 7, 2004.

FOR FURTHER INFORMATION CONTACT: Jamison Prime, Office of Engineering and Technology, (202) 418–7474.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Report and Order and Memorandum Opinion and Order*, ET Docket No. 95–18, ET Docket No. 00–258, and IB Docket No. 01–185, FCC 03–280, adopted November 5, 2003, and released November 10, 2003. The full text of this Commission decision is available on the Commission's Internet site at *http://www.fcc.gov*. It is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's duplication contractor, Qualex International, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554; (202) 863–2893; fax (202) 863–2898; e-mail *qualexint@aol.com*.

Summary of the Third Report and Order and Third Memorandum Opinion and Order

1. In the Third Report and Order and Third Memorandum Opinion and Order the Commission retains in substantial part the BAS and FS relocation procedures that new MSS entrants in the 2 GHz band will follow and that were originally adopted in the Commission's *MSS Second Report and Order*, 65 FR 48174, August 7, 2000. The modifications we make herein respond to comments filed in response to the *Further Notice of Proposed Rulemaking*, 66 FR 47518, September 13, 2001, in the AWS proceeding and the Notice of Proposed Rulemaking, 66 FR 47621, September 13, 2001, in the MSS–ATC proceeding. In both of those actions, the Commission sought comment on how the introduction of new services into the 2 GHz MSS band would affect the existing BAS and FS relocation procedures. We also address petitions for reconsideration filed in response to the *MSS Second Report and Order*. Specifically, we make the following decisions herein:

For relocation of BAS in the 1990–2025 MHz band by new MSS entrants, we:

- Require the relocation of BAS incumbents in all television markets to the final (Phase II) plan at 2025–2110 MHz. This will eliminate the necessity of relocating BAS licensees to an interim (Phase I) channel plan as part of the previously adopted two-phase approach to relocation.
- Retain the requirement that all BAS operations in markets 1–30 must be relocated prior to the initiation of new MSS in the band.
- Amend the rules to specify that the time period for calculating a one-year mandatory BAS negotiation period for markets 1–30 and the ten-year sunset period commence upon publication of this Report and Order in the **Federal Register**.
- Require the relocation of all fixed BAS stations on channels 1 and 2 nationwide prior to the initiation of new MSS in the band.
- Decline to require the reimbursement of relocation expenses for BAS facilities for which initial

applications were filed at the Commission after adoption of the *MSS Second Report and Order*.

• Modify our final (Phase II) BAS channel plan to provide for seven channels of 12 megahertz each, and a 500 kilohertz data return link (DRL) band at both ends of the seven channels.

• Permit BAS licensees to operate indefinitely on their existing 17-megahertz wide channels in the 2025–2110 MHz band on a secondary basis, if they so choose.

• Clarify that an assignment or transfer of control does not disqualify a BAS incumbent from relocation eligibility.

For FS microwave relocation by MSS/ATC licensees in the 2180–2200 MHz band, we:

• Clarify that TIA TSB 10–F, or its successor, is an appropriate interference standard that may be used for determining interference from MSS ATC stations to incumbent FS operations in the 2 GHz band.

• Clarify that FS incumbents relocated through the negotiation process are eligible for reimbursement for relocation to leased facilities or alternative media, but decline to extend reimbursement eligibility to FS incumbents that voluntarily self-relocate.

• Decline to establish separate ''rolling'' negotiation periods for each FS incumbent as they are approached by MSS licensees for relocation negotiation.

• Amend the rules to specify that the time period for calculating the mandatory FS negotiation periods and the ten-year sunset period commence upon publication of the *Report and Order* in the **Federal Register**.

• Clarify that an assignment or transfer of control does not disqualify a FS incumbent from relocation eligibility.

• Decline to require MSS licensees to relocate FS incumbents from which the MSS operation would only receive, but not cause, interference prior to the ten-year sunset date.

2. The Third Report and Order and Third Memorandum Opinion and Order also address BAS and FS relocation issues as they pertain to 2 GHz MSS licensees as part of an overall effort to promote the rapid introduction of MSS into the 2 GHz bands. As such, we combine a Report and Order addressing the relevant comments that discuss BAS and Fixed Service relocation issues in two proceedings, ET Docket 00–258 and IB Docket No. 01–185, with a Memorandum Opinion and Order addressing petitions that seek reconsideration or clarification of relocation decisions made in the MSS Second Report and Order. The issues we consider generally relate to relocation timing, reimbursement eligibility, negotiation commencement, and technical/interference matters. Our decisions are designed to account for the actions the Commission has taken in the subsequent proceedings, described above, regarding the reallocation of a portion of the MSS band and the introduction of ATC services by MSS licensees.

3. As an initial matter, we are not altering the fundamental workings of the relocation process that was adopted in the *MSS Second Report and Order*. For example, throughout the AWS proceeding, commenters representing incumbent licensees' interests have urged us to maintain the general relocation principles of the Emerging Technologies proceeding even if we expand the nature and scope of services in the band. We agree.

4. In order to provide for MSS entry into the band in accordance with construction milestones, MSS licensees generally will have to relocate BAS and FS incumbents. We note that, due to the reallocation of the 1990–2000 MHz and 2020–2025 MHz bands in the AWS proceeding, non-MSS licensees that may begin service later will benefit from the band clearing paid for by MSS licensees. For this reason, we will provide an equitable mechanism by which MSS licensees can recover some of the relocation costs incurred from other licensees who will benefit from the band clearing in the 1990–2000 MHz and 2020–2025 MHz segments of the 1990–2025 MHz band. Thus, licensees benefiting from MSS licensees' efforts to clear incumbent BAS from the 1990–2025 MHz band will be expected to share the costs of this relocation.

5. However, because the nature and scope of new Fixed and Mobile service licensees that will operate in the 1990–2000 MHz and 2020–2025 MHz bands has not yet been determined, we do not set forth herein a comprehensive set of procedures that new Fixed and Mobile service providers (including AWS entrants) in these bands must follow to relocate incumbent BAS licensees and/or to reimburse MSS licensees that will have incurred relocation costs. We will instead consider such matters in a separate, future proceeding. This is because the decisions we make with respect to these bands may affect the manner by which we apply the general cost-sharing principles embodied in the Emerging Technologies procedures. For example, it is not clear how we would apply our traditional cost-sharing principles were we to use portion of the bands to provide relocation spectrum for Nextel's operations in the 800 MHz band or for MDS licensees in the 2150–2160/62 MHz band, to relocate federal government operations, or to provide interference separation between new AWS licensees and existing users in adjacent spectrum bands. We expect, however, that licensees that ultimately benefit from spectrum cleared by MSS shall bear the cost of reimbursing MSS licensees for the accrual of that benefit.

6. Some petitioners also note the complexity that introducing different services with potentially different geographic licensing schemes will have on cost-sharing in the band. For example, PCIA has suggested, inter alia, that we authorize a third-party clearinghouse to administer relocation matters. We likewise defer consideration of this issue because we have not yet adopted service rules for the Fixed and Mobile allocation in the band and, therefore, do not know the characteristics of new licensees that will share the 2 GHz band with the existing MSS licensees. We will be able to make more meaningful decisions with respect to these and other cost-sharing procedures at a future time.

7. Finally, since the actions taken herein include the relocation of existing services and the addition of new services within the subject frequency bands, there may be some impact on international coordination arrangements currently in effect. Therefore, operation in the border areas may be constrained pending the completion of consultations with foreign administrations, as necessary, and until existing agreements are revised and new agreements are developed, as appropriate.

Report and Order—BAS

8. We believe that the core interests that the Commission considered when it crafted the *MSS Second Report and Order* remain valid. The band will still host MSS licensees, and the unique, integrated nature of BAS has not changed. What has changed is that, in light of the decisions the Commission made in the AWS proceeding, we can expect additional new licensees to occupy the 1990–2025 MHz band.

9. Of the 15 megahertz of spectrum that we have reallocated from MSS in the 1990–2025 MHz band to support new Fixed and Mobile services, two thirds occupies the lower end (1990–2000 MHz) of the band and one third is situated at the upper end (2020–2025 MHz). The twenty megahertz of spectrum that remains for the four MSS licensees is situated in the 2000–2020 MHz portion of the band. Phase I of the transition was crafted so that BAS

licensees would cease use of the frequencies occupied by the existing BAS channel 1 (1990–2008 MHz) in order to allow MSS entry into the band, but could continue to use channel 2 until there were a significant number of MSS entrants so as to require use of the 2008–2025 MHz band. Now, however, more than half of the Phase I spectrum will be used for new Fixed and Mobile applications, such as AWS. Because each MSS licensee will be eligible to choose a five megahertz Selected Assignment in the revised MSS allocation, only one MSS licensee will be able to operate in the portion of the band that contains spectrum that will be available under Phase I of the relocation plan. In the best case—one in which the first MSS entrant selects the lowest portion of the band—the entry of the second MSS licensee will trigger Phase II of the relocation plan. If the first MSS licensee instead were to choose an assignment at 2005 MHz, 2010 MHz or 2015 MHz, its entry would immediately trigger Phase II.

10. We conclude that the practical effect of these changed circumstances is that new MSS licensees will begin using Phase II spectrum (2008–2025 MHz) sooner than was anticipated in the *MSS Second Report and Order*. Under the revised MSS allocation, no more than one MSS licensee may operate in the Phase I spectrum. The second MSS licensee seeking to begin operations (assuming the first chooses 2000–2005 MHz as its Selected Assignment) would initiate the Phase II relocation process. In order to meet the milestone requirements for MSS licensees—which require, for example, that non-GSO MSS licensees construct and launch the first two satellites in their system by January 17, 2005—MSS licensees will need to act quickly to deploy their systems and it is therefore highly likely that BAS relocation to the Phase I channels would not be complete when Phase II starts.

11. The initiation of the Phase I relocation and quick transition to Phase II would undercut one rationale for a two-phase transition—that the potential to leave substantial amounts of spectrum unused for a long period of time would result in inefficient use of valuable 2 GHz spectrum. In addition, a two-phase transition was an appropriate means of spreading out overall MSS relocation costs when it appeared that MSS licensees would begin operations within the Phase I spectrum and would not need Phase II spectrum until much later—after their systems had grown and matured. Under that scenario, a multi-phase approach would reduce initial costs to MSS entrants because a smaller number of BAS licensees (those in markets 1–100) would need to be relocated during Phase I, and because it is more likely that existing BAS equipment could be retuned (versus replaced) in order to operate in 14.5–15 megahertz-wide channels (versus the final 12.5 megahertz-wide channels). This plan also would have minimized the initial costs incurred by the Phase I MSS licensees. At that time, MSS system proponents were ''at widely differing points in the process of preparing to begin service.'' Now, due to impending milestones, the difference in time between an ''early'' MSS entrant and a ''later'' MSS entrant will necessarily be small.

12. Were we to retain the two-phase relocation approach, MSS licensees would be responsible for the costs of relocating some BAS licensees to the Phase I channel plan, plus the costs of relocating all BAS licensees to the Phase II channel plan soon after. This situation would negate any cost-spreading benefits that were envisioned by a two-phase approach, and might even increase overall relocation costs over a relatively short term. If Phase II of the transition is initiated during the time in which Phase I relocations are taking place, BAS operations may be on three different band plans, and some BAS licensees would face the disruption and down time associated with being twice relocated in a short period of time.

13. The *MSS Second Report and Order* also adopted a two-phase relocation plan because of the ''significant likelihood'' that little or no new equipment that would operate in the Phase II channels would be manufactured in time for MSS to begin service. Much of the new equipment was anticipated to be purchased during Phase II of the transition, at which time the Commission predicted that digital BAS equipment would ''benefit from more time for design development, becoming higher capacity, smaller, less expensive, and less power-intensive.'' Such developments have taken place. BAS manufacturers now offer extensive lines of digital equipment that are designed to operate in a variety of channel widths, including the narrow channels associated with Phase II. Moreover, digital equipment has been available for a sufficient time, in such quantity, and such cost that broadcast stations buying new equipment have begun purchasing digital ENG equipment. At the time the Commission developed its relocation plan, digital equipment for one BAS link was estimated to cost $93,000. Recent filings in the docket reflect lower cost projections. SBE now estimates relocation costs for a BAS link to be between $20,000 and $25,000 (for a receive site) and between $40,000 and $55,000 (for a typical ENG vehicle). ICO has derived similar cost estimates, based on its separate informal discussions with manufactures of 2 GHz capable digital BAS equipment. A survey of the broadcast industry conducted by the Ad Hoc 2 GHz Reallocation Committee in September 2003 estimated the total population of 2 GHz transmitters and receivers in use at television stations in the United States and projected an overall cost of $397 million to convert 2 GHz ENG services to digital operation and as much as $115 million to convert 2 GHz fixed links to digital operation. We note that the BAS relocation cost estimates based on the Ad Hoc Survey compare favorably to overall 2 GHz MSS relocation costs of up to $3 billion that had been estimated when the MSS allocation was initially proposed and support our overall conclusion that BAS equipment that can operate in the Phase II frequencies is now both readily available and available at a cost that is less than that which was anticipated at the time the relocation plan was adopted.

14. Collectively, all of these factors make the Phase I relocation plan no longer practical. We will initiate Phase II of the transition by way of this *Report and Order*. Our decision to initiate Phase II immediately is consistent with suggestions made by several commenters, including SBE. As a practical matter, because the rapid introduction of Phase II that would likely occur were we to retain the existing rules would eviscerate the benefits associated with Phase I of the transition, this decision simplifies what would otherwise become a complex relocation procedure with minimal attendant benefits. For the reasons described above, we can no longer conclude maintaining the existing two-phase relocation procedures strikes the appropriate balance that is ''not unreasonably burdensome upon MSS, while also fair to the incumbents.'' Given the subsequent developments in the 1990–2025 MHz band, our decision to initiate Phase II more effectively meets this goal.

15. The initiation of Phase II will allow us to supersede the remaining mandatory negotiation period for Phase I, which was due to end on November 13, 2003. Because the rules we adopt herein may not take effect before November 13, we will, effective immediately, extend the stay of the Phase I mandatory negotiation period that was adopted in the *Third Suspension Order* until such time that the rules become effective.

16. We will also retain the existing market-segmented approach whereby MSS licensees relocate BAS facilities in markets 1–30 before they begin operations, markets 31–100 within three years after MSS begins operations, and markets 101 and above within five years after MSS begins operations. Those parties that asked us to require that all BAS markets be relocated at once base their arguments, in large part, on the difficulties that will be faced by BAS licensees operating on different channel plans. The Commission previously considered these arguments in the *MSS Second Report and Order*, and ultimately concluded that a market-segmented approach was best suited to balance the needs of the current and future users of the band, notwithstanding the added challenges to BAS operations. Nevertheless, we also recognize that by initiating Phase II, BAS licensees in markets 31–100 will have to operate on five, as opposed to six, channels for up to three years. This situation would occur under our current rules if Phase II is initiated before Phase I is complete. Although licensees will benefit by being certain that they will be relocated to a final band plan in a set time period and in a single step, we also recognize that operation of five channels will create short-term burdens for some BAS licensees.

17. There are several factors can serve to mitigate any difficulties that may occur in coordinating BAS use in nearby markets that operate on different channel plans during the short duration of the transition. Although the final channel plan calls for the operation of seven channels in a smaller amount of spectrum, the bands of three of the new channels will be fully within the bands of three of the existing BAS channels, as is illustrated in Table 1 on page 10 of this *3rd R&O and 3 MO&O*. In addition, at least some new BAS equipment is expected to be designed so that it can readily be programmed to operate on both new and old BAS channels. We also note that use of BAS channels 8 and 9 is unaffected by the transition. Our decision to initiate Phase II relocation procedures will, in some ways, actually serve to reduce the difficulties associated with BAS licensees operating on different channel plans in different markets at the same time. Because there are now only two channel plans for the BAS band, licensees will not have to account for the possibility of concurrent BAS use of three separate channel plans.

18. MSS licensees—for whom cost deferral continues to be a concern—will continue to occupy former BAS frequencies. We see no reason to change our decision to require relocation on a market-segmented basis because other types of new licensees will also occupy the band. As SBE notes, it is unclear whether MSS or new terrestrial licensees will be the first to deploy service. Because MSS licensees have significant up-front costs and cannot engage in a gradual buildout because of the large geographic reach of an MSS signal, a MSS licensee that is the first entrant in the band will still be required to pay substantial up-front BAS relocation costs and seek pro-rata reimbursement from subsequent licensees, without the benefit of having had a revenue stream as it builds out its system. A market-differentiated approach allows for important cost-spreading benefits, particularly because the cost deferrals that were anticipated with a delay between Phase I and Phase II are no longer available. For example, although the Ad Hoc Survey shows that the greatest projected relocation costs will occur in markets 1–30, these costs are approximately 40 percent of the estimated cost to relocate all markets. Those commenters that assert that the market-segmented approach is unnecessary incorrectly assume that non-MSS licensees will be the first to initiate service in the 1990–2025 MHz band and, as a result, do not account for the unique needs of MSS licensees. In addition, the introduction of ATC does not alter our conclusion: because MSS licensees are obligated to begin satellite service before offering terrestrial services, our decision to permit ATC operations will not reduce up-front costs or provide an earlier revenue stream to defray such costs.

19. Finally, we find that the other factors that led to the adoption of a market-segmented approach are still valid. Because new equipment is readily available, one concern that drove the original two-phase relocation plan—that additional time would be needed for equipment manufactures to develop and build equipment that operated in the Phase II channels—is no longer at issue. Nevertheless, we recognize that it will still take time to retune or replace existing BAS equipment. For example, SBE estimates that it takes one month to transition one electronic news gathering transmit and receive system at an average television station. To require the relocation of all BAS facilities before MSS or other new licensees begin service in the band would result in intolerable delays in a process that has already been marked by longer-than-anticipated entry of new services into the band. Such a course would severely undermine the ability of MSS licensees to secure entry into the band. Accordingly, our decision to retain a market-segmented approach allows us to maintain a relocation plan that is not overly burdensome to MSS entrants but that is still fair to incumbents in the band.

20. The elimination of Phase I requires the slight modification of several procedures. First, the restriction on the use of the 2023–2025 MHz band until all BAS incumbents have been relocated to the final band plan is no longer appropriate. This restriction was designed to allow BAS licensees to use channel 2 under a channel plan that we will no longer be using. Moreover, we have subsequently reallocated the 2023–2025 MHz band to fixed and mobile services. Next, we re-establish the mandatory negotiation period between new licensees and BAS licensees in the top 30 markets. As discussed previously, this negotiation period was scheduled to end on November 13, 2002, for Phase I, under the terms of the *Third Suspension Order*. Now that we have resolved the issues that prompted us to suspend expiration of the mandatory negotiation period, we anticipate that MSS licensees will move quickly to resume the negotiation process to relocate BAS incumbents in the 1990–2025 MHz band. As such, we establish a new mandatory negotiation period between MSS licensees and BAS incumbents in markets 1–30 (and for all fixed BAS facilities regardless of market, as described in the Memorandum Opinion and Order, *infra*) that ends one year from publication of this Report and Order in the **Federal Register**. This time period is appropriate to maintain the balance of equities between MSS licensees and BAS incumbents given the amount of time that has already passed since adoption of the *MSS Second Report and Order,* and the upcoming MSS milestone requirements. We also modify our rules to make explicit that a one-year mandatory negotiation period for BAS markets 31 and above starts when the first MSS licensee begins operations. Finally, we specify that the relocation procedures will apply to the BAS markets as they existed upon adoption of the *MSS Second Report and Order*—June 27, 2000. Because these rules are based on a ranking of DMAs, and because DMAs and their rank are subject to modification, it is important for us to specify a fixed point in time in order to prevent potential confusion or frustrate negotiations between parties.

21. Under our existing rules, BAS licensees in markets 31 and above would have had to stop using BAS channel 2 after the Phase II negotiations

began but before MSS operations actually commenced in the 2008–2025 MHz band. Because BAS incumbents have not had the benefits of relocation under Phase I, we find this requirement is overly burdensome and we will ease our rules to allow all BAS licensees to use channels 1 and 2 (*i.e.* the 1990–2025 MHz band) while new licensees are negotiating with BAS licensees in the top 30 markets. BAS operations on the 1990–2025 MHz band in these markets must instead end once the first MSS licensee begins service.

22. We decline to consider more comprehensive modifications to our relocation procedures. We reject the Joint Commenters' suggestion that we explore such revisions as part of a Notice of Proposed Rulemaking as unnecessarily burdensome and time consuming. The modified version of the existing plan we are adopting serves the goals of our relocation policy and also accounts for the special circumstances involved in the transition of BAS and introduction of satellite services into the band.

Memorandum Opinion and Order—BAS

23. *Sunset Date.* In its Petition for Partial Reconsideration, NAB/MSTV requests that the sunset date after which new MSS licensees are not required to relocate BAS operations be eliminated, or at a minimum, revised to take effect ten years after the start of Phase II negotiations. We continue to believe that a sunset date is a vital component of the Emerging Technologies relocation principles. As stated in the MSS Second Report and Order, a sunset date provides a measure of certainty for new technology licensees, while giving incumbents time to prepare for the eventuality of moving to another frequency band. We recognize that the unresolved issues relating to MSS deployment have resulted in limited negotiation between BAS and MSS licensees to date. Now that we have addressed allocation matters for the 2 GHz MSS band, we find that revising a sunset date is appropriate. Further, our decision to initiate the Phase II negotiation period by way of this Report and Order is similar to our earlier decision to begin the Phase I negotiation period after publication of the MSS Second Report and Order in the **Federal Register**, which also began the original sunset date. In both cases, the beginning of the negotiation period marks a starting point for active negotiations between incumbents and new licensees. Accordingly, we are revising the sunset date as follows: a new licensee's obligation to relocate an incumbent BAS operator in the 1990–2025 MHz band will end ten years after the publication of this Report and Order in the **Federal Register**.

24. *Special Considerations for Fixed Facilities.* Under the two-phase relocation policy, BAS licensees would first cease operations on the 1990–2008 MHz band once MSS operations begin and, during Phase II, would stop using the 2008–2025 MHz band. In their Petition for Reconsideration of the *MSS Second Report and Order,* the Broadcast Filers ask that we expand mandatory relocation to those BAS facilities operating on channel 1 (1990–2008 MHz) in markets 31 and above that cannot be retuned and refiltered to accommodate the Phase I channelization. SBE, in a substantially similar request, asks that we require the relocation of all non-frequency agile links in both BAS channels 1 and 2 (1990–2025 MHz) outside the top 30 markets. This situation has the potential to disrupt some BAS operations and uniquely burden a limited class of licensees in a manner not considered in the *MSS Second Report and Order*. While the Commission found in the *MSS Second Report and Order* that the number of BAS channels could be reduced during the transition, it discussed the aggregate need for seven channels in a particular market and not the unique needs of incumbent licensees in the 1990–2025 MHz band with facilities that cannot operate on the remaining available channels. Many BAS facilities that potentially could have been retuned to operate in the interim Phase I channels will likely need to be replaced with spectrally efficient digital equipment in order to operate in the narrow Phase II channels. The elimination of BAS operations in the 1990–2025 MHz band can be expected to have a significant effect on fixed BAS facilities, such as intercity relays and studio-to-transmitter links. By contrast, mobile BAS facilities are generally licensed from band edge to band edge (*i.e.* authorized to operate in any one of the BAS channels) and should not suffer such harm. Accordingly, we will expand our relocation procedures to require fixed facilities operating on the 1990–2025 MHz band in markets 31 and above that are licensed on a primary basis to be relocated on the same schedule as other BAS facilities in the top 30 markets. If a suitable replacement channel cannot be found within a BAS market for a BAS channel 1 or 2 facility and the parties are unable to agree to an alternative relocation plan as part of the mandatory negotiation process, then the MSS licensee will not be obligated to replace that facility until such time that it is obligated to relocate all BAS facilities in that market. In this situation, the incumbent BAS licensee will still be required to cease use of the 1990–2025 MHz band once the first new licensee begins operations. The relocation of fixed stations on channels 1 and 2 in markets 31 and above will follow the same procedures that we established for the relocation of facilities in BAS markets 1–30, including a mandatory negotiation period that ends one year from publication of this Report and Order in the **Federal Register**.

25. *Subsequently Licensed BAS Stations.* In the *MSS Second Report and Order*, the Commission decided that those BAS facilities where the receipt date of the initial application was prior to June 27, 2000, the adoption date of the *MSS Second Report and Order*, could continue to operate on a primary basis until relocated or the sunset date. Initial applications filed after that date have been licensed on a secondary basis and, therefore, are not eligible for relocation. We find that the relocation eligibility cut-off date remains appropriate and, therefore, are denying petitions for reconsideration. None of the subsequent decisions to allow new services in the band or pleadings filed in response to the *MSS Second Report and Order* affects the fundamental decision to provide for an 85 megahertz BAS allocation. Holders of BAS licenses issued after the *MSS Second Report and Order* have known that the Commission proposed to reduce the 2 GHz BAS band to the 85 megahertz allocation in the 2025–2110 MHz band and have an opportunity to consider any additional expenses that may be associated with phased relocation as well as the development, availability, and Commission approval of digital equipment that can be used in the band.

26. *Phase II BAS Channel Plan.* SBE asks us to modify the channel plan that was adopted in the *MSS Second Report and Order* in order to provide consistent channel spacing. The use of seven 12 megahertz-wide channels will also allow for two 500 kilohertz-wide data return link (''DRL'') bands—one at each end of the re-farmed 2025–2110 MHz BAS band. These DRL bands would be available for narrowband downstream control channels to TVPU transmitters (such as an ENG truck) for applications such as transmitter power control. We find merit in this proposal. As SBE notes, a prime benefit of this plan is that manufacturers will be able to design for uniform bandwidth ratios. Moreover, by providing for two 500 kilohertz-wide DRL bands, we can promote efficient use of the band by BAS licensees.

Replacement of the current Phase II channel plan with the revised band plan could reduce MSS and other licensees' overall costs to relocate BAS. We revise our Phase II channel plan to specify seven 12 megahertz-wide channels and two 500 kilohertz-wide DRL bands. We will continue to permit split channel operation by BAS licensees operating on the Phase II channel plan. Although we did not prohibit such operation, and did not intend to suggest such a prohibition, we find it beneficial to clarify this issue. We also believe that BAS licensees should have the ability to continue to operate on channels 3–7 under the ''old'' channel plan, if they so elect. We will not prohibit BAS licensees from continuing to use the existing channel plan, so long as they restrict their use to the 2025–2110 MHz band when they are no longer permitted to use the 1990–2025 MHz band segment. Because the continued use of the existing channel plan could disrupt BAS licensees that have relocated to the Phase II channel plan and lead to the difficulties in coordination that SBE describes, we will permit continued use of the ''old'' channel plan only if all BAS licensees in a market will agree to such operation. Moreover, BAS licensees in such markets must operate on a secondary basis to other BAS licensees using the Phase II channel plan and must be prepared for the potential disruption associated with secondary operation, such as the interference likely to be caused by a BAS licensee operating on the Phase II channels that enters the market to cover a sporting event or breaking news story.

27. *Additional Issues.* Because the BAS relocation is segmented by market, BAS licensees in one market could be operating on a different channel plan than BAS licensees in adjacent markets for part of the relocation period. Several parties have asked for clarification of the procedures by which BAS operations will be protected from harmful interference during and after the transition. SBE describes situations in which large market BAS facilities cause interference in adjacent smaller markets even while operating within the bounds of the larger market, and predicts that BAS licensees operating in the smaller market may need to reconfigure their systems in order to eliminate or avoid interference. To the extent that such interference is similar to interference that small market stations have previously received from their large market neighbors, we expect the parties to use the same coordination procedures that they have previously employed to resolve these issues. Moreover, the Commission previously considered comments by SBE and NAB/MSTV regarding the complexities associated with the operation of BAS equipment on different channels in different markets, and found a simultaneous cut-over to be impractical. While these mitigation options may not be available in all cases, we find the cooperative procedures of BAS entities will minimize any negative effects. We also clarify that an assignment or transfer of control will not disqualify an incumbent in the 2 GHz BAS band from relocation eligibility so long as the facility is not rendered more expensive to relocate as a result.

Report and Order—FS

28. *ATC Inteference to FS.* We affirm that TIA TSB 10–F, or its successor standard, is an appropriate standard for purposes of triggering relocation obligations by new terrestrial (ATC or AWS) entrants in the 2 GHz band. Due to the technical similarity of MSS terrestrial operations to PCS which operates in nearby bands and for which TSB 10–F is well-suited, we conclude that the criteria specified in TSB 10–F should be equally suitable to determine where sharing would be possible between FS and MSS terrestrial operations in the 2180–2200 MHz band.

29. Furthermore, consistent with the approach we adopted for MSS satellite operations in the *MSS Second Report and Order*, where an initial MSS licensee of terrestrial ATC operations relocates both links of a paired FS microwave link, any subsequent licensee(s) that benefit from the relocation will be required to participate in the reimbursement of the initial licensee. We decline, however, to adopt API's suggestion that we require the initial MSS licensee of ATC to relocate both paired FS links and, instead, leave that decision to be resolved in the first instance through the relocation negotiation process. As a practical matter, we again note that when one path of a paired FS link is relocated, it is often necessary due to technical considerations to relocate both path links. Consequently, even without a mandatory requirement, we believe that both links will, in practice, be relocated in most instances. In particular, since the FS transmit/receive electronics, antenna and tower are often highly integrated, it would likely be more expensive and complex to relocate just one link due to the additional retuning and retrofitting—above and beyond that normally involved with paired links—that would be required to ensure seamless operation with the legacy link under the comparable facility requirement. The general result is that there should be a clear financial and technical incentive for MSS/ATC licensees to relocate both paired links as at the same time.

30. On the other hand, there can be individual situations where it is both economically and technically feasible within reason to relocate just one of the paired links. To the extent such a situation occurs, we do not believe that MSS/ATC licensees should be *per se* deprived of this option by regulation. In any event, FS licensees are ensured of comparable facilities under the relocation rules and they have a year under these rules to determine if a satisfactory result has been achieved. Therefore, we continue to believe that leaving the decision of whether to relocate both paired links to the negotiation process is the better and more flexible approach.

31. *Self-relocation to leased facilities or alternative media.* As an initial matter, we affirm that FS incumbents that are relocated through the negotiation process are eligible for reimbursement for relocation to leased facilities or alternative media. This is consistent with the approach we have previously taken in the *Emerging Technologies* and *Microwave Cost-Sharing* proceedings. We decline, however, to extend reimbursement eligibility or automatic reimbursement credits as requested by Blooston to FS incumbents that voluntarily self-relocate to leased facilities or alternative media. In addition to the reasons discussed in the MO&O section with regard to Joint Petitioners' and SBC's related requests, we find that a reimbursement scheme for voluntary self-relocation was not envisioned by the MSS/FS relocation plan and would likely require a clearinghouse to administer reimbursement claims. We believe that initiating a plan for reimbursing those who voluntarily relocate is not warranted and that a further rulemaking at this stage to consider such a plan would only serve to delay MSS entry in the 2 GHz band.

32. *Negotiation periods.* In response to the *AWS Further Notice*, API and the Association of Public-Safety Communications Officials-International (APCO) urge that we clarify that each FS incumbent approached by an MSS licensee for relocation negotiations would receive the benefit of a full two year (or three year for Public Safety) negotiation period. We decline to establish such ''rolling'' negotiation periods during which each FS incumbent would be allowed a full two or three year mandatory negotiation period that would be triggered when

notified by an MSS licensee of its desire to negotiate. Such a scheme would result in a large number of unrelated mandatory negotiation periods that would tend to further delay the overall relocation process in the band. We believe that such discontinuity would be likely to create considerable confusion and lack of finality as compared with a single uniform negotiation period for all FS incumbents.

Memorandum Opinion and Order—FS

33. *Ten-year sunset period.* We do not believe it would be in the public interest to delay further the start of the mandatory negotiation period for a further uncertain period of time (*i.e.*, until whenever the first MSS licensee seeks to negotiate relocation of an FS incumbent). Therefore, we are specifying that the date of publication of this Report and Order and Memorandum Opinion and Order in the **Federal Register** will be the starting date of the mandatory negotiation period between MSS licensees and FS incumbents, as well as the starting date of the related ten-year sunset period for relocation of FS licensees by MSS licensees in the 2180–2200 MHz band. Similarly, we believe that the duration of the mandatory negotiation period should be modified—from two years for non-public safety and three years for public safety—to one year and two years, respectively. Given the amount of time that has already passed since adoption of the MSS Second Report and Order and the upcoming MSS milestone requirements, we believe that this modification is appropriate to maintain the balance of equities between MSS licensees and FS incumbents.

34. We decline to adopt the Joint Petitioner's request that MSS licensees be required to notify FS incumbents of their intention to relocate incumbents within 90 days of the start of the mandatory negotiation period. Under the relocation plan adopted in *MSS Second Report and Order*, we have placed substantial relocation burdens on MSS licensees with respect to FS—in addition to BAS—incumbents in the 2 GHz band. In order to help balance these substantial burdens, we believe that MSS licensees should be afforded maximum flexibility in choosing the timing of negotiations during the mandatory negotiation period. At the same time, we find that the negotiation starting date that we have adopted herein will provide sufficient notice for all FS incumbents to factor such relocation into their business plans. Therefore, we affirm that MSS licensees may elect to notify FS incumbents of their desire to enter into relocation negotiations at any time during the mandatory negotiation period and will not be required to provide anticipatory notice prior to doing so. Taken together, we believe that these actions balance the public interests in providing the opportunity for early entry of new MSS operations while maintaining the integrity of incumbent FS services in the 2 GHz band.

35. *Assignment or transfer of control.* We agree with the Joint Petitioners' analysis that our policy on assignment or transfer of control of incumbent FS licensees needs to be clarified. Therefore, consistent with our finding in the 18 GHz Relocation Proceeding, we clarify that an assignment or transfer of control will not disqualify an FS incumbent in the 2180–2200 MHz band from relocation eligibility so long as the facility is not rendered, as a result, more expensive to relocate. On the other hand, FS stations newly authorized after the date of publication of the *MSS Second Report and Order* (*i.e.*, September 6, 2000) will not be eligible for relocation. In addition, FS stations making changes that are otherwise classified as major modifications under § 1.929(a) will not be eligible for relocation.

36. *Interference to MSS Operations.* Joint Petitioners and Enron urge that MSS licensees be obligated to relocate incumbents prior to the ten-year sunset whenever the MSS licensee would receive interference from incumbent FS operations in addition to whenever interference is caused to FS incumbents. Enron further asserts that the current provisions ignore half of the interference picture prior to the sunset and would allow MSS licensees to engage in ''cherry picking'' where they commence operations in order to minimize initial relocation expenses during their start-up phase. Petitioners correctly observe that, prior to the ten-year sunset for FS relocation in the 2 GHz band, we require MSS licensees to relocate FS incumbent licensees after coordination and a determination according to TIA TSB–86 that interference would be caused to an FS incumbent. Subsequent to the sunset, FS microwave licensees will be required to relocate at their own expense within six months of presentation of a written demand by a MSS licensee that determines it ''will receive harmful interference according to TIA TSB–86, or that has received actual harmful interference from the FS licensee.''

37. We decline to require MSS licensees to relocate FS incumbents from which they receive—but do not cause—interference prior to the end of the sunset period. As a practical matter, we believe that MSS licensees will act in their own best interests to maximize the marketability of their service when dealing with any interference that might be received from FS incumbents. In that regard, nothing in the *MSS Second Report and Order* or our finding herein prohibits an MSS licensee from making an individual business decision to resolve instances of interference received from an FS incumbent prior to the sunset date through a voluntary arrangement with the FS licensee. Such an arrangement could include terms for relocating the incumbent FS operation. Consequently, rather than making such relocation mandatory, we believe that it is better for each MSS licensee to make its own business case decision whether to relocate FS incumbents from which it may receive interference in light of the quality of service the MSS licensee seeks to provide.

38. Furthermore, as the Commission stated in the *MSS Second Report and Order* with regard to balancing the relocation burdens on each service, MSS licensees in the 2 GHz band will face unusually high costs in gaining early access to spectrum because of the nationwide nature of their service. Requiring MSS licensees to relocate only those FS incumbents to which interference is caused prior to the sunset period is but one step the Commission has taken to minimize the relocation expense for MSS licensees and, thereby, provide their early access to the 2 GHz band. Indeed, the Commission found in the *MSS Second Report and Order* that many of the adopted measures will work hardships upon the incumbents in order to minimize relocation costs to MSS licensees. At the same time, requiring MSS licensees to relocate FS incumbents who are caused interference by MSS operations prior to the sunset will ensure the integrity and continuity of the services provided to the public by incumbent FS licensees during the ten-year sunset period. Furthermore, the sunset date for FS relocation serves the public interest by providing certainty to the relocation process, prevents MSS licensees from being obliged to pay relocation expenses indefinitely, and provides incumbents with ample time to either negotiate relocation or plan for relocation themselves. Therefore, we affirm that MSS licensees are not required to relocate FS incumbents from which they receive, but do not cause, interference prior to the sunset date. After the sunset date, FS incumbents will be required to relocate at their own expense upon demand by a MSS licensee that determines it will receive

harmful interference according to TIA TSB–86 (or TSB–10F in the case of ATC operations by MSS licensees), or that has received actual harmful interference from the FS licensee. We do not find these provisions to be inconsistent as suggested by petitioners. Instead, we find that they are complementary toward achieving our underlying goal of crafting a relocation process that strikes a fair balance for all parties.

39. *Voluntary self-relocation.* Joint petitioners and SBC request that we clarify that incumbents in the 2110–2150 MHz or 2165–2200 MHz bands that voluntarily self-relocate may participate in 2 GHz band relocation cost sharing in similar fashion to the relocation plan we adopted for Personal Communications Services (PCS) in a separate proceeding. ICO responds that such an approach is inappropriate in this proceeding because, unlike the situation in the PCS cost-sharing proceeding cited by Joint Petitioners, MSS may not identify their selected 2 GHz frequencies until they have placed their first satellite in its intended orbit.

40. We decline to extend cost-sharing eligibility to self-relocating FS incumbents. Under the plan adopted in the *MSS Second Report and Order*, relocation of incumbent FS microwave links need occur only if there is harmful interference. We find that allowing self-relocating FS incumbents to share in relocation costs would circumvent our intention of limiting relocation to those FS incumbents receiving interference which cannot be resolved through the coordination process and a TSB–86 (or TSB 10–F for terrestrial ATC to FS) interference determination. Furthermore, we find that requiring relocation under those circumstances would inordinately increase the relocation cost burden on MSS licensees.

Final Regulatory Flexibility Analysis

41. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in each of the following documents: the *Further Notice of Proposed Rulemaking* component of the *First Report and Order and Further Notice of Proposed Rulemaking*[2] *and the Third Notice of Proposed Rulemaking* component of the *Memorandum Opinion and Order and Third Notice of Proposed Rulemaking and Order*[3] in ET Docket No 95–18, the *Notice of Proposed Rulemaking*[4] in IB Docket No. 01–185, and the *Further Notice of Proposed Rulemaking component of the Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*[5] in ET Docket No. 00–258. The Commission sought written public comments on the proposals in the *Further Notice of Proposed Rulemaking*, the *Third Notice of Proposed Rulemaking, the Notice of Proposed Rulemaking and the Further Notice of Proposed Rulemaking*, including comment on each IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[6]

A. Need for, and Objectives of, the Third R&O and Third MO&O

42. The goal of the *Third Report and Order and Third Memorandum Opinion and Order* is twofold. First, in the *Third Report and Order*, we modify the rules that new 2 GHz Mobile-Satellite Service (MSS) licensees are to follow when relocating incumbent Broadcast Auxiliary Service (BAS) licensees that currently operate within the 1990–2025 MHz band and when relocating Fixed Service (FS) microwave licensees that currently operate within the 2180–2200 MHz band. For the 1990–2025 MHz band, we immediately initiate Phase II of a planned two-phase relocation plan. In conjunction with the beginning of Phase II, we restart negotiation periods between MSS licensees and BAS incumbents to run for the publication of the *Third Report and Order and Third Memorandum Opinion and Order* in the **Federal Register**. These actions are necessary because the *Third Report and Order*[7] in ET Docket No. 00–285 reallocated the 1990–2025 MHz band to allow for both MSS licensees and new fixed and mobile service licensees to occupy the band. The allocation of a portion of the 1990–2025 MHz band to new fixed and mobile services means that MSS licensees will no longer be the only parties involved in the relocation of BAS incumbents that currently occupy the band. MSS licensees will operate in a reduced amount of spectrum from 2000–2020 MHz, and will now need to relocate BAS incumbents from spectrum that was designated as part of Phase II of the BAS relocation plan. Accordingly, incumbent BAS licensees must be relocated of this Phase II spectrum much more quickly that was anticipated when MSS was to occupy the entire 1990–2025 MHz band. It is also necessary to reset the negotiation periods to recognize the initiation of Phase II, the entry of new licensees into the band, and the lack of negotiation that was expected to have taken place between MSS and BAS licensees by this time. For the 2180–2200 MHz band, we affirm that the TIA TSB 10–F interference standard may be used for determining interference from MSS ATC stations to incumbent FS operations in the 2 GHz band. This modification was necessary because the *Order*[8] in IB Docket No. 01–185 allowed MSS licensees to incorporate Ancillary Terrestrial Components into their systems. The 10–F standard is appropriate for the interference analysis of such non-satellite system components.

43. In the *Third Memorandum Opinion and Order*, we both grant and deny petitions for reconsideration and clarification of the above-referenced *First Report and Order and Further Notice of Proposed Rulemaking*. With respect to the 1990–2025 MHz band, we grant petitions and revise the sunset date (*i.e.* the date by which new licensees are no longer obligated to relocate incumbents in the band);

[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] Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, ET Docket No. 95–18, *First Report and Order and Further Notice of Proposed Rule Making*, 12 FCC Rcd 7388 (1997), 62 FR 19509 and 62 FR 19538, April 22, 1997, respectively.

[3] Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, ET Docket No. 95–18, *Memorandum Opinion and Order and Third Notice of Proposed Rulemaking and Order*, 13 FCC Rcd 23949 (1998) 63 FR 69606 and 63 FR 69562, December 17, 1998.

[4] Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band and the 1.6/2.4 GHz Band, IB Docket No. 01–185, *Notice of Proposed Rulemaking*, 16 FCC Rcd 15532 (2001), 66 FR 47621, September 13, 2001.

[5] Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00–258, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 16043 (2001), 66 FR 47591, September 13, 2001.

[6] *See* 5 U.S.C. 604.

[7] Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00–258, *Third Report and Order, Third Notice of Proposed Rulemaking, and Second Memorandum Opinion and Order*, 18 FCC Rcd 2223 (2003), 68 FR 12015 and 68 FR 11986, March 13, 2003, respectively.

[8] Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands, IB Docket No. 01–185, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 1962 (2003), 68 FR 33640, June 5, 2003, Errata (rel. March 7, 2003), appeal pending, AT&T Wireless Services, Inc. and Cellco Partnership d/b/a Verizon Wireless v. FCC, No. 03–1191 (D.C. Cir. filed July 8, 2003).

require that fixed facilities operating in BAS channels 1 and 2 (1990–2008 MHz and 2008–2025 MHz, respectively) be relocated prior to the initiation of MSS service; and modify the channel plan for the frequency band to which BAS operations will be relocated. We otherwise deny the petitions relating to the 1990–2025 MHz band and retain our previously adopted relocation rules. The changes we adopt are necessary to recognize the entry of new fixed and mobile service licensees in the 1990–2025 MHz band and the lack of negotiations to date between MSS and BAS licensees; to provide relief to fixed BAS facilities that would otherwise have to cease operation for three years or more; and to provide a new BAS channel plan that promotes efficiencies in equipment manufacture and operation by incorporating uniform channel sizes. For the 2180–2200 MHz band, we adopt a date certain from which FS–MSS negotiations and the sunset date run, and clarify that a transfer or assignment will not affect a FS licensee's relocation rights. We otherwise deny the petitions relating to the 2180–2200 MHz band and retain our previously adopted relocation rules. The changes we adopt are necessary to provide clarity to the relocation process, and serve to reduce the notification requirements for MSS licensees regarding initiation of the negotiation period that were required under the previous relocation rules.

44. Collectively, the rules we adopt in the *Third Report and Order and Third Memorandum Opinion and Order* are designed to allow for the rapid provision of MSS in the 2 GHz band by resolving outstanding issues relating to the relocation of incumbent users in the 1990–2025 MHz and 2180–2200 MHz bands. These actions are based on our response to petitions for reconsideration and clarification filed in the docket, in conjunction with the proposals we set forth in the *Notice of Proposed Rulemaking* in IB Docket No. 01–185 and the *Further Notice of Proposed Rulemaking* component of the *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* in ET Docket No. 00–258.

B. Sumary of Significant Issues Raised by Public Comments in Response to the IRFA

45. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

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

46. 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 rules adopted herein.[9] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [10] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[11] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[12]

47. *Fixed Microwave Services.* Microwave services include both common carrier [13] and private-operational fixed [14] services. The SBA has developed a small business size standard for Cellular and Other Wireless Telecommunication, of which these fixed microwave services are a part, and which consists of all such firms having 1,500 or fewer employees.[15] According to Census Bureau data for 1997, in this category there was a total of 977 firms that operated for the entire year.[16] Of this total, 965 firms had employment of 999 or fewer employees, and an additional twelve firms had employment of 1,000 employees or more.[17] Thus, under this size standard, the majority of firms can be considered small.

48. *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;[18] (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;[19] (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.

49. 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 [20] must be included.[21] 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).[22] 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,

[9] 5 U.S.C. 604(a)(3).

[10] 5 U.S.C. 601(6).

[11] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[12] 15 U.S.C. 632.

[13] 47 CFR 101 *et seq.* (formerly, part 21 of the Commission's Rules).

[14] 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.

[15] 13 CFR 121.201, NAICS code 517212 (changed from 513322 in October 2002).

[16] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 5, NAICS code 513322 (issued October 2000).

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

[18] 13 CFR 121.201, NAICS code 515120.

[19] Id. NAICS code 515112.

[20] ''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).

[21] ''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).

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

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 [23] are included.[24] Our estimate, therefore, likely overstates the number of small businesses that might be affected by our action.

50. *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.[25] 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.[26] Thus, under this standard, the majority of firms can be considered small.

51. *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.[27] According to Census Bureau data for 1997, there were 324 firms that operated for the entire year.[28] 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.[29] Thus, under this size standard, the majority of firms can be considered small.

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

52. The *Third Report and Order and Third Memorandum Opinion and Order* modifies relocation rules that were originally adopted in the *Second Report and Order and Second Memorandum Opinion and Order* in this docket. To a large degree, the item contains no new reporting, recordkeeping, or other compliance requirements. For example, we retain the requirement that all BAS operations in markets 1–30 be relocated prior to the initiation of MSS in the band; decline to change the qualifications by which a BAS licensee is eligible for relocation; continue to permit BAS licensees to operate on a 17-megahertz wide channel plan within the reduced BAS spectrum band if all licensees within a market so choose; and do not alter the relocation process for FS licensees (such as adding provisions to permit self-relocation or adopting ''rolling'' negotiation periods). Because we previously addressed the reporting, recordkeeping, and other compliance requirements associated with these matters as part of the FRFA adopted in the *Second Report and Order and Second Memorandum Opinion and Order*, we incorporate by reference those aspects of the reporting and other compliance requirements that remain unchanged.

53. Our decision, however, modifies several dates associated with the relocation of BAS and FS incumbents. Specifically, the duration of the mandatory negotiation period for BAS markets 1–30, FS stations, and the sunset date are all based on the publication date of the item in the **Federal Register**. We previously froze the mandatory negotiation period for BAS relocation—originally scheduled to end on September 6, 2003—because unresolved issues relating to MSS deployment had limited the negotiations between MSS and BAS licensees.[30] Because the *Third Report and Order and Third Memorandum Opinion and Order* adopts rules and procedures that will allow the relocation of BAS and FS licensees to continue, we establish new dates associated with relocation of BAS and FS incumbents. Because the new dates are designed to afford parties that are involved in the relocation with time frames that are substantially similar to those that were previously adopted, the change in dates will have no adverse impact on all parties involved in the relocation, including smaller entities.

54. The initiation of Phase II of the BAS relocation and the requirement that all fixed BAS stations operating on channels 1 and 2 be relocated prior to the initiation of MSS operations both have the potential to affect the compliance burdens associated with relocation. The initiation of Phase II of the relocation process will reduce the overall relocation burdens for MSS by eliminating the expense and reporting requirements that are associated with Phase I. There will be no disruption and no uncertainty for BAS licensees because the rules adopted herein provide sufficient time for fixed facilities to relocate without losing their ability to operate on their existing primary status.

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

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

56. In response to Petitions for Reconsideration of the *Second Report and Order and Second Memorandum Opinion and Order,* we concluded that the temporary loss of BAS channels 1 and 2 during relocation would have the potential to disrupt fixed BAS operations and uniquely burden licensees. For example, loss of the studio-to-transmitter links would likely necessitate television broadcast stations to obtain alternate facilities to transport their signal to their transmitter for broadcast. Otherwise, these licensees would have to wait for as many as five years before their facilities would be relocated. Because we are reluctant to impose such a delay which would unacceptably jeopardize television operations that rely on fixed BAS facilities on channels 1 and 2, we decline to exempt smaller entities from

[23] ''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).

[24] ''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).

[25] 13 CFR 121.201, NAICS code 517510 (changed from 513220 in October 2002).

[26] Id.

[27] 13 CFR 121.201, NAICS code 517410 (changed from 513340 in October 2002).

[28] 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).

[29] Id.

[30] Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for use by the Mobile-Satellite Service, ET Docket No. 95–18, *Order,* 17 FCC Rcd 15141 (2002).

[31] 5 U.S.C. 603(c)(1)–(c)(4).

the rule requiring the rapid relocation of these facilities.

57. We retained the general rule that staggers the relocation of BAS facilities based on a market-size approach. Under this rule, the burden of MSS entrants to relocate BAS facilities is staggered over time, based on the size of a particular BAS market. Unlike mobile BAS operations, which can typically be tuned to operate on different channels, fixed BAS facilities are tuned to a single channel. Because of the importance of these fixed channels and because the temporary loss of channels 1 and 2 could uniquely impair operations for BAS licensees with fixed facilities tuned to these channels, we concluded that such facilities should be relocated without delay. We also rejected proposals that would have MSS relocate all BAS facilities, regardless of their fixed or mobile status or the size of market in which they operate. Although this action would have provided the same relief for fixed BAS facilities operating on channels 1 and 2, a wholesale front-loaded relocation of all BAS facilities would have imposed significant burdens on MSS licensees, including those MSS licensees that are small entities.

F. Report to Congress

58. The Commission will send a copy of the *Third Report and Order and Third Memorandum Opinion and Order* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[32] In addition, the Commission will send a copy of the Second Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of this *Third Report and Order and Third Memorandum Opinion and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.[33]

Ordering Clauses

59. Pursuant to sections 4(i), 7, 302, 303(c), 303(e), 303(f), 303(g) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 157, 302, 303(c), 303(e), 303(f), 303(g) and 303(r), this Third Report and Order and Third Memorandum Opinion and Order IS ADOPTED and that parts 2, 74, 78, and 101 of the Commission's Rules ARE AMENDED as specified in rule changes, effective January 7, 2004.

60. Pursuant to sections 4(i), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f), and 303(r), and 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), the expiration date of the initial two-year mandatory BAS negotiation period for Phase I set forth in the *Second Report and Order* in ET Docket No. 95–18 IS HEREBY SUSPENDED until the effective date of the rules adopted in this *Third Report and Order and Third Memorandum Opinion and Order*, effective immediately upon release of this order, consistent with the terms discussed in the order.

61. Pursuant to sections 4(i), 302, 303(e), 303(f), 303(g), 303(r) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, 303(e), 303(f), 303(g) and 405, that the petitions for reconsideration in ET Docket No. 95–18 filed by Joint Petitioners (CICC, FWCC, *et al*), Broadcast Filers (Cosmos Broadcasting Corp., Cox Broadcasting, *et al*), Society of Broadcast Engineers, Inc., and National Association of Broadcasters and the Association for Maximum Service Television, Inc., ARE GRANTED to the extent discussed in the Third Report and Order and Third Memorandum Opinion and Order.

62. The petitions for reconsideration in ET Docket No. 95–18 filed by Joint Petitioners (CICC, FWCC, *et al*) and Celsat America, Inc. ARE DISMISSED AS MOOT.

63. The petitions for reconsideration in ET Docket No. 95–18 filed by Joint Petitioners (CICC, FWCC, *et al*), Enron North America Corp., SBC Communications, Inc., Broadcast Filers (Cosmos Broadcasting Corp., Cox Broadcasting, *et al*), Society of Broadcast Engineers, Inc., and National Association of Broadcasters and the Association for Maximum Service Television, Inc., ARE DENIED in all other respects.

64. The Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Third Report and Order and Third Memorandum Opinion and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

65. The proceeding in ET Docket No. 95–18 IS TERMINATED.

List of Subjects

47 CFR Part 2

Communications equipment, Radio.

47 CFR Part 74 and 101

Radio.

47 CFR Part 78

Cable television, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 74, 78 and 101 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 footnotes NG156, NG168, NG177 and NG178 in the list of non-Federal Government (NG) Footnotes to read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

Non-Federal Government (NG) Footnotes

* * * * *

NG156 The band 2000–2020 MHz is also allocated to the fixed and mobile services on a primary basis for facilities where the receipt date of the initial application was prior to June 27, 2000, and on a secondary basis for all other initial applications. Not later than December 9, 2013, the band 2000–2020 MHz is allocated to the fixed and mobile services on a secondary basis.

* * * * *

NG168 The band 2180–2200 MHz is also allocated to the fixed and mobile services on a primary basis for facilities where the receipt date of the initial application was prior to January 16, 1992, and on a secondary basis for all other initial applications. Not later than December 9, 2013, the band 2180–2200 MHz is allocated to the fixed and mobile services on a secondary basis.

* * * * *

NG177 In the bands 1990–2000 MHz and 2020–2025 MHz, where the receipt date of the initial application for facilities in the fixed and mobile services was prior to June 27, 2000, said facilities shall operate on a primary basis and all later-applied-for facilities shall operate on a secondary basis to any service licensed pursuant to the allocation adopted in FCC 03–16, 68 FR 11986, March 13, 2003 (''Advanced Wireless Services''). Not later than December 9, 2013, all such facilities in the bands 1990–2000 MHz and 2020–

[32] *See* 5 U.S.C. 801(a)(1)(A).

[33] *See* 5 U.S.C. 604(b).

2025 MHz shall operate on a secondary basis to Advanced Wireless Services.

NG178 In the band 2165–2180 MHz, where the receipt date of the initial application for facilities in the fixed and mobile services was prior to January 16, 1992, said facilities shall operate on a primary basis and all later-applied-for facilities shall operate on a secondary basis to any service licensed pursuant to the allocation adopted in FCC 03–16, 68 FR 11986, March 13, 2003 (''Advanced Wireless Services''). Not later than December 9, 2013, all such facilities in the band 2165–2180 MHz shall operate on a secondary basis to Advanced Wireless Services.

* * * * *

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

■ 3. 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.

■ 4. Section 74.602 is amended by revising paragraph (a)(3)(i), and by revising and redesignating paragraph (a)(3)(ii) as (a)(3)(iii) and by adding a new paragraph (a)(3)(ii) and by removing and reserving paragraph (a)(4) to read as follows:

§ 74.602 Frequency assignment.

(a) * * *

(3)(i) After January 7, 2004, stations may adhere to the channel plan specified in paragraph (a) of this section, or the following channel plan in Band A:

Channel A1r—2025.5–2037.5 MHz
Channel A2r—2037.5–2049.5 MHz
Channel A3r—2049.5–2061.5 MHz
Channel A4—2061.5–2073.5 MHz
Channel A5r—2073.5–2085.5 MHz
Channel A6r—2085.5–2097.5 MHz
Channel A7r—2097.5–2109.5 MHz

(ii) Stations adhering to the channel plan specified in paragraph (a)(3)(i) of this section may also use the following 40 data return link (DRL) channels to facilitate their operations in the 2025.5–2109.5 MHz band:

Lower band DRL channels

2025.000–2025.025 MHz
2025.025–2025.050 MHz
2025.050–2025.075 MHz
2025.075–2025.100 MHz
2025.100–2025.125 MHz
2025.125–2025.150 MHz
2025.150–2025.175 MHz
2025.175–2025.200 MHz
2025.200–2025.225 MHz
2025.225–2025.250 MHz
2025.250–2025.275 MHz
2025.275–2025.300 MHz
2025.300–2025.325 MHz
2025.325–2025.350 MHz
2025.350–2025.375 MHz
2025.375–2025.400 MHz
2025.400–2025.425 MHz
2025.425–2025.450 MHz
2025.450–2025.475 MHz
2025.475–2025.500 MHz

Upper band DRL channels

2109.500–2109.525 MHz
2109.525–2109.550 MHz
2109.550–2109.575 MHz
2109.575–2109.600 MHz
2109.600–2109.625 MHz
2109.625–2109.650 MHz
2109.650–2109.675 MHz
2109.675–2109.700 MHz
2109.700–2109.725 MHz
2109.725–2109.750 MHz
2109.750–2109.775 MHz
2109.775–2109.800 MHz
2109.800–2109.825 MHz
2109.825–2109.850 MHz
2109.850–2109.875 MHz
2109.875–2109.900 MHz
2109.900–2109.925 MHz
2109.925–2109.950 MHz
2109.950–2109.975 MHz
2109.975–2110.000 MHz

(iii) Broadcast Auxiliary Service, Cable Television Remote Pickup Service, and Local Television Transmission Service licensees in Nielsen Designated Market Areas (DMAs) 1–30, as such DMAs existed on September 6, 2000, 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 accorance with § 74.690 of this chapter. Licensees declining relocation and licensees in Nielsen DMAs 31–210, as such DMAs existed on September 6, 2000, will be required to discontinue use of the 1990–2025 MHz on the date that the first Mobile-Satellite Service licensee begins operations in the 2000–2020 MHz band.

(4) [reserved]

* * * * *

■ 5. Section 74.690 is amended by revising paragraphs (a), (b), and (e) to read as follows:

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

(a) Licensees proposing to implement Mobile-Satellite Services using emerging technologies (MSS Licensees) may negotiate with Broadcast Auxiliary Service licensees operating on a primary basis and fixed service licensees operating on a primary basis in the 1990–2025 MHz band (Existing Licensees) for the purpose of agreeing to terms under which the Existing Licensees would relocate their operations to the 2025–2110 MHz band, to other authorized bands, or to other media; or, alternatively, would discontinue the use of the 1990–2025 MHz band when MSS operations commence in the 2000–2020 MHz band.

(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 MSS Licensee or are discontinued under the terms of paragraph (a) of this section.

* * * * *

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

(1) Existing Licensees and MSS licensees may negotiate individually or collectively for relocation of Existing Licensees to one of the channel plans specified in § 74.602(a)(3) of this chapter. Parties may not decline to negotiate, though Existing Licensees may decline to be relocated.

(i) MSS licensees must relocate all Existing Licensees in Nielsen Designated Market Areas (DMAs) 1–30, as such DMAs existed on September 6, 2000, and all fixed stations operating in the 1990–2025 MHz band on a primary basis, prior to beginning operations, except those Existing Licensees that decline relocation. Such relocation negotiations shall be conducted as ''mandatory negotiations,'' as that term is used in § 101.73 of this chapter. If these parties are unable to reach a negotiated agreement, MSS Licensees may involuntarily relocate such Existing Licensees and fixed stations after December 8, 2004.

(ii) On the date that the first MSS licensee begins operations in the 2000–2020 MHz band, Broadcast Auxiliary Service licensees and fixed service licensees that are not operating on the new channel plan specified in § 74.602(a)(3) of this part must discontinue use of all operations in the 1990–2025 MHz band.

(iii) On the date that the first MSS licensee begins operations in the 2000–2020 MHz band, a one-year mandatory negotiation period begins between MSS licensees and Existing Licensees in Nielsen DMAs 31–210, as such DMAs existed on September 6, 2000. After the end of the mandatory negotiation period, MSS licensees may involuntary relocate any Existing Licensees with which they have been unable to reach a negotiated agreement. As described elsewhere in this paragraph (e), MSS Licensees are obligated to relocate these Existing Licensees within the specified three- and five-year time periods.

(2) Before negotiating with MSS licensees, Existing Licensees in Nielsen

Designated Market Areas where there is a BAS frequency coordinator must coordinate and select a band plan for the market area. If an Existing Licensee wishes to operate in the 2025–2110 MHz band using the channels A03-A07 as specified in the Table in § 74.602(a) of this part, then all licensees within that Existing Licensee's market must agree to such operation and all must operate on a secondary basis to any licensee operating on the channel plan specified in § 74.602(a)(3) of this part. All negotiations must produce solutions that adhere to the market area's band plan.

(3) [reserved]

(4) [reserved]

(5) As of the date the first MSS licensee begins operations in the 1990–2025 MHz band, MSS Licensees must relocate Existing Licensees in DMAs 31–100, as they existed as of September 6, 2000, within three years, and in the remaining DMAs, as they existed as of September 6, 2000, within five years.

(6) On December 9, 2013, all Existing Licensees will become secondary in the 1990–2025 MHz band. Upon written demand by any MSS licensee, Existing Licensees must cease operations in the 1990–2025 MHz band within six months.

PART 78—CABLE TELEVISION RELAY SERVICE

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

Authority: Secs. 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.

■ 7. Section 78.18 is amended by revising paragraph (a)(6)(ii) to read as follows:

§ 78.18 Frequency assignments.

(a) * * *

(6) * * *

(ii) After a licensee has been relocated in accordance with the provisions of § 78.40, operations will be in the band 2025–2110 MHz. The following channel plan will apply, subject to the provisions of § 74.604 of this part:

Frequency Band (MHz)
2025.5–2037.5
2037.5–2049.5
2049.5–2061.5
2061.5–2073.5
2073.5–2085.5
2085.5–2097.5
2097.5–2109.5

* * * * *

■ 8. Section 78.40 is amended by revising paragraph (f) to read as follows:

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

* * * * *

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

(1) Existing Licensees and MSS licensees may negotiate individually or collectively for relocation of Existing Licensees to one of the channel plans specified in § 74.602(a)(3) of this part. Parties may not decline to negotiate, though Existing Licensees may decline to be relocated.

(i) MSS licensees must relocate all Existing Licensees in Nielsen Designated Market Areas (DMAs) 1–30, as such DMAs existed on September 6, 2000, prior to beginning operations, except those Existing Licensees that decline relocation. Such relocation negotiations shall be conducted as ''mandatory negotiations,'' as that term is used in § 101.73 of this chapter. If these parties are unable to reach a negotiated agreement, MSS Licensees may involuntarily relocate such Existing Licensees after December 8, 2004.

(ii) On the date that the first MSS licensee begins operations in the 2000–2020 MHz band, Broadcast Auxiliary Service licensees and fixed service licensees that are not operating on the new channel plan specified § 78.18(a)(6)(ii) must discontinue use of all operations in the 1990–2025 MHz band.

(iii) On the date that the first MSS licensee begins operations in the 2000–2020 MHz band, a one-year mandatory negotiation period begins between MSS licensees and Existing Licensees in DMAs 31–210, as such DMAs existed on September 6, 2000. After the end of the mandatory negotiation period, MSS licensees may involuntary relocate any Existing Licensees with which they have been unable to reach a negotiated agreement. As described elsewhere in this paragraph (f), MSS Licensees are obligated to relocate these Existing Licensees within the specified three- and five-year time periods.

(2) Before negotiating with MSS licensees, Existing Licensees in Nielsen Designated Market Areas where there is a BAS frequency coordinator must coordinate and select a band plan for the market area. If an Existing Licensee wishes to operate in the 2025–2110 MHz band using the channel plan specified in § 78.18(a)(6)(i) of this part, then all licensees within that Existing Licensee's market must agree to such operation and all must operate on a secondary basis to any licensee operating on the channel plan specified in § 78.18(a)(6)(ii). All negotiations must produce solutions that adhere to the market area's band plan.

(3) [reserved]

(4) [reserved]

(5) As of the date the first MSS Licensee begins operations in the 1990–2025 MHz band, MSS Licensees must relocate Existing Licensees in DMAs 31–100, as they existed as of September 6, 2000, within three years, and in the remaining DMAs, as they existed as of September 6, 2000, within five years.

(6) On December 9, 2013, all Existing Licensees will become secondary in the 1990–2025 MHz band. Upon written demand by any MSS Licensee, Existing Licensees must cease operations in the 1990–2025 MHz band within six months.

■ 9. Section 78.103(e), the table is amended by revising footnote 1 to read as follows:

§ 78.103 Emissions and emission limitations.

* * * * *

[1] After a licensee has been relocated in accordance with § 78.40, the maximum authorized bandwidth in the frequency band 2025 to 2010 MHz will be 12 megahertz.

PART 101—FIXED MICROWAVE SERVICES

■ The authority citation for part 101 continues to read as follows:

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

■ 10. Section 101.69 is amended by revising paragraph (d) to read as follows:

§ 101.69 Transition of the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands from the fixed microwave services to personal communications services and emerging technologies.

* * * * *

(d) Relocation of FMS licensees in the 2180–2200 MHz band by Mobile-Satellite Service (MSS) licensees, including MSS licensees providing Ancillary Terrestrial Component (ATC) service, will be subject to mandatory negotiations only. Mandatory negotiation periods are defined as follows:

(1) The mandatory negotiation period for non-public safety incumbents will end December 8, 2004.

(2) The mandatory negotiation period for public safety incumbents will end December 8, 2005.

■ 11. Section 101.73 is amended by revising paragraph (d) introductory text to read as follows:

§ 101.73 Mandatory negotiations.

* * * * *

(d) *Provisions for Relocation of Fixed Microwave Licensees in the 2180–2200*

MHz band. Notwithstanding references to voluntary negotiation periods elsewhere in this section, relocation of FMS licensees in the 2180–2200 MHz band by Mobile-Satellite Service (MSS) licensees (including MSS licensees providing Ancillary Terrestrial Component ''ATC'' service) will be subject to mandatory negotiations only. Mandatory negotiations will commence on January 7, 2004. Mandatory negotiations will be conducted with the goal of providing the fixed microwave licensee with comparable facilities, defined as facilities possessing the following characteristics:

* * * * *

■ 12. Section 101.79 is amended by revising the section heading and paragraph (a) to read as follows:

§ 101.79 Sunset provisions for licensees in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands.

(a) FMS licensees will maintain primary status in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands unless and until an ET (including MSS/ATC) licensee requires use of the spectrum. ET licensees are not required to pay relocation costs after the relocation rules sunset (*i.e.* ten years after the voluntary period begins for the first ET licensees in the service; or, in the case of the 2180–2200 MHz band, ten years after the mandatory negotiation period begins for MSS/ATC licensees in the service). Once the relocation rules sunset, an ET licensee may require the incumbent to cease operations, provided that the ET licensee intends to turn on a system within interference range of the incumbent, as determined by TIA Bulletin 10-F (for terrestrial-to-terrestrial situations) or TIA Bulletin TSB–86 (for MSS satellite-to-terrestrial situations) or any standard successor. ET licensee notification to the affected FMS licensee must be in writing and must provide the incumbent with no less than six months to vacate the spectrum. After the six-month notice period has expired, the FMS licensee must turn its license back into the Commission, unless the parties have entered into an agreement which allows the FMS licensee to continue to operate on a mutually agreed upon basis.

* * * * *

■ 13. Section 101.99 is redesignated as § 101.82.

[FR Doc. 03–30310 Filed 12–5–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3641, MM Docket No. 99–277, RM–9666]

Digital Television Broadcast Service; Corpus Christi, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Channel 3 of Corpus Christi, Inc., substitutes DTV channel 8 for DTV channel 47 at Corpus Christi. *See* 64 FR 50055, September 15, 1999. DTV channel 8 can be allotted to Corpus Christi in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 27–39–30 N. and 97–36–04 W. with a power of 160, HAAT of 289 meters and with a DTV service population of 491 thousand. Since the community of Corpus Christi is located within 275 kilometers of the U.S.-Mexican border, concurrence by the Mexican government has been obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective January 5, 2004.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–277, adopted November 13, 2003, and released November 19, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

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

PART 73—[AMENDED]

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

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

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Texas, is amended by removing DTV channel 47 and adding DTV channel 8 at Corpus Christi.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–30308 Filed 12–5–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 1018–AJ02

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 402

[Docket No. 030506115–3298–02]

RIN 0648–AR05

Joint Counterpart Endangered Species Act Section 7 Consultation Regulations

AGENCIES: U.S. Fish and Wildlife Service, Interior; Bureau of Land Management, Interior; National Park Service, Interior; Bureau of Indian Affairs, Interior; Forest Service, Agriculture; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule.

SUMMARY: This final rule codifies joint counterpart regulations for consultation under section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA), to streamline consultation on proposed projects that support the National Fire Plan (NFP), an interagency strategy approved in 2000 to reduce risks of catastrophic wildland fires and restore fire-adapted ecosystems. These counterpart regulations were developed, as part of the President's Healthy Forests Initiative announced in August 2002, by the U.S. Department of the Interior's Fish and Wildlife Service (FWS) and the U.S. Department of Commerce's National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS) (singly or jointly, Service), in cooperation with the U.S. Department of Agriculture's Forest Service (FS) and the Department of