established as a result of this change. Indeed there may be a reduction in State responsibilities since section 1115 demonstration populations will no longer have to be treated differently from other Medicaid eligibles.

In order to assist the States in making this information available to the Medicare fiscal intermediaries so they can accurately count days related to patients eligible under an 1115 waiver, we are issuing clarifying instructions to the States specifying exactly what data are to be included in the Medicare DSH calculation, and the States' role in providing this information. In addition, we are in ongoing contact with States that have waivers in order to assist and monitor the development and implementation of their waivers.

We believe this regulation meets Federalism requirements as it does not increase the burden on States and is responsive to requests from hospitals who partner with States in providing health services to needy populations.

List of Subjects in 42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 42 CFR chapter IV, part 412 is amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 412.106, republish the headings of paragraphs (b) and (b)(4), redesignate paragraph (b)(4)(ii) as paragraph (b)(4)(iii), and add a new paragraph (b)(4)(ii) to read as follows:

§ 412.106 Special treatment: Hospitals that serve a disproportionate share of low-income patients.

* * * * *

(b) Determination of a hospital's disproportionate patient percentage. * * *

(4) Second computation. * * *

(ii) Effective with discharges occurring on or after January 20, 2000, for purposes of counting days under paragraph (b)(4)(i) of this section, hospitals may include all days attributable to populations eligible for Title XIX matching payments through a waiver approved under section 1115 of the Social Security Act.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 22, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Approved: December 22, 1999.

Donna E. Shalala,

Secretary.

[FR Doc. 00–1357 Filed 1–14–00; 3:09 pm]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[CC Docket No. 99–168; FCC 00–5]

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

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document establishes service rules governing the initial assignment of licenses, by competitive bidding, and the subsequent regulatory treatment of commercial services to be provided on the 746–764 and 776–794 MHz Bands. The service rules adopted in this document enable assignment of these bands to licensees by competitive bidding, scheduled to commence in early May in order to comply with the statutory requirement that revenues from the auction of the commercial spectrum segments be received in the U.S. Treasury by September 30, 2000.

DATES: This rule is effective January 20, 2000.

FOR FURTHER INFORMATION CONTACT: Legal Information: Stan Wiggins, 202–418–1310; Technical Information: Martin Liebman, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's First Report and Order (First R&O) in WT Docket No. 99–168, FCC 00–5, adopted January 6, 2000, and released January 7, 2000. The complete text of this First R&O is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, S.W., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY–B400, 445 12th Street, S.W., Washington, DC. The informal text of the First R&O is posted on the Commission's Internet web site, at *www.fcc.gov/Bureaus/Wireless/Orders/2000/fcc00005.txt.*

Synopsis of the First Report and Order

1. The Commission adopts a First Report and Order (First R&O) in WT Docket No. 99–168, establishing service and auction rules for the commercial licensing of 36 megahertz of spectrum, the 746–764 and 776–794 Bands, as directed by Congress in the Balanced Budget Act of 1997. The subsequent legislation, referred to as the Consolidated Appropriations enactment directs the Commission to assign these licenses by competitive bidding, and to deposit revenues from those assignments in the U.S. Treasury no later than September 30, 2000. The assignment of this spectrum to commercial licensees has the potential to expand existing wireless services, both fixed and mobile, and to introduce both new technologies and new services.

2. The First R&O divides these Bands into several sub-bands, as subsequently described in the ''band plan'' and these decisions reflect broad spectrum management considerations. The First R&O also determines the more specific service rule and auction rule issues raised with respect to the sub-bands occupying 30 of the 36 megahertz, while it defers to a subsequent R&O the comparably specific issues raised with respect to the remaining 6 megahertz, which are designated as Guard Bands and occupy spectrum adjacent to frequencies previously allocated for public safety use. Those issues are the subject of a Public Notice issued January 7, 2000, which seeks additional comment on technical and operational issues. See Public Comment Sought On Issues Related To Guard Bands In The 746–764 MHz and 776–794 MHz Spectrum Block (WT Docket No. 99–168), Public Notice (January 7, 2000). A future R&O will also adopt revisions to Form 601.

3. These spectrum Bands occupy frequencies formerly reserved for analog UHF television service, and new licenses assigned by auction on these Bands will be required to protect existing UHF television services from harmful interference. This obligation to protect existing UHF television services will continue until the termination of analog television service, as part of the scheduled transition to digital television (DTV) service. Analog television licenses may not be renewed beyond December 31, 2006, unless the Commission determines that an extension is authorized. *See* 47 U.S.C. 309(j)(14)(B).

4. The First R&O is the Commission's first decision guided by principles enunciated in its Spectrum Reallocation Policy Statement. *See* Principles for Reallocation of Spectrum to Encourage the Development of Telecommunications Technologies for the New Millennium, FCC 99–354, November 22, 1999, (Spectrum Reallocation Policy Statement), 1999 WL 1054886 (1999). Based on that statement and the record in this proceeding, the First R&O adopts a flexible, market-based approach to determining service rules for this band, and declines to establish a unitary, 36 megahertz license as requested by some commenters. The potential for interference to public safety users, and the range of different services and spectrum needs asserted by commenting parties, make it undesirable to leave determination of the internal framework of these bands to a single commercial entity. Expanding demand for wireless voice and data services, rapid technological change, and the variety of interested parties and potential service applications support the Commission's conclusion that establishment of separate sub-bands will best ensure the realization of a variety of spectrum management priorities. These priorities include: (i) Protection of public safety operations; (ii) encouraging efficient and intensive use of spectrum; (iii) enabling potential entry by a variety of technologies and service providers.

5. Ensuring protection to public safety operations is achieved, in part, by the creation of Guard Bands. Encouraging efficient and intensive use of spectrum is furthered by creating sub-bands for applications of different scale, while allowing licensee flexibility in both the range of possible fixed and mobile wireless uses, and in the optional combination and post-auction division of these spectrum resources. The creation of the different sub-bands, rather than licensing the entire commercial band to a single licensee for a specified geographic area, in part reflects the preference of some parties, including proponents of new technologies and services, for smaller initial spectrum segments on which to bid. The two major sub-bands established by the First R&O, and the two paired Guard Bands, are configured as follows.

6. *Band Plan:* The largest sub-band is a 20 megahertz segment, consisting of two paired 10 megahertz blocks at 752–762 MHz and 782–792 MHz, provides a significant block of spectrum that should be desirable for providers of advanced wireless services requiring greater bandwidth. The greater flexibility of these larger bandwidth segments could be used, for example, to satisfy the asymmetric characteristics of data services. Providers of existing cellular and PCS services also contend that large spectrum blocks are needed to support mobile ''next generation'' telephony. The second major sub-band is half this size, a 10 megahertz segment consisting of two paired 5 megahertz blocks at 747–752 MHz and 777–782 MHz, and should be of interest to entities seeking to deploy innovative wireless technologies, including those with the potential to provide Internet access, that require less spectrum. The paired 5 megahertz blocks also, by their placement on the band, reduce the number of existing television channels to which a new licensee's operations would potentially cause interference. The designation of paired bands with distinct power limits, as described, is consistent with traditional practice for paired mobile services and achieves effective flexibility to enable such offerings without constraining new technologies and services.

7. Each of these sub-bands is open to both fixed and mobile services, under the technical rules specified, and is also open to new ''broadcast-type'' services that, consistent with the part 27 technical rules, might be subject to provisions of the Communications Act specifically directed at broadcast services. Bidders are permitted to bid on both sub-bands in a specific geographic area, and retain both if successful at auction.

8. Service and technical regulations governing the larger sub-bands were adopted in the First R&O and are described in more detail below. In contrast, service and technical regulations for the two spectrum blocks established as Guard Bands will be adopted in a future report and order, though the First R&O notes that the Commission intends to adopt more stringent interference protection standards for Guard Bands than for the larger sub-bands that do not directly abut public safety spectrum. The actions in the First R&O respecting Guard Bands are therefore limited to their designation in the band plan as two paired blocks of spectrum. The first Guard Band consists of two 1 megahertz segments, at 746–747 MHz and 776–777 MHz, and the second consists of two 2 megahertz segments, at 762–764 MHz and 792–794 MHz.

9. The two larger sub-bands will be auctioned on the basis of six Economic Area Groupings (EAGs), which should allow significant economies of scale to help reduce costs and increase efficiencies. Bidders may aggregate these regional licenses into nationwide licenses.

10. The First R&O also adopts standards to ensure protection of the approximately 100 existing conventional television stations permitted to continue operations on these bands during the transition to digital television, as well as rules for application licensing, technical and operational requirements, and competitive bidding. The structure of the band plan, and the related rules, establish a flexible structure intended to enable the most efficient and intensive use of this spectrum, and we describe below our review of these actions as required by section 303(y) of the Communications Act.

11. The NPRM in this proceeding sought comment both on broad spectrum management issues, including the internal framework of the spectrum band and possible sharing between services, as well as specific issues raised by the activation of commercial services on this band. *See* Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to part 27 of the Commission's rules, WT Docket No. 99–168, Notice of Proposed Rulemaking, FCC 99–97, June 3, 1999 (NPRM), 1999 WL 350460, 64 FR 36686, July 7, 1999. The band plan previously described addresses several spectrum management issues. Additional, more particular concerns arise over varied service and technical issues. Another broad spectrum issue is the Commission's concern over potential interference between conventional television and wireless services, if the full scope of flexible use were implemented for these spectrum blocks.

12. With regard to broad spectrum management, sharing of these bands by conventional television and wireless services is subject to section 303(y) of the Communications Act, which requires the Commission, before authorizing such ''flexible use'' of a spectrum allocation, to make several factual determinations. 47 U.S.C. 303(y). Specifically, the Commission must determine that such flexible use is consistent with international agreements, and also: (1) Would be in the public interest; (2) would not deter investment in communications services and systems, or technology development; and (3) would not result in harmful interference among users. Many commenters, representing a variety of potential service providers, asserted that renewed conventional television operations on these bands would create such a wide range of interference difficulties as to effectively preclude other, non-broadcast wireless

applications. The First R&O does not permit operations by conventional television stations, that is, by stations operating at power levels authorized by parts 73 and 74 of the Commission's rules. While spectrum markets benefit from flexible service rules, the Commission determined that the inherent technical conflicts between such disparate services would create substantial spectrum inefficiencies and render provision of both types of services on this spectrum impracticable.

13. Because the Commission determined not to enable conventional television services on these bands, it did not need to make the factual determinations required by section 303(y) as a precondition to such flexible use. The Commission also interpreted the section 303(y) review requirement as limited to regulatory decisions that enable flexible use between ''services'' as the term ''service'' is used in the allocations process. Thus, the Commission did not perform a section 303(y) review of rules that enable licensee flexibility within a specific service, though it did consider the section 303(y) criteria when making decisions under the broader public interest mandate in the statute.

14. At the same time that it declined to permit conventional television service, however, the Commission determined not to preclude broadcast-type services that comply with the power and other technical requirements established in part 27 for wireless services on these bands. With respect to these services, therefore, the Commission undertook the required section 303(y) review, and determined that because such broadcast-type services will be required to comply fully with the technical and operating regulations adopted for wireless services, they would create no additional interference attributable to sharing between broadcast and wireless services. The Commission also determined that it did not anticipate adverse investment or innovation effects from such services, and concluded that permitting broadcast-type services consistent with technical requirements imposed on wireless services is in the public interest and satisfies the criteria in section 303(y).

15. More particular licensing and operating rule concerns include: (1) The regulatory status of entities licensed under part 27; (2) eligibility restrictions; (3) aggregation and disaggregation; (4) ownership restrictions; (5) license terms and renewal; (6) performance requirements; (7) notice of initial applications and petitions to deny; (8) forbearance; and (9) equal employment opportunity. After reviewing the First R&O actions in these areas, we will turn to consider technical rules and competitive bidding, and finally the protection of television services.

16. (1) *Regulatory Status.* The rules adopted in the First R&O require licensees to identify the regulatory status of the services offered, such as common carrier or broadcast, and the Commission will revise Form 601 to add the broadcast option for new services on this Band.

17. *(2) Eligibility Restrictions.* The Commission believes that opening this spectrum to as wide a range of applicants as possible will encourage efforts to develop new technologies and services, and help to ensure the most efficient use of spectrum. Thus, the First R&O imposes no restrictions on eligibility, and also does not recognize these spectrum blocks for purposes of calculating the CMRS spectrum cap applied to cellular, broadband PCS, and SMR services. The Commission noted that including these bands in the cap and adjusting the cap upward would permit reconsolidation within present CMRS bands, renewing concerns about reduced competition and increased prices and reduced quality of services provided.

18. *(3) Aggregation and Disaggregation.* The initial sizing of EAG geographic licensing areas, described briefly in this summary, recognizes several spectrum management interests. First, these regional areas seem best suited to facilitate rapid service deployment, and to avoiding excessive concentration of licenses. Second, mindful of our statutory obligation to deposit auction revenues by September 30, 2000, we accord due weight to our experience with auctions for larger numbers of licenses, which are more complex and take longer to complete. Third, while the First R&O enables parties to aggregate spectrum and service areas when bidding, and to disaggregate spectrum and partition service areas after the auction, there are risks and costs associated with both aggregating geographic service areas and forming bidding consortia to obtain rights to areas smaller than the initial licensing areas. Fourth, the economies of scale that attach to larger licensing areas afford better prospects for developing standard protocols for specific applications, and for manufacturing equipment to operate at specific frequencies.

19. The Commission believes that permitting licensees in these bands to partition service areas and disaggregate spectrum will improve smaller entities' ability to overcome entry barriers, and facilitate greater participation by rural telephone companies and other smaller entities, including those owned by minorities and women. The First R&O also establishes bidding credits for small businesses.

20. *(4) Ownership restrictions.* The First R&O determines to apply existing 47 CFR 27.12, which implements section 310 of the Communications Act, to applicants for licenses on these bands regardless of the service they choose to provide. While the statute requires different substantive standards for compliance with alien ownership restrictions, depending on whether the licensee is providing common carrier or non-common carrier services, establishing parity with regard to reporting requirements will enable more effective Commission monitoring of compliance.

21. *(5) License terms and renewal.* The First R&O establishes an initial license term of approximately 14 years, until January 1, 2014, recognizing that incumbent television licensees pose an obstacle to fulfillment of new licensees' performance obligations. The 2014 expiration date reflects the judgment that licensees should be allowed eight years after the scheduled termination of the DTV transition as a reasonable period to fulfill those requirements. Licensees providing nonbroadcast services will also be given a renewal expectancy established in 47 CFR 27.14(b), which relies in part on the substantial service standards specified in the next paragraph. Licensees involved in a comparative renewal proceeding must include the 47 CFR 27.14(b) showing at a minimum to claim a renewal expectancy. Because the Communications Act establishes a maximum eight-year term for broadcast licensees, entities providing broadcast-type services on the 700 MHz bands will have to seek renewal eight years after initiating such services.

22. *(6) Performance requirements.* 47 CFR 27.14(a) requires commercial wireless licensees to provide ''substantial service'' to their service area within 10 years of being licensed. Several examples of ''safe harbors'' that demonstrate substantial service are provided in the part 27 Report and Order. See Amendment of the Commission's rules to Establish Part 27, the Wireless Communications Service (''WCS''), GN Docket No. 96–228, Report and Order, 12 FCC Rcd 10785 (1997) (Part 27 Report and Order), 62 FR 09636, March 3, 1997. We will apply those standards to licensees in the 747–762 MHz and 777–792 MHz bands. The First R&O also encourages licensees to

build out not only in urban areas and areas of high density population, but in rural areas as well, and cautions that licensees that do not serve rural areas, even if otherwise compliant with performance standards, will not necessarily be assured of license renewal. Failure to meet the substantial service requirement results in forfeiture of the license and ineligibility to regain it.

23. *(7) Notice of initial applications; petitions to deny.* The Commission in its Part 1 Third Report and Order previously exercised its statutory authority to provide for a seven-day public notice period for auctionable services and a five-day period for filing petitions to deny, and has determined in the First R&O to apply those periods to initial applications for license in this spectrum. See Amendment of Part 1 of the Commission's rules—Competitive Bidding Procedures, WT Docket No. 97–82, Allocation of Spectrum Below 5 GHZ Transferred from Federal Government Use, 4660–4685 MHz, ET Docket No. 94–32, Third Report and Order and Second Further Notice of Proposed Rulemaking, 13 FCC Rcd 374, 431 (para. 98) (1997), recon. pending, 62 FR 13540 March 21, 1997.

24. *(8) Forbearance.* The Commission has previously forborne from applying certain obligations imposed on common carriers by Title II of the Communications Act. Common carriers classified as CMRS, who provide mobile services in the 747–762 MHz and 777–792 MHz bands, will not be required to file contracts of service, seek authority for interlocking directors, or submit applications for new facilities or discontinuance of existing facilities. Such providers also will not be required to file tariffs for most international services, or be subject to most of section 226 of the Communications Act, relating to telephone operator services. CMRS providers on these bands will also be subject to the Commission's complete detariffing of interstate, interexchange services offered by non-dominant interexchange carriers, to our elimination of part 41 requirements applicable to franks, and to our elimination of prior approval requirements for most pro forma transfer applications involving telecommunications carriers. CMRS providers on this spectrum will, however, be required to support service provider Local Number Portability by November 24, 2002.

25. With regard to providers of fixed common carrier services, such entities are specifically exempt from the requirement that authority be sought for interlocking directorates, following the Commission's decision in its 1998 Biennial Regulatory Review of part 62 of the Commission rules. See 1998 Biennial Regulatory Review—Repeal of part 62 of the Commission's rules, CC Docket No. 98–195, Report and Order, FCC 99–163 (July 16, 1999), 1999 WL 503615, 64 FR 43937, August 13, 1999. In addition, the First R&O applies to licensees on these bands the recent amendment of 47 CFR 63.71, which provides for the automatic grant of a nondominant common carrier's application for discontinuance after 31 days. This establishes comparable regulatory treatment between wireline providers and fixed wireless providers operating on the 747–762 MHz and 777–792 MHz bands.

26. The Commission's network reliability requirements, however, will not apply to fixed service common carrier licensees on this spectrum. When such services are involuntarily discontinued, reduced, or impaired for more than 48 hours, the licensee must promptly notify the Commission in writing of the reasons, and include a statement indicating when normal service will be resumed. The licensee must also promptly notify the Commission when normal service is resumed.

27. The First R&O also determined that a non-common carrier licensee on these bands that voluntarily discontinues, reduces, or impairs service to a community or part of a community will be required to give written notice to the Commission within seven days. Neither a non-common carrier nor a fixed service common carrier, however, need surrender its license for cancellation if the ''discontinuance'' is merely a change in common carrier or non-common carrier status.

28. *(9) Equal employment opportunity (EEO).* Because the service rules permit licensees on these bands to provide any service consistent with the technical regulations, including wireless and broadcast services, the Commission determined not to include an explicit EEO provision in part 27 of the rules. Rather, an applicant's election on its Form 601 of one of several specific regulatory classifications will determine which of the several, service-based Commission EEO rules will apply.

29. We now turn to technical rules. These can be divided into: (1) In-band interference control; (2) out-of-band and spurious emission limits; (3) RF safety and power limits; and (4) special considerations raised by use of channels 65, 66 and 67. Apart from the specific provisions described here, all licensees are subject to the general provisions of part 27.

30. *(1) In-band interference control.* The First R&O adopts the field strength limit approach to control co-channel interference in these bands. The rules thus require licensees to limit signals from all base and fixed stations operating in the 747–762 MHz band to a predicted or measured field strength, specifically 40 dBu/m, at the licensee's geographic border.

31. *(2) Out-of-band and spurious emission limits.* The NPRM in this proceeding recognized both general concerns with interference caused by emissions outside the licensee's assigned spectrum, and specifically stated Congressional concern with ensuring that public safety service licensees operate free of interference from new commercial licensees. In the First R&O, the Commission seeks to protect public safety services while maintaining the viability of adjacent commercial bands. Specifically, the First R&O requires licenses operating in the 747–762 MHz and 777–792 MHz bands to attenuate power for emissions on any frequency outside the authorized spectrum by at least 43 + 10 log (P) dB, where P is the transmitter power. In addition, the Commission adopts a more stringent out-of-band emission limit (OOBE) of 76 + 10 log10 (P) dB per 6.25 kHz for emissions from base station transmitters operating on the 747–762 MHz sub-bands into the 764–776 MHz and 794–806 MHz public safety bands.

32. For mobile and portable transmitters, which will operate in the 777–792 MHz sub-band, the First R&O specifies an OOBE attenuation requirement of at least 65 + 10 log P dB per 6.25 kHz in the 764–776 MHz and 794–806 MHz public safety bands. If fixed transmissions are employed in the 777–792 MHz band, interference to public safety operations in the 764–776 MHz band would resemble the type of interference to that band caused by base stations operating in the 747–762 MHz band (and for which we have adopted a 76 + 10 log P standard). Accordingly, for fixed transmissions in the 777–792 MHz band, the First R&O adopts the standard applied to emissions from base stations in the 747–762 MHz band, which requires attenuation of fixed transmitters by at least 76 + 10 log P dB per 6.25 kHz in the 764–776 and 794–806 MHz public safety bands. The Commission also stated its intention to consider greater out-of-band attenuation when emissions from a transmitter operating in the 747–762 and 777–792 MHz bands causes harmful interference to public safety operations.

33. These technical regulations governing OOBE and spurious emissions are supplemented by additional regulations governing use of channels 65, 66, and 67.

34. *(3) RF safety and power limits.* The First R&O adopts a threshold of 1000 w ERP for categorical exclusion from routine evaluation for RF exposure for base and fixed stations. For portable devices, the First R&O adopts a maximum power of 3 w ERP, with the provision that these devices be evaluated for RF exposure in compliance with § 2.1093 of the Commission's rules. This will require modification of §§ 1.1307(b), 2.1091, and 2.1093 of the Commission's rules to include potential services and devices developed for use in the 700 MHz band.

35. The First R&O adopts the following power limits: (1) For base stations and fixed stations operating in the 747–762 MHz band, an effective radiated power (ERP) no greater than 1,000 watts and an antenna height above average terrain (HAAT) no greater than 305 meters; (2) for mobile, fixed, and control stations operating in the 777–792 MHz band, an ERP no greater than 30 watts; and (3) for portable stations operating in the 777–792 MHz band, an ERP no greater than 3 watts.

36. *(4) Special considerations for Use of Channels 65, 66, and 67.* The second harmonic transmissions of services operating on these channels, from 776 MHz to 794 MHz, fall within a band used for radionavigation in the Global Navigation Satellite System (GNSS), which includes the Global Positioning System (GPS). To protect this system and ensure that commercial equipment operating in these bands does not cause interference to the GNSS, especially when GNSS is used for precision approach and landing, the First R&O adopts the following OOBE limits for all spurious emissions, including harmonics, that fall within the 1559–1610 MHz frequency range, from equipment operating in the 747–762 MHz and 777–792 MHz bands. First, for wideband emissions, the OOBE limit will be −70 dBW/MHz equivalent isotropically radiated power (EIRP). Second, for discrete emissions of less than 700 Hz bandwidth, an absolute EIRP limit of −80 dBW.

37. We now turn to competitive bidding issues. The First R&O determined that because the Commission has not yet completed the development of a practical means of implementing combinatorial bidding procedures, such procedures should not be used for these bands. The Commission will use the competitive bidding procedures contained in subpart Q of Part 1 of the Commission's rules for the auction of licenses in these bands, including any amendments adopted in the ongoing part 1 proceeding. While these rules generally will be adequate for the auction of licenses for all uses permitted in these bands, the Commission also directed the Wireless Telecommunications Bureau to adopt, if operationally feasible, an optional nationwide bid withdrawal procedure for the 747–762 MHz and 777–792 MHz bands that would cap bid withdrawal payments for bidders seeking a 30 megahertz nationwide aggregation. Such a procedure would require applicants to declare on their short-form applications whether they seek a 30 megahertz nationwide aggregation and wish to be subject to the nationwide bid withdrawal provisions. Applicants that choose to be such a nationwide bidder would not be allowed to bid on anything other than all licenses comprising the 30 megahertz aggregation, and must win either this aggregation or no licenses at all. The bid withdrawal payment for a 30 megahertz nationwide bidder that withdraws from the auction would be calculated as the difference between the sum of the withdrawn bids and the sum of the subsequent high bids on the withdrawn licenses. In addition, nationwide bid withdrawal payments would be limited to a certain percentage, such as 5 percent, of the aggregate withdrawn bids. Applicants that do not choose this nationwide bid withdrawal option may still aggregate licenses pursuant to the standard bid withdrawal provisions. The Bureau will seek comment on whether to implement this procedure in its public notice seeking comment on auction procedures for these bands, and will announce, prior to the filing of short-form applications for the auction, whether a 30 megahertz nationwide aggregation subject to this procedure will be available.

38. For purposes of the auction of licenses for these bands, the Commission will define a small business as an entity with average annual gross revenues for the preceding three years not exceeding $40 million. A very small business is an entity with average annual gross revenues for the preceding three years not exceeding $15 million. In calculating gross revenues for purposes of small business eligibility, the Commission will attribute the gross revenues of the applicant, its controlling interests and its affiliates. Consistent with the levels of bidding credits adopted in the Part 1 proceeding, small businesses will receive a 15 percent bidding credit, and very small businesses will receive a 25 percent bidding credit. The First R&O does not adopt special preferences for entities owned by minorities or women, because the Commission does not have an adequate record to support such special provisions under current standards of judicial review.

39. We now turn to protection of television services from interference caused by licensees on these bands. Previous Commission decisions stated that television operations in the 746–806 MHz band would be fully protected during the digital television (DTV) transition period. See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87–268, Sixth Report and Order, 12 FCC Rcd 14588 (1997), 62 FR 2668, July 11, 1997; Reallocation of Television Channels 60–69, the 746–806 MHz Band, ET Docket No. 97–157, Notice of Proposed Rule Making, 12 FCC Rcd 14141 (1997), 62 FR 41012, July 31, 1997. The subsequent Public Safety Spectrum Report and Order, adopting service rules for the public safety uses of the 700 MHz band, addressed the protection of transitional television operations in the 764–776 MHz and 794–806 MHz public safety bands. See In the Matter of Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State, and local Public Safety Agency Requirements Through the Year 2010; Establishment of Rules and Requirements For Priority Access Service, WT Docket No. 96–86, First Report and Order and Third Notice of Proposed Rulemaking, 14 FCC Rcd 152 (1998), 63 FR 58645, November 2, 1998 (Public Safety Spectrum Report and Order). The Commission concludes in the First R&O that the factors and considerations examined in the Public Safety Spectrum Report and Order with regard to protection of television service should also apply to the use of the 747–762 MHz and 777–792 MHz bands. Licensees operating on these bands will be required to comply with the provisions of 47 CFR 90.545, and the First R&O incorporates those provisions into part 27, as 47 CFR 27.60.

40. The existing agreements with Canada and Mexico covering television broadcast use of the UHF 470–806 MHz band do not reflect the additional use or services being adopted in the First R&O. Until supplemental agreements have been finalized, licenses issued for these bands within 120 km of the national borders will be subject to such future agreements. Licensees operating in border areas will be granted on the condition that harmful interference may not be caused to, but must be accepted

from, UHF television transmitters in Canada and Mexico. Also, pending further negotiations, the First R&O adopts the protection criteria for domestic television stations as interim criteria for Canadian and Mexican television stations.

41. The effect of continued television operations by protected incumbents on the usefulness of these spectrum blocks was recognized in the NPRM, which proposed to permit new licensees to reach agreement with protected, incumbent television licensees for: (1) Accelerated conversion to DTV-only transmission; (2) acceptance of higher levels of interference than allowed by the protection standards; or (3) otherwise accommodating the new licensees. The First R&O recognizes the spectrum management challenge of both minimizing the operational difficulties posed by incumbents to new wireless licensees, while maintaining broadcast services through the transition period. The extended license term specified for services on these bands reflects that licensees may not have uncompromised use of the spectrum resource for some years, under the statutory provision for DTV transition.

42. In addition, to the extent that incumbent television licensees seek to negotiate with new licensees on these bands, and develop accommodations that affect only the analog television broadcast, the unitary license established for NTSC and DTV television facilities may pose administrative complications. The First R&O states the Commission's willingness to consider specific regulatory requests needed to implement voluntary agreements reached between incumbent television licensees and new licensees in these bands. In considering the public interest aspects of specific requests, the Commission would consider both the benefits of provisioning new wireless services, including service to underserved areas, and the loss of service to the community of the broadcast licensee.

Final Regulatory Flexibility Analysis

43. As required by the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the NPRM issued in this proceeding. See Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99–168, Notice of Proposed Rulemaking, FCC 99–97, June 3, 1999 (NPRM), 1999 WL 350460, 64 FR 36686, July 7, 1999. The Commission sought written public comments in the NPRM, including comment on the IRFA. Under the provisions of the Consolidated Appropriations enactment, however, the Commission is exempt from 5 U.S.C. Chapter 6 and so is not required to prepare a Final Regulatory Flexibility Analysis (FRFA) as part of this First R&O. See Consolidated Appropriations, Appendix E. Sec. 213. See also 145 Cong. Rec. at H12493–94 (Nov. 17, 1999).

Ordering Clauses

44. Part 27 of the Commission's Rules is accordingly amended. The rule amendments made by this First R&O shall become effective January 20, 2000, pursuant to the Consolidated Appropriations statute. See Public Law 106–113, 113 Stat. 1501, Appendix E, Section 213. ''Making consolidated appropriations for the fiscal year ending September 30, 2000, and for other purposes.'' (Consolidated Appropriations). See also 145 Cong. Rec. at H12493–94, H12501 (Nov. 17, 1999).

45. The Office of Public Affairs, Reference Operations Division, shall send a copy of this First R&O to the Chief Counsel for Advocacy of the Small Business Administration.

Paperwork Reduction Act

46. The First R&O contains a new information collection. The actions contained in this First R&O are, however, exempt from the Paperwork Reduction Act of 1995 under the Consolidated Appropriations statute. See Consolidated Appropriations, Appendix E. Sec. 213. See also 145 Cong. Rec. at H12493–94 (Nov. 17, 1999). Implementation of the revisions to part 27 required to assign licenses in these commercial spectrum bands, including revisions to information collections, are therefore not subject to approval by the Office of Management and Budget, and became effective on adoption. As a matter of information, the new paperwork requirements contained in the First R&O are limited to: (1) Minor revisions to existing Commission Form 601, to reflect the scope of possible services to be provided on these spectrum blocks; and (2) the application of existing information collection requirements associated with the auction and licensing processes to entities participating in the auction of these spectrum blocks.

List of Subjects CFR 47 CFR Part 27

Telecommunications.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

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

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

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

2. The heading for part 27 is revised to read as follows:

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

3. Section 27.1 is amended in paragraph (a) by removing the phrase ''for the Wireless Communications Service (WCS)'' and adding in its place the phrase ''for miscellaneous wireless communications services (WCS)'', and by revising paragraph (b) to read as follows:

§ 27.1 Basis and purpose.

* * * * *

(b) *Purpose.* This part states the conditions under which spectrum is made available and licensed for the provision of wireless communications services in the following bands.

(1) 2305–2320 MHz and 2345–2360 MHz.

(2) 747–762 MHz and 777–792 MHz.

* * * * *

4. Section 27.2 is revised to read as follows:

§ 27.2 Permissible communications.

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

(b) *Satellite DARS.* Satellite digital audio radio service (DARS) may be provided using the 2310–2320 and 2345–2360 MHz bands. Satellite DARS service shall be provided in a manner consistent with part 25 of this chapter.

5. Section 27.3 is amended by redesignating paragraph (e) as paragraph (f), paragraphs (f), (g), and (h) as paragraphs (k), (l), and (m), and by adding paragraphs (e), (g), (h), (i), (j) and (n) to read as follows:

§ 27.3 Other applicable rule parts.

* * * * *

(e) *Part 15.* This part sets forth the requirements and conditions applicable to certain radio frequency devices.

* * * * *

(g) *Part 20.* This part sets forth the requirements and conditions applicable to commercial mobile radio service providers.

(h) *Part 21.* This part sets forth rules the requirements and conditions applicable to point-to-point microwave services relating to communications common carriers.

(i) *Part 22.* This part sets forth the requirements and conditions applicable to public mobile services.

(j) *Part 24.* This part sets forth the requirements and conditions applicable to personal communications services.

* * * * *

(n) *Part 101.* This part sets forth the requirements and conditions applicable to fixed microwave services.

6. Section 27.4 is amended by adding a new definition for ''broadcast services'', and revising the definition for ''wireless communications service'' in alphabetical order to read as follows:

§ 27.4 Terms and definitions.

* * * * *

Broadcast services. This term shall have the same meaning as that for ''broadcasting'' in section 3(6) of the Communications Act of 1934, *i.e.,* ''the dissemination of radio communications intended to be received by the public, directly or by the intermediary of relay stations.'' 47 U.S.C. 153(6).

* * * * *

Wireless communications service. A radiocommunication service licensed pursuant to this part for the frequency bands specified in § 27.5.

7. Section 27.5 is amended by redesignating paragraphs (a) and (b) as (a)(1) and (a)(2), redesignating and revising the introductory text as paragraph (a) and adding paragraph (b) to read as follows:

§ 27.5 Frequencies.

(a) *2305–2320 MHz and 2345–2360 MHz bands.* The following frequencies are available for WCS in the 2305–2320 MHz and 2345–2360 MHz bands:

* * * * *

(b) *746–764 MHz and 776–794 MHz bands.* The following frequencies are available for licensing pursuant to this part in the 746–764 MHz and 776–794 MHz bands:

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

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

(3) Two paired channels of 5 megahertz each are available for assignment. Block C: 747–752 MHz and 777–782 MHz.

(4) Two paired channels of 10 megahertz each are available for assignment. Block D: 752–762 MHz and 782–792 MHz.

8. Section 27.6 is amended by redesignating paragraphs (a) and (b) as (a)(1) and (a)(2), redesignating and revising the introductory text as paragraph (a), and adding a new paragraph (b) to read as follows:

§ 27.6 Service areas.

(a) *2305–2320 MHz and 2345–2360 MHz bands.* WCS service areas for the 2305–2320 MHz and 2345–2360 MHz bands are Major Economic Areas (MEAs) and Regional Economic Area Groupings (REAGs) as defined below. Both MEAs and REAGs are based on the U.S. Department of Commerce's 172 Economic Areas (EAs). See 60 FR 13114 (March 10, 1995). In addition, the Commission shall separately license Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, American Samoa, and the Gulf of Mexico, which have been assigned Commission-created EA numbers 173–176, respectively. Maps of the EAs, MEAs, and REAGs and the **Federal Register** Notice that established the 172 EAs are available for public inspection and copying at the FCC Public Reference Room, Room CY–A257, 445 12th Street SW, Washington, D.C. 20554.

* * * * *

(b) *746–764 MHz and 776–794 MHz bands.* WCS service areas for the 746–764 MHz and 776–794 MHz bands are as follows.

(1) [Reserved]

(2) Service areas for Blocks C and D in the 747–762 MHz and 777–792 MHz bands are based on Economic Area Groupings (EAGs) as defined by the Federal Communications Commission. *See* 62 FR 15978 (April 3, 1997) extended with the Gulf of Mexico. *See* also 62 FR 9636 (March 3, 1997), in which the Commission created an additional four economic area-like areas for a total of 176. Maps of the EAGs and the **Federal Register** Notice that established the 172 Economic Areas (EAs) are available for public inspection and copying at the Reference Center, Room CY A–257, 445 12th St., S.W., Washington, DC 20554. These maps and data are also available on the FCC website at *www.fcc.gov/oet/info/maps/areas/.*

(i) There are 6 EAGs, which are composed of multiple EAs as defined in the table below:

Economic area groupings	Name	Economic areas
EAG001	Northeast	1–11, 54
EAG002	Mid-Atlantic	12–26, 41, 42, 44–53, 70
EAG003	Southeast	27–40, 43, 69, 71–86, 88–90, 95, 96, 174, 176(part)
EAG004	Great Lakes	55–68, 97, 100–109
EAG005	Central/Mountain	87, 91–94, 98, 99, 110–146, 148, 149, 152, 154–159, 176(part)
EAG006	Pacific	147, 150, 151, 153, 160–173, 175

Note 1 to paragraph (b)(2)(i): Economic Area Groupings are defined by the Federal Communications Commission; *see* 62 FR 15978 (April 3, 1997) extended with the Gulf of Mexico.

Note 2 to paragraph (b)(2)(i): Economic Areas are defined by the Regional Economic Analysis Division, Bureau of Economic Analysis, U.S. Department of Commerce February 1995 and extended by the Federal Communications Commission, *see* 62 FR 9636 (March 3, 1997).

(ii) For purposes of paragraph (b)(2)(i) of this section, EA 176 (the Gulf of Mexico) will be divided between EAG003 (the Southeast EAG) and EAG005 (the Central/Mountain EAG) in accordance with the configuration of the Eastern/ Central and Western Planning Area established by the Mineral Management Services Bureau of the Department of the Interior (MMS). That portion of EA 176 contained in the Eastern and Central Planning Areas as defined by MMS will be included in

EAG003; that portion of EA 176 contained in the Western Planning Area as defined by MMS will be included in EAG005. Maps of these areas may be found on the following MMS website: *www.gomr.mms.gov/homepg/offshore/offshore.html.*

9. Section 27.10 is added to subpart B to read as follows:

§ 27.10 Regulatory status.

(a) *Single authorization.* Authorization will be granted to provide any or a combination of the following services in a single license: common carrier, non-common carrier, and broadcast. A licensee may render any kind of communications service consistent with the regulatory status in its license and with the Commission's rules applicable to that service. An applicant or licensee may submit a petition at any time requesting clarification of the regulatory status for which authorization is required to provide a specific communications service.

(b) *Designation of regulatory status in initial application.* An applicant shall specify in its initial application if it is requesting authorization to provide common carrier, non-common carrier, or broadcast services, or a combination thereof.

(c) *Amendment of pending applications.* The following rules apply to amendments of a pending application.

(1) Any pending application may be amended to:

(i) Change the carrier regulatory status requested, or

(ii) Add to the pending request in order to obtain common carrier, non-common carrier, or broadcast status, or a combination thereof, in a single license.

(2) Amendments to change, or add to, the carrier regulatory status in a pending application are minor amendments filed under § 1.927 of this chapter.

(d) *Modification of license.* The following rules apply to amendments of a license.

(1) A licensee may modify a license to:

(i) Change the regulatory status authorized, or

(ii) Add to the status authorized in order to obtain a combination of services of different regulatory status in a single license.

(2) Applications to change, or add to, the carrier status in a license are modifications not requiring prior Commission authorization. The licensee must notify the Commission within 30 days of the change. If the change results in the discontinuance, reduction, or impairment of an existing service, the licensee is subject to the provisions of § 27.66.

10. Section 27.11 is amended by adding the following sentences to the end of paragraph (a), by revising paragraph (b), and by adding a new paragraph (c) to read as follows:

§ 27.11 Initial authorization.

(a) * * * Initial authorizations shall be granted in accordance with § 27.5. Applications for individual sites are not required and will not be accepted, except where required for environmental assessments, in accordance with §§ 1.1301 through 1.1319 of this chapter.

(b) *2305–2320 MHz and 2345–2360 MHz bands.* Initial authorizations for the 2305–2320 MHz and 2345–2360 MHz bands shall be for 10 megahertz of spectrum in accordance with § 27.5(a).

(1) Authorizations for Blocks A and B will be based on Major Economic Areas (MEAs), as specified in § 27.6(a)(1).

(2) Authorizations for Blocks C and D will be based on Regional Economic Area Groupings (REAGs), as specified in § 27.6(a)(2).

(c) *746–764 MHz and 776–794 MHz bands.* Initial authorizations for the 746–764 MHz and 776–794 MHz blocks shall be for 1, 2, 5, or 10 megahertz of spectrum in accordance with § 27.5(b).

(1) Authorizations for Block A, consisting of two paired channels of 1 megahertz each, will be based on those geographic areas specified in § 27.6(b)(1).

(2) Authorizations for Block B, consisting of two paired channels of 2 megahertz each, will be based on those geographic areas specified in § 27.6(b)(1).

(3) Authorizations for Block C, consisting of two paired channels of 5 megahertz each, will be based on Economic Area Groupings (EAGs), as specified in § 27.6(b)(2).

(4) Authorizations for Block D, consisting of two paired channels of 10 megahertz each, will be based on EAGs, as specified in § 27.6(b)(2).

11. Section 27.13 is revised to read as follows:

§ 27.13 License period.

(a) *2305–2320 MHz and 2345–2360 MHz bands.* Initial WCS authorizations for the 2305–2320 MHz and 2345–2360 MHz bands will have a term not to exceed ten years from the date of original issuance or renewal.

(b) *747–762 MHz and 777–792 MHz bands.* Initial authorizations for the 747–762 MHz and 777–792 MHz bands will extend until January 1, 2014, except that a part 27 licensee commencing broadcast services, will be required to seek renewal of its license for such services at the termination of the eight-year term following commencement of such operations.

§ 27.14 [Amended]

12. Section 27.14 is amended in paragraph (a) by removing ''ten years of being licensed'' and adding in its place ''the prescribed license term set forth in § 27.13''.

13. Section 27.15 is amended by revising paragraph (b)(4) and adding a new paragraph (e) to read as follows:

§ 27.15 Geographic partitioning and spectrum disaggregation.

* * * * *

(b) * * *

(4) *Signal levels.* For purposes of partitioning and disaggregation, part 27 systems must be designed so as not to exceed the signal level specified for the particular spectrum block in § 27.55 at the licensee's service area boundary, unless the affected adjacent service area licensees have agreed to a different signal level.

* * * * *

(e) *Compliance with construction requirements.* The following rules apply for purposes of implementing the construction requirements set forth in § 27.14.

(1) *Partitioning.* Parties to partitioning agreements have two options for satisfying the construction requirements set forth in § 27.14. Under the first option, the partitioner and partitionee each certifies that it will independently satisfy the substantial service requirement for its respective partitioned area. If a licensee subsequently fails to meet its substantial service requirement, its license will be subject to automatic cancellation without further Commission action. Under the second option, the partitioner certifies that it has met or will meet the substantial service requirement for the entire, pre-partitioned geographic service area. If the partitioner subsequently fails to meet its substantial service requirement, only its license will be subject to automatic cancellation without further Commission action.

(2) *Disaggregation.* Parties to disaggregation agreements have two options for satisfying the construction requirements set forth in § 27.14. Under the first option, the disaggregator and disaggregatee each certifies that it will share responsibility for meeting the substantial service requirement for the geographic service area. If the parties choose this option and either party subsequently fails to satisfy its substantial service responsibility, both

parties' licenses will be subject to forfeiture without further Commission action. Under the second option, both parties certify either that the disaggregator or the disaggregatee will meet the substantial service requirement for the geographic service area. If the parties choose this option, and the party responsible subsequently fails to meet the substantial service requirement, only that party's license will be subject to forfeiture without further Commission action.

14. Section 27.50 is amended by redesignating paragraphs (a) and (b) as paragraphs (b)(1) and (b)(2), by removing ''in the 2305–2320 MHz and 2345–2360 MHz bands'', each place it appears, by adding new paragraphs (a) and (b) introductory text, and by adding Table 1 following paragraph (c) to read as follows:

§ 27.50 Power and antenna height limits.

(a) The following power and antenna height limits apply to transmitters operating in the 747–762 MHz and 777–792 MHz bands:

(1) Fixed and base stations transmitting in the 747–762 MHz band must not exceed an effective radiated power (ERP) of 1000 watts and an antenna height of 305 m height above average terrain (HAAT), except that antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 1000 watts ERP in accordance with Table 1 of this section;

(2) Fixed, control, and mobile stations transmitting in the 777–792 MHz band are limited to 30 watts ERP;

(3) Portable stations (hand-held devices) transmitting in the 777–792 MHz band are limited to 3 watts ERP;

(4) Maximum composite transmit power shall be measured over any interval of continuous transmission using instrumentation calibrated in terms of RMS-equivalent voltage. The measurement results shall be properly adjusted for any instrument limitations, such as detector response times, limited resolution bandwidth capability when compared to the emission bandwidth, etc., so as to obtain a true maximum composite measurement for the emission in question over the full bandwidth of the channel.

(b) The following power limits apply to the 2305–2320 MHz and 2345–2360 MHz bands:

* * * * *

(c) * * *

TABLE 1.—PERMISSIBLE POWER AND ANTENNA HEIGHTS FOR BASE AND FIXED STATIONS IN THE 747–762 MHZ BAND

Antenna height (AAT) in meters (feet)	Effective radiated power (ERP) (watts)
Above 1372 (4500)	65
Above 1220 (4000) To 1372 (4500)	70
Above 1067 (3500) To 1220 (4000)	75
Above 915 (3000) To 1067 (4000)	100
Above 763 (2500) To 915 (3000)	140
Above 610 (2000) To 763 (2500)	200
Above 458 (1500) To 610 (2000)	350
Above 305 (1000) To 458 (1500)	600
Up to 305 (1000)	1000

15. Section 27.51 is revised to read as follows:

§ 27.51 Equipment authorization.

(a) Each transmitter utilized for operation under this part must be of a type that has been authorized by the Commission under its certification procedure.

(b) Any manufacturer of radio transmitting equipment to be used in these services may request equipment authorization following the procedures set forth in subpart J of part 2 of this chapter. Equipment authorization for an individual transmitter may be requested by an applicant for a station authorization by following the procedures set forth in part 2 of this chapter.

16. Section 27.53 is amended by revising paragraph (a) introductory text, redesignating paragraph (c) as paragraph (f), and adding paragraphs (c), (d) and (e) to read as follows:

§ 27.53 Emission limits.

(a) For operations in the bands 2305–2320 MHz and 2345–2360 MHz, the power of any emission outside the licensee's frequency band(s) of operation shall be attenuated below the transmitter power (P) within the licensed band(s) of operation, measured in watts, by the following amounts:

* * * * *

(c) For operations in the 747 to 762 MHz band, the power of any emission outside the licensee's frequency band(s) of operation shall be attenuated below the transmitter power (P) within the licensed band(s) of operation, measured in watts, in accordance with the following:

(1) On any frequency outside the 747 to 762 MHz band, the power of any emission shall be attenuated outside the band below the transmitter power (P) by at least 43 + 10 log (P) dB;

(2) On all frequencies between 764 to 776 MHz and 794 to 806 MHz, by a factor not less than 76 + 10 log (P) dB in a 6.25 kHz band segment;

(3) Compliance with the provisions of paragraph (c)(1) of this section is based on the use of measurement instrumentation employing a resolution bandwidth of 100 kHz or greater. However, in the 100 kHz bands immediately outside and adjacent to the frequency block, a resolution bandwidth of at least 30 kHz may be employed;

(4) Compliance with the provisions of paragraph (c)(2) of this section is based on the use of measurement instrumentation such that the reading taken with any resolution bandwidth setting should be adjusted to indicate spectral energy in a 6.25 kHz segment.

(d) For operations in the 777 to 792 MHz band, the power of any emission outside the licensee's frequency band(s)of operation shall be attenuated below the transmitter power (P) within the licensed band(s) of operation, measured in watts, in accordance with the following:

(1) On any frequency outside the 777 to 792 MHz band, the power of any emission shall be attenuated outside the band below the transmitter power (P) by at least 43 + 10 log (P) dB;

(2) On all frequencies between 764 to 776 MHz and 794 to 806 MHz, by a factor not less than 65 + 10 log (P) dB in a 6.25 kHz band segment, for mobile and portable stations transmitting in the 777 to 792 MHz band;

(3) On all frequencies between 764 to 776 MHz and 794 to 806 MHz, by a factor not less than 76 + 10 log (P) dB in a 6.25 kHz band segment, for fixed stations transmitting in the 777 to 792 MHz band;

(4) Compliance with the provisions of paragraph (d)(1) of this section is based on the use of measurement instrumentation employing a resolution bandwidth of 100 kHz or greater. However, in the 100 kHz bands immediately outside and adjacent to the frequency block, a resolution bandwidth of at least 30 kHz may be employed;

(5) Compliance with the provisions of paragraphs (d)(2) and (d)(3) of this section is based on the use of measurement instrumentation such that the reading taken with any resolution bandwidth setting should be adjusted to indicate spectral energy in a 6.25 kHz segment.

(e) For operations in the 747–762 MHz and 777–792 MHz bands, emissions in the band 1559–1610 MHz shall be limited to −70 dBW/MHz equivalent isotropically radiated power

(EIRP) for wideband signals, and −80 dBW EIRP for discrete emissions of less than 700 Hz bandwidth. For the purpose of equipment authorization, a transmitter shall be tested with an antenna that is representative of the type that will be used with the equipment in normal operation.

* * * * *

17. Section 27.55 is revised to read as follows:

§ 27.55 Field strength limits.

The predicted or measured median field strength at any location on the geographical border of a part 27 service area shall not exceed the value specified for the following bands, unless the adjacent affected service area licensees agree to a different field strength. This value applies to both the initially offered service areas and to partitioned, service areas.

(a) 2305–2320 and 2345–2360 MHz bands: 47 dBuV/m.

(b) 747–762 and 777–792 MHz bands: 40 dBuV/m.

18. Section 27.60 is added to read as follows:

§ 27.60 TV/DTV interference protection criteria.

Base, fixed, control, and mobile transmitters in the 747–762 MHz and 777–792 MHz frequency bands must be operated only in accordance with the rules in this section to reduce the potential for interference to public reception of the signals of existing TV and DTV broadcast stations transmitting on TV Channels 59 through 68.

(a) *D/U ratios.* Licensees must choose site locations that are a sufficient distance from co-channel and adjacent channel TV and DTV stations, and/or must use reduced transmitting power or transmitting antenna height such that the following minimum desired signal-to-undesired signal ratios (D/U ratios) are met.

(1) The minimum D/U ratio for co-channel stations is 40 dB at the hypothetical Grade B contour (64 dBμV/m) (88.5 kilometers (55 miles)) of the TV station or 17 dB at the equivalent Grade B contour (41 dBμV/m) (88.5 kilometers (55 miles)) of the DTV station.

(2) The minimum D/U ratio for adjacent channel stations is 0 dB at the hypothetical Grade B contour (64 dBμV/m) (88.5 kilometers (55 miles)) of the TV station or −23 dB at the equivalent Grade B contour (41 dBμV/m) (88.5 kilometers (55 miles)) of the DTV station.

(b) *TV stations and calculation of contours.* The methods used to calculate TV contours and antenna heights above average terrain are given in §§ 73.683 and 73.684 of this chapter. Tables to determine the necessary minimum distance from the 747–762 MHz or 777–792 MHz station to the TV/DTV station, assuming that the TV/DTV station has a hypothetical or equivalent Grade B contour of 88.5 kilometers (55 miles), are located in § 90.309 of this chapter and labeled as Tables B, D, and E. Values between those given in the tables may be determined by linear interpolation. The locations of existing and proposed TV/DTV stations during the period of transition from analog to digital TV service are given in Part 73 of this chapter and in the final proceedings of MM Docket No. 87–268. The DTV allotments on Channels 60 through 68 are:

State	City	NTSC TV Ch.	DTV Ch.	ERP (kW)	HAAT (m.)
California	Concord	42	63	61	856
California	Long Beach	18	61	413.6	725
California	Los Angeles	2	60	865.9	1107
California	Los Angeles	11	65	688.7	896
California	Los Angeles	13	66	679.7	899
California	Riverside	62	68	180.1	723
California	Sacramento	10	61	1000	595
California	Stockton	64	62	63.5	874
New Jersey	Newark	13	61	198.7	500
New Jersey	Vineland	65	66	107.8	280
Pennsylvania	Allentown	39	62	50	302
Pennsylvania	Philadelphia	6	64	1000	332
Pennsylvania	Philadelphia	10	67	791.8	354
Puerto Rico	Aguada	50	62	50.1	343
Puerto Rico	Arecibo	60	61	55	242
Puerto Rico	Mayaguez	16	63	50.1	347
Puerto Rico	Naranjito	64	65	50.1	142
Puerto Rico	Ponce	7	66	407.4	826
Wisconsin	Milwaukee	18	61	519.8	307

Note: DTV stations on Channel 59 must be considered even though they are not indicated in the above table. The transition period is scheduled to end on December 31, 2006. After that time, unless otherwise directed by the Commission, 747–762 MHz and 777–792 MHz stations will no longer be required to protect reception of co-channel or adjacent channel TV/DTV stations.

(1) Licensees of stations operating within the ERP and HAAT limits of § 27.50 must select one of three methods to meet the TV/DTV protection requirements, subject to Commission approval:

(i) Utilize the geographic separation specified in the tables referenced below;

(ii) Submit an engineering study justifying the proposed separations based on the actual parameters of the land mobile station and the actual parameters of the TV/DTV station(s) it is trying to protect; or,

(iii) Obtain written concurrence from the applicable TV/DTV station(s). If this method is chosen, a copy of the agreement must be submitted with the application.

(2) The following is the method for geographic separations.

(i) Base and fixed stations that operate in the 747–762 MHz band having an antenna height (HAAT) less than 152 m. (500 ft.) shall afford protection to co-channel and adjacent channel TV/DTV stations in accordance with the values specified in Table B (co-channel frequencies based on 40 dB protection) and Table E (adjacent channel frequencies based on 0 dB protection) in § 90.309 of this chapter. For base and fixed stations having an antenna height (HAAT) between 152–914 meters (500–3,000 ft.) the effective radiated power must be reduced below 1 kilowatt in accordance with the values shown in the power reduction graph in Figure B in § 90.309 of this chapter. For heights of more than 152 m. (500 ft.) above average terrain, the distance to the radio path horizon will be calculated assuming smooth earth. If the distance so determined equals or exceeds the distance to the hypothetical or equivalent Grade B contour of a co-channel TV/DTV station (*i.e.*, it exceeds the distance from the appropriate Table in § 90.309 of this chapter to the

relevant TV/DTV station), an authorization will not be granted unless it can be shown in an engineering study (*see* paragraph (b)(1)(ii) of this section) that actual terrain considerations are such as to provide the desired protection at the actual Grade B contour (64 dBμV/m for TV and 41 dBμV/m for DTV stations) or unless the effective radiated power will be further reduced so that, assuming free space attenuation, the desired protection at the actual Grade B contour (64 dBμV/m for TV and 41 dBμV/m coverage contour for DTV stations) will be achieved. Directions for calculating powers, heights, and reduction curves are listed in § 90.309 of this chapter for land mobile stations. Directions for calculating coverage contours are listed in §§ 73.683–685 of this chapter for TV stations and in § 73.625 of this chapter for DTV stations.

(ii) Control, fixed, and mobile stations (including portables) that operate in the 777–792 MHz band are limited in height and power and therefore shall afford protection to co-channel and adjacent channel TV/DTV stations in accordance with the values specified in Table D (co-channel frequencies based on 40 dB protection for TV stations and 17 dB for DTV stations) in § 90.309 of this chapter and a minimum distance of 8 kilometers (5 miles) from all adjacent channel TV/DTV station hypothetical or equivalent Grade B contours (adjacent channel frequencies based on 0 dB protection for TV stations and −23 dB for DTV stations). Since control, fixed, and mobile stations may affect different TV/DTV stations than the associated base or fixed station, particular care must be taken by applicants/licensees to ensure that all appropriate TV/DTV stations are considered (*e.g.* a base station may be operating within TV Channel 62 and the mobiles within TV Channel 67, in which case TV Channels 61, 62, 63, 66, 67 and 68 must be protected). Control, fixed, and mobile stations shall keep a minimum distance of 96.5 kilometers (60 miles) from all adjacent channel TV/DTV stations. Since mobiles and portables are able to move and communicate with each other, licensees must determine the areas where the mobiles can and cannot roam in order to protect the TV/DTV stations.

(iii) In order to protect certain TV/DTV stations and to ensure protection from these stations which may have extremely large contours due to unusual height situations, an additional distance factor must be used by all base, fixed, control, and mobile stations. For all co-channel and adjacent channel TV/DTV stations which have an HAAT between 350 and 600 meters, licensees must add the following DISTANCE FACTOR to the value obtained from the referenced Tables in § 90.309 of this chapter and to the distance for control, fixed, and mobile stations on adjacent TV/DTV channels (96.5 km).

DISTANCE FACTOR = (TV/DTV HAAT − 350) ÷ 14 in kilometers, where HAAT is the TV or DTV station antenna height above average terrain obtained from its authorized or proposed facilities, whichever is greater.

(iv) For all co-channel and adjacent channel TV/DTV stations which have an antenna height above average terrain greater than 600 meters, licensees must add 18 kilometers as the DISTANCE FACTOR to the value obtained from the referenced Tables in § 90.309 of this chapter and to the distance for control, fixed, and mobile stations on adjacent TV/DTV channels (96.5 km).

Note to § 27.60: The 88.5 km (55 mi) Grade B service contour (64 dBμV/m) is based on a hypothetical TV station operating at an effective radiated power of one megawatt, a transmitting antenna height above average terrain of 610 meters (2000 feet) and the Commission's R–6602 F(50,50) curves. *See* § 73.699 of this chapter. Maximum facilities for TV stations operating in the UHF band are 5 megawatts effective radiated power at an antenna HAAT of 610 meters (2,000 feet). *See* § 73.614 of this chapter. The equivalent contour for DTV stations is based on a 41 dBμV/m signal strength and the distance to the F (50,90) curve. *See* § 73.625 of this chapter.

19. Section 27.66 is added to read as follows:

§ 27.66 Discontinuance, reduction, or impairment of service.

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

(b) *Voluntary act by common carrier.* If a fixed common carrier licensee voluntarily discontinues, reduces, or impairs service to a community or part of a community, it must obtain prior authorization as provided under § 63.71 of this chapter. An application will be granted within 30 days after filing if no objections have been received.

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

(d) *Notifications and requests.* Notifications and requests identified in paragraphs(a) through (c) of this section should be sent to: Federal Communications Commission, Common Carrier Radio Services, 1270 Fairfield Road, Gettysburg, Pennsylvania, 17325.

§ 27.308 [Amended]

20. Section 27.308 is amended by removing the phrase ''WCS (see subparts C and D of this part as appropriate)'' and adding in its place the phrase ''applicable frequency band (*see* subparts C, D, and F of this part, as appropriate)''.

21. Part 27 is amended by adding subpart F to read as follows:

Subpart F—Competitive Bidding Procedures for the 747–762 MHz and 777–792 MHz Bands

§ 27.501 747–762 MHz and 777–792 MHz bands subject to competitive bidding.
§ 27.502 Designated entities.

Subpart F—Competitive Bidding Procedures for the 747–762 MHz and 777–792 MHz Bands

§ 27.501 747–762 MHz and 777–792 MHz bands subject to competitive bidding.

Mutually exclusive initial applications for licenses in the 747–762 MHz and 777–792 MHz bands are subject to competitive bidding procedures. The procedures set forth in part 1, subpart Q, of this chapter will apply unless otherwise provided in this part.

§ 27.502 Designated entities.

(a) Eligibility for small business provisions.

(1) A small business is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding $40 million for the preceding three years.

(2) A very small business is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding $15 million for the preceding three years.

(3) For purposes of determining whether an entity meets either of the definitions set forth in paragraphs (a)(1) and (a)(2) of this section, the gross revenues of the entity, its controlling interests and affiliates shall be considered on a cumulative basis and aggregated. An applicant seeking status as a small business or very small business under this section must disclose on its short-and long-form applications, separately and in the aggregate, the gross revenues of the

applicant (or licensee), its controlling interests and affiliates for each of the previous three years.

(4) Persons or entities that hold interests in an applicant (or licensee) that are affiliates of each other or have an identity of interests identified in § 1.2110(b)(4)(iii) of this chapter will be treated as though they were one person or entity and their ownership interests aggregated for purposes of determining an applicant's (or licensee's) compliance with the requirements of this section.

(5) Where an applicant (or licensee) cannot identify controlling interests under the standards set forth in this section, the gross revenues of all interest holders in the applicant, and their affiliates, will be attributable.

(6) A consortium of small businesses (or a consortium of very small businesses) is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(1) of this section (or each of which individually satisfies the definition in paragraph (a)(2) of this section). Where an applicant or licensee is a consortium of small businesses (or very small businesses), the gross revenues of each small business (or very small business) shall not be aggregated.

(7) Designated entities must describe on their long-form applications how they satisfy the requirements for eligibility for designated entity status, and must list and summarize on their long-form applications all agreements that affect designated entity status such as partnership agreements, shareholder agreements, management agreements and other agreements, including oral agreements, establishing, as applicable, de facto or de jure control of the entity. Such information must be maintained at the licensee's facilities or by its designated agent for the term of the license in order to enable the Commission to audit designated entity eligibility on an ongoing basis.

(b) *Controlling interest.*

(1) For purposes of this section, a controlling interest includes individuals or entities with either *de jure or de facto* control of the applicant. *De jure* control is evidenced by holdings of greater than 50 percent of the voting stock of a corporation, or in the case of a partnership, general partnership interests. *De facto* control is determined on a case-by-case basis. An entity must disclose its equity interest and demonstrate at least the following indicia of control to establish that it retains *de facto* control of the applicant:

(i) The entity constitutes or appoints more than 50 percent of the board of directors or management committee;

(ii) The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and

(iii) The entity plays an integral role in management decisions.

(2) The following rules apply for the calculation of certain interests.

(i) Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options, and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised.

(ii) Partnership and other ownership interests and any stock interest equity, or outstanding stock or outstanding voting stock shall be attributed as specified below.

(iii) Stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal, or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust will be attributed to the grantor or beneficiary, as appropriate.

(iv) Non-voting stock shall be attributed as an interest in the issuing entity.

(v) Limited partnership interests shall be attributed to limited partners and shall be calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses.

(vi) Officers and directors of an entity shall be considered to have an attributable interest in the entity. The officers and directors of an entity that controls a licensee or applicant shall be considered to have an attributable interest in the licensee or applicant.

(vii) Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

(viii) Any person who manages the operations of an applicant or licensee pursuant to a management agreement shall be considered to have a controlling interest in such applicant or licensee if such person, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

(A) The nature or types of services offered by such an applicant or licensee;

(B) The terms upon which such services are offered; or

(C) The prices charged for such services.

(ix) Any licensee or its affiliate who enters into a joint marketing arrangement with an applicant or licensee, or its affiliate, shall be considered to have a controlling interest, if such applicant or licensee, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

(A) The nature or types of services offered by such an applicant or licensee;

(B) The terms upon which such services are offered; or the prices charged for such services.

(c) *Bidding credits.* A winning bidder that qualifies as a small business or a consortium of small businesses as defined in this section may use the bidding credit specified in § 1.2110(e)(2)(iii) of this chapter. A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in this section may use the bidding credit specified in § 1.2110(e)(2)(ii) of this chapter.

[FR Doc. 00–1332 Filed 1–19–00; 8:45 am]

BILLIING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–3040; MM Docket No. 98–72; RM–9265, RM–9368]

Radio Broadcasting Services; Middlebury, Berlin and Hardwick, VT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Dynamite Radio, Inc., substitutes Channel 265C2 for Channel 265A at Middlebury, VT, reallots Channel 265C2 to Berlin, VT, and modifies the license of Station WGTK to specify operation on the higher class channel and specify Berlin as its community of license. *See* 63 FR 36387, July 6, 1998. At the request of Montpelier Broadcasting, Inc., the