

accomplished either prior to adding the airplane to the air carrier's operations specification, or per a schedule and an inspection method approved by the Manager, Los Angeles ACO. After each inspection has been performed once, each subsequent inspection must be performed per the new operator's schedule.

#### Inspections Accomplished Before the Effective Date of This AD

(o) Inspections accomplished prior to the effective date of this AD per Boeing Report No. L26-012, "DC-10 Supplemental Inspection Document (SID)," Volume I, Revision 4, dated June 1993, or Revision 5, dated October 1994; Volume II, Revision 6, dated October 1997, or Revision 7, dated August 2002; and Volume III-94, dated November 1994; are acceptable for compliance with the requirements of paragraph (j) of this AD.

#### Acceptable for Compliance

(p) McDonnell Douglas Report No. MDC 91K0264, "DC-10/KC-10 Aging Aircraft Repair Assessment Program Document," Revision 1, dated October 2000, provides inspection/replacement programs for certain repairs to the fuselage pressure shell. These repairs and inspection/replacement programs are considered acceptable for compliance with the requirements of paragraphs (i) and (m) of this AD for repairs subject to that document.

#### Alternative Methods of Compliance (AMOCs)

(q) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(r) AMOCs approved previously per AD 95-23-09, amendment 39-9429, are approved as AMOCs with the actions required by paragraph (j) of this AD.

Issued in Renton, Washington, on July 23, 2004.

**Kevin M. Mullin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*  
[FR Doc. 04-17592 Filed 8-2-04; 8:45 am]

**BILLING CODE 4910-13-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 2 and 90

[ET Docket No. 04-243; FCC 04-156]

### Narrowbanding for Private Land Mobile Radio Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to revise our transition plan for Private Land Mobile Radio (PLMR) licensees in the 150.05-150.8 MHz, 162-174 MHz,

and 406.1-420 MHz bands. This action will provide for an orderly transition from wideband to narrowband operations, increase spectrum efficiency, maintain compatibility with Federal operations, permit PLMR licensees to operate using existing equipment with greater confidence that their critical operations will not be suddenly required to cease transmissions, and significantly reduce the probability that wideband PLMR operations will interfere with new Federal operations.

**DATES:** Written comments are due September 2, 2004, and reply comments are due September 17, 2004.

**ADDRESSES:** Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., TW-A325, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Tom Mooring, Office of Engineering and Technology, (202) 418-2450, TTY (202) 418-2989, e-mail: [Tom.Mooring@fcc.gov](mailto:Tom.Mooring@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rulemaking*, ET Docket No. 04-243; FCC 04-156, adopted June 30, 2004, and released July 6, 2004. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room, CY-B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before September 2, 2004, and reply comments on or before September 17, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (May 1, 1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In

completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address.>" A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

#### Summary of the Notice of Proposed Rulemaking

1. This proceeding was initiated in order to revise the procedures by which certain PLMR service operations on the Hydrological and Meteorological (Hydro), Forest Fire-Fighting and Conservation, and Public Safety channels, as well as Medical Radiocommunication Systems, are to transition to narrower, more spectrally efficient channels in a process commonly known as "narrowbanding." These PLMR operations occupy spectrum in the 150.05-150.8 MHz, 162-174 MHz, and 406.1-420 MHz bands that is allocated for Federal Government (Federal) use and, in many cases, is shared on the condition that

interference is not caused to Federal operations. The National Telecommunications and Information Administration (NTIA) is transitioning Federal operations in this spectrum to 12.5 kHz (so-called “narrowband”) channels on a January 1, 2005 and January 1, 2008 timetable (depending on the band), whereas our rules currently permit non-Federal Government (non-Federal) licensees to operate channels in excess of 12.5 kHz (so-called “wideband” operations) in these bands for as long as 2018. Because NTIA has adopted a more rapid narrowbanding schedule in these Federal bands than the Commission has required for our licensees, this transition has the potential to impact non-Federal operations in these bands.

2. Our proposals draw on the general principles embodied in the Commission’s *Refarming Proceeding*, 60 FR 43720, August 23, 1995, which set forth a plan to transition PLMR operations from 25 kHz channels to narrower channels. In that proceeding, the Commission recognized that narrowbanding can promote efficient spectrum use and can help accommodate increasing PLMR demand. The instant proceeding is made necessary by NTIA’s separate narrowbanding efforts, and is designed to allow for compatible use of Federal spectrum by both Federal and non-Federal users.

#### *Federal Use of the Bands*

3. Since January 1, 1995, all new Federal systems in the 162–174 MHz band have been required to operate within a 12.5 kHz channel. After January 1, 2005, all Federal systems in the band must operate within a 12.5 kHz channel. For operations in the 406.1–420 MHz band, NTIA has required that, by January 1, 2008, all assignments and equipment must operate within to a 12.5 kHz channel. In order to remain on a wideband channel in the 406.1–420 MHz band after that date, NTIA requires that a waiver request be recommended for approval by the IRAC’s Frequency Assignment Subcommittee (FAS) and approved by NTIA. Even if a waiver is approved, the assignment may be revoked within 180 days of a formal notice, under certain conditions. Finally, we note that some Federal operations such as wireless microphones, military equipment used for tactical and/or training operations, and NOAA weather radio stations are exempt from the Federal narrowbanding requirements.

#### *Non-Federal Use of the Bands*

4. Although these bands are allocated for Federal Government use and are administered by NTIA, limited non-Federal use of these bands is authorized by virtue of seven United States footnotes: US8, US11, US13, US216, US223, US300, and US312. We describe the services the Commission has authorized to operate in these bands pursuant to these footnotes, as well as the relationship of non-Federal Government users in the bands to Federal Government users. In many cases, non-Federal Government users in these bands operate on a non-interference basis in conjunction with, or in support of, Federal functions. Moreover, many of the channels authorized by these footnotes are subject to the 12.5 kHz channel plan that the Commission adopted in the *Narrowbanding Second Report and Order*, 68 FR 42296, July 17, 2003.

5. As an initial matter, we note that our current narrowbanding schedule, which sets a January 1, 2005, date by which all new certified equipment must be designed to operate on channels of 6.25 kHz or less, applies to PLMR operations and does not make an exception for the operations on Federal channels discussed in the NPRM. Because NTIA has not yet addressed if or when it will require Federal users on these bands to operate on 6.25 kHz-wide channels, we seek comment on whether we should exempt equipment designed for use in these Federal bands from our current 6.25 kHz certification requirement. Specifically, commenters should address whether such a policy would be either beneficial or detrimental to enabling sharing between PLMR licensees and Federal users.

#### *Hydro Channels (US13)*

6. *Background.* On February 24, 2000, NTIA updated the *NTIA Manual* to implement a revised channel plan that specifies new and modified narrowband channels for hydrologic and meteorological operations in the 162–174 and 406.1–420 MHz bands. Specifically, in the 169–172 MHz band segment (in which 20 Hydro channels are currently located), 16 channels were added to the Hydro Channel Plan and the three previously grandfathered channels were removed. In the 406–416 MHz band segment (in which eight Hydro channels are currently located), seven channels were added to the Hydro Channel Plan and three channels were removed. NTIA has designated two of the existing channels—406.125 MHz and 406.175 MHz—to be paired with two of the new channels—415.125 MHz

and 415.175 MHz—to allow for paired Hydro operations. A review of our databases indicates that the Commission has licensed 219 fixed stations on the six channels being removed from the Hydro Channel Plan and has issued 1053 licenses for those Hydro channels that are designated for narrowband operations. NTIA requests that existing wideband Hydro systems in the 169–172 MHz and 406–416 MHz segments adhere to the new Hydro Channel Plan and convert to narrowband equipment before January 1, 2005 and January 1, 2008, respectively.

7. *Proposal.* The Commission proposed to revise its rules to reflect an updated Hydro Channel Plan that is consistent with the channel plan shown in the NTIA Manual. The Commission’s proposal would increase the number of Hydro channels from 28 single frequency channels (plus three grandfathered channels) to 44 single frequency channels and two sets of paired channels—for a total of 48 frequencies. Within the 162–174 MHz band, we propose to add 16 channels to the Hydro Channel Plan and to remove the three grandfathered channels—169.575 MHz, 170.375 MHz, and 171.975 MHz. Within the 406–416 MHz band, we propose to add seven channels to the Hydro Channel Plan, pair two of the new channels with two existing channels in the band, and remove three channels—409.675 MHz, 409.725 MHz, and 412.625 MHz. By doing so, we would align non-Federal use of the Hydro channels with Federal use under NTIA’s narrowbanding plan. Under the provisions of footnote US13, non-Federal stations operate in cooperation with Federal stations. Consistency between Federal and non-Federal band plans furthers the public interest and safety by maintaining a ready flow of hydrologic and meteorological data between non-Federal and Federal entities.

8. The Commission’s previously adopted rules that require Hydro operations in the 169–172 MHz segment to transition to narrowband equipment well into the future (currently, January 1, 2013, for systems operating in the Industrial/Business Pool and by January 1, 2018, for systems operating in the Public Safety Pool). Thus, our narrowbanding schedule differs from NTIA’s plan, which calls for Federal operations to use narrowband equipment by 2005. Because there could be extended periods during which existing non-Federal 25 kHz equipment may not be compatible with Federal operations using the new 12.5 kHz channels, we propose to establish the following procedure for incumbent

licensees in the Hydro channels: First, existing stations (including those stations that expand operations) will be permitted to continue to operate with an authorized bandwidth in excess of 12.5 kHz until the 2013 and 2018 transition dates that are currently in effect, so long as no harmful interference is caused to a Federal assignment in the band. Second, because new Federal assignments may be authorized after January 1, 2005, it will be necessary for our licensees to work with the Hydro Committee to minimize the potential for interference between stations. The Hydro Committee coordinates all requests for use of hydrologic channels and provides comment on such request to the FCC and NTIA (*i.e.*, the FAS Secretariat), and thus is in the best position to promote the best cooperative use of these channels. Ultimately, because assignments are determined by the NTIA and the FCC, a non-Federal license in the 169–172 MHz band segment is subject to termination if interference is caused to the Federal assignment.

9. The Commission has not previously adopted narrowbanding requirements for the 406–416 MHz band. For existing non-Federal operations on the 406.125 MHz, 406.175 MHz, 412.725 MHz, and 412.775 MHz channels (*i.e.* the four Hydro channels currently authorized in footnote US13 that will remain in the revised Hydro Channel Plan), we propose to require narrowband operations by the same dates as the Hydro channels in the 169–172 MHz band segment. Thus, these licensees would be permitted to use existing equipment until the Commission's overall narrowbanding requirements take effect (again, currently January 1, 2013, for systems in the Industrial/Business Pool, and by January 1, 2018, for systems in the Public Safety Pool). Because new Federal assignments may be authorized after January 1, 2005, it will be necessary for our licensees to work with the Hydro Committee to minimize the potential for interference between stations. The Hydro Committee coordinates all requests for use of Hydro channels and provides comment on such request to the FCC and NTIA (*i.e.*, the FAS Secretariat), and thus is in the best position to promote the best cooperative use of these channels. Ultimately, because assignments are determined by the NTIA and the FCC, a non-Federal license in the 406–416 MHz band segment will be subject to termination if interference is caused to the Federal assignment.

10. The Commission tentatively concluded that we should implement a

modified procedure for those Hydro channels that we propose to remove from the Hydro Channel Plan. In the 162–174 MHz band, one licensee—the State of California—has been authorized 15 fixed stations on the frequency 169.575 MHz under the 1962 grandfathering rules. There are no non-Federal licensees operating on the other two channels in the band. A total of 13 non-Federal licensees are authorized to operate on the three 406–416 MHz band channels: (1) six licensees are authorized to operate 112 fixed stations at 409.675 MHz; (2) three licensees are authorized to operate ten fixed stations at 409.725 MHz; and (3) four licensees are authorized to operate 97 fixed stations at 412.625 MHz. In each of these cases, we propose that licensees modify their equipment and station licenses and migrate to a center frequency under the new Hydro Channel Plan on a timetable as advised by the Hydro Committee and approved by the NTIA and the FCC. As such, we note that Commission licensees should be prepared to cease or relocate operations by January 1, 2005, for stations on the frequency 169.575 MHz and by January 1, 2008, for stations on the frequencies 409.675 MHz, 409.725 MHz, and 412.625 MHz, in the event that they cause harmful interference to Federal facilities. Regardless of how long the Hydro Committee allows existing licensees to continue operations, we propose that in no case will licensees be permitted to operate on these channels after January 1, 2013 (for non-public safety systems) and January 1, 2018 (for public safety systems).

11. For all new Hydro stations, we propose that a license issued on or after January 1, 2005 (for stations in the 162–174 MHz band) or January 1, 2008 (for stations in the 406–416 MHz band), limit operations to a channel no wider than 12.5 kHz, except that we could authorize wideband operations if the Hydro Committee recommends that an application be granted, and NTIA approves the request. Because equipment meeting this channel bandwidth has been available for more than eight years, new licensees should be able to meet this requirement.

12. To implement these proposals, the Commission anticipates revising § 90.265(a) of its rules to reflect the new Hydro Channel Plan and our proposal for transitioning to narrowband channels. Although Hydro channels are used by state and local government entities, they are not listed as being available to Public Safety Pool eligibles in part 90 of its rules. Therefore, we also propose to amend §§ 90.20(c), 90.20(d)(48), and 90.265(a) of the

Commission's rules to correct this oversight. The Commission proposes to amend the Industrial/Business Pool Frequency Table in part 90 of its rules by revising the entry for the 406–413 MHz band to read “406–416 MHz” to encompass the new Hydro frequencies at 415.125 MHz and 415.175 MHz. Furthermore, the Commission proposes to revise footnote US13 of § 2.106 to incorporate the new band plan. These revisions are included in the proposed rules.

13. Because non-Federal operations on these channels must not cause interference to Federal operations, we believe that the proposed modifications are necessary in light of the NTIA narrowbanding efforts. Due to the nature and use of the Hydro channels, we expect that the Hydro Committee will continue to promote effective non-Federal use of the band, and will work to foster an effective transition for all licensees. The Commission seeks comment on these proposals, including any difficulties that public safety licensees may have with complying with the proposed policy for transitioning existing operations to narrowband channels. The Commission also request comments on how these proposals would affect Federal operations in the bands.

#### *Forest Fire-Fighting and Conservation Channels (US8)*

14. *Background.* Footnote US8 states that the use of nine channels in the 162–174 MHz band may be authorized for stations in the fixed and land mobile services that are operated by non-Federal forest fire-fighting agencies on the condition that no harmful interference will be caused to Federal stations. In addition, two of these channels may also be used by non-Federal conservation agencies for mobile relay operation only. These nine channels are available to Public Safety Pool eligibles in Section 90.20 of our Rules and are reserved primarily for assignment to state licensees.

15. NTIA has required that all new Federal fixed and land mobile operations in the 162–174 MHz band use 12.5 kHz channels since 1995 and has established January 1, 2005, as the date by which all such Federal operations in this band must use narrowband equipment. Our rules permit existing licensees on these channels to use wideband equipment much longer—currently, until January 1, 2018. Because additional Federal agencies will soon commence to operate on the new channels, there is an increased likelihood of interference

between these Federal and non-Federal operations.

16. *Proposal.* Because these nine frequencies were provided for cooperative forest fire-fighting and conservation operations between Federal, state, and local entities, we propose to maintain that relationship. Because our rules provide a much longer transition to narrowband channels than NTIA's plan, we propose to allow operations under existing licenses (and expansions under existing licenses) to continue with an authorized bandwidth in excess of 12.5 kHz until the Commission's general narrowband transition date (currently 2018) or until notified by the Commission that harmful interference is anticipated to or from a Federal assignment proposed on or after January 1, 2005, whichever comes first. To minimize the potential of harmful interference between stations, the FCC will work with NTIA under the auspices of the FAS to provide advanced notice to our licensees that a proposed Federal assignment has been filed with NTIA. After the Federal entity begins operations, however, the non-Federal license will be subject to termination if interference is caused to Federal operations.

17. The Commission proposed that, after January 1, 2005, all new non-Federal stations meet the narrowband standards, unless a waiver has been recommended by the sponsoring Federal agency and approved by NTIA. Although the *Narrowbanding Second Report and Order* 68 FR 42296, July 17, 2003, had established a January 13, 2004, cut-off date for filing wideband applications, it is unclear how long the current stay of those rules will remain in effect or whether the underlying rules will be changed upon reconsideration. Nevertheless, because the forest fire-fighting and conservation channels operate on a secondary basis to Federal operations, we believe that we must move forward with the narrowbanding of these channels in order to improve compatibility with Federal operators and minimize the potential for interference. Thus, if the general narrowbanding requirement for PLMR licenses in the 150–174 MHz band takes effect prior to January 1, 2005, we propose to apply that date instead.

18. The Commission observed that these channels are used sporadically and many are located in rural areas, and so we believe that there is a realistic possibility that some existing licensees will be able to continue to operate on their current channels beyond NTIA's January 1, 2005, schedule without causing harmful interference.

Accordingly, we see no need to alter the Commission's previously adopted rules that allow incumbent forest firefighting and conservation operations in the 162–174 MHz band to transition to narrowband equipment by January 1, 2018. However, because there could be up to a 13-year period during which non-Federal forest firefighting/conservation operations using 25 kHz equipment may not be compatible with Federal operations using the new 12.5 kHz channels, the procedures described in the NPRM will provide licensees with notice of anticipated interference to or from new Federal operations and an opportunity to prepare to cease operations. The Commission believes that these proposals balance the competing needs of all users, and seek comment on this plan. The Commission also request comments on the compatibility of older 25 kHz channel equipment with narrowband equipment currently available.

19. The Commission note that, under current practice, applications for use of these channels are accompanied by a letter of concurrence by the sponsoring Federal agency (e.g. the Department of Agriculture). We tentatively conclude that this practice aids the coordination of assignments between NTIA and the Commission, and we therefore propose to modify our rules to codify this procedure.

20. Finally, the Commission proposes to move the existing limitations that are contained in § 90.20 of its rules into a new subsection of § 90.265, revise limitation 49 under § 90.20 to provide a cross-reference to § 90.265, and remove what will then be redundant statements of limitation for these channels in § 90.20. Section 90.265 of the Commission's rules already describes procedures by which we license two services permitted on Federal bands pursuant to United States footnotes—Hydro operations and wireless microphones. We believe it would be convenient and consistent to expand this section to include similarly situated services including, *inter alia*, the Forest Fire-Fighting and Conservation channels. We seek comment on these proposals, including any difficulties that public safety licensees may have with complying with the proposed policy for transitioning assignments to 12.5 kHz channels. We also request comment on how these proposals would affect Federal operations in the band.

#### *Public Safety Channels (US11)*

21. *Background.* Footnote US11 authorizes public safety radio services use of two channels on 166.25 MHz and 170.15 MHz for locations within 150

miles of New York City, on the condition that harmful interference is not caused to present or future Federal stations in the 162–174 MHz band. A recent review of our licensing database shows that the Commission has authorized 30 fixed stations, 1295 mobile stations, and 95 pagers on the frequency 166.25 MHz, and 23 fixed stations, 640 mobile stations, and 160 pagers on the frequency 170.15 MHz.

22. Consistent with NTIA's 12.5 kHz Plan for Federal fixed and land mobile operations in the 162–174 MHz band, we have required that non-Federal operations on the two public safety channels authorized in footnote US11 be narrowed to 12.5 kHz channels. However, the NTIA plan calls for Federal licensees to meet a January 1, 2005, deadline to operate on narrowband channels, whereas our rules require public safety licensees in the band to migrate to 12.5 kHz technology by January 1, 2018. The prospect that Federal agencies will soon commence to operate on the new channels increases the likelihood of interference between Federal and non-Federal operations in the band.

23. *Proposal.* Because the non-interference considerations discussed in the NPRM apply to these channels, we propose to allow operations under existing licenses (and expansions under existing licenses) to continue with an authorized bandwidth in excess of 12.5 kHz until the Commission's narrowband transition date (currently 2018) or until notified by the Commission that harmful interference is anticipated to or from a Federal assignment proposed on or after January 1, 2005, whichever comes first. To minimize the potential of harmful interference between stations, the FCC will work with NTIA under the auspices of the Frequency Assignment Subcommittee (FAS) of the Interdepartment Radio Advisory Committee (IRAC) to provide advanced notice to our licensees that a proposed Federal assignment has been filed with NTIA. After the Federal entity begins operations, however, the non-Federal license will be subject to termination if interference is caused to the Federal assignment. The Commission also proposed that new stations meet the narrowband standards no later than January 1, 2005, unless a waiver has been granted by NTIA. However, if the general narrowbanding requirement for PLMR licenses in the 150–174 MHz band takes effect prior to January 1, 2005, we propose to apply that date instead.

24. The Commission proposed modifications to its rules to accurately reflect non-Federal licensees' role in

this shared band. It proposed to create a new paragraph in § 90.265 of the rules to describe these public safety channels, and to revise the limitation in § 90.20(d)(47) of the rules to serve as a cross-reference. The Commission proposed to state in its rules that operations are on a secondary basis to any Federal station, in order to give effect to the restriction embodied in footnote US11 that non-Federal operations on 166.250 MHz and 170.150 MHz may operate on the condition that no harmful interference is caused to Government stations “present or future” in the Federal band. The Commission also believes that footnote US11 can be modified to remove an outdated reference to wideband operations that are no longer permitted and to simplify the description of public safety and remote pickup broadcast operations in the band. Finally, the Commission asks whether new applications for use of these channels should be accompanied by a letter of concurrence by a sponsoring Federal agency, as we do with the Forest Fire-Fighting and Conservation channels. We note that similar coordination letters appear to have served non-Federal users well in ensuring smooth processing of license applications.

25. The Commission believes that these proposed modifications will properly account for NTIA’s scheduled narrowbanding of Federal operations in the band. The Commission seeks comment on these proposals, including any difficulties that public safety licensees may have with complying with the proposed policy for transitioning footnote US11 assignments to 12.5 kHz channels. The Commission also request comment on how these proposals would affect Federal operations, which are scheduled to use only narrowband equipment after January 1, 2005. Further, the Commission seeks comment on the compatibility of older 25 kHz channel equipment with narrowband equipment currently available.

#### *Medical Radiocommunication Systems (US216)*

26. *Background.* Footnote US216 makes several frequencies available to both Federal and non-Federal Medical Radiocommunication Systems on a primary basis. Such use dates back to a 1974 *Report and Order*, in which the Commission established new medical radiocommunication frequencies pursuant to a NTIA report. Medical Radiocommunication Systems operate in frequency bands that are designated for Federal use, as well as bands designated for non-Federal use. Five

medical radiocommunication frequencies specified in part 90 of the rules, 150.775 MHz, 150.7825 MHz, 150.790 MHz, 150.7975 MHz, and 163.250 MHz, operate in the Federal bands and are the subject of the discussion herein. Three of these frequencies, 150.775 MHz, 150.790 MHz, and 163.250 MHz, are listed in US216, while the other two, 150.7825 MHz and 150.7975 MHz, are not.

27. *Proposal.* The Commission proposed to require that non-Federal operations in the Federal bands as listed in footnote US216 (150.775 MHz, 150.790 MHz and 163.25 MHz) be narrowed to a 12.5 kHz channel to maintain their primary status. The establishment of a narrowbanding plan for non-Federal users operating on these frequencies will complement NTIA’s 12.5 kHz Plan to establish narrowband channels for Federal fixed and land mobile operations in the 150.05–150.8 MHz and 162–174 MHz bands. The Commission further propose to cease licensing stations on the frequencies of 150.7825 MHz and 150.7975 MHz. These frequencies, which were never incorporated into footnote US216, lie within the Federal military band, and additional authorizations would limit the operational deployment of vital military systems. We propose to permit existing stations that are authorized as of effective date of the Report and Order in this proceeding to use the frequencies 150.7825 MHz and 150.7975 MHz indefinitely. We seek comment on these proposals.

28. The Commission proposed to retain the same narrowbanding timetable we previously established in the *Narrowbanding Second R&O* with respect to stations operating on the Federal frequencies: 150.775 MHz, 150.790 MHz, and 163.250 MHz. Under this plan, existing public safety operations using these frequencies, including expansions of existing systems, must use narrowband equipment no later than January 1, 2018. With respect to use of the Federal frequencies in the Medical Radiocommunication Systems bands, the Commission recognizes that our plan differs from that of NTIA, and that existing non-Federal entities will be able to operate on wideband channels both throughout and after NTIA’s transition period for Federal users in the band. The Commission tentatively concluded that such a timetable is warranted because the application of our general narrowbanding dates to these channels will allow us to provide a migration period that is sufficiently long in duration to meet the unique funding and planning needs of public

safety entities. The Commission further notes that these three frequencies are shared by Federal and non-Federal entities on a co-primary basis. Thus, use of these three frequencies differs from the other frequency bands, in which non-Federal licensees operate on a secondary basis to Federal users and must be prepared to migrate or cease operations once Federal licensees begin using narrowband equipment. Because of this distinction, the Commission believe that these non-Federal licensees should be treated in a similar manner to all other primary land mobile licensees under its jurisdiction. By doing so, we will be able to provide valuable migration time to existing non-Federal Medical Radiocommunication Systems licensees. In addition, this approach will preserve our traditional first-in-time policy by which the first licensed entity does not have to modify its operations but instead maintains a primary status in relation to subsequently licensed entities. Under this policy, an existing wideband non-Federal licensee will be entitled to protection from interference from new Federal entities and non-Federal licensees that subsequently begin operations in the band, and will not need to modify existing operations to prevent interference to these new entrants. For all of these reasons, we tentatively conclude that existing licensees be permitted to use their existing equipment until January 1, 2018, and that such operations be protected from interference from new or modified Federal and non-Government operations in the band until that date.

29. With respect to new stations operating on the frequencies 150.775 MHz, 150.790 MHz, and 163.250 MHz, the Commission proposed to adopt a narrowbanding timetable that is aligned with NTIA’s narrowbanding plan. New stations operating at 163.250 MHz must meet the narrowband standards no later than January 1, 2005, and new stations operating at 150.775 MHz and 150.790 MHz must meet the narrowband standards no later than January 1, 2008. However, if the general narrowbanding requirement for PLMR licenses in the 150–174 MHz band takes effect prior to January 1, 2008, we propose to apply that date instead for new operations at 150.775 MHz, 150.790 MHz, and 163.25 MHz. Because equipment meeting this channel bandwidth has been available for more than eight years, we anticipate that new licensees should be able to meet these requirements. We further note that, unlike existing licensees, new licensees will not have the burden of planning for, budgeting, and

transitioning from legacy wideband systems. These requirements support the longer transition period we are affording existing licensees.

30. The Commission also take this opportunity to propose several clarifications to its part 90 rules relating to Medical Radiocommunication Systems. In § 90.20 of the rules, the Commission proposed to add a new limitation on the use of the frequencies 150.775 MHz, 150.790 MHz, and 163.250 MHz that would implement, on a going-forward basis, the footnote US216 requirement that the use of these channels be limited to medical radio communications systems, as well as to remove existing limitation 19 for these channels. In addition, and in order to give effect to the medical use limitation, we propose that the coordinator for the frequencies 152.0075 MHz and 163.250 MHz (as listed in the fourth column of the Public Safety Pool Frequency Table) be changed from Special Emergency Coordinator (PS) to Emergency Medical Coordinator (PM). The Commission notes that the coordinator for the frequencies 150.775 MHz and 150.790 MHz is specified as PM in the current rules, and tentatively conclude that we should follow the same approach for the frequencies 152.0075 MHz and 163.250 MHz. The Commission seek comment on this proposal. The Commission also proposed to modify footnote US216 to list the available frequencies in lieu of the 152–152.0150 MHz and 163.2375–163.2625 MHz bands. The Commission note that our proposal would result in a single medical paging frequency, 152.0075 MHz, operating in the primary non-Federal band. The Commission seeks comment as to how we should treat this frequency, and whether it should be limited to narrowband operations in the same manner and time frame we require for medical paging operations at 163.25 MHz. Finally, we note that the use of frequencies 150.775 MHz and 150.790 MHz are limited to mobile use only and that no power restrictions are currently specified for these channels in part 90 of the rules, despite NTIA's provisions that these channels are to be used for hand-held units restricted to 2.5 watts of power. The Commission seeks comment on the practical effect of this discrepancy and what actions, if any, we should take to reconcile the difference between our Rules and NTIA's provisions for these channels.

31. The modifications the Commission proposed are designed to balance the needs of incumbent non-Federal users in light of proposed new Federal narrowband operations in the band, and we seek comment on these

proposals. The Commission especially solicit information from the medical, the emergency medical, and the special emergency radiocommunication services community regarding the use of the two mobile frequencies (150.775 MHz and 150.790 MHz), the two "offset" frequencies (150.7825 MHz and 150.7975 MHz), and the two paging-only frequencies (152.0075 MHz and 163.25 MHz) in order to develop a full record regarding both the current use of and any future needs for these frequencies—including any related use by non-medical, public safety entities. The Commission also seek information about the need for these frequencies in relation to other frequencies available under part 90 of the Commission's rules.

*Other Users (US117, US223, US300, and US312)*

32. *Stolen Vehicle Recovery Systems (US312)*. Footnote US312 states that the frequency 173.075 MHz may be authorized on a primary basis to non-Federal stations in the Police Radio Service for Stolen Vehicle Recovery Systems (SVRS) and limits the maximum authorized bandwidth for SVRS to 20 kHz. This frequency is listed in the Public Safety Pool Frequency Table and its use is limited to SVRS as prescribed in § 90.20(e)(6) of the Rules. This part 90 rule also states that the SVRS frequency is available on a shared basis with Federal operations. LoJack, currently the only SVRS operator on this frequency in the United States, operates its network in cooperation with federal, state and local law enforcement agencies in 20 states and the District of Columbia. A review of our licensing database finds that public safety licensees are authorized to operate 125 fixed stations as part of the SVRS network.

33. NTIA's 12.5 kHz plan for the 162–174 MHz band calls for Federal agencies to be licensed on the adjacent frequencies 173.0625 MHz and 173.0875 MHz. The Commission note that these frequencies are only 12.5 kHz away from the SVRS center frequency, and therefore it is possible that because new federal entities will be operating much closer in frequency to the SVRS channel than Federal entities have in the past, wideband SVRS operations could encounter interference situations that could prove burdensome to identify and resolve. However, we also note that there has been significant investment in SVRS by the general public and that SVRS equipment has been deployed by numerous law enforcement agencies. Taking these facts into account, the Commission seeks comment as to whether it would be advisable to

establish a narrowband transition plan for SVRS users at 173.075 MHz. Specifically, we ask that commenters provide detailed information regarding the availability of narrowband SVRS equipment. In addition, the Commission seeks information that would allow us to determine whether we could craft an effective process that would both preserve the utility of the LoJack system and account for new Federal entrants in the band. For example, how readily could narrowband SVRS technology be made available to operate on the 173.075 MHz frequency? What is the expected life cycle of existing SVRS equipment? Taking into account the availability of equipment and the installed base, what is a reasonable transition plan by which the LoJack network could move to narrowband equipment? For example, would the January 1, 2018 transition date already adopted for the Public Safety Radio Pool be appropriate?

34. Because rules for a separate Police Radio Service were removed when the Commission created the Public Safety Radio Pool, it proposed to update footnote US312 to account for this fact. We also note that some Federal frequencies will continue to operate on wideband channels for the indefinite future. The Commission seeks comment on this matter.

35. *Ship and Public Coast (US223) and Wireless Microphones (US300)*. Footnote US223 makes a channel available for public coast station use in limited areas near the Canadian border. Because Ship and Public Coast operations do not fall under the same rules as PLMR, operations under footnote US223 do not need to be modified to support NTIA's narrowbanding timetable, and therefore we propose no changes to these frequencies as part of this proceeding. Footnote US300 specifies eight frequencies that are available for wireless microphone operations on a secondary basis to Federal and non-Federal operations. Because wireless microphones operate at very low power (50 mW output power), there is a minimal likelihood that they will cause interference to high-power land mobile operations. Thus, we propose no changes to the frequencies allocated for wireless microphones as part of footnote US300.

36. *Radio Astronomy Protection (US117)*. Footnote US117 states that, in the 406.1–410 MHz band, all new authorizations are limited to a transmitter output power of 7 watts per kHz of necessary bandwidth and that new fixed station authorizations near four RAS observatories are subject to

prior coordination. NTIA has reviewed footnote US117 and recommends that it be revised. Specifically, NTIA proposes that footnote US117 be revised to limit transmitter output power of stations in the fixed and mobile services operating in the 406.1–410 MHz band to 125 watts and to update the RAS site coordination information.

37. With regards to stations in the fixed and mobile services that operate in the 406.1–410 MHz band, the Commission notes that non-Federal use is currently limited to four Hydro channels (406.125 MHz, 406.175 MHz, 409.675 MHz, and 409.725 MHz). A staff review of our licensing records found that most of the non-Federal fixed stations operating on these four Hydro channels have a transmitter output power of 50 watts or less and that the maximum output power that the Commission has authorized is 100 watts. Moreover, we note that, in the proposed Hydro Channel Plan, non-Federal use of the 406.1–410 MHz band would be limited to two Hydro channels (406.125 MHz and 406.175 MHz).

38. The Commission proposed to revise footnote US117, as requested by NTIA, in order to promote more effective protection of RAS reception in the 406.1–410 MHz band. Specifically, in the 406.1–410 MHz band, the proposed revision of footnote US117 would limit the transmitter output power of stations in the fixed and mobile services to 125 watts; would revise the list of RAS sites to include the National Radio Astronomy Observatory at Socorro, New Mexico and to delete two RAS sites no longer observing in this band; and would revise the coordination areas for the Arecibo and Table Mountain Observatories. The Commission request comment on this proposal.

#### Initial Regulatory Flexibility Analysis

39. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including the

<sup>1</sup> 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).

IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>2</sup>

#### A. Need for, and Objectives of, the Proposed Rules

40. In the 150.05–150.8 MHz, 162–174 MHz, and 406.1–420 MHz bands, the National Telecommunications and Information Administration (NTIA) is transitioning Federal Government (Federal) operations in the fixed and land mobile services from wideband (25 kHz) to narrowband (12.5 kHz) channels at a more rapid schedule than the Commission has adopted for Private Land Mobile Radio (PLMR) operations in these bands. Because there could be extended periods during which existing PLMR wideband operations may not be compatible with narrowband Federal operations, the Commission is proposing to revise its current narrowbanding plan for these bands to take into account that many PLMR operations in the above Federal bands are authorized on the condition that they not cause interference to Federal operations.

41. The Commission's objectives in making the PLMR proposals contained in this NPRM are to provide for a more orderly transition from wideband to narrowband operations, increase spectrum efficiency, maintain compatibility with Federal operations, permit licensees to operate using existing equipment for the maximum amount of time possible, and significantly reduce the probability that wideband operations will interfere with new Federal operations.

#### B. Legal Basis

42. This action is authorized under sections 1, 4(i), 302, 303(f) and (r), 332, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 4(i), 154(i), 302, 303(f) and (r), 332, 337.

#### C. Description and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

43. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>3</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act, unless the Commission has

<sup>2</sup> 5 U.S.C. 603(a).

<sup>3</sup> *Id.* at 603(b)(3).

developed one or more definitions that are appropriate for its activities.<sup>4</sup> Under the Small Business Act, a "small business concern" is one that: (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).<sup>5</sup>

44. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."<sup>6</sup> Nationwide, as of 1992, there were approximately 275,801 small organizations.<sup>7</sup> The definition of "small governmental entity" is one with populations of 1 fewer than 50,000.<sup>8</sup> There are approximately 85,006 governmental entities in the nation.<sup>9</sup> This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number have populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or ninety-six percent, have populations of fewer than 50,000.<sup>10</sup> The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that ninety-six percent, or about 81,600, are small entities that may be affected by our rules.

45. PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we could use the definition for "Cellular and Other Wireless Telecommunications." This definition provides that a small entity is any such entity employing no more than 1,500 persons.<sup>11</sup> The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not

<sup>4</sup> *Id.* at 601(3).

<sup>5</sup> *Id.* at 632.

<sup>6</sup> *Id.* at 601(4).

<sup>7</sup> Department of Commerce, U.S. Bureau of the Census, 1992 Economic Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

<sup>8</sup> 5 U.S.C. 601(5).

<sup>9</sup> 1992 Census of Governments, U.S. Bureau of the Census, U.S. Department of Commerce.

<sup>10</sup> *Id.*

<sup>11</sup> See 13 CFR 121.201, NAICS code 517212.

have information that could be used to determine how many PLMR licensees constitute small entities under this definition. Moreover, because PLMR licensees generally are not in the business of providing cellular or other wireless telecommunications services but instead use the licensed facilities in support of other business activities, we are not certain that the Cellular and Other Wireless Telecommunications category is appropriate for determining how many PLMR licensees are small entities for this analysis. Rather, it may be more appropriate to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.<sup>12</sup>

46. The proposals in this NPRM would affect the following PLMR licensees: (1) Industrial/Business Pool and state and local government licensees that are authorized to make hydrological and meteorological (Hydro) measurements under footnote US13; (2) forest firefighting agencies, which are primarily state government licensees, and forest conservation agencies that are authorized under footnote US8; (3) Public Safety Pool licensees that are authorized under footnote US11; and (4) hospital, medical centers, nursing homes, etc. that operate Medical Radiocommunication Systems, which are authorized under footnote US216. These United States footnotes are fully discussed in the NPRM.

47. *Hydro Channel Users.* The Commission has authorized 9 licensees to operate 219 fixed stations on the six channels that would be removed from the Hydro Channel Plan: (1) one licensee (the State of California) is authorized to operate 15 fixed stations on the frequency 169.575 MHz; (2) six licensees are authorized to operate 112 fixed stations at 409.675 MHz; (3) three licensees are authorized to operate ten fixed stations at 409.725 MHz; (4) four licensees are authorized to operate 97 fixed stations at 412.625 MHz; and (5) there are no licensees authorized to operate on the frequencies 170.375 MHz and 171.975 MHz. The Commission has issued 1053 licenses (there is at least one station per license) for the remaining Hydro channels that are being narrowbanded. We believe that some of the Hydro channel licensees are small businesses or small governmental entities.

48. *Forest Firefighting and Conservation Agencies.* The Commission has authorized 21 licensees to operate 414 fixed stations and 45,630 mobile stations on the nine channels that are available to forest firefighting

agencies; two of these frequencies are also available for use by conservation agencies. By Commission rule, these frequencies are reserved primarily for assignment to state licensees. Assignments to other licensees may be made only where the frequencies are required for coordinated operation with the state system to which the frequency is assigned. The 21 licensees consist of 19 states and state agencies, the County of Los Angeles, and a non-profit organization. This small organization may be impacted by our proposals.

49. *Public Safety Licensees.* The Commission has granted 27 licensees authorization to operate wideband equipment on the frequencies 166.25 MHz and 170.15 MHz. By Commission rule, these frequencies are to be assigned to stations in the Public Safety Pool that are at points within 240 kilometers of New York City. Specifically, the Commission has granted 15 licensees authorization to operate 1295 mobile stations, 95 pagers, and 30 fixed stations using the frequency 166.25 MHz. The Commission has granted 12 licensees authorization to operate 899 mobile stations, 165 pagers, and 22 fixed stations on the frequency 170.15 MHz. We believe that many of these public safety licensees are small governmental entities.

50. *Medical Radiocommunication Systems.* The Commission has issued 499 licenses for the frequency 150.775 MHz and 418 licenses for the frequency 150.79 MHz. By Commission rule, these 150 MHz channels are used only by mobile stations. For example, these frequencies may be used for voice transmissions from a portable (hand-held) unit to an ambulance. The Commission has issued 520 licenses for the frequency 163.25 MHz. By Commission rule, the frequency 163.25 MHz can be assigned only for one-way paging. We believe that most of the hospitals, medical centers, and nursing homes that operate medical radiocommunication systems are small businesses or small governmental entities.

51. The Commission seeks comment on this analysis. In providing such comment, commenters are requested to provide information regarding how many total and small business entities would be affected.

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

52. If adopted, the proposed rules would require that:

- PLMR licensees employing wideband channels for Hydro, forest

fire-fighting, conservation, and public safety operations modify or discontinue operations if, after January 1, 2005, these wideband operations cause interference to new Federal operations in the 162–174 MHz band, or if, after January 1, 2008, these wideband operations cause interference to new Federal operations in the 150.05–150.8 MHz and 406.1–420 MHz bands;

- Hydro channel licensees operating on the center frequencies 169.575 MHz, 409.675 MHz, 409.725 MHz, and 412.625 MHz cease operations not later than January 1, 2013 for Industrial/Business Pool licensees and not later than January 1, 2018 for Public Safety Pool licensees;

- PLMR applicants requesting authority to operate Hydro, forest fire-fighting, conservation, public safety, and medical radiocommunication stations in the 162–174 MHz band use narrowband channels after January 1, 2005; and that these applicants use narrowband channels after January 1, 2008 in the 150.05–150.8 MHz and 406–416 MHz bands; and

- New Hydro stations that would operate on the center frequencies 406.125 MHz and 406.175 MHz be limited to a transmitter output power of 125 watts and required to coordinate with the Radio Astronomy Observatory at Socorro, New Mexico.

53. If a licensee is required to modify its operations, we believe that the licensee would either buy new narrowband equipment or that the licensee would hire a vendor to modify some or all of its wideband equipment. We are uncertain of the exact costs relating to the narrowbanding requirements. We request comment on the costs related to narrowbanding and whether these costs would be borne as part of the licensee's normal depreciation and replacement cycle. We are especially interested in comments dealing with whether small entities would be affected disproportionately.

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

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

<sup>12</sup> See generally 13 CFR 121.201.

standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>13</sup>

55. So long as incompatibilities are not created with Federal narrowband operations, we propose to allow incumbent Public Safety Pool licensees to use existing equipment until January 1, 2018, and to allow incumbent Industrial/Business Pool licensees to use existing equipment until January 1, 2013. The Commission proposed that the 14 licensees of the six Hydro channels being deleted from the Hydro Channel Plan modify their equipment and station licenses and migrate to a center frequency listed in the new Hydro Channel Plan on a timetable as advised by the Hydro Committee and approved by NTIA and the Commission. The Commission proposed to grandfather indefinitely those incumbent stations that operate on the frequencies 150.7825 MHz and 150.7975 MHz.

56. The Commission request comment on whether it should exempt equipment designed for use in these Federal bands from our current 6.25 kHz equipment certification requirement, which is scheduled to commence on January 1, 2005. The purpose in providing this alternative is to determine whether such a policy would be beneficial or detrimental to enabling sharing between PLMR licensees and Federal users.

*F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

57. None.

**Ordering Clauses**

58. Pursuant to sections 1, 4(i), 7(a), 301, 302(a), 303(f), 303(g), 303(r), 307, 308, 309(j), 316, 332, 334, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157(a), 301, 302(a), 303(f), 303(g), 303(r), 307, 308, 309(j), 316, 332, 334, and 336, the Notice of Proposed Rulemaking is hereby Adopted.

59. The Commission's Consumer Information and Governmental Affairs Bureau, Reference Information Center, Shall Send a copy of the Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in Parts 2 and 90**

Radio, Telecommunications.  
Federal Communications Commission.  
**William F. Caton,**  
*Deputy Secretary.*

**Proposed Rule Changes**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 2 and 90 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 is amended by revising footnotes US11, US13, US117, US216, and US312 to read as follows:

**§ 2.106 Table of Frequency Allocations.**

\* \* \* \* \*

United States (US) Footnotes

\* \* \* \* \*

US11 On the condition that harmful interference is not caused to present or future Federal Government stations in the band 162–174 MHz, the frequencies 166.25 MHz and 170.15 MHz may be authorized to non-Federal Government stations, as follows: (1) eligibles in the Public Safety Radio Pool may be authorized to operate in the fixed and land mobile services for locations within 150 miles (241.4 km) of New York City; and (2) remote pickup broadcast stations may be authorized to operate in the land mobile service for locations within the continental United States, excluding Alaska, locations within 150 miles of New York City, and the Tennessee Valley Authority Area (TVA Area). The TVA Area is bounded on the west by the Mississippi River, on the north by the parallel of latitude 37°30' N., and on the east and south by that arc of the circle with center at Springfield, Illinois, and radius equal to the airline distance between Springfield, Illinois, and Montgomery, Alabama, subtended between the foregoing west and north boundaries.

US13 The following center frequencies, each with a channel bandwidth not greater than 12.5 kHz, are available for assignment to non-Federal Government fixed stations for the specific purpose of transmitting hydrological and meteorological data in cooperation with Federal agencies, subject to the condition that harmful interference will not be caused to Federal Government stations:

**HYDRO CHANNELS (MHZ)**

169.425	170.2625	171.100	406.1250
169.4375	170.275	171.1125	406.1750
169.450	170.2875	171.125	412.6625
169.4625	170.300	171.825	412.6750
169.475	170.3125	171.8375	412.6875
169.4875	170.325	171.850	412.7125
169.500	171.025	171.8625	412.7250
169.5125	171.0375	171.875	412.7375
169.525	171.050	171.8875	412.7625
170.225	171.0625	171.900	412.7750
170.2375	171.075	171.9125	415.1250
170.250	171.0875	171.925	415.1750

New assignments on the frequencies 406.125 MHz and 406.175 MHz are to be primarily for paired operations with the frequencies 415.125 MHz and 415.175 MHz, respectively.

\* \* \* \* \*

US117 In the band 406.1–410 MHz: (a) Stations in the fixed and mobile services shall be limited to a transmitter output power of 125 watts; (b) non-Federal Government use shall be limited to the radio astronomy service and to

the fixed service, as provided by footnote US13; and (c) new authorizations for stations, other than mobile stations, shall be subject to prior coordination by the applicant in the following areas:

<sup>13</sup> 5 U.S.C. 603(c).

1. *Arecibo Observatory of the National Astronomy and Ionosphere Center.* Within Puerto Rico and the U.S. Virgin Islands, contact: Spectrum Manager, Arecibo Observatory, P.O. Box 995, Arecibo, Puerto Rico 00613, Phone: 787-878-2612, Fax: 787-878-1816.

2. *Very Large Array (VLA) of the National Radio Astronomy Observatory (NRAO).* Within a 350 kilometer radius that is centered on 34°04'44" North Latitude, 107°37'04" West Longitude, contact: Spectrum Manager, National Radio Astronomy Observatory, P.O. Box O, 1003 Lopezville Road, Socorro, New Mexico 87801, Phone: 505-835-7000, Fax: 505-835-7027.

3. *Table Mountain Observatory of the Department of Commerce (407-409 MHz only).* Within a 10 kilometer radius that is centered on 40°07'50" North Latitude, 105°14'40" West Longitude, contact: Radio Frequency Coordinator, Department of Commerce, 325

Broadway, Boulder, Colorado 80303, Phone: 303-497-6548, Fax: 303-497-3384.

\* \* \* \* \*

US216 The use of the frequencies 150.775 MHz, 150.79 MHz, 152.0075 MHz, and 163.25 MHz, and the bands 462.9375-463.1875 MHz and 467.9375-468.1875 MHz may be authorized for both Federal and non-Federal Government Medical Radiocommunication Systems on a primary basis.

\* \* \* \* \*

US312 The frequency 173.075 MHz may be authorized on a primary basis to non-Federal Government stations in the Public Safety Radio Pool, limited to police licensees, for stolen vehicle recovery systems (SVRS). SVRS may operate with an authorized bandwidth not to exceed 20 kHz.

\* \* \* \* \*

**PART 90—PRIVATE LAND MOBILE RADIO SERVICES**

3. The authority citation for part 90 continues to read as follows:

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

4. Section 90.20 is amended by revising entries to the table in paragraph (c)(3), (d)(47), (d)(48), and (d)(49), by removing and reserving paragraphs (d)(50), and (d)(51), and by adding paragraphs (d)(86) and (d)(87) to read as follows:

**§ 90.20 Public Safety Pool.**

\* \* \* \* \*

(c) \* \* \*

(3) *Frequencies.*

**PUBLIC SAFETY POOL FREQUENCY TABLE**

Frequency or band	Class of station(s)	Limitations	Coordinator
* * * * *			
<b>Megahertz</b>			
* * * * *			
150.775 .... Mobile .....		86	PM
150.7825 .. do .....		87	PM
150.790 .... do .....		86	PM
150.7975 .. do .....		87	PM
* * * * *			
152.0075 .. Base .....		13, 30, 86	PM
* * * * *			
163.250 .... do .....		13, 86	PM
166.250 .... do .....		47	PF
169-172 ... Mobile or operational fixed .....		48	.....
170.150 .... Base or mobile .....		47	PF
170.425 .... do .....		9, 49	PO
170.475 .... do .....		9, 49	PO
170.575 .... do .....		9, 49	PO
171.425 .... do .....		9, 49	PO
171.475 .... do .....		9, 49	PO
171.575 .... do .....		9, 49	PO
172.225 .... do .....		9, 49	PO
172.275 .... do .....		9, 49	PO
172.375 .... do .....		9, 49	PO
* * * * *			
406-416 ... Operational fixed .....		48	
* * * * *			

(d) \* \* \*

(47) This frequency may be assigned to stations in the Public Safety Pool in accordance with the provisions of § 90.265.

(48) Frequencies in this band will be assigned only for transmitting hydrological or meteorological data or for low power wireless microphones in accordance with the provisions of § 90.265.

(49) This frequency may be assigned only for forest fire-fighting and conservation activities in accordance with the provisions of § 90.265.

(50) [Reserved]

(51) [Reserved]  
\* \* \* \* \*

(86) This frequency will be assigned only for Medical Radiocommunication Systems in accordance with the provisions of § 90.265.

(87) Use of this frequency shall be limited to stations licensed as of [effective upon publication of the Report and Order in this proceeding].

5. Section 90.35(b)(3) is amended by removing the entry for “406–413” and

adding in its place “406–416” to read as follows:

**§ 90.35 Industrial/Business Pool.**

\* \* \* \* \*  
(b) \* \* \*  
(3) *Frequencies.*

**INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE**

Frequency or band	Class of station(s)	Limitations	Coordinator
* * * * *	* * * * *	* * * * *	* * * * *
Megahertz			
406–416	Operational fixed		53
* * * * *	* * * * *	* * * * *	* * * * *

6. Section 90.203 is amended by revising paragraph (j) introductory text, and the first sentence in paragraphs (j)(3), and (j)(5), and by revising (j)(7) to read as follows:

**§ 90.203 Certification required.**

(j) Except where otherwise specially provided for, transmitters operating on frequencies in the 150–174 MHz and 406–512 MHz bands must comply with the following:

(3) Applications for part 90 certification of transmitters designed to operate on frequencies in the 150–174 MHz and/or 406–512 MHz bands,

received on or after February 14, 1997, must include a certification that the equipment meets a spectrum efficiency standard of one voice channel per 12.5 kHz of channel bandwidth. \* \* \*

(5) Applications for part 90 certification of transmitters designed to operate on frequencies in the 150–174 MHz and/or 406–512 MHz bands, received on or after January 1, 2005, must include a certification that the equipment meets a spectrum efficiency standard of one voice channel per 6.25 kHz of channel bandwidth. \* \* \*

(7) All transmitters that are designed for one-way paging operations, except

those operating on the frequency 163.25 MHz, will be certified with a 25 kHz channel bandwidth and are exempt from the spectrum efficiency requirements of paragraphs (j)(3) and (j)(5) of this section.

7. Section 90.209 is amended by removing the entry “421–512<sup>2</sup>”, in the table following paragraph (b)(5), and adding in its place “406–512<sup>2</sup>” to read as follows:

**§ 90.209 Bandwidth limitations.**

\* \* \* \* \*  
(b) \* \* \*  
(5) \* \* \*

**STANDARD CHANNEL SPACING BANDWIDTH**

Frequency band (MHz)	Channel Spacing (kHz)	Authorized bandwidth (kHz)
406–512 <sup>2</sup>	6.25	1 <sup>3</sup> 20/11.25/6
* * * * *	* * * * *	* * * * *

8. Section 90.217 is amended by adding paragraph (e) to read as follows:

**§ 90.217 Exemption from technical standards.**

(e) Transmitters used for wireless microphone operations and operating

on frequencies allocated for Federal Government use must comply with the requirements of § 90.265(b).

9. Section 90.265 is amended by revising the section heading and paragraph (a) introductory text and the table preceding paragraph (a)(1) and by adding paragraphs (a)(5) through (a)(9), (c), (d), and (e) to read as follows:

**§ 90.265 Assignment and use of frequencies in the bands allocated to Federal Government use.**

(a) The following center frequencies are available for assignment to fixed stations in the Public Safety Pool or the Industrial/Business Pool, subject to the provisions of this section:

**HYDRO CHANNELS (MHZ)**

169.4250	170.2625	171.1000	406.1250
169.4375	170.2750	171.1125	406.1750
169.4500	170.2875	171.1250	412.6625
169.4625	170.3000	171.8250	412.6750
169.4750	170.3125	171.8375	412.6875

HYDRO CHANNELS (MHZ)—Continued

169.4875	170.3250	171.8500	412.7125
169.5000	171.0250	171.8625	412.7250
169.5125	171.0375	171.8750	412.7375
169.5250	171.0500	171.8875	412.7625
170.2250	171.0625	171.9000	412.7750
170.2375	171.0750	171.9125	415.1250
170.2500	171.0875	171.9250	415.1750

\* \* \* \* \*

(5) After January 1, 2005 for the 169–172 MHz band and January 1, 2008 for the 406–416 MHz band, channels for new operations are limited to an authorized bandwidth not to exceed 11.25 kHz. After those dates, existing systems with an authorized bandwidth of greater than 11.25 kHz (including those systems that expand existing operations) may continue to operate with a bandwidth greater than 11.25 kHz until January 1, 2013 (for Business/Industrial Pool licensees), and until January 1, 2018 (for Public Safety Pool licensees). Such operations are limited by § 90.265(a)(6) and (a)(7).

(6) After January 1, 2005, if a licensee of a channel in the band 169–172 MHz which uses equipment with an authorized bandwidth greater than 11.25 kHz cannot resolve an interference complaint to the satisfaction of an impacted Federal agency or is advised to do so by the Hydro Committee as approved by the FCC, then the licensee must cease operation on the frequency upon notification by the Commission.

(7) After January 1, 2008, if a licensee of a channel in the band 169–172 MHz which uses equipment with an authorized bandwidth greater than 11.25 kHz cannot resolve an interference complaint to the satisfaction of an impacted Federal agency or is advised to do so by the Hydro Committee as approved by the FCC, then the licensee must cease operation on the frequency upon notification by the Commission.

(8) After [effective upon publication of the Report and Order in this proceeding], new assignments on the frequencies 406.125 MHz and 406.175 MHz are to be primarily for paired operations with the frequencies 415.125 MHz and 415.175 MHz, respectively and limited to an authorized bandwidth not to exceed 11.25 kHz when paired.

(9) Existing stations may continue to use the center frequencies 169.575 MHz, 409.675 MHz, 409.725 MHz, and 412.625 MHz until January 1, 2013 for Business/Industrial Pool licensees and until January 1, 2018 for Public Safety

Pool licensees, subject to the requirements of § 90.265(a)(6) and (a)(7).

\* \* \* \* \*

(c) The following center frequencies are available for assignment to licensees engaged in forest fire-fighting and conservation activities, subject to the provisions of this section:

FOREST FIRE-FIGHTING AND CONSERVATION CHANNELS (MHZ)

170.425	171.425	172.225
170.475	171.475	172.275
170.575	171.575	172.375

(1) These frequencies will be assigned on a secondary basis to any U.S. Government station.

(2) The frequencies 170.425 MHz, 170.475 MHz, 170.575 MHz, 171.425 MHz, 171.575 MHz, 172.225 MHz, and 172.275 MHz will be assigned only to licensees directly responsible for the prevention, detection, and suppression of forest fires.

(3) The frequencies 171.475 MHz and 172.275 MHz will be assigned to licensees directly responsible for the prevention, detection, and suppression of forest fires; or to licensees engaged in forest conservation activities for mobile relay operation only.

(4) The frequencies 170.425 MHz, 170.575 MHz, 171.475 MHz, 172.225 MHz, and 172.375 MHz will be assigned for use only in areas west of the Mississippi River.

(5) The frequencies 170.475 MHz, 171.425 MHz, 171.575 MHz, and 172.275 MHz will be assigned for use only in areas east of the Mississippi River.

(6) All applications for use of these frequencies must be accompanied by a letter of concurrence by the Federal Government, Department of Agriculture.

(7) After January 1, 2005, channels for new operations are limited to an authorized bandwidth not to exceed 11.25 kHz. Between January 1, 2005, and January 1, 2018, existing systems with an authorized bandwidth of greater than 11.25 kHz (including those systems that expand existing operations) may continue to operate with a bandwidth greater than 11.25 kHz, subject to the limitations set forth in § 90.265(c)(8).

(8) After January 1, 2005, if a licensee that uses equipment with an authorized bandwidth greater than 11.25 kHz cannot resolve an interference complaint from an impacted Federal agency, then the licensee must cease operation on the frequency upon notification by the Commission.

(d) The frequencies 166.250 MHz and 170.150 MHz are available for assignment to licensees engaged in public safety activities, subject to the provisions of this section:

(1) These frequencies are available for assignment to stations in the Public Safety Pool, only at points within 241.4 km. (150 mi.) of New York, N.Y.;

(2) Operations on these channels is on a secondary basis to any Federal Government station; and

(3) After January 1, 2005, if a licensee that uses equipment with an authorized bandwidth greater than 11.25 kHz cannot resolve an interference complaint from an impacted Federal agency, then the licensee must cease operation on the frequency upon notification by the Commission.

(4) After January 1, 2005, channels for new operations are limited to an authorized bandwidth not to exceed 11.25 kHz. Between January 1, 2005, and January 1, 2018, existing systems with an authorized bandwidth of greater than 11.25 kHz (including those systems that expand existing operations) may continue to operate with a bandwidth greater than 11.25 kHz, subject to the limitations set forth in § 90.265(d)(3).

(e) The following frequencies are available for use by Medical Radiocommunication Systems:

(1) The frequencies 150.775 MHz, 150.790 MHz, and 163.250 MHz, subject to following provisions:

(i) After [effective upon publication of the Report and Order in this proceeding], new assignments for these frequencies shall be authorized only for Medical Radiocommunication Systems.

(ii) After January 1, 2005, new operations on the frequency 163.25 MHz are limited to an authorized bandwidth not to exceed 11.25 kHz.

(iii) After January 1, 2008, new operations on the frequencies 150.775 MHz and 150.790 MHz are limited to an authorized bandwidth not to exceed 11.25 kHz.

(iv) Existing systems with an authorized bandwidth of greater than 11.25 kHz (including those systems that expand existing operations) may continue to operate on a primary basis with a bandwidth greater than 11.25 kHz until January 1, 2018. After January 1, 2018, stations that use the frequencies 150.775 MHz, 150.790 MHz, or 163.25 MHz shall be limited to an authorized bandwidth not to exceed 11.25 kHz.

(2) The frequency 152.0075 MHz and frequencies within the bands 462.9375–463.1875 MHz and 467.9375 MHz–468.1875 MHz, subject to the limitations specified in § 90.20 of this chapter.

[FR Doc. 04–17074 Filed 8–2–04; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 04–2267; MB Docket No. 04–266, RM–11005; MB Docket No. 04–267, RM–11008; MB Docket No. 04–268; RM–11009; MB Docket No. 04–269, RM–11010; MB Docket No. 04–270 RM–11012; MB Docket No. 04–271; RM–11013; MB Docket No. 04–272; RM–11014; MB Docket No. 04–273, RM–11015; MB Docket No. 04–274; RM–11016; MB Docket No. 04–275; RM–11017; MB Docket No. 04–276; RM–11033; MB Docket No. 04–277; RM–11034; MB Docket No. 04–278; RM–11035; MB Docket No. 04–279; RM–11036; MB Docket No. 04–280; RM–11037]

**Radio Broadcasting Services; Coalinga, CA; Coupeville, WA; Harrisonburg, LA; Mecca, CA; Mooreland, OK; Randsburg, CA; Port Isabel, TX; Richland Springs, TX; Ringwood, OK; Rosepine, LA; San Joaquin, CA; Taos, NM; Taos Pueblo, NM, Wasco, CA; Waynoka, OK**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes 15 allotments to Coalinga, California, Coupeville, Washington, Harrisonburg, Louisiana, Mecca, California, Mooreland, Oklahoma, Randsburg, California, Port Isabel, Texas, Richland Springs, Texas, Ringwood, Oklahoma, Rosepine, Louisiana, San Joaquin, California, Taos Pueblo, New Mexico, Taos, New Mexico, Wasco, California, and Waynoka, Oklahoma. *See SUPPLEMENTARY INFORMATION, infra.*

**DATES:** Comments must be filed on or before September 16, 2004, and reply comments on or before October 1, 2004.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the

FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas Texas 75205 (Petitioner for the Harrisonburg, LA; Rosepine, LA, Waynoka, OK; Richland Springs, TX; Ringwood, OK; and Mooreland, OK proposals); Dana J. Puopolo, 2134 Oak Street, Unit C, Santa Monica, California, 90405 (Petitioner for the Mecca, CA; Taos, NM; Port Isabel, TX; Randsburg, CA; Taos Pueblo, NM; and Coupeville, WA proposals); Linda A. Davidson, 2134 Oak Street, Unit C, Santa Monica, California 90405 (Petitioner for the San Joaquin, CA; and Wasco, CA proposals); and Robert Eurich, President, 105 Mountain Air, Inc., 7179 N. Van Ness, Fresno, California 93711 (Petitioner for the Coalinga, CA proposal).

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 04–266; MB Docket No. 04–267; MB Docket No. 04–268; MB Docket No. 04–269; MB Docket No. 04–270; MB Docket No. 04–271; MB Docket No. 04–272; MB Docket No. 04–273; MB Docket No. 04–274; MB Docket No. 04–275, MB Docket No. 04–276; MB Docket No. 04–277; MB Docket No. 04–278; MB Docket No. 04–279; and MB Docket No. 04–280; adopted July 21, 2004, and released July 26, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or <http://www.BCPIWEB.com>.

The Audio Division requests comments on a petition filed by Charles Crawford proposing the allotment of Channel 232A at Harrisonburg, Louisiana, as the community's first local aural transmission service. Channel 232A can be allotted to Harrisonburg in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.9 kilometers (3.0 miles) northeast to avoid short-spacings to the licensed sites of Station WEMX(FM), Channel 231C1, Kentwood, Louisiana, and Station KSMB(FM), Channel 233C, Lafayette, Louisiana. The coordinates for Channel 232A at Harrisonburg are 31–48–18 North Latitude and 91–47–26 West Longitude.

The Audio Division requests comments on a petition filed by Dana J. Puopolo proposing the allotment of Channel 274A at Mecca, California, as the community's second local FM transmission service. Channel 274A can be allotted to Mecca in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 274A at Mecca are 33–34–18 North Latitude and 116–04–35 West Longitude. Since Mecca is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested.

The Audio Division requests comments on a petition filed by Dana J. Puopolo proposing the allotment of Channel 288A at Taos, New Mexico, as the community's fifth local FM transmission service. Channel 288A can be allotted to Taos in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.3 kilometers (5.2 miles) northwest to avoid a short-spacing to the proposed allotment of Channel 287C at Des Moines, New Mexico. The coordinates for Channel 288A at Taos are 36–26–55 North Latitude and 105–39–00 West Longitude.

The Audio Division requests comments on a petition filed by Linda A Davidson proposing the allotment of Channel 299A at San Joaquin, California, as the community's second local FM transmission service. Channel 299A at can be allotted to San Joaquin in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.1 kilometers (1.2 miles) west to avoid a short-spacing to the licensed site for Station KZOL(FM), Channel 300B1, North Fork, California. The coordinates for Channel 299A at San Joaquin California are 36–36–00 North Latitude and 120–12–36 West Longitude.

The Audio Division requests comments on a petition filed by Charles Crawford proposing the allotment of Channel 281A at Rosepine, Louisiana, as the community's first local aural transmission service. Channel 281A can be allotted to Rosepine in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.5 kilometers (3.4 miles) west to avoid a short-spacing to the licensed site of Station KJLO-FM, Channel 281C, Monroe, Louisiana. The coordinates for Channel 281A at Rosepine are 30–55–24 North Latitude and 93–20–24 West Longitude.

The Audio Division requests comments on a petition filed by Charles Crawford proposing the allotment of