Federal Communications Commission.

Marlene H. Dortch,

Secretary.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[WT Docket Nos. 03–103, 05–42; FCC 05–202]

Air-Ground Telecommunications Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Federal Communications Commission (''Commission'') adopts competitive bidding rules for the 800 MHz commercial Air-Ground Radiotelephone Service and the 400 MHz general aviation Air-Ground Radiotelephone Service. The Commission will auction licenses in both of these services in conformity with the general competitive bidding rules. The Commission adopts small business definitions and bidding credits for the 800 MHz air-ground service and concludes that bidding credits are unnecessary for the 400 MHz air-ground service.

DATES: Effective February 27, 2006.

FOR FURTHER INFORMATION CONTACT: Lynne Milne, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, at 202–418–7055 or via e-mail at *Lynne.Milne@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the *Report and Order* portion of the *Order on Reconsideration and Report and Order,* FCC 05–202, in WT Docket Nos. 03–103 and 05–42, adopted on December 8, 2005, and released on December 9, 2005. The Commission is concurrently publishing a summary of the *Order on Reconsideration* in the **Federal Register**. The complete text of the *Report and Order* is available for public inspection and copying from 8 a.m. to 4:30 p.m. Monday through Thursday or from 8 a.m. to 11:30 p.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Report and Order* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI please provide the appropriate FCC document number (for example, FCC 05–202, Report and Order). The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by sending an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), or 202–418–0432 (tty).

Synopsis of the Report and Order

A. Incorporation of the Part 1 Standardized Auction Rules

1. On December 15, 2004, the Commission adopted a *Report and Order and Notice of Proposed Rulemaking,* WT Docket Nos. 03–103 and 05–42, 70 FR 19293 (April 13, 2005) and 70 FR 19377 (April 13, 2005). In the *Notice of Proposed Rulemaking,* the Commission proposed to conduct auctions of both commercial and general aviation air-ground licenses in conformity with the general competitive bidding rules in part 1, subpart Q, of the Commission's rules, and substantially consistent with the bidding procedures that have been employed in previous Commission auctions.

2. In this *Report and Order,* the Commission adopts this proposal. Because alternative band plans are being made available in the 800 MHz air-ground service, with the selection of the final band configuration to be determined by applicants' bids in the auction, the determination of whether individual applications are mutually exclusive for purposes of section 309(j) of the Communications Act will be based on whether different applicants have applied for licenses in different band configurations as well as on whether different applicants have applied for the same licenses. The Commission finds, however, that there is no need to change the part 1 competitive bidding rules for the air-ground services. These rules will be subject to any modifications to them that the Commission may adopt for auctionable services generally.

B. Provisions for Designated Entities

3. The Commission concludes that it is appropriate to offer bidding credits in the 800 MHz commercial air-ground service. No commercial air-ground license will authorize the use of as much spectrum as other nationwide services for which the Commission has declined to adopt small business bidding credits. In addition, the Commission continues to believe that the operation of a commercial air-ground service may require lower capital expenditures than other nationwide services. Therefore, the Commission finds that bidding credits should be made available to small businesses to assist them with attracting capital.

4. The Commission adopts its proposed small business definitions for the 800 MHz commercial air-ground service. Thus, for this service the Commission will define a small business as an entity with average annual gross revenues for the three preceding years not exceeding $40 million, and the Commission will define a very small business as an entity with average annual gross revenues for the three preceding years not exceeding $15 million. The Commission will offer a 15 percent bidding credit for small businesses and a 25 percent bidding credit for very small businesses, as set forth in the standardized schedule of bidding credits at 47 CFR 1.2110(f)(2). The Commission rejects the arguments of Space Data Corporation and AirCell, Inc., in favor of higher bidding credit levels than those provided for in 47 CFR 1.2110(f)(2). The Commission concludes that neither Space Data nor AirCell has provided sufficient support for departing from the part 1 bidding credit schedule in the 800 MHz air-ground service.

5. The Commission concludes that bidding credits are unnecessary in the auction of licenses in the 400 MHz general aviation Air-Ground Radiotelephone Service. If in the future the Commission is presented with evidence of a need for bidding credits in the 400 MHz air-ground service, the Commission will reconsider this issue.

Procedural Matters

A. Congressional Review Act

6. The Commission will send a copy of the *Order on Reconsideration and Report and Order* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

B. Final Regulatory Flexibility Analysis

7. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an 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 the *Notice of Proposed Rulemaking* (*NPRM*) was incorporated therein. The Commission sought written public

comment on the proposals in the *NPRM*, including comment on the IRFA. No comments were submitted specifically in response to the IRFA. The Commission nonetheless discusses certain comments below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Report and Order

8. In this *Report and Order* (*R&O*) the Commission adopts competitive bidding rules for the 800 MHz commercial Air-Ground Radiotelephone Service and the 400 MHz general aviation Air-Ground Radiotelephone Service. Such rules are necessary because, under section 309(j) of the Communications Act, 47 U.S.C. 309(j), the Commission is required to choose among mutually exclusive applications for spectrum licenses using competitive bidding, except in certain cases not applicable here. The Commission has revised its rules governing the four megahertz of dedicated spectrum in the 800 MHz commercial Air-Ground Radiotelephone Service and intends to make new licenses available in this service. If mutually exclusive applications are filed for these licenses, the Commission will be required to resolve such applications by competitive bidding. The Commission also has pending before it nine groups of mutually exclusive applications for licenses in the 400 MHz general aviation Air-Ground Radiotelephone Service, and it will schedule an auction to resolve these applications. In addition to adopting its proposal in the *Notice of Proposed Rulemaking* to apply its general part 1 competitive bidding rules to both the 800 MHz commercial air-ground service and the 400 MHz general aviation air-ground service, the Commission adopts bidding credits for small businesses in the 800 MHz commercial air-ground service in order to help small entities attract capital to participate in the 800 MHz air-ground auction.

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

9. No comments were submitted specifically in response to the IRFA.

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

10. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

11. The SBA has not developed a specific small business size standard for the Air-Ground Radiotelephone Service. The SBA has, however, developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can be considered small. In addition, annual FCC data show that 437 carriers have reported that they are engaged in the provision of ''wireless telephony,'' which includes cellular service, personal communications service, and specialized mobile radio telephony. The Commission has estimated that 260 of these are small, under the SBA small business size standard. Finally and more specifically, the Commission has determined that currently there are 11 licensees in the Air-Ground Radiotelephone Service, and it estimates that almost all of them qualify as small under the SBA small business size standard for ''Cellular and Other Wireless Telecommunications.''

12. As the Commission proposed in the *NPRM*, it adopts small business size standards specific to the 800 MHz commercial Air-Ground Radiotelephone Service. Thus, the Commission defines a small business as an entity with average annual gross revenues for the three preceding years not exceeding $40 million, and it defines a very small business as an entity with average annual gross revenues for the three preceding years not exceeding $15 million. The Commission sought consultation regarding these size standards with the SBA, as required by the Small Business Act, 15 U.S.C. 632(a)(2)(c), and 13 CFR 121.901–903. On January 26, 2005, the SBA indicated that these size standards appeared reasonable and that it had no specific comments. *See* Letter from Gary M. Jackson, Assistant Administrator for Size Standards, U.S. Small Business Administration, to Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, dated January 26, 2005. No parties filed comments opposing these size standards. On September 19, 2005, the SBA approved the Commission's request to adopt these small business size standards for the commercial air-ground service. *See* Letter from Hector V. Barreto, Administrator, U.S. Small Business Administration, to Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, dated September 19, 2005.

13. The Commission does not know how many entities interested in providing commercial air-ground service fall within these definitions. For purposes of this FRFA, the Commission assumes that a significant percentage of such entities will be small businesses or very small businesses under these definitions. The Commission has not adopted small business size standards specific to the 400 MHz general aviation Air-Ground Radiotelephone Service. The Commission therefore will use SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' i.e., an entity employing no more than 1,500 persons, for the 400 MHz general aviation air-ground service. As noted above, there are 11 licensees in the Air-Ground Radiotelephone Service. Ten of these operate in the general aviation Air-Ground Radiotelephone Service, and the Commission estimates that all or almost all of them qualify as small under the SBA small business size standard. In addition, as noted above, the Commission has pending before it nine groups of mutually exclusive applications for licenses in the 400 MHz general aviation Air-Ground Radiotelephone Service; these nine groups include six applicants that are not already licensees in the general aviation Air-Ground Radiotelephone Service. As with the licensees in this service, the Commission estimates that all or almost all of these six applicants qualify as small under the SBA small business size standard. The Commission also estimates that all or almost all of any future applicants in the 400 MHz

general aviation Air-Ground Radiotelephone Service will be small under the SBA small business size standard.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

14. The *R&O* does not establish new reporting, recordkeeping, or other compliance requirements but extends the Commission's existing part 1 competitive bidding rules to the Air-Ground Radiotelephone Service. Applicants for air-ground licenses will therefore be required to file a short-form application on FCC Form 175 to participate in auctions, and auction winners will be required to file a long-form application on FCC Form 601. While these application requirements are new with respect to applicants in the air-ground services, they are the same application requirements the Commission has applied to other auctionable services for a number of years.

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

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

16. The Commission has taken significant steps to assist small entities. For instance, the Commission has adopted its proposal to auction both 800 MHz commercial and 400 MHz general aviation air-ground licenses in conformity with the general competitive bidding rules set forth in part 1, subpart Q, of the Commission's Rules. The Commission believes that use of these well-established rules provides consistent guidance, reduces burdens on bidders and the Commission, and avoids undue delay in the provision of services.

17. In addition, to provide opportunities for small entities to participate in the 800 MHz commercial air-ground auction, the Commission offers bidding credits to small businesses (entities with average annual gross revenues for the three preceding years not exceeding $40 million) and very small businesses (entities with average annual gross revenues for the three preceding years not exceeding $15 million). The bidding credits adopted are 15 percent for small businesses and 25 percent for very small businesses. These bidding credits are consistent with the Commission's standardized schedule of bidding credits at 47 CFR 1.2110(f)(2). One party, Verizon Airfone Inc., filed comments opposing the adoption of bidding credits in the 800 MHz commercial air-ground auction. Two parties, AirCell, Inc., and Space Data Corporation, filed comments requesting higher bidding credits than those the Commission adopts. The Commission concludes that bidding credits are appropriate for the 800 MHz commercial air-ground service and that AirCell, Inc., and Space Data Corporation have not provided sufficient support for departing from the Commission's part 1 bidding credit schedule, which the Commission has used effectively since 1997 to promote the participation of small businesses in auctions and whose predictability is helpful to small businesses in the business planning and capital fundraising process.

18. No parties filed comments on the issue of whether small business bidding credits would be appropriate for the 400 MHz general aviation Air-Ground Radiotelephone Service. As discussed in the *R&O,* general aviation air-ground licenses are generally held by relatively small businesses, and larger telecommunications providers do not routinely apply for them. Moreover, the initial auction for the nine general aviation licenses for which the Commission has received applications will be limited to those parties with applications already on file. Given these circumstances, the Commission concludes that bidding credits are unnecessary in the auction of these licenses. If in the future the Commission is presented with evidence of a need for bidding credits in the 400 MHz air-ground service, it will reconsider this issue, but it finds no need for bidding credits in this service under current circumstances.

19. Concerning compliance burdens, the Commission notes that the requirement of filing applications on appropriate forms is necessary in order to ensure that applicants are qualified to participate in auctions and hold licenses. Certain information required on FCC Form 175 is also necessary to ensure that only applicants that qualify as small businesses or very small businesses receive the bidding credits offered to such entities. The Commission has reduced the burden of the application process wherever possible by requiring limited information on FCC Form 175 and requiring more complete information only from auction winners on FCC Form 601.

Report to Congress

20. The Commission will send a copy of this *R&O,* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of this *R&O,* including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this *R&O* and FRFA (or summaries thereof) will be published in the **Federal Register**.

C. Paperwork Reduction Act of 1995

21. The *Order on Reconsideration and Report and Order* does not contain either new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4).

Ordering Clauses

22. Pursuant to the authority contained in sections 1, 4(i), 11, 303(r) and (y), 308, 309, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 161, 303(r), 303(y), 308, 309, and 332, this *Order on Reconsideration* and *Report and Order* is hereby *adopted.*

23. Pursuant to sections 4(i), 303(c), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(r) and 309(j), part 22 of the Commission's Rules is amended as specified in Appendix B of the *Report and Order,* effective 60 days after publication in the **Federal Register**.

24. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Order On Reconsideration and Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 22

Communications common carriers, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 22 as follows:

PART 22—PUBLIC MOBILE SERVICES

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

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

■ 2. Add § 22.881 to read as follows:

§ 22.881 Air-Ground Radiotelephone Service subject to competitive bidding.

Mutually exclusive initial applications for general aviation Air-Ground Radiotelephone Service licenses and mutually exclusive initial applications for commercial Air-Ground Radiotelephone Service licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q, of this chapter will apply unless otherwise provided in this subpart.

■ 3. Add § 22.882 to read as follows:

§ 22.882 Designated entities.

(a) Eligibility for small business provisions in the commercial Air-Ground Radiotelephone Service.

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

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

(b) Bidding credits in the commercial Air-Ground Radiotelephone Service.

(1) A winning bidder that qualifies as a small business, as defined in this section, or a consortium of small businesses may use a bidding credit of 15 percent, as specified in § 1.2110(f)(2)(iii) of this chapter, to lower the cost of its winning bid on a commercial Air-Ground Radiotelephone Service license.

(2) A winning bidder that qualifies as a very small business, as defined in this section, or a consortium of very small businesses may use a bidding credit of 25 percent, as specified in § 1.2110(f)(2)(ii) of this chapter, to lower the cost of its winning bid on a commercial Air-Ground Radiotelephone Service license.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

48 CFR Chapter 12

[Docket No. OST–2004–19899]

RIN 2105–AD28

Re-issuance of the Department of Transportation Acquisition Regulation

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department of Transportation is converting the interim final rule published in the **Federal Register** at 70 FR 6506, on February 7, 2005 to a final rule with changes to amend the Transportation Acquisition Regulation (TAR) due to internal organization changes and the need for minor editorial changes. No comments were received on this rule. This final rule replaces the 1994 edition of the Transportation Acquisition Regulation (TAR) with the 2004 edition.

DATES: This rule is effective January 26, 2006.

FOR FURTHER INFORMATION CONTACT: Elaine Wheeler, Office of the Senior Procurement Executive, M–60, 400 Seventh Street, SW., Washington, DC 20590: (202) 366–4272.

SUPPLEMENTARY INFORMATION:

I. Background

The Department did not receive any comments to its interim final rule on this subject. Accordingly, the interim final rule amending 48 CFR Chapter 12 which was published at 70 FR 6505 on February 7, 2005, is adopted as a final rule without substantive change.

On February 21, 2005, the Department of Transportation was reorganized by, among other changes, establishing two new operating administrations. This is an internal organizational change to the Department not requiring public comment. This final rule includes a change in nomenclature to ensure that the rule includes the present names of DOT operating administrations. In addition, there are few minor editorial corrections.

List of Subjects in 48 CFR Parts 1201, 1202, 1217, 1228, 1252

Government procurement.

This final rule is issued under the delegated authority of the Senior Procurement Executive pursuant to 49 CFR 1.50a(a)(1).

Issued this 16th day of December 2005 at Washington, DC.

David J. Litman,

Senior Procurement Executive.

■ Interim Final Rule Adopted as Final With Changes. Accordingly, DOT adopts the interim final rule which was published in the **Federal Register** at 70 FR 6506, February 7, 2005, as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 1201, 1202, 1217, 1228, and 1252 continues to read as follows:

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); (FAR) 48 CFR 1.3.

PART 1201—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 2. In 48 CFR 1201.105–2, paragraph (a) is amended by:

■ A. Adding ''PHMSA'' and ''RITA'' in alphabetic order to the list of acronyms; and

■ B. Removing ''RSPA'' from the list of acronyms. The additions read as follows:

§ 1201.105–2 Arrangement of regulations.

* * * * *

(a) General. * * *

PHMSA—Pipeline and Hazardous Materials Safety Administration

RITA—Research and Innovative Technology Administration

* * * * *

PART 1202—DEFINITIONS

■ 3. In 48 CFR 1202.1, the definition for Operating Administration (OA) is amended by revising paragraphs (9) and (10) and adding a new paragraph (11) to read as follows:

§ 1202.1 Definitions.

* * * * *

Operating Administration (OA) means the following components of DOT:

* * *

(9) Pipeline and Hazardous Materials Safety Administration (PHMSA).

(10) Research and Innovative Technology Administration (RITA).

(11) Saint Lawrence Seaway Development Corporation (SLSDC).

* * * * *

PART 1217—SPECIAL CONTRACTING METHODS

§ 1217.7001 [Amended]

■ 4. Amend § 1217.7001(e) by deleting the words ''(TAR) 48 CFR 1252.217''—and adding in their place the words ''(TAR) 48 CFR 1252.217–75.''