

### E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

#### List of Subjects in 41 CFR Part 303-70

Government employees, Travel and transportation expenses.

For the reasons set forth in the preamble, 41 CFR part 303-70 is amended as follows:

#### PART 303-70—AGENCY REQUIREMENTS FOR PAYMENT OF EXPENSES CONNECTED WITH THE DEATH OF CERTAIN EMPLOYEES

1. The authority citation for part 303-70 continues to read as follows:

**Authority:** 5 U.S.C. 5721-5738; 5741-5742; E.O. 11609, 3 CFR, 1971-1975 Comp., p. 586.

2. Section 303-70.100 is revised to read as follows:

#### § 303-70.100 May we pay the travel expenses for an escort for the remains of a deceased employee?

Yes, in accordance with §§ 303-70.600 through 303-70.602.

3. Section 303-70.403 is amended by revising the section heading to read as follows:

#### § 303-70.403 When a family member, residing with the employee, dies while in transit to or from the employee's duty station outside CONUS, must we furnish mortuary services and/or transportation of the remains?

\* \* \* \* \*

4. Part 303-70 is amended by adding Subpart G to read as follows:

#### Subpart G—Escort of Remains

Sec.

303-70.600 How many persons may we authorize travel expenses for to escort the remains of a deceased employee?

303-70.601 Under what circumstances may we authorize the escort of remains?

303-70.602 What travel expenses may we authorize for the escort of remains?

#### Subpart G—Escort of Remains

#### § 303-70.600 How many persons may we authorize travel expenses for to escort the remains of a deceased employee?

Travel expenses may be authorized for no more than two persons.

#### § 303-70.601 Under what circumstances may we authorize the escort of remains?

Escort of remains may be authorized when the employee's death occurs:

(a) While in a travel status away from his/her official station in the United States; or

(b) While performing official duties outside the United States or in transit thereto or therefrom.

#### § 303-70.602 What travel expenses may we authorize for the escort of remains?

You may authorize any travel expenses in accordance with chapter 301 of this title that are necessary for the escort of remains to:

(a) The home or official station of the deceased; or

(b) Any other place appropriate for interment as determined by the head of your agency.

Dated: July 8, 1999.

**David J. Barram,**

*Administrator of General Services.*

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BILLING CODE 6820-34-P

### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Parts 1 and 101

[FCC 99-179—ET Docket No. 95-183]

#### 37.0-38.6 GHz and 38.6-40.0 GHz Bands

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rules.

**SUMMARY:** The Commission concludes that licensing the 39 GHz band by Economic Areas (EAs), rather than Basic Trading Areas (BTAs), will provide ample population coverage and allow licensees the flexibility to provide many different types of services. This action was taken upon the Commission's own motion after consideration of Rand McNally's copyright interest in BTAs and the possible delays that this might cause to the 39 GHz licensing process. The Commission also concludes that it is in the public interest to allow licensees to partition along any licensee-defined service area. This action was taken in response to a petition for reconsideration of the Commission's earlier action in this proceeding allowing partitioning according to county boundaries or geo-political subdivisions. Finally, the Commission decides to exempt 39 GHz licensees from a build-out requirement of mandatory operation with 18 months from the initial date of grant. This action was taken because there is a new performance requirement of a substantial service showing for 39 GHz licensees. These amended rules will provide 39 GHz licensees with more flexibility in the use of their licenses.

**DATES:** Effective October 22, 1999. Written comments by the public on the

proposed information collection are due October 22, 1999. Written comments must be submitted to the Office of Management and Budget on the proposed information collection on or before October 22, 1999.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, S.W., Room 4-C207, Washington, DC 20554. A copy of any comments on the information collection contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 Twelfth Street, S.W., Room 1-C804, Washington, DC 20554 or via the Internet to jboley@fcc.gov; and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 Seventeenth Street, N.W., Washington, DC 20503 or via the Internet to fain\_t@al.eop.gov.

#### FOR FURTHER INFORMATION CONTACT:

Jennifer Burton, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Policy and Rules Branch, (202) 418-0680. TTY: (202) 418-7233. For further information concerning the information collection contained in the *Memorandum Opinion and Order*, contact Judy Boley at (202) 418-0215 or via the Internet to jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Memorandum Opinion and Order (MO&O)*, ET Docket No. 95-183, FCC 99-179, adopted July 14, 1999, and released on July 29, 1999. This *Memorandum Opinion and Order* reaffirms the Commission's decision to dismiss, without prejudice, the following applications: (1) all pending mutually exclusive 39 GHz applications where mutual exclusivity was not resolved by December 15, 1995; (2) all major modification applications and amendments filed on or after November 13, 1995; and (3) all amendments to resolve mutual exclusivity filed on or after December 15, 1995. It also states that the Commission will process all 39 GHz applications that were not mutually exclusive with previously filed applications as of December 15, 1995, that conform in all aspects to our rules and all associated amendments of right filed before December 15, 1995, where such applications have satisfied the 30-day public notice requirement, even if they have not been subject to the full 60-day window during which competing mutually exclusive applications may be filed. The Commission will dismiss, without prejudice, all 39 GHz applications that did not meet the 30-day public notice requirement as of November 13, 1995. This conforms with section 101.37(c) of the Commission's Rules, which states

that the Commission may process an application no earlier than 30 days after it has been placed on public notice. In this *Memorandum Opinion and Order*, the Commission reconsiders the service area definitions for the 39 GHz band and decides to license all channel blocks in the 39 GHz band using Economic Areas (EAs). The use of EAs will provide ample population coverage and allow licensees the flexibility to provide many different types of services. The Commission states that it will retain the channelization plan set forth earlier in this proceeding. The current allocation for the 39 GHz segment of the band contains both fixed and satellite services. The Commission also states that consistent with the new Part 1 rules governing applications for license renewal provided in section 1.949 of the Commission's Rules, 39 GHz licensees seeking renewal of station authorizations must file applications no later than the expiration date of the authorization for which renewal is sought, and no sooner than 90 days prior to the date of license expiration. The Commission reiterates that various types of antennas may be used in the 39 GHz band because Category A directional antenna may be too restrictive to fulfill the requirements of diverse system configurations in the 39 GHz band. It clarifies that Category A and B radiation pattern requirements do not apply to wide-beam antennas, such as omni-directional and sectored antennas. The Commission decides that it is in the public interest to retain the interim rule that (1) neighboring co-channel and adjacent channel licensees must coordinate within 16 kilometers of an adjacent service area boundary, and (2) licensees that receive coordination notifications must respond within ten days. It will amend section 101.56(a)(1) of the Commission's Rules to allow licensees to partition along any licensee defined service area. The Commission decided that allowing partitioning according to county boundaries or geopolitical subdivisions was too restrictive. In this *Memorandum Opinion and Order*, the Commission also states that consistent with the Part 1 competitive bidding provision contained in section 1.2111(e) of the Commission's Rules, unjust enrichment payments for 39 GHz licensees that obtain a bidding credit at auction, and subsequently partition or disaggregate to an entity that would not have qualified for such a credit, will be calculated on a *pro rata* basis, using population to determine the relative value of the partitioned area, the amount of spectrum disaggregated to determine the

relative value of the disaggregated spectrum, and some combination thereof for combined partitioning and disaggregation. Finally, the Commission dismisses as moot the Emergency Request for Stay that was filed in connection with one of the petitions for reconsideration. The complete text of this *Memorandum Opinion and Order* may be purchased from the Commission's copy contractor, International Transcription Services, 1231 20th Street, N.W., Washington, DC 20036, telephone (202) 857-3800, facsimile (202) 857-3805. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418-0260, TTY (202) 418-2555, or at [mcontee@fcc.gov](mailto:mcontee@fcc.gov). The full text of the *Memorandum Opinion and Order* is available for inspection and copying during normal business hours in the FCC Reference Center, 445 Twelfth Street, S.W., Room CY-A257, Washington, D.C. 20554. The full text of the *Memorandum Opinion and Order* can also be downloaded at: <http://www.fcc.gov/Bureaus/Wireless/Orders/1999/fcc99138.txt> or <http://www.fcc.gov/Bureaus/Wireless/Orders/1999/fcc99138.wp>.

#### Paperwork Reduction Act Analysis

This *Memorandum Opinion and Order* contains either a new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collections contained in this *Memorandum Opinion and Order* as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due 60 days from date of publication of this *Memorandum Opinion and Order* in the **Federal Register**. Comments should address: (a) whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.  
*OMB Approval Number:* 3060-0690.  
*Title:* Rules regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands.  
*Form No.:* Forms 415/415T.  
*Type of Review:* Revision of currently approved collection.

*Respondents:* Businesses.  
*Number of Respondents:* 5000.  
*Estimated time per response:* 15.125.  
*Total annual burden:* 75,625.  
*Total annual cost:* 5,000,000.  
*Needs and Uses:* The collection of information is necessary because of the amendments of the Commission's Rules regarding the 37.0-38.6 GHz and 38.6-40.0 GHz bands in ET Dck No. 95-183. The rules implement use of a channeling plan, and licensing and technical rules for fixed point-to-point microwave operations in these bands, while also modifying the rules to make the technical rules consistent in both bands. The information is used by the Commission staff to provide adequate point-to-point microwave spectrum, which will facilitate provision of communications infrastructure for commercial and private mobile radio operation and competitive wireless local telephone service. Without this information, the Commission would not be able to carry out its statutory responsibilities.

#### List of Subjects in 47 CFR Parts 1 and 101

Radio, communications equipment.  
 Federal Communications Commission.  
**Magalie Roman Salas,**  
*Secretary.*

#### Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Parts 1 and 101 as follows:

#### PART 1—PRACTICE AND PROCEDURE

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

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. Sections 154, 303; Implement, 5 U.S.C. Sections 552 and 21 U.S.C. 853a, unless otherwise noted.

#### PART 101—FIXED MICROWAVE SERVICES

2. The authority citation for Part 101 continues to read as follows:

**Authority:** Sec. 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154 and 303, unless otherwise noted.

3. § 101.17 is amended by revising paragraph (a) to read as follows:

#### § 101.17 Performance requirements for the 38.6-40.0 GHz frequency band.

(a) All 38.6-40.0 GHz band licensees must demonstrate substantial service at the time of license renewal. A licensee's substantial service showing should

include, but not be limited to, the following information for each channel for which they hold a license, in each EA or portion of an EA covered by their license, in order to qualify for renewal of that license. The information provided will be judged by the Commission to determine whether the licensee is providing service which rises to the level of "substantial."

\* \* \* \* \*

4. § 101.56 is amended by revising paragraphs (a)(1), (b), (d), (f), (g), (h), and (i) to read as follows:

**§ 101.56 Partitioned Services Areas (PSAs) and Disaggregated Spectrum**

(a)(1) The holder of an EA authorization to provide service pursuant to the competitive bidding process and any incumbent licensee of rectangular service areas in the 38.6–40.0 GHz band may enter into agreements with eligible parties to partition any portion of its service area as defined by the partitioner and partitionee. Alternatively, licensees may enter into agreements or contracts to disaggregate any portion of spectrum, provided acquired spectrum is disaggregated according to frequency pairs.

\* \* \* \* \*

(b) The eligibility requirements applicable to EA authorization holders also apply to those individuals and entities seeking partitioned or disaggregated spectrum authorizations.

\* \* \* \* \*

(d)(1) When any area within an EA becomes a partitioned service area, the remaining counties and geopolitical subdivision within that EA will be subsequently treated and classified as a partitioned service area.

(2) At the time an EA is partitioned, the Commission shall cancel the EA authorization initially issued and issue a partitioned service area authorization to the former EA authorization holder.

\* \* \* \* \*

(f) The duties and responsibilities imposed upon EA authorization holders in this part, apply to those licensees obtaining authorizations by partitioning or spectrum disaggregation.

(g) The build-out requirements for the partitioned service area or disaggregated spectrum shall be the same as applied to the EA authorization holder.

(h) The license term for the partitioned service area or disaggregated spectrum shall be the remainder of the period that would apply to the EA authorization holder.

(i) Licensees, except those using bidding credits in a competitive bidding procedure, shall have the authority to

partition service areas or disaggregate spectrum.

5. § 101.63 is amended by revising paragraph (a) to read as follows:

**§ 101.63 Period of construction; certification of completion of construction**

(a) Each Station, except in Local Multipoint Distribution Services and the 38.6–40.0 GHz band, authorized under this part must be in operation within 18 months from the initial date of grant.

\* \* \* \* \*

6. § 101.64 is revised to read as follows:

**§ 101.64 Service areas.**

Service areas for 38.6–40.0 GHz service are Economic Areas (EAs) as defined below. EAs are delineated by the Regional Economic Analysis Division, Bureau of Economic Analysis, U.S. Department of Commerce. The Commerce Department organizes the 50 States and the District of Columbia into 172 EAs. Additionally, there are four EA-like areas: Guam and Northern Mariana Islands; Puerto Rico and the U.S. Virgin Islands; American Samoa and the Gulf of Mexico. A total of 175 authorizations (excluding the Gulf of Mexico EA-like area) will be issued for each channel block in the 39 GHz band.

\* \* \* \* \*

7. § 101.103 is amended by revising paragraph (i)(1) to read as follows:

**§ 101.103 Frequency coordination procedures.**

\* \* \* \* \*

(i)(1) When the licensed facilities are to be operated in the band 38,600 MHz to 40,000 MHz and the facilities are located within 16 kilometers of the boundaries of an Economic Area, each licensee must complete the frequency coordination process of subsection 101.103(d) with respect to neighboring EA licensees and existing licensees within its EA service area that may be affected by its operation prior to initiating service. In addition to the technical parameters listed in subsection 101.103(d), the coordinating licensee must also provide potentially affected parties technical information related to its subchannelization plan and system geometry.

\* \* \* \* \*

8. § 101.147 is amended by revising paragraph (u)(2) to read as follows:

**§ 101.147 Frequency assignments.**

\* \* \* \* \*

(u)(2) Applications filed pursuant to Section 101.1206 shall identify any pre-existing rectangular service area authorizations that are located within, or are overlapping with, the EA for

which the license is sought, and the provisions of Section 101.103 shall apply for purposes of frequency coordination between any authorized rectangular service area(s) and EA service area(s) that are geographically adjoining and overlapping.

\* \* \* \* \*

[FR Doc. 99–21765 Filed 8–20–99; 8:45 am]

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

[MM Docket No. 98–175]

**Television Broadcasting Services, Digital Television Broadcasting Services; Buffalo, NY**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document grants a petition filed by Western New York Public Broadcasting Association, licensee of Stations WNEB-TV, Channel 17, and WNEQ-TV, Channel \*23, Buffalo, New York, and amends the Table of Allotments of Television Broadcast Stations, to reflect Channel \*17 as reserved for non-commercial educational use, and Channel 23 as nonreserved. See 63 FR 53009 (October 2, 1998). Comments in opposition filed by Grant Television, Inc, WKBW-TV Licensee, Inc., Kevin Smardz, and Coalition for Noncommercial Media are denied. The Table of Allotments of Digital Broadcast Stations for Buffalo is also amended to delete the asterisk for Digital TV Channel \*32.

**DATES:** Effective September 7, 1999.

**FOR FURTHER INFORMATION CONTACT:** Victoria M. McCauley, Mass Media Bureau, (202) 418–2130.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order*, MM Docket No.98–175, adopted July 19, 1999, and released on July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

**List of Subjects in 47 CFR Part 73**

Television broadcasting.