

**FEDERAL COMMUNICATIONS
COMMISSION**
47 CFR Parts 1 and 26
[ET Docket No. 94-32, FCC 95-319]
**Wireless Service; General Wireless
Communications Service**
AGENCY: Federal Communications
Commission.

ACTION: Final rule.

SUMMARY: This *Second Report and Order* creates the General Wireless Communications Service and adopts rules for licensing of this service in the 4660-4685 MHz band. These rules will be found in newly adopted 47 CFR Part 26. The creation of the General Wireless Service comes in response to the Omnibus Budget Reconciliation Act of 1993 (Reconciliation Act), and is intended to benefit the public by permitting and encouraging the introduction of new services and the enhancement of existing services. These new and enhanced services and uses will create new jobs, foster economic growth, and improve access to communications by industry and the American public.

EFFECTIVE DATE: August 9, 1995. Section 26.104 which contains information collection requirements will not become effective until approved by the Office of Management and Budget. Notice of such approval and the effective date will be provided in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Karen Rackley, 202-418-0620, or Dan Grosh 202-418-1534.

SUPPLEMENTARY INFORMATION:

Type of Review: New collection
requirement

Title: In the Matter of Allocation of
Spectrum Below 5 GHz Transferred
from Federal Government Use

OMB Number: None.

Form Number:

Affected Public: Business or other-for-
profit organizations, not-for-profit
institutions, and state, local, or tribal
governments.

Number of Respondents: 875

Estimated time per response:

Approximately 4 hours

Total burden: Approximately 3500
hours five and ten years after initial
license grant

Needs and Uses: These requirements
comply with Congressional directive
that the Commission adopt
performance requirements to ensure
prompt service to rural areas, prevent
stockpiling or warehousing of
spectrum and encourage investment
in and development of new
technologies

This is a synopsis of the *Second Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**Synopsis of the Second Report and
Order**

1. By this action, the Commission creates the General Wireless Communications Service (GWCS), and adopts rules for licensing of this service in the 4660-4685 MHz band. The 25 megahertz of spectrum in the 4660-4685 MHz band was transferred from Federal Government to private sector use and was allocated to the Fixed and Mobile services in the *First Report and Order* and *Second Notice of Proposal Rule Making (First R&O/Second NPRM)* in this proceeding. (The *Notice of Inquiry* in this proceeding was published at 59 FR 255589, May 17, 1994; the *Notice of Proposed Rule Making* at 59 FR 19393, May 17, 1994; the *Notice of Proposed Rule Making* at 59 FR 19393, November 17, 1994; and the *First Report and Order* at 60 FR 13102, March 10, 1995.)

2. The *First R&O* allocated the 2390-2400 MHz band for use by unlicensed Personal Communication Services (PCS) devices, provided for continued use of the 2402-2417 MHz band by devices operating in accordance with Part 15 of our rules, upgraded the allocation of these bands for use by the Amateur service on a primary basis, and allocation the 5440-4685 MHz band for use by Fixed and Mobile Service. The *Second NPRM* proposed rules for use of the 4660-4685 MHz band.

Service Rules

3. The *Second NPRM* proposed to create a new service, the General Wireless Communications Service (GWCS), for licensing of the 4660-4685 MHz band. This new service would allow a licensee to provide a wide range of Fixed or Mobile services. As stated in the *Second NPRM*, GWCS would provide licensees an opportunity to use the spectrum flexibility in order to meet the needs of consumers. Services that would not be within the proposed GWCS category included Broadcast services, Radio location services, and Satellite services.

4. The Commission proposed to establish the flexible GWCS service classification in order to enhance the ability of service providers to meet a

variety of user needs. The Commission also acknowledged the possibility that these needs might better be accommodated by rules that prescribe the use of the 4660-4685 MHz frequency band only by specific services. Interested parties who opposed the proposed establishment of a GWCS category were asked to suggest ways in which use of the 4660-4685 MHz band could be limited to specific services. For example, the Commission sought comment on (1) what services should be treated as eligible; (2) whether we should divide channels in the band in a matter which assigns Fixed services exclusively to certain channels and Mobile services exclusively to other channels in the band; (3) whether we should establish priorities for Fixed service or Mobile service use of some or all of the channels established in the band; and (4) whether we should assign some or all channels established in the band for exclusive use by private Fixed or Mobile Services. Proponents of this alternative approach for designating services in the 4660-4685 MHz frequency band were asked to provide facts and arguments supporting their view that such an approach would better serve the Commission's objectives and the public interest than would the establishment of GWCS, which would permit use of the spectrum for these as well as other applications.

5. The Commission adopts the proposed General Wireless Communications Service for the 4660-4685 MHz block, largely as proposed in the *Second NPRM*. This flexible, broadly defined service should accommodate a wide variety of potential Fixed and Mobile service uses, including all of those identified by the commenters. The flexibility of GWCS should also help make frequencies available for new technologies and services, including those that have been mentioned in the current comments and those that may be developed in the years ahead. In addition, as a service category that is not limited to specific past and current uses, but is available for the implementation of future technologies, GWCS should encourage research and investment to invent, develop, and market new technologies, and spur their deployment to serve consumers.

6. Under the Reconciliation Act, the spectrum reallocated from Federal Government use is to be allocated and assigned to public use under a plan that makes frequencies available for new technologies and services, and stimulates the development of such technologies. The Commission believes that the General Wireless

Communications Service will foster the accomplishment of these goals. Additionally, GWCS should stimulate efficient use of the spectrum by encouraging licensees to find ways to use the spectrum for the variety of services allowed under the license. Of equal importance, GWCS will accommodate and spur the development of new technologies and services.

7. Commenters have not persuaded the Commission that limiting assignments to any of their specific proposed uses of the spectrum would better meet the goals of the Reconciliation Act, the Communications Act, and the public interest. Restricting the 4660–4685 MHz spectrum to defined uses or services, such as the specific uses proposed by various commenters, would tend to reduce the attractiveness of this spectrum for new technologies and services. Moreover, as discussed above, GWCS is flexible enough to permit the specific uses suggested by such commenters, as well as the other uses identified in the comments. If GWCS spectrum assignment applications submitted by qualified parties now seeking service-specific allocations are not mutually exclusive, those parties will be granted licenses to provide the specific services they wish to provide, as well as other permissible GWCS services. In the event the spectrum is assigned by auction because of mutual exclusivity, they will also be able to participate and seek to obtain licenses.

8. The Commission also believes that any interference issues that may arise among GWCS licensees can be satisfactorily resolved by general non-interference standards and technical rules. Many potential sources of unacceptable interference have been eliminated by barring use of GWCS for Broadcast services, Radiolocation services, and Satellite services. Further, the grant of each GWCS license will be made subject to the condition that the licensee not cause unacceptable interference with any other licensee or service. Failure to abide by this condition will render the licensee subject to fines, damages, or forfeiture of the license. The Commission is adopting technical rules similar to those in place for PCS. To the extent it proves necessary, the Commission can consider whether revisions to those rules are warranted after GWCS licenses are assigned.

9. The Commission finds no merit in arguments that the Fixed and Mobile allocation of this spectrum, and use of the flexible GWCS designation for assigning this spectrum, are unlawful. As discussed in the *First Report and*

Order the provisions of the Communications Act and Commission precedent support the legality of allocating frequencies to more than one radiocommunication service, and of assigning licenses for use by a broadly defined service. The Commission is required by the National Telecommunications and Information Administration Organization Act (NTIAO Act) to issue regulations to allocate the 50 megahertz of spectrum that the Secretary of Commerce identified and recommended for immediate reallocation from Federal Government use no later than 18 months from enactment of the Reconciliation Act.¹ For purposes of this portion of the NTIAO Act, the term "allocation" is defined as "an entry in the National Table of Frequency Allocations of a given frequency band for the purpose of its use by one or more radiocommunication services."² The Table of Frequency Allocations often contains allocations to more than one type of service³ and such allocations are specifically authorized in this instance by the NTIAO Act. Therefore, allocation of the 4660–4685 MHz band to Fixed and Mobile Services is permissible and consistent with established practice.

10. The Commission also believes that such an allocation is consistent with the Commission's obligations under the Communications Act. The Commission has broad authority under the Communications Act to allocate spectrum. This authority derives from Section 303 of the Communications Act. Nothing in the language of Section 303 establishes or suggests any limitation or restriction on the Commission's discretion to prescribe the nature of the service to be rendered over radio frequencies or authority to assign (or allocate) frequencies to the various classes of stations. Moreover, nothing in the language of Section 303 or its legislative history suggests that the Commission is prohibited from assigning spectrum to stations for more than one permissible use, or otherwise limits the Commission's discretion in making spectrum allocations that it deems to serve the public interest. With respect to allocation decisions, courts have accorded "substantial deference" to Commission determinations.⁴ Finally,

¹ Section 115(a) of the National Telecommunications and Information Administration Organization Act, 47 U.S.C. § 925(a) (NTIAO Act).

² Section 111(1) of the NTIAO Act, 47 U.S.C. § 921(1).

³ See 47 C.F.R. § 2.106.

⁴ See National Ass'n of Regulatory Util. Comm'ners v. FCC, 525 F.2d 630, 636 (D.C. Cir.), cert. denied, 425 U.S. 992 (1976); see also *Telocator*

Commission precedent supports the permissibility of allocating spectrum in a manner that allows for its use by a broadly defined service.

11. The Commission, in the *Second NPRM*, noted that, in addition to the Fixed and Mobile service allocation adopted in the *First R&O*, 4660–4685 MHz is allocated on a co-primary basis for non-government fixed-satellite service (FSS) space-to-Earth links, with use limited to international inter-continental systems and subject to a case-by-case electromagnetic analysis in accordance with US footnote 245 of the Table of Frequency Allocations. The *NOI* in this proceeding requested comment on the necessity of maintaining the US245 restrictions on FSS use of this band, considering that it would no longer be available for Federal Government use. To facilitate the shared use of this band, the *Second NPRM* proposed to maintain the restrictions set forth in US footnote 245 on use of 4660–4685 MHz and requested comments on this proposal. The Commission adopts the proposal as contained in the *Second NPRM* and retains the restriction in this footnote.

12. The Commission next considers public safety issues. Under the NTIAO Act, the Commission's plan for allocating and assigning former Federal Government spectrum must contain appropriate provisions to ensure not only the availability of frequencies for new services, but also "the safety of life and property in accordance with the policies of Section 1 of the [Communication Act]"⁵ In the current record, the Association of Public-Safety Communications Officials-International, Inc. (APCO) proposes designating at least a portion of the 4660–4685 MHz band for public safety mobile and aeronautical video operations. The current record does not, however, provide a sound basis for concluding that any or all of the 4660–4685 MHz band should be assigned as APCO suggests.

13. The Commission is firmly committed to ensuring that wireless and wired communications resources are deployed to promote the safety of life and property, as well as to carry out the other public interest goals of the Communications Act. The FCC and NTIA recently formed a Public Safety Wireless Advisory Committee to prepare a report on operational, technical and spectrum requirements of Federal, state and local public safety entities through

Network of America v. FCC, 691 F.2d 525, 549 (D.C. Cir. 1982).

⁵ Section 115(b)(2)(C) of the NTIAO Act, codified at 47 U.S.C. § 925(b)(2)(C).

the year 2010. This Committee is expected to begin its work in the very near future. The plan the Commission is developing for the 200 MHz of Federal Government spectrum scheduled to be reallocated to non-Government use over the next 10 years will contain provisions to address how the reallocated Federal Government spectrum can best be used to satisfy unmet national safety needs. The Commission is directed by statute to submit and implement this plan by February 1996.⁶

14. It is the Commission's hope and intent that the gaps identified in the current record regarding the scope of public safety needs for additional wireless spectrum, and how those needs might best and most efficiently be met, will spur public safety organizations and other interested parties to work together to help us develop an effective plan for using wireless communications to meet any unmet and future public safety needs. The FCC-NTIA Public Safety Wireless Advisory Committee will offer one useful forum for such efforts. One of the tasks undertaken by the advisory committee will be to identify spectrum for federal, state, and local public safety use. As part of that process, the Commission suggests that the advisory committee explore potential public safety uses of the 4635-4660 MHz band. The Commission expects to begin proceedings in the near future to allocate and establish rules for assigning this band, which consists of reallocated Federal Government spectrum which is scheduled to become available in January 1997. This band is directly adjacent to the 4660-4685 MHz band we are designating to GWCS in this Order and thus has essentially the same technical characteristics and potential uses. Public safety organizations may develop proposals to ensure that the Commission has a complete, well-developed record to consider whether and how this band might be allocated and assigned to meet public safety needs.

Use of Spectrum

15. The Commission expects that the General Wireless Communications Service will benefit the public by providing licensees the opportunity to use the spectrum in a variety of ways they find appropriate. The *Second NPRM* tentatively concluded that it is likely that these uses will principally involve the provision of subscriber-based services. Based on this conclusion, the Commission proposed

to use competitive bidding as the assignment method for this spectrum if mutually exclusive applications are filed. Section 309(j)(2)(A) of the Communications Act provides that competitive bidding may be used by the Commission to assign spectrum if the "principal use" of the spectrum involves, or is reasonably likely to involve, the transmission or reception of communications signals to subscribers for compensation.

16. Based on the record, the *Second NPRM* tentatively concluded that the principal use of this spectrum under the Commission's proposed General Wireless Communications Service would involve, or was reasonably likely to involve, the receipt by the licensee of compensation from subscribers in return for enabling those subscribers to receive or transmit communications signals. The Commission requested further comment on this tentative conclusion. Based on the record in response to the *Second NPRM*, the Commission finds it likely that the principal use of this band will be for subscription services.

Assignment Method

17. Sections 309(j)(1) and 309(j)(2) of the Communications Act⁷ permit auctions where mutually exclusive applications for initial licenses or construction permits are accepted for filing by the Commission and where the principal use of the spectrum will involve or is reasonably likely to involve the receipt by the licensee of compensation from subscribers in return for enabling those subscribers to receive or transmit communications signals. As explained above, the Commission believes that the principal use of this spectrum will meet these requirements. In addition, Section 309(j)(2)(B) requires the Commission, before it may adopt the use of auctions to award licenses, to determine that use of competitive bidding will promote the objectives described in Sections 1 and 309(j)(3) of the Communications Act. The *Second NPRM* tentatively concluded that the use of competitive bidding to assign licenses in the 4660-4685 MHz band would promote these objectives. The *Second NPRM* also requested comments on other possible assignment methods.

18. The Commission concludes that, in cases of mutually-exclusive applications, GWCS spectrum should be assigned by auction, as we tentatively concluded in the *Second NPRM*. Based on our experience with comparative hearings, lotteries, and auctions, the Commission believes that auctions will in this case achieve the statutory

objectives of Section 309(j)(3) of the Communications Act.

19. One important aspect of any assignment method is determining whether applications are mutually exclusive. In the *Second NPRM*, the Commission proposed to use a 30-day filing window or other application cut-off method to allow for competing applications. The *Second NPRM* also sought comment on whether some other type of filing group would be more appropriate for determining whether initial applications are mutually exclusive. None of the commenters addressed this issue or suggested alternatives to the proposed 30-day filing window. Therefore, the Commission adopts the 30-day filing window as proposed for GWCS applications.

Channelization; Aggregation

20. The *Second NPRM* next proposed that the 4660-4685 MHz band be licensed in five blocks, each of which would be 5 megahertz wide. The *Second NPRM* proposed to limit a single entity from obtaining more than three of these blocks in a single geographic licensing area. The *Second NPRM* further proposed that, regardless of the specific service to be provided, this spectrum will not count against the 45 megahertz spectrum cap that applies to certain commercial mobile radio service (CMRS) licensees.

21. The Commission adopts the proposed channelization plan consisting of five 5 megahertz blocks. The Commission also adopts the proposed aggregation limit of 15 megahertz of spectrum that may be obtained by a single entity. Lastly, the Commission adopts its tentative conclusion not to count this spectrum against the 45 megahertz spectrum cap that applies to certain CMRS licenses.

License Areas

22. The Commission will issue GWCS licenses based on EA-like geographic areas. The complete list of EA and EA-like areas is shown in Appendix C of the full text of this *Second Report and Order*. The five 5 MHz blocks will be designated as Blocks A through E: Block A (4660-4665 MHz), Block B (4665-4670 MHz), Block C (4670-4675 MHz), Block D (4675-4680 MHz) and Block E (4680-4685 MHz).

Eligibility

23. The *Second NPRM* proposed, in the event the Commission determined it reasonably likely that GWCS services would be commercial services, that there be no restrictions on eligibility to apply for licenses in this band other

⁶ See Section 115(b) of the NTIAO Act, codified at 47 U.S.C. §925(b).

⁷ 47 U.S.C. §§ 309(j)(1), 309(j)(2).

than those foreign ownership restrictions that apply to CMRS and common carrier fixed system licensees, and the restriction on foreign governments or their representatives related to the holding of private mobile radio service licenses. Although rural telephone companies would be eligible, the Commission did not propose to treat them differently than other applicants. The Commission now adopts these proposed broad eligibility standards for GWCS applications.

Competitive Bidding Issues

24. In the *Second NPRM*, the Commission proposed to use auctions to issue licenses for GWCS services in the 4660–4685 MHz band that meet the statutory auction criteria and sought comment on a wide range of issues related to competitive bidding. For example, regarding competitive bidding methodology for licenses in the 4660–4685 MHz band, the *Second NPRM* proposed to use simultaneous multiple round bidding for licensing of the proposed 5 MHz-wide MTA spectrum blocks. The Commission also tentatively proposed to auction all licenses simultaneously, because of the relatively high value and significant interdependence of the licenses. Commenters were asked to address these tentative conclusions and whether any other competitive bidding designs might be more appropriate for the licensing of this spectrum. The Commission adopts the tentative conclusion in the *Second NPRM* and will auction this spectrum by simultaneous multiple round bidding. However, the Commission reserves the discretion to hold one or more auctions.

25. The *Second NPRM* also sought comment on whether to allow combinatorial bidding for GWCS services, because it may be necessary or at least highly desirable that spectrum used for some services (e.g., air-ground service) be licensed to the same entity nationwide. Combinatorial bidding is an auction method which allows applicants to bid for multiple licenses as all or nothing packages, e.g., all licenses nationwide on a particular spectrum block, with the licenses awarded as a package if the combinatorial bid is greater than the sum of the high bids on the individual licenses in the package. The Commission declines to adopt combinatorial bidding in this decision, but will establish reduced bid withdrawal penalties for entities seeking nationwide licenses that should achieve results similar to combinatorial bidding, with far less uncertainty and complexity.

26. The *Second NPRM* invited comment on bidding procedures to be used in the 4660–4685 MHz auctions, including bid increments, duration of bidding rounds, stopping rules, and activity rules. Assuming that the Commission would use simultaneous multiple round auctions, the *Second NPRM* generally proposed to use the same or similar bidding procedures to those used in simultaneous multiple round bidding for MTA-based PCS licenses. The Commission sought comment on whether any variations on these procedures should be adopted for licenses in the 4660–4685 MHz band. Based upon our successful experience in auctioning PCS spectrum and the absence of any dispute concerning the efficacy of the bidding procedures used there, the Commission adopts essentially the same procedures for GWCS licenses. Additional, more detailed information on bidding procedures and other auction information will be made public prior to the auction.

27. This *Second Report and Order* next considers procedural, payment, and penalty issues. As discussed below, the Commission will generally follow the procedural, payment, and penalty rules established in Subpart Q of Part 1 of the Commission's Rules.⁸ First, regarding upfront payments, as in the case of other auctionable services, the Commission will require participants in the 4660–4685 MHz auction to tender to the Commission, in advance of the auction, a substantial upfront payment as a condition of bidding in order to ensure that only serious, qualified bidders participate in auctions and to ensure payment of the penalty in the event of bid withdrawal or default. For GWCS, the Commission adopts the standard upfront payment formula of \$0.02 per pop per MHz for the largest combination of MHz-pops a bidder anticipates bidding on in any single round of bidding.

28. Second, the Commission adopts a requirement for 4660–4685 MHz GWCS licensees that successful bidders tender a 20 percent down payment on their bids to discourage default between the auction and licensing and to ensure payment of the penalty if such default occurs. Third, the Commission adopts the bid withdrawal, default, and disqualification rules for 4660–4685 MHz licensing based on the procedures established in our general competitive bidding rules. Under these procedures, any bidder who withdraws a high bid during an auction before the Commission declares bidding closed, or

defaults by failing to remit the required down payment within the prescribed time, will be required to reimburse the Commission in the amount of the difference between its high bid and the amount of the winning bid the next time the license is offered by the Commission, if the subsequent winning bid is lower. One exception is that the Commission will limit the bid withdrawal penalties for nationwide bidders to 5 percent of the withdrawn bids. A defaulting auction winner will be assessed an additional penalty of three percent of the subsequent winning bid or three percent of the amount of the defaulting bid, whichever is less, up to 5 percent of the withdrawn bids. In the event that an auction winner defaults or is otherwise disqualified, the Commission will re-auction the license either to existing or new applicants. The Commission will retain discretion, however, to offer the license to the next highest bidder at its final bid level if the default occurs within five business days of the close of bidding.

29. The Commission next considers regulatory safeguards. First, the Commission establishes unjust enrichment regulations as directed by the Reconciliation Act. Specifically, the Commission adopts the transfer disclosure requirements contained in Section 1.2111(a) of our rules for all 4660–4685 MHz licenses obtained through the competitive bidding process. In addition, the Commission adopts the specific rules governing unjust enrichment by designated entities as proposed in the *Second NPRM*. Generally, applicants transferring their licenses within three years after the initial license grant will be required to file, together with their transfer application, the associated contracts for sale, option agreements, management agreements, and all other documents disclosing the total consideration received in return for the transfer of its license.

30. Second, the Commission contemplates performance standards, as instructed by the Reconciliation Act and finds that no additional performance requirements are needed beyond the specific performance standards already provided for in the 4660–4685 MHz service rules.

31. Third, the Commission considers rules prohibiting collusion and adopts rules for the 4660–4685 service which are identical to those found at 47 CFR § 1.2105(c). Under these procedures, bidders will be required to identify on their applications all parties with whom they have entered into any consortium arrangements, joint ventures, partnerships, or other agreements or

⁸ 47 C.F.R. Part 1, Subpart Q.

understandings that relate to the competitive bidding process. Bidders will also be required to certify that they have not entered into any explicit or implicit agreements, arrangements, or understandings with any parties, other than those identified, regarding the amount of their bid, bidding strategies or the particular properties on which they will or will not bid.

32. The *Second Report and Order* deals with several issues regarding eligibility criteria and general rules governing the award of licensing preferences to certain designated entities, i.e. minority groups and women. In keeping with the general parameters set forth in PR Docket 93-253, the *Second NPRM* in the current docket proposed specific measures and eligibility criteria for designated entities in the 4660-4685 MHz service, designed to ensure that such designated entities are given the opportunity to participate both in the competitive bidding process and in the provision of service in the 4660-4685 MHz band. The Commission sought comment on these proposals, and specifically on identifying special provisions tailored to the unique characteristics of the service or services that might be offered in the 4660-4685 MHz band, in order to create meaningful incentives and opportunities in the service for small businesses and businesses owned by minorities and/or women.

33. In the *Second NPRM*, the Commission discussed and sought comment on these special provisions for designated entities:

(1) for businesses owned by women and minorities the Commission proposed that installment payments be available on all licenses and that a bidding credit of 25 percent be available on one of the five proposed spectrum blocks;

(2) for small business the Commission sought comment on allowing a reduced down payment requirement coupled with installment payments;

(3) the Commission did not believe that special preferences are needed to ensure adequate participation of rural telephone companies;

(4) the Commission sought comments on reducing upfront payments to encourage participation in the auction, particularly by all eligible designated entities; and

(5) the Commission sought comment on whether and how to designate one 5 MHz spectrum block as an "entrepreneurs' block."

34. The Commission also discussed and solicited comments on issues of the eligibility criteria for designated entities and provisions to prevent unjust

enrichment by trafficking in licenses acquired through the use of bidding credits or installment payments.

35. The Commission concludes that its plan to award licenses for the 4660-4685 MHz band based on EA regions, will substantially enhance the opportunities for designated entities to participate in the GWCS license auction. Partitioning of licenses will further increase the opportunities for designated entities. Based on our experience in the other auctions held to date, the Commission is also adopting bidding and payment provisions that will help ensure that the auction assigns licenses to the bidders who value them most highly, while encouraging the participation of designated entities. Specifically, the Commission will permit small business licensees to make their payments in installments computed at a reasonable rate of interest (the rate for ten year U.S. Treasury obligations plus 2.5 percent). Small businesses will in addition be permitted to make reduced down payments and interest-only payments in the first two years of the license term, and will be allowed a 10 percent bidding credit on all blocks of spectrum. The Commission also adopt rules to prevent unjust enrichment from bidding preferences. The Commission does not adopt an entrepreneurial set aside, but will apply the designated entity bidding preferences to all five spectrum blocks.

36. The Commission limit eligibility for bidding credits, installment payments and reduced down payments to small businesses, including those owned by members of minority groups and women. The Commission lacks the information necessary to set different eligibility criteria for minority and women-owned entities that do not meet our small business size standards in order to achieve the goals of Section 309(j) in the GWCS services. By providing credits on all blocks, licensing the blocks based on EA geographic areas, and permitting disaggregation and partitioning, the Commission will create substantial opportunities for all small businesses, including those owned by minorities and women.

37. The *Second NPRM* requested comment on whether the Commission should utilize the Small Business Association net worth/net income definition of a small business (a net worth not in excess of \$6 million with average net income after Federal income taxes for the preceding years not in excess of \$2 million) we adopted in the *Competitive Bidding Second Report and Order* or, in the alternative, a gross revenue standard like that used in the

broadband PCS context (average gross revenues for the three preceding years not in excess of \$40 million). The Commission also proposed to apply the same affiliation and attribution rules for calculating revenues that we have previously adopted in the PCS context.

38. The Commission finds that the GWCS overall may be similar to broadband PCS in its requirements for capital and adopts the small business definition adopted there, namely any firm, together with its attributable investors and affiliates, with average gross revenues for the three preceding years not in excess of \$40 million. The Commission also applies to 4660-4685 MHz applicants the same affiliation and attribution rules for calculating revenues previously adopted in the PCS context.

39. On the issues of installment payments and down payments, the Commission believes that ensuring the opportunity for small businesses to participate in providing service in the 4660-4685 MHz band is important for the telecommunications industry. The record in PR Docket 93-253 indicates that small businesses have not become major participants in telecommunications. The record in that docket also shows that small businesses have particular difficulties obtaining capital. As discussed in the *Second NPRM*, it appears that installment payments may have been more effective than bidding credits in attracting capital in the regional narrowband PCS auction, possibly because installment payments shift some of the financial risk of future failure to the Government. Therefore, the Commission adopts installment payments for any GWCS licensee meeting the definition of a small business.

40. Under this approach, small business licensees may elect to pay their winning bid amount (less upfront payments) in installments over the ten year term of the license, with interest charges to be fixed at the time of licensing at a rate equal to the rate for ten year U.S. Treasury obligations plus 2.5 percent. Installment payments would be due quarterly on the anniversary of the day the license was granted. Timely payment of all installments would be a condition of the license grant and failure to make such timely payments would be grounds for revocation of the license.

41. The Commission also adopts additional payment preferences to further reduce the capital needs of small businesses. Small business licensees will be permitted to make interest-only installment payments during the first two years of the license. The

Commission also reduces down payments for small businesses to 5 percent of the winning bid due five days after the auction closes and the remaining 5 percent down payment due five days after Public Notice that the license is ready for grant.

42. The *Second NPRM* next proposed a 25 percent bidding credit on one of the five proposed spectrum blocks for small businesses owned by women and minorities. These bidding credits would be available exclusively to minority and women-owned businesses. The Commission also proposed installment payments for these entities and sought comment on whether installment payments should also be available for small businesses. The Commission did not believe that special preferences were needed to ensure adequate participation of rural telephone companies in the provision of services in this spectrum, in view of the uncertainty concerning what specific uses may emerge in this band, the potential prices that licenses may bring, the effects of provisions for partitioning or leasing spectrum, and the advantages of incumbency and economies of scale that may already benefit rural telephone companies. The *Second NPRM* sought comment on this analysis.

43. The Commission adopts a 10 percent bidding credit for small businesses. As discussed above, the Commission is adopting installment payments for small business bidders and the small EA geographic licensing areas. In the Commission's judgment, these and other provisions of the licensing and auction rules should ensure that small businesses, including small businesses owned by women and minorities, will be able to participate effectively in obtaining GWCS licenses, whether or not those licenses are auctioned.

44. The Commission next considers transfer restrictions and unjust enrichment provisions. Restrictions on the transfer or assignment of licenses acquired by designated entities are intended to promote the Congressional intent that designated entities be permitted to participate in the provision of spectrum-based services, not simply to profit from trafficking in licenses acquired with the help of bidding preferences. The Commission adopts the proposal contained in the *Second NPRM*. Specifically, the Commission adopts a payment requirement on transfers of such licenses to entities that are not small businesses. Small businesses seeking to transfer a license to an entity that is not owned by women or minorities would be required to reimburse the government for the

amount of the bidding credit, plus interest at the rate imposed for installment financing at the time the license was awarded, before the transfer would be permitted. The amount of the penalty would be reduced over time so that a transfer in the first two years of the license would result in a payment of 100 percent of the value of the bidding credit; in year three of the license term the payment would be 75 percent; in year four the penalty would be 50 percent and in year five the payment would be 25 percent, after which there would be no payment.

45. On the issue of rural telephone company partitions, the Commission, in the *Second NPRM*, proposed to permit partitioning of MTA-based licenses, to permit licensees to lease the rights to operate a GWCS system within portions of their geographic service area or transfer their license to partition their service areas geographically, allowing another party to be licensed in the partitioned area, subject to Commission approval. The Commission elects to adopt partitioning procedures similar to those used for cellular licenses and adopted for broadband PCS licenses.

46. The *Second NPRM* next sought comment on whether to designate one 5 MHz spectrum block as an "entrepreneurs'" block. The Commission also invited comment on how eligibility for such a block should be defined. The Commission declines to adopt an entrepreneur's block for this band, based on our belief that bidding credits, installment payment options, and the other approaches also adopted will generate sufficient incentives to encourage participation in GWCS licensing. Unlike a set-aside, they also should not generate the risk of inefficient use of the 4660-4685 MHz spectrum and of dampening incentives for innovation.

Technical Rules

47. The *Second NPRM* proposed general and minimal technical restrictions that are based on the PCS rules. Specifically, the Commission proposed to limit the field strength at licensees' service area boundaries to 55 dBu unless licensees operating in adjacent areas agree to higher field strengths along their mutual border.⁹ The Commission stated that licensees would be expected to coordinate their operations at the service area boundaries. The *Second NPRM* further stated that the Commission would

⁹The minimum field strength required for a good quality service for mobile reception in an urban environment is 35 dBu (CCIR Report 358-5) and the proposed 55 dBu field strength limit allows 20 dB additional for location variability.

encourage licensees to resolve adjacent channel interference problems. The Commission did, however, propose to require licensees to attenuate the power below the transmitter power (P) by at least 43 plus $10\log_{10}(P)$ or 80 decibels, whichever is less, for any emission at the edges of the 4660-4685 MHz band. Comments were requested on these proposals and any other technical rules that commenters believed appropriate.

48. Based on the record, the Commission adopts the technical rules as proposed in the *Second NPRM*. The PCS-based technical rules appear to be the best available rules to govern the flexible GWCS designation. However, the Commission recognizes that the technical rules may need to be adjusted to suit the needs of the eventual licensees. The rules also anticipate that licensees will in the first instance seek to resolve interference problems among themselves.

License Term

49. The *Second NPRM* noted that the Communications Act allows the Commission to establish a license term of up to 10 years, except for television or radio broadcasting stations, which may have a license term of up to 5 and 7 years, respectively. For services in the 4660-4685 MHz band, the *Second NPRM* proposed to establish a license term of 10 years, with a renewal expectancy similar to that of PCS and cellular telephone licensees. The *Second NPRM* indicated that this relatively long license term, combined with a high renewal expectancy, should help provide a stable regulatory environment that will be attractive to investors and, thereby, encourage development of this new frequency band. The Commission noted, however, that commenters had proposed using this band for auxiliary broadcast service and the statute requires that the term of any license for the operation of any auxiliary broadcast station or equipment must be concurrent with the term of the license for such primary television station. Therefore, the *Second NPRM* asked that commenters address whether the Commission should allow differing license terms in this band. The Commission finds that the statutory provision that requires a shorter license term will generally not apply, except in the case of an applicant seeking to use GWCS for auxiliary broadcast use by a single station, within the meaning of Section 307(c).

Construction Requirements

50. The Commission, in the *Second NPRM*, acknowledged that the very wide array of potential services that

could be offered in this band makes it difficult to develop construction requirements that can be applied fairly and equitably, without skewing the workings of the market. The Commission also recognized our responsibility to ensure that the spectrum we assign is used effectively. Therefore, the *Second NPRM* proposed, and the Commission now adopts, rules that would require build-out rules modeled on those adopted for broadband PCS. Specifically, these rules will require that within five years licensees in this band offer service to one-third of the population in the area in which they are licensed, and to serve two-thirds within ten years of being licensed. The Commission will also consider waivers or modification of these rules based on demonstrations that the spectrum is being used efficiently, not warehoused or stockpiled.

Regulatory Status

51. The Communications Act and Commission rules often apply differing requirements based on the type of service and the regulatory status of licensees. The new GWCS category for the 4660–4685 band would allow licensees to provide a variety or combination of Fixed and Mobile services. Under this service, both Fixed and Mobile applications would be permitted and an individual licensee could provide a number of Fixed and Mobile services. In the *Second NPRM*, the Commission observed that it may be difficult to determine the regulatory status of GWCS licensees. The Commission proposed to rely on applicants to identify specifically the type of service or services they intend to provide, and require them to include sufficient detail to enable the Commission to determine if the service will be Fixed or Mobile, and whether it will be offered as a commercial mobile radio service, a private mobile radio service, a common carrier Fixed service, or a private Fixed service. Comment was requested on the most efficient manner in which to administer the requirements of the Communications Act and the Commission’s Rules, and grant licensees as much operational flexibility as possible. The Commission also solicited comments on whether to develop a new application long form for this general allocation or require an applicant to be responsible for filing the appropriate license application based upon the nature of the service designated by the applicant. Commenters were asked to address whether it is necessary for the Commission to require licensees to notify the Commission if they change

the type of service offered using some or all of their licensed spectrum even though the new use would be permissible under the Commission’s rules.

52. The Commission adopts the proposed approach of relying on applicants to identify the type of GWCS service or services each will provide, with sufficient detail to enable the Commission to determine the applicant’s regulatory status. The proposed added step would usually be unnecessary and would tend to delay the offering of new services. The Commission believes that it would be in the public interest to develop an application form for the new service. To clarify and simplify the regulatory status of licensees, the Commission also adopts a presumption that GWCS licenses are providing fixed common carrier services, which appears from the record to be the most likely and common use of this spectrum. This presumption may be rebutted by an appropriate showing. The Commission delegates to the Wireless Telecommunications Bureau authority to develop forms appropriate to collect this data, and to monitor changes in licensee status.

Licensing Issues

53. The *Second NPRM* requested comment on whether the Commission is required or should find that it is in the public interest to adopt additional licensing rules in order to comply with the statutory requirement that we adopt assignment rules before August 10, 1995. The Commission finds it unnecessary at present to adopt additional license rules for GWCS. The Commission will follow the statutory provisions of Section 309(d) for public notice and other requirements. With respect to other licensing issues, the Commission will consider whether any additional rules are necessary, and what form those rules should take, after we have proceeded with the application and licensing process. The Commission should at that time have a more detailed understanding of the services licensees intend to provide and their regulatory status.

Final Regulatory Flexibility Analysis

54. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that this decision will have an impact on small entities interested in operating on the 4660–4685 MHz band. As detailed in the full text of the *Second Report and Order*, the Commission has attempted, wherever possible within the statutory constraints, to establish regulations which, to the extent

possible, minimize the burdens on such small businesses while providing maximum flexibility. The full text of the Commission’s final regulatory flexibility analysis may be found in paragraph ____ of the full text of this decision.

Ordering Clauses

55. Accordingly, IT IS ORDERED that Part 26 of the Commission’s Rules is added as set forth below. This action is taken pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r).

56. IT IS FURTHER ORDERED that the rule changes made herein WILL BECOME EFFECTIVE at the time of their publication in the **Federal Register**.¹⁰

List of Subjects

47 CFR Part 1

Telecommunications.

47 CFR Part 26

General wireless communications service.

Federal Communications Commission.

William F. Canton,

Acting Secretary.

Rule Changes

Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

2. New paragraph (a)(8) is added to Section 1.2102 to read as follows:

§ 1.2102 Eligibility of applications for competitive bidding.

(a) * * *

(8) General Wireless Communications Service (GWCS) (see Part 26 of this chapter).

* * * * *

Part 26 of Chapter I of Title 47 of the Code of Federal Regulations is added to read as follows:

¹⁰This Order is adopted pursuant to a statutory requirement that the Commission, by August 9, 1995, allocate and establish licensing rules for 50 megahertz of spectrum that was transferred from Federal Government to private sector use, as required by the Budget Act. Thus, there is good cause to order the rule changes publication. See 5 U.S.C. § 553(d)(3).

PART 26—GENERAL WIRELESS COMMUNICATIONS SERVICE**Subpart A—General Information**

Sec.

- 26.1 Basis and purpose.
- 26.2 Other applicable rule parts.
- 26.3 Permissible communications.
- 26.4 Terms and definitions.

Subpart B—Applications and Licenses

- 26.11 Initial authorization.
- 26.12 Eligibility.
- 26.13 License period.
- 26.14 Criteria for comparative renewal proceedings.

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- 26.101 Multiple ownership restrictions.
- 26.102 Service areas.
- 26.103 Frequencies.
- 26.104 Construction requirements.

Subpart E—Competitive Bidding Procedures for GWCS

- 26.201 GWCS subject to competitive bidding.
- 26.202 Competitive bidding design for GWCS licensing.
- 26.203 Competitive bidding mechanisms.
- 26.204 Withdrawal, default and disqualification penalties.
- 26.205 Bidding application (FCC Form 175 and 175-S Short-Form).
- 26.206 Submission of upfront payments and down payments.
- 26.207 Long form applications.
- 26.208 License grant, denial, default, and disqualification.
- 26.209 Eligibility for partitioned licenses.
- 26.210 Provisions for small businesses.

Subpart F—Application, Licensing, and Processing Rules for GWCS

- 26.301 Authorization required.
- 26.302 Eligibility.
- 26.303 Formal and informal applications.
- 26.304 Filing of GWCS applications, fees, and numbers of copies.
- 26.305 Standard application forms and permissive changes or minor modifications for the General Wireless Communications Service.
- 26.306 Miscellaneous forms.
- 26.307 General application requirements.
- 26.308 Technical content of applications; maintenance of list of station locations.
- 26.309 Station antenna structures.
- 26.310 Waiver of rules.
- 26.311 Defective applications.
- 26.312 Inconsistent or conflicting applications.
- 26.313 Amendment of application for General Wireless Communications Service filed on FCC Form 175.
- 26.314 Amendment of applications for General Wireless Communications Service (other than applications filed on FCC Form 175).

- 26.315 Application for temporary authorizations.
 - 26.316 Receipt of application; applications in the General Wireless Communications Service filed on FCC Form 175 and other applications in the GWCS.
 - 26.317 Public notice period.
 - 26.318 Dismissal and return of applications.
 - 26.319 Ownership changes and agreements to amend or to dismiss applications or pleadings.
 - 26.320 Opposition to applications.
 - 26.321 Mutually exclusive applications.
 - 26.322 Consideration of applications.
 - 26.323 Post-auction divestitures.
 - 26.324 Transfer of control or assignment of station authorization.
 - 26.325 Extension of time to complete construction.
 - 26.326 Termination of authorization.
- Authority:** 47 U.S.C. Sections 154, 301, 302, 303, 309 and 332, unless otherwise noted.

Subpart A—General Information**§ 26.1 Basis and purpose.**

This section contains the statutory basis for this part of the rules and provides the purpose for which this part is issued.

(a) Basis. The rules for the general wireless communications service (GWCS) in this part are promulgated under the provisions of the Communications Act of 1934, as amended, that vests authority in the Federal Communications Commission to regulate radio transmission and to issue licenses for stations.

(b) Purpose. This part states the conditions under which portions of the radio spectrum are made available and licensed for GWCS.

(c) Scope. The rules in this part apply only to stations authorized under this part.

§ 26.2 Other applicable rule parts.

Other FCC rule parts applicable to licensees in the general wireless communications service include the following:

(a) Part 0. This part describes the Commission's organization and delegations of authority. Part 0 of this chapter also lists available Commission publications, standards and procedures for access to Commission records, and location of Commission Field Offices.

(b) Part 1. This part includes rules of practice and procedure for license applications, adjudicatory proceedings, procedures for reconsideration and review of the Commission's actions; provisions concerning violation notices and forfeiture proceedings; and the environmental requirements that, if applicable, must be complied with prior to the initiation of construction.

(c) Part 2. This part contains the Table of Frequency Allocations and special

requirements in international regulations, recommendations, agreements, treaties. This part also contains standards and procedures concerning the marketing and importation of radio frequency devices, and for obtaining equipment authorization.

(d) Part 5. This part contains rules prescribing the manner in which parts of the radio frequency spectrum may be made available for experimentation.

(e) Part 17. This part contains requirements for construction, marking and lighting of antenna towers.

(f) Part 68. This part contains technical standards for connection of terminal equipment to the telephone network.

§ 26.3 Permissible communications.

GWCS licensees may provide any fixed or mobile communications service on their assigned spectrum. Broadcasting services, Radiolocation services and satellite services as defined in § 2.1 of this chapter are prohibited.

§ 26.4 Terms and definitions.

Assigned frequency. The center of the frequency band assigned to a station.

Authorized bandwidth. The maximum width of the band of frequencies permitted to be used by a station. This is normally considered to be the necessary or occupied bandwidth, whichever is greater.

Average terrain. The average elevation of terrain between 3 and 16 kilometers from the antenna site.

Effective radiated power (e.r.p.) (in a given direction). The product of the power supplied to the antenna and its gain relative to a half-wave dipole in a given direction.

Equivalent isotropically radiated power (e.i.r.p.). The product of the power supplied to the antenna and the antenna gain in a given direction relative to an isotropic antenna.

Fixed service. A radio communication service between specified fixed points.

Fixed station. A station in the fixed service.

Gross revenues. Gross revenues shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (e.g. cost of goods sold), as evidenced by audited financial statements for the relevant number of calendar years preceding January 1, 1994, or, if audited financial statements were not prepared on a calendar-year basis, for the most recently completed fiscal years preceding the filing of the applicant's short-form application (Form 175). For applications filed after December 31, 1995, gross revenues shall

be evidenced by audited financial statements for the preceding relevant number of calendar or fiscal years. If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate.

Land mobile service. A mobile service between base stations and land mobile stations, or between land mobile stations.

Land mobile station. A mobile station in the land mobile service capable of surface movement within the geographic limits of a country or continent.

Land station. A station in the mobile service not intended to be used while in motion.

Mobile service. A radio communication service between mobile and land stations, or between mobile stations.

Mobile station. A station in the mobile service intended to be used while in motion or during halts at unspecified points.

National Geodetic Reference System (NGRS): The name given to all geodetic control data contained in the National Geodetic Survey (NGS) data base. (Source: National Geodetic Survey, U.S. Department of Commerce)

Rural telephone company. A rural telephone company is a local exchange carrier having 100,000 or fewer access lines, including all affiliates.

Small business: consortium of small businesses.

(1) A small business is an entity that, together with its affiliates and persons or entities that hold interest in such entity and their affiliates, has average annual gross revenues that are not more than \$40 million for the preceding three years.

(2) A small business consortium is a conglomerate organization formed as a joint venture between or among mutually-independent business firms, each of which individually satisfies the definition of a small business.

Total assets. *Total assets* shall mean the book value (except where generally accepted accounting principles (GAAP) require market valuation) of all property owned by an entity, whether real or personal, tangible or intangible, as evidenced by the most recent audited financial statements.

Subpart B—Applications and Licenses

§ 26.11 Initial authorization.

(a) An applicant must file an application for an initial authorization

in each market and frequency block desired.

(b) Blanket licenses are granted for each market and frequency block. Applications for individual sites are not required and will not be accepted.

§ 26.12 Eligibility.

Any entity, other than those precluded by section 310 of the Communications Act of 1934, as amended, 47 U.S.C. § 310, is eligible to hold a license under this part.

§ 26.13 License period.

Licenses for service areas will be granted for ten year terms from the date of original issuance or renewal.

§ 26.14 Criteria for comparative renewal proceedings.

A renewal applicant involved in a comparative renewal proceeding shall receive a preference, commonly referred to as a renewal expectancy, which is the most important comparative factor to be considered in the proceeding, if its past record for the relevant license period demonstrates that the renewal applicant:

(a) Has provided "substantial" service during its past license term.

"Substantial" service is defined as service which is sound, favorable, and substantially above a level of mediocre service which might just minimally warrant renewal; and

(b) Has substantially complied with applicable Commission rules, policies and the Communications Act.

Subpart C—Technical Standards

§ 26.51 Equipment authorization.

(a) Each transmitter utilized for operation under this part and each transmitter marketed, as set forth in § 2.803 of this chapter, must be of a type that has been authorized by the Commission under its type acceptance procedure.

(b) The Commission periodically publishes a list of type accepted equipment, entitled "Radio Equipment List, Equipment Accepted for Licensing." Copies of this list are available for public reference at the Commission's offices in Washington, D.C., at each of its field offices, and may be ordered from its copy contractor.

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

chapter. Such equipment if approved or accepted will not normally be included in the Commission's Radio Equipment List but will be individually enumerated on the station authorization.

(d) Applicants for type acceptance of transmitters that operate in these services must determine that the equipment complies with IEEE C95.1-1991, (ANSI/IEEE C95.1-1991), "IEEE Standards for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz" as measured using methods specified in IEEE C95.3-1991, (ANSI/IEEE C95.3-1991), "Recommended Practice for the Measurement of Potentially Hazardous Electromagnetic Fields—RF and Microwave." The applicant for type acceptance is required to submit a statement affirming that the equipment complies with these standards as measured by an approved method and to maintain a record showing the basis for the statement of compliance with IEEE C.95.1-1991. (See § 26.52 for availability of IEEE standards.)

§ 26.52 RF hazards.

(a) Licensees and manufacturers are required to ensure that their facilities and equipment comply with IEEE C95.1-1991. Measurement methods are specified in IEEE C95.3-1991. Copies of these standards are available from IEEE Standards Board, 445 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855-1331. Telephone: 1-800-678-4333. The limits for both "controlled" and "uncontrolled" environments, as defined by IEEE C95.1-1991, will apply to all GWCS base and mobile stations, as appropriate. The application for equipment authorization must contain a statement confirming compliance with IEEE C95.1-1991. Technical information showing the basis for this statement must be submitted to the Commission upon request.

(b) GWCS hand-held devices whose maximum radiated power is 100 milliwatts or less are not required to be evaluated for compliance with ANSI/IEEE SAR (specific absorption rate) requirements, as long as 2.5 cm separation distance is maintained between the radiating structure and the body of the user. (The ANSI/IEEE standard uses the term "radiated power," meaning input power to the antenna.)

(c) For further information on the Commission's environmental rules see §§ 1.1301 through 1.1319 of this chapter.

§ 26.53 Emission limits.

(a) The power of any emission at the edges of the 4660–4685 MHz band shall be attenuated below the transmitter power (P) by at least $43 + 10 \log_{10}(P)$ or 80 decibels, whichever is less.

(b) Compliance with these provisions is based on the use of measurement instrumentation employing a resolution bandwidth of 1 MHz or greater. However, in the 1 MHz bands immediately outside and adjacent to the frequency block a resolution bandwidth of at least one percent of the emission bandwidth of the fundamental emission of the transmitter may be employed. The emission bandwidth is defined as the width of the signal between two points, one below the carrier center frequency and one above the carrier center frequency, outside of which all emission are attenuated at least 26 dB below the transmitter power.

(c) When measuring the emission limits, the nominal carrier frequency shall be adjusted as close to the licensee's frequency block edges, both upper and lower, as the design permits.

(d) The measurements of emission power can be expressed in peak or average values, provided that they are expressed in the same parameters as the transmission power.

(e) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

§ 26.54 Frequency stability.

The frequency stability shall be sufficient to ensure that the fundamental emission stays within the authorized frequency block.

§ 26.55 Field strength limits.

The predicted or measured median field strength at any location on the border of the GWCS service area shall not exceed 55 dBu unless licensees operating in adjacent areas agree to higher field strength along their mutual borders.

Subpart D—Miscellaneous

§ 26.101 Multiple ownership restrictions.

(a) GWCS licensees shall not have an ownership interest in more than three of the five, 5 megahertz wide channels available in any geographic area. For purposes of this restriction, a GWCS licensee is:

(1) Any institutional investor, as defined in § 26.4, with an ownership interest of ten or more percent in a GWCS license; and

(2) Any other person or entity with an ownership interest of five or more percent in a GWCS license.

(b) In cases where a party had indirect ownership, through an interest in an intervening entity (or entities) that has ownership in the GWCS license, that indirect ownership shall be attributable if the percentages of ownership at each level, multiplied together, equal five or more percent ownership of the GWCS license, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

Example. Party X has a non-controlling ownership interest of 25 percent in Company Y, which in turn has a non-controlling ownership interest of 10 percent in Company Z, the GWCS licensee. Party X's effective ownership interest in Company Z is Party X's ownership interest in Company Y (25 percent) times Company Y's ownership interest in Company Z (10 percent). Therefore, Party X's effective ownership interest in Company Z is 2.5 percent, and is not attributable.

(c) Notwithstanding paragraph (b) of this section, the following interests shall not constitute attributable ownership interests for purposes of paragraph (a) of this section.

(1) A limited partnership interest held by an institutional investor (as defined § 26.4) where the limited partner is not materially involved, directly or indirectly, in the management or operation of the GWCS holdings of the partnership, and the licensee so certifies. The criteria which would assure adequate insulation for the purposes of this certification require:

(i) Prohibiting limited partners from acting as employees of the limited partnership if responsibilities relate to the carrier activities of the licensee;

(ii) Barring the limited partners from serving as independent contractors;

(iii) Restricting communication among limited partners and the general partner regarding day-to-day activities of the licensee;

(iv) Empowering the general partner to veto admissions of new general partners;

(v) Restricting the circumstances in which the limited partners can remove the general partner;

(vi) Prohibiting the limited partners from providing services to the partnership relating to the GWCS holdings of the licensee; and

(vii) Stating that the limited partners may not become involved in the management or operation of the licensee.

§ 26.102 Service areas.

GWCS service areas are based on Economic Areas developed by the

Bureau of Economic Analysis, Department of Commerce, referred to as "EAs" and three additional EA-like service areas: Guam and the Northern Mariana Islands (combined as one service area), Puerto Rico and the United States Virgin Islands (combined as one service area), and American Samoa.

(a) *Economic Areas.* Codes from 001 to 172 are assigned to the EAs in approximate geographic order, beginning with 001 in northern Maine, continuing south to Florida, then north to the Great Lakes, and continuing in a serpentine pattern to the West Coast. Except for the Western Oklahoma EA (126), the Northern Michigan EA (058), and the 17 EAs that mainly correspond to consolidated metropolitan statistical areas (CMSAs), each EA is named for the metropolitan area or city that is the node of its largest component economic area (CEA) and that is usually, but not always, the largest metropolitan area or city in the EA. Each CEA consists of a single economic node and the surrounding counties that are economically related to the node. The following list provides EA codes and names.

Code and Name

- 001 Bangor, ME
- 002 Portland, ME
- 003 Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH
- 004 Burlington, VT
- 005 Albany-Schenectady-Troy, NY
- 006 Syracuse, NY
- 007 Rochester, NY
- 008 Buffalo-Niagara Falls, NY
- 009 State College, PA
- 010 New York-No. New Jersey-Long Island, NY-NJ-CT-PA
- 011 Harrisburg-Lebanon-Carlisle, PA
- 012 Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD
- 013 Washington-Baltimore, DC-MD-VA-WV
- 014 Salisbury, MD
- 015 Richmond-Petersburg, VA
- 016 Staunton, VA
- 017 Roanoke, VA
- 018 Greensboro-Winston-Salem-High Point, NC
- 019 Raleigh-Durham-Chapel Hill, NC
- 020 Norfolk-Virginia Beach-Newport News, VA-NC
- 021 Greenville, NC
- 022 Fayetteville, NC
- 023 Charlotte-Gastonia-Rock Hill, NC-SC
- 024 Columbia, SC
- 025 Wilmington, NC
- 026 Charleston-North Charleston, SC
- 027 Augusta-Aiken, GA-SC
- 028 Savannah, GA
- 029 Jacksonville, FL

- 030 Orlando, FL
- 031 Miami-Fort Lauderdale, FL
- 032 Fort Myers-Cape Coral, FL
- 033 Sarasota-Bradenton, FL
- 034 Tampa-St. Petersburg-Clearwater, FL
- 035 Tallahassee, FA
- 036 Dothan, AL
- 037 Albany, GA
- 038 Macon, GA
- 039 Columbus, GA-AL
- 040 Atlanta, GA
- 041 Greenville-Spartanburg-Anderson, SC
- 042 Asheville, NC
- 043 Chattanooga, TN-GA
- 044 Knoxville, TN
- 045 Johnson City-Kingsport-Bristol, TN-VA
- 046 Hickory-Morganton, NC
- 047 Lexington, KY
- 048 Charleston, WV
- 049 Cincinnati-Hamilton, OH-KY-IN
- 050 Dayton-Springfield, OH
- 051 Columbus, OH
- 052 Wheeling, WV-OH
- 053 Pittsburgh, PA
- 054 Erie, PA
- 055 Cleveland-Akron, OH
- 056 Toledo, OH
- 057 Detroit-Ann Arbor-Flint, MI
- 058 Northern Michigan, MI
- 059 Green Bay, WI
- 060 Appleton-Oshkosh-Neenah, WI
- 061 Traverse City, MI
- 062 Grand Rapids-Muskegon-Holland, MI
- 063 Milwaukee-Racine, WI
- 064 Chicago-Gary-Kenosha, IL-IN-WI
- 065 Elkhart-Goshen, IN
- 066 Fort Wayne, IN
- 067 Indianapolis, IN
- 068 Champaign-Urbana, IL
- 069 Evansville-Henderson, IN-KY
- 070 Louisville, KY-IN
- 071 Nashville, TN
- 072 Paducah, KY
- 073 Memphis, TN-AR-MS
- 074 Huntsville, AL
- 075 Tupelo, MS
- 076 Greenville, MS
- 077 Jackson, MS
- 078 Birmingham, AL
- 079 Montgomery, AL
- 080 Mobile, AL
- 081 Pensacola, FL
- 082 Biloxi-Gulfport-Pascagoula, MS
- 083 New Orleans, LA
- 084 Baton Rouge, LA
- 085 Lafayette, LA
- 086 Lake Charles, LA
- 087 Beaumont-Port Arthur, TX
- 088 Shreveport-Bossier City, LA
- 089 Monroe, LA
- 090 Little Rock-North Little Rock, AR
- 091 Fort Smith, AR-OK
- 092 Fayetteville-Springdale-Rogers, AR
- 093 Joplin, MO
- 094 Springfield, MO
- 095 Jonesboro, AR
- 096 St. Louis, MO-IL
- 097 Springfield, IL
- 098 Columbia, MO
- 099 Kansas City, MO-KS
- 100 Des Moines, IA
- 101 Peoria-Pekin, IL
- 102 Davenport-Moline-Rock Island, IA-IL
- 103 Cedar Rapids, IA
- 104 Madison, WI
- 105 La Crosse, WI-MN
- 106 Rochester, MN
- 107 Minneapolis-St. Paul, MN-WI
- 108 Wausau, WI
- 109 Duluth-Superior, MN-WI
- 110 Grand Forks, ND-MN
- 111 Minot, ND
- 112 Bismarck, ND
- 113 Fargo-Moorhead, ND-MN
- 114 Aberdeen, SD
- 115 Rapid City, SD
- 116 Sioux Falls, SD
- 117 Sioux City, IA-NE
- 118 Omaha, NE-IA
- 119 Lincoln, NE
- 120 Grand Island, NE
- 121 North Platte, NE
- 122 Wichita, KS
- 123 Topeka, KS
- 124 Tulsa, OK
- 125 Oklahoma City, OK
- 126 Western Oklahoma, OK
- 127 Dallas-Fort Worth, TX
- 128 Abilene, TX
- 129 San Angelo, TX
- 130 Austin-San Marcos, TX
- 131 Houston-Galveston-Brazoria, TX
- 132 Corpus Christi, TX
- 133 McAllen-Edinburg-Mission, TX
- 134 San Antonio, TX
- 135 Odessa-Midland, TX
- 136 Hobbs, NM
- 137 Lubbock, TX
- 138 Amarillo, TX
- 139 Santa Fe, NM
- 140 Pueblo, CO
- 141 Denver-Boulder-Greeley, CO
- 142 Scottsbluff, NE
- 143 Casper, WY
- 144 Billings, MT
- 145 Great Falls, MT
- 146 Missoula, MT
- 147 Spokane, WA
- 148 Idaho Falls, ID
- 149 Twin Falls, ID
- 150 Boise City, ID
- 151 Reno, NV
- 152 Salt Lake City-Ogden, UT
- 153 Las Vegas, NV-AZ
- 154 Flagstaff, AZ
- 155 Farmington, NM
- 156 Albuquerque, NM
- 157 El Paso, TX
- 158 Phoenix-Mesa, AZ
- 159 Tucson, AZ
- 160 Los Angeles-Riverside-Orange County, CA
- 161 San Diego, CA
- 162 Fresno, CA
- 163 San Francisco-Oakland-San Jose, CA
- 164 Sacramento-Yolo, CA
- 165 Redding, CA
- 166 Eugene-Springfield, OR
- 167 Portland-Salem, OR-WA
- 168 Pendleton, OR
- 169 Richland-Kennewick-Pasco, WA
- 170 Seattle-Tacoma-Bremerton, WA
- 171 Anchorage, AK
- 172 Honolulu, HI

(b) Other eligible areas not included in the Bureau of Economic Analysis's list of EAs include: Guam and the Northern Mariana Islands, Puerto Rico and United States Virgin Islands, and American Samoa.

§ 26.103 Frequencies.

The following frequencies are available for GWCS in the Economic Areas and other areas described in § 26.102 as shown below.

Channel Block and Frequency Band

- Block A: 4660-4665 MHz
- Block B: 4665-4670 MHz
- Block C: 4670-4675 MHz
- Block D: 4675-4680 MHz
- Block E: 4680-4685 MHz

§ 26.104 Construction requirements.

(a) GWCS licensees shall within five years of initial license grant date offer service to one-third of the population in the area in which they are licensed. Licensees shall serve two-thirds of the population in the area in which they are licensed within ten years of initial license grant date.

(b) In demonstrating compliance with the above construction requirements, licensees must base their calculations on signal field strengths that ensure reliable service for the technology utilized. Licensees may use any service radius contour formula developed or generally used by industry, provided that such formula is based on the technical characteristics of their system.

(c) Upon meeting the five and ten year benchmarks in paragraph (a) of this section, licensees shall file a map and other supporting documentation that demonstrates compliance with the geographic area or population coverage requirement. Licensees shall file a statement indicating commencement of service. The filing must be received at the Commission on or before expiration of the relevant period.

(d) If the sale of a license is approved, the new licensee is held to the original build-out requirement.

(e) Failure by a licensee to meet the above construction requirements may result in forfeiture of the license and ineligibility to regain it.

Note to § 26.104: Population-based construction requirements contained in this section shall be based on the 1990 census.

Subpart E—Competitive Bidding Procedures for GWCS

§ 26.201 GWCS subject to competitive bidding.

Mutually exclusive initial applications to provide GWCS service are subject to competitive bidding procedures. The general competitive bidding procedures found in 47 CFR Part 1, Subpart Q, will apply unless otherwise provided in this part.

§ 26.202 Competitive bidding design for GWCS licensing.

(a) The Commission will employ the following competitive bidding designs when choosing from among mutually exclusive initial applications to provide GWCS service:

(1) Simultaneous multiple round actions

(2) Sequential oral auctions

(b) The Commission may design and test alternative procedures. The Commission will announce by Public Notice before each auction the competitive bidding design to be employed in a particular auction.

(c) The Commission may use single combined auctions, which combine bidding for two or more substitutable licenses and award licenses to the highest bidders until the available licenses are exhausted. This technique may be used in conjunction with any type of auction.

§ 26.203 Competitive bidding mechanisms.

(a) Sequencing. The Commission will establish and may vary the sequence in which GWCS licenses will be auctioned.

(b) Reservation price. The Commission may establish a reservation price, either disclosed or undisclosed, below which a license subject to auction will not be awarded.

(c) Minimum bid increments. The Commission may, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms. The Commission may also establish by Public Notice a suggested opening bid or a minimum opening bid on each license.

(d) Stopping rules. The Commission may establish stopping rules before or during multiple round auctions in order to terminate an auction within a reasonable time.

(e) Activity rules. The Commission may establish activity rules which require a minimum amount of bidding activity. In the event that the Commission establishes an activity rule in connection with a simultaneous

multiple round auction, each bidder will be entitled to request and will be automatically granted one activity rule waiver during each stage of an auction, or one automatic waiver during a specified number of bidding rounds. The Commission may change by Public Notice the number and frequency of such automatic activity rule waivers for a specific auction.

(f) Bidder identification during auctions. The Commission may choose, on an auction-by-auction basis, to release the identity of the bidders associated with bidder identification numbers. The Commission will announce by Public Notice before each auction whether bidder identities will be revealed.

(g) Nationwide bidders. Bidders seeking to aggregate EA-based GWCS licenses into nationwide licenses are required to declare the number of nationwide aggregations for which they will bid and to be active in every round of bidding on sufficient licenses to create the number of declared aggregations.

§ 26.204 Withdrawal, default and disqualification penalties.

(a) When the Commission conducts a simultaneous multiple round auction pursuant to § 26.202(a)(1), the Commission will impose penalties on bidders who withdraw high bids during the course of an auction, or who default on payments due after an auction closes or who are disqualified.

(1) Bid withdrawal prior to close of auction. A bidder who withdraws a high bid during the course of an auction will be subject to a penalty equal to the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission. No withdrawal penalty would be assessed if the subsequent winning bid exceeds the withdrawn bid. This penalty amount will be deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission. The withdrawal penalty for a nationwide bidder for each aggregation is limited to 5 percent of the aggregate withdrawn bids. The withdrawal penalty for a nationwide bidder is calculated between the sum of the withdrawn bids and the sum of the subsequent high bids on the withdrawn licenses.

(2) Default or disqualification after close of auction. If a high bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to the penalty in paragraph (a)(1) of this section plus an additional penalty equal to three (3)

percent of the subsequent winning bid. If the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the 3 percent penalty will be calculated based on the defaulting bidder's bid amount. These amounts will be deducted from any upfront payments or down payments that the defaulting or disqualified bidder has deposited with the Commission.

(b) When the Commission conducts sequential oral auctions, the Commission may modify the penalties to be paid in the event of bid withdrawal, default disqualification; provided, however, that such penalties shall not exceed the penalties specified above.

(c) In the case of single round bidding for GWCS licenses:

(1) If a bid is withdrawn before the Commission releases the initial Public Notice announcing the winning bidder(s), no bid withdrawal penalty will be assessed.

(2) If a bid is withdrawn after the Commission releases the initial Public Notice announcing the winning bidder(s), the bid withdrawal penalty will be equal to the difference between the high bid amount and the amount of the next highest valid bid. A bid will be considered valid for this purpose if the bidder has not already been designated the winning bidder on more licenses than it is permitted to be awarded. Losing bidders will only be subject to this bid withdrawal penalty for a period of 30 days after the Commission releases the initial Public Notice announcing the winning bidders.

(d) In the case of oral sequential bidding for GWCS licenses:

(1) If a bid is withdrawn before the Commission has declared the bidding to be closed for the license bid on, no bid withdrawal penalty will be assessed.

(2) If a bid is withdrawn after the Commission has declared the bidding to be closed for the license bid on, the bid withdrawal penalty of § 1.2104(g) of this chapter and paragraphs (a)(1) and (a)(2) of this section will apply.

§ 26.205 Bidding application (FCC) Form 175 and 175-S Short-Form).

All applicants for initial provision of GWCS service must submit applications on FCC Forms 175 and 175-S pursuant to the procedures set forth in § 1.2105 of this chapter. The Commission will issue a Public Notice announcing the date of a GWCS auction, the licenses which are to be auctioned, and the date on or before which applicants intending to participate in an upcoming GWCS auction must file their applications in order to be eligible for that auction. The

Public Notice will also contain information necessary for completion of the application as well as other important information such as the materials which must accompany the Forms, any filing fee that must accompany the application or any upfront payment that will need to be submitted, and the location where the application must be filed.

§ 26.206 Submission of upfront payments and down payments.

(a) Where the Commission uses simultaneous multiple round auctions or oral sequential auctions bidders will be required to submit an upfront payment pursuant to the procedures set forth in § 1.2106 of this chapter.

(b) Winning bidders in an auction must submit a down payment to the Commission in accordance with the procedures set forth in § 1.2107 (a) and (b) of this chapter.

(c) Notwithstanding paragraphs (a) and (b) of this section, eligible small businesses may submit a down payment of 5 percent of the winning bid five days after the auction closes and 5 percent five days after public notice that the license is ready for grant.

§ 26.207 Long form applications.

Winning bidders will be required to submit long form applications on FCC form XXX, as modified, within ten (10) business days after being notified that they are the winning bidder. Applications on FCC Form XXX shall be submitted pursuant to the procedures set forth in subpart G of this part and § 1.2107 (c) and (d) of this chapter and any associated Public Notices. Only auction winners will be eligible to file applications on FCC Form XXX for initial GWCS licenses in the event of mutual exclusivity between applicants filing Form 175. Winning bidders need not complete Schedule B to Form XXX.

§ 26.208 License grant, denial, default, and disqualification.

(a) Unless eligible for installment payments and/or a bidding credit, each winning bidder is required to pay the balance of its winning bid in a lump sum payment within five (5) business days following the award of the license. Grant of the license will be conditioned upon full and timely payment of the winning bid amount.

(b) A bidder who withdraws its bid, defaults on a payment or is disqualified will be subject to the penalties specified in § 1.2109 of this Chapter.

(c) An eligible small business may elect to pay its winning bid, less upfront payments, over the terms of the license. Interest charges are fixed at the

time of licensing at the rate equal to U.S. Treasury obligation plus 2.5 percent. Installment payments are due quarterly on the anniversary of the day the license was granted, except that interest-only installment payments are permitted during the first two years of the license.

§ 26.209 Eligibility for partitioned licenses.

(a) Notwithstanding § 26.102, an applicant that is a rural telephone company, as defined in § 26.4, may be granted a GWCS license that is geographically partitioned from a separately licensed EA, so long as the EA applicant or licensee has voluntarily agreed (in writing) to partition a portion of the license to the rural telephone company.

(b) If partitioned licenses are being applied for in conjunction with a license(s) to be awarded through competitive bidding procedures—

(1) The applicable procedures for filing short-form applications and for submitting upfront payments and down payments contained in this part and Part 1 of this chapter shall be followed by the applicant, who must disclose as part of its short-form application all parties to agreement(s) with or among rural telephone companies to partition the license pursuant to this section, if won at auction (see § 1.2105(a)(2)(viii));

(2) Each rural telephone company that is a party to an agreement to partition the license shall file a long-form application for its respective, mutually agreed-upon geographic area together with the application for the remainder of the EA filed by the auction winner.

(c) If the partitioned license is being applied for as a partial assignment of the EA license following grant of the initial license, request for authorization for partial assignment of a license shall be made pursuant to § 26.324.

(d) Each application for a partitioned area (long-form initial application or partial assignment application) shall contain a partitioning plan that must propose to establish a partitioned area to be licensed that meets the following criteria:

(1) Conforms to established geopolitical boundaries (such as county lines);

(2) Includes the wireline service area of the rural telephone company applicant; and

(3) Is reasonably related to the rural telephone company's wireline service area.

Note to paragraph (d)(3): A partitioned service area will be presumed to be reasonably related to the rural telephone company's wireline service area if the partitioned service area contains no more than twice the population overlap between

the rural telephone company's wireline service area and the partitioned area.

(e) Each licensee in each partitioned area will be responsible for meeting the construction requirements in its area (see § 26.104).

§ 26.210 Provisions for small businesses.

(a) Bidding credits. A winning bidder that qualifies as a small business or a consortium of small businesses may use a bidding credit of ten percent to lower the cost of its winning bid.

(b) Installment payments. A winning bidder that qualifies as a small business may pay its winning bid amount (less upfront payments) in installments over the ten year term of the license, with interest charges to be fixed at the time of licensing at a rate equal to the rate for ten year U.S. Treasury obligations plus 2.5 percent. Installment payments are due quarterly on the anniversary of the day the license is granted. Failure to make timely installment payments may result in revocation of the license. Small businesses are permitted to make interest-only installment payments during the first two years of the license.

(c) Down payments. A winning bidder that qualifies as a small business is permitted to make a down payment equal to 5 percent of the winning bid due five days after the auction closes with the remaining 5 percent down payment due five days after Public Notice that the license is ready for grant.

(d) Unjust enrichment. If a licensee that utilizes a bidding credit under this section seeks to assign or transfer control of its license to an entity not meeting the eligibility standards for bidding credits or seeks to make any other change in ownership that would result in the licensee no longer qualifying for bidding credits under this section, the licensee must seek Commission approval and reimburse the government for the amount of the bidding credit, plus interest at the rate imposed for installment financing at the time the license was awarded as a condition of the approval of such assignment, transfer or other ownership change. The amount of the payment would be reduced over time so that a transfer in the first two years of the license would result in a payment of 100 percent of the value of the bidding credit; in year three of the license term the payment would be 75 percent; in year four the payment would be 50 percent and in year five the payment would be 25 percent, after which there would be no payment. Transfer of control or assignment of station license is also subject to provisions of § 1.2111 of this chapter.

Subpart F—Application, Licensing, and Processing Rules for GWCS**§ 26.301 Authorization required.**

No person shall use or operate any device for the transmission of energy or communications by radio in the services authorized by this part except as provided in this part.

§ 26.302 Eligibility.

(a) General. Authorizations will be granted upon proper application if:

(1) The applicant is qualified under the applicable laws and the regulations, policies and decisions issued under those laws, including §§ 26.101 and 26.12;

(2) There are frequencies available to provide satisfactory service; and

(3) The public interest, convenience or necessity would be served by a grant.

(b) Alien ownership. A GWCS authorization to provide Commercial Mobile Radio Service may not be granted to or held by:

(1) Any alien or the representative of any alien.

(2) Any corporation organized under the laws of any foreign government.

(3) Any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or any corporation organized under the laws of a foreign country.

(4) Any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

(c) A GWCS authorization to provide Private Mobile Radio Service may not be granted to or held by a foreign government or a representative thereof.

§ 26.303 Formal and informal applications.

(a) Except for an authorization under any of the conditions stated in section 308(a) of the Communications Act of 1934 (47 U.S.C. 308(a)), the Commission may grant only upon written application received by it, the following authorization: station licenses; modifications of licenses; renewals of licenses; transfers and assignments of station licenses, or any right thereunder.

(b) Except as may be otherwise permitted by this part, a separate

written application shall be filed for each instrument of authorization requested. Applications may be:

(1) "Formal applications" where the Commission has prescribed in this Part a standard form; or

(2) "Informal applications" (normally in letter form) where the Commission has not prescribed a standard form.

(c) An information application will be accepted for filing only if:

(1) A standard form is not prescribed or clearly applicable to the authorization requested;

(2) It is a document submitted, in duplicate, with a caption which indicates clearly the nature of the request, radio service involved, location of the station, and the application file number (if known); and

(3) It contains all the technical details and informational showings required by the rules and states clearly and completely the facts involved and authorization desired.

§ 26.304 Filing of GWCS applications, fees, and numbers of copies.

(a) As prescribed by §§ 26.304 and 26.307, standard formal application forms applicable to the GWCS may be obtained from either:

(1) Federal Communications Commission, Washington, DC 20554; or

(2) By calling the Commission's Forms Distribution Center, (202) 418-3676.

(b) Applications for the initial provision of GWCS service must be filed on FCC Form 175 in accordance with the rules in § 26.305 and Part 1, Subpart Q of this chapter. In the event of mutual exclusivity between applicants filing FCC Form 175, only auction winners will be eligible to file subsequent long form applications on FCC Form XXX for initial GWCS licenses. Mutually exclusive applications filed on Form 175 are subject to competitive bidding under those rules. GWCS applicants filing Form XXX need not complete Schedule B.

(c) All applications for GWCS radio station authorizations (other than applications for initial provision of GWCS service filed on FCC Form 175) shall be submitted for filing to: Federal Communications Commission, Washington, DC 20554, Attention: GWCS Processing Section. Applications requiring fees as set forth at Part 1, Subpart G, of this chapter must be filed in accordance with § 0.401(b) of this chapter.

(d) All correspondence or amendments concerning a submitted application shall clearly identify the name of the applicant, applicant identification number or Commission

file number (if known) or station call sign of the application involved, and may be sent directly to the Wireless Telecommunications Bureau, Washington, DC 20554, GWCS Processing Section.

(e) Except as otherwise specified, all applications, amendments, correspondence, pleadings and forms (including FCC Form 175) shall be submitted on one original paper copy and with three microfiche copies, including exhibits and attachments thereto, and shall be signed as prescribed by § 1.743 of this chapter. Unless otherwise provided by the FCC, filings of five pages or less are exempt from the requirement to submit on microfiche, as well as emergency filings like letters requesting special temporary authority. Those filing any amendments, correspondence, pleadings, and forms must simultaneously submit the original hard copy which must be stamped "original". In addition to the original hard copy, those filing pleadings, including pleadings under § 1.2108 of this chapter shall also submit 2 paper copies as provided in § 1.51 of this chapter.

(1) Microfiche copies. Each microfiche copy must be a copy of the signed original. Each microfiche copy shall be a 148mm 0A 105mm negative (clear transparent characters appearing on an opaque background) at 240A to 270A reduction for microfiche or microfiche jackets. One of the microfiche sets must be a silver halide camera master or a copy made on silver halide film such as Kodak Direct Duplicatory Film. The microfiche must be placed in paper microfiche envelopes and submitted in a B6 (125mm 0A 176 mm) or 5 0A 7.5 inch envelope. All applicants must leave Row "A" (the first row for page images) of the first fiche blank for in-house identification purposes.

(2) All applications and all amendments must have the following information printed on the mailing envelope, the microfiche envelope, and on the title area at the top of the microfiche:

(i) The name of the applicant;

(ii) The type of application (e.g. nationwide, or EA);

(iii) The month and year of the document;

(iv) Name of the document;

(v) File number, applicant identification number, and call sign, if assigned; and

(vi) The identification number and date of the Public Notice announcing the auction in response to which the application was filed (if applicable).

Each microfiche copy of pleadings shall include:

- (A) The month and year of the document;
- (B) Name of the document;
- (C) Name of the filing party;
- (D) File number, applicant identification number, and call sign, if assigned;
- (E) The identification number and date of the Public Notice announcing the auction in response to which the application was filed (if applicable). Abbreviations may be used if they are easily understood.

§ 26.305 Standard application forms and permissive changes or minor modifications for the General Wireless Communications Service.

(a) Applications for the initial provision of GWCS service must be filed on FCC Forms 175 and 175-S.

(b) Subsequent application by auction winners or non-mutually exclusive applicants for GWCS radio station(s) under Part 26. FCC Form XXX ("Application for New or Modified General Wireless Communications Service Under Part 26") shall be submitted by each auction winner for each GWCS license applied for on FCC Form 175. In the event that mutual exclusivity does not exist between applicants filing FCC Form 175, the Commission will so inform the applicant and the applicant will also file FCC Form XXX. Blanket licenses are granted for each market frequency block. Applications for individual sites are not needed and will not be accepted. See § 26.11. GWCS applicants filing Form XXX need not complete Schedule B.

(c) Extensions of time and reinstatement. When a licensee cannot complete construction in accordance with the provisions of § 26.104, a timely application for extension of time (FCC Form 489) must be filed.

§ 26.306 Miscellaneous forms.

(a) Licensee qualifications. FCC Form 430 ("Common Carrier and Satellite Radio Licensee Qualifications Report") shall be filed by General Wireless Communications Service licensees only as required by Form 490 (Application for Assignment or Transfer of Control Under part 22).

(b) Renewal of station license. Except for renewal of special temporary authorizations, FCC Form 405 ("Application for Renewal of Station License") must be filed in duplicate by the licensee between thirty (30) and sixty (60) days prior to the expiration date of the license sought to be renewed.

§ 26.307 General application requirements.

(a) Each application (including applications filed on forms 175 and XXX) for a radio station authorization or for consent to assignment or transfer of control in the GWCS shall disclose fully the real party or parties in interest and must include the following information:

(1) A list of its subsidiaries, if any. Subsidiary means any business five per cent or more whose stock, warrants, options or debt securities are owned by the applicant or an officer, director, stockholder or key management personnel of the applicant. This list must include a description of each subsidiary's principal business and a description of each subsidiary's relationship to the applicant.

(2) A list of its affiliates, if any. Affiliates means any business which holds a five per cent or more interest in the applicant, or any business in which a five per cent or more interest is held by another company which holds a five per cent interest in the applicant (e.g. Company A owns 5% of Company B and 5% of Company C; Companies B and C are affiliates).

(3) A list of the names, addresses, citizenship and principal business of any person holding five per cent or more of each class of stock, warrants, options or debt securities together with the amount and percentage held, and the name, address, citizenship and principal place of business of any person on whose account, if other than the holder, such interest is held. If any of these persons are related by blood or marriage, include such relationship in the statement.

(4) In the case of partnerships, the name and address of each partner, each partner's citizenship and the share or interest participation in the partnership. This information must be provided for all partners, regardless of their respective ownership interests in the partnership. A signed and dated copy of the partnership agreement must be included in the application. This information must be included in Exhibit V of the application.

(b) Each application for a radio station authorization in the GWCS must:

(1) Submit the information required by the Commission's rules, requests, and application forms;

(2) Be maintained by the applicant substantially accurate and complete in all significant respects in accordance with the provisions of § 1.65 of this chapter; and

(3) Show compliance with and make all special showings that may be applicable.

(c) Where documents, exhibits, or other lengthy showings already on file with the Commission contain information which is required by an application form, the application may specifically refer to such information, if:

(1) The information previously filed is over one A4 (21 cm×29.7 cm) or 8.5×11 inch (21.6 cm×27.9 cm) page in length, and all information referenced therein is current and accurate in all significant respects under § 1.65 of this chapter; and

(2) The reference states specifically where the previously filed information can actually be found, including mention of:

(i) The station call sign or application file number whenever the reference is to station files or previously filed applications;

(ii) The title of the proceeding, the docket number, and any legal citations, whenever the reference is to a docketed proceeding. However, questions on an application form which call for specific technical data, or which can be answered by a "yes" or "no" or other short answer shall be answered as appropriate and shall not be cross-referenced to a previous filing.

(d) In addition to the general application requirements of Subpart F of this part and § 1.2105 of this chapter, applicants shall submit any additional documents, exhibits, or signed written statements of fact:

(1) As may be required by these rules; and

(2) As the Commission, at any time after the filing of an application and during the term of any authorization, may require from any applicant, permittee, or licensee to enable it to determine whether a radio authorization should be granted, denied, or revoked.

(e) Except when the Commission has declared explicitly to the contrary, an informational requirement does not in itself imply the processing treatment of decisional weight to be accorded the response.

(f) All applicants (except applicants filing FCC Form 175) are required to indicate at the time their application is filed whether or not a Commission grant of the application may have a significant environmental impact as defined by § 1.1307 of this chapter. If answered affirmatively, the requisite environmental assessment as prescribed in § 1.1311 of this chapter must be filed with the application and Commission environmental review must be completed prior to construction. See § 1.1312 of this chapter. All GWCS licensees are subject to a continuing obligation to determine whether subsequent construction may have a

significant environmental impact prior to undertaking such construction and to otherwise comply with §§ 1.1301 through 1.1319 of this chapter. See § 1.1312 of this chapter.

§ 26.308 Technical content of applications; maintenance of list of station locations.

All applications required by this part shall contain all technical information required by the application forms or associated Public Notice(s). Applications other than initial applications for a GWCS license must also comply with all technical requirements of the rules governing the GWCS (see Subparts C and D as appropriate).

§ 26.309 Station antenna structures.

(a) Unless the GWCS licensee has received prior approval from the FCC, no antenna structure, including radiating elements, tower, supports and all appurtenances, may be higher than 61 m (200 feet) above ground level at its site.

(b) Unless the GWCS licensee has received prior approval from the FCC, no antenna structure at an airport or heliport that is available for public use and is listed in the Airport Directory of the current Airman's Information Manual or in either the Alaska or Pacific Airman's Guide and Chart Supplement; or at an airport or heliport under construction that is the subject of a notice or proposal on file with the FAA, and except for military airports, it is clearly indicated that the airport will be available for public use; or at an airport or heliport that is operated by the armed forces of the United States; or at a place near any of these airports or heliports, may be higher than:

(1) 1 m above the airport elevation for each 100 m from the airport runway longer than 1 km within 6.1 km of the antenna structure.

(2) 2 m above the airport elevation for each 100 m from the nearest runway shorter than 1 km within 3.1 km of the antenna structure.

(3) 4 m above the airport elevation for each 100 m from the nearest landing pad within 1.5 km of the antenna structure.

(c) A GWCS station antenna structure no higher than 6.1 m (10 feet) above ground level at its site or no higher than 6.1 m above any natural object or existing manmade structure, other than an antenna structure, is exempt from the requirements of paragraphs (a) and (b) of this section.

(d) Further details as to whether an aeronautical study and/or obstruction marking and lighting may be required, and specifications for obstruction

marking and lighting are contained in Part 17 of this chapter, Construction, Marking and Lighting of Antenna Structures. To request approval to place an antenna structure higher than the limits specified in paragraphs (a), (b), and (c) of this section, the licensee must notify the Federal Aviation Administration (FAA) on FAA Form 7460-1 and the FCC on FCC Form 854.

§ 26.310 Waiver of rules.

(a) Request for waivers. (1) Waivers of these rules may be granted upon application or by the Commission on its own motion. Requests for waivers shall contain a statement of reasons sufficient to justify a waiver. Waivers will not be granted except upon an affirmative showing:

(i) That the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and that grant of the waiver is otherwise in the public interest; or

(ii) That the unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest. Applicants must also show the lack of a reasonable alternative.

(2) If the information necessary to support a waiver request is already on file, the applicant may cross-reference to the specific filing where it may be found.

(b) Denial of waiver, alternate showing required. If a waiver is not granted, the application will be dismissed as defective unless the applicant has also provided an alternative proposal which complies with the Commission's rules (including any required showings).

§ 26.311 Defective applications.

(a) Unless the Commission shall otherwise permit, an application will be unacceptable for filing and will be returned to the applicant with a brief statement as to the omissions or discrepancies if:

(1) The application is defective with respect to completeness of answers to questions, informational showings, executive, or other matters of a formal character; or

(2) The application does not comply with the Commission's rules, regulations, specific requirements for additional information or other requirements. See also § 1.2105 of this chapter.

(b) Some examples of common deficiencies which result in defective applications under paragraph (a) of this section are:

(1) The application is not filled out completely and signed;

(2) The application (other an application filed on FCC Form 175) does not include an environmental assessment as required for an action that may have a significant impact upon the environment, as defined in § 1.1307 of this chapter.

(3) The application is filed prior to the Public Notice issued under § 26.317 announcing the application filing date for the relevant auction or after the cutoff date prescribed in that Public Notice;

(c) If an applicant is requested by the Commission to file any documents or any supplementary or explanatory information not specifically required in the prescribed application form, a failure to comply with such request within a specified time period will be deemed to render the application defective and will subject it to dismissal.

§ 26.312 Inconsistent or conflicting applications.

While an application is pending and undecided, no subsequent inconsistent or conflicting application may be filed by the same applicant, his successor or assignee, or on behalf or for the benefit of the same applicant, his successor or assignee.

§ 26.313 Amendment of application for General Wireless Communications Service filed on FCC Form 175.

(a) The Commission will provide bidders a limited opportunity to cure defects in FCC Form 175 specified herein except for failure to sign the application and to make certifications. These are defects which may not be cured. See also § 1.2105 of this chapter.

(b) For GWCS, applicants will be permitted to amend their Form 175 applications to make minor amendments to correct minor errors or defects such as typographical errors. Applicants will also be permitted to amend FCC Form 175, to make ownership changes or changes in the identification of parties to bidding consortia, provided such changes do not result in a change in control of the applicant and do not involve another applicant (or parties in interest to an applicant) who has applied for any of the same licenses as the applicant. Amendments which change control of the applicant will be considered major amendments. An FCC Form 175 which is amended by a major amendment will be considered to be newly filed and cannot be resubmitted after applicable filing deadlines. See also § 1.2105 of this chapter.

§ 26.314 Amendment of applications for General Wireless Communications Service (other than applications filed on FCC Form 175).

This section applies to all applications for General Wireless Communications Service other than applications filed on FCC Form 175.

(a) Amendments as of right. A pending application may be amended as a matter of right if the application has not been designated for hearing.

(1) Amendments shall comply with § 26.319, as applicable; and

(2) Amendments which resolve interference conflicts or amendments under § 26.319 may be filed at any time.

(b) The Commission or the presiding officer may grant requests to amend an application designated for hearing only if a written petition demonstrating good cause is submitted and properly served upon the parties of record.

(c) Major amendments, minor amendments. The Commission will classify all amendments as minor except in the cases listed below. An amendment shall be deemed to be a major amendment subject to § 26.317 under any of the following circumstances:

(1) Change in technical proposal. If the amendment results in a substantial change in the engineering proposal such as (but not necessarily limited to) a change in, or an addition of, a radio frequency; or

(2) Amendment to proposed service area. If the amendment extends the reliable service area of the proposed facilities outside its EA or other applicable market area as defined in § 26.102; or

(3) A substantial change in ownership or control.

(d) If a petition to deny (or other formal objection) has been filed, any amendment, requests for waiver, (or other written communications) shall be served on the petitioner, unless waiver of this requirement is granted pursuant to paragraph (e) of this section. See also § 1.2108 of this chapter.

(e) The Commission may waive the service requirements of paragraph (d) of this section and prescribe such alternative procedures as may be appropriate under the circumstances to protect petitioners' interests and to avoid undue delay in a proceeding, if an applicant submits a request for waiver which demonstrates that the service requirement is unreasonably burdensome.

(f) Any amendment to an application shall be signed and shall be submitted in the same manner, and with the same number of copies, as was the original application. Amendments may be made

in letter form if they comply in all other respects with the requirements of this chapter.

(g) An application will be considered to be a newly filed application if it is amended by a major amendment (as defined in this section), except in the following circumstances:

(1) The amendment reflects only a change in ownership or control found by the Commission to be in the public interest;

(2) The amendment corrects typographical transcription, or similar clerical errors which are clearly demonstrated to be mistakes by reference to other parts of the application, and whose discovery does not create new or increased frequency conflicts;

(3) The amendment does not create new or increased frequency conflicts, and is demonstrably necessitated by events which the applicant could not have reasonably foreseen at the time of filing, such as, for example:

(i) The loss of a transmitter or receiver site by condemnation, natural causes, or loss of lease or option; or

(ii) Obstruction of a proposed transmission path caused by the erection of a new building or other structure.

§ 26.315 Application for temporary authorizations.

(a) In circumstances requiring immediate or temporary use of facilities, request may be made for special temporary authority to install and/or operate new or modified equipment. Any such request may be submitted as an informal application in the manner set forth in § 26.303 and must contain full particulars as to the proposed operation including all facts sufficient to justify the temporary authority sought and the public interest therein. No such request will be considered unless the request is received by the Commission at least 10 days prior to the date of proposed construction or operation or, where an extension is sought, expiration date of the existing temporary authorization. A request received within less than 10 days may be accepted upon due showing of sufficient reasons for the delay in submitting such request.

(b) Special temporary authorizations may be granted without regard to the 30-day public notice requirements of § 26.317 when:

(1) The authorization is for a period not to exceed 30 days and no application for regular operation is contemplated to be filed;

(2) The authorization is for a period not to exceed 60 days pending the filing

of an application for such regular operation;

(3) The authorization is to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as previously authorized; or

(4) The authorization is made upon a finding that there are extraordinary circumstances requiring operation in the public interest and that delay in the institution of such service would seriously prejudice the public interest.

(c) Temporary authorizations of operation not exceed 180 days may be granted under the standards of section 309(f) of the Communications Act where extraordinary circumstances so require. Extensions of the temporary authorization for a period of 180 days each may also be granted, but the renewal applicant bears a heavy burden to show that extraordinary circumstances warrant such an extension.

(d) In cases of emergency found by the Commission, involving danger to life or property or due to damage of equipment, or during a national emergency proclaimed by the president or declared by the Congress or during the continuance of any war in which the United States is engaged and when such action is necessary for the national defense or safety or otherwise in furtherance of the war effort, or in cases of emergency where the Commission finds that it would not be feasible to secure renewal applications from existing licensees or otherwise to follow normal licensing procedure, the Commission will grant radio station authorizations and station licenses, or modifications or renewals thereof, during the emergency found by the Commission or during the continuance of any such national emergency or war, as special temporary licenses, only for the period of emergency or war requiring such action, without the filing of formal applications.

§ 26.316 Receipt of application; applications in the General Wireless Communications Service filed on FCC Form 175 and other applications in the GWCS Service.

All applications for the initial provision of GWCS service must be submitted on FCC Forms 175 and 175-S. Mutually exclusive initial applications in the General Wireless Communications Services are subject to competitive bidding. FCC Form XXX ("Application for New or Modified General Wireless Communications Service Radio Station Under Part 26") must be submitted by each winning bidder for each GWCS license applied

for on FCC Form 175. In the event that mutual exclusivity does not exist between applicants filing FCC Form 175, the applicant will also file FCC Form 401. The aforementioned Forms 175, 175-S, and XXX are subject to the provisions of Part 1, Subpart Q of this chapter ("Competitive Bidding Proceedings") and subpart E of this part. Blanket licenses are granted for each market frequency block. Applications for individual sites are not needed and will not be accepted. See § 26.11.

(b) Applications received for filing are given a file number. The assignment of a file number to an application is merely for administrative convenience and does not indicate the acceptance of the application for filing and processing. Such assignment of a file number will not preclude the subsequent return or dismissal of the application if it is found to be not in accordance with the Commission's rules.

(c) Acceptance of an application for filing merely means that it has been the subject of a preliminary review as to completeness. Such acceptance will not preclude the subsequent return or dismissal of the application if it is found to be defective or not in accordance with the Commission's rules.

§ 26.317 Public notice period.

(a) At regular intervals, the Commission will issue a public notice listing:

(1) The acceptance for filing of all applications and major amendments thereto;

(2) Significant Commission actions concerning applications listed as acceptable for filing;

(3) Information which the Commission in its discretion believes of public significance. Such notices are solely for the purpose of informing the public and do not create any rights in an applicant or any other person.

(4) Special environmental considerations as required by part 1 of this chapter.

(b) The Commission will not grant any application until expiration of a period of thirty (30) days following the issuance date of a public notice listing the application, or any major amendments thereto, as acceptable for filing. Provided, that the Commission will not grant an application filed on Form XXX filed either by a winning bidder or by an applicant whose Form 175 application is not mutually exclusive with other applicants, until the expiration of a period of forty (40) days following the issuance of a public notice listing the application, or any major amendments thereto, as

acceptable for filing. See also § 1.2108 of this chapter.

(c) As an exception to paragraphs (a)(1), (a)(2) of this section, the public notice provisions are not applicable to applications:

(1) For authorization of a minor technical change in the facilities of an authorized station where such a change would not be classified as a major amendment (as defined by § 26.314) were such a change to be submitted as an amendment to a pending application;

(2) For issuance of a license subsequent to a radio station authorization or, pending application for a grant of such license, any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such license;

(3) For extension of time to complete construction of authorized facilities, see § 26.104;

(4) For temporary authorization pursuant to § 25.315;

(5) For an authorization under any of the proviso clauses of section 308(a) of the Communications Act of 1934 (47 U.S.C. 308(a));

(6) For consent to an involuntary assignment or transfer of control of a radio authorization; or

(7) For consent to a voluntary assignment or transfer of control of a radio authorization, where the assignment or transfer does not involve a substantial change in ownership or control.

§ 26.318 Dismissal and return of applications.

(a) Any application may be dismissed without prejudice as a matter of right if the applicant requests its dismissal prior to designation for hearing or, in the case of applications filed on Forms 175 and 175-S, prior to auction. An applicant's request for the return of his application after it has been accepted for filing will be considered to be a request for dismissal without prejudice. Applicants requesting dismissal of their applications are also subject to § 1.2104 of this chapter.

(b) A request to dismiss an application without prejudice will be considered after designation for hearing only if:

(1) A written petition is submitted to the Commission and is properly served upon all parties of record, and

(2) The petition complies with the provisions of this Section and demonstrates good cause.

(c) The Commission will dismiss an application for failure to prosecute or

for failure to respond substantially within a specified time period to official correspondence or requests for additional information. Dismissal shall be without prejudice if made prior to designation for hearing or prior to auction, but dismissal may be made with prejudice for unsatisfactory compliance or after designation for hearing or after the applicant is notified that it is the winning bidder under the auction process.

§ 26.319 Ownership changes and agreements to amend or to dismiss applications or pleadings.

(a) Applicability. Subject to the provisions of § 1.2105 of this chapter (Bidding Application and Certification Procedures; Prohibition of Collusion), this section applies to applicants and all other parties interested in pending applications who wish to resolve contested matters among themselves with a formal or an informal agreement or understanding. This section applies only when the agreement or understanding will result in:

(1) A major change in the ownership of an applicant to which § 26.323 and 26.324 would apply, or

(2) The individual or mutual withdrawal, amendment or dismissal of any pending application, amendment, petitioner or other pleading.

(b) Parties that have filed an application in the GWCS that is mutually exclusive with one or more other applications, and then enter into an agreement to resolve the mutual exclusivity by withdrawing or requesting dismissal of the application or an amendment thereto, must obtain the approval of the FCC. Parties that have filed a petition to deny, informal objection or other pleading against a pending application, and then seek to withdraw or request dismissal of the petition, either unilaterally or in exchange for a financial consideration, must obtain the approval of the FCC.

(1) The party withdrawing or requesting dismissal of its application, petition to deny, informal objection or other pleading must submit to the FCC a request for approval of the withdrawal or dismissal, a copy of any written agreement related to the withdrawal or dismissal, and an affidavit setting forth:

(i) A certification that neither the party nor its principals has received or will receive any money or other consideration in excess of the legitimate and prudent expenses incurred in prosecuting the application, petition to deny, informal objection or other pleading in exchange for the withdrawal or dismissal of the application, petition to deny, informal objection or other

pleading, except that this provision does not apply to dismissal or withdrawal of applications pursuant to *bona fide* merger agreements;

(ii) The exact nature and amount of any consideration received or promised;

(iii) An itemized accounting of the expenses for which it seeks reimbursement; and

(iv) The terms of any oral agreement related to the withdrawal or dismissal of the application, petition to deny, informal objection or other pleading.

(2) In addition, within 5 days of the filing date of the applicant's or petitioner's request for approval, each remaining party to any written or oral agreement must submit an affidavit setting forth:

(i) A certification that neither the applicant nor its principals has paid or will pay money or other consideration in excess of the legitimate and prudent expenses of the petitioner in exchange for withdrawing or dismissing the application, petition to deny, informal objection or other pleading; and

(ii) The terms of any oral agreement relating to the withdrawal or dismissal of the application, petition to deny, informal objection or other pleading.

(3) For the purposes of this section:

(i) Affidavits filed pursuant to this section must be executed by the filing party, if an individual, a partner having personal knowledge of the facts, if a partnership, or an officer having personal knowledge of the facts, if a corporation or association.

(ii) Applications, petitions to deny, informal objections and other pleadings are deemed to be pending before the FCC from the time the application or petition to deny is filed with the FCC until such time as an order of the FCC granting, denying or dismissing the application, petition to deny, informal objection or other pleading is no longer subject to reconsideration by the FCC or to review by any court.

(iii) "Legitimate and prudent expenses" are those expenses reasonably incurred by a party in preparing to file, filing, prosecuting and/or settling its application, petition to deny, informal objection or other pleading for which reimbursement is sought.

(iv) "Other consideration" consists of financial concessions, including, but not limited to, the transfer of assets or the provision of tangible pecuniary benefit, as well as non-financial concessions that confer any type of benefit on the recipient.

(v) Reimbursement by an applicant of the legitimate and prudent expenses of a potential petitioner or objector, incurred reasonably and directly in

preparing to file a petition to deny, will not be considered to be payment for refraining from filing a petition to deny or an informal objection. Payments made directly to a potential petitioner or objector, or a person related to a potential petitioner or objector, to implement non-financial promises are prohibited unless specifically approved by the FCC.

§ 26.320 Opposition to applications.

(a) Petitions to deny (including petitions for other forms or relief) and responsive pleadings for Commission consideration must comply with § 1.2108 of this chapter and must:

(1) Identify the application or applications (including applicant's name, station location, Commission file numbers and radio service involved) with which it is concerned;

(2) Be filed in accordance with the pleading limitations, filing periods, and other applicable provisions §§ 1.41 through 1.52 of this chapter except where otherwise provided in § 1.2108 of this chapter;

(3) Contain specific allegations of fact which, except for facts of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof, and which shall be sufficient to demonstrate that the petitioner (or respondent) is a party in interest and that a grant of, or other Commission action regarding, the application would be *prima facie* inconsistent with the public interest;

(4) Be filed within thirty (30) days after the date of public notice announcing the acceptance for filing of any such application or major amendment thereto (unless the Commission otherwise extends the filing deadline); and

(5) Contain a certificate of service showing that it has been mailed to the applicant no later than the date of filing thereof with the Commission.

(b) A petition to deny a major amendment to a previously filed application may only raise matters directly related to the amendment which could not have been raised in connection with the underlying, previously filed application. This does not apply to petitioners who gain standing because of the major amendment.

(c) parties who file frivolous petitions to deny may be subject to sanctions including monetary forfeitures, license revocation, if they are FCC licensees, and may be prohibited from participating in future auctions.

§ 26.321 Mutually exclusive applications.

(a) The Commission will consider applications to be mutually exclusive if their conflicts are such that the grant of one application would effectively preclude by reason of harmful electrical interference, or other practical reason, the grant of one or more of the other applications. The Commission will presume "harmful electrical interference" to mean interference which would result in a material impairment to service rendered to the public despite full cooperation in good faith by all applicants or parties to achieve reasonable technical adjustments which would avoid electrical conflict.

(b) Mutually exclusive applications filed on Form 175 for the initial provision of GWCS service are subject to competitive bidding in accordance with the procedures in Subpart F of this part and in Part 1, Subpart Q of this chapter.

(c) An application will be entitled to comparative consideration with one or more conflicting applications only if the Commission determines that such comparative consideration will serve the public interest.

§ 26.322 Consideration of applications.

(a) Applications for an instrument of authorization will be granted if, upon examination of the application and upon consideration of such other matters as it may officially notice, the Commission finds that the grant will serve the public interest, convenience, and necessity. See also § 1.2108 of this chapter.

(b) The grant shall be without a formal hearing if, upon consideration of the application, any pleadings or objections filed, or other matters which may be officially noticed, the Commission finds that:

(1) The application is acceptable for filing, and is in accordance with the Commission's rules, regulations, and other requirements;

(2) The application is not subject to a post-auction hearing or to comparative consideration pursuant to § 26.321 with another application(s);

(3) A grant of the application would not cause harmful electrical interference to an authorized station;

(4) There are no substantial and material questions of fact presented; and

(5) The applicant is qualified under current FCC regulations and policies.

(c) If the Commission should grant without a formal hearing an application for an instrument of authorization which is subject to a petition to deny filed in accordance with § 26.320, the Commission will deny the petition by the issuance of a Memorandum Opinion

and Order which will concisely report the reasons for the denial and dispose of all substantial issues raised by the petition.

(d) Whenever the Commission, without a formal hearing, grants any application in part, or subject to any terms or conditions other than those normally applied to applications of the same type, it shall inform the applicant of the reasons therefor, and the grant shall be considered final unless the Commission should revise its action (either by granting the application as originally requested, or by designating the application for a formal evidentiary hearing) in response to a petition for reconsideration which:

(1) Is filed by the applicant within thirty (30) days from the date of the letter or order giving the reasons for the partial or conditioned grant;

(2) Rejects the grant as made and explains the reasons why the application should be granted as originally requested; and,

(3) Returns the instrument of authorization.

(e) The Commission will designate an application for a formal hearing, specifying with particularity the matters and things in issue, if, upon consideration of the application, any pleadings or objections filed, or other matters which be officially noticed, the Commission determines that:

(1) A substantial and material question of fact is presented (see also § 1.2108 of this chapter);

(2) The Commission is unable for any reason to make the findings specified in paragraph (a) of this section and the application is acceptable for filing, complete, and in accordance with the Commission's rules, regulations, and other requirements; or

(3) The application is entitled to comparative consideration (under § 26.321) with another application (or applications).

(f) The Commission may grant, deny or take other action with respect to an application designated for a formal hearing pursuant to paragraph (e) of this section or Part 1 of this chapter.

(g) Reconsideration or review of any final action taken by the Commission will be in accordance with Part 1, Subpart A of this chapter.

§ 26.323 Post-action divestitures.

Any parties sharing a common non-controlling ownership interests who aggregate more GWCS spectrum among them than a single entity is entitled to hold will be permitted to divest sufficient properties within 90 days of the license grant to come into

compliance with the spectrum aggregation limits as follows:

(a) The GWCS applicant shall submit a signed statement with its long-form application stating that sufficient properties will be divested within 90 days of the license grant. If the licensee is otherwise qualified, the Commission will grant the applications subject to a condition that the licensee come into compliance with the GWCS spectrum aggregation limits within 90 days of grant.

(b) Within 90 days of license grant, the licensee must certify that the applicant and all parties to the application have come into compliance with the GWCS spectrum aggregation limits. If the licensee fails to submit the certification within 90 days, the Commission will immediately cancel all broadband GWCS licenses won by the applicant, impose the default payment and, based on the facts presented, take any other action it deems appropriate. Divestiture may be an interim trustee if a buyer has not been secured in the required time frame, as long as the applicant has no interest in or control of the trustee, and the trustee may dispose of the property as it sees fit. In no event may the trustee retain the property for longer than six months from grant of license.

§ 26.324 Transfer of control or assignment of station authorization.

(a) Authorizations shall be transferred or assigned to another party, voluntarily (for example, by contract) or involuntarily (for example, by death, bankruptcy, or legal disability), directly or indirectly or by transfer of control of any corporation holding such authorization, only upon application and approval by the Commission. A transfer of control or assignment of station authorization in the General Wireless Communications Service is also subject to § 1.2111 of this chapter (Assignment or transfer of control: unjust enrichment).

(1) A change from less than 50% ownership to 50% or more ownership shall always be considered a transfer of control.

(2) In other situations a controlling interest shall be determined on a case-by-case basis considering the distribution of ownership, and the relationships of the owners, including family relationships.

(b) Form required:

(1) Assignment.

(i) FCC Form 490 shall be filed to assign a license or permit.

(ii) In the case of involuntary assignment, FCC Form 490 shall be filed

within 30 days of the event causing the assignment.

(2) Transfer of control.

(i) FCC Form 490 shall be submitted in order to transfer control of a corporation holding a license or permit.

(ii) In the case of involuntary transfer of control, FCC Form 490 shall be filed within 30 days of the event causing the transfer.

(3) Form 430. Whenever an application must be filed under paragraphs (a)(1) or (a)(2) of this section, the assignee or transferee shall file FCC Form 430 ("Common Carrier Radio License Qualification Report") unless an accurate report is on file with the Commission.

(4) Notification of completion. The Commission shall be notified by letter of the date of completion of the assignment or transfer of control.

(5) If the transfer of control of a license is approved, the new licensee is held to the original build-out requirement of § 26.104.

(c) In acting upon applications for transfer of control or assignment, the Commission will not consider whether the public interest, convenience, and necessity might be served by the transfer or assignment of the authorization to a person other than the proposed transferee or assignee.

(d) Applicants seeking to transfer their licenses within three years after the initial license grant date are required to file, together with their transfer application, the associated contracts for sale, option agreements, management agreements, and all other documents disclosing the total consideration to be received in return for the transfer of the license.

§ 26.325 Extension of time to complete construction.

(a) If construction is not completed within the time period set forth in § 26.104, the authorization will automatically expire. Before the period for construction expires an application for an extension of time to complete construction (FCC Form 489) may be filed. See paragraph (b) of this section. Within 30 days after the authorization expires an application for reinstatement may be filed on FCC Form 489.

(b) An application for extension of time to complete construction may be made on FCC Form 489. Extension of time requests must be filed prior to the expiration of the construction period. Extensions will be granted only if the licensee shows that the failure to complete construction is due to causes beyond his control. An application for modification of an authorization (under construction) does not extend the initial

construction period. If additional time to construct is required, an FCC Form 489 must be submitted.

§ 26.326 Termination of authorization.

(a) (1) All authorizations shall terminate on the date specified on the authorization or on the date specified by these rules, unless a timely application for renewal has been filed.

(2) If no application for renewal has been made before the authorization's expiration date, a late application for renewal will only be considered if it is filed within 30 days of the expiration date and shows that the failure to file a timely application was due to causes beyond the applicant's control. During this 30 day period reinstatement applications must be filed on FCC Form 489. Service to subscribers need not be suspended while a late filed renewal application is pending, but such service shall be without prejudice to Commission action on the renewal application and any related sanctions. See also § 26.14 (Criteria for Comparative Renewal Proceedings).

(b) Special Temporary Authority. A special temporary authorization shall automatically terminate upon failure to comply with the conditions in the authorization.

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