you want each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W. Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street N.W., Washington D.C. 20554.

13. It is further ordered that the Secretary shall send a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–3127 Filed 2–15–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 90

[PR Docket No. 93–144; PP Docket No. 93–253; FCC 95–501]

Future Development of SMR Systems in the 800 MHz Frequency Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this Second Further Notice of Proposed Rule Making (*Second Further Notice*) in PR Docket No. 93–144, the Commission seeks comment on disaggregation of channel blocks and partitioning on the upper 200 channels of 800 MHz Specialized Mobile Radio (SMR) spectrum, certain aspects of mandatory relocation as adopted in the *First Report and Order* (*First R&O*) in PR Docket No. 93–144, and eligibility of Basic Exchange Telecommunications Radio Service (BETRS) operators for certain upper 200 channels. In addition, we propose to adopt service and competitive bidding rules for the lower 80 SMR channels and the General Category channels in the 800 MHz band. Further, we have redesignated the General Category channels for exclusive SMR use. The intended effect of this action is to facilitate future development of SMR systems in the 800 MHz band through implementation of streamlined licensing procedures and the use of competitive bidding.

DATES: Comments are to be filed on or before February 15, 1996, and Reply Comments are to be filed on or before March 1, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David Furth, or David Kirschner at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This *Second Further Notice,* adopted December 15, 1995, and released December 15, 1995, is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street N.W., Washington, D.C. 20037 (telephone: (202) 857–3800).

I. Disaggregation of Channel Blocks on the Upper 200 Channels of 800 MHz SMR Spectrum

1. *Background.* In the *Further Notice of Proposed Rule Making* in PR Docket No. 93–144, 59 FR 60111 (November 22, 1994) (*Further Notice),* we asked commenters to address whether licensees should be allowed to sublicense portions of larger blocks instead of aggregating smaller blocks.

2. *Comments.* Total Com, AMTA, AMI and Motorola contend that licensees with service areas based on Economic Areas (EAs) established by the United States Department of Commerce, Bureau of Economic Analysis should be permitted to sublicense portions of their spectrum blocks. Motorola argues that allowing sublicensing on a spectrum basis would allow excess spectrum capacity to be made available for alternative uses and provide small SMR licensees with the opportunity to participate in the provision of wide-area service at levels commensurate with their business and customer interests and their financial resources. AMTA argues that such sublicensing should be permitted as long as construction and coverage requirements are satisfied, because such an approach would encourage development of bidding consortia of smaller operators, which otherwise might be incapable of participating in the competitive bidding process. Parkinson, *et al.* express concern that, by allowing sublicensing, an incumbent's operations unfairly and unreasonably would be restricted by the EA licensee.

3. *Discussion.* Given the extensive incumbent presence in the upper 10 MHz block of the 800 MHz SMR spectrum, we tentatively conclude that EA licensees should be permitted to disaggregate their spectrum blocks. We believe that this additional tool will enable EA licensees to manage their spectrum blocks more effectively and efficiently. We further believe that disaggregation not only will facilitate the coexistence of EA licensees and incumbents in the upper 200 channels, but also will result in the most efficient use of the 800 MHz SMR spectrum. We seek comment on this tentative conclusion.

4. As a general matter, we believe that any disaggregation agreements must comply with the Commission's pro-competitive policies. We propose that spectrum covered by an EA license may be sublicensed in either of two ways: (1) a group of licensees or entities may form bidding consortia to participate in auctions, and then disaggregate or partition the EA license(s) won among consortia participants; and (2) an EA licensee, through private negotiation and agreement before or after the auction, may elect to disaggregate or partition its spectrum block. We seek comment on this proposal.

5. Although we are interested in affording EA licensees optimal flexibility for spectrum management, we nonetheless do not want to undermine our goal to facilitate an effective and efficient wide-area licensing scheme. We ask commenters to discuss the conditions under which EA licensees should be permitted to disaggregate their spectrum blocks. Should EA licensees be required to retain a specified portion of their spectrum block, and if so, what is an appropriate amount? In addition, should there be a minimum amount of spectrum that EA licensees must disaggregate in order to utilize this spectrum management tool? Should geographic area licensees be permitted to disaggregate only after they have satisfied applicable construction and coverage requirements? We also ask commenters to discuss any other type of considerations applicable to disaggregation.

II. Partitioning on the Upper 200 Channels of 800 MHz SMR Spectrum

6. *Background.* In the *Eighth Report and Order* (*Competitive Bidding Eighth R&O*) in PP Docket No. 93–253 we adopted a partitioning option for rural telephone companies.

7. *Comments.* Nextel contends that smaller, local operators wishing to participate in wide-area service could become involved through arrangements with the EA licensee to partition its service area.

8. *Proposal.* We tentatively conclude that partitioning should be an option not only for rural telephone companies but also for incumbents and eligible SMR licensees generally. We tentatively conclude that extending the partitioning option will further the goal of Section 309(j) in the dissemination of licenses to a variety of licensees because small businesses will have additional flexibility and opportunities to serve areas in which they already provide service, while the remainder of the service area could be served by other providers.

9. We propose that SMR licensees be permitted to acquire partitioned EA licenses in either of two ways: (1) they may form bidding consortia to participate in auctions, and then partition the licenses won among consortia participants; or (2) they may acquire partitioned 800 MHz SMR licenses from other licensees through private negotiation and agreement either before or after the auction. Each member of a consortium would be required to file a long-form application, following the auction, for its respective mutually agreed-upon geographic area. We propose that partitioned areas be required to conform to established geo-political boundaries (such as county lines). We further propose that these entities be subject to the same interim coverage and channel use requirements as EA licensees with respect to the geographic areas covered by their partitioned authorizations. We seek comment on our proposals and tentative conclusions and any alternatives.

10. As a general matter, we believe that any partitioning agreement must comply with the Commission's pro-competitive policies. We ask commenters to discuss the conditions under which EA licensees should be permitted to partition their service areas to other SMR licensees. Should EA licensees be required to retain a specified portion of their service area, and if so, what is an appropriate amount? Should geographic area licensees be permitted to partition only after they have satisfied applicable construction and coverage requirements? We also ask commenters to discuss any other type of considerations applicable to partitioning.

III. Mandatory Relocation in the Upper 200 Channels

A. Distributing Relocation Costs Among EA Licensees

11. In the *First R&O,* we determined that EA licensees must notify incumbents operating on the upper 200 channels of their intention to relocate such incumbents within 90 days of the release of the Public Notice commencing the voluntary negotiation period. We also determined that any incumbent licensee who has been so notified may require all EA licensees in whose spectrum blocks it operates to negotiate collectively with the incumbent. Because an incumbent licensee can compel simultaneous negotiations with all affected EA licensees, we tentatively conclude that the elaborate cost-sharing plan proposed for broadband PCS is unnecessary for the 800 MHz SMR service. Therefore, we propose to require EA licensees to share the relocation costs on a pro rata basis (based on the actual number of the incumbent's channels located in the EA licensees' respective spectrum blocks), unless all such licensees agree to a different cost-sharing arrangement. We believe that this approach would enhance significantly the speed of relocation given that incumbent licensees most likely will elect to negotiate with EA licensees collectively rather than individually to accommodate system-wide relocation agreements. This would in turn result in faster delivery of wide-area SMR service to the public. We seek comment on our tentative conclusions and on the advantages and disadvantages of our cost-sharing proposal.

B. Relocation Costs

12. *Compensable Costs.* When relocation will benefit multiple licensees, the issue arises as to what relocation costs should be shared by the benefitting licensees. Relocation costs can be divided roughly into two categories: (1) the actual cost of relocating an incumbent licensee to comparable facilities, and (2) payments above the cost of providing comparable facilities, also referred to as ''premium payments.''

13. *Comments.* Louisville believes that relocation costs should include expenses for: engineering, equipment, labor, construction, testing, FCC application fees, local fees, additional recurring operating costs, pay for lost time, cost analysis, frequency coordination, and any other expenses incurred by the incumbent as long as the expenses were caused by the new facilities not being comparable with the old facilities and they occurred within one year after the incumbent took control of the new facilities. Clarus argues that expenses paid by the EA licensee should include administrative costs and any loss of goodwill that the incumbent might suffer. Nextel believes that all out-of-pocket costs associated with retuning should be borne by the auction winner, such costs include those covered by the Commission's Emerging Technologies relocation plan.

14. *Proposal.* We tentatively conclude that premium payments should not be reimbursable, because such payments are likely to be paid by EA licensees to accelerate relocation so that they can be the first licensee in the market area to implement wide-area SMR service. Because other EA licensees have not received the corresponding advantage of being first to market and did not actively participate in the relocation negotiations, we do not believe that such licensees should be required to contribute to premium payments. We therefore propose to limit the calculation of reimbursable costs for the 800 MHz SMR service to actual relocation costs, unless the EA licensees involved mutually and expressly agree to share any premium payments. We tentatively conclude that ''actual relocation costs'' would include, but not be limited to: SMR equipment; towers and/or modifications; back-up power equipment; engineering costs; installation; system testing; FCC filing costs; site acquisition and civil works; zoning costs; training; disposal of old equipment; test equipment; spare equipment; project management; and site lease negotiation. We request comment on this proposal. We also ask commenters to address any additional costs they believe should be reimbursable and a supporting rationale for such treatment.

15. *Creation of Reimbursement Rights.* We tentatively conclude that an EA licensee who negotiates a relocation agreement that benefits one or more other EA licensees should obtain a right to reimbursement of a share of the relocation costs. We seek comment on how such rights should be created procedurally. We believe that some form of reimbursement rights should be conferred on EA licensees so that it will be possible to enforce the right to reimbursement and collect reimbursement from other EA licensees. We seek comment on these tentative conclusions and any alternatives.

16. *Payment.* We seek comment on when reimbursement payments should be due. Specifically, we ask commenters to address whether such payments should be due when the benefitting EA licensee begins to use the particular frequency or when the EA licensee commences testing of its wide-area system in the EA.

17. *Dispute Resolution Issues. Comments.* PCIA, AMI, and Motorola all argue that the Commission should establish a mediation mechanism to

resolve disputes. PCIA believes that the EA winner should pay for the mediation unless the mediator finds that the incumbent is not acting in good faith. If mediation is not successful, Motorola and PCIA believe that the Commission should resolve the dispute.

18. *Proposal.* We tentatively conclude that incumbents and EA licensees should attempt to resolve disputes arising over the amount of reimbursement required, in the first instance, amongst themselves. We encourage parties to use expedited alternative dispute resolution (''ADR'') procedures, such as binding arbitration or mediation. We seek comment on this proposal and on any other mechanisms that would expedite resolution of these disputes should they arise.

19. Similarly, to the extent that disputes arise between incumbents and EA licensees over relocation negotiations (including disputes over the comparability of facilities and the requirement to negotiate in good faith), we also encourage parties to use alternative dispute resolution techniques. We believe such techniques are an appropriate first step during both the voluntary and mandatory negotiation periods. We emphasize again that resolution of such disputes entirely by our adjudication processes would be time consuming and costly to all parties.

20. We also seek comment on whether either the industry trade associations or the FCC's Compliance and Information Bureau should be designated as arbiters for such disputes. We ask commenters to discuss the advantages and disadvantages of such designations as well as suggested dispute resolution procedures in the event that they were so designated. In addition, we seek comment on whether failure to comply with the relocation obligations or requirements should be taken into consideration by the Commission when deciding on renewal or transfer of control or assignment applications.

C. Comparable Facilities

21. *Background.* Under the mandatory relocation scheme we adopt in the *First R&O,* we require EA licensees to provide incumbents with ''comparable facilities'' as a condition for involuntary relocation. In the broadband PCS context, we also adopted a mandatory relocation scheme in which PCS licensees are required to provide microwave incumbents with comparable facilities as a condition for involuntary relocation. Although we have not adopted a definition of comparable facilities in the broadband PCS context, we have indicated that we generally require that comparable facilities be equal to or superior to existing facilities. We also indicated that we would consider, *inter alia,* system reliability, speed, bandwidth, throughput, overall efficiency, bands authorized for such services, and interference protection in making a determination regarding comparability. In the *Further Notice,* we asked commenters to discuss the meaning of comparable facilities in the 800 MHz SMR context.

22. *Comments.* Some commenters suggest, as a general matter, that a comparable system is one that is as good as or superior to the incumbent's existing system. The majority of commenters attempt to define comparable facilities by specifying what would need to be provided to the incumbent being relocated. These commenters argue that comparable facilities would include: (1) the same number of channels as are currently held by the incumbent; (2) the retuned frequencies being compatible in a multi-channel system at the incumbent's current location; (3) the retuned frequencies not having any co-channel licensees within the EA; (4) incumbents having 70-mile co-channel interference protection; (5) base station equipment being modified to operate on the retuned frequencies; (6) all user units and user control units being reprogrammed or recrystallized to the retuned frequencies (or, if modification of the incumbent's equipment is not possible, the EA licensee would be required to provide new equipment); (7) the incumbent's ''retuned'' system providing the same, if not superior, performance as the incumbent's existing system operating at the same antenna height, and with the same power and interference protection; and, (8) the same channel separation for the retuned frequencies.

23. Some commenters define ''comparable facilities'' on the basis of operational characteristics. For example, commenters contend that comparable facilities mean that the incumbent's retuned system should have the same or superior coverage as its existing system. Nextel argues that comparable facilities means having the same 40 dBu contour as the incumbent's current system. Several commenters argue that only other 800 MHz SMR channels could constitute comparable frequencies. In this connection, Spectrum believes that incumbents should be relocated elsewhere on the 800 MHz spectrum or to the 900 MHz spectrum, or the auction winner should buy-out the incumbent's system.

24. PCIA, supported by other commenters, proposes that retuned incumbents receive the following rights and privileges associated with mandatory relocation: (1) The ability to obtain geographic area licenses on retuned channels; (2) protection against being relocated more than once; (3) the right to demand one unified retuning plan from all EA license holders in whose spectrum blocks their frequencies are located; (4) a requirement of ''seamless'' transition, such that the EA holder would complete retuning before the incumbent moves; (5) no obligation to cease operations on the original channels unless alternative frequencies are identified and accepted; and, (6) the right to timely notification by the EA licensee that incumbents will be moved. PCIA also suggests that EA licensees be given one year in which to complete retuning, so that incumbents can make future business plans. Several commenters argue that there should be no selective retuning of incumbent channels; rather, all of an incumbent's channels within an EA spectrum block should be retuned. Moreover, several commenters argue that in terms of an EA licensee's relocation obligations, an incumbent system should be defined as all licenses issued to an entity or multiple entities participating in an integrated network. Nextel, on the other hand, contends that selective retuning should be allowed, so long as the channels are ''comparable.''

25. *Proposal.* Although we wish to provide parties with sufficient flexibility to negotiate mutually agreeable terms for determining comparability, based on our experience in the broadband PCS context, we tentatively conclude that comparable facilities, at a minimum, should provide the same level of service as the incumbents' existing facilities. We propose that by ''comparable facilities,'' a relocated incumbent would: (a) Receive the same number of channels with the same bandwidth; (b) have its entire system relocated, not just those frequencies desired by a particular EA licensee; and, (c) once relocated, have a 40 dBu service contour that encompasses all of the territory covered by the 40 dBu contour of its original system. We believe that this definition will ensure that incumbents' operations will not be adversely affected. We further believe that such definition would not preclude incumbents and EA licensees from negotiating to trade-off any of these system parameters for premium payments or other operational rights which are consistent with our rules. We believe that this flexibility in

designing replacement facilities will expedite relocation, given the many variables involved with the system design of each individual system. We seek comment on our proposed definition of and tentative conclusions regarding ''comparable facilities.'' We ask commenters to discuss whether the ''comparable facilities'' definition should include additional operational characteristics, if so, what characteristics should be specified.

26. With respect to old and new SMR equipment, we tentatively conclude that an EA licensee's relocation obligations to an incumbent will not require the EA licensee to replace existing analog equipment with digital equipment when there is an acceptable analog alternative that satisfies the comparable facilities definition. In the event that an incumbent still wishes to obtain digital equipment under these circumstances, we believe that the incumbent should be required to bear the additional costs associated with such an upgrade of its system. Consequently, we propose that under these circumstances, the cost obligation of the EA licensee would be the minimum cost the incumbent would incur if it sought to replace, but not upgrade, its system. However, if an analog alternative fails to meet any of the criteria included in the comparable facilities definition, the incumbent would not be required to accept such an alternative. In those instances in which an incumbent licensee is operating with digital equipment prior to relocation, we tentatively conclude that the incumbent's new system also must be digital, unless the EA licensee and incumbent mutually agree to different terms. We believe that the proposed definition of comparability would facilitate negotiations between incumbents and EA licensees during the voluntary period, because both parties would be better informed about the EA licensees' minimum obligation under our rules. We seek comment on our proposals and tentative conclusions and any alternatives.

D. Relocation Guidelines—Good Faith Requirement During Mandatory Negotiations

27. In the *First R&O,* we establish a mandatory relocation mechanism for the upper 10 MHz block. Under this mechanism, incumbents and EA licensees have a one-year voluntary negotiation period during which EA licensees are free to offer incumbents a variety of incentives to expedite relocation. If a relocation agreement is not reached during this period, the EA licensee may initiate a mandatory negotiation period during which the parties are required to negotiate in ''good faith.''

28. We believe that additional clarification of the term ''good faith'' will facilitate negotiations and help reduce the number of disputes that may arise over varying interpretations of what constitutes good faith. We tentatively conclude that, for purposes of the mandatory negotiation period, an offer by an EA licensee to replace an incumbent's system with comparable facilities constitutes a good faith offer. Likewise, an incumbent that accepts such an offer presumably would be acting in good faith; whereas, failure to accept an offer of comparable facilities would create a rebuttable presumption that the incumbent is not acting in good faith. Comparable facilities would be limited to actual costs associated with providing a replacement system and would exclude any expenses incurred by the incumbent without securing the approval, in advance, of the EA licensee. We believe that the time for expansive negotiation is during the voluntary negotiation period and that, by the time the parties have reached the mandatory negotiation period, only the bare essentials of comparability should be required. We seek comment on our proposal. We also seek comment on the appropriate penalty to impose on a licensee that fails to act in good faith.

IV. BETRS Eligibility on the Upper 200 Channels of 800 MHz SMR Spectrum

29. *Background.* Under Section 90.621(h) of the Commission's rules, Channel Numbers 401–410, 441–450, 481–490, 521–530, and 561–570 are available on co-primary basis to stations in Basic Exchange Telecommunications Radio Service (BETRS) as described in Part 22 of the Commission's rules.

30. *Proposal.* According to our licensing records, there are few BETRS facilities currently licensed on these frequencies. Based on the limited BETRS licensing on these frequencies and the goals of the wide-area licensing plan adopted in the *First R&O* (in which these channels are included), we propose that BETRS stations no longer be authorized on these frequencies. In addition, as of the adoption of this *Second Further Notice,* we will no longer accept applications for BETRS facilities on these channels.

V. Licensing of Lower 80 and General Category Channels

A. Geographic Area Licensing

31. *Background.* Under our current rules the lower 80 and General Category channels are licensed on a site-specific basis. In the *Further Notice,* we sought comment on whether to continue site-specific licensing or to adopt a form of geographic area licensing on these channels.

32. *Comments.* Several commenters advocate that we continue licensing channels designated for local SMR use based on the geographic separation and channelization criteria in our current SMR rules. These commenters argue that continued site-specific licensing would: (1) Allow local operators to define their own markets; (2) permit construction of niche systems designed to meet unique and customized needs; and, (3) minimize disruption to operations of existing licensees.

33. Other commenters advocate discontinuing site-specific licensing of the lower 80 and General Category channels and instead offering licenses for individual channels or small channel blocks covering defined geographic areas. Cumulous argues that market-area licensing would allow local SMR operators to grow and develop into geographic area licensees in the future. Dru Jenkinson, *et al.* contend that market-area licensing would permit more efficient service area coverage than site-specific authorizations. Total Com believes that market-area licensing will be advantageous to market development, with minimal regulation.

Some commenters expressly oppose market-area licensing on the basis that: (1) There is no reason to license these channels on a market-defined area basis given the scarcity of vacant channels; and, (2) it could create an artificial shortage of local channels simply because a licensee secures an authorization covering a particular geographic area. Pittencrief contends that such an approach, if adopted, should be used only in those areas where the spectrum currently is not being used.

35. Although AMTA does not expressly support this licensing approach, it notes that there are certain advantages associated with geographic area licensing, including facilitation of future integration of local systems into wide-area operations should additional spectrum be desired. Pittencrief contends that even if site-specific licensing is retained, geographic area licensing would not necessarily be foreclosed in the future. In this regard, Pittencrief recommends that in order to secure a market-based license, a local licensee would be required to demonstrate either that: (a) No other co-channel systems serve the geographic area; or, (b) it has secured the consent of all affected co-channel licensees. In either case, Pittencrief suggests that the local licensee should be required to

serve a certain percentage of the Commission-defined service area or face loss of the wide-area authorization.

36. *Proposal.* We tentatively conclude that the lower 80 and General Category channels should be converted to geographic area licensing. We believe that this new licensing approach will afford smaller SMR operators the flexibility to provide service to a defined geographic area on the same basis as licensees in the upper 10 MHz block. We further believe that geographic licensing would simplify system expansion and substantially reduce the administrative burden on both lower 80 and General Category licensees and the Commission. In fact, we expect that in many instances, existing licensees will seek to obtain market-area licenses for those areas in which they already operate, which would enable them to consolidate and expand their operations under a more flexible regulatory regime. We seek comment on our tentative conclusion.

B. Service Areas

37. *Background.* In the *Further Notice,* we indicated our belief that the Basic Trading Areas (BTAs), established by Rand McNally, could be an appropriate service area for geographic area licensing on the lower 80 channels. In the *First R&O,* we adopt EAs as the service area for licenses in the upper 10 MHz block.

38. *Comments.* AMTA recommends using EAs rather than BTAs, partly because EAs appear to approximate more closely the coverage range of existing systems. Pittencrief also supports use of EAs. DCL Associates and Telecellular support use of BTA service areas, because they believe that such licensing would permit substantially more operational flexibility than the traditional 35-mile radius licensing areas. E.F. Johnson believes use of BTAs is contrary to the public interest because it potentially would require operators to construct facilities where they did not anticipate providing service; and, it would limit the possibility that a co-channel licensee legitimately could reuse those channels to serve an adjacent area. CellCall favors licensing the lower 80 channels based on Rand McNally's Major Trading Areas (MTAs). Dru Jenkinson, *et al.* believe that uniformity and efficiency of administration suggest that the lower 80 channels be licensed on the same geographic area as the upper 200 channels. Similarly, AMTA contends that such uniformity will preserve the value of lower 80 channels.

39. *Proposal.* We tentatively conclude that EAs would be the most appropriate service areas for a geographic area licensing approach on the lower 80 and General Category channels. As discussed in the *First R&O,* EAs are based on urban, suburban, and rural traffic patterns that accurately reflect the coverage provided by most 800 MHz SMR operators other than the largest wide-area systems. We therefore believe that this is an appropriate service area definition for the smaller systems that we anticipate will occupy the lower 80 and General Category channels. We also believe that using the same service area definition for licenses on these channels as for licenses on the upper 200 channels will result in greater administrative efficiency. We seek comment on this tentative conclusion and on alternative area definitions.

C. Channel Assignments

40. *Background.* In the *Further Notice,* we indicated that by continuing to license the lower channels in five-channel blocks, as we do currently, we would enable existing licensees to expand local systems on the same channels they are using presently. We also indicated that licensing fewer channels in each block might be an option that would give SMR operators more flexibility in channel configuration.

41. *Comments.* CellCall, Telecellular, AMI, Dru Jenkinson, *et al.,* and Palmer support licensing the lower 80 channels in five-channel blocks. Palmer believes that such an approach would limit spectrum warehousing severely because channels would not be sitting idle while reserved for future service areas within a larger defined geographic region. Dru Jenkinson, *et al.* believes that a five-channel block is an appropriate grouping which would permit limited service application on a local basis, yet provide flexibility for system modification within the designated area.

42. *Proposal.* The five-channel blocks, which proved to be administratively convenient under a site-by-site licensing scheme, may also continue to be feasible under a geographic area licensing approach since incumbent licensees have established their systems based on such channelization. We anticipate that licensees operating on the lower 80 channels increasingly may become more interested in expanding the geographic areas served by their systems and preoccupied less with the number of frequencies utilized by such systems. We tentatively conclude that the lower 80 channels should be licensed in the same five-channel blocks under a geographic licensing approach in order to allow SMR operators to build upon the systems they have already established. Thus, we propose to license the lower 80 channels in five-channel blocks. We seek comment on this tentative conclusion and any alternatives.

43. For the General Category channels, we are not convinced that five-channel blocks would be the best licensing alternative. Unlike the lower 80 channels, the General Category channels are contiguous. As a result, licensees may be interested in establishing multiple-channel system networks. In addition, we are concerned that the competitive bidding process for these frequencies may be administratively unmanageable if they are licensed on a channel-by-channel basis, given the large number of channels involved. Thus, we tentatively conclude that the General Category channels should be licensed in channel blocks. We seek comment on our tentative conclusion. We also ask commenters to discuss what specific channel block size would be appropriate. One alternative is to license channel blocks of different sizes, *e.g.,* a 120-channel block, a 20-channel block, and a 10-channel block. Another alternative is to license channel blocks of the same size, *e.g.,* 25-channel or 10-channel blocks. We seek comment on these, as well as other, alternatives.

D. Operational and Eligibility Restrictions

Background. In the *Further Notice,* we proposed to allow licensees to use the lower 80 channels for any purpose that is technically consistent with our rules. We also did not propose to restrict the ability of licensees on the lower 80 channels to aggregate channels or integrate local systems to provide service over a larger area.

45. *Comments.* The majority of commenters addressing this issue endorse the Commission's proposal to allow licensees to use the lower 80 channels for any purpose that is technically consistent with our rules. Cumulous believes that the Commission should pursue licensing policies that allow the same use to be made of both the upper 10 MHz block of 800 MHz SMR spectrum and the lower 80 channels. OneComm believes that such a regime would make local channels more fungible in relocation negotiations and preserve the value of the lower 80 channels.

46. Some commenters, on the other hand, oppose allowing EA licensees to be able to obtain lower 80 channels. Ericsson believes that such channels should be reserved as a safe haven for any local licensees who currently operate in the upper 10 MHz block and

do not obtain the EA license if a mandatory relocation plan is adopted. UTC believes that, in order to ensure the benefits of competition within all geographic markets, an entity should be restricted from holding EA licenses and authorizations for the lower 80 channels in the same geographic area. Fisher urges the Commission to clarify that if an EA licensee also holds licenses for systems made up of frequencies from the lower 80 channels, it would be allowed to incorporate such frequencies into its wide-area system. Fisher believes that such use would further the Commission's goal of efficient and full utilization of spectrum.

47. *Proposal.* We tentatively conclude that lower 80 and General Category SMR licensees should be permitted to use these channels for any purpose which is technically consistent with our rules. In light of our designation of 10 MHz of 800 MHz spectrum for wide-area licensing, however, we wish to ensure that our rules do not inadvertently allow licensees in the upper 10 MHz to acquire large numbers of additional SMR channels primarily intended for other use. As discussed *infra,* 2we propose to adopt size restrictions on eligibility for the lower 80 and General Category channels by designating these channels as an entrepreneurs' block. As a result of the economic size limitations associated with such designation, the largest licensees in the upper 10 MHz block would likely be ineligible for the lower 80 and General Category channels. Aside from this proposed restriction, however, we tentatively conclude that limiting the potential uses of lower 80 and General Category licenses would not serve the public interest. We believe that operational restrictions ultimately may restrict the ability of smaller SMR operators to expand their service area and service offerings by such means as integrating their frequencies into a wide-area system or establishing a multiple-channel network. Thus, we do not propose any additional restrictions for these channels.

E. Channel Aggregation Limit

48. *Background.* In the *Further Notice,* we tentatively concluded that a limit should be placed on the number of lower 80 channels that an applicant may obtain at one time in an area without constructing and commencing operations on previously licensed channels in the same area. We proposed to limit grants of the lower 80 channels to no more than five channels at one time, which is the applicable limit under our current rules.

49. *Comments.* All commenters addressing this issue agree that a limit should be placed on the number of lower 80 channels that an applicant may obtain at one time in an area without constructing and commencing operations on previously licensed channels in the same area. CellCall proposes a five-channel limit in a particular area for the lower 80 frequencies. Russ Miller believes, however, that a five-channel limit is too restrictive over a geographic area as large as a BTA service area. It proposes a five-channel limit, per location, not per area, for requested frequencies not licensed to the applicant within its existing footprint. Russ Miller suggests that the limit apply to any of the 800 MHz frequencies, not just SMR channels. Telecellular believes that lower 80 licensees should be permitted to apply for additional channels only after construction has been completed for any frequencies covered by previously issued authorizations in a given area, with ''area'' defined as any location within 40 miles of the unbuilt site. Total Com suggests that any licensee must have 90 percent of its channels constructed in each market before additional channels are authorized.

50. *Proposal.* We propose not to limit the number of frequencies a single applicant can request at one time. Under our site-specific 800 MHz SMR licensing rules, we generally have restricted the number of channels for which an entity could apply in a particular area at one time, to deter spectrum warehousing. We believe that the risk of channel warehousing would be limited because these licenses will be subject to competitive bidding and we anticipate that licensees will not bid for more channels than they actually need or can use. We also believe that lower 80 and General Category licensees should have the flexibility to pursue plans to establish wide-area systems by aggregating the lower 80 and General Category frequencies. We note, however, that Commercial Mobile Radio Services (CMRS) spectrum holdings by these licensees still would be subject to the CMRS spectrum aggregation limit provided in Section 20.6 of our Rules. We seek comment on these proposals and any alternatives.

F. Construction Requirements

1. Construction Period

51. *Background.* In the *Third Report and Order* in GN Docket No. 93–252, 59 FR 59945 (November 21, 1994) (*CMRS Third R&O*), we established a uniform 12-month period for constructing a standard base station in all CMRS services that are licensed on a site specific basis. In the *Further Notice,* we indicated that licensees of SMR systems presumptively are subject to this 12-month construction period. In the *CMRS Third R&O,* we also indicated that CMRS providers would be required to commence service to subscribers by the end of their construction period, with ''service to subscribers'' defined to mean the provision of service to at least one party not affiliated with, controlled by, or related to the CMRS provider.

52. *Comments.* All commenters addressing this issue endorse the Commission's proposal of a 12-month construction period, coupled with a commencement of service to subscribers requirement.

53. *Proposal.* Consistent with our conclusions in the *CMRS Third R&O,* we propose that lower 80 and General Category licensees be subject to a 12-month construction period. We further propose that these licensees be required to construct their facilities and commence ''service to subscribers'' within twelve months from the grant of their licenses. We seek comment on this proposal and any alternatives.

2. Coverage Requirements

54. We seek comment on whether geographic area SMR licensees operating on the lower 80 and General Category frequencies should be subject to minimum coverage requirements as a condition of licensing. In the *First R&O,* we require EA licensees operating in the upper 200 channels to provide coverage to one-third of the population within their EA within three years of initial license grant and to two-thirds of the population by the end of their five-year construction period. We propose to apply these same requirements to lower 80 and General Category geographic area licensees. We believe that these coverage requirements serve the public interest by deterring spectrum warehousing and ensuring the speedy delivery of SMR service to the public. We also propose that lower 80 and General Category licensees be able to satisfy their coverage requirements by meeting a ''substantial service'' standard, like that adopted in the broadband PCS 10 MHz blocks and 900 MHz SMR services. We ask commenters to address the advantages and disadvantages of imposing coverage requirements on lower 80 and General Category licensees, the specific coverage criteria proposed, and any alternative criteria that could be used.

55. We also tentatively conclude that the geographic area lower 80 and General Category licensees should be

responsible for meeting their coverage requirements, regardless of the extent to which their service areas are occupied by co-channel incumbents. We believe that incumbents that already provide substantial coverage in certain areas will have sufficient incentive to seek geographic area licenses for these areas. Thus, we propose to require the geographic area licensees for the lower 80 and General Category channels to satisfy their coverage requirements directly. This proposal is consistent with our approach for EA licensees on the upper 200 channels. We seek comment on these proposals and any alternatives, including the impact, if any, on the construction period for the lower 80 and General Category channels. Assuming a twelve-month construction period, we ask commenters to address whether the coverage requirements should be imposed earlier in the license term. If so, we ask commenters to discuss what would be the appropriate time frame.

56. If we adopt coverage requirements, we also must determine what penalty should be imposed if the geographic area licensee fails to comply with such requirements. We tentatively conclude that a geographic area licensee's failure to meet the coverage requirements should result in forfeiture of the market-area license. We also tentatively conclude that in the event that a licensee loses its geographic area license for failure to comply with coverage requirements, any authorizations that such licensee held in that area prior to the auction for facilities that are constructed and operating would be reinstated. This approach is consistent with the sanctions provided for in our rules for the upper 10 MHz block of 800 MHz SMR spectrum, 900 MHz SMR, and broadband PCS. We seek comment on our proposal and any alternatives.

G. Treatment of Incumbents

57. Given the extensive licensing of the 800 MHz SMR service, we remain concerned about the ramifications of implementing a market-area licensing approach where systems have been licensed already on a site-specific basis. In the *First R&O,* we adopt a mandatory relocation mechanism for the upper 10 MHz block. With respect to the lower 80 and General Category channels, however, we believe that there are no equitable means of relocating incumbents to alternative channels, and that there are no identifiable alternative channels to accommodate all such incumbents. We also believe that incumbent licensees relocated from the upper 200 channels should not be subject to relocation a second time. We therefore tentatively conclude that there should be no mandatory relocation mechanism for SMR operators operating on the lower 80 and General Category channels. We propose that incumbent SMR licensees on these frequencies be allowed to continue to operate under their existing site-specific authorizations, and geographic area licensees would be required to provide protection to all co-channel systems that are constructed and operating within their service areas. We further propose that no incumbent SMR licensee be allowed to expand beyond its existing service area (as discussed in further detail, *infra*) and into the geographic area licensee's territory without obtaining the prior consent of the geographic area licensee (unless, of course, the incumbent in question is itself the market-area licensee for the relevant channel). We seek comment on this proposal. In addition, we ask commenters to address how non-SMR licensees operating on the lower 80 and General Category channels should be treated. Should these licensees be relocated to non-SMR channels, and if so, under what circumstances and pursuant to what type of relocation plan?

58. Because incumbent licensees' ability to expand their service areas would be restricted as a result of our proposal, we believe that it is imperative that they be given the optimum amount of operational flexibility possible, without encroaching upon market-area licensees' operations. Consistent with our approach on the upper 200 channels, we propose that incumbent licensees on lower 80 and General Category channels be able to modify or add transmitters in their existing service area without prior notification to the Commission, so long as their 22 dBu interference contour is not expanded. As we note in the *First R&O,* we believe that by using the 22 dBu interference contour as the benchmark for defining an incumbent's service area, incumbents will be afforded significant operational flexibility without detracting from the market-area licensee' operational capabilities. We seek comment on this proposal. We ask commenters to address whether our proposal strikes the appropriate balance between the competing interests of market-area and incumbent licensees. We also ask commenters to discuss whether a basis other than the 22 dBu interference contour should be used to determine an incumbent's service area.

59. In addition, similar to our approach in the upper 200 channels and the 900 MHz SMR service, we propose to allow SMR incumbents operating on the lower 80 and General Category channels to have their licenses reissued if they are not the successful bidder for the geographic area license which includes the area in which they are currently operating. Under this procedure, which will be granted post-auction upon the request of the incumbent, an incumbent may convert its current multiple site licenses to a single license, authorizing operations throughout the contiguous and overlapping 22 dBu contours of the incumbent's previously authorized sites. We propose that incumbents seeking such reissued licenses be required to make a one-time filing identifying each of their external base station sites to assist the staff in updating the Commission's database after the close of the auction for the lower 80 and General Category channels. We also propose to require evidence that such facilities are constructed and placed in operation and that, by operation of our rules, no other licensee would be able to use these channels within this geographic area. We believe that facilities added or modified within the 22 dBu contour without prior approval or subsequent notification under this procedure will not receive interference, because they will be protected by the presence of surrounding stations of the same licensee on the same channel or channel block. We seek comment on this proposal.

H. Co-Channel Interference Protection

60. Under our market-area licensing proposal for the lower 80 and General Category channels, market-area licensees will be required to provide interference protection both to incumbent co-channel facilities and to co-channel licensees in neighboring market areas. With respect to incumbent co-channel facilities, we propose to retain the level of protection afforded under our existing rules. Thus, a market-area licensee would be required either to locate its stations at least 113 km (70 mi) from the facilities of any incumbent or to comply with the co-channel separation standards set forth in our short-spacing rule if it seeks to operate stations located less than 113 km (70 mi) from an incumbent licensee's facilities. With respect to adjacent market-area licensees, we propose that market-area licensees provide interference protection either by reducing the signal level at their service area boundary, or negotiating some other mutually acceptable agreement with all potentially affected adjacent licensees. We seek comment on these

proposals and we invite commenters to provide alternatives.

I. Licensing in Mexican and Canadian Border Areas

61. We recognize that a limited number of lower 80 channels are available for SMR licensing in the Mexican and Canadian border areas. In the *First R&O,* we have decided not to distinguish between border areas and non-border areas for licensing purposes. We propose the same approach for the lower 80 channels in the border areas, *i.e.,* all market areas should be licensed on a uniform basis without distinguishing border from non-border areas, even if some spectrum is unusable. We believe that lower 80 and General Category applicants, like those in the upper 10 MHz block and other services, will be able to assess the impact of more limited spectrum availability when valuing those market areas for competitive bidding purposes. Moreover, we believe that altering the size of particular market areas because they are located near an international border is likely to be administratively unworkable. Thus, we propose that market-area licensees be entitled to use any available border-area channels, subject to the relevant rules regarding international assignment and coordination of such channels. We seek comment on this proposal.

VI. Regulatory Classification of Lower 80 and General Category Channels

62. *Background.* In the *CMRS Third R&O,* we determined that SMR licensees would be classified as CMRS if they offered interconnected service and as Private Mobile Radio Service (PMRS) if they did not offer such service. In the *Further Notice,* we sought comment on whether the presumption of CMRS status should apply to licensees authorized for the lower 80 channels.

63. *Comments.* All of the commenters addressing this issue believe that there should not be a CMRS presumption for the lower 80 channels or any other channels designated primarily for local service. E.F. Johnson and Genesee opine that there is a significant difference between the type of services provided by local SMR systems and wide-area systems. AMTA opines that it is not persuaded that Congress intended to adopt a definition of CMRS so sweeping as to encompass even the smallest, most rural SMR system, irrespective of its practical ability to provide a service substantially similar to cellular or other CMRS systems.

64. *Proposal.* Based on our geographic area licensing proposal for the lower 80 and General Category channels, we believe that it is not evident that the operations of the licensees on these frequencies will be local in nature. In fact, some licensees may desire to establish regional networks on these frequencies. Furthermore, contrary to the suggestion by some commenters, the CMRS definition provided in the Communications Act does not distinguish mobile service providers based on their economic size. Instead, a service provider's regulatory classification is determined based on factors associated with the nature of its operations. In this connection, we believe that the operational opportunities for the lower 80 and General Category channels are not significantly different. Thus, we tentatively conclude that most if not all geographic area licensees on these channels will be classified as CMRS, because they are likely to provide interconnected service as part of their service offering. We therefore propose to classify all geographic area licensees on the lower 80 and General Category channels presumptively as CMRS. We also propose that market-area applicants or licensees who do not intend to provide CMRS service may overcome this presumption by demonstrating that their service does not fall within the CMRS definition. We also propose not to apply this presumption prior to August 10, 1996 in the case of any geographic area licensee who previously was licensed in the SMR service as of August 10, 1993. We seek comment on our tentative conclusion and proposals.

VII. Competitive Bidding Issues for Lower 80 and General Category Channels

A. Auctionability of Lower 80 and General Category Channels

65. In the *Competitive Bidding Eighth R&O,* we affirmed our previous determination that the 800 MHz SMR service is auctionable. In addition, we concluded that use of competitive bidding in the upper 200 channels of 800 MHz SMR spectrum is fully consistent with Section 309(j) of the Communications Act. Because the lower 80 frequencies are SMR channels, and thus a subset of the 800 MHz SMR service, we believe that they also are auctionable. Consistent with our approach regarding the upper 200 channels, we propose to employ competitive bidding as a licensing tool to select among mutually exclusive applicants on the lower 80 channels. We seek comment on this proposal.

66. We also seek comment on whether to adopt equivalent auction procedures for competing applications for General Category channels. In the *Competitive Bidding Eighth R&O,* we determine that in the future the General Category Channels will be licensed exclusively for SMR use. Consistent with our approach for other 800 MHz SMR spectrum, we tentatively conclude that if two or more entities file mutually exclusive initial applications, we intend to use competitive bidding to select from among competing applications.

67. We anticipate that a large number of applicants will file mutually exclusive geographic area applications for SMR operations on General Category frequencies. Competitive bidding will ensure that the qualified applicants who place the highest value on the available spectrum, and who will provide valuable services rapidly to the public, will prevail in the selection process. Thus, we tentatively conclude that all potential conflicts among General Category applicants will not be eliminated by our proposed geographic area licensing scheme. Competitive bidding procedures will be necessary to select from among competing applicants for these channels. We seek comment on this tentative conclusion.

B. Competitive Bidding Design

1. Bidding Methodology

68. *Background.* In the *Second Report and Order* in PP Docket No. 93–253, 59 FR 22980 (May 4, 1994) (*Competitive Bidding Second R&O*) we established criteria to be used in selecting which auction design to use for particular auctionable services. Generally, we concluded that awarding licenses to parties who value them most highly will foster Congress's policy objectives of stimulating economic growth and enhancing access to telecommunications services. We further noted that, because a bidder's ability to introduce valuable new services and to deploy them quickly, intensively, and efficiently increases the value of a license to that bidder, an auction design that awards licenses to those bidders with the highest willingness to pay tends to promote the development and rapid deployment of new services and the efficient and intensive use of the spectrum. In determining how best to promote this objective, we identified several auction design elements which, in combination, produce many different auction types. The two most important design elements are: (1) the number of auction rounds (single or multiple), and (2) the order in which licenses are auctioned (sequentially or simultaneously). These two elements can be combined to create four basic auction designs: sequential

single round, simultaneous single round, sequential multiple round, and simultaneous multiple round.

69. In the *Further Notice,* we noted that because of the non-contiguous nature of the lower 80 channels, there did not appear to be a high degree of interdependency among them. We further noted that the limited geographic scope of the licenses is likely to make them less valuable than the licenses for the spectrum blocks for the upper 200 channels.

70. *Comments.* SBA supports use of single round sealed bidding. Genesee disagrees that one single round of auctions in sealed bidding would be fair, and suggests that at least two rounds be done with 30 day intervals. AMTA does not dispute the Commission's tentative conclusion regarding the appropriate competitive bidding methodology for local licenses. AMTA notes that it is reluctant to suggest an approach that might further complicate what would be an unjustifiably costly and complex process for those entities. AMTA contends that some grouping of frequency blocks and geographic areas might be necessary for this purpose, if the Commission determines to issue local licenses on a geographic, rather than site-specific basis. Morris proposes the use of multiple round auctions for local area licenses, limited to five rounds. Nextel proposes that after relocation is completed, the lower 80 channels and any other spectrum reallocated to exclusive SMR use, be auctioned on a single channel basis.

71. *Proposal.* We seek comment on which of the above auction methodologies should be used for the auction of the lower 80 and General Category licenses. In the *Competitive Bidding Second R&O,* we stated that simultaneous multiple round auctions would be the preferred method where licenses have strong value interdependencies. Accordingly, we have used this method in broadband and narrowband PCS services and the 900 MHz SMR service, and we will use the same methodology for the upper 200 channels in the 800 MHz SMR service.

72. Given our successful experience in conducting simultaneous multiple round auctions, we propose to use this competitive bidding methodology for the lower 80 and General Category channels as well. We seek comment on this proposal. We also note, however, that there is less interdependency between licenses for the lower 80 and General Category channels, both because channel aggregation is not required to provide SMR service and because channel selection may be largely dictated by which channels currently are licensed to incumbents in each license area. We therefore seek comment on alternatives to simultaneous multiple round bidding for these channels. One alternative would be to use the oral outcry method, *i.e.,* sequential multiple round bidding. This method may allow us to conduct auctions expeditiously and in a manner that is not burdensome to applicants.

2. License Grouping

73. *Background.* Depending upon the auction methodology chosen, several alternatives exist for grouping the lower 80 and General Category licenses. For example, the Commission determined in the *Competitive Bidding Second R&O* that in a multiple round auction, highly interdependent licenses should be grouped together and put up for bid at the same time, because such grouping provides bidders with the most information about the prices of complementary and substitutable licenses during the course of an auction. We also determined that the greater the degree of interdependence among the licenses, the greater the benefit of auctioning a group of licenses together in a simultaneous multiple round auction.

74. *Proposal.* We seek comment on how lower 80 and General Category licenses should be grouped for competitive bidding purposes. As noted above, it does not appear that licenses on these channels are likely to be highly interdependent. We therefore propose that lower 80 licenses be grouped in 16 five-channel blocks for each license area. We seek comment on this proposal. We also ask commenters to indicate if there are instances in which licenses on multiple channels should be grouped together for competitive bidding purposes.

75. Assuming that we group lower 80 licenses by 16 five-channel blocks, the issue remains whether all geographic area licenses for specific channel blocks should be grouped together for competitive bidding purposes. Given the large number of licenses, we believe that it would be administratively feasible to employ an additional means of grouping the five-channel blocks. We believe that some licensees may elect to pursue regional service plans. Thus, we propose to group the five-channel blocks on a regional basis. We seek comment on this proposal. We recognize that there are other sets of interdependencies which could form a basis for license grouping. In a simultaneous multiple round auction, for example, we could auction all of the market areas for a five-channel block simultaneously. Alternatively, we could begin with the largest (*i.e.,* most populated) markets and then move to smaller markets. We seek comment on these alternatives as well. Assuming that we group, the licenses on a regional basis, we ask commenters to discuss how the regions should be defined. For example, should the regions be defined by sequential groupings of EAs or some other basis? We also ask commenters to address whether there is a particular order in which the regions should be auctioned.

76. With respect to the General Category channels, which we propose to license in a 120-channel block, 20-channel block and 10-channel block, we believe that these licenses will be significantly interdependent, primarily due to their contiguity. Thus, we propose to auction the General Category geographic area licenses simultaneously. We seek comment on this proposal and any alternatives.

3. Bidding Procedures

77. *Background.* In the *Competitive Bidding Second R&O,* the Commission established general procedures for simultaneous multiple round auctions, including bid increments, duration of bidding rounds, stopping rules, and activity rules. We further noted that these procedures could be modified on a service-specific basis. We seek comment on the bidding procedures that should be used for licensing of the lower 80 and General Category channels.

78. *Bid Increments.* If we use a multiple round auction, we propose to establish minimum bid increments for bidding in each round of the auction, based on the same considerations in the *Competitive Bidding Eighth R&O.* The bid increment is the amount or percentage by which the bid must be raised above the previous round's high bid in order to be accepted as a valid bid in the current bidding round. The application of a minimum bid increment speeds the progress of the auction and, along with activity and stopping rules, helps to ensure that the auction closes within a reasonable period of time. Establishing an appropriate minimum bid increment is especially important in a simultaneous auction with a simultaneous closing rule, because all markets remain open until there is no bidding on any license and a delay in closing one market will delay the closing of all markets. We seek comment on the appropriate minimum bid increments for the lower 80 and General Category channels.

79. For example, if simultaneous multiple round auctions are employed

for the lower 80 and General Category licenses, we believe that we should start such auctions with relatively large bid increments, and reduce the increments as the number of active bidders declines. We also propose to adopt a minimum bid increment of five percent of the high bid in the previous round or $0.01 per activity unit, whichever is greater. We believe that applying a $0.01 per activity unit minimum bid increment in addition to the percentage calculation is appropriate to provide flexibility for a wide range of different license values, and to ensure timely closure of auctions. In addition, we propose to retain the discretion to vary the minimum bid increments for individual licenses or groups of licenses at any time before or during the course of the auction, based on the number of bidders, bidding activity, and the aggregate high bid amounts. We also propose to retain the discretion to keep an auction open if there is a round in which no bids or proactive waivers are submitted. We seek comment on these proposals.

80. *Stopping Rules.* If multiple round auctions are used, a stopping rule must be established for determining when the auction is over. Three types of stopping rules exist that could be employed in simultaneous multiple round auctions: markets may close individually, simultaneously, or a hybrid approach may be used. We believe a market-by-market stopping rule is most appropriate for the lower 80 channels given the lack of strong interdependencies among these licenses. We also believe that a market-by-market stopping rule would be the least complex approach from an administrative perspective. Under a market-by-market approach, bidding closes on each license after three rounds pass in which no new acceptable bids are submitted for that particular license. We tentatively conclude that a simultaneous stopping rule is not appropriate for these licenses, because market-by-market closure will provide bidders with sufficient flexibility to bid on the license of their choice. In addition, the complexity of implementation and the vulnerability to strategic delay by bidders seeking to impede closure of the auction outweigh the benefits of a simultaneous stopping rule given the nature of these SMR licenses. With a simultaneous stopping rule, bidding remains open on all licenses until there is no bidding on any license. Under this approach, all markets will close if three rounds pass in which no new acceptable bids are submitted for any license. We seek comment on our tentative conclusions. We also ask commenters to address the advantages and disadvantages of using a hybrid stopping rule. Under a hybrid approach, a simultaneous stopping rule, coupled with an activity rule designed to bring the markets to close within a reasonable period of time, could be used to close auctions with high value licenses. For lower value licenses, the simpler market-by-market closing could be employed. For the General Category licenses, we tentatively conclude that a simultaneous stopping rule is most appropriate, given the significant interdependencies between these licenses. We seek comment on this tentative conclusion. Regardless of which stopping rule we ultimately apply, we further propose to retain the discretion to declare when the auction will end, whether it be after one additional round or some other specified number of rounds. This proposal will ensure ultimate Commission control over the duration of the auction. We seek comment on this proposal.

81. *Activity Rules.* Based on our proposal to employ a market-by-market stopping rule for the lower 80 licenses, we tentatively conclude that it is unnecessary to implement an activity rule. We believe that an activity rule is less important when markets close one-by-one, because failure to participate in any given round may result in losing the opportunity to bid at all, if that round turns out to be the last. We seek comment on this tentative conclusion. We also ask commenters to address what activity rules, if any, would be appropriate if an alternative stopping rule is adopted. For example, in order to ensure that simultaneous auctions with simultaneous stopping rules close within a reasonable period, we believe that it may be necessary to impose an activity rule to prevent bidders from waiting until the end of the auction before participating. Because simultaneous stopping rules generally keep all markets open as long as anyone wishes to bid, they also create incentives for bidders to hold back, until prices approach equilibrium, before making a bid and risking payment of a monetary assessment for withdrawing. We believe that this could lead to very long auctions.

82. Thus, in the *Competitive Bidding Second R&O*, we adopted the Milgrom-Wilson activity rule as our preferred activity rule where a simultaneous stopping rule is used. We subsequently have adopted or proposed the Milgrom-Wilson rule in each of our simultaneous multiple round auctions. The Milgrom-Wilson approach encourages bidders to participate in early rounds by limiting their maximum participation to some multiple of their minimum participation level. Bidders are required to declare their maximum eligibility in terms of activity units, and make the required upfront payment. That is, bidders will be limited to bidding on licenses encompassing no more than the number of activity units covered by their upfront payment. Licenses on which a bidder is the high bidder from the previous round, as well as licenses on which a new valid bid is placed, count toward this activity unit limit. Under this approach, bidders have the flexibility to shift their bids among any licenses for which they have applied, so long as the total activity units encompassed by those licenses does not exceed the number for which they made an upfront payment. Moreover, bidders have the freedom to participate at whatever level they deem appropriate by making a sufficient upfront payment. To preserve their maximum eligibility, however, bidders are required to maintain some minimum activity level during each round of the auction. Accordingly, we propose to employ the Milgrom-Wilson activity rule for the General Category licenses. We seek comment on this proposal and any alternatives.

83. Under the Milgrom-Wilson approach, the minimum activity level, measured as a fraction of the self-declared maximum eligibility, will increase during the course of the auction. For this purpose, Milgrom and Wilson divide the auction into three stages. During the first stage of the auction, a bidder is required to be active on licenses encompassing one-third of the activity units for which it is eligible. The penalty for falling below that activity level is a reduction in eligibility. At this stage, bidder would lose three activity units in maximum eligibility for each activity unit below the minimum required activity level. In other words, each bidder would retain eligibility for three times the activity units for which it is an active bidder, up to the activity units covered by the bidder's upfront payment. In the second stage, bidders are required to be active on two-thirds of the activity units for which they are eligible. The penalty for falling below that activity level would be a loss of 1.5 activity units in eligibility for each activity unit below the minimum required activity level. In the third stage, bidders are required to be active on licenses encompassing all of the activity units for which they are eligible. The penalty for falling below that activity level is a loss of one activity unit in eligibility for each

activity unit below the minimum required activity. Each bidder thus retains eligibility equal to its current activity level (1 times the activity units for which it is an active bidder). We seek comment on this alternative.

84. *Duration of Bidding Rounds.* We propose to retain the discretion to vary the duration of bidding rounds or the interval at which bids are accepted (*e.g.*, run two or more rounds per day rather than one), in order to close the auction more quickly. If this mechanism is used, we most likely would shorten the duration and/or intervals between bidding rounds where there are relatively few licenses to be auctioned, where the value of the licenses is relatively low, or in early rounds to speed the auction process. Where license values are expected to be high or where large numbers of licenses are being auctioned, we propose to increase the duration and/or intervals between bidding rounds. We would announce by Public Notice, and may vary by announcement during an auction, the duration and intervals between bidding rounds. We also propose to announce by Public Notice, before each auction, the stopping rule we adopt. We seek comment on these proposals.

4. Rules Prohibiting Collusion

85. *Background.* In the *Competitive Bidding Second R&O,* as modified on reconsideration, we adopted special rules prohibiting collusive conduct in the context of competitive bidding. In the *Further Notice,* we proposed to apply these rules prohibiting collusion to the 800 MHz SMR service. We want to prevent parties, especially large entities, from agreeing in advance to bidding strategies that divide the market according to their strategic interests and/or disadvantage other bidders. Bidders will be required to (i) reveal all parties with whom they have entered into any agreement that relates to the competitive bidding process, and (ii) certify 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, particular properties on which they will or will not bid or any similar agreement.

86. *Proposals.* We tentatively conclude that we should subject the lower 80 and General Category licenses to the reporting requirements and rules prohibiting collusion embodied in Sections 1.2105 and 1.2107 of the Commission's rules. Specifically, we propose to implement Section 1.2105(a) to require bidders to identify on their short-form applications all parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate to the competitive bidding process. We propose to apply Section 1.2105(c) of our rules, which prohibits bidders from communicating with one another (if they have applied for any of the same markets) regarding the substance of their bids or bidding strategies after short-form applications (FCC Form 175) have been filed. Section 1.2105(c) also prohibits bidders from entering into consortium arrangements or joint bidding agreements after the deadline for short-form applications has passed. Prohibited communications between such bidders cannot take place directly or indirectly.

87. Further, in the *Fourth Memorandum Opinion and Order* in PP Docket No. 93–253, 59 FR 53364 (October 24, 1994), we noted that communications among bidders concerning matters unrelated to the license auction would be permitted. In making this proposal, it is not our intent to discourage potential applicants from entering into consortia, joint ventures, or similar joint bidding arrangements for geographic area licenses prior to the short form filing deadline. To the contrary, we intend to provide parties with time to negotiate such arrangements before the start of the application process. To avoid compromising the auction process, however, such negotiations must end at the point that short forms are filed. As in other services, we also propose to require winning bidders to submit with their long-form application a detailed explanation of the terms, conditions and parties involved in any auction-related consortium, joint venture, partnership, or other agreement entered into prior to the close of bidding. We seek comment on these proposals.

C. Procedural and Payment Issues

1. Pre-Auction Application Procedures

88. *Background.* In the *Competitive Bidding Second R&O,* the Commission established general competitive bidding rules and procedures, which we noted may be modified on a service-specific basis. We also determined that we should require only a short-form application (FCC Form 175) prior to auction, and that only winning bidders should be required to submit a long-form license application (FCC Form 600) after the auction. In this connection, we determined that such a procedure would fulfill the statutory requirements and objectives and adequately protect the public interest.

89. As discussed below, we propose to follow generally the processing and procedural rules established in the *Competitive Bidding Second R&O,* with certain modifications designed to address the particular characteristics of the lower 80 and General Category licenses. These proposed rules are structured to ensure that bidders and licensees are qualified and will be able to construct systems quickly and offer service to the public. By ensuring that bidders and license winners are serious, qualified applicants, these proposed rules will minimize the need to re-auction licenses and prevent delays in the provision of SMR services to the public.

90. Section 309(j)(5) of the Communications Act provides that no party may participate in an auction ''unless such bidder submits such information and assurances as the Commission may require to demonstrate that such bidder's application is acceptable for filing.'' Moreover, ''[n]o license shall be granted to an applicant selected pursuant to this subsection unless the Commission determines that the applicant is qualified pursuant to Section 309(a) and Section 308(b) and 310'' of the Communications Act. As the legislative history of Section 309(j) makes clear, the Commission may require that bidders' applications contain all information and documentation sufficient to demonstrate that the application is not in violation of Commission rules, and we propose to dismiss applications not meeting those requirements prior to the competitive bidding.

91. Under this proposal, before the auction for the lower 80 and General Category channels, the Bureau would release an initial Public Notice announcing the auction. The initial Public Notice would specify the licenses to be auctioned and the time and place of the auction in the event that mutually exclusive applications are filed. The Public Notice would specify the method of competitive bidding to be used, applicable bid submission procedures, stopping rules, activity rules, and the deadline by which short-form applications must be filed and the amounts and deadlines for submitting the upfront payment. We would not accept applications filed before or after the dates specified in the Public Notice. Applications submitted before the release of the Public Notice would be returned as premature. Likewise, applications submitted after the deadline specified by the Public Notice would be dismissed, with prejudice, as untimely. We seek comment on these proposals.

92. Soon after the release of the initial Public Notice, a Bidder's Information Package will be made available to prospective bidders. The Bidder's Information Package will contain information on the incumbents occupying blocks on which bidding will be available. Incumbents will be expected to update information on file with the Commission, such as current address and phone number, so that such information will be of use to prospective bidders.

93. Under this proposal, all bidders would be required to submit short-form applications on FCC Form 175 (and FCC Form 175–S, if applicable), by the date specified in the initial Public Notice. Applicants would be encouraged to file Form 175 electronically. Detailed instructions regarding electronic filing would be contained in the Bidder Information Package. Those applicants filing manually would be required to submit one paper original and one microfiche original of their application, as well as two microfiche copies. The short form applications would require applicants to provide the information required by Section 1.2105(a)(2) of the Commission's rules. Specifically, each applicant would be required to specify on its Form 175 application certain identifying information, including its status as a designated entity (if applicable), its classification (*i.e.*, individual, corporation, partnership, trust, or other), the license areas and frequency blocks for which it is applying, and assuming that the licenses will be auctioned, the names of persons authorized to place or withdraw a bid on its behalf.

94. As we indicated in the *Competitive Bidding Second R&O,* if we receive only one application that is acceptable for filing for a particular license, and thus there is no mutual exclusivity, we propose to issue a Public Notice cancelling the auction for this license and establishing a date for the filing of a long-form application, the acceptance of which would trigger the procedures permitting petitions to deny. If no petitions to deny are filed, the application would be grantable after 30 days. We seek comment on the proposals discussed above.

2. Amendments and Modifications

95. *Background.* To encourage maximum bidder participation, we proposed in the *Competitive Bidding Second R&O* to provide applicants with an opportunity to correct minor defects in their short-form applications prior to the auction. We stated that applicants whose short-form applications are substantially complete, but contain minor errors or defects, would be provided an opportunity to correct their applications prior to the auction. In the broadband PCS context, we modified our rules to permit ownership changes that result when consortium investors drop out of bidding consortia, even if control of the consortium changes due to this restructuring. In the *CMRS Third R&O,* we decided to adopt the same or similar definitions for initial applications and major and minor amendments and modifications for all CMRS in Part 22 and Part 90, in order to facilitate similar system proposals and modifications for equal treatment of substantially similar services.

96. On the date set for submission of corrected applications, applicants that discover minor errors in their own applications (*e.g.*, typographical errors, incorrect license designations, etc.) also would be permitted to file corrected applications. Recently, the Commission waived the *ex parte* rules as they applied to the submission of amended short-form applications for the A and B blocks of the broadband PCS auctions, to maximize applicants' opportunities to seek Commission staff advice on making such amendments. We propose to apply the same principles to the SMR auctions. Under this proposal, applicants would not be permitted to make any major modifications to their applications, including changes in license areas and changes in control of the applicant, or additions of other bidders into the bidding consortia, until after the auction. Applicants could modify their short-form applications to reflect formation of consortia or changes in ownership at any time before or during an auction, provided such changes would not result in a change in control of the applicant, and provided that the parties forming consortia or entering into ownership agreements have not applied for licenses in any of the same geographic license areas. In addition, applications that are not signed would be dismissed as unacceptable.

97. Upon our review of the short-form applications, we propose to issue a Public Notice listing all defective applications, and applicants with minor defects would be given an opportunity to cure errors and resubmit a corrected version. After reviewing the corrected applications, the Commission would release a second Public Notice announcing the names of all applicants whose applications have been accepted for filing. These applicants would be required to submit an upfront payment to the Commission, as discussed below, to the Commission's lock-box by the date specified in the Public Notice, which generally would be no later than 14 days before the scheduled auction. After the Commission receives from its lock-box bank the names of all applicants who have submitted timely upfront payments, the Commission would issue a third Public Notice announcing the names of all applicants that are determined qualified to bid. An applicant who fails to submit a sufficient upfront payment to qualify it to bid on any license being auctioned would not be identified on this Public Notice as a qualified bidder. Each applicant listed on this Public Notice would be issued a bidder identification number and further information and instructions regarding auction procedures. We seek comment on the proposals discussed above.

3. Upfront Payments

98. *Background.* In the *Competitive Bidding Second R&O,* we established a minimum upfront payment of $2,500 and stated that this amount could be modified on a service-specific basis. In the *Further Notice,* we proposed to require 800 MHz SMR auction participants to tender in advance to the Commission a substantial upfront payment, $0.02 per activity unit for the largest combination of activity units a bidder anticipates bidding on in any round, as a condition of bidding in order to ensure that only serious, qualified bidders participate in auctions and to ensure payment of the penalty (discussed *infra*) in the event of bid withdrawal or default. We also sought comment on the upfront payment formula and minimum upfront payment most appropriate for the 800 MHz SMR service.

99. *Proposals.* As in the case of other auctionable services, we propose to require participants for the lower 80 and General Category auction to tender in advance to the Commission 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 additional monetary assessments in the event of bid withdrawal or default. For services that are licensed by simultaneous multiple round auction, we have established a standard upfront payment formula of $0.02 per activity unit for the largest combination of activity units a bidder anticipates bidding on in any single round of bidding. We tentatively conclude that a minimum $2,500 upfront payment should be required, regardless of the bidding methodology we employ. We seek comment on our proposal regarding the appropriate minimum upfront payment for

applications for the lower 80 or General Category channels. In particular, we seek comment on whether a minimum upfront payment of $2,500 is sufficient to discourage frivolous or speculative bidders in the auction process.

100. We tentatively conclude that upfront payments should be due no later than 14 days before a scheduled auction. This period should be sufficient to allow the Commission to process upfront payment data and release a Public Notice listing all qualified bidders. The specific procedures to be followed in the tendering and processing of upfront payments are set forth in Section 1.2106 of the Commission's rules.

4. Down Payment and Full Payment

101. *Background.* In the *Competitive Bidding Second R&O,* we generally required successful bidders to 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. We concluded that this requirement was appropriate to ensure that auction winners have the necessary financial capabilities to complete payment for the license and to pay for the costs of constructing a system, while not being so onerous as to hinder growth or diminish access. In the *Further Notice,* we proposed to require the winning bidders for 800 MHz SMR licenses to supplement their upfront payments with down payments sufficient to bring their total deposits up to 20 percent of their winning bid(s).

102. *Proposals.* We propose to apply the 20 percent down payment requirement to winning bidders for lower 80 and General Category licenses. Such a down payment would be due within five business days following the Public Notice announcing the winning bidders. We further propose that auction winners be required to pay the full balance of their winning bids within five business days following Public Notice that the Commission is prepared to award the license. We seek comment on this proposal.

103. To the extent that an auction winner is eligible to make payments through an installment plan (small businesses, as proposed *infra*), we propose to apply different down payment requirements. Such an entity would be required to bring its deposit with the Commission up to five percent of its winning bid after the bidding closes (this amount would include the upfront payment), and would have to pay an additional five percent of its winning bid to the Commission within five business days following Public Notice that the Commission is prepared to award the license. We seek comment on this proposal.

5. Bid Withdrawal, Default, and Disqualification

104. *Background.* In the *Further Notice,* we proposed to adopt bid withdrawal, default, and disqualification rules for the 800 MHz SMR service based on the procedures established in our general competitive bidding rules. In the *Competitive Bidding Second R&O,* we noted that it is critically important to the success of our competitive bidding process that potential bidders understand that there will be a substantial penalty assessed if they withdraw a high bid, are found not to be qualified to hold licenses, or default on payment of a balance due. If a bidder withdraws a high bid before the Commission closes bidding or defaults by failing to timely remit the required down payment, it would be required to reimburse the Commission for any differences between its high bid and the amount of the winning bid, if the winning bid is lower. A defaulting auction winner also would be assessed three percent of either the subsequent winning bid or the amount of the defaulting bid, whichever is less.

105. *Proposal.* We propose to adopt bid withdrawal, default, and disqualification rules for the lower 80 and General Category licenses based on the procedures 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, would be required to reimburse the Commission. The bidder would be required to pay 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. A defaulting auction winner would be assessed an additional payment of three percent of the subsequent winning bid or three percent of the amount of the defaulting bid, whichever is less. The monetary assessment would be offset by the upfront payment. In the event that an auction winner defaults or is otherwise disqualified, we propose to re-auction the license either to existing or new applicants. The Commission would 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. We seek comment on these proposed procedures.

6. Long-Form Applications

106. *Background.* In the *Competitive Bidding Second R&O,* we established rules that require a winning bidder to submit a long-form application. The long-form application is required to be filed by a specific date, generally within ten business days after the close of the auction. We stated that after we received the high bidder's down payment and the long-form application, we would review the long-form application to determine if it is acceptable for filing. Once the long-form application is accepted for filing, we stated that we would release a Public Notice announcing this fact, triggering the filing window for petitions to deny. We also stated that if, pursuant to Section 309(d), we deny or dismiss all petitions to deny, if any are filed, and we otherwise are satisfied that the applicant is qualified, we would grant the license(s) to the auction winner. In the *Further Notice,* we proposed to use application procedures similar to those used for licensing PCS. Consistent with our approach in PCS, we proposed to require only the winning bidder to file a long-form application (FCC Form 600).

107. *Proposal.* If the winning bidder makes the down payment in a timely manner, we propose the following procedures: A long-form application filed on FCC Form 600 must be filed by a date specified by Public Notice, generally within ten (10) business days after the close of bidding. After the Commission receives the winning bidder's down payment and long-form application, we will review the long-form application to determine if it is acceptable for filing. In addition to the information required in the Form 600, designated entities will be required to submit evidence to support their claim to any special provision available for designated entities described in this Order. This information may be included in an exhibit to FCC Form 600. This information will enable the Commission, and other interested parties, to ensure the validity of the applicant's certification of eligibility for bidding credits, installment payment options, and other special provisions. Upon acceptance for filing of the long-form application, the Commission will issue a Public Notice announcing this fact, triggering the filing window for petitions to deny. If the Commission denies all petitions to deny, and is otherwise satisfied that the applicant is qualified, the license(s) will be granted to the auction winner. We seek comment on this proposal.

7. Petitions to Deny and Limitations on Settlements

108. *Background.* We determined in the *Competitive Bidding Second R&O* that the procedures concerning petitions to deny found in Section 309(j)(2) of the Communications Act, should apply to competitive bidding. We determined that we would adopt expedited procedures to resolve substantial and material issues of fact concerning qualifications. We stated that we would entertain petitions to deny the application of the auction winner if the petitions to deny otherwise are provided for under the Communications Act or our rules. We then determined that we would not conduct a hearing before denial if we determined that an applicant is not qualified and no substantial and material issue of fact exists concerning that determination. We also stated that if we identified substantial and material issues of fact in need of resolution, Sections 309(j)(5) and 309(j)(2) of the Communications Act permit submission of all or part of evidence in written form, and also allow employees other than administrative law judges to preside at the taking of written evidence. Additionally, we previously have stated that our anti-collusion and settlement procedures were designed to avoid the problem of entities filing applications solely for the purpose of demanding payment from other bidders in exchange for settlement or withdrawal.

109. As we have determined, the petition to deny procedures in Section 90.163 of the Commission's rules, adopted in the *CMRS Third R&O,* will apply to the processing of applications for the 800 MHz SMR service. Thus, a party filing a petition to deny against an application for the lower 80 and General Category channels will be required to demonstrate standing and meet all other applicable filing requirements. We also have adopted restrictions in Section 90.162 to prevent the filing of applications and pleading (or threats of the same) designed to extract money from SMR applicants. Thus, we will limit the consideration that an applicant or petitioner is permitted to receive for agreeing to withdraw an application or a petition to deny to the legitimate and prudent expenses of the withdrawing applicant or petitioner.

110. With respect to petitions to deny, the Commission need not conduct a hearing before denying an application, if it determines that an applicant is not qualified and no substantial issue of fact exists concerning that determination. In the event the Commission identifies substantial and material issues of fact, Section 309(i)(2) of the Communications Act permits the submission of all or part of evidence in written form in any hearing and allows employees other than administrative law judges to preside over the taking of written evidence. We seek comment on these proposals.

8. Transfer Disclosure Requirements

111. In Section 309(j) of the Communications Act, Congress directed the Commission to ''require such transfer disclosures and anti-trafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment as a result of the methods employed to issue licenses and permits.'' In the *Competitive Bidding Second R&O,* the Commission adopted safeguards designed to ensure that the requirements of Section 309(j)(4)(E) are satisfied. We decided that it was important to monitor transfers of licenses awarded by competitive bidding to accumulate the necessary data to evaluate our auction designs and to judge whether ''licenses [have been] issued for bids that fall short of the true market value of the license.'' Therefore, we imposed a transfer disclosure requirement on licenses obtained through the competitive bidding process, whether by a designated entity or not.

112. We tentatively conclude that the transfer disclosure requirements of Section 1.2111(a) should apply to all lower 80 and General Category licenses obtained through the competitive bidding process. Generally, licensees transferring their licenses within three years after the initial license grant would be required to file, together with their transfer applications, the associated contracts for sale, option agreements, management agreements, and all other documents disclosing the total consideration received in return for the transfer of their license. As we indicated in the *Competitive Bidding Second R&O,* we would give particular scrutiny to auction winners who have not yet begun commercial service and who seek approval for a transfer of control or assignment of their licenses within three years after the initial license grant, so that we may determine if any unforeseen problems relating to unjust enrichment have arisen outside the designated entity context. We seek comment on these proposals.

9. Performance Requirements

113. Section 309(j)(4)(B) of the Communications Act requires the Commission to establish rules for auctionable services that ''include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services.'' In the *Competitive Bidding Second R&O,* we decided that in most auctionable services, existing construction and coverage requirements provided in our service rules would be sufficient to meet this standard, and that it was unnecessary to impose additional performance requirements. We have proposed service rules for SMR that would require market-area licensees to meet minimum population coverage requirements in their licensing areas. We tentatively conclude that these proposed coverage requirements are sufficient to meet the requirements of Section 309(j)(4)(B). As discussed *supra,* we propose that failure to meet these requirements would result in automatic license cancellation. Accordingly, we do not propose to adopt additional performance requirements for the lower 80 and General Category licenses. We seek comment on this proposal.

D. Treatment of Designated Entities

1. Overview and Objectives

114. Section 309(j)(3)(B) of the Communications Act provides that in establishing auction eligibility criteria and bidding methodologies, the Commission shall ''promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.'' Section 309(j)(4)(A) provides that to promote the statute's objectives the Commission shall ''consider alternative payment schedules and methods of calculation, including lump sums or guaranteed installment payments, with or without royalty payments, or other schedules or methods * * * and combinations of such schedules and methods.''

115. In the *Competitive Bidding Second R&O,* we established eligibility criteria and general rules regarding special measures for small businesses, rural telephone companies, and businesses owned by women and minorities (sometimes referred to collectively as ''designated entities''). We also identified several measures, including installment payments, spectrum set-asides, and bidding

credits, from which we could choose when establishing rules for auctionable services. We stated that we would decide whether and how to use these special provisions, or others, when we developed specific competitive bidding rules for particular services. In addition, we set forth rules designed to prevent unjust enrichment by designated entities who transfer ownership in licenses obtained through the use of these special measures or who otherwise lose their designated entity status.

116. When deciding which provisions to adopt to encourage designated entity participation in particular services, we have closely examined the specific characteristics of the service and determined whether any particular barriers to accessing capital have stood in the way of designated entity opportunities. In accordance with our statutory directive, we have adopted measures designed both to enhance the ability of designated entities to acquire licenses and to increase the likelihood that designated entity licensees will become strong competitors in the provision of wireless services. In narrowband PCS, for instance, we provided installment payments for small businesses and bidding credits for minority-owned and women-owned businesses. In broadband PCS, we designated certain spectrum blocks as entrepreneurs' blocks, allowed entrepreneurs' block licensees to make installment payments, and provided bidding credits for designated entities. In 900 MHz SMR, we adopted bidding credits and installment payments for small businesses. In the 800 MHz SMR service, we did not adopt special provisions for designated entities, with respect to the upper 200 channels. We nonetheless indicated that such approach would meet the statutory objectives of promoting economic opportunity and competition, avoiding excessive concentration of licenses, and ensuring access to new and innovative technologies by designated entities. As discussed in greater detail below, we seek comment on the type of designated entity provisions that should be incorporated into our competitive bidding procedures for the lower 80 and General Category channels.

2. Eligibility for Designated Entity Provisions

a. Small Businesses. i. Special Provisions. 117. *Proposal.* We tentatively conclude that it is appropriate to establish special provisions for small businesses in our competitive bidding rules for the lower 80 and General Category channels. We note that Congress specifically cited the needs of small businesses in enacting auction legislation. The House Report states that the statutory provisions related to installment payments were enacted to ''ensure that all small businesses will be covered by the Commission's regulations, including those owned by members of minority groups and women.'' It also states that the provisions in Section 309(j)(4)(A) relating to installment payments were intended to promote economic opportunity by ensuring that competitive bidding inadvertently does not favor incumbents with ''deep pockets'' over new companies or start-ups.

118. In addition, Congress made specific findings with regard to access to capital in the Small Business Credit and Business Opportunity Enhancement Act of 1992: that ''small business concerns, which represent higher degrees of risk in financial markets than do large businesses, are experiencing increased difficulties in obtaining credit.'' As a result of these difficulties, Congress resolved to consider carefully legislation and regulations ''to ensure that small business concerns are not negatively impacted'' and to give priority to passage of ''legislation and regulations that enhance the viability of small business concerns.'' For these reasons, and as discussed in greater detail below, we tentatively conclude that small businesses applying for these licenses should be entitled to some form of bidding credit and should be allowed to pay their bids in installments. This is consistent with our approach in the 900 MHz SMR service. We seek comment on this tentative conclusion.

ii. Definition. 119. *Comments.* DCL Associates and Dru Jenkinson, *et al.* suggest that we adopt the SBA definition of small business initially adopted in the *Competitive Bidding Second Report and Order.* Under that definition, a ''small business'' is one which has a net worth not in excess of $6 million with average net income for the two preceding years not in excess of $2 million. Morris recommends using the small business definition utilized by the Internal Revenue Service. The SBA opines that a revenue test remains the best and least problematic guideline for determining whether a business is small. AMTA suggests that the better approach for the 800 MHz SMR service would be to incorporate preferential provisions for existing operators.

120. Several commenters offer other small business definitions. AMI suggests that small businesses be defined to have 30 channels licensed or managed and/or less than $540,000 in current system revenues. Genesee suggests using the U.S. Chamber of Commerce standard for retail/service companies of less than $5.5 million annually. Genesee and the SBA believe that the PCS small business definition, with a $40 million maximum would be inappropriate for the 800 MHz SMR service. The SBA believes that a smaller revenue figure, such as $15 million, would be more appropriate.

121. *Proposal.* We seek comment on the appropriate definition of ''small business'' to be applied for purposes of the bidding credits proposed above. We have stated previously that we would define eligibility requirements for small businesses on a service-specific basis, taking into account the capital requirements and other characteristics of each particular service in establishing the appropriate threshold. In broadband PCS and regional narrowband PCS, we defined small businesses based on a $40 million annual revenue threshold. In the 220 MHz service, we have proposed two small business definitions: (1) for purposes of bidding on a nationwide or regional license, small businesses would be defined as entities with $15 million in average gross revenues for the preceding three years; and (2) for purposes of bidding on EA licenses, small businesses be would be defined as entities with $6 million in average gross revenues for the preceding three years. After considering the record in the 900 MHz proceeding, we concluded that both $15 million and $3 million small business definitions were warranted, which would entitle applicants for MTA licenses to 10 percent and 15 percent bidding credits respectively.

122. In conjunction with our proposal to provide two levels of bidding credits, we propose to establish two small business definitions: to obtain the 10 percent bidding credit, an applicant would be limited to $15 million in average gross revenues for the previous three years; to obtain the 15 percent credit, the applicant would be limited to $3 million in gross revenues for the previous three years. In both cases, we would require the applicant to aggregate the gross and revenues of its affiliates and investors for the preceding three years for purposes of determining eligibility. These proposed thresholds are comparable to what we have adopted in 900 MHz SMR, and they reflect our tentative view of the capital requirements and potential barriers to entry in the 800 MHz SMR service. We seek comment on whether these thresholds, and the proposed bidding credit amounts associated with them, are sufficient for the lower 80 and General Category Channels in light of the build-out costs associated with

constructing an SMR system throughout a market area, or whether alternative definitions would be more suitable. We also seek comment on whether our proposed small business definitions are sufficiently restrictive to protect against businesses receiving bidding credits which in fact do not need them.

b. Minority- and Women-Owned Businesses. 123. *Background.* Prior to the Supreme Court's decision in *Adarand Constructors, Inc.* v. *Peña,* we concluded that in the licensing of broadband and narrowband PCS, minority and women-owned businesses might have difficulty accessing sufficient capital to be viable auction participants or service providers, in the absence of special provisions in our auction rules. We therefore adopted special provisions for minorities and women in these services. We further determined that such provisions were constitutional under the ''intermediate scrutiny'' standard used in *Metro Broadcasting, Inc.* v. *FCC.*

124. In *Adarand,* however, the Supreme Court ruled that racial classifications imposed by the federal government are subject to strict scrutiny. This holding will apply to any proposal to incorporate race-based measures into our rules; thus, it introduces an additional level of complexity to implementing Congress' mandate to ensure that businesses owned by minorities and women are provided ''the opportunity to participate in the provisions of spectrum-based services.'' We emphasize that we have not concluded that race or gender-based measures are unconstitutional or otherwise inappropriate for spectrum auctions we will hold in the future. At a minimum, however, we believe that *Adarand* requires us to build a thorough factual record concerning the participation of minorities and women in spectrum-based services to support race- and gender-based measures.

125. *Comments.* DCL Associates and Dru Jenkinson, *et al.,* the only commenters addressing this specific issue, propose that the PCS definitions of minority- and/or female-controlled firms should be utilized in the 800 MHz SMR service. Dru Jenkinson, *et al.* further suggest that there should be no difference in eligibility requirements for the wide-area and local licenses.

126. *Proposal.* We propose to adopt special provisions in the lower 80 and General Category competitive bidding rules for small businesses. We believe that such provisions can be structured in a way that would increase the likelihood of participation by women- and minority-owned businesses. In adopting designated entity measures for PCS, for example, we noted that such targeted provisions might not be necessary in services that are less capital intensive. We consider 800 MHz SMR to be significantly less capital-intensive than PCS and some other wireless services. In addition, we anticipate that our proposal to license each channel separately on an EA basis will mean lower entry costs for applicants. We also expect that the vast majority of minority and women-owned businesses will be able to qualify as small businesses under any definition we adopt. For example, U.S. Census Data shows that approximately 99 percent of all women-owned businesses and 99 percent of all minority-owned businesses generated net receipts of $1 million or less. Finally, in light of the statute's instruction to ''design and test multiple alternative methodologies'' we believe that it would be suitable to use more uniform measures for the lower 80 and General Category channels, because capital entry requirements are expected to be comparatively lower than other CMRS services. We seek comment on this proposal.

127. We also request comment on the possibility that in addition to small business provisions, separate provisions for women- and minority-owned entities should be adopted for the lower 80 and General Category channels. To comply with the Supreme Court's ruling in *Adarand,* any race-based classification must be a narrowly tailored measure that furthers a compelling governmental interest. We also believe that gender-based provisions, although not addressed in *Adarand,* should be subject to the broadest possible comment. We therefore ask that commenters discuss whether the capital requirements of the 800 MHz SMR service pose a barrier to entry by minorities and women, and whether assisting women and minorities to overcome such a barrier, if it exists, would constitute a compelling government interest. In particular, we seek comment on the actual costs associated with acquisition, construction, and operation of an 800 MHz SMR system with a service area based on a pre-defined geographic area and the proportion of existing 800 MHz SMR businesses that are owned by women and minorities. We also seek comment on the analytical framework for establishing a history of past discrimination in the 800 MHz SMR industry and urge parties to submit evidence (statistical, documentary, anecdotal or otherwise) about patterns or actual cases of discrimination in this and related communications services. Assuming that a compelling government interest is established, we seek comment on whether separate provisions for women and minorities are necessary to further this interest, and whether such provisions can be narrowly tailored to satisfy the strict scrutiny standard.

c. Reduced Down Payment. 128. *Background.* In the *Competitive Bidding Second R&O,* we noted that reduced upfront payments particularly may be appropriate for auctions of spectrum specifically set aside for designated entities as a means of encouraging participation in the auction, particularly by all eligible designated entities. For broadband PCS, we reduced the upfront payment requirement for designated entities in the entrepreneurs—blocks, observing that requiring full compliance with the upfront payment could discourage auction participation by designated entities.

129. *Comments.* Several commenters support offering a reduced upfront payment option to designated entities. DCL Associates strongly supports availability of reduced upfront payments for minority- and/or women-owned businesses. Dru Jenkinson, Inc., *et al.,* on the other hand, support offering the reduced upfront payment option to all designated entities. To encourage the participation of designated entities in an auction for a geographic area licenses, Pittencrief does not oppose a reduced upfront payment. Southern opines, however, that if the Commission imposes a higher than usual upfront payment, as other commenters suggest, then a reduced upfront payment option will not do much to facilitate participation by designated entities in the auctions for wide-area licenses.

130. *Proposal.* We propose to adopt reduced upfront payments for small businesses for geographic licenses on the lower 80 and General Category channels. We believe that this special provision will encourage participation in the auction by eligible designated entities. We seek comment on this proposal and tentative conclusion.

3. Bidding Credits

131. *Background.* Bidding credits allow eligible designated entities to receive a payment discount (or credit) for their winning bid in an auction. In the *Competitive Bidding Second R&O,* we determined that competitive bidding rules applicable to individual services would specify the entities eligible for bidding credits and the bidding credit amounts for each particular service. As a result, we have adopted a variety of bidding credit provisions for small businesses and other designated entities

in auctionable services. In the nationwide narrowband PCS auction, for example, we established a 25 percent bidding credit for minority and women-controlled businesses, while a 40 percent credit was used in the regional narrowband PCS auction. In broadband PCS, our pre-*Adarand* entrepreneurs' block rules included a 10 percent bidding credit for small businesses, a 15 percent credit for businesses owned by minorities or women, and an aggregated 25 percent credit for small businesses owned by women and/or minorities. In the Multipoint Distribution Service (MDS), we allowed small businesses a 15 percent bidding credit. In the 900 MHz SMR service, we adopted a 15 percent bidding credit for small businesses with gross revenues that are not more than $3 million for the preceding three years and a 10 percent bidding credit for small businesses with gross revenues that are more than $3 million but not more than $15 million for the preceding three years. Finally, in the 220 MHz service, we proposed a 40 percent small business bidding credit for nationwide and regional licenses and a 10 percent bidding credit for smaller EA licenses.

132. *Comments.* Few commenters addressed whether special provisions should be provided for businesses owned by minorities and/or women in the 800 MHz SMR auctions. With respect to bidding credits, Morris, Pittencrief, DCL Associates, Dru Jenkinson, *et al.* and the SBA support the Commission's proposal to provide bidding credits for such entities. DCL Associates, Dru Jenkinson, *et al.*, and the SBA support a forty percent bidding credit for minority-and women-owned entities for wide-area licenses. The SBA further supports affording minority- and women-owned entities a twenty-five percent bidding credit for local SMR licenses. Other commenters, however, oppose giving such entities any type of bidding credit. AMI opines that a bidding credit would be inappropriate, based on the uncertainty of the value of wide-area licenses at auction. Dial Call opposes bidding credits, contending the questionable constitutionality of such provisions only would serve to delay the ultimate resolution of the proceeding.

133. *Proposal.* We seek comment on the appropriate level of bidding credit for the lower 80 and General Category channels, in comparison to the services discussed above. We also seek comment on the possibility of offering ''tiered'' bidding credits for different classes of small businesses. We note that small businesses may vary in their ability to raise capital, depending on their size and gross revenues. By offering levels of bidding credits which depend on the size of the small business, we could increase the likelihood that the full range of small businesses would be able to participate in an auction and potentially provide service. We therefore propose to establish two levels of bidding credits: a 10 percent bidding credit for all small businesses, and a 15 percent credit for small businesses that meet a more restrictive gross revenue threshold. We believe that tiered bidding credits can help achieve our statutory objective under Section 309(j)(3)(B), by providing varying sizes of small businesses with a meaningful opportunity to obtain SMR licenses. We seek comment on this proposal.

134. We also seek comment on the degree to which the revenues of affiliates and major investors should be considered in determining small business eligibility. For example, in determining whether a PCS applicant qualifies as a small business, we include the gross revenues of the applicant's affiliates and investors with ownership interests of twenty-five percent or more in the applicant, but we do not attribute the gross revenues of investors who hold less than a twenty-five percent interest in the applicant unless they are members of the applicant's control group. We seek comment on what attribution standard should be applied to 800 MHz SMR applicants seeking to qualify as small businesses. Would a smaller attribution standard be more appropriate?

135. We propose to make the small business bidding credit available on all lower 80 and General Category Channels that are licensed on a market-area basis. We recognize that this would be a departure from our 900 MHz SMR rules, in which we offered bidding credits to small businesses on any available channel block. Our proposal is consistent, however, with our PCS rules in which bidding credits are available only on designated channels. We seek comment on this proposal. We also seek comment on whether there is a reasonable basis for providing credits on some channels and not others.

4. Installment Payments

136. *Background.* We previously have indicated that in the future we would not necessarily limit the availability of installment payments to small businesses, but would consider offering the installment option (with varying rates and payment schedules) to other classes of designated entities.

137. *Comments.* AMI, CellCall, DCL Associates, Genesee, Pittencrief, and the SBA support the proposal that small businesses be eligible for installment payments. AMI opines that the availability of installment payments may prove useful in facilitating the participation of small operators in the 800 MHz SMR auctions. In addition, CellCall, DCL Associates, and Morris advocate that the Commission afford small businesses reduced upfront payments. Telecellular believes that the Commission should maximize the opportunities for small businesses by granting them bidding credits. Telecellular suggests adoption of the bidding credits provided under the Commission's broadband PCS designated entity provisions.

138. DCL Associates strongly supports the availability of installment payments for minority and/or women-owned businesses. Pittencrief does not object to offering installment payments as a means to encourage participation of designated entities in the auctions for wide-area licenses.

139. *Proposal.* We propose to adopt an installment payment option for small businesses that successfully bid for lower 80 and General Category licenses. As we noted in the *Competitive Bidding Second R&O,* allowing installment payments reduces the amount of private financing needed by prospective small business licensees and therefore mitigates the effect of limited access to capital by small businesses. Under this proposal, licensees who qualify for installment payments would be entitled to pay their winning bid amount in quarterly installments over the ten-year license term, 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. In addition, we propose to tailor installment payments to reflect the needs of different size entities. Under our proposal, small businesses with $3 million or less in gross revenues would make interest-only payments for the first five years of the license term, while small businesses with $15 million or less in gross revenues would make interest-only payments during the first two years. We believe that this installment payment structure, which is consistent with our approach in 900 MHz SMR and the upper 200 channels, will enable entities with less immediate access to capital to increase their chances of obtaining licenses. Timely payment of all installments would be a condition of the license grant and failure to make timely payment would be grounds for revocation of the license. We seek comment on this proposal.

5. Set-Aside Spectrum

140. *Background.* In the *Competitive Bidding Eighth R&O,* we determined that designation of an entrepreneur's block for the upper 200 channels was not feasible. In the *Further Notice,* we indicated that an entrepreneurs' block could be feasible for the lower 80 channels which we contemplated would be used primarily by smaller SMR operators.

141. *Proposal.* We tentatively conclude that the lower 80 and the General Category Channels should be designated as an entrepreneurs' block. Such a designation would ensure that smaller SMR operators would have opportunities to maintain competitive and viable systems and also to pursue wide-area licensing strategies should they desire to do so. In our broadband PCS rules where we have authorized entrepreneurs' block licenses, we have required entrepreneurs to comply with financial caps based on gross revenues and total assets over a certain period of time. Because the 800 MHz SMR service is less capital-intensive than PCS, we believe that the entrepreneurs' block financial caps in the 800 MHz SMR service should be set at a lower level than those in broadband PCS. We seek comment on the feasibility of designating the lower 80 and General Category channels as an entrepreneurs' block. We also ask commenters to discuss what would be appropriate financial caps for such entrepreneurs' block.

6. Unjust Enrichment Provisions

142. *Background.* In the *Competitive Bidding Second R&O,* we indicated that licensees that received bidding credits and installment payments and also chose to transfer their licenses to entities not eligible for these benefit, were required to repay the amount of the bidding credit on a graduated basis. No repayment would be required six years after the license grant. In addition, the ineligible transferee would not have the benefit of installment payments, and principal and accrued interest would come due. For the 900 MHz SMR service, we adopted unjust enrichment provisions which required reimbursement of the benefit received by a small business through bidding credits and installment payments in the event that such small business transferred its license to an entity not qualifying as a small business. We previously adopted restrictions on the transfer or assignment of broadband PCS entrepreneurs' block licenses to ensure that designated entities do not take advantage of special provisions by immediately assigning or transferring control of their licenses.

143. *Proposal.* Permitting an immediate transfer of a discounted license to an entity that is not a small business could undermine our basis for offering special provisions to small businesses, but we note that in services with no entrepreneurs' block, we have limited unjust enrichment to repayment of bidding credits or installment payments. We therefore seek comment on whether we should use an approach similar to that adopted for the 900 MHz SMR service or that adopted for broadband PCS entrepreneurs' block licenses.

7. Partitioning

144. The Communications Act directs the Commission to ensure that rural telephone companies have the opportunity to participate in the provision of spectrum-based services. Rural areas, because of their more dispersed populations, tend to be less profitable to serve than more densely populated urban areas. Rural telephone companies, however, are well positioned because of their existing infrastructure to serve these areas. In other services, such as broadband PCS and 900 MHz SMR, we have acknowledged this fact by allowing rural telephone companies to partition their licenses on a geographic basis, thereby increasing the likelihood of rapid introduction of service into rural areas. We also afforded rural telephone companies this opportunity under our rules for the upper 200 channels of 800 MHz SMR spectrum. We seek comment on whether we should incorporate similar provisions into our rules for the lower 80 and General Category channels.

145. If we adopt geographic partitioning for rural telephone companies, geographic partitioning should be made available to them on the same basis as in PCS and the upper 200 channels. Such a partitioning scheme would provide rural telephone companies with the flexibility to serve areas in which they already provide service, while the remainder of the service area could be served by other providers. Under this proposal, rural telephone companies would be permitted to acquire partitioned SMR licenses in one of two ways: (1) By forming bidding consortia consisting entirely of rural telephone companies to participate in auctions, and then partitioning the licenses won among consortia participants, or (2) by acquiring partitioned paging licenses from other licensees through private negotiation and agreement either before or after the auction. We also would require that partitioned areas conform to established geo-political boundaries, include all portions of the wireline service area of the rural telephone company applicant, and be reasonably related to the rural telephone company's wireline service area. We also propose to use the definition for rural telephone companies implemented in broadband PCS. Rural telephone companies would be defined as local exchange carriers having 100,000 or fewer access lines, including all affiliates. We seek comment on this proposal. We also seek comment on whether we should extend partitioning options to entities other than rural telephone companies, as we did in MDS and as we proposed for the upper 200 channels in this service.

VIII. Procedural Matters

A. Regulatory Flexibility Analysis

With respect to this *Second Further Notice,* pursuant to the Regulatory Flexibility Act of 1980, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Further Notice of Proposed Rule Making* in PR Docket No. 93–144. Written comments on the IRFA were requested. The Commission's final analysis is as follows

147. *Need for and purpose of the action.* The rule making proceeding has implemented Sections 332 and 3(n), respectively, of the Communications Act of 1934, as amended. The rules adopted herein will carry out Congress's intent to establish a consistent framework for all commercial mobile radio services (CMRS).

148. *Issues raised in response to the IRFA.* No comments were submitted in response to the IRFA.

149. *Significant alternatives considered and rejected.* All significant alternatives have been addressed in the *First Report and Order* in PR Docket No 93–144, the *Third Report and Order* in GN Docket No. 93–252, and the *Eighth Report and Order* in PP Docket No. 93–253.

B. Paperwork Reduction Act

150. Summary: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission,

including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 16, 1996. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554, or via Internet to dconway@fcc.gov; and Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th St., NW., Washington, DC 20503, or via Internet to fain____t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Dorothy Conway, (202) 418–0217, or via Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

Title: Amendment to the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band.

Type of Review: Revised collection.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 12,195.

Estimated Time Per Response: Approximately 1 to 5 hours.

Total Annual Burden: Approximately 17,254 hours.

Total Annual Cost: $6,468,260 this includes the costs for filing the information electronically or mailing submissions and hiring consultants that may be necessary to respond the requests.

Needs and Uses: The information will be used by the Commission for the following purposes: (a) To determine if the grant or retention of an extended implementation schedule is warranted; (b) to update the Commission's licensing database and thereby facilitate the successful coexistence of EA licensees and incumbents in the upper 10 MHz block of 800 MHz SMR spectrum; (c) to ensure that incumbents are timely notified of possible relocation thus allowing relocation to occur in an orderly, efficient, and expedient manner; and (d) to determine whether an applicant is eligible for special provisions for small businesses provided for applicants in the 800 MHz SMR service.

C. Ex Parte Rules—Non-Restricted Proceeding.

151. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules, 47 CFR §§ 1.1202, 1.1203, 1.1206(a).

D. Authority.

152. The legal authority for this proposed information collection includes 47 U.S.C. Sections 154(i), 303(c), 303(f), 303(g), 303(r), 309(j), and 332, as amended. The information collection would not affect any FCC forms. The proposed collection would increase minimally the burden on 800 MHz SMR service applicants.

List of Subjects in 47 CFR Part 90

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–3511 Filed 2–13–96; 5:07 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[I.D. 021296E]

Northeast Multispecies Fishery; Notice of Availability of Amendment 7

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NMFS issues this notice that the New England Fishery Management Council (Council) has submitted Amendment 7 to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP) for Secretarial review and is requesting comments from the public. This amendment contains a series of management measures designed to rebuild overfished stocks of groundfish, especially cod, haddock and yellowtail flounder. Copies of the amendment may be obtained from the Council (see **ADDRESSES**).

DATES: Comments must be received on or before April 11, 1996.

ADDRESSES: Send comments to Dr. Andrew A. Rosenberg, Regional Director, National Marine Fisheries Service, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930–3799. Mark the outside of the envelope ''Comments on Amendment 7 to the Northeast Multispecies Plan.''

Copies of proposed Amendment 7, its Regulatory Impact Review (RIR) and the Initial Regulatory Flexibility Analysis contained within the RIR, and the Final Supplemental Environmental Impact Statement are available from Douglas Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (U.S. Rte. 1), Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, Fishery Policy Analyst, 508–281–9252.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) (16 U.S.C 1801 *et seq.*) requires each regional fishery management council to submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. The Magnuson Act also requires the Secretary, upon receiving the plan or amendment, to immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the plan or amendment.

Proposed measures in the amendment include: (1) A procedure for setting annual target total allowable catch levels for regulated species; (2) an acceleration of the current days-at-sea effort reduction program; (3) elimination of current exemptions to the effort control program; (4) new closed areas; (5) a restriction on large mesh fisheries with more than a minimal bycatch of regulated species in the Gulf of Maine/Georges Bank and Southern New England regulated mesh areas; (6) a cod, haddock and yellowtail flounder possession limit restriction for vessels less than 30 ft (9.14 m); (7) establishment of the current experimental Nantucket Shoals dogfish fishery on a permanent basis; (8) modification to permit categories and qualifying criteria; (9) restrictions on charter/party and recreational vessels; and (10) revision and expansion of the existing framework provisions. Many of the current provisions to the FMP will be retained as the basic structure for the regulatory program.

NMFS, on behalf of the Secretary, disapproved three measures in