authorized by the patrol commander. Anchoring in the viewing area is prohibited unless authorized by the Patrol Commander. Entry or anchoring in the staging area is prohibited, unless authorized by the Patrol Commander. After the passage of the parade participants, all vessels may resume normal operations.

(2) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any non-participating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(c) *Effective Date:* This section is effective annually on the second Saturday in December from 5 p.m. to 10 p.m. EST.

Dated: October 27, 1997.

Norman T. Saunders,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 97–29508 Filed 11–6–97; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5919–3]

Notice of Extension of Comment Period for the GE-Housatonic Site Included in National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 23

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of extension of comment period for GE-Housatonic site.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for the GE-Housatonic site in Pittsfield, Massachusetts which was proposed to be added to the National Priorities List (NPL) on September 25, 1997 (62 FR 50450). The comment period was scheduled to end on November 24, 1997. However, due to the unique circumstances surrounding the GE-Housatonic site, the comment period will be extended until March 1, 1998.

The Environmental Protection Agency (EPA) has formed a partnership with several state and federal agencies (intergovernmental team) in order to achieve a comprehensive solution to the environmental problems at the GE/Housatonic River Site in Pittsfield, MA. The Intergovernmental Team is comprised of representatives from EPA, the Massachusetts Department of Environmental Protection, the Massachusetts Executive Office of Environmental Affairs, the Massachusetts Attorney General's Office, the Connecticut Department of Environmental Protection, the Connecticut Attorney General's Office, the US Department of Interior, the US Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, and the United States Department of Justice. The Intergovernmental Team is attempting to negotiate, with General Electric, a comprehensive solution in lieu of final listing of the General Electric/Housatonic River Site on the National Priorities list. In order to facilitate this intensive and comprehensive negotiation, the EPA has decided to extend the public comment period until March 1, 1998.

Numerous parties, including the public, are directly or indirectly participating in these negotiations. These parties include the City of Pittsfield and other cities and towns downstream of the GE facility, environmental and business groups.

DATES: Comments regarding the GE-Housatonic site must be submitted (postmarked) on or before March 1, 1998.

ADDRESSES:

By Mail: Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; (Mail Code 5201G); 401 M Street, SW; Washington, DC 20460; 703/603–9232.

By Federal Express: Send original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; 1235 Jefferson Davis Highway; Crystal Gateway #1, First Floor; Arlington, VA 22202.

By E-Mail: Comments in ASCII format only may be mailed directly to Superfund.Docket@EPAMAIL.EPA.GOV.

E-mailed comments must be followed up by an original and three copies sent by mail or Federal Express.

FOR FURTHER INFORMATION CONTACT: Terry Keidan, State and Site Identification Center, Office of Emergency and Remedial Response (Mail Code 5204G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460.

Dated: October 27, 1997.

Stephen D. Luftig,

Director, Office of Emergency and Remedial Response.

[FR Doc. 97–29481 Filed 11–6–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 20 and 90

[WT Docket No. 96–86; FCC 97–373]

The Development of Technical and Spectrum Requirements for Meeting Public Safety Agency Communication Requirements, Establishment of Rules and Requirements for Priority Access Service

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission adopts a *Second Notice of Proposed Rulemaking (Second NPRM)* which makes a range of proposals relating to public safety communications in the 746–806 MHz band and in general. The *Second NPRM* discusses goals for establishing a plan to ensure the efficient and effective use of spectrum to meet critical public safety communications needs, proposes and seeks comment on service rules for the 24 megahertz of spectrum that the Commission has proposed to allocate for public safety needs, seeks comment relating to the establishment of wireless priority access services by commercial systems for use in meeting communications needs in emergency and disaster situations, and proposes technical requirements to protect broadcast licensees operating in the 746–806 MHz band from interference. This action is taken as part of the Commission's compliance with its mandate under the Balanced Budget Act of 1997.

DATES: Comments are due on or before December 22, 1997, and reply comments are due on or before January 12, 1998. Written comments by the public on the proposed information collections are due January 6, 1998. Written comments on the proposed information collections must be submitted by the Office of Management and Budget (OMB) on or before January 6, 1998.

ADDRESSES: Federal Communications Commission, Office of the Secretary, Room 222, Washington, D.C. 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy

Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, N.W., Washington, D.C. 20503, or via the internet to fain__t@eop.gov.

FOR FURTHER INFORMATION CONTACT: Marty Liebman, Mary Woytek, David Siehl, or Jon Reel, Policy Division, (202) 418–1310. For additional information concerning the information collections contained in this *Second NPRM*, contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Second NPRM* in WT Docket No. 96–86, FCC 97–373, adopted October 9, 1997, and released October 24, 1997. The complete text of this notice is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 1231 20th Street, N.W., Washington, DC 20036. This *Second NPRM* contains new information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

Paperwork Reduction Act

This *Second NPRM* contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this *Second NPRM*, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. Public and agency comments are due January 6, 1998. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–XXXX.

Title: Development of Operational, Technical, and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, Establishment of Rules and Requirements for Priority Access Service (*Second NPRM*, WT Docket No. 96–86).

Form No.: N/A.

Type of Review: New Collection.

Respondents: Primary: 55 regional planning committees + 1 national planning committee + 1 standards committee + 2,000 entities applying for extended implementation = 2,057.

Third Party: 6,600 eligible entities (estimate based on 120 per regional committee). (This figure includes 2,000 eligible entities already included as primary respondents that may apply to the Commission for extended implementation.)

Number of Respondents: 6,657.

Estimated Time Per Response: Primary: Regional planning committee: 10,270 hours; National planning committee: 10,000 hours; Standards committee: 10,000 hours; Entity seeking extended implementation: 10 hours;

Third Party: Eligible entity—6 hours.

Total Annual Burden: 644,450 hours.

Total Annual Cost: $0 . There are no capital/startup or operational and maintainance cost associated with this collection. The Commission estimates the respondents will not hire contract staff to prepare the material.

Needs and Uses: In the Balanced Budget Act of 1997, Congress directed the Commission to dedicate 24 megahertz of spectrum in the 746–806 MHz band for public safety services. The enclosed Second Notice of Proposed Rulemaking, FCC 97–393, in WT Docket No. 96–86 proposes service rules to make the spectrum available for licensing.

In order to satisfy local and regional needs and preferences, the Commission proposes that regional planning committees made up of representatives from the public safety community draft and submit of regional plans. The regional plans may include plans for both spectrum reserved for interoperability and spectrum available for general public safety use. Creation of these plans will necessarily impose some burden, both on the eligible entities that make their needs known, and on the planners who seek to accommodate them. In addition, the Commission proposes that a planning committee convene to develop nationwide interoperability policies and procedures, and mentions the possibility that an entity may be formed to assist the Commission in formulating technical standards. Commission personnel will use the information to assign licenses, and may also use the information to determine regional spectrum requirements and to develop technical standards. The information will also be used to determine whether prospective licensees will operate in compliance with the Commission's rules. Without such information, the Commission could not accommodate regional requirements or provide for the optimal use of the available frequencies.

Synopsis of the Second Notice of Proposed Rulemaking

1. In this *Second Notice of Proposed Rulemaking (Second NPRM)* the Commission makes a range of proposals relating to public safety communications in the 746–806 MHz spectrum band. The proposals include service rules for the 24 megahertz of spectrum that Congress, in the Balanced Budget Act of 1997, has committed to public safety services;[1] the establishment of wireless priority access services by commercial systems for use in meeting communications needs in emergencies; and technical requirements to protect broadcast licensees operating in the 746–806 MHz band from interference. The Commission notes that this *Second NPRM* does not address all the issues raised in the Notice of Proposed Rulemaking in this proceeding (61 FR 25185, May 20, 1996) (*Public Safety NPRM*) or in the Final Report of the Public Safety Wireless Advisory Committee.[2] To the extent that important issues remain, they will be addressed in future proceedings.

I. Public Safety Communications

A. Interoperability Service Rules

2. The *Second NPRM* first considers service rules in the 746–806 MHz band for public safety interoperability, and discusses the following issues that arise in the context of interoperability: location and amount of interoperability spectrum; types of communication; transmission technology; channel spacing; channel requirements; equipment standards; eligibility, use, and licensing; and trunking and

[1] Reallocation of Television Channels 60–69, the 746–806 MHz Band, ET Docket No. 97–157, *Notice of Proposed Rulemaking*, FCC 97–245, 62 FR 41012 (July 31, 1997) (*Allocation NPRM*). Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251 (1997).

[2] Final Report of the Public Safety Wireless Advisory Committee to the Federal Communications Commission and the National Telecommunications and Information Administration, September 11, 1996 (PSWAC Final Report).

technical standards. The *Second NPRM* then discusses similar issues for the spectrum that is not reserved for interoperability, *i.e.*, those frequencies to be made available for the use of individual public safety entities.

3. The *Public Safety NPRM* proposed a formal definition of interoperability and related definitions of Infrastructure-independent and Infrastructure-dependent interoperability, and Multi-jurisdictional and Multi-disciplinary interoperability. The PSWAC Final Report adopted these definitions, and additionally proposed that ''mission critical'' communications be defined as that which must be immediate, ubiquitous, reliable and, in most cases, secure. The Commission seeks further comment on these definitions and on any proposals for different definitions.

1. Interoperability Spectrum

Location and Amount of Interoperability Spectrum

4. The Commission proposes to dedicate a significant amount of spectrum in the 746–806 MHz band solely for interoperability communications. The Commission seeks comment on the amount of spectrum that should be dedicated for interoperability communications. The precise amount adopted by the Commission will also reflect the comments and suggestions received in regard to the spacing and number of channels required.

5. The *Second NPRM* also asks commenters who believe that the Commission should attempt to allocate spectrum for interoperability from other public safety bands or elsewhere to indicate which bands should be used to provide such spectrum, and how channels within those bands might be cleared throughout the Nation in order to realize the Commission's goal of nationwide interoperable communications. If commenters believe that interoperability channels should be designated in more than one band, the Commission asks that they indicate how nationwide interoperability can be achieved using channels in different bands.

Types of Communication

6. The *Second NPRM* tentatively concludes that it would be useful to categorize public safety communications into four separate types: voice, data, image/high speed data (image/HSD), and video. In order to determine whether and how each of these types of potential interoperability communications could or should be accommodated in the Commission's designation of interoperability spectrum, comment is solicited on whether the Commission should designate interoperability spectrum for:

- Voice channels only (with data capability on such channels).
- Voice and data channels only.
- Voice, data, image/HSD, slow motion video, and full motion video channels.
- Channels that would accommodate some other combination of uses.

Transmission Technology

7. In order to ensure interoperability among all public safety agencies, an important factor to consider is whether to specify the modulation technology for interoperability channels. Because the Commission's goal is to provide for nationwide interoperability, the Commission tentatively concludes that at a minimum the Commission must specify whether analog FM or digital modulation technologies should be used for interoperability channels. The *Second NPRM* addresses these issues in the context of the various types of interoperability communications the Commission is considering.

Voice

8. The *Second NPRM* invites comment on whether the achievement of interoperability on analog or digital modulation for voice interoperability channels should be specified. In addition, the *Second NPRM* seeks comment regarding whether standards on these channels, whether analog or digital, should be adopted. The Commission asks commenters how long it would take to develop digital standards and whether the time associated with the development process offsets the advantages of digital technology. The Commission also seeks comment regarding whether adopting a digital standard would result in all interoperability equipment being tied to today's digital technology for many years, even if that technology experiences great advances in the next century.

Data, Image/HSD, and Video

9. Given that technical standards will have to be developed regardless of whether analog or digital technology is used for data channels, the Commission proposes to adopt the use of digital modulation on such channels, in order to benefit from the throughput advantages of digital technology. Because image/HSD and video communications also involve the transmission of digital information, the Commission proposes to adopt the use of digital modulation on these channels. The same considerations allotted to data communications would apply to image/HSD and video communications. The *Second NPRM* seeks comment on these proposals.

10. As a related issue, the *Second NPRM* seeks comment regarding whether technical standards should be mandated for data, image/HSD, or video equipment used for interoperability. If so, the *Second NPRM* also asks what technical standards would be necessary on data, image/HSD, and video channels to achieve interoperability if digital systems, or analog-based systems, are employed? In addition, the Commission asks commenters to indicate the data rates they believe are desirable or necessary for each type of digital communication (*i.e.*, data, image/HSD, and video).

Channel Spacing

11. An important consideration in deciding how spectrum should be designated for different types of interoperable communications is the spacing of the channels needed to support such communications. The *Second NPRM* therefore explores this issue with respect to each of the four categories of interoperable communications discussed above, and requests comment on any other categories that may be appropriate.

12. The Commission seeks comment regarding the following issues relating to channel spacing for interoperability channels:

- What channel spacing is needed to ensure appropriate voice quality and clarity for voice interoperability channels?
- Should the interoperability channels be spaced 25 kilohertz apart to more easily enable these channels to be incorporated into equipment operating in the 806–821 MHz band? Or should the Commission consider a transition to 12.5 kHz channels for the 806–821 MHz band?
- What channel spacing is needed to ensure appropriate data capacity for data interoperability channels?
- To what extent might voice channels also be used by public safety personnel to carry data?

13. The *Second NPRM* seeks comment on what channel spacings should be adopted for voice, data, image/hsd, and video interoperability channels. The Commission requests that commenters consider issues such as the use of analog or digital technology and the appropriate data rates for different types of communications, and discuss their rationale in suggesting appropriate channel spacings for voice, data, image/HSD, slow motion video, and full

motion video channels. The Commission also asks commenters to indicate whether the channel spacings they suggest are based on current or future state-of-the-art technology in digital efficiency, as measured in bits/second/Hertz.

Channel Requirements

14. The *Second NPRM* seeks input regarding the number of interoperability channels that should be designated for each type of communication described above, and with regard to additional factors related to channelization, such as the number of paired or unpaired channels needed for the various types of communications.

15. Specifically, the *Second NPRM* seeks comment on the number of channels that commenters believe should be dedicated for interoperability uses for: voice transmissions (mobile-only, or base and mobile channel pairs); data transmissions (base-only, or base and mobile channel pairs); image/HSD transmissions (base-only, or base and mobile channel pairs); slow motion video transmissions (mobile-only, or base and mobile channel pairs); and full motion video transmissions (mobile-only, or base and mobile channel pairs). In commenting on the number of interoperability channels that should be designated, the Commission asks interested parties to indicate the channel spacing they assume for each type of channel.

Equipment Standards

16. The Commission recognizes that poor quality receivers could impede communications on the interoperability channels, and so invites comment as to whether to establish receiver standards for the interoperability channels. The Commission observes that its authority to regulate receiver standards may be limited. It notes, for example, that § 302(a) of the Communications Act grants the Commission specific authority to regulate the susceptibility to interference of home electronic equipment such as TV receivers. The Commission therefore asks those commenters recommending mandatory receiver standards to indicate the technical parameters to be standardized and to address the Commission's legal authority to adopt such standards.

17. The *Second NPRM* also seeks comment regarding whether the Commission should require that all public safety mobile and portable radios operating in the 746–806 MHz band be capable of operating on all voice and data interoperability channels in that band. In addition, the *Second NPRM* invites comment regarding whether it is technically feasible to incorporate the 746–806 MHz interoperability channels into mobile and portable radios operating in the 806–824/851–869 MHz band, and whether doing so is dependent on whether the Commission employs television Channels 68 and 69 for mobile-to-base transmissions or whether the Commission decides instead to use television Channels 63 and 64 for some or all mobile-to-base transmissions. If incorporating 746–806 MHz interoperability channels into 806–824/851–869 MHz mobile and portable radios is technically feasible, commenters are asked to address whether the Commission should require that all public safety mobile and portable radios operating in 806–824/851–869 MHz band manufactured or imported beginning one year after the effective date of the Report and Order adopted in this proceeding, be capable of operating on the interoperability channels in the 746–806 MHz band.

18. On the other hand, the Commission suggests that the best and easiest way to provide for mobile and portable radio equipment on these channels might be for equipment manufacturers to build ''interoperability radios'' (*i.e.*, radios that transmit and receive only on voice and data interoperability channels). The *Second NPRM* seeks comment on this option, and on the trade-offs between this and the previous option (of requiring all radios to operate on the interoperability channels).

2. Eligibility, Use, and Licensing

Definitions

19. The *Public Safety NPRM* tentatively concluded that the Commission should adopt formal definitions relating to public safety. The Commission does not intend to take further action on the definitions it proposed, however, since in directing the Commission to assign 24 megahertz of spectrum in the 746–806 MHz band for public safety services, Congress defined ''public safety services'' to mean services:[3]

(A) the sole or principal purpose of which is to protect the safety of life, health, or property;

(B) that are provided—

(i) By State or local government entities; or

(ii) By nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and

(C) that are not made commercially available to the public by the provider.

20. The *Second NPRM* tentatively concludes that a definition of a public safety service provider can be based upon the statutory definition of public safety services, and that such a definition would be helpful in developing service rules for the 746–806 MHz band. The *Second NPRM* proposes to define the term as follows:

Public Safety Service Provider: (1) A State or local government entity that provides public safety services; or (2) a non-governmental organization that is authorized to provide public safety services by a governmental entity pursuant to § 337(f)(1)(B)(ii) of the Communications Act.

21. The Commission notes that two broad groups fall within this definition—governmental public safety services providers, and authorized non-governmental public safety services providers. The Commission also notes that many entities with public safety interests, and with which public safety service providers may need to communicate by radio, do not fall within the statutory definition. Eligibility issues regarding use of the interoperability channels and for channels from the non-interoperability (general use) public safety spectrum are discussed under separate headings below.

National and Regional Planning

22. The *Second NPRM* addresses how interoperability spectrum may best be managed for effective interoperable communications. As a threshold question, however, the Commission asks commenters to discuss which policies it should set at the national level, and which should be set by those in closer proximity to State and local public safety users. In the *NPSPAC Proceeding*, the Commission established 55 regions and directed each to develop plans for use of both the interoperability and the non-interoperability channels.[4] The regions were to establish procedures for interoperability that best suited their individual requirements. The Commission could adopt a similar process for the interoperable channels in the 746–806 MHz band. The *Second NPRM* tentatively concludes that the Commission's primary goal with respect

[3] § 337(f)(1) of the Communications Act, 47 U.S.C. 337(f)(1), as added by the Balanced Budget Act of 1997, 3004.

[4] Development and Implementation of a Public Safety National Plan and Amendment of Part 90 to Establish Service Rules and Technical Standards for Use of the 821–824/866–869 MHz Bands by the Public Safety Services, GEN Docket No. 87–112, (*NPSPAC Proceeding*), *Memorandum Opinion and Order*, 53 FR 11849 (April 11, 1988). *See Report and Order*, GEN Docket Nos. 87–112, 53 FR 1022 (January 15, 1988) (*NPSPAC Report and Order*).

to interoperability should be seamless interoperability on a nationwide basis.

23. The *Second NPRM* requests comment regarding four alternative approaches to managing the interoperability channels in the 746–806 MHz band. First, the Commission asks commenters to consider whether the individual NPSPAC regional planning committees should develop plans for the operation and use of the interoperability channels in the 746–806 MHz band. Second, as a variation on this approach, commenters should consider whether the Commission should create parallel regional organizations devoted entirely to developing plans and procedures for use of the interoperability channels. Commenters favoring either of these two options should discuss how these channels could be entrusted to the individual regions without compromising the goal of seamless nationwide interoperability.

24. As a third alternative, the *Second NPRM* asks whether a national planning process to develop nationwide plans and procedures for the interoperability channels should be adopted. Finally, the *Second NPRM* asks commenters to discuss a fourth option in which specific nationwide guidelines and procedures for the use of the interoperability channels would be developed.

Categories of Interoperability Uses

25. In the *Public Safety NPRM*, the Commission discussed public safety interoperability in three general contexts: day-to-day, mutual aid, and emergency preparedness or task force operations. The *Second NPRM* asks whether it is necessary or advisable to provide specific amounts of spectrum for each of these uses, or whether the Commission should instead provide spectrum for general interoperability use. If commenters believe that interoperability channels should be designated for specific uses, the Commission asks them to suggest how many of each type of channel should be designated for each category.

26. The *Second NPRM* also asks commenters to consider whether in an emergency all voice, data, image/HSD, and video interoperability channels should become mutual aid channels. The Commission invites comment regarding the alternative approaches of allowing the regions, either individually or as participants in a national planning committee, to decide how many channels, and what kind of channels, should be used for each category of interoperability. If the Commission permits the regions to decide these questions, commenters should discuss whether the Commission should designate a minimum number of the interoperability channels for mutual aid and set their location. The Commission's tentative view is that this would ensure that immediately identifiable channels would be available for mutual aid nationwide.

Eligibility and Use of Interoperability Channels

27. The Commission tentatively concludes that all public safety service providers should be eligible to use all of the interoperability channels. The Commission also tentatively concludes, however, that eligibility alone should not guarantee unlimited access to these channels, but rather that their use should only be permitted in accordance with the plan for interoperability. The Commission also believes that it would be consistent with the new § 337 of the Communications Act and the intent of Congress to broaden the eligibility for interoperability channels, because public safety service providers may need to interact with entities which provide services that do not fall within the definition of public safety services established by Congress in § 337. The Commission tentatively concludes that public safety service providers will need to communicate with their Federal counterparts, and seeks comment regarding how the interoperability channels should be made available to Federal users, and how the Table of Allocations may need to be revised to permit Federal use. The *Second NPRM* also seeks comment regarding whether such use would be consistent with congressional objectives in amending § 337 of the Communications Act.

28. The *Second NPRM* next proposes that authorized non-governmental providers are among the public safety service providers for whom the interoperability channels are specifically intended, but that orderly and effective use of these channels requires that all users use the interoperability channels only in accordance with the interoperability plan. The Commission further tentatively concludes that, in formulating such plans, the planners should have full latitude to restrict the use of the interoperability channels as they judge necessary to ensure that these channels are put to effective use. The *Second NPRM* seeks comment on these tentative conclusions.

29. The *Second NPRM* further asks commenters whether the plans governing access to the interoperability channels should be designed by the individual regions, either through the regional planning committees or through regional committees established specifically to address interoperability, or whether at least some of these rules should be prescribed at the national level, either by the Commission or through a national interoperability planning committee. The Commission asks commenters to consider the possibility that some rules for the interoperability channels, such as the mutual aid channels or the task force channels, might be formulated by the Commission, while regional committees or other regional groups might formulate the rules governing access to the channels designated for day-to-day use. The Commission also asks commenters whether access by Federal agencies should be regulated at the national level, with the rules governing access by other entities to be set at the regional level. Finally, the *Second NPRM* asks whether standards and procedures should be adopted to ensure that the interoperability plans are reasonable, effective, and fair.

30. The *Second NPRM* also solicits comment regarding whether some channels should be designated for particular services nationwide, or whether all eligible entities should have access to all the channels within a given category. Commenters are again asked whether these decisions should be made by the regions individually, either through the regional planning committees or through regional committees established specifically to address interoperability; by a national interoperability planning committee; or by the Commission. Commenters should consider the option of the Commission deciding these issues for some, but not all, of the interoperability channels.

31. The *Second NPRM* also invites comment regarding how the voice, data, image/HSD, and video interoperability channels should be assigned to licensees. Specifically the *Second NPRM* asks whether authorizations for base and control transmitters operating on the interoperability channels should be obtained from the Commission, or whether the Commission should adopt an alternative approach, such as giving the regions more authority for the interoperability channels and allowing each region to authorize individual agencies to operate base stations without the need for separate station authorizations. In either case, public safety entities could operate mobile units and portables on the interoperability channels without separate authorization as long as they were operating in accordance with the approved regional plan.

3. Trunking on Interoperability Spectrum

32. The *Second NPRM* notes that in a large-scale emergency, wireless communication among many personnel from different agencies and regions must be rapidly coordinated. It tentatively concludes that a trunked system is the best, and possibly the only practicable, method by which this goal can be achieved.

33. The Commission has not required use of specific trunking standards for public safety communications services, nor has it specified such standards for private or commercial mobile radio services. However, the Commission states that interoperability among public safety users could be thwarted absent a trunking standard. It also states that it is vitally important that the public safety spectrum be used in the most efficient way feasible. For these reasons, as well as the operational benefits that trunking technology can provide, the *Second NPRM* asks whether the Commission should adopt a trunking standard for communications on the interoperability channels. Because the Commission's goal is to promote the ability of public safety users to communicate across regional as well as across agency lines, the Commission asks whether it should mandate a single nationwide trunking standard, rather than leave to the individual regions the decision of whether to employ conventional or trunked operations, or of selecting regional trunking standards.

4. Technical Standards for Interoperability Spectrum

34. The *Second NPRM* suggests various approaches for developing digital or trunking standards for interoperability channels and invites comment regarding these approaches. The Commission is particularly interested in views concerning the option that would have the greatest likelihood of successfully meeting the needs of the public safety community. Because the Commission intends to initiate licensing of the public safety spectrum as soon as practicable, it also requests comments as to the approach to development of standards for interoperability spectrum that is likely to be the most expeditious. Finally, the Commission indicates that in addition to a basic trunking standard for interoperability channels, related technical standards may be required to enable effective interoperability. Therefore, the *Second NPRM* invites comments as to the scope of any such additional standards that may be needed to ensure effective interoperability, how such standards should be developed, and what elements these standards should encompass.

B. General Service Rules

35. The *Second NPRM* turns from the service rules for the portion of the public safety spectrum designed to promote interoperability to similar issues related to service rules for the remainder of the public safety spectrum in the 746–806 MHz band. For these general service rules, the Commission's primary concerns are to alleviate the shortage of channels available to public safety agencies for their internal use and to provide spectrum for new types of communications, such as image and video.

1. Regional Planning Committees

36. The *Second NPRM* proposed to use the regional planning approach taken an earlier allocation of spectrum, the allocation of the 821–824/866–869 MHz bands for public safety use. In that instance, the Commission used a National Plan created by the National Public Safety Planning Advisory Committee (NPSPAC).[5] This plan comprised both national and regional elements, which allowed the Commission to establish nationwide rules where appropriate, but still provided sufficient flexibility for regional planners to tailor solutions to local public safety problems. The Commission tentatively concludes that this dichotomy between national and regional elements has been successful and thus proposes to use the regional planning approach again for that portion of the public safety spectrum that is not devoted to interoperability. The *Second NPRM* seeks comment regarding this proposal, as well as any other alternatives for the administration of the spectrum, and encourages suggestions regarding the organization and operation of the regions and the regional planning committees. Commenters should consider the Commission goals of equitable distribution of frequencies, efficient use of spectrum, and minimizing the burden on both public safety service providers and the regional planning committees.

37. The *Second NPRM* proposes to retain the boundaries of current regions. Minor modifications may be needed depending upon the comments received. The Commission asks whether the boundaries of the multi-state regions that serve metropolitan areas are drawn along optimal lines, and whether other multi-state metropolitan regions should be created. The *Second NPRM* proposes to retain the existing committees, with at most minor modifications to their boundaries, and to add the 746–806 MHz band to the 821–824/866–869 MHz bands that the planning committees have been using to create regional plans. The Commission seeks comment regarding this proposal.

38. The *Second NPRM* invites commenters to address the procedures for ensuring the equitable distribution of frequencies among eligible entities, and to evaluate any need for procedural guidelines for the committees. The *Second NPRM* also proposes that regional plans be required to include the same minimum elements as required by the *NPSPAC Report and Order.* These include:

- A cover page that clearly identified the document as the regional plan for the defined region.
- The name of the regional planning chairperson, including mailing address and telephone number.
- The names of the members of the regional planning committee, including organizational affiliations, mailing addresses, and telephone numbers.
- A summary of the major elements of the plan.
- A general description of how the spectrum would be allotted among the various eligible users within the region.
- An explanation of how the requirements of all eligible entities within the region were considered and, to the degree possible, met.
- An explanation as to how needs were assigned priorities in areas where not all eligible entities could receive licenses.
- An explanation of how the plan had been coordinated with adjacent regions.
- A detailed description of how the plan put the spectrum to the best possible use by requiring system design with minimum coverage areas, by assigning frequencies so that maximum frequency reuse and offset channel use may be made, by using trunking, and by requiring small entities with minimal requirements to join together in using a single system where possible.
- The signature of the regional planning chairperson.

The Commission invites comment regarding whether these listed elements should be amended to include any additional provisions, or whether the current elements require clarification or reformulation.

The *Second NPRM* proposes to utilize the same review and modification procedures as followed under the National Plan. These procedures include public notice and opportunity for comment. The Commission notes that this proceeding presents an

[5] *See NPSPAC Report and Order.*

opportunity to revise the process, and invites comment regarding ways that the modification procedures could be improved. The Commission invites commenters to address the requirement that regions wishing to modify their plans must obtain the express concurrence of adjacent regional planning committees to the proposed modifications prior to submitting them for Commission approval.

2. Eligibility and Licensing of General Use Channels

40. Regarding the channels in the 746–806 MHz band public safety spectrum that are not reserved for interoperability, the *Second NPRM* tentatively concludes that the Commission should limit eligibility to entities that provide public safety services, as defined for this spectrum in § 337(f)(1) of the Communications Act. The Commission further tentatively concludes that the regional planning committees should, as an element of their regional plans, specify precisely which groups within the broad categories of the statutory definition they suggest should receive frequencies within their regions. The *Second NPRM* seeks comment on these tentative conclusions.

41. The *Second NPRM* also asks whether the Commission should prescribe rules or guidelines for determining if a service meets the statutory definition of a public safety service, and whether the Commission should prescribe substantive or procedural rules for the authorization of non-governmental organizations by governmental public safety service providers, as provided in § 337(f)(1)(B)(ii) of the Communications Act.

3. Provision and Use of Public Safety Channels

42. The following is a discussion of various issues relating to the provision and use of the general public safety spectrum. The goal with respect to the assignment of the general use spectrum is to provide a regulatory framework that will enable a variety of types of communications, and to facilitate utilization of an array of innovative technologies for the public safety community. The *Second NPRM* seeks comment on various matters that will assist us in developing such a framework.

Types of Communication

43. The *Second NPRM* seeks comment regarding what types of public safety communications should be reserved for the new band:

- Voice channels only (with data capability on such channels).
- Voice channels and data channels only.
- Voice, data, image/HSD, slow motion video, and full motion video channels.
- Channels that would accommodate some other combination of uses.

Channel Spacing

44. The *Second NPRM* next considers the matter of channel spacing for the general use channels. In so doing, it considers whether the Commission should decide on appropriate spacings for the channels designated in the 746–806 MHz band, or whether to employ a different approach to channelizing the band. The Commission suggests three such methods, each of which would give the regions various degrees of latitude in deciding on the spacings for channels licensed in their region, and seeks comments on these approaches.

45. If the Commission decides to play a role in determining the spacing of channels in the band, it seeks input from commenters regarding what those channel spacings should be for voice, data, image/HSD, slow motion video, and full motion video channels.

Channel Requirements

46. The *Second NPRM* next explores the issue of how many of each type of channel—*e.g.*, voice, data, image/HSD, or video—should be designated for assignment. It again suggests various methods that would give the regions different degrees of flexibility to decide how many of each type of channel should be made available for assignment in the respective regions. The *Second NPRM* seeks comment on these different approaches to determining how many channels will be made available for assignment to public safety licensees.

47. If it is decided that the Commission will devise the band plan to be used by all regions, comment is requested on the number of channels that should be designated for each of the following proposed uses:

- Voice transmissions (mobile-only, or base and mobile channel pairs).
- Data transmissions (base-only, or base and mobile channel pairs).
- Image/HSD transmissions (base-only, or base and mobile channel pairs).
- Slow motion video transmissions (mobile-only, or base and mobile channel pairs).
- Full motion video transmissions (mobile-only, or base and mobile channel pairs).

Finally, the *Second NPRM* invites comment as to whether voice, data, image/HSD, or video channels could or should be shared among public safety entities within a given area, or whether all assignments should be made on an exclusive basis.

Transmission Technology

48. The *Second NPRM* examines the issue of whether there is a need to mandate a particular transmission technology on the regularly assigned public safety channels. The Commission believes it would be preferable to give public safety licensees the ability to choose among available analog or digital technologies on their own authorized channels, and it is therefore not inclined to require any particular transmission technology to be mandated for voice, data, image/HSD, or video transmissions in the portion of the public safety spectrum in the 746–806 MHz band not used for interoperability. The *Second NPRM* seeks comment on this approach.

Equipment Standards

49. The *Second NPRM* tentatively concludes that there is no need to mandate receiver standards on the non-interoperability public safety channels. It also seeks comment on the issue of whether, if technically feasible, the Commission should require all public safety mobile and portable radios operating in the 746–806 MHz band to be capable of operating on all public safety and commercial channels in the band. The Commission indicates that the use of equipment capable of operating on the entire 746–806 MHz band could enable public safety users to employ commercial spectrum when and where such spectrum is available from commercial providers.

C. Technical Parameters for all Public Safety Channels and Operations in 746–806 MHz Band

50. In this section, the *Second NPRM* discusses various technical parameters that are associated with the operation and use of both the interoperable and general public safety channels. These parameters must be quantified in order to ensure the effective, efficient, and interference-free operation of these channels.

1. Bandwidth

51. The *Second NPRM* seeks comment as to the maximum authorized bandwidths that should be specified for different types of general and interoperability communications—*i.e.*, voice data, image/HSD and video. Also, if the Commission decides to permit regions to determine the spacings of their channels, it proposes to require the regions to identify the maximum authorized bandwidths that would be

associated with those channels. The *Second NPRM* seeks comment on these proposals.

2. Emission Mask; Frequency Stability; Power and Antenna Height

52. Part 90 of the Commission's rules specifies the required frequency stability, emission mask, and authorized power and antenna height for channels used in the various private land mobile bands. As with the authorization of maximum bandwidth, the Commission seeks comment regarding these parameters for the channels used for the four types of general and interoperability public safety communications.

53. Also, if the Commission permits regions to determine the spacings of their general use channels, it proposes to require the regions to identify the emission masks and frequency stabilities that would be associated with those channels. The *Second NPRM* seeks comment on these proposals.

3. Base Station Protection

54. The *Second NPRM* solicits comment on whether the Commission should specify the protection criteria that would apply to all exclusively assigned base stations operating on the public safety channels in the 746–806 MHz band, or whether the Commission should allow base stations to be assigned in accordance with protection criteria established in the regional plans. The Commission asks commenters supporting the establishment of uniform protection criteria to indicate whether they believe that the existing protection criteria for the 800 MHz and 900 MHz bands are appropriate, or whether some other standards should be applied.

D. Construction Requirements

55. The *Second NPRM* seeks comment on the appropriate construction deadline for licensees operating on the public safety spectrum in the 746–806 MHz band, including comment on factors that the Commission should consider in establishing construction deadlines that will best promote the timely deployment of public safety facilities.

E. Use of Television Channels 63, 64, 68, and 69 for Public Safety

56. In the *Allocation NPRM,* the Commission proposed the use of television Channels 63, 64, 68, and 69 for public safety. If the Commission decides in that proceeding to dedicate these particular television channels to public safety, then, to facilitate two-way, base/mobile communications, the *Second NPRM* proposes that: (1) the frequencies in Channels 63 and 64 (764–776 MHz) be used for all base-to-mobile transmissions; (2) the frequencies in Channels 68 and 69 (794–806 MHz) be used for all mobile-to-base transmissions; and (3) when providing for paired base-to-mobile and mobile-to-base communications, any base frequencies in Channel 63 should be paired with mobile frequencies in Channel 68 and any base frequencies in Channel 64 should be paired with mobile frequencies in Channel 69. The *Second NPRM* seeks comment on these proposals and, in particular, asks commenters who may utilize signals from the glonass satellites to discuss any concerns they may have about the possible use of Channels 68 and 69 for mobile-to-base public safety communications.

II. Priority Access Service

A. Background

57. The Department of Defense, as executive agent of the National Communications System (NCS), filed on October 19, 1995, a Petition for Rulemaking (Petition) on behalf of NCS, requesting the Commission to initiate a rulemaking proceeding to implement Cellular Priority Access Service (CPAS). According to NCS, the term ''priority access'' means that in emergencies, when cellular spectrum is congested, authorized priority users would gain access to the next available cellular channel before subscribers not engaged in national security and emergency preparedness (NSEP) functions.

58. Following the Commission's issuance of the *Public Safety NPRM,* the Wireless Telecommunications Bureau (Wireless Bureau) released a Public Notice seeking comment on the NCS Petition and asking interested parties to address the extent to which the issues raised in the NCS Petition are related to the public safety rulemaking proceeding.[6] The Commission received 20 comments and five reply comments in response to the *CPAS Public Notice.* Subsequent to the receipt of those comments, the Defense Information Systems Agency (DISA) filed a letter on behalf of NCS, submitting additional information concerning the CPAS proposal.

1. NCS Petition for Rulemaking

59. NCS asserts that priority access to cellular spectrum is essential in conducting response and recovery efforts of NSEP personnel at Federal, State, and local levels. The NCS Petition proposes that CPAS would be a voluntary offering of cellular carriers who would then be subject to mandatory CPAS rules should they elect to provide the service. Under the NCS proposal, cellular carriers would be permitted to charge for the service, determine the amount of spectrum available to CPAS, and discontinue the CPAS service offering at any time.

60. NCS also submits that the proposed CPAS rules would be consistent with the priority access rules that the Executive Office of the President will adopt concurrently for situations in which the President invokes war emergency powers pursuant to § 706 of the Communications Act. For implementation of CPAS, NCS submits that Priority Access Channel Assignment (PACA) technology, a cellular features description, should be used. The PACA feature permits the subscriber to obtain priority access to voice or traffic channels by queuing the originating calls of subscribers when channels are not available. Under the PACA queuing scheme, as proposed by NCS, there would be five levels of priority.

61. NCS proposes that State and local emergency providers would have the same priority level as Federal defense and law enforcement agencies and urges a uniform, nationwide cellular priority access scheme for effective implementation of CPAS. The rules advocated by NCS would (1) authorize cellular service providers to provide priority access; (2) ensure that such providers, when doing so, are not in violation of Communications Act provisions barring unreasonable discrimination or undue preference; and (3) override any existing contractual provisions inconsistent with the rules adopted.

2. PSWAC Final Report

62. The PSWAC Final Report also addresses the role of commercial services in supporting public safety communications. Among its recommendations, PSWAC states that ''[t]he use of commercial services and private contracts should be facilitated, provided the essential requirements for coverage, priority access and system restoration, security, and reliability are met.''[7] Further, the PSWAC Interoperability Subcommittee (PSWAC ISC) finds that, although commercial systems could be used to achieve

[6] *Public Notice,* Petition for Rulemaking Filed, Commission Seeks Comment on Petition for Rulemaking filed by National Communications System, WT Docket No. 96–86, 61 FR 18538 (April 18, 1996) (*CPAS Public Notice*).

[7] PSWAC Final Report at 4.

interoperability, they currently do not meet the requirements addressed in the PSWAC Final Report. Although the PSWAC ISC recommends that the Commission adopt rules to make commercial systems more responsive to public safety needs, including a requirement to offer a priority access option, it contends that there are many shortcomings to the NCS CPAS proposal. The PSWAC ISC concludes that those shortcomings flow from market forces and are not readily susceptible to regulatory cures.

B. Discussion of NCS Proposed Rules and Related Issues

1. Priority Access and Public Safety Communications Generally

63. The *Second NPRM* concludes that it is advisable to consider the issues raised by the NCS Petition in the context of this proceeding and therefore seeks comment on those issues. In the view of the Commission, based in part on the conclusions of the PSWAC Final Report, there is a substantial nexus between considerations of priority access and the needs of the public safety community. The *Second NPRM* maintains that the need for expedition regarding disposition of the wide range of public safety issues mitigates any concern that linking Commission consideration of these issues with Commission consideration of the NCS priority access proposal will delay resolution of the issues raised by the NCS Petition.

64. The *Second NPRM* specifically asks commenters to address the NCS contention that, although the public safety rulemaking might ultimately mitigate the need for priority access, there could be no harm in having rules to address the current situation.

65. The Commission believes that the record developed thus far regarding the NCS Petition does not furnish an adequate basis at this time for making more comprehensive proposals on issues relating to priority access. Based on the comments the Commission receives with respect to various priority access issues discussed in the *Second NPRM* and other related issues, it will determine how to proceed further in establishing priority access rules.

2. Priority Levels

66. The *Second NPRM* finds that it is premature to propose specific levels for priority based on the NCS proposal, and seeks more comment on the issue of priority levels that should be included in priority access.

67. The Commission believes that in the context of issues and problems raised in this *Second NPRM*, there are significant questions regarding how a priority access structure can best be formulated and applied. In this respect, the *Second NPRM* seeks comment on how the Commission should examine and resolve this issue. Interested parties may comment, for example, on whether it is better to require a formal prioritization structure or whether a less formal, more flexible approach should evolve. In terms of what is the most effective means to allow and encourage the marketplace to respond to the kinds of demand for this service offering, the *Second NPRM* seeks comment regarding whether the Commission should prescribe rules for priority levels, rely on industry and governmental agency groups to establish uniformly applied priority levels, or leave to carriers the decision to offer individual or customized priority levels, consistent with a single set of principles and criteria, to the subscribers who demand priority access.

68. The *Second NPRM* also seeks further comment on what priority access structure or structures would be most suitable to the commercial wireless environment as it continues to develop. Commenters should address what scheme of priority levels would provide the optimal service to meet the needs of NSEP users and associated public safety personnel while not interfering with the needs of citizens in emergencies. The Commission also seeks comment on what role should be played by commercial wireless providers, manufacturers of the equipment required, regional planning committees, Public Safety Answering Point (PSAP) personnel, trade associations, standard setting bodies such as the Telecommunications Industry Association (TIA), and other potential participants in going forward in the development of priority access.

3. Spectrum Capacity of Commercial Carrier Networks

69. The *Second NPRM* addresses contentions that a key consideration supporting the need for priority access is the current lack of sufficient capacity in the commercial wireless network. With a shortage of capacity, the flooding of the network by a high incidence of attempted calls in emergency situations could lead to increased blocking of a portion of those calls. Consequently, factors that affect capacity are also likely to affect the ability and incentive of commercial wireless service providers to furnish priority access services, as well as the need of the public safety community to obtain and utilize such services.

70. The amount of spectrum available for dedicated public safety communications uses is being substantially increased by the availability of 24 megahertz of spectrum in the 746–806 MHz band. One question in examining the NCS proposal is whether this increased spectrum for public safety communications lessens the need for priority access arrangements regardless of the status of capacity on commercial wireless networks. Thus, the Commission seeks comment regarding the relationship between the availability of this new public safety spectrum and the need for priority access arrangements.

71. Finally, the *Second NPRM* seeks comment regarding whether other recent developments in the utilization of spectrum for public safety communications may diminish the need for priority access services.

4. Liability Under § 202 of Communications Act

Adequacy of Current Provisions

72. The *Second NPRM* tentatively finds that, to the extent the provision of priority access service is a voluntary offering made by a carrier and to the extent the Commission refrains from establishing detailed rules regarding various levels of priority access, it would be prudent for the Commission to provide specifically for limitations on liability under § 202. Thus, the *Second NPRM* proposes that it will be sufficient for a Commercial Mobile Radio Service (CMRS) provider, in responding to any complaint alleging an unreasonable discrimination or undue preference under § 202 of the Communications Act, to demonstrate that the service provided by the carrier is exclusively designed to enable authorized priority users, in emergency situations when spectrum used by the carrier is congested, to gain access to the next available channel on the service network of the carrier, before subscribers not engaged in public safety or NSEP functions. The Commission seeks comment on this proposal.

73. Further, the Commission tentatively concludes that the types of priority access services that will qualify for limitation of liability under § 202 should be limited to CMRS services providing priority access to NSEP personnel, including Federal Government entities, in addition to State and local governmental entities performing public safety functions. Thus, the Commission also tentatively concludes that priority access services provided by commercial carriers to corporate or other business or private subscribers on a private contractual

basis would not constitute the type of priority access service that would qualify for any limitation of liability under § 202. The Commission tentatively concludes that this approach is consistent with the objective to serve the national defense and to meet the needs of public safety entities to improve their ability to respond to emergencies and disasters, and seeks comment on these tentative conclusions.

74. The *Second NPRM* also seeks comment regarding types of actions and conduct by carriers, in providing priority access service to authorized priority users, that would qualify for limitation of liability under § 202 of the Communications Act, as proposed in the *Second NPRM*.

Exercise of Forbearance Authority

75. The *Second NPRM*, in addition to the liability proposals discussed above, additionally seeks comment on alternative measures that the Commission could employ to ensure providers of priority access that they are excluded from potential liability under § 202. Such measures might include, for example, the exercise of the Commission's forbearance authority under § 10 of the Communications Act.

76. § 10 gives the Commission authority to forbear from applying any provision of the Communications Act, including § 202 and notwithstanding § 332(c)(1)(A), to a telecommunications service or class of telecommunications services, provided that the Commission makes certain determinations established in the statute.

77. § 10(a) of the Communications Act sets forth three prerequisite determinations for the Commission to make. The statute requires that, before forbearing from applying any section of Title II, the Commission must find that each of the following conditions applies:

(1) Enforcement of such regulation or provision is not necessary in order to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

(2) Enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) Forbearance from applying such provision or regulation is consistent with the public interest.

78. The Commission seeks comment regarding whether it would be appropriate to forbear from applying § 202(a) of the Communications Act to the extent a carrier offers priority access service to NSEP personnel or to State or local governmental entities performing public safety functions. The Commission also asks for comment on the definition of consumers, what factors should be considered, what problems may arise in making those determinations, and examples of applying these tests in evaluating whether forbearance is appropriate.

79. Moreover, § 10(b) of the Communications Act requires weighing competitive effects in determining whether forbearance is consistent with the public interest under § 10(a)(3). With regard to this requirement of § 10(b), the *Second NPRM* asks what the potential competitive effects of commercially provided priority access service would be among CMRS providers, what the relevance of those competitive effects is regarding forbearance, and what the impact of those competitive effects would be on whether priority access is voluntary or mandatory.

5. Voluntary or Mandatory Provision of Priority Access

80. The *Second NPRM* seeks comment regarding whether CMRS providers should be permitted to provide priority access services on a voluntary basis. As a general matter, the Commission believes it is sound public policy to pursue market solutions to communications needs. The *Second NPRM* asks commenters to address whether, in this case, it is reasonable to expect that competitive forces will prompt CMRS providers to respond to market demand by developing and offering priority access services that meet the needs of Federal, State, and local government agencies.

81. In addition, whether CPAS is voluntary or mandatory may dictate the necessity for cost recovery or funding mechanisms. The *Second NPRM* seeks further comment concerning the means of funding that would result in the most effective implementation of priority access. The *Second NPRM* also invites comment on whether a flexible, non-prescriptive approach to funding would be advisable in order to allow carriers and government officials the latitude to develop cost recovery solutions that address particular needs for priority access.

6. Potential Limitations of Priority Access Service

82. NCS recognizes current technical constraints in the implementation of CPAS, because the standards for CPAS are still in the developmental stage. The *Second NPRM* seeks comment regarding the potential technical limitations summarized in this section. In particular, the *Second NPRM* asks commenters to address the extent of these potential limitations, efforts underway to reduce or overcome the limitations, and the implications of these potential problems for the viability and effectiveness of priority access systems.

Technical Standards; Operational Limitations

83. The NCS Petition suggests that priority access should be implemented using a PACA queuing scheme. The record indicates that the standard for the PACA feature, IS–53 A, is applicable only to cellular systems that use a Time Division Multiple Access (TDMA) air interface. Despite ongoing improvements, current analog phones still will not work with the CPAS scheme, because they have a five-second ''timeout'' feature.

84. In addition, implementation of the PACA standard requires the use of a switch-to-switch protocol, for intersystem interoperability (roaming). The Commission's understanding is that this protocol, IS–41 Rev. C, is final for cellular service and available for broadband PCS, and is currently implemented throughout a substantial part of the wireless industry. The IS–41 Rev. C protocol, however, is not compatible with all digital systems. Thus, the *Second NPRM* seeks comment regarding the progress of the development of priority access standards for digital cellular systems, and for wireless systems in general.

85. A further potential problem is that, although current protocols may provide intersystem capability for newly initiated calls, there appears to be no capability to provide for roaming between different systems while there is a pending request in the queue. The *Second NPRM* seeks comment regarding the significance of this technical issue. In particular, the Commission seeks comment regarding whether public safety users intend to use priority access while moving from place to place, or whether they contemplate that priority access will more likely be used at relatively confined emergency scenes.

86. Finally, the *Second NPRM* notes that CPAS, as proposed in the NCS Petition, does not have dispatch capability with immediate communications access. The Commission seeks comment regarding this issue, and regarding whether priority access will meet the needs of public safety personnel.

Equipment and Hardware Limitations

87. The record indicates that the PACA feature can be installed only in new phones, and thus is not ''backward compatible.'' Therefore, existing CMRS phones would not allow deployment of a priority access service.

88. Moreover, the CPAS feature is designed for implementation only by NSEP users who will have to acquire a commercial off-the-shelf or dual-mode handset built in accordance with the digital interface standards necessary to allow ''queuing'' operation. The record also indicates that for the CPAS proposal to work with analog handsets, cellular providers would have to implement the CPAS scheme differently than proposed, or implement two different CPAS schemes. The Second NPRM seeks comment regarding these priority access implementation issues.

Security Limitations

89. Consideration of the NCS CPAS proposal for NSEP users also entails recognition of the need for secure communications. Lack of security regarding analog-based cellular systems has been considered to be a problem, and digital communications may not be as secure as once thought, even with encryption codes. Additionally, there is comment that the proposed 3-digit code, ''*xx,'' to acquire access into the queue could be easily tampered with by computer ''hackers.'' The *Second NPRM* seeks comment regarding these security issues.

7. Other Issues

Types of Commercial Wireless Carriers Offering Priority Access

90. In view of the proposal for additional dedicated spectrum for public safety and increased capacity of existing and new CMRS providers, the *Second NPRM* tentatively concludes that all CMRS carriers, including cellular carriers, should be considered as potential providers of priority access service. The *Second NPRM* seeks comment on this tentative conclusion. The *Second NPRM* also seeks comment on whether priority access should be applicable to Mobile Satellite Systems (MSS) that are treated as CMRS under part 20 of the Commission's rules. Generally in this regard, the Commission also seeks comment on whether the applicability of priority access rules to CMRS carriers should parallel the same CMRS services as are subject to E911 requirements.

91. The *Second NPRM* further requests that commenters address the role of resellers of CMRS in offering priority access, particularly focussing on the issue of non-discrimination in resale. Finally, the *Second NPRM* seeks comment on whether priority access should be applied in the case of any newly reallocated spectrum that is made available to CMRS providers who may desire to provide priority access as part of their new service offerings.

Administration of Priority Access

92. In view of the scope of the Commission's proposal concerning priority access, the Commission finds it unnecessary at this time to address issues concerning aspects of administering priority access that were raised by the commenters. Those issues include the assignment of priority levels and safeguarding against potential abuses of priority access systems. Another issue the Commission is deferring is who should have or share responsibility in the administration of priority access, whether administrators of the regional planning committees and Public Safety Answering Points should have a role. While the Commission has decided to defer consideration of these issues, government entities, public safety agencies, and commercial providers of wireless service are encouraged to continue to work together to resolve them.

III. Protection of Television Services

93. In this section of the *Second NPRM*, the Commission discusses technical requirements for protecting incumbent channel 60–69 broadcast licensees and planned channel 60–69 digital television (DTV) allotments against interference. The Commission notes that its previous sharing criteria and analyses, which provided for the land mobile and television sharing of the 470–512 MHz band (TV channels 14–20), were based upon use of ''traditional'' private land mobile technology that typically employed a high powered base station to provide wide area coverage. The Commission anticipates that public safety users will employ such systems to a significant degree. At this juncture, however, it is not clear what types of services, technologies, or system architectures may be used for new types of public safety services. Accordingly, the Commission believes it is appropriate to consider in this proceeding a variety of approaches and criteria for protecting TV broadcasting from the services that will occupy channels 60–69.

Geographic Spacing Requirements Based on 55-Mile Reference Grade B Contour

94. The Commission indicates that it could protect co-channel analog TV stations on channels 60–69 during the DTV transition period by adopting geographical spacing requirements based on a 40 dB D/U signal ratio at the 55-mile Grade B contour of the protected TV station,[8] and could protect adjacent channel TV operations by adopting geographical spacing requirements based on a 0 dB D/U signal ratio.[9] The Commission states that if it were to adopt this approach, it would favor development of a table permitting operation at distances based on particular powers and antenna heights, similar to that in the current geographic separation standards in subpart L of part 90 of the Commission's rules. The Commission recognizes, however, that a table that permits operation at closer distances based on reduced power and antenna height may still be unnecessarily restrictive. The Commission therefore requests comment on whether adopting uniform geographic spacings based on the use of separation tables would be appropriate, and if so, what separation distances should be used in such tables.

95. The Commission also invites comment as to whether it should establish different separation distances to protect TV operations from interference from fixed and mobile operations in the 746–806 MHz band, and whether it should use different spacing requirements depending on the technology employed, location in the TV channel, or any other factor. Also, the Commission tentatively concludes that it would be appropriate to allow new licensees and TV licensees privately to negotiate shorter geographic separations than those the Commission has proposed.

96. Finally, the Commission recognizes that, in addition to addressing protection of analog TV stations, it must also address protection criteria for DTV stations operating on channels 60–69 during the transition period. It therefore seeks comment on the appropriate D/U ratios that should be applied for the protection of DTV stations.

Other Approaches

97. The Commission also requests comment on whether approaches other than the use of geographic separation tables based on the assumption of a 55-mile reference Grade B contour should be employed for the protection of TV operations. For example, since TV broadcast stations are authorized with

[8] *See* § 90.309 of the Commission's rules, 47 CFR 90.309.

[9] The adjacent channel separation requirement would also apply to protection of analog television operations on Channel 59.

effective radiated power (ERP) levels up to 5 megawatts, at an antenna HAAT of 610 meters (2,000 feet), it requests comment on whether the size of the reference contour should be increased accordingly. The Commission also seeks comment on whether the use of tables based on a particular reference Grade B contour could unnecessarily inhibit innovative or case-specific solutions to potential interference problems, and it therefore seeks comment on whether protection criteria should instead be based on requiring that a predicted D/U signal ratio be met based on a TV licensee's authorized facilities.

Other Issues

98. In the *DTV Proceeding*,[10] the Commission raised the possibility that, in negotiating among themselves for changes in allotments and assignments, TV licensees could include agreements for compensation. The Commission proposes to permit new licensees in this spectrum similarly to reach agreements with licensees of protected TV stations, including holders of construction permits, compensating them for converting to DTV transmission only before the end of the DTV transition period, accepting higher levels of interference than those allowed by the protection standards, or otherwise accommodating new licensees in these bands. The Commission believes that these measures would benefit the public by accelerating the transition to DTV and clearing the 746–806 MHz band for public safety services.

Administrative Matters

99. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before December 22, 1997, and reply comments on or before January 12, 1998. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, you must file an original plus five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 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), 1919 M Street, N.W., Washington, D.C. 20554. Copies of comments and reply comments are available through the Commission's duplicating contractor: International Transcription Services, Inc. (ITS, Inc.), 1231 20th Street, N.W., Washington, D.C. 20036 (202) 857–3800.

100. This *Second NPRM* is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a). *Initial Regulatory Flexibility Analysis*

101. As required by § 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this *Second NPRM*, but they must have a separate and distinct heading designating them as responses to the IRFA.

Initial Regulatory Flexibility Act Statement

Initial Regulatory Flexibility Analysis

102. As required by the Regulatory Flexibility Act (RFA),[11] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in this *Second Notice of Proposed Rulemaking* (*Second NPRM*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Second NPRM* provided above in paragraph 248 of the *Second NPRM*. The Commission will send a copy of the *Second NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[12] In addition, the *Second NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.[13]

A. Need for, and Objectives of, the Proposed Action

103. This rulemaking proceeding was initiated to propose service rules for 24 megahertz of spectrum in the 746–806 MHz band. The spectrum, which is currently used by television (TV) Channels 60–69, is being made available to meet various public safety communications needs.

104. This rulemaking proceeding was also initiated to seek comment regarding whether certain commercial mobile radio service (CMRS) providers should be authorized to offer priority access service on a voluntary basis for purposes of enhancing national security and emergency preparedness (NSEP) functions. Priority access service will enable NSEP personnel and other public safety users to receive priority to available channels during emergencies. The rulemaking proceeding is also initiated to secure comment on other issues concerning such priority access.

105. The Commission endeavors to (1) provide for modern and innovative communications at high levels of efficiency and effectiveness required by the Nation's public safety entities; (2) explore the possibility of certain commercial services being used for public safety applications; and (3) protect TV stations on Channels 60–69 during the transition to digital television (DTV).

B. Legal Basis

106. The proposed action is authorized under §§ 1, 4(i), 10, 201, 202, 303(b), 303(g), 303(j), 303(r), and 403 of the Communications Act, 47 U.S.C. 151, 154(i), 160, 201, 202, 303(b), 303(g), 303(j), 303(r), 403.

C. Reporting, Recordkeeping, and Other Compliance Requirements

107. The Commission proposes the filing of regional plans drafted by planning committees made up of representatives of the public safety community. Applicants for public safety licenses may be required to make submissions to the planning committees justifying their requests for spectrum, and will be required to submit applications for spectrum licenses on Form 601. The proposals under consideration in the *Second NPRM* include the possibility of imposing recordkeeping and reporting requirements on individuals or organizations involved in establishing a national planning process to develop a nationwide interoperability plan, on individuals or organizations that may assist us in developing technical standards, and on small government

[10] Advanced Television Systems and their Impact upon the Existing Television Broadcast Service, MM Docket No. 87–268 (*DTV Proceeding*), *Sixth Report and Order*, 62 FR 26684 (May 14, 1997) (*DTV Sixth Report and Order*), *recon. pending.*

[11] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Contract with America Advancement Act of 1996, Pub. L. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[12] *See* 5 U.S.C. 603(a).

[13] *See id.*

agencies who may request extended implementation. The Commission requests comment on how these requirements can be modified to reduce the burden on small entities and still meet the objectives of this proceeding.

108. With respect to priority access service, the proposals of the Commission in this *Second NPRM* do not entail reporting, recordkeeping, or other compliance requirements. If, however, there are matters pertaining to such requirements that relate to those issues on which the Commission also seeks comment in this *Second NPRM*, the Commission invites commenters to address how those matters may affect small entities who may be potential providers of priority access service.

D. Description and Number of Small Entities Involved

109. This *Second NPRM* will affect TV station licenses on Channels 60–69, public safety entities, and commercial mobile radio service (CMRS) providers. Commenters are requested to provide information regarding how many entities (overall) and how many small entities would be affected by the proposed rules in the *Second NPRM*.

(a) Television Stations

(1) Television Station Estimates Based on Census Data

110. The *Second NPRM* will affect full service TV stations, TV translator facilities, and low power TV (LPTV) stations. The Small Business Administration defines a TV broadcasting station that has no more than $10.5 million in annual receipts as a small business.[14] TV broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by TV to the public, except cable and other pay TV services.[15] Included in this industry are commercial, religious, educational, and other TV stations.[16] Also included are establishments primarily engaged in TV broadcasting and which produce taped TV program materials.[17] Separate establishments primarily engaged in producing taped TV program materials are classified under another SIC number.[18]

111. There were 1,509 TV stations operating in the Nation in 1992 [19] That number has remained fairly constant as indicated by the approximately 1,551 operating TV broadcasting stations in the Nation as of February 28, 1997.[20] For 1992[21] the number of TV stations that produced less than $10.0 million in revenue was 1,155 establishments, or approximately 77 percent of the 1,509 establishments.[22] There are currently 95 full service analog TV stations, either operating or with approved construction permits on channels 60–69.[23] In the *DTV Proceeding*, the Commission adopted a DTV Table which provides only 15 allotments for DTV stations on channels 60–69 in the continental United States.[24] There are seven DTV allotments in channels 60–69 outside the continental United States.[25] Thus, the rules will affect approximately 117 TV stations; approximately 90 of those stations may be considered small businesses.[26] These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-TV affiliated companies. The Commission recognizes that the rules may also impact minority-owned and women-owned stations, some of which may be small entities. In 1995, minorities owned and controlled 37 (3.0 percent) of 1,221 commercial TV stations in the United States.[27] According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9 percent) of 1,342 commercial and non-commercial TV stations in the United States.[28]

112. There are currently 4,977 TV translator stations and 1,952 LPTV stations.[29] Approximately 1,309 low power TV and TV translator stations are on channels 60–69 [30] which could be affected by policies in this proceeding. The Commission does not collect financial information of any broadcast facility and the Department of Commerce does not collect financial information on these broadcast facilities. The Commission will assume for present purposes, however, that most of these broadcast facilities, including LPTV stations, could be classified as small businesses. As indicated earlier, approximately 77 percent of TV stations are designated under this analysis as potentially small businesses. Given this, LPTV and TV translator stations would not likely have revenues that exceed the SBA maximum to be designated as small businesses.

(2) Alternative Classification of Small TV Stations

113. An alternative way to classify small TV stations is by the number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment Opportunity (EEO) rule for broadcasting.[31] Thus, radio or TV

[14] 13 CFR 121.201, Standard Industrial Code (SIC) 4833 (1996).

[15] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92–S–1, App. A–9 (1995) (ESA 1992 Census).

[16] *Id. See* Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes TV Broadcasting Station (SIC Code 4833) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

[17] ESA 1992 Census at App. A–9.

[18] *Id.*; SIC 7812 (Motion Picture and Video Tape Production); SIC 7922 (Theatrical Producers and Miscellaneous Theatrical Services (producers of live radio and TV programs).

[19] *Allocation NPRM*, at App. C; ESA 1992 Census at App. A–9.

[20] *Allocation NPRM*, at App. C.

[21] A census for communications establishments is performed every five years ending with a ''2'' or ''7.'' *See* ESA 1992 Census at III.

[22] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[23] *See Allocation NPRM* at para. 2.

[24] *See DTV Proceeding, Sixth Report and Order*, App.B.

[25] *Allocation NPRM* at para. 2 n.5.

[26] The Commission uses the 77 percent figure of TV stations operating at less than $10 million for 1992 and apply it to the 117 TV stations to arrive at 90 stations categorized as small businesses.

[27] *Minority Commercial Broadcast Ownership in the United States*, U.S. Dep't of Commerce, National Telecommunications and Information Administration, The Minority Telecommunications Development Program (''MTDP'') (April 1996). MTDP considers minority ownership as ownership of more than 50 percent of a broadcast corporation's stock, voting control in a broadcast partnership, or ownership of a broadcasting property as an individual proprietor. *Id.* The minority groups included in this report are Black, Hispanic, Asian, and Native American.

[28] *See* Comments of American Women in Radio and TV, Inc. in MM Docket No. 94–149 and MM Docket No. 91–140, at 4 n.4 (filed May 17, 1995), *citing* 1987 Economic Censuses, *Women-Owned Business*, WB87–1, U.S. Dep't of Commerce, Bureau of the Census, August 1990 (based on 1987 Census). After the 1987 Census report, the Census Bureau did not provide data by particular communications services (four-digit SIC Code), but rather by the general two-digit SIC Code for communications (#48). Consequently, since 1987, the Census Bureau has not updated data on ownership of broadcast facilities by women, nor does the Commission collect such data. However, the Commission sought comment on whether the Annual Ownership Report Form 323 should be amended to include information on the gender and race of broadcast license owners. Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities, *Notice of Proposed Rulemaking*, 60 FR 06068 (February 1, 1995).

[29] *Allocation NPRM*, at App. C.

[30] *Allocation NPRM* at para. 2 n.3.

[31] The Commission's definition of a small broadcast station for purposes of applying its EEO rule was adopted prior to the requirement of approval by the Small Business Administration pursuant to section 3(a) of the Small Business Act,

Continued

stations with fewer than five full-time employees are exempted from certain EEO reporting and recordkeeping requirements.[32] The Commission estimates that the total number of commercial TV stations with four or fewer employees is 132 and that the total number of non-commercial educational TV stations with four or fewer employees is 136.[33] The Commission does not know how many of these stations operate on Channels 60–69.

(b) Public Safety Entities

114. The public safety entities that will be affected by this *Second NPRM* are governmental entities. The definition of a small governmental entity is one with a population of fewer than 50,000.[34] There are approximately 85,006 governmental entities in the Nation.[35] This number includes such entities as States, counties, cities, utility districts, and school districts. There are no figures available on what portion of this number have populations of fewer than 50,000. However, this number includes 38,978 counties, cities, and towns, and, of those, 37,566, or 96 percent, have populations of fewer than 50,000.[36] The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the approximately 85,006 governmental entities, the Commission estimates that 96 percent, or 81,600, are small entities that may be affected by our rules. The Commission solicits comment on this estimate.

(c) Entities With Regard to Priority Access Service

115. Concerning the provision of priority access service, commenters are requested to provide information regarding how many providers of CMRS, existing and potential, will be considered small businesses. ''Small business'' is defined as having the same meaning as the term ''small business concern'' under the Small Business Act.[37] A small business concern is one which (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by SBA. The Commission seeks comment as to whether this definition is appropriate in this context. Additionally, the Commission requests each commenter to identify whether it is a small business under this definition. If the commenter is a subsidiary of another entity, this information should be provided for both the subsidiary and the parent corporation or entity.

116. The Commission has not yet developed a definition of small entities which respect to the provision of a CMRS service offering of priority access. Therefore, for entities not falling within other established SBA categories, the applicable definition of small entity is the definition under the SBA applicable to the ''Communications Services, Not Elsewhere Classified'' category. This definition provides that a small entity is one with $11.0 million or less in annual receipts.[38] The Census Bureau estimates indicate that of the 848 firms in the ''Communications Services, Not Elsewhere Classified'' category, 775 are small businesses. While the Commission anticipates some CMRS providers would elect to provide priority access service, it is not possible to predict either how many, or what percentage, of these providers would be small entities.

(1) Cellular Radio Telephone Service

117. The Commission has not developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[39] The size data provided by the SBA does not enable the Commission to make a meaningful estimate of the number of cellular providers which are small entities because it combines all radiotelephone companies with 500 or more employees.[40] The Commission therefore used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. That census shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[41] Therefore, even if all 12 of these large firms were cellular telephone companies, all of the remainder were small businesses under the SBA's definition. The Commission assumes that, for purposes of its evaluations and conclusions in this IRFA, all of the current cellular licensees are small entities, as that term is defined by the SBA. Although there are 1,758 cellular licenses, the Commission does not know the number of cellular licensees, since a cellular licensee may own several licenses.

(2) Broadband Personal Communications Service

118. The broadband PCS spectrum is divided into six frequency blocks designated A through F. Pursuant to § 24.720(b) of the Commission's rules,[42] the Commission has defined ''small entity'' for Block C and Block F licensees as firms that had average gross revenues of less than $40 million in the three previous calendar years. This regulation defining ''small entity'' in the context of broadband PCS auctions has been approved by the SBA.[43]

119. The Commission has auctioned broadband PCS licenses in all of its spectrum blocks A through F. The Commission does not have sufficient data to determine how many small businesses under the Commission's definition bid successfully for licenses in Blocks A and B. As of now, there are

15 U.S.C. 632(a). However, this definition was adopted after public notice and an opportunity for comment. *See* Petition for Rulemaking To Require Broadcast Licensees To Show Non-Discrimination in Their Employment Practices, Docket No. 18244, RM–1144, *Report and Order,* 35 FR 8925 (June 6, 1970).

[32] *See, e.g.,* 47 CFR 73.3612 (requirement to file annual employment reports on Form 395 applies to licensees with five or more full-time employees); Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395, Docket No. 21474, *First Report and Order,* 44 FR 6722 (February 2, 1979). The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on small stations while maintaining the effectiveness of our broadcast EEO enforcement. *See* Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines, MM Docket No. 96–16, *Order and Notice of Proposed Rulemaking,* 61 FR 9964 (March 12, 1996). One option under consideration is whether to define a small station for purposes of affording such relief as one with ten or fewer full-time employees.

[33] The Commission bases this estimate on a compilation of 1995 Broadcast Station Annual Employment Reports (FCC Form 395–B), performed by staff of the Equal Opportunity Employment Branch, Mass Media Bureau, FCC.

[34] 5 U.S.C. 601(5).

[35] 1992 Census of Governments, U.S. Bureau of the Census, U.S. Department of Commerce.

[36] *Id.*

[37] 15 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632).

[38] 13 CFR 120.21, SIC Code 4899.

[39] 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812.

[40] U.S. Small Business Administration 1992 Economic Census Employment Report, Bureau of the Census, U.S. Department of Commerce, SIC Code 4812 (radiotelephone communications industry data adopted by the SBA Office of Advocacy).

[41] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms: 1992, SIC Code 4812 (issued May 1995).

[42] 47 CFR 24.720(b).

[43] *See* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *Fifth Report and Order,* 59 FR 37566 (July 22, 1994).

90 non-defaulting winning bidders that qualify as small entities in the Block C auction and 93 non-defaulting winning bidders that qualify as small entities in the D, E, and F Block auctions. Based on this information, the Commission concludes that the number of broadband PCS licensees that would be affected by the proposals in this *Second NPRM* includes the 183 non-defaulting winning bidders that qualify as small entities in the C, D, E, and F Block broadband PCS auctions.

(3) Specialized Mobile Radio

120. Pursuant to § 90.814(b)(1) of the Commission's rules,[44] the Commission has defined ''small entity'' for geographic area 800 MHz and 900 MHz SMR licenses as firms that had average gross revenues of less than $15 million in the three previous calendar years. This regulation defining ''small entity'' in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.[45]

121. The proposals set forth in the *Second NPRM* may apply to SMR providers in the 800 MHz and 900 MHz bands. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service, nor how many of these providers have annual revenues of less than $15 million.

122. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities under the Commission's definition in the 900 MHz auction. Based on this information, the Commission concludes that the number of geographic area SMR licensees affected by the proposals set forth in this *Second NPRM* includes these 60 small entities.

123. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis to estimate, moreover, how many small entities within the SBA's definition will win these licenses. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz SMR licensees can be made, the Commission assumes, for purposes of our evaluations and conclusions in this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

(4) 220 MHz Service

124. Licensees for 220 MHz services that meet the definition of CMRS may be providers of priority access service if there is a demand for these services during emergencies and disasters. The Commission has classified providers of 220 MHz service into Phase I and Phase II licensees. There are approximately 2,800 non-nationwide Phase I licensees and 4 nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has estimated that there are approximately 900 potential Phase II licensees.

125. At this time, however, there is no basis upon which to estimate definitively the number of 220 MHz service licensees, either current or potential, that are small businesses. To estimate the number of such entities that are small businesses, the Commission applies the definition of a small entity under SBA rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[46] However, the size data provided by the SBA do not allow the Commission to make a meaningful estimate of the number of 220 MHz providers that are small entities because they combine all radiotelephone companies with 500 or more employees.[47] The Commission therefore uses the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. Data from the Bureau of the Census' 1992 study indicate that only 12 out of a total 1,178 radiotelephone firms which operated during 1992 had 1,000 or more employees—and these may or may not be small entities, depending on whether they employed more or less than 1,500 employees.[48] But 1,166 radiotelephone firms had fewer than 1,000 employees and therefore, under the SBA definition, are small entities. However, the Commission does not know how many of these 1,166 firms are likely to be involved in the 220 MHz service.

126. To assist the Commission in this analysis, commenters are requested to provide information regarding how many total 220 MHz service entities, existing and potential, may offer a priority access service. In particular, the Commission seeks estimates of how many 220 MHz service entities, existing or potential, will be considered small businesses.

(5) Mobile Satellite Services (MSS)

127. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[49] According to the Census Bureau, there were a total of 848 communications services, NEC in operation in 1992, and a total of 775 had annual receipts of less than $9,999 million.[50]

128. Mobile Satellite Services or Mobile Satellite Earth Stations are intended to be used while in motion or during halts at unspecified points. These stations operate as part of a network that includes a fixed hub or stations. The stations that are capable of transmitting while a platform is moving are included under § 20.7(c) of the Commission's rules[51] as mobile services within the meaning of §§ 3(27) and 332 of the Communications Act.[52] Those MSS services are treated as CMRS if they connect to the Public Switched Network (PSN) and also satisfy other criteria of § 332. Facilities provided

[44] 47 CFR 90.814(b)(1).

[45] *See* Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896–901 MHz and the 935–940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89–553, *Second Order on Reconsideration and Seventh Report and Order*, 60 FR 48913 (September 21, 1995); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93–144, Implementation of Sections 3(n) and 322 of the Communications Act—Regulatory Treatment of Mobile Services, GN Docket No. 93–252, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking*, 61 FR 6212 (February 16, 1996).

[46] 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812.

[47] 1992 Economic Census Employment Report, Bureau of the Census, U.S. Department of Commerce, Table 3, SIC Code 4812 (industry data adapted by the Office of Advocacy for the U.S. Small Business Administration).

[48] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S–1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC Code 4812 (issued May 1995).

[49] 13 CFR 120.121, SIC Code 4899.

[50] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC 4899 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[51] 47 CFR 20.7(c).

[52] 47 U.S.C. 153(27), 332.

through a transportable platform that cannot move when the communications service is offered are excluded from § 20.7(c).[53]

129. The MSS networks may provide a variety of land, maritime and aeronautical voice and data services. There are eight mobile satellite licensees. At this time, the Commission is unable to make a precise estimate of the number of small businesses that are mobile satellite earth station licensees and could be considered CMRS providers of priority access service.

(5) Other Commercial Mobile Radio Services

130. Other CMRS services may potentially be providers of priority access service if there is a demand for the transmission of voice, data, or text messages during emergencies and disasters.

a. Paging and Radiotelephone Service, and Paging Operations

131. The Commission has proposed a two-tier definition of small businesses in the context of auctioning licenses in the paging service. Under the proposal, a small business will be defined as either (1) a entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million; or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Since the SBA has not yet approved this definition for paging companies, we utilize the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons.[54]

132. The Commission estimates that the total current number of paging carriers is approximately 600. In addition, the Commission anticipates that a total of 16,630 non-nationwide geographic area licenses will be granted or auctioned. The geographic area licenses will consist of 2,550 Major Trading Area (MTA) licenses and 14,080 Economic Area (EA) licenses. In addition to the 47 Rand McNally MTAs, the Commission is licensing Alaska as a separate MTA and adding three MTAs for the U.S. territories, for a total of 51 MTAs. No auctions of paging licenses have been held yet, and there is no basis to determine the number of licenses that will be awarded to small entities. Given the fact that nearly all radiotelephone companies have fewer than 1,000 employees, and that no reliable estimate of the number of paging licensees can be made, the Commission assumes, for purposes of this IRFA, that all of the current licensees and the 16,630 geographic area paging licensees either are or will consist of small entities, as that term is defined by the SBA.

133. Although the *Second NPRM* requests comment concerning all CMRS providers, the number of paging licensees that elect to provide some form of priority access service may depend on whether there is a market for wireless data or message text transmissions in emergency and disaster environments. The number may also depend on whether two-way paging providers, rather than providers of traditionally one-way service, are eventually included under any priority access rules.

b. Narrowband PCS

134. The Commission has auctioned nationwide and regional licenses for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition. At present, there have been no auctions held for the MTA and Basic Trading Area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licensees and 2,958 BTA licensees will be awarded in the auctions. Those auctions, however, have not yet been scheduled. Given that nearly all radiotelephone companies have fewer than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, the Commission assumes, that all of the licensees will be awarded to small entities, as that term is defined by the SBA.[55]

c. Air-Ground Radiotelephone Service

135. The Commission has not adopted a definition of small business specific to the Air-Ground Radiotelephone Service, which is defined in § 22.99 of the Commission's rules.[56] Accordingly, the Commission will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[57] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small under the SBA definition.

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

136. The Commission has reduced burdens wherever possible. To minimize any negative impact, however, we propose certain incentives for small entities, which will redound to their benefit. While public safety entities will be required to submit regional plans (to enable the Commission to accommodate regional needs and preferences), they will be able to pool their resources in developing such plans. The regulatory burdens the Commission has retained, such as filing applications on appropriate forms, are necessary in order to ensure that the public receives the benefits of innovative new services in a prompt and efficient manner. The Commission will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing significant economic impact on small entities. The Commission seeks comment on significant alternatives commenters believe should be adopted.

137. With respect to priority access service, the Commission is seeking comment regarding whether the provision of priority access service by wireless carriers should be on a voluntary basis. Thus, small entities at their option can elect to provide the service should they determine that there is a competitive market opportunity to do so. In addition, the Commission is proposing that in providing priority access service, providers of certain CMRS services are to be insulated from liability under § 202 of the Communications Act.[58] The Commission also seeks comment on alternatives regarding the priority access issues raised in the *Second NPRM.*

F. Federal Rules Which Overlap, Duplicate or Conflict With These Rules

138. None.Insert Reg Flex Here.

Ordering Clauses

139. Accordingly, *it is ordered,* pursuant to §§ 1, 4(i), 10, 201, 202, 303(b), 303(g), 303(j), 303(r), and 403 of the Communications Act, 47 U.S.C. 151, 154(i), 160, 201, 202, 303(b), 303(g), 303(j), 303(r), 403, that notice is hereby given of the proposed regulatory changes described in this *Second Notice of Proposed Rulemaking,* and that comment is sought on these proposals.

140. *It is further ordered* that the Secretary shall send a copy of this *Second Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief

[53] 47 CFR 20.7(c).

[54] 13 CFR 121.201, SIC 4812.

[55] *See id.*

[56] 47 CFR 22.99.

[57] 13 CFR 121.201, SIC 4812.

[58] 47 U.S.C. 202.

Counsel for Advocacy of the Small Business Administration in accordance with § 603(a) of the Regulatory Flexibility Act.[59]

141. *It is further ordered* that the Petition for Rulemaking filed on October 19, 1995, on behalf of the National Communications System is granted in part to the extent indicated herein.

List of Subjects

47 CFR Part 20

Communications common carriers.

47 CFR Part 90

Communications equipment, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–29515 Filed 11–6–97; 8:45 am]

BILLING CODE 6712–01–P

[59] Pub. L. 96–354, 94 Stat. 1165, 5 U.S.C. 601–612 (1980).