

Kings Highway, Dover, DE 19901, Phone number: 302-739-3689.

**FOR FURTHER INFORMATION CONTACT:**

Lillie Ellerbe at the above address and phone number (215) 814-5454.

**SUPPLEMENTARY INFORMATION:** For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: June 19, 2000.

**Bradley M. Campbell,**

*Regional Administrator, Region III.*

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 27**

[WT Docket No. 99-168, CS Docket No. 98-120, FCC 00-224]

**Service Rules for the 746 Through 764 and 776 Through 794 MHz Bands, Carriage of the Transmission of Digital Television Broadcast Stations**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document solicits comment on various aspects of the spectrum clearance process for the 746-764 and 776-794 MHz (700 MHz) band. First, the document seeks comment on cost-sharing rules. Second, the document requests comment on the Commission's review of possible three-way voluntary relocation agreements to expedite clearing of the 700 MHz band. Third, the document invites comment on "secondary auctions." Finally, the document invites comment whether incumbent broadcasters and new 700 MHz licensees should be permitted to share spectrum, and on whether the standards the Commission adopts for the channel 59-69 band should apply to incumbents on channels 58 and lower. The action is intended as a method of creating a comprehensive record, representing as many varying viewpoints as possible, upon which to base decisions in this proceeding.

**DATES:** Submit comments on or before August 16, 2000; submit reply comments on or before September 15, 2000.

**ADDRESSES:** Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Joel Rabinovitz, 202-418-0689.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Further Notice of Proposed Rule Making (FNPRM) portion of the Commission's Memorandum Opinion and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-168 and CS Docket No. 98-120, FCC 00-224, adopted June 22, 2000, and released June 30, 2000. The Memorandum Opinion and Order (MO&O) portion of the decision is summarized elsewhere in this edition of the **Federal Register**. The complete text of the MO&O/FNPRM is available on the Commission's Internet site at [www.fcc.gov](http://www.fcc.gov). It is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW, Washington, DC, and may be purchased from the Commission's copy contractor, International Transcription Services, Inc., CY-B400, 445 12th Street SW, Washington, DC. Comments may be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>, or by e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov).

**Synopsis of the FNPRM**

1. The Commission, through the FNPRM, solicits comment on four aspects of the spectrum clearance process initiated in the First Report and Order (First R&O) in this proceeding (65 FR 3139, January 20, 2000). The First R&O adopted a band plan and associated service rules for the assignment of licenses in 30 megahertz of the 700 MHz band (747-762 and 777-792 MHz). In the First R&O, the Commission concluded that it would consider specific regulatory requests needed to implement voluntary agreements reached between incumbent licensees and new licensees that would compensate incumbents for clearing the band or otherwise accommodating the new licensees. In the FNPRM, the Commission seeks comment on other potential mechanisms to further the goals of transitioning the 700 MHz band to wireless services and accelerating the transition to digital television.

2. The FNPRM first invites comment on whether to adopt cost-sharing rules that would spread the cost of clearing the 700 MHz band for use by the new licensees among 700 MHz licensees that benefit from the process. Specifically, the Commission invites comment on the following issues: (1) Would cost-sharing rules would expedite clearing the 700 MHz band for use by the new licensees and the transition to DTV by incumbent broadcasters, or should, as the Commission tentatively concludes, cost-sharing arrangements should be left to negotiations among successful auction

bidders? and (2) If the Commission adopts cost-sharing rules, how should the Commission calculate the costs that benefiting 700 MHz licensees would be required to pay. The Commission also tentatively concludes that if it were to adopt cost-sharing rules, licensees of the public safety spectrum would not be required to pay a share of the clearing costs, and invites comment on this tentative conclusion.

3. The FNPRM solicits comment on whether there are mechanisms other than cost-sharing rules that the Commission could implement to facilitate voluntary band clearing. In particular, the Commission seeks comment on whether there are market-oriented mechanisms that might be more efficient to facilitate voluntary band clearing than the negotiation of individual band clear agreements by each 700 MHz licensee and each incumbent.

4. One alternative on which the FNPRM solicits comment is three-way voluntary transition agreements that would provide for TV incumbents on television channels 59-69 to relocate to lower band TV channels that, in turn would be voluntarily cleared by the lower band TV incumbents. The Commission seeks comment on whether and under what conditions such agreements should be approved. The Commission, in the FNPRM seeks comment on how the Commission should evaluate possible loss of service in reviewing specific requests for voluntary relocations, and on whether the Commission should consider steps other than the review and approval or disapproval of voluntary agreements.

5. The FNPRM also invites comment on the use of "secondary auctions" in conjunction with this or future auctions in the band as another tool for facilitating band clearing agreements. In a secondary auction, competitive bidding would be used to determine the price that would be paid by 700 MHz licensees to TV incumbents who agree to clear their channels in the 700 MHz band. The FNPRM seeks comment on this alternative, on whether such an auction should be conducted on a private basis, whether the Commission has legal authority to conduct a secondary auction, and, if a secondary auction were to be conducted by the Commission, how it should be organized.

6. Finally, the Commission, through the FNPRM solicits comment on whether additional proposals should be considered to accelerate the digital television transition. For example, should the Commission allow incumbent broadcasters on television

channels 59–69 and 700 MHz new service providers to share spectrum in time and/or bits? Lastly, the FNPRM seeks comment on whether any of the enhanced band clearing proposals discussed in the FNPRM for incumbents on channels 59–69 should also apply to incumbents on channels 58 and lower.

### Initial Regulatory Flexibility Analysis

7. This is a synopsis of the Initial Regulatory Flexibility Act Statement in the Further Notice of Proposed Rulemaking (FNPRM). The full text of Initial Regulatory Flexibility Act Statement may be found in Appendix C of the full Memorandum Opinion and Order and NPRM.

8. As required by the Regulatory Flexibility Act (RFA) (see 5 U.S.C. 603). The RFA has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) the Commission has prepared the Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by certain policies and rules proposed in the FNPRM. Pursuant to the Consolidated Appropriations Act, 2000, the requirements of the RFA do not apply to the rules and competitive bidding procedures governing assignments to commercial entities of frequencies in the 746 MHz to 806 MHz band. Accordingly, the IRFA does not include an analysis of the possible economic impacts that might result from such rules and procedures. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM. The Commission will send a copy of the Memorandum Opinion and Order and FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

#### A. Need for and Objectives of the Proposed Rules

9. The Congressional plan set forth in Sections 336 and 337 of the Act and in the 1997 Budget Act is to transition the 700 MHz band from its current use for broadcast services to commercial use and public safety services as expeditiously as possible. In the FNPRM, the Commission moves towards this goal by seeking comment on whether mechanisms other than those adopted in the First R&O might further facilitate the voluntary clearing of TV incumbents from the band. Further discussion of the need for and objectives of the proposed rules can be

found at paragraph 2 of the full text of the IRFA.

#### B. Legal Basis

10. This action is authorized under Sections 1, 4(i), 7, 10, 301, 303, 307, 308, 309(j), 309(k), 316, 331, 332, 336, 337 and 614 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 160, 301, 303, 307, 308, 309(j), 309(k), 316, 331, 332, 336, 337, and 534, and the Consolidated Appropriations Act, 2000, Public Law 106–113, 113 Stat. 1501, Section 213.

#### C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

11. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities. Under the Small Business Act, a “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). According to SBA reporting data, there were approximately 4.44 million small business firms nationwide in 1992. A small organization is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Nationwide, as of 1992, there were approximately 275,801 small organizations. “Small governmental jurisdiction” generally means “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.” As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

12. The policies and rules proposed in the FNPRM discussed in the IRFA would affect all small entities that seek

to acquire licenses in wireless services in the 698–746 MHz band (“lower 700 MHz band”) currently used for television broadcasts on Channels 52–58, or that are incumbent television broadcasters.

13. The Commission has not yet developed a definition of small entities applicable to the lower 700 MHz band. Therefore, the applicable definition is the one under the Small Business Administration rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is one with \$11.0 million or less in annual receipts. However, no channelization plan or licensing plan has been proposed or adopted for the lower 700 MHz band. Therefore, the number of small entities that may apply to acquire licenses in the lower 700 MHz band is unknown.

14. The SBA defines a television broadcasting station that is independently owned and operated, is not dominant in its field of operation, and has no more than \$10.5 million in annual receipts as a small business. Television broadcasting stations consist of 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 are establishments primarily engaged in television broadcasting and which produce taped television program materials. There were 1,509 television stations operating in the nation in 1992. In 1992, there were 1,155 television station establishments that produced less than \$10.0 million in revenue (76.5 percent). As of May 31, 1998, official Commission records indicate that 1,579 full power television stations, 2089 low power television stations, and 4924 television translator stations were licensed. We conclude that a similarly high percentage of current television broadcasting licensees are small entities (76.5 percent).

#### D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

15. At this time, the Commission does not anticipate the imposition of new reporting, recordkeeping, or other compliance requirements as a result of the FNPRM. If the Commission later finds a need to impose new reporting, recordkeeping or other compliance requirements as a result of deciding to adopt any of the proposals contained in the FNPRM, a period of public and agency comment will be established at that time.

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

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

17. The Commission seeks comment on the economic impact that the proposals described in the FNPRM might have on small entities. With the exception of the cost-sharing rules, the proposals on which the FNPRM seeks comment are based on the voluntary participation of both new 700 MHz licensees and incumbent television broadcasters. Cost-sharing rules, if adopted, would require those new 700 MHz licensees that benefit from a clearing agreement with a TV incumbent to share the costs of that agreement. Insofar as small entities could not afford to enter into clearing agreements without the costs being shared by other 700 MHz licensees, the cost-sharing rules would provide a positive economic benefit to small entities. To the extent that other licensees would enter into clearing agreements without the costs being shared by small entities, thereby giving the small entities a "free ride," cost-sharing rules would produce a significant economic impact on small entities. Finally, to the extent that small entities would prefer not to enter into clearing agreements but to wait until the incumbent TV licensee was required to clear the band by statute, and cost-sharing rules would require small entities to share the costs of clearing agreements, cost-sharing rules would also produce a significant economic impact on small entities. As a general matter, cost-sharing rules must apply to all licensees in order for them to operate as intended. Moreover, without a channelization plan for the lower 700 MHz band, it is not possible at this time to determine whether the Commission could exempt some or all small entities from any cost-sharing rules adopted, or otherwise minimize the impact on small entities. One significant alternative the

Commission is considering is not to adopt any cost-sharing rules.

*F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

18. None.

**Ordering Clauses**

19. Notice is hereby given of the proposed regulations described in the FNPRM, and that comment is sought on these proposals.

20. The Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of the MO&O and FNPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act of 1980, Public Law 96-354, 94 Stat. 1164, 5 U.S.C. 601-612 (1980).

Federal Communications Commission.

**Shirley Suggs,**

*Chief, Publications Group.*

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018-AG27**

**Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Morro Shoulderband Snail**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat for the Morro shoulderband snail (*Helminthoglypta walkeriana*) pursuant to the Endangered Species Act of 1973, as amended (Act). A total of approximately 1,039 hectares (2,566 acres) fall within the boundaries of the proposed critical habitat designation. Proposed critical habitat is located in San Luis Obispo County, California. If this proposed rule is made final, section 7 of the Act would prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency.

Section 4 of the Act requires us to consider economic and other relevant impacts of specifying any particular area

as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation and our approaches for handling habitat conservation plans (HCPs). We may revise this proposal to incorporate or address new information received during the comment period.

**DATES:** We will accept comments from all interested parties until September 11, 2000. Public hearing requests must be received by August 28, 2000.

**ADDRESSES:** If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods.

1. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California, 93003.

2. You may hand-deliver written comments to our Ventura Office, at the address given above.

3. You may send comments by electronic mail (e-mail) to FW1vees\_MorrosnailCH@r1.fws.gov. For directions on how to submit electronic filing of comments, see **Public Comments Solicited** section.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Ventura Office.

**FOR FURTHER INFORMATION CONTACT:** Field Supervisor, Ventura Fish and Wildlife Office, at the above address (telephone 805/644-1766; facsimile 805/644-3958).

**SUPPLEMENTARY INFORMATION:**

**Background**

The Morro shoulderband snail was first described as *Helix walkeriana* by Hemphill (1911) based on collections made "near Morro, California." He also described a subspecies, based on sculptural features of the shell, *Helix walkeriana*, *Helix* var. *morroensis*, that was collected "near San Luis Obispo City" (Roth 1985). The Morro shoulderband snail is also commonly known as the banded dune snail and belongs to the Class Gastropoda and Family Helminthoglyptidae.

The shell of the Morro shoulderband snail is slightly translucent (clear) and has 5-6 whorls. Its dimensions are 18 to 29 millimeters (mm) (0.7 to 1.1 inches (in.)) in diameter and 14 to 25 mm (0.6 to 1.0 in.) in height. The Morro shoulderband snail can be distinguished from the Big Sur shoulderband snail (*Helminthoglypta umbilicata*), another