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#### List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and record keeping requirements, Small Businesses.

For the reasons set forth in the preamble, 37 CFR Part 1 is amended as follows:

#### PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

**Authority:** 35 U.S.C. 2(b)(2).

2. Section 1.251 is added immediately following § 1.248 to read as follows:

#### § 1.251 Unlocatable file.

(a) In the event that the Office cannot locate the file of an application, patent, or other patent-related proceeding after a reasonable search, the Office will notify the applicant or patentee and set a time period within which the applicant or patentee must comply with the notice in accordance with one of paragraphs (a)(1), (a)(2), or (a)(3) of this section.

(1) Applicant or patentee may comply with a notice under this section by providing:

(i) A copy of the applicant's or patentee's record (if any) of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding (except for U.S. patent documents);

(ii) A list of such correspondence; and

(iii) A statement that the copy is a complete and accurate copy of the applicant's or patentee's record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding (except for U.S. patent documents), and whether applicant or patentee is aware of any correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding that is not among applicant's or patentee's records.

(2) Applicant or patentee may comply with a notice under this section by:

(i) Producing the applicant's or patentee's record (if any) of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding for the Office to copy (except for U.S. patent documents); and

(ii) Providing a statement that the papers produced by applicant or patentee are applicant's or patentee's complete record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding (except for U.S. patent documents), and whether applicant or patentee is aware of any correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding that is not among applicant's or patentee's records.

(3) If applicant or patentee does not possess any record of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding, applicant or patentee must comply with a notice under this section by providing a statement that applicant or patentee does not possess any record of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding.

(b) With regard to a pending application, failure to comply with one of paragraphs (a)(1), (a)(2), or (a)(3) of this section within the time period set in the notice will result in abandonment of the application.

Dated: October 31, 2000.

**Q. Todd Dickinson,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 00-29411 Filed 11-16-00; 8:45 am]

BILLING CODE 3510-16-P

#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Parts 2 and 90

[ET Docket No. 98-237; FCC 00-363]

#### 3650-3700 MHz Government Transfer

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allocates 50 megahertz of spectrum in the 3650-3700 MHz band to the fixed and mobile (base stations) terrestrial services on a primary basis. We are "grandfathering" existing fixed satellite service ("FSS") earth station sites in this band and, for a limited time, will accept new applications for FSS earth stations in the vicinity (*i.e.*, within 10 miles) of these grandfathered sites to operate on a co-primary basis in the band. We will also permit additional FSS earth station operations on a secondary basis. This will ensure the continuity of FSS operations and permit new FSS operations to help alleviate congestion in the adjacent 3700-4200 MHz FSS band. Finally, to provide for compatibility with both terrestrial fixed service and FSS operations in the band, we are limiting the terrestrial mobile service use of the band to base station operations.

**DATES:** Effective February 15, 2001.

**FOR FURTHER INFORMATION CONTACT:** Rodney Conway, Office of Engineering and Technology, (202) 418-2904.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *First Report and Order*, ET Docket No. 98-237, FCC 00-363 adopted October 12, 2000, and released October 23, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY-A257, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's duplication contractor, International

Transcription Service, (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

### Summary of the Report and Order

1. Based on the record in this proceeding and the need to balance competing demands for this spectrum, we are adopting our proposal to allocate the 3650-3700 MHz band for terrestrial fixed service operations on a primary basis. As indicated by the commenting parties, allocation of this band on a primary basis for fixed service will facilitate the operation of a broad range of new advanced services. We believe that the 3650-3700 MHz band is situated low enough in the radiofrequency spectrum so as to permit favorable transmission characteristics which will allow the establishment of service links that can cover significant distances. In addition, 50 megahertz will provide enough bandwidth to allow for high speed digital data and video services. These characteristics should prove useful in establishing basic and advanced telecommunications services within rural areas of the country.

The need for advanced services in rural areas has been well documented in recent studies. These studies conclude that Americans living in rural areas and inner cities do not have access to advanced services that are comparable to services available to people living in other areas. A lack of broadband infrastructure could limit the potential of these communities to attract and retain businesses and jobs, especially businesses that are dependent on electronic commerce. Lack of infrastructure could also restrict community access to education, health care, and recreational services. We conclude that allocation of the 3650-3700 MHz band for the fixed service will serve the public interest by providing broadband data services to residential and business consumers, particularly in rural areas. Additionally, this allocation will facilitate an alternative means of providing basic telephone service, thus fostering a competitive market structure for direct public switched telephone network ("PSTN") access for rural and underserved areas of the U.S. For example, it could be used to provide unserved persons with a wireless connection to the PSTN and to economically serve high-cost wireline service areas, including rural areas.

2. Given the challenging spectrum sharing environment involving the relatively weaker satellite receive signals, we remain concerned about mobile station (*i.e.*, roving handset) operations in the 3650-3700 MHz band.

However, while we note that mobile station operations may raise interference concerns, we find that land mobile base stations should be allowed to operate within the 3650-3700 MHz band. Mobile base stations are fixed and thus do not raise the same interference concerns as mobile handset operations. Mobile base stations in the 3650-3700 MHz band might operate with land mobile services offered in the 4940-4990 MHz band.

Specifically, the land mobile base stations could transmit in the 3650-3700 MHz band, and the land mobile receivers could use the 4940-4990 MHz band to transmit back to the land mobile base station. We therefore allocate the 3650-3700 MHz band to the mobile service on a nationwide co-primary basis with the fixed service. However, we limit this allocation to base station operations only. Consistent with the international allocation in this band, we are not permitting aeronautical mobile operations. Land mobile base stations in the 3650-3700 MHz band will be subject to the same coordination procedures as FS stations concerning grandfathered Government radiolocation and grandfathered FSS operations.

3. In the *Notice of Proposed Rule Making and Order* ("NPRM and Order"), 64 FR 2462, January 14, 1999, we imposed a freeze on the acceptance of applications for earth station operations in the 3650-3700 MHz band. We proposed to permanently implement this action, but sought comment on alternative methods to meet the terrestrial fixed service needs while minimizing the effect on FSS operations. While some satellite providers indicate that sharing on a co-primary basis is possible, we decline to adopt such a proposal. We recognize that fixed operations and FSS share spectrum in some bands. We will permit sharing to the extent it is technically possible and promotes efficient use of the spectrum.

However, in this band, allowing FSS on an unrestrained co-primary basis would impede any potential widespread use of the band for terrestrial services. Due to the weak signals that are received in the FSS, coordination with the higher-powered terrestrial operations would result in potentially large geographic areas where terrestrial services could not operate to avoid interference to FSS. The size and shape of these "exclusion zones" may be different for each FSS earth station site because factors such as shielding, antenna orientation and terrain elevation will vary from site to site. These coordination requirements and

the presence of exclusion zones would significantly increase transaction costs and create a disincentive for deployment of new terrestrial operations. Thus, we find that unrestrained deployment of FSS earth stations could hinder or greatly inhibit the opportunities for terrestrial operations in the band.

4. Pursuant to the Balanced Budget Act of 1997, the National Telecommunications and Information Administration ("NTIA"), identified the 3650-3700 MHz band as a possible substitute for 15 megahertz at 1990-2110 MHz. A statutory condition of the substitution requires that alternative spectrum "better serve the public interest, convenience, and necessity" and that "the alternative could reasonably be expected to produce comparable receipts." The other bands identified by NTIA as alternatives to the 15 megahertz at 1990-2110 MHz include: 944-960 MHz, 1390-1400 MHz, 1427-1432 MHz, 1670-1675 MHz, and 2500-2690 MHz. As noted in our Spectrum Policy Statement, the 944-960 MHz and 2500-2690 MHz bands are already used extensively for non-Government services. We also observe that portions of the 1390-1400 MHz and 1427-1432 MHz have already been allocated and assigned to non-Government use. The remaining portions of these bands and the 1670-1675 MHz band are small, noncontiguous segments and thus we believe are unlikely to raise comparable receipts as required by the BBA. Thus, with the exception of 3650-3700 MHz, none of the bands identified by NTIA is available to satisfy the requirements of the BBA. Because this 50 megahertz is at a higher frequency than 15 megahertz of spectrum identified in the 1990-2110 MHz band, additional bandwidth is required to compensate for increased path losses that occur in the 3650-3700 MHz band. For these reasons, we find that the 3650-3700 MHz band is an equivalent and viable substitute for 15 megahertz of spectrum at 1990-2110 MHz, taking into account differences in propagation characteristics between the two bands.

5. Because we are substituting the 3650-3700 MHz band for 15 megahertz of spectrum in the 1990-2110 MHz band, we must assign licenses for this spectrum by competitive bidding to satisfy the requirements of the BBA. Our allocation to the terrestrial services will enable us to establish service rules consistent with the statutory mandate to auction licenses for this spectrum.

6. Recently enacted legislation states that the Commission "shall not assign spectrum used for international or

global satellite services by competitive bidding." FSS in this band has historically been restricted to international, intercontinental services. Given that this band is allocated for space-to-Earth or downlink services, this footnote implies that data is being transmitted from another country. Even if this restriction were not in place, the international inter-continental nature of the satellite systems deployed in this band results in a footprint that extends well beyond the U.S. border into other countries. Because FSS is, or may be, used for the provision of international satellite services in this band, we believe that the assignment of FSS licenses by competitive bidding would be inconsistent with the ORBIT Act.

While we do not plan to assign FSS licenses for the 3650–3700 MHz band by competitive bidding, we are taking a number of steps to continue to accommodate FSS use of the band. Specifically, we are: (1) Grandfathering existing FSS earth station sites on a co-primary basis; (2) providing a limited opportunity to request additional co-primary FSS earth station sites within 10 miles of existing grandfathered FSS earth station sites; and (3) allowing other new FSS earth station sites on a secondary basis. In addition, we note that the 3600–3650 MHz band remains available for FSS earth station operations on a primary basis.

7. While incumbent FSS operations could relocate to other bands that are available for FSS, relocation would necessitate significant reconfiguration costs and disrupt continuity of operations. Recognizing the importance of providing continuity of service to the public, we will grandfather existing FSS earth station sites indefinitely. We also believe that the Commission should not mandate relocation of FSS operations to other bands because FSS and terrestrial operations, as limited by this *First Report and Order*, are not fundamentally incompatible. We are not, however, precluding voluntary negotiations between existing FSS licensees and new terrestrial licensees for relocation where feasible.

8. We realize that grandfathering existing FSS earth station sites will impose constraints on new terrestrial operations. However, in many cases these new terrestrial fixed and mobile operations should be able to co-exist with existing FSS earth stations by "engineering in" facilities to avoid interference. Furthermore, many rural, remote and less densely populated areas that could benefit significantly from deployment of terrestrial fixed and mobile services are not effected by existing grandfathered FSS earth station

sites. Thus, we conclude that grandfathering existing FSS earth station sites will not unreasonably constrain the new terrestrial services.

9. In the *Memorandum Opinion & Order (MO&O)*, 65 FR 36900, June 12, 2000, the Commission did not establish a time limit for the filing of FSS earth station applications. However, because the new FSS facilities permitted by the *MO&O* could affect the use of the 3650–3700 MHz band by the terrestrial services, we now find it necessary to establish a limit on the acceptance of such applications and on the construction of FSS facilities. Accordingly, applications for FSS earth stations in the 3650–3700 MHz band within 10 miles of the authorized coordinates of an existing grandfathered earth station submitted prior to December 1, 2000 and subsequently authorized for service by the Commission will be co-primary with the terrestrial services. Such FSS earth stations will be grandfathered as described above. We consider the filing of an FSS earth station application before the cut-off date to be an expression of immediate need consistent with the intent of the *MO&O*. However, applicants will be required to complete construction and be operational within one year from the date of initial authorization. If a license for an FSS earth station at a grandfathered site is assigned or transferred, the earth station will retain its grandfathered status, provided there is no change in the site coordinates. In addition, certain modifications are permitted to the extent there is no change in the site coordinates. Such modifications should be minor in nature and can include changes in the polarization and antenna orientation. However, changes such as an increase in the height of the center line of the dish or a change in geographical coordinates of greater than one second in either latitude or longitude would not be considered minor. Further, any change in the earth station antenna dish size that increases the likelihood of receiving interference will not be considered a minor change in facilities. If a license for a grandfathered FSS station is forfeited pursuant to section 25.161(c) of the Commission's rules, the site will no longer be considered primary and will lose its grandfathered status.

10. Subsequent to the end of the filing window, we will continue to accept applications for additional FSS earth stations. These authorizations, however, will be provided on a secondary basis only in the 3650–3700 MHz band. Secondary status will apply for new earth station sites located both inside

and outside the coordination zones. We note that FSS earth stations only receive signals in this band, and thus cannot cause interference. We also note that secondary FSS earth stations are not entitled to protection from primary terrestrial operations. We find that allowing additional FSS expansion on a secondary basis will help alleviate congestion in the adjacent C-band (3700–4200 MHz) and allow FSS providers to market available capacity, while preserving opportunities for a viable terrestrial services. In addition, allowing additional FSS earth stations on a secondary basis may enable FSS providers licensed under Part 25 to enter into private arrangements with terrestrial service licensees in the secondary market for access to this spectrum. We note, however, that an agreement between a terrestrial service licensee and an FSS operator would not elevate an FSS earth station in this band to primary status relative to other FS licensees.

11. Consistent with our regulatory treatment of existing FSS earth stations, we will grandfather the sites currently used to provide TT&C operations. As a result those sites will receive the same protections as the other grandfathered FSS earth stations in the 3650–3700 MHz band, except that they will be protected only for the frequencies they are authorized to use for TT&C operations. Any other TT&C operations site that receives grandfathering protection in the 3650–3700 MHz band will also be protected only for the specific frequencies the site is authorized to operate on pursuant to the license it holds.

12. We deny the TT&C petition's request for a reservation of 10 MHz of spectrum in the 3650–3700 MHz band for TT&C operations, *See Public Notice*, Report Number 2306, dated November 23, 1998. We find that reserving 10 MHz of spectrum for TT&C operations for a few earth station sites would be an inefficient use of limited spectrum resources. We have determined that the public interest will be best served by adopting a regulatory framework that will foster the development and deployment of terrestrial services in the 3650–3700 MHz band. Nothing in part 2 of the Commission's rules prohibits TT&C operations under the FSS allocation in this band, or from grandfathered FSS earth station locations, provided the non-TT&C operations of the satellite system include operations in the fixed satellite service.

13. In the *NPRM and Order*, the Commission requested comment on a proposal to delete the unused secondary

non-Government radiolocation service allocation in the 3650–3700 MHz band. No comments were filed supporting the continued secondary allocation for the unused non-Government radiolocation service and we find no sufficient reason to maintain the secondary unused allocation. Accordingly, we adopt the proposal and delete the unused secondary non-Government radiolocation allocation to preserve the availability of the spectrum for use by the terrestrial services and FSS operations. We note that sufficient spectrum remains available within the 2900–3650 MHz band, on a secondary basis, to accommodate non-Government radiolocation service needs.

14. In the *NPRM and Order*, we noted that, as a condition of the transfer of the 3650–3700 MHz band to a mixed-use status, three Government radiolocation sites would be allowed to operate indefinitely in the band within an 80-kilometer “radius of operation” surrounding each site. NTIA indicates that a coordination distance of 80 kilometers around these three sites will provide adequate identification of spectrum conflicts, and that the Commission should coordinate any non-Government terrestrial service or FSS station within 80 kilometers of these sites with NTIA’s Frequency Assignment Committee on a case-by-case basis. In the *NPRM and Order*, we requested comment on what actions should be taken to achieve this coordination in a manner to promote the ability of new non-Government services to co-exist with extremely high powered Government mobile radar systems in the adjacent 3300–3650 MHz band as well as with occasional high powered in-band use at three grandfathered Government radiolocation sites.

15. Because the requirement to protect the three grandfathered Government radiolocation sites at an 80 kilometer distance is a condition of the transfer of this spectrum, we adopt NTIA’s proposal for an 80 kilometer coordination radius to ensure that these sites will be protected from interference. This requirement means that non-Government terrestrial service and FSS stations located within 80 kilometers of the three grandfathered Government radiolocation stations may not cause interference to the grandfathered Government radiolocation operations, that they must accept any interference received from such operations, and that they must be coordinated before commencing operation. The coordination requirement will apply to all non-Government stations, not just base station operations, because any station within the coordination zone

could potentially cause interference to the protected Government operations.

Given that coordination is required only for areas within 80 kilometers of three grandfathered Government radiolocation sites, we find that this should affect a limited number of non-Government stations. We adopt this coordination requirement in a footnote to the Table of Allocations contained in Section 2.106 of the Commission’s rules. The coordination procedures are addressed as part of the service rules in the *Second NPRM*, adopted simultaneously with the *First Report and Order* and published elsewhere in this issue of the **Federal Register**.

16. In the *NPRM and Order*, the Commission proposed to delete the Government radiolocation service allocation from the 3650–3700 MHz band, except for grandfathering three Government radio location sites that would continue operations in the band. The Commission also proposed to permit Government radiolocation operations in the 3650–3700 MHz band on Naval vessels at an appropriate distance from the shore. NTIA recommends the inclusion of a footnote to the Table of Frequency Allocations indicating that off-shore Government radiolocation operations may operate on a noninterference basis with authorized non-Government operations, and may not hinder the implementation of any non-Government operations. NTIA recommends that a distance of 30 nautical miles (55.5 kilometers) from shore be specified. It notes that this recommended distance is based upon limited information, and that a different distance may later be found appropriate after further measurements and experience with non-Government use of the 3650–3700 MHz band.

17. After carefully reviewing the comments concerning this issue, we find that NTIA’s recommended distance of 30 nautical miles from the shore of the U.S. or its territories may be insufficient to protect non-Government services that will operate in the band. We note that NTIA has indicated previously that the operational radius of the three grandfathered Government radiolocation operations is 80 kilometers. We note that 80 kilometers is approximately equal to 44 nautical miles. We are concerned that allowing operation of Government radiolocation stations any closer than 44 nautical miles (80 kilometers) to the U.S. or its territories will have the potential to cause interference to non-Government operations in the band. Therefore, we specify a distance of 44 nautical miles, which is equivalent to the 80 kilometers grandfathered Government

radiolocation “radius of operation” as described in the *NPRM and Order*.

NTIA’s request to include the Government radiolocation allocation via a footnote, as described, will not hinder the introduction of non-Government services in the band, given the 80-kilometer protection limit.

Additionally, offshore Government radiolocation stations will not be allowed to cause interference to non-Government stations, irrespective of their location. Further, if additional technical information and analysis is made available to us concerning any change in the distance requirements, we will consider altering the distance as appropriate.

18. In the *NPRM and Order*, we proposed to delete the unused Government aeronautical radionavigation service (ground based) allocation in the 3650–3700 MHz band. We see no useful purpose in continuing this allocation. Therefore, for the reasons set forth in the *NPRM and Order*, we adopt our proposal to delete the Government aeronautical radionavigation service (ground based) allocation from the 3650–3700 MHz band to preserve the band for non-Government use.

#### Final Regulatory Flexibility Analysis

19. As required by the Regulatory Flexibility Act (RFA),<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Notice of Proposed Rule Making and Order*, in ET Docket 98–237.<sup>2</sup> The Commission sought written public comments on the proposals in the *NPRM and Order*, including the IRFA. The Final Regulatory Flexibility Analysis (“FRFA”) in this *First Report and Order*, conforms to the RFA.<sup>3</sup>

#### A. Need for and Objective of This Report and Order

20. These rules allocate the 3650–3700 MHz band to the fixed, mobile (base stations only), and grandfathered fixed satellite services on a co-primary basis and for non-grandfathered fixed satellite service earth station operations on a secondary basis. These actions are taken in order to make this transfer spectrum available for commercial services, including those of any small businesses. The adoption of this *First*

<sup>1</sup> See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 *et seq.*, 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).

<sup>2</sup> See 14 FCC Rcd 1295 (1999), 64 FR 2462, January 14, 1999.

<sup>3</sup> See 5 U.S.C. 604.

*Report and Order* will provide additional spectrum to be used in meeting the growing demand for fixed, mobile (base station only) and fixed satellite services among all sizes of providers.

#### *B. Legal Basis for Adopted Rules*

21. The adopted rule changes are authorized pursuant to Sections 4, 4(i), 157, 303, 303(g), 303(r), 307, and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154, 154(i), 157, 303, 303(g), 303(r), 307, and 332(c)(7).

#### *C. Summary of Significant Issues Raised by Public Comments in Response to the IRFA*

22. No comments were filed in response to the IRFA that was contained in the *NPRM and Order* in this proceeding.

#### *D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply*

23. For purposes of this First Report and Order, the RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities.<sup>4</sup> Under the Small Business Act, a "small business concern" is one that: (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").<sup>5</sup>

24. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."<sup>6</sup> Nationwide, as of 1992, there were approximately 275,801 small organizations.<sup>7</sup> The definition of "small governmental jurisdiction" is one with populations of fewer than 50,000.<sup>8</sup> There are 85,006 governmental jurisdictions in the nation.<sup>9</sup> 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 has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or 96 percent, have populations of fewer than 50,000.<sup>10</sup> The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, we estimate that 96 percent, or about 81,600, are small entities that may be affected by our rules. Nationwide, there are 4.44 million small business firms, according to SBA reporting data.<sup>11</sup>

25. The Commission has not developed a definition of small entities applicable to fixed satellite service licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is one with no more than 11.0 million in annual receipts.<sup>12</sup> According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified. Of those, approximately 775 reported annual receipts of 11 million or less and qualify as small entities.<sup>13</sup>

26. As described, the designations we hereby adopt will permit wireless services, as broadly defined to include fixed and mobile base station operations. Neither the Commission nor the SBA has developed a definition of small entities applicable to wireless services licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies.

27. The rules adopted by the First Report and Order will affect applicants who wish to provide fixed, mobile (base stations only) and/or fixed satellite services in the 3650–3700 MHz band. Pursuant to 47 CFR 24.702(b) the Commission has defined "small entity" for Blocks C and F broadband licensees as firms that had average gross revenues of less than \$40 million dollars in the three previous calendar years. This Commission regulation defining "small entity" in the context of broadband PCS auctions has been approved by the

SBA.<sup>14</sup> With respect to the 3650–3700 MHz license applicants, we propose to use the small entity definition adopted in the Broadband PCS proceeding.

28. The Commission has not yet determined how many licenses will be awarded, nor will it know how many licensees will be small businesses until the auction is held. Even after that, the Commission will not know how many licensees will partition their license areas or disaggregate their spectrum blocks, if partitioning and disaggregation are allowed which may result in additional small entities. In view of our lack of knowledge of the entities which will seek licenses in the 3650–3700 MHz band, we will assume that, for the purposes of our evaluations and conclusions in the FRFA, all of the prospective licensees are small entities, as that term is defined by the SBA or our definitions for the 3650–3700 MHz band. We invite comment on this analysis.

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

29. The rules adopted in the *First Report and Order* allocate the 3650–3700 MHz band to the fixed, mobile (base station operation, and grandfathered fixed satellite services on a co-primary basis and for non-grandfathered fixed satellite service earth station operations on a secondary basis. These adopted rules do not require any additional reporting, recordkeeping or other compliance requirements. Rules that may apply to the auctioning and licensing of these operations or other operating requirements will be addressed in the Second Notice of Proposed Rule Making in this proceeding and any reporting, recordkeeping and other compliance requirements will be addressed then.

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

30. No petition for rule making was filed to initiate this proceeding and there are no comments in this proceeding that suggest alternatives to the adopted allocation. We requested comment on alternatives that might minimize the amount of economic impact on small entities and no alternatives were offered. The allocation adopted in this First Report and Order represents the most efficient and least

<sup>4</sup> See 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. 632).

<sup>5</sup> See 15 U.S.C. 632.

<sup>6</sup> Id. Section 601(4).

<sup>7</sup> Department of Commerce, U.S. Bureau of the Census, 1992 Economic Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

<sup>8</sup> 5 U.S.C. 601(5).

<sup>9</sup> 1992 Census of Governments, U.S. Bureau of the Census, U.S. Department of Commerce.

<sup>10</sup> Id.

<sup>11</sup> See 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to the Office of Advocacy of the U.S. Small Business Administration).

<sup>12</sup> See 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4899.

<sup>13</sup> See 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 2D, Employment Size of Firms, 1992, SIC Code 4899 (issued May 1995).

<sup>14</sup> See Implementation of Section 309(j) of the Communications Act, Competitive Bidding, PP Docket 93–253, Fifth Report and Order, 9 FCC Rcd 5532, 5581–82 (¶ 115) (1994), 59 FR 37566, July 22, 1994.

restrictive method to accomplish the Commission's policies and objectives.

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

31. None.

*H. Report to Congress*

32. The Commission will send a copy of the First Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the First Report and Order, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 604(b).

**List of Subjects in 47 CFR Parts 2 and 90**

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

**Magalie Roman Salas,**  
*Secretary.*

**Rule Changes**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2 and 90 as follows:

**PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS**

1. The authority citation for part 2 continues to read as follows:

**Authority:** 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

a. Page 54 is revised.

b. In the list of United States (US) Footnotes, footnote US110 is revised and footnotes US348 and US349 are added.

c. In the list of Non-Federal Government (NG) Footnotes, footnotes NG169 and NG170 are added.

d. In the list of Federal Government (G) Footnotes, footnotes G59 and G110 are revised.

The revisions and additions read as follows:

**§ 2.106 Table of Frequency Allocations.**

\* \* \* \* \*

**BILLING CODE 6712-01-P**

2900-3100 RADIIONAVIGATION S5.426 Radiolocation	2900-3100 MARITIME RADIIONAVIGATION Radiolocation US44 S5.425 S5.427	2900-3100 MARITIME RADIIONAVIGATION Radiolocation G56 S5.427 US44 US316	2900-3100 MARITIME RADIIONAVIGATION Radiolocation US44 S5.427 US316	Maritime (80) Private Land Mobile (90)
3100-3300 RADIOLOCATION Earth exploration-satellite (active) Space research (active) S5.149 S5.428	3100-3300 RADIOLOCATION S5.333 US110 G59 S5.149	3100-3300 RADIOLOCATION S5.333 US110 G59 S5.149	3100-3300 RADIOLOCATION S5.333 US110 S5.149	Private Land Mobile (90)
3300-3400 RADIOLOCATION Amateur Fixed Mobile S5.149 S5.429 S5.430	3300-3400 RADIOLOCATION Amateur Fixed Mobile S5.149 S5.430	3300-3400 RADIOLOCATION Amateur S5.149 S5.429	3300-3500 Amateur Radiolocation US108	Private Land Mobile (90) Amateur (97)
3400-3600 FIXED FIXED-SATELLITE (space-to-Earth) Mobile Radiolocation	3400-3500 FIXED FIXED-SATELLITE (space-to-Earth) Amateur Mobile Radiolocation S5.433 S5.282 S5.432	3400-3500 FIXED FIXED-SATELLITE (space-to-Earth) Amateur Mobile Radiolocation S5.433 S5.282 S5.432	S5.149 S5.282	
S5.431 3600-4200 FIXED FIXED-SATELLITE (space-to-Earth) Mobile	3500-3700 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile Radiolocation S5.433 S5.435	3500-3650 RADIOLOCATION US110 G59 AERONAUTICAL RADIIONAVIGATION (ground-based) G110 US245 3650-3700	3500-3600 Radiolocation US110 3600-3650 FIXED-SATELLITE (space-to-Earth) US245 Radiolocation US110 3650-3700 FIXED FIXED-SATELLITE (space-to-Earth) NG169 MOBILE except aeronautical mobile NG170 US245 US348 US349	Private Land Mobile (90)
	See next page for 3700-4200 MHz	See next page for 3700-4200 MHz	See next page for 3700-4200 MHz	See next page for 3700-4200 MHz

\* \* \* \* \*  
**United States (US) Footnotes**  
 \* \* \* \* \*

US110 In the bands 3100–3300 MHz, 3500–3650 MHz, 5250–5350 MHz, 8500–9000 MHz, 9200–9300 MHz, 9500–10000 MHz, 13.4–14.0 GHz, 15.7–17.3 GHz, 24.05–24.25 GHz and 33.4–36.0 GHz, the non-Government radiolocation service shall be secondary to the Government radiolocation service and to airborne doppler radars at 8800 MHz, and shall provide protection to airport surface detection equipment (ASDE) operating between 15.7–16.2 GHz.

\* \* \* \* \*  
 US348 The band 3650–3700 MHz is also allocated to the Government radiolocation service on a primary basis at the following sites: St. Inigoes, MD (38° 10' N., 76° 23' W.); Pascagoula, MS (30° 22' N., 88° 29' W.); and Pensacola, FL (30° 21' 28" N., 87° 16' 26" W.). All fixed and fixed satellite operations within 80 kilometers of these sites shall be coordinated through the Frequency Assignment Subcommittee of the Interdepartmental Radio Advisory Committee on a case-by-case basis.

US349 The band 3650–3700 MHz is also allocated to the Government radiolocation service on a non-interference basis for use by ship stations located at least 44 nautical miles in off-shore ocean areas on the condition that harmful interference is not caused to non-Government operations.

\* \* \* \* \*  
**Non-Federal Government (NG) Footnotes**  
 \* \* \* \* \*

NG169 After December 1, 2000, operations on a primary basis by the fixed-satellite service (space-to-Earth) in the band 3650–3700 MHz shall be limited to grandfathered earth stations. All other fixed-satellite service earth station operations in the band 3650–3700 MHz shall be on a secondary basis. Grandfathered earth stations are those authorized prior to December 1, 2000, or granted as a result of an application filed prior to December 1, 2000, and constructed within 12 months of initial authorization. License applications for primary operations for new earth stations, major amendments to pending earth station applications, or applications for major modifications to earth station facilities filed on or after December 18, 1998, and prior to December 1, 2000, shall not be accepted unless the proposed facilities are in the vicinity (*i.e.*, within 10 miles) of an authorized primary earth station operating in the band 3650–3700 MHz. License applications for primary operations by new earth stations, major amendments to pending earth station applications, and applications for major modifications to earth station facilities, filed after December 1, 2000, shall not be accepted, except for changes in polarization, antenna orientation or ownership of a grandfathered earth station.

NG170 In the band 3650–3700 MHz, the mobile except aeronautical mobile service is limited to base station operations. These base stations are subject to the same coordination procedures as fixed service operations in the band 3650–3700 MHz.

**Federal Government (G) Footnotes**  
 \* \* \* \* \*  
 G59 In the bands 902–928 MHz, 3100–3300 MHz, 3500–3650 MHz, 5250–5350 MHz, 8500–9000 MHz, 9200–9300 MHz, 13.4–14.0 GHz, 15.7–17.7 GHz and 24.05–24.25 GHz, all Government non-military radiolocation shall be secondary to military radiolocation, except in the sub-band 15.7–16.2 GHz airport surface detection equipment (ASDE) is permitted on a co-equal basis subject to coordination with the military departments.

\* \* \* \* \*  
 G110 Government ground-based stations in the aeronautical radionavigation service may be authorized between 3500–3650 MHz when accommodation in the band 2700–2900 MHz is not technically and/or economically feasible.

\* \* \* \* \*  
**PART 90—PRIVATE LAND MOBILE RADIO SERVICES**

3. The authority citation for part 90 continues to read as follows:

**Authority:** Sections 4(i), 11, 303(g), 303(r) and 332(c)(7) of the Communications Act of 1934 as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

4. Section 90.103(b) is amended by removing the entry 3500 to 3700 under the heading “megahertz” in the frequency table and adding in numerical order the entry 3500 to 3650 to read as follows:

**§ 90.103 Radiolocation Service.**  
 \* \* \* \* \*

(b) \* \* \*

**RADIOLOCATION SERVICE FREQUENCY TABLE**

Frequency of band	Class of station(s)	Limitation
* * * * *		
<b>Megahertz</b>		
3500 to 3650 .....	do .....	12
* * * * *		

\* \* \* \* \*

[FR Doc. 00–28819 Filed 11–16–00; 8:45 am]

**BILLING CODE 6712-01-P**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 73 and 74**

[MM Docket No. 99–25; FCC 00–349]

**Creation of Low Power Radio Service**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule, correction.

**SUMMARY:** This document corrects errors in the final rule portion regarding low power radio service published in the **Federal Register** of November 9, 2000.

**DATE:** Effective December 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Julie Barrie, (202) 418–2130, Policy and Rules Division, Mass Media Bureau.

**SUPPLEMENTARY INFORMATION:** This contains corrections to the rule portion of the Commission’s *Memorandum Opinion and Order on Reconsideration (“MO&O”)*, MM 99–25; FCC 00–349, 65 FR 67289 (November 9, 2000). The full text of the Commission’s *MO&O* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW–A306), 445 12 St. SW., Washington, DC. The complete text of this *MO&O* may also be purchased from the Commission’s copy contractor, International Transcription Services, (202) 857–3800, 1231 20th St., NW., Washington, DC 20036.

**Correction**

**§ 73.810 [Corrected]**

1. In § 73.810, on page 67302, in the second column, paragraphs (b)(i), (b)(ii), (b)(iii), and (b)(iv) are corrected to read (b)(1), (b)(2), (b)(3), and (b)(4).

**§ 73.860 [Corrected]**

2. In § 73.860, on page 67304, in the first column, paragraphs (b)(i), (b)(ii), (b)(iii), and (b)(iv) are corrected to read (b)(1), (b)(2), (b)(3), and (b)(4).

**William F. Caton,**  
*Deputy Secretary.*  
 [FR Doc. 00–29492 Filed 11–16–00; 8:45 am]

**BILLING CODE 6712-01-P**