

rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 10, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: March 21, 2002.

**Michael V. Peyton,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 02-8295 Filed 4-8-02; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1, 61, and 69

[CC Docket No. 96-128; FCC 02-39]

#### Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document the Commission declined to modify its accounting safeguards in the manner requested by the Inmate Calling Services Provider Coalition (ICSPC) in part because the Commission's existing rules already provide for much of the relief that the ICSPC requested. The intended effect of this document is to maintain

the existing Commission rules regarding the accounting safeguards.

**FOR FURTHER INFORMATION CONTACT:** Joi Roberson Nolen, Wireline Competition Bureau, 202-418-1537.

**SUPPLEMENTARY INFORMATION:** Section 276 of the Communications Act of 1934, as amended (the Act), directs the Commission to "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone." See 47 U.S.C. 276(b)(1)(A). The ICSPC sought reconsideration of certain issues relating to inmate calling services. See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Order on Reconsideration, 11 FCC Rcd 21233 (1996), 61 FR 65341 (Dec. 12, 1996)(Order on Reconsideration) *aff'd in part and remanded in part, Illinois Pub. Tel. Ass'n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997), *cert. denied sub nom., Virginia State Corp. Comm'n v. FCC*, 523 U.S. 1046 (1998). ICSPC, along with numerous other parties, initially sought review of the Order on Reconsideration before the United States Court of Appeals for the District of Columbia Circuit and consolidated its appeal under the lead case *Illinois Public Telecommunications Association v. FCC*. The court subsequently severed ICSPC's appeal, and later remanded it at the Commission's request. The Commission issued a Public Notice asking parties to update and refresh the record with respect to the issues raised in ICSPC's appeal.

In this order, the Commission concluded that section 276's fair compensation requirement does not require either preemption of state local collect calling caps or imposition of a federally-tariffed surcharge above state rate caps for local inmate calls. The Commission also concluded that ICSPC's requested nonstructural safeguards are not necessary, in light of those that section 276 and our rules already impose. In addition, the Commission initiated a Notice of Proposed Rulemaking to examine the costs associated with the provision of inmate calling services. See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Notice of Proposed Rulemaking, FCC 02-39 (Feb. 21, 2002) (published elsewhere in this issue).

Accordingly, it is ordered that, pursuant to the authority contained in

sections 1, 4(i)-4(j), and 276 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)-(j), 276, the Petition for Partial Reconsideration and Clarification of the Inmate Calling Services Providers Coalition is *denied*.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 02-8343 Filed 4-8-02; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 2 and 26

[WT Docket No. 00-32; FCC 02-47]

#### The 4.9 GHz Band Transferred From Federal Government Use

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission allocates 50 megahertz of spectrum in the 4940-4990 MHz band (4.9 GHz band) for fixed and mobile services (except aeronautical mobile service) and designates this band for use in support of public safety. The allocation and designation provide public safety users with additional spectrum to support new broadband applications. This action is pursuant to statutory requirements of the Omnibus Budget Reconciliation Act of 1993. The Commission also continues its ongoing effort to streamline rules and eliminate redundancy by removing part 26.

**DATES:** Effective May 9, 2002.

**ADDRESSES:** Parties who choose to file comments by paper must file an original and four copies to William F. Caton, Acting Secretary, Office of the Secretary, Federal Communications Commission, 445 12th St., SW., Room TW-A325, Washington, DC 20554. Comments may also be filed using the Commission's Electronic Filing System, which can be accessed via the Internet at [www.fcc.gov/e-file/ecfs.html](http://www.fcc.gov/e-file/ecfs.html).

**FOR FURTHER INFORMATION CONTACT:**

Genevieve Augustin, Esq., [gaugusti@fcc.gov](mailto:gaugusti@fcc.gov), or Roberto Mussenden, Esq., [rmussend@fcc.gov](mailto:rmussend@fcc.gov), Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418-0680, or TTY (202) 418-7233.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's Second Report and Order, FCC 02-47, adopted on February 14, 2002, and released on February 27, 2002. The full text of this

document is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: [www.fcc.gov](http://www.fcc.gov). Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365.

1. In this *Second Report and Order* (*Second R&O*), the Commission allocates 50 megahertz of spectrum in the 4940-4990 MHz band (4.9 GHz band) for fixed and mobile services (except aeronautical mobile service) and designates this band for use in support of public safety. This allocation and designation will provide public safety users with additional spectrum to support new broadband applications such as high-speed digital technologies and wireless local area networks (WLANs) for incident scene management. The spectrum will also support dispatch operations and vehicular/personal communications. The Commission believes this decision aligns with new national priorities focusing on homeland security, and will ensure that agencies involved in the protection of life and property possess the communications resources needed to successfully carry out their mission. Furthermore, we seek to transition to an environment in which the public safety community enjoys maximum access to emerging broadband technologies. This action effectuates the transfer of this spectrum from Federal Government to non-Federal Government use pursuant to statutory requirements of the Omnibus Budget Reconciliation Act of 1993. We also continue our ongoing effort to streamline our Rules and eliminate redundancy by removing part 26 of our rules.

#### A. Allocation of the 4.9 GHz Band

2. The Commission allocates the 4.9 GHz band to non-Government fixed and mobile services, excluding aeronautical mobile service, on a co-primary basis. This allocation permits flexibility and a wide range of fixed and mobile services. The Commission allows licensees to utilize this spectrum for any service permitted within any of the allocation categories of fixed and mobile, to include any fixed, land mobile, or maritime mobile service. The Commission excludes aeronautical mobile service from the entire 4.9 GHz band for the protection of radio astronomy operations in the 4950-4990

MHz sub-band and the 4990-5000 MHz band. The Commission deletes the Government fixed and mobile service allocations from the 4.9 GHz band. The Commission concludes that a flexible allocation would be in the public interest. Such flexibility would not deter investment in communications and services, or technology development; and would not cause harmful interference among users.

#### B. Sharing With Passive Operations

3. Regarding radio astronomy use of the 4.9 GHz band, the Commission deletes footnote US257 from the Table of Frequency Allocations and merges it into a revised footnote US311, requiring that every practical effort be made to protect radio astronomy observations in the 4950-4990 MHz band, which operate on an unprotected basis at certain Radio Astronomy Observatories listed. The Commission declines the exclusion of non-aeronautical mobile operation and the imposition of frequency coordination procedures on fixed or non-aeronautical mobile operation within the radio astronomy zones.

#### C. Removal of Part 26 of the Commission's Rules

4. Inasmuch as there are no part 26 licensees, and the Commission no longer has jurisdiction over the frequencies to which these rules are applicable, the Commission removes this part from its rules.

#### D. Designation of the 4.9 GHz Band for Use in Support of Public Safety

5. The Commission concludes that the 4.9 GHz band should be designated for use in support of public safety providing public safety users with access to state of the art technologies that will enhance their critical operations capabilities. The acts of terrorism committed against the United States on September 11, 2001 reinforce the critical nature of the public safety community's responsibilities to our Nation's safety and well being. nevertheless, then numerous public safety entities have filed in this proceeding supporting public safety use of the 4.9 GHz band to implement and utilize the technologies described previously. The record does not support the Commission's previous tentative conclusion, set forth, that the designation of spectrum in the 700 MHz band for public safety use obviates a need to allocate spectrum in the 4.9 GHz band for use in support of public safety. Finally, we agree with Motorola that the Commission is not statutorily required to use competitive bidding to license the

4.9 GHz band and therefore licensing this band for public safety is fully consistent with the Communications Act.

#### II. Final Regulatory Flexibility Certification (Second Report and Order)

6. The Regulatory Flexibility Act (RFA) requires that a regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the term "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. 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 the Small Business Administration (SBA).

7. This *Second R&O* allocates the band 4940-4990 MHz to the fixed and mobile, except aeronautical mobile, services on a co-primary basis, to be used exclusively by public safety. This allocation affects public safety users by providing them with additional spectrum to support new broadband applications such as high-speed digital technologies and wireless local area networks for incident scene management, dispatch operations, and vehicular/personal communications, and thus enables public safety providers to more effectively, efficiently and safely serve their communities. In addition, our action may affect indirectly equipment manufacturers by ultimately potentially increasing the demand for their goods and services. Both of these effects are positive benefits, with no associated additional compliance burdens. Also, an indirect affect of this allocation on some small entities is the potential enhancement of their protection from crime and hazards, and of their receipt of emergency services.

8. Therefore, we certify that the requirements of this *Second R&O* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *Second R&O*, including a copy of this final certification, in a report to Congress pursuant to the Congressional Review Act, see U.S.C. 801(a)(1)(A). In addition, the *Second R&O* and this certification will be sent

to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**. See U.S.C. 605(b).

### III. Ordering Clauses

9. Pursuant to sections 4(i), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 403, this *Report and Order* is hereby adopted.

10. Part 2 of the Commission's rules is amended as specified in rule changes and such rule amendments shall be effective May 9, 2002.

11. Pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), that Part 26 of the Commission's rules, 47 CFR part 26, is no longer in the public interest,

and therefore is *Removed*, effective May 9, 2002.

### List of Subjects

#### 47 CFR Part 2

Communications equipment, Radio.

#### 47 CFR Part 26

Communications common carrier, Radio.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

### Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 2 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, 302(a), 303, and 336, unless otherwise noted.

2. Amend § 2.106, as follows:

a. Revise page 55.

b. In the list of United States (US) footnotes, remove footnote US257 and revise footnote US311.

c. In the list of Federal Government (G) Footnotes, revise footnote G122.

The revisions read as follows:

### § 2.106 Table of Frequency Allocations.

\* \* \* \* \*

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International Table		United States Table		FCC Rule Part(s)
Region 1	Region 2 Region 3	Federal Government	Non-Federal Government	
See previous page for 3600-4200 MHz	3700-4200 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile	3700-4200	3700-4200 FIXED NG41 FIXED-SATELLITE (space-to-Earth)	International Fixed (23) Satellite Communications (25) Fixed Microwave (101)
4200-4400 AERONAUTICAL RADIONAVIGATION S5.438 S5.437 S5.439 S5.440		4200-4400 AERONAUTICAL RADIONAVIGATION S5.440 US261		Aviation (87)
4400-4500 FIXED MOBILE		4400-4500 FIXED MOBILE	4400-4500	
4500-4800 FIXED FIXED-SATELLITE (space-to-Earth) S5.441 MOBILE		4500-4800 FIXED MOBILE US245	4500-4800 FIXED-SATELLITE (space-to-Earth) 792A US245	
4800-4990 FIXED MOBILE S5.442 Radio astronomy		4800-4940 FIXED MOBILE S5.149 US203	4800-4940	
S5.149 S5.339 S5.443		4940-4990	S5.149 US203 4940-4990 FIXED MOBILE except aeronautical mobile	Private Land Mobile (90) Fixed Microwave (101)
4990-5000 FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY Space research (passive) S5.149		S5.149 S5.339 US311 G122 4990-5000 RADIO ASTRONOMY US74 Space research (passive) US246	S5.149 S5.339 US311 S5.149 S5.339 US311	
5000-5150 AERONAUTICAL RADIONAVIGATION S5.367 S5.444 S5.444A		5000-5250 AERONAUTICAL RADIO- NAVIGATION US260	5000-5150 AERONAUTICAL RADIO- NAVIGATION US260 S5.367 S5.444 S5.444A US211 US344	Satellite Communications (25) Aviation (87)

**United States (US) Footnotes**

\* \* \* \* \*

US311 Radio astronomy observations may be made in the bands 1350–1400 MHz and 4950–4990 MHz

on an unprotected basis at the following radio astronomy observatories:

Allen Telescope Array, Hat Creek, California .....	Rectangle between latitudes 40° 00' N and 42° 00' N and between longitudes 120° 15' W and 122° 15' W.
NASA Goldstone Deep Space Communications Complex, Goldstone, California.	80 kilometers (50 mile) radius centered on latitude 35° 18' N, longitude 116° 54' W.
National Astronomy and Ionosphere Center, Arecibo, Puerto Rico .....	Rectangle between latitudes 17° 30' N and 19° 00' N and between longitudes 65° 10' W and 68° 00' W.
National Radio Astronomy Observatory, Socorro, New Mexico .....	Rectangle between latitudes 32° 30' N and 35° 30' N and between longitudes 106° 00' W and 109° 00' W.
National Radio Astronomy Observatory, Green Bank, West Virginia ....	Rectangle between latitudes 37° 30' N and 39° 15' N and between longitudes 78° 30' W and 80° 30' W.

National Radio Astronomy Observatory, Very

80 kilometers (50 mile) radius centered on:

Long Baseline Array Stations	Latitude (North)	Longitude (West)
Brewster, WA .....	48° 08'	119° 41'
Fort Davis, TX .....	30° 38'	103° 57'
Hancock, NH .....	42° 56'	71° 59'
Kitt Peak, AZ .....	31° 57'	111° 37'
Los Alamos, NM .....	35° 47'	106° 15'
Mauna Kea, HI .....	19° 48'	155° 27'
North Liberty, IA .....	41° 46'	91° 34'
Owens Valley, CA .....	37° 14'	118° 17'
Pie Town, NM .....	34° 18'	108° 07'
Saint Croix, VI .....	17° 46'	64° 35'

Owens Valley Radio Observatory, Big Pine, California

Two contiguous rectangles, one between latitudes 36° 00' N and 37° 00' N and between longitudes 117° 40' W and 118° 30' W and the second between latitudes 37° 00' N and 38° 00' N and between longitudes 118° 00' W and 118° 50' W.

Every practicable effort will be made to avoid the assignment of frequencies in the bands 1350–1400 MHz and 4950–4990 MHz to stations in the fixed and mobile services that could interfere with radio astronomy observations within the geographic areas given above. In addition, every practicable effort will be made to avoid assignment of frequencies in these bands to stations in the aeronautical mobile service which operate outside of those geographic areas, but which may cause harmful interference to the listed observatories. Should such assignments result in harmful interference to these observatories, the situation will be remedied to the extent practicable.

\* \* \* \* \*

**Government (G) Footnotes**

\* \* \* \* \*

G122 In the bands 2390–2400 MHz, 2402–2417 MHz, and 4940–4990 MHz, Government operations may be authorized on a non-interference basis to authorized non-Government operations, but shall not hinder the implementation of any non-Government operations.

\* \* \* \* \*

**PART 26—[Removed]**

3. Under the authority 47 U.S.C. 154, amend 47 CFR chapter I by removing part 26.

[FR Doc. 02–8482 Filed 4–8–02; 8:45 am]

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 36**

[CC Docket Nos. 78–72, 80–286; DA 01–2427]

**MTS and WATS Market Structure and Establishment of a Joint Board**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Office of the Managing Director (Managing Director) grants the petition of US West Communications, Inc. (U.S. West) and makes technical revisions to the Commission's jurisdictional separations rules. Specifically, the Managing Director amends the Commission's rules to correct misspellings and to remove certain text inadvertently added to a rule section upon original publication in the Code of Federal Regulations.

**DATES:** Effective May 9, 2002.

**FOR FURTHER INFORMATION CONTACT:** Andrew Firth, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–2694.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Managing Director's Order in CC Docket Nos. 78–72 and 80–286, adopted on October 17, 2001 and released on October 18, 2001. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554.

1. In this Order, pursuant to authority delegated to the Managing Director at § 0.231(b) of the Commission's rules, we make certain technical and non-substantive corrections to the Commission's part 36 jurisdictional separations rules to reflect a printing error brought to our attention by US West Communications, Inc. (U.S. West) in a Petition for Technical Corrections. In its Petition, U.S. West notes that the Commission's 1989 *Decision and Order* in this docket (*MTS and WATS Market Structure, Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, Decision and Order, CC