

contact Ms. Chandra Kennedy. Presentations will be limited to 5 minutes each.

SUPPLEMENTARY INFORMATION: The EPA's planned seating arrangements for the hearings is theater style, with seating available on a first come first served basis for about 250 people. An agenda will be provided at the hearings.

Dated: March 7, 2003.

Henry C. Thomas,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 03-6186 Filed 3-12-03; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR 62

[Region II Docket No. NY58-253b; FRL-7464-7]

Approval and Promulgation of Implementation Plans for Designated Facilities; NY

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the State plan submitted by New York State to implement and enforce the Emission Guidelines (EG) for existing small Municipal Waste Combustion (MWC) Units. New York's plan establishes emission limits and other requirements for the purpose of reducing toxic air emissions from small MWC units throughout the State. New York submitted its plan to fulfill the requirements of sections 111(d) and 129 of the Clean Air Act. In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP submittal, as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule.

If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before April 14, 2003.

ADDRESSES: All comments should be addressed to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007-1866.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

New York State Department of Environmental Conservation, Division of Air Resources, 625 Broadway, 2nd Floor, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT:

Anthony (Ted) Gardella, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10278, (212) 637-4249.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: March 3, 2003.

Jane M. Kenny,

Regional Administrator, Region 2.

[FR Doc. 03-5909 Filed 3-12-03; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-7465-9]

Virginia: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Virginia has applied to EPA for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Virginia. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we receive written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it

establishes, and we will not take further action on this proposal. If we receive comments that oppose this action, we will withdraw the immediate final rule, and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by April 14, 2003.

ADDRESSES: Send written comments to Joanne Cassidy, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814-3381. You may inspect and copy Virginia's application from 8:15 a.m. to 4:30 p.m. at the following locations: Virginia Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219, Phone Number: (804) 698-4213, attn: Robert Wickline; or Virginia Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, VA 24015, Phone Number: (540) 562-6872, attn: Aziz Farahmand; or EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103-2029, Phone Number: (215) 814-5254.

FOR FURTHER INFORMATION CONTACT:

Joanne Cassidy, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814-3381.

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

Dated: March 5, 2003.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 03-6110 Filed 3-12-03; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 00-258 and IB Docket No. 99-81; FCC 03-16]

Advanced Wireless Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on how to use the reallocated Mobile Satellite Service (MSS) spectrum

as well as other bands previously proposed for Advanced Wireless Service (AWS) use, the relocation of the Multipoint Distribution Service (MDS), and additional flexibility for the Unlicensed Personal Communications Service (UPCS) band spectrum, in order to promote more efficient spectrum use which, in turn, serves the public interest.

DATES: Written comments are due April 14, 2003, and reply comments are due April 28, 2003.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., TW-A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jamison Prime, Office of Engineering and Technology, (202) 418-7474, TTY (202) 418-2989, e-mail: jprime@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Notice of Proposed Rule Making*, ET Docket 00-258 and IB Docket No. 99-81, FCC 03-16, adopted January 29, 2003, and released February 10, 2003. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also 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. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 14, 2003, and reply comments on or before April 28, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the

applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address.>" A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

Summary of Third Notice of Proposed Rule Making

1. The *Third Notice of Proposed Rule Making* ("Third NPRM") discusses the frequency bands that are still under consideration in this proceeding and invites additional comment on their disposition. Specifically, we address the UPCS band at 1910-1930 MHz, the MDS spectrum at 2155-2160/62 MHz, the Emerging Technology spectrum at 2160-2165 MHz, and the bands reallocated from MSS (1990-2000 MHz, 2020-2025 MHz and 2165-2180 MHz). We seek comment on these bands with respect to using them for paired or unpaired AWS operations or as relocation spectrum for existing services. We emphasize the scope of the record we have already developed and urge interested parties to narrow their discussion to specific proposals that will allow for the most efficient and

effective use of this remaining spectrum. For example, parties filing comments in response to any of the issues in the *Third Notice* should take into account how the modification of our rules to allow MSS licensees to deploy ATC (see *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band and the 1.6/2.4 GHz Bands*, FCC 03-315) affects their analysis of the spectrum under consideration in this proceeding. We specifically seek comment on the following issues:

- Seek comment on whether we should re-designate all or a portion of the UPCS spectrum at 1910-1920 for new fixed and mobile uses. Five or 10 megahertz of this spectrum could be paired with spectrum in the 1990-2000 MHz band to expand the existing Broadband PCS allocation, to allow for AWS applications, or as replacement spectrum for other services.
- Tentatively conclude that we should retain the 1920-1930 MHz band for UPCS use and seek comment on whether we should provide for additional flexibility in that band, as well as any additional spectrum that we retain for UPCS use in the 1910-1920 MHz band.
- Seek comment on making available for new services, including AWS, the MSS uplink band spectrum that we are reallocating at 2020-2025 MHz. We also ask whether this band could be paired with spectrum in the 2.1 GHz band.
- Seek further comment on making available for new services, including AWS, a 10 megahertz block that is upper adjacent to the existing 45 megahertz AWS allocation in the 2110-2155 MHz band. This spectrum block consists of the remaining 5 megahertz of the MDS band at 2155-2160 MHz combined with an adjacent 5 megahertz spectrum block in the 2160-2165 MHz band that was identified in the *Emerging Technologies* proceeding.
- Seek comment on the best use of the spectrum that we make available by reallocating the MSS downlink band at 2165-2180 MHz.
- Seek comment on relocation spectrum for MDS operations from the 2150-2160/62 MHz band, including spectrum that we make available by reallocating the MSS downlink band at 2165-2180 MHz or, alternatively, spectrum that is adjacent to the Broadband PCS bands.

Initial Regulatory Flexibility Analysis

2. As required by the Regulatory Flexibility Act (RFA)¹ the Commission

¹ See 5 U.S.C. 603. The RFA (codified at 5 U.S.C. 601-612) has been amended by the Small Business

has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Third Notice of Proposed Rulemaking (*Third NPRM*). Comment is requested in this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Third NPRM* as provided in paragraph 77 of the *Third NPRM*. The Commission will send a copy of the *Third NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 603(a).

Need for, and Objectives of, the Proposed Rules

3. The *Third NPRM* seeks comments on the reallocation of spectrum in the 1910–1920 MHz band that can be paired with spectrum in the 1990–2000 MHz band to support fixed and mobile services, including AWS. It proposes that additional flexibility be afforded to the UPCS spectrum (that remains in the 1910–1930 MHz band) in order to support a variety of UPCS devices, including voice and data devices, and asks whether additional unlicensed devices—such as community wireless networks—could also coexist in the band. The *Third NPRM* also proposes to reallocate spectrum at 2155–2165 MHz that was previously identified as candidate spectrum for AWS, and seeks the most appropriate means to relocate licensees operating in the 2150–2160/2162 MHz band. Together, these proposed actions continue our efforts to identify spectrum that is suitable for AWS, and to allocate our existing in such a way as to promote overall efficient use.

Legal Basis

4. The proposed action is authorized under sections 1, 4(i), 7(a), 301, 302(a), 303(f), 303(g), 303(r), 307, 308, 309(j), 316, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154(i), 157(a), 301, 302(a), 303(f), 303(g), 303(r), 307, 308, 309(j), 316, and 332.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

5. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.² The RFA

generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”³ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁴ 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).⁵

6. A small organization is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”⁶ Nationwide, as of 1992, there were approximately 275,801 small organizations.⁷ “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.”⁸ As of 1992, there were approximately 85,006 governmental entities in the United States.⁹ This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96%, have populations of fewer than 50,000.¹⁰ 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 (96%) are small entities.

Radiotelephone Operators. The Commission has not developed service rules for AWS spectrum, nor has it attempted to categorize potential licensees for this spectrum. However, because many of the comments we received in support of our efforts to allocate spectrum for AWS were submitted by commercial radiotelephone operators and because

³ 5 U.S.C. 601(6).

⁴ 5 U.S.C. 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.”

⁵ 15 U.S.C. 632.

⁶ 5 U.S.C. 601(4).

⁷ 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).

⁸ 5 U.S.C. 601(5).

⁹ U.S. Dept. of Commerce, Bureau of the Census, “1992 Census of Governments.”

¹⁰ Id.

licensees of AWS-like bands in other countries include incumbent commercial radiotelephone operators, we believe that there is a high likelihood that the class of AWS licensees may ultimately consist of one or more radiotelephone operator. Therefore, we examine this category in greater depth. The SBA has developed a small business size standard for small businesses in the category “Cellular and Other Wireless Telecommunications.”¹¹ Under that SBA category, a business is small if it has 1,500 or fewer employees.¹² According to the Bureau of the Census, only 12 firms from a total of 1238 cellular and other wireless telecommunications firms operating during 1997 had 1,000 or more employees.¹³ Therefore, even if all 12 of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA’s definition. In addition, we note that there are 1807 cellular licenses; however, a cellular licensee may own several licenses. According to the most recent *Trends in Telephone Service* data, 858 carriers reported that they were engaged in the provision of either cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio telephony services, which are placed together in that data. We have estimated that 291 of these are small under the SBA small business size standard.¹⁴ Accordingly, based on this data, we estimate that not more than 291 radiotelephone operators would be affected by a decision to make additional spectrum available for AWS.

Fixed Microwave Services. The *Third NPRM* proposes to reallocate a 5 megahertz spectrum block (2160–2165 MHz) that is licensed to fixed point-to-point microwave services and was previously identified for reallocation for advanced services in the Commission’s *Emerging Technologies* proceeding.¹⁵

¹¹ 13 CFR 121.201, North American Industry Classification System (NAICS) code 513322.

¹² Id.

¹³ U.S. Department of Commerce, U.S. Census Bureau, 1997 Economic Census, Information—Subject Series, Establishment and Firm Size, Table 5—Employment Size of Firms Subject to Federal Income Tax at 64, NAICS code 513322 (October 2000).

¹⁴ See *Trends in Telephone Service*, Industry Analysis and Technology Division, Wireline Communications Bureau, Table 5.3, page 5–5 (May 2002).

¹⁵ Redevelopment of Spectrum to Encourage the Establishment of Services Using New and Innovative Technologies, ET Docket No. 92–9, First Report and Order and Third Notice of Proposed Rule Making, 7 FCC Rcd 6886 (1992), 57 FR 49020, October 10, 1992 and 57 FR 48776, October 28, 1992; Second Report and Order, 8 FCC Rcd 6495 (1993), 58 FR 49220, September 22, 1993; Third Report and Order and Memorandum Opinion and

Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 104–121, title II, 110 Stat. 857 (1996).

² 5 U.S.C. 604(a)(3).

Microwave services include common carrier,¹⁶ private-operational fixed,¹⁷ and broadcast auxiliary radio services.¹⁸ At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this FRFA, we will use the SBA's definition applicable to wireless and other telecommunications companies—*i.e.*, an entity with no more than 1,500 persons.¹⁹ According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.²⁰ Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.²¹ Thus, under this size standard, the great majority of firms can be considered small.

7. We note that the number of firms does not necessarily track the number of licensees. We estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition. Of these licenses, approximately 890 are issued for

frequencies in the Emerging Technology bands affected by this proceeding. In addition, the band contains approximately 13 licenses in the paging and radiotelephone service and 40 Local Television Transmission Service licenses. Thus, assuming that these entities also qualify as small businesses, as many as 943 small business licensees could be affected by the rules we adopt. We note that these entities have been subject to relocation under rules originally adopted in the Commission's *Emerging Technologies* proceeding. The *Third NPRM* anticipates that these general relocation rules will continue to apply to FS microwave licensees and does not propose to modify the class of licensees that are subject to these relocation provisions.

Multipoint Distribution Service (MDS). The *Third NPRM* proposes to reallocate spectrum for MDS licensees that currently operate in the 2155–2160 MHz band (and the 2155–2162 MHz band in some cases). This service has historically provided primarily point-to-multipoint, one-way video services to subscribers.²² The Commission recently amended its rules to allow MDS licensees in the 2500–2690 MHz band to provide a wide range of high-speed, two-way services to a variety of users.²³ In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of \$40 million.²⁴ The Commission established this small business definition in the context of this particular service and with the approval of the SBA.²⁵ The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs).²⁶ Of the 67 auction winners, 61 met the definition of a small

business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that are considered small entities.²⁷ After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 MDS licensees that are defined as small businesses under either the SBA or the Commission's rules. Because the Commission's action only affects MDS operations in the 2155–2160 MHz band (and 2155–2162 MHz band in some cases), the actual number of MDS providers who will be affected by the proposed reallocation will only represent a small fraction of those 440 small business licensees.

Unlicensed Personal Communications Service (UPCS). As its name indicates, UPCS is not a licensed service. UPCS consists of intentional radiators operating in the frequency bands 1910–1930 MHz and 2390–2400 MHz, that provide a wide array of mobile and ancillary fixed communication services to individuals and businesses. The *Third NPRM* affects UPCS operations in the 1910–1920 MHz band; operations in those frequencies are limited to asynchronous (generally data) applications. There is no accurate source for the number of operators in the UPCS. The Commission has not developed a definition of small entities applicable to UPCS equipment manufacturers. However, the SBA has developed a small business size standard, Cellular and Other Wireless Carriers, which consists of all such companies having 1500 or fewer employees.²⁸ According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.²⁹ Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.³⁰ Thus, under this

Order, 8 FCC Rcd 6589 (1993), 58 FR 46547, October 4, 1993; Memorandum Opinion and Order, 9 FCC Rcd 1943 (1994), 59 FR 19642, April 25, 1994; Second Memorandum Opinion and Order, 9 FCC Rcd 7797 (1994), 59 FR 65501, December 20, 1994, *aff'd*, Association of Public Safety Communications Officials-International, Inc. v. FCC, 76 F.3d 395 (D.C. Cir. 1996) (collectively, "Emerging Technologies proceeding").

¹⁶ 47 CFR 101 *et seq.* (formerly, part 21 of the Commission's Rules).

¹⁷ Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. See 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

¹⁸ Auxiliary Microwave Service is governed by part 74 of title 47 of the Commission's rules. See 47 CFR part 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

¹⁹ 13 CFR 121.201, NAICS code 517212 (formerly 513322).

²⁰ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Employment Size of Firms Subject to Federal Income Tax: 1997," Table 5, NAICS code 517212 (issued Oct. 2000).

²¹ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

²² For purposes of this item, MDS includes single channel Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS). See 66 FR 36177.

²³ Amendment of parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, MM Docket No. 97–217, Report and Order, 13 FCC Rcd 19112 (1998), 63 FR 65087, November 25, 1998, recon., 14 FCC Rcd 12764 (1999), 64 FR 63727, November 22, 1999, further recon., 15 FCC Rcd 14566 (2000).

²⁴ 47 CFR 21.961 and 1.2110.

²⁵ Amendment of parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of section 309(j) of the Communications Act—Competitive Bidding, MM Docket No. 94–131, Report and Order, 10 FCC Rcd 9589, 9670 (1995), 60 FR 36524 (July 17, 1995).

²⁶ Basic Trading Areas (BTAs) were designed by Rand McNally and are the geographic areas by which MDS was auctioned and authorized. See *id.* at 9608.

²⁷ 47 U.S.C. 309(j). (Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j)). For these pre-auction licenses, the applicable standard is SBA's small business size standard for "other telecommunications" (annual receipts of \$12.5 million or less). See 13 CFR 121.201.

²⁸ 13 CFR 121.201, North American Industry Classification System (NAICS) code 517212.

²⁹ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Employment Size of Firms Subject to Federal Income Tax: 1997," Table 5, NAICS code 517212 (issued Oct. 2000).

³⁰ *Id.* The census data do not provide a more precise estimate of the number of firms that have

size standard, the great majority of firms can be considered small. However, no equipment authorizations have been issued for devices operating in the 1910–1920 MHz band.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

9. The *Third NPRM* addresses the possible use of frequency bands below 3 GHz to support the introduction of new AWS, but does not propose service rules. Thus, the item contains no new reporting, recordkeeping, or other compliance requirements.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

10. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): “(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) an exemption from coverage of the rule, or any part thereof, for such small entities.”³¹

11. Providing spectrum to support the introduction of new advanced mobile and fixed terrestrial wireless services is critical to the continuation of technological advancement. As an initial matter, we believe that the provision of additional spectrum that can be used to support AWS will directly benefit small business entities by providing new opportunities for the provision of innovative new fixed and mobile wireless services.

12. We realize that some entities must be displaced to clear a sufficient quantity of contiguous spectrum to support new services. We endeavored to avoid this effect by identifying unencumbered spectrum, but spectrum in the suitable frequency range is heavily used already and a sufficient amount of unencumbered spectrum simply does not exist. We have also sought to minimize an adverse impact by proposing to reallocate frequency bands for those incumbents, including small entities, which might be accommodated in other spectrum. The

spectrum we propose to allocate in the 2160–2165 MHz band was previously identified as an Emerging Technology band; thus, we have previously considered relocation consequences and established relocation procedures for incumbent operators in this band. Small entities operating in this band have known for a decade that they are subject to relocation and may have taken steps (such as deploying more efficient systems in different spectrum in lieu of upgrading existing equipment) that could minimize the consequences of relocation vis-à-vis licensees in another spectrum band that had not heretofore been identified as a candidate for reallocation. Thus, the existing relocation procedures should serve to ease the relocation of small entity incumbents in the 2160–2165 MHz band, and make reallocation of this band a preferable alternative to the reallocation of other bands where we would have to establish new relocation rules.

13. The Commission has already received extensive comments in this proceeding on issues related to the possible reallocation of the 2150–2160 MHz (2.1 GHz) spectrum for advanced wireless purposes. Comments filed by the multipoint distribution/instructional television fixed services industry and several equipment manufacturers argue that the 2.1 GHz band is necessary for the continued roll-out of fixed wireless services across the country. Other commenters support the use of 2.1 GHz for advanced wireless services. In a recent decision, the Commission determined that it was necessary to reallocate MDS operations at 2150–2155 MHz to create a 45 megahertz block of contiguous spectrum that can be used to provide advanced services, but did not decide how to relocate these operations or what to do with remaining MDS operations in the 2155–2160/62 MHz band. One option proposed is the reallocation of the remaining MDS spectrum. By taking this action, we would be able to provide opportunities associated with the provision of contiguous and/or paired blocks of spectrum that can be used for fixed and mobile applications, including AWS.

14. The *Third NPRM* discusses reallocation of UPCS spectrum in the 1910–1920 MHz band for AWS. Because no equipment is currently certified for this band, we conclude that our decision is unlikely to affect any users or equipment manufacturers that are small entities. We also explore options for providing increased flexibility of unlicensed use in the remaining UPCS spectrum, including modifying our rules to allow for expanded voice-based

applications in the 1915–1920 MHz portion of the band if we decide to reallocate only the 1910–1915 MHz band segment. We note that we had sought comment on use of the entire 1910–1930 MHz band for AWS, and that the record reflects that numerous small entities may use or manufacture UPCS voice equipment on the 1920–1930 MHz portion of the band. Thus, the *Third R&O* represents a means to provide additional opportunities both to small entities that provide AWS while providing minimal disruption to small entities that are UPCS users and manufacturers (and possibly providing additional benefits, if the proposal to expand permitted UPCS use of the 1915–1920 MHz band is adopted). For this reason we conclude that our action is preferable to other alternatives, such as retaining the existing UPCS allocation in its entirety.

Rules That May Duplicate, Overlap or Conflict With the Proposed Rules

15. None.

List of Subjects in 47 CFR Part 15

Communications equipment.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 15 as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307, 336, and 544A.

2. Section 15.319 is amended by revising the first sentence in paragraph (a) to read as follows:

§ 15.319 General technical requirements.

(a) The 2390–2400 MHz band is limited to use by asynchronous devices under the requirements of § 15.321.

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3. Section 15.321 is amended by revising the section heading and paragraphs (a) and (b) to read as follows:

§ 15.321 Specific requirements for asynchronous devices operating in the 2390–2400 MHz band.

(a) Operation shall be contained within the 2390–2400 MHz band. The emission bandwidth of any intentional radiator operating in these bands shall be no less than 500 kHz.

employment of 1,500 or fewer employees; the largest category provided is “Firms with 1,000 employees or more.”

³¹ 5 U.S.C. 603(c)(1)–(c)(4).

(b) All systems of less than 2.5 MHz emission bandwidth shall start searching for an available spectrum window within 3 MHz of the band edge at 2390 or 2400 MHz while systems of more than 2.5 MHz emission bandwidth will first occupy the center half of the band. Devices with an emission bandwidth of less than 1.0 MHz may not occupy the center half of the sub-band if other spectrum is available.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96-45; FCC 03-13]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule.

SUMMARY: In this document, the Commission seeks comment on the *Recommended Decision* of the Federal-State Joint Board on Universal Service (Joint Board) regarding the definition of services supported by universal service. In its *Recommended Decision*, the Joint Board generally recommended that the Commission not modify the existing list of services supported by universal service. The Joint Board was unable to reach agreement, however, on whether equal access to interexchange service (equal access) satisfies the statutory criteria contained in the Communications Act of 1934, as amended, and should be added to the list of supported services. The Commission seeks comment regarding the Joint Board's recommendations and positions.

DATES: Comments are due on or before April 14, 2003. Reply comments are due on or before April 28, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Suite TW-A325, Marlene H. Dortch, Office of the Secretary, Washington, DC, 20554. See **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Katherine Tofigh, Attorney or Diane Law Hsu, Deputy Division Chief, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in CC Docket No.

96-45 released on February 25, 2003. 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.

I. Notice of Proposed Rulemaking

1. In this Notice of Proposed Rulemaking (NPRM), we seek comment on the *Recommended Decision* of the Federal-State Joint Board on Universal Service (Joint Board) regarding the definition of services supported by universal service. A copy of the *Recommended Decision* can be found at 17 FCC Rcd 14095 (Wir. Com. Bur. rel. Jul. 10, 2002). In its *Recommended Decision*, the Joint Board generally recommended that the Commission not modify the existing list of services supported by universal service. The Joint Board was unable to reach agreement, however, on whether equal access to interexchange service (equal access) satisfies the statutory criteria contained in section 254(c) of the Communications Act of 1934, as amended (the Act), and should be added to the list of supported services. We seek comment regarding the Joint Board's recommendations and positions.

II. Procedural Issues

A. Ex Parte Presentations

2. This is a permit but disclose rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, as long as they are disclosed as provided in the Commission's rules.

B. Initial Paperwork Reduction Act Analysis

3. This NPRM may modify an information collection. As part of a continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due May 12, 2003. 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 shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the

information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

C. Initial Regulatory Flexibility Analysis

4. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this 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 NPRM provided. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

D. Need for and Objectives of the Proposed Rules

5. Pursuant to section 254(c) of the Act, the Joint Board on Universal Service may periodically make recommendations to modify the list of supported services, in order to take account for advances in telecommunications and information technologies and services. On December 21, 2000, the Commission requested the Joint Board to review the definition of universal service and make recommendations regarding whether modifications to the definition are warranted. The Joint Board subsequently released a public notice seeking comment on the services, if any, that should be added to or removed from the list of core services. On July 10, 2002, the Joint Board released its recommendations regarding the list of services supported by universal service. The NPRM seeks comment on the Joint Board's recommendations.

1. Legal Basis

6. The legal basis as proposed for this NPRM is contained in §§ 4(i), 4(j), 201-205, 214, 254, and 403 of the Communications Act of 1934, as amended.

2. Description and Estimate of the Number of Small Entities to Which the Proposed Rules will Apply

7. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed modifications to the definition of universal services. To