

**Executive Order 13132**

This rule has been reviewed under Executive Order 13132, Federalism. This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

**List of Subjects in 42 CFR Part 73**

Biologics, Incorporation by reference, Packaging and containers, Penalties, Reporting and Recordkeeping requirements, Transportation.

Dated: October 7, 2005.

**Michael O. Leavitt,**  
Secretary.

■ For the reasons stated in the preamble, we are amending 42 CFR part 73 as follows:

**PART 73—SELECT AGENTS AND TOXINS**

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 42 U.S.C. 262a; sections 201–204, 221 and 231 of Title II of Public Law No. 107–188, 116 Stat. 637 (42 U.S.C. 262a).

■ 2. Amend paragraph (b) of § 73.3 by adding the following entry in alphabetical order to read as follows:

**§ 73.3 HHS select agents and toxins.**

\* \* \* \* \*

(b) \* \* \*

Reconstructed replication competent forms of the 1918 pandemic influenza virus containing any portion of the coding regions of all eight gene segments.

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[FR Doc. 05–20946 Filed 10–17–05; 12:02 pm]

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**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Parts 1, 22, 24, 27 and 90**

[WT Docket No. 03–264; FCC 05–144]

**Amendment of Various Rules Affecting Wireless Radio Services**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (“Commission”) streamlines and harmonizes licensing provisions in the wireless radio services (WRS) that were identified in part during the Commission’s 2000 and 2002 biennial regulatory reviews. The Commission concludes that streamlining and harmonizing these rules will clarify spectrum rights and obligations for affected licensees and support recent efforts to maximize the public benefits derived from the use of the radio spectrum. Among other matters, the Commission retains the references to ERP and EIRP in its rules, eliminates the transmitter-specific posting requirement of part 22 licensees, conforms the Emission Mask G to a modulation-independent mask that places no limitation on the spectral power density profile within the maximum authorized bandwidth, eliminates a rule which required the filing of certain outdated supplemental information, and eliminates certain transmitter output power limits rules. Further, in this document, the Commission eliminates many filing and data reporting requirements, some output power limits, and seeks comment on whether the Commission should increase other power limits.

**DATES:** Effective December 19, 2005.

**FOR FURTHER INFORMATION CONTACT:** Wilbert E. Nixon, Jr. and/or B.C. “Jay” Jackson, Jr. of the Mobility Division, Wireless Telecommunications Bureau, at 202–418–0620 or via e-mail at [Wilbert.Nixon@fcc.gov](mailto:Wilbert.Nixon@fcc.gov) and/or [Jay.Jackson@fcc.gov](mailto:Jay.Jackson@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Report and Order portion (*Report and Order*) of the Commission’s *Report and Order and Further Notice of Proposed Rulemaking*, FCC 05–144, in WT Docket Nos. 03–264, adopted July 22, 2005, and released August 9, 2005. The Further Notice of Proposed Rulemaking portion (*FNPRM*) of the document is summarized elsewhere in this publication. The full text of the document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, 445 12th St., SW., Room CY–A257, Washington, DC 20554. The complete text may be purchased from the Commission’s duplicating contractor: Best Copy & Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 800–378–3160, facsimile 202–488–5563, or via e-mail at [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com). The full text may also be downloaded at: <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 or at [Brian.Millin@fcc.gov](mailto:Brian.Millin@fcc.gov).

**Paperwork Reduction Act of 1995 Analysis**

This document contains modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this R&O as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due December 19, 2005. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

**Synopsis of the Report and Order****I. Introduction**

1. On January 7, 2004, the Commission released a *Notice of Proposed Rulemaking*, (*NPRM*) published at 69 FR 8132, February 23, 2004, which commenced a proceeding to streamline and harmonize licensing provisions in the wireless radio services (WRS) that were identified in part during the Commission’s 2000 and 2002 biennial regulatory reviews pursuant to section 11 of the Communications Act of 1934, as amended (“Communications Act” or “Act”) (47 U.S.C. 161). The Commission proposed various amendments to parts 1, 22, 24, 27, and 90 of the rules to modify or eliminate provisions that treat licensees differently and/or have become outdated as a result of technological change, supervening changes to related Commission rules, and/or increased competition within WRS. We believe streamlining and harmonizing these rules will clarify spectrum rights and obligations and optimize flexibility for WRS licensees, fulfill our mandate under Section 11 of the Communications Act, and support efforts to maximize the public benefits derived from the use of the radio spectrum. Accordingly, in this *Report and Order*, we:

- Modify our rules to classify a deletion of a frequency and/or transmitter site from a multi-site authorization under part 90 as a minor modification.

- Retain the references to ERP and EIRP in our rules.
- Eliminate the transmitter-specific posting requirement of Part 22 licensees.
  - Eliminate part 24 transmitter output power limits.
  - Retain the frequency coordination requirement for incumbent licensees operating on 800 MHz General Category frequencies and for site-based 800 MHz General Category applications filed after 800 MHz rebanding.
  - Conform the Emission Mask G to a modulation-independent mask that places no limitation on the spectral power density profile within the maximum authorized bandwidth.
  - Eliminate § 90.607(a) of our rules requiring the filing of certain outdated supplemental information.
  - Eliminate the loading requirement and references to the “waiting list” in § 90.631(d) of our rules, and eliminate § 90.631(i) which is no longer necessary because the 900 MHz specialized mobile radio (SMR) renewal period it references has long passed.
  - Modify § 90.635 of our rules to remove the distinction between urban and suburban sites when setting the maximum power and antenna heights limits for conventional 800 MHz and 900 MHz systems. Eliminate the power limitations on systems with operational radii of less than 32 kilometers.
  - Eliminate § 90.653 of our rules which specifies no limitation on the number of system authorizations to operate within a given geographic area as redundant.
  - Eliminate § 90.658 of our rules which provides that site-based licensees of trunked SMR systems must provide loading data in order to either acquire additional channels or renew their authorizations.
  - Modify § 90.693 of our rules to eliminate the necessity of incumbent 800 MHz SMR licensees filing notifications of minor modifications in certain circumstances.
  - Eliminate § 90.737 of our rules which requires the filing of supplemental progress reports for 220 MHz Phase I licensees.

## II. Background

2. In the *2000 Biennial Review Report* (16 FCC Rcd 1207 (2001)) and *2002 Biennial Review Report* (18 FCC Rcd 4726 (2003)), the Commission supported proposals to streamline, harmonize, and update a number of regulations after reviewing various WRS rule parts pursuant to section 11 of the Act. Section 11 of the Act requires the Commission to review biennially its regulations that are applicable to providers of telecommunications service

in order to determine whether any rule is “no longer necessary in the public interest as the result of meaningful economic competition.” Following such reviews, the Commission is required to modify or repeal any such regulations that are no longer in the public interest. Since the release of the biennial review reports, the Commission has considered modifying or repealing certain regulations by issuing notices of proposed rulemakings as appropriate. The *NPRM* addressed additional proposals, identified in the 2000 and/or 2002 biennial review reports, to streamline and harmonize WRS rules that may no longer be necessary in the public interest pursuant to section 11 of the Act.

3. To a great extent, technological changes and/or successive changes to various Commission licensing rules have made it appropriate to review whether many of these rules are obsolete and no longer in the public interest. Accordingly, the *NPRM* sought comment on streamlining and harmonizing these rules if they no longer serve the public interest in their current form notwithstanding any findings regarding the level of competition among existing services. In its *2002 Biennial Review Report*, the Commission clarified the scope and standard of review for future proceedings conducted pursuant to section 11. In so doing, the Commission acknowledged that it has broad discretion to review the continued need for any rule even in the absence of a congressional mandate such as section 11. Accordingly, the *NPRM* sought comment pursuant to the Commission’s broad authority to consider any proposed modifications to, or elimination of, these existing rules under the Commission’s general public interest standard. The Commission also provided notice of, and invited the public to review, various administrative corrections that it intended to make at the conclusion of this proceeding to update and/or clarify certain WRS rules. Although it was not necessary pursuant to the Administrative Procedure Act to seek comment on all of the proposed rule changes in the *NPRM*, the Commission did so to facilitate administrative efficiency. Thirteen parties filed comments. Six parties filed reply comments.

## III. Discussion

### A. Classification of Part 90 Frequency and/or Transmitter Site Deletions as Minor Modifications Under Part 1

4. *Background.* Section 1.929(c)(4) of the Commission’s rules requires that

certain requests for modification to a site-specific part 90 authorization, including changes to the frequencies or locations of base stations, are considered major modifications to the license which require prior Commission approval. Pursuant to § 90.135(b) of the rules, a site-specific Part 90 licensee that makes a modification request listed in § 1.929(c)(4) must submit its request to the applicable frequency coordinator, unless the request falls within one of the specific exemptions listed in § 90.175 of the rules.

5. The Commission tentatively concluded that a request to delete a frequency or a site from a multi-site authorization under part 90 should be considered a minor modification that requires neither frequency coordination nor the Commission’s prior approval and consequently proposed to amend its rules such that these actions would be treated as minor modifications under part 1 of the Commission’s rules. The Commission invited comment on its tentative conclusion and also sought comment on whether there remains any need for licensees to notify the applicable frequency coordinator of any given deletion, if the rules are modified as proposed.

6. *Discussion.* We adopt our tentative conclusion which was unanimously supported by the commenting parties. We conclude that requiring frequency coordination for a part 90 frequency or site deletion request is unnecessary given that the Universal Licensing System (ULS) now provides frequency coordinators with immediate access to frequency and site information. We agree with AAA’s assessment that it would be inconsistent to require coordination for a deletion of a site or a frequency when it is not required for a request to cancel an entire authorization. We also conclude that no further direct notification of frequency coordinators by licensees is necessary. We agree with NAM/MRFAC that licensees need provide no special notification to coordinators of a frequency/site deletion because licensees are generally required to file notifications of minor modifications with the Commission within 30 days of the change pursuant to §§ 1.929 and 1.947, and that coordinators routinely obtain such information via regular downloads from the ULS. We also clarify that a deleted frequency and/or transmitter location becomes available for the filing of applications, where applicable, when the ULS database is updated to reflect the grant of the modification application seeking deletion of a frequency and/or transmitter location.

### B. Effective Radiated Power/Equivalent Isotropically Radiated Power

7. *Background.* In its comments in the 2000 biennial review proceeding, the Wireless Communications Division of the Telecommunications Industry Association (TIA) argued that designating FCC power limits in terms of ERP in the Cellular Radiotelephone Service (cellular) rules and EIRP in the broadband Personal Communications Service (PCS) rules is "confusing to [its members'] customers since it appears that a dual mode phone [transmits] at different power levels at different frequencies." Although it recommended in the 2000 *Biennial Review Report* that a rulemaking proposal be initiated to consider using EIRP exclusively in Commission rules, the Commission tentatively concluded that the costs of implementation and potential for greater confusion that would likely be associated with making a wholesale conversion from ERP limits to EIRP limits outweigh the potential benefits to those licensees who do not possess the scientific or engineering expertise to distinguish between the two standards and sought comment on this tentative conclusion.

8. *Discussion.* We decide to leave unchanged the references to ERP and EIRP in our rules and adopt our tentative conclusion. We agree with AAA and Nextel that the costs associated with implementing the TIA request, together with the potential for greater uncertainty, outweigh its possible benefits. Because an EIRP limit is always a larger number than the equivalent ERP limit, we believe that restating all ERP limits as EIRP limits could likely cause some entities (e.g., licensees, frequency coordinators, etc.) to mistakenly think that the Commission has increased the permitted power.

### C. Part 22 Transmitter Identification

9. *Background.* Section 22.303 of the Commission's rules provides, *inter alia*, that "[t]he station call sign must be clearly and legibly marked on or near every transmitting facility, other than mobile transmitters, of the station." In the 2002 biennial review proceeding, CTIA and the Rural Cellular Association (RCA) recommended that the Commission eliminate this requirement in the interest of commercial wireless regulatory parity, since wireless services regulated under other parts of the Commission's rules are not subject to a comparable obligation to post call sign information on each transmitter. The Commission agreed with CTIA and RCA that these rules should be harmonized

and tentatively concluded to delete the last sentence of § 22.303, thereby eliminating the transmitter-specific posting requirement for cellular and other part 22 licensees. The Commission requested comment on this proposal, including whether the absence of call sign information on transmitting facilities associated with other WRS that are not subject to part 22 has proved problematic to the public or other carriers in any way.

10. *Discussion.* We eliminate the transmitter-specific posting requirement of part 22 licensees and thereby adopt our tentative proposal. All commenting parties, including AMTA, CTIA and Cingular, support the proposal. AMTA asserts that the requirement for posting a call sign at each transmitter location is a vestige of a time when systems typically were licensed on a site-specific and frequency-specific basis wherein each location had a unique call sign and claims that now, a significant number of wireless systems, including part 22 systems, are licensed on a geographic basis with a single call sign covering the entire authorization. Cingular states that "[n]ot having posted call sign information has not proved problematic for PCS and other services governed by other parts of the rules. The proposed rule change would harmonize the cellular and PCS rules and eliminate an unnecessary obligation on licensees." We agree with the commenters' analysis.

### D. Part 24 Power and Antenna Height Limits

11. *Background.* Section 24.232 of the Commission's rules contains, *inter alia*, limits on broadband PCS base station equivalent isotropically radiated power and broadband PCS base station transmitter output power. For the last ten years, the rule limited "base station power" to 1640 watts peak EIRP for antenna heights up to 300 meters height above average terrain (HAAT), and also limited transmitter output power to 100 watts. When the Commission increased the PCS EIRP limit from 100 watts to 1640 watts in 1994, it concurrently adopted the 100 watt peak transmitter power output limit to ensure that broadband PCS licensees utilizing the increased EIRP would do so by employing high-gain, directional antennas, rather than high power transmitters with low-gain, non-directional antennas. Such use of directional antennas, the Commission stated, would help reduce the likelihood of a system imbalance in which PCS licensees would deploy base stations that could transmit a strong signal over distances well beyond a mobile unit's

capability to respond. Also, the Commission stated that it would not authorize a higher output power limit at that time because "interference could result to fixed microwave operations and/or to other PCS systems in adjacent service areas." As discussed in more detail below, the Commission recently adopted the *Rural Report and Order*, published at 69 FR 75144, December 15, 2004, and amended § 24.232(b), the power rule for broadband PCS, to allow twice as much radiated power (3280 watts EIRP) for use in rural areas, and also increased the base station transmitter output power limit from 100 watts to 200 watts in rural areas. The Commission indicated that increasing power limits in rural areas can benefit consumers in rural areas by reducing the costs of infrastructure and otherwise making the provision of spectrum-based services to rural areas more economic.

12. Powerwave, a manufacturer of Multi-Carrier Power Amplifiers (MCPAs), filed comments in the 2002 biennial review proceeding, prior to the Commission's release of the *Rural Report and Order*, and asserted that the output power limitations contained in rule § 24.232 are overly restrictive. According to Powerwave, as subscriber growth in PCS has increased dramatically since broadband PCS systems were first authorized, the number of carriers (*i.e.*, the individual electrical signals that carry information) used to provide the additional voice channels in a typical cell site has also increased. Powerwave asserted that the need for higher power levels has also increased because, due to increased local resistance to base station construction, more PCS stations must be collocated with cellular stations and, therefore, are spaced on a cellular design. As a result, PCS licensees, according to Powerwave, are increasingly using MCPAs in their systems. Powerwave contended that the output power limit in § 24.232(a) has the unintended effect of penalizing the use of an MCPA transmitter in the place of multiple individual transmitters because the output power rule limits power on a per transmitter basis rather than on a per carrier basis. As a result, Powerwave proposed that the Commission eliminate the output power restriction entirely, or at the very least, amend § 24.232 to provide that the output power of each carrier must not exceed 100 watts, instead of each transmitter.

13. In the 2002 *Biennial Review Staff Report*, Commission staff generally agreed with Powerwave and concluded that § 24.232(a) should be modified in order to regulate PCS base station

transmissions in a more technologically-neutral manner. Given the case Powerwave presented and subsequent recommendations of staff, the Commission sought comment on whether to relax the output power limitations in § 24.232(a) by either amending the rule to provide that the output power limit of 100 watts applies on a “per carrier” basis in the case of MCPAs, or to simply eliminate the transmitter output power restriction to allow increased flexibility for PCS licensees in the configuration of their systems.

14. In addition, the Commission asked commenters to address whether or not a radiated power rule can be devised that is technology-neutral, given that the current “per transmitter” rule allows licensees utilizing relatively narrower bandwidth technologies (e.g., GSM) to operate with higher aggregate power across their authorized spectrum than licensees utilizing relative broader bandwidth technologies such as CDMA. The Commission suggested that parties consider other alternatives, including whether or not a power spectral density limit (i.e., power per unit bandwidth) would be more appropriate and thus preferable to a “per-carrier” wording. In response to this latter question, Motorola and Qualcomm argue that the Commission’s current rule favors narrowband technologies over wider bandwidth technologies because it is on a “per transmitter” basis, and licensees using narrow bandwidth technologies could operate multiple transmitters resulting in a higher aggregate power per unit bandwidth. According to Motorola and Qualcomm, this places wider bandwidth systems at a competitive disadvantage because they need to deploy additional infrastructure to maintain the same coverage area as narrower bandwidth technologies.

15. Consequently, as a compromise between the narrowband and wideband technologies, Motorola urges the Commission to modify § 24.232(a) to apply the EIRP limits on a “per MHz” basis for technologies with emission bandwidths exceeding 1 MHz, and on a “per carrier” basis for technologies with emission bandwidths less than 1 MHz. Motorola argues that this adjustment would ensure that wideband systems could be deployed on a competitive basis by being able to radiate similar power per unit bandwidth, regardless of the technology utilized. Motorola contends that this proposal, as opposed to applying a universal power spectral density limit (as Qualcomm suggests) is more fair to narrowband operations, because applying a power spectral density universally would in effect

impose limits in excess of those currently applicable and could negatively impact current systems and technologies.

16. Finally, CTIA, in *ex parte* submissions, proposes that EIRP limits for PCS licensees be limited to the larger of either: (1) The current rules; or (2) a power spectral density constraint of 3280 watts/MHz average EIRP for non-rural areas and 6560 watts average EIRP/MHz for rural areas. In addition, CTIA proposes that the Commission allow operators to measure power limits on an “average” as well as “peak” basis, as CTIA claims the term “peak” is subject to interpretation and may lead to confusion. CTIA argues that replacing the term “peak” with the term “average” or by simply removing “peak” (and thereby conform the form of the EIRP/ERP limits in parts 22 and 24) to permit measurements on either a peak or average basis, without restriction, would remove the uncertainty associated with use of the term peak in the current rules.

17. *Discussion.* After consideration of the record and the general experience with the PCS and other new wireless services, we conclude that the current base station transmitter output power limits should be relaxed to afford more flexibility and achieve harmonization among wireless radio services and competing technologies. The record demonstrates that the transmitter output power limit has had an undesirable effect in hindering the use of MCPAs. MCPAs may be a cost effective way to construct base stations, and we wish to allow licensees flexibility in their use. In view of these conclusions and our policy to eliminate unnecessary, counterproductive or ineffective rules, we are amending §§ 24.232(a)–(b) to eliminate the 100-watt and 200-watt base station transmitter output power limits for urban and rural systems, respectively (We note that Motorola requested that any changes made to § 24.232 of our rules be uniformly applied to our part 27 rules involving power for AWS systems, specifically § 27.50(d)(1). Motorola Comments at 2–5. While we are amending §§ 24.232(a) and (b) to eliminate the output power restriction for part 24 broadband PCS systems, the *NPRM* did not specifically address the proposed elimination of the output power restriction for AWS systems under part 27. Accordingly, we believe that this issue would be better addressed in our review of petitions for reconsideration of the *AWS Report and Order*, published at 69 FR 5711, February 6, 2004, where the identical form of relief was sought for AWS systems. *See* In the Matter of Service

Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02–353, *Report and Order*. As discussed, we believe that the remaining rule that limits maximum EIRP is sufficient to serve our legitimate regulatory purposes for the time being. We note that, in view of our elimination of the broadband PCS base station transmitter output power limit rule, there is no need to address the “per transmitter” vs. “per carrier” aspect with regard to base station transmitter output power.

18. We conclude that the current base station transmitter output power limits have little or no role either in limiting interference or in ensuring that wireless systems are not designed with an excessive imbalance between the forward and reverse links. In light of our action eliminating the output power limit, we need not address Qualcomm’s contention that establishing a per carrier limit would invariably cause harmful interference as GSM and TDMA networks could operate base stations at much greater power than CDMA and W-CDMA networks. We believe that interference problems in PCS are largely avoided by voluntary coordination between the licensees of adjacent systems of facilities located in the area near the geographic boundary between those systems, and by licensee compliance with existing EIRP limits. We further believe that the demand for wireless spectrum and resulting cost of obtaining access to that spectrum provide a strong incentive for licensees to reuse frequencies efficiently within PCS systems. The necessity for efficient re-use ensures that licensees carefully design systems such that the base station transmit range does not exceed the ability of mobile units to communicate back. Excess base transmit range would have a negative impact on frequency re-use and intra-system interference levels. Thus, we believe systems will continue to be properly designed, even without our current output power rule. We also believe that licensees are in the best position to decide what combination of equipment will result in the most efficient provision of service. For example, licensees may wish to utilize higher base station output power with lower gain antennas while operating within our EIRP limits, and we believe it is in the public interest to afford licensees the flexibility to make these types of decisions regarding system design.

19. With respect to the question of spectral power density limits, we decide to maintain for the time being the radiated power limits as recently increased in the *Rural Report and*

*Order*. Given these recent radiated power increases, we conclude that the record developed in response to the *NPRM* does not adequately support further EIRP increases. We find that the Commission and industry should be afforded additional time to gain experience with, and assess the effect of, the increased rural radiated power limits and the elimination of part 24 transmitter output power limits. We also note that the *NPRM* was issued in response to comments received in our biennial review process and, with respect to possible EIRP increases, was limited in scope to broadband PCS systems regulated under part 24 of our rules. Accordingly, the commenting parties largely responded to the *NPRM* without knowledge of the Commission's rule changes as ultimately adopted in the *Rural Report and Order*. Moreover, the *Rural Report and Order* addressed rural system EIRP increases across multiple radio services, and was not limited to part 24 broadband PCS systems. Thus, in keeping with our objective to harmonize our rules across similar services, we believe that the issue of increasing EIRP for broadband PCS licensees must be examined in the larger context of services governed by other rule parts, including cellular licensees under part 22, and 700 MHz, WCS and Advanced Wireless Services under part 27. We will explore these issues in the *FNPRM*.

20. Additionally, we note that a new dimension has been raised relative to our examination of our rules to achieve better parity among technologies. Specifically, CTIA has suggested a fundamental shift in how base station transmitter power limits are determined. Rather than simply increasing the permitted peak radiated power, CTIA asks that we change from peak to average power while implementing a power spectral density limit. While we appreciate that several major carriers and equipment manufacturers are in agreement on such an approach, we believe such a change raises a number of issues that need closer examination and for which we have little record. For example, it is not clear what impact changing from a peak power limit to an average power limit may have on services operating in other parts of the spectrum, particularly those in adjacent frequency bands. Because of the significant issues that are raised by the CTIA proposal, and although the proposal has promise, we decline to make any changes to the Commission's current radiated power rules at this time. However, we will consider this

below among other issues in the *FNPRM*.

#### *E. Proposed Modifications to Part 90*

##### 1. Frequency Coordination

21. *Background*. Section 90.175(j) includes exemptions from the general frequency coordination obligation of part 90 license applications. Previously, the Commission did not require evidence of frequency coordination to accompany applications for 800 MHz Upper 200 and Lower 80 SMR frequencies. In the 2002 biennial review proceeding, CTIA asked the Commission to expand the exceptions to the frequency coordination requirements to include the 800 MHz General Category frequencies. However, the Commission staff found that "the possible conversion of existing site-by-site licensed general category frequencies to a different mode of operation (e.g., from conventional to trunked use), and the potential shared use environment of the frequencies, makes [wholesale] elimination of the coordination requirement a concern," and that frequency coordination "remains beneficial in a shared use environment to ensure efficient use and prevent interference." Consequently, the Commission sought comment on whether to eliminate the frequency coordination requirement for incumbent licensees operating on 800 MHz General Category frequencies on a non-shared basis, where such licensees propose new and/or modified facilities that do not expand the applicable interference contour.

22. *Discussion*. In light of the Commission's recent decision to reconfigure the 800 MHz band, we believe this issue is moot (i.e., there is no longer any reason to expand the exceptions to the frequency coordination requirements to include the band 806–809.75/851–854.75 MHz). Specifically, in the *800 MHz Order*, published at 69 FR 67823, November 22, 2004, the Commission decided to separate incompatible technologies by moving enhanced specialized mobile radio (ESMR) operations to the upper portion of the 800 MHz band and putting non-ESMR operations in the lower portion of the band. Under this 800 MHz reconfiguration plan, the 806–809 MHz/851–854 MHz segment of the General Category spectrum was reallocated exclusively for site-based public safety operations. The remaining segment of the General Category spectrum, i.e. 806–806.75 MHz/809–809.75 MHz, is still designated as General Category spectrum.

23. Although geographic area licensees operating in this segment can remain under certain conditions pursuant to the *800 MHz Order*, it is likely that ESMR systems in this remaining segment of the General Category will relocate to the ESMR portion of the band and the 806–806.75 MHz/809–809.75 MHz segment will be used predominately for site-based systems. For example, on the channels in this segment of the General Category vacated by Nextel, applications for site-based facilities will be accepted, exclusively from public safety entities for the first three years, by public safety and CII entities for the next two years, and thereafter by any entity eligible for use of 800 MHz channels. These site-based facilities, will require frequency coordination in order to avoid interference. Therefore, we decline to adopt the proposal that § 90.175(j) be amended to exempt applications in the General Category spectrum from frequency coordination.

##### 2. Emission Masks

24. *Background*. Section 90.210 of the Commission's rules describes several emission masks applicable to part 90 transmitters. In comments in the 2002 biennial review proceeding, Motorola notes that, while the standards imposed by this rule section generally serve the public interest by limiting unwanted emissions outside the authorized bandwidth and thus minimizing adjacent channel interference, Emission Mask G, set forth in § 90.210(g), limits design flexibility without any corresponding value in improved interference control. Motorola recommended that the Commission conform the Emission Mask G rule to the steps it has taken in recent years in adopting modulation-independent masks (emission masks D, E, and F) that place no limitation on the spectral power density profile within the maximum authorized bandwidth. The Commission sought comment on the potential benefits to the public of making this change, and whether this proposed revision would, despite Commission intent, potentially increase interference. Also, the Commission tentatively concluded that it should revise § 90.210(m) of its rules to conform to ITU Regulation S3.10, because it believed this revision will provide greater protection against interference. The Commission sought comment on this tentative conclusion.

25. *Discussion*. We adopt our tentative conclusion to conform the Emission Mask G to a modulation-independent mask that places no limitation on the spectral power density profile within

the maximum authorized bandwidth. We also revise § 90.210(m) of our rules to conform to ITU Regulation S3.10. All of the commenting parties, including CTIA, Motorola and Nextel, support the Commission's emission mask proposal. We agree with the commenters' assertion that elimination of the rule will afford greater flexibility to manufacturers and will conform this emission mask rule with other emission mask provisions applicable to part 90 services.

### 3. 800 MHz and 900 MHz Supplemental Information

26. *Background.* Section 90.607 of the Commission's rules describes the supplemental information that must be furnished by applicants for 800 MHz and 900 MHz SMR systems. Under paragraph (a) of this rule, applicants proposing to provide service on a commercial basis in these bands must supply, among other things, a statement of their "planned mode of operation" and a statement certifying that only eligible persons would be provided service on the licensee's base station facility. In comments filed in the 2002 biennial review proceeding, PCIA advocated eliminating § 90.607(a). Specifically, PCIA stated that the system diagrams that were used when the 800 MHz band was originally conceived have not been used by the Commission for years and are no longer necessary. Moreover, PCIA asserted that the eligibility statement is no longer needed because the eligibility rules for SMR end-users have been eliminated. The Commission, therefore, tentatively concluded that it should delete § 90.607(a) to eliminate the above-mentioned reporting requirements.

27. *Discussion.* We eliminate § 90.607(a) from our rules as it is no longer relevant to our regulatory scheme. The supplemental information required under this rule section was previously used in the Commission's analysis of site-based operations in the SMR service and assisted the Commission in determining to what extent single-site facilities were operating as part of a larger network. Further, prior Commission rules required that SMR end-users meet certain eligibility requirements and the Commission relied upon an applicant's separate certification regarding compliance. The Commission has shifted from site-based licensing of SMR channels to geographic-area licensing through competitive bidding, where SMR systems are routinely part of larger, integrated networks consisting of multiple transmitter sites. We therefore find it unnecessary to require applicants

to provide a statement of planned mode of operation. We also agree with PCIA that the separate eligibility certification is no longer necessary as the eligibility rules for SMR users have been eliminated. We also believe meaningful competition among the various wireless services has rendered such requirements no longer necessary in the public interest and market forces should encourage applicants to operate their facilities in the proper manner without Commission involvement.

### 4. 800 MHz and 900 MHz Trunked Systems Loading, Construction and Authorization Requirements

28. *Background.* Section 90.631 of the Commission's rules contains various requirements for the authorization, construction, and loading of 800 MHz and 900 MHz trunked systems. PCIA and CTIA request that the Commission modify two of these requirements that they assert are no longer necessary. Section 90.631(d) of the Commission's rules allows a licensee of an 800 MHz and 900 MHz SMR trunked system to request an additional five channels than it has constructed without meeting the loading requirements if the licensee operates in a "rural area." The rule defines a "rural area" as either (1) an area which is beyond the 100-mile radius of the designated center of urbanized areas listed in the rule, or (2) an area that has a "waiting list." In comments in the 2002 biennial review proceeding, PCIA noted that waiting lists for 800 MHz and 900 MHz SMR frequencies were eliminated by the Commission in 1995 when the Commission switched to competitive bidding and geographic area licensing. As a result, PCIA requested that the Commission amend § 90.631(d) to delete the "waiting list" exception to the definition of a rural area. The Commission agreed with PCIA and sought comment on a tentative conclusion to delete this exception to the definition of a rural area. The Commission also sought comment on eliminating other references to waiting lists contained in § 90.631(d) of the rules.

29. Section 90.631(i) provides that an incumbent (*i.e.*, pre-auction, site-by site authorized) 900 MHz SMR licensee that has not met the loading requirements set forth in § 90.631(b) at the end of its initial five-year license term will only be granted a renewal period of two years, in which time the licensee must satisfy the loading requirements. CTIA stated that the requirement is obsolete because the "timeframe for site-specific SMR 900 MHz systems to meet the loading requirements has since

expired." The Commission agreed that the period of renewing incumbent 900 MHz SMR licenses subject to this requirement has ended. Therefore, the Commission tentatively concluded to eliminate paragraph (i) of § 90.631 from its rules, as well as references to paragraph (i) in § 90.631(b) of the rules.

30. *Discussion.* We adopt our tentative conclusions. We agree with all of the commenting parties, including AMTA, CTIA, Nextel, and PCIA, that support the Commission's tentative conclusion on this issue urging the Commission to eliminate both the loading requirement and references to the "waiting list" in § 90.631(d) of the rules and to eliminate § 90.631(i), which is no longer necessary since the 900 MHz SMR renewal period it references has long passed. These rules are no longer relevant to our regulatory scheme.

### 5. 800 MHz and 900 MHz Power and Antenna Height

31. *Background.* Section 90.635 of our rules sets forth the limitations on power and antenna height for 800 MHz and 900 MHz systems. In its comments in the 2002 biennial review proceeding, PCIA asked the Commission to modify or eliminate the restrictions placed on two particular types of 800 MHz and 900 MHz systems—those located in "suburban" areas as defined in the rule and those whose service area requirements are less than 32 kilometers.

32. First, § 90.635(a)–(c) differentiates between "urban" and "suburban" conventional (*i.e.*, non-trunked) systems, allowing a greater maximum power (1000 watts vs. 500 watts ERP) at a given antenna height above average terrain for urban conventional systems than suburban conventional systems. The 90.635 chart (Table 2) limits maximum radiated power on a sliding scale based upon antenna height above average terrain. For example, urban conventional systems and all trunked systems are permitted to operate with a radiated power of 65 Watts ERP with an antenna height above average terrain of 4500 feet and above to a maximum of 1000 Watts ERP from an antenna height above average terrain of no greater than 1000 feet. In contrast, suburban conventional licensees are limited to a maximum power of 15 Watts ERP with an antenna height above average terrain of 4500 feet and above to a maximum of 500 Watts ERP from an antenna height above average terrain of no greater than 500 feet. PCIA argued that such a distinction "no longer serves a useful purpose and should be eliminated." PCIA justified this conclusion by asserting that suburban

systems frequently must cover larger service areas than urban systems, and therefore, a smaller maximum power limit economically restricts the ability of these licensees to serve the suburban areas. Moreover, PCIA asserted that the restrictions on suburban sites also prevent these licensees from counteracting interference from cellular systems to the same extent as urban sites. The Commission sought comment on PCIA's proposal to modify § 90.635 to remove the distinction between urban and suburban sites when setting the maximum power and antenna height limits for conventional 800 MHz and 900 MHz systems, stating that it believed there is a significant question as to whether the justification for such distinction remains relevant in today's marketplace.

33. Second, PCIA asked the Commission to eliminate the power restrictions on 800 MHz and 900 MHz systems with an operational radius of less than 32 kilometers in radius. PCIA stated that although it "appreciates the Commission's original goal to maximize the number of radio systems that could be accommodated on a single frequency, by limiting the ERP of small footprint systems," the possibility of additional channel use is effectively prohibited by the requirement in § 90.621(b)(4) that applicants protect all existing stations as if the incumbent system was operating at 1000 watts ERP. PCIA also asserted that the power limitation prevents these smaller systems from limiting interference from cellular systems. Therefore, PCIA requested that the power limitations on 800 MHz and 900 MHz systems with an operational radius below 32 kilometers be eliminated. The Commission sought comment on this proposal and asked that interested parties address the use of such systems in light of the Commission's original goal of increasing the use of single frequencies, and whether lifting of these restrictions will help eliminate interference from cellular systems.

34. *Discussion.* We adopt PCIA's proposal to modify § 90.635 to remove the distinction between urban and suburban sites when setting the maximum power and antenna height limits for conventional 800 MHz and 900 MHz systems and eliminate power limitations on systems with operational radii of less than 32 kilometers. All of the commenting parties, including AMTA, CTIA, Motorola, NAM/MRFAC, Nextel, and PCIA support the PCIA proposal. We agree with AMTA that several decades of experience have confirmed that there is no bright line distinction between the operational requirements of systems in these two

areas. AMTA contends that suburban facilities arguably could require greater power since they might need to cover larger geographic areas than their urban counterparts. AMTA argues that this rule is not needed to protect against inter-system interference in these bands and has not proven reflective of the real world operational requirements of operators. In that regard, CTIA contends that under the current rule, an "urban" system operating 24 km from the geographic center of the top 50 urbanized areas could operate with a higher power and antenna height than a system located 25 km from an urban center, which would instead be classified as a "suburban" system. CTIA argues that such a bright-line distinction makes little, if any, sense from an engineering perspective. Furthermore, CTIA argues, the existence of the "urban" versus "suburban" thresholds increases infrastructure and compliance costs, without providing any countervailing public interest benefit.

35. With regard to the reduced power requirements for this type of system, Motorola notes that the reduced power requirements may affect coverage well within the 32-kilometer service border by providing reduced building penetration. However, PCIA argues that such restrictions in today's operating environment should not lead to any allocations of additional spectrum for other licensees. Specifically, PCIA continues, since § 90.621(b)(4) requires that licensees be protected at 1000 watts ERP, even if the station is licensed for less, the reduced ERP for such systems provides no spectrum benefit. PCIA contends that conversely, the reduced ERP makes some operations more difficult for these types of systems. For example, PCIA continues, airlines do not serve a large operational area, but must be able to communicate into the lower reaches of terminal buildings. PCIA contends that the ERP limits of § 90.635 restrict the ability of airlines to serve these areas. PCIA also argues that one of the most effective means of coping with in-band interference is to increase the signal level of the desired signal. In other words, PCIA argues, a private radio or public safety licensee, experiencing interference from an adjacent channel cellular system, should increase the signal level of their system to override the cellular interference. PCIA states that in the context of these systems, constructing an additional transmitter site is an expensive and needless solution. Further, PCIA states that in the context of an airport facility, constructing an additional transmitter site is often not

an option. PCIA claims that no licensees would be harmed by the ability of a licensee to utilize increased ERP, and such licensees should have the operational flexibility to utilize an ERP that does not cause interference to co-channel users. We agree.

#### 6. System Authorization Limit in Geographic Areas

36. *Background.* Section 90.653 of the rules states that "[t]here shall be no limit on the number of systems authorized to operate in any one given area except that imposed by allocation limitations." The Commission adopted this rule in 1982 pursuant to its decision to not restrict equipment manufacturers from holding 800 MHz SMR licenses. CTIA asserted that "[t]he rule is redundant and no longer serves any regulatory purpose." Based on the fact that it has licensed and will continue to license 800 and 900 MHz SMR frequencies using competitive bidding for geographic-area authorizations, the Commission agreed with CTIA that this rule is no longer in the public interest. Therefore, the Commission tentatively concluded that § 90.653 should be removed. The Commission sought comment on this tentative conclusion.

37. *Discussion.* We adopt our tentative conclusion and eliminate § 90.653 of our rules. We agree with all of the commenting parties, including AMTA, CTIA, and Nextel, that support the Commission's tentative conclusion that rule § 90.653 is redundant "and no longer serves any regulatory purpose" due to the Commission's general shift to competitive bidding for geographic area licensing in most cases.

#### 7. Reporting Requirement for Trunked SMR Loading Data

38. *Background.* Section 90.658 of the Commission's rules provides that site-based licensees of trunked SMR systems licensed before June 1, 1993 must provide loading data in order to either acquire additional channels or renew their authorizations. Both PCIA and CTIA noted that all SMR licenses issued prior to June 1, 1993 have now been through at least one renewal period and, therefore, advocated eliminating the rule. The Commission staff found that this provision may be an outdated and burdensome requirement on SMR licensees, especially in light of the competition among cellular, PCS, and 800/900 MHz SMR services. Accordingly, the Commission tentatively concluded that it will eliminate § 90.658 as no longer necessary in the public interest.

39. *Discussion.* We adopt our tentative proposal and eliminate § 90.658. The

Commission previously stated in the *CMRS Third Report and Order*, published at 59 FR 59945, November 21, 1994, that loading requirements are “one of the mechanisms we employ under our rules to ensure that mobile service licensees make efficient use of spectrum and offer service to customers within their service area.” Previously, SMR licensees were required to meet mobile loading requirements to obtain exclusive use of existing channels, obtain additional channels, serve areas within 40 miles of existing channels, and avoid automatic cancellation of authorization for unloaded channels at renewal. However, the Commission eliminated mobile loading requirements for CMRS licensees in the *CMRS Third Report and Order* and we eliminate § 90.658 consistent with that action. We also note that all of the commenting parties, including CTIA, Nextel and PCIA, support the Commission’s tentative conclusion to eliminate § 90.658 because competitive market forces among wireless services have replaced the need to closely monitor traffic loading on SMR systems.

#### 8. Grandfathering Provisions for 800 MHz SMR Incumbent Licensees

40. *Background.* In general, § 90.621(b) requires a fixed mileage separation of 113 km (70 miles) between co-channel 800 and 900 MHz systems. However, § 90.621(b)(4) provides that co-channel stations may be separated by less than 113 km (70 miles) by meeting certain transmitter ERP and antenna height criteria, as listed in the Commission’s “Short-Spacing Separation Table.” Previously, engineering showings were submitted with applications demonstrating that a certain addition or modification would not cause interference to other licensees, even though the stations would be spaced less than 70 mi (113 km) apart. Currently, stations meeting the parameters set forth in the Short-Spacing Separation Table need not submit an engineering analysis demonstrating interference protection to co-channel licensees. Section 90.693 of the Commission’s rules requires that 800 MHz incumbent SMR licensees “notify the Commission within 30 days of any changes in technical parameters or additional stations constructed that fall within the short-spacing criteria.” It has been standard practice for incumbents to notify the Commission of all changes and additional stations constructed in cases where such stations are in fact located less than the required 70 mile distance separation, and are therefore technically “short-spaced,” but are in fact fully compliant with the

parameters of the Commission’s Short-Spacing Separation Table.

41. *Discussion.* Although we did not propose in the *NPRM* to revise § 90.693, we will delete § 90.693’s notification requirement for incumbents wishing to locate stations closer than the minimum distance separation rules allow, but that fall within the parameters of the Short-Spacing Separation Table under § 90.621 of our rules. Because incumbents are not allowed under the rules to expand their interference contours, this approach will not lead to interference among licensees.

42. Although we eliminate a substantial number of filings to reduce burdens on licensees, we clarify that notification of minor modifications within 30 days will still be required under § 90.693 in two areas involving short-spaced systems. First, § 90.621(b)(4) allows stations to be licensed at distances less than those prescribed in the Short-Spacing Separation Table where applicants “secure a waiver.” Second, § 90.621(b)(5) permits stations to be located closer than the required separation, so long as the applicant provides letters of concurrence indicating that the applicant and each co-channel licensee within the specified separation agree to accept any interference resulting from the reduced separation between systems.

#### 9. 220 MHz Phase I Supplemental Progress Reports

43. *Background.* Section 90.737 of the Commission’s rules sets forth the supplemental progress reports that 220 MHz Phase I licensees must file with the Commission. The Commission staff recommended that the Commission consider whether certain rules applicable to 220 MHz Phase I licensees continue to be necessary in the public interest in light of increased competition among commercial mobile radio services (CMRS) providers. In particular, staff identified section 90.737 as imposing certain reporting requirements and restrictions on assignments of unconstructed, site-based, 220 MHz Phase I licenses that were intended to prevent speculation and trafficking in licenses awarded by lottery. The Commission tentatively concluded that § 90.737 should be eliminated as no longer necessary in the public interest given recent competitive and other developments. The Commission sought comment on this tentative conclusion.

44. *Discussion.* We adopt our tentative conclusion to eliminate § 90.737. Licensing by lottery has been eliminated in the 220 MHz Service and a

continuation of these reporting requirements may “impede the transferability of 220 MHz spectrum” in a competitive CMRS marketplace. Both commenting parties, AMTA and CTIA support the Commission’s tentative conclusion to eliminate § 90.737 because “future 220 MHz licenses will be awarded by auction, not lottery” and the rule is no longer needed to prevent trafficking in unconstructed stations.

#### F. Corrections and Updates to WRS Rules

45. In the *NPRM*, we described a series of administrative changes we proposed to make in this *Report and Order*. Generally, the changes entail correcting, updating, and eliminating various rules in parts 1, 22, 24, 27, and 90. We received no comment on any of the proposed administrative changes. Consequently, based on the record before us, we adopt those administrative changes. The specific administrative changes are as follows:

- Part 1, subpart F—Title. Correct the term “Wireless Telecommunications Services” to read “Wireless Radio Services.”
- Section 1.927(g). Replace the cross-reference to § 1.948(h)(2) with § 1.948(i)(2).
- Section 1.939(b). Eliminate the third sentence which states that manually filed petitions to deny can be filed at the Commission’s former office location.
- Section 1.955(a)(2). Replace the cross-reference to § 1.948(c) with § 1.946(c).
- Section 22.946(b)(2). Replace the reference to Form 489 with Form 601.
- Section 22.946(c). Replace the cross-reference to § 22.144(b) with § 1.955.
- Section 22.947(c). Update the location for filing a cellular system information update (SIU) to “Federal Communications Commission, Wireless Telecommunications Bureau, Mobility Division, 445 12th Street, SW., Washington, DC 20554.”
- Section 22.948(d). Delete the cross-reference to § 22.144(a).
- Section 22.949(d). Replace the cross-reference to § 22.122 with § 1.927.
- Section 22.953(b). Replace the cross-reference to § 1.929(h) with § 1.929(a)–(b).

Finally, we also received a request from Motorola to address the station identification rules applicable to 700 MHz public safety licensees. Specifically, Motorola contends that unlike the rules for 800 MHz public safety licensees operating digital transmitting equipment on exclusive channels, the rules do not explicitly

provide similarly situated 700 MHz licensees with the ability to transmit their station identification in the digital mode. We note that the Commission recently sought comment on this issue in another proceeding.

#### G. Procedural Matters

##### 1. Final Regulatory Flexibility Certification

46. The Regulatory Flexibility Act of 1980, as amended (RFA) (*See* 5 U.S.C. 601–612) requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making 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 the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. 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).

47. As required by the RFA, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM*, which commenced a proceeding to streamline and harmonize licensing provisions in the wireless radio services (WRS). The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. This Final Regulatory Flexibility Certification conforms to the RFA.

48. This *Report and Order* adopts several measures intended to streamline and harmonize certain licensing provisions in the wireless radio services (WRS) and further Commission efforts to maintain clear spectrum rights and obligations for these licensees, fulfill the Commission’s mandate under section 11 of the Communications Act to conduct biennial reviews, support recent efforts to maximize the public benefits derived from the use of the radio spectrum, and increase the ability of wireless service providers to use licensed spectrum resources flexibly and efficiently to offer a variety of services in a cost-effective manner.

49. The *Report and Order* resolves the question of whether relevant provisions should be (1) streamlined as a result of competitive, technological, or subsequent administrative rule changes and/or (2) harmonized because they treat similarly situated services

differently. The Order accomplishes this primarily by eliminating provisions when necessary and modifying provisions when appropriate. For example, as we have done in recent years in adopting modulation-independent masks (emission masks D, E, and F), we conform the Emission Mask G rule to the others and place no limitation on the spectral power density profile within the maximum authorized bandwidth. This action, supported by all commenting parties, will improve design flexibility while maintaining interference control, thus creating, we believe, no significant adverse economic impact.

50. Also, we modified our rules to remove the distinction between urban and suburban sites when setting the maximum power and antenna height limits for conventional 800 MHz and 900 MHz systems. Our experience has been that there is no bright line distinction between the operational requirements of urban and suburban systems. In fact, because they might need to cover larger geographic areas than their urban counterparts, suburban facilities arguably could require greater power. In general, we found that “urban” versus “suburban” thresholds actually increase infrastructure and compliance costs, without providing any countervailing public interest benefit. We found that removing those distinctions might actually eliminate or significantly reduce those compliance costs. Therefore, we certify that the requirements of the *Report and Order* will not have a significant economic impact on a substantial number of small entities.

##### 2. Congressional Review Act

51. The Commission will send a copy of the *Report and Order*, including a copy of the Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act (*See* 5 U.S.C. 801(a)(1)(A)). In addition, the *Report and Order* and the final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the **Federal Register** (*See* 5 U.S.C. 605(b)).

##### 3. Paperwork Reduction Act of 1995

52. This document does not contain any proposed, new, or modified information collection subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief

Act of 2002, Public Law 107–198. *See* 44 U.S.C. 3506(c)(4).

##### 4. Contact Information

53. The primary Wireless Telecommunications Bureau contacts for this proceeding are Wilbert E. Nixon, Jr., and B.C. “Jay” Jackson, Jr. of the Wireless Telecommunications Bureau’s Mobility Division (202–418–0620). Press inquiries should be directed to Chelsea Fallon, Wireless Telecommunications Bureau, at (202) 418–7991, TTY at (202) 418–7233, or e-mail at [Chelsea.Fallon@fcc.gov](mailto:Chelsea.Fallon@fcc.gov).

#### IV. Ordering Clauses

54. Pursuant to the authority of sections 4(i), 7, 11, 303(c), 303(f), 303(g), 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), 303(g), 303(r), and 332, the rule changes specified in the *Report and Order* are adopted.

55. The rule changes set forth in the *Report and Order* will become effective 60 days after publication in the **Federal Register**.

56. The Commission’s Consumer Information Bureau, Reference Information Center, shall send a copy of this *Report and Order*, including the Final Regulatory Flexibility Certification and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects

##### 47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Radio, Reporting and Recordkeeping requirements, Telecommunications.

##### 47 CFR Part 22

Communications common carriers, Radio.

##### 47 CFR Part 24

Personal communications services, Radio.

##### 47 CFR Part 27

Wireless communications services.

##### 47 CFR Part 90

Business and industry, Common carriers, Radio, Reporting and recordkeeping requirements. Federal Communications Commission.

**Marlene H. Dortch**,  
Secretary.

#### Rule Changes

■ Parts 1, 22, 24, 27, and 90 of Title 47 of the Code of Federal Regulations are amended as follows:

**PART 1—PRACTICE AND PROCEDURE**

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

**Authority:** 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, and 303(r).

■ 2. The heading of Subpart F is revised to read as follows:

**Subpart F—Wireless Radio Services Applications and Proceedings**

■ 3. Section 1.927 is amended by revising paragraph (g) to read as follows:

**§ 1.927 Amendment of applications.**

\* \* \* \* \*  
(g) Where an amendment to an application specifies a substantial change in beneficial ownership or control (*de jure* or *de facto*) of an applicant, the applicant must provide an exhibit with the amendment application containing an affirmative, factual showing as set forth in § 1.948(i)(2).  
\* \* \* \* \*

■ 4. Section 1.929 is amended by revising paragraph (c) to read as follows:

**§ 1.929 Classification of filings as major or minor.**

\* \* \* \* \*  
(c) In addition to those changes listed in paragraph (a) in this section, the following are major changes applicable to stations licensed to provide base-to-mobile, mobile-to-base, mobile-to-mobile on a site-specific basis:

(1) In the Paging and Radiotelephone Service, Rural Radiotelephone Service and 800 MHz Specialized Mobile Radio Service (SMR), any change that would increase or expand the applicant's existing composite interference contour.

(2) In the 900 MHz SMR and 220 MHz Service, any change that would increase or expand the applicant's service area as defined in the rule parts governing the particular radio service.

(3) In the Paging and Radiotelephone Service, Rural Radiotelephone Service, Offshore Radiotelephone Service, and Specialized Mobile Radio Service:

(i) Request an authorization or an amendment to a pending application that would establish for the filer a new fixed transmission path;

(ii) Request an authorization or an amendment to a pending application for a fixed station (i.e., control, repeater, central office, rural subscriber, or inter-office station) that would increase the effective radiated power, antenna height above average terrain in any azimuth, or relocate an existing transmitter;

(4) In the Private Land Mobile Radio Services (PLMRS), the remote pickup

broadcast auxiliary service, and GMRS systems licensed to non-individuals;

(i) Change in frequency or modification of channel pairs, except the deletion of one or more frequencies from an authorization;

(ii) Change in the type of emission;

(iii) Change in effective radiated power from that authorized or, for GMRS systems licensed to non-individuals, an increase in the transmitter power of a station;

(iv) Change in antenna height from that authorized;

(v) Change in the authorized location or number of base stations, fixed, control, except for deletions of one or more such stations or, for systems operating on non-exclusive assignments in GMRS or the 470–512 MHz, 800 MHz or 900 MHz bands, a change in the number of mobile transmitters, or a change in the area of mobile transmitters, or a change in the area of mobile operations from that authorized;

(vi) Change in the class of a land station, including changing from multiple licensed to cooperative use, and from shared to unshared use.  
\* \* \* \* \*

■ 5. Section 1.939 is amended by revising paragraph (b) to read as follows:

**§ 1.939 Petitions to deny.**

\* \* \* \* \*  
(b) *Filing of petitions.* Petitions to deny and related pleadings may be filed electronically via ULS. Manually filed petitions to deny must be filed with the Office of the Secretary, 445 Twelfth Street, SW., Room TW–B204, Washington, DC 20554. Attachments to manually filed applications may be filed on a standard 3 1/4" agnetic diskette formatted to be readable by high density floppy drives operating under MS-DOS (version 3.X or later compatible versions). Each diskette submitted must contain an ASCII text file listing each filename and a brief description of the contents of each file on the diskette. The files on the diskette, other than the table of contents, should be in Adobe Acrobat Portable Document Format (PDF) whenever possible. Petitions to deny and related pleadings must reference the file number of the pending application that is the subject of the petition.  
\* \* \* \* \*

■ 6. Section 1.955 is amended by revising paragraph (a)(2) to read as follows:

**§ 1.955 Termination of authorizations.**

(a) \* \* \*  
(2) *Failure to meet construction or coverage requirements.* Authorizations automatically terminate, without

specific Commission action, if the licensee fails to meet applicable construction or coverage requirements. See § 1.946(c) of this part.  
\* \* \* \* \*

**PART 22—PUBLIC MOBILE SERVICES**

■ 7. The authority citation for part 22 continues to read as follows:

**Authority:** 47 U.S.C. 154, 222, 303, 309 and 332.

■ 8. Section 22.303 is revised to read as follows:

**§ 22.303 Retention of station authorizations; identifying transmitters.**

The current authorization for each station, together with current administrative and technical information concerning modifications to facilities pursuant to § 1.929 of this chapter, and added facilities pursuant to § 22.165 must be retained as a permanent part of the station records. A clearly legible photocopy of the authorization must be available at each regularly attended control point of the station, or in lieu of this photocopy, licensees may instead make available at each regularly attended control point the address or location where the licensee's current authorization and other records may be found.

■ 9. Section 22.947 is amended by revising paragraph (c) introductory text to read as follows:

**§ 22.947 Five year build-out period.**

\* \* \* \* \*  
(c) *System information update.* Sixty days before the end of the five year build-out period, the licensee of each cellular system authorized on each channel block in each cellular market must file, in triplicate, a system information update (SIU), comprising a full size map, a reduced map, and an exhibit showing technical data relevant to determination of the system's CGSA. Separate maps must be submitted for each market into which the CGSA extends, showing the extension area in the adjacent market. Maps showing extension areas must be labeled (*i.e.* marked with the market number and channel block) for the market into which the CGSA extends. SIUs must accurately depict the relevant cell locations and coverage of the system at the end of the five year build-out period. SIUs must be filed at the Federal Communications Commission, Wireless Telecommunications Bureau, Mobility Division, 445 12th Street, SW., Washington, DC 20554. If any changes to the system occur after the filing of the SIU, but before the end of the five year

build-out period, the licensee must file, in triplicate, additional maps and/or data as necessary to insure that the cell locations and coverage of the system as of the end of the five year build-out period are accurately depicted.

■ 10. Section 22.948 is amended by revising paragraph (d) to read as follows:

**§ 22.948 Partitioning and Disaggregation.**

\* \* \* \* \*

(d) *License Term.* The license term for the partitioned license area and for disaggregated spectrum shall be the remainder of the original cellular licensee's or the unserved area licensee's license term.

■ 11. Section 22.949 is amended by revising paragraph (d) introductory text to read as follows:

**§ 22.949 Unserved area licensing process.**

\* \* \* \* \*

(d) *Limitations on amendments.* Notwithstanding the provisions of § 1.927 of this chapter, Phase I applications are subject to the following additional limitations in regard to the filing of amendments.

\* \* \* \* \*

■ 12. Section 22.953 is amended by revising paragraph (b) and (c) to read as follows:

**§ 22.953 Content and form of applications.**

\* \* \* \* \*

(b) *Existing systems—major modifications.* Licensees making major modifications pursuant to § 1.929(a) and (b) of this chapter, must file FCC Form 601 and need only contain the exhibits required by paragraphs (a)(1) through (a)(3) of this section.

(c) *Existing systems—minor modifications.* Licensees making minor modifications pursuant to § 1.929(k) of this chapter—in which the modification causes a change in the CGSA boundary (including the removal of a transmitter or transmitters)—must notify the FCC (using FCC Form 601) and include full-sized maps, reduced maps, and supporting engineering exhibits as described in paragraphs (a)(1) through (3) of this section. If the modification involves a contract SAB extension, it must include a statement as to whether the five-year build-out for the system on the relevant channel block in the market into which the SAB extends has elapsed, and as to whether the SAB extends into any unserved area in that market.

**PART 24—PERSONAL COMMUNICATIONS SERVICES**

■ 13. The authority citation for part 24 continues to read as follows:

**Authority:** 47 U.S.C. 154, 301, 302, 303, 309 and 332.

■ 14. Section 24.12 is revised to read as follows:

**§ 24.12 Eligibility.**

Any entity, other than those precluded by section 310 of the Communications Act of 1934, as amended, 47 U.S.C. 310, is eligible to hold a license under this part.

■ 15. Section 24.232 is revised to read as follows:

**§ 24.232 Power and antenna height limits.**

(a) Base stations are limited to 1640 watts peak equivalent isotropically radiated power (EIRP) with an antenna height up to 300 meters HAAT, except as described in paragraph (b) below. See § 24.53 for HAAT calculation method. Base station antenna heights may exceed 300 meters with a corresponding reduction in power; see Table 1 of this section. The service area boundary limit and microwave protection criteria specified in §§ 24.236 and 24.237 apply.

**TABLE 1.—REDUCED POWER FOR BASE STATION ANTENNA HEIGHTS OVER 300 METERS**

HAAT in meters	Maximum EIRP watts
≤ 300 .....	1640
≤ 500 .....	1070
≤ 1000 .....	490
≤ 1500 .....	270
≤ 2000 .....	160

(b) Base stations that are located in counties with population densities of 100 persons or fewer per square mile, based upon the most recently available population statistics from the Bureau of the Census, are limited to 3280 watts peak equivalent isotropically radiated power (EIRP) with an antenna height up to 300 meters HAAT; See § 24.53 for HAAT calculation method. Base station antenna heights may exceed 300 meters with a corresponding reduction in power; see Table 2 of this section. The service area boundary limit and microwave protection criteria specified in §§ 24.236 and 24.237 apply. Operation under this paragraph must be coordinated in advance with all PCS licensees within 120 kilometers (75 miles) of the base station and is limited to base stations located more than 120 kilometers (75 miles) from the Canadian

border and more than 75 kilometers (45 miles) from the Mexican border.

**TABLE 2.—REDUCED POWER FOR BASE STATION ANTENNA HEIGHTS OVER 300 METERS**

HAAT in meters	Maximum EIRP watts
≤ 300 .....	3280
≤ 500 .....	2140
≤ 1000 .....	980
≤ 1500 .....	540
≤ 2000 .....	320

(c) Mobile/portable stations are limited to 2 watts EIRP peak power and the equipment must employ means to limit the power to the minimum necessary for successful communications.

(d) Peak transmit power must be measured over any interval of continuous transmission using instrumentation calibrated in terms of an rms-equivalent voltage. The measurement results shall be properly adjusted for any instrument limitations, such as detector response times, limited resolution bandwidth capability when compared to the emission bandwidth, sensitivity, etc., so as to obtain a true peak measurement for the emission in question over the full bandwidth of the channel.

**§ 24.843 [Removed]**

■ 16. Section 24.843 is removed.

**PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES**

■ 17. The authority citation for part 27 continues to read as follows:

**Authority:** 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

■ 18. Section 27.3 is amended by redesignating paragraphs (o) and (p) as (p) and (q) and adding new paragraph (o) to read as follows:

**§ 27.3 Other applicable rule parts.**

\* \* \* \* \*

(o) *Part 74.* This part sets forth the requirements and conditions applicable to experimental radio, auxiliary, special broadcast and other program distributional services.

\* \* \* \* \*

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

■ 19. 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).

**§ 90.20 [Amended]**

■ 20. Amend § 90.20 as follows:

■ a. Amend the Public Safety Pool Frequency Table of Section 90.20(c)(3) (Frequencies.) by revising the entries for frequencies 35.02, 156.1725, 156.1875,

156.195, 156.2025, 156.2325, 158.9925, 159.0075, 159.0225, 159.0525, 159.0675, 159.0825, 159.1125, 159.1275, 159.135, 159.1425, 159.1725, 155.325, 155.3325, 155.355, 155.3625, 155.385, 155.3925, 155.400, 155.4075, 462.950, 462.95625, 462.9625, 462.96875, 462.975, 462.98125, 462.9875, and 462.99375 Megahertz to read as set forth below;

■ b. Remove and reserve paragraph (d)(38); and

■ c. The entries for 467.950, 467.95625, 467.9625, 467.96875, 467.975, 467.98125, 467.9875 and 467.99375 Megahertz are amended by removing limitation 38 and adding in its place 10.

**PUBLIC SAFETY POOL FREQUENCY TABLE**

Frequency or brand	Class of station(s)	Limitations	Coordinator
<b>Megahertz</b>			
35.02	Mobile	12, 78	PS
155.325	do	10, 39	PM
155.3325	do	27, 10, 39	PM
155.355	do	10, 39	PM
155.3625	do	27, 10, 39	PM
155.385	do	10, 39	PM
155.3925	do	27, 10, 39	PM
155.400	do	10, 39	PM
155.4075	do	27, 10, 39	PM
156.1725	do	27, 42	PH
156.1875	do	27, 42	PH
156.195	do	27	PH
156.2025	do	27	PH
156.2325	do	27, 10	PH
158.9925	do	27	PH
159.0075	do	27	PH
159.0225	do	27	PH
159.0525	do	27	PH
159.0675	do	27	PH
159.0825	do	27	PH
159.1125	do	27	PH
159.1275	do	27	PH
159.135	do	27	PH
159.1425	do	27	PH
159.1725	do	27, 43	PH
462.950	Base or mobile	10, 65	PM

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or brand	Class of station(s)	Limitations	Coordinator
462.95625 .....	.....do .....	10, 44, 65	PM
462.9625 .....	.....do .....	27, 10, 65	PM
462.96875 .....	.....do .....	10, 44, 65	PM
462.975 .....	.....do .....	10, 65	PM
462.98125 .....	.....do .....	10, 44, 65	PM
462.9875 .....	.....do .....	27, 10, 65	PM
462.99375 .....	.....do .....	10, 44, 65	PM
* * * * *			

\* \* \* \* \*

**§ 90.35 [Amended]**

■ 21. Section 90.35 is amended by removing one of the duplicate entries of “Frequency 35.48 Megahertz” of the Industrial/Business Pool Frequency Table of paragraph (b)(3) and by removing and reserving paragraph (c)(45).

■ 22. Section 90.149 is amended by revising paragraph (a) and removing paragraph (d) to read as follows:

**§ 90.149 License term.**

(a) Except as provided in subpart R of this part, licenses for stations authorized under this part will be issued for a term not to exceed ten (10) years from the date of the original issuance or renewal.

\* \* \* \* \*

■ 23. Section 90.175 is amended by revising paragraph (j) to read as follows:

**§ 90.175 Frequency coordinator requirements.**

\* \* \* \* \*

(j) The following applications need not be accompanied by evidence of frequency coordination:

(1) Applications for frequencies below 25 MHz.

(2) Applications for a Federal Government frequency.

(3) Applications for frequencies in the 72–76 MHz band except for mobile frequencies subject to § 90.35(c)(77).

(4) Applications for a frequency to be used for developmental purposes.

(5) Applications in the Industrial/Business Pool requesting a frequency designated for itinerant operations, and applications requesting operation on 154.570 MHz, 154.600 MHz, 151.820 MHz, 151.880 MHz, and 151.940 MHz.

(6) Applications in the Radiolocation Service.

(7) Applications filed exclusively to modify channels in accordance with band reconfiguration in the 806–824/851–869 band.

(8) Applications for frequencies listed in the SMR tables contained in §§ 90.617 and 90.619.

(9) Applications indicating license assignments such as change in ownership, control or corporate structure if there is no change in technical parameters.

(10) Applications for mobile stations operating in the 470–512 MHz band, 764–776/794–806 MHz band, or above 800 MHz if the frequency pair is assigned to a single system on an exclusive basis in the proposed area of operation.

(11) Applications for add-on base stations in multiple licensed systems operating in the 470–512 MHz, 764–776/794–806 MHz band, or above 800 MHz if the frequency pair is assigned to a single system on an exclusive basis.

(12) Applications for control stations operating below 470 MHz, 764–776/794–806 MHz, or above 800 MHz and meeting the requirements of § 90.119(b).

(13) Except for applications for the frequencies set forth in §§ 90.719(c) and 90.720, applications for frequencies in the 220–222 MHz band.

(14) Applications for a state license under § 90.529.

(15) Applications for narrowband low power channels listed for itinerant use in § 90.531(b)(4).

(16) Applications for DSRCS licenses (as well as registrations for Roadside Units) in the 5850–5925 GHz band.

(17) Applications for the deletion of a frequency and/or transmitter site location.

■ 24. Section 90.210 is amended by removing paragraph (g)(1) and redesignating paragraphs (g)(2) and (g)(3) as paragraphs (g)(1) and (g)(2), and by revising paragraph (o) to read as follows:

**§ 90.210 Power and antenna height limits.**

\* \* \* \* \*

(o) *Instrumentation.* The reference level for showing compliance with the emission mask shall be established, except as indicated in §§ 90.210 (d), (e), and (k), using standard engineering practices for the modulation characteristic used by the equipment under test. When measuring emissions

in the 150–174 MHz and 421–512 MHz bands the following procedures will apply. A sufficient number of sweeps must be measured to insure that the emission profile is developed. If video filtering is used, its bandwidth must not be less than the instrument resolution bandwidth. For frequencies more than 50 kHz removed from the edge of the authorized bandwidth a resolution of at least 100 kHz must be used for frequencies below 1000 MHz. Above 1000 MHz the resolution bandwidth of the instrumentation must be at least 1 MHz. If it can be shown that use of the above instrumentation settings do not accurately represent the true interference potential of the equipment under test, then an alternate procedure may be used provided prior Commission approval is obtained.

**§ 90.607 [Amended]**

■ 24a. Section 90.607 is amended by removing paragraph (a) and redesignating paragraphs (b), (c), (d), and (e) as paragraphs (a), (b), (c), and (d).

■ 25. Section 90.631 is amended by revising paragraphs (b) and (d) and removing paragraph (i) to read as follows:

**§ 90.631 Trunked systems loading, construction and authorization requirements.**

\* \* \* \* \*

(b) Each applicant for a non-SMR trunked system must certify that a minimum of seventy (70) mobiles for each channel authorized will be placed into operation within five (5) years of the initial license grant.

\* \* \* \* \*

(d) In rural areas, a licensee of a trunked system may request to increase its system capacity by five more channels than it has constructed without meeting the loading requirements specified in paragraphs (b) and (c) of this section. A rural area is defined for purposes of this section as being beyond a 100-mile radius of the designated centers of the following

urbanized areas: New York, NY; Los Angeles, CA; Chicago, IL; Philadelphia, PA; San Francisco, CA; Detroit, MI; Boston, MA; Houston, TX; Washington, DC; Dallas-Fort Worth, TX; Miami, FL; Cleveland, OH; St. Louis, MO; Atlanta, GA; Pittsburgh, PA; Baltimore, MD; Minneapolis-St. Paul, MN; Seattle, WA; San Diego, CA; and Tampa-St. Petersburg, FL. The coordinates for the centers of these areas are those referenced in § 90.635, except that the coordinates (referenced to North American Datum 1983 (NAD83)) for Tampa-St. Petersburg are latitude 28°00'1.1" N, longitude 82°26'59.3" W.

\* \* \* \* \*

■ 26. Section 90.635 is revised read as follows:

**§ 90.635 Limitations on power and antenna height.**

(a) The effective radiated power and antenna height for base stations may not exceed 1 kilowatt (30 dBw) and 304 m. (1,000 ft.) above average terrain (AAT), respectively, or the equivalent thereof as determined from the Table. These are maximum values, and applicants will be required to justify power levels and antenna heights requested.

(b) The maximum output power of the transmitter for mobile stations is 100 watts (20 dBw).

TABLE.—EQUIVALENT POWER AND ANTENNA HEIGHTS FOR BASE STATIONS IN THE 851–869 MHz AND 935–940 MHz BANDS WHICH HAVE A REQUIREMENT FOR A 32 KM (20 MI) SERVICE AREA RADIUS

Antenna height (ATT) meters (feet)	Effective radiated power (watts) <sup>1 2 4</sup>
Above 1,372 (4,500) .....	65
Above 1,220 (4,000) to 1,372 (4,500) .....	70
Above 1,067 (3,500) to 1,220 (4,000) .....	75
Above 915 (3,000) to 1,067 (3,500) .....	100
Above 763 (2,500) to 915 (3,000) .....	140
Above 610 (2,000) to 763 (2,500) .....	200
Above 458 (1,500) to 610 (2,000) .....	350
Above 305 (1,000) to 458 (1,500) .....	600
Up to 305 (1,000) .....	<sup>3</sup> 1,000

<sup>1</sup> Power is given in terms of effective radiated power (ERP).

<sup>2</sup> Applicants in the Los Angeles, CA, area who demonstrate a need to serve both the downtown and fringe areas will be permitted to utilize an ERP of 1 kw at the following mountaintop sites: Santiago Park, Sierra Peak, Mount Lukens, and Mount Wilson.

<sup>3</sup> Stations with antennas below 305 m (1,000 ft) (AAT) will be restricted to a maximum power of 1 kw (ERP).

<sup>4</sup> Licensees in San Diego, CA, will be permitted to utilize an ERP of 500 watts at the following mountaintop sites: Palomar, Otay, Woodson and Miguel.

**§ 90.653 [Removed]**

■ 27. Section 90.653 is removed.

**§ 90.658 [Removed]**

■ 28. Section 90.658 is removed.

**§ 90.693 [Removed]**

■ 29. Section 90.693 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 90.693 Grandfathering provisions for incumbent licensees.**

\* \* \* \* \*

(b) *Spectrum blocks A through V.* An incumbent licensee's service area shall be defined by its originally licensed 40 dBµV/m field strength contour and its interference contour shall be defined as its originally-licensed 22 dBµV/m field strength contour. The "originally-licensed" contour shall be calculated using the maximum ERP and the actual height of the antenna above average terrain (HAAT) along each radial. Incumbent licensees are permitted to add, remove or modify transmitter sites within their original 22 dBµV/m field strength contour without prior notification to the Commission so long as their original 22 dBµV/m field strength contour is not expanded. Incumbent licensee protection extends only to its 40 dBµV/m signal strength contour. Pursuant to the minor modification notification procedures set forth in 1.947(b), the incumbent licensee must notify the Commission within 30 days of any change in technical parameters for stations that are authorized under a waiver of 90.621(b)(4), or that are authorized under 90.621(b)(5).

(c) Special provisions for spectrum blocks F1 through V. Incumbent licensees that have received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBµV/m signal strength interference contour shall have their service area defined by their originally-licensed 36 dBµV/m field strength contour and their interference contour shall be defined as their originally-licensed 18 dBµV/m field strength contour. The "originally-licensed" contour shall be calculated using the maximum ERP and the actual HAAT along each radial. Incumbent licensees seeking to utilize an 18 dBµV/m signal strength interference contour shall first seek to obtain the consent of affected co-channel incumbents. When

the consent of a co-channel licensee is withheld, an incumbent licensee may submit to any certified frequency coordinator an engineering study showing that interference will not occur, together with proof that the incumbent licensee has sought consent. Incumbent licensees are permitted to add, remove or modify transmitter sites within their original 18 dBµV/m field strength contour without prior notification to the Commission so long as their original 18 dBµV/m field strength contour is not expanded. Incumbent licensee protection extends only to its 36 dBµV/m signal strength contour. Pursuant to the minor modification notification procedures set forth in 1.947(b), the incumbent licensee must notify the Commission within 30 days of any change in technical parameters for stations that are authorized under a waiver of 90.621(b)(4), or that are authorized under 90.621(b)(5).

\* \* \* \* \*

**§ 90.737 [Removed]**

■ 30. Section 90.737 is removed.

■ 31. Section 90.743 is amended by revising paragraphs (a) introductory text and (c) to read as follows:

**§ 90.743 Renewal expectancy.**

(a) All licensees seeking renewal of their authorizations at the end of their license term must file a renewal application in accordance with the provisions of § 1.949 of this chapter. Licensees must demonstrate, in their application, that:

\* \* \* \* \*

(c) Phase I non-nationwide licensees have license terms of 10 years, and therefore must meet these requirements 10 years from the date of initial authorization in order to receive a renewal expectancy. Phase I nationwide licensees and all Phase II licensees have license terms of 10 years, and therefore must meet these requirements 10 years from the date of initial authorization in order to receive a renewal expectancy.

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