

TABLE 1.—EPA APPROVED TENNESSEE REGULATIONS—Continued

| State citation | Title/subject | State effective date | EPA approval date | Federal Register Notice |
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| Section 1200–3–27–.09. | Compliance plans for NO _x Emissions From Stationary Internal Combustion Engines. | 11/14/05 | 12/27/05 | [Insert citation of publication] |
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 [FR Doc. 05–24415 Filed 12–23–05; 8:45 am]
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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 22

[WT Docket Nos. 03–103, 05–42; FCC 05–202]

Air-Ground Telecommunications Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission (“Commission”) resolves two petitions for reconsideration in this proceeding. Further, the Commission adopts certain reporting requirements that will require licensees who win an exclusive 3 MHz license to report to the Commission in order to enable the Commission to monitor the migration of their narrowband subscribers to a new broadband system.

DATES: Effective February 27, 2006.

FOR FURTHER INFORMATION CONTACT: Richard Arsenault, Chief Counsel, Mobility Division, Wireless Telecommunications Bureau, at 202–418–0920 or via e-mail at Richard.Arsenault@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Order on Reconsideration portion (*Order on Reconsideration*) of the Commission’s Order on Reconsideration and Report and Order, FCC 05–202, in WT Docket Nos. 03–103 and 05–42, adopted December 8, 2005, and released December 9, 2005. Contemporaneous with this document, the Commission issues a *Report and Order* (published elsewhere in this publication). The complete text of this document is available for public inspection and copying from 8 a.m. to 4:30 p.m. Monday through Thursday or from 8 a.m. to 11:30 p.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257,

Washington, DC 20554. This document and all related Commission documents may also be purchased from the Commission’s duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site: <http://www.BCPIWEB.com>. When ordering documents from BCPI please provide the appropriate FCC document number (for example, FCC 05–202, Order on Reconsideration). The full text may also be downloaded at: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by sending an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), or 202–418–0432 (tty).

Paperwork Reduction Act

This *Order on Reconsideration* does not contain any new or modified information collections.

Synopsis of the Order on Reconsideration

1. In the *Report and Order* in this proceeding, 70 FR 19293, April 13, 2005, the Commission, *inter alia*, amended its 800 MHz Commercial Air-Ground Radiotelephone Service band plan and service rules. Based on the band configuration proposals submitted by interested parties in the proceeding, the Commission decided to assign nationwide air-ground licenses under one of three alternative band configurations: (1) Band Plan 1, comprised of two overlapping, shared, cross-polarized 3 MHz licenses (licenses A and B, respectively), (2) Band Plan 2, comprised of an exclusive 3 MHz license and an exclusive 1 MHz license (licenses C and D, respectively), and (3) Band Plan 3, comprised of an exclusive 1 MHz license and an exclusive 3 MHz license (licenses E and F, respectively), with the blocks at opposite ends of the band from the second configuration. Each of these band plans includes at least one 3 MHz license, which the Commission determined would enable a

new licensee to provide broadband service to the flying public.

2. The Commission will award licenses to winning bidders for the licenses comprising the band plan that receives the highest aggregate gross bid, subject to long-form license application review. In order to further competition and ensure maximum use of this frequency band for air-ground services, no party will be eligible to hold more than one of the spectrum licenses being made available. We note that current bilateral agreements between the United States, Canada, and Mexico provide for coordinated use of air-ground frequencies over North American airspace and are based on a narrow bandwidth channel scheme, and therefore may need to be renegotiated to provide for more flexible use of this spectrum. The Commission decided not to permit a licensee to provide ancillary land mobile or fixed services in the 800 MHz air-ground spectrum.

3. Verizon Airfone Inc. (Verizon Airfone or Airfone) is the sole incumbent currently operating in the 800 MHz air-ground band. The Commission granted Verizon Airfone a non-renewable license for a five-year term commencing on the effective date of the *Report and Order*. The Commission determined that in order to ensure that the air-ground spectrum can be used to provide broadband air-ground services to the public in the near future, it is imperative to clear the incumbent narrowband system from a minimum of three megahertz of spectrum as soon as reasonably practicable. The Commission concluded that Verizon Airfone’s incumbent system must cease operations in the lower 1.5 MHz portion of each 2 MHz air-ground band within 24 months of the initial date of grant of any license, if band plan 1 or 2 is implemented; Verizon Airfone may relocate its incumbent operations to the upper 0.5 MHz portion of each 2 MHz band and may continue to operate under the renewal authorization until the end of the five-year license term. If band plan 3 is implemented, Verizon Airfone’s incumbent system must cease operations in the upper 1.5 MHz portion

of each 2 MHz air-ground band within 24 months of the initial date of grant of any new license; Verizon Airfone may relocate its incumbent operations to the lower 0.5 MHz portion of each 2 MHz band and may continue to operate under the renewal authorization until the end of the five-year license term.

4. In this *Order on Reconsideration*, we address the Petition for Clarification and Reconsideration of the *Report and Order* in this proceeding, 70 FR 19293, April 13, 2005, filed by Space Data Corporation (Space Data). We deny Space Data's request to permit the provision of ancillary land mobile and fixed service in the 800 MHz air-ground band on a secondary basis. We grant Space Data's request to clarify that stratospheric platforms, such as high-altitude balloons, may be used to provide air-ground services in the band.

5. In the *Report and Order*, the Commission prohibited the provision of ancillary land mobile and fixed services in the 800 MHz air-ground band. The Commission determined that, in light of the small amount of spectrum dedicated for commercial air-ground service (only four megahertz), the public interest would be best served by ensuring that the band is devoted to the provision of air-ground service. Space Data requests that we revisit this determination and permit licensees to provide ancillary land mobile and fixed service on a secondary basis in the band.

6. We conclude that Space Data has failed to demonstrate sufficient grounds for revisiting the Commission's proscription on ancillary land mobile and fixed service use of the 800 MHz air-ground band. Ancillary use of the air-ground band could create the potential for harmful interference with users of adjacent spectrum bands. Space Data claims that because it proposes ancillary use of the band on a secondary basis, the potential for harmful interference can be readily addressed. We find that it is unnecessary to resolve the parties' claims regarding the potential for interference arising from ancillary land mobile and fixed operations. Rather, we conclude that the Commission's goal to promote the provision of new and innovative wireless services to the flying public, including broadband services, will be best served by requiring that the four megahertz of spectrum in the band be devoted to the provision of air-ground service.

7. Space Data also requests clarification that balloon-borne stratospheric platforms may be used to provide air-ground communications services in the 800 MHz air-ground band. We confirm that stratospheric

platforms, as described by Space Data, may be used to provide service in the 800 MHz air-ground band so long as licensees comply with the rules adopted in the *Air-Ground Report and Order* and other applicable rules.

8. We also grant Space Data's request that we clarify that, if a licensee were to deploy stratospheric platforms in the band, those operations would be subject to the 12 watt peak effective radiated power limit for airborne mobile station transmitters set forth in new Section 22.867(a) of the Commission's rules. Together, these rules should ensure that any stratospheric operations in the band would not cause harmful interference to operations in adjacent spectrum bands.

9. In addition, in this *Order on Reconsideration*, we deny the Petition for Partial Reconsideration of the *Report and Order*, filed by AirCell, Inc. (AirCell). Specifically, we deny AirCell's request to shorten from five to two years the term of the nonrenewable license granted to Verizon Airfone Inc. We also deny AirCell's request to abbreviate from two years to six months the transition period that the Commission adopted in order for Verizon Airfone to move its incumbent narrowband operations to one megahertz of spectrum in the 800 MHz air-ground band, which period will commence on the grant date of the first new license in the band.

10. AirCell claims that based on its experience as an air-ground service provider, relocation of Airfone's incumbent operations from four to one megahertz of spectrum could be concluded in six months. AirCell believes that Airfone's ground stations could be remotely returned to operate on one megahertz in the band. According to Airfone, however, the software controlling each of its ground stations must be modified, tested, and deployed on-site, and each location needs to be evaluated for the possible installation of customized emission filters. AirCell assumes that moving Airfone's narrowband operations to one megahertz in the band would not require modification of end user equipment. Airfone's service, however, is installed on over 3,000 general aviation, military, and Federal Government aircraft that cannot be remotely contacted for reprogramming and therefore would require a maintenance visit. In view of the foregoing, we find that there is no basis in the record to shorten the two-year transition period.

11. AirCell also argues that the possibility that it could construct an air-ground system and begin to provide broadband service shortly after

obtaining a license in the band warrants reducing the transition period to six months. Even if a new entrant could launch broadband service within a few months of obtaining a license in the band, the transition of Airfone's system to one megahertz in the band may be far more complex than envisioned by AirCell. In establishing the two-year transition period, the Commission carefully balanced the goal in this proceeding of enabling new entrants to deploy innovative wireless services to the flying public in the near future with the need for an orderly transition of Airfone's legacy narrowband system. We find no basis in the record to revisit the reasonableness of the decision reached in the *Report and Order* in weighing these competing public interest objectives.

12. We also reject AirCell's assertion that the two-year transition period would somehow act as a perverse bidding credit for Airfone by allowing the company to bid on a ten-year license, while other auction participants would be bidding on licenses with an effective eight-year term. Even if Airfone were to obtain a new 3 MHz air-ground license, the company would have to move its incumbent narrowband operations from four to one megahertz of spectrum in the band before it could commence broadband operations. Moreover, if Airfone were to obtain either of the non-exclusive 3 MHz licenses comprising band plan 1, it and the other non-exclusive 3 MHz licensee would both have to wait the same interlude (the period it takes Airfone to move its incumbent operations) to commence service. Accordingly, we deny AirCell's request to reduce the transition period.

13. Lastly, we note that AirCell has more recently urged the Commission to shorten the transition period to one year rather than six months. For all of the foregoing reasons, we also deny AirCell's request to reduce the transition period to one year.

14. AirCell also argues that grant of the five-year license to Verizon Airfone is antithetical to the Commission's goal in this proceeding to promote competition in the 800 MHz air-ground band. To the contrary, the Commission granted Airfone a nonrenewable five-year license, rather than a renewable ten-year license, in order to promote the introduction of competition and new services in the 800 MHz air-ground band.

15. AirCell claims that if Airfone were to obtain an exclusive 3 MHz license, the winner of the corresponding 1 MHz license could be prevented from commencing operations until the end of

the five-year license term. The Commission recognized this possibility in the *Report and Order* and noted that the holder of a 1 MHz license might have to share spectrum with Airfone's incumbent system until the end of the company's five-year license term.

16. AirCell also argues that we should shorten the term of Airfone's license because, if band plan 1 is implemented (*i.e.*, two overlapping 3 MHz licenses), the licensees would have to overlap their systems 100 percent while the incumbent system operates in one megahertz of the band. AirCell claims that, with 100 percent spectrum overlap, isolation between two 3 MHz networks would be degraded and the licensees would have to extensively coordinate site locations. The Commission granted Airfone a five-year license term (which commenced on May 13, 2005), rather than a ten-year license term, to promote the introduction of new services in the 800 MHz air-ground band. The possibility that full spectrum sharing—during the period from when Airfone transitions to one megahertz in the band and the end of Airfone's license term—may not be optimal does not cause us to reconsider this decision. We therefore reject AirCell's request to shorten the license term.

17. AirCell states that, in order to help ensure that Airfone will timely conclude the transition of its incumbent narrowband operations from four to one megahertz of the 800 MHz air-ground band, we should establish milestones or benchmarks that Airfone must meet during the transition period and that we should require the company to regularly file reports regarding the status of the transition process. The process of transitioning Airfone's incumbent system and its general aviation subscribers to operate on one megahertz of the band will be more complex than envisioned by AirCell. We therefore conclude that imposing transition benchmarks or milestones that Airfone would have to meet by target dates would be impracticable and potentially burdensome.

18. We agree with AirCell that we should require Airfone to file regular transition status reports. We find that such reports will serve the public interest by enabling the Commission to closely monitor the transition of Airfone's narrowband system and to ensure that the transition is timely effected. We hereby delegate authority to the Commission's Wireless Telecommunications Bureau to adopt specific reporting requirements and direct it to issue a Public Notice enumerating such requirements within 60 calendar days of the adoption of this

Order on Reconsideration. We envision that each report will provide specific details regarding the status of Airfone's transition of its base stations and its subscribers' aircraft so that they may operate on one megahertz of the 800 MHz air-ground band. At a minimum, each report should provide the number and percentage of each type of aircraft (commercial, general aviation, and government) and base stations that have been transitioned to operate in the one megahertz portion of the band. Airfone must file its initial transition status report with the Commission six months from the date of the grant of any new license in the band and at each of the three six-month intervals thereafter. Airfone is not required to submit any classified information regarding government aircraft in its reports.

19. In addition, if Verizon Airfone, or one of its affiliates, wins an exclusive 3 MHz license at auction, it shall include in each status report—and file additional reports at six-month intervals from the conclusion of the two-year transition period until the expiration of its five-year nonrenewable license—information regarding the transition of its existing subscribers from its narrowband system to a broadband system. We hereby delegate authority to the Commission's Wireless Telecommunications Bureau to adopt specific reporting requirements and direct it to issue a Public Notice enumerating such requirements within 60 calendar days of the grant of an exclusive 3 MHz license to Airfone. At a minimum, Airfone must specify the number and percentage of each type of aircraft (commercial, general aviation, and government) and base stations that have been configured to operate in the three megahertz portion of the band. The report must also delineate which aircraft have been transitioned from Airfone's 4 MHz narrowband system directly to a 3 MHz broadband system, and which aircraft have been transitioned from the 4 MHz narrowband system to a 1 MHz narrowband system and then to a 3 MHz broadband system. Airfone is not required to submit any classified information regarding government aircraft in its reports.

Ordering Clauses

20. Pursuant to the authority contained in sections 1, 4(i), 11, 303(r) and (y), 308, 309, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 161, 303(r), 303(y), 308, 309, and 332, this *Order on Reconsideration and Report and Order* is hereby *Adopted*.

21. Pursuant to sections 1, 4(i), and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), and 154(j), and section 1.429 of the Commission's rules, 47 CFR 1.429, that the Petition for Clarification and Reconsideration, filed by Space Data Corporation on May 13, 2005, *Is granted in part and denied in part*, to the extent indicated herein.

22. Pursuant to sections 1, 4(i), and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), and 154(j), and section 1.429 of the Commission's rules, 47 CFR 1.429, that the Petition for Partial Reconsideration, filed by AirCell, Inc. on May 13, 2005, *Is denied*.

23. Pursuant to sections 1, 4(i), and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), and 154(j), and sections 0.201 and 0.331 of the Commission's rules, 47 CFR 0.201 and 0.331, that the Wireless Telecommunications Bureau shall, within 60 calendar days of the date of the adoption of this order, issue a Public Notice that specifies the reporting requirements imposed on Verizon Airfone pursuant to paragraph 21 of the *Order on Reconsideration*.

24. Pursuant to sections 1, 4(i), and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), and 154(j), and sections 0.201 and 0.331 of the Commission's rules, 47 CFR 0.201 and 0.331, that in the event an exclusive 3 MHz license is granted to Verizon Airfone, or an affiliate of Verizon Airfone, the Wireless Telecommunications Bureau shall, within 60 calendar days of the grant thereof, issue a Public Notice that specifies the reporting requirements imposed on Verizon Airfone pursuant to paragraph 22 of the *Order on Reconsideration*.

25. Pursuant to sections 4(i), 303(c), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(r) and 309(j), that part 22 of the Commission's rules *Are amended* as specified in Appendix B of the Report and Order, effective 60 days after publication in the **Federal Register**.

26. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *Shall send* a copy of the *Order on Reconsideration and Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05-24485 Filed 12-23-05; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[WT Docket Nos. 03-103, 05-42; FCC 05-202]

Air-Ground Telecommunications Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Federal Communications Commission ("Commission") adopts competitive bidding rules for the 800 MHz commercial Air-Ground Radiotelephone Service and the 400 MHz general aviation Air-Ground Radiotelephone Service. The Commission will auction licenses in both of these services in conformity with the general competitive bidding rules. The Commission adopts small business definitions and bidding credits for the 800 MHz air-ground service and concludes that bidding credits are unnecessary for the 400 MHz air-ground service.

DATES: Effective February 27, 2006.

FOR FURTHER INFORMATION CONTACT:

Lynne Milne, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, at 202-418-7055 or via e-mail at Lynne.Milne@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the *Report and Order* portion of the *Order on Reconsideration and Report and Order*, FCC 05-202, in WT Docket Nos. 03-103 and 05-42, adopted on December 8, 2005, and released on December 9, 2005. The Commission is concurrently publishing a summary of the *Order on Reconsideration* in the **Federal Register**. The complete text of the *Report and Order* is available for public inspection and copying from 8 a.m. to 4:30 p.m. Monday through Thursday or from 8 a.m. to 11:30 p.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The *Report and Order* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC,

20554, telephone 202-488-5300, facsimile 202-488-5563, or you may contact BCPI at its Web site: <http://www.BCPIWEB.com>. When ordering documents from BCPI please provide the appropriate FCC document number (for example, FCC 05-202, Report and Order). The full text may also be downloaded at: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by sending an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), or 202-418-0432 (tty).

Synopsis of the Report and Order

A. Incorporation of the Part 1 Standardized Auction Rules

1. On December 15, 2004, the Commission adopted a *Report and Order and Notice of Proposed Rulemaking*, WT Docket Nos. 03-103 and 05-42, 70 FR 19293 (April 13, 2005) and 70 FR 19377 (April 13, 2005). In the *Notice of Proposed Rulemaking*, the Commission proposed to conduct auctions of both commercial and general aviation air-ground licenses in conformity with the general competitive bidding rules in part 1, subpart Q, of the Commission's rules, and substantially consistent with the bidding procedures that have been employed in previous Commission auctions.

2. In this *Report and Order*, the Commission adopts this proposal. Because alternative band plans are being made available in the 800 MHz air-ground service, with the selection of the final band configuration to be determined by applicants' bids in the auction, the determination of whether individual applications are mutually exclusive for purposes of section 309(j) of the Communications Act will be based on whether different applicants have applied for licenses in different band configurations as well as on whether different applicants have applied for the same licenses. The Commission finds, however, that there is no need to change the part 1 competitive bidding rules for the air-ground services. These rules will be subject to any modifications to them that the Commission may adopt for auctionable services generally.

B. Provisions for Designated Entities

3. The Commission concludes that it is appropriate to offer bidding credits in the 800 MHz commercial air-ground service. No commercial air-ground license will authorize the use of as much spectrum as other nationwide services for which the Commission has declined to adopt small business

bidding credits. In addition, the Commission continues to believe that the operation of a commercial air-ground service may require lower capital expenditures than other nationwide services. Therefore, the Commission finds that bidding credits should be made available to small businesses to assist them with attracting capital.

4. The Commission adopts its proposed small business definitions for the 800 MHz commercial air-ground service. Thus, for this service the Commission will define a small business as an entity with average annual gross revenues for the three preceding years not exceeding \$40 million, and the Commission will define a very small business as an entity with average annual gross revenues for the three preceding years not exceeding \$15 million. The Commission will offer a 15 percent bidding credit for small businesses and a 25 percent bidding credit for very small businesses, as set forth in the standardized schedule of bidding credits at 47 CFR 1.2110(f)(2). The Commission rejects the arguments of Space Data Corporation and AirCell, Inc., in favor of higher bidding credit levels than those provided for in 47 CFR 1.2110(f)(2). The Commission concludes that neither Space Data nor AirCell has provided sufficient support for departing from the part 1 bidding credit schedule in the 800 MHz air-ground service.

5. The Commission concludes that bidding credits are unnecessary in the auction of licenses in the 400 MHz general aviation Air-Ground Radiotelephone Service. If in the future the Commission is presented with evidence of a need for bidding credits in the 400 MHz air-ground service, the Commission will reconsider this issue.

Procedural Matters

A. Congressional Review Act

6. The Commission will send a copy of the *Order on Reconsideration and Report and Order* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

B. Final Regulatory Flexibility Analysis

7. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Notice of Proposed Rulemaking (NPRM)* was incorporated therein. The Commission sought written public