

collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule

does not have any “tribal implications” as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.” This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

X. Reference

Whitman, P.A. and R.T. Marshall. *Isolation of psychrophilic bacteriophages-host systems from refrigerated food products*. Applied Microbiology. Vol. 22, No 2, August 1971, pp. 220-223.

XI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 9, 2005.

James Jones,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.1261 is added to subpart D to read as follows:

§ 180.1261 *Xanthomonas campestris* pv. *vesicatoria* and *Pseudomonas syringae* pv. *tomato* specific Bacteriophages.

An exemption from the requirement of a tolerance is established for residues of *Xanthomonas campestris* pv. *vesicatoria* and *Pseudomonas syringae* pv. *tomato* specific bacteriophages in or on tomatoes and peppers.

[FR Doc. 05-24540 Filed 12-27-05; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22 and 90

[WT Docket No. 02-55; ET Docket No. 00-258; ET Docket No. 95-18; RM-9498; RM-10024; FCC 05-174]

Private Land Mobile Services; 800 MHz Public Safety Interference Proceeding

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission amends the definition of an Enhanced Specialized Mobile Radio (ESMR) system; further delineates the relocation rights of 800 MHz incumbent licensees; narrows the Expansion Band in the Atlanta, Georgia region; reaffirms the Commission’s authority to grant Nextel Communications, Inc. (Nextel) spectrum rights to ten megahertz of spectrum in the 1.9 GHz band; permits the Transition Administrator (TA) to follow a calendar year for reporting schedule purposes; permits Nextel to receive credit in the 800 MHz ‘true-up’ process for the relocation of certain additional BAS incumbent licensees whose licenses were issued prior to November 12, 2004; and clarifies the definitions of “unacceptable interference” and “Critical Infrastructure Industries” (CII).

DATES: Effective January 27, 2006.

FOR FURTHER INFORMATION CONTACT:

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and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418-0680, or TTY (202) 418-7233. *Legal Information:* Roberto Mussenden, Esq., *Roberto.Mussenden@FCC.gov*, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau (202) 418-0680, or TTY (202) 418-7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Memorandum Opinion and Order*, FCC 05-174, adopted October 3, 2005 and released on October 5, 2005.

I. Procedural Matters

A. Paperwork Reduction Act Analysis

1.-2. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA) and found to impose no new or modified reporting or recordkeeping requirements or burdens to the public, including businesses with fewer than 25 employees.

B. Report to Congress

3. The Commission will send a copy of this *Memorandum Opinion and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

C. Supplemental Final Regulatory Flexibility Analysis

4. The Regulatory Flexibility Act (RFA) requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." As required by the RFA an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the Notice of Proposed Rulemaking ("*800 MHz NPRM*") in this proceeding. The Commission sought written public comment on the proposals in the *800 MHz NPRM*, including comment on the IRFA. Based upon the comments in response to the *800 MHz NPRM* and the IRFA, the Commission included a Final Regulatory Flexibility Analysis ("FRFA") in the Report and Order ("*800 MHz R&O*") in this proceeding. The Commission subsequently sought comment on ex parte presentations filed in this proceeding. In the Supplemental Order and Order on Reconsideration (*Supplemental Order*), the Commission, on its own motion, amended the rules in a manner that did not significantly affect small entities beyond the terms set forth in the FRFA. Accordingly, the

Commission included a Supplemental Regulatory Flexibility Analysis ("*Supplemental FRFA*") addressing those amendments consistent with the RFA.

5. This *Memorandum Opinion and Order* clarifies portions of the *800 MHz R&O* and companion *Supplemental Order* and addresses petitions for reconsideration of the Commission's decisions in the *800 MHz R&O* and the *Supplemental Order*. Interested parties were afforded notice and opportunity to comment on the petitions for reconsideration of the *800 MHz R&O* and *Supplemental Order*. *See* 70 FR 17327. Several parties filed oppositions to the petitions for reconsideration and replies to the oppositions. The clarifications we make in this MO&O are in response to the various petitions for reconsideration, oppositions and replies that have been filed thus far. Accordingly, this Supplemental Regulatory Flexibility Analysis ("*Supplemental FRFA*") addresses those clarifications and conforms to the RFA. *Need for, and Objectives of, the Order on Reconsideration*

6. By way of background the *800 MHz R&O* adopted a plan comprised of both long-term and short-term components that the Commission concluded represented the most effective solution to the problem of interference to public safety licensees in the 800 MHz band. The Commission addressed the ongoing interference problem over the short-term by adopting technical standards defining unacceptable interference in the 800 MHz band and detailing responsibility for interference abatement. The long-term component augmented the short-term component by reconfiguring the 800 MHz band to separate generally incompatible technologies whose current proximity to each other is the identified root cause of unacceptable interference.

7. *Enhanced Specialized Mobile Radio Systems*. In this proceeding the Commission divided the 800 MHz band into a cellular portion and non-cellular portion to create spectral separation between incompatible technologies. Section 90.614 provides that the cellular portion would be reserved for licensees that operate cellular high-density systems. Several parties sought reconsideration of the eligibility and operating requirements applicable to the cellular band arguing that these requirements are overly restrictive.

8. On our own motion we clarify the definition of ESMR system in order to resolve an ambiguity between the text of the *800 MHz R&O* and § 90.7 of the accompanying rules. This clarification

is significant to the extent that it defines those licensees that may elect to be relocated into the cellular portion of the band. When the Commission first established the eligibility criteria for relocation into the cellular portion of the band, it spoke to existing "ESMR" systems. The *800 MHz R&O* inadvertently defined ESMR systems as those that employ "high density" cellular architecture. However the *800 MHz R&O* had also referred to an "ESMR system," more generally, as a term to describe systems that use multiple, interconnected, multi-channel transmit/receive cells and employ frequency reuse to serve a larger number of subscribers than is possible using non-cellular technology. We resolve this contradiction by amending rule § 90.7 to eliminate the "high density" qualification for ESMR status. The practical effect of this clarification is to ensure licensees operating in the ESMR band have a fair amount of flexibility in the management of their systems. The purpose of this clarification is to distinguish between high-density systems that may not be operated in the non-ESMR portion of the band not to require EA licensees that relocate to the ESMR band to operate high-density systems should they elect to operate in the ESMR band. To this end we also adopt a definition of "800 MHz high-density cellular system" and revise several part 22 and 90 rules to incorporate the distinction between 800 MHz cellular systems and high-density cellular systems in order to more efficiently implement our band reconfiguration plan.

Economic Area Licensees

9. We also clarify that Economic Area (EA) licensees that elect to relocate to the cellular band may relocate site-based systems so long as they deploy a cellular system on their combined facilities by the end of their EA license term. We also clarify that those incumbent EA licensees that operate non-cellular systems in that portion of the cellular band known as the "Upper 200 band," must relocate from the cellular band unless they deploy a cellular system. Failure to construct a cellular system will result in automatic cancellation of the relocated EA license and any site-based facilities relocated to the cellular band. The purpose of this clarification is to: (1) Avoid replicating in the cellular band the same incompatible mix of technologies that resulted in this proceeding; (2) ensure that licensees genuinely interested in competing with cellular operators have the opportunity to move forward with

their business plans and (3) inhibit the ability of speculative licensees to allow valuable spectrum to lie fallow or underutilized in an attempt to maximize resale value. In this connection, EA licensees, consistent with their existing construction and operational obligations, must notify the Commission whether they have constructed in accordance with the operational rules governing the ESMR band. Overall, this clarification confers upon EA licensees the benefit of added flexibility.

Unacceptable Interference

10. In the 800 MHz R&O, the Commission adopted an objective standard for defining what constitutes "unacceptable interference" to public safety and other non-cellular systems in the 800 MHz band. The purpose of defining unacceptable interference is to determine the rights and responsibilities of parties to alleviate interference. One petitioner requested that we clarify that the "unacceptable interference" standard will apply only to interference created by licensees employing cellular architecture systems. According to this petitioner the heading and text of § 90.672 implies that "unacceptable interference" could be created by any type of licensee including non-cellular licensees. We clarify the heading and text of § 90.672 to specify that "unacceptable interference" to 800 MHz non-cellular licensees is that which originates from one or a combination of 800 MHz cellular-architecture licensees, regardless of whether the cellular-architecture licensee employs a "high-density" or "low-density" cellular system. In this connection we replace the reference to harmful interference in § 90.672 with the term unacceptable interference.

Critical Infrastructure Industry

11. One Petitioner pointed out that § 90.7 imprecisely defined Critical Infrastructure Industries (CII). Accordingly we clarify the definition of CII.

Southeast Region Band Plan

12. Section 90.617 is updated to reflect the distribution of channels between the various pool categories in the SouthernLINC/Nextel counties listed in § 90.614(c). In the 800 MHz R&O the Commission adopted a band plan for the Southeast Region. Part of this band plan included a 1 MHz Expansion band, designed to create spectral separation between public safety and ESMR operations. Subsequently we have received petitions for reconsideration seeking to eliminate or reduce the size of the

Expansion band because there is insufficient amount of spectrum to accommodate Public Safety and cellular operations in the Atlanta market. Accordingly, we reduce the size of the Expansion band in the Atlanta market and up to seventy miles outside Atlanta.

Transition Administrator Reports

13. Sections 90.676(b)(3) and (4) are revised to allow the Transition Administrator to choose the date for filing quarterly and annual reports regarding band reconfiguration. Previously § 90.676 required that the TA submit its reports based on the effective date of the *Report and Order*. We have since learned that this requirement would be complicated by Nextel Communications, Inc.'s obligations to the Securities and Exchange Commission. We therefore modify our rules to permit the TA to file its quarterly and annual reports with the Commission on the first business day following Nextel's quarterly and annual filings with the Securities and Exchange Commission.

Dispute Resolution

14. One petitioner pointed out an ambiguity and inadvertent omission in our 800 MHz band reconfiguration dispute resolution procedures. Accordingly we revise § 90.677(d) of our rules to clarify that the Transition Administrator must forward unresolved disputed issues remaining at the end of the mandatory negotiation period within thirty days of the end of the mandatory negotiation period. We also will modify § 90.674 of our rules to codify the dispute resolution procedures set forth in the text of the 800 MHz R&O.

Frequency Coordination

15. Section 90.175 is revised to clarify that 800 MHz Economic Area licensees and 900 MHz SMR licensees will continue to be exempt from frequency coordination requirements. Previously, in the Supplemental Order we provided that 800 MHz site-based SMR licensees will be subject to frequency coordination in the 800 MHz band but inadvertently omitted this requirement from the rules. Accordingly we correct this omission.

Summary of Significant Issues Raised in Response to the FRFA

16. No parties have addressed the FRFA in any subsequent filings.

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

17. The RFA generally defines "small entity" as having the same meaning as

the terms "small business," "small organization," and "small governmental jurisdiction." [FN352] 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).

18. In this *MO&O*, the Commission is amending the final rules adopted in the 800 MHz R&O and *Supplemental Order*. In this Further FRFA, we incorporate by reference the description and estimate of the number of small entities from the FRFA in the 800 MHz R&O, which identifies as potentially affected entities Governmental Licensees, Public Safety Radio Licensees, Wireless Telecommunications, Business, Industrial and Land Transportation Licensees, and Specialized Mobile Radio Licensees.

19. A small organization is generally "any not-for-profit enterprise which is independently owned and operates and is not dominant in its field." Nationwide as of 2002, there were approximately 1.6 million small organizations. The term "small governmental jurisdiction" is defined as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." As of 1997, there were approximately 87,453 governmental jurisdictions in the United States. This number includes 39,044 county governments, municipalities and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.

Description of Projected Reporting, Recordkeeping and other Compliance Requirements

20. We do not adopt new reporting, recordkeeping or other compliance requirements in this *MO&O*.

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

21. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of

differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

22. As noted above, we reduce the size of the Expansion band in Atlanta, rather than eliminating the Expansion band in the Atlanta area. Although we reduce the Expansion band in Atlanta by .5 MHz, we maintain spectral separation between public safety and ESMR band operations. The purpose of maintaining spectral separation between public safety licensees operating in the non-cellular band and ESMR licensees operating in the cellular band is to reduce the incidence of interference to public safety. In contrast, if we had eliminated the Expansion band, we would have eliminated any spectral separation between public safety and ESMR systems operating in the cellular portion of the band. Further, public safety will continue to be entitled to interference protection from unacceptable interference. As a concession, however, some Atlanta-based B/ILT incumbents who would otherwise not be required to change frequencies will be required to relocate to the Expansion Band in order to accommodate public safety licensees relocating below the Expansion Band.

23. The Commission will send a copy of this *Memorandum Opinion and Order*, including this Supplemental Final Regulatory Flexibility Certification, in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act. See 5 U.S.C. 801(a)(1)(A). In addition the Commission will send a copy of the Order including a copy of this Memorandum Opinion and Order Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. See 5 U.S.C. 605(b).

A summary of this *Memorandum Opinion and Order* and this certification will also be published in the **Federal Register**.

List of Subjects in 47 CFR Parts 22 and 90

Communications, Communications common carriers, Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 22 and 90 as follows:

PART 22—PUBLIC MOBILE SERVICES

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

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

■ 2. In § 22.970, the section heading and paragraph (a) introductory text are revised to read as follows:

§ 22.970 Unacceptable interference to part 90 non-cellular 800 MHz licensees from cellular radiotelephone or part 90–800 MHz cellular systems.

(a) *Definition.* Except as provided in 47 CFR 90.617(k), unacceptable interference to non-cellular part 90 licensees in the 800 MHz band from cellular radiotelephone or part 90–800 MHz cellular systems will be deemed to occur when the below conditions are met:

* * * * *

■ 3. In § 22.971 paragraph (a) is revised to read as follows:

§ 22.971 Obligation to abate unacceptable interference.

(a) *Strict Responsibility.* Any licensee who, knowingly or unknowingly, directly or indirectly, causes or contributes to causing unacceptable interference to a non-cellular part 90 of this chapter licensee in the 800 MHz band, as defined in § 22.970, shall be strictly accountable to abate the interference, with full cooperation and utmost diligence, in the shortest time practicable. Interfering licensees shall consider all feasible interference abatement measures, including, but not limited to, the remedies specified in the interference resolution procedures set forth in § 22.972(c). This strict responsibility obligation applies to all forms of interference, including out-of-band emissions and intermodulation.

* * * * *

■ 4. In § 22.972, paragraph (c)(1) introductory text is revised to read as follows:

§ 22.972 Interference resolution procedures.

* * * * *

(c) * * *

(1) All Cellular Radiotelephone and part 90 of this chapter—800 MHz cellular system licensees who are

responsible for causing unacceptable interference shall take all affirmative measures to resolve such interference. Cellular Radiotelephone licensees found to contribute to unacceptable interference, as defined in § 22.970, shall resolve such interference in the shortest time practicable. Cellular Radiotelephone licensees and part 90 of this chapter—800 MHz cellular system licensees must provide all necessary test apparatus and technical personnel skilled in the operation of such equipment as may be necessary to determine the most appropriate means of timely eliminating the interference. However, the means whereby interference is abated or the cell parameters that may need to be adjusted is left to the discretion of the Cellular Radiotelephone and/or part 90 of this chapter—800 MHz cellular system licensees, whose affirmative measures may include, but not be limited to, the following techniques:

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

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

Authority: 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).

■ 6. In § 90.7, the definition for “Cellular System (800 MHz)” is removed, the definition for “800 MHz Cellular System” is added in its place, the definition for “800 MHz High Density Cellular System” is added following the definition for “800 MHz Cellular System”, and the definition for “Critical Infrastructure Industry (CII)” is revised to read as follows:

§ 90.7 Definitions.

* * * * *

800 MHz Cellular System. In the 806–824 MHz/ 851–869 MHz band, a system that uses multiple, interconnected, multi-channel transmit/receive cells capable of frequency reuse and automatic handoff between cell sites to serve a larger number of subscribers than is possible using non-cellular technology.

800 MHz High Density Cellular System. In the 806–824 MHz/ 851–869 MHz band, a high density cellular system is defined as a cellular system which:

(1) Has more than five overlapping interactive sites featuring hand-off capability; and

(2) Any one of such sites has an antenna height of less than 30.4 meters (100 feet) above ground level with an

antenna height above average terrain (HAAT) of less than 152.4 meters (500 feet) and twenty or more paired frequencies.

* * * * *

Critical Infrastructure Industry (CII). State, local government and non-government entities, including utilities, railroads, metropolitan transit systems, pipelines, private ambulances, volunteer fire departments, and not-for-profit organizations that offer emergency road services, providing private internal radio services provided these private internal radio services are used to protect safety of life, health, or property; and are not made commercially available to the public.

* * * * *

■ 7. In § 90.175, paragraph (j)(8) is revised to read as follows:

§ 90.175 Frequency coordination requirements.

* * * * *

(j) * * *

(8) Applications for SMR frequencies contained in §§ 90.617(d) Table 4A, 90.617(e), 90.617(f) and 90.619(b)(2).

* * * * *

■ 8. In § 90.614, the section heading, the introductory text, and paragraphs (a), (b) and (c) introductory text are revised to read as follows:

§ 90.614 Segments of the 806–824/851–869 MHz band for non-border areas.

The 806–824/851–869 MHz band (“800 MHz band”) will be divided as follows at locations farther than 110 km (68.4 miles) from the U.S./Mexico border and 140 km (87 miles) from the U.S./Canadian border (“non-border areas”)

(a) 800 MHz high density cellular systems—as defined in § 90.7—are prohibited from operating on channels 1–550 in non-border areas.

(b) 800 MHz high density cellular systems—as defined in § 90.7—are permitted to operate on channels 551–830 in non-border areas.

(c) In the following counties and parishes, 800 MHz high density cellular systems—as defined in § 90.7—are permitted to operate on channels 411–830:

* * * * *

■ 9. In § 90.615, paragraph (a) introductory text is revised to read as follows:

§ 90.615 Individual channels available in the General Category in 806–824/851–869 MHz band.

* * * * *

(a) In a given 800 MHz NPSPAC region, any channel in the 231–260 range which is vacated by a licensee

relocating to channels 551–830 and which remains vacant after band reconfiguration will be available as follows:

* * * * *

■ 10. In § 90.617, revise paragraphs (a), (b), (d), (e), (g) introductory text, (h) introductory text, (i) introductory text, (j) introductory text, and (k) introductory text to read as follows:

§ 90.617 Frequencies in the 809.750–824/854.750–869 MHz, and 896–901/935–940 MHz bands available for trunked, conventional or cellular system use in non-border areas.

* * * * *

(a) Unless otherwise specified, the channels listed in Table 1 and paragraph (a)(1) of this section are available for to eligible applicants in the Public Safety Category which consists of licensees eligible in the Public Safety Pool of subpart B of this part. 800 MHz high density cellular systems as defined in § 90.7 are prohibited on these channels. These frequencies are available in non-border areas. Specialized Mobile Radio Systems will not be authorized in this category. These channels are available for intercategory sharing as indicated in § 90.621(e).

TABLE 1.—PUBLIC SAFETY POOL 806–816/851–861 MHz BAND CHANNELS
[70 Channels]

Group No.	Channel Nos.
269	269–289–311–399–439
270	270–290–312–400–440
279	279–299–319–339–359
280	280–300–320–340–360
309	309–329–349–369–389
310	310–330–350–370–390
313	313–353–393–441–461
314	314–354–394–448–468
321	321–341–361–381–419
328	328–348–368–388–420
351	351–379–409–429–449
332	352–380–410–430–450
Single Channels	391, 392, 401, 408, 421, 428, 459, 460, 469, 470

(1) Channels numbers 1–230 are also available to eligible applicants in the Public Safety Category in non-border areas. The assignment of these channels will be done in accordance with the

policies defined in the Report and Order of Gen. Docket No. 87–112 (See § 90.16). The following channels are available only for mutual aid purposes as defined in Gen. Docket No. 87–112: channels 1, 39, 77, 115, 153.

(2) Except as provided in paragraph (a)(3) of this section, the channels listed in Table 1A are available in the counties listed in § 90.614(c) to eligible applicants in the Public Safety Category. 800 MHz high density cellular systems as defined in § 90.7 are prohibited on these channels. These channels are available for intercategory sharing as indicated in § 90.621(e).

TABLE 1A.—PUBLIC SAFETY POOL 806–816/851–861 MHz BAND CHANNELS FOR COUNTIES IN SOUTHEASTERN U.S.

[70 Channels]

Group No.	Channel Nos.
261	261–313–324–335–353
262	262–314–325–336–354
265	265–285–315–333–351
266	266–286–316–334–352
269	269–289–311–322–357
270	270–290–312–323–355
271	271–328–348–358–368
279	279–299–317–339–359
280	280–300–318–340–360
309	309–319–329–349–369
310	310–320–330–350–370
321	321–331–341–361–372
Single Channels	326, 327, 332, 337, 338, 342, 343, 344, 345, 356

(3) The channels listed in Table 1B are available within 113 km (70 mi) of the center city coordinates of Atlanta, GA to eligible applicants in the Public Safety Category. The center city coordinates of Atlanta, GA—for the purposes of the rule—are defined as 33°44’55” NL, 84°23’17” WL. 800 MHz high density cellular systems as defined in § 90.7 are prohibited on these channels. These channels are available for intercategory sharing as indicated in § 90.621(e).

TABLE 1B.—PUBLIC SAFETY POOL 806–816/851–861 MHz BAND CHANNELS FOR ATLANTA, GA
[70 Channels]

Group No.	Channel Nos.
261	261–313–324–335–353
262	262–314–325–336–354
269	269–289–311–322–357
270	270–290–312–323–355
279	279–299–319–339–359
280	280–300–320–340–360
285	285–315–333–351–379
286	286–316–334–352–380
309	309–329–349–369–389
310	310–330–350–370–390
321	321–331–341–361–381
328	328–348–358–368–388
Single Channels	317, 318, 326, 327, 332, 337, 338, 356, 371, 372

(b) Unless otherwise specified, the channels listed in Table 2 are available to applicants eligible in the Industrial/Business Pool of subpart C of this part but exclude Special Mobilized Radio Systems as defined in § 90.603(c). 800 MHz high density cellular systems as defined in § 90.7 are prohibited on these channels. These frequencies are available in non-border areas. Specialized Mobile Radio (SMR) systems will not be authorized on these frequencies. These channels are available for inter-category sharing as indicated in § 90.621(e).

TABLE 2.—BUSINESS/INDUSTRIAL/LAND TRANSPORTATION POOL 806–816/851–861 MHz BAND CHANNELS
[100 Channels]

Group No.	Channel Nos.
322	322–362–402–442–482
323	323–363–403–443–483
324	324–364–404–444–484
325	325–365–405–445–485
326	326–366–406–446–486
327	327–367–407–447–487
342	342–382–422–462–502

TABLE 2.—BUSINESS/INDUSTRIAL/LAND TRANSPORTATION POOL 806–816/851–861 MHz BAND CHANNELS—Continued
[100 Channels]

Group No.	Channel Nos.
343	343–383–423–463–503
344	344–384–424–464–504
345	345–385–425–465–505
346	346–386–426–466–506
347	347–387–427–467–507
Single Channels	261, 271, 281, 291, 301, 262, 272, 282, 292, 302, 263, 273, 283, 293, 303, 264, 274, 284, 294, 304, 265, 275, 285, 295, 305, 266, 276, 286, 296, 306, 267, 277, 287, 297, 307, 268, 278, 288, 298, 308

(1) Except as provided in paragraph (b)(2) of this section, the channels listed in Table 2A are available in the counties listed in § 90.614(c) to eligible applicants in the Industrial/Business Pool of subpart C of this part but exclude Special Mobilized Radio Systems as defined in § 90.603(c). 800 MHz high density cellular systems as defined in § 90.7 are prohibited on these channels. These channels are available for intercategory sharing as indicated in § 90.621(e).

TABLE 2A.—BUSINESS/INDUSTRIAL/LAND TRANSPORTATION POOL 806–816/851–861 MHz BAND FOR CHANNELS IN SOUTHEASTERN U.S.
[69 Channels]

Group No.	Channel Nos.
Single Channels	263, 264, 267, 268, 272, 273, 274, 275, 276, 277, 278, 281, 282, 283, 284, 287, 288, 291, 292, 293, 294, 295, 296, 297, 298, 301, 302, 303, 304, 305, 306, 307, 308, 346, 347, 362, 363, 364, 365, 366, 367, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410

(2) The channels listed in Table 2B are available within 113 km (70 mi) of the center city coordinates of Atlanta, GA, to eligible applicants in the Industrial/Business Pool of subpart C of this part but exclude Special Mobilized Radio Systems as defined in § 90.603(c). The center city coordinates of Atlanta, GA—for the purposes of the rule—are defined as 33°44'55" NL, 84°23'17" WL. 800 MHz high density cellular systems as defined in § 90.7 are prohibited on these channels. These channels are available for intercategory sharing as indicated in § 90.621(e).

TABLE 2B.—BUSINESS/INDUSTRIAL/LAND TRANSPORTATION POOL 806–816/851–861 MHz BAND FOR CHANNELS IN ATLANTA, GA
[69 Channels]

Group No.	Channel Nos.
Single Channels	263, 264, 265, 266, 267, 268, 271, 272, 273, 274, 275, 276, 277, 278, 281, 282, 283, 284, 287, 288, 291, 292, 293, 294, 295, 296, 297, 298, 301, 302, 303, 304, 305, 306, 307, 308, 342, 343, 344, 345, 346, 347, 362, 363, 364, 365, 366, 367, 382, 383, 384, 385, 386, 387, 391, 392, 393, 394, 399, 400, 401, 402, 403, 404, 405, 406, 407, 409, 410

(d) Unless otherwise specified, the channels listed in Tables 4A and 4B are available only to eligibles in the SMR category—which consists of Specialized Mobile Radio (SMR) stations and eligible end users. 800 MHz high density cellular systems, as defined in § 90.7, are prohibited on these channels. These frequencies are available in non-border areas. The spectrum blocks listed in Table 4A are available for EA-based services (as defined by § 90.681) prior to January 21, 2005. No new EA-based services will be authorized after January 21, 2005. EA-based licensees who operate non-high-density cellular systems prior to January 21, 2005, may choose to remain on these channels in the non-high-density cellular portion of the 800 MHz band (as defined in § 90.614). These licensees may continue to operate non-high-density cellular systems and will be grandfathered indefinitely. The channels listed in Table 4B will be available for site-based licensing after January 21, 2005, in any

Economic Area where no EA-based licensee is authorized for these channels.

TABLE 4A.—EA-BASED SMR CATEGORY 806–816/851–861 MHZ BAND CHANNELS, AVAILABLE PRIOR TO JANUARY 21, 2005
[80 Channels]

Spectrum block	Channel Nos.
G	311–351–391–431–471
H	312–352–392–432–472
I	313–353–393–433–473
J	314–354–394–434–474
K	315–355–395–435–475
L	316–356–396–436–476
M	317–357–397–437–477
N	318–358–398–438–478
O	331–371–411–451–491
P	332–372–412–452–492
Q	333–373–413–453–493
R	334–374–414–454–494
S	335–375–415–455–495
T	336–376–416–456–496
U	337–377–417–457–497
V	338–378–418–458–498

TABLE 4B.—SMR CATEGORY 806–816/851–861 MHZ BAND CHANNELS, AVAILABLE AFTER JANUARY 21, 2005, FOR SITE-BASED LICENSING
[80 Channels]

Group No.	Channel Nos.
315	315–355–395–435–475
316	316–356–396–436–476
317	317–357–397–437–477
318	318–358–398–438–478
331	331–371–411–451–491
332	332–372–412–452–492
333	333–373–413–453–493
334	334–374–414–454–494
335	335–375–415–455–495

TABLE 4B.—SMR CATEGORY 806–816/851–861 MHZ BAND CHANNELS, AVAILABLE AFTER JANUARY 21, 2005, FOR SITE-BASED LICENSING—Continued
[80 Channels]

Group No.	Channel Nos.
336	336–376–416–456–496
337	337–377–417–457–497
338	338–378–418–458–498
Single Channels	431, 432, 433, 434, 471, 472, 473, 474, 479, 480, 481, 488, 489, 490, 499, 500, 501, 508, 509, 510

(1) Except as provided in paragraph (d)(2) of this section, the channels listed in Table 4C are available in the counties listed in § 90.614(c) for non-high-density cellular operations only to eligibles in the SMR category—which consists of Specialized Mobile Radio (SMR) stations and eligible end users. 800 MHz high density cellular systems as defined in § 90.7 are prohibited on these channels. These channels are available for intercategory sharing as indicated in § 90.621(e).

TABLE 4C.—SMR CATEGORY 806–816/851–861 MHZ BAND CHANNELS AVAILABLE FOR SITE-BASED LICENSING IN SOUTHEASTERN U.S. AFTER JANUARY 21, 2005
[11 Channels]

Group No.	Channel Nos.
Single Channels	371, 373, 374, 375, 376, 377, 378, 395, 396, 397, 398

(2) The channels listed in Table 4D are available within 113 km (70 mi) of the center city coordinates of Atlanta, GA, only to eligibles in the SMR category—which consists of Specialized Mobile Radio (SMR) stations and eligible end users. The center city coordinates of Atlanta, GA—for the purposes of this rule—are defined as 33°44'55" NL, 84°23'17" WL. 800 MHz high density cellular systems as defined in § 90.7 are prohibited on these channels. These channels are available for intercategory sharing as indicated in § 90.621(e). 800 MHz high density cellular systems as defined in § 90.7 are prohibited on these channels. These channels are available for intercategory sharing as indicated in § 90.621(e).

TABLE 4D.—SMR CATEGORY 806–816/851–861 MHZ BAND CHANNELS AVAILABLE FOR SITE-BASED LICENSING IN ATLANTA, GA AFTER JANUARY 21, 2005
[11 Channels]

Group No.	Channel Nos.
Single Channels	373, 374, 375, 376, 377, 378, 395, 396, 397, 398, 408

(e) The Channels listed in § 90.614(b) and (c) are available to eligibles in the SMR category—which consists of Specialized Mobile Radio (SMR) stations and eligible end users. ESMR licensees which employ an 800 MHz high density cellular system, as defined in § 90.7, are permitted to operate on these channels in non-border areas. ESMR licensees authorized prior to January 21, 2005, may continue to operate, if they so choose, on the channels listed in Table 5. These licensees will be grandfathered indefinitely.

TABLE 5.—ESMR CATEGORY 816–821 MHZ BAND CHANNELS FOR CELLULAR OPERATIONS IN NON-BORDER AREAS AVAILABLE PRIOR TO JANUARY 21, 2005
[200 Channels]

Spectrum block	Channel Nos.
A	511 through 530.
B	531 through 590.
C	591 through 710.

* * * * *

(g) In a given 800 MHz NPSPAC region, channels below 471 listed in Tables 2 and 4B which are vacated by licensees relocating to channels 551–830 and which remain vacant after band reconfiguration will be available as follows:

* * * * *

(h) In a given 800 MHz NPSPAC region, channels below 471 listed in Tables 2 and 4B which are vacated by a licensee relocating to channels 511–550 and remain vacant after band reconfiguration will be available as follows:

* * * * *

(i) Special Mobilized Radio Systems licensees who operate systems, other than 800 MHz high density cellular systems, on any of the public safety channels listed in Table 1 prior to January 21, 2005, are grandfathered and may continue to operate on these channels indefinitely. These grandfathered licensees will be

prohibited from operating 800 MHz high density cellular systems as defined in § 90.7. Site-based licensees who are grandfathered on any of the public safety channels listed in Table 1 may modify their license only if they obtain concurrence from a certified public safety coordinator in accordance with § 90.175(c). Grandfathered EA-based licensees, however, are exempt from any of the frequency coordination requirements of § 90.175 as long as their operations remain within the Economic Area defined by their license in accordance with the requirements of § 90.683(a).

(j) Licensees operating 800 MHz high density cellular systems on the channels listed in § 90.614(a), prior to January 21, 2005, may elect to continue operating on these channels and will be permitted to continue operating 800 MHz high density cellular systems (as defined in § 90.7) in this portion of the band. These licensees will be grandfathered indefinitely subject to the provisions of §§ 90.673, 90.674 and 90.675.

(k) Licensees may operate systems other than 800 MHz high density cellular systems (as defined in § 90.7) on Channels 511–550 at any location vacated by an EA-based SMR licensee. For operations on these channels, unacceptable interference (as defined in § 22.970 of this chapter and § 90.672) will be deemed to occur only at sites where the following median desired signals are received (rather than those specified in § 22.970(a)(1)(i) of this chapter and § 90.672(a)(1)(i). The minimum required median desired signal, as measured at the R.F. input of the receiver, will be as follows:

* * * * *

■ 11. In § 90.619 paragraph (d)(2) is revised to read as follows:

§ 90.619 Frequencies available for use in the U.S./Mexico and U.S./Canada border areas.

* * * * *

(d) * * *

(2) All frequency assignments made pursuant to paragraph (d)(1) of this section shall comply with the requirements of § 90.619(b).

* * * * *

■ 12. In § 90.672, the section heading and the introductory text of paragraph (a) are revised to read as follows:

§ 90.672 Unacceptable interference to non-cellular 800 MHz licensees from 800 MHz cellular systems or Part 22 Cellular Radiotelephone systems.

(a) *Definition.* Except as provided in 47 CFR 90.617(k), unacceptable interference to non-cellular licensees in the 800 MHz band from 800 MHz

cellular systems or part 22 of this chapter, Cellular Radiotelephone systems will be deemed to occur when the below conditions are met:

* * * * *

■ 13. In § 90.674, paragraphs (a) introductory text and (c)(1) introductory text are revised to read as follows:

§ 90.674 Interference resolution procedures before, during and after band reconfiguration.

(a) *Initial Notification.* Any non-cellular licensee operating in the 806–824/851–869 MHz band who reasonably believes it is receiving unacceptable interference, as described in § 90.672, shall provide an initial notification of the interference incident. This initial notification of an interference incident shall be sent to all part 22 of this chapter Cellular Radiotelephone licensees and ESMR licensees who operate cellular base stations (“cell sites”) within 1,524 meters (5,000 feet) of the interference incident.

* * * * *

(c) * * *

(1) All 800 MHz cellular system licensees and part 22 of this chapter Cellular Radiotelephone licensees who are responsible for causing unacceptable interference shall take all affirmative measures to resolve such interference. 800 MHz cellular system licensees found to contribute to harmful interference, as defined in § 90.672, shall resolve such interference in the shortest time practicable. 800 MHz cellular system licensees and part 22 of this chapter Cellular Radiotelephone licensees must provide all necessary test apparatus and technical personnel skilled in the operation of such equipment as may be necessary to determine the most appropriate means of timely eliminating the interference. However, the means whereby interference is abated or the cell parameters that may need to be adjusted is left to the discretion of involved 800 MHz cellular system licensees and/or part 22 of this chapter Cellular Radiotelephone licensees, whose affirmative measures may include, but not be limited to, the following techniques:

* * * * *

■ 14. In § 90.676 paragraphs (b)(3), (b)(4), and (b)(5) are revised to read as follows:

§ 90.676 Transition administrator for reconfiguration of the 806–824/851–869 MHz band in order to separate high-density cellular systems from non-cellular systems.

* * * * *

(b) * * *

(3) Provide quarterly progress reports to the Commission in such detail as the Commission may require and include, with such reports, certifications by Nextel and the relevant licensees that relocation has been completed and that both parties agree on the amount received from the letter of credit proceeds in connection with relocation of the licensees’ facilities. The report shall include description of any disputes that have arisen and the manner in which they were resolved. These quarterly reports need not be audited. The Transition Administrator may select the dates for filing the quarterly progress reports;

(4) Provide to the Public Safety and Critical Infrastructure Division with an annual audited statement of relocation funds expended to date, including salaries and expenses of Transition Administrator. The Transition Administrator may select the date for filing the annual audited statement;

(5) Facilitate resolution of disputes by mediation; or referral of the parties to alternative dispute resolution services as described in § 90.677(d).

* * * * *

■ 15. In § 90.677, the introductory paragraph and paragraph (d) are revised to read as follows:

§ 90.677 Reconfiguration of the 806–824/851–869 MHz band in order to separate high-density cellular systems from non-cellular systems.

In order to facilitate reconfiguration of the 806–824/851–869 MHz band (“800 MHz band”) to separate high-density cellular systems from non-cellular systems, Nextel Communications, Inc. (Nextel) may relocate incumbents within the 800 MHz band by providing “comparable facilities.” For the limited purpose of band reconfiguration, the provisions of § 90.157 shall not apply and inter-category sharing will be permitted under all circumstances. Such relocation is subject to the following provisions:

* * * * *

(d) *Transition Administrator.* (1) The Transition Administrator, or other mediator, shall attempt to resolve disputes referred to it before the conclusion of the mandatory negotiation period as described in § 90.677(c) within thirty working days after the Transition Administrator has received a submission by one party and a response from the other party. Any party thereafter may seek expedited non-binding arbitration which must be completed within thirty days of the Transition Administrator’s, or other mediator’s recommended decision or advice. Should issues still remain

unresolved they may be referred to the Chief of the Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau within thirty days of the Transition Administrator's, or other mediator's recommended decision or advice. When referring an unresolved matter to the Chief of the Public Safety and Critical Infrastructure Division, the Transition Administrator shall forward the entire record on any disputed issues, including such dispositions thereof that the Transition Administrator has considered. Upon receipt of such record and advice, the Commission will decide the disputed issues based on the record submitted. The authority to make such decisions is delegated to the Chief of the Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau who may decide the disputed issue or designate it for an evidentiary hearing before an Administrative Law Judge. If the Chief of the Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau decides an issue, any party to the dispute wishing to appeal the decision may do so by filing with the Commission, within ten days of the effective date of the initial decision, a Petition for de novo review; whereupon the matter will be set for an evidentiary hearing before an Administrative Law Judge. Any disputes submitted to the Transition Administrator after the conclusion of the mandatory negotiation period as described in § 90.677(c) shall be resolved as described in § 90.677(d)(2).

(2) If no agreement is reached during either the voluntary or mandatory negotiating periods, all disputed issues shall be referred to the Transition Administrator who shall attempt to resolve them. If disputed issues remain thirty working days after the end of the mandatory negotiation period, the Transition Administrator shall forward the record to the Chief of the Public Safety and Critical Infrastructure Division, together with advice on how the matter(s) may be resolved. The Chief of the Public Safety and Critical Infrastructure Division is hereby delegated the authority to rule on disputed issues, de novo. If the Chief of the Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau decides an issue, any party to the dispute wishing to appeal the decision may do so by filing with the Commission, within ten days of the effective date of the initial decision, a Petition for de novo review; whereupon the matter will be set for an

evidentiary hearing before an Administrative Law Judge.

* * * * *

■ 16. In § 90.685 paragraph (e) is added to read as follows:

§ 90.685 Authorization, construction and implementation of EA licenses.

* * * * *

(e) EA licensees operating on channels listed in § 90.614(b) and (c) must implement an Enhanced Specialized Mobile Radio (ESMR) system—as defined in § 90.7—on their EA license and any associated site-based licenses prior to the expiration date of the EA license. EA licensees operating on these channels shall follow the construction notification procedures set forth in § 1.946(d) of this chapter. Failure to implement an ESMR system on their EA and site-based licenses before the expiration date of the EA license will result in termination of the EA license and any associated site-based licenses pursuant to § 1.946(c) of this chapter.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 03-123; DA 05-3139]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Final rule; expiration of waiver.

SUMMARY: In this document, the Commission extends for an additional year the waiver of the emergency (911) call handling requirement for providers of Video Relay Service (VRS). The Commission extends the waiver for one year in view of continued technological challenges to determining the geographic location of telecommunications relay service (TRS) calls that originate via the Internet, and the VRS 911 NPRM addressing the issue.

DATES: The waiver of the emergency (911) call handling requirement will expire on January 1, 2007, or upon the release of an order addressing the VRS emergency (911) call handling issue, whichever comes first.

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SUPPLEMENTARY INFORMATION: On December 31, 2001, the Commission released *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Waiver Order*, DA 01-3029, CC Docket No. 98-67, 17 FCC Rcd 157 (2001), granting VRS providers a waiver until December 31, 2003, of certain TRS mandatory minimum standards, including the emergency call handling requirement. On December 19, 2003, the Commission released *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Order*, DA 03-4029, CC Docket No. 98-67, 18 FCC Rcd 26309 (2003), extending the waiver to June 30, 2004. On June 30, 2004, the Commission released *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, 2004 TRS Report and Order*, FCC 04-137, CC Docket No. 98-67, which published in the **Federal Register** on September 1, 2004 (69 FR 53382) again extending the waiver until January 1, 2006. This is a summary of the Commission's *Order* DA 05-3139, adopted December 2, 2005, released December 5, 2005. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). The Commission's *Order* DA 05-3139 can also be downloaded in Word and Portable Document Format (PDF) at <http://www.fcc.gov/cgb.dro>.

Synopsis

The Commission's TRS regulations set forth operational, technical, and functional mandatory minimum standards applicable to the provision of TRS. See 47 CFR 64.604 (the TRS "mandatory minimum standards"). These standards apply to all forms of TRS when they are offered, unless they are waived. Therefore, to be eligible for reimbursement from the Interstate TRS Fund for the provision of TRS, the provider must meet all applicable non-waived mandatory minimum standards. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking (*Improved TRS Order and FNPRM*), FCC 00-56, CC Docket No. 98-67, which