

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WT Docket No. 06–150; WT Docket No. 06–169; PS Docket No. 06–229; WT Docket No. 96–86; DA 07–2197]

Comment Sought on Google Proposals Regarding Service Rules for 700 MHz Spectrum

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Wireless Telecommunications Bureau seeks comments on a proposal recently submitted by Google regarding service rules for the 700 MHz spectrum that is to be auctioned. Google requests that the Commission clarify the service rules governing the 700 MHz bands and declare that the rules allow the use of “dynamic auction mechanisms” such as real-time auctions and per-device registration fees. Google also requests that the Commission posit at least whether it would be in the public interest to mandate the use of such mechanisms for some, or even all, of the commercial spectrum to be auctioned in the 700 MHz bands. The document also seeks comment on Google’s proposal that the unpaired 6 megahertz E Block (722–728 MHz) in the current Lower 700 MHz band plan should be designated primarily or exclusively to be used for deployment of broadband communications platforms. Finally, the document seeks comment on the Initial Regulatory Flexibility Analysis.

DATES: Comments due on or before June 6, 2007 and reply comments are due on or before June 13, 2007.

ADDRESSES: You may submit comments, identified by WT Docket No. 06–150; WT Docket No. 06–169; PS Docket No. 06–229; WT Docket No. 96–86, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission’s Web site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- E-mail: Include the docket numbers in the subject line of the message.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional

information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: John Branscome, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, at 202–418–8205 or by e-mail at John.Branscome@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Public Notice released May 24, 2007, DA 07–2197. Pursuant to §§ 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before the date indicated on the first page of this document. Comments may be filed using: (1) The Commission’s Electronic Comment Filing System (ECFS), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments.

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, “get form.” A sample form and directions will be sent in response.

- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission’s contractor will receive hand-delivered or messenger-delivered paper filings for the Commission’s Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

People with Disabilities: 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), 202–418–0432 (tty).

Synopsis of the Public Notice

On April 27, 2007, the Commission released a Report and Order (72 FR 27688) and Further Notice of Proposed Rulemaking (72 FR 24238), which addresses rules governing wireless licenses in the 698–806 MHz Band (herein, the “700 MHz Band”). This spectrum currently is occupied by television broadcasters in TV channels 52–69 and is being made available for wireless services, including public safety and commercial services, as a result of the digital television (“DTV”) transition. On May 21, 2007, Google Inc. (“Google”) filed an *ex parte* letter asking that the Commission seek immediate comment on certain proposals regarding the service rules for the 700 MHz Band spectrum that is to be auctioned. In the Public Notice, the Wireless Telecommunications Bureau seeks comment on those proposals as well as any other alternative approaches for conditioning the licenses that will be auctioned.

Google requests that the Commission clarify that the Commission’s existing rules governing commercial spectrum in the 700 MHz Band already allow licensees to utilize “dynamic auction mechanisms,” such as real-time auctions and per-device registration fees. In Google’s real-time airwaves auction model, a licensee could bestow the right to transmit an amount of power for a unit of time, with the total amount of power in any location being limited to a specified cap. According to Google, as part of a real-time auction process,

the communications device itself could become key to the payment process. For example, a consumer's price to purchase a device could include an airwaves registration fee that would grant the ability to gain unlimited use at a specified power level. The Public Notice seeks comment broadly on the extent to which the Commission's existing rules permit 700 MHz licensees to employ such "dynamic spectrum management techniques." To the extent they are not currently permitted, the Notice asks whether the Commission should modify any of its rules to permit their use.

Google also requests that the Commission posit at least whether it would be in the public interest to mandate the use of such techniques for some, or even all, of the commercial spectrum to be auctioned in the 700 MHz bands. The Public Notice seeks comment on whether the Commission should mandate such an approach, and if so, to what extent.

The Public Notice also seeks comment on Google's proposal that the unpaired 6 megahertz E Block (722–728 MHz) in the current Lower 700 MHz band plan should be designated primarily or exclusively to be used for deployment of interactive, two-way broadband services; connected to the public internet; and used to support innovative software-based applications, services and devices.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (the "RFA"), the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact of the policies and rules proposed in the Public Notice on a substantial number of small entities. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on the Public Notice. The Commission will send a copy of the Public Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA"). In addition, the Public Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

Although Section 213 of the Consolidated Appropriations Act of 2000 provides that the RFA shall not apply to the rules and competitive bidding procedures for frequencies in the 746–806 MHz Band, the Commission believes that it would serve the public interest to analyze the possible significant economic impact of the proposed policy and rule changes in

this band on small entities. Accordingly, this IRFA contains an analysis of this impact in connection with all spectrum that falls within the scope of this Public Notice, including spectrum in the 746–806 MHz Band.

A. Need for, and Objectives of, the Proposed Rules

The Public Notice seeks comments broadly on a proposal recently submitted by Google and on any other alternative approaches for conditioning the licenses that will be auctioned in the 700 MHz band. Google requests that the Commission clarify the service rules governing the 700 MHz bands and declare that the rules allow the use of "dynamic auction" mechanisms such as real-time auctions and per-device registration fees. Google also asks the Commission to consider whether it would be in the public interest to mandate such mechanisms for some, or even all, of the commercial spectrum to be auctioned in the 700 MHz bands. The Public Notice also seeks comment on Google's proposal that the unpaired 6 MHz E Block (722–728 MHz) in the current Lower 700 MHz band plan should be designated primarily or exclusively to be used for deployment of broadband communications platforms.

B. Legal Basis

The legal authority for the actions proposed in this Public Notice are contained in sections 1, 2, 4(i), 5(c), 7, 10, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336, 337, 614, 615, and 710 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 155(c), 157, 160, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336, 337, 534, 535, and 610.

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

The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. 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").

Small Businesses. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.

Small Organizations. Nationwide, there are approximately 1.6 million small organizations.

Governmental Entities. 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 2002, there were approximately 87,525 governmental jurisdictions in the United States. This number includes 38,967 county governments, municipalities, and townships, of which 37,373 (approximately 95.9%) have populations of fewer than 50,000, and of which 1,594 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 85,931 or fewer.

Wireless Service Providers. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging" and "Cellular and Other Wireless Telecommunications." Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small.

Under this Public Notice, any of the changes to the Commission's rules which may occur as a result of the Public Notice would be limited to the 698–806 MHz spectrum band. Since this rulemaking proceeding applies to services in that band, this IRFA analyzes the number of small entities affected on a service-by-service basis. When identifying small entities that could be affected by the Commission's new rules, this IRFA provides information

describing auctions results, including the number of small entities that were winning bidders. However, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily reflect the total number of small entities currently in a particular service. The Commission does not generally require that licensees later provide business size information, except in the context of an assignment or transfer of control application where unjust enrichment issues are implicated. Consequently, to assist the Commission in analyzing the total number of potentially affected small entities, the Commission requests commenters to estimate the number of small entities that may be affected by any rule changes that might result from this Public Notice.

700 MHz Guard Band Licenses. In the 700 MHz Guard Band Order, the Commission adopted size standards for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. SBA approval of these definitions is not required. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

Upper 700 MHz Band Licenses. The Commission released a Report and Order authorizing service in the Upper 700 MHz band. An auction for these licenses, previously scheduled for January 13, 2003, was postponed.

Lower 700 MHz Band Licenses. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission has defined a small business as an entity that, together with its affiliates and controlling principals,

has average gross revenues not exceeding \$40 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. Additionally, the Lower 700 MHz Band has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is entrepreneur, which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA has approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RsAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 CMA licenses. Seventeen winning bidders claimed small or very small business status and won sixty licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.

Public Safety Radio Licensees. As a general matter, public safety radio licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. The SBA rules contain a small business size standard for cellular and other wireless telecommunications companies, which encompasses business entities engaged in wireless communications employing no more than 1,500 persons. According to Census Bureau data for 2002, in this category there were 8,863 firms that operated for the entire year. Of this total, 401 firms had 100 or more employees, and the remainder had fewer than 100 employees. With respect to local governments, in particular, since many governmental entities as well as private businesses comprise the licensees for these services, we include under public safety services the number of government entities affected.

Wireless Communications Equipment Manufacturers; Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. The Census Bureau defines this category as follows: “This

industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.” The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year. Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

Google requests that the Commission clarify that the existing rules governing the commercial bands of the 700 MHz spectrum already allow licensees to utilize what it describes as “dynamic spectrum management techniques.” Google provides as examples “real-time airwaves auctions” and “device-driven registration.” According to Google, in real-time airwaves auctions, a licensee can bestow the right to transmit an amount of power for a unit of time, with the total amount of power in any location being limited to a specified cap. With a per-device registration process, Google states, the communications device itself can become a key to the payment process, and that a consumer’s price to purchase a device could include an airwaves registration fee that would grant the ability to gain unlimited use at a specified power level. Under its proposal, Google states that a licensee would simply purchase spectrum initially in the up-front auction, and then recover its costs over time by charging third parties for real-time and place use. The Public Notice seeks comment broadly on the extent to which the Commission’s existing rules permit 700 MHz licensees to employ such “dynamic spectrum management techniques,” and on whether the Commission should modify any of its rules to permit their use.

The Public Notice also seeks comment on Google’s request that the Commission posit at least whether it would be in the public interest to

mandate the use of such techniques for some, or even all, of the commercial spectrum to be auctioned in the 700 MHz bands.

The Public Notice also seeks comment on Google's proposal that the unpaired 6 MHz E Block (722–728 MHz) in the current Lower 700 MHz band plan should be designated primarily or exclusively to be used for deployment of interactive, two-way broadband services; connected to the public internet; and used to support innovative software-based applications, services and devices.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

The RFA requires an agency to describe any significant, specifically small business, 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 and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”

The Public Notice seeks comment on the relative merits of dynamic auction techniques. The Public Notice also seeks comment on whether the Commission should designate the unpaired 6 MHz E Block (722–728 MHz) in the current Lower 700 MHz band plan primarily or exclusively for deployment of broadband communications platforms. To assist the Commission in its analysis, commenters are requested to provide information regarding how small entities would be affected if the Commission were to adopt Google's proposals. Commenters should also provide information on alternative approaches to alleviate any potential burdens on small entities.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Federal Communications Commission.

James D. Schlichting,

Deputy Chief.

[FR Doc. E7–10417 Filed 5–29–07; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Mt. Charleston Blue Butterfly as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the Mt. Charleston blue butterfly (*Icaricia shasta charlestonensis*) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that listing the Mt. Charleston blue butterfly may be warranted. Therefore, with the publication of this notice, we are initiating a status review of this subspecies, and we will issue a 12-month finding to determine if the petitioned action is warranted. To ensure that the status review of the Mt. Charleston blue butterfly is comprehensive, we are soliciting scientific and commercial data regarding this subspecies. A determination on critical habitat will be made if and when a listing action is initiated for this subspecies.

DATES: The finding announced in the document was made on May 30, 2007. To be considered in the 12-month finding for this petition, comments and information should be submitted to us by July 30, 2007.

ADDRESSES: Data, information, comments, or questions concerning this petition and our finding should be submitted to the Field Supervisor, Nevada Fish and Wildlife Office, U.S. Fish and Wildlife Service, by mail at 4701 North Torrey Pines Drive, Las Vegas, NV, 89130, or by fax at (702) 515–5231. The petition is available at <http://www.fws.gov/nevada>. The petition, supporting data, and comments will be available for public inspection, by appointment, during normal business hours at the Nevada Fish and Wildlife Office at the above address.

FOR FURTHER INFORMATION CONTACT: Robert D. Williams, Field Supervisor, Nevada Fish and Wildlife Office (see **ADDRESSES**) (telephone 702/515–5230; facsimile 702/515–5231).

SUPPLEMENTARY INFORMATION:

Public Information Solicited

When we make a finding that substantial information is presented to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information on the Mt. Charleston blue butterfly. We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, North American tribes, the scientific community, industry, or any other interested parties concerning the status of the Mt. Charleston blue butterfly. We are seeking information regarding the subspecies' historical and current status and distribution, its ecology, ongoing conservation measures for the subspecies and its habitat, and threats to the subspecies and its habitat.

We will base our 12 month finding on a review of the best scientific and commercial information available, including all information received during the public comment period. If you wish to provide comments you may submit your comments and materials concerning this finding to the Field Supervisor, Nevada Fish and Wildlife Office (see **ADDRESSES** section). Please note that comments merely stating support or opposition to the actions under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species shall be made “solely on the basis of the best scientific and commercial data available.” At the conclusion of the status review, we will issue the 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

If you wish to comment or provide information, you may submit your comments and materials concerning this finding to the Field Supervisor (see **ADDRESSES** section). Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.