

- Producers of pesticide products (NAICS 32532).
- Producers of antimicrobial pesticides (NAICS 32561).
- Veterinary testing laboratories (NAICS 541940).
- Medical pathology laboratories (NAICS 621511).
- Taxidermists, independent (NAICS 711510).
- Surgeons (NAICS 621111).
- Dental surgeons (NAICS 621210).

Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

## II. What Action is EPA Taking?

Section 25(a)(2) of FIFRA provides that the Administrator must provide the Secretary of Agriculture with a copy of any draft proposed rule at least 60 days before signing it for publication in the **Federal Register**. Similarly, section 21(b) of FIFRA provides that the Administrator must provide the Secretary of Health and Human Services with a copy of any draft proposed rule pertaining to a public health pesticide at least 60 days before signing it for publication in the **Federal Register**. The draft proposed rule is not available to the public until after it has been signed by EPA. If either Secretary comments in writing regarding the draft proposed rule within 30 days after receiving it, the Administrator shall include in the proposed rule when published in the **Federal Register** the comments of the Secretary and the Administrator's response to those comments. If the Secretary does not comment in writing within 30 days after receiving the draft proposed rule, the Administrator may sign the proposed regulation for publication in the **Federal Register** anytime after the 30-day period.

## III. Do Any Statutory and Executive Order Reviews Apply to this Notification?

No. This document is not a proposed rule; it is merely a notification of submission to the Secretaries of Agriculture and Health and Human Services. As such, none of the regulatory assessment requirements apply to this document.

## List of Subjects in 40 CFR Part 152

Environmental protection, Antimicrobial pesticides, Pests.

Dated: June 24, 2010.

**Steven Bradbury**,

*Director, Office of Pesticide Programs.*

[FR Doc. 2010-16169 Filed 7-6-10; 8:45 am]

**BILLING CODE 6560-50-S**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 745

[EPA-HQ-OPPT-2005-0049; FRL-8836-1]

RIN 2070-AJ57

### Lead; Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program; Reopening of Comment Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** EPA issued a proposed rule in the **Federal Register** of May 6, 2010, concerning several revisions to the 2008 Lead Renovation, Repair, and Painting Program (RRP) rule. This document reopens the comment period for an additional 30 days.

**DATES:** Comments, identified by docket identification (ID) number EPA-HQ-OPPT-2005-0049, must be received on or before August 6, 2010.

**ADDRESSES:** Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of May 6, 2010.

**FOR FURTHER INFORMATION CONTACT:** *For technical information contact:* Cindy Wheeler, National Program Chemicals Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-0484; e-mail address: [wheeler.cindy@epa.gov](mailto:wheeler.cindy@epa.gov).

*For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; e-mail address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

**SUPPLEMENTARY INFORMATION:** This document reopens the public comment period established in the **Federal Register** of May 6, 2010 (75 FR 25038) (FRL-8823-5). In that document, EPA proposed several revisions to the 2008 Lead Renovation, Repair, and Painting Program (RRP) rule. The proposal included additional requirements designed to ensure that lead-based paint hazards generated by renovation work are adequately cleaned after renovation work is finished and before the work

areas are re-occupied. EPA is hereby reopening the comment period for 30 days.

To submit comments, or access the docket, please follow the detailed instructions as provided under **ADDRESSES** in the May 6, 2010 **Federal Register** document. If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

## List of Subjects in 40 CFR Part 745

Environmental protection, Child-occupied facility, Housing renovation, Lead, Lead-based paint, Renovation, Reporting and recordkeeping requirements.

Dated: July 2, 2010.

**Stephen A. Owens**,

*Assistant Administrator, Office of Chemical Safety and Pollution Prevention.*

[FR Doc. 2010-16657 Filed 7-6-10; 8:45 am]

**BILLING CODE 6560-50-S**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1, 22, 24, 27, 90, and 101

[WT Docket No. 10-112; FCC 10-86]

### Uniform License Renewal, Discontinuance of Operations, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document the Federal Communications Commission (Commission) seeks comment on revisions to its rules governing license renewals, discontinuance of operations, geographic partitioning, and spectrum disaggregation for certain Wireless Radio Services in an effort to update and harmonize its rules.

**DATES:** Submit comments on or before August 6, 2010, and reply comments on or before August 23, 2010. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before September 7, 2010.

**ADDRESSES:** You may submit comments, identified by WT Docket No. 10-112, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission Web site:* <http://www.fcc.gov>.

gov/cgb/ecfs. Follow the instructions for submitting comments.

- *Mail:* Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. 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.

- *Hand Delivery/Courier:* Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Room TW-A325, Washington, DC 20554.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0503 or TTY: 202-418-0432. All submissions received must include the agency name and docket numbers for this rulemaking, WT Docket No. 10-112. All comments received will be posted without change to <http://www.fcc.gov/cgb/ecfs>.

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:** Richard Arsenaault, Chief Counsel, Mobility Division, Wireless Telecommunications Bureau, at (202) 418-0920, or e-mail at [Richard.Arsenaault@fcc.gov](mailto:Richard.Arsenaault@fcc.gov). In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via e-mail to [PRA@fcc.gov](mailto:PRA@fcc.gov) and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to [Nicholas\\_A.Fraser@omb.eop.gov](mailto:Nicholas_A.Fraser@omb.eop.gov) or via fax at 202-395-5167.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rulemaking* (NPRM) in WT Docket No. 10-112, FCC 10-86, adopted on May 20, 2010, and released on May 25, 2010. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Room CY-A257, Washington, DC 20554, or by downloading the text from the Commission's Web site at <http://www.fcc.gov/>. The complete text also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, Suite CY-B402, Washington, DC 20554. Alternative formats are available for people with

disabilities (Braille, large print, electronic files, audio format), by sending an e-mail to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or calling the Consumer and Government Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

*Paperwork Reduction Act of 1995 Analysis:* This document contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the proposed information collection requirements contained in this document as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due September 7, 2010. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

## Synopsis of the Notice of Proposed Rulemaking

### I. Introduction

1. The Commission currently has a patchwork of rules governing renewal and discontinuance obligations for wireless services, such as cellular, personal communications service (PCS), specialized mobile radio (SMR), and wireless communications service (WCS). In this document, the Commission proposes to create consistent requirements for renewal of licenses and consistent consequences for discontinuance of service, and to clarify construction obligations for spectrum licenses that have been divided, by geographic partitioning or disaggregation of the spectrum. In making its rules clearer and consistent across services, the Commission seeks to apply the rules that have worked the best to a larger group of services, and to simplify the regulatory process for licensees.

### II. Discussion

#### A. Renewal Requirements for Wireless Radio Services

2. One of the Commission's principal goals in this proceeding is to harmonize its varying requirements for the renewal of Wireless Radio Services licenses where such harmonization would advance the public interest. The Commission seeks to implement standardized renewal requirements and expeditious renewal procedures, but only to the extent that such

requirements and procedures will ensure that licenses are renewed in the public interest as required by the Act. The Commission finds that adoption of uniform renewal policies and procedures will promote the efficient use of spectrum resources, and will serve the public interest by providing licensees certainty regarding their license renewal requirements. The Commission also finds that the renewal processes that it proposes to adopt below would encourage licensees to invest in new facilities and services, and facilitate their business and network planning. The Commission seeks comment on these findings.

#### 1. Current Requirements

3. Section 1.949(a) of the Commission's rules (47 CFR 1.949(a)) specifies two universal requirements for filing applications for renewal of licenses in the Wireless Radio Services. First, the rule establishes a 90-day filing period for renewal applications, beginning 90 days prior to expiration of an authorization and ending on its expiration date. Second, the rule requires applicants to use the same form as applications for initial authorization in the same service, *i.e.*, FCC Form 601 or 605. Section 1.949(a) further provides that additional renewal requirements applicable to specific services are set forth in the subparts governing those services. The Commission's current renewal requirements vary widely; some rules include comprehensive procedures, while others contain only minimal guidance.

#### 2. Proposed Requirements

4. In the *700 MHz First Report and Order*, 22 FCC Rcd 8064, 8092-8094 (2007), the Commission adopted a new paradigm for renewal of wireless licenses. Specifically, the Commission determined that renewal applicants in the 700 MHz Commercial Services Band will not be subject to competing applications and that if a renewal application is not granted, the licensed spectrum will be returned to the Commission for reassignment. The Commission also determined that renewal applicants in these bands must affirmatively demonstrate that they have provided substantial service to the public during their license term, and are in compliance with the Commission's rules and policies and the Act.

5. The Commission proposes to adopt renewal requirements for numerous Wireless Radio Services based on the Commission's model for the 700 MHz Commercial Services Band licensees. Under this three-part approach:

(1) Renewal applicants must file a detailed renewal showing, demonstrating that they are providing service to the public (or, when allowed under the relevant service rules or pursuant to waiver, using the spectrum for private, internal communication), and substantially complying with the Commission's rules (including any applicable performance requirements) and policies and the Communications Act;

(2) Competing renewal applications are prohibited; and

(3) If a license is not renewed, the associated spectrum is returned to the Commission for reassignment.

6. The Commission proposes to modify the first part of this approach for services licensed by site by requiring affected licensees to certify that they are continuing to operate consistent with their applicable construction notification(s) or authorization(s) (where the filing of construction notifications is not required), rather than making a renewal showing. Wireless Radio Services licensed by rule or on a personal basis or that have no construction/performance obligation are beyond the scope of this proceeding.

7. The Commission proposes to revise § 1.949 to specify the renewal showing requirements and procedures that will be applied to Wireless Radio Services. The proposed language of revised § 1.949 is set forth below. The Commission specifically seeks comment on the draft rule provisions. In addition to revising the generally applicable part 1 renewal rule governing Wireless Radio Services, the Commission proposes a number of rule revisions and deletions in the rule sections governing specific Wireless Radio Services. The Commission specifically requests comment on these proposed rule revisions.

#### a. Geographically Licensed Services—Renewal Showing

8. The Commission tentatively concludes that the public interest would be served by adopting and applying the Commission's 700 MHz three-part renewal paradigm to the Wireless Radio Services that are licensed on a geographic-area basis and enumerated in revised § 1.949(c) below. In the *700 MHz First Report and Order*, the Commission determined that 700 MHz Commercial Services Band licensees must file a renewal application pursuant to § 1.949, demonstrating "that they have provided substantial service during their past license term, which is defined as service that is sound, favorable, and substantially above a level of mediocre service that just might

minimally warrant renewal." The Commission explained that the substantial service showing made in support of a renewal application is distinct from any substantial service performance showing (also known as a buildout or construction showing) under the Commission's service rules. The Commission emphasized that "a licensee that meets the applicable performance requirements might nevertheless fail to meet the substantial service standard at renewal."

9. Many of the Commission's specific service rules require performance showings to be made at the midpoint and end of an initial license term regarding population or area covered. For some services, licensees must demonstrate, or may elect to demonstrate, substantial service as their performance requirement during their initial license term. Thus, under the Commission's current rules, some licensees could make two distinct substantial service showings, one to support their renewal application and one for performance purposes, at the end of their initial license term. Under the Commission's performance requirement rules, a licensee generally provides a snapshot in time (usually as of or near the date on which the notification or other filing is submitted) of the level of service that it is providing to the public. By contrast, a substantial service showing for renewal requires more detailed information regarding a licensee's services and related matters for its entire license period than one made for performance purposes.

10. Specifically, in the *700 MHz First Report and Order*, 22 FCC Rcd at 8093, the Commission explained that "[s]ubstantial service in the renewal context \* \* \* encompasses Commission consideration of a variety of factors including [1] the level and quality of service, [2] whether service was ever interrupted or discontinued, [3] whether service has been provided to rural areas, and [4] any other factors associated with a licensee's level of service to the public." The Commission tentatively concludes that these same factors should be considered by the Commission when evaluating renewal showings for the Wireless Radio Services licensed on a geographic-area basis that are identified above. The Commission requests comment regarding its proposed list of Wireless Radio Services that would be subject to the renewal showing requirement, which are enumerated in proposed § 1.949(c) below. Interested parties that recommend revising the proposed list should specifically describe the

proposed change and the rationale for any such change.

11. The Commission also seeks to eliminate any confusion that may have arisen from using the "substantial service" terminology in both the renewal and performance contexts. To avoid the potential for confusion and to better reflect the broad array of factors that the Commission considers when evaluating a renewal application, the Commission proposes to change the applicable nomenclature and require that licensees make a "renewal showing," rather than a "substantial service" renewal showing.

12. Pursuant to § 308(b) of the Communications Act of 1934, the Commission may require renewal applicants to "set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station" as well as "such other information as it may require." The Commission seeks comment on whether it should consider factors in addition to those identified above when evaluating applications for renewal.

13. The Commission notes that a number of its existing service rules enumerate factors that a renewal applicant must address to obtain a renewal expectancy. To facilitate public review and assessment of the factors set forth in various current rules for demonstrating that the applicant should receive a renewal expectancy, the Commission includes a listing of those factors for comment:

- A description of the licensee's current service in terms of geographic coverage and population served;
- An explanation of the licensee's record of expansion, including a timetable for the construction of new sites to meet changes in demand for service;
- A description of its investments in its system;
- A list, including addresses, of all cell transmitter stations constructed;
- Identification of type of facilities constructed and their operational status;
- Consideration of whether the licensee is offering a specialized or technologically sophisticated service that does not require a high level of coverage to benefit customers;
- Consideration of whether the licensee's operations serve niche markets or focus on serving populations outside of areas served by other licensees; and
- Consideration of whether the licensee's operations serve populations with limited access to telecommunications services.

14. The Commission seeks comment regarding whether, in addition to the factors it specified in the *700 MHz First Report and Order*, the public interest would be served by consideration of any of the factors enumerated above when assessing whether a licensee has demonstrated a level of service warranting renewal. The Commission encourages parties to address whether these or other factors would enhance its ability to assess whether a license should be renewed, and the degree to which a factor could reasonably be demonstrated by renewal applicants. The Commission further encourages parties to address whether these or other factors should be used where facilities are used to meet a licensee's private, internal communication needs.

15. The Commission also seeks comment on whether the public interest would be served by codifying in § 1.949 a nonexclusive list of the factors that applicants should address in renewal showings. Enumerating such factors in one rule for all affected services would provide members of the wireless industry regulatory certainty in an area where there currently is scant precedent and varying requirements in the Commission's service rules. The Commission's objective in suggesting a standardized codification of relevant factors is to conform the current service-specific rules to the proposed policies discussed herein and to eliminate any potential confusion. The Commission requests comment on this proposal.

16. *Broadband Radio Service and Educational Broadband Service*. The Commission concludes that modification of its renewal showing proposal is appropriate to address the unique circumstances of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS). Given the Commission's decision to allow BRS and EBS licensees to discontinue service and to require substantial service as of May 1, 2011 (Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 (2004)), the Commission generally believes it would not be appropriate to apply its proposed renewal framework to BRS or EBS licenses with a term that is scheduled to expire on or before that date. Accordingly, given that most BRS incumbent licenses expire on May 1, 2011, the Commission proposes to apply this renewal framework to BRS incumbent licenses starting with their new license term. The Commission also tentatively concludes that it would be premature to apply this renewal framework to EBS licenses with ten-year license terms scheduled to expire on or before May 1, 2011. The Commission

seeks comment on the appropriate effective date for applying this renewal paradigm to EBS licensees with ten-year license terms scheduled to expire after that date. In addition, the Commission proposes to apply the renewal framework to BRS Basic Trading Authorizations, most of which are scheduled to expire in 2016. The Commission believes such licensees will have sufficient time to complete the transition and make the required renewal showing over the period from 2011 to 2016. The Commission seeks comment on these proposals and any other issues related to renewals for BRS and EBS.

#### b. Site-Based Licensed Services—Certification Requirement

17. The Commission finds that Wireless Radio Services licensed by site generally are subject to licensing and renewal policies under which requiring a showing of substantial service to support grant of renewal would not be appropriate. In site-based services, a licensee's initial application for authorization provides the exact technical parameters of its planned operations, and the licensee's subsequent notification that it has completed construction confirms that the facilities have been constructed consistent with its authorization (or with minor modifications as may be permitted by the applicable service rules). A licensee also may file to modify its license, which may lead to a modified authorization and the submission of a subsequent construction notification. Consequently, at the time a site-based service provider files a renewal application, it should be operating as licensed or not operating. Under either scenario, the concept of substantial service is inapposite.

18. Accordingly, for site-based services, the Commission proposes to revise its Form 601 application to require renewal applicants to certify that they are continuing to operate consistent with the applicable filed construction notification(s) (NT) or most recent authorization(s) (when no NT is required under the Commission's rules). The Commission tentatively concludes that if a licensee makes the required certification and demonstrates substantial compliance with its rules and policies and the Communications Act, the Commission will renew the license. Licensees in the site-based services thus would not be required to make a substantial service renewal showing. The Commission tentatively concludes that the services enumerated in proposed § 1.949(d), below, should be subject to this certification process

19. The Commission believes that adoption of a streamlined certification process for renewal of licenses in these site-based services will avoid unduly burdening renewal applicants and Commission staff. At the same time, applying the certification process to site-based services will ensure that renewed licenses in these services are being operated as authorized. The Commission requests comment on its proposed identification of Wireless Radio Services subject to the certification requirement in lieu of a required substantial service showing, which are enumerated in proposed § 1.949(d), below. Interested parties that recommend that the Commission's designation of services be revised should specifically describe the proposed change and the rationale for any change. The Commission also requests comment whether, in its consideration of renewal applications involving site-based licenses, there are any additional factors it should consider.

#### c. Geographically and Site-Based Licensed Services—Other Requirements

20. As explained above, the Commission proposes to adopt a renewal showing requirement for renewal applicants in Wireless Radio Services licensed by geographic area and a streamlined certification requirement for renewal applicants in services licensed by site. Below, the Commission proposes to apply a single regulatory compliance demonstration requirement to all renewal applicants, whether licensed by geographic area or by site. The Commission also proposes to prohibit the filing of competing applications against such renewal applications and that, if a renewal application is denied, the associated spectrum generally will be returned to the Commission.

#### (i) Regulatory Compliance Demonstration

21. In the *700 MHz First Report and Order*, 22 FCC Rcd at 8093, the Commission stated that in addition to demonstrating that they are providing substantial service to the public, renewal applicants must demonstrate "that they have substantially complied with all applicable Commission rules, policies, and the Communications Act of 1934, as amended, including any applicable performance requirements." Such a regulatory compliance demonstration serves the public interest by facilitating the Commission's evaluation of the character and other qualifications of a renewal applicant. The Commission therefore proposes that

renewal applicants in the geographic-area and site-based Wireless Radio Services identified in proposed § 1.949 be required to demonstrate regulatory compliance.

22. To aid review of a renewal applicant's regulatory compliance, the Commission tentatively concluded that an applicant must file copies of all FCC orders finding a violation or an apparent violation of the Communications Act or any FCC rule or policy by the licensee, an entity that owns or controls the licensee, an entity that is owned or controlled by the licensee, or an entity that is under common control with the licensee (whether or not such an order relates specifically to the license for which renewal is sought). This disclosure requirement would apply to all orders finding such violations during the license term for which renewal is sought, including orders that are, or could be, the subject of administrative or judicial review. For purposes of this disclosure requirement, relevant FCC orders would include, but would not be limited to, any Notice of Apparent Liability for Forfeiture, Forfeiture Order, Admonishment, Notice of Violation, Memorandum Opinion and Order, or Order on Review finding a violation or an apparent violation of the Communications Act or any FCC rule or policy by the licensee. The Commission proposes to rely upon the definition of "affiliate" in § 1.2110(c)(5) of its rules to define the scope of entities related to the renewal applicant that are encompassed within these proposed disclosure requirements.

23. If there are no FCC orders finding violations of the Communications Act or any FCC rule or policy, the Commission proposes that a licensee certify the absence of any such findings as part of the renewal application. The Commission seeks comment on the costs and benefits of its proposed framework to licensees, interested parties, and the Commission, and whether additional information would aid its review of an applicant's regulatory compliance.

#### (ii) Prohibition of Competing Renewal Applications

24. Consistent with the Commission's renewal approach for the 700 MHz Commercial Services Band, the Commission tentatively concludes to prohibit the filing of competing (*i.e.*, mutually exclusive) applications against renewal applications for the Wireless Radio Services identified in § 1.949, whether licensed by site or geographic area. In the *700 MHz First Report and Order*, the Commission noted the potential costs and the burdens that

competing applications impose on both the Commission and licensees. The Commission's experience has shown that the comparative renewal process can result in protracted litigation that may be unduly burdensome for an incumbent licensee and strain available Commission resources. A renewal applicant may have to devote considerable resources to defend its authorization against competing applications, resources that might otherwise be used to improve service to the public.

25. The Commission finds that its established petition to deny process affords interested parties an appropriate mechanism to challenge the level of service and qualifications of licensees seeking renewal. In this regard, the Commission found in the *700 MHz Report and Order* that the ability of a party to file a petition to deny and participate in an auction of spectrum if the licensed spectrum is returned to the Commission will provide sufficient incentives to challenge inferior service or poor qualifications of licensees at renewal. Interested parties that might otherwise file a competing application would, under the Commission's proposed framework, have the opportunity to participate in the auction of spectrum recovered from any geographic licensee or to apply for spectrum recovered from a site-based licensee (provided the spectrum did not revert to a geographic overlay licensee). The Commission has repeatedly concluded that spectrum auctions most likely will result in the licensing of spectrum to a party that most highly values the spectrum. Moreover, as the Commission has moved from comparative licensing regimes to competitive bidding processes for awarding spectrum licenses, eliminating the filing of competing renewal applications will harmonize the Commission's renewal processes with those for granting initial authorizations.

26. The Commission also finds that the public interest would be served by preventing parties from interposing "strike" applications against a renewal applicant for possible anticompetitive purposes, to harass an applicant, or to exact a payoff. The comparative renewal process was never intended to invite such abuse, and specious challenges needlessly drain Commission resources and disserve the public interest. While abuse of process is not the driving force behind the Commission's tentative conclusion to eliminate comparative renewal applications, the Commission nonetheless invites comment on whether such abuse, either actual or potential, is a concern to renewal

applicants. The Commission seeks comment on the costs and benefits to the public, the Commission, and licensees that may be associated with the Commission's tentative conclusion to prohibit the filing of competing renewal applications.

#### (iii) Return of Spectrum to Commission If Renewal Application Denied

27. Consistent with the Commission's approach for 700 MHz Commercial Services Band licensees, the Commission tentatively concludes that if a renewal applicant fails to demonstrate substantial service (for services licensed by geographic area) or does not certify that it is continuing to operate consistent with the applicable construction notification(s) or authorization(s), as applicable (for services licensed by site), its renewal application will be denied and its licensed spectrum generally will be returned automatically to the Commission for reassignment by auction or other mechanism that the Commission concludes would serve the public interest. The Commission notes that even if a licensee demonstrates substantial service or makes the required certification, it could nevertheless find that a license should not be renewed based on substantial regulatory non-compliance (*e.g.*, where a licensee has been found to have abused Commission processes or committed fraud).

28. The Commission also notes that in the case of the non-renewal of a site-based license, it has established a general policy of the spectrum reverting to the geographic area licensee on the same spectrum. The Commission proposes to continue its policy of having spectrum revert to a geographic area licensee if an underlying site-based authorization is not renewed. The Commission tentatively concludes that adoption of these policies would serve the public interest and invites comment on the Commission's findings.

#### 3. Wireless Radio Services Excluded From Rulemaking

29. Finally, the Commission tentatively concludes that various Wireless Radio Services should not be affected by the renewal proposals in this rulemaking. Specifically, the Commission tentatively concludes that it will not apply the revised renewal paradigm to Wireless Radio Services where operations are licensed by rule (and thus there is no "license" to renew) or to Wireless Radio Services that can be considered to involve a "personal" license or that have no construction obligation. The following services are

licensed by rule and therefore there is no individual license to renew (or to cancel automatically) and no basis to adopt any of the proposals discussed above: Citizens Band Radio Service (47 CFR part 95, subpart D); Dedicated Short Range Communications Service (On-Board Units operating in the 5850–5925 MHz band) (47 CFR part 95, subpart L); Family Radio Service (47 CFR part 95, subpart B); Low Power Radio Service (47 CFR part 95, subpart G); Medical Device Radiocommunication Service (47 CFR part 95, subpart I); Multi-Use Radio Service (47 CFR part 95, subpart J); Personal Locator Beacons (47 CFR part 95, subpart K); Radio Control Radio Service (47 CFR part 95, subpart C); and Wireless Medical Telemetry Service (47 CFR part 95, subpart H).

30. The Commission also proposes to exclude from the proposals in the *Notice* services that involve licenses that are granted on a personal basis or that have no construction/performance requirement. Without a construction obligation, the Commission's proposal to require renewal applicants to make a showing of substantial service or to certify that they are operating consistent with prior filings regarding construction is inapplicable. These services include: 70–80–90 GHz Service (licenses in these bands are non-exclusive and do not authorize transmission unless/until each "pencil beam" link is registered in a private-sector database) (47 CFR part 101, subpart Q); Aeronautical Advisory Stations (Unicom) (47 CFR part 87, subpart G); Aeronautical Enroute and Aeronautical Fixed Stations (47 CFR part 87, subpart I); Aeronautical Multicom Stations (47 CFR part 87, subpart H); Aeronautical Search and Rescue Stations (47 CFR part 87, subpart M); Aeronautical Utility Mobile Stations (47 CFR part 87, subpart L); Aircraft Stations (47 CFR part 87, subpart F); Airport Control Tower Stations (47 CFR part 87, subpart O); Alaska Fixed Stations (47 CFR part 80, subpart O); Amateur Radio Service (47 CFR part 97); Automatic Weather Stations (47 CFR part 87, subpart S); Aviation Support Stations (47 CFR part 87, subpart K); Commercial Radio Operator License Program (47 CFR part 13); Flight Test Stations (47 CFR part 87, subpart J); General Mobile Radio Service (47 CFR part 95, subpart A); Maritime Support Stations (47 CFR part 80, subpart N); part 80 Operational Fixed Stations (47 CFR part 80, subpart L); Private Coast Stations and Marine Utility Stations (47 CFR part 80, subpart K); Radiodetermination Service Stations (47 CFR part 80, subpart M); Ship Stations

(47 CFR 80.13(c)); and Wireless Broadband Services in the 3650–3700 MHz Band (licenses in these bands are nationwide, non-exclusive, and do not authorize transmission unless and until each fixed or base station is registered; an unlimited number of base and fixed stations may be registered (not licensed) in this band on a nationwide, non-exclusive basis) (47 CFR part 90, subpart Z).

31. The Commission requests comment on its proposed identification of Wireless Radio Services to be excluded entirely from its revised renewal rules. Interested parties that recommend that the Commission's designation of services be revised should describe in detail the nature of the proposed change and the rationale for any such change.

#### *B. Permanent Discontinuance of Operations for Wireless Radio Services*

32. The Commission proposes to adopt a uniform regulatory framework governing the permanent discontinuance of operations for Wireless Radio Services under parts 22, 24, 27, 80, 90, 95 and 101 of the Commission's rules. The Commission's goal is to adopt a standardized approach for all services, whether licensed by geographic area or by site, to the maximum extent practicable.

33. Because an authorization will automatically terminate, without specific Commission action, if service is permanently discontinued, it is imperative that the Commission's rules provide a clear and consistent definition of permanent discontinuance of operations; they do not. The definition varies by service, and some service rules contain no clear definition. The Commission believes that standardizing the definition of permanent discontinuance of operations will serve the public interest by providing licensees and other interested parties much needed certainty and by affording similarly-situated licensees and like services comparable regulatory treatment.

##### 1. Current Requirements

34. Under § 1.955(a)(3) of the Commission's rules (47 CFR 1.955(a)(3)), "[t]he Commission authorization or the individual service rules govern the definition of permanent discontinuance for purposes of this section." The rule provides that a "station that has not provided service to subscribers for 90 continuous days is considered to have been permanently discontinued \* \* \*." Section 90.157(a), which applies to most part 90 services, provides that "[a]n authorization shall

cancel automatically upon permanent discontinuance of operations." The rule further provides that "for the purposes of this section, any station which has not operated for one year or more is considered to have been permanently discontinued."

35. In contrast to the part 22 and part 90 rules, many services, including those authorized by competitive bidding (such as the Commission's part 24 PCS rules and part 27 Miscellaneous Wireless Communication Services rules) contain no definition of permanent discontinuance. Thus, subject to meeting any service-specific construction and renewal requirements, a part 24 or part 27 licensee might conclude that it could discontinue service for a long period without fear of automatic license termination. Licensees in these services thus might retain their spectrum while it lies idle for extended periods, while part 22 licensees (including cellular service licensees, which may provide directly competing services) are subject to automatic license termination if they discontinue service to subscribers for 90 days (120 days with a 30-day extension). The public interest is not served by such marked regulatory disparities.

##### 2. Proposed Requirements

36. The Commission believes that the adoption of a uniform discontinuance of service rule for parts 22, 24, 27, 80, 90, 95 and 101 Wireless Radio Services will serve the public interest by ensuring that similarly situated licensees are afforded comparable regulatory treatment. Under the Commission's proposal, part 24 and part 27 licensees would be definitely subject to the consequence of a discontinuance of service rule—*i.e.*, automatic termination of an authorization. The Commission also believes that adoption of uniform permanent discontinuance policies will serve the public interest by ensuring that valuable spectrum is not underutilized, and by providing certainty to licensees, investors, and other interested parties, which will facilitate business and network planning. Accordingly, the Commission seeks comment on the appropriate definition of permanent discontinuance of operations and whether to adopt a single definition for Wireless Radio Services licensed either by geographic area or by site.

37. The Commission seeks comment on the length of the period that should be used to define permanent discontinuance of service that would trigger automatic license termination. The Commission's goal is to strike an appropriate balance between providing

licensees operational flexibility while ensuring that spectrum does not lie fallow. As noted above, part 22 licensees are now afforded up to a 120-day discontinuance of service period. Technologies continue to evolve rapidly and the Commission seeks to encourage technological innovation by its licensees. The Commission believes that a discontinuance of service period longer than 90 or 120 days, such as 180 days, might better enable licensees to implement technology upgrades involving reconfiguration and possible relocation of cell sites and other network elements.

38. The Commission seeks comment on the costs and benefits of defining permanent discontinuance as 180 consecutive days or 12 consecutive months during which a licensee does not operate or, for certain services, does not serve at least one subscriber that is not affiliated with, controlled by, or related to the providing carrier. The Commission also requests that interested parties address whether a 180-day or 12-month discontinuance period would enable spectrum warehousing.

39. Subject to certain limited exceptions noted below, the Commission tentatively concludes that for any Wireless Radio Service for which prior approval to discontinue service is not required, permanent discontinuance of service should be defined as 180 consecutive days during which a licensee does not operate or, in the case of Commercial Mobile Radio Service (CMRS) providers, does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the providing carrier. The Commission proposes to consolidate its permanent discontinuance of service requirements via a new § 1.953 (below), and seeks detailed comment on the proposed language of § 1.953, and all aspects of its proposal. The Commission notes that a new § 1.953 would require a licensee that permanently discontinues service to notify the Commission of the discontinuance by filing FCC Form 601 or FCC Form 605 requesting license cancellation. The Commission seeks comment on this provision and whether there may be alternatives to a self-reporting requirement.

40. The Commission also tentatively concludes that its proposed permanent discontinuance rule should apply commencing on the date a licensee makes its initial construction showing or notification. Under this approach, if a CMRS provider makes a five-year construction showing, it would have to serve at least one subscriber that is not

affiliated with, controlled by, or related to it in any ensuing 180-day period or else it would be deemed to have permanently discontinued service and its license would automatically terminate without specific Commission action. The Commission questions whether in the Narrowband PCS, for example, it would be inequitable for it to reclaim spectrum from a licensee that meets its five-year construction obligation, and then discontinues operations for 180 days before the end of its license term, while only applying a ten-year construction obligation to licensees that elect to demonstrate substantial service. The Commission seeks comment whether, under these circumstances, the public interest would be better served if it applied its permanent discontinuance of operations rule only after the initial license term.

41. The Commission notes that if it were to adopt a 180-day discontinuance period, a licensee could request more time to implement a network upgrade or to complete a distress sale, for example. The text of proposed § 1.953(f) sets forth a process under which a request for a longer discontinuance period may be filed for good cause, and subject to the requirement that it is filed at least 30 days before the end of the discontinuance period. Under the proposed rule, the filing of a request would automatically extend the discontinuance period a minimum of the latter of an additional 30 days or the date upon which the Wireless Telecommunications Bureau acts on the request. The Commission seeks comment on these proposed provisions.

42. In addition, the Commission tentatively concludes that operation of so-called channel keepers (e.g. devices that transmit test signals, tones and/or color bars) will not constitute operation for the purposes of the Commission's permanent discontinuance rules. The Commission seeks comment below on the application of this proposed framework to various services.

#### a. Part 22 Public Mobile Services

43. The Commission's part 22 rules govern operations in the Paging and Radiotelephone Service, Rural Radiotelephone Service, Air-Ground Radiotelephone Service, Cellular Radiotelephone Service, and Offshore Radiotelephone Service. Under § 22.317 of the Commission's rules, "any station that has not provided service to subscribers for 90 continuous days is considered to have been permanently discontinued, unless the applicant notified the FCC otherwise prior to the end of the 90 day period and provided a date on which operations will resume,

which date must not be in excess of 30 additional days." Service to subscribers is defined as "[s]ervice to at least one subscriber that is not affiliated with, controlled by or related to the providing carrier." The Commission seeks comment on whether for each part 22 service (some of which are licensed by geographic area and some by site), the public interest would be served by defining permanent discontinuance as 180 consecutive days during which a licensee does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the providing carrier. The Commission seeks specific comment on whether the additional operational flexibility that would be afforded by a 180-day or longer period would be beneficial.

#### b. Part 24 Personal Communications Services

44. Section 1.955(a)(3) of the Commission's rules provides that an authorization will "automatically terminate, without specific Commission action, if service is permanently discontinued." The rule also provides that "[t]he Commission authorization or the individual service rules govern the definition of permanent discontinuance for purposes of this section." For many of the Commission's services authorized by competitive bidding (such as PCS), the specific service rules do not define permanent discontinuance of operations.

45. The Commission seeks comment on whether, for Broadband and Narrowband PCS, the public interest would be served by defining permanent discontinuance as 180 consecutive days during which a licensee does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the providing carrier. The Commission notes that the mid- and end-of-term performance requirements for these services vary based on the size of a market area and authorized bandwidth. Moreover, a narrowband PCS licensee may elect to forego making a five-year mid-term geographic area or population-based construction showing and, instead, elect to demonstrate substantial service by the end of its license term.

#### c. Part 27 Miscellaneous Wireless Communications Services

46. The Commission's part 27 Miscellaneous Wireless Communications Services include: (1) 700 MHz Commercial Service (Lower and Upper 700 MHz Bands); (2) 700 MHz Guard Band Service; (3) 1.4 GHz Service; (4) 1.6 GHz Service; (5) Advanced Wireless Service (AWS-1,

1710–1755 MHz, 2110–2155 MHz); (6) Wireless Communications Service (WCS, 2305–2320 and 2345–2360 MHz), and (7) the Broadband Radio Service and Educational Broadband Service. Part 27 does not define permanent discontinuance for any of these services. However, section 27.66(b) of the Commission's rules requires fixed common carriers in any of these services to obtain prior Commission authorization before voluntarily discontinuing service to a community or part of a community, which will be granted "within 31 days after filing if no objections have been received." Fixed non-common carrier licensees, on the other hand, may voluntarily discontinue service without prior Commission authorization and need only provide the Commission notice within seven days of such discontinuance.

47. Many part 27 licensees must, as a performance requirement (*i.e.*, construction requirement), make a showing of substantial service in their license area during their license term. For these part 27 licensees, the Commission proposes to apply the permanent discontinuance rule effective on the date that a licensee makes its performance showing. Thus, if a licensee makes its substantial service performance showing in year six of its initial license term, thereafter it must serve at least one subscriber that is not affiliated with, controlled by, or related to it in any ensuing 180-day period or else it would be deemed to have permanently discontinued service and its license would automatically terminate without specific Commission action. The Commission seeks comment on application of its proposed permanent discontinuance rule to licensees that must make a showing of substantial service in their license area within their initial license term.

48. Rather than demonstrate substantial service as their performance requirement, Part 27 licensees that hold 700 MHz Commercial Services Band authorizations for Blocks A, B, C, and E must satisfy population-based or geographic-area performance requirements. Licensees in these spectrum blocks must make their initial construction showing no later than June 13, 2013, or four years from license grant if an initial authorization is granted after June 13, 2009. The Commission proposes to apply a permanent discontinuance rule to these licensees effective upon the date that a licensee makes its first performance showing. The Commission notes that, unlike Narrowband PCS licensees, this group of 700 MHz licensees will not have the option of electing to show

substantial service at the end of their license term in lieu of making an interim performance showing. Under these circumstances, the Commission finds the public interest would be served if it applies its proposed permanent discontinuance rule effective upon a licensee making its first performance showing. The Commission seeks comment on its findings and application of the proposed permanent discontinuance rules to licensees for 700 MHz Blocks A, B, C, and E.

49. *Broadband Radio Service and Educational Broadband Service.* The Commission is implementing a new band plan for BRS and EBS. To enable licensees to transition to the new band plan and deploy new and innovative wireless services, the Commission eliminated its discontinuance of service rules, and adopted a substantial service standard under which all licensees must demonstrate substantial service on or before May 1, 2011. The Commission tentatively concludes that it would not serve the public interest to re-impose a discontinuance of service rule on BRS and EBS at this time. The transition to the new band plan is ongoing, and licensee transition reports indicate that many are discontinuing existing operations as they transition. Accordingly, the Commission proposes to maintain the right of BRS and EBS licensees to discontinue service during the transition, and seek comment on the appropriate date thereafter on which to apply discontinuance of service rules to BRS and EBS.

#### d. Part 80 Safety and Special Radio Services

50. Part 80, which governs stations in the Maritime Services, does not currently define permanent discontinuance of operations. Section 80.31 of the Commission's rules provides that "[w]ireless telecommunications carriers subject to this part must comply with the discontinuance of service provisions of part 63 of this chapter," but this rule has limited applicability. The Commission seeks comment on whether to define permanent discontinuance of service for part 80 stations as 180 consecutive days during which a licensee does not operate or, in the case of certain stations, does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the providing carrier.

#### e. Part 90 Private Land Mobile Radio Services

51. Section 90.157(a) of the Commission's rules provides that "[a]n authorization shall cancel automatically

upon permanent discontinuance of operations." The rule further provides that "[u]nless stated otherwise in this part or in a station authorization, for the purposes of this section, any station which has not operated for one year or more is considered to have been permanently discontinued." This rule applies to all part 90 services, except trunked Specialized Mobile Radio (SMR) Service, which is discussed below. Some part 90 services are used for seasonal operations such as ski resort operations or beach patrols. Because such operations may be conducted for less than six months in any given 12-month period, the Commission intends to retain the one-year discontinuance of operations rule. The Commission does, however, propose to modify this rule by also requiring service to at least one unaffiliated subscriber during the one-year period if the licensed spectrum is used for Commercial Mobile Radio Service (CMRS) purposes. The Commission would thus define permanent discontinuance for services licensed as CMRS under part 90 as a 12-month period during which a licensee does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the providing carrier. Licenses used for private, internal communications do not involve the provision of service to unaffiliated subscribers, so the Commission proposes to retain the existing discontinuance of operations test for these types of licenses. The Commission seeks comment on its proposed approach.

#### f. Part 90 Specialized Mobile Radio Service

52. Section 90.631(f) of the Commission's rules, which governs permanent discontinuance of trunked SMR Service operations, is similar to § 22.317, governing permanent discontinuance of operations for all part 22 Public Mobile Services. The rule provides that an SMR "licensee with facilities that have discontinued operations for 90 continuous days is presumed to have permanently discontinued operations," unless it notifies the Commission "prior to the end of the 90 day period and provides a date on which operation will resume, which date must not be in excess of 30 additional days." Under the rule, a trunked SMR base station "is not considered to be placed in operation unless at least two associated mobile stations, or one control station and one mobile station, are also placed in operation." The Commission proposes to conform its requirements for permanent



discontinuance for part 90 trunked SMR and part 22 Public Mobile Services. Accordingly, the Commission seeks comment on whether, for part 90 trunked SMR Service, the public interest would be served by defining permanent discontinuance as 180 consecutive days during which a licensee does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the providing carrier. The Commission encourages parties to address whether the practical effect of the rule would be undermined by not requiring service to at least two associated mobile stations, or one control station and one mobile station, as § 90.631(f) currently provides.

#### g. Part 95 218–219 MHz Service

53. Part 95 does not currently define permanent discontinuance of operations for licensees in the 218–219 MHz Service. The Commission seeks comment on whether for 218–219 MHz Service providers, the public interest would be served by defining permanent discontinuance of operations as 180 consecutive days during which a licensee does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the providing carrier.

#### h. Part 101 Fixed Microwave Services

54. Section 101.65(b) of the Commission's rules provides that any part 101 "station which has not operated for one year or more is considered to have been permanently discontinued." The Commission notes that § 101.65(a), which applies to all part 101 stations, provides that "a license will be automatically forfeited in whole or in part \* \* \* upon the voluntary removal or alteration of the facilities, so as to render the station not operational for a period of 30 days or more." The Commission seeks comment on the relationship of this 30-day rule to its proposed 180-day permanent discontinuance rule, including whether the rule should be eliminated or modified in any respect.

### C. Geographic Partitioning and Spectrum Disaggregation Rules and Policies

55. The Commission tentatively concludes that the public interest would be well served if the Commission revises its geographic partitioning and spectrum disaggregation rules to require each party to such an arrangement to independently satisfy construction obligations under the applicable service rules. The Commission's experience with implementation of partitioning and

disaggregation across myriad wireless radio services indicates that parties can, and sometimes do, manipulate the requirements in ways that result in spectrum in some services lying fallow for lengthy periods. The Commission therefore seeks to eliminate any provisions in its partitioning and disaggregation rules that enable parties to avoid timely construction.

56. The Commission's approach is intended to ensure that valuable spectrum does not lie fallow to the public's detriment, while still affording wireless service providers flexibility to configure geographic area licenses and spectrum blocks to meet their operational needs. The Commission's approach also will provide licensees greater regulatory certainty by eliminating service-specific inconsistencies regarding satisfaction of performance requirements when spectrum is partitioned or disaggregated. Harmonization of these rules across wireless radio services, moreover, will place licensees in different services on more comparable regulatory footing to the extent that partitioning or disaggregation is permitted in specific services.

#### 1. Current Requirements

57. In the 1996 *CMRS Partitioning and Disaggregation Order*, 11 FCC Rcd 21831 (1996), the Commission adopted geographic partitioning and spectrum disaggregation rules for Broadband PCS. The Commission sought to provide licensees flexibility to determine the amount of spectrum they will occupy and the geographic area they will serve. The Commission echoed these goals when it subsequently adopted partitioning and disaggregation rules akin to the PCS rules on a service-by-service basis, including in the 800 MHz and 900 MHz Specialized Mobile Radio (SMR) Services, 39 GHz Service, Wireless Communications Service (WCS), 220–222 MHz Service, and Cellular Radiotelephone Service.

58. In adopting partitioning and disaggregation rules and policies, the Commission has sought to promote multiple, albeit sometimes competing, goals. The Commission specifically envisioned that partitioning and disaggregation would expedite the provision of service to rural and other underserved areas of America as well as to niche markets. These goals remain paramount today as the Commission develops a national strategy to extend the promise of broadband to all Americans.

59. The Commission also has previously determined that partitioning and disaggregation would promote the

efficient use of spectrum by providing licensees with the flexibility to make offerings directly responsive to market demands for particular types of service. It thus adopted rules that provide geographic-area licensees discretion to determine the amount of spectrum they will occupy and the area they will serve consistent with their business plan, which may not necessarily coincide with predetermined spectrum blocks and geographic areas of the licenses in a specific service. In the *Upper 700 MHz First Report and Order*, 15 FCC Rcd 476, 507 (2000), for example, the Commission "permit[ted] geographic partitioning of any service area defined by the partitioner and partitionee, spectrum disaggregation without restriction on the amount of spectrum to be disaggregated and combined partitioning and disaggregation." The Commission also sought to increase competition through its partitioning and disaggregation policies by enabling market entry. Numerous licensees and others have availed themselves of these options.

60. While seeking to afford licensees the significant flexibility described above, the Commission also has sought to ensure that licensees meet applicable service performance obligations (*i.e.*, construction and operation). Although the Commission has reiterated this goal when specifying performance requirements for partitioning and disaggregation across numerous wireless radio services, the text of the rules varies considerably across services, and often without a detailed explanation for the variations. Some of these variations have enabled parties to manipulate the requirements in unforeseen ways that result in spectrum in some services lying fallow for lengthy periods. The Commission seeks to rectify this problem.

#### 2. Proposed Requirements

61. The Commission tentatively concludes that the public interest would be better served if it revises its rules to require each party to a partitioning, disaggregation, or combination of both to independently satisfy the service-specific construction obligations. Accordingly, the Commission proposes to adopt an independent construction requirement for each party to a geographic partitioning or spectrum disaggregation in those services that currently provide for partitioning or disaggregation. This approach would eliminate any provisions in the Commission's partitioning and disaggregation rules that enable parties to avoid timely construction. The Commission's goal is to harmonize its

disparate partitioning and disaggregation rules to address these concerns while affording licensees significant flexibility to structure their coverage areas and spectrum use as envisioned when these rules were adopted.

62. Specifically, the Commission tentatively concludes that the public interest will be served by requiring each party to a partitioning, disaggregation, or combination of both, in any of the services enumerated in proposed rule § 1.950(b), to individually meet the applicable service performance requirements (both construction and operation) for its license.

63. The Commission proposes to harmonize and consolidate all of the Commission's partitioning and disaggregation requirements in a new § 1.950 to the maximum extent practicable. This section will apply to the more than 20 wireless radio services in which geographic partitioning or spectrum disaggregation is now permitted. The proposed language for the new § 1.950 is set forth below. The Commission seeks detailed comment on the wording of the proposed § 1.950 and all aspects of the Commission's proposal, including whether imposing a construction obligation on both parties to a partitioning or disaggregation could in some cases discourage publicly beneficial arrangements.

64. In the PCS disaggregation context (*CMRS Partitioning and Disaggregation Order*, 11 FCC Rcd at 21865), the Commission stated that “[b]ecause our rules do not dictate a minimum level of spectrum usage by the original PCS licensee, we believe it would be inconsistent to impose separate construction requirements on both disaggregator and disaggreatee for their respective spectrum portions.” Does the fact that the Commission does not require minimum spectrum usage in many services militate against requiring both parties to a disaggregation to separately meet performance requirements? The Commission requests any commenters that take this position to support their arguments with as much detail as possible and to provide any appropriate supporting facts. The Commission also notes that despite its foregoing statement, it explained that “[s]hould both parties agree to share the responsibility for meeting the construction requirements and either party later fail to do so, both parties’ licenses will be subject to forfeiture.”

65. The Commission also observed in the *CMRS Partitioning and Disaggregation Order* (11 FCC Rcd at 21864) that “[t]he goal of our construction requirements in both the

partitioning and disaggregation contexts is to ensure that the spectrum is used to the same degree that would have been required had the partitioning or disaggregation transaction not taken place.” It is paramount that the Commission's construction requirements are not circumvented. Indeed, section 309(j)(4)(B) of the Communications Act requires that rules for auctionable services “include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services.” The Commission thus requests comment regarding whether its proposal will eliminate the opportunities that exist under the Commission's current partitioning and disaggregation rules that may enable a party to avoid construction. The Commission also seeks comment on whether adoption of this proposal would lead to more efficient spectrum usage. Parties should support their positions with detailed comments and specific facts.

66. The Commission seeks comment on whether the public interest would be served by making any exceptions to the uniform, bright-line construction rules the Commission is proposing today for any service in which partitioning or disaggregation is permitted. For example, the Commission notes that 700 MHz spectrum licenses won in Auction 73 are subject to more stringent performance requirements than most Wireless Radio Services, including four-year and end-of-term construction benchmarks and keep-what-you-use policies. For these licenses, a disaggregator, disaggreatee, or both working together can meet the construction benchmarks for the entire license area. If neither party meets the four-year benchmark, then both parties’ license terms will be reduced by two years. Likewise, if neither party meets the end-of-term benchmark, both will be subject to an automatic keep-what-you-use rule, and will lose their authorization for unserved portions of their license areas. The Commission seeks comment on whether the Commission should continue to afford 700 MHz spectrum licenses won in Auction 73 such treatment, or whether the public interest would be better served by requiring each party separately to meet applicable construction benchmarks.

67. Finally, while the Commission tentatively concludes that its proposal

discussed above would be the best way to balance competing factors and to support partitioning and disaggregation arrangements that further the public interest, it welcomes any additional suggested rule or policy revisions that commenters might want to suggest. The Commission invites comment on whether there are other available mechanisms to deter circumvention of construction requirements under partitioning and disaggregation arrangements. The Commission requests that any alternative proposals be explained in detail. This explanation should include the goals of the proposal, and how adoption of the proposal would achieve such goals.

### III. Procedural Matters

#### *Ex Parte Rules—Permit-but-Disclose*

68. This rulemaking shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. Other requirements pertaining to oral and written presentations are set forth in 47 CFR 1.1206(b).

#### *Comment Period and Procedures*

69. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments and reply comments should refer to WT Docket No. 10–112, and 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.

■ **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments.

■ **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 the Commission continues 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.

■ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW-A325, Washington, DC 20554. The filing hours 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.

70. Parties should send a copy of their filings in this proceeding via e-mail or U.S. mail to: Richard Arsenault, Chief Counsel, Mobility Division, Wireless Telecommunications Bureau, [richard.arsenault@fcc.gov](mailto:richard.arsenault@fcc.gov), and Michael Connelly, Attorney Advisor, Mobility Division, Wireless Telecommunications Bureau, [michael.connely@fcc.gov](mailto:michael.connely@fcc.gov), 445 12th Street, SW., Washington, DC 20554. Parties should also provide one copy of their filings to the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, Room CY-B402, 445 12th Street, SW., Washington, DC 20554, (202) 488-5300, or via e-mail to [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

71. Documents in WT Docket No. 10-112 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, Room CY-A257, 445 12th Street, SW., Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

72. *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](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

### *Initial Regulatory Flexibility Analysis*

73. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present 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 NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided in paragraph 116 of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

### *Need for, and Objectives of, the Proposed Rules*

74. In the NPRM, the Commission takes three actions. First, the NPRM proposes to adopt uniform renewal policies for licenses in Wireless Radio Services (WRS), based on the Commission's renewal framework for the 700 MHz Commercial Services Band. Specifically, the NPRM tentatively concludes to apply the Commission's 700 MHz Commercial Services Band framework to services licensed by geographic area and, with certain refinements, to services licensed on a site-by-site basis. Second, the NPRM proposes to harmonize the Commission's rules regarding the permanent discontinuance of operations by WRS licensees. Third, the NPRM proposes to standardize the Commission's requirements regarding the responsibilities of parties to geographic partitioning and spectrum disaggregation arrangements.

75. The NPRM proposes to harmonize the Commission's widely varying wireless license renewal requirements. Specifically, based on the Commission's 700 MHz renewal paradigm, applicants for geographic-area licenses would have to file a renewal showing that demonstrates the level of service they are providing to the public, and that they are compliant with the Commission's rules and policies and the Communications Act. For site-based services, renewal applicants would have to certify that they are operating consistent with their construction notification (NT) or most recent authorization, when no NT is required. The filing of applications that are mutually exclusive with a renewal application would be prohibited. If a renewal is denied, the spectrum in most cases would be returned to the

Commission for reassignment, generally through competitive bidding.

76. The Commission's permanent discontinuance of operations rules are intended to provide licensees operational flexibility, while preventing spectrum warehousing. The definition of permanent discontinuance, however, varies by service, and some services contain no definition, enabling warehousing. The NPRM seeks comment on whether to adopt a uniform definition for discontinuance of operations (such as 180 days) for all wireless services that would trigger automatic license termination.

77. The Commission's experience with partitioning and disaggregation across myriad wireless services indicates that parties can, and sometimes do, manipulate requirements in ways that result in spectrum lying fallow. The wording of these rules varies, and the responsibilities of parties are inconsistent. The NPRM seeks to place licensees in different services on comparable regulatory footing and close regulatory loopholes. The NPRM tentatively concludes that each party to a partitioning or disaggregation should independently satisfy construction obligations.

### *Legal Basis*

78. The proposed action is taken under §§ 1, 2, 4(i), 301, 303, 308, 309, and 332 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 301, 303, 308, 309, 332.

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

79. 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 SBA.

80. *Small Businesses*. Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.

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

82. *Small Governmental Jurisdictions.* 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 percent) have populations of fewer than 50,000, and of which 1,594 have populations of 50,000 or more. Thus, the Commission estimates the number of small governmental jurisdictions overall to be 85,931 or fewer. In completing this IRFA, the Commission recognizes that small governmental jurisdictions may be WRS licensees.

83. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of “Paging” and “Cellular and Other Wireless Telecommunications.” Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, the Commission will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms 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. For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms 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, the Commission estimates that the majority of wireless firms are small.

84. The Commission has determined that there are approximately 197,812 licensees in the Wireless Radio Services affected by the NPRM, as of May 18, 2010; the Commission does not know how many licensees in these bands are small entities, as the Commission does not collect that information for these types of entities. The Commission notes that, under the action it proposes in the NPRM, entities, including small businesses, will have to comply with a single set of rules regarding license renewal in the WRS. The Commission does not know how many entities that

will file for WRS license renewal will be small entities. Thus, the Commission assumes, for purposes of this IRFA, that all prospective licensees are small entities as that term is defined by the SBA or by the Commission’s proposed small business definitions for these bands.

#### Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

85. In paragraphs 16–32 and 37–39 of the NPRM, the Commission sets forth the rules with which geographic-area licensees in the Wireless Radio Services must comply; the rules for site-based licensees are specified in paragraphs 33–35 and 37–39. These rules would be generally applicable to all WRS licensees, large and small. For an incumbent geographic area WRS licensee to expect to renew its license, it must generally follow the three-part approach the Commission established for the 700 MHz Commercial Services Band, *i.e.*, (1) renewal applicants must demonstrate that they are providing substantial service to the public (or, when allowed under the relevant service rules, for private, internal communication), and substantially complying with the Commission’s rules (including any applicable performance requirements) and policies and the Communications Act, (2) competing renewal applications are prohibited, and (3) if a license is not renewed, the associated spectrum is returned to the Commission for reassignment. Regarding the substantial service component of the first prong, the Commission has indicated that substantial service in the renewal context encompasses Commission consideration of a variety of factors including the level and quality of service, whether service was ever interrupted or discontinued, whether service has been provided to rural areas, and any other factors associated with a licensee’s level of service to the public.

86. In paragraph 27, the Commission lists factors that WRS licensees in various services are required to address to demonstrate that the applicant should receive a renewal expectancy. The list includes the following factors: A description of the licensee’s current service in terms of geographic coverage and population served; an explanation of the licensee’s record of expansion, including a time table for the construction of new sites to meet changes in demand for service; a description of its investments in its system; a list, including addresses, of all cell transmitter stations constructed; identification of the type of facilities

constructed and their operational status; consideration of whether the licensee is offering a specialized or technologically sophisticated service that does not require a high level of coverage to be of benefit to customers; consideration of whether the licensee’s operations service niche markets or focus on serving populations outside of areas served by other licensees; and consideration of whether the licensee’s operations serve populations with limited access to telecommunications services.

87. In paragraphs 37–39, applicable to both geographically and site-based services, the Commission indicates that in addition to making the requisite substantial service showing, a WRS licensee seeking renewal of its license must further indicate that it has substantially complied with all applicable Commission rules, policies, and the Communications Act of 1934, as amended, including any applicable performance requirements; the Commission believes such a showing will assist in character and other evaluations of the applicant. Included in this showing are the filing, if any, of all FCC orders, including letter rulings, finding a violation or an apparent violation of the Communications Act or any FCC rule or policy by the licensee, an entity that owns or controls the licensee, an entity that is owned or controlled by the licensee, or an entity that is under common control with the licensee (whether or not such an order relates specifically to the license for which renewal is sought). The Commission also proposes that a renewal applicant must provide a list of any pending FCC proceedings or investigations that relate to a potential violation of the Communications Act or any FCC rule or policy by the licensee, an entity that owns or controls the licensee, an entity that is owned or controlled by the licensee, or an entity that is under common control with the licensee. In the event there is no FCC order finding violations, the applicant will so certify.

88. Regarding requirements unique to site-based WRS licensees, in paragraphs 33–35, the Commission proposes to modify FCC Form 601 to require such renewal applicants to certify that they continue to operate consistent with the applicable filed construction notification(s) or most recent authorization(s) (when no notification was required to be filed under the Commission’s rules); the licensee can expect license renewal if it files such certification and demonstrates substantial compliance with other applicable rules.

89. Harmonization of the rules in the affected wireless services will not impose any more administrative burden on a licensee than the licensee must currently comply with. The Commission believes its proposed action will have the effect of lessening the recordkeeping burden by making the renewal process more straight-forward; this is particularly so for an FCC licensee with authorizations in more than one of the affected services.

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

90. 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.

91. The Commission believes that the adoption of uniform renewal policies for licensees in the various Wireless Radio Services and harmonization of its rules regarding the permanent discontinuance of operations by WRS licensees will benefit all WRS applicants and licensees, regardless of size. The Commission believes that complying with the current license renewal rules, varied as they are, has the potential to place a particular burden on the limited financial resources of small businesses. The Commission therefore believes that uniform renewal rules throughout the Wireless Radio Services, and harmonizing its rules regarding the definition of, and what constitutes, permanent discontinuance of operation, will have the intended consequences of assisting small entities that are WRS licensees.

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

92. None.

*Initial Paperwork Reduction Analysis*

93. This document contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to

comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

**IV. Ordering Clauses**

94. Pursuant to §§ 1, 2, 4(i), 301, 303, 308, 309, and 332 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 301, 303, 308, 309, 332, this Notice of Proposed Rulemaking is hereby *adopted*.

95. *Notice is hereby given* of the proposed regulatory changes described in this Notice of Proposed Rulemaking, and that comment is sought on these proposals.

96. The Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking and Order, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects**

*47 CFR Part 1*

Administrative practice and procedure, Communications common carriers, Penalties, Radio, Reporting and recordkeeping requirements, Telecommunications, Television.

*47 CFR Part 22*

Communications common carriers, Radio, Reporting and recordkeeping requirements.

*47 CFR Part 24*

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

*47 CFR Part 27*

Communications common carriers, Radio.

*47 CFR Part 90*

Administrative practice and procedure, Common carriers, Radio, Reporting and recordkeeping requirements.

*47 CFR Part 101*

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 proposes to amend 47 CFR parts 1, 22, 24, 27, 90 and 101 as follows:

**PART 1—PRACTICE AND PROCEDURE**

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

**Authority:** 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309.

2. Section 1.949 is revised to read as follows:

**§ 1.949 Application for renewal of authorization.**

(a) *Filing requirements.* Applications for renewal of authorizations in the Wireless Radio Services must be filed no later than the expiration date of the authorization, and no sooner than 90 days prior to the expiration date. Renewal applications must be filed on the same form as applications for initial authorization in the same service, *i.e.*, FCC Form 601 or 605.

(b) *Common expiration date.* Licensees with multiple authorizations in the same service may request a common date on which such authorizations expire for renewal purposes. License terms may be shortened by up to one year but will not be extended.

(c) *Renewal showing.* An applicant for renewal of a geographic-area authorization in the following services regulated under this chapter must make a Renewal Showing, independent of its performance requirements, as a condition of renewal: 1.4 GHz Service (part 27, subpart I); 1.6 GHz Service (part 27, subpart J); 24 GHz Service (part 101, subpart G); 39 GHz Service (part 101, subpart B); 218–219 MHz Service (part 95, subpart F); 220–222 MHz Service (part 90, subpart T); 700 MHz Commercial Services (part 27, subpart F); 700 MHz Guard Band Service (part 27, subpart G); 800 MHz Specialized Mobile Radio Service (part 90, subpart S); 900 MHz Specialized Mobile Radio Service (part 90, subpart S); Advanced Wireless Service (part 27, subpart L); Air-Ground Radiotelephone Service (Commercial Aviation) (part 22, subpart G); Broadband Personal Communications Service (part 24, subpart E); Cellular Radiotelephone Service (part 22, subpart H); Dedicated Short Range Communications Service

(part 90, subpart M); Local Multipoint Distribution Service (part 101, subpart L); Multichannel Video Distribution and Data Service (part 101, subpart P); Multilateration Location and Monitoring Service (part 90, subpart M); Multiple Address Systems (EAs) (part 101, subpart O); Narrowband Personal Communications Service (part 24, subpart D); Paging and Radiotelephone Service (part 22, subpart E; part 90, subpart P); Public Coast Stations, including Automated Maritime Telecommunications Systems (part 80, subpart J); and Wireless Communications Service (part 27, subpart D). For the Broadband Radio Service and Educational Broadband Service, this requirement shall not apply to any license that expires on or before May 1, 2011. The showing must include a detailed description of the applicant's provision of service during the entire license period and address:

(1) The level and quality of service provided by the applicant (*e.g.*, the population served, the area served, the number of subscribers, the services offered);

(2) The date service commenced, whether service was ever interrupted, and the duration of any interruption or outage;

(3) The extent to which service is provided to rural areas;

(4) The extent to which service is provided to qualifying tribal land as defined in § 1.2110(e)(3)(i); and

(5) Any other factors associated with the level of service to the public.

(d) *Service certification.* An applicant for renewal of a site-by-site authorization in the following services regulated under this chapter must make a Service Certification with its application: 220–222 MHz Service (site-based) (part 90, subpart T); 800/900 MHz (SMR and Business and Industrial Land Transportation Pool) (part 90, subpart S); Air-Ground Radiotelephone Service (General Aviation) (part 22, subpart G); Broadcast Auxiliary Service (part 74, subpart F); Common Carrier Fixed Point-to-Point, Microwave Service (part 101, subpart I); Digital Electronic Message Service (part 101, subpart G); Industrial/Business Radio Pool (part 90, subpart C); Local Television Transmission Service (part 101, subpart J); Multiple Address Systems (site-based), excluding systems licensed to public safety entities (part 101, subpart O); Non-Multilateration Location and Monitoring Service (part 90, subpart M); Offshore Radiotelephone Service (part 22, subpart I); Paging and Radiotelephone Service (site-based) (part 22, subpart E); Private Carrier Paging (part 90, subpart P); Private

Operational Fixed Point-to-Point Microwave Service, excluding licenses held by public safety entities (part 101, subpart H); and Rural Radiotelephone Service (including Basic Exchange Telephone Radio Service) (part 22, subpart F). The Service Certification must certify that the applicant is continuing to operate consistent with its most recently filed construction notification (NT) or most recent authorization, when no NT is required to be filed under the Commission's rules.

(e) *Regulatory compliance demonstration.* An applicant for renewal of an authorization in the Wireless Radio Services identified in paragraphs (c) and (d) of this section must make a Regulatory Compliance Demonstration as a condition of renewal. A Regulatory Compliance Demonstration must include:

(1) A copy of each FCC order and letter ruling, which may or may not have been assigned a delegated authority number, finding a violation of the Communications Act or any FCC rule or policy by the applicant, an entity that owns or controls the applicant, an entity that is owned or controlled by the applicant, an entity that is under common control with the applicant, or an affiliate of the applicant (whether or not such an order or letter ruling relates specifically to the license for which renewal is sought); and

(2) A list of any pending petitions to deny any application filed by the applicant, an entity that owns or controls the applicant, an entity that is owned or controlled by the applicant, an entity that is under common control with the applicant, or an affiliate of the applicant (whether or not the petition to deny relates specifically to the license for which renewal is sought).

(f) *Regulatory compliance certification.* An applicant for renewal of an authorization in the Wireless Radio Services identified in paragraphs (c) and (d) of this section may, instead of making a Regulatory Compliance Demonstration as part of the renewal application, make a Regulatory Compliance Certification certifying the absence of any findings under paragraph (e)(1) of this section, and any pending petitions to deny under paragraph (e)(2) of this section.

(g) For the purposes of paragraphs (e)(1) and (e)(2) of this section, the term affiliate means affiliate as defined in § 1.2110(c)(5).

(h) If the Commission, or the Wireless Telecommunications Bureau acting under delegated authority, finds that a licensee's Renewal Showing under paragraph (c) of this section, its Service

Certification under paragraph (d) of this section, its Regulatory Compliance Demonstration under paragraph (e) of this section, or its Regulatory Compliance Certification under paragraph (f) of this section is insufficient, its renewal application will be denied, and its licensed spectrum will return automatically to the Commission for reassignment (by auction or other mechanism). In the case of certain services licensed site-by-site, the spectrum will revert automatically to the holder of the related overlay geographic-area license.

3. Add § 1.950 to subpart F to read as follows:

**§ 1.950 Geographic partitioning and spectrum disaggregation.**

(a) *Definitions.* The terms “County and County Equivalent,” “Geographic Partitioning,” and “Spectrum Disaggregation” as used in this section are defined as follows:

(1) *County and county equivalent.* The terms county and county equivalent as used in this part are defined by Federal Information Processing Standards (FIPS) 6–4, which provides the names and codes that represent the counties and other entities treated as equivalent legal and/or statistical subdivisions of the 50 States, the District of Columbia, and the possessions and freely associated areas of the United States. Counties are considered to be the “first-order subdivisions” of each State and statistically equivalent entity, regardless of their local designations (county, parish, borough, *etc.*). Thus, the following entities are considered to be equivalent to counties for legal and/or statistical purposes: The parishes of Louisiana; the boroughs and census areas of Alaska; the District of Columbia; the independent cities of Maryland, Missouri, Nevada, and Virginia; that part of Yellowstone National Park in Montana; and various entities in the possessions and associated areas. The FIPS codes and FIPS code documentation are available online at <http://www.itl.nist.gov/fipspubs/index.htm>.

(2) *Geographic partitioning.* Geographic partitioning is the assignment of a geographic portion of a licensee's license area.

(3) *Spectrum disaggregation.* Spectrum disaggregation is the assignment of portions or blocks of a licensee's spectrum.

(b) *Eligibility.* Licensees in the wireless radio services regulated under this chapter are eligible for Geographic Partitioning and Spectrum Disaggregation: 1.4 GHz Service (part 27, subpart I); 1.6 GHz Service (part 27,

subpart J); 24 GHz Service (part 101, subpart G); 39 GHz Service (part 101, subpart B); 218–219 MHz Service (part 95, subpart F); 220–222 MHz Service (part 90, subpart T); 700 MHz Commercial Services (part 27, subpart F); 700 MHz Guard Band Service (part 27, subpart G); 800 MHz Specialized Mobile Radio Service (part 90, subpart S); 900 MHz Specialized Mobile Radio Service (part 90, subpart S); Advanced Wireless Services (part 27, subpart L); Air-Ground Radiotelephone Service (Commercial Aviation) (part 22, subpart G); Broadband Personal Communications Service (part 24, subpart E); Broadband Radio Service and Educational Broadband Service (part 27, subpart M); Cellular Radiotelephone Service (part 22, subpart H); Local Multipoint Distribution Service (part 101, subpart L); Multichannel Video Distribution and Data Service (part 101, subpart P); Multilateration Location and Monitoring Service (part 90, subpart M); Multiple Address Systems (part 101, subpart O); Narrowband Personal Communications Service (part 24, subpart D); Paging and Radiotelephone Service (part 22, subpart E; part 90, subpart P); Public Coast Stations, including Automated Maritime Telecommunications Systems (part 80, subpart J); and Wireless Communications Service (part 27, subpart D).

(1) *Geographic partitioning.* An eligible licensee may partition any geographic portion of its license area, at any time following grant of its license, subject to the following exceptions:

(i) 220 MHz Service licensees must comply with § 90.1019 of this chapter.

(ii) Cellular Radiotelephone Service licensees must comply with § 22.948 of this chapter.

(2) *Spectrum disaggregation.* An eligible licensee may disaggregate spectrum in any amount, at any time following grant of its license, subject to the following exceptions:

(i) 220 MHz Service licensees must comply with § 90.1019 of this chapter.

(ii) Cellular Radiotelephone Service licensees must comply with § 22.948 of this chapter.

(iii) VHF Public Coast (156–162 MHz) spectrum may only be disaggregated in frequency pairs, except that the ship and coast transmit frequencies comprising Channel 87 (see § 80.371(c) of this chapter) may be disaggregated separately.

(iv) Disaggregation is not permitted in the Multichannel Video & Distribution and Data Service 12.2–12.7 GHz band.

(c) *Filing requirements.* Parties seeking approval for geographic partitioning, spectrum disaggregation, or

a combination of both must apply for a partial assignment of authorization by filing FCC Form 603 pursuant to § 1.948. Each request for geographic partitioning must include an attachment defining the perimeter of the partitioned area by geographic coordinates to the nearest second of latitude and longitude, based upon the 1983 North American Datum (NAD83). Alternatively, applicants may specify an FCC-recognized service area (e.g., Basic Trading Area, Economic Area, Major Trading Area, Metropolitan Service Area, or Rural Service Area), county, or county equivalent, in which case, applicants need only list the specific FCC-recognized service area, county, or county equivalent names comprising the partitioned area.

(d) *Relocation of incumbent licensees.* Applicants for geographic partitioning, spectrum disaggregation, or a combination of both must, if applicable, include a certification with their partial assignment of authorization application stating which party will meet any incumbent relocation requirements.

(e) *License term.* The license term for a partitioned license area or disaggregated spectrum license is the remainder of the original licensee's license term.

(f) *Frequency coordination.* Any existing frequency coordination agreements convey with the partial assignment of authorization for geographic partitioning, spectrum disaggregation, or a combination of both.

(g) *Performance requirements.* Each party to a geographic partitioning, spectrum disaggregation, or a combination of both must individually meet any service-specific performance requirements (i.e., construction and operation requirements). If a licensee fails to meet any service-specific performance requirements on or before the required date, its authorization will terminate automatically on that date without further Commission action pursuant to § 1.946.

(h) *Unjust enrichment.* Licensees making installment payments or that received a bidding credit, that partition their licenses or disaggregate their spectrum to entities that do not meet the eligibility standards for installment payments or bidding credits, are subject to the unjust enrichment requirements of § 1.2111.

4. Add § 1.953 to subpart F to read as follows:

**§ 1.953 Discontinuance of service.**

(a) *Termination of authorization.* A licensee's authorization will automatically terminate, without

specific Commission action, if it permanently discontinues service.

(b) *180-day rule.* Permanent discontinuance of service is defined as 180 consecutive days during which a licensee does not operate or, in the case of commercial mobile radio service providers, does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the providing carrier. This 180-day rule applies to: All radio services regulated under parts 22, 24, 27 (except the Broadband Radio Service and Educational Broadband Service), and 80 of this chapter; trunked Specialized Mobile Radio Service (part 90, subpart S of this chapter); the 218–219 MHz Service (part 95, subpart S of this chapter), and the 220–222 MHz Service (part 90, subpart T of this chapter).

(c) *365-day rule.* Permanent discontinuance of service is defined as 365 consecutive days during which a licensee does not operate or, in the case of commercial mobile radio service providers, does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the providing carrier. This 365-day rule applies to all radio services regulated under parts 90 (except trunked Specialized Mobile Radio Service and the 220–222 MHz Service) and 101 of this chapter.

(d) *Channel keepers.* Operation of channel keepers (devices that transmit test signals, tones, color bars, or some combination of these, for example) does not constitute operation for the purposes of this section.

(e) *Filing requirements.* A licensee that permanently discontinues service as defined in this section must notify the Commission of the discontinuance within 10 days by filing FCC Form 601 or 605 requesting license cancellation. An authorization will automatically terminate, without specific Commission action, if service is permanently discontinued as defined in this section, even if a licensee fails to file the required form requesting license cancellation.

(f) *Extension request.* A licensee may file a request for a longer discontinuance period for good cause. An extension request must be filed at least 30 days before the end of the applicable 180-day or 365-day-discontinuance period. The filing of an extension request will automatically extend the discontinuance period a minimum of the latter of an additional 30 days or the date upon which the Wireless Telecommunications Bureau acts on the request.

**PART 22—PUBLIC MOBILE SERVICES**

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

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

**§§ 22.935 and 22.936 [Removed]**

6. Remove §§ 22.935 and 22.936.

**§§ 22.939 and 22.940 [Removed]**

7. Remove §§ 22.939 and 22.940.

**§ 22.943 [Removed]**

8. Remove § 22.943.

**PART 24—PERSONAL COMMUNICATIONS SERVICES**

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

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

**§ 24.16 [Removed]**

10. Remove § 24.16.

**PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES**

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

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

12. Section 27.14 is amended by revising the section heading and by removing and reserving paragraphs (b) through (f) to read as follows:

**§ 27.14 Construction requirements.**

\* \* \* \* \*

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

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

**Authority:** Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r) and 332(c)(7).

14. Section 90.165 is amended as follows:

a. Remove paragraphs (b)(1), (c)(3)(i), and (c)(4)(i).

b. Redesignate paragraphs (b)(2) through (b)(4) as paragraphs (b)(1) through (b)(3).

c. Redesignate paragraphs (c)(3)(ii) through (c)(3)(iii) as paragraphs (c)(3)(i) through (c)(3)(ii).

d. Redesignate paragraphs (c)(4)(ii) through (c)(4)(iv) as paragraphs (c)(4)(i) through (c)(4)(iii).

e. Revise newly redesignated paragraph (c)(3)(ii) as follows:

**§ 90.165 Procedures for mutually exclusive applications.**

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(ii) If any mutually exclusive application filed on the earliest filing date is an application for modification, a same-day filing group is used.

\* \* \* \* \*

**§ 90.743 [Removed]**

15. Remove § 90.743.

**PART 101—FIXED MICROWAVE SERVICES**

16. The authority citation for part 101 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 101.1327 [Removed]**

17. Remove § 101.1327.

18. Revise § 101.1413 to read as follows:

**§ 101.1413 License term.**

The MVDDS license term is ten years, beginning on the date of the initial authorization grant.

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