

the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new

buildings built after these elevations are made final, and for the contents in those buildings.

**Correction**

In the proposed rule published at 76 FR 46701, in the August 3, 2011, issue of the **Federal Register**, FEMA published a table under the authority of 44 CFR 67.4. The table, entitled “City of Cadiz, Kentucky” addressed the flooding sources Little River (backwater effects from Lake Barkley) and Little River Tributary 1 (backwater effects

from Lake Barkley). That table contained inaccurate information as to the location of referenced elevation, effective and modified elevation in feet, and/or communities affected for those flooding sources.

In this notice, FEMA is publishing a table containing the accurate information, to address these prior errors. The information provided below should be used in lieu of that previously published for the City of Cadiz, Kentucky.

State	City/town/county	Source of flooding	Location**	Elevation/Depth	
				Existing	Modified
<b>City of Cadiz, Kentucky</b>					
Kentucky .....	City of Cadiz .....	Little River (backwater effects from Lake Barkley).	Approximately 3.7 miles upstream of the Lake Barkley confluence to approximately 4.5 miles upstream of the Lake Barkley confluence.	None	+375
Kentucky .....	City of Cadiz .....	Little River Tributary 1 (backwater effects from Lake Barkley).	Approximately 500 feet upstream of the Little River confluence to approximately 1,678 feet upstream of the Little River confluence.	None	+375

\* National Geodetic Vertical Datum.

+ North American Vertical Datum.

# Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

\*\* BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

**ADDRESSES**

**City of Cadiz**

Maps are available for inspection at 63 Main Street, Cadiz, KY 42211.

(Catalog of Federal Domestic Assistance No. 97.022, “Flood Insurance.”)

Dated: March 1, 2012.

**Sandra K. Knight,**

*Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 1 and 22**

**[WT Docket No. 12-40; RM-11510; FCC 12-20]**

**Cellular Service, Including Changes in Licensing of Unserved Area; Interim Restrictions and Procedures for Cellular Service Applications**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; interim procedures.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) proposes to amend the rules governing the 800 MHz Cellular Radiotelephone Service (Cellular

Service). In the Notice of Proposed Rulemaking (NPRM), the Commission proposes to transition the Cellular Service from a site-based licensing model to a geographic-based model by offering an “overlay” license for every Cellular Market Area (CMA) and corresponding channel block (Block A or Block B), in two stages, via auction. The Overlay Licensees would be obligated to protect existing licensees’ Cellular operations from harmful interference. The NPRM also includes proposals to update various other Cellular Service rules. The Commission seeks comment on all its proposals as well as on alternative proposals. The companion Order imposes certain interim procedures, including a freeze on the filing of certain Cellular applications in certain markets and

other interim procedures regarding currently pending applications to help ensure an orderly and efficient rulemaking proceeding while the Commission considers changes to the Cellular Service rules.

**DATES:** Submit comments on or before May 15, 2012, and reply comments are due on or before June 14, 2012. 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 May 15, 2012.

**ADDRESSES:** Parties may submit comments to the Secretary of the Federal Communications Commission, identified by WT Docket No. 12–40; FCC No. 12–20, by any of the following methods:

- **Electronic Filers:** Comments may be filed electronically using the Internet: <http://fjallfoss.fcc.gov/ecfs2/>.

- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing.

- **People with Disabilities:** Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone 202–418–0530 or TTY: 202–418–0432.

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 email to [PRA@fcc.gov](mailto:PRA@fcc.gov) and to Nicholas A. Fraser, OMB, via email to [Nicholas.A.Fraser@omb.eop.gov](mailto:Nicholas.A.Fraser@omb.eop.gov) or via fax at 202–395–5167. 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:**

Nina Shafran, Wireless Telecommunications Bureau, Mobility Division, at 202–418–2781 or by email to [Nina.Shafran@fcc.gov](mailto:Nina.Shafran@fcc.gov). For additional information concerning Paperwork Reduction Act information collection requirements contained in this document, send an email to [PRA@fcc.gov](mailto:PRA@fcc.gov) or contact Judith B. Herman at (202) 418–0214.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking and Order (*NPRM and Order*) in WT Docket No. 12–40, FCC 12–20, adopted and released on February 15, 2012. The full text of the *NPRM and Order*, including all

Appendices, is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554. The complete text of the *NPRM and Order* may be downloaded at: [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-12-20A1.doc](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-12-20A1.doc). In addition, the complete text of the *NPRM and Order* as well as links to Cellular Service coverage maps and interactive map files are available at: <http://www.fcc.gov/rulemaking/12-40>. Alternative formats are available to persons with disabilities by sending an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or by calling the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

**Paperwork Reduction Act of 1995 Analysis**

This document contains potential new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the potential 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), we seek specific comment on how we 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. Since its inception roughly 30 years ago, the Cellular Service has been instrumental in transforming the communications landscape by making mobile services broadly available to the American public. As discussed in Section III below, based on our data, only limited area not yet licensed (Unserved Area) remains outside of Alaska and certain rural markets in the western United States. At this advanced stage of the Cellular Service, the site-based aspect of this licensing model is yielding diminished returns. The significant administrative burdens on licensees associated with the site-based model no longer appear to be outweighed by the public benefits

produced. In addition, the Cellular Service stands apart from virtually all other commercial wireless services by not yet transitioning to a geographic-based model, which offers greater flexibility and reduced regulatory requirements. Thus, consistent with its regulatory reform agenda, the Commission proposes to revise the Cellular licensing regime to a geographic-based approach, in two stages, through competitive bidding, as explained in detail in Section III, below.

2. The Commission also proposes to update the Cellular Service rules, including, for example, streamlining application requirements and deleting certain data collection requirements that may no longer be necessary going forward. Consistent with other flexibly licensed commercial wireless services, the Commission proposes to establish a signal field strength limit. Finally, we seek comment on whether to move the part 22 Cellular rules, as well as the part 24 rules, to part 27. We seek comment on all aspects of our proposals, and on the alternative transition proposals discussed in the *NPRM*, including those of CTIA—The Wireless Association (CTIA), as set forth in its initial petition for rulemaking filed in February 2008, and its revised proposal submitted in September 2010, and those of the National Telecommunications Cooperative Association (NTCA), The Rural Telecommunications Group (RTG), and others on the record. (All commenters are listed in Appendix A of the *NPRM and Order*.)

**II. Background**

3. **Brief History of Cellular Service Licensing.** The Commission adopted initial rules governing allocation of spectrum for commercial Cellular service, including the establishment of two channel blocks (Blocks A and B), in 1981. The Commission established in phases 734 Cellular Market Areas (CMAs) for the purpose of issuing licenses to two Cellular providers per market (herein, “Original System Licensees” (OSLs)), one on each Block, without competitive bidding. Every OSL was given the exclusive right, for a five-year period from the date of grant of the initial construction authorization for that CMA Block, to build out anywhere within the CMA boundary. The area timely built out during that five-year period became the licensee's initial Cellular Geographic Service Area (CGSA), the licensed area entitled to protection from harmful interference, while any area not built out by the five-year mark was automatically relinquished for re-licensing as Unserved Area on a site-by-site basis by

the Commission. Under site-based licensing, any interested party may request authorization to construct at a specific transmitter location (or multiple locations) in Unserved Area, and may only construct authorized transmitters. For all CMA Blocks except one (Chambers, Texas, discussed in detail below), licenses have been issued to OSLs and the initial five-year periods have expired.

4. The Commission established two phases for applicants seeking to provide Cellular service in Unserved Area for each CMA Block: Phase I and Phase II. As of late 2007, the Phase I filing window had ended in all licensed Blocks. Under current rules, Phase II lasts indefinitely. Phase II applications specify the area to be licensed and are subject to a 30-day public comment period during which petitions to deny and mutually exclusive applications may be filed. In the event that mutually exclusive applications are filed for a particular Unserved Area, they are resolved through competitive bidding in closed auctions. Licenses granted in Phase II are subject to a one-year construction deadline for the authorized site and the licensee must be providing service to subscribers by the end of the one-year period; failure to build out results in automatic termination of the authorization for that site, and the Unserved Area again is subject to the filing of site-based applications.

5. *Summary of Industry Proposals on the Record.* In October 2008, CTIA filed a Petition requesting that the Commission change Cellular licensing from a site-based regime to a geographic area-based regime in all markets and to assign to incumbents, without using competitive bidding, all remaining Unserved Area. The Wireless Telecommunications Bureau (Bureau) subsequently issued a Public Notice seeking comment on CTIA's Petition. (See 24 FCC Rcd 27 (WTB 2009).) Ten parties filed comments, six (including CTIA) filed reply comments, and two (including CTIA) filed *ex parte* letters. In September 2010, CTIA submitted a revised proposal (CTIA Revised Plan) which it asserts "takes into account the objectives and concerns raised by commenters in this proceeding." RTG filed comments specifically addressing the CTIA Revised Plan. In May 2011, CTIA, GCI Communication Corp. (GCI), NTCA, and RTG met with Commission staff to express their additional views regarding transition approaches for Cellular licensing and, accordingly, filed *ex parte* letters. Subsequently, in February 2012, CTIA, AT&T, Inc. (AT&T) and Verizon Wireless met with Commission staff to express their

additional views regarding transition approaches for Cellular licensing and CTIA filed *ex parte* letters accordingly.

6. In its Revised Plan, CTIA appears to be proposing that the Commission change the Cellular Service to geographic area-based licensing and terminate site-based access to Unserved Area on a rolling basis, as CMA Blocks become "Fully Served." CTIA defines a Fully Served Block as one where either: (1) 90 percent of the land area is served; or (2) there is no parcel of Unserved Area measuring at least 50 contiguous square miles. Under both prongs, CTIA proposes to exclude "government lands, but not tribal areas." All Unserved Area in Fully Served Blocks would be assigned to existing incumbents "on a proportional basis" without the use of competitive bidding. Disputes over existing CGSA boundaries and the distribution of the remaining Unserved Area to incumbents would, under CTIA's Revised Plan, need to be resolved through cooperation among licensees and in the event that such cooperative efforts fail, by referral to arbitration at the expense of the referring party. So long as a CMA Block is "under-served" (*i.e.*, not Fully Served), CTIA proposes that it remain under site-based licensing rules.

7. AT&T and Verizon Wireless generally endorse CTIA's Petition; they have not submitted comments specifically addressing CTIA's Revised Plan. In response to the CTIA Petition, Verizon Wireless offers various additional proposals, including a staggered transition process based on regional groupings of CMA Blocks; establishment of a 40 dBµV/m median field strength limit; the provision of public notice of, and opportunity to comment on, claimed licensed area boundaries; and a plan for informal dispute resolution of boundary claims (more detailed than in CTIA's Petition), in which a *de minimis* discrepancy standard would be applied.

8. In contrast, commenters representing the interests of smaller and rural providers generally favor indefinite retention of the current site-based licensing regime. These commenters include Commnet Wireless, LLC (Commnet), GCI, NTCA, the Rural Independent Competitive Alliance (RICA), RTG, and United States Cellular Corporation (USCC). RTG, for example, criticizes CTIA's Revised Plan by asserting that it provides no incentive to serve areas obtained through the proposed proportional allotment and that its definition of Fully Served "could leave large areas \* \* \* without service indefinitely." NTCA claims that its members are asked by their

communities to ensure that hikers, hunters, and others enjoying the most rural territory can complete a call in an emergency. Commnet continues to send technicians to Unserved Area to determine if there is demand for service and claims that with most of its Unserved Area applications, the OSL could have applied for that spectrum "over at least sixteen years" but did not do so. GCI, which operates in Alaska, urges continuation of site-based licensing and is concerned it will be unable to improve (or even maintain) its network if the Commission adopts CTIA's proposal.

9. The smaller and more rural providers largely reject CTIA's statistics. According to RTG, for example, CTIA's Petition misleadingly "undercounts actual use of the [site-based licensing] process" by reporting only grants, not filings, and only new applications, not modification applications. RICA, GCI, and NTCA make similar arguments. Several of these commenters are also skeptical of CTIA's proposed mechanisms for resolving disputes that may arise between adjacent licensees concerning license boundaries. USCC argues that a voluntary consultation process is unworkable for dispute resolution without legal standards.

10. While preferring retention of the existing paradigm, some rural commenters state that they could accept, in the alternative, a limited transition to geographic-area licensing. Their suggestions, however, are not highly detailed and contain ambiguities. GCI, for example, indicates support for issuance of a CMA-based license if the CGSA is coterminous with the CMA boundary or if Unserved Area in the CMA Block is less than 50 square miles but does not specify how the small areas would be licensed. NTCA suggests that, if an incumbent's "actual service area" is *not* coterminous with the CMA Block boundary, or if there is an Unserved Area parcel that is 50 square miles or larger, the Commission could establish a geographic license but based only on the territory "actually served by the licensee." RTG states that Cellular licensees could "elect \* \* \* to transition to some form of market-based licensing," but only where the new market-based license "would encompass the areas they actually serve." USCC, a mid-sized carrier, states that issuance of a CMA-based license may be appropriate in limited circumstances, but argues that site-based licensing should be retained at least in any market with at least one Unserved Area Licensee (defined in the *NPRM and Order* as a licensee that has established a Cellular system solely

through the Unserved Area application process following expiration of the OSL's exclusive five-year initial build-out period), so that OSLs and Unserved Area Licensees have equal opportunity to expand their systems.

11. Commenters differ on the issue of how to assign geographic area licenses. MetroPCS Communications, Inc. (MetroPCS), another mid-sized carrier, advocates a transition to geographic-area licensing via auction. AT&T states broadly that, for CMA Blocks with over 50 contiguous square miles of Unserved Area, the Commission should "license that area through an auction or some other process." In response, USCC argues that an auction is unnecessary in light of the existing normal closed auction process for mutually exclusive Unserved Area applications. In *Ex Parte* letters filed by CTIA to document various meetings with Commission staff in early 2012, which involved representatives of AT&T and Verizon Wireless as well, CTIA expresses concerns of CTIA, AT&T and Verizon Wireless with an overlay auction approach for markets that are not substantially served. Comment emphasizes that the Commission used competitive bidding in prior transitions to geographic area licensing.

### III. Notice of Proposed Rulemaking

12. Based on the record, it appears that site-based licensing may unduly limit licensees' ability in many markets to adapt to technological and marketplace changes, which burdens licensees and consumes FCC staff resources, as application filings are required for even minor technical system changes. These problems can be addressed by moving to a geographic-based model, which would bring the Cellular Service into greater harmony with the more flexible licensing schemes used successfully by other similar mobile services, such as the Broadband Personal Communications Service (PCS) and the 700 MHz Service. At the same time, we propose to preserve direct access to Unserved Area through the existing site-based application process for an appropriate period in Cellular Service markets that are less substantially built out.

13. In anticipation of releasing the *NPRM*, the Commission undertook the task of creating a digital version of every existing CGSA based on maps accompanying Cellular applications. The data, which the Commission used to calculate licensed and Unserved Area, is available at the Commission's Web site (*see* <http://www.fcc.gov/rulemaking/12-40>). It is clear from our data that the vast majority of CMA

Blocks already are substantially built out. (Maps illustrating the data are provided at Appendices B and D of the *NPRM and Order*.) Licensees in these markets, which we term "Substantially Licensed" as set forth below, have faced increasing regulatory challenges, however. Among other things, they do not have the ability to modify and expand their systems without Commission filings, and must seek prior Commission approval through filings if the CGSA would be expanded, even for minor adjustments to their systems. We believe that it would serve the public interest to reduce administrative burdens for these licensees (as well as for Commission staff) by providing Cellular licensees in such markets with greater flexibility to modify their operations to respond more quickly to market conditions. Moreover, the Commission has long held that market-based licensing regimes are simpler to administer for all parties.

14. We recognize that, with direct access to Unserved Area through the site-based licensing regime, licensees and prospective new entrants are free to respond to market changes by filing an application on an as-needed basis (for a filing fee) without use of competitive bidding in most cases. We believe that there are public interest benefits of preserving such direct access by all interested parties, for some defined period, to any Unserved Area in CMA Blocks that are less substantially built out (*i.e.*, not Substantially Licensed under our proposed test). While site-based application filings would continue to be required for some period going forward in these markets, there is a significantly smaller volume of system modification filings in areas that are less built out.

15. Additionally, in developing a new model aimed at transitioning the Cellular Service to a geographic-based model, we must keep in mind long-held Commission policies governing spectrum assignment. The Balanced Budget Act of 1997 (BBA) revised the Commission's auction authority by substantially amending sections 309(j)(1) and (2) of the Communications Act of 1934, as amended (Act). (*See* 47 U.S.C. 309(j)(1), (2).) Under section 309(j)(1), with limited exceptions that are not applicable here, the Commission is required to license spectrum through competitive bidding whenever it accepts mutually exclusive applications for initial licenses or permits. The Commission has determined that applications are "mutually exclusive" if the grant of one application would effectively preclude the grant of one or more of the other applications, *i.e.*,

when acceptable, competing applications for the same license are filed. (When, however, the Commission receives only one application that is acceptable for filing for a particular license that is otherwise subject to auction, there is no mutual exclusivity, and thus, the Commission is not required to conduct an auction for that license.) Consistent with the Commission's policy that competitive bidding places licenses in the hands of those that value the spectrum most highly, we believe that it would be in the public interest to adopt the transition described below, which allows the filing of mutually exclusive applications that would be resolved through competitive bidding.

16. In light of the above-described goals and considerations, we propose to issue CMA-based Overlay Licenses for all Blocks via Stage I and Stage II auctions, thus making immediately available to the Overlay Licensee, for primary service, all Unserved Area remaining in the particular Block as of an established cut-off date. An overlay license is issued for the entire geographic area (in this case, the entire CMA Block), but requires the overlay licensee to provide interference protection to incumbent operations (in this case, Cellular Service incumbents' CGSAs existing as of a certain cut-off date). In Stage I, we would offer Overlay Licenses only for those CMA Blocks that either: (1) As of a certain cut-off date, are Substantially Licensed pursuant to certain benchmarks (described below); or (2) have Cellular service that has been authorized solely under interim operating authority (IOA) (*i.e.*, for which no primary license has been issued). All other Blocks would remain subject to the current site-based Unserved Area licensing system until we implement Stage II of the transition and offer Overlay Licenses for these remaining CMA Blocks. We seek comment on whether seven years is the appropriate timeframe before initiation of Stage II. As explained below, we propose to exempt from the transition the Gulf of Mexico Service Area (GMSA).

17. We invite comment on all aspects of our proposals, as well on the expected costs and benefits (to the extent applicable) of operating under our proposal. For example, would the resulting lack of data that would otherwise be collected and available to the public through the Commission's Universal Licensing System and other databases (*i.e.*, data that is currently available regarding major and minor CGSA modification applications, grants, construction notifications, etc., indicating the location of Cellular

Service transmitter sites) constitute a detrimental cost? If so, to what extent? Would the cost be outweighed by the benefits associated with the reduction in regulatory burdens, paperwork, and other aspects of our proposal? By reducing the filing burdens on many Cellular providers, we would expect resulting lower costs for the providers, and in turn, we would expect such lower costs to have a positive effect on service to subscribers. We seek comment on these cost considerations, including quantification of expected savings (in terms of monetary and human resources, for example) resulting from no longer having to submit certain applications once fixed boundaries have been established. We also seek comment on the extent to which expected savings might be passed on to subscribers. We hope these proposals will also promote enhanced competitive options for consumers and we seek comment on any additional steps the Commission could take, in this proceeding, to promote this policy priority.

#### A. Stage I Transition

##### 1. Substantially Licensed CMA Blocks

18. We propose to treat a CMA Block as Substantially Licensed if *either* of the following benchmarks is met: (1) At least 95 percent of the total land area is licensed; or (2) there is no unlicensed parcel within the Block at least 50 contiguous square miles in size. An analysis of Cellular licensed area by Block reflects that only about 20 percent of the 1,468 CMA Blocks are geographically licensed between less than 10 percent up to roughly 94 percent. The vast majority of all Blocks (approximately 80 percent) fall at or above the 95 percent licensed threshold, representing in our view a logical breaking point for inclusion in Stage I of the proposed transition. We also recognize, however, that a Block that has less than 95 percent of its total land area licensed might not have sufficient size parcels of Unserved Area to warrant exclusion from transition in Stage I. Our current rules prohibit a new entrant from applying to serve an area smaller than 50 contiguous square miles. We therefore propose that a Block be deemed Substantially Licensed if it does not have even one remaining unlicensed parcel that is at least 50 contiguous square miles in size, regardless of the percentage of licensed area. (The small number of CMA Blocks in this category does not affect the approximate 80 percent/20 percent split between the Stage I and Stage II Blocks under our proposal.)

19. Specifically, 601 of the 734 Block A markets appear to meet the proposed test, and 596 of the 734 Block B markets appear to meet the proposed test, for a total of 1,197 of 1,468 Blocks. The maps provided in Appendix D (*see full text of the NPRM and Order*) illustrate, for each Block, which markets appear to meet the proposed test and which markets, while served, do not.

20. We propose to include *total* land area without exclusions in our calculation of licensed area and Unserved Area. We propose to treat government lands differently in this Cellular Service transition, compared to our treatment in the 700 MHz Service, for two reasons. First, the 700 MHz Service “government lands” exclusion was adopted in conjunction with the imposition of aggressive construction benchmarks, which for the first time included mandatory coverage of geography (rather than population). In our proposed Cellular Service transition, the calculation is not based on a consideration of compliance with future construction benchmarks but is solely for purposes of determining whether a CMA Block meets our test for inclusion in Stage I. Second, in our analysis of digitized CGSAs, we observed that Cellular licenses have frequently applied to provide service to federal lands, as the demand for Cellular service has increased in areas such as national parks. We believe that permitting the exclusion of lands that are already being served as part of a Cellular licensee’s CGSA would provide inaccurate results as to which markets are in fact Substantially Licensed for purposes of inclusion in the appropriate transition stage.

21. Through our proposed transition, an Overlay Licensee would not only have the flexibility to extend service into currently Unserved Area, but also would be able to do so without filing modification applications, with limited exceptions. In addition, in the event that all or a portion of an incumbent’s CGSA is relinquished by that incumbent (*e.g.*, through license cancellation, reduction in CGSA, permanent discontinuance of operations, or failure to renew a license), the Overlay Licensee of that CMA Block would no longer be required to protect the relinquished area and could immediately provide service on a primary basis in that area (sometimes known among industry stakeholders as “reversionary rights”). We believe that auctioning, instead, only the remaining Unserved Area in a particular Block without overlay licensing rights could result in incumbents’ relinquished areas being held in the Commission’s auction inventory and only accessible via a

future auction. In contrast, our Overlay License proposal will facilitate prompt service to such areas through reduced administrative burdens.

22. Under our proposal, just as incumbents that do not become Overlay Licensees would be assured continued protection from harmful interference within their CGSA footprint as of an established cut-off date, they would in turn be obligated to protect the Overlay Licensees from harmful interference. Non-Overlay licensees’ CGSA boundaries would be permanently fixed, insofar as such licensees would not be permitted to expand their CGSAs in Blocks included in the auction, except through contractual arrangements with other licensees. To foster secondary market transactions, we propose to continue to allow licensees to partition their CGSAs and/or disaggregate their authorized spectrum, as well as enter into leasing arrangements. We seek comment on this proposal. Non-overlay licensees will also be free to modify their systems in response to market demands without Commission filings, so long as the CGSA would not be expanded (other than through contractual arrangements) or reduced as a result, and subject to any obligations imposed on all licensees. (For example, certain other filings, such as administrative updates, license renewals, and filings required under the rules implementing the National Environmental Policy Act of 1969, as amended (NEPA) would still be required for all licensees.)

23. We recognize that in Substantially Licensed markets included in our Stage I transition, the new Overlay Licenses awarded in the auction will be heavily encumbered by the incumbents, whose CGSAs would continue to be entitled to protection from harmful interference. A prospective Overlay Licensee would therefore need to be familiar with incumbent operations and should take care to understand how such operations may affect its ability to execute its business plan. Under delegated authority, the Bureau will determine, prior to conducting the auctions, what procedures (if any) are warranted to resolve discrepancies and other anomalies in the licensing data in order to establish definitive boundaries of existing authorized CGSAs as of certain cut-off dates. The Bureau will also issue the appropriate Public Notice(s) regarding such procedures. We recognize that, in some Blocks, the remaining Unserved Area as of the auction date may be very small, fragmented, and/or not immediately servable.

2. Interim Operating Authority Block (Chambers, Texas, Block A—CMA 672A)

24. Chambers, Texas, Block A (Chambers) is the only Block for which a Cellular license has never been issued. AT&T Mobility of Galveston LLC (AT&T Galveston) holds an interim operating authorization and provides Cellular service to nearly all of the area in this Block under Call Sign KNKP971. Notably, neither AT&T nor any other commenter has mentioned this unlicensed market thus far in this proceeding. We propose that Chambers be licensed on a geographic area (CMA Block) basis and that it be included in Stage I described above.

25. For Chambers, we propose not to apply our existing rules concerning the various build-out and application phases that have been applicable to other Cellular markets. For example, we propose not to subject Chambers to the Phase I or Phase II licensing processes (and because Phase I has terminated for all other CMA Blocks, we are proposing to delete the provisions that address Phase I applications, and references thereto, throughout the part 22 subpart H rules and applicable part 1 rules). As no primary license has ever been issued for Chambers, the initial five-year build-out period that is described in § 22.947 of our rules has never commenced. We propose not to apply to Chambers this five-year build-out period (and because it has expired for all other CMA Blocks, we are proposing to delete the provisions that address the five-year period, and references thereto, throughout the part 22 subpart H rules and applicable part 1 rules). Consistent with our treatment of newly authorized markets in the 700 MHz proceeding, we propose that the Overlay License for Chambers will terminate automatically if the licensee fails to provide signal coverage and offer service over at least 35 percent of the geographic area of its license authorization within four years of initial license grant and to at least 70 percent of the geographic area of its license authorization by the end of the license term. We further propose that, after the build-out requirement has been met, the Chambers Overlay Licensee should be subject to the same rules and obligations that we apply to those that are awarded the Overlay Licenses for all Substantially Licensed Blocks. AT&T Galveston does not have primary authority to operate and would not be afforded incumbent status with respect to any Overlay Licensee resulting from our proposed competitive bidding process.

26. We believe this proposal provides the most efficient and effective means to foster the provision of additional advanced wireless service by a primary licensee to this Texas market. We also believe that our proposed performance obligations are appropriate given the increased regulatory flexibility afforded any Chambers Overlay Licensee under our transition proposal, including the ability to modify system parameters and expand service without application filings in most instances. In short, we believe that our proposal serves the public interest, and we seek comment on all aspects of the proposal, including any foreseeable costs. Commenters that oppose our proposed approach for Chambers should offer a detailed alternative proposal that is consistent with the goals of this proceeding and the Commission's policies as set forth herein, as well as an analysis of the costs and benefits of the alternative proposal.

#### B. Stage II Transition

27. As stated above, based on our preliminary data, approximately 20 percent of all CMA Blocks currently do not meet either of the two benchmarks of our proposed Substantially Licensed test. We believe that the public interest is best served by retaining the existing site-based licensing scheme in these Blocks—primarily Alaska and rural areas out west—to preserve direct access to such area through the Commission's Unserved Area application process during a defined transition period. The reduction in administrative burdens identified above for Stage I markets is substantially smaller for these Blocks that are less built out and have relatively more Unserved Area remaining. In rural areas, service tends to become economically feasible gradually, and modification and new-system applications are filed to a much lesser extent than modification applications in the Blocks that are already substantially built out. Our proposal will allow all interested parties, including new entrants, the opportunity to identify the specific areas they wish to serve as service becomes economically feasible in such markets due to changing demographics, technologies, or other factors. Under our current site-based rules, the one-year construction requirement will ensure prompt build-out of areas in these Blocks where licensees seek authorization to provide service.

28. We recognize the public interest benefits of having all CMA Blocks under a single geographic area licensing scheme, and therefore we propose to retain the site-based licensing model

only for a defined period. Specifically, we propose to continue this model for a period of seven years from the date on which revised Cellular Service rules take effect in this proceeding (Effective Date). We seek comment on our Stage II proposal and specifically on our proposed seven-year transitional time period. While we wish to effectuate prompt build-out in the CMA Blocks that do not currently meet the Substantially Licensed test, we recognize that certain markets may present increased challenges to widespread deployment in the near term. We seek comment on whether seven years is the appropriate timeframe that takes into account the goal of ensuring prompt build-out of systems and economic forces that might delay deployment in certain markets or any alternate proposals commenters may have. We also ask that commenters address the costs and benefits of a seven-year transition period, or for any alternate proposals set forth.

29. *Possible Exception for Alaska.* It is likely to be many years before the Alaskan CMA Blocks are substantially built out. We seek comment on whether we should simply retain the *status quo* site-based scheme for Alaska indefinitely, rather than including it with other Blocks in Stage II. Even if we include Alaska in the proposed transition in Stage II, we seek comment on whether it is appropriate to revise the one-year build-out requirement for Alaska so long as it remains subject to site-based licensing. In addressing these issues, we also seek feedback on the costs and benefits of including Alaska in the Stage II transition, as well as revision to the one-year build-out requirement.

30. *Possible Other Exceptions.* We seek comment on whether public interest considerations warrant any exception that we have not considered, *e.g.*, an especially challenging rural market that might require, for example, an extended build-out period, or another kind of exception altogether. Commenters proposing an exception should include details and supporting rationale consistent with the goals of this proceeding and the Commission's policies as set forth herein.

#### C. Performance Requirements

31. We are mindful of our statutory obligation and overarching policy goal of ensuring that the spectrum is used effectively and efficiently to provide valuable services to the American public, including those residing in rural areas, and that the spectrum not be warehoused when it could be deployed using new technologies and services.

We also recognize that the Cellular Service has, in most CMAs across the country, already resulted in significant levels of system deployment during the past few decades. Indeed, the level of build-out far exceeds even the most stringent geographic-based construction benchmarks the Commission has imposed on any wireless service to foster public interest goals. In the markets not Substantially Licensed—20 percent of the CMA Blocks—the current level of build-out varies significantly, as discussed above, with most above 70 percent geographic coverage, and a few below 10 percent geographic coverage (e.g., certain Alaskan CMA Blocks), with the rest somewhere in between.

32. We seek comment on whether we should adopt any performance benchmarks for Overlay Licenses to promote build-out in areas covered by these licenses where spectrum is unused and the costs and benefits of doing so. If we decide to adopt performance benchmarks, what would the measures be? Would it be appropriate to establish build-out requirements that vary depending on the amount of Unserved Area remaining, or for CMA Blocks that face particular construction challenges (e.g., Alaska)? In seeking comment, we note that the Commission has never established performance requirements in similar services mandating 100 percent build-out of all areas or population centers in a geographic-based license.

33. We also seek comment on whether, in place of or in addition to performance build-out requirements, we should require an Overlay Licensee to make unused spectrum available in the secondary market to entities that have need for it. Specifically, we request comment on various possible approaches for facilitating secondary market transactions for use of spectrum that the Overlay Licensee is not using or may not be inclined to use. As one possible approach, we seek comment on whether Overlay Licensees that continue to hold unused spectrum after a certain period of time should be required to make that information publicly available, in some readily accessible and transparent fashion, so that any party interested in using that spectrum can more easily seek to take advantage of the opportunity to gain access to the spectrum. If we were to require the licensee to provide information on unused spectrum, how should this information be made publicly available? We also seek comment on the possible costs and benefits of pursuing this secondary market transparency approach.

34. As another possible approach, should Overlay Licensees be required to participate in good faith negotiations with a party expressing an interest in spectrum leasing, partitioning, or disaggregating spectrum in a CMA Block? Or, should we consider a modified version of negotiation methodologies employed in other wireless services, possibly involving phases of voluntary negotiations, followed by mandatory negotiations? What are the relative benefits and costs to such an approach in the context of Overlay Licenses?

35. In considering various approaches, we request that commenters address any difficulties they may have experienced when seeking to access unused spectrum in secondary markets transactions that could inform our decision-making and could improve the workings of secondary markets with respect to unused spectrum associated with Overlay Licenses. Finally, we seek comment on any other approach that commenters may suggest that could facilitate secondary market transactions that help ensure that valuable spectrum resources do not needlessly lie fallow.

#### *D. Competitive Bidding Procedures*

36. As stated above, consistent with the Commission's approach in prior transitions of other services from site-based to geographic area-based overlay licensing, we believe that it serves the public interest to accept competing, mutually exclusive applications in our proposed transition of Cellular licensing that will be resolved by competitive bidding. We reiterate that we are interested in reducing regulatory burdens and affording increased system flexibility (including deployment of broadband service) within fixed boundaries for Cellular licensees, but in a manner that is consistent with Commission precedent and spectrum management policies. No commenter has offered a justification for departing from a transition approach under which we accept mutually exclusive applications. Competitive bidding should place Cellular Overlay Licenses in the hands of those that value them most.

37. In other competing commercial wireless services, the Commission implemented geographic-based licensing, rather than a site-based model, from the inception of the radio service, particularly in PCS, the Advanced Wireless Service (AWS), and the 700 MHz Service. In these radio services, the existing incumbents (e.g., microwave, government, and broadcasters) were to be relocated. In other commercial wireless services

where incumbents were originally licensed on a site-by-site basis but were permitted to remain in the band, the Commission also chose to transition to geographic-based overlay licensing including, for example, the 800 MHz specialized mobile radio service, the 220 MHz private land mobile radio service, and the 929–931 MHz paging services. In each instance, the Commission determined that the geographic-area licensing model afforded licensees increased flexibility to construct and operate facilities within a larger geographic area and commence operations without prior Commission approval, thereby reducing regulatory burdens.

38. In the event we adopt our proposal for a transition entailing competitive bidding, we propose to apply the general competitive bidding rules set forth in part 1, subpart Q of the Commission's rules, substantially consistent with the bidding procedures that have been employed in previous auctions. Specifically, we propose to employ the Part 1 rules governing competitive bidding design, designated entity preferences, unjust enrichment, application and payment procedures, reporting requirements, and the prohibition on certain communications between auction applicants. Under this proposal, such rules would be subject to any modifications that the Commission may adopt in the future. In addition, consistent with our long-standing approach, auction-specific matters such as the competitive bidding design and mechanisms, as well as minimum opening bids and/or reserve prices, would be determined by the Bureau pursuant to its delegated authority. We invite comment on this proposal. In particular, we request comment on whether any of our part 1 competitive bidding rules or other auction procedures would be inappropriate or should be modified for an auction of Cellular licenses in the context of this proceeding.

39. *Provisions for Designated Entities.* In authorizing the Commission to use competitive bidding, Congress mandated that the Commission “ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services.” In addition, section 309(j)(3)(B) of the Act provides that, in establishing eligibility criteria and bidding methodologies, the Commission shall promote “economic opportunity and competition . . . by avoiding excessive concentration of licenses and by disseminating licenses among a wide

variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.” One of the principal means by which the Commission fulfills these mandates is through the award of bidding credits to small businesses. The Commission’s experience with numerous auctions has demonstrated that bidding credits for designated entities afford such entities substantial opportunity to compete with larger businesses for spectrum licenses and provide spectrum-based services.

40. The Commission has stated that it would define eligibility requirements for small businesses on a service-specific basis, taking into account the capital requirements and other characteristics of each particular service in establishing the appropriate threshold. Although it has standardized many of its auction rules, the Commission has determined that it will continue a service-by-service approach to defining small businesses.

41. We propose to employ the following three small business definitions for auctions of these licenses. We seek comment on whether we should define an entrepreneur as an entity with average gross revenues for the preceding three years not exceeding \$40 million, a small business as an entity with average gross revenues for the preceding three years not exceeding \$15 million, and a very small business as an entity with average gross revenues for the preceding three years not exceeding \$3 million. As provided in § 1.2110(f)(2) of our rules, we seek comment on whether we should offer entrepreneurs a bidding credit of 15 percent, small businesses a bidding credit of 25 percent, and very small businesses a bidding credit of 35 percent. Commenters are encouraged to provide feedback on the costs and benefits of these proposed definitions and bidding credit designations. We also invite input on whether alternative size standards should be established in light of the particular circumstances or requirements that may apply to the proposed Cellular Overlay Licenses. Commenters advocating alternatives should explain the basis for their proposed alternatives, including whether anything about the characteristics or capital requirements of providing Cellular service or other considerations require a different approach, as well as the costs and benefits of the alternatives.

#### *E. Gulf of Mexico Service Area*

42. Cellular service in the Gulf of Mexico Service Area (GMSA) (CMA Blocks 306A and 306B) is subject to

special licensing rules. The GMSA is divided by rule into two zones: the Coastal Zone (GMCZ) in the Eastern Gulf region and the Exclusive Zone (GMEZ). The existing Cellular licensing regime for the GMSA was carefully developed by the Commission after taking into account many prior disputes between Gulf-based and adjacent land-based carriers, multiple prior Commission decisions, court litigation and judicial rulings, as well as the unique circumstances of providing Cellular service in the Gulf region. We propose not to alter the existing regime, except that we propose to subject GMSA licensees to our proposed field strength limit, discussed below. We also believe that GMSA licensees may benefit from certain other rule changes proposed in the *NPRM*. We seek comment on our proposed exemption of the GMSA from a Cellular licensing transition at this time, including comment on which (if any) individual rule changes should be applied to GMSA licensees.

#### *F. Signal Field Strength Limit Proposal*

43. The Commission believes that a median field strength limit of 40 dBµV/m is appropriate for the Cellular Service and proposes that all Cellular licensees be subject to this limit in all CMA Blocks. With an established field strength limit applicable to all Cellular licensees, the current rule governing Service Area Boundary (SAB) extensions (*see* 47 CFR 22.912) would be unnecessary, even in those CMA Blocks that remain subject to the current site-based licensing rules for Unserved Area. In the latter class of CMA Blocks, however, SABs and CGSAs (for new systems and expansions of existing systems) would still be calculated under the provisions currently set forth in § 22.911. We seek comment on our proposal.

44. An appropriate field strength limit allows a licensee to transmit at a signal strength sufficient to provide reliable service right up to the license boundary, while preventing the licensee from transmitting at a signal strength that is excessive for that purpose. Having a 47 dBµV/m field strength limit for PCS, for example, has worked effectively as a limit on the amount of signal incursion a licensee may have into an adjacent licensed area, and we believe that a 40 dBµV/m field strength limit will be similarly effective for the Cellular Service. We do not anticipate a notable increase in boundary disputes if we adopt our proposal. There is no evidence of a causal relationship between boundary disputes and a field strength limit if the limit applies equally to all licensees in a given service.

45. We believe that co-channel licensees are in the best position to negotiate placement and parameters of facilities near the boundary of another licensee’s protected area, taking into account the factors unique to their systems and the area involved, including, for example, technologies, traffic loading, topography, and location of major roads. Thus, consistent with the PCS field strength limit rules, we also propose to allow Cellular licensees to negotiate contractual agreements specifying field strength limits different from the limit established by rule. We emphasize, however, that Commission rules do not allow licensees to agree to transmit their signals at a power level that is higher than the applicable power limit set forth in the rules.

46. Even with full compliance with the proposed field strength limit, licensees operating in proximity to each other will still need to coordinate channel usage in order to avoid mutually destructive interference. Section 22.907 of our rules requires that interference problems (and any possible problems with traffic capture) in the Cellular Service be avoided by coordination between or among licensees. We propose to retain the requirements for mandatory coordination that are currently set forth in § 22.907.

47. We encourage parties to address all aspects of our proposal concerning a field strength limit and continued mandatory licensee coordination. Interested parties that offer a counter-proposal, whether for a different field strength limit or non-use of any signal field strength limit, should be specific and explain how their proposal better serves the public interest, including whether it would be more cost effective.

#### *G. Other Alternatives to the Commission’s Proposed Transition*

48. *Single-stage Transition for All Blocks.* We seek comment on the possibility of eliminating the site-based licensing scheme and transitioning expeditiously, via a *single* auction, all CMA Blocks to a geographic-based model. Commenters should address the impact of such a proposal on rural service and rural interests in particular, given that once an Overlay License is offered at auction, the Unserved Area in that particular Block would no longer be available under site-based licensing, even if the Overlay License returns to the Commission for re-licensing. For example, if there is no successful bidder at auction, or if a successful bidder is awarded the Overlay License but then, years later, fails to renew, the only methodology for re-licensing is to offer



the Overlay License again at a subsequent Commission auction. We seek comment on these considerations under this alternate approach.

49. *A Three-Stage Transition.* As another alternative, we could subdivide the Blocks that do not now meet the Substantially Licensed test into two groups, as there may be some markets that need even more time, such as those in Alaska and other very rural areas with similar construction challenges, resulting in a third stage in the Cellular licensing transition. We seek specific comment on this approach as well. For example, what benchmarks should be used to distinguish the Stage II Blocks from the Stage III Blocks, and what is the basis for choosing such benchmarks? What would be an appropriate dividing line in terms of licensed area? What should the trigger dates be for Stage II and Stage III, and what would be the rationale? We also seek comment on whether all Blocks with unique construction challenges should be subject to an extended build-out requirement while they remain under the site-based licensing regime.

50. *Other Alternatives.* We also welcome submission of alternatives that we have not considered herein. Commenters who oppose our two-stage proposal and advocate an alternative need to address details of implementation and should demonstrate how their alternative serves the public interest and is cost effective.

#### H. Proposed Amendments to Rules and Possible Rule Relocation

##### 1. Proposed Amendments

51. *Transition-related proposed amendments.* Proposed new and revised rules to reflect the proposed two-stage transition of Cellular licensing are set forth in Appendix E of the *NPRM and Order*. We urge all parties to review Appendix E closely and submit detailed comments. Our proposals introduce some new terminology, including for incumbent operations, and we also propose revisions and some deletions regarding the definitions in § 22.99.

52. *Other Deletions and Updates.* Although we are not proposing immediate fundamental changes to the rules for CMA Blocks that are not to be included in the Stage I transition (except for the proposed establishment of a signal field strength limit), we have reviewed all the subpart H rules as well as certain part 1 rules applicable to Cellular licensing in an effort to streamline or update them, and we propose certain changes. We have also reviewed these rules to determine whether any should be deleted as

obsolete or, going forward, no longer necessary. For example, we believe that certain items required under §§ 22.929 and 22.953(a) of our rules will no longer be routinely of interest to the Commission's engineering staff in their review of Cellular applications in the future, and accordingly, we propose to streamline these requirements in a revised § 22.953 (and a corresponding deletion of § 22.929). In addition, we discuss below a proposal regarding § 22.901(b). The results of our review are reflected in the proposed rules set forth in Appendix E of the *NPRM and Order*. We invite all commenters to review each of the proposed revisions, additions, and deletions and comment on them with specificity. If there are other rules that commenters believe should be revised, deleted or added as part of our effort to streamline and update the rules that govern Cellular licensees, we welcome suggestions regarding such revisions. Commenters should be specific in their proposals, providing proposed language for the rule itself as well as the rationale for the change.

53. *AMPS Sunset Certifications: Termination of Collection; Deletion of Section 22.901(b).* On June 15, 2007, the Commission released an Order declining to extend the sunset of the Cellular analog service requirement set forth in § 22.901(b) of our rules. See 22 FCC Rcd 11243 (2007). Pursuant to such 2007 *AMPS Sunset Order*, on November 16, 2007, the Bureau released a Public Notice (see 22 FCC Rcd 19922 (WTB 2007)) with instructions for Cellular licensees on how to file a one-time Cellular Coverage Certification (AMPS Sunset Certification), which would certify that discontinuance of analog service would not result in any loss of wireless coverage throughout the CGSA. By filing an AMPS Sunset Certification, licensees could preserve the rights associated with their previously determined CGSAs on file with the Commission as of the AMPS Sunset Certification's filing date. The overwhelming majority of Cellular licensees have opted to file an AMPS Sunset Certification. We believe that all Cellular licensees have had ample time—more than four years since the *AMPS Instructions Notice*—to make their choice and file either the one-time AMPS Sunset Certification or the appropriate revised CGSA showing. Accordingly, we propose to terminate the Commission's collection of such Certifications and to delete § 22.901(b). We welcome comment on these proposals.

2. Possible Relocation of Part 22 Cellular and Part 24 PCS Rules to Part 27

54. In light of our proposal to revise the Cellular licensing rules to bring them in line with the more flexible rules that govern other wireless services, we take this opportunity to invite comment on placement of revised rules that may ultimately be adopted in this proceeding. Specifically, in the event that we adopt a geographic area regime that includes Overlay Licenses, should the new Cellular rules be incorporated into part 27, which houses the existing rules for certain other flexible wireless services, such as AWS, rather than in subpart H of part 22? If the revised Cellular rules are to be incorporated into part 27, we believe that the rules for part 24 PCS—which is already a flexible service governed by geographic area-based licensing—should then also be moved into part 27. Should the Commission initiate a separate rulemaking to revise the part 27 rules and reserve the possible relocation of Cellular and PCS rules to that separate proceeding? We welcome comment on such relocations and the optimal timing for them.

3. Proposed Correction of Section 1.958(d)

55. We take this opportunity to propose correction of a clerical error in the distance computation formula in § 1.958(d) of our rules. The error was introduced in the process of moving the provision containing the formula from part 22 (§ 22.157) to subpart F of part 1. The proposed correction is included in Appendix E of the *NPRM and Order*.

#### IV. Order

56. To facilitate the orderly and effective resolution of the fundamental changes and issues raised in the *NPRM*, and consistent with our actions in numerous prior proceedings, the Commission adopts a companion *Order* on February 15, 2012 in which it imposes an immediate freeze on the acceptance of certain Cellular applications in certain markets, as explained below, and imposes other interim procedures for certain Cellular applications, as also explained below. The Commission's decision to impose a freeze and other interim procedures is procedural and therefore not subject to the notice and comment or effective date requirements of the Administrative Procedure Act. (See 5 U.S.C. 553(b)(A), (d). See also, e.g., *Bachow Communications, Inc. v. FCC*, 237 F.3d 683 (D.C. Cir. 2001)). The tailored freeze and other interim procedures are

effective as of February 15, 2012 until further notice.

#### A. Suspension of Certain Filings

57. Rather than imposing a freeze on all modification and new-system applications, the Commission has tailored the freeze in this proceeding to: (1) provide for the continued expansion of service to consumers during the pendency of this proceeding; and (2) help the Commission identify Unserved Area and inform potential bidders of encumbrances well in advance of the auction. A tailored freeze will facilitate much needed network changes. We conclude that the benefits described above outweigh the limited potential costs of this tailored freeze.

58. As of the Adoption Date (February 15, 2012) and until further notice, we have suspended acceptance of certain Cellular applications claiming Unserved Area in "Covered" CMA Blocks. We wish to allow licensees to continue limited expansion of existing systems necessary to respond to customer needs by addressing technical changes at the periphery of their current CGSAs without facing strike applications, *i.e.*, applications filed primarily to block such service during a transition to geographic area licensing. Moreover, accepting and processing all applications in the normal course under our current rules would arguably be inconsistent with our goal of changing to a less burdensome licensing system.

59. Covered Blocks include: (i) Those we preliminarily determine to be Substantially Licensed under either benchmark of our proposed test (listed in Appendix C of the *NPRM and Order*); and (ii) those we preliminarily determine to be more than 90 percent but less than 95 percent licensed (listed in Appendix F of the *NPRM and Order*). In Covered Blocks, we prohibit the filing of applications for: (a) new-system Cellular licenses; and (b) major modifications to expand existing systems if claiming Unserved Area that is not contiguous to the existing CGSA. The prohibition applies even if a portion of the area to be claimed as CGSA lies in a non-Covered Block. Thus, for example, if a proposed new-system or major modification application proposes to claim (as CGSA) Unserved Area that straddles a CMA boundary, where the CMA Block on one side of the boundary is Covered while the Block on the other side of the boundary is non-Covered, the entire application will be treated as if solely for Unserved Area in a Covered Block. Any applications prohibited under the *Order* that are received on or after the

Adoption Date are to be dismissed by the Bureau as unacceptable for filing.

60. We are permitting major modification applications that propose CGSA expansion in, or into, Covered Blocks only if claiming Unserved Area that is contiguous to the existing CGSA. (If an application proposes to claim (as CGSA) contiguous Unserved Area that is partially in a Covered Block and partially in a non-Covered Block, the application will be treated as if the entire claimed area is in a Covered Block.) Also, as of the Adoption Date and until further notice, we are using a "same-day filing group" for purposes of determining mutual exclusivity of permissible Cellular applications that entail Unserved Area in Covered Blocks. We will dismiss any mutually exclusive applications claiming Unserved Area in Covered Blocks that are received on or after the Adoption Date rather than conduct closed auctions to resolve such applications. We will permit major amendments to permissible major modification applications only so long as the proposed CGSA expansion in the amendment is claiming Unserved Area that is contiguous to the existing licensed CGSA. (If the amendment proposes to claim (as CGSA) contiguous Unserved Area that is partially in a Covered Block and partially in a non-Covered Block, it will be treated as if the entire claimed area is in a Covered Block.) Also, for such major amendments filed on or after the Adoption Date and until further notice, we will use a "same-day filing group" for purposes of determining mutual exclusivity, and we will dismiss any such mutually exclusive major amendments rather than conduct closed auctions to resolve them.

61. These interim filing procedures do not affect applications claiming Unserved Area solely in non-Covered CMA Blocks, which we will continue to accept and process under current rules and procedures, nor do they affect any applications that do not propose a new Cellular system or a CGSA expansion (*e.g.*, renewals, transfers, assignments, modifications that do not extend a CGSA boundary, administrative updates, and required notifications), no matter the Block. Applications for renewal must comply with any applicable provisions of the Notice of Proposed Rulemaking released by the Commission in the Wireless Radio Services (WRS) proceeding in May 2010. (*See generally WRS NPRM, 25 FCC Rcd 6996 (2010). See also 47 CFR 1.939.*) We advise all parties, however, that although minor modification applications (regardless of market) are not affected by the freeze imposed

under this *Order*, we know from experience that staff might find on review that a purported minor modification application submitted on or after the Adoption Date is in fact a major modification application. If such an application is for Unserved Area (in whole or in part) in a Covered CMA Block, the application will be subject to the same procedures and restrictions described above (including dismissal if an impermissible filing under this *Order*).

62. In the following Section B, we discuss how we will process currently pending new-system and CGSA-expansion applications in Covered CMA Blocks.

#### B. Currently Pending Non-Mutually Exclusive Applications in Covered CMA Blocks

63. *New-System and Major Modification Applications.* Currently pending applications (*i.e.*, filed prior to the Adoption Date) that propose either a new Cellular system or a modification that would expand an existing system's CGSA boundary in, or into, Covered CMA Blocks fall into one of two categories: (1) Those accepted for filing and placed on public notice at least 30 days before the Adoption Date; and (2) those for which the 30-day public comment period has not yet expired as of the Adoption Date. We will treat non-mutually exclusive applications in the first category (including pending applications that would be impermissible under this *Order* if filed on or after the Adoption Date) under existing rules and will process them in the normal course as expeditiously as possible, subject to certain interim procedures regarding major amendments. Specifically, for pending modification applications proposing expansion of an existing CGSA, we will permit major amendments on or after the Adoption Date subject to the same interim procedures described above in Section IV.A. For pending new-system applications, we will permit major amendments on or after the Adoption Date only so long as the proposed new-system CGSA in the amendment is claiming Unserved Area that is contiguous to the CGSA proposed in the application that was pending as of the Adoption Date. (If an application proposes to claim (as CGSA) contiguous Unserved Area that is partially in a Covered Block and partially in a non-Covered Block, the application will be treated as if the entire claimed area is in a Covered Block.) For such amendments, we will use a "same-day filing group" for purposes of determining mutual exclusivity, and we

will dismiss any such mutually exclusive major amendments claiming Unserved Area in Covered Blocks that are received on or after the Adoption Date rather than conduct closed auctions to resolve them. On balance, rather than holding them in abeyance until conclusion of this proceeding, we concluded that processing pending applications in the first category under existing rules, subject to the interim procedures described herein, will not sacrifice the goals we seek to accomplish in this proceeding.

64. Pending new-system and major modification applications in the second category (*i.e.*, filed prior to the Adoption Date but for which the 30-day comment period has not expired) claiming any Unserved Area in Covered CMA Blocks will be deemed mutually exclusive only if a competing application was filed prior to the adoption date of the *Order*. Applications in the second category that are not mutually exclusive will be processed under our current rules, except that we will only permit the filing of major amendments subject to the same interim procedures described above regarding major amendments to applications in the first category.

65. *Minor Modifications*. As explained above, applications submitted as minor modifications of an existing CGSA are sometimes found by staff to be major modification applications. During the pendency of this proceeding, a minor modification application submitted prior to the Adoption Date that is determined to be proposing a major modification claiming (as CGSA) Unserved Area in a Covered Block will be treated the same as a pending major modification application in accordance with the interim procedures described above.

## V. Procedural Matters

### A. Ex Parte Rules—Permit-But-Disclose

66. The proceeding that the *NPRM* initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine Period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and

arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

### B. Comment Period and Procedures

67. Pursuant to §§ 1.415 and 1.419 of the Commission’s rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. *All comments and reply comments should refer to WT Docket No. 12–40*. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS).

- *Electronic Filers*: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.

- *Paper Filers*: Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight 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 and boxes

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.

68. People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email 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 of the Notice of Proposed Rulemaking and Order

69. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this 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 filed by the same dates as listed on the first page of the *NPRM* and must have a separate and distinct heading designating them as responses to this IRFA. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

70. In the *NPRM*, the Commission proposes a transition for the 800 MHz Cellular (Cellular) Service from site-based licensing to geographic-area licensing. The proposed transition would occur in two stages, via Commission auction. We believe that the current site-based paradigm is outdated and hinders carriers from being able to respond quickly to changing market conditions and consumer demands. We also believe it is contrary to the public interest to maintain a burdensome system to preserve extremely limited Unserved Area licensing opportunities. The Commission’s early key goal of creating a seamless and integrated nationwide Cellular Service has been achieved throughout the vast majority of our nation. The Commission has long held that market-based licensing regimes are

simpler to administer for all parties concerned. The proposed transition would reduce administrative burdens for licensees as well as Commission staff. The proposed transition is consistent with the Commission's ongoing regulatory reform agenda and also supports the Commission's Data Innovation Initiative, launched in June 2010, by reducing information collection burdens under the Paperwork Reduction Act. We anticipate that, with the proposed additional flexibility provided to licensees, the regulatory and compliance costs associated with service provision would be reduced. These changes would also put Cellular licensees more on par with other wireless telecommunications licensees and further the Commission's goal of rule harmonization for the different wireless services.

71. As detailed in Section III, we propose a transition in two stages. Consistent with precedent, we would accept competing applications for Overlay Licenses, and resolve them via auction, for each CMA Block. In Stage I, the Commission would offer Overlay Licenses for all CMA Blocks that are "Substantially Licensed" or authorized solely under interim operating authority (IOA). We propose the following test to determine if a CMA Block is Substantially Licensed: *either* (1) at least 95 percent of the total land area in the CMA Block is licensed; *or* (2) there is no parcel within the Block at least 50 contiguous square miles in size that is not licensed. We believe it is appropriate to include *total* land area without exclusions in calculating the licensed area. If a CMA Block meets either benchmark as of an established date, it would be deemed Substantially Licensed and included in the Stage I transition. We propose, however, that the Gulf of Mexico Service Area (GMSA) be exempt from the transition because it is governed by a specialized licensing regime.

72. All CMA Blocks that do not meet the Substantially Licensed test would remain under site-based licensing until Stage II is triggered. In Stage II, the Commission proposes to offer Overlay Licenses for all remaining CMA Blocks (except the GMSA), regardless of the percentage of total land area licensed, and terminate site-based licensing. In the *NPRM*, we propose to continue the site-based model for seven years before Stage II is triggered, and we seek comment on whether this is the appropriate period of time. We believe that the public interest is best served by preserving the current scheme's direct spectrum access through site-based applications in Blocks that are not yet

Substantially Licensed, primarily rural areas out west, for a defined period of time. This will allow all interested parties to have the opportunity to identify the specific areas they wish to serve as demographics change or service otherwise becomes economically feasible in such markets. Moreover, site-based licensing in such Blocks will ensure build-out within one year of authorization of such areas.

73. Overlay Licensees would be obligated to protect incumbent licensees' operations from harmful interference. That obligation would cease with respect to any incumbent's licensed area relinquished for any reason in the future (*e.g.*, through failure to renew the license). Such relinquished areas would not be returned to the Commission's auction inventory but, rather, could be served immediately by the Overlay Licensee on a primary basis without being subject to competitive bidding.

74. The Chambers, Texas Block-A market (Chambers) is the only CMA Block for which a license has never been issued; the market is served solely under IOA. We propose to include Chambers in the Stage I auction and award an Overlay License consistent with the process described for the Substantially Licensed Blocks, but subject to specific build-out requirements for the Chambers Overlay Licensee, as explained in Section III.A.2. We believe this is the most efficient and effective way to resolve the continued lack of a licensee and help bring additional advanced service to this Texas market.

75. We also propose that all Cellular licensees, regardless of Block, should be subject to a field strength limit at their respective license boundaries, similar to licensees in other flexible services such as PCS, certain AWS, etc. The *NPRM* proposes a median field strength limit of 40 dBμV/m for the Cellular Service. We also propose certain other revisions in individual Cellular rules to reflect the proposed transition, and to delete provisions that we deem obsolete or unnecessary going forward, including certain application requirements and other filings, and to streamline certain other provisions. The proposed rules are set forth in Appendix E and we encourage all interested parties to review them carefully. We seek comment on how the proposals will impact the amount of information available to regulated entities and the public.

#### Legal Basis

76. The proposed action is taken under sections 1, 2, 4(i), 301, 303, 307,

309, 319, 324, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 301, 303, 307, 309, 319, 324, and 332.

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

77. 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.

78. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA. In addition, a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States. We estimate that, of this total, as many as 88,506 entities may qualify as "small governmental jurisdictions." Thus, we estimate that most governmental jurisdictions are small.

79. *Wireless Telecommunications Carriers (except Satellite).* The appropriate size standard under SBA rules is for the category Wireless Telecommunications Carriers. The size standard for that category is that a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this

total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by our proposed action. The Commission's own data—available on its Spectrum Dashboard—indicate that, as of February 9, 2012, there are 347 Cellular licensees that will be affected by this *NPRM*. The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities.

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

80. In the *NPRM*, the Commission seeks to reduce filing burdens and recordkeeping for all Cellular licensees by changing from site-based to geographic area licensing. We propose that, in the Blocks for which an Overlay License is offered, the CGSA boundaries of incumbents that do not become Overlay Licensees would be permanently fixed insofar as such incumbents would not be permitted to expand their CGSAs, except through contractual arrangements with other licensees. They would, however, be free to modify their systems in response to market demands without Commission filings in most cases, so long as the CGSA would not be changed as a result, and subject to any obligations we impose on all Cellular licensees.

81. Under our proposal, in most cases Overlay Licensees would be free as well to modify their systems without Commission filings, thereby minimizing their regulatory burdens. In addition, while Overlay Licensees would be obligated to protect incumbent licensees' operations from harmful interference, that obligation would cease with respect to any incumbent's licensed area (CGSA) or portion thereof that is relinquished for any reason in the future (*e.g.*, through failure to renew the license). Such relinquished areas would not be returned to the Commission's auction inventory but, rather, could be served by the Overlay Licensee on a primary basis immediately, without being subject to competitive bidding.

82. Once an Overlay License is granted via auction for Chambers, we propose not to subject the Licensee to the existing rules concerning the five-year build-out phase or the Phase II or Phase III license application processes that have been applicable to other CMA Blocks. Instead, we propose that the

Chambers Overlay Licensee be required to demonstrate that it has built out a Cellular system that is providing signal coverage and offering service over at least 35 percent of the geographic area of its license authorization within four years of initial license grant and at least 70 percent of the geographic area of its license authorization by the end of the license term, with failure to meet these build-out deadlines resulting in automatic forfeiture of the license. We further propose that, after the build-out requirements have been met, the Chambers Overlay Licensee should be subject to the same rules and obligations that we apply to the other Overlay Licenses issued in Stage I of the transition. For example, we seek comment in the *NPRM* on whether Overlay Licensees should be subject to performance requirements.

83. The Commission also proposes that all Cellular licensees be subject to a field strength limit at their respective license boundaries and that a median field strength limit of 40 dBμV/m is appropriate for the Cellular Band. Coordination among co-channel licensees regarding channel usage will remain essential in actually preventing harmful interference. We therefore propose to retain the current Cellular Service rule mandating coordination in certain circumstances (§ 22.907), but we also propose to allow Cellular licensees to negotiate contractual agreements specifying different field strength limits. This will provide licensees with additional flexibility in their operations.

84. In the *NPRM*, we also propose various other changes in parts 1 and 22 of the Commission's rules that apply to Cellular Service licensees. For example, we propose to streamline the application requirements for site-based Unserved Area applications, notably § 22.953 (deleting certain technical data requirements that, going forward, we believe will no longer be routinely necessary). We also propose to delete provisions that we believe are obsolete going forward, such as those requiring certifications associated with cessation of analog service, often referred to as the "analog sunset." Here too, our proposals are consistent with the Commission's regulatory reform agenda and its Data Innovation Initiative. The proposed rules are set forth in Appendix E and we encourage all interested parties to review them carefully and comment on them with specificity.

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

85. The RFA requires an agency to describe any significant, specifically

small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for 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.

86. The *NPRM* discusses several alternatives to the proposed two-stage transition. These include, for example, alternatives that would entail transition via auction in more than two stages as well as possible exemption for certain extremely rural markets such as Alaskan markets and others with special build-out challenges. The *NPRM* also discusses proposals put forth by industry stakeholders thus far in this proceeding, including an approach that would not entail competitive bidding. The *NPRM* specifically invites interested parties to comment on these various alternatives and to suggest other alternative proposals. At this time, the Commission has not excluded any alternative proposal from its consideration, but it would do so in this proceeding if the record indicates that a particular proposal would have a significant and unjustifiable adverse economic impact on small entities.

87. The Commission believes that the proposed transition to a geographic-area licensing system for the Cellular Service in two stages via auction will benefit all Cellular incumbents and entrants, regardless of size. The proposed scheme would put Cellular licensees on a regulatory par with other wireless licensees that hold geographic area licenses, such as PCS and certain AWS licensees, thus easing the regulatory burden of compliance by eliminating discrepancies in competing services. The Commission has historically valued harmonization in the rules for wireless licensees by eliminating burdensome requirements, as appropriate. Furthermore, we anticipate that the modernized licensing scheme will encourage Cellular licensees to invest in and deploy ever more advanced technologies as they evolve. By reducing the paperwork burden on Cellular providers, we would also expect their resulting lower costs to have some positive effect on the rates paid by subscriber groups, including small businesses that rely on Cellular service.

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

None.

C. Initial Paperwork Reduction Analysis

88. This document contains potential new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the potential 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), we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

VI. Ordering Clauses

89. Pursuant to sections 1, 2, 4(i), 301, 302, 303, 308, 309(j), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 301, 302, 303, 308, 309(j), and 332, this Notice of Proposed Rulemaking and Order are hereby adopted.

90. Pursuant to sections 4(i), 301, 303, 308, and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 303, 308, and 309, that effective as of the date of the adoption of this Notice of Proposed Rule Making and Order, THE FEDERAL COMMUNICATIONS COMMISSION WILL NOT ACCEPT FOR FILING ANY APPLICATIONS for licenses in the Cellular Band that are inconsistent with the terms of the application freeze discussed herein. This suspension is effective until further notice and applies to any such applications received on or after the date of adoption of this Notice of Proposed Rulemaking and Order.

91. NOTICE IS HEREBY GIVEN of the proposed regulatory changes described in this Notice of Proposed Rulemaking and that comment is sought on these proposals.

92. 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, Radio, Reporting and recordkeeping requirements, Telecommunications.

47 CFR Part 22

Communications common carriers, Radio, Reporting and recordkeeping requirements, Rural areas.

Federal Communications Commission.

Marlene H. Dortch, Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1 and 22 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, 227, 303(r), and 309.

§ 1.919 [Amended]

2. Amend § 1.919 by removing and reserving paragraph (c).

3. Amend § 1.929 by revising paragraph (b)(1), removing and reserving paragraph (b)(3), and adding paragraph (b)(4) to read as follows:

§ 1.929 Classification of filings as major or minor.

\* \* \* \* \*

(b) \* \* \*

(1) Request for an authorization or an amendment to a pending application that would expand the Cellular Geographic Service Area (CGSA) of an existing cellular system or, in the case of an amendment, as previously proposed in an application, in a CMA Block that has not been included in an auction for Cellular Overlay Authorizations under § 22.985.

\* \* \* \* \*

(4) Request for a Cellular Overlay Authorization. See § 22.985.

\* \* \* \* \*

4. Amend § 1.958 by revising paragraph (d) to read as follows:

§ 1.958 Distance computation.

\* \* \* \* \*

(d) Calculate the number of kilometers per degree of longitude difference for the mean geodetic latitude calculated in paragraph (b) of this section as follows:

KPD<sub>lon</sub> = 111.41513 cos ML - 0.09455 cos 3ML + 0.00012 cos 5ML

\* \* \* \* \*

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.

6. Amend § 22.99 by:

a. Removing the definitions "Build-out transmitters," "Extension," "Five year build-out period," and "Partitioned cellular market";

b. Revising the definitions "Cellular Geographic Service Area," and "Cellular markets"; and

c. Revising the term "Unserved areas" to read "Unserved Area" and revising the first sentence of its definition;

d. Adding definitions "Cellular area-based authorization," "Cellular Licensed Area," "Cellular Overlay Authorization (COA)," "Cellular Overlay Licensee," "Cellular site-based authorization," "CMA Block," and "Substantially Licensed CMA Block".

The revisions and additions read as follows:

§ 22.99 Definitions.

\* \* \* \* \*

Cellular area-based authorization. An authorization in the Cellular Radiotelephone Service where the licensed area is a specified fixed geographic area other than a CGSA (e.g., a CMA, as in the case of a Cellular Overlay Authorization) irrespective of the locations and technical parameters of base stations (cell sites), in a CMA Block included in an auction under § 22.985.

Cellular Geographic Service Area (CGSA). The licensed geographic area, determined by the specified locations and technical parameters of base stations (cell sites) pursuant to the procedures set forth in § 22.911, within which a cellular system is entitled to protection and adverse effects are recognized, for the purpose of determining whether a petitioner has standing, in the Cellular Radiotelephone Service.

Cellular Licensed Area. The geographic area within which the cellular licensee is permitted to transmit, or consent to allow other cellular licensees to transmit, electromagnetic energy and signals on the assigned channel block, in order to provide cellular service.

Cellular Market Area (CMA). A standard geographic area used by the FCC for administrative convenience in the licensing of cellular systems; a more recent term for "cellular market" (and includes Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs)). See § 22.909.

*Cellular markets (obsolescent). See definition for "Cellular Market Area (CMA)".*

\* \* \* \* \*

**Cellular Overlay Authorization (COA).**

A cellular area-based authorization in a CMA Block included in an auction under § 22.985, where the cellular licensed area is the geographic area within the CMA boundary (Channel Block A or B), subject to the requirement to protect incumbent licensees' operations from harmful interference under applicable rules.

**Cellular Overlay Licensee.** The holder of a Cellular Overlay Authorization.

\* \* \* \* \*

**Cellular site-based authorization.** An authorization in the Cellular Radiotelephone Service where the Cellular Licensed Area is determined by the specified locations and technical parameters of base stations (cell sites), pursuant to the procedures set forth in § 22.911.

\* \* \* \* \*

**CMA Block.** In the Cellular Radiotelephone Service, a CMA considered in regard to a specified channel block, *i.e.*, either Channel Block A or Channel Block B (*see* § 22.905).

\* \* \* \* \*

**Substantially Licensed CMA Block.** A CMA Block (A or B) where at least 95 percent of the total land area is Cellular Geographic Service Area or which contains no contiguous parcel of Unreserved Area larger than 130 square kilometers (50 square miles).

\* \* \* \* \*

**Unreserved Area.** With regard to a channel block allocated for assignment in the Cellular Radiotelephone Service: Geographic area in the District of Columbia, or any State, Territory or Possession of the United States of America that is not within any Cellular Geographic Service Area of any cellular system authorized to transmit on that channel block. \* \* \*

7. Amend § 22.131 by revising paragraphs (c)(3)(iii) and (d)(2)(iv) to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(iii) If all of the mutually exclusive applications filed on the earliest filing date are applications for initial authorization, a 30-day notice and cut-off filing group is used.

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(iv) Any application to expand the CGSA of a cellular system (as defined in § 22.911) in a CMA Block that has not been included in an auction under § 22.985.

\* \* \* \* \*

8. Amend § 22.165 by revising paragraph (e) to read as follows:

**§ 22.165 Additional transmitters for existing systems.**

\* \* \* \* \*

(e) **Cellular Radiotelephone Service.**

(1) In a CMA Block that has not been included in an auction under § 22.985, the service area boundaries of the additional transmitters, as calculated by the method set forth in § 22.911(a), must remain within the CGSA; the licensee must seek prior approval (using FCC Form 601) regarding any transmitters to be added under this section that would cause a change in the CGSA boundary. *See* § 22.953.

(2) With regard to an incumbent's CGSA in a CMA Block that has been included in an auction under § 22.985, the service area boundaries of the additional transmitters, as calculated by the method set forth in § 22.911(a), must remain within the incumbent's CGSA.

(3) A Cellular Overlay Licensee is permitted to expand into any Unreserved Area within its licensed CMA Block so long as it protects existing cellular licensees from harmful interference.

\* \* \* \* \*

**§ 22.228 [Removed]**

9. Remove § 22.228.

10. Revise § 22.901 to read as follows:

**§ 22.901 Cellular service requirements and limitations.**

Each cellular system must provide either mobile service, fixed service, or a combination of mobile and fixed service, subject to the requirements, limitations and exceptions in this section. Mobile service provided may be of any type, including two-way radiotelephone, dispatch, one-way or two-way paging, and personal communications services (as defined in part 24 of this chapter). Fixed service is considered to be primary service, as is mobile service. When both mobile and fixed services are provided, they are considered to be co-primary services. In providing cellular service, each cellular system may incorporate any technology that meets all applicable technical requirements in this part.

11. Revise § 22.909 to read as follows:

**§ 22.909 Cellular market areas (CMAs).**

Cellular market areas (CMAs) are standard geographic areas used by the FCC for administrative convenience in

the licensing of cellular systems. CMAs comprise Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs). All CMAs and the counties they comprise are listed in: "Common Carrier Public Mobile Services Information, Cellular MSA/RSA Markets and Counties," *Public Notice*, Report No. CL-92-40, 6 FCC Rcd 742 (1992).

(a) **MSAs.** Metropolitan Statistical Areas are 306 areas, including New England County Metropolitan Areas and the Gulf of Mexico Service Area (water area of the Gulf of Mexico, border is the coastline), defined by the Office of Management and Budget, as modified by the FCC.

(b) **RSAs.** Rural Service Areas are 428 areas, other than MSAs, established by the FCC.

**§ 22.912 [Removed]**

12. Remove § 22.912.

**§ 22.929 [Removed]**

13. Remove § 22.929.

14. Revise § 22.946 to read as follows:

**§ 22.946 Construction period for cellular systems under site-based authorizations.**

The construction period applicable to specific new or modified cellular facilities for which a site-based authorization is granted is one year, beginning on the date the authorization is granted. To satisfy this requirement, a cellular system must be providing service to mobile stations operated by subscribers and roamers. The licensee must notify the FCC (FCC Form 601) after the requirements of this section are met. *See* § 1.946 of this chapter. GMEZ cellular systems are not subject to construction period requirements. *See* § 22.950.

15. Revise § 22.947 to read as follows:

**§ 22.947 Build-out period for CMA Block 672A (Chambers, TX).**

This rule section applies only to cellular systems operating on Channel Block A in CMA 672 (Chambers, Texas).

(a) A licensee that holds the Cellular Overlay Authorization for CMA Block 672A (Chambers, Texas) initially awarded via auction (*i.e.*, the CMA Block for which cellular service was authorized solely under interim operating authority prior to the Stage I auction described in § 22.985) must be providing signal coverage and offering service over at least 35 percent of the geographic area of the CMA Block within four years of the grant of the authorization, and over at least 70 percent of the geographic area of its license authorization by the end of the license term. In applying this geographic benchmark, the licensee is to count total land area.

(b) The licensee must notify the FCC (FCC Form 601) after the requirements of this section are met and must include with its notification(s) GIS map files and other supporting documents showing compliance with the construction requirement. *See* § 1.946 of this chapter. *See also* § 22.953.

(c) Failure to meet the requirements in this section by the deadline will result in automatic termination of the authorization and such licensee will be ineligible to regain it.

16. Revise § 22.948 to read as follows:

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

Cellular licensees may apply to partition their cellular licensed area or to disaggregate their licensed spectrum at any time following the grant of their authorization(s). Parties seeking approval for partitioning and disaggregation shall request from the FCC an authorization for partial assignment of a license pursuant to § 1.948 of this chapter. *See also* paragraph (f) of this section.

(a) *Partitioning.* Applicants must file FCC Form 603 pursuant to § 1.948 of this chapter. The filing must include the attachments required under § 22.953, including GIS map files and a reduced-size PDF map, for both the assignor and the assignee.

(1) Within a CMA Block that has not yet been included in an auction under § 22.985, partitioning of a CGSA must be on a site-by-site basis; *i.e.*, the partitioned area must comprise only the area resulting from one or more cell sites pursuant to § 22.911. At least one entire cell site must be partitioned. If all cell sites are assigned, it is not partitioning, but rather a full assignment of authorization.

(2) Partitioning of the licensed area of a cellular area-based authorization (including, *e.g.*, the licensed area of a Cellular Overlay Authorization) to a licensee in a CMA Block that has not yet been included in an auction under § 22.985 must be on a site-by-site basis; *i.e.*, the partitioned area must comprise CGSA resulting from one or more cell sites pursuant to § 22.911.

(3) Partitioning of the licensed area of a cellular area-based authorization within the same CMA Block that has been included in an auction under § 22.985, or to a licensee in another CMA Block that has also been included in such an auction (including, *e.g.*, the partitioning of a Cellular Overlay Authorization area by one Cellular Overlay Licensee to another Cellular Overlay Licensee), may involve any proportion of division. If all of the licensed area is assigned, it is not

partitioning, but rather a full assignment of authorization.

(b) *Disaggregation.* Spectrum may be disaggregated in any amount.

(c) *Combined partitioning and disaggregation.* The FCC will consider requests for partial assignment of licenses that propose combinations of partitioning and disaggregation.

(d) *Field strength limit.* For purposes of partitioning and disaggregation, cellular systems must be designed so as not to exceed a median field strength level of 40 dBµV/m at or beyond the boundary of the Cellular Licensed Area, unless all affected adjacent service area licensees agree to a different signal level. *See* § 22.983.

(e) *License term.* The license term for a partitioned license area and for disaggregated spectrum will be the remainder of the original license term.

(f) *Spectrum Leasing.* Cellular spectrum leasing is subject to the provisions of paragraphs (a)(1) through (a)(3), (b), and (c) of this section, except that applicants must file FCC Form 608 (not FCC Form 603), as well as all applicable provisions of subpart X of part 1 of this chapter.

17. Revise § 22.949 to read as follows:

**§ 22.949 Unserved Area licensing process for site-based systems.**

This section sets forth the process for licensing Unserved Area in CMA Blocks not yet included in an auction pursuant to § 22.985. The licensing process in this § 22.949 allows eligible parties to apply for any Unserved Area that remains in such CMA Blocks.

(a) The Unserved Area licensing process described in this section is ongoing and applications may be filed at any time, until the CMA Block is included in an auction pursuant to § 22.985.

(b) There is no limit to the number of Unserved Area applications that may be granted on each CMA Channel Block that remains subject to the procedures of this section. Consequently, such Unserved Area applications are mutually exclusive only if the proposed CGSAs would overlap. Mutually exclusive applications are processed using the general procedures in § 22.131. *See also* § 22.961.

(c) Unserved Area applications under this section may propose a CGSA covering more than one CMA. Each such Unserved Area application must request authorization for only one CGSA.

(d) Settlements among some, but not all, applicants with mutually exclusive applications for Unserved Area (partial settlements) under this section are prohibited. Settlements among all

applicants with mutually exclusive applications under this section (full settlements) are allowed and must be filed no later than the date that the FCC Form 175 (short-form) is filed.

18. Amend § 22.950 by revising paragraphs (c) and (d) to read as follows:

**§ 22.950 Provision of service in the Gulf of Mexico Service Area (GMSA).**

\* \* \* \* \*

(c) *Gulf of Mexico Exclusive Zone (GMEZ).* GMEZ licensees have an exclusive right to provide cellular service in the GMEZ, and may add, modify, or remove facilities anywhere within the GMEZ without prior FCC approval. There is no Unserved Area licensing procedure for the GMEZ.

(d) *Gulf of Mexico Coastal Zone (GMCZ).* The GMCZ is subject to the Unserved Area licensing procedure set forth in § 22.949.

19. Revise § 22.953 to read as follows:

**§ 22.953 Content and form of applications for cellular authorizations.**

Applications for authority to operate a new cellular system or to modify an existing cellular system must comply with the specifications in this section.

(a) *New Systems.* In addition to information required by subparts B and D of this part and by FCC Form 601, applications for a site-based authorization to operate a cellular system must comply with all applicable requirements set forth in part 1 of this chapter, including the requirements specified in §§ 1.913, 1.923, and 1.924, and must include the information listed below, in numbered exhibits. Geographical coordinates must be correct to ±1 second using the NAD 83 datum.

(1) *Exhibit I—Geographic Information System (GIS) map files.* The FCC will specify the file format required for the Geographic Information System (GIS) map files that are to be submitted electronically via the Universal Licensing System (ULS). In addition to GIS map files submitted electronically, the FCC reserves the right to request a full-size paper map from the applicant. The scale of the full-size paper map must be 1:500,000, regardless of whether any different scale is used for the reduced-size PDF map required in Exhibit II. In addition to the information required for the GIS map files, the paper map, if requested, must include all the information required for the reduced-size PDF map (*see* paragraph (a)(2) of this section).

(2) *Exhibit II—Reduced-size PDF map.* This map must be 8½ × 11 inches (if possible, a proportional reduction of a 1:500,000 scale map). The map must



have a legend, a distance scale and correctly labeled latitude and longitude lines. The map must be clear and legible. The map must accurately show the cell sites (transmitting antenna locations), the service area boundaries of additional and modified cell sites, the entire CGSA, extensions of the composite service area beyond the CGSA (see § 22.911), and the relevant portions of the CMA boundary.

(3) *Exhibit III—Antenna Information.* In addition, upon request by an applicant, licensee, or the FCC, a cellular applicant or licensee of whom the request is made shall furnish the antenna type, model, the name of the antenna manufacturer, antenna gain in the maximum lobe, the beam width of the maximum lobe of the antenna, a polar plot of the horizontal gain pattern of the antenna, antenna height to tip above ground level, the height of the center of radiation of the antenna above the average terrain, the height of the antenna center of radiation above the average elevation of the terrain along each of the 8 cardinal radials, the maximum effective radiated power, and the electric field polarization of the wave emitted by the antenna when installed as proposed to the requesting party within ten (10) days of receiving written notification.

(4) through (10) [Reserved].

(11) *Additional information.* The FCC may request information not specified in paragraphs (a)(1) through (3) of this section as necessary to process an application.

(b) *Existing systems: major and minor modifications.* Licensees making major modifications pursuant to § 1.929(a) and (b) of this chapter, and licensees making minor modifications pursuant to § 1.929(k) of this chapter, must file FCC Form 601 and comply with the requirements of paragraph (a) of this section.

(c) [Reserved].

**§ 22.960 [Removed]**

20. Remove § 22.960.

21. Add § 22.961 to read as follows:

**§ 22.961 Cellular licenses subject to competitive bidding.**

The following mutually exclusive initial applications for cellular licensed area authorizations are subject to competitive bidding, and unless otherwise provided by this subpart, the general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply:

(a) Mutually exclusive initial applications for cellular site-based authorizations; and

(b) Mutually exclusive initial applications for Cellular Overlay Authorizations.

**§§ 22.962 through 22.967 [Removed and Reserved]**

22. Remove and Reserve §§ 22.962 through 22.967.

**§ 22.969 [Removed]**

24. Remove § 22.969.

25. Add § 22.983 to read as follows:

**§ 22.983 Field strength limit.**

The predicted or measured median field strength at any location on or beyond the boundary of any Cellular Licensed Area must not exceed 40 dBµV/m, unless the adjacent cellular service licensee(s) on the same Channel Block agree(s) to a different field strength. This value applies to both the initially authorized areas and to partitioned areas.

26. Add § 22.985 to read as follows:

**§ 22.985 Geographic area licensing via auctions.**

The licensing procedures in this section do not apply to any CMA Block in the GMSA (see § 22.950).

(a) *Determination of licensing status of CMA Blocks.* The FCC will determine whether each CMA Block is Substantially Licensed. A CMA Block will be deemed Substantially Licensed if, as of a cut-off date established by the FCC, either:

(1) At least 95 percent of the total land area in the CMA Block is already licensed as CGSA; or

(2) The CMA Block contains no contiguous parcel of Unserved Area that is larger than 130 square kilometers (50 square miles).

(b) *Stage I Auction.* Any auction to resolve mutually exclusive applications filed with respect to CMA Blocks that are included in Stage I for the assignment of Cellular Overlay Authorizations shall be conducted pursuant to the procedures set forth in part 1, subpart Q of this chapter. Any eligible entity may bid in the Stage I auction. A CMA Block is eligible to be included in the Stage I auction if either:

(1) The CMA Block is determined by the FCC to be Substantially Licensed; or,

(2) The CMA Block has cellular service that has been authorized solely under interim operating authority (*i.e.*, for which no license has ever been issued).

(c) *Stage II Auction.* Any auction to resolve mutually exclusive applications filed with respect to CMA Blocks that are included in Stage II for the assignment of Cellular Overlay Authorizations in such Blocks shall be conducted pursuant to the procedures

set forth in part 1, subpart Q of this chapter. Any eligible entity may bid in the Stage II auction.

27. Add § 22.986 to read as follows:

**§ 22.986. Designated Entities.**

(a) *Eligibility for small business provisions in the Cellular Radiotelephone Service.* (1) A very small business is an entity that, together with its controlling interests and affiliates, has average annual gross revenues not exceeding \$3 million for the preceding three years.

(2) A small business is an entity that, together with its controlling interests and affiliates, has average annual gross revenues not exceeding \$15 million for the preceding three years.

(3) An entrepreneur is an entity that, together with its controlling interests and affiliates, has average annual gross revenues not exceeding \$40 million for the preceding three years.

(b) *Bidding credits in the Cellular Radiotelephone Service.* A winning bidder that qualifies as a very small business, as defined in this section, or a consortium of very small businesses may use the bidding credit specified in § 1.2110(f)(2)(i) of this chapter. A winning bidder that qualifies as a small business, as defined in this section, or a consortium of small businesses may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as an entrepreneur, as defined in this section, or a consortium of entrepreneurs may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter.

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**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**48 CFR Parts 2401, 2402, 2403, 2404, 2406, 2407, 2409, 2415, 2416, 2417, 2419, 2426, 2427, 2428, 2432, 2437, 2439, 2442, and 2452**

[Docket No FR-5571-P-01]

RIN 2501-AD56

**Amendments to the HUD Acquisition Regulation (HUDAR)**

**AGENCY:** Office of the Chief Procurement Officer, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend the HUDAR to implement miscellaneous changes. These changes include, for example, such amendments as removing provisions that are now obsolete, refining provisions to approve