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Issued in Burlington, Massachusetts, on September 1, 2017.

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*Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 27

[WT Docket No. 06-150, DA 17-810]

#### In the Matter of Service Rules for the 698-746, 747-762, and 777-792 MHz Bands

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission explains the overall rules and policies for the relicensing of 700 MHz spectrum that is returned to the Commission's inventory as a result of licensees' failure to meet applicable construction requirements, as set forth by the Commission in the *700 MHz Second Report and Order* (WT Docket No. 06-150, FCC 07-132). The document seeks comment on the Wireless Telecommunications Bureau's proposed approach for implementing the various rules and policies of the relicensing process.

**DATES:** Interested parties may file comments on or before October 10, 2017, and reply comments on or before November 6, 2017.

**ADDRESSES:** You may submit comments, identified by WT Docket No. 06-150, by any of the following methods:

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS): <http://fjallfoss.fcc.gov/ecfs2/>. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. Generally if more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Commenters are only required to file copies in GN Docket No. 13-111.

- 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 8:00 a.m. to 7:00 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.

**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).

**FOR FURTHER INFORMATION CONTACT:** Anna Gentry, [Anna.Gentry@fcc.gov](mailto:Anna.Gentry@fcc.gov), of the Wireless Telecommunications Bureau, Mobility Division, (202) 418-2887. For additional information concerning the PRA information collection requirements contained in this document, contact Cathy Williams at (202) 418-2918 or send an email to [PRA@fcc.gov](mailto:PRA@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's document in WT Docket No. 06-150, DA 17-810, released on August 28, 2017. The complete text of the *Public Notice* is available for viewing via the Commission's ECFS Web site by entering the docket number, WT Docket No. 06-150. The complete text of the documents also available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW., Room CY-B402, Washington, DC 20554, telephone 202-488-5300, fax 202-488-5563.

This proceeding shall continue to be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules (47 CFR 1.1200 *et seq.*). 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 rule 1.1206(b). In proceedings governed by rule 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.

### I. Synopsis

In the 2007 *700 MHz Second Report and Order*,<sup>1</sup> the Commission adopted rules for relicensing of 700 MHz Lower A, B, and E Block, and Upper C Block spectrum that is returned to the Commission's inventory as a result of licensees' failure to meet applicable construction requirements. The Commission set forth the overall rules and policies for the relicensing process and delegated authority to the Wireless Telecommunications Bureau (Bureau) to implement those rules and policies. To the extent the *700 MHz Second Report and Order* and other Commission rules set forth elements of the relicensing process, the *document* cites to those rules, and otherwise seeks comment on

<sup>1</sup> *Service Rules for 698-746, 747-762, and 777-792 MHz Bands et al.*, Second Report and Order, 22 FCC Rcd 15289 (2007) (*700 MHz Second Report and Order*).

the Bureau's proposed approach to the remaining elements of the process, including the respective costs and benefits of the various proposals.

#### A. Required Filing for Keep What You Serve

Pursuant to the 700 MHz *Second Report and Order*, licensees that fail to meet the construction requirement and are subject to the Keep What You Serve (KWYS) KWYS rules will be required to file an electronic coverage map in order to demonstrate the geographic portion of the licensed area the licensee will retain, and the geographic area that will be returned to the Commission for reassignment. Licensees admitting failure must include the additional required filing for KWYS with their construction notification at the end-of-term construction deadline. If a licensee claims to have met the construction benchmark, but the Bureau deems the licensee to have failed after review of the construction notification, the licensee will be asked to amend its initial construction notification filing to include the additional required filing for KWYS.

In order to implement the KWYS rules, the *document* proposes and seeks comment on a process whereby licensees would demonstrate the "served" area of the license by filing a shapefile showing a smooth enclosed 40 dBuV/m field strength contour (Smooth Contour) of existing facilities as of the end-of-term deadline. The portion of the license market covered by the Smooth Contour would be deemed "served" for the purposes of the KWYS rule and become the reduced licensed area that the licensee "keeps." Recognizing that some licensees might provide service at significantly lower field strength such that the 40 dBuV/m Smooth Contour would result in a reduced licensed area that is substantially smaller than the licensee's actual service area, the *document* also proposes that, if the 40 dBuV/m Smooth Contour would result in a reduced licensed area that is at least 25 percent smaller than the licensee's actual service area, the licensee could demonstrate the service area using a lower dBuV/m field strength smooth contour (Alternative Smooth Contour). Under this proposed approach, in order to be acceptable for filing, a submission using an Alternative Smooth Contour would be required to demonstrate that: (1) The licensee is operating a viable service at the lower field strength; and (2) the service area using the lower dBuV/m field strength Alternative Smooth Contour is at least 25 percent larger than it would be using the 40 dBuV/m field strength Smooth Contour.

The Bureau would update the license in the Commission's Universal Licensing System (ULS) using either the Smooth Contour or Alternative Smooth Contour shapefile to reflect the reduced license boundary. The remaining portion of the original license market would be deemed unserved area and would return to the Commission's inventory for relicensing.

The *document* seeks comment on this proposed methodology for determining licensees' service area and what, if any, alternatives to this approach might achieve the Commission's goals of accurately reflecting licensees' service areas and making spectrum available for relicensing in an efficient manner.

#### B. Identifying Unserved Area

Pursuant to the 700 MHz *Second Report and Order*, information about the available unserved areas will be publicly available. Under the approach proposed in this *document*, the Bureau would use the Smooth Contour or Alternative Smooth Contour shapefiles submitted by failing licensees to determine the unserved areas of each market. The Bureau would compile these unserved portions together as areas that would be available for relicensing and would provide instructions on how to access that information by public notice. The public notice announcing the unserved areas available for relicensing would also provide further instructions and specific dates for the commencement of the relicensing process. In setting these dates, the Bureau intends to provide potential applicants with at least 60 days prior to the commencement of relicensing to enable them to make necessary inquiries about available area, e.g. site leases, existing infrastructure, neighboring operations, and network and backhaul needs.

#### C. Phased Relicensing Process

The *document* also describes the two-phased application process for the relicensing of unserved areas, as set forth in Section 27.14 of the Commission's rules. The *document* explains that applications for available unserved areas will be filed via ULS and the applicant will select the available unserved area that they wish to serve by filing a shapefile covering that area.

In order to implement the relicensing process, this *document* proposes to provide applicants with access to a publicly available map displaying the areas available for relicensing, from which they could determine the areas they are interested in licensing. In the interest of administrative clarity and functionality, this *document* proposes

limiting a single application to include one shapefile of a contiguous shape, or, if non-contiguous, requiring that the shapes be within a single market boundary. If an applicant files for non-contiguous shapes in a single application, grant of the application would result in a single license and a single buildout requirement would be applied to all shapes as a whole. Consequently, failure to meet the buildout requirement with respect to one non-contiguous shape would result in application of the penalty for failure to all shapes as a whole. This *document* seeks comment on this proposed treatment of applications for available unserved areas and what, if any, further restrictions or methods might be necessary to ensure efficient processing and review of applications filed during the relicensing process.

#### D. Phase 1 of Relicensing

As set forth in the Commission's rules, relicensing will begin with a 30-day Phase 1 filing window. Pursuant to section 27.14, the original licensee of available unserved areas, whose authorization to serve that area terminated due to failure to meet the end-of-term construction benchmark, is barred during Phase 1 from applying to relicense that area. This Phase 1 bar is specific to each unserved area, and therefore an applicant that is barred from one unserved area during Phase 1 is not barred from applying for other available areas for which it was not the original licensee.

In order to implement the Phase 1 bar, this *document* proposes to apply the bar to any applicant that has any interest or ownership in, or any control of, the original licensee and to any applicant in which the original licensee has any interest, ownership, or control. This *document* seeks comment on requiring applicants to certify in the application that: (1) The applicant is not the original licensee of the unserved area; (2) the applicant does not have any interest in or own or control any part of the original licensee of the unserved area; and (3) the original licensee of the unserved area does not have any interest in or own or control any part of the applicant. This *document* seeks comment on this approach and potential alternatives for applying the bar, including application of the Commission's *pro forma* standard for determining ownership, which looks to both *de jure* and *de facto* control of the licensee.

Pursuant to the Commission's Part 1 rules, at the end of the 30-day Phase 1 filing window, the Bureau will issue a public notice listing applications found

acceptable for filing during Phase 1. The public notice will identify which acceptable applications, if any, are mutually exclusive with each other. All applications received during the Phase 1 filing window for a particular available unserved area are treated as contemporaneous for the purposes of mutual exclusivity. Pursuant to section 27.14(j)(1), applications will be deemed mutually exclusive if they propose areas overlapping with other applications. Consistent with the *700 MHz Second Report and Order*, no further mutually exclusive applications may be filed after the 30-day filing window has ended, but licensees and third parties may file petitions to deny any pending applications within 30 days of the release of the public notice listing Phase 1 applications found acceptable for filing. This *document* explains that, subject to the Greenmail Rule, applicants may resolve mutual exclusivity by withdrawing or filing a minor amendment to one or both of the mutually exclusive applications, and describes the types of amendments that qualify as a minor amendment, rather than a major amendment, which requires a new public notice period.

In order to implement these policies concerning mutually exclusive applications, this *document* proposes that applicants would be permitted to resolve their mutually exclusive applications or attempt to reach a settlement during the public notice period that follows the Phase 1 filing window. Similar to the Commission's approach in other licensing and competitive bidding contexts, this *document* proposes that the definition of mutually exclusive applications would include "daisy chains" of mutual exclusivity, which occur when two or more applications contain proposed areas that do not directly overlap, but are linked together into a chain by the overlapping proposal(s) of other(s).

#### *E. Phase 2 of Relicensing*

As set forth in the rules establishing the relicensing process, during Phase 2 interested applicants, including those that were barred during Phase 1, may file applications for available unserved areas that were not licensed during Phase 1 or for which there are no pending applications.

In order to implement the Phase 2 process, this *document* proposes and seeks comment on a process whereby the Bureau would update the publicly available relicensing map following Phase 1 to reflect pending applications, licenses that were issued, and area that remains available for relicensing. As with Phase 1, this *document* proposes

that the definition of mutual exclusivity for Phase 2 applications would include applications that, though not mutually exclusive of the first-filed application, are mutually exclusive of another application that overlaps the first-filed application—*i.e.*, a "daisy chain" as described above. This *document* proposes that the public notice for the first-filed application would determine the applicable filing period for all subsequent mutually exclusive or "daisy chain" applications. Following a Phase 2 application's 30-day public notice, this *document* proposes and seeks comment on a process whereby, if the Bureau determines there are existing applications that are mutually exclusive of the initial application, it would notify the parties of the conflicting applications and provide 60 days to resolve the mutual exclusivity. Any mutually exclusive applications that are not resolved by the end of the 60-day period would be subject to auction. This *document* seeks comment on this proposed approach to mutual exclusivity during Phase 2.

#### *F. Relicensed Area Construction Requirement and Showing*

As set forth in section 27.14(j)(3), licensees of 700 MHz licenses acquired through the relicensing process will have one year from the date the new license is issued to complete construction, provide signal coverage, and offer service over 100 percent of the geographic area of the new license area. Pursuant to the Commission's rules, if the licensee fails to meet this construction requirement, its license will automatically terminate without Commission action and it will not be eligible to apply to provide service to this area at any future date.

In order to implement the Commission's goals of facilitating rapid deployment of service on relicensed spectrum and to prevent potential gaming of the relicensing process, this *document* proposes to treat any modification, cancellation, or assignment of a license as failure to provide signal coverage and offer service to the entire relicensed area, such that the penalty for failure would apply. Specifically, under the proposal, licensees would not be permitted to modify the licensed area prior to meeting the one-year construction benchmark in order to reduce the area they must cover. Cancellation of the license prior to meeting the one-year construction benchmark would also constitute failure, and the former licensee would not be eligible to apply to serve any portion of this area at any future date. Finally, licensees would be

permitted to file applications to assign licenses acquired through relicensing (including requests to partition and disaggregate) only after they have demonstrated that they have met the construction benchmark. This *document* seeks comment on this approach to the construction requirement and what, if any, further restrictions might be necessary to promote the Commission's goals in establishing the requirements.

In order to implement the construction requirement for relicensed area, this *document* proposes that, at the one-year construction deadline, licensees would be required to demonstrate that they provide signal coverage and offer service over 100 percent of the geographic area by filing either a Smooth Contour or an Alternative Smooth Contour, consistent with the proposed required filings for KWYS. This *document* seek comment on what, if any, alternative filings might be appropriate methods for licensees to demonstrate that they satisfy the construction requirement.

Given the proposed requirements and penalties for failing to meet the construction requirement, this *document* notes that it is particularly important that potential participants in the relicensing process only apply for portions of available unserved areas if they, through due diligence, have determined they can provide signal coverage and offer service over 100 percent of the area within one year from the date of license issuance. Under approach proposed in this *document*, it would be particularly important that potential licensees conduct due diligence prior to applying for available unserved areas during the relicensing process and ensure the shapefile used in their application is an accurate reflection of the Smooth Contour or Alternative Smooth Contour they would be required to file at the one-year construction deadline. Additionally, the Bureau recommends that potential licensees review the technical narratives and specifications of construction notifications that the Bureau has previously accepted for the 700 MHz band.

## **II. Procedural Matters**

### *Initial Regulatory Flexibility Act Analysis*

As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) in connection with the *700 MHz Further*

*Notice*<sup>2</sup> and a Final Regulatory Flexibility Analysis (FRFA) in connection with the 700 MHz *Second Report and Order*.<sup>3</sup> While no commenter directly responded to the IRFA, the FRFA addressed concerns about the impact on small business of the KWYS rules. The IRFA and FRFA set forth the need for and objectives of the Commission's rules for the KWYS rules; the legal basis for those rules, a description and estimate of the number of small entities to which the rules apply; a description of projected reporting, recordkeeping, and other compliance requirements for small entities; steps taken to minimize the significant economic impact on small entities and significant alternatives considered; and a statement that there are no federal rules that may duplicate, overlap, or conflict with the rules. The proposals in this *document* do not change any of those descriptions.

This *document* does, however, detail proposed procedures for implementing those rules. Therefore, this *document* seeks comment on how the proposals in this *document* could affect either the IRFA or the FRFA. Such comments must be filed in accordance with the same filing deadlines for responses to this *document* and have a separate and distinct heading designating them as responses to the IRFA and FRFA.

#### *Initial Paperwork Reduction Act Analysis*

The *document* contains proposed new 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 information collection requirements contained in this document, as required by PRA. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

Federal Communications Commission.

#### **Nese Guendelsberger,**

*Senior Deputy Bureau Chief, Wireless Telecommunications Bureau.*

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<sup>2</sup> *Service Rules for 698-746, 747-762, and 777-792 MHz Bands et al.*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 8064, 8212 (2007) (700 MHz Further Notice).

<sup>3</sup> 700 MHz *Second Report and Order*, 22 FCC Rcd at 15542.

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 170717675-7675-01]

RIN 0648-XF571

#### Fisheries of the Northeastern United States; Golden Tilefish Fishery; 2018 and Projected 2019-2020 Specifications

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes specifications for the 2018 commercial golden tilefish fishery and projected specifications for 2019 and 2020. The proposed action is intended to establish allowable harvest levels and other management measures to prevent overfishing while allowing optimum yield, consistent with the Magnuson-Stevens Fishery Conservation and Management Act and the Tilefish Fishery Management Plan. It is also intended to inform the public of these proposed specifications for the 2018 fishing year and projected specifications for 2019-2020.

**DATES:** Comments must be received by 5 p.m. local time, on September 22, 2017.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2017-0091, by either of the following methods:

**ELECTRONIC SUBMISSION:** Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to [www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2017-0091](http://www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2017-0091),

2. Click the "Comment Now!" icon, complete the required fields.

3. Enter or attach your comments.

- OR -

**MAIL:** Submit written comments to John Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on the Proposed Rule for Golden Tilefish Specifications."

**INSTRUCTIONS:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record

and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

A draft environmental assessment (EA) has been prepared for this action that describes the proposed measures and other considered alternatives, as well as provides an analysis of the impacts of the proposed measures and alternatives. Copies of the specifications document, including the EA and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. These documents are also accessible via the Internet at <http://www.mafmc.org>.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Hanson, Fishery Management Specialist, (978) 281-9180.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The golden tilefish fishery is managed by the Mid-Atlantic Fishery Management Council under the Tilefish Fishery Management Plan (FMP), which outlines the Council's process for establishing annual specifications. The FMP requires the Council to recommend acceptable biological catch (ABC), annual catch limit (ACL), annual catch target (ACT), total allowable landings (TAL), and other management measures, for up to three years at a time. The directed fishery is managed under an individual fishing quota (IFQ) program, with small amounts of non-IFQ catch allowed under an incidental permit. The Council's Scientific and Statistical Committee (SSC) provides an ABC recommendation to the Council to derive these catch limits. The Council makes recommendations to NMFS that cannot exceed the recommendation of its SSC. The Council's recommendations must include supporting documentation concerning the environmental, economic, and social impacts of the recommendations. We are responsible for reviewing these recommendations to ensure that they achieve the FMP objectives and are consistent with all applicable laws, and may modify them if they do not. Following review, NMFS publishes the final specifications in the **Federal Register**.