

United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Two), filed May 25, 2018.

2. Comments by interested persons in this proceeding are due no later than July 16, 2018.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Lyudmila Y. Bzhilyanskaya to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Ruth Ann Abrams,**  
Acting Secretary.

[FR Doc. 2018-12200 Filed 6-6-18; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1 and 27

[WT Docket No. 18-120; FCC 18-59]

### Transforming the 2.5 GHz Band

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission or FCC) seeks comment on proposed service rules on the 2.5 GHz band and on refinements to the adopted rules in this document.

**DATES:** Comments are due on or before July 9, 2018; reply comments are due on or before August 6, 2018.

**ADDRESSES:** You may submit comments, identified by WT Docket No. 18-120, by any of the following methods:

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

- *Federal Communications Commission's Website:* <https://www.fcc.gov/ecfs/filings>. Follow the instructions for submitting comments.

- *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), phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** John J. Schauble of the Wireless Telecommunications Bureau, Broadband Division, at 202-418-0797 or by email to [John.Schauble@fcc.gov](mailto:John.Schauble@fcc.gov). For information regarding the PRA information collection requirements contained in this PRA, contact Cathy Williams, Office of Managing Director, at (202) 418-2918 or [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rulemaking, WT Docket No. 18-120, FCC 18-59*, adopted and released on May 10, 2018. The complete text of this document is available for public inspection and copying from 8 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW, Room CY-A257, Washington, DC 20554. The complete text is available on the Commission's website at <http://wireless.fcc.gov>, or by using the search function on the ECF's web page at <http://www.fcc.gov/cgb/ecfs/>. 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).

### Comment Filing Procedures

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: <https://www.fcc.gov/ecfs/filings>. Filers should follow the instructions provided on the website for submitting comments. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number, WT Docket No. 18-120.

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

Filings can be sent by hand or messenger delivery, by commercial

overnight courier, or by first-class or overnight U.S. Postal Service mail. 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 9050 Junction Dr., Annapolis Junction, Annapolis, MD 20701.

- 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), 888-835-5322 (tty).

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

Pursuant to § 1.1200(a) of the Commission's rules, this *NPRM* 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.

### Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980 ("RFA"), the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on a substantial number of small entities of the policies and rules proposed in the *NPRM*. The Commission requests written public comment on the analysis. Comments must be filed in accordance with the same deadlines as comments filed in response to the *NRPM* and must have a separate and distinct heading designating them as responses to the IRFA.

### Paperwork Reduction Act

This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

## Synopsis

### I. Introduction

1. The 2.5 GHz band (2496-2690 MHz) constitutes the single largest band of contiguous spectrum below 3 gigahertz and has been identified as prime spectrum for next generation mobile operations, including 5G uses. Significant portions of this band, however, currently lie fallow across

approximately one-half of the United States, primarily in rural areas. Moreover, access to the Educational Broadband Service (EBS) has been strictly limited since 1995, and current licensees are subject to a regulatory regime largely unchanged from the days when educational TV was the only use envisioned for this spectrum. The Commission proposes to allow more efficient and effective use of this spectrum band by providing greater flexibility to current EBS licensees as well as providing new opportunities for additional entities to obtain unused 2.5 GHz spectrum to facilitate improved access to next generation wireless broadband, including 5G. The Commission also seeks comment on additional approaches for transforming the 2.5 GHz band, including by moving directly to an auction for some or all of the spectrum.

## II. Background

2. EBS, formerly known as ITFS (Instructional Television Fixed Service), permits the transmission of instructional material for the formal education of students by accredited public and private schools, colleges, and universities.

3. Currently, eligibility to hold an EBS license is limited to (1) accredited public and private educational institutions, (2) governmental organizations engaged in the formal education of enrolled students, and (3) nonprofit organizations whose purposes are educational and include providing educational and instructional television materials to accredited institutions and governmental organizations. EBS licenses generally are held by state government agencies, state universities and university systems, public community and technical colleges, private universities and colleges, public elementary and secondary school districts, private schools (including Catholic school systems and other religious schools), public television and radio stations, hospitals and hospital associations, and other non-profit educational entities.

4. EBS licensees operate in 114 megahertz of the 2.5 GHz band; the remaining 80 megahertz is assigned to the Broadband Radio Service (BRS). EBS licensees are authorized to operate on the A, B, C, D, and G channel groups, with each group comprised of three 5.5 MHz channels in the lower or upper band segment and one 6 MHz channel in the mid-band segment. Since 1983 the Commission has allowed EBS licensees to lease their excess capacity to commercial providers, but it has required EBS licensees to retain five

percent of their capacity for educational use, and it further has required that they use each channel at least 20 hours per week for educational purposes.

5. Currently, there are 1,300 EBS licensees holding over 2,190 licenses. EBS licenses generally are based on a 35-mile radius circular Geographic Service Area (GSA) (with an area of 1934 square miles), although due to a historical license modification process the Commission adopted in 2005, many EBS licenses have much smaller, irregular GSAs. Incumbent EBS licenses cover only about one half of the geographic area of the United States in any given channel. In the rest of the country, mostly rural areas west of the Mississippi River, the 2.5 GHz spectrum remains unassigned. There is some EBS spectrum unassigned in urban areas as well, but such spectrum generally is only available in small, irregularly shaped areas between GSAs that are considerably smaller than the area of a 35-mile radius circle.

6. The Commission suspended the processing of EBS applications in 1993. Only twice since then has the Commission opened filing windows for EBS applications. In 1995, the Commission provided a five-day window for the filing of applications for new construction permits and for major changes to existing EBS facilities. And in 1996, the Mass Media Bureau announced a sixty-day window for the filing of a limited class of applications, but during that window, it only permitted the filing of EBS modification applications and amendments to pending EBS applications proposing to co-locate with an authorized wireless cable facility.

7. During the past 20 years, the Commission, on several occasions, has considered assigning EBS spectrum licenses by auction. Most recently, the Commission in 2008 decided to use competitive bidding to license unassigned BRS spectrum but held that a "broader record should be developed on how to distribute licenses for unassigned EBS spectrum," and it sought further comment on how to license unassigned EBS spectrum in the *BRS/EBS Second FNPRM*.

8. In response to the *BRS/EBS Second FNPRM*, commenters proposed various alternative licensing schemes, including awarding licenses through a comparative point system; permitting only consortia to apply for a Basic Trading Area (BTA) license (an area consisting of several counties surrounding a common commercial center); permitting existing licensees to expand their respective GSAs to the borders of the BTA, which would

eliminate all white space and in turn, eliminate the need to file applications for new licenses (“GSA maximization”); and permitting licensees to expand their respective GSAs to the borders of the BTA after accepting applications for new stations (reverse GSA maximization). Subsequently, on June 6, 2014, the Catholic Technology Network, the National EBS Association, the Wireless Communications Association International, and the Hispanic Information and Telecommunications Network, Inc. proposed a multi-step process for licensing unassigned EBS spectrum. Unused EBS spectrum, however, has remained generally unavailable since 1995.

### III. Discussion

9. In accordance with the Commission’s goal of making additional spectrum available for flexible use, and to promote use of 2.5 GHz frequencies that have been unassigned for far too long, the Commission proposes and seeks comment on a number of steps to encourage and facilitate more efficient use of this spectrum. First, given the irregularity of current EBS geographic service areas (as well as outdated regulatory requirements), the Commission proposes to rationalize existing EBS holdings so that existing licensees have new opportunities to put 2.5 GHz spectrum to its highest and best use. Second, the Commission seeks comment on whether to open one or more local priority filing windows so that existing licensees, Tribal Nations, and educational entities could get access to unassigned spectrum in the 2.5 GHz band. Third, the Commission proposes to use geographic area licensing to assign any remaining spectrum, which may result in the auction of any licenses for 2.5 GHz spectrum still unassigned after rationalizing holdings and any new filing windows. Finally, the Commission seeks comment on additional approaches for transforming the 2.5 GHz band, including by moving directly to an auction for some or all of the spectrum. The Commission believes the proposed changes discussed herein will reduce unnecessary regulatory burdens on licensees, promote greater spectrum efficiency, and facilitate the full use of EBS spectrum to provide advanced mobile broadband services, particularly in rural areas where this spectrum sits idle today.

#### A. Rationalizing Existing 2.5 GHz Holdings

10. Ensuring that the radio spectrum is used efficiently and intensively is an important public interest goal—a goal

that also serves the interests of the existing licensees. The Commission traditionally has recognized that a spectrum policy based on flexible use in regular geographic areas has several advantages. Such flexible use licensing can promote broadband deployment, ensure the spectrum is put to its most beneficial use, allow licensees to respond to consumer demand for new services, and maximize the probability of success for new services.

#### 1. Regular Geographic License Areas

11. As an initial step, the Commission proposes to rationalize the GSAs of existing EBS licensees, except grandfathered licensees in the E and F Channel groups, to a defined geographic area, namely, the sum of census tracts that are covered by, or that intersect, a licensee’s existing GSA. The Commission proposes that such rationalization should occur automatically (*i.e.*, the Commission would update our licensing records to reflect the change), so existing licensees would not be required to file applications with the Commission or otherwise notify the Commission to effectuate this change.<sup>1</sup>

12. The Commission seeks comment on whether such expansion should include every census tract that is covered by or that intersects the licensee’s existing GSA. Alternatively, should a census tract be included only if a minimum percentage of that census tract overlaps the GSA, and, if so, what should that minimum percentage threshold be (*e.g.*, 10 percent, 25 percent, 50 percent)? The Commission also seeks comment on whether, if the Commission adopts a minimum percentage overlap threshold, that minimum percentage should be a percentage of the census tract’s geography or of the census tract’s population.

13. Second, the Commission proposes that, in this rationalization process, each

<sup>1</sup> The Commission notes that it followed a similar automatic process when ITFS licensees were awarded a protected service area (“PSA”), the precursor to a GSA, and when the PSA was expanded from 15 miles to 35 miles. The Commission also notes that pursuant to our existing rules, grandfathered EBS licensees on the E and F channel groups would not be permitted to expand their GSAs. 47 CFR 27.1216. Pursuant to 47 CFR 27.1216, because there may be both EBS and BRS stations on the same channels in the same market, grandfathered E and F group EBS channels have previously been limited in their ability to expand their GSAs. This may still be the case. The Commission seeks comment on whether rationalizing the holdings of grandfathered EBS licensees on the E and F channel groups would be feasible, whether the Commission could use a similar rationalization scheme as proposed herein for EBS generally, and whether doing so would facilitate more intensive use of 2.5 GHz spectrum.

current EBS GSA will be converted to a single license made up of all the census tracts it covers or intersects, rather than converted to a collection of separate licenses, each the size of a single census tract. The Commission seeks comment on this proposal.

14. Finally, the Commission seeks comment on how to resolve situations in which two or more co-channel GSAs overlap the same census tract(s), and whether simply setting the threshold for required overlap at 50 percent in order to include the census tract in the GSA is the best way to address such a situation. Are there other ways to address situations in which co-channel GSAs overlap the same census tracts?

15. Modifying EBS licenses to GSAs based on census tracts should generate two particular benefits. First, since census tract boundaries are pre-determined and follow regular geographic separation patterns (*e.g.*, divisions based on streets), the boundaries of census tract-based GSAs should be easier to determine than a circular GSA that cuts across regular geographic boundaries.

16. Second, rationalizing incumbent EBS licenses based on census tracts would yield white spaces that also are based on the boundaries of census tracts and/or counties (since census tracts nest into counties), rather than irregular shapes and slivers. This regularity in the shape and size of white spaces would facilitate new entry into the 2.5 GHz band. The Commission seeks comment on these views. Commenters should discuss the costs and benefits of such a license area change.

17. As an alternative to basing GSAs on census tracts, the Commission seeks comment on whether the Commission should expand existing GSAs to include the counties covered by or that intersect the GSA. Under this alternative, the Commission seeks comment on whether to include a county only if a minimum percentage of the county overlaps the GSA and, if so, what that minimum percentage should be (*e.g.*, 50 percent, 75 percent). The Commission also seeks comment on whether, if it adopts a minimum percentage overlap threshold, that the minimum percentage should be a percentage of the county’s geography or of the county’s population. In addition, the Commission seeks comment on how to resolve situations where more than one EBS licensee is in the same county, and whether and to what extent automatic expansion on a county basis will result in inefficient use of spectrum.

18. The Commission also seeks comment on any other issue that may arise from rationalizing existing EBS

holdings and allowing EBS licensees to apply to expand their GSA boundaries. In addition to the criteria stated above, are there any other requirements that existing licensees should satisfy in order to be permitted to expand into the vacant area of a county? For instance, should the right to expand to county boundaries be limited to licensees that provide service to a given percentage of that county? If so, what should the minimum percentage be? Should the minimum percentage be a percentage of the county's geography or of the county's population? Should the Commission establish a requirement that the incumbent licensee's GSA cover a minimum percentage of the area in a county before it is allowed to expand into the remainder of the county? In the alternative, should the Commission simply have existing licensees maintain their current contours, rather than rationalizing existing holdings? Commenters should discuss cost and benefits of any advocated approach and support their position with quantitative and qualitative data.

## 2. Additional Flexibility for EBS Licenses

19. Granting additional flexibility to EBS licensees has been an effective means of allowing better use of the 2.5 GHz band. In 1983, when the Commission allowed 2.5 GHz licensees to lease excess capacity, it provided educators with another means of acquiring the resources needed to operate Instructional Television Fixed Source (ITFS) facilities for education. In 2004, when the Commission created BRS and EBS, the more flexible technical rules allowed the bands to be used for broadband services. Now, significant amounts of commercial broadband data flow through the 2.5 GHz band. The Commission believes subsequent events have confirmed the Commission's prediction that "consumer benefits will be maximized if BRS/EBS licensees are able to take advantage of the flexible use standard in Part 27." The Commission now seeks comment on granting additional flexibility to EBS licensees in order to promote more intensive and efficient spectrum use.

20. First, the Commission proposes to provide EBS licensees with the flexibility to assign or transfer control of their licenses to entities that are not EBS-eligible. Specifically, the Commission proposes to eliminate the limit on what entities can hold EBS licenses (rule 27.1201) and make clear that licensees may assign or transfer control of their licenses to other entities. The Commission notes that the existing

licensees have built out their systems since 2011 and understand how they use their EBS licenses as well as the availability of wireless broadband in their area. Under this proposal, the decision whether to lease or transfer a license would rest with the EBS licensee.<sup>2</sup> There is little reason to think that, at this point in time, the Commission is better positioned than licensees themselves to determine how to maximize the use of 2.5 GHz spectrum for licensees and their communities. And there is little reason to think that licensees should not be allowed to decide for themselves whether to continue to hold their licenses or to transfer their licenses to a third party in the secondary market. The Commission seeks comment on this proposal.

21. EBS licensees whose licenses were granted via waiver since the EBS filing freeze was instituted are currently prohibited from leasing the spectrum. Consistent with our consideration of providing additional secondary-markets flexibility to existing EBS licensees, the Commission proposes to eliminate any special restrictions on such licensees; accordingly, those whose licenses were granted via waiver would have the same flexibility to lease their spectrum or to transfer or assign their licenses as the Commission proposes for other EBS licensees. The Commission seeks comment on this proposal.

22. The Commission also seeks comment on eliminating the educational use requirements for EBS licensees. The educational use requirements, which have not been updated since 1998 were based on the use of analog video and permitted many administrative uses to fulfill the educational requirement. However, most EBS licensees or their commercial lessees are providing digital broadband service, offered 24/7, at the school itself, at home, or anywhere within the licensee's GSA. It appears the existing educational use requirements are out of date and do not fit the actual use of the spectrum. Given the additional flexibility the Commission is granting EBS licensees, the Commission seeks comment on whether there is value in attempting to update the educational use requirements—who is better positioned to determine the highest and best use of 2.5 GHz spectrum, the Commission or licensees? Commenters should explain and quantify the benefits and costs of these

regulatory requirements, including whether to update them (and if so, how).

23. The Commission also proposes to eliminate the current restrictions on EBS lease terms. Under existing rules, EBS licensees are prohibited from leasing their facilities for a term longer than 30 years and lessees are required to provide EBS lessors with the opportunity to revisit their lease terms at years 15, 20, and 25 to review their "educational use requirements in light of changes in educational needs, technology, and other relevant factors and to obtain access to such additional services, capacity, support, and/or equipment as the parties shall agree upon in the spectrum leasing arrangement to advance the EBS licensee's educational mission." To that end, the Commission proposes to eliminate these lease restrictions on a going-forward basis.<sup>3</sup> The Commission also seeks comment on any other revisions needed to fully rationalize our rules for the transferability, leasing, and use of EBS spectrum. Are there other restrictions that unnecessarily reduce the ability of licensees to put this spectrum to its highest and best use?

24. Finally, the Commission asks whether, in light of the actions the Commission takes in this proceeding, it should modify our treatment of EBS in the spectrum screen. In the *Mobile Spectrum Holdings Report and Order*, the Commission concluded that it was necessary to include most EBS spectrum into the spectrum screen "to reflect today's marketplace realities." While the Commission found that EBS spectrum generally was suitable and available for the provision of mobile telephony/mobile broadband services, it did apply a discount. Specifically, the Commission first excluded the five percent of the EBS capacity that is reserved for educational uses because it remains committed to EBS spectrum serving educational purposes. Second, it excluded the EBS white space. After taking these discounts into consideration, the Commission, in 2014, included 89 megahertz of EBS spectrum in the screen. Are any changes to this treatment warranted? Should the Commission reconsider the spectrum aggregation screen?

## B. Opportunities To Acquire New 2.5 GHz Licenses

25. Once the Commission has rationalized the holdings of existing

<sup>2</sup> If the EBS licensee's lease provides for an option or right of first refusal with respect to a license, the provisions of the contract would apply, subject to the requirement that all assignments and transfers of Commissions licenses are subject to Commission consent.

<sup>3</sup> While the Commission proposes to eliminate EBS-specific term-related restrictions for leases, the Commission does not propose to eliminate the requirement that lease notifications must be refiled for each new license term.

EBS licensees, unassigned portions of the 2.5 GHz band will be ready for new assignment—bringing new opportunities to rural communities that have lacked access to this spectrum before. The Commission proposes to use geographic area licensing to assign any remaining spectrum, which should result in the auction of licenses for unassigned portions of the 2.5 GHz band and seek comment on whether it should first open up to three new local priority filing windows to give existing licensees, Tribal Nations, and educational entities an opening to access 2.5 GHz spectrum to serve their local communities. The Commission also proposes build-out requirements for these new licenses to ensure that all Americans have the opportunity to benefit from the 2.5 GHz band.

#### 1. New Local Priority Filing Windows

26. When the Commission reopened applications for the 2.5 GHz band in 1985, it expressed a “strong preference” for local applicants in the licensing process. The Commission found then that local applicants were “convincingly demonstrated . . . to be the best authorities for evaluating their educational needs and the needs of others they propose to serve in their communities,” to “best understand the educational needs . . . of their communities,” and to “act most responsibly in designing and developing [2.5 GHz] systems.” It thus opened a “local priority period” to give “more local entities . . . the opportunity to fill more channels as financial support from non-[instructional] use becomes more widespread.”

27. Now that the Commission is again opening the 2.5 GHz band for additional licensing, the Commission starts by seeking comment on whether the Commission should open up to three new filing windows for qualifying applicants that want to use currently unassigned 2.5 GHz spectrum to serve their local communities. In each filing window, qualifying applicants would have the opportunity to apply for one or more vacant channels of EBS spectrum in areas where the applicant can show it has a local presence. The first filing window would be for existing EBS licensees, the second for Tribal Nations, and the third for other educational entities. The Commission seeks comment on whether the Commission should open any new local priority filing windows, if any, as well as the details of such windows in turn.

28. In responding, commenters should discuss whether such priority filing windows to assign licenses is consistent with our statutory authority to assign

licenses that could be used for telecommunications, and Commission policy and precedent regarding use of competitive bidding. Also, should these entities be given preference over others, in light of other benefits provided to these entities, such as various Universal Service programs, including E-Rate and the Connect America Fund? The Commission also seeks comment on whether such filing windows can be misused and result in unjust enrichment, with licenses being sold or leased to ineligible entities for profit. What effect might these priority windows have on the attractiveness of the remaining spectrum for other applicants? Should the Commission have one combined priority window for these entities, or the three the Commission seeks comment on below?

29. *Local Presence.* When the Commission previously created a local priority period, it defined as “local” those “institutions and organizations that are physically located in the community, or metropolitan area, where service is proposed.” The Commission proposes for any new local priority filing window, should the Commission choose to implement this approach, to similarly require an applicant to demonstrate, as part of the application process, that it is physically located within the license area applied for. The Commission seeks comment on this requirement and what it would mean in practice. For example, should a college or university be considered to be physically located in any area in which it has a campus? Should an entity created by a state or local government for the purpose of serving formal educational needs, such as a public school or a school district, be considered to be physically located in every area where it has a school building? Should having a physical or mailing address within a particular area, be sufficient to demonstrate that the applicant has a local presence within that area? Are there any situations in which simply having some sort of physical address is not indicative of the local presence of an applicant? Commenters should discuss whether the proposed definition of local presence would serve the public interest and provide any relevant qualitative and quantitative data to support their positions.

30. Commenters also should address what documentation applicants must provide to make such a demonstration. Should the determination of whether an applicant is considered to have a local presence be based solely on an applicant’s physical location(s) and/or physical address(es)? Commenters

should discuss other factors that should be considered and explain how any factors that they suggest will ensure that the local priority filing window is available only to local applicants. The Commission also seeks comment any other issues that it may need to address to implement a local presence requirement.

31. The Commission notes that the majority of current EBS licensees, such as school districts, schools, colleges and universities, appear to have a local presence where they have licenses. It also appears that the entities most likely to be affected by a local presence requirement are the “national” licensees. Although national licensees serve a purpose in providing educational services to educational institutions and students, educational entities with a local presence have a closer understanding of the needs of their local communities and are more likely to use 2.5 GHz spectrum to meet such needs, especially in rural areas. Entities with a local presence are part of the communities they wish to serve, and requiring local presence would increase the likelihood that the EBS spectrum would be put to beneficial use for local communities. The Commission seeks comment on these views.

32. *Local Priority Filing Window 1: Existing Licensees.* If the Commission decides to use priority filing windows, the Commission seeks comment on whether it should open a window for existing EBS licensees. Opening such a window would allow existing licensees that are already providing service in a significant portion of a county (and have a local presence in that county) to expand their service to the county border.<sup>4</sup> Existing licensees have already deployed service throughout a portion may be best positioned to quickly put the white-spaces in their local area to use through an edging-out strategy. In addition, since a number of school districts are based on county boundaries, allowing county expansion could allow county-based school districts to better provide services to the students within their districts, and in many cases, to provide services to those students at home, as well as on school premises. Alternatively, such a window would preclude other applicants from accessing 2.5 GHz white spaces, including new entrants long excluded from the band. The Commission seeks

<sup>4</sup> To be clear, should another licensee already hold licenses for census tracts in that county, the Commission would not intend the county-expansion to encompass those areas.

comment on opening such a local priority filing window.

33. Were the Commission to open such a window, it would propose to limit participation to existing licensees as of the adoption of this *NPRM*.<sup>5</sup> Setting a firm, fixed date allows all commenters and the Commission to easily discern what entities would be potential applicants for this window should the Commission adopt it. Furthermore, applicants in this window would be limited to seeking county-based licenses only in counties where they have a local presence. And finally, applicants in this window would be limited to seeking county-based licenses only where they hold, after the rationalization of existing license areas, licenses on a particular channel that cover at least 25 percent of census tracts in a county. The Commission seeks comment on these conditions. In particular, what adjustments to these conditions, if any, would be appropriate to ensure that the goals of such a window would be met? For example, should the Commission require licensees to hold licenses covering even more of a county (say 50 percent of census tracts)? Or should the Commission require that a local presence of the licensee lie inside the county but outside the already-licensed area of the licensee (under a theory that licensees should be permitted to expand to cover areas where they have a physical presence but otherwise restricted so that new licensees have the opportunity to participate in the 2.5 GHz band)?

34. What other conditions, if any, should the Commission adopt on participants in such a window? For example, should the Commission exclude channels in counties in which more than one existing licensee would qualify for expansion on a single channel? If so, how would the Commission determine all counties in which existing licensees meet the local presence requirement? Alternatively, should the Commission only exclude channels in counties in which more than one licensee holds licenses covering at least 25 percent of the census tracts in the county? Should the Commission exclude tribal areas that are contained within a county that would be subject to the Tribal Nations window discussed below? The Commission seeks comment on these and any other issues related to opening a new local

priority filing window for existing licensees.

35. *Local Priority Filing Window 2: Rural Tribal Nations*. The Commission seeks comment on whether the Commission, if it decides to pursue this approach, should open a new local priority filing window for rural Tribal Nations. The Commission has recognized that “members of federally-recognized American Indian Tribes and Alaska Native Villages and other residents of Tribal lands have lacked meaningful access to wired and wireless communications services.” Opening such a window would allow rural Tribal Nations an opportunity to access 2.5 GHz spectrum to address educational and communications needs of their communities and residents on rural Tribal lands, including the deployment of advanced wireless services to areas that have too long been without. Alternatively, such a window would preclude other applicants from accessing 2.5 GHz white spaces. The Commission seeks comment on opening such a local priority filing window.

36. Were the Commission to open such a window, it would propose to limit participation to federally-recognized American Indian Tribes and Alaska Native Villages located in rural areas.<sup>6</sup> Such a request would appear to comport with Native Public Media’s request to open the 2.5 GHz band to Indian Tribes and Tribal Governments to account for the special trust relationship between Tribal Nations and the Federal Government and the fact that Native Americans are acutely underrepresented in communications media. Furthermore, applicants in this window would be limited to seeking new licenses only in rural areas where they have a local presence—that would include rural Tribal lands associated with the Tribal Nation itself. The Commission seeks comment on how much of the license area would need to be Tribal lands to qualify. Would 25 percent be sufficient? 50 percent? The Commission further seeks comment on how to define rural Tribal lands for these purposes. Should the Commission use the definition of rural Tribal lands used for E-rate program and Lifeline; *i.e.*, Tribal Lands that are not part of “an urbanized area or urban cluster area with a population equal to or greater

than 25,000”? The Commission asks commenters to discuss any issues that may arise out of a particular definition of Tribal Lands. The Commission seeks comment on whether to exclude lands that currently are not inhabited by members of the Tribal Nations and/or are held as private property from the definition. To this end, the Commission requests comment on how to ensure that the only entities eligible to participate in this filing window are entities that meet our definition of a Tribal Nation, and whose Tribal lands are lands where tribal members reside as a group and are not used for purely commercial purposes. The Commission seeks comment on these conditions. In particular, what adjustments to these conditions, if any, would be appropriate to ensure that the goals of such a window would be met?

37. The Commission next seeks comment on whether licenses granted for white spaces in such a local priority window should be at the county level or on a census-tract-by-census-tract basis. Commenters should discuss why a particular geographic area size would be appropriate taking into account all relevant information, including border interference coordination needs, propagation characteristics of the band, and the services that will be offered. The Commission notes that using a smaller license area (census tracts) would increase the fit between areas licensed to Tribal Nations and Tribal lands, but may have offsetting efficiency losses. Commenters should discuss the costs and benefits of any advocated approach and support their position with quantitative and qualitative data.

38. The Commission also proposes that, if it were to adopt such a local priority filing window, it would not limit the number of channels that a Tribal Nation could acquire. Given the state of wireless technologies (including the use of progressively wider channels), the Commission believes that allowing access to contiguous spectrum on any number of available channels would more efficiently accommodate varying business models and spectrum needs for wireless broadband. The Commission seeks comment on this proposal.

39. Finally, the Commission seeks comment on any other ways by which it could encourage the use of 2.5 GHz spectrum on Tribal Lands. Should the Commission impose any additional obligations to ensure that Tribal Nations hold 2.5 GHz licenses for the benefit of their Tribal community? The Commission seeks comment on these and any other issues related to opening a new local priority filing window for

<sup>5</sup> The Commission seeks comment on whether holders of special temporary authority (an STA) who are not full-fledged licensees should qualify for such a window. Should the Commission expect them to have the permanent facilities in place to quickly expand service to the county edge?

<sup>6</sup> Alternatively, should the Commission authorize any “Native American Tribal entity” to participate, including any entity that is listed on the U.S. Secretary of the Interior’s currently published list of Indian Tribes recognized to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians? See *The Federally Recognized Indian Tribe List Act of 1994* (Indian Tribe Act, Pub. L. 103–154, 108 Stat. 4791 (1994)) (*Indian Tribe Act*).

Tribal Nations, and in particular it seeks government-to-government consultation and coordination with federally recognized Tribes on these issues and the input of inter-Tribal government associations and Native representative organizations.

40. *Local Priority Filing Window 3: New Educational Entities.* To the extent that the Commission implements any filing windows, it seeks comment on whether the Commission should open a new local priority filing window for educational entities that do not currently hold any 2.5 GHz licenses. Opening such a window would allow new educational entities that have never had the opportunity to benefit from holding and using 2.5 GHz spectrum (and that have a local presence in a particular area) the opportunity to access this spectrum for the first time. The Commission notes that the majority of requests for waiver of the current filing freeze have come from educators with a local presence in the communities that they wish to serve. Alternatively, such a window would preclude the auction of any licenses for remaining 2.5 GHz white spaces. The Commission seeks comment on opening such a local priority filing window.

41. Were the Commission to open such a window, it would propose to limit participation to accredited institutions as well as governmental organizations engaged in the formal education of enrolled students who are not 2.5 GHz licensees as of the adoption of this NPRM.<sup>7</sup> Setting a firm, fixed date allows all commenters and the Commission to easily discern what entities would be potential applicants for this window should it adopt it. Furthermore, applicants in this window would be limited to seeking licenses only in areas where they have a local presence. The Commission seeks comment on these conditions. In particular, what adjustments to these conditions, if any, would be appropriate to ensure that the goals of such a window would be met?

42. The Commission next seeks comment on whether licenses granted for white spaces in such a local priority window should be at the county level or on a census-tract-by-census-tract basis. Commenters should discuss why a particular geographic area size would be appropriate taking into account all relevant information, including border interference coordination needs, propagation characteristics of the band,

and the services that will be offered. Since a number of school districts are based on county boundaries, would allowing county-based licenses allow county-based school districts to better provide services to the students within their districts, and in many cases, to provide services to those students at home, as well as on school premises? Commenters should discuss the costs and benefits of any advocated approach and support their position with quantitative and qualitative data.

43. The Commission also proposes that, if it were to adopt such a local priority filing window, it would not limit the number of channels that a new educational entity could acquire. Given the state of wireless technologies (including the use of progressively wider channels), the Commission believes that allowing access to contiguous spectrum on any number of available channels would more efficiently accommodate varying business models and spectrum needs for wireless broadband. The Commission seeks comment on this proposal.

44. *Local Priority Filing Process.* The Commission seeks comment on the appropriate time frame for any new local priority filing windows. How long should the Commission keep this window open, and how much notice should be given to applicants before the filing window opens? For example, should each such filing window last 30 days with at least 90 days' notice to potential applicants of the licenses available? The Commission asks entities that are interested in participating in the application window and obtaining 2.5 GHz licenses to indicate their interests and the difficulties that they may face to help us evaluate any possible technical and process issues that may arise in implementing one or more new local priority filing windows for applicants and processing such applications. Given technical limitations of the Universal Licensing System (ULS), the Commission notes that it may not be able to accept applications for all available EBS licenses in one general filing window. If that is the case, and the Commission divides the available licenses among multiple filing windows, how should such division be implemented: by region; by population, with the most populous States first or last; alphabetically; or by some other method? The Commission seeks comment on these and related issues.

45. *Resolving Mutually Exclusive Applications.* The Act requires that, if the Commission accepts mutually exclusive applications for initial spectrum licenses, the Commission

“shall grant the license . . . through a system of competitive bidding.” The Commission assigns licenses for commercial and private internal use through competitive bidding in order to place the licenses in the hands of the parties that value them most highly and that are able to use them most effectively. If the Commission decides to create one or more local priority filing windows, as discussed here, it would result in relatively few mutually exclusive applications, but such a result is not precluded. Therefore, should the Commission receive mutually exclusive applications, it must use competitive bidding to assign initial licenses subject to mutually exclusive applications. The Commission seeks comment on limiting such competitive bidding to the mutually exclusive applicants in that particular filing window, however. In addition, the Commission proposes to employ the part 1 rules governing competitive bidding design, unjust enrichment, application and payment procedures, reporting requirements, and the prohibition on certain communications between auction applicants. The Commission does not propose to adopt designated entity provisions. Under this proposal, such rules would be subject to any further modifications that the Commission may adopt for its part 1 general competitive bidding rules in the future. The Commission seeks comment on this proposal.

46. The Commission also seeks comment on whether to allow a settlement window for the filers to resolve any mutual exclusivity before the Commission accept any application for a 2.5 GHz license. The Commission also seeks comment on any alternative “engineering solutions, negotiation, threshold qualifications, service regulations, and other means”<sup>8</sup> of avoiding mutually exclusive applications for new licenses that might further the public interest and comply with the Act.

47. *Holding Periods for Licenses Acquired through a Local Priority Filing Window.* The Commission seeks comment on whether to impose a special holding period on any license acquired through a local priority filing window, if any. Although the Commission generally seeks to facilitate the free transfer of licenses among parties, granting certain entities local priority filing windows is premised on the idea that such entities are uniquely qualified to hold spectrum licenses and ensures that the licenses are put to their highest and best use—something that

<sup>7</sup> As before, the Commission seeks comment on whether holders of special temporary authority (an STA) who are not full-fledged licensees should qualify for such a window.

<sup>8</sup> 47 U.S.C. 309(j)(6)(E).

could not occur if such an entity quickly flipped that license to another, nonqualifying entity. Should the Commission expect that these licenses are likely to be used by the licensee, or that they ultimately will be leased or sold to others who are not eligible for the priority preference? Should the Commission implement a holding period that deters the lease or sale of spectrum to ineligible entities? What factors should the Commission consider in establishing a holding period? What is the most appropriate length for a holding period so as to alleviate concerns involving any potential for speculative behavior or acquisition of 2.5 GHz licenses by entities that do not have a *bona fide* interest in providing service? Would a three, five, or seven-year or more holding period be most appropriate for these circumstances? In determining the appropriate length of holding period, should the Commission consider the chances for and mitigate the potential unjust enrichment by those receiving a priority preference? Are there additional steps that should be taken to ensure that entities are not unjustly enriched? Should the Commission require the licensee to demonstrate completion of certain buildout requirements before allowing a transfer of control? Should the Commission prohibit an EBS licensee that is granted a license during one of the local priority windows proposed herein from leasing 100 percent or some other percentage of their capacity to a commercial entity during the holding period? The Commission seeks comment on these issues.

48. For EBS licenses granted via the local priority windows proposed above, the Commission proposes to require that licensees must reserve a minimum of 20 percent of the capacity of their channels for educational uses that “further the educational mission of accredited public and private schools” consistent with paragraphs (b) and (c) of § 27.1203 of the Commission’s rules and may not enter into spectrum leasing arrangements involving this reserved capacity. For EBS licensees that choose to provide a broadcast-type service, the Commission proposes to require such licensees to offer 20 hours per channel, per week of educational programming. The Commission seeks comment on these proposals.

## 2. Licensing White Spaces

49. The Commission proposes, after any new licenses have been assigned through one or more local priority filing windows should the Commission choose to implement that approach, that

any remaining 2.5 GHz spectrum<sup>9</sup> be made available for commercial use via competitive bidding. The Commission proposes that it would conduct an auction for licenses of EBS spectrum in conformity with the general competitive bidding rules set forth in part 1, subpart Q, of the Commission’s rules. As proposed above for mutually exclusive applications filed in the three EBS filing windows, the Commission proposes to employ the part 1 rules governing competitive bidding design, unjust enrichment, application and payment procedures, reporting requirements, and the prohibition on certain communications between auction applicants. The Commission also proposes not to apply designated entity preferences in this auction. The Commission seeks comment on this proposal.

50. The Commission seeks comment on the appropriate geographic size of new 2.5 GHz white space licenses (*e.g.*, county, census tract, or something else) and the size of the channel blocks (*e.g.*, existing channels or the entire available band). Commenters should discuss the costs and benefits of adopting their proposed geographic area size and channel block size and why such area and channel block sizes would serve the public interest taking into account all the characteristics of this band.

51. Consistent with our longstanding approach, the Commission would initiate a public notice process to solicit public input on certain details of auction design and the auction procedures. This public notice process would address auction-specific matters such as the competitive bidding design and mechanisms, minimum opening bids and/or reserve prices, caps on bidding credits, and payment procedures. In advance of the auction, another public notice would announce the auction procedures and provide detailed instructions for potential auction participants. The Commission also seeks comment on whether any of our part 1 rules should be modified for an auction of licenses in these frequency bands.

## 3. Requirements for New 2.5 GHz Licenses

52. The current performance requirements for licensees in the 2.5

<sup>9</sup> In the *BRS/EBS Second FNPRM*, the Commission sought comment on a variety of issues related to licensing EBS spectrum in the Gulf of Mexico. The Commission need not address whether to eliminate restrictions on EBS spectrum in the Gulf of Mexico because, as explained herein, the Commission proposes to eliminate restrictions on all remaining “white space” EBS spectrum and make it available for commercial use via competitive bidding.

GHz band were set forth in 2006, as part of the ongoing efforts to transition the band to the new band plan established in 2004. The *2006 BRS/EBS Second Report and Order* established a substantial service regime for BRS and EBS licensees and required licensees to demonstrate compliance by May 1, 2011. The *2006 BRS/EBS Second Report and Order* also established specific safe harbors, including 30 percent population coverage for mobile or point-to-multipoint use, or six permanent links per million for fixed point-to-point services. The *2006 BRS/EBS Second Report and Order* also established an educational safe harbor for EBS licensees, consisting of 20 hours of educational use per channel, per week. In 2010, the Commission established a new requirement for new BRS licenses issued after November 6, 2009: The licensee must make a showing of substantial service within four years from the date of issue of the license. The Commission seeks comment on how effective these performance requirements have been.

53. Last year, the Commission adopted a unified regulatory framework for the Wireless Radio Services (WRS) that replaced the existing patchwork of service-specific rules regarding renewal, comparative renewal, continuity of service, and partitioning and disaggregation, with clear, consistent rules of the road for WRS licensees. The Commission included BRS in the new WRS framework, but excluded EBS from the WRS framework on the ground that “this service presents unique issues that are under consideration in” this present proceeding.

54. *Performance Requirements for New 2.5 GHz Licenses.* The Commission proposes more robust performance requirements for any new 2.5 GHz licenses granted through a local priority filing window or a system of competitive bidding. For mobile and fixed point-to-multipoint services, the Commission proposes an interim benchmark of 50 percent population coverage and a final benchmark of 80 percent population coverage. For fixed point-to-point services, the Commission proposes an interim benchmark of 20 point-to-point links per million persons (one link per 50,000 persons) in a license area, and a final benchmark of 40 point-to-point links per million persons (one link per 25,000 persons) in a licensed area. These benchmarks are slightly higher than those for the AWS-3 and WCS bands (which have similar propagation characteristics) given the maturity of technologies already developed and deployed in the 2.5 GHz band. For educational broadcast



services, the Commission seeks comment on an interim benchmark of 50 percent population coverage and a final benchmark of 80 percent population coverage. The Commission seeks comment on these performance benchmarks and on any other requirements that may be more appropriate for this band. Are there considerations specific to this band that would warrant a different approach? Are there new technological developments, or issues specific to the 2.5 GHz band, that render a usage-based approach or any other approach suitable here? When should the interim benchmark showing be required? What penalty should apply to licensees that do not meet it? In addition, because the Commission seeks comment on whether to adopt a licensing framework based on census tracts, the Commission also seeks comment on how such a framework would affect performance requirements. Is there some other method of evaluating meaningful service, beyond traditional metrics, that might be more appropriate considering the size of license areas? The Commission also seeks comment on whether there are other more appropriate construction requirements for educational services.

55. *Renewal Standards.* The Commission also proposes to bring any new 2.5 GHz licenses granted through a local priority filing window or a system of competitive bidding into the unified regulatory renewal framework for WRS. The Commission believes that updating the renewal standards in this manner will encourage rapid deployment of next generation wireless services, including 5G. The Commission also seeks comment on bringing existing EBS licensees, once their licenses have been rationalized as discussed earlier, into the WRS framework for license renewal. What are the costs and benefits of each approach?

#### C. *Cleaning Up the 2.5 GHz Rules*

56. The process for transitioning BRS and EBS licensees to the new band plan was completed in 2011. While a few Multichannel Video Programming Distributors have received waivers to opt out of the transition so that they can continue providing service, all other licensees have transitioned to the new band plan. It therefore appears that the transition rules are no longer necessary.<sup>10</sup> The Commission believes it

<sup>10</sup> Should an MVPD operator decide that it wishes to discontinue video service and transition to the new band plan, it can follow the process established by the Wireless Telecommunications Bureau in *Antilles Wireless, LLC d/b/a USA Digital*,

is in the public interest to eliminate regulations that are out of date and no longer necessary. The Commission therefore proposes to eliminate the BRS/EBS transition rules.

57. The Commission also proposes to make various non-substantive, clarifying amendments to § 27.1206. The proposed changes are contained in the Proposed Rules. The changes are designed to make the rules easier to understand without changing the substantive requirements for BRS. The Commission seeks comment on these proposed changes.

#### D. *Additional Approaches for Transforming the 2.5 GHz Band*

58. The Commission seeks comment on other approaches to rationalizing and opening up the 2.5 GHz band for more productive and intensive use. Generally, are there better ways to restructure the 2.5 GHz band that will ensure that it is put to its highest and best use? In particular, the Commission seeks comment on other licensing and auction ideas and alternatives to the local priority filing window approach. Commenters should provide information about the costs and benefits of any approach suggested.

59. For instance, should the Commission, regardless of the scope of incumbent operations, create new geographic area licenses? If so, what types of geographic area licenses should the FCC create? Should the Commission license the spectrum based on census tracts or counties or some other size? Commenters should discuss whether their view of the appropriate geographic area size changes if the Commission is considering licenses that encompass more than the white spaces previously discussed, and if so why. Additionally, what channel size or sizes should the Commission use in licensing this spectrum?

60. If the FCC were to adopt this approach, how would the Commission account for reasonable investment-backed expectations and incumbent operations? Would a different approach than those considered in section III.A. above be preferable, and if so why? For example, should the Commission convert incumbent licenses into new, flexible use spectrum licenses that would be subject to its secondary market rules? If so, how? Should our approach to incumbent licensees depend on or consider the existing and/or historic use of the spectrum by those incumbent licensees, including, for instance, the construction of facilities or

*et al.*, Order on Reconsideration, 25 FCC Rcd 8052, 8058, paras. 13–14 (WTB 2010).

degree to which the spectrum has consistently been put to use?

61. Should the Commission consider moving directly to auction for this spectrum, rather than open priority filing windows for certain entities? In section III.B.2, the Commission seeks comment on auctioning the white spaces, but, instead, should the Commission consider other auction options, such as an incentive auction of this spectrum in order to provide incentives for incumbents to make underutilized spectrum available for commercial use? In particular, should the Commission rely on § 6402 of the Spectrum Act, now codified at 47 U.S.C. 309(j)(8)(G) (or some other source of authority) to encourage incumbent licensees to relinquish voluntarily some or all of their spectrum usage rights to permit the assignment of new initial licenses subject to flexible-use service rules? Are there other means of assigning licenses and promoting more efficient uses that the Commission should consider, such as an overlay auction<sup>11</sup> or other auction mechanisms? The Commission seeks comment on the implications of moving directly to auction.

62. Regardless of the particular approach the Commission takes to facilitate more intensive use of the 2.5 GHz spectrum, should the Commission allow all entities that are interested in using this spectrum the same opportunity to acquire licenses in this band? In other words, should the Commission not adopt local priority filing windows or otherwise grant preferential treatment to potential licensees based on their identity or other criteria?

#### IV. *Initial Regulatory Flexibility Analysis*

63. 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 identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *NPRM*. The Commission will send a copy of this *NPRM*, including this IRFA,

<sup>11</sup> In an overlay auction, the auction winner acquires spectrum rights “subject to the exclusion of overlapping, co-channel incumbent” licensees. Typically, if an incumbent license cancels or is forfeited, the overlay licensee automatically acquires the right to operate in the area formerly covered by the incumbent license.

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**.

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

64. In the *NPRM*, the Commission take steps to permit more flexible use of the 2496–2690 MHz (2.5 GHz) band by current EBS licensees and to provide new opportunities for EBS eligible entities, Tribal Nations, and commercial entities to obtain unused 2.5 GHz spectrum to facilitate improved access to next generation wireless broadband, including 5G, for both educational and commercial uses. As mentioned in the *NPRM*, roughly half of EBS spectrum currently is unassigned, while the other half is assigned in geographic areas of various sizes and shapes and is subject to unique use and transfer restrictions. The irregularity in the current geographic service areas, combined in some cases with outdated regulatory requirements has impeded the efficient deployment of services, such as mobile broadband, in this spectrum band. Consistent with the Commission's goal of making additional spectrum available for flexible use, and to promote use of EBS frequencies that have been unassigned for far too long, the Commission proposes and seeks comment on a number of steps to encourage and facilitate more efficient use of the 2.5 GHz band. Additionally, since the process for transitioning BRS and EBS licensees to the new band plan was completed in 2011, the Commission proposes to eliminate the BRS/EBS transition rules. The Commission believes it is in the public interest to eliminate these regulations that are out of date and no longer necessary.

*B. B. Legal Basis*

65. The proposed actions are authorized pursuant to Sections 1, 2, 3, 4(i), 7, 201, 301, 302, 303, 304, 307, 308, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 157, 201, 301, 302, 303, 304, 307, 308, 309, 310 and Section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 1302.

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

66. 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 and policies, 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.

67. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9 percent of all businesses in the United States which translates to 28.8 million businesses.

68. Next, the type of small entity described as 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 August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

69. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2012 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37,132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000. Based on this data the Commission estimates that at least

49,316 local government jurisdictions fall in the category of “small governmental jurisdictions.”

70. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1,000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

71. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and “wireless cable,” transmit video programming to subscribers and provide two-way high-speed data operations using the microwave frequencies of the BRS and EBS (previously referred to as the Instructional Television Fixed Service (ITFS)).

72. *BRS*—In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, based on our review of licensing records, the Commission estimates that of the 61-small business BRS auction winners, based on our review of licensing records, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 86 incumbent BRS licensees that are considered small entities (18 incumbent BRS licensees do not meet the small business size standard). After adding the

number of small business auction licensees to the number of incumbent licensees not already counted, there are currently approximately 133 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules.

73. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

74. *EBS—Educational Broadband Service* has been included within the broad economic census category and SBA size standard for Wired Telecommunications Carriers since 2007. Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." The SBA's small business size standard for this category is all such firms having 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

75. In addition to Census data, the Commission's Universal Licensing System indicates that as of March 2018 there are 1,300 licensees holding over 2,190 active EBS licenses. The Commission estimates that of these 2,190 licenses, the majority are held by non-profit educational institutions and

school districts, which are by statute defined as small businesses.

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

76. The Commission expects the rules proposed in the *NPRM* will impose new or additional reporting or recordkeeping and/or other compliance obligations on small entities as well as other EBS licensees and EBS eligible entities. The Commission discusses its proposals and the obligations that would result below, and seeks comment on these matters, including cost and benefit analyses supported by quantitative and qualitative data from the parties in the proceeding.

77. *Rationalizing the GSAs of incumbent EBS Licensees.* The Commission proposes to rationalize the GSAs of incumbent EBS licensees, except grandfathered licensees in the E and F Channel groups, to a defined geographic area, namely, the sum of census tracts that are covered by, or that intersect with, a licensee's existing GSA. The Commission proposes that, in this rationalization process, each current EBS GSA will be converted to a single license made up of all the census tracts it covers, rather than converted to a collection of separate census tract-sized licenses. The Commission also proposes that EBS licensees with a local presence in a county be given the opportunity to apply to expand their GSA to the boundaries of a county where they have a local presence. Licensees who take advantage of that option would be subject to new performance requirements. As an alternative to basing GSAs on census tracts, the Commission seeks comment on whether it should expand existing GSAs to include the county (or counties) covered by or that intersect the GSA.

78. *Additional Flexibility for EBS Licenses.* The Commission proposes to provide EBS licensees with the flexibility to assign or transfer control of their licenses to entities that are not EBS-eligible. To provide additional flexibility and to facilitate the most efficient use of the EBS spectrum through a market-based mechanism, the Commission proposes to allow an incumbent EBS licensee, in addition to leasing a portion of its license, to assign or transfer control of its entire license to entities that do not meet the eligibility criteria contained in § 27.1201 of the Commission's rules. If the incumbent EBS licensee were to choose to assign or transfer its license, the new licensee would not be required to comply with the educational use requirements in § 27.1203 of the Commission's rules.

The Commission seeks comment on whether licensees whose license were granted via waiver, should be given additional flexibility to lease their spectrum or to transfer or assign their licenses freely. Given this flexibility to transfer or assign an entire EBS license to non-eligible entities, free of educational use requirements, the Commission also proposes to eliminate the educational use requirements in § 27.1203 for all EBS licensees. The Commission also proposes to eliminate restrictions on EBS lease terms on a going forward basis and ask whether additional revisions are necessary to fully rationalize our rules for the transferability, leasing and use of EBS spectrum.

79. *Opportunities to Acquire New 2.5 GHz Licenses.* The Commission proposes to auction off licenses for unassigned portions of the 2.5 GHz band and seek comment on whether it should first open up to three new local priority filing windows to give existing licensees, Tribal Nations and educational entities an opportunity to access 2.5 GHz spectrum to serve their local communities. The Commission also proposes build-out requirements for these new licenses to ensure that all Americans have the opportunity to benefit from the 2.5 GHz band.

80. *New Local Priority Filing Window—Local Presence.* The Commission proposes to require an applicant to demonstrate as part of the application process that it has a local presence, and that an EBS-eligible entity should be considered to have a "local presence" when it is physically located within the license area where service is proposed. The Commission seeks comment on what documentation applicants must provide to demonstrate that they have a local presence.

81. *Local Priority Filing Window 1: Existing Licensees.* The Commission seeks comment on opening a window that would permit existing 2.5 GHz licensees to expand their service to the county border if they were able to demonstrate that they had a local presence in that county, and if they covered at least 25 percent of census tracts in that county. Such a window would allow existing licensees to quickly put white space to use, but it would also preclude new entrants.

82. *Local Priority Filing Window 2: Tribal Nations.* The Commission seeks comment on opening a new filing priority filing window for Tribal Nations. The Commission proposes to limit participation to federally-recognized American Indian Tribes and Alaska Native Villages that also have a local presence. The Commission also

proposes not to limit the number of channels that a Tribal Nations could apply for as EBS-eligible entities for the purposes of participating in the Native National entity filing window. The Commission asks commenters to propose other ways by which it could encourage the use of EBS spectrum on Tribal Lands and in Native communities.

83. *Local Priority Filing Window 3: New Educational Entities.* The Commission seeks comment on opening a new local priority filing window for educational entities that do not hold any 2.5 GHz spectrum. The Commission would propose to limit participation in such a window to accredited institutions as well as governmental organizations engaged in the formal education of enrolled students who are not 2.5 GHz licensees as of the adoption of this NPRM and only in areas in which they have a local presence. The Commission seeks comment on whether to assign new EBS licenses on a county-wide or census tract basis.

84. *Local Priority Filing Process.* The Commission seeks comment on the appropriate time frame for any of the new local priority filing windows, how long the windows should be open, and how much notice to give. The Commission asks entities that are interested in participating in the application window and obtaining 2.5 GHz licenses to indicate their interests and the difficulties that they may face to help us evaluate any possible technical and process issues that may arise in implementing one or more new local priority filing windows for applicants and processing such applications.

85. *Resolving Mutually Exclusive Applications.* While the Commission does not anticipate many mutually exclusive applications based on the local priority filing windows, it notes that the Communications Act requires that assign initial licenses subject to mutually exclusive applications through competitive bidding. The Commission proposes to limit such competitive bidding to the mutually exclusive applications filed during a particular window, and ask for comment on that. The Commission asks for comment on whether the Commission should permit a settlement window to resolve such mutual exclusivity. The Commission also proposes to employ the part 1 rules governing competitive bidding design, unjust enrichment, application and payment procedures, reporting requirements, and the prohibition on certain communications between auction applicants, and seeks comment on this proposal.

86. *Holding Periods for Licenses Acquired Through a Local Priority Filing Window.* The Commission seeks comment on whether to impose a special holding period, and for how long, on any license acquired through a local priority filing window in order to ensure that licenses are not immediately flipped to a nonqualifying entity. The Commission asks whether a three, five, or seven-year holding period would be most appropriate for these circumstances. The Commission also asks whether licensees should be required to meet certain buildout requirements before allowing a transfer.

87. *Licensing White Spaces.* The Commission proposes that after any new licenses have been assigned through one or more local priority filing windows, any remaining 2.5 GHz spectrum would be made available for commercial use via competitive bidding using our general part 1 competitive bidding rules. The Commission seeks comment on this proposal and on the appropriate size of such licenses and the size of channel blocks. The Commission also proposes to apply designated entity preferences in this auction, and to eliminate the EBS eligibility criteria contained in § 27.1201 of the rules with respect to unassigned spectrum and ask for comment on these proposals.

88. *Requirements for New 2.5 GHz Licenses.* The Commission proposes more robust construction requirements for new 2.5 GHz licenses granted based on the proposed local priority filing window in the NPRM or a system of competitive bidding. For mobile and fixed point-to-multipoint services, the Commission proposes an interim benchmark of 50 percent population coverage and a final benchmark of 80 percent population coverage. For fixed point-to-point services, the Commission proposes an interim benchmark of 20 point-to-point links per million persons (one link per 50,000 persons) in a license area, and 40 point-to-point links per million persons (one link per 25,000 persons) in a licensed area. For educational broadcast services that provide least 20 hours of educational use per channel per week, the Commission seeks comment on an interim benchmark of 50 percent population coverage and a final benchmark of 80 percent population coverage. The Commission also proposes to bring any new 2.5 GHz licenses granted through a local priority filing window or a system of competitive bidding into the unified regulatory renewal framework for WRS. The Commission seeks comment on bringing existing EBS licensees into the WRS framework for license renewal

once their licenses have been rationalized.

89. *Cleaning Up the 2.5 GHz Rules.* The Commission proposes to eliminate the BRS/EBS transition rules since the process for transitioning BRS and EBS licensees to the new band plan was completed in 2011 and the rules no longer appear necessary. The Commission also proposes to make various non-substantive, clarifying amendments to § 27.1206 to make the rules easier to understand without changing the substantive requirements for BRS. The proposed changes are contained in the Proposed Rules of the NRPM, and the Commission seeks comment on these proposed changes.

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

90. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use or performance rather than design standards; and (4) an exemption from coverage of the rules, or any part thereof, for such small entities.”

91. The Commission does not believe that its proposed changes will have a significant economic impact on small entities however, to get a better understanding costs and benefits associated with proposals and any alternatives raised in this proceeding as mentioned above in the previous section, the Commission has requested that commenters discuss the costs and benefits supported by quantitative and qualitative data of any approach advocated. The proposed changes expanding the use of the 2.5 GHz band will benefit small entities as well as entities of other sizes by reducing unnecessary regulatory burdens on licensees, promoting greater spectrum efficiency, and facilitating the full use of EBS spectrum to provide advanced mobile broadband services, particularly in rural areas where this spectrum sits idle today. Moreover, the proposed reforms will permit more flexible use of this spectrum by small and other sized entities that currently hold EBS licenses and will provide new opportunities for EBS eligible entities, Tribal Nations, and

commercial entities to obtain unused 2.5 GHz spectrum to facilitate improved access to next generation wireless broadband, including 5G, for both educational and commercial uses.

92. More specifically, the Commission's proposed rationalization process for incumbent EBS licensees that would occur automatically allowing incumbent licensees to avoid a requirement to file applications with the Commission or to otherwise notify the Commission to effectuate this change would minimize some costs and/or administrative burdens on small entities associated with the rule, if adopted. Small entities should also benefit from removal of the filing freeze for new EBS licenses and the requirement that EBS eligible entities applying for a new license must have a local presence in the areas in which they wish to provide service, which will provide them greater opportunity to obtain EBS spectrum to meet the needs of their communities. In addition, small entities should benefit from the increased flexibility of our proposal to allow EBS licensees with the flexibility to assign or transfer control of their licenses to entities that are not EBS-eligible. The Commission believes that, at this point in time, licensees are in the best position to determine how to use their licenses, or, alternatively, whether to transfer their licenses to a third party in the secondary market.

93. For existing EBS licenses the Commission's action declining to issue proposals creating new performance or renewal requirements will spare small entities and other existing EBS licensees the costs of new compliance requirements in these areas. With respect to performance requirements adopted for all new EBS licenses, the Commission believes such requirements are necessary to ensure that spectrum is being put into use and has proposed a variety of metrics to provide small entities as well as other licensees with a variety of means by which they may demonstrate compliance. The Commission anticipates that updating the performance requirements in this manner will encourage rapid deployment of next generation wireless services, including 5G, which will benefit small entities and the industry as a whole.

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

94. None.

V. Ordering Clauses

95. It is ordered, pursuant to the authority found in Sections 1, 2, 3, 4(i),

7, 201, 301, 302, 303, 304, 307, 308, 309, and 310 of the Communications Act of 1934, 47 U.S.C. 151, 152, 153, 154(i), 157, 201, 301, 302, 303, 304, 307, 308, 309, 310, and Section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 1302, and Section 1.411 of the Commission's Rules, 47 CFR 1.411, that this Notice of Proposed Rulemaking is hereby adopted.

96. It is further ordered that notice is hereby given of the proposed regulatory changes described in this Notice of Proposed Rulemaking, and that comment is sought on these proposals.

97. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 1 and 27

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

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1 and 27 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452, and 1455, unless otherwise noted.

■ 2. Amend § 1.949 by revising paragraph (c) to read as follows:

§ 1.949 Application for renewal of authorization.

\* \* \* \* \*

(c) Implementation. Covered Site-based Licenses, except Common Carrier Fixed Point-to-Point Microwave Service (part 101, subpart I of this chapter), and Covered Geographic Licenses in the 600 MHz Service (part 27, subpart N); 700 MHz Commercial Services (part 27, subpart F); Advanced Wireless Services (part 27, subpart L) (AWS-3 (1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz) and AWS-4 (2000-2020 MHz and 2180-2200 MHz) only); and H Block Service (part 27, subpart K) must comply with paragraphs (d) through (h)

of this section. Broadband Radio Service and Educational Broadband Service licenses (part 27, subpart M) initially issued after [effective date of final rule] must comply with paragraphs (d) through (h) of this section. All other Covered Geographic Licenses must comply with paragraphs (d) through (h) of this section beginning on January 1, 2023. Common Carrier Fixed Point-to-Point Microwave Service (part 101, subpart I) must comply with paragraphs (d) through (h) of this section beginning on October 1, 2018.

\* \* \* \* \*

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

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

Authority: 47 U.S.C. 154, 301, 302a, 303, 307, 309, 332, 336, 337, 1403, 1404, 1451, and 1452, unless otherwise noted.

■ 4. Amend § 27.14 by revising paragraph (o) to read as follows:

§ 27.14 Construction Requirements.

\* \* \* \* \*

(o)(1) All BRS and EBS licensees issued after [effective date of final rule], must demonstrate compliance with the performance requirements described in this paragraph. All equipment used to demonstrate compliance must be in use and actually providing service, either for internal use or to unaffiliated customers, as of the interim deadline or the end of the license term, whichever is applicable.

(2) Licensees relying on mobile service must demonstrate reliable signal coverage of 50% of the population of the geographic service area by the interim deadline, and 80% of the population of the geographic service area by the end of the license term.

(3) Licensees relying on fixed service must demonstrate operation of one link for each 50,000 persons in the geographic service area by the interim deadline, and one link for each 25,000 persons in the geographic service area by the end of the license term.

\* \* \* \* \*

§ 27.1201 [Removed and Reserved]

■ 5. Remove and reserve § 27.1201.

■ 6. Revise § 27.1206 to read as follows:

§ 27.1206 Geographic Service Area.

(a) BRS:

(1) For BRS incumbent licenses granted before September 15, 1995, the GSA for a channel is the GSA as created on January 10, 2005.

(2) For BRS BTA authorization holders, the GSA for a channel is the

BTA, subject to the exclusion of overlapping, co-channel incumbent GSAs created on January 10, 2005.

(3) If an incumbent BRS license is cancelled or is forfeited, the GSA area of the incumbent station shall dissolve and the right to operate in that area automatically reverts to the GSA licensee that held the corresponding BTA.

(b) For EBS:

(1) *Incumbent EBS licensees.* (i) The GSA of EBS licenses on the E and F channel groups is defined in § 27.1216. EBS licensees on the E and F channel groups are prohibited from expanding their GSAs.

(ii) For EBS licenses not in the E and F channel groups in effect as of [effective date of final rule], the GSA for a channel consists of all census tracts which are covered by or intersect its GSA existing as of [effective date of final rule].

(2) *New initial EBS licenses.* The GSA for a channel for new initial licenses issued after [effective date of final rule], is the county [census tract] for which the license is issued, subject to the exclusion of overlapping, co-channel incumbent GSAs.

■ 7. Revise § 27.1214 to read as follows:

**§ 27.1214 EBS spectrum leasing arrangements and grandfathered leases.**

(a) All leases of current EBS spectrum entered into prior to January 10, 2005 and in compliance with leasing rules formerly contained in part 74 of this chapter may continue in force and effect, notwithstanding any inconsistency between such leases and the rules applicable to spectrum leasing arrangements set forth in this chapter. Such leases entered into pursuant to the former part 74 rules of this chapter may be renewed and assigned in accordance with the terms of such lease. All spectrum leasing arrangements leases entered into after January 10, 2005, pursuant to the rules set forth in part 1 and part 27 of this chapter, must comply with the rules in those parts.

(b) For leasing arrangements entered into between July 19, 2006 and [effective date of final rule], the maximum permissible term of an EBS spectrum leasing arrangement (including the initial term and all renewal terms that commence automatically or at the sole option of the lessee) shall be 30 years. Any spectrum leasing arrangement in excess of 15 years that is entered into on or after July 19, 2006 and before [effective date of final rule] must include terms which

provide the EBS licensee on the 15th year and every 5 years thereafter, with an opportunity to review its educational use requirements in light of changes in educational needs, technology, and other relevant factors and to obtain access to such additional services, capacity, support, and/or equipment as the parties shall agree upon in the spectrum leasing arrangement to advance the EBS licensee's educational mission.

■ 8. Revise § 27.1217 to read as follows:

**§ 27.1217 Competitive bidding procedures for the Broadband Radio Service and the Educational Broadband Service.**

Mutually exclusive initial applications for BRS and EBS licenses are subject to competitive bidding. The designated entity provisions in § 27.1218 shall not apply to auctions held after [effective date of final rule]. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

**§§ 27.1230 through 27.1239 [Removed]**

■ 9. Remove §§ 27.1230 through 27.1239.

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