

individual to provide additional information, and honor requests to amend or supplement a request for a subpoena.

(d) *Form and issuance.* Every subpoena shall cite 39 U.S.C. 3016 as the authority under which it is issued, and shall command each person to whom it is directed to produce specified records at a time and place therein specified. The General Counsel shall sign the subpoena and enter the name of the individual or entity to whom it is directed.

#### § 913.2 Service.

(a) *Service within the United States.* A subpoena issued under this section may be served by a person designated under 18 U.S.C. 3061 at any place within the territorial jurisdiction of any court of the United States.

(b) *Foreign service.* Any such subpoena may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States, in such manner as the Federal Rules of Civil Procedure describe for service in a foreign country. To the extent that the courts of the United States may assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such court would have if such person were personally within the jurisdiction of such court.

(c) *Service on business persons.* Service of any such subpoena may be made upon a partnership, corporation, association, or other legal entity by—

(1) Delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(2) Delivering a duly executed copy thereof to the principal office or place of business of the partnership, corporation, association, or entity; or

(3) Depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such partnership, corporation, association, or entity at its principal office or place of business.

(d) *Service on natural persons.* Service of any subpoena may be made upon any natural person by—

(1) Delivering a duly executed copy to the person to be served; or

(2) Depositing such copy in the United States mails, by registered or certified mail, return receipt requested,

duly addressed to such person at his residence or principal office or place of business.

(e) *Verified return.* A verified return by the individual serving any such subpoena setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such subpoena.

#### § 913.3 Enforcement.

(a) *In general.* Whenever any person, partnership, corporation, association, or entity fails to comply with any subpoena duly served upon him, the General Counsel may request that the Attorney General seek enforcement of the subpoena in the district court of the United States for any judicial district in which such person resides, is found, or transacts business (or in the case of a person outside the territorial jurisdiction of any district court, the district court for the District of Columbia), and serve upon such person a petition for an order of such court for the enforcement of this part.

(b) *Jurisdiction.* Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section. Any final order entered shall be subject to appeal under 28 U.S.C. 1291. Any disobedience of any final order entered under this section by any court may be punished as contempt.

#### § 913.4 Disclosure.

Any documentary material provided pursuant to any subpoena issued under this section shall be exempt from disclosure under 5 U.S.C. 552.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00-6092 Filed 3-15-00; 8:45 am]

BILLING CODE 7710-12-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 2, 26, and 27

[WT Docket No. 00-32; FCC 00-63]

### Transfer of 4.9 GHz Band From Federal Government Use

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** This document proposes to allocate and establish licensing and service rules for the 4940-4990 MHz band that has recently been transferred from Federal Government to private sector use as substitute spectrum for the 4635-4685 MHz band reclaimed for Federal Government use. This document also grants in part a Petition for Rulemaking filed by Global Frontiers, Inc. (Global) to revise, among other requests, the Commission's rules relating to this band. The action taken in this document is necessary to comply with Congressional mandate to transfer spectrum from the Federal government to the private sector, to permit and encourage the introduction of new services and the enhancement of existing services.

**DATES:** Submit comments on or before April 26, 2000; submit reply comments on or before May 17, 2000. Written comments by the public on the proposed information collections are due April 26, 2000. Written comments must be submitted by the Office Management and Budget (OMB) on the proposed information collections on or before May 15, 2000.

**ADDRESSES:** Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to [jboley@fcc.gov](mailto:jboley@fcc.gov), and to Ed Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW, Washington, DC 20503 or via the Internet to [Edward.Springer@omb.eop.gov](mailto:Edward.Springer@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** Elias Johnson, 202-418-1310. For additional information concerning the information collections contained in this document, contact Judy Boley at 202-418-0214, or via the Internet at [jboley@fcc.gov](mailto:jboley@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making (NPRM) in WT Docket No. 00-32, FCC 00-63, adopted February 23, 2000, and released February 29, 2000. The complete text of the NPRM and Initial Regulatory Flexibility Analysis is available on the Commission's Internet site, at [www.fcc.gov](http://www.fcc.gov). It is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level,

445 12th Street, SW, Washington, DC, and may be purchased from the Commission's copy contractor, International Transcription Services, Inc., CY-B400, 445 12th Street SW, Washington, DC. Comments may be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>, or by e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov).

### Synopsis of the NPRM

1. In this NPRM, the Commission proposes to allocate and establish licensing and service rules for the 4940–4990 MHz (4.9GHz) band that has recently been transferred from Federal Government to private sector use as a substitute spectrum for the 4635–4685 MHz band reclaimed for Federal Government use. The Commission proposes to allocate the 4.9 GHz band for fixed and mobile services, except aeronautical mobile service, on a primary basis and seeks comment on the geographic area and spectrum blocks that should be used to license this spectrum. In addition, the Commission also proposes to license the 4.9 GHz band under part 27 of the Commission's Rules, except to the extent the Commission, in this NPRM, proposes to modify those rules to reflect the particular characteristics of this spectrum and the services that will be permitted to operate in this band. The Commission proposes to delete part 26 of the Rules (regarding General Wireless Communications Service) because it applies only to the 4660–4685 MHz band. The Commission also proposes that initial licenses for the 4.9 GHz band be acquired through competitive bidding under part I of the Commission's Rules. Furthermore, in a few instances, the Commission proposes to codify and conform certain rules for the 2.3 GHz band to provide for consistent regulation of part 27 services. Finally, the Commission grants in part a Petition for Rulemaking filed by Global Frontiers, Inc. (Global) to revise, among other requests, the Commission's rules relating to this band.

2. Briefly, the Omnibus Budget Reconciliation Act of 1993 (OBRA, Public Law 103–66 107 Stat. 312) required that the Secretary of Commerce identify at least 200 megahertz of spectrum then allocated for use by Federal Government agencies to be transferred to private sector use. The Commission, in the GWCS First Report and Order (60 FR 13071, March 10, 1995) among other things allocated the 4660–4685 MHz band on a primary basis to fixed and mobile services and proposed to designate this band for the new GWCS service. The subsequent Second GWCS Report and Order (60 FR

40712, August 9, 1995) established GWCS and adopted Part 26 of the Commission's Rules setting out licensing and operating rules for the service in the 4660–4685 MHz band. However, due to an evident lack of interest in this spectrum and certain concerns expressed by the United States Navy regarding the effect that transferring this spectrum to commercial use could have on its Cooperative Engagement Capability (CEC) system, the Department of Commerce, on March 30, 1999, notified the Commission that the Federal Government was reclaiming the 4635–4685 MHz band and identifying, as substitute spectrum, the 4.9 GHz band.

3. Global, in its Petition for Rulemaking (filed on November 24, 1999) requested that the Commission: (1) Designate the 4.9 GHz band for GWCS in lieu of the reclaimed 4660–4685 MHz band; (2) make the service more attractive to applicants that require broadband capability in order to serve the public; (3) speed the process of licensing applicants that are not mutually exclusive; and (4) allow mutually exclusive applicants to consult and negotiate solutions to their mutual exclusivity. Global asked that the Commission make available for GWCS the entire 4.9 GHz band, that the band be broken down into five 10 megahertz wide bands, and apparently that the band be licensed using Economic Areas (EAs). Global also requested that the 15 MHz aggregation limit contained in § 26.101(a) be increased, and that GWCS licensees be able to partition their service territories to entities other than just rural telephone companies. In addition, Global asked that the Commission clarify how applications are to be filed and that the Commission promptly process GWCS applications. Finally, Global requested that the Commission encourage the avoidance of mutual exclusivity through negotiated engineering solutions.

4. The NPRM proposes that licensees in the 4.9 GHz band be authorized to provide any fixed, mobile, or maritime mobile service, but not aeronautical mobile service. The NPRM seeks comment on this proposal. Further, the NPRM tentatively concludes that allocating the 4940–4990 MHz band to fixed and mobile services, except aeronautical mobile service, is consistent with section 303(y)(2) of the Communications Act (Act), 47 U.S.C. 303(y)(2), as amended by the Balanced Budget Act 1997, Public Law 105–33, 111 Stat. 251. The NPRM also invites comment on whether allocating the 4940–4990 MHz band to fixed and mobile services is in the public interest,

and on whether a flexible spectrum allocation in this band would deter investment in communications and systems, or technology development. Further, the NPRM seeks comment regarding the extent to which significant flexibility in service rules may encourage such investments. Finally, the NPRM solicits comment on its tentative finding that the technical rules proposed in the NPRM satisfy the requirements of section 303(y)(2)(C).

5. The NPRM seeks comment on its tentative conclusion that the action taken in the Public Safety Reallocation Order, 63 FR 06669, February 10, 2000, allocating the 764 MHz band on a primary basis to fixed and mobile services, and designating this spectrum solely for public safety use, and in the First Report and Order WT Docket No. 96–86, 63 FR 58645, November 2, 1998, which adopted rules for licensing and operation for public safety in those bands, there is no need to set aside spectrum in the 4.9 GHz band for public safety use.

6. The NPRM next seeks comment on the Commission's proposals that the 4.9 GHz band be governed, in general, by part 27 of the Commission's Rules and that part 26 no longer serves a function and should be deleted from the Commission's Rules.

7. The NPRM does not propose to restrict the types of fixed and mobile services that can be provided in the 4.9 GHz band (other than aeronautical mobile). Consistent with this approach, the Commission notes that licensees may be required to comply with rules contained in other parts of the Commission's Rules. The Commission seeks comment generally on any provisions in existing, service-specific rules that may require specific recognition or adjustment to comport with the supervening application of part 27, as well as any provisions that may be necessary in part 27 to fully describe the scope of covered services and technologies.

8. The NPRM notes that the 4.9 GHz service will be subject to the Universal Licensing System (ULS). All 4.9 GHz licensees filing applications and other filings using FCC forms 601 through 605 or associated schedules must make these filings electronically in accordance with the electronic filing instructions provided by ULS, 47 CFR 1.913(b).

9. The NPRM next proposes that, similar to licensees in other Commission services, applicants in the 4.9 GHz band be allowed to request common carrier and non-common carrier status for authorization in a single license rather than require the

applicant to choose between common carrier and non-carrier services. This would enable 4.9 GHz licensees to provide all allowable services anywhere within its licensed area at any time, consistent with its regulatory status. In this regard, the NPRM proposes that applicants and licensees in the 4.9 GHz band be required to indicate a regulatory status based on any service they choose to provide, but not be required to describe their proposed services. The NPRM also proposes that if licensees change the service or services they offer, such that it would change their regulatory status, they must notify the Commission, within 30 days of the change although such change would not require prior Commission authorization. In addition to making these procedures applicable to the 4.9 GHz band, the NPRM also proposes to codify these procedures for the 2.3 GHz band, and seeks comment on these proposals.

10. The NPRM proposes that there be no additional restrictions on eligibility, other than the foreign ownership restrictions set forth in section 310 of the Commission's Act, and as indicated in this decision. In addition, consistent with Global's request, the NPRM tentatively concludes that licensees in the 4.9 GHz band should be permitted to obtain all of the 4.9 GHz licenses in a given geographic area, and that a spectrum cap is not necessary to prevent a 4.9 GHz licensee from exercising market power. The NPRM seeks comment on these issues.

11. Applicants in the 4.9 GHz band would be subject to section 27.12 of the Act, which implements the foreign ownership and citizenship requirements that restrict the issuance of licenses to certain applicants. An applicant requesting authorization only for non-common carrier services would be subject to section 310(a) but not to the additional prohibitions of section 310(b). An applicant requesting authorization for common carrier services (or for both common carrier and non-common carrier services) would be subject to both sections 310(a) and 310(b). Like common carriers, non-common carriers would be required to file the information whenever there are changes to their foreign ownership information. However, under the Commission's proposed rules, applicants requesting authorization exclusively to provide non-common carrier services would not be disqualified if its citizenship information reflects that it would be disqualified from a common carrier license or required to file a waiver. The NPRM solicits comment on these proposals.

12. The NPRM seeks comment on the appropriate geographic area to use for licensing the 4.9 GHz band. (See paras 41–43 of the full text of the NPRM.) Additionally, the NPRM invites comment on the appropriate size spectrum block or blocks that should be used to license the 4.9 GHz band. Global requests that the spectrum be divided into five 10 megahertz wide spectrum block. Alternatively, the NPRM seeks comment on whether this spectrum should be auctioned in two 25 MHz licenses. The NPRM requests comment on whether larger or smaller blocks would provide more options for services provided by licensees in the band, on whether the spectrum should be auctioned in paired spectrum blocks, on whether the Commission should license unpaired spectrum in the 4.9 GHz band, and on whether the Commission should make changes to its bidding rules to promote bidder flexibility.

13. The NPRM seeks comment on whether to provide for license terms not to exceed 10 years from the date of original issuance and whether to provide a right to a renewal expectancy. (See paras. 48 through 50 of the full NPRM.) Further, the NPRM invites comments on the Commission's tentative conclusion that, in order to claim a renewal expectancy, a 4.9 GHz licensee involved in a comparative renewal proceeding must include at a minimum a showing including: (1) A description of current service in terms of geographic coverage and population served or links installed; (2) an explanation of the licensee's record of expansion, including a timetable for the construction of new base sites or links to meet changes in demand for service; (3) a description of the licensee's investments in its system; and (4) copies of any Commission Orders finding the licensee to have violated the Communications Act or any Commission rule or policy, and a list of any pending proceedings that relate to any matter described by the requirements for the renewal expectancy.

14. On December 20, 1996, the Commission released a Further Notice of Proposed Rulemaking in WT Docket No. 96–148, 62 FR 696, January 6, 1997, proposing, among other actions, to revise the partitioning rules for the band 4660–4685 MHz and to establish disaggregation rules for this band. The proposals contained in that document are superseded by the proposals discussed in the NPRM, and that proceeding is terminated to the extent that it addressed partitioning and disaggregation rules for the band 4660–4685 MHz.

15. The NPRM tentatively concludes, consistent with Global's request, to allow all 4.9 GHz licensees the flexibility to partition their service areas without any restriction, and to disaggregate their spectrum. Section 27.15 of the Commission's Rules permits licensees seeking approval for partitioning and disaggregation arrangements to request authorization from the Commission for partial assignment of a license, and provides that licensees may apply to partition their licensed geographic service areas or disaggregate their licensed spectrum at any time following the grant of their licenses. In the Report and Order adopting the rule, 62 FR 653, January 6, 1997, the Commission decided to permit geographic partitioning of any service area defined by the partitioner and partitionee, to permit spectrum disaggregation without restriction on the amount of spectrum to be disaggregated, and to permit combined partitioning and disaggregation. The NPRM requests comment on the Commission's proposal that licensees in the 4.9 GHz band be eligible to the same extent to partition service areas and disaggregate spectrum, and also on what limits, if any, should be placed on the ability of licensees to partition service areas and disaggregate spectrum.

16. The NPRM also requests comment on its proposal that 4.9 GHz applicants and licensees be required to, in the case of partitioning, file FCC form 603 and list the partitioned service area on a schedule to the application. Further, the NPRM proposes that licensees in the 4.9 GHz band follow § 27.15(c) provisions against unjust enrichment and the remaining provisions governing partitioning and disaggregation in § 27.15 of the Commission's Rules.

17. The NPRM also seeks comment on the Commission's proposal regarding construction requirements for parties to partitioning, disaggregation, or combined partitioning and disaggregation agreements. The NPRM proposes to allow parties to partitioning agreements to choose between two options for satisfying the construction requirements. The first option provides that the partitioner and partitionee would each certify that it would independently satisfy the substantial service requirement for its respective partitioned area. If a licensee fails to meet this requirement during the relevant license term, that licensee's authorization would be subject to cancellation at the end of the license term. Under the second option, the partitioner would certify that it has met or will meet the substantial service requirement for the entire market. If the

partitioner fails to meet this standard during the relevant license term, however, only its license would be subject to cancellation at the end of the license term. The partitioner's license would not be affected by that failure.

18. The NPRM additionally proposes to allow parties to disaggregation agreements to choose between two options for satisfying the construction requirements. Under the first option, the disaggregator and disaggreatee would certify that they each would share responsibility for meeting the substantial service requirement for the geographic service area. If parties choose this option, both parties' performance will be evaluated at the end of the relevant license term and both licenses could be subject to cancellation. The second option would allow the parties to agree that either the disaggregator or the disaggreatee would be responsible for meeting the substantial service requirement for the geographic service area. If parties choose this option, and the party responsible for meeting the construction requirement fails to do so, only the license of the non-performing party would be subject to cancellation.

19. The NPRM proposes construction standards and safe harbor provisions for 4.9 GHz licensees. As mandated by § 27.14(a) of the Commission's Rules, licensees would be required to provide "substantial service" in their service areas within 10 years of being licensed. A failure to meet this requirement would result in forfeiture of the license and the licensee's ineligibility to regain it. As proposed, licensees would be required to submit an acceptable showing to the Commission at the end of the license period demonstrating that they have provided substantial service during the license term or are providing substantial service at the end of the term. In addition, the NPRM proposes the safe harbors that would be applicable to 2.3 GHz licensee, as well as to 4.9 GHz licensees. The first safe harbor proposal states that for a licensee who chooses to offer fixed, point-to-point service, the construction of four permanent links per one million people in its licensed service area during its license term or the license-renewal mark would constitute substantial service. The second safe harbor proposal provides that, for a licensee who chooses to offer mobile services or point-to-point multipoint services, a demonstration of coverage to 20 percent of the population of its licensed service area during its licensed term or at the license-renewal mark would constitute substantial service.

20. Under the proposed approach, the Commission intends to reserve the right to review these construction requirements in the future if complaints are received related to section 309(j)(4)(B) of the Act, or if a reassessment is warranted because spectrum is being warehoused or is otherwise not being used despite demand. The Commission will also reserve the right to impose additional, more stringent construction requirements on licenses in the future in the event that actual anticompetitive or universal service problems develop. The NPRM seeks comment on these proposals.

21. The NPRM seeks comment on its tentative proposal that, for applicants in the 4.9 GHz band, providing common carrier or non-common carrier service, the Commission provide for a five-day period for filing petitions to deny applications, and a seven-day notice period for all auctionable services, as mandated for auctionable services in §§ 1.2108(b) and 1.2108(c) of the Commission's Rules.

22. The NPRM considers general common carrier obligations. The NPRM first invites comment on its proposal that the Commission exercise its authority to forbear from enforcing the same Title II of the Act requirements that the Commission has determined not to apply to CMRS licensees, for 4.9 GHz and 2.3 GHz licensees that provide common carrier fixed services. Title II of the Act imposes a variety of obligations on the operations of common carriers that are not otherwise imposed on wireless communications services. These operational requirements include the filing of tariffs, maintaining of records, liabilities, and discontinuance of service. The 1996 Act provides the Commission with the authority to forbear from Title II requirements. (See 47 U.S.C. 160, as added by the 1996 Act.) The statute requires that, before forbearing from applying any section of Title II, the Commission must find that each of the following applies:

(a) Enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory.

(b) Enforcement of such regulation or provision is not necessary for the protection of consumer; and

(c) Forbearance from applying such provision or regulation is consistent with the public interest.

The NPRM seek comment on the application of these criteria to the 4.9 and 2.3 GHz band.

23. The NPRM seeks comment regarding whether to include an Equal Employment Opportunity (EEO) provision in the Commission's rules applicable to services in the 4.9 GHz band, and if so, which of the Commission's EEO rules should be adopted. The NPRM also seek comment on whether the Commission's EEO rules should be applied to licensees at 2.3 GHz.

24. The NPRM next proposes to apply the technical standards of part 27, including power limits, equipment authorization, radiofrequency safety standards, emission limits, frequency stability, antenna structures and air navigation safety, international coordination and disturbance of AM station antenna patterns, as well as technical standards contained in other sections of the Commission's Rules, to 4.9 GHz licensees.

25. The NPRM offers two approaches to in-band interference control. Parties are asked to provide their analysis of both a general coordination requirement, in which the Commission would rely principally upon the use of coordination procedures to avoid harmful interference between the operation of licensees in adjacent service areas, and establishment of a field strength limit. Comments are particularly sought on issues such as coordination procedures and criteria, and on what the boundary limit should be. Comment is also sought on whether to modify § 27.64 of the Commission's Rules, which states that part 27 stations operating in full accordance with applicable Commission rules and the terms and conditions of their authorizations are normally considered to be non-interfering, and provides for Commission action to require modification to eliminate significant interference. The NPRM further invites comment on whether power limits and coordination procedures should be imposed to adequately protect radio astronomy operation.

26. The NPRM notes that the U.S. Navy's CEC system operates on multiple frequencies in the bands below the 4.9 GHz, and invites comment on what measures should be taken to protect the 4.9 GHz licensees from interference from Federal Government use of the adjacent band. For example, should certain technical standards be imposed on 4.9 GHz licensees?

27. The NPRM proposes to use the part 1 auction rules to initially license the 4.9 GHz band, and to move the remaining part 26 auction rules for the

band 4660–4685 MHz to the 4.9 GHz band. The NPRM also tentatively concludes that mutually exclusive initial applications for the 4.9 GHz band must be resolved through competitive bidding and that the Commission's previous determinations of auctionability is dispositive with regard to the substituted 4.9 GHz spectrum. (See para. 94 of the NPRM). The NPRM solicits comment on these tentative conclusions.

28. The NPRM proposes to conduct the auction for initial licenses in the 4.9 GHz band in conformity with the general competitive bidding rules set forth in part 1, subpart Q of the Commission's Rules, and consistent with the bidding procedures that have been employed in previous Commission auctions. The NPRM invites comment on this proposal and on whether any of the Commission's part 1 rules would be inappropriate in an auction for this service.

29. The NPRM considers the definition of small business in the context of the 4.9 GHz band. Specifically, the NPRM proposes to define a small business as any firm with annual average gross revenues for the three preceding years not in excess of \$40 million. For entities that qualify as small businesses, the NPRM proposes to provide a bidding credit of 15 percent. The NPRM also proposes to define a very small business as one with average annual gross revenues for the three preceding years not in excess of \$15 million. For entities that qualify as very small businesses, the NPRM proposes a bidding credit of 25 percent. The NPRM invites comment on the appropriateness of these standards and on related issues. (See paragraphs 101 through 103.) In calculating gross revenues for purposes of small business eligibility in 4.9 GHz auction, the NPRM proposes to attribute the gross revenues of the applicant, its controlling interests, and its affiliates.

#### Initial Regulatory Flexibility Analysis

30. As required by the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the NPRM. The Commission requests written public comment on the analysis. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, the Commission asks a number of questions in the IRFA regarding the prevalence of small businesses in the affected industries.

31. Comments must be filed in accordance with the same filing deadlines as comments filed in this rulemaking proceeding, but they must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer Information Bureau, Reference Information Center, will send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

#### Ex Parte Presentations

32. For purposes of this permit-but-disclose notice and comment rulemaking proceeding, members of the public are advised that *ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed under the Commission's Rules. (See generally 47 CFR 1.1202, 1.1203, 1.1206(a).)

#### Pleading Dates

33. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before April 26, 2000, and reply comments on or before May 17, 2000. Comments and reply comments should be filed in WT Docket No. 00–32. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, interested parties must file an original and four copies of all comments, reply comments, and supporting comments. If interested parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Interested parties should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Room TW–A325, 445 Twelfth Street, SW, Washington, DC 20554, with a copy to Eli Johnson, Policy Division, Wireless Telecommunications Bureau, 445 Twelfth Street, SW, Washington, DC 20554.

34. Comments may also be filed using the Commission's Electronic Comment Filing System (ECFS). Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet E-Mail. To obtain filing instructions for E-Mail comments, commenters should send an

e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your E-Mail address>." A sample form and directions will be sent in reply.

35. Comments and reply comments will be available for public inspection during regular business hours at the FCC Reference Center, Room CY–A257, at the Federal Communications Commission, 445 Twelfth Street, SW, Washington, DC 20554. Copies of comments and reply comments are available through the Commission's duplicating contractor: International Transcription Service, Inc. (ITS, Inc.), CY–B400, 445 12th Street, SW, Washington, DC 20054, (202) 857–3800.

#### Ordering Clauses

36. These actions are taken pursuant to sections 1, 4(i), 7, 10, 201, 202, 208, 214, 301, 303, 308, 309(j), and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 208, 214, 301, 303, 308, 309(j), 310.

37. Notice is hereby given of the proposed regulatory changes described in the NPRM, and that comment is sought on these proposals.

38. The Petition for Rulemaking of Global Frontiers, Inc. To Revise Title 47, CFR, parts 2 and 26 in Order To Reallocate Frequencies to GWCS and Make Related Changes, is granted to the extent indicated.

39. Pursuant to sections 1, 4(i) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and 332, the rulemaking proceeding captioned Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees, WT Docket No. 96–148, is terminated to the extent indicated.

40. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of the Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration

#### Initial Regulatory Flexibility Analysis

41. This is a synopsis of the Initial Regulatory Flexibility Act Statement in this Notice of Proposed Rulemaking (NPRM). The full text of Initial Regulatory Flexibility Act Statement may be found in Appendix A of the full NPRM.

42. As required by the Regulatory Flexibility Act (RFA) the Commission has prepared this Initial Regulatory

Flexibility Analysis (IRFA)<sup>1</sup> of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM), WT Docket No. 00-32. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

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

43. The Commission's objectives in the NPRM are to: (1) Accommodate the introduction of new uses of spectrum and the enhancement of existing uses; (2) encourage commercial development of equipment that can operate in the 4.9 GHz band; (3) facilitate the awarding of licenses to entities who value them the most; and (4) create new jobs, foster economic growth and improve access to communications by industry and the American public. The Commission also seeks to ensure a regulatory plan for the 4.9 GHz band that will allow for the efficient licensing and use of the band, eliminate unnecessary regulatory burdens, enhance the competitive potential of the band, and provide a wide variety of radio services to the public.

### Legal Basis for Proposed Rules

44. The proposed action is authorized under sections 1, 4(i), 7, 10, 201, 202, 208, 214, 301, 303, 308, 309(j), and 310 of the Communications Act of 1934, 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 208, 214, 301, 303, 308, 309(j), 310.

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

45. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act, unless the Commission has

developed one or more definitions that are appropriate for its activities. Under the Small business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 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 1992, there were approximately 275,801 small organizations.

46. The definition of "small governmental entity" is one with populations of fewer than 50,000. There are 85,006 governmental entities in the nation. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, the Commission estimates that ninety-six percent, or about 81,600, are small entities that may be affected by our rules.

47. The proposals in the NPRM affect applicants who wish to provide services in the 4.9 GHz band. The Commission notes that we have previously defined "small entity" for Blocks C and F broadband PCS licensees as firms that had average gross revenues of less than \$40 million in the three previous calendar years. This regulation defining "small entity" in the context of broadband PCS auctions has been approved by the SBA. We also note that the Commission has adopted this same definition for 2.3 GHz and 39 GHz applicants, as well as for the band 4660-4685 MHz. With respect to prospective 4.9 GHz license applicants, the Commission proposes to use the small entity definition adopted in the Broadband PCS proceeding.

48. In addition, the Commission notes that if the proposed special small business definition were not to be used, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated

during 1992 had 1,000 or more employees.

49. The NPRM observes that the capital costs of operational facilities in the 4.9 GHz band are likely to vary widely. Accordingly, the NPRM seeks to adopt small business size standards that afford licensees substantial flexibility. Thus, in addition to its proposal to adopt the general small business standard the Commission used in the case of broadband PCS, 2.3 GHz, 39 GHz, and 4660-4685 MHz licenses, the NPRM also proposes to adopt the definition for very small businesses, businesses with average annual gross revenues for the three preceding years not in excess of \$15 million.

50. While the NPRM proposes to use these definitions, the Commission has not yet determined or proposed how many licenses will be awarded, nor will it know how many licensees will be small businesses until the auction, if required, is held. In addition, at this point in the proceeding, the Commission does not know how many licensees will partition their license areas or disaggregate their spectrum blocks, if partitioning and disaggregation are allowed. The Commission assumes that, for purposes of our evaluations and conclusions in the IRFA, all of the prospective licensees are small entities, as that term is defined by the SBA or our proposed definitions for the 4.9 GHz band. We invite comment on this analysis.

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

51. Entities interested in acquiring spectrum in the 4.9 GHz band will be required to submit license applications and high bidders will be required to apply for their individual licenses. The proposals under consideration in this item also include requiring commercial licensees to make showings that they are in compliance with construction requirements, file applications for license renewals and make certain other filings as required by the Communications Act. The Commission requests comment on how these requirements can be modified to reduce the burden on small entities and still meet the objectives of the proceeding.

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

52. The NPRM seeks data demonstrating build-out and other capital requirements for services in the 4.9 GHz band, as well as the anticipated start-up costs for providing service, and how these costs compare with costs for

<sup>1</sup> 5 U.S.C. 603, The RFA, 5 U.S.C. 601 *et. seq.*, has been amended by the Contract with America Advancement Act of 1996, Public Law 104-121, 110 Stat. 847 (1996) (CWAA). Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

other services. Commenters are invited to use comparisons with other services for which the Commission has already established auction procedures as a basis for their comments regarding the appropriate definitions for small and very small businesses. Commenters are asked to address to what extent the proposed size standards will impact the ability of small businesses to acquire financing. In addition, the Commission seeks comment on whether the proposed designated entity provisions would be sufficient to promote participation by businesses owned by minorities and by women, and participation by rural telephone companies.

53. The Commission has reduced burdens wherever possible. To minimize any negative impact, however, the NPRM proposes certain incentives for small entities which will redound to their benefit. The Commission will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities. The Commission seeks comment on significant alternatives commenters believe should be adopted.

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

54. None

**Paperwork Reduction Analysis**

55. This NPRM contains proposed and modified information collections. As part of our continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the same time as other comments on this NPRM. OMB comments are due 60 days from the date of publication of this NPRM in the **Federal Register**.

Comments should address: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (2) the accuracy of the Commission's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

*OMB Approval Number:* None.

*Title:* The Transfer of the 4.9 GHz Band from Federal Government Use: Notice of Proposed Rulemaking.

*Form No.:* FCC Forms 601, 602, 603, 604, 605.

*Type of Review:* New information collection.

*Respondents:* Business or other for profit.

*Number of Respondents:* 100.

*Estimated Time Per Response:* 113 hours.

*Total Annual Cost Burden:* 0.

*Total Annual Burden:* 11,300 hours.

*Needs and Uses:* The various information reporting and verification requirements, and the prospective coordination requirement will be used by the Commission to verify licensee compliance with Commission rules and regulations, and to ensure that licensees continue to fulfill their statutory responsibilities in accordance with the Communications Act of 1934. Such information has been used in the past and will continue to be used to minimize interference, verify that applicants are legally and technically qualified to hold licenses, and to determine compliance with Commission Rules.

**List of Subjects**

*47 CFR Part 2*

Radio.

*47 CFR Parts 26 and 27*

Communications common carriers, Radio.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

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