PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart G—Colorado

■ 2. Section 52.320 is amended by adding paragraph (c)(100) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(100) EPA is approving a SIP revision submitted by the Governor of Colorado on July 31, 2002, concerning the use of credible evidence for determining compliance and establishing violations. The July 31, 2002 submittal revises Colorado Air Quality Control Commission (AQCC) Common Provisions Regulation by adding Section II.I, Compliance Certifications. Section II.I of Colorado AQCC Common Provisions Regulation is approved into the SIP.

(i) Incorporation by reference.

(A) Colorado Air Quality Control Commission Common Provisions Regulation, Section II.I, effective September 30, 2001.

[FR Doc. 03–16026 Filed 6–27–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 90

[WT Docket No. 00–32; FCC 03–99]

The 4.9 GHz Band Transferred from Federal Government Use

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Federal Communications Commission (FCC) denies petitions for reconsideration of the FCC's decision to prohibit aeronautical mobile operations in the 4940–4990 MHz (4.9 GHz) band. While the FCC believes that it could fashion no general rule that would adequately protect radio astronomy operations without being so restrictive as to limit the utility of pursuing aeronautical mobile operations in the 4.9 GHz band, the FCC nonetheless recognizes the public safety community's interest in utilizing the 4.9 GHz band for aeronautical mobile operations. Thus, the FCC provides a mechanism whereby such operations could be allowed on a case-by-case basis provided that there is a sufficient technical showing made that the proposed operations would not interfere with in-band and adjacent band radio astronomy operations.

FOR FURTHER INFORMATION CONTACT: Tim Maguire, *tmaguire@fcc.gov*, or Genevieve Augustin, *gaugusti@fcc.gov*, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–0680, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's Memorandum Opinion and Order, FCC 03–99, adopted on April 23, 2003, and released on May 2, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC–03–99A1.pdf*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

1. In the Second Report and Order (Second Report and Order), 67 FR 17308, April 9, 2002, in this proceeding, the FCC allocated the fifty megahertz of spectrum in the 4.9 GHz band for fixed and mobile services (except aeronautical mobile service) and designated the band for use in support of public safety. In this Memorandum Opinion and Order (MO&O), the FCC addresses petitions for reconsideration of the Second R&O.

2. In the *MO&O*, the FCC denies petitions for reconsideration of the FCC's decision to prohibit aeronautical mobile operations in the 4.9 GHz band. The FCC believes that there is insufficient information demonstrating that it could fashion a general rule that would adequately protect radio astronomy operations in all scenarios. The FCC is also concerned that any general rule would be so restrictive as to limit the utility of pursuing aeronautical mobile operations in the 4.9 GHz band. The FCC nonetheless recognizes the public safety community's interest in utilizing the 4.9 GHz band for aeronautical mobile operations and provides a mechanism whereby such operations could be allowed on a case-by-case basis provided that there is a sufficient technical showing made that the proposed operations would not interfere with in-band and adjacent band radio astronomy operations. This action strikes the appropriate balance between the FCC's goals of protecting radio astronomy operations and promoting effective public safety communications and innovation in wireless broadband services in support of public safety.

I. Ordering Clauses

3. The Chief, Wireless Telecommunications Bureau and the Chief, Office of Engineering and Technology, *are granted delegated authority* to adjudicate waiver requests to utilize the 4.9 GHz band for aeronautical mobile operations.

Federal Communications Commission

Marlene H. Dortch,

Secretary.

[FR Doc. 03–16376 Filed 6–27–03; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 90

[WT Docket No. 00–32; FCC 03–99]

The 4.9 GHz Band Transferred From Federal Government Use

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (FCC) establishes licensing and service rules for the 4940–4990 MHz band (4.9 GHz band). By this action, the FCC seeks to promote effective public safety communications and innovation in wireless broadband services in support of public safety. The FCC further endeavors to provide 4.9 GHz band licensees with the maximum operational flexibility practicable and to encourage effective and efficient utilization of the spectrum. The actions herein make significant strides towards ensuring that agencies involved in the protection of life and property possess the communications resources needed to successfully carry out their mission.

DATES: Effective July 30, 2003. Public and agency comments regarding information collection are due August 29, 2003.

ADDRESSES: 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tim Maguire, *tmaguire@fcc.gov*, or Genevieve Augustin, *gaugusti@fcc.gov*, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–0680, or TTY (202) 418–7233

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's *Third Report and Order*, FCC 03–99, adopted on April 23, 2003, and released on May 2, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC–03–99A1.pdf*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

1. In this *Third Report and Order* (*Third R&O*), the FCC establishes licensing and service rules for the 4940–4990 MHz band (4.9 GHz band). In the *Second Report and Order and Further Notice of Proposed Rule Making*, 67 FR 20914, April 29, 2002, in this proceeding, the FCC allocated the fifty megahertz of spectrum in the 4.9 GHz band for fixed and mobile services (except aeronautical mobile service) and designated the band for use in support of public safety. The FCC also sought comment on licensing and service rules, eligibility, and other technical issues concerning the 4.9 GHz band.

2. By this action, the FCC seeks to promote effective public safety communications and innovation in wireless broadband services in support of public safety. The rules adopted herein represent another step in the FCC's ongoing efforts to develop a regulatory framework in which to meet the current and future public safety communications needs. For example, the rules for the 4.9 GHz band that the FCC adopts herein are intended to accommodate a variety of new broadband applications such as high-speed digital technologies and wireless local area networks for incident scene management, dispatch operations and vehicular operations. The FCC's action also fosters interoperability by providing a regulatory framework in which traditional public safety entities can pursue strategic partnerships with both traditional public safety entities, such as the Federal Government, and non-traditional public safety entities, such as utilities and commercial entities, in support of their missions regarding homeland security and protection of life and property.

3. The FCC envisions that the 4.9 GHz band will be able to accommodate a variety of broadband applications, including technologies and operations requiring varying bandwidths and operations that are both temporary and permanent in nature. Consequently, in this *Third R&O*, the FCC endeavors to provide 4.9 GHz band licensees with the maximum operational flexibility practicable and to encourage effective and efficient utilization of the spectrum. The FCC believes that its actions herein make significant strides towards ensuring that agencies involved in the protection of life and property possess the communications resources needed to successfully carry out their mission.

4. In the *Third R&O*, the FCC establishes licensing and service rules for the 4.9 GHz band. The major decisions the FCC reaches are as follows:

- Limits eligibility for licensing in the 4.9 GHz band to those entities providing ''public safety services'' wherein public safety services are defined as services:

(A) The sole or principal purpose of which is to protect the safety of life, health, or property;

(B) that are provided

(i) by State or local government entities; or

(ii) by nongovernmental organizations that are authorized by a government entity whose primary mission is the provision of such services; and

(C) that are not made commercially available to the public by the provider.

- The FCC permits broadband mobile operations, fixed hotspot use, and temporary fixed links on a primary basis in the band. Furthermore, the FCC allows fixed point-to-point operations on a secondary basis.
- The FCC establishes a ''jurisdictional'' geographical licensing approach for operations in the band, whereby licensees will be authorized to operate in those geographic areas over which they have jurisdiction and will be required to cooperate in use of the spectrum.

Procedural Matters

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

5. This is a permit-but-disclose notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the FCC's rules.

B. Regulatory Flexibility Act

6. The Regulatory Flexibility Act (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Accordingly, the FCC has prepared a Final Regulatory Flexibility Analysis concerning the impact of the rule changes contained in the *Third R&O* on small entities. The Final Regulatory Flexibility Analysis is set forth below.

C. Paperwork Reduction Act

7. This *Third R&O* contains new information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under the PRA. The FCC, as part of its continuing effort to reduce paperwork burdens, invites the general public, the OMB and other Federal agencies to comment on the information collection(s) contained in this *Third R&O*, as required by the PRA.

8. Public and agency comments are due August 29, 2003. Comments should address: (a) Whether the modified collection of information is necessary for the proper performance of the functions of the FCC, including whether the information shall have practical utility; (b) the accuracy of the FCC's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) 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.

Final Regulatory Flexibility Analysis

9. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Further Notice of Proposed Rule Making* (*FNPRM*). The FCC sought written public comment on the proposals in the *FNPRM*, including comment on the IRFA. No comments were submitted specifically in response to the IRFA; the FCC nonetheless discusses certain general comments below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Report and Order

10. In this *Third Report and Order* (*Third Report and Order*), the FCC adopts eligibility and service rules for the licensing and operation of fixed and mobile services in the 4.9 GHz band pursuant to the Omnibus Budget Reconciliation Act. These rules provide 4.9 GHz band eligibles with maximum flexibility to employ a variety of new broadband applications such as high-speed digital technologies, wireless local area networks for incident scene

management, dispatch operations and vehicular/personal communications. Additionally, public safety entities will be permitted to employ ''hot spot'' operations, temporary fixed links, and traditional backbone microwave operations in the band. The rules the FCC adopts herein ensure that public safety entities will enjoy the greatest possibility of unhindered use of this spectrum while fostering partnership opportunities with critical infrastructure and commercial entities, and will fulfill the FCC's obligations as mandated by Congress to assign this spectrum for non-Government use.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

11. No comments were submitted specifically in response to the IRFA. In general comments, however, some commenters expressed concern with the FCC's proposal to limit eligibility in the 4.9 GHz band to traditional public safety entities as defined by section 337(f) of the Communications Act. For example, the Association of American Railroads urges the FCC to adopt a definition of public safety services, pursuant to section 309(j)(2) of the Communications Act, that would allow critical infrastructure entities (CIEs) such as railroads and utility companies to acquire licenses in the 4.9 GHz band. Although under the rules the FCC adopts, CIEs are not eligible to hold licenses in this band, the FCC has considered the effect of these rule changes on small entities and considered other alternatives. In particular, the FCC notes that CIEs will have access to this spectrum through sharing agreements with public safety licensees. The FCC believes that this item strikes an appropriate balance between competing spectrum needs and expect that the FCC's actions will mostly benefit all entities subject to these rule changes, including small entities.

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

12. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

13. Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the FCC estimates that 81,600 (ninety-one percent) are small entities.

14. The rules adopted will affect users of public safety radio services. These rules may also affect manufacturers of radio communications equipment. An analysis of the number of small businesses that may be affected follows. The FCC also notes that according to SBA data, there are approximately 4.44 million small businesses nationwide.

15. *Small Businesses Sharing Spectrum with Public Safety Radio Services and Governmental Entities.* As a general matter, Public Safety Radio Services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. Non-Federal governmental entities, as well as certain private businesses authorized by governmental entities, are potential licensees for these services in this proceeding. Neither the FCC nor the SBA has developed a definition of small businesses directed specifically toward the public service work at issue. Therefore, the applicable definition of small business is the definition under the SBA rules applicable to Cellular and other Wireless Telecommunications. This provides that a small business is a radiotelephone company employing no more than 1,500 persons.

16. *Equipment Manufacturers.* The FCC anticipates that at least six radio equipment manufacturers will be affected by the FCC's decisions in this proceeding. According to SBA regulations, a Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing businesses must have 750 or fewer employees in order to qualify as a small business concern.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

17. Applicants for licenses to provide terrestrial fixed and mobile services in the 4.9 GHz band must submit license applications through the Universal Licensing System using FCC Form 601, and follow the service rules at 47 CFR part 90.

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

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

19. Regarding the FCC's decision to limit eligibility in the 4.9 GHz band to traditional public safety entities, the FCC realizes that certain commercial and critical infrastructure small business entities that might have wished to operate in this newly available spectrum may be adversely affected, in that they will not be able to obtain a license to operate in this band. This concern is mitigated, however, by the fact that the FCC will allow public safety entities to enter into sharing agreements with entities performing operations in support of public safety. Moreover, the FCC believes that in this instance, there is a compelling need for spectrum dedicated to public safety operations and that the FCC's approach here will ensure that such operations are not hampered by excessive frequency congestion. An alternative would be to expand the definition of public safety eligibles and/or to allow commercial use of the subject band; however, this would undermine the FCC's intention to promote public safety service in this band.

20. Regarding the FCC's decision to license the 4.9 GHz band via a jurisdictional licensing scheme, the FCC does not believe that there will be any significant adverse impact on small entities. In fact, this approach will give public safety entities which are considered small entities under the RFA the ability to obtain licenses for the

entire 50 MHz of spectrum in this band and to choose the types of operations that best suit their individual needs. An alternative would be to license this spectrum on a state-wide basis or to require the use of some type of formal frequency coordination committee. The FCC does not believe, however, that frequency coordination would benefit licensees in all parts of the country, and state-wide licenses would not give smaller, local jurisdictions control over what types of operations might best suit their individual needs.

21. Regarding the FCC's decision to allow both fixed and mobile use, as well as point-to-point microwave operations on a secondary basis in the 4.9 GHz band, the FCC does not anticipate any adverse affect on small entities. Instead, the FCC's approach here should benefit public safety entities by allowing greater flexibility in meeting each licensee's particular operational needs.

22. Regarding the FCC's decision to implement a frequency utilization plan in the 4.9 GHz band consisting of one and five MHz channels, the FCC does not anticipate any adverse affect on small entities. In the event that public safety entities determine that greater channel bandwidths are needed, licensees may aggregate their channels.

23. Regarding the FCC's decision declining to require use of a particular technology for equipment in the 4.9 GHz band, the FCC does not anticipate any adverse affect on small entities. The FCC believes that the imposition of specific technology could impede the utilization of emerging technologies in the band and that greater flexibility is consequently warranted.

24. The FCC's decisions regarding fixed and mobile technical standards should not result in any adverse impact to small entities. Alternatively, the FCC could have adopted higher or lower power and emissions limits, but the FCC believes that the rules it adopts herein strike an appropriate balance between offering licensees maximum flexibility in their utilization of the 4.9 GHz band and minimizing the risk of harmful interference.

Report to Congress

25. The FCC will send a copy of this *Third R&O*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the FCC will send a copy of this *Third R&O*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this *Third R&O* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Ordering Clauses

26. Pursuant to sections 4(i), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 403, this *Third R&O* IS HEREBY ADOPTED.

27. Parts 2 and 90 of the FCC's rules ARE AMENDED as specified in rule changes and effective July 30, 2003.

List of Subjects in 47 CFR Parts 2 and 90

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble the FCC amends 47 CFR parts 2 and 90 as follows:

I. PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.103 is amended by revising paragraph (b) introductory text to read as follows:

§ 2.103 Government use of non-Government frequencies.

* * * * *

(b) Government stations may be authorized to use channels in the 764–776 MHz, 794–806 MHz and 4940–4990 MHz public safety bands with non-Government entities if the Commission finds such use necessary; where:

* * * * *

■ 3. Section 2.1091 is amended by revising paragraph (c) as follows:

§ 2.1091 Radiofrequency radiation exposure evaluation: mobile devices.

* * * * *

(c) Mobile devices that operate in the Cellular Radiotelephone Service, the Personal Communications Services, the Satellite Communications Services, the General Wireless Communications Service, the Wireless Communications Service, the Maritime Services, the 4.9 GHz Band Service and the Specialized Mobile Radio Service authorized under subpart H of part 22 of this chapter, part 24 of this chapter, part 25 of this chapter, part 26 of this chapter, part 27 of this chapter, part 80 of this chapter (ship earth stations devices only) and part 90 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use if they operate at frequencies of 1.5 GHz or below and their effective radiated power (ERP) is 1.5 watts or more, or if they operate at frequencies above 1.5 GHz and their ERP is 3 watts or more. Unlicensed personal communications service devices, unlicensed millimeter wave devices and unlicensed NII devices authorized under § 15.253, § 15.255, and subparts D and E of part 15 of this chapter are also subject to routine environmental evaluation for RF exposure prior to equipment authorization or use if their ERP is 3 watts or more or if they meet the definition of a portable device as specified in § 2.1093 (b) requiring evaluation under the provisions of that section. All other mobile and unlicensed transmitting devices are categorically excluded from routine environmental evaluation for RF exposure prior to equipment authorization or use, except as specified in §§ 1.1307(c) and 1.1307(d) of this chapter. Applications for equipment authorization of mobile and unlicensed transmitting devices subject to routine environmental evaluation must contain a statement confirming compliance with the limits specified in paragraph (d) of this section as part of their application. Technical information showing the basis for this statement must be submitted to the Commission upon request.

* * * * *

■ 4. Section 2.1093 is amended by revising paragraph (c) as follows:

§ 2.1093 Radiofrequency radiation exposure evaluation: portable devices.

* * * * *

(c) Portable devices that operate in the Cellular Radiotelephone Service, the Personal Communications Service (PCS), the Satellite Communications Services, the General Wireless Communications Service, the Wireless Communications Service, the Maritime Services, the Specialized Mobile Radio Service, the 4.9 GHz Band Service, the Wireless Medical Telemetry Service (WMTS) and the Medical Implant Communications Service (MICS), authorized under subpart H of part 22 of this chapter, parts 24, 25, 26, 27, 80, 90, subparts H and I of part 95 of this chapter, and unlicensed personal communication service, unlicensed NII devices and millimeter wave devices authorized under subparts D and E, § 15.253 and § 15.255 of part 15 of this chapter are subject to routine environmental evaluation for RF

exposure prior to equipment authorization or use. All other portable transmitting devices are categorically excluded from routine environmental evaluation for RF exposure prior to equipment authorization or use, except as specified in §§ 1.1307(c) and 1.1307(d) of this chapter. Applications for equipment authorization of portable transmitting devices subject to routine environmental evaluation must contain a statement confirming compliance with the limits specified in paragraph (d) of this section as part of their application. Technical information showing the basis for this statement must be submitted to the Commission upon request.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

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

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

■ 6. Section 90.20 is amended by inserting the following frequency in the table at paragraph (c)(3) before the entry referencing the 10,550 to 10,680 band, and adding paragraph (d)(85) to read as follows:

§ 90.20 Public Safety Pool.

* * * * *

(c) * * *

(3) *Frequencies.*

PUBLIC SAFETY POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
* * * * * * *			
4940 to 4990	Fixed, base or mobile	85	
* * * * * * *			

* * * * *

(d) * * *

(85) Subpart Y of this part contains rules for assignment of frequencies in the 4940–4990 MHz band.

* * * * *

■ 7. Section 90.137 is amended by adding paragraph (c) to read as follows:

§ 90.137 Applications for operation at temporary locations.

* * * * *

(c) The provisions of this section do not apply to the 4940–4990 MHz band.

■ 8. Section 90.155 is amended by revising paragraph (a) to read as follows:

§ 90.155 Time in which a station must be placed in operation.

(a) All stations authorized under this part, except as provided in sections 90.629, 90.631(f), 90.665, 90.685 and 90.1209, must be placed in operation within twelve (12) months from the date of grant or the authorization cancels automatically and must be returned to the Commission.

* * * * *

■ 9. Section 90.175 is amended by revising paragraph (i) and adding a new paragraph (j)(17) to read as follows:

§ 90.175 Frequency coordination requirements.

* * * * *

(i) Applications for facilities near the Canadian border north of line A or east of line C in Alaska may require coordination with the Canadian government. *See* § 1.928 of this chapter.

* * *

(j) * * *

* * * * *

(17) Applications for frequencies in the 4940–4990 MHz band.

■ 10. Section 90.205 is amended by redesignating paragraphs (o) through (q) as (p) through (r), and adding paragraph (o) to read as follows:

§ 90.205 Power and antenna height limits.

* * * * *

(o) *4940–4990 MHz.* Limitations on power are specified in § 90.1215.

* * * * *

■ 11. Section 90.210 is amended by adding a new frequency band entry to the table in the undesignated paragraph in numerical order, by redesignating paragraphs (l) and (m) as paragraphs (m) and (n) and by adding a new paragraph (l) to read as follows:

§ 90.210 Emission masks.

* * * * *

APPLICABLE EMISSION MASKS

Frequency band (MHz)	Mask for equipment with audio low pass filter	Mask for equipment without audio low pass filter
* * * * *		
4940–4990 MHz.	L	L
* * * * *		

* * * * *

(l) Emission Mask L. For transmitters operating in the 4940–4990 MHz frequency band, any emission must be attenuated below the output power of the transmitter as follows:

(1) On any frequency removed from the assigned frequency by more than 40 percent but less than 75 percent of the authorized bandwidth: At least 28 dB.

(2) On any frequency removed from the assigned frequency by more than 75 percent but less than 125 percent of the authorized bandwidth: At least 37 dB.

(3) On any frequency removed from the assigned frequency by more than 125 percent but less than 150 percent of the authorized bandwidth: At least 41 dB.

(4) On any frequency removed from the assigned frequency by more than 150 percent of the authorized bandwidth: At least 53 dB.

(5) On any frequency outside the channel bandwidth, the power spectral density of the device must meet the attenuation in the mask above or -53 dBm/MHz, whichever is the lesser attenuation.

(6) The zero dB reference is measured relative to the highest average power of the fundamental emission measured across the designated channel bandwidth using a resolution bandwidth of at least one percent of the occupied bandwidth of the fundamental emission. Emission levels are also based on the use of measurement instrumentation employing a resolution bandwidth of at least one percent of the occupied bandwidth.

* * * * *

■ 12. Subpart Y is added to read as follows:

Subpart Y—Regulations Governing Licensing and Use of Frequencies in the 4940–4990 MHz Band

Sec.
§ 90.1201 Scope.
§ 90.1203 Eligibility.
§ 90.1205 Permissible operations.
§ 90.1207 Licensing.
§ 90.1209 Policies governing the use of the 4940–4990 MHz band.
§ 90.1211 Regional plan.
§ 90.1213 Band plan.
§ 90.1215 Power limits.
§ 90.1217 RF hazards.

Subpart Y—Regulations Governing Licensing and Use of Frequencies in the 4940–4990 MHz Band

§ 90.1201 Scope.

This subpart sets out the regulations governing use of the 4940–4990 MHz (4.9 GHz) band. It includes eligibility requirements, and specific operational and technical standards for stations licensed in this band. The rules in this subpart are to be read in conjunction with the applicable requirements contained elsewhere in this part; however, in case of conflict, the provisions of this subpart shall govern with respect to licensing and operation in this band.

§ 90.1203 Eligibility.

(a) Entities providing public safety services as defined under section 90.523 are eligible to hold a Commission license for systems operating in the 4940–4990 MHz band. All of the requirements and conditions set forth in that section also govern authorizations in the 4940–4990 MHz band.

(b) 4.9 GHz band licensees may enter into sharing agreements or other arrangements for use of the spectrum with entities that do not meet these eligibility requirements. However, all applications in the band are limited to operations in support of public safety.

§ 90.1205 Permissible operations.

(a) Unattended and continuous operation is permitted.

(b) Voice, data and video operations are permitted.

(c) Aeronautical mobile operations are prohibited.

§ 90.1207 Licensing.

(a) A 4940–4990 MHz band license gives the licensee authority to operate on any authorized channel in this band within its licensed area of operation. *See* § 90.1213. A 4940–4990 MHz band license will be issued for the geographic area encompassing the legal jurisdiction of the licensee or, in case of a nongovernmental organization, the legal jurisdiction of the state or local governmental entity supporting the nongovernmental organization.

(b) Subject to § 90.1209, a 4940–4990 MHz band license gives the licensee authority to construct and operate any number of base stations anywhere within the area authorized by the license, except as follows:

(1) A station is required to be individually licensed if:

(i) International agreements require coordination;

(ii) Submission of an environmental assessment is required under § 1.1307 of this chapter; or

(iii) The station would affect the radio quiet zones under § 1.924 of this chapter.

(2) Any antenna structure that requires notification to the Federal Aviation Administration (FAA) must be registered with the Commission prior to construction under § 17.4 of this chapter.

(c) A 4940–4990 MHz band license gives the licensee authority to operate base and mobile units (including portable and handheld units) and operate temporary (1 year or less) fixed stations anywhere within the area authorized by the license. Such licensees may operate base and mobile units and/or temporary fixed stations outside their authorized area to assist public safety operations with the permission of the jurisdiction in which the radio station is to be operated. Base and temporary fixed stations are subject to the requirements of paragraph (b) of this section.

(d) A 4940–4990 MHz band license does not give the licensee authority to operate permanent fixed point-to-point stations. Licensees choosing to operate such fixed stations must license them individually on a site-by-site basis. Such fixed operation will be authorized only on a secondary, non-interference basis to base, mobile and temporary fixed operations.

§ 90.1209 Policies governing the use of the 4940–4990 MHz band.

(a) Channels in this band are available on a shared basis only and will not be assigned for the exclusive use of any licensee.

(b) All licensees shall cooperate in the selection and use of channels in order to reduce interference and make the most effective use of the authorized facilities. Licensees of stations suffering or causing harmful interference are expected to cooperate and resolve this problem by mutually satisfactory arrangements. If licensees are unable to do so, the Commission may impose restrictions including specifying the transmitter power, antenna height, or area or hours of operation of the stations concerned. Further, the Commission may prohibit the use of any 4.9 GHz channel under a system license at a given geographical location when, in the judgment of the Commission, its use in that location is not in the public interest.

(c) Licensees will make every practical effort to protect radio astronomy operations as specified in § 2.106, footnote US311 of this chapter.

(d) There is no time limit for which base and temporary fixed stations authorized under a 4940–4990 MHz band license must be placed in operation. Fixed point-to-point stations which are licensed on a site-by-site basis must be placed in operation within 18 months of the grant date or the authorization for that station cancels automatically.

§ 90.1211 Regional plan.

(a) To facilitate the shared use of the 4.9 GHz band, each region may submit a plan on guidelines to be used for sharing the spectrum within the region. Any such plan must be submitted to the Commission within 12 months of the effective date of the rules.

(b) Such plans must incorporate the following common elements:

(1) Identification of the document as a plan for sharing the 4.9 GHz band with the region specified along with the names, business addresses, business telephone numbers and organizational affiliations of the chairperson(s) and all members of the planning committee.

(2) A summary of the major elements of the plan and an explanation of how all eligible entities within the region were given an opportunity to participate in the planning process and to have their positions heard and considered fairly.

(3) An explanation of how the plan was coordinated with adjacent regions.

(4) A description of the coordination procedures for both temporary fixed and mobile operations, including but not limited to, mechanisms for incident management protocols, interference avoidance and interoperability.

(c) Regional plans may be modified by submitting a written request, signed by the regional planning committee, to the Chief, Wireless Telecommunications Bureau. The request must contain the full text of the modification, and a certification that all eligible entities had a chance to participate in discussions concerning the modification and that any changes have been coordinated with adjacent regions.

§ 90.1213 Band plan.

The following channel center frequencies are permitted to be aggregated for channel bandwidths of 5, 10, 15 or 20 MHz. Channel numbers 1 through 5 and 15 through 18 are 1 MHz channels and channels numbers 6 through 14 are 5 MHz channels.

Center frequency (MHz)	Channel Nos.
4940.5	1
4941.5	2
4942.5	3
4943.5	4
4944.5	5
4947.5	6
4952.5	7
4957.5	8
4962.5	9
4967.5	10
4972.5	11
4977.5	12
4982.5	13
4985.5	14
4986.5	15
4987.5	16
4988.5	17
4989.5	18

§ 90.1215 Power limits.

The transmitting power of stations operating in the 4940–4990 MHz band must not exceed the maximum limits in this section.

(a) The peak transmit power should not exceed:

Channel bandwidth (MHz)	Peak transmitter power (dBm)
1	20
5	27
10	30
15	31.8
20	33

Devices are also limited to a peak power spectral density of 20 dBm per 1 MHz. Devices using channel bandwidths other than those listed above are permitted; however, they are limited to a peak power spectral density of 20 dBm/MHz. If transmitting antennas of directional gain greater than 9 dBi are used, both the peak transmit power and the peak power spectral density should be reduced by the amount in decibels that the directional gain of the antenna exceeds 9 dBi. However, point-to-point or point-to-multipoint operation (both fixed and temporary-fixed rapid deployment) may employ transmitting antennas with directional gain up to 26 dBi without any corresponding reduction in the transmitter power or spectral density. Corresponding reduction in the peak transmit power and peak power spectral density should be the amount in decibels that the directional gain of the antenna exceeds 26 dBi.

(b) The peak transmit power is measured as a conducted emission over any interval of continuous transmission calibrated in terms of an rms-equivalent voltage. If the device cannot be connected directly, alternative techniques acceptable to the Commission may be used. The measurement results shall be properly adjusted for any instrument limitations, such as detector response times, limited resolution bandwidth capability when compared to the emission bandwidth, sensitivity, etc., so as to obtain a true peak measurement conforming to the definitions in this paragraph for the emission in question.

(c) The peak power spectral density is measured as a conducted emission by direct connection of a calibrated test instrument to the equipment under test. If the device cannot be connected directly, alternative techniques acceptable to the Commission may be used. Measurements are made over a bandwidth of 1 MHz or the 26 dB emission bandwidth of the device, whichever is less. A resolution bandwidth less than the measurement bandwidth can be used, provided that the measured power is integrated to show total power over the measurement bandwidth. If the resolution bandwidth is approximately equal to the measurement bandwidth, and much less than the emission bandwidth of the equipment under test, the measured results shall be corrected to account for any difference between the resolution bandwidth of the test instrument and its actual noise bandwidth.

§ 90.1217 RF Hazards.

Licensees and manufacturers are subject to the radiofrequency radiation exposure requirements specified in §§ 1.1307(b), 2.1091 and 2.1093 of this chapter, as appropriate. Applications for equipment authorization of mobile or portable devices operating under this section must contain a statement confirming compliance with these requirements for both fundamental emissions and unwanted emissions. Technical information showing the basis for this statement must be submitted to the Commission upon request.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 32

[WC Docket No. 02–269; CC Docket No. 00–199; CC Docket No. 80–286; CC Docket No. 99–301; FCC 03–141]

Federal-State Joint Conference on Accounting Issues

AGENCY: Federal Communications Commission.

ACTION: Final rule; delay of effective date.

SUMMARY: This document further delays the effective date and the implementation of four previously adopted accounting and reporting rule changes from July 1, 2003, until January 1, 2004. The Commission extends the delay in order to avoid undue burdens associated with implementation of mid-year accounting and reporting requirement changes and to allow the Federal-State Joint Conference on Accounting Issues more time to formulate its recommendations to the Commission.

DATES: The effective date for amendments to *47 CFR 32.5200, 32.6562* and *32.6620* published at *67 FR 5670* (February 6, 2002) is further delayed until January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Jane E. Jackson, Associate Chief, Wireline Competition Bureau, (202) 418–1500.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted June 20, 2003, and released on June 24, 2003. The full text of the document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

Synopsis of Order

On November 12, 2002, the Commission released an order, *67 FR 77432* (December 18, 2002) further deferring until July 1, 2003, the effective date and implementation of four accounting and reporting requirement rule modifications previously adopted by the Commission as part of its biennial review of accounting requirements and Automated Reporting Management System (ARMIS) reporting