

2. § 117.469 is revised to read as follows:

**§ 117.469 Liberty Bayou.**

The draw of the S433 Bridge, mile 2.0, at Slidell, shall open on signal with a two hour notice.

Dated: October 26, 2010.

**Mary E. Landry,**

*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

[FR Doc. 2010-29300 Filed 11-19-10; 8:45 am]

**BILLING CODE 9110-04-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**42 CFR Parts 417, 422, and 423**

[CMS-4144-CN]

RIN 0938-AQ00

**Medicare Program; Proposed Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs for Contract Year 2012 and Other Proposed Changes; Correction**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Correction of proposed rule.

**SUMMARY:** This document corrects a technical error that appeared in the proposed rule entitled “Medicare Program; Proposed Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs for Contract Year 2012 and Other Proposed Changes” which was filed for public inspection on November 10, 2010.

**FOR FURTHER INFORMATION CONTACT:** Sabrina Ahmed, (410) 786-7499.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In FR Doc. 2010-28774 filed November 10, 2010, there was a technical error that is identified and corrected in the Correction of Errors section below.

**II. Summary of Errors**

In the **DATES** section, we inadvertently requested that the Office of the Federal Register base the comment period closing date on the date the proposed rule will appear in the **Federal Register** instead of the date of filing for public inspection. Therefore, in section III. of this correction notice, we correct this error by inserting the date that the comment period closes, which is January 11, 2011.

**III. Waiver of 60-Day Comment Period**

We ordinarily permit a 60-day comment period on notices of proposed rulemaking in the **Federal Register**, as provided in section 1871(b)(1) of the Act. The change made by this correction notice does not constitute agency rulemaking, and therefore the 60-day comment period does not apply. This correction notice merely corrects a technical error in the proposed rule and does not make substantive changes to the proposed rule that would require additional time on which to comment. Instead, this correction notice is intended to ensure the accuracy of the proposed rule.

**IV. Correction of Errors**

In FR Doc. 2010-28774 filed November 10, 2010, make the following correction:

1. In the **DATES** section, the phrase “[OFR—insert date 60 days after date of publication in the **Federal Register**]” is corrected to read “January 11, 2011.”

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 12, 2010.

**Barbara J. Holland,**

*Deputy Executive Secretary to the Department.*

[FR Doc. 2010-28997 Filed 11-12-10; 4:15 pm]

**BILLING CODE 4120-01-P**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 25**

[IB Docket No. 97-95; FCC 10-186]

**Allocation and Designation of Spectrum for Fixed-Satellite Services in the 37.5–38.5 GHz, 40.5–41.5 GHz and 48.2–50.2 GHz Frequency Bands**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Communications Commission (FCC) seeks comment on technical rules for the Fixed-Satellite Service in the 37.5–42.5 GHz band. The purpose of this proceeding is to ensure that satellite operators in this band can share the band with terrestrial fixed microwave services without causing harmful interference.

**DATES:** Comments are due on or before January 6, 2011 and reply comments are due on or before February 7, 2011.

**ADDRESSES:** You may submit comment, identified by WT Docket No. 07-293

and IB Docket No. 95-91, by any of the following methods:

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

*Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs>. 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 e-mail: [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:**

Sean O'More (202) 418-2453, or Howard Griboff, (202) 418-0657, Policy Division, International Bureau, Federal Communications Commission, Washington, DC 20554.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Third Notice of Proposed Rulemaking (*Third Notice*) in IB Docket No. 97-95, adopted October 29, 2010 and released on November 1, 2010. The full text of the Notice of Proposed Rulemaking 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, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 488-5300, facsimile (202) 488-5563, or via e-mail [FCC@BCPIWEB.com](mailto:FCC@BCPIWEB.com).

The *Third Notice* contains proposed new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. The Commission invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in the *Third Notice*, 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 the *Third Notice*; OMB comments are due on January 6, 2011. Comments should address: (a) 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; (b) the accuracy of the Commission'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.

### Summary of Notice of Proposed Rulemaking

The 37.5–42.5 GHz band is shared between FSS and terrestrial microwave operators on a primary basis. Under a regulatory plan known as “soft segmentation,” technical rules favor the widespread deployment of terrestrial microwave stations in the 37.5–40.0 GHz portion of the band and widespread deployment of consumer satellite earth stations in the 40.0–42.5 GHz portion of the band.

The *Third Notice* proposes to complete the allocation of the entire 37.5–42.5 GHz band to terrestrial microwave and FSS by removing allocations to the Broadcasting Service and the Broadcasting-Satellite Service in the 42.0–42.5 GHz band and by adding an allocation for FSS on a primary basis in the 42.0–42.5 GHz band.

In order to prevent harmful interference from FSS operators to terrestrial microwave and to radioastronomy operations in the adjacent 42.5–43.5 GHz band, the *Third Notice* requests comment on coordination procedures for FSS operators and terrestrial microwave operators in the band and requests comment on what protection requirements will adequately protect radioastronomy operations in the 42.5–43.5 GHz band.

To allow FSS operators to boost power in the band to compensate for signal fading due to rain, while at the same time preventing harmful interference to terrestrial microwave stations from higher-power satellite transmissions, the *Third Notice* proposes to require FSS operators in the band to use measures other than boosting power to compensate for signal fading due to rain before boosting power, depending on the rain rate in various locations in the United States.

*Initial Regulatory Flexibility Analysis:* As required by the Regulatory Flexibility Act (RFA),<sup>1</sup> the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies

and rules proposed in this *Third Notice of Proposed Rulemaking (Third Notice)*. 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 in paragraph 59 of this *Third Notice*. The Commission will send a copy of this *Third Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the *Third Notice* and IRFA (or summaries thereof) will be published in the **Federal Register**.<sup>3</sup>

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

The rules proposed in this *Third Notice* will allocate the 42.0–42.5 GHz sub-band to the Fixed Satellite Service (FSS), and remove the allocation of the same sub-band to the Broadcasting Satellite Service (BSS), in order to harmonize allocations in the 37.5–42.5 GHz band with the allocations agreed by the United States at the 2000 and 2003 World Radiocommunication Conferences. The rules proposed in this *Third Notice* will also ensure the protection of radioastronomy operations in the 42.5–43.5 GHz band from interference from satellite operations in the adjacent 37.5–42.5 GHz band. The rules proposed in this *Third Notice* will also provide standards for coordination of FSS gateway earth stations and Fixed Service (FS) stations, in order to prevent interference between these stations. Finally, the rules proposed in this *Third Notice* will establish a methodology for increasing power flux-density (PFD) from satellites operating in the 37.5–40.0 GHz band under rain fade conditions, in order to minimize the likelihood of interference to Fixed Service (FS) microwave links operating in the same band while at the same time ensuring the continuity of satellite service.

#### B. Legal Basis

The proposed action is authorized under Sections 4(i), 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 403, and 405.

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

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.<sup>4</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>5</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>6</sup> 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.<sup>7</sup>

*Fixed Microwave Services.* Fixed microwave services include common carrier,<sup>8</sup> private operational-fixed,<sup>9</sup> and broadcast auxiliary radio services.<sup>10</sup> At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.<sup>11</sup> The Commission does not have data specifying the number of these licensees that have no more than 1,500 employees, and thus are unable at this

<sup>4</sup> 5 U.S.C. 603(b)(3).

<sup>5</sup> 5 U.S.C. 601(6).

<sup>6</sup> 5 U.S.C. 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.” 5 U.S.C. 601(3).

<sup>7</sup> Small Business Act, 15 U.S.C. 632 (1996).

<sup>8</sup> See 47 CFR 101 *et seq.* for common carrier fixed microwave services (except Multipoint Distribution Service).

<sup>9</sup> Persons eligible under parts 80 and 90 of the Commission’s Rules can use Private Operational-Fixed Microwave services. See 47 CFR Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee’s commercial, industrial, or safety operations.

<sup>10</sup> Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission’s Rules. See 47 CFR Part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

<sup>11</sup> 13 CFR 121.201, NAICS code 517210.

<sup>1</sup> See 5 U.S.C. 603. The RFA, see 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) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>2</sup> See 5 U.S.C. 603(a).

<sup>3</sup> See *id.*

time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are 22,015 or fewer common carrier fixed licensees and 61,670 or fewer private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies proposed herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

*Satellite Telecommunications and All Other Telecommunications.* These two economic census categories address the satellite industry. The first category has a small business size standard of \$15 million or less in average annual receipts, under SBA rules.<sup>12</sup> The second has a size standard of \$25 million or less in annual receipts.<sup>13</sup> The most current Census Bureau data in this context, however, are from the (last) economic census of 2002, and we will use those figures to gauge the prevalence of small businesses in these categories.<sup>14</sup>

The category of Satellite Telecommunications "comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."<sup>15</sup> For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.<sup>16</sup> Of this total, 307 firms had annual receipts of under \$10 million, and 26 firms had receipts of \$10 million to \$24,999,999.<sup>17</sup> Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

The second category of *All Other Telecommunications* comprises, *inter alia*, "establishments primarily engaged in providing specialized

telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems."<sup>18</sup> For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.<sup>19</sup> Of this total, 303 firms had annual receipts of under \$10 million and 15 firms had annual receipts of \$10 million to \$24,999,999.<sup>20</sup> Consequently, we estimate that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

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

The *Third Notice* proposes a rule change that will affect reporting, recordkeeping and other compliance requirements. Each of these changes is described below.

The *Third Notice* proposes to require satellite operators and FS operators in the 37.5–40.0 GHz band to coordinate the siting of gateway earth stations and FS stations in the same band when station antennas have lines of sight into the other licensees' service areas, in accordance with the frequency coordination process set forth in Section 101.103(d) of the rules. In order to accomplish such coordination, operators wishing to establish new stations would be required to accomplish coordination with all licensees whose station antennas lie within line of sight of the proposed new station, and certify to the Commission that such coordination has been accomplished along with the application for authorization for the new station.

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

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.<sup>21</sup>

A significant alternate coordination procedure considered in this *Notice* was to establish a specific distance between existing stations and proposed new stations within which the licensee proposing the new station must coordinate. The Commission decided, however, that the proposed coordination requirement, which is based on power-flux densities and actual lines of sight rather than a simple distance measure, provides more flexibility to licensees in siting new stations, while at the same time risking no greater likelihood of interference between stations.

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

None.

#### **Ordering Clauses**

Accordingly, *It is ordered* that, pursuant to the authority contained in sections 1, 4(i), 4(j), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), and 308 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), 308, the Third Notice of Proposed Rulemaking in IB Docket No. 97–95 is adopted.

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

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

[FR Doc. 2010–29385 Filed 11–19–10; 8:45 am]

**BILLING CODE 6712–01–P**

<sup>21</sup> See 5 U.S.C. 603(c).

<sup>12</sup> 13 CFR 121.201, NAICS code 517410.

<sup>13</sup> 13 CFR 121.201, NAICS code 517919.

<sup>14</sup> 13 CFR 121.201, NAICS codes 517410 and 517910 (2002).

<sup>15</sup> U.S. Census Bureau, 2007 NAICS Definitions, "517410 Satellite Telecommunications"; <http://www.census.gov/naics/2007/def/ND517410.HTM>.

<sup>16</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517410 (issued Nov. 2005).

<sup>17</sup> *Id.* An additional 38 firms had annual receipts of \$25 million or more.

<sup>18</sup> U.S. Census Bureau, 2007 NAICS Definitions, "517919 All Other Telecommunications"; <http://www.census.gov/naics/2007/def/ND517919.HTM#N517919>.

<sup>19</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517910 (issued Nov. 2005).

<sup>20</sup> *Id.* An additional 14 firms had annual receipts of \$25 million or more.