

(September 22, 1999), are effective November 4, 1999.

**FOR FURTHER INFORMATION CONTACT:**

Tamara Preiss, Deputy Division Chief, Common Carrier Bureau, Competitive Pricing Division, (202) 418-1520. For additional information concerning the information collections, contact Judy Boley at 202-418-0214, or via the Internet at [jboley@fcc.gov](mailto:jboley@fcc.gov).

**SUPPLEMENTARY INFORMATION:** On August 27, 1999, the Commission released its Fifth Report and Order in its Access Charge Reform Proceeding, CC Docket No. 96-262, a summary of which was published in the **Federal Register**. See 64 FR 51258, September 22, 1999. 47 CFR 1.774, 61.47, 69.709, 69.711, 69.713, and 69.729, as amended, contain modified information collection requirements. We stated that "the Commission will publish a document in the **Federal Register** announcing the effective date" of those rules. The information collections were approved by OMB on October 18 and October 20, 1999. See OMB 3060-0526, 3060-0760, and 3060-0770. By this publication, the Commission announces that these rules are effective November 4, 1999.

**List of Subjects**

**47 CFR Part 0**

Organization and functions.

**47 CFR Part 1**

Administrative practice and procedure, Communications common carriers, Telecommunications.

**47 CFR Part 61**

Communications common carriers, Telephone.

**47 CFR Part 69**

Communications common carriers, Telephone.

Federal Communications Commission.

**Magalie Roman Salas,**  
Secretary.

[FR Doc. 99-28794 Filed 11-3-99; 8:45 am]

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 2 and 90**

[FCC 99-85; WT Docket No. 96-86]

**Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; petition for reconsideration.

**SUMMARY:** This document modifies the provisions governing the newly reallocated public safety spectrum at 764-776 MHz band and 794-806 MHz. The action was taken in response to petitions for reconsideration of a previous Commission order. These modifications are intended to provide the National Coordination Committee (NCC) the flexibility to proceed more efficiently without constraints that may have unnecessarily delayed the completion of its work to address and advise the Commission on certain public safety communication matters. The document also provides new procedures that will promote competition in the market for public safety communications equipment.

**DATES:** Effective January 3, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, S.W., Room 4-C207, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:**

Michael Pollak, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, at (202) 418-0680.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Memorandum Opinion and Order on Reconsideration* in WT Docket No. 96-86, FCC 99-85, adopted April 26, 1999, and released May 4, 1999. The full text of the *Memorandum Opinion and Order on Reconsideration* is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. The full text of the *Memorandum Opinion and Order on Reconsideration* may also be purchased from the Commission's copy contractor, International Transcription Services, 1231 20th Street, N.W., Washington, D.C. 20036, telephone (202) 857-3800, facsimile (202) 857-3805. The full text of the *Memorandum Opinion and Order on Reconsideration* may also be downloaded at: <http://www.fcc.gov/Bureaus/Wireless/Orders/1999/fcc99085.wp>. Alternative formats (computer diskette, large print, audiocassette, and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418-2555, or at [mcontee@fcc.gov](mailto:mcontee@fcc.gov).

**Synopsis of the Memorandum Opinion and Order on Reconsideration**

This *Memorandum Opinion and Order (MO&O)* modifies a *First Report and Order* and *Third Notice of Proposed Rulemaking*, 63 FR 58645 (November 2, 1998) (*First Report and Order*), which

established a band plan and adopted service rules in the newly reallocated public safety spectrum at 764-776 MHz and 794-806 MHz, in three respects. First, the Commission is expanding the standards development options available to the National Coordination Committee (NCC) by providing that the NCC may, but is not required to, become accredited by the American National Standards Institute (ANSI). In this regard, we also clarify that the NCC is allowed to make use of and base its recommendations on the standards development work of other existing ANSI-accredited Standards Developers (ASDs). This expands the options available to the NCC for developing the standards it is required to recommend under the provisions of the *First Report and Order*. ANSI states, from its experience, that development and approval of an individual standard as an American National Standard can take from six months to three years and the NCC is required to complete its work within four years. These new options could potentially save time by allowing the NCC to build on standards work already accomplished or by allowing other technical standards development work to begin immediately, under ANSI procedures, without the necessity of waiting for the potentially lengthy process of accreditation of the NCC itself.

Second, the Commission is rescinding the requirement that the fees and terms of license agreements involving proprietary technologies contained in NCC-recommended standards be approved by ANSI. ANSI is not an appropriate entity to approve proprietary technology license terms and fees involved with standards recommended by the NCC because such a role for ANSI would not meet with the approval of the voluntary standards community.

Third, the Commission is implementing a self-policing policy similar to the ANSI patent policy that is structured to adequately protect the rights of both intellectual property right holders and consensus standard users while at the same time encouraging competition. Proprietary technology may be incorporated, however the Commission will require the owner or holder of the rights to proprietary technologies to file a statement with the NCC indicating that they will make such rights available to applicants either without cost or without unfair discrimination.

The changes provided in the *MO&O* will allow the work of the NCC to proceed in a timely fashion, with the flexibility to operate more efficiently,

and without constraints that may have unnecessarily delayed the completion of that work. In addition, this *MO&O* provides new procedures that will promote competition in the market for public safety communications equipment by protecting users of standards recommended by the NCC from unfair discrimination in the licensing of proprietary technology.

### **Supplemental Final Regulatory Flexibility Analysis**

As required by the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA), a Final Regulatory Flexibility Analysis (FRFA) was incorporated in Appendix A of the *First Report and Order* issued in this proceeding.<sup>1</sup> The Commission's Supplemental Final Regulatory Flexibility Analysis (SFRFA) in this Memorandum Opinion and Order on Reconsideration (*Order on Reconsideration*) contains information additional to that contained in the FRFA and is thus limited to matters raised on reconsideration with regard to the *First Report and Order* and addressed in this *Order on Reconsideration*. This SFRFA conforms to the RFA, as amended by the Contract with America Advancement Act of 1996.<sup>2</sup>

#### **I. Need for and Purpose of This Action**

In the *Order on Reconsideration*, the Commission responds to the Petition for Reconsideration filed in connection with the *First Report and Order* in this docket by the American National Standards Institute (ANSI and ANSI

Petition). The Commission clarifies certain aspects of the *First Report and Order* relating to the operation of the National Coordination Committee (NCC). The NCC was established as provided in the *First Report and Order* pursuant to the provisions of the Federal Advisory Committee Act (FACA) to develop and recommend to the Commission technical standards to be used in public safety interoperability spectrum across the country.

In response to the ANSI Petition, the Commission modifies its initial decision in three respects. First, in order to allow the NCC to make more efficient use of ANSI standards processes, the Commission expands the standards development options available to the NCC by providing that the NCC may, but is not required to, become ANSI-accredited. The Commission also clarifies that the NCC is allowed to make use of and base its recommendations on the standards development work of existing ANSI-Accredited Standards Developers (ASDs). Second, the Commission rescinds the requirement from the *First Report and Order* that the fees and terms of license agreements involving proprietary technologies contained in NCC-recommended standards be approved by ANSI. And third, the Commission revises the process for allowing the incorporation of proprietary technologies into standards recommended by the NCC by requiring the owner or holder of the rights to such technologies to file with the NCC a statement that they will make such rights available to applicants either without cost or without unfair discrimination.

As a result of the Commission's action in the *Order on Reconsideration*, it has addressed the fundamental concerns raised by ANSI in its petition, thus allowing the work of the NCC to proceed in a timely fashion, with the flexibility to operate with increased efficiency, and without the constraints that may have unnecessarily delayed the completion of that work. In addition, the *Order on Reconsideration* provides new procedures for the NCC that will promote competition in the market for public safety communications equipment by protecting users of standards recommended by the NCC from unfair discrimination in the licensing of proprietary technology contained in such standards.

#### **II. Summary of Significant Issues Raised by the Public Comments in Response to the Final Regulatory Flexibility Analysis**

No comments were filed in direct response to the FRFA. In the ANSI

Petition, and in certain other pleadings, issues were raised that might affect small entities. Specifically, ANSI argued that it had no authority to approve the license terms and fees offered by owners or holders of rights to proprietary technology and that better protection of licensees of this technology could be offered by adoption of the ANSI patent policy. ANSI also asserted that the NCC should not be required to become an ASD to develop its own standards but instead should be able to make use of American National Standards, or preliminary or in-process standards developed by other ASDs. In its comments to the *Second Notice*, FLEWUG supported the concept of requiring that the NCC choose an open standard created by an ANSI-accredited entity.

#### **III. Changes Made to the Proposed and Final Rules**

In the *Second NPRM* the Commission proposed to set technical standards for public safety interoperability spectrum. In the *First Report and Order*, the Commission determined instead, to seek to create the NCC to advise the Commission on the standards to be used in such spectrum. The *First Report and Order* required the NCC to become an ASD in order to develop itself the standards that it would recommend to the Commission. This *Order on Reconsideration* rescinds that requirement and allows the NCC to make use of, and base its recommendations on, the work of other ASDs.

In addition, the *Order on Reconsideration* eliminates the requirement that fees and license terms for proprietary technology contained in any NCC-recommended standard be approved by ANSI. Instead, the Commission requires that before the NCC recommends any standard containing proprietary technology, where the technology is the subject of an actual or proposed license agreement, the owner or holder of such proprietary right must file with the NCC a statement that they will make such rights available to applicants either without cost or without unfair discrimination.

#### **IV. Description and Number of Small Entities Affected by Rule Amendment**

The changes in the operations of the NCC provided in this *Order on Reconsideration* would principally affect the NCC, ANSI, the public safety and commercial entities who contribute members and/or resources to the NCC, and the persons or entities that hold the rights to proprietary technology that

<sup>1</sup> See Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010, WT Docket No. 96/86, *First Report and Order and Third Notice of Proposed Rulemaking* (herein *First Report and Order*). As required by Section 603 of the RFA, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the initial *Notice of Proposed Rulemaking* in WT Docket No. 96-86. See Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010, WT Docket No. 96-86, *Notice of Proposed Rulemaking*, 61 FR 25185 (May 20, 1996) (*First Notice*). The proposals in the *First Notice* were refined and modified in a *Second Notice of Proposed Rulemaking*, 62 FR 60199 (November 7, 1997) in this docket, into which a second IRFA was incorporated. See Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010, WT Docket No. 96-86, *Second Notice of Proposed Rulemaking*, (Second Notice). The Commission sought written comment on the proposals in the *Second Notice* including the IRFA. The FRFA in the *First Report and Order* addressed issues raised by commenters that might affect small entities.

<sup>2</sup> Public Law 104-121, 110 Stat. 846 (1996) (CWAIA). Title II of the Contract with America Act is entitled "The Small Regulatory Enforcement Fairness Act of 1996" (SBREFA), and is codified at 5 U.S.C. 601-611.

might be included in an NCC-recommended standard. The public safety equipment manufacturers who might enter into agreements to use such standards in the construction of public safety communications equipment and the government and non-government entities that will purchase such equipment are only indirectly affected by the *Order on Reconsideration*.

On January 29, 1999, the Commission released a Public Notice soliciting nominations for membership. Membership is open to any interested member of the public safety communications community, including representatives of federal, state and local government entity radio users, licensees and organizations, manufacturers, consulting firms, frequency coordinators and trade associations. A similar open membership structure was adopted for the most recent FCC-appointed federal advisory committee for public safety matters. This committee, formed in 1996 and called the Public Safety Wireless Advisory Committee (PSWAC), attracted approximately 500 members. It is anticipated that the NCC will have a similar number of members.

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>3</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>4</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 Small Business Administration (SBA).<sup>5</sup> A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."<sup>6</sup> Nationwide, as of 1992, there were approximately 275,801 small organizations.<sup>7</sup> ANSI has fewer than 300 employees, is

independently owned and operated and we conclude that it is a small organization. "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."<sup>8</sup> As of 1992, there were approximately 85,006 such jurisdictions in the United States.<sup>9</sup> This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.<sup>10</sup> The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted. As a general matter, Public Safety Radio Pool licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.<sup>11</sup> Spectrum in the 700 MHz band for public safety services is governed by 47 U.S.C. 337. Non-Federal governmental entities as well as private businesses are licensees for these services.

We anticipate that at least six radio equipment manufacturers might be affected by our decision in this *Order on Reconsideration*. According to the SBA's regulations, a communications equipment manufacturer must have 750 or fewer employees in order to qualify

as a small business concern.<sup>12</sup> Census Bureau data indicate that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would therefore be classified as small entities.<sup>13</sup> We do not have information that indicates how many of the six radio equipment manufacturers associated with this proceeding are among these 778 firms. However, Motorola and Ericsson, firms that control approximately ninety-five percent of the public safety communications equipment market, are major, nationwide radio equipment manufacturers, and, thus, we conclude that these manufacturers would not qualify as small businesses.

#### V. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The compliance requirements pertaining to the issues addressed in the *Order on Reconsideration* that were adopted in the *First Report and Order* include the provision that the NCC was to become accredited by ANSI as an ASD. Further, the *First Report and Order* required that no proprietary data was to be incorporated in any standard ultimately recommended by the NCC unless the proprietary data was made available on a fair, reasonable, unbiased and non-discriminatory basis, with license fees approved by ANSI and on terms and conditions set by that standards body. The *Order on Reconsideration* eliminates the requirement that the NCC become NCC accredited and the requirement that license fees terms and conditions be approved by ANSI. The *Order on Reconsideration* requires that before any standard may the owner or holder of the any rights to proprietary technologies that are incorporated into standards recommended by the NCC, where such owner or holder has licensed or announced and intention to license such proprietary technology, to file with the NCC a statement that they will make such rights available to applicants either without cost or without unfair discrimination.

#### VI. Steps Taken To Minimize the Economic Impact on Small Entities

The Commission has reduced the impact on small entities of the provisions governing the operations of the NCC by eliminating the requirement

<sup>3</sup> 5 U.S.C. 601(5).

<sup>9</sup> U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

<sup>10</sup> *Id.*

<sup>11</sup> See Subparts A and B of part 90 of the Commission's Rules, 47 CFR 90.1-90.22. Police licensees include 26,608 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). Fire licensees include 22,677 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. Public Safety Radio Pool licensees also include 40,512 licensees that are state, county, or municipal entities that use radio for official purposes. There are also 7,325 forestry service licensees comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are highway maintenance licensees that provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. Emergency medical licensees (1,460) use these channels for emergency medical service communications related to the delivery of emergency medical treatment. Another 19,478 licensees include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities.

<sup>12</sup> 13 CFR 121.201, (SIC) Code 3663.

<sup>13</sup> U.S. Dept. of Commerce, *1992 Census of Transportation, Communications and Utilities* (issued May 1995), SIC category 3663.

<sup>3</sup> See 5 U.S.C. 601(6).

<sup>4</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>5</sup> Small Business Act, 15 U.S.C. 632 (1996).

<sup>6</sup> 5 U.S.C. 601(4).

<sup>7</sup> 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

that the NCC become ANSI-certified as an ASD and by eliminating the requirement that all fees, terms and conditions of licenses for proprietary technology contained in any NCC-recommended standard be approved by ANSI. In addition, the Commission has adopted on reconsideration an alternative procedure to protect users of NCC-recommended standards from unfair discrimination. The requirement that owners or holders of rights to proprietary technology contained in NCC-recommended standards that seek to license such rights must file statements with the NCC will burden a handful of entities that may or may not be small entities. In contrast, the requirement will benefit thousands of small governmental jurisdictions and their agencies by protecting their suppliers from unfair discrimination in the acquisition of technologies, and by encouraging greater competition in the public safety communications equipment market.

#### *VII. Significant Alternatives Considered and Rejected*

The alternative approaches contained in the *First Report and Order* were considered and rejected as too burdensome, unnecessarily restrictive, or inefficient, thus leading the Commission to eliminate the above-described compliance requirements on ANSI and the NCC. With regard to a mechanism to protect users of NCC-recommended standards from unfair discrimination in the licensing of proprietary technology, the alternative of providing no protection was considered and deemed anti-competitive, unnecessarily expensive and insufficiently responsive to the communications needs of the large and small members of public safety community that the Commission is bound by law to support. The chosen mechanism of requiring owners and holders of rights to proprietary technology to agree with their licensees to make the technologies available, either without cost or on terms that are free from unfair discrimination, and to evidence that agreement by filing a statement to that effect with the NCC, was determined to be the least expensive and burdensome alternative available. Moreover, given its probable effect of encouraging competition in the relevant equipment market, this mechanism was determined to generate the most favorable ratio of cost to benefit in the overall public safety communications community.

#### **Report to Congress**

The Commission shall send a copy of this Supplemental Final Regulatory Flexibility Analysis, along with the *Order on Reconsideration*, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this Supplemental Final Regulatory Flexibility Analysis will also be published in the **Federal Register**.

#### **List of Subjects**

##### *47 CFR Part 2*

Communications equipment, Radio.

##### *47 CFR Part 90*

Administrative practice and procedure, Communications equipment, Radio.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

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#### **FEDERAL COMMUNICATIONS COMMISSION**

##### **47 CFR Part 20**

[CC Docket No. 94-102; FCC 99-245]

#### **Wireless Radio Services; Compatibility With Enhanced 911 Emergency Calling Systems**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document revises rules applicable to wireless carriers to permit the use of handset-based solutions, or hybrid solutions that require changes both to handsets and wireless networks, in providing caller location information as part of Enhanced 911 (E911) services. These actions are intended to encourage the deployment of the best location technology for each area being served, promote competition in E911 location technology, and speed implementation of E911.

**DATES:** Effective March 3, 2000, except for § 20.18(i), which contains an information collection requirement that has not been approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for that section. Public comments on the information collection are due January 3, 2000.

**FOR FURTHER INFORMATION CONTACT:** Legal Information: Daniel Grosh, 202-

418-1310; Technical Information: Martin Liebman, 202-418-1310. For further information concerning the information collection contained in this Report and Order, contact Les Smith, Federal Communications Commission, Room 1A-804, 445 12th Street, SW, Washington, DC 20054, or via the Internet at lesmith@fcc.gov.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Third Report and Order* (Third R&O) in CC Docket No. 94-102; FCC 99-245, adopted September 15, 1999, and released October 6, 1999. The complete text of this Third R&O is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW, Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY-B400, 445 12th Street, SW, Washington, DC.

#### **Synopsis of the Third Report and Order**

1. The Commission adopts a Third Report and Order (Third R&O) in CC Docket No. 94-102, regarding implementation of Enhanced 911 (E911) emergency calling systems. Specifically, in the Third R&O, the Commission takes several steps to enable handset-based methods of providing Automatic Location Identification (ALI) to compete in a reasonable way with network-based solutions in meeting the Commission's E911 Phase II requirements. The new rules will benefit both wireless callers and public safety entities by providing accurate and efficient automatic caller location information in emergencies.

2. The rule change was needed because, when the Commission originally adopted its Phase II rules in 1996, it was believed that location information could only be effectively provided by technologies based in or overlaid on carrier networks, using approaches such as triangulation of the handset's signal. Since that time, advancements in location technologies that employ new or upgraded handsets have demonstrated important progress. While no single solution appears to be perfect in all situations, each type of solution has its advantages and limitations and each may be improved or combined with other technologies in the future to support further improvements in 911 service.

3. The Commission's original rules, adopted in the Report and Order and Further Notice of Proposed Rulemaking (61 FR 40348, August 2, 1996), as a practical matter, only permitted network-based solutions to meet the Commission's Phase II requirements