coordinates 42–20–12 North Latitude and 74–16–19 West Longitude, which is the site specified in the station's outstanding construction permit.

DATES: Effective January 18, 2000.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–194, adopted November 24, 1999, and released December 3, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by removing Jewett, Channel 250A and adding Windham, Channel 250A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–32800 Filed 12–17–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 93–144; GN Docket No. 93–252; PP Docket No. 93–253; FCC 99–270]

Future Development of SMR Systems in the 800 MHz Frequency Band, Regulatory Treatment of Mobile Services, and Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Memorandum Opinion and Order on Reconsideration (MO&O), the Commission completes the implementation of a new licensing framework for the 800 MHz Specialized Mobile Radio service (SMR). Specifically, the Commission revises or clarifies its rules concerning: the channel plan for General Category channels, the modification of incumbent licensee systems, and the mandatory relocation of incumbent licensee systems from the upper 200 channels to the lower 230 channels. Additionally, the Commission retains its current construction and coverage requirements and clarifies its rules concerning co-channel interference protection, the definition of incumbent and the applicability of its partitioning and disaggregation rules to Private Mobile Radio Service (PMRS) licensees in the 800 MHz and 900 MHz SMR services. The Commission also reaffirms its conclusion that competitive bidding is an appropriate tool to resolve mutually exclusive license applications for the General Category and lower 80 channels of the 800 MHz SMR service. These modifications and clarifications strike an equitable balance between the competing interests of 800 MHz SMR licensees seeking to provide local service and those desiring to provide geographic area service. Further, the Commission's licensing framework will enhance the competitive potential of SMR services in the Commercial Mobile Radio Service (CMRS) marketplace.

DATES: Effective February 18, 2000.

FOR FURTHER INFORMATION CONTACT: Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau: Donald Johnson or Scott Mackoul at (202) 418–7240; Auctions and Industry Analysis Division, Wireless Telecommunications Bureau: Gary D. Michaels at (202) 418–0660; Media Contact: Meribeth McCarrick at (202) 418–0654.

SUPPLEMENTARY INFORMATION: This *Memorandum Opinion and Order on Reconsideration* in PR Docket No. 93–144; RM–8117, RM–8030, RM–8029; GN Docket No. 93–252; PP Docket No. 93–253 was adopted September 30, 1999 and released October 8, 1999. The document is available, in its entirety, (including the list of petitioners) for inspection and copying during normal business hours in the FCC Reference Center, (Room CY-A257), 445 12th Street, SW, Washington, D.C. 20554. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 1231 20th Street, NW, Washington, D.C. 20036, (202) 857–3800. In addition, it is available on the Commission's website at http://www.fcc.gov/Bureaus/Wireless/Orders.

SYNOPSIS OF MEMORANDUM OPINION AND ORDER ON RECONSIDERATION

I. Introduction

1. The major actions adopted in the Memorandum Opinion and Order are:

A. Service Rules for the Lower 230 Channels

- Determine to license the 150 General Category channels in six contiguous 25-channel blocks, thereby amending the Commission's previous decision to license these channels in three contiguous 50-channel blocks;
- Retain the ''substantial service'' standard as an alternative to meeting the applicable construction requirements for EA licensees in the lower 230 channels;

B. Rights and Obligations of EA Licensees in the Lower 230 Channels

- Clarify that the grandfathering provisions in § 90.693 of the Commission's rules, setting forth the parameters within which incumbent licensees can modify their systems, apply to both SMR and non-SMR licensees that obtained their licenses or filed applications on or before December 15, 1995;
- Clarify that an incumbent licensee on the lower 230 channels seeking to modify its system using its 18 dBμ interference contour may, in the absence of consent from affected incumbents, provide a statement from a certified frequency advisory committee that a modification will not cause interference to adjacent licensees;
- Specify the operating parameters that incumbent licensees will use to calculate their service area contours and interference contours;
- Conclude that incumbents may not expand their geographic licenses beyond the contours of their individual site licenses to include areas where the EA licensee is not able to operate;
- Clarify that an incumbent's geographic license area includes, in addition to external base stations that are in operation, any interior sites that are constructed within the applicable construction period;
- Clarify that even when an incumbent licensee has expanded its operation throughout its 18 dBμ contour, its interference protection continues to extend only to its 36 dBμV/m signal strength contour;
- Affirm that the lower 80 SMR channels will not be redesignated for non-SMR use;

• Clarify that the construction requirements in Section 90.685(b) of the Commission's rules are applicable to all EA licensees on the lower 230 channels without distinction between CMRS and PMRS licensees;

• Clarify that EA licensees on the lower 80 SMR channels and General Category channels may switch between CMRS and PMRS services, provided that channels designated exclusively for SMR use continue to be used only for SMR service;

C. Relocation of Incumbents from the Upper 200 Channels

• Clarify that, for the purpose of determining what facility an EA licensee is responsible for relocating, an incumbent licensee's ''system'' includes mobile units and a redundant system when necessary to effect a transparent relocation;

• Affirm that the Commission's definition of ''system'' does not include managed systems that are comprised of individual licenses;

• Determine that an EA licensee that relocates an incumbent to a system with a comparable channel capacity, but a different channel configuration, is required to reimburse the incumbent for the increased cost inherent in operating such a system;

• Retain the five-year cost recovery period for increased operating costs caused by incumbent licensee relocation;

• Affirm that reimbursement of relocation costs will not be due until the incumbent has been fully relocated and the frequencies are free and clear;

• Decline to revise the time period for relocation negotiations between EA licensees and incumbent licensees;

• Determine that EA licensees are not required to compensate end users for service interruptions caused by realignment and returning to new frequencies;

D. Partitioning and Disaggregation for 800 MHz and 900 MHz Licensees

• Clarify that the Commission's geographic partitioning and spectrum disaggregation rules apply to PMRS licensees in the 800 MHz and 900 MHz SMR services;

E. Competitive Bidding Issues

• Affirm the Commission's previous determination that the General Category channels and lower 80 SMR channels of the 800 MHz SMR band are auctionable under Section 309(j) of the Communications Act.

• Clarify that the auction exemption for public safety radio services in Section 309(j)(2) of the Communications Act does not apply to spectrum that has been allocated for SMR use and which the Commission has already determined to be auctionable;

• Affirm that licensing in the lower 230 channels will be open to all parties;

• Amend the method by which licenses in the lower 230 channels will be grouped for auction, and direct the Wireless Telecommunications Bureau, pursuant to delegated authority, to determine what licensing groups, if any, should be established for auctioning the lower 230 channels;

• Affirm that a bidder's upfront payment will be based on the number of licenses on which a bidder anticipates bidding in any round;

• Affirm that the Commission will not offer installment payment financing for licenses in the lower 230 channels;

• Affirm that the Commission will not adopt gender-or minority-based provisions for auctioning licenses for the lower 230 channels at this time.

II. Background

2. The Commission initially established the 800 MHz SMR services to license dispatch radio systems on a site-by-site basis in local markets. In recent years, however, a number of SMR licensees have expanded the geographic scope of their services, aggregated channels, and developed digital networks to enable them to provide a type of service comparable to that provided by cellular and Personal Communications Service (PCS) operators. In response to these developments, the Commission has re-evaluated its site-by-site licensing procedures, which were cumbersome for systems comprised of several hundred sites, because licensees were required to obtain Commission approval for each site. This re-examination has stemmed from a concern that site-by-site licensing procedures impair an SMR licensee's ability to respond to changing market conditions and consumer demand.

3. In the *First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making (800 MHz First Report and Order),* 61 FR 6212 (February 16, 1996) the Commission restructured the licensing framework that governs the 800 MHz SMR service. For the upper 200 channels, the Commission replaced site- and frequency-specific licensing with a geography-based system similar to those used in other Commercial Mobile Radio Services (''CMRS''). The Commission designated the upper 200 channels of 800 MHz SMR spectrum for geographic licensing, and created 120-, 60-and 20-channel blocks within the U.S. Department of Commerce Bureau of Economic Analysis Economic Areas (''EAs''). The Commission concluded that mutually exclusive applications for these licenses would be awarded through competitive bidding. Additionally, the Commission granted EA licensees the right to relocate incumbent licensees out of the upper 200 channels to comparable facilities. Finally, the Commission reallocated the 150 contiguous 800 MHz General Category channels for exclusive SMR use.

4. In the *800 MHz Second Report and Order,* 62 FR 41190 (July 31, 1997) the Commission established EAs as the licensing area for the lower 230 800 MHz channels, which include the lower 80 SMR channels and the 150 General Category channels. The Commission established competitive bidding rules for resolving mutually exclusive applications for EA licenses in the lower 230 channels, determined that incumbents on the lower 230 channels would not be subject to mandatory relocation, and defined the rights of incumbent licensees on those channels. The Commission also provided further details concerning the mandatory relocation rules for the upper 200 channel block and established partitioning and disaggregation rules for 800 MHz and 900 MHz SMR licensees.

5. In response to the *800 MHz Second Report and Order,* the Commission received a number of pleadings requesting reconsideration, modification or clarification of its rules relating to mandatory relocation, co-channel interference, spectrum block size, geographic area licensing, and partitioning and disaggregation.

III. Discussion

A. Service Rules for the Lower 230 Channels

i. Channel Blocks

6. *Background.* In the *800 MHz Second Report and Order,* the Commission adopted channel blocks for licensing the lower 80 SMR channels and the 150 General Category channels. Specifically, the Commission determined to license the lower 80 SMR channels in sixteen non-contiguous 5-channel blocks. The Commission reasoned that the non-contiguous nature of these channels made it impractical to impose any other channel plan. The Commission, further concluded that this approach would provide opportunities for incumbents and applicants that base their systems on trunking of non-contiguous channels to acquire spectrum and was, therefore, consistent with the mandate of Section 309(j)(4)(C)

of the Communications Act of 1934 to promote an equitable distribution of licenses and provide economic opportunities for a wide variety of entities. Finally, the Commission determined that this channel plan was the least disruptive geographic licensing method for smaller incumbent licensees that had acquired their channels in 5-channel increments.

7. The Commission decided to license the 150 General Category channels in three contiguous 50-channel blocks. Initially, in the *Second Further Notice*, the Commission proposed three alternative block sizes for licensing these channels: (a) a 120-channel block, a 20-channel block, and a 10-channel block; (b) six 25-channel blocks; or (c) fifteen 10-channel blocks. In response, commenters suggested various other options for channel allotment such as 5-channel blocks or licensing all 150 channels individually. While the Commission considered all of the proposed plans, the Commission ultimately adopted, in part, the Industry Proposal plan for licensing channels in three contiguous 50-channel blocks. The Commission rejected that portion of the Industry Proposal channel plan that would have permitted incumbent licensees to enter into settlement agreements for the distribution of unlicensed spectrum on a channel-by-channel basis prior to auction. The Commission believed that licensing the General Category channels in three contiguous 50-channel blocks, without permitting pre-auction settlements, struck the appropriate balance between the needs of some licensees for large contiguous blocks of spectrum and those of other licensees for smaller spectrum blocks.

8. *Discussion.* On reconsideration, the Commission concludes that auctioning the 150 General Category channels in six contiguous 25-channel blocks, rather than three contiguous 50-channel blocks, will best serve the interests of licensees with different spectrum allocation needs. Currently, the General Category frequencies are occupied by a wide variety of entities, including public safety, SMR, business, and industrial/land transportation users. Each of these entities has different spectrum allocation needs based on the services they provide and their technological capabilities. While some licensees use contiguous spectrum technologies and therefore need large blocks of spectrum, other licensees (*i.e.,* small businesses) trunk small numbers of non-contiguous channels and thus seek smaller amounts of spectrum. The Commission believes that licensing General Category channels in blocks of 25 will achieve its goal of providing a wide variety of entities a meaningful opportunity to pursue spectrum in this band.

9. A significant portion of incumbent licensees on the General Category frequencies are small businesses and are licensed for only a few channels in the band. Auctioning licenses for General Category channels in smaller channel blocks will provide these small business incumbents with greater opportunities to take advantage of geographic area licensing. In addition, it will encourage new entrant participation in the provision of 800 MHz services. As the Commission explained in the *800 MHz Second Report and Order*, auctioning the General Category channels in large channel blocks could preclude small businesses and new entrants with limited financial resources from acquiring licenses because, generally, bigger blocks of spectrum require larger bids. Smaller channel blocks, on the other hand, are less likely to be cost prohibitive. Changing the block size from 50 channels to 25 channels will provide small entities with the opportunity to acquire smaller amounts of spectrum consistent with their financial means and technological needs. By facilitating small business and new entrant participation in the provision of 800 MHz services, this channel plan fulfills the Commission's statutory mandate of promoting economic opportunity for a wide variety of applicants and avoiding an excessive concentration of licenses.

10. The Commission declines to license General Category channels on an individual basis. First, auctioning these channels on an individual basis would be administratively burdensome given the large number of channels involved. Second, this method of licensing is inconsistent with the needs of applicants that receive blocks of contiguous spectrum. Further, blocks of contiguous spectrum allow for more flexibility in terms of technological applications and innovation.

ii. Construction and Coverage Requirements

11. *Background.* In the *800 MHz First Report and Order*, the Commission required EA licensees on the upper 200 channels to construct their systems within five years of licensing. The Commission imposed interim coverage requirements, requiring EA licensees to provide coverage to one-third of the population within the EA within three years of initial license grant and to two-thirds of the population by the end of the five-year construction period. In addition, the Commission required EA licensees to use at least 50 percent of the channels in their spectrum blocks in at least one location within the EA within three years of the initial license grant.

12. In the *800 MHz Second Report and Order*, the Commission adopted construction requirements for the lower 230 channels. Specifically, the Commission required that EA licensees in these channel blocks provide coverage to one-third of the population within three years of the initial license grant and to two-thirds of the population within five years of the license grant. Unlike their counterparts in the upper 200 channels, however, the Commission stated that EA licensees in the lower 230 channels could, in the alternative, provide ''substantial service'' to their geographic license area within five years of license grant. The Commission defined ''substantial service'' as ''service that is sound, favorable, and substantially above a level of mediocre service, which would barely warrant renewal.'' The Commission stated that a licensee could satisfy the substantial service requirement by demonstrating that it is providing a technologically innovative service or that it is providing service to unserved or underserved areas. The Commission did not adopt a channel usage requirement for licensees in the lower 230, channel block. The Commission made clear that failure to meet these construction requirements would result in automatic termination of the geographic area license.

13. *Discussion.* The substantial service option is necessary to provide opportunities for new entrants to compete with incumbents in the lower 230-channel block. In some EAs, an incumbent licensee may already serve a large portion of the population. A new entrant, therefore, may not be able to satisfy the population coverage requirement because its service area cannot overlap with that of the incumbent's. The option of providing a showing of substantial service allows potential EA licensees that cannot meet the three-year and five-year coverage requirements, because of the existence of incumbent co-channel licensees, to satisfy a construction requirement. Allowing licensees to make substantial service showings also encourages build-out in rural areas since one of the ways in which a licensee may satisfy the substantial service requirement is to demonstrate that it is providing service to unserved or underserved areas, which are often rural areas.

B. Rights and Obligations of EA Licensees in the Lower 230 Channels

1. Treatment of Incumbents

a. Definition of Incumbent

14. *Background.* In the Commission's *800 MHz SMR Second Report and Order* the Commission declined to adopt a mandatory, relocation plan for incumbents on the lower 230 channels. The Commission concluded that incumbent licensees, on these frequencies should be allowed to continue to operate under their existing authorizations, and that geographic area licensees would be required to provide protection to all co-channel systems within their licensing areas. The Commission also adopted operating parameters for incumbents that would give them a reasonable opportunity to expand their systems.

15. *Discussion.* Section 90.693 sets forth, specific conditions under which ''grandfathered'' licensees can modify their systems. The Commission received a request to clarify § 90.393(a) of its rules. The term ''incumbent licensees,'' in § 90.693(a) of its rules, refers to both SMR and non-SMR licensees that obtained licenses or filed applications on or before December 15, 1995.

b. Expansion and Flexibility Rights of Lower Channel Incumbents

16. *Background.* In the *800 MHz Second Report and Order*, the Commission concluded that while geographic licensing is appropriate for the lower 230 channels, some additional flexibility is appropriate for incumbents on these channels to facilitate modifications and limited expansion of their systems. The Commission stated that it would allow incumbents on the lower 230 channels to make system modifications within their interference contours without prior Commission approval. Thus, an incumbent licensee that desires to make modifications to its existing system, such as adding new transmitters and altering its coverage area, will be able to do so with the concurrence of all affected incumbents, so long as such an incumbent does not expand the 18 dBμ interference contour of its system. Moreover, licensees who do not receive the consent of all incumbent affected licensees, will be able to make similar modifications within their 22 dBμ signal strength interference contour and licensees who do not desire to make modifications may continue to operate within their existing systems. The Commission emphasized that the revised interference standard protects incumbents only against EA licensees, not against other incumbents. As such, the protection that one incumbent must provide to another incumbent continues to be governed by § 90.621(b) of the Commission's rules. In the absence of consent of all affected incumbent licensees, incumbent licensees must locate their stations at least seventy miles from the facilities of any other incumbent or comply with the co-channel separation standards established in the Commission's short-spacing rules.

17. *Discussion.* The Commission concludes that incumbent licensees seeking to utilize an 18 dBμ signal strength interference contour shall first seek to obtain the consent of affected co-channel incumbents. However, if that consent is withheld, the incumbent licensee may provide, in lieu of consent, a statement from a certified frequency coordinator that a modification will not cause interference to adjacent licensees.

18. Consistent with §§ 90.621(b)(4) and 90.621(b)(6) of the Commission's rules, it believes that the ''originally-licensed'' contour should be calculated using the maximum ERP and the actual HAAT along each radial. The short spacing table protects existing licensees at maximum power, and actual HAAT in the direction of the co-channel station. The Commission believes that these protection criteria will provide more flexibility to incumbent licensees and are consistent with § 90.693 of its rules.

c. Converting Site-Specific Licenses to Geographic Licenses

19. *Background.* In the *800 MHz Second Report and Order*, the Commission allowed incumbents on the lower 230 channels to combine their site-specific licenses into single geographic licenses to provide them with the same flexibility and reduced administrative burden that geographic licensing affords to EA licensees. Because the Commission adopted the 18 dBμ contour rather than the 22 dBμ contour, where the incumbent licensee has obtained the consent of all affected parties, as the benchmark for defining an incumbent licensee's protected service area, the Commission used the contiguous and overlapping 18 dBμ contours of the incumbent's previously authorized sites to define the scope of the incumbent's geographic license. The Commission stated that once the geographic license has been issued, incumbents will not be required to obtain prior Commission approval or provide subsequent notification to add or modify facilities that do not extend the licensee's 18 dBμ interference contour. Additionally, licensees that do not receive the consent of all affected parties may follow the same process utilizing their 22 dBμ signal strength contour, rather than the 18 dBμ contour.

20. *Discussion.* Petitioners contend that incumbents' geographic licenses should include areas where an incumbent's interference contours do not overlap, but where no other licensee could place a transmitter because of the Commission's interference protection rules. The Commission declines to expand an incumbent's geographic license beyond the contours of its individual site licenses. The Commission finds that inclusion of areas that are outside of an incumbent's interference contours within the incumbent's geographic license would be contrary to its objective of prohibiting encroachment by incumbents on the geographic area licensee's operations. Additionally, the Commission clarifies that in defining the scope of an incumbent's geographic license area, the Commission includes external base stations that are already constructed and operational and interior sites that are constructed within the particular construction period applicable to the incumbent. Once the geographic license has been issued, facilities that are added within an incumbent's existing footprint and that are not subject to prior approval by the Commission will not be subject to construction requirements.

2. Co-channel Interference Protection

21. *Background.* In the Commission's *800 MHz SMR Second Report and Order,* the Commission concluded that additional flexibility was needed for lower 230 channel incumbent licensees to facilitate modifications and limited expansion of their systems. The Commission determined that additional flexibility for the lower 230 channel incumbent licensee was appropriate because these channels were subject to an application freeze and geographic licensing of these channels would not occur until after the upper 200 channel auction was completed and upper 200 channel incumbent licensees were relocated to the lower channels.

22. Because the Commission adopted an 18 dBμV/m standard, which gives incumbent licensees greater flexibility to expand, the Commission adopted stricter interference protection criteria to ensure that EA licensees do not interfere with incumbents' operations. Specifically, the Commission further determined that incumbent licensees who currently utilize the 40 dBμ signal strength contour for their service area contour and 22 dBμ signal strength contour for their interference contour will be permitted to use their 18 dBμ

signal strength contour for their interference contour as long as they obtain the consent of all affected parties. In particular, EA licensees are required to either: locate their stations at least 173 km (107 miles) from the licensed coordinates of any incumbent licensee, or comply with co-channel separation standards based on a 36/18 dBμV/m standard, rather than the previously applicable 40/22 dBμV/m standard. EA licensees must ensure that the 18 dBμV/m signal strength contour of a proposed station does not encroach upon the 36 dBμV/m signal strength contour of an incumbent licensee's existing stations.

23. *Discussion.* The Commission clarifies that incumbent licensees on the lower 230 channels will be protected by EA licensees only on the basis of the 36/18 dBμV/m contour analysis of the incumbent's existing station, even if an incumbent licensee has expanded its operation throughout its 18 dBμV/m contour. An incumbent licensee's protection extends only to its 36 dBμV/m signal strength contour. The Commission further clarifies that where the co-channel separation requirements in § 90.621(b) of its rules have afforded certain licensees greater interference protection, those standards will continue to apply.

3. Regulatory Classification of EA Licensees on the Lower 230 Channels

24. *Background.* In the *800 MHz Second Report and Order,* the Commission concluded that the Commission would presumptively classify SMR winners of EA licenses on the lower 230 channels as CMRS providers, because the Commission anticipates that most applicants for these licenses will be SMR applicants who seek to provide interconnected service and thus meet the definition of CMRS. However, the Commission stated that it would allow SMR applicants and licensees to overcome this presumption by demonstrating that their service does not meet the CMRS definition. In the *800 MHz Memorandum Opinion and Order,* the Commission determined that both SMRs and non-SMRs would be eligible to obtain licenses for the 150 General Category channels. Thus, where an EA license is obtained by a non-SMR operator, the CMRS presumption is inapplicable. In the event that EA licenses are awarded to Public Safety, Industrial/Land Transportation or Business licensees, for example, such licensees will be classified as PMRS providers.

25. *Discussion.* The Commission declines to re-designate the lower 80 channels for non-SMR use, as well as for SMR use. The Commission designated the lower 80 SMR channels for use in SMR systems based on a significant increase in the number of applicants for 800 MHz trunked systems and private users seeking service from SMR operators. The Commission anticipates that SMR providers' demand for the lower 80 channels will be increased by geographic area licensing of the upper 200 channels and its mandatory relocation policy.

26. The Commission also clarifies that construction requirements in § 90.685(b) are applicable to all EA licensees in the lower 230 channels without distinction between those classified as CMRS and those classified as PMRS. In addition, the Commission clarifies that EA licensees in the lower 230 channels are permitted to switch between CMRS and PMRS service in these channels.

C. Relocation of Incumbents from the Upper 200 Channels

1. Relocation Negotiations

27. *Background.* In the *800 MHz First Report and Order,* the Commission established procedures for the mandatory relocation of incumbent licensees from the upper 200 to the lower 230 channels on the 800 MHz SMR band. The Commission established a three-phase process for the relocation of incumbents. Phase I comprises a one-year voluntary negotiation. If no agreement is reached in phase I, the EA licensee may initiate Phase II, a one-year mandatory negotiation period during which the parties are required to negotiate in ''good faith.'' If the parties still fail to reach an agreement, the EA licensee may then initiate Phase III, which is an involuntary relocation of the incumbent's system. The Commission determined that incumbents on the upper 200 channels would not be subject to mandatory relocation unless the EA licensee provided the incumbent with ''comparable facilities'' without any significant disruption in the incumbent's operations.

28. In the *800 MHz Second Report and Order,* the Commission defined comparable facilities as facilities that will provide the same level of service as the incumbent licensee's existing facilities, from the perspective of the end user. The Commission identified four factors relevant to this determination: system, capacity, quality of service and operating costs.

29. *Discussion.* In the *800 MHz Memorandum Opinion and Order on Reconsideration,* the Commission reduced the original two-year mandatory negotiation period to one year, concluding that a one-year voluntary and one year mandatory negotiation period would provide parties with the flexibility to negotiate voluntarily while ensuring that relocation occurs expeditiously. Accordingly, the Commission declines to further reduce the negotiation period. In addition, the Commission declines to establish a time period after which an incumbent would have the ability to terminate the relocation process if it does not reach agreement with the EA licensee. Allowing incumbents to terminate the relocation process after a certain period of time may encourage some incumbents to refrain from negotiating in good faith.

2. Comparable Facilities

a. System

30. In the *800 MHz Second Report and Order,* the Commission defined ''system'' functionally from the end user's point of view. A system is comprised of base station facilities that operate on an integrated basis to provide service to a common end user, and all mobile units associated with those base stations. A system can include multiple-licensed facilities that share a common switch or are otherwise operated as a unitary system, provided that an end user has the ability to access all such facilities. Although the Commission defined ''system'' broadly to provide incumbent licensees flexibility to continue meeting their customers' needs, the Commission specifically excluded from its definition facilities that are operationally separate and managed systems that are comprised of individual licenses.

31. *Discussion.* The Commission agrees with petitioners that its definition of ''system'' should include redundant mobile units and a redundant backbone, but only to the extent that they are necessary to effect a relocation that is transparent to the end user. The Commission declines to engage in specific detailed analysis of the various individual components that potentially could be included in a system. To determine whether a specific component is part of a system, EA licensees are required to look to the function of the component and consider whether the equipment in question is part of a unitary system providing service to the end user.

32. Furthermore, the Commission declines to expand its definition of ''system'' to include commonly managed systems that are comprised of individual licenses. To the extent that a manager operates separately licensed facilities as a unitary system, that could meet the Commission's definition of

''system,'' such operation would be likely to conflict with the licensees' obligation under Section 310(d) of the Communications Act to retain exclusive responsibility for the operation and control of authorized facilities. To the extent that such facilities are kept operationally separate, they are excluded from the Commission's definition of ''system.''

b. Capacity

33. *Background.* To comply with the Commission's capacity requirements, an EA licensee must provide an incumbent licensee with equivalent channel capacity. The Commission defined channel capacity as the same number of channels with the same bandwidth that is currently available to the end user. If a different channel configuration is used, it must have the same overall capacity as the original configuration. Accordingly, comparable channel capacity requires equivalent signaling capability, baud rate and access time.

34. *Discussion.* The Commission does not believe that retuning requires the exact channel spacing that the incumbent licensee had on the upper 200 channels. Because of the large number of incumbent licensees presently licensed on the lower 230 channels, the Commission believes that some relocated licensees will not receive the exact channel spacing that the relocated licensees had on the upper 200 channels. In these situations the EA licensee must configure the system in a way that does not compromise channel capacity and must reimburse the incumbent for the increased cost of operating the reconfigured system.

c. Operating Costs

i. Increased Operating Costs

35. *Background.* In the *800 MHz Second Report and Order,* the Commission defined operating costs as costs that affect the delivery of services to the end user. The Commission stated that if the EA licensee provides facilities that entail higher operating costs than the operating cost of the incumbent's previous system, and the cost increase is a direct result of the relocation of the system, the EA licensee must compensate the incumbent licensee for the difference.

36. *Discussion.* The Commission disagrees with one petitioner that contended that the Commission failed to provide for these increased costs. In the *800 MHz Second Report and Order,* the Commission explained that operating costs associated with the relocation might consist of either increased recurring costs associated with the replacement facilities or increased maintenance costs. Accordingly, if a higher power transmitter or larger antennas are necessitated by relocation, the incumbent should be compensated for any additional rental payments, increased utility fees, or increased maintenance costs associated with the new transmitter or antennas.

ii. Cost Recovery Period

37. *Background.* While the Commission concluded in the *800 MHz Second Report and Order* that EA licensees should be responsible for increased operating costs caused by relocation, it noted that identifying whether increased costs are attributable to relocation becomes more difficult over time. The Commission therefore determined not to impose this obligation indefinitely, but stated that the EA licensees' obligation to pay increased costs will end five years after relocation has occurred. The Commission concluded that a five-year payment period appropriately balances the interest of EA licensees and relocated incumbents.

38. *Discussion.* The Commission declines to lengthen the cost recovery period from a five to a ten-year period. A five-year period will facilitate the speedy resolution of relocation issues. The Commission believes the rationale the Commission provided in the *Microwave Relocation Cost Sharing First Report and Order,* 61 FR 29679 (June 12, 1996) is equally applicable to the relocation of SMR facilities. The five-year cost recovery period is not unfair to incumbent licensees because after five years many incumbents would have been forced to bear some of these costs themselves, even if they had not been relocated by the EA licensee. The Commission also notes that a five-year period provides incumbent licensees adequate time to budget, plan and allocate resources to meet these expenses upon the expiration of the cost recovery period.

39. In addition, the Commission declines to reduce the cost recovery period to three years. The Commission does not believe that costs incurred beyond a three-year period would be ''speculative and beyond the realm of [the] cost reimbursement parameters.'' The five-year period is not unfair to EA licensees and thus, the Commission declines to reduce the period to three years.

3. Other Payment Issues

a. Timing of Payments to Incumbents

40. *Background.* In the *800 MHz Second Report and Order,* the Commission stated that reimbursement payments for relocation are due (a) when the incumbent licensee has been fully relocated, and (b) the frequencies are free and clear.

41. *Discussion.* The Commission reiterates that payment of relocation costs will not be due until the incumbent has been fully relocated and the frequencies are free and clear. The Commission believes that this approach promotes a more expeditious relocation process by establishing a definite time at which reimbursement is due. However, the Commission notes that parties are free to negotiate when reimbursement of relocation costs will occur, and may agree to reimbursement as such expenses are incurred.

b. Compensable Costs

42. *Background.* In the *800 MHz Second Report and Order,* the Commission concluded that reimbursable relocation costs could include incumbent transaction expenses such as legal and consulting fees, configuration of antennas, increased rental space, and administrative costs. However, because the Commission wanted to encourage a fast relocation process free of disputes, it determined that the bulk of compensable costs should be tied as closely as possible to actual equipment costs. Therefore, the Commission required EA licensees to reimburse incumbents only for those transaction expenses that are directly attributable to the relocation, subject to a cap of two percent of the hard costs involved.

43. The Commission declines to require compensation to end users of incumbent licensee systems, because such compensation would be inconsistent with the Commission's determination that the bulk of compensable costs should be tied as closely as possible to the licensee's actual equipment costs.

D. Partitioning and Disaggregation for 800 MHz and 900 MHz Licensees

44. *Background.* In the *800 MHz Second Report and Order,* the Commission adopted flexible partitioning and disaggregation rules for all licensees in the 800 MHz and 900 MHz SMR service. Specifically, the Commission extended partitioning to all incumbent and EA licensees on both the upper 200 and lower 230 channels of the 800 MHz SMR service and to all incumbent and Major Trading Area (MTA) licensees on the 200 channels of the 900 MHz service. Similarly, the Commission concluded that all incumbent and EA licensees in the 800 MHz SMR service and all incumbent

and MTA licensees in the 900 MHz SMR service should be allowed to disaggregate portions of their spectrum.

45. *Discussion.* The Commission clarifies that in the *800 MHz Second Report and Order,* it determined that its partitioning and disaggregation rules should apply to all licensees in all SMR channel blocks with no distinction on the basis of licensee's regulatory classification as PMRS or CMRS. Application of the partitioning and disaggregation rules to PMRS licensees will result in more efficient use of the spectrum by allowing licensees to transfer part of their spectrum to a party that more highly values it.

E. Competitive Bidding Issues

1. Auctionability

46. *Background.* In the *800 MHz Second Report and Order,* the Commission concluded that competitive bidding is an appropriate licensing mechanism for the General Category and lower 80 channels of the 800 MHz SMR service. The Commission concluded that the 800 MHz SMR service satisfies the criteria set forth by Congress for determining when competitive bidding should be used. The Commission noted that under its rules a diverse group of applicants, including incumbent licensees and potential new providers of this service, will be able to participate in the auction process because eligibility for EA licenses will not be restricted. Finally, the Commission adopted special provisions for small businesses seeking EA licenses.

47. *Discussion.* The Commission reaffirms its conclusion that competitive bidding is the appropriate tool to resolve mutually exclusive license applications for the General Category and lower 80 channels of the 800 MHz SMR service. The Commission continues to believe that competitive bidding furthers the public interest by promoting rapid deployment of service, fostering competition, recovering a portion of the value of two spectrum for the public, and encouraging efficient spectrum use. The Commission has previously construed § 309(j)(6)(E) to mean that it has an obligation to attempt to avoid mutual exclusivity by the methods prescribed therein only when it would further the public interest goals of § 309(j)(3). In the course of this proceeding, the Commission has evaluated the appropriateness of various licensing mechanisms for the 800 MHz SMR service. No new arguments are raised that would persuade the Commission to reconsider the adoption of EA licensing for the 800 MHz SMR service. The Commission emphasizes that geographic area licensing offers a flexible, licensing scheme that eliminates the need for many of the complicated and burdensome licensing procedures that hampered SMR development in the past. By determining that it would not be in the public interest to implement other licensing schemes or processes that avoid mutual exclusivity, the Commission has fulfilled its obligation under section 309(j)(6)(E).

48. Congress has exempted certain classes of licensees from the competitive bidding process in § 309(j)(2). The Commission previously determined that the public safety radio services exemption does not entitle individual users to remove licenses from auctions licensing simply by claiming a public safety use. Thus, contrary to petitioners' contentions, the exemption does not apply to spectrum that is allocated for SMR use and which has already been determined to be auctionable.

2. Eligibility

49. *Background.* In the *800 MHz Second Report and Order* and the *800 MHz Memorandum Opinion and Order* the Commission concluded that General Category and lower 80 channels would be licensed on a geographic basis and subject to competitive bidding to resolve mutually exclusive applications. Earlier, in the *800 MHz SMR First Report and Order,* the Commission concluded based on comments in the proceeding and on its licensing records that the primary demand for General Category channels came from SMR operators. When the Commission froze General Category licensing in 1995, the Commission noted that the number of SMR applications for these channels had risen markedly and, as such, the Commission believed that such activity is itself an indication that demand for the spectrum exists. Moreover, as a result of geographic area licensing on the upper 200 channels, there is a substantial demand for General Category channels among legitimate small SMR operators, including incumbents that relocate from the upper 200 channels.

50. *Discussion.* The Commission continues to believe that the lower 80 and General Category channels of the 800 MHz SMR service should be licensed through competitive bidding and open to all parties, as opposed to incumbents solely. The Commission has determined that it will maintain open eligibility and the requirement that incumbents participate in competitive bidding. The Commission believes that open eligibility will foster competition and result in a diverse group of 800 MHz SMR providers, and that the competitive bidding process will adequately deter speculation. These rules are consistent with the rules for other CMRS services, and encourage the participation of diverse provider that are serious enough to meet the requirements of the competitive bidding process.

51. The Commission does not believe that its approach will harm the interests of non-commercial licensees by requiring them to compete for spectrum with commercial systems. In the *800 MHz Second Report and Order,* the Commission noted there are several ways in which non-SMRs can benefit from its geographic licensing rules. For example, non-commercial operators may not only apply individually for geographic area licenses they may also participate in joint ventures (with other non-commercial operators or with commercial service providers) or obtain spectrum through partitioning and disaggregation to meet their spectrum needs. The Commission also expects that geographic area licensing of SMR and General Category spectrum will free up non-SMR spectrum in the 800 MHz band, providing more options for non-commercial operators where availability of General Category spectrum is limited. Finally, the Commission is continuing with its initiatives to provide sufficient spectrum for non-commercial operations through its *Reframing* proceeding.

52. The Commission emphasizes that non-SMR operators are eligible to hold licenses in the lower 80 SMR channels, however these channels continue to be designated for SMR use only. While the Commission concludes that non-SMR are eligible for licensing, it emphasizes that this in no way affects its decision to license General Category and lower 80 channels geographically, with mutually exclusive applications reserved through competitive bidding with open eligibility.

3. Competitive Bidding Design

a. License Grouping

53. *Background.* In the *800 MHz Second Report and Order,* the Commission stated that ''to expedite the process of auctioning the lower 80 and General Category EA licenses, it would auction these licenses using the five regional groups that were used for the regional narrowband Personal Communications Services (PCS) auction: Northeast, South, Midwest, Central, and West.''

54. *Discussion.* The Commission amends the method by which it will group licenses for auction. While the Commission continues to believe that licenses should be grouped for

competitive bidding purposes in a manner that will reduce the administrative burden on auction participants, particularly small businesses, the Commission will not use the five regional groups based on Basic Trading Areas that were used in the regional narrowband PCS auction. Instead, the Commission will direct the Bureau to determine, pursuant to its delegated authority, what groups, if any should be established for auctioning the lower 80 and General Category EA licenses. The Balanced Budget Act of 1997 provides that ''before the issuance of bidding rules,'' the Commission must provide adequate time for parties to comment on proposed auction procedures. It has been the Bureau's practice to issue a Public Notice seeking comment on auction-specific operational issues well in advance of the application deadline for each auction. The Commission therefore concludes that the Bureau, under its existing delegated authority and in accordance with the Balanced Budget Act of 1997, should seek further comment on license grouping and auction sequence, prior to the start of the 800 MHz auction.

b. Upfront Payments

55. *Background.* Currently, applicants have the option to check ''all markets'' on their short-form applications but submit an upfront payment to cover only those licenses on which they actually intend to bid in any one round. Permitting the selection of ''all markets'' gives bidders the flexibility to pursue back-up strategies in the event they are unable to obtain their first choice of licenses.

56. *Discussion.* The Commission has expressly rejected arguments made by those that oppose the use of an ''all markets'' box. A bidder must submit an upfront payment sufficient to meet the eligibility requirements for any combination of licenses on which it might wish to bid in a round. This rule forces bidders to make a payment that reflects their level of interest and protects against speculation. Moreover, the Commission continues to believe that bidders should have the flexibility to pursue back-up strategies if they are unable to obtain their first choice of licenses. As demonstrated by all recent auctions, providing bidders flexibility is crucial to an efficient auction and optimum license assignment. Therefore, the Commission will retain the current rules, which permit use of the ''all markets'' box and require an upfront-payment that corresponds to the number of licenses on which a bidder anticipates bidding in any one round.

c. Delegated Authority

57. *Background.* In the *800 MHz Second Report and Order,* the Commission delegated to the Bureau the authority to implement many of the Commission's rules pertaining to auctions procedures. This included the authority to conduct auctions; administer applications, payment, licenses, grant, and denial procedures; and determine upfront and down payment amounts.

58. *Discussion.* The Commission notes that § 0.131 of its rules gives delegated authority to the Bureau to implement all of the rules pertaining to auction *procedures.* The Commission concludes that the delegation of authority to the Bureau is valid as it concerns inherently procedural rather than substantive issues and is, therefore, in compliance with its rules. Furthermore, the Commission's delegation of authority is in compliance with the APA. Pursuant to 5 U.S.C. Section 553(b), an agency may modify procedural rules without notice and comment. Because the actions delegated to the Bureau are procedural in nature and do not affect the substantive rights of interested parties, the Commission's delegation of authority falls within that exception.

4. Treatment of Designated Entities

a. Installment Payments

59. *Background.* In the *800 MHz Second Report and Order,* the Commission deferred to its Part 1 proceeding the decision on whether to adopt installment payments in the lower 80 and General Category channels. The Commission determined in its *Part 1 Third Report and Order,* 63 FR 2315 (January 15, 1998), released in December of 1997, that installment payments should not be used in the immediate future as a means of financing small-business participation in its auction program.

60. *Discussion.* In the *Part 1 Third Report and Order,* the Commission considered its use of installment payment plans for future auctions. On the basis of the record in that proceeding and the record developed on installment payment financing for the broadband PCS C block service and on recent decisions eliminating installment payment financing for LMDS and 800 MHz SMR (upper 200 channels), the Commission concluded that, until further notice, the Commission should no longer offer such plans as a means of financing small businesses and other designated entities seeking spectrum licenses. The Commission notes that this conclusion was subject to its request for comment in the Second Further Notice of Proposed Rulemaking portion of the *Part 1 Third Report and Order* on installment payment issues and means other than bidding credits and installment payments by which the Commission might facilitate the participation of small businesses in its spectrum auction program.

61. The Commission believes that the public interest is best served by going forward with the auction of the lower 80 and General Category channels without extending installment payments to licensees. In place of installment payments, the Commission established larger bidding credits to provide for the interests of small business bidders. The Commission believes that its adoption of the larger bidding credit both fulfills the mandate of Section 309(j) to provide small businesses with the opportunity to participate in auctions and ensure that new services are offered to the public without delay.

b. Designated Entity Provisions

62. *Background.* In the *800 MHz Second Report and Order,* the Commission sought comment on the type of designated entity provisions that should be incorporated into its competitive bidding procedures for the lower 80 and General Category channels. The Commission requested comment on the possibility that, in addition to small business provisions, separate provisions for women- and minority-owned entities should be adopted for the lower 80 and General Category channels. In the *800 MHz Second Report and Order,* the Commission determined that it had not developed a record sufficient to sustain gender- and minority-based measures in the lower 80 and General Category licenses based on the standard established by the *Adarand* decision. Additionally, the Commission noted the record was insufficient to support any gender-based provisions under the intermediate scrutiny standard established in the *VMI* decision. Based upon the record in that proceeding, the Commission adopted bidding credits solely for applicants qualifying as small businesses. The Commission believed these provisions would provide small businesses with a meaningful opportunity to obtain licenses for the lower 80 and General Category channels. Moreover, many women- and minority-owned entities are small businesses and will therefore qualify for these provisions. As such, these provisions met Congress' goal of promoting wide dissemination of licenses in this spectrum.

63. *Discussion.* In light of the Supreme Court's recent decisions, the

Commission considered its statutory obligations to (1) award spectrum licenses expeditiously and to promote the rapid deployment of new services to the public without judicial delays, and (2) disseminate licenses among a wide variety of applicants, including designated entities. The designated entity bidding credits adopted for the 800 MHz service are gender- and minority-neutral but specifically target small businesses. Auction results indicate that many of the small businesses participating in auctions are also women- and minority-owned, therefore effectively furthering Congress' objective of disseminating licenses among a wide variety of applicants.

V. Conclusion

64. The Commission believes that the revisions and clarifications of its rules adopted in this *Memorandum Opinion and Order on Reconsideration* are necessary to finalize its implementation of a new licensing framework for SMR systems that strikes a fair and equitable balance between the competing interests of 800 MHz SMR licensees who seek to provide local service and those desiring to provide geographic area service. The Commission further believes that the revisions and clarifications of its rules will facilitate the rapid implementation of wide-area licensing in the SMR service and advance the public interest by fostering the economic growth of competitive new services.

VI. Procedural Matters

A. Regulatory Flexibility Act

65. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared a Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) of the possible impact on small entities of the changes in its rules adopted in this *Memorandum Opinion and Order on Reconsideration.* The Office of Public Affairs, Reference Operations Division, will send a copy of the *Memorandum Opinion and Order on Reconsideration,* including the Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the RFA.

B. Paperwork Reduction Act of 1995 Analysis

66. This *Memorandum Opinion and Order on Reconsideration* contains a modified information collection that the Commission is submitting to the Office of Management and Budget requesting clearance under the Paperwork Reduction Act of 1995.

VII. Supplemental Final Regulatory Flexibility Analysis

67. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Second Further Notice of Proposed Rulemaking (Second Further Notice)* in this proceeding. The Commission sought written public comment on the proposals in the Second Further Notice, including the IRFA. A Final Regulatory Flexibility Analysis (FRFA) was incorporated in Appendix D of the subsequent *Second Report and Order* in this proceeding. The Commission received eight petitions for reconsideration in response to the *800 MHz Second Report and Order.* The *Memorandum Opinion and Order on Reconsideration* addresses those reconsideration petitions. This associated Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) reflects revised or additional information to that contained in the FRFA. This Supplemental FRFA is thus limited to matters raised in response to the *800 MHz Second Report and Order* and addressed in this *Memorandum Opinion and Order on Reconsideration.* This Supplemental FRFA conforms to the RFA, as amended by the Contract with America Advancement Act of 1996.

A. Need for and Purpose of this Action

68. In the *800 MHz Second Report and Order,* the Commission established a flexible regulatory scheme for the 800 MHz Specialized Mobile Radio (SMR) service to promote efficient licensing and enhance the service's competitive potential in the commercial mobile radio marketplace. The rules adopted, in the *800 MHz Second Report and Order,* also implement Congress' goal of regulatory symmetry in the regulation of competing commercial mobile radio services (CMRS) as described in Sections 3(n) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 153(n), 332 (Communications Act), as amended by Title VI of the Omnibus Budget Reconciliation Act of 1993. In the *Second Report and Order,* the Commission also adopted rules regarding competitive bidding for the remaining 800 MHz SMR spectrum based on Section 309(j) of the Communications Act, 47 U.S.C. 309(j), which authorizes the Commission to use auctions to select among mutually exclusive initial applications in certain services, including the 800 MHz SMR service. The actions taken in this *Memorandum Opinion and Order on Reconsideration* are in response to petitions for reconsideration or clarification of the *800 MHz Second Report and Order.* Throughout this proceeding, the Commission has sought to promote Congress' goal of regulatory parity for all commercial mobile radio services, and to encourage the participation of a wide variety of applicants, including small businesses, in the SMR industry. In addition, the Commission has sought to establish rules for the SMR services that will streamline the licensing process and provide a flexible operating environment for licensees, foster competition, and promote the delivery of service to all areas of the country, including rural areas.

B. Summary of Significant Issues Raised in Response to the Final Regulatory Flexibility Analysis

69. No reconsideration petitions were submitted in response to the FRFA. However, small business-related issues were raised indirectly by some parties filing petitions for reconsideration of the *800 MHz Second Report and Order.* Several petitions concerned the potential impact of some of the Commission's proposals on small entities, especially on certain incumbent 800 MHz SMR licensees. In Section E, *infra,* the Commission describes its actions taken in response to petitions that raised small entity-related issues, as well as significant alternatives considered.

70. In the *800 MHz Second Report and Order,* the Commission adopted geographic area licensing for the lower 230 800 MHz SMR channels in order to facilitate the evolution of larger 800 MHz SMR systems covering wider areas and offering commercial services to rival other wireless telephony services. Some petitioners that were not SMR licensees opposed this plan arguing that it was unsuitable to the needs of smaller, private systems, which do not seek to cover large geographic areas in the manner of commercial service providers.

71. In the *800 MHz Second Report and Order,* the Commission adopted a portion of a proposal set forth by a number of incumbent 800 MHz SMR licensees (''Industry Proposal'') and allotted three contiguous 50-channel blocks from the former General Category block of channels. Some petitioners argued that auctioning such large contiguous blocks would not suit the needs of smaller SMR and non-SMR systems, which typically trunk smaller numbers of non-contiguous channels. These petitioners argued that large blocks of contiguous channels could be

prohibitively expensive to bid for at auction, thereby limiting the opportunities for smaller operators to take advantage of geographic area licensing. One petitioner argued that the 150 General Category Channels should be auctioned on a single-channel basis.

72. In the *800 MHz Second Report and Order,* the Commission adopted construction requirements for the lower 230 channels requiring EA licensees to provide coverage to one-third of the population within three years of initial license grant and to two-thirds of the population within five years of license grant. However, as an alternative to meeting applicable construction requirements, the Commission allowed EA licensees in the lower 230 channels to provide ''substantial service'' to their geographic license area within five years of license grant. The Commission found that more flexible construction requirements enhance rapid deployment of new technologies and services and will expedite service to rural areas. The Commission stated that a licensee could satisfy the substantial service requirement by demonstrating that it is providing a technologically innovative service or that it is providing service to unserved or underserved areas. Two petitioners argued that the Commission should eliminate the substantial service test and impose specific channel usage requirements.

73. In the *800 MHz Second Report and Order,* the Commission concluded that competitive bidding is an appropriate licensing mechanism for the Lower 80 channels and the General Category channels. Several petitioners request that the Commission use procedures other than competitive bidding to license the 800 MHz SMR service. In essence, petitioners contend that this band does not fit within the Congressional criteria for auctions because the General Category and lower 80 channels of the 800 MHz SMR band do not meet the original statutory criteria governing auctionability contained in Section 309(j) of the Communications Act, or the criteria as amended by the enactment of the Balanced Budget Act of 1997. Several petitioners contend that Section 309(j)(6)(E) of the Communications Act prohibits the Commission from conducting an auction unless it first attempts alternative licensing mechanisms to avoid mutual exclusivity.

74. Several petitioners contend that the Commission should limit participation in the 800 MHz SMR auction to SMR and/or non-SMR incumbents. PCIA, for example, believes that the Commission should limit eligibility for geographic area licenses to those incumbent licensees who provide coverage to 70 percent of their market areas. It further argues that the rules adopted in the *800 MHz Second Report and Order* will encourage the filing of applications for anti-competitive or speculative purposes, which may result in high license costs and degradation of service to the public.

75. Two petitioners contended that the Commission should retain installment payments for the lower 80 and General Category 800 MHz SMR licenses on the grounds that installment payments are the most significant option for the provision of meaningful small business participation in the spectrum auctions as they allow SMR operators to pay for the license out of the profits generated through the provision of SMR service. In the *Part 1 Third Report and Order,* released in December of 1997, the Commission subsequently determined that installment payments should not be used in the immediate future as a means of financing small-business participation in the auction program.

76. Finally, one petitioner argued that, in addition to small business provisions, separate bidding credit provisions for women- and minority-owned entities should be adopted for the lower 80 and General Category channels.

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

77. 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 Commission's rules. 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). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. ''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 96 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 Commission estimate that 81,600 (91 percent) are small entities.

78. The rules adopted in the *Memorandum Opinion and Order on Reconsideration* will affect all small entities that hold or seek to acquire 800 MHz SMR licenses. Under these rules, Economic Area (EA) licenses will be granted on a market area basis, instead of site-by-site and mutually exclusive applications will be resolved through competitive bidding procedures. As noted, a FRFA was incorporated into the *800 MHz Second Report and Order*. In that analysis, the Commission described the small entities that might be significantly affected at that time by the rules adopted in the *800 MHz Second Report and Order*. Those entities include existing, 800 MHz SMR operators and new entrants into the 800 MHz SMR market. To ensure the more meaningful participation of small business entities in the auction for geographic area 800 MHz SMR licenses, the Commission, adopted a two-tiered definition of small businesses in the *800 MHz Second Report and Order.* A very small business will be defined as an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million. A small business will be defined as an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $15 million. The Small Business Administration (SBA) has approved these definitions for the lower 80 SMR channels and General Category channels.

79. Based on the revised channelization plan adopted in the *Memorandum Opinion and Order on Reconsideration,* the Commission anticipates that a total of 3,850 EA licenses will be auctioned in the lower 230 channels of the 800 MHz SMR service. This figured is derived by multiplying the total number of EAs (175) by the number of channel blocks (22) in the lower 230 channels. No party submitting or commenting on the petitions for reconsideration giving rise to this *Memorandum Opinion and Order on Reconsideration* commented on the potential number of small entities that might participate in the auction of the lower 230 channels and no reasonable estimate can be made.

80. The Commission does not know how many 800 MHz SMR service providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In the auction of the upper 200 channels of the 800 MHz SMR service, there were 524 licenses won by winning bidders, of which 38 licenses were won by small or very small businesses. There is no basis to determine, of the 3,850 geographic area licenses to be auctioned in the lower 230 channels, the number of licenses that will be awarded to small or very small businesses.

D. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements

81. With one exception, this *Memorandum Opinion and Order on Reconsideration* does not impose any additional recordkeeping or other compliance requirements beyond the requirements contained in the *800 MHz Second Report and Order*. Incumbent licensees seeking to utilize an 18 dBμ signal strength interference contour and that are unsuccessful in obtaining the consent of affected co-channel incumbents, may submit to any certified frequency coordinator an engineering study showing that interference will not occur, together with proof that the incumbent licensee has sought consent.

E. Steps Taken to Minimize Any Significant Economic Burdens on Small Entities, and Significant Alternatives Considered

82. In awarding geographic area 800 MHz licenses in the lower 230 channels, the Commission is committed to meeting the statutory objectives of promoting economic opportunity and competition, of avoiding excessive concentration of licenses, and of ensuring access to new and innovative technologies by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. In order to ensure the more meaningful participation of small business entities in the 800 MHz auctions, the Commission has adopted a two-tier definition of small businesses. This approach will give qualifying small businesses bidding flexibility. Small businesses will receive a 25 percent bidding credit and very small businesses will receive a 35 percent bidding credit.

83. A number of petitioners requested that the Commission reconsider its decision to license the 150 General Category channels in three contiguous 50-channel blocks. These petitioners generally supported the licensing of smaller channel blocks as a means of enabling small businesses and new entrants to acquire spectrum in the 800 MHz SMR service. Recognizing these concerns, the Commission has determined that the General Category channels will be licensed in six contiguous 25-channel blocks, rather than three contiguous 50-channel blocks. A significant portion of incumbent licensees on the General Category frequencies are small businesses and are licensed for only a few channels in the band. Auctioning licenses for General Category Channels in smaller channel blocks will provide these small business incumbents with greater opportunities to take advantage of geographic area licensing. In addition, it will encourage new entrant participation in the provision of 800 MHz services. Changing the block size from 50 channels to 25 channels will provide small entities with the opportunity to acquire smaller amounts of spectrum consistent with their financial means and technological needs. By further facilitating small business and new entrant participation in the provision of 800 MHz services, this channel plan fulfills the Commission's statutory mandate of promoting economic opportunity for a wide variety of applicants and avoiding an excessive concentration of licenses. At the same time, licensing in 25-channel blocks will allow entities desiring large contiguous blocks of spectrum to pursue such spectrum in the General Category.

84. In concluding that licensing the General Category channels in blocks of 25 strikes a better balance between the competing needs of different licensees, the Commission also rejected one petitioner's proposal to license channels on an individual basis. The Commission does not believe the public interest would be served by licensing on a channel-by-channel basis, because this method of licensing would be administratively burdensome given the large number of channels involved. Single channel licensing would also be inconsistent with the needs of applicants that require blocks of contiguous spectrum and would not foster the kind of technological advancements that would allow SMR licensees, which typically operate multichannel systems, to compete with other CMRS licensees.

85. In the *800 MHZ Second Report and Order*, the Commission adopted construction requirements for the lower 230 channels that required EA licensees to provide coverage to one-third of the population within three years of initial license grant and to two-thirds of the population within five years of license grant. However, as an alternative to those construction requirements, the Commission stated that EA licensees in the lower 230 channels could provide ''substantial service'' to their geographic license area within five years of license grant. One petitioner asked the Commission to eliminate the substantial service test and require that construction standards be met on a ''per channel'' basis. The Commission has rejected the petitioner's request because the Commission believes that maintaining the substantial service option as an alternative to meeting applicable construction requirements will facilitate build-out in rural areas, encourage licensees to provide new service, and enable new entrants to satisfy the Commission's coverage requirements in geographic areas where incumbents are already substantially built out. The Commission believes that rural service providers as well as new entrants are likely to include small businesses, and thus retaining the ''substantial service'' option should benefit small businesses. Giving licensees flexibility to satisfy the ''substantial service'' option in different ways should benefit small businesses.

86. In the *Second Report and Order,* the Commission concluded that incumbent licensees may add or modify sites within their existing 22 dBμ interference contours without prior Commission approval, and may use their 18 dBμ interference contour as the basis for modifying or expanding their systems provided that they obtain the consent of all co-channel incumbents potentially affected by the use of this standard. Three petitioners suggested that the Commission clarify that an incumbent licensee on the lower 230 channels seeking to modify its system using its 18 dBμ interference contour may, in the absence of consent from affected incumbents, provide a statement from a certified frequency advisory committee that a modification will not cause interference to adjacent licensees. In response to this request the Commission clarified that incumbent licensees seeking to utilize an 18 dBμ signal strength interference contour and that are unsuccessful in obtaining the consent of affected co-channel incumbents, may submit to any certified frequency coordinator an engineering study showing that interference will not occur together with proof that the incumbent licensee has sought consent. Adopting this alternative will provide a balance between incumbent licensee flexibility and incumbent licensee

protection, including small business incumbent licensees. This alternative reduces unnecessary regulatory burdens on licensees and administrative costs on the industry, and thereby benefits consumers.

87. Two petitioners contended that incumbents' geographic licenses should include areas where an incumbent's interference contours do not overlap, but where no other licensee could place a transmitter because of the Commission's interference rules. The Commission considered and rejected this proposal, finding that inclusion of areas outside of an incumbent's interference contours would be contrary to its objective of prohibiting encroachment on the geographic area licensee's operations. Incumbents seeking to expand their contours, including small businesses may participate in the auction of geographic area licenses or seek partitioning agreements with geographic area licensees.

88. A number of petitioners have requested that the Commission reconsider its decision to grant mutually exclusive applications for geographic area licenses in the lower 230 channels through competitive bidding. Balancing various interests, the Commission has affirmed the use of competitive bidding to grant mutually exclusive 800 MHz SMR licenses. The Commission also reaffirms its conclusion in the *800 MHz Second Report and Order* that mutually exclusive applications for the lower 230 channels are auctionable under the Commission's auction authority, as amended by the Balanced Budget Act of 1997. Under the Commission's rules, incumbent licensees and potential new providers of this service, including small businesses, will be able to participate in the auction process because the Commission has decided not to restrict eligibility for EA licenses.

89. Some petitioners contend that the administrative procedures associated with assigning geographic area licenses through auctions are not as efficient as site-specific licensing. The Commission disagrees with those petitioners and reiterates the advantages to both the Commission and licensees of geographic area licensing. The Commission again emphasizes that geographic area licensing offers a flexible, licensing scheme that eliminates the need for many of the complicated and burdensome licensing procedures that hampered SMR development in the past. Small businesses will be among those licensees that will benefit from the advantages of a flexible and less burdensome licensing scheme.

90. Several petitioners asked the Commission to limit participation in the 800 MHz SMR auction to SMR and/or non-SMR incumbents. The Commission specifically considered and rejected a proposal to limit eligibility for geographic area licenses to incumbents providing coverage to 70 percent or more of their market areas. In rejecting these proposals, the Commission concluded that market forces, not regulation, should determine participation in competitive bidding for geographic area licenses. The Commission concluded that the competitive bidding process will adequately deter speculation and that open eligibility will foster competition and result in a diverse group of 800 MHz SMR providers, including small businesses.

91. In the *800 MHz Second Report and Order*, the Commission stated that to expedite the auctioning of EA licenses for the lower 230 channels, the Commission would auction these licenses using the five regional groups that were used for the regional narrowband Personal Communications Services (PCS) auction. On reconsideration, the Commission clarifies the method by which the Commission will group licenses for auction. While the Commission continues to believe that licenses should be grouped for competitive bidding purposes in a manner that will reduce the administrative burden on auction participants, particularly small businesses, the Commission will not use the five regional groups based on Basic Trading Areas that were used in the regional narrowband PCS auction. Instead, the Commission direct the Bureau to seek comment on license groupings and determine, pursuant to its delegated authority, what groups, if any, should be established for auctioning the lower 80 and General Category EA licenses.

92. The Commission declined to reconsider its decision in the *Part 1 Third Report and Order* to suspend the availability of installment payment financing for small businesses participating in the auction of the lower 230 channels of the 800 MHz SMR service. To balance the impact of this decision on small businesses, in the *800 MHz Second Report and Order*, the Commission established larger bidding credits for qualifying entities. The Commission believes that the larger bidding credit will provide small businesses with adequate opportunities to participate in the 800 MHz SMR auction.

93. The Commission has also rejected one petitioner's contention that the Commission is required to incorporate gender- and minority-based provisions into its competitive bidding procedures. Recent U.S. Supreme Court decisions has created legal uncertainty on whether special auction provisions for minorities and women could withstand a constitutional challenge. The designated entity bidding credits adopted for the 800 MHz service are gender- and minority-neutral but specifically target small businesses. Auction results indicate that many of the small businesses participating in auctions are also women- and minority-owned, therefore effectively furthering Congress' objective of disseminating licenses among a wide variety of applicants.

F. Report to Congress

94. The Commission will send a copy of this *Memorandum Opinion and Order on Reconsideration*, including this Supplemental FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the *Memorandum Opinion and Order on Reconsideration*, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Ordering Clauses

95. Authority for issuance of this *Memorandum Opinion and Order on Reconsideration* is contained in Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 309(j).

96. Accordingly, it is ordered that the petitions for reconsideration or clarification filed by the parties listed in the attachment are granted in part to the extent provided herein, and otherwise are denied.

97. It is furthered ordered that the Commission's rules, are amended. It is further ordered that the provisions of this *Memorandum Opinion and Order on Reconsideration* and the Commission's rules, as amended in the rule changes, shall become effective February 18, 2000.

98. It is furthered ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this *Memorandum Opinion and Order on Reconsideration,* including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 90

Administrative practice and procedure, Business and industry,

Common carriers, Communications equipment, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 90 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

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

Authority: Secs. 4, 251–2, 303, 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 251–2, 303, 309 and 332, unless otherwise noted.

2. Section 90.615 is revised to read as follows:

§ 90.615 Spectrum blocks available in the General Category for 800 MHz SMR General Category.

TABLE 1.—806–821/851–866 MHz BAND CHANNELS (150 CHANNELS)

Spectrum block	Channel Nos.
D	1 through 25
D1	26 through 50
E	51 through 75
E1	76 through 100
F	101 through 125
F1	126 through 150

3. Section 90.619 is amended by revising the ''General Category (12 Channels)'' entries in Table 4A in paragraph (a)(5), Table 12 in paragraph (b)(8), the ''General Category (5 Channels)'' entries in Table 16 in paragraph (b)(9), Table 20 in paragraph (b)(10), and the ''General Category (18 Channels)'' entries in Table 24 in paragraph (b)(11) to read as follows:

§ 90.619 Frequencies available for use in the U.S./Mexico and U.S/Canada border areas.

(a) * * *

(5) * * *

TABLE 4A.—UNITED STATES-MEXICO BORDER AREA, SMR AND GENERAL CATEGORIES 806–821/851–866 MHz BAND (95 CHANNELS)

[EA-Based SMR Category (83 Channels)]

* * * * *

Spectrum Block	Channel Nos.
General Category (12 Channels)	
D	275–315
D1	355–395
E	276–316
E1	356–396
F	277–317
F1	357–397

(b) * * *

(8) * * *

TABLE 12.—SMR AND GENERAL CATEGORIES—95 CHANNELS

[Regions 1, 4, 5, 6]

Spectrum block	Channel Nos.
EA-Based SMR Category (90 Channels)	
A	None
B	463 through 480
C	493 through 510, 523 through 540, 553 through 570, 583 through 600
G through V	None
General Category (5 Channels)	
D	None
D1	30
E	60
E1	90
F	120
F1	150

(9) * * *

TABLE 16.—SMR AND GENERAL CATEGORIES—60 CHANNELS

[Region 2]

* * * * *

Spectrum Block	Channel Nos.
General Category (5 Channels)	
D	18
D1	36
E	54–72
E1	90
F	None
F1	None

(10) * * *

TABLE 20.—SMR AND GENERAL CATEGORIES (135 CHANNELS)

[Region 3]

Spectrum Block	Channel Nos.
SMR Category (120 Channels)	
A	417 through 420
B	421 through 440, 457 through 480
C	497 through 520, 537 through 560, 577 through 600
G through V	None
General Category (15 Channels)	
D	38–39–40
D1	158–159
E	78–79–80
E1	160–198
F	118–119–120
F1	199–200

(11) * * *

TABLE 24.—(REGIONS 7,8) SMR AND GENERAL CATEGORIES—190 CHANNELS

* * * * *

Spectrum Block	Channel Nos.
General Category (18 Channels)	
D	35 through 37
D1	38 through 40
E	75 through 77
E1	78 through 80
F	115 through 117
F1	118 through 120

* * * * * *

4. Section 90.621 is amended by revising paragraphs (b) introductory text, (b)(1) and (b)(3) introductory text to read as follows:

§ 90.621 Selection and assignment of frequencies.

* * * * *

(b) Stations authorized on frequencies listed in this Subpart, except for those stations authorized pursuant to paragraph (g) of this section and EA-based and MTA-based SMR systems, will be afforded protection solely on the basis of fixed distance separation criteria. For Channel Blocks A, through V, as set forth in § 90.917(d), the separation between co-channel systems will be a minimum of 113 km (70 mi) with one exception. For incumbent licensees in Channel Blocks D through V, that have received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour (see § 90.693), the separation between co-channel systems will be a minimum of 173 km (107 mi). The following exceptions to these separations shall apply:

(1) Except as indicated in paragraph (b)(4) of this section, no station in Channel Blocks A through V shall be less than 169 km (105 mi) distant from a co-channel station that has been

granted channel exclusivity and authorized 1 kW ERP on any of the following mountaintop sites: Santiago Peak, Sierra Peak, Mount Lukens, Mount Wilson (California). Except as indicated in paragraph (b)(4) of this section, no incumbent licensee in Channel Blocks D through V that has received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour shall be less than 229 km (142 mi) distant from a co-channel station that has been granted channel exclusivity and authorized 1 kW ERP on any of the following mountaintop sites: Santiago Peak, Sierra Peak, Mount Lukens, Mount Wilson (California).

* * * * *

(3) Except as indicated in paragraph (b)(4) of this section, stations in Channel Blocks A through V that have been granted channel exclusivity and are located in the State of Washington at the locations listed below shall be separated from co-channel stations by a minimum of 169 km (105 mi). Except as indicated in paragraph (b)(4) of this section, incumbent licensees in Channel Blocks D through V that have received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour, have been granted channel exclusivity and are located in the State of Washington at the locations listed below shall be separated from co-channel stations by a minimum of 229 km (142 mi). Locations within one mile of the geographical coordinates listed in the table below will be considered to be at that site.

* * * * *

5. Section 90.693 is revised to read as follows:

§ 90.693 Grandfathering provisions for incumbent licensees.

(a) *General provisions.* These provisions apply to ''incumbent licensees'', all 800 MHz licensees authorized in the 806–821/851–866 MHz band who obtained licenses or filed applications on or before December 15, 1995.

(b) *Spectrum blocks A through V.* An incumbent licensee's service area shall be defined by its originally licensed 40 dBμV/m field strength contour and its interference contour shall be defined as its originally-licensed 22 dBμV/m field strength contour. The ''originally-licensed'' contour shall be calculated using the maximum ERP and the actual height of the antenna above average terrain (HAAT) along each radial. Incumbent licensees are permitted to add, remove or modify transmitter sites within their original 22 dBμV/m field strength contour without prior notification to the Commission so long as their original 22 dBμV/m field strength contour is not expanded and the station complies with the Commission's short-spacing criteria in §§ 90.621(b)(4) through 90.621(b)(6). Incumbent licensee protection extends only to its 40 dBμV/m signal strength contour. Pursuant to the minor modification notification procedure set forth in 1.947(b), the incumbent licensee must notify the Commission within 30 days of any changes in technical parameters or additional stations constructed that fall within the short-spacing criteria. See 47 CFR 90.621(b).

(c) *Special provisions for spectrum blocks D through V.* Incumbent licensees that have received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour shall have their service area defined by their originally-licensed 36 dBμV/m field strength contour and their interference contour shall be defined as their originally-licensed 18 dBμV/m field strength contour. The ''originally-licensed'' contour shall be calculated using the maximum ERP and the actual HAAT along each radial. Incumbent licensees seeking to utilize an 18 dBμV/m signal strength interference contour shall first seek to obtain the consent of affected co-channel incumbents. When the consent of a co-channel licensee is withheld, an incumbent licensee may submit to any certified frequency coordinator an engineering study showing that interference will not occur, together with proof that the incumbent licensee has sought consent. Incumbent licensees are permitted to add, remove or modify transmitter sites within their original 18 dBμV/m field strength contour without prior notification to the Commission so long as their original 18 dBμV/m field strength contour is not expanded and the station complies with the Commission's short-spacing criteria in §§ 90.621(b)(4) through 90.621(b)(6). Incumbent licensee protection extends only to its 36 dBμV/m signal strength contour. Pursuant to the minor modification notification procedure set forth in 1.947(b), the incumbent licensee must notify the Commission within 30 days of any changes in technical parameters or additional stations constructed that fall within the short-spacing criteria. See 47 CFR 90.621(b).

(d) *Consolidated license*—(1) *Spectrum blocks A through V.* Incumbent licensees operating at multiple sites may, after grant of EA licenses has been completed, exchange multiple site licenses for a single license, authorizing operations throughout the contiguous and overlapping 40 dBμV/m field strength contours of the multiple sites. Incumbents exercising this license exchange option must submit specific information on Form 601 for each of their external base sites after the close of the 800 MHz SMR auction. The incumbent's geographic license area is defined by the contiguous and overlapping 22 dBμV/m contours of its constructed and operational external base stations and interior sites that are constructed within the construction period applicable to the incumbent. Once the geographic license is issued, facilities that are added within an incumbent's existing footprint and that are not subject to prior approval by the Commission will not be subject to construction requirements.

(2) *Special Provisions for Spectrum Blocks D through V.* Incumbent licensees that have received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour operating at multiple sites may, after grant of EA licenses has been completed, exchange multiple site licenses for a single license. This single site license will authorize operations throughout the contiguous and overlapping 36 dBμV/m field strength contours of the multiple sites. Incumbents exercising this license exchange option must submit specific information on Form 601 for each of their external base sites after the close of the 800 SMR auction. The incumbent's geographic license area is defined by the contiguous and overlapping 18 dBμV/m contours of its constructed and operational external base stations and interior sites that are constructed within the construction period applicable to the incumbent. Once the geographic license is issued, facilities that are added within an incumbent's existing footprint and that are not subject to prior approval by the Commission will not be subject to construction requirements.

6. Section 90.903 is amended by revising paragraph (b)(1) to read as follows:

§ 90.903 Competitive bidding mechanisms.

* * * * *

(b) *Grouping.* (1) All EA licenses for Spectrum Blocks A through V will be auctioned simultaneously, unless the Wireless Telecommunications Bureau announces, by Public Notice prior to the

auction, an alternative method of grouping these licenses for auction.

* * * * *

[FR Doc. 99–32841 Filed 12–17–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 991210334–9334–01; I.D. 112399A]

RIN 0648–AN41

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim rule; request for comments.

SUMMARY: This interim rule implements changes to the management measures for the red snapper fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico as requested by the Gulf of Mexico Fishery Management Council (Council) to reduce overfishing. This rule modifies the recreational and commercial fishing seasons, increases the recreational minimum size limit, and reinstates a 4–fish bag limit for the captain and crew of for-hire vessels (i.e., charter vessels and headboats). The intended effect is to reduce overfishing of red snapper in the Gulf of Mexico.

DATES: This rule is effective January 19, 2000 through June 19, 2000, except that § 622.34(n) is effective January 1, 2000, through June 19, 2000. Comments must be received at the appropriate address or fax number (See **ADDRESSES**) no later than 5:00 p.m., eastern standard time, on January 19, 2000.

ADDRESSES: Written comments on this interim rule must be mailed to Dr. Roy Crabtree, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or Internet.

Requests for copies of the documents supporting this rule, which include an analysis of the economic consequences of the rule and an environmental assessment, may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Dr. Roy Crabtree, telephone: 727–570–5305, fax: 727–570–5583, e-mail: Roy.Crabtree@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

The Council has requested an interim rule to adjust management measures for the recreational and commercial red snapper fisheries for the 2000 fishing year, with certain provisions effective January 1, 2000. The requested adjustments are: (1) An increase in the recreational minimum size limit to 16 inches (40.6 cm); (2) establishment of a recreational season of April 21 to October 31, 2000; (3) reinstatement of the 4–fish bag limit for captain and crew of for-hire vessels; and (4) a change in the openings of the spring red snapper commercial season from the first 15 days of each month to the first 10 days of each month, beginning February 1.

The Council adopted these adjustments, as well as others, for a proposed regulatory amendment to establish red snapper management specifications for 2000. The Council is preparing the regulatory amendment for submission to NMFS for review, approval, and implementation under the FMP's framework procedure. NMFS will implement any approved regulatory amendment measures through the framework's proposed and final rulemaking procedure; the final rule would replace the interim rule.

At this time, NMFS is not implementing any measures to reduce overfishing beyond those requested by the Council. The Council recommended no change to the status quo TAC of 9.12 million pounds; thus, this interim rule does not address or alter the current TAC. The Magnuson-Stevens Act as amended by the Sustainable Fisheries Act (SFA) mandates that overfished stocks be rebuilt to a biomass level capable of producing maximum sustainable yield (MSY). On November 17, 1999, NMFS disapproved the Council's rebuilding schedule proposed for red snapper in its Generic SFA Amendment to the Gulf of Mexico Fishery Management Council Fishery Management Plans because it specified a fishing-mortality-based rebuilding target rather than a biomass-based target and because it did not estimate the time to rebuild in the absence of fishing mortality consistent with the Magnuson-Stevens Act and the national standard guidelines. The Council must submit a new rebuilding plan as soon as possible.

The recent stock assessment included a wide range of estimates of MSY and the stock biomass associated with MSY for red snapper. NMFS recognizes that there is considerable uncertainty associated with these estimates, and the Council has latitude to consider this uncertainty when developing a new rebuilding plan. Conditions approaching those estimated to exist near MSY for red snapper have not been seen in decades, and thus the assessment models require assumptions regarding the productivity of the stock to predict MSY. The SFA requires greater reductions in the red snapper harvest and in shrimp trawl bycatch mortality of juvenile red snapper than previous management targets. Depending on the reduction of red snapper bycatch mortality achieved in the shrimp fishery and appropriate rebuilding parameters, the 1999 Reef Fish Stock Assessment Panel (RFSAP) estimates of acceptable biological catch (ABC) for TAC range from 0 to 9.12 million pounds. The best available scientific information indicates that the 9.12 million pound TAC for 2000 may slow the rate of recovery in the early years of any rebuilding program but would not jeopardize recovery of the stock consistent with the rebuilding requirements of the Magnuson-Stevens Act, particularly if greater reductions in bycatch mortality are achieved as expected. However, an immediate and significant reduction in TAC would have devastating effects upon participants in the fishery.

NMFS will continue to provide the Council with the best available scientific information regarding the status of the red snapper stock, the effectiveness of bycatch reduction devices (BRDs), and the effectiveness of the FMP's management measures in rebuilding the overfished red snapper resource. NMFS is working with the commercial fishing industry to develop new BRDs that will further reduce finfish bycatch while minimizing shrimp loss. Also, NMFS will continue to work with the Council in implementing the FMP's current red snapper stock rebuilding plan and in modifying this plan as necessary to restore the stock to a biomass level capable of producing maximum sustainable yield. Management options include adjustments to the fishing season, bag limit changes, quota reductions, fishing effort reduction,