

material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

#### **X. Regulatory Assessment Requirements**

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the

government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

#### **XI. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### **List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 27, 2000.

**Susan B. Hazen,**

*Acting Director, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

#### **PART 180—[AMENDED]**

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.1210 is added to subpart D to read as follows:

#### **§ 180.1210 Phosphorous acid, exemption from the requirement of a tolerance.**

An exemption from the requirement of a tolerance is established for residues of phosphorous acid and its ammonium, sodium and potassium salts in or on all food commodities when used as an agricultural fungicide on food crops.

[FR Doc. 00-25598 Filed 10-4-00; 8:45 am]

**BILLING CODE 6560-50-F**

### **FEDERAL COMMUNICATIONS COMMISSION**

#### **47 CFR Parts 1, 2, 87 and 101**

[FCC 00-272; WT Docket No. 99-327]

#### **24 GHz Service; Licensing and Operation**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document adds and amends regulations governing the licensing and operation of the 24.25–24.45 GHz and 25.05–25.25 GHz bands. In addition, the Commission adopts competitive bidding rules to select among mutually exclusive applicants for licenses in these bands. We expect such amendments to promote the effective use of the 24 GHz band and to accommodate deployment of point-to-point, point-to-multipoint, and multipoint-to-multipoint fixed wireless technology at 24 GHz.

**DATES:** Effective December 4, 2000, except for §§ 101.527 and 101.529, which contain information collection requirements that have not been approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date of those sections. Public comments on the information collections contained in the *Report and Order* are due November 6, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Room 4-C207, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Michael Pollak, Shellie Blakeney or Paul Moon of the Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418-0680, or Nese Guendelsberger of the Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, (202) 418-0660.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order (R&O)* in WT Docket No. 99-327, FCC 00-272, adopted July 25, 2000, and released August 1, 2000. The full text of the *R&O* is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The full text of the *R&O* may also be purchased from the Commission's copy contractor, International Transcription Services, 1231 20th Street, NW., Washington, DC 20036, telephone (202) 857-3800, facsimile (202) 857-3805. The full text of the *R&O* may also be downloaded at: <<http://www.fcc.gov/Bureaus/Wireless/Orders/2000/fcc00272>>. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418-0260, TTY (202) 418-2555, or at [mcontee@fcc.gov](mailto:mcontee@fcc.gov).

### Synopsis of the Report and Order

The *R&O* gives maximum regulatory flexibility to 24 GHz Service providers. Both incumbent 24 GHz band licensees and new licensees will be governed by part 101 of the Commissions Rules, 47 CFR part 101. The Commission will assign the 24 GHz band for licensing throughout the United States by 172 Economic Areas. The Commission also authorized additional economic areas for licensing covering the following United States territories and possessions: Guam, Northern Mariana Islands, Puerto Rico, the United States Virgin Islands, America Samoa and the Gulf of Mexico. The Commission will license the 24 GHz band in 40 MHz flexible channel pairs, five per economic area. The *R&O* also permitted 24 GHz licensee more flexibility in system design, by designating that either the upper or lower side of the 40 MHz channel pairs can be used for the nodal station or the subscriber station.

The *R&O* allowed 24 GHz band licensees to offer a variety of fixed services. 24 GHz providers may elect their regulatory status as either common carrier or private, under the conditions set forth in Title II and III of the Communications Act of 1934, as amended. Regarding service and construction requirements, the *R&O* adopted a ten-year license term and required a "substantial service" showing at the ten year license renewal date. Substantial service is defined as a "service" that is sound, favorable, and substantially above a level of mediocre service which might minimally warrant renewal. In addition, the following "safe harbor" examples achieve compliance:

(a) A demonstration of four links per million population within a service area; (b) a demonstration of service to an area that has limited wireless or wireline telecommunication services.

Partitioning and disaggregation are permitted, and any partitionee/disaggregatee is authorized to hold its license for the remainder of the original licensee's term. The *R&O* also clarified that licensees may aggregate 24 GHz band spectrum.

The *R&O* adopted flexible technical standards as well that are both consistent with the Commission's part 101 Rules, 47 CFR part 101. These rules include, but are not limited to the revision of the emission mask for the 24 GHz band; allowing the use of non-directional antennas and one foot parabolic antennas; eliminating individual licensing for nodal stations; and allowing a maximum contiguous bandwidth of up to 200 MHz through aggregation.

The *R&O* provides that the competitive bidding rules set forth in part 1, subpart Q, of the Commission's rules will apply to the auction of licenses in the 24 GHz band unless otherwise provided therein. The application of the part 1 rules to the 24 GHz band will include any amendments that may be adopted in the ongoing part 1 proceeding. Consistent with current practice, the Wireless Telecommunications Bureau (Bureau) will seek comment on matters such as auction design in a public notice prior to the auction. The *R&O* adopts a ten-day period for filing petitions to deny against long-form applications and delegates to the Bureau the discretion to implement a five-day period in exigent circumstances.

The *R&O* also adopts a three-tiered approach to bidding credits. Entrepreneurs, which are defined as entities having average annual gross revenues not exceeding \$40 million for the preceding three years, are eligible to receive a 15 percent bidding credit. Small businesses, which are defined as entities having average annual gross revenues not exceeding \$15 million for the preceding three years, are eligible to receive a 25 percent bidding credit. Very small businesses, which are defined as entities having average annual gross revenues not exceeding \$3 million for the preceding three years, are eligible to receive a 35 percent bidding credit.

Finally, the *R&O* adopts attribution rules for the 24 GHz band. Under these rules, the Commission will attribute to the applicant the gross revenues of its controlling interests and their affiliates in assessing whether the applicant is qualified to take advantage of the

Commission's small business provisions.

### Regulatory Flexibility Act Final Analysis

As required by the Regulatory Flexibility Act ("RFA"), an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the Amendment to parts 1, 2, and 101 of the Commission's Rules To License Fixed Services at 24 GHz, WT Docket 99-327, Notice of Proposed Rulemaking (*NPRM*), 64 FR 71088 (rel. Dec. 20, 1999), issued in this proceeding. The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. No comments were filed in direct response to the IRFA. This Final Regulatory Flexibility Analysis ("FRFA") conforms to the Regulatory Flexibility Act.

#### I. Need for, and Objectives of, the Report and Order in the Report and Order

We adopt rules for licensing and operation of the 24.25-24.45 GHz and 25.05-25.25 GHz bands. In addition, the Commission adopts competitive bidding rules to select among new licensees for this band. We amend parts 1, 2, 87 and 101 of the Commission's Rules and expect such amendments to promote the effective use of the 24 GHz band and to accommodate deployment of point-to-point, point-to-multipoint, and multipoint-to-multipoint fixed wireless technology at 24 GHz. The rule changes we adopt today establish a flexible regulatory and licensing framework, which will enhance opportunities to provide a broadband wireless service, foster effective competition, and further our efforts for consistent rule application regarding broadband wireless services.

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

No comments were filed in direct response to the IRFA. However, as described in Section V, we have taken into account all comments submitted generally by small entities.

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

The Regulatory Flexibility Act directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The Regulatory Flexibility Act 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 ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (ninety-one percent) are small entities. The rules we are adopting today will affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The Commission has not developed a definition of small entities applicable to licensees in the 24 GHz band. Therefore, the applicable definition of small entity is the definition under the SBA rules for the radiotelephone industry that provides that a small entity is a radiotelephone company employing fewer than 1,500 persons. The 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available, shows that only 12 radiotelephone firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees. This information notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. However, TRW is not a small entity. Therefore, only one incumbent licensee in the 24 GHz band is a small business entity. The proposals also affect potential new licensees on the 24 GHz band. Pursuant

to 47 CFR 24.720(b), the Commission has defined "small business" for Blocks C and F broadband PCS licensees as firms that had average gross revenues of less than \$40 million in the three previous calendar years. This regulation defining "small business" in the context of broadband PCS auctions has been approved by the SBA. With respect to new applicants in the 24 GHz band, we shall use this definition of "small business" and apply it to the 24 GHz band under the name "entrepreneur." With regard to "small business," we shall adopt the definition of "very small business" used for 39 GHz licenses and PCS C and F block licenses: Businesses with average annual gross revenues for the three preceding years not in excess of \$15 million. Finally, "very small business" in the 24 GHz band shall be defined as an entity with average gross revenues not to exceed \$3 million for the preceding three years. The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held. Even after that, the Commission will not know how many licensees will partition their license areas or disaggregate their spectrum blocks, if partitioning and disaggregation are allowed.

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

This *R&O* adopts rules that will entail reporting, recordkeeping, and/or third-party consultation. However, the Commission believes that these requirements are the minimum needed. By this *R&O*, we require licensees to notify the Commission within 30 days of a change in regulatory status between common carrier and/or non-common carrier. We also require licensees to substantiate their renewal expectancies with information demonstrating substantial service. In addition, because we consider partitioning and disaggregation to be a form of license assignment, we require such action to receive Commission approval via application for assignment on FCC Form 603. With regard to alien ownership, we require licensees to amend their FCC Form 602 to reflect any changes in foreign ownership information, together with the initial information required by FCC Form 601.

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

The Regulatory Flexibility Act requires an agency to describe any significant alternatives that it has considered in reaching its proposed

approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

In the *NPRM*, we noted that the Commission originally used Standard Metropolitan Statistical Areas (SMSA) to license the DEMS service, which failed to include rural communities because SMSAs are too large. We then proposed to reduce the licensing service area in order to: (1) Include rural communities; (2) maximize the opportunities for the dissemination of 24 GHz licenses among a wide array of entities; and (3) facilitate efficient use of this spectrum. While adopting Economic Areas (EAs) in this *R&O*, we cite to our experience with the 39 GHz auction in which the majority of small, very small and rural qualified bidders won licenses. We also note that our decision to offer flexible partitioning and disaggregation/aggregation will speed service to rural areas and encourage the participation of smaller entities at auction. In addition, we adopt flexible bidding credits for smaller entities, while noting that small entities may further form bidding consortiums to prevail at auction. In sum, we believe that adopting EAs for licensing this service will serve the public interest best, in light of the overall changes we are making here to specifically benefit small entities.

In this *R&O*, we authorize 24 GHz licensees to provide common carrier service, non-common carrier service, or both under a single license. We also adopt our proposal in the *NPRM* to require licensees to notify us within 30 days of such a change in regulatory status. However, we minimize the reporting burden by declining to require licensees to obtain Commission authorization prior to a change in regulatory status. In addition, we decline to require that the licensees detail the specific services they seek to provide. This is consistent with our streamlined application process, and it serves to simplify the reporting requirements for small entities.

In this *R&O*, we adopt a ten-year license term in conjunction with a renewal expectancy based on substantial service. In order to demonstrate substantial service,

licensees must provide the Commission with a description of geographic coverage and population served or links installed, and a description of how the service complies with the substantial service requirement. In addition, licensees must submit copies of any violations or proceedings that relate to their renewal expectancy. While taking into account this burden on small entities, we note that such recordkeeping ensures that the 24 GHz band is not "warehoused" or abused to the preclusion of small business opportunities. In this context, we also note that we declined here to adopt a license term in excess of ten years, in order to afford more opportunities for entities, including small businesses, to capture licenses that fail to meet substantial service.

In order to overcome entry barriers for smaller entities, we adopt here flexible partitioning and disaggregation rules. Parties to partitioning and disaggregation agreements may negotiate whether one party or both will be responsible for demonstrating fulfillment of pertaining construction requirements. Parties may also combine partitioning and disaggregation agreements. Any such agreements are treated, however, as a form of license assignment and therefore require Commission approval via filing FCC Form 603. Licensees who received bidding credits at auction and who subsequently partition or disaggregate are also subject to the unjust enrichment provision contained in our Rules. We believe that these recordkeeping and unjust enrichment restrictions are the minimum needed, when weighed against the significant benefits to small entities that result from the flexible approach we are adopting here.

In order to supervise effectively the compliance of 24 GHz licensees with regard to our alien ownership restrictions, we require both common carrier and non-common carrier licensees in the 24 GHz band to provide the alien ownership information requested in FCC Form 601, as well as amendments in FCC Form 602 to reflect any changes in foreign ownership information. This enforcement is a mutual benefit to all licensees and a minimal reporting burden.

In the *R&O*, we adopt a ten-day period for filing petitions to deny long-form applications. We decline to adopt a five-day period in order to give small businesses more flexibility in challenging license awards. We also adopt a third level of small business bidding credits in addition to those proposed in the *NPRM*, in respect of the fact that the capital costs of operating

facilities in the 24 GHz band will vary widely. Finally, we adopt attribution rules based on a "controlling interest" standard to determine eligibility for our small business provisions. We believe these rules, along with our affiliation rules, will prevent larger firms from illegitimately seeking status as a small business. All of these decisions regarding competitive bidding procedures will work to the benefit of small entities.

#### Report to Congress

The Commission will send a copy of this *R&O*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *R&O*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *R&O* and this FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

#### Paperwork Reduction Analysis

This *R&O* contains either a new or modified information collection. As part of its continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on revision to the information collections contained in the *R&O*. As required by the Paperwork Reduction Act of 1995, Public Law 104-13, public comments on the information collections contained in the *R&O* are due November 6, 2000.

Comments on the modified and proposed information collections contained in the *R&O* should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. These comments should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to <jboley@fcc.gov>. Furthermore, a copy of any such comments should be submitted to Edward C. Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW.,

Washington, DC 20503 or via the Internet to <edward\_c.\_springer@omb.eop.gov>.

OMB Approval Number: 3060-XXXX.

Title: Section 101.527 Construction requirements of 24 GHz operations & 101.529 Renewal Expanding criteria for 24 GHz licenses.

Form No: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 952.

Estimated Time Per Response: 20 hours.

Total Annual Burden: 14,399 hours.

Total Annual Cost: \$952,000.

Needs and Uses: The information required in Sections 101.527 and 101.529 is used to determine whether a renewal applicant of a 24 GHz Service system has complied with the requirements to provide substantial service by the end of the ten-year initial license term. The FCC uses the information to determine whether an applicant's license will be renewed at the end of the license period.

#### Ordering Clauses

The actions of the Commission herein are taken pursuant to Sections 4(i), 257, 303, 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 257, 303, 309(j).

The rules in this Report and Order are effective December 4, 2000, except for §§ 101.527 and 101.529, which contain information collection requirements that have not been approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date of those sections. Public comments on the information collections contained in the *Report and Order* are due November 6, 2000.

Pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects

##### 47 CFR Part 1

Administrative practice and procedure, Radio.

##### 47 CFR Parts 2, 87, and 101

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.  
Magalie Roman Salas,  
Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 2, 87 and 101 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. In Table 1 in § 1.1307(b)(1), the entry for Local Multipoint Distribution

Service is removed and a new entry is added in its place, to read as follows:

§ 1.1307 Actions which may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

\* \* \* \* \*  
(b) \* \* \*  
(1) \* \* \*

TABLE 1.—TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION

Service (title 47 CFR rule part)	Evaluation required if
* * * * *	* * * * *
Local Multipoint Distribution Service (subpart L of part 101) and 24 GHz (subpart G of part 101).	<i>Non-building-mounted antennas:</i> height above ground level to lowest point of antenna <10 m <i>and</i> power>1640 W EIRP <i>Building-mounted antennas:</i> power >1640 W EIRP LMDS and 24 GHz Service licensees are required to attach a label to subscriber transceiver antennas that: (1) provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and (2) references the applicable FCC-adopted limits for radio-frequency exposure specified in § 1.1310.

\* \* \* \* \*

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

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

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

§ 2.106 [Amended]

4. Section 2.106 is amended by revising pages 71 and 72 of the Table to read as follows:

BILLING CODE 6712-02-P

22.5-27.5 GHz (SHF)				United States Table		FCC Rule Part(s)
International Table		Region 3		Federal Government	Non-Federal Government	
Region 1	Region 2					
22.5-22.55 FIXED MOBILE				22.5-22.55 FIXED MOBILE US211		Fixed Microwave (101)
22.55-23.55 FIXED INTER-SATELLITE MOBILE				22.55-23.55 FIXED INTER-SATELLITE MOBILE S5.149 US278		Satellite Communications (25) Fixed Microwave (101)
S5.149				23.55-23.6 FIXED MOBILE		Fixed Microwave (101)
23.6-24 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive)				23.6-24 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		
S5.340				24-24.05 AMATEUR AMATEUR-SATELLITE	24-24.05 AMATEUR AMATEUR-SATELLITE	ISM Equipment (18) Amateur (97)
S5.150				S5.150 US211	S5.150 US211	
24.05-24.25 RADIOLOCATION Amateur Earth exploration-satellite (active)				24.05-24.25 RADIOLOCATION US110 G59 Earth exploration-satellite (active) S5.150	24.05-24.25 Radiolocation US110 Amateur Earth exploration-satellite (active) S5.150	ISM Equipment (18) Private Land Mobile (90) Amateur (97)
S5.150				24.25-24.45 FIXED	24.25-24.45 FIXED	Fixed Microwave (101)
24.25-24.45 FIXED	24.25-24.45 RADIO NAVIGATION	24.25-24.45 RADIO NAVIGATION FIXED MOBILE				

24.45-24.75 FIXED INTER-SATELLITE	24.45-24.65 INTER-SATELLITE RADIONAVIGATION	24.45-24.65 FIXED INTER-SATELLITE MOBILE RADIONAVIGATION	24.45-24.65 INTER-SATELLITE RADIONAVIGATION	Satellite Communications (25)
	S5.533	S5.533	S5.533	
24.75-25.25 FIXED	24.65-24.75 INTER-SATELLITE RADIOLOCATION-SAT- ELLITE (Earth-to-space)	24.65-24.75 FIXED INTER-SATELLITE MOBILE	24.65-24.75 INTER-SATELLITE RADIOLOCATION-SATELLITE (Earth-to-space)	Satellite Communications (25) Aviation (87)
	24.75-25.25 FIXED-SATELLITE (Earth-to-space) S5.535	24.75-25.25 FIXED FIXED-SATELLITE (Earth-to-space) S5.535 MOBILE	24.75-25.05 RADIONAVIGATION	
25.25-25.5 FIXED INTER-SATELLITE S5.536 MOBILE Standard frequency and time signal-satellite (Earth-to-space)	24.75-25.25 FIXED-SATELLITE (Earth-to-space) S5.535	24.75-25.25 FIXED FIXED-SATELLITE (Earth-to-space) S5.535 MOBILE	24.75-25.05 RADIONAVIGATION	Satellite Communications (25) Fixed Microwave (101)
		S5.534	25.05-25.25 FIXED-SATELLITE (Earth-to-space) NG167 FIXED	
25.5-27 FIXED EARTH EXPLORATION-SATELLITE (space-to-Earth) S5.536A S5.536B FIXED INTER-SATELLITE S5.536 MOBILE Standard frequency and time signal-satellite (Earth-to-space)			25.25-25.5 FIXED MOBILE Standard frequency and time signal-satellite (Earth-to- space)	Note: In its Manual, NTIA has added a primary inter-satellite service allocation to the band 25.25-27.5 GHz, limited the use of this allocation by adopting footnote S5.536, and has changed the directional indicator for the Earth exploration-satellite service allocation in the band 25.5-27 GHz from space-to-space to space- to-Earth.
			25.5-27 FIXED MOBILE Standard frequency and time signal-satellite (Earth-to- space)	
27-27.5 FIXED INTER-SATELLITE S5.536 MOBILE	27-27.5 FIXED FIXED-SATELLITE (Earth-to-space) INTER-SATELLITE S5.536 S5.537 MOBILE		27-27.5 FIXED MOBILE Earth exploration-satellite (space-to-space)	27-27.5 Earth exploration-satellite (space-to-space)

\* \* \* \* \*

**PART 87—AVIATION SERVICES**

5. The authority citation for part 87 is revised to read as follows:

**Authority:** 47 U.S.C. 154, 303 and 307(e), unless otherwise noted.

**§ 87.173 [Amended]**

6. Section 87.173(b), the Frequency Table, is amended in the first column by revising “24250–25250 MHz” to read “24750–25050 MHz”.

**PART 101—FIXED MICROWAVE SERVICES**

7. The authority citation for part 101 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

8. Section 101.1 is amended by revising paragraph (b) to read as follows:

**§ 101.1 Scope and authority.**

\* \* \* \* \*

(b) The purpose of the rules in this part is to prescribe the manner in which portions of the radio spectrum may be made available for private operational, common carrier, 24 GHz Service and Local Multipoint Distribution Service fixed, microwave operations that require transmitting facilities on land or in specified offshore coastal areas within the continental shelf.

\* \* \* \* \*

9. Section 101.3 is amended by adding a definition for “24 GHz Service” immediately preceding the alphabetical definitions and adding a definition for “User or Subscriber Station,” in alphabetical order, and by revising the definitions of “Digital Electronic Message Service” and “Nodal Station,” to read as follows:

**§ 101.3 Definitions.**

\* \* \* \* \*

*24 GHz Service.* A fixed point-to-point, point-to-multipoint, and

multipoint-to-multipoint radio system in the 24.25–24.45 GHz band and in the 25.05–25.25 GHz band consisting of a fixed main (nodal) station and a number of fixed user terminals. This service may encompass any digital fixed service.

\* \* \* \* \*

*Digital Electronic Message Service.* A two-way end-to-end fixed radio service utilizing digital termination systems for the exchange of digital information in the frequency bands 10,550–10,680 MHz, 18,820–18,920 MHz, and 19,160–19,260 MHz. This service may also make use of point-to-point microwave facilities, satellite facilities or other communications media to interconnect digital termination systems to comprise a network.

\* \* \* \* \*

*Nodal station.* The central or controlling stations in a microwave radio system operating on point-to-multipoint or multipoint-to-multipoint frequencies with one or more user stations or internodal links.

\* \* \* \* \*

*User or subscriber station.* The station(s) in a microwave radio system operating at the users' premises on point-to-multipoint or multipoint-to-multipoint frequencies and communicating with one or more nodal stations.

\* \* \* \* \*

10. Section 101.21 is amended by revising paragraph (g) to read as follows:

**§ 101.21 Technical content of applications.**

\* \* \* \* \*

(g) Each application in the Local Multipoint Distribution Service and 24 GHz Service must contain all technical information required by FCC Form 601 and any other applicable form or associated Public Notices and by any applicable rules in this part.

11. Section 101.45 is amended by revising paragraph (b) introductory text to read as follows:

**§ 101.45 Mutually exclusive applications.**

\* \* \* \* \*

(b) A common carrier application, except in the Local Multipoint Distribution Service and in the 24 GHz Service, will be entitled to comparative consideration with one or more conflicting applications only if:

\* \* \* \* \*

12. Section 101.61 is revised to read as follows:

**§ 101.61 Certain modifications not requiring prior authorization in the Local Multipoint Distribution Service and 24 GHz Service**

In the Local Multipoint Distribution Service (LMDS) licensees may add, remove, or relocate facilities within the area authorized by the license without prior authorization. Upon request by an incumbent licensee or the Commission, an LMDS licensee shall furnish the technical parameters, location and coordinates of the completion of the addition, removal, relocation or modification of any of its facilities within the BTA. The LMDS licensee must provide such information within ten (10) days of receiving a written request. This section also applies to 24 GHz licensees that are licensed according to Economic Areas.

13. Section 101.63 is amended by revising paragraph (a) to read as follows:

**§ 101.63 Period of construction; certification of completion of construction.**

(a) Each Station, except in Local Multipoint Distribution Services, 24 GHz Service and the 38.6–40.0 GHz band, authorized under this part must be in operation within 18 months from the initial date of grant.

\* \* \* \* \*

14. Section 101.101 is amended by revising the entry for 24,250–25,250 MHz in the table to read as follows:

**§ 101.101 Frequency availability.**

Frequency band (MHz)	Radio service				Notes
	Common carrier (Part 101)	Private radio (Part 101)	Broadcast auxiliary (Part 74)	Other (Parts 15, 21, 22, 24, 25, 74, 78 & 100)	
24,250–25,250	CC	OFS.			

\* \* \* \* \*



15. Section 101.105 is amended by revising the text of paragraph (c)(6) preceding the table to read as follows:

**§ 101.105 Interference protection criteria.**

\* \* \* \* \*

(c) \* \* \*

(6) Each application for new or modified nodal station on channels numbered 4A, 4B, 7, 9, and 19/20 in the 10.6 GHz band must demonstrate that all existing co-channel stations are at least 56 kilometers from the proposed nodal station site. Applicants for these channels must certify that all licensees and applicants for stations on the adjacent channels within 56 kilometers of the proposed nodal station have been notified of the proposed station and do not object. Alternatively, or if one of the affected adjacent channel interests does object, the applicant may show that all affected adjacent channel parties are provided a C/I protection ratio of 0 dB. An applicant proposing to operate at an AAT greater than 91 meters must reduce its EIRP in accordance with the following table; however, in no case may EIRP exceed 70 dBm on the 10.6 GHz channels:

\* \* \* \* \*

16. Section 101.109(c) is amended in the table by revising the entry for 24, 250 to 25,250 MHz and by revising

footnote 7 and the note to footnote 7 to read as follows:

**§ 101.109 Bandwidth.**

\* \* \* \* \*

(c) \* \* \*

Frequency band (MHz)	Maximum authorized bandwidth
* * * * *	* * * * *
24,250 to 25,250 .....	40 MHz <sup>7</sup>
* * * * *	* * * * *

<sup>7</sup>For channel block assignments in the 24,250–25,250 MHz and 38,600–40,000 MHz bands, the authorized bandwidth is equivalent to an unpaired channel block assignment or to either half of a symmetrical paired channel block assignment. When adjacent channels are aggregated, equipment is permitted to operate over the full channel block aggregation without restriction.

**Note to Footnote 7:** Unwanted emissions shall be suppressed at the aggregate channel block edges based on the same roll-off rate as is specified for a single channel block in § 101.111(a)(1) or in § 101.111(a)(2)(ii) and (iii) as appropriate.

17. Section 101.111 is amended by adding paragraph (a)(2)(iv) and by revising paragraph (a)(4) introductory text to read as follows:

**§ 101.111 Emission limitations.**

(a) \* \* \*

(2) \* \* \*

(iv) The emission mask for 24 GHz Service used the equation in paragraph (a)(2)(ii) of this section applies only to the edge of each channel, but not to subchannels established by licensees. The value of P in the equation is for the percentage removed from the carrier frequency and assumes that the carrier frequency is the center of the actual bandwidth used. The emission mask can be satisfied by locating a carrier of the subchannel sufficiently far from the channel edges so that the emission levels of the mask are satisfied. The 24 GHz emission mask shall use a value B (bandwidth) of 40 MHz, for all cases even in the case where a narrower subchannel is used (for instance the actual bandwidth is 10 MHz) and the mean output power used in the calculation is the sum of the output power of a fully populated channel.

\* \* \* \* \*

(4) For DEMS channels in the 17,700–19,700 MHz band:

\* \* \* \* \*

18. In § 101.115(c), the table is amended by revising the entry for “24,250 to 25,250” and footnote 10 to read as follows:

**§ 101.115 Directional antennas.**

\* \* \* \* \*

(c) \* \* \*

**ANTENNA STANDARDS**

Frequency (MHz)	Category	Maximum beam-width to 3 dB points <sup>1</sup> (included angle in degrees)	Minimum antenna gain (dbi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels						
				5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *	* * * * *	* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
24,250 to 25,250 <sup>10</sup> ....	A	2.8	38	25	29	33	36	42	55	60
	B	2.8	38	20	24	28	32	35	36	45
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *	* * * * *	* * * * *	* * * * *	* * * * *	* * * * *	* * * * *

<sup>1</sup> If a licensee chooses to show compliance using maximum beamwidth to 3 dB points, the beamwidth limit shall apply in both the azimuth and the elevation planes.

<sup>10</sup> DEMS User Station antennas in this band must meet performance Standard B and have a minimum antenna gain of 34 dBi. The maximum beamwidth requirement does not apply to DEMS User Stations. DEMS Nodal Stations need not comply with these standards. Stations authorized to operate in the 24,250–25,250 MHz band do not have to meet these standards, however, the Commission may require the use of higher performance antennas where interference problems can be resolved by the use of such antennas.

\* \* \* \* \*

19. Section 101.139 is amended by adding paragraph (g) to read as follows:

**§ 101.139 Authorization of transmitters.**

\* \* \* \* \*

(g) After January 1, 2001, a transmitter operating on the 24,250–24,450 MHz and 25,050–25,250 MHz bands must

meet the emission limitation set forth in § 101.111(a)(2)(ii).

20. Section 101.141 is amended by revising paragraph (a) introductory text to read as follows:

**§ 101.141 Microwave modulation.**

(a) Microwave transmitters employing digital modulation techniques and operating below 19.7 GHz band must,

with appropriate multiplex equipment, comply with the following additional requirements:

\* \* \* \* \*

21. Section 101.147 is amended by:

A. Revising the fifth sentence of paragraph (r) introductory text.

B. Revising the introductory text of paragraph (r)(9) preceding the table and paragraphs (r)(9)(i) and (r)(9)(ii).

## C. Adding paragraph (r)(9)(iii).

The additions and revisions read as follows:

**§ 101.147 Frequency assignments.**

\* \* \* \* \*

(r) 17,700 to 19,700 and 24,250 to 25,250 MHz. \* \* \* Licensees, except 24 GHz band licensees, may use either a two-way link or one frequency of a frequency pair for a one-way link and must coordinate proposed operations pursuant to the procedures required in § 101.103. \* \* \*

\* \* \* \* \*

(9) The following frequencies are available for point-to-multipoint DEMS Systems, except that channels 35–39 were available only to existing 18 GHz DEMS licensee as of March 14, 1997 and are now available by geographic area licensing in the 24 GHz Service to be used as the licensee desires. The 24 GHz spectrum can be aggregated or disaggregated and does not have to be used in the transmit/receive manner shown except to comply with international agreements along the US borders. Systems operating on Channels 25–34 must cease operations as of January 1, 2001, except that those stations on these channels within 150 km of the coordinates 38°48' N/76°52' W (Washington, DC, area) and 39°43' N/101°46' W (Denver, Colorado area) must cease operations of June 5, 1997:

\* \* \* \* \*

(i) Each station on channels 25 through 34 will be limited to one frequency pair per SMSA. Additional channel pairs may be assigned upon a showing that the service to be provided will fully utilize the spectrum requested. A channel pair may be subdivided as desired by the licensee.

(ii) A frequency pair on channels 25 through 34 may be assigned to more than one licensee in the same SMSA or service area so long as the interference protection criteria of § 101.105 are met.

(iii) Channels 35 through 39 are licensed in the 24 GHz Service by Economic Areas for any digital fixed service. Channels may be used at either nodal or subscriber station locations for transmit or receive but must be coordinated with adjacent channel and adjacent area users in accordance with the provisions of § 101.509. Stations must also comply with international coordination agreements.

\* \* \* \* \*

22. Section 101.305 is amended by revising paragraphs (a), (b) and (c) to read as follows:

**§ 101.305 Discontinuance, reduction or impairment of service.**

(a) If the public communication service provided by a station in the Common Carrier Radio Services, the Local Multipoint Distribution Service or 24 GHz Service is involuntarily discontinued, reduced or impaired for a period exceeding 48 hours, the station licensee must promptly notify the Commission. In every such case, the licensee must furnish full particulars as to the reasons for such discontinuance, reduction or impairment of service, including a statement as to when normal service is expected to be resumed. When normal service is resumed, prompt notification thereof must be given Commission.

(b) No station licensee subject to title II of the Communications Act of 1934, as amended, may voluntarily discontinue, reduce or impair public communication service to a community or part of a community without obtaining prior authorization from the Commission pursuant to the procedures set forth in part 63 of this chapter. In the event that permanent discontinuance of service is authorized by the Commission, the station license is terminated; except that station licenses in the Local Multipoint Distribution Service and 24 GHz Service are not terminated if the discontinuance is a result of a change of status by the licensee from common carrier to non-common carrier pursuant to § 1.929 of this chapter.

(c) Any licensee not subject to title II of the Communications Act of 1934, as amended, who voluntarily discontinues, reduces or impairs public communication service to a community or a part of a community must notify the Commission within 7 days thereof. In the event of permanent discontinuance of service, the station license is automatically terminated; except that station licenses in the Local Multipoint Distribution Service and 24 GHz Service are not terminated if the discontinuance is a result of a change of status by the licensee from non-common carrier to common carrier pursuant to § 1.929 of this chapter.

\* \* \* \* \*

23. Section 101.311 is revised to read as follows:

**§ 101.311 Equal employment opportunities.**

Equal opportunities in employment must be afforded by all common carrier licensees and all Local Multipoint Distribution Service and 24 GHz Service licensees in accordance with the provisions of § 21.307 of this chapter.

24. Subpart G is amended by:

A. Revising the table of contents for subpart G.

B. Revising the heading of subpart G.

C. Revising §§ 101.501, 101.503, 101.505, 101.509, and 101.511.

The revisions read as follows:

**Subpart G—24 GHz Service and Digital Electronic Message Service**

## Sec.

101.501	Eligibility.
101.503	Digital Electronic Message Service Nodal Stations.
101.505	Frequencies.
101.509	Interference protection criteria.
101.511	Permissible services.
101.513	Transmitter power.
101.515	Emissions and bandwidth.
101.519	Interconnection.
101.521	Spectrum utilization.
101.523	Service areas.
101.525	24 GHz system operations.
101.526	License term.
101.527	Construction requirements for 24 GHz operations.
101.529	Renewal expectancy criteria for 24 GHz licenses.
101.531	Application form and contents.
101.533	Regulatory status.
101.535	Geographic partitioning and spectrum aggregation/disaggregation.
101.537	24 GHz band subject to competitive bidding.
101.538	Designated entities.

**Subpart G—24 GHz Service and Digital Electronic Message Service****§ 101.501 Eligibility.**

See § 101.147(n) for licensing of DEMS facilities in the 10.6 GHz band. Applications for new facilities using the 18 GHz band are no longer being accepted. Any entity, other than one precluded by § 101.7, is eligible for authorization to provide 24 GHz Service under this subpart.

**§ 101.503 Digital Electronic Message Service Nodal Stations.**

10.6 GHz DEMS Nodal Stations may be authorized only as a part of an integrated communication system wherein 10.6 GHz DEMS User Stations associated therewith also are licensed to the 10.6 GHz DEMS Nodal Station licensee. Applications for 10.6 GHz DEMS Nodal Station licenses should specify the maximum number of 10.6 GHz DEMS User Stations to be served by that nodal station. Any increase in that number must be applied for pursuant to § 1.913 of this chapter.

**§ 101.505 Frequencies.**

Frequencies, and the conditions on which they are available, for DEMS operations are contained in this subpart as well as in § 101.147(m), (n), and (r)(9).

**§ 101.509 Interference protection criteria.**

(a) As a condition for use of frequencies in this service each licensee is required to:

(1) Engineer the system to be reasonably compatible with adjacent and co-channel operations in the same or adjacent areas on all frequencies; and

(2) Cooperate fully and in good faith to resolve whatever potential interference and transmission security problems may be present in adjacent and co-channel operations.

(b) All harmful interference to other users of co-channel and adjacent channel use in the same or adjacent geographical area are prohibited. In areas where Economic Areas are in close proximity, careful consideration should be given to minimum power requirements and to the location, height, and radiation pattern of the transmitting and receiving antennas. Licensees are expected to cooperate fully in attempting to resolve problems of potential interference before bringing the matter to the attention of the Commission.

(c) Licensee shall coordinate their facilities whenever the facilities have optical line-of-sight into other licensees' areas or are within the same geographic area. Licensees are encouraged to develop operational agreements with relevant licensees in the same or adjacent areas. Incumbent SMSA licensee(s) shall retain exclusive rights to its channel(s) within its SMSA and must be protected.

(d) Licensees shall comply with the appropriate coordination agreements between the United States and Canada and the United States and Mexico concerning cross-border sharing and use of the 24 GHz bands which may require using channels pairs in accordance with the table in § 101.147(r)(9).

(e) The Commission recommends that coordination is not necessary if the power flux density (pfd) at the boundary of the relevant adjacent area is lower than  $-14$  dBW/m<sup>2</sup> in any 1 MHz. This value can be changed and agreed upon by both coordinating parties. Licensees should be able to deploy with a pfd up to  $-94$  dBW/m<sup>2</sup> in any 1 MHz at the boundary of the relevant adjacent area without negatively affecting the successful operations of the adjacent area licensee.

**§ 101.511 Permissible services.**

(a) Authorizations for stations in the 24 GHz Service will be granted to provide services on a common carrier basis or a non-common carrier basis or on both a common carrier and non-common carrier basis in a single authorization.

(b) Stations may render any kind of digital communications service consistent with the Commission's rules and the regulatory status of the station to provide services on a common carrier or non-common carrier basis.

(c) An applicant or licensee may submit a petition at any time requesting clarification of the regulatory status required to provide a specific communications service.

25. Section 101.521 is revised to read as follows:

**§ 101.521 Spectrum utilization.**

All applicants for DEMS frequencies in the 10.6 GHz band must submit as part of the original application a detailed plan indicating how the bandwidth requested will be utilized. In particular the application must contain detailed descriptions of the modulation method, the channel time sharing method, any error detecting and/or correcting codes, any spatial frequency reuse system and the total data throughput capacity in each of the links in the system. Further, the application must include a separate analysis of the spectral efficiency including both information bits per unit bandwidth and the total bits per unit bandwidth.

26. Sections 101.523, 101.525, 101.526, 101.527, 101.529, 101.531, 101.533, 101.535, 101.537 and 101.538 are added to subpart G to read as follows:

**§ 101.523 Service areas.**

(a) The service areas for 24 GHz are Economic Areas (EAs) as defined in this paragraph (a). EAs are delineated by the Regional Economic Analysis Division, Bureau of Economic Analysis, U.S. Department of Commerce. The Commerce department organizes the 50 States and the District of Columbia into 172 EAs. Additionally, there are three EA-like areas: Guam and Northern Mariana Islands; Puerto Rico and the U.S. Virgin Islands; and American Samoa and the Gulf of Mexico. A total of 176 authorizations will be issued for the 24 GHz Service by the FCC.

(b) Where an incumbent SMSA license area in the 24 GHz band occupies only a portion of an EA available for application under the competitive bidding rules, the SMSA portion will be excluded from auction and the incumbent licensee will retain the exclusive right to those channels within the SMSA.

**§ 101.525 24 GHz system operations.**

(a) A licensee using the 24 GHz band may construct and operate any number of fixed stations anywhere within the

area authorized to serve without prior authorization, except as follows:

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

(i) International agreements require coordination;

(ii) Submission of an Environmental Assessment is required under § 1.1307 of this chapter;

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

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

(b) Whenever a licensee constructs or makes system changes as described in paragraph (a)(1) of this section, the licensee is required to notify the Commission within 30 days of the change under § 1.947 of this chapter and include a statement of the technical parameters of the changed station.

**§ 101.526 License term.**

The license term for stations licensed under this subpart is ten years from the date of license grant or license renewal for incumbent licensees.

**§ 1A101.527 Construction requirements for 24 GHz operations.**

(a) Each licensee must make a showing of "substantial service" within ten years of its license grant. A "substantial service" assessment will be made at renewal pursuant to the provisions and procedures set forth in § 1.949 of this chapter. "Substantial service" is a service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal during its past license term.

(b) Each licensee must, at a minimum file:

(1) A report, maps and other supporting documents describing its current service in terms of geographic coverage and population served to the Commission. The report must also contain a description of the licensees' investments in its operations. The report must be labeled as an attachment to the renewal application; and

(2) Copies of all FCC orders finding the licensee to have violated the Communications Act or any FCC rule or policy; and a list of any pending proceedings that relate to any matter described in this paragraph (b)(2).

(c) Failure to demonstrate that substantial service is being provided in the service area will result in forfeiture of the license, and the licensee will be unable to regain it.

(d) The frequencies associated with incumbent authorizations, licensed on a SMSA basis, that have cancelled automatically or otherwise been recovered by the Commission will automatically revert to the applicable EA licensee.

**§ 101.529 Renewal expectancy criteria for 24 GHz licenses.**

(a) A renewal applicant involved in a renewal proceeding shall receive a preference, commonly referred to as a renewal expectancy, that is the most important factor to be considered in the proceeding as long as the applicant's past record for the relevant license period demonstrates that:

(1) The renewal applicant has provided "substantial service" pursuant to § 101.527; and

(2) The renewal applicant has substantially complied with applicable FCC rules, policies, and the Communications Act of 1934, as amended.

(b) In order to establish its right to a renewal expectancy, a licensee in the 24 GHz service involved in a renewal proceeding must submit a showing explaining why it should receive a renewal expectancy. At a minimum, this showing must include:

(1) A description of how the licensee has complied with the "substantial service" requirement; and

(2) Copies of all FCC orders finding the licensee to have violated the Communications Act or any FCC rule or policy; and a list of any pending proceedings that relate to any matter described in this paragraph (b)(2).

(c) In making its showing of entitlement to a renewal expectancy, a renewal applicant may claim credit for any system modification applications that were pending on the date it filed its renewal application. Such credit will not be allowed if the modification application is dismissed or denied.

**§ 101.531 Application form and contents.**

(a) Applications for initial authorization of 24 GHz facilities are filed on FCC Form 175 in accordance with subpart M and subpart Q of part 1 of this chapter. FCC Form 601 is submitted subsequently either by the winning bidder, if an auction is held to decide among two or more mutually exclusive applications, or, in cases of no mutual exclusivity, by the sole applicant. Applications to amend pending applications and to modify licenses are filed on FCC Form 601.

(b) *Foreign ownership information.* All applicants for 24 GHz licenses must provide the information requested on FCC Form 601 to address all of the

eligibility requirements in § 101.7 of this part. All licensees will keep the information updated.

**§ 101.533 Regulatory status.**

(a) *Initial applications.* An applicant for a 24 GHz license must specify on FCC Form 601 if it is requesting authorization to provide services on a common carrier basis, a non-common carrier basis, or on both a common carrier and non-common carrier basis.

(b) *Amendment of pending applications.* Any pending application may be amended to:

(1) Change the carrier status requested; or

(2) Add to the pending request in order to obtain both common carrier and non-common carrier status in a single license.

(c) *Modification of license.* A licensee may modify a license to:

(1) Change the carrier status authorized; or

(2) Add to the status authorized in order to obtain both common carrier and non-common carrier status in a single license.

**§ 101.535 Geographic partitioning and spectrum aggregation/disaggregation.**

(a) *Eligibility.* (1) Parties seeking approval for partitioning and disaggregation shall request from the Commission an authorization for partial assignment of a license pursuant to § 1.948 of this chapter.

(2) 24 GHz licensees may apply to the Commission to partition their licensed geographic service areas to eligible entities and are free to determine the portion of their service areas to be partitioned. 24 GHz licensees may aggregate or disaggregate their licensed spectrum at any time following the grant of a license.

(3) Any existing frequency coordination agreements shall convey with the assignment of the geographic area or spectrum, and shall remain in effect unless new agreements are reached.

(b) *Technical standards.*—(1) *Aggregation.* There is no limitation on the amount of spectrum that a 24 GHz licensee may aggregate.

(2) *Partitioning.* In the case of partitioning, applicants and licensees must file FCC Form 603 pursuant to § 1.948 of this chapter and list the partitioned service area on a schedule to the application. The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude and must be based upon the 1983 North American Datum (NAD83).

(3) *Disaggregation.* Spectrum may be disaggregated in any amount. A licensee

need not retain a minimum amount of spectrum.

(4) *Combined partitioning and disaggregation.* The Commission will consider requests for partial assignment of licenses that propose combinations of partitioning and disaggregation.

(c) *Unjust enrichment.* 24 GHz licensees that received a bidding credit and partition their licenses or disaggregate their spectrum to entities not meeting the eligibility standards for such a bidding credit, will be subject to the provisions concerning unjust enrichment as set forth in § 1.2111 of this chapter.

(d) *License term.* The license term for a partitioned license area and for disaggregated spectrum shall be the remainder of the original licensee's license term as provided for in § 101.526.

(e) *Construction requirements.* Applications requesting approval for partitioning or disaggregation must include a certification by each party stating that one or both parties will satisfy the construction requirement set forth in § 101.529. Failure by a party to meet its respective construction requirement will result in the automatic cancellation of its license without further Commission action.

**§ 101.537 24 GHz band subject to competitive bidding.**

Mutually exclusive initial applications for licenses in the 24 GHz band are subject to competitive bidding procedures. The procedures set forth in part 1, subpart Q, of this chapter will apply unless otherwise provided in this part.

**§ 101.538 Designated entities.**

(a) *Eligibility for small business provisions.* (1) A very small business is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years.

(2) A small business is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding \$15 million for the preceding three years.

(3) An entrepreneur is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding \$40 million for the preceding three years.

(4) For purposes of determining whether an entity meets one of the definitions set forth in paragraphs (a)(1), (a)(2), and (a)(3) of this section, the gross revenues of the entity, its controlling interests and affiliates shall be considered on a cumulative basis and aggregated. An applicant seeking status

as a very small business, small business, or entrepreneur under this section must disclose on its short- and long-form applications, separately and in the aggregate, the gross revenues of the applicant (or licensee), its controlling interests and affiliates for each of the previous three years.

(5) Persons or entities that hold interests in an applicant (or licensee) that are affiliates of each other or have an identity of interests identified in § 1.2110(b)(4)(iii) of this chapter will be treated as though they were one person or entity and their ownership interests aggregated for purposes of determining an applicant's (or licensee's) compliance with the requirements of this section.

(6) Where an applicant (or licensee) cannot identify controlling interests under the standards set forth in this section, the gross revenues of all interest holders in the applicant, and their affiliates, will be attributable.

(7) A consortium of very small businesses, a consortium of small businesses, or a consortium of entrepreneurs is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the applicable definition in paragraphs (a)(1), (a)(2) and (a)(3) of this section. Where an applicant or licensee is a consortium of very small businesses, a consortium of small businesses, or a consortium of entrepreneurs, the gross revenues of each very small business, small business, or entrepreneur shall not be aggregated.

(8) Designated entities must describe on their long-form applications how they satisfy the requirements for eligibility for designated entity status, and must list and summarize on their long-form applications all agreements that affect designated entity status such as partnership agreements, shareholder agreements, management agreements and other agreements, including oral agreements, establishing, as applicable, *de facto* or *de jure* control of the entity. Such information must be maintained at the licensee's facilities or by its designated agent for the term of the license in order to enable the Commission to audit designated entity eligibility on an ongoing basis.

(b) *Controlling interest.* (1) For purposes of this section, a controlling interest includes individuals or entities with either *de jure* or *de facto* control of the applicant. *De jure* control is evidenced by holdings of greater than 50 percent of the voting stock of a corporation, or in the case of a partnership, general partnership interests. *De facto* control is determined

on a case-by-case basis. An entity must disclose its equity interest and demonstrate at least the following indicia of control to establish that it retains *de facto* control of the applicant:

(i) The entity constitutes or appoints more than 50 percent of the board of directors or management committee;

(ii) The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and

(iii) The entity plays an integral role in management decisions.

(2) The following rules apply for the calculation of certain interests.

(i) Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options, and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised.

(ii) Partnership and other ownership interests and any stock interest equity, or outstanding stock, or outstanding voting stock shall be attributed as specified.

(iii) Stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal, or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust will be attributed to the grantor or beneficiary, as appropriate.

(iv) Non-voting stock shall be attributed as an interest in the issuing entity.

(v) Limited partnership interests shall be attributed to limited partners and shall be calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses.

(vi) Officers and directors of an entity shall be considered to have a controlling interest in the entity. The officers and directors of an entity that controls a licensee or applicant shall be considered to have a controlling interest in the licensee or applicant.

(vii) Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual

control, it shall be treated as if it were a 100 percent interest.

(viii) Any person who manages the operations of an applicant or licensee pursuant to a management agreement shall be considered to have a controlling interest in such applicant or licensee if such person, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

(A) The nature or types of services offered by such an applicant or licensee;

(B) The terms upon which such services are offered; or

(C) The prices charged for such services.

(ix) Any licensee or its affiliate who enters into a joint marketing arrangement with an applicant or licensee, or its affiliate, shall be considered to have a controlling interest, if such applicant or licensee, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

(A) The nature or types of services offered by such an applicant or licensee;

(B) The terms upon which such services are offered; or

(C) The prices charged for such services.

(c) *Bidding credits.* A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in this section may use the bidding credit specified in § 1.2110(e)(2)(i) of this chapter. A winning bidder that qualifies as a small business or a consortium of small businesses as defined in this section may use the bidding credit specified in § 1.2110(e)(2)(ii) of this chapter. A winning bidder that qualifies as an entrepreneur or a consortium of entrepreneurs as defined in this section may use the bidding credit specified in § 1.2110(e)(2)(iii) of this chapter.

[FR Doc. 00-24065 Filed 10-4-00; 8:45 am]

BILLING CODE 6712-01-P