

approximately \$11.5 million per year. Therefore, the overall impact on the total industry annual receipts would be small, that is, less than 1 percent reduction in Medicare revenue. However, while the overall impact is small, some suppliers would be seriously affected as a result of the mix of DME that they furnish to Medicare beneficiaries. Namely, suppliers who specialize in furnishing respiratory assist devices would be seriously affected by this rule. To estimate how many suppliers could be seriously affected by this rule, we analyzed data for the top 30 suppliers of RADs with a back-up rate, which account for approximately 50 percent of Medicare expenditures for code K0533. Total allowed charges for code K0533 were \$77 million in 2002. Therefore, a \$10 million reduction in annual expenditures resulting from this proposed rule equates to a 13 percent reduction in revenue for suppliers for code K0533. These top 30 suppliers were ranked in terms of total allowed charges attributed to them for claims received for HCPCS code K0533 from October 1, 2002 through December 31, 2002. Five of the top 30 suppliers would not be considered small entities by SBA standards. These 5 suppliers account for approximately 40 percent of total expenditures for K0533. Twenty-five suppliers in the top 30 could be considered small entities if such a determination was based solely on Medicare expenditures (data on revenue attributed to sources other than Medicare has not been obtained for these companies as part of this analysis). Therefore, the total reduction in revenue for potential small entities as a result of this proposed rule would be approximately \$6 million. The percentage of Medicare DME business that K0533 devices represent for 9 of the 25 potential small entities is 5 percent or less. For the remaining 16 potential small entities, the percentage of Medicare DME business that K0533 devices represent ranges from 17 to 98 percent. Therefore, these 16 suppliers would be seriously affected by this rule. Other K0533 suppliers not in the list of top 30 suppliers could also be small entities and could be seriously affected by this rule. The total allowed charges per year for these suppliers for code K0533 are less than \$250,000.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the

RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We are not preparing a rural impact analysis since we have determined that this rule would not have a significant economic impact on the operation of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal government, in the aggregate, or by the private sector of \$110 million. This rule would not have an effect on the governments mentioned, and private sector costs would be less than the \$110 million threshold.

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have determined that this rule does not significantly affect State or local governments.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

#### List of Subjects in 42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

For the reasons stated in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR part 414 as follows:

#### PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

1. The authority citation for part 414 continues to read as follows:

**Authority:** Secs. 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr (b)(1)).

2. In § 414.222 paragraph (a)(1) is revised to read as follows:

#### § 414.222 Items requiring FSS.

(a) *Definition.* \* \* \*

(1) Ventilators (except those that are either continuous airway pressure devices or respiratory assist devices with bi-level pressure capability with or without a back-up rate, previously referred to as intermittent assist devices

with continuous airway pressure devices).

\* \* \* \* \*

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

Dated: April 15, 2003.

**Thomas A. Scully,**

*Administrator, Centers for Medicare & Medicaid Services.*

Dated: April 24, 2003.

**Tommy G. Thompson,**

*Secretary.*

[FR Doc. 03-21443 Filed 8-21-03; 8:45 am]

**BILLING CODE 4120-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 2

[ET 03-158; MB 03-159; FCC 03-165]

### Use of Television Channel 16 by the New York Police Department and NYMAC for Public Safety Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to amend the rules of the Federal Communications Commission (FCC) to reallocate television channel 16 to the land mobile service in order to permit the New York Police Department and New York Metropolitan Advisory Committee (NYMAC) to utilize the channel for public safety services.

**DATES:** Submit comments on or before September 22, 2003. Reply comments are due on or before October 6, 2003.

**ADDRESSES:** Federal Communications Commission, 445 12th St. SW., Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** for filing instructions.

#### FOR FURTHER INFORMATION CONTACT:

Dave Roberts (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a summary of the FCC's Notice of Proposed Rulemaking, (NPRM) FCC 03-165, adopted on July 7, 2003, and released on July 10, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by

contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365 or at [bmillin@fcc.gov](mailto:bmillin@fcc.gov).

By this NPRM, the FCC initiates a rulemaking to determine whether to reallocate television channel 16 to the land mobile service for use by the New York Police Department and NYMAC for public safety use in the New York metropolitan area. Comments are sought on the technical impact of this proposal.

This matter shall be treated as a "permit—but-disclose" proceeding in accordance with the Commission's ex parte rules. 47 CFR 1.200, 1.1206. Members of the public are advised that ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided under the Commission's rules. *See generally* 47 CFR 1.1203 and 1.1206(a).

Pursuant to 47 CFR 1.415, 1.419, interested parties may file comments on or before September 22, 2003 and reply comments on or before October 6, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

Comments filed using ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. When completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties also may submit electronic comments by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience

delays in receiving U.S. Postal Service mail).

The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

- The filing hours at this location are 8 a.m. to 7 p.m.
- All hand deliveries must be held together with rubber bands or fasteners.
- Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, § 73.606(b) of the Commission's rules. *See* Certification That §§ 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

Accordingly, it is ordered that pursuant to the authority contained in Sections 1, 4(i), 4(j), 301, 303, 308, 309(j), and 337 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154(j), 157(a), 301, 303, 308, 309(j), and 337 this Notice of Proposed Rulemaking is adopted.

#### List of Subjects in 47 CFR Part 2

Television.

Federal Communications Commission.

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

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 2 as follows:

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

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

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

2. Section 2.106, the Table of Frequency Allocations, is amended by

revising footnote NG66 to read as follows.

#### § 2.106 Table of Frequency Allocations.

\* \* \* \* \*

NON-FEDERAL GOVERNMENT (NG)  
FOOTNOTES

\* \* \* \* \*

NG66 The use of the land mobile service in the band 470–512 MHz is available for assignment to licensees in the Public Mobile Services, the Public Safety Radio Pool, and the Industrial/Business Radio Pool at, or in the vicinity of 11 urbanized areas, as set forth in the following table. Additionally, the band 482–488 MHz (TV channel 16) is available for assignment to licensees in the Public Safety Radio Pool at, or in the vicinity of, Los Angeles and at, or in the vicinity of, New York City and Nassau and Suffolk Counties, New York. Such use in the land mobile service is subject to the conditions set forth in 47 CFR parts 22 and 90.

Urbanized area	Frequencies (MHz)	TV channel
New York, NY-Northeastern New Jersey.	470–482 .....	14, 15
Chicago, IL-Northwestern Indiana.	470–482 .....	14, 15
Boston, MA .....	470–476 and 482–488.	14, 16
Pittsburgh, PA ....	470–476 and 494–500.	14, 18
Los Angeles, CA	470–476 and 506–512.	14, 20
Miami, FL .....	470–476 .....	14
San Francisco-Oakland, CA.	482–494 .....	16, 17
Dallas, TX .....	482–488 .....	16
Washington, D.C.-Maryland-Virginia.	488–500 .....	17, 18
Houston, TX .....	488–494 .....	17
Philadelphia, PA-New Jersey.	500–512 .....	19, 20

\* \* \* \* \*

[FR Doc. 03-21507 Filed 8-21-03; 8:45 am]

BILLING CODE 6712-01-P

#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[DA 03-2574; MB Docket No. 03-181; RM-10758]

#### Radio Broadcasting Services; Blanchard and Weatherford, OK

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Audio Division requests comment on a petition filed by Wright Broadcasting Systems, Inc., licensee of FM Station KWEY, Channel 247C1,