

Date	Location	Phone
09/30/2009 .....	Hotel Monteleone, 214 Rue Royal, New Orleans, LA 70130 .....	866-338-4684.
10/02/2009 .....	Hilton Garden Inn Chicago Downtown/Magnificent Mile, 10 E. Grand Avenue, Chicago, IL 60611 .....	312-595-0000.
10/08/2009 .....	U.S. Environmental Protection Agency, 1201 Constitution Ave., NW., Washington, DC 20460 .....	202-564-9545.
10/27/2009 .....	TBD, Oakland, CA .....	TBD.
10/29/2009 .....	TBD, New York, NY .....	TBD.

Written comments and related material may also be submitted to Coast Guard personnel specified at those meetings for inclusion in the official docket for this rulemaking.

#### Information on Service for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the public meetings, contact Mr. John Morris at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Dated: September 23, 2009.

**F.J. Sturm,**

*Acting Director of Commercial Regulations and Standards, U.S. Coast Guard.*

[FR Doc. E9-23386 Filed 9-24-09; 11:15 am]

**BILLING CODE 4910-15-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 49

[EPA-R01-OAR-2009-0305; A-1-FRL-8949-7]

#### Approval and Promulgation of Air Quality Implementation Plans; Mohegan Tribe of Indians of Connecticut

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a Tribal Implementation Plan ("TIP") submitted by the Mohegan Tribe of Indians of Connecticut ("the Tribe"). This revision adds new emission units to the Tribe's TIP, while maintaining an enforceable cap on nitrogen oxide emissions from stationary sources owned by the Mohegan Tribal Gaming Authority and located within the external boundaries of the Mohegan Reservation. The revision also provides the Administrator of The Mohegan Environmental Protection Department with enforcement authority for violations of the Mohegan TIP and establishes a right of appeal to the Director of Regulation and Compliance and the Mohegan courts. This action is

intended to help attain the National Ambient Air Quality Standards (NAAQS) for ground-level ozone. This action is being taken in accordance with the Clean Air Act.

**DATES:** Written comments must be received on or before October 28, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R01-OAR-2009-0305 by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *E-mail: mcdonnell.ida@epa.gov*

3. *Fax: (617) 918-1653*

4. *Mail: "EPA-R01-OAR-2009-0305", Ida McDonnell, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAP), Boston, MA 02114-2023.*

5. *Hand Delivery or Courier.* Deliver your comments to: Ida McDonnell, Air Permits, Toxics and Indoor Air Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAP), Boston, MA 02114-2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:** Ida E. McDonnell, Air Permits, Toxics and Indoor Air Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAP), Boston, MA 02114-2023, telephone number (617) 918-1653, fax number (617) 918-0653, e-mail *mcdonnell.ida@epa.gov*

**SUPPLEMENTARY INFORMATION:** In the Final Rules Section of this **Federal Register**, EPA is approving the Tribe's TIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the

approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: August 13, 2009.

**Ira Leighton,**

*Acting Regional Administrator, EPA New England.*

[FR Doc. E9-23262 Filed 9-25-09; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 27

[WT Docket Nos. 03-66; RM-10586, FCC 09-70]

#### Facilitating the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this document, the Commission seeks comment on its proposal to require applicants that win BRS licenses in Auction 86, and any subsequent auction, to demonstrate substantial service on or before four years from the date of license grant. Further, the Commission seeks comment on a proposed clarification to the substantial service rule applicable to the Broadband Radio Service and to the

Educational Broadband Service. The Commission's proposals, if adopted, would ensure that spectrum in the 2.5 GHz band is put in use and would promote the provision of innovative services and rapid service to the public.

**DATES:** Submit comments on or before October 13, 2009. Submit reply comments on or before October 23, 2009.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. You may submit comments, identified by FCC 09–70, or by WT Docket No. 03–66, by any of the following methods:

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

- *Federal Communications Commission's Web site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:**

Nancy M. Zaczek, Wireless Telecommunications Bureau, Broadband Division, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, at (202) 418–0274 or via the Internet to [Nancy.Zaczek@fcc.gov](mailto:Nancy.Zaczek@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Broadband Radio Service/Educational Broadband Service Third Further Notice of Proposed Rulemaking (BRS/EBS 3rd FNPRM)*, FCC 09–70, adopted on September 8, 2009, and released on September 11, 2009. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, 1–800–378–3160 or via e-mail at [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com). The complete text is also available on the Commission's Web site at [http://wireless.fcc.gov/edocs\\_public/attachment/FCC-09-70A1doc](http://wireless.fcc.gov/edocs_public/attachment/FCC-09-70A1doc). This full text may also be

downloaded at: <http://wireless.fcc.gov/releases.html>. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available by contacting Brian Millin at (202) 418–7426, TTY (202) 418–7365, or via e-mail to [bmillin@fcc.gov](mailto:bmillin@fcc.gov).

**SUPPLEMENTARY INFORMATION:**

**BRS/EBS Third FNPRM**

1. *Background.* The Commission's general practice has been to adopt performance requirements associated with licenses to be met at a deadline measured in some period of time from the issue of the license (e.g., a licensee may have to demonstrate substantial service 5 years from issue of the license). Regarding incumbent BRS licenses, licensees were required to construct within twelve months of the date of license grant. Regarding BTA licenses, the former MDS rules provided that “within five years of the grant of a BTA authorization, the authorization holder must construct MDS stations to provide signals \* \* \* that are capable of reaching at least two-thirds of the population of the applicable service area.” Subsequently, in April 2006, the Commission adopted May 1, 2011 as the uniform date by which all BRS BTA authorization holders and incumbent BRS and EBS licensees must demonstrate substantial service.

2. The Commission adopted May 1, 2011 as the date for BRS licensees to demonstrate substantial service because it is the date that renewal applications for incumbent BRS licenses are due. Moreover, May 1, 2011 is approximately five years from the date of release of the *BRS/EBS Second Report and Order*, which gave existing BRS licensees five years to build out their systems, while they simultaneously transitioned to the new band plan and technical rules. Thus, the Commission concluded, requiring BRS licensees to demonstrate substantial service by May 1, 2011 struck the appropriate balance between ensuring that the band is promptly placed in use and giving licensees fair opportunity to transition their facilities. The Commission then required that BRS incumbent licensees file their demonstration of substantial service with their respective renewal applications.

3. On April 24, 2009, the Wireless Telecommunications Bureau announced that it intended to auction 78 BRS BTA licenses, 75 of which will be overlay licenses that were originally offered in Auction 6 and are now available as a result of default, cancellation, or termination. Three additional licenses were created by the Commission in the *BRS/EBS Fourth MO&O*, when the

Commission amended its rules to establish three Gulf of Mexico Service Areas for BRS. It is anticipated that the auction of these 78 BRS licenses will commence on October 27, 2009. Under the rules adopted by the Commission in 2006, auction winners of these 78 licenses will also be required to demonstrate substantial service on or before May 1, 2011.

4. In response to the Auction 86 Procedures Public Notice, SAL Spectrum, LLC (SAL Spectrum) asked the Commission to give applicants that win BRS licenses in Auction 86 ten years in which to demonstrate substantial service. SAL Spectrum argues that requiring licensees who receive their licenses in Auction 86 to demonstrate substantial service by May 1, 2011 “will discourage participation in Auction 86 and deflate the amount that participants will be willing to bid.” The Ad Hoc BRS Applicants Association supports giving new licensees ten years to demonstrate substantial service. The Wireless Communications Association International, Inc. (WCA) and Clearwire Corporation (Clearwire) opposed SAL Spectrum's proposal. They contend that it would not be in the public interest to give new licensees ten years to demonstrate substantial service because the spectrum could lie fallow during that period. WCA recommends that any additional time “be an appropriate balance between the goal of ensuring that the spectrum is put to good use and permitting winners a reasonable opportunity to construct.” Clearwire argues that the existing May 1, 2011 substantial service deadline should apply.

5. We tentatively conclude that we should require applicants that win BRS licenses in Auction 86, and any subsequent auction of BRS licenses, to demonstrate substantial service on or before four years from the date their respective licenses are granted. We agree with WCA that the substantial service deadline should ensure that spectrum is promptly placed in use while allowing licensees a reasonable opportunity to construct.

6. We tentatively conclude that a four-year time period will allow new licensees sufficient time to build out their systems and put the spectrum to use. Although the May 1, 2011 date adopted by the Commission in the *BRS/EBS Second Report and Order* gave BRS licensees five years to build out their systems, during this five-year period licensees had to simultaneously transition to the new band plan and technical rules. Since the adoption of the *BRS/EBS 2nd Report and Order*, however, the transition of the 2500–

2690 MHz band has been initiated in virtually the entire United States and has been completed in most of the country. Given that new BRS licensees will not face issues related to simultaneous transition and construction, we tentatively conclude that requiring new BRS licensees to build out within four years of license grant will ensure that the spectrum is put in use, promote the provision of innovative services, and promote rapid service to the public.

7. The proposal to require substantial service within four years of license grant is consistent with the decision to establish initial buildout requirements within four years of the effective date of the DTV transition or of license grant in the 700 MHz band. Therefore, we tentatively conclude that a four-year deadline is more appropriate than the ten-year deadline. We believe that a ten-year deadline is excessive and could lead to spectrum being unused for an inordinately long period of time. Also, we believe the better course of action is to provide advance notice to potential bidders regarding their buildout obligations. Thus, we tentatively conclude that we should require new BRS licensees awarded in Auction 86 to demonstrate substantial service on or before four years from the date of license grant. In addition, we note that the same rationale would apply to any BRS licensee whose initial license is granted near the May 1, 2011 substantial service deadline. Therefore, we tentatively conclude that we should adopt a rule that would require any BRS licensee whose initial license is granted after the revised rule becomes effective to demonstrate substantial service on or before a date four years from the date the license was granted. We seek comment on this proposal and alternatives.

8. We also propose to revise the introductory text to § 27.14(o) of the Commission's rules to more clearly state the Commission's intent to allow BRS or EBS licensees to demonstrate substantial service if their respective lessees met one of the safe harbors adopted by the Commission and to allow licenses to be combined for purposes of demonstrating substantial service under certain circumstances. We seek comment on this proposal.

#### Procedural Matters

##### *Ex Parte Rules—Permit-But-Disclose Proceeding*

9. This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda

period, provided they are disclosed pursuant to the Commission's rules.

#### Comment Period and Procedures

10. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments.

- *For ECFS filers,* if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment via the 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 include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- *Paper Filers:* 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, filers 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). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. The Commission's contractor 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, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

- *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

- *Availability of Documents:* The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW., Room CY-A257, Washington, DC 20554, and on the Commission's Internet Home Page: <http://www.fcc.gov>. Copies of comments and reply comments are also available through the Commission's duplicating contractor: Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, 1-800-378-3160.

#### Paperwork Reduction Analysis

11. This document does not contain proposed information collections subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

#### Initial Regulatory Flexibility Analysis

12. The Regulatory Flexibility Act (RFA) requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines "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).

13. In the *BRS/EBS Third FNPRM*, the Commission has proposed extending the deadline for demonstrating substantial service for those licensees that are granted a BRS license after the adoption date of a rule in this proceeding. The Commission proposes this action in light of its decision to auction 78 available BRS BTA licenses starting on October 27, 2009. The Commission is concerned that these licensees, and any other licensees whose initial license is granted after the effective date of the rules adopted in this proceeding, may not be able to meet the substantial service deadline adopted by the Commission on April 12, 2006. This proposal, if adopted, would not create any additional burdens for BRS licensees. All BRS licensees must demonstrate substantial service. If adopted, however, this decision would relieve certain licensees of the burden of demonstrating substantial service on or before May 1, 2011, which would, in many cases, be just over a year from the date of license grant. Thus the Commission's proposal, if adopted, would relieve licensees granted an initial license after the effective date of the rules adopted in this proceeding, from having to meet the May 1, 2011 deadline, but would require them to demonstrate substantial service four years from the date of license grant.

14. The Commission therefore certifies, pursuant to the RFA, that the proposals in the *BRS/EBS Third FNPRM*, if adopted, will not have a significant economic impact on a substantial number of small entities. If commenters believe that the proposals discussed in the *BRS/EBS Third FNPRM* require additional RFA analysis, they should include a discussion of these issues in their comments and

additionally label them as RFA comments.

#### Ordering Clauses

15. It is ordered that notice is hereby given of the proposed regulatory changes described in this *Third Further Notice of Proposed Rulemaking*, and that comment is sought on these proposals.

16. It is further ordered that pursuant to section 4(i) of the Communications Act of 1934, 47 U.S.C.154(i), that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Third Further Notice of Proposed Rulemaking*, including the Initial Regulatory Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects in 47 CFR Part 27

Communications common carriers, Communications equipment, Equal employment opportunity, Radio, Reporting and recordkeeping requirements, Satellites, Securities, Telecommunications.

**Marlene H. Dortch,**

*Secretary, Federal Communications Commission.*

#### Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 27 as follows:

#### PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

1. The authority citation for part 27 continues to read as follows:

**Authority:** 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

2. Amend § 27.14 by revising paragraph (o) introductory text to read as follows:

#### § 27.14 Construction requirements; Criteria for renewal.

\* \* \* \* \*

(o) BRS and EBS licensees originally issued a BRS or EBS license prior to [insert effective date of final rule] must make a showing of substantial service no later than May 1, 2011. With respect to initial BRS licenses issued after [insert effective date of final rule], the licensee must make a showing of substantial service within four years from the date of issue of the license. Incumbent BRS licensees that are required to demonstrate substantial service by May 1, 2011 must file their substantial service showing with their renewal applications. "Substantial service" is defined as service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal. Substantial service for BRS and EBS licensees is satisfied if a licensee meets the requirements of paragraph (o)(1), (o)(2), or (o)(3) of this section. If a licensee has not met the requirements of paragraph (o)(1), (o)(2), or (o)(3) of this section, then demonstration of substantial service shall proceed on a case-by-case basis. Except as provided in paragraphs (o)(4) and (o)(5) of this section, all substantial service determinations will be made on a license-by-license basis. Failure by any licensee to demonstrate substantial service will result in forfeiture of the license and the licensee will be ineligible to regain it.

\* \* \* \* \*

[FR Doc. E9-23331 Filed 9-25-09; 8:45 am]

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