§ 101.1112 Definitions.

(a) *Scope.* The definitions in this section apply to §§ 101.1101 through 101.1112, unless otherwise specified in those sections.

(b) *Very small business.* A very small business is an entity that, together with its affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million.

(c) *Small business.* A small business is an entity that, together with its affiliates and controlling interests, has average gross revenues for the three preceding years of more than $15 million but not more than $40 million.

(d) *Entrepreneur.* An entrepreneur is an entity that, together with its affiliates and controlling interests, has average gross revenues for the three preceding years of more than $40 million but not more than $75 million.

(e) For purposes of determining whether an entity meets the definition of very small business, small business or entrepreneur, the gross revenues of the applicant, its affiliates and controlling interests shall be considered on a cumulative basis and aggregated.

(f) *Consortium.* A consortium of very small businesses, small businesses or entrepreneurs is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition of a very small business, small business or entrepreneur. Each individual member must establish its eligibility as a very small business, small business or entrepreneur. Where an applicant (or licensee) is a consortium of very small businesses, small businesses or entrepreneurs, the gross revenues of each business shall not be aggregated.

122. Revise § 101.1201 to read as follows:

§ 101.1201 38.6–40.0 GHz subject to competitive bidding.

Mutually exclusive initial applications for 38.6–40.0 GHz band licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

§ 101.1202 through § 101.1207 [Removed and Reserved]

123. Remove and reserve § 101.1202 through § 101.1207.

124. Revise § 101.1208 to read as follows:

§ 101.1208 Bidding credits for small businesses.

A winning bidder that qualifies as a small business or a consortium of small businesses, (as defined in § 101.1209(b)(1)(i) may use a bidding credit of 25 percent to lower the cost of its winning bid on any of the licenses in this part. A winning bidder that qualifies as a very small business or a consortium of very small businesses, as defined in § 101.1209(b)(1)(ii), may use a bidding credit of 35 percent to lower the cost of its winning bid on any of the licenses in this part.

125. Amend § 101.1209 by removing paragraphs (b)(2), (c), (d), and (e), and redesignating paragraph (b)(3) as (b)(2), and revising newly redesignated paragraph (b)(2) to read as follows:

§ 101.1209 Definitions.

* * * * *

(b) * * *

(2) A small business consortium is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies either definition of a small business in paragraphs (b)(1) of this section.

126. Revise § 101.1317 to read as follows:

§ 101.1317 Competitive bidding procedures for mutually exclusive MAS EA applications.

Mutually exclusive initial applications for licenses in the portions of the MAS bands licensed on a geographic area basis are subject to competitive bidding procedures. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

127. Amend § 101.1319 by removing paragraph (c) and revising paragraph (b) to read as follows:

§ 101.1319 Competitive bidding provisions.

* * * * *

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

§ 101.1323 [Amended]

128. Amend § 101.1323 by removing paragraph (c) and redesignating paragraphs (d) and (e) as paragraphs (c) and (d).

[FR Doc. 02–16096 Filed 7–8–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 27 and 73

[GN Docket No. 01–74; FCC 02–185]

Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission addresses petitions for reconsideration filed by eight parties. The Commission affirms its prior decisions regarding issues relating to the transition to DTV service and the rules for auctioning and licensing of new services on the 698–746 MHz spectrum band (Lower 700 MHz Band), which has been reallocated pursuant to statutory requirements. The Commission takes these actions to promote the transition to DTV, meet its statutory mandate to reclaim and license this spectrum by competitive bidding, and enable the flexible use of the Lower 700 MHz Band for a wide range of new services.

DATES: Effective June 18, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Rowan, Wireless Telecommunications Bureau, at (202) 418–7240.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Memorandum Opinion and Order (MO&O),* FCC 02–185, in GN Docket No. 01–74, adopted on June 14, 2002, and released on June 14, 2002. The full text of this *MO&O* is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 863–2893. The complete text may also be downloaded at: *http://www.fcc.gov.*

Synopsis of MO&O

In the *MO&O,* the Commission: (1) Affirms the band plan and geographic license areas adopted in the *Report and Order (Lower 700 MHz R&O)* (67 FR 5491, February 6, 2002); (2) affirms the

Lower 700 MHz Band out-of-band emission (''OOBE'') limit and decision in the *Lower 700 MHz R&O* to adopt a uniform maximum power limit of 50 kW effective radiated power (''ERP'') for services operating on the Lower 700 MHz Band; (3) denies the petition for reconsideration of the Office of the Chief Technology Officer, Government of the District of Columbia (''OCTO''), which argues that public safety users should be permitted to obtain Lower 700 MHz band licenses under the ''public safety radio services'' auction exemption found at section 309(j)(2)(A) of the Communications Act, as amended (''Communications Act'' or ''Act''); (4) affirms the decision in the *Lower 700 MHz R&O* to dismiss all pending petitions for NTSC channel allotments in the Lower 700 MHz Band; (5) clarifies that broadcast stations clearing from Channels 59–69 in connection with voluntary band clearing arrangements may seek a modified NTSC or DTV channel allotment on Channels 52–58; (6) affirms the decision in the *Lower 700 MHz R&O* not to authorize additional new NTSC construction permits in the Lower 700 MHz Band and to open a 45-day window, during which such pending applications could be modified, either (a) to provide analog or digital television service in the core channels (2–51), or (b) to provide digital television service in Channels 52–58; and (7) affirms the decision of the Mass Media Bureau (now the Media Bureau) adopted pursuant to the *Lower 700 MHz R&O* providing that, where multiple applicants have filed for a single NTSC allotment in the Lower 700 MHz Band, they must file a petition for rulemaking proposing a single replacement channel to which all applicants agree to modify their applications.

I. Background

1. In the *Lower 700 MHz R&O,* the Commission reallocated the spectrum in the Lower 700 MHz Band to flexible use by fixed, mobile and new broadcast services, as well as incumbent broadcast services during their transition to DTV. The Commission established technical criteria designed to protect incumbent television operations in the band during the DTV transition period, and adopted a mechanism by which pending broadcast applications may be amended to provide analog or digital service in the core television spectrum or to provide digital service on TV Channels 52–58.

2. The Commission also adopted service rules required for use of the Lower 700 MHz Band by fixed, mobile, and broadcast services. The Commission divided the Lower 700 MHz Band into five blocks across different service areas for geographic area licensing: two 6-megahertz blocks of contiguous unpaired spectrum, as well as two 12-megahertz blocks of paired spectrum, were to be assigned over six Economic Area Groupings (''EAGs''); a remaining 12 megahertz block of paired spectrum (710–716 MHz and 740–746 MHz) was designated for licensing over 734 Metropolitan Statistical Areas (''MSAs'') and Rural Service Areas (''RSAs''). The Commission decided that all operations in the Lower 700 MHz Band would be generally regulated under the framework of part 27's technical, licensing, and operating rules. However, in order to permit both wireless services and certain new broadcast operations in the Lower 700 MHz Band, the Commission adopted maximum power limits for the Lower 700 MHz Band that would permit 50 kW ERP transmissions under certain conditions. The Commission declined to restrict any of the spectrum in the Lower 700 MHz Band exclusively to public safety or private radio services, but noted that its flexible use allocation under part 27 permits fixed and mobile wireless uses for private, internal radio communications.

II. Discussion

A. Service Rules

1. Band Plan and Geographic Scope of Licenses

3. In petitions for reconsideration/clarification, Spectrum Exchange Group, LLC and Allen & Company (''Spectrum Exchange/Allen'') and Spectrum Clearing Alliance (''SCA'') claim that the Commission should reconsider the plan for assignment of spectrum within the Lower 700 MHz Band, in particular the use of MSAs/RSAs to license Block C. In the *MO&O,* the Commission decides not to alter the band plan or geographic service areas that were adopted in the *Lower 700 MHz R&O,* including the assignment of MSA/RSA license areas to Block C currently occupied by TV Channels 54 and 59. Based on the Commission's consideration of the arguments raised on reconsideration and the factors previously considered in the *Lower 700 MHz R&O,* the Commission reaffirms that the band plan adopted in that order represents the best approach for achieving the Commission's policy objectives for the Lower 700 MHz Band. Thus, the Commission denies the petitions for reconsideration/clarification that raise issues regarding the band plan and geographic scope of Lower 700 MHz Band licenses.

4. In determining the optimum initial scope of licenses for the Lower 700 MHz Band, the Commission maintained its commitment to several spectrum management policies, including the statutory mandate to promote opportunities for a wide variety of applicants, including small and rural wireless providers, to obtain spectrum and participate in the provision of spectrum-based services. The MO&O states that a primary result of this process was a band plan that assigned the majority of spectrum over large service areas defined by EAGs. According to the Commission, this approach is consistent with the Commission's decision in the Upper 700 MHz Band proceeding to assign the majority of commercial spectrum in the Upper 700 MHz Band over EAGs. As the Commission noted in the Upper 700 MHz Band proceeding, large geographic areas such as EAGs offer several advantages. The MO&O states that large areas provide optimum opportunity to aggregate spectrum, which may be particularly useful for services that require nationwide footprints. It states that large geographic areas also make it easier for providers to take advantage of economies of scale, allowing existing technologies to grow and new technologies to develop. The Commission notes that large geographic areas also reduce the potential transaction costs to both auction participants seeking adjoining smaller geographic areas and carriers seeking to consolidate such areas post-auction. Finally, the Commission states that these large areas may help address problems due to incumbent TV stations. Because of these advantages associated with the assignment of larger licensing areas, the Commission designated the bulk of Lower 700 MHz Band spectrum as EAGs.

5. Nevertheless, based on the record, the statutory mandate of section 309(j) of the Communications Act, and a desire to promote opportunities for a wide variety of applicants in the provision of spectrum-based services in the Lower 700 MHz Band, the Commission also sought to define a band plan that afforded meaningful opportunities to the interested parties seeking licenses with smaller initial geographic scope. Because the Commission decided to assign only one 12 megahertz block of paired spectrum over MSAs/RSAs, the MO&O states that it is of consequential significance to such parties whether that block is assigned to spectrum with high incumbency, potential for interference, or other obstructions to use. Given the

lack of any significant difference in the relative incumbency levels on Blocks A, B, and C, the Commission focused on factors such as band plan architecture and adjacent channel interference in selecting the various license block assignments.

6. Given these considerations in the *Lower 700 MHz R&O,* the Commission finds its assignment of MSAs/RSAs to Block C to be in the public interest. Of the three paired 12-megahertz blocks, the *MO&O* states that Block B would have been the most suitable to meet the spectrum needs of the many parties interested in acquiring additional spectrum to complement existing networks of a local or smaller scale. However, the *MO&O* states that the use of MSAs/RSAs for Block B would have conflicted with another Commission goal that of making it possible to aggregate 24 megahertz of paired spectrum within the same EAG. As the Commission recognizes in the *MO&O* and in the *Lower 700 MHz R&O,* the ability to aggregate spectrum may offer important benefits. In order to provide additional opportunities for firms seeking to aggregate paired spectrum within the same EAG, the Commission had to designate either Blocks A and B or Blocks B and C as the EAG blocks. The *MO&O* states that using Block B for MSA/RSA licenses would result in the two EAG blocks being split, frustrating this objective. Thus, according to the Commission, the alternative locations for MSA/RSA licenses were Block A or Block C. Given these alternatives, the Commission finds Block C to be the best choice to meet its specific objective for the Lower 700 MHz Band to provide opportunities for provision of services by rural telephone companies, small businesses, and/or other entities seeking spectrum licenses of smaller geographic scope.

7. The Commission does not view the alternative, Block A, to be sufficient to meet its objectives. Compared to Blocks B through E, the *MO&O* states that Block A may pose the most burdens for new licensees seeking to offer services while protecting DTV operations on Channel 51. Unlike these other blocks, the Commission finds that Block A licensees will have to meet additional part 27 adjacent channel interference obligations involving these DTV operations on Channel 51, which are in the TV core and are therefore of a permanent nature. The *MO&O* states that these permanent DTV operations on Channel 51 underscore the advantages of licensing Channel 52 across EAGs, as these large geographic areas match and can be aggregated with those used for Block B. According to the Commission, such aggregation may permit licensees greater flexibility to engineer their systems around Channel 51 DTV operations by the use of measures such as internal guard bands. Accordingly, compared to Block C, the Commission finds that adjacent channel protection requirements may limit the usability of Block A as a stand-alone block.

8. The Commission rejects Spectrum Exchange/Allen's proposal to rearrange the Lower 700 MHz Band licensing arrangement and/or band plan. The Commission finds that their alternative proposals will not preserve the equitable distribution of licenses. In particular, the Commission does not accept the suggestion that an unpaired block should be assigned to the current Channel 52 spectrum instead of to Channels 55 and 56. The Commission does not find adequate support to change the existing separation between segments of the 12 megahertz paired blocks that were adopted in the Lower 700 MHz R&O. The *MO&O* states that the separation between the blocks that the Commission adopted in the Lower 700 MHz R&O is consistent with the band plan adopted in the Upper 700 MHz Band, and is appropriate for many two-way technologies to operate. According to the Commission, locating the 6-megahertz unpaired licenses at the center of the band plan maintains this separation.

9. The Commission finds that the spectrum policy objectives for the Lower 700 MHz Band are a balancing of a number of factors. According to the Commission, petitioners' specific arguments regarding the potential for Channel 59 ''free-riders'' to hinder band-clearing efforts on Channels 59–69 are outweighed by other considerations in the Lower 700 MHz band plan. While the Commission identified the early clearing of incumbents as an Upper 700 MHz Band consideration that would also be important in the Lower 700 MHz Band, the *MO&O* states that it does not follow that removing potential obstacles to band clearing on Channel 59 should be the overriding objective of the Commission's service rules for the Lower 700 MHz Band. Rather, the Commission finds that the aforementioned advantages of the band plan for a wide variety of applicants and spectrum-based services outweigh the potential that the band plan may present some obstacles to clearing Channel 59. The Commission notes that under the Commission's voluntary band-clearing policy, there has always been the potential for certain new licensees to benefit from the early clearing of a Channel 59–69 incumbent without being a party to the particular band-clearing agreement. The *MO&O* states that this potential exists for new licensees on Channels 58 and 59, as well as commercial and guard band licensees in the Upper 700 MHz Band. In particular, the Commission explains that there originally was no expectation that Lower 700 MHz licensees would contribute to Upper 700 MHz band-clearing efforts. According to the Commission, at the time the Upper 700 MHz band-clearing rules were adopted, it was assumed that Channels 52–59 would be auctioned later than Channels 60–69. Thus, the *MO&O* states that placing MSA/RSA licensees on Block C does not make band clearing more costly or difficult for petitioners than originally conceived.

2. Power and Out-of-Band Emission Limits

10. In a petition for reconsideration, Access Spectrum, LLC (''Access Spectrum'') requests that the Commission reconsider permitting licensees on TV Channels 57–59 to operate base stations at a power level of up to 50 kW ERP. In the *MO&O* the Commission declines to adopt petitioner's proposal to reduce the power limits in the upper portions of the Lower 700 MHz Band. In the Lower 700 MHz R&O, the Commission devoted considerable discussion to the possibility of harmful interference from 50 kW ERP operations to systems on adjacent channels operating at lower power levels. Contrary to the statements of the petitioner and other commenting parties, the Commission evaluated fully the potential impact of 50 kW transmissions on operations in the Upper 700 MHz Band, including users of spectrum licensed to guard band managers on 746–747 MHz.

11. To address the potential for adjacent channel interference resulting from operations on the Lower 700 MHz Band, the Commission adopted general rules that protect all adjacent channel licensees, whether they are operating in the Lower 700 MHz Band or in the lower portion of the Upper 700 MHz Band. As the *MO&O* states, by its very compliance with the power flux density (''PFD'') limit in § 27.55(b), a Block A, B, and/or C Lower 700 MHz licensee operating at 50 kW protects mobile receivers operating on 746–747 MHz from desensitization or front-end overload because they will experience PFD levels that are no greater than the PFD levels that could occur from stations operating at 1 kW ERP or less.

12. The *MO&O* states that licensees operating at power levels that exceed 1 kW are required to notify all licensees authorized on adjacent blocks that are

located within 75 km. The *MO&O* explains that this requirement provides adjacent channel licensees, including licensees on 746–747 MHz, the opportunity to adopt measures to mitigate interference. Finally, by meeting the limits of § 27.53(f) of the Commission's rules on the power of any emission outside a licensee's frequency band(s), which would include any OOBE on 746–747 MHz, the *MO&O* states that a Block A, B, and/or C Lower 700 MHz licensee operating at up to 50 kW will protect mobile and base receive stations on 746–747 MHz from harmful interference that could arise due to out-of-band emissions.

13. Petitioner claims that transmitters operating at 50 kW will produce high levels of interference to mobile and portable receivers in the 746–747 MHz guard band and that the PFD limit established in the *Lower 700 MHz R&O* is inadequate to protect receivers in the guard band from being overwhelmed. However, on the basis of petitioner's own calculations referenced in the *Lower 700 MHz R&O*, the Commission determined that the interference environment of mobile and portable receivers in adjacent bands, such as the 746–747 MHz guard band, would be not substantially changed with 50 kW ERP stations operating under the conditions of the PFD limit adopted in the *Lower 700 MHz R&O*. To protect adjacent channel mobile receivers from overload conditions, the Commission concluded that it is only necessary that 50 kW transmitters produce radio fields on the ground that are no greater than what would occur from commercial land mobile systems operating at power levels of 1 kW or less. Thus, the Commission adopted § 27.55(b) of the Commission's rules, which established a PFD limit for Lower 700 MHz Band stations operating up to 50 kW. The *MO&O* states that § 27.55(b) ensures that the interference environment for mobile and portable receivers operating on spectrum adjacent to 50 kW ERP transmitters is substantially the same as what it would be for mobile and portable receivers operating on spectrum adjacent to 1 kW ERP transmitters.

14. In support of Access Spectrum's petition, Motorola, Inc. (''Motorola'') filed an engineering analysis purporting to demonstrate that the PFD limit does not adequately protect adjacent channel licensees in the guard band. The Commission disagrees with Motorola's finding that there is a discontinuity in the provisions of its rules that affects systems operating below 1 kW differently from those operating at higher power levels. Motorola suggests that because of the Commission's rule, which places a particular PFD limit on above-1 KW ERP systems in the Lower 700 MHz Band, licensees will operate with antennas and antenna configurations that might put the full 3000 microwatts per square meter PFD on the ground in the vicinity of the transmitter and, therefore, cause excessively high out-of-band emissions into 746–747 MHz guard band handsets. According to the *MO&O*, Motorola's claimed large discontinuity in the level of out-of-band emissions produced when licensees operate at power levels above 1 kW suggests a sudden, large increase in emissions automatically occurring when a licensee operating at 1 kW ERP increases its power level to just above 1 kW ERP. According to the *MO&O*, this assertion, however, is groundless. The Commission explains that its 3000-microwatt per square meter rule merely places a limit on the energy a licensee operating above 1 kW can put on the ground 1 km away. In the course of operating at such power levels, and designing their systems to not exceed the 3000 mw/sq m limit, the *MO&O* states that if a licensee employs a particular antenna and/or an antenna configuration in an effort to actually reach this rather generous PFD limit, there would, as Motorola contends, be greater out-of-band emissions into guard band receivers than the Commission may have anticipated when it adopted its 43 + 10log P OOBE standard. However, the *MO&O* explains that it is far more likely that licensees designing commercial systems operating at power levels just above and just below 1 KW ERP will employ virtually the same antennas and antenna configurations, which, according to Motorola, would produce a much more modest 140 mw/sq m PFD level. Thus, the *MO&O* states that a licensee operating at a power level above 1 kW ERP will produce no greater emissions into guard band receivers than a licensee operating below 1 kW ERP—*i.e.*, there would be no sudden increase or discontinuity in emissions occurring from systems that choose to operate at power levels above 1 kW ERP.

15. The Commission states that it should also be noted that commercial licensees operating in the Upper 700 MHz Band, *e.g.*, the 747–752 megahertz license immediately above the guard band, could design systems that produce that same PFD level and thus create the same out-of-band emissions into guard band receivers that concern Motorola with regard to Lower 700 MHz Band systems. According to the *MO&O,* the Commission's rule, which is designed simply to place a limit on energy produced by high-powered systems in the Lower 700 MHz band, will not cause any greater out-of-band interference to occur to guard band receivers from commercial systems operating in Lower 700 MHz Band than could occur from commercial systems operating in the Upper 700 MHz Band.

16. The petitioner also claims that the use of antenna down tilting and improved filtering is inadequate to mitigate interference for users of the guard band utilizing portable handsets. From this observation, the petitioner concludes that the Commission failed to address the circumstances that will be faced by guard band users operating mobile or portable receivers and that the Commission's conclusions regarding interference mitigation are therefore baseless. As the petitioner recognizes, however, the Commission explains in the *MO&O* that antenna down tilting and filtering are measures that it suggested may be applied to base station receiving receivers, not mobiles or portables. Because of the potential interference scenarios involving base-to-base interference (i.e., scenarios that the adoption of a PFD limit on the ground would not address), the Commission provided a table demonstrating how a licensee could mitigate potential base-to-base interference from 50 kW transmissions by use of a selective antenna pattern or down tilting of its base receive antenna. The *MO&O* states that protection of mobiles and portables is already ensured by the PFD limitation of 3000 microwatts per square meter on the ground. Thus, the Commission squarely addressed and mitigated the potential impact to adjacent channel mobiles on 746–747 MHz by the adoption of § 27.55(c).

17. The Commission disagrees with the petitioner's supposition that the notification requirement placed on licensees that intend to operate base or fixed stations in excess of 1 kW ERP provides no practical benefit for users of the 746–747 guard band. The *MO&O* states that the petitioner's position relies on a misunderstanding that the notification requirement is intended to solve a base-to-mobile interference potential. As stated in the *MO&O*, the potential interference to mobile and portable receivers on the 746–747 MHz guard band is addressed by the PFD limitation of 3000 mw/sq m on the ground. As explained in the *Lower 700 MHz R&O*, the Commission states that the notification requirement is a means to implement the mitigation measures cited by the Commission to address the potential for base-to-base interference from 50 kW ERP operations.

18. Access Spectrum finally contends that the OOBE limit established in the *Lower 700 MHz R&O* should be significantly greater in order to mitigate adjacent channel interference caused by high power base station operations on license blocks occupying TV channels 57–59. In the *MO&O*, the Commission disagrees. According to the Commission, the OOBE limit will result in the identical out-of-band emission level for 1 kW transmitters as for 50 kW transmitters (*i.e.*, producing the absolute power of −43 dBw, or 50 microwatts, out of the transmitter). The *MO&O* states that the protection afforded adjacent channel receivers is independent of the maximum power allowed for Lower 700 MHz Band operations, finding that the requirement proposed by petitioner is unnecessary.

19. In sum, the Commission does not agree with the petitioner that the technical rules jeopardize users of the 746–747 MHz guard band. After full consideration of the arguments made by petitioner, and the commenters supporting its petition, the Commission will not alter the OOBE limit or maximum power limit of 50 kW ERP for any operations in the Lower 700 MHz Band. The Commission also leaves intact the related mitigation requirements that were adopted in the *Lower 700 MHz R&O* as reasonable measures to maintain the flexibility provided by the higher power limit, while mitigating the risk that any interference from stations operating in excess of 1 kW ERP will occur.

3. Applicability of Statutory Exemptions From Auction

20. In a petition for reconsideration or clarification, OCTO asks that the Commission confirm that the part 27 service rules that have been amended in the *Lower 700 MHz R&O* permit public safety eligibles to apply to provide private, internal communications services in the spectrum without participating in an auction. In the *MO&O*, the Commission denies OCTO's petition. The Commission did not designate any portion of the band to ''public safety radio services'' in the *Lower 700 MHz R&O*. Instead, the Commission allocated the entire band for flexible use by fixed, mobile, and broadcast services. Thus, the *MO&O* states that this band is not subject to the ''public safety radio services'' auction exemption found at section 309(j)(2)(A) of the Act.

21. OCTO argues that, because the *Lower 700 MHz R&O* permits private internal uses and public safety eligibles such as OCTO who have historically used private internal systems, the section 309(j)(2)(A) competitive bidding exemption applies to public safety radio service eligibles that seek to acquire licenses on the Lower 700 MHz Band. In previous rulemakings, the Commission examined the scope of section 309(j)(2)(A)'s exemption for public safety radio services, and concluded that the public safety radio services exemption applies to spectrum for particular services, rather than individual users of spectrum. Thus, the *MO&O* explains that the rules for a particular service determine whether spectrum is designated for public safety radio services exclusively, and the *MO&O* states that part 27 rules do not define any portion of the Lower 700 MHz spectrum as ''public safety radio services'' band. In developing service rules in this proceeding, the Commission relied on the record which demonstrated demand for commercial wireless and broadcast services in the Lower 700 MHz Band. According to the *MO&O*, these service rules reflect established Commission policy that favors flexibility of use as well as the Commission's experience in allocating spectrum, predictions about future demands and technologies, and statutory and other public interest considerations. To the extent that public safety users desire spectrum in a particular band, the Commission encourages them to participate in the service rule proceedings to help craft rules conducive to public safety needs. The *MO&O* states that public safety users, such as OCTO, may apply for unassigned spectrum in the Lower 700 MHz Band pursuant to the Commission's established section 337 procedures, or apply for designated public safety spectrum.

22. In the *MO&O*, the Commission finds that *National Public Radio, Inc.* v. *FCC (NPR)* (254 F.3d 226 (D.C.Cir.2001)) does not alter its determination that the public radio services exemption in section 309(j)(2)(A) does not apply to spectrum to be auctioned in the Lower 700 MHz Band. The *MO&O* states that in *NPR,* the court held that the section 309(j)(2)(C) exemption from competitive bidding for non-commercial educational broadcasters (''NCEs'') exempts NCEs from participating in auctions for any broadcasting spectrum, whether or not the spectrum has been reserved for noncommercial educational use. The *MO&O* states that, because section 309(j)(2)(C) specifically exempts NCE ''stations,'' the court concluded that the NCE exemption ''is based on the nature of the station that ultimately receives the license, not on the part of the spectrum in which the station operates.'' In contrast to section 309(j)(2)(C)'s NCE exemption specifically at issue in *NPR*, the Commission states that the public safety radio services exemption in section 309(j)(2)(A) does not refer to the ultimate recipient of the license. Rather, the *MO&O* states that it specifically refers to ''public safety radio services'' used by public safety entities, and not to public safety stations or licensees themselves. Thus, the Commission has previously found that the NCE exemption addressed in *NPR* is not analogous to the application of the section 309(j)(2)(A) exemption, as OCTO claims. The Commission therefore believes that the plain language analysis used in *NPR* supports the Commission's interpretation of section 309(j)(2)(A) in the *MO&O*.

23. The *MO&O* states that the interpretation of the public safety radio services exemption is also consistent with the Commission's obligations to auction and manage the Lower 700 MHz Band. Section 309(j)(14) of the Communications Act requires the Commission to reclaim and assign the Lower 700 MHz Band by competitive bidding. Thus, the Commission finds that allowing public safety entities to acquire spectrum in the band under the section 309(j)(2)(A) exemption would undermine Congress' intent to auction this spectrum. Under section 309(j)(3) of the Act, in using competitive bidding to assign licenses the Commission must seek to promote a number of competing objectives such as: promoting the introduction and deployment of new technologies and services for the public; encouraging economic opportunity and competition; and allowing time for interested parties to develop their business plans. The *MO&O* states that once Congress has determined that a band should be licensed through competitive bidding, allowing public safety eligibles to override that designation under the section 309(j)(2)(A) exemption would undermine Congress' directive and the Commission's auction authority. Because the approach advocated by OCTO would make spectrum freely available to public safety radio service eligibles on demand, the Commission explains that it and other potential applicants would not know in advance which licenses would be available at auction. According to the *MO&O*, such uncertainty would cause delays in the deployment of new spectrum-based services and would frustrate the statutory objectives of reclaiming the spectrum and subjecting it to competitive bidding.

24. For similar reasons, the Commission decides on its own motion, that NCEs are not eligible to apply for initial licenses for new services in the Lower 700 MHz Band. The *MO&O* states that, in arriving at this decision, the Commission does not reach the issue of whether the section 309(j)(2)(C) exemption applies to mutually exclusive license applications for new services in the Lower 700 MHz Band. The *MO&O* states that prohibiting NCE broadcasters from acquiring spectrum in this band under the section 309(j)(2)(C) exemption is necessary to implement the Commission's decisions to establish flexible mixed use licenses assigned by competitive bidding. By taking a flexible use approach and using competitive bidding, the Commission established a market-based approach that allows the spectrum to be employed for a full range of allocated services, so long as such operations comply with part 27's technical requirements. The Commission recognized recently that the restriction the Commission adopts would be consistent with the statutory language, as interpreted by the court in the *NPR* case. The Commission believes that this approach as applied to new services in the Lower 700 MHz Band will eliminate uncertainties about the outcome of the competitive bidding process and promote the Commission's goals of assigning these licenses expeditiously and promoting the intensive and efficient use of this spectrum. The Commission's decision does not in any way prejudge the outcome that will be taken in MM Docket No. 95–31. In this regard, the Commission notes that the Lower 700 MHz band is flexible mixed use spectrum, and very different considerations apply to conventional broadcast licenses regulated under parts 73 and 74 that are the subject of that proceeding. In arriving at a decision in that proceeding, the Commission intends to ensure that NCE broadcasters will continue to have adequate access to broadcast spectrum.

B. DTV Transition Issues

1. Temporary Relocation of Analog Stations to Channels 52–58 To Facilitate Band Clearing

25. SCA seeks clarification that the Commission's decision in the *Lower 700 MHz R&O* does not prohibit proposals to relocate analog stations to channels 52–58 in connection with Upper 700 MHz band-clearing agreements. Pursuant to the Commission's band-clearing policy, the Commission will entertain proposals to temporarily relocate analog operations to Channel 52–58 in connection with voluntary band-clearing arrangements that would result in the clearing of a Channel 59–69 station. As stated in the *MO&O*, the Commission adopted a policy in the Upper 700 MHz proceeding not to prohibit three-way band-clearing agreements pursuant to which a station might relocate temporarily into Channels 52–58. In so doing, the Commission observed that this alternative could provide necessary flexibility to incumbents on Channels 59–69 to enter into early clearing arrangements. The Commission has consistently recognized that extending flexibility to Channel 59–69 broadcasters to enter into voluntary arrangements for the early clearing of the Upper 700 MHz bands may make this spectrum available more quickly for new public safety and other services and promote the transition of analog television licensees to digital television service.

26. Contrary to Council Tree Communications, LLC's (''Council Tree's'') suggestion, the Commission does not believe that this policy presents significant uncertainties for potential bidders for licenses in the Lower 700 MHz band. The *MO&O* states that an analog broadcaster that seeks to move temporarily into this band must move into an existing Channel 52–58 allotment because the Commission has previously determined that it will not create new allotments in the Upper or Lower 700 MHz bands. Thus, as the Commission pointed out in the Upper 700 MHz proceeding, the *MO&O* states that such temporary moves will not increase the number of stations that will have to be cleared from Channels 52–58, but merely replace one station on those channels with another. For this reason, the Commission states that potential new 700 MHz licensees should be able to determine prior to the auctions the number of incumbent broadcast operations that may exist in (and adjacent to) the geographic areas and frequency bands that they are interested in serving.

27. The Commission also disagrees with Council Tree's argument that some broadcasters might be able to obtain excessive payments from new 700 MHz licensees in exchange for early band clearing. The *MO&O* states that the Commission's voluntary band-clearing policy merely permits bidders and broadcasters to negotiate for the economic value of early clearing. According to the Commission, once a particular allotment is cleared, the allotment would become part of the relevant 700 MHz license (or licenses), and no incumbent broadcast operation would be permitted to move into that allotment, except with the agreement of the new 700 MHz licensee. Thus, the *MO&O* states that a new 700 MHz licensee would not be liable for multiple payments to clear a single allotment. Further, the *MO&O* states that this policy is entirely voluntary. The Commission finds that there are possible uses for this spectrum that would allow new Lower 700 MHz licensees to begin operating immediately, subject to the requirement that they protect incumbent TV and DTV facilities from harmful interference. According to the Commission, such licensees would have full use of the licensed spectrum at the end of the DTV transition period in each market, at which time all incumbent broadcasters will be required to vacate the 700 MHz bands. In addition, the *MO&O* states that market forces should act to keep the total amount of all clearing payments at a reasonable level both because the interests of broadcasters and bidders in these negotiations are not congruent and because bidders that participate in band-clearing arrangements will have to outbid other wireless entities which may be willing to hold licenses for encumbered spectrum. When it extended this flexibility to Upper 700 MHz band-clearing broadcasters, the Commission explicitly recognized that, because relocations from Channels 59–69 to Channels 52–58 would be interim in nature, such moves could result in duplicative costs for broadcasters, additional disruption to viewers, and other inefficiencies. However, the Commission observed that the benefits of such an arrangement may well be substantial, and that a broadcaster will have considered the costs in its individual situation before voluntarily agreeing to move into Channels 52–58 with the knowledge that it will subsequently be obligated to vacate that allotment. Consistent with the Commission's policy regarding the early voluntary clearing of the 700 MHz bands, the Commission will consider any such public interest issues in its review of regulatory requests filed in connection with such voluntary clearing agreements.

2. Pending NTSC Petitions and Applications

28. In the *MO&O*, the Commission affirms its decision in the *Lower 700 MHz R&O* to (1) dismiss pending petitions for new NTSC channel allotments on channels 52–59, but permit such petitioners to refile new DTV allotment petitions on a core channel, subject to meeting DTV

spacing requirements; and (2) permit entities with pending applications to modify their filings to provide analog or digital service in the core or digital service on channels 52–58.

29. Univision Television Group, Inc. (''Univision'') requests that the Commission exclude it from the category of applicants who must amend their applications to specify an in-core channel or DTV operation, or face dismissal. According to the *MO&O*, Univision was the winning bidder in FCC Auction No. 80 (July 2000) for NTSC Channel 52 at Blanco, Texas. In the alternative, Univision asks that the Commission grant its pending petition for rulemaking (filed March 8, 2002) proposing to substitute NTSC Channel 17 for NTSC Channel 52 (''Petition''). In the *MO&O*, the Commission requires the Media Bureau to work with Univision to expedite the allotment process. In addressing Univision's Petition, the Commission directs the Media Bureau to consider waiver of the applicable land mobile distance separation criterion for the site proposed in Univision's petition for rulemaking based on the record in that proceeding. According to the *MO&O*, such wavier relief, if granted, should be conditioned on Univision agreeing to (1) accept interference from current and future 488–494 MHz land mobile facilities operating from base stations located within 50 miles of the Houston reference point and mobile units operating within 30 miles of their associated base stations and (2) not radiate a signal in the Houston area where land mobile operation is permitted with a field strength greater than that permitted by a full-power TV station that meets the co-channel distance separation criteria (341.1 km).

30. Two other petitioners, Pappas Telecasting of America, a California Limited Partnership, and Iberia Communications, LLC (''Pappas/Iberia'') and WB Television Network (''WB''), argue that the decision to permit NTSC applicants to provide digital service in the Lower 700 MHz Band will not ensure the recovery of this spectrum because DTV operations will encumber this spectrum just as much as NTSC operations. WB also argues that limiting new Lower 700 MHz Band stations to DTV service would not further the transition to DTV. The *MO&O* states that the Commission disagrees. The Commission continues to believe that authorizing new NTSC allotments or stations in the Lower 700 MHz Band is inconsistent with the 1997 Budget Act mandate to reclaim this spectrum for new services, and to facilitate the transition to digital television service. As the Commission noted in the *Lower 700 MHz R&O,* digital deployment in the Lower 700 MHz Band will introduce new digital service and could promote the acquisition of digital equipment by consumers. Moreover, according to the *MO&O*, new service providers in the band may be able to co-exist more easily with digital television stations because such stations operate with less power than most analog stations and are more resistant to interference. In addition, the *MO&O* states that this approach can avoid the complications that could arise with requiring licensees to convert their NTSC operations to digital relatively soon after they commence operations.

31. The Commission also disagrees with Pappas/Iberia's and WB's argument that the grant of additional requests for NTSC allotments and stations in the band would constitute a negligible increase and would have a low overall impact on the Lower 700 MHz Band. The *MO&O* states that, while not all of the 57 requests for new NTSC stations and allotments pending at the time the Commission released the *Lower 700 MHz R&O* could have been granted, there are approximately 100 NTSC stations in the band and, even assuming that only ten of them were granted, the number of NTSC stations in the band would increase by approximately ten percent. According to the Commission, such an increase would not be de minimis and could substantially increase the burden on new licensees to protect incumbents particularly because NTSC stations are more susceptible to interference.

32. Pappas/Iberia argue that the *Lower 700 MHz R&O* conflicts with section 309(l)(3) of the Act, which directs the Commission to waive any provisions of its regulations necessary to permit settlements between mutually exclusive applicants for commercial television stations during the 180-day period beginning on the date of enactment of the 1997 Budget Act. Pappas/Iberia claim that they may not be able to effectuate their settlement agreements, and that they have been deprived of due process. The *MO&O* states that the Commission disagrees. According to the *MO&O*, neither the plain language of section 309(l)(3) nor its legislative history suggests that Congress intended to limit the Commission's ability to require modification of settlement agreements. The *MO&O* states that it is well established that the filing of an application with the FCC creates no vested rights in the applicant, and that the Commission may make midstream rule adjustments, even though it disrupts expectations and alters the competitive balance among applicants. The Commission did not deprive Pappas/Iberia of their ability to have their settlement proposals considered using the same procedures as used for all other similarly situated applicants. Because Pappas/Iberia can effectuate their settlement agreements by specifying either digital service in channels 2–58 or NTSC service in the core, the Commission states that the *Lower 700 MHz R&O* does not conflict with section 309(l)(3) of the Act.

33. Pappas/Iberia also argue that the Commission's decision not to grant additional NTSC facilities in the Lower 700 MHz Band constitutes an unjustified departure from the Commission's first local service policy. In the *Lower 700 MHz R&O,* the Commission acknowledged that several commenters, including Pappas and WB, identified the potential benefits of first local service. The Commission, however, weighed competing policy considerations and found that not granting additional NTSC facilities in the Lower 700 MHz Band would further the 1997 Budget Act mandate to recover spectrum in the band. The *MO&O* also states that the *Lower 700 MHz Band R&O* did not foreclose the ability of applicants for NTSC stations in the band to provide first local television service: the order afforded applicants an opportunity to amend their applications to specify digital operations in channels 2–58 or analog service in the core.

3. Mutually Exclusive Applications

34. KM Communications, Inc. (''KM'') filed a petition for reconsideration or clarification in which it requested that the Commission overturn the Media Bureau's requirement that all pending mutually exclusive applicants for NTSC allotments in the Lower 700 MHz Band join in any petition or amendment to petition for rulemaking to substitute an alternate channel. The Commission denies KM's petition. The *MO&O* states that KM does not cite any case law, statute, rule, or FCC policy in support of its arguments. According to the Commission, it is not aware of any. The Commission has previously stated that elimination of vacant NTSC allotments would help it achieve its goals of full accommodation, replication and spectrum recovery. The Commission stated that in some areas a DTV channel could not be accommodated unless the unused NTSC allotments were eliminated and, in other areas, the presence of unused NTSC allotments would crowd the expected service areas of DTV allotments. The Commission therefore eliminated all vacant NTSC allotments. The Commission's decision was founded on the need to preserve

spectrum for use by new DTV stations and to avoid prolonging the DTV transition. The Commission finds that grant of the relief requested by KM would hinder the DTV transition in that the uncertainty created by the filing of allotment modification petitions for different channels by mutually exclusive applicants would frustrate the efforts of parties seeking new or modified DTV allotments.

Procedural Matters

35. The *MO&O* states that alternative formats (computer diskette, large print, audiocassette 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.* According to the Commission, the *MO&O* can also be downloaded at *http://www.fcc.gov/cgb/dro/.*

Ordering Clauses

36. Pursuant to sections 1, 2, 4(i), 5(c), 7, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336, 405, 614 and 615 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 155(c), 157, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336, 405, 614 and 615, the Commission takes this action.

37. The *MO&O* concludes that the Petitions for Reconsideration filed by Access Spectrum, LLC, Pappas Telecasting of America, a California Limited Partnership, and Iberia Communications, LLC, Spectrum Exchange Group, LLC and Allen & Company, WB Television Network, and Univision Television Group, Inc. are denied; that the Petitions for Reconsideration or Clarification filed by KM Communications, Inc., and Office of the Chief Technology Officer, Government of the District of Columbia are denied; and that the Petition for Clarification or Reconsideration filed by Spectrum Clearing Alliance is granted, to the extent indicated above, and is otherwise denied.

38. On the Commission's own motion, pursuant to sections 1.106 and 1.108 of the Commission's rules, 47 CFR 1.106, 1.108, the eligibility to apply for new services in the Lower 700 MHz Band is modified to the extent indicated in Section III.A.3 of the *MO&O.*

39. The Commission orders that its determinations are effective immediately upon release of the *MO&O.* The Commission states that good cause exists for the Commission's determinations to take effect immediately because, at the time the *MO&O* was released, Auction No. 44 for the Lower 700 MHz Band was scheduled to commence on June 19, 2002.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–17176 Filed 7–8–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 43 and 63

[IB Docket No. 00–231, FCC 02–154]

2000 Biennial Regulatory Review; International Telecommunications Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends several of the Commission's rules regarding the provision of international telecommunications service. This document also clarifies the intent of certain rules and eliminates certain rules that are no longer necessary. This proceeding is part of the Commission's year 2000 biennial regulatory review. The rule changes will remove unnecessary burdens on the public and the agency.

DATES: Effective August 8, 2002 except for §§ 43.61, 63.10(d), 63.18(e)(3), 63.19(a) and (b), 63.20(a), and 63.24(e) and (f) which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The FCC will publish a document in the **Federal Register** announcing the effective date for those sections. OMB, the general public, and other Federal agencies are invited to comment on the information collection requirements on or before September 9, 2002.

ADDRESSES: Federal Communications Commission, Secretary, 445 12th Street, SW., Room TW–B204F, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collection contained herein should be submitted to Judith Boley Herman, Federal Communications Commission, In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to *jboley@fcc.gov*, and Jeanette Thornton, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *Jeanette_I._Thornton@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Peggy Reitzel, Policy Division, International Bureau, (202) 418–1499. For additional information concerning the information collections contained in this Order contact Judith Boley Herman at (202) 418–0214, or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 02–154, released on June 10, 2002. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) of the Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. The document is also available for download over the Internet at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC–02–154A1.pdf.* The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, Telephone: 202–863–2893, Fax: 202–863–2898, e-mail qualexint@aol.com. This Order contains proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA). It will be submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the proposed information collections contained in this proceeding.

Summary of Report and Order

1. On November 13, 2000, the Commission adopted a Notice of Proposed Rulemaking (NPRM) (65 FR 79795, December 20, 2000), to determine whether it should amend and clarify several of its rules relating to international telecommunications services. The Commission initiated this proceeding in response to the Telecommunications Act of 1996, which requires the Commission to review all regulations that apply to operations or activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer necessary in the pubic interest. The Commission solicited comments on all of the proposals and tentative conclusions contained in the NPRM.

2. On May 22, 2002, the Commission adopted a Report and Order (Order) in this proceeding. The Commission