4. As an additional matter, the Commission takes this opportunity to clarify that the term ''telecommunications competition matter'' in the current rule was intended to be broadly construed to include the full extent of the respective agencies' jurisdiction over communications competition matters. It was not intended to be limited to specific types of competition matters involving ''telecommunications'' as that term may be technically defined by the Act.

Initial Regulatory Flexibility Certification

5. Section 603 of the Regulatory Flexibility Act, as amended, requires a preliminary regulatory flexibility analysis in a notice and comment rulemaking proceeding unless we certify that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). We believe that the rule we propose today will not have a significant economic impact on a substantial number of small entities.

6. As noted above, in proposing to revise the ex parte rules we are expanding the scope of presentations treated as exempt. The proposed rule does not impose any additional compliance burden on persons dealing with the Commission, including small entities. The new rule would not significantly affect the rights of persons participating in Commission proceedings. There is no reason to believe that operation of the new rule would impose significant costs on parties to Commission proceedings.

7. Accordingly, we certify, pursuant to Section 605(b) of the Regulatory Flexibility Act, as amended by the Contract with America Advancement Act of 1996 (CWAAA), Public Law 104–121, 110 Stat. 847 (1996), that the rules will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). The Commission shall send a copy of this Notice of Proposed rulemaking, including this certification, to the Chief Counsel for Advocacy of the SBA. 5 U.S.C. 605(b). A copy of this certification will also be published in the **Federal Register.**

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Radio, Telecommunications, Television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 1 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

2. Section 1.1204 is amended by revising paragraph (a)(6) to read as follows:

§ 1.1204 Exempt ex parte presentations and proceedings

(a)* * *

(6) The presentation is to or from The United States Department of Justice, The United States Federal Trade Commission, or a foreign or international agency, including but not limited to the Competition Directorate of the European Commission, with responsibility for the oversight of competition matters similar to the foregoing United States agencies, and the presentation involves a telecommunications competition matter. This exemption applies to proceedings which have not been designated for hearing and in which the relevant agency is not a party or commenter (in an informal rulemaking or Joint board proceeding). Any new factual information obtained through such a presentation that is relied on by the Commission in its decision-making process shall be disclosed by the Commission no later than at the time of the release of the Commission's decision;

* * * * *

[FR Doc. 00–32788 Filed 12–22–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 13, 20, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101

[WT Docket No. 00–230; FCC 00–402]

Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, we open a proceeding to examine ways in which we could remove, relax, or modify Commission rules to remove unnecessary regulatory barriers to the development of more robust secondary markets in radio spectrum usage rights. We inquire generally about how best to clarify our rules, and revise them where necessary, to promote the wider use of spectrum leasing, particularly in our Wireless Radio Services in which licensees hold ''exclusive'' authority to use spectrum in their service areas. We also ask whether the Commission should take additional actions to improve the effectiveness of secondary markets in the context of other terrestrial licenses, as well as satellite licenses. We inquire whether the Commission should revise its rules to increase flexibility in its technical and service rules. Finally, we seek comment on actions the Commission might take to impose the availability of information on the use of wireless radio spectrum.

DATES: The agency must receive comments on or before February 9, 2001, and reply comments on or before March 9, 2001.

FOR FURTHER INFORMATION CONTACT: Paul Murray or Donald Johnson, Wireless Telecommunications Bureau, at (202) 418–7240, or via the Internet at pmurray@fcc.gov or djohnson@fcc.gov, respectively; for additional information concerning the information collections contained in this document, contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Notice of Proposed Rulemaking (NPRM), FCC 00–402, in WT Docket No. 00–230, adopted on November 9, 2000 and released on November 27, 2000. The full text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20037. The full text may also be downloaded at: www.fcc.gov. Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

Synopsis of Notice of Proposed Rulemaking

I. Introduction and Executive Summary

1. In this document, we open a proceeding to examine a number of

actions we might take to remove unnecessary regulatory barriers to the development of more robust secondary markets in radio spectrum usage rights. We believe that enabling the development of more robust secondary markets will help promote spectrum efficiency and full utilization of Commission-licensed spectrum and thereby make more spectrum available for the purposes for which it is needed.

2. First, we seek to remove, relax, or modify our rules and procedures to eliminate unnecessary impediments to the operation of secondary market processes. In this document, we set forth a number of proposals for reducing regulations that unnecessarily inhibit the development of secondary markets. We initially ask generally how best to clarify our rules, and revise them where necessary, to promote the wider use of the leasing of spectrum usage rights (''spectrum leasing''), particularly in our Wireless Radio Services. We next focus on a specific proposal for furthering leasing in the context of a broad set of licenses in which spectrum leasing could most easily be implemented, namely those Wireless Radio Services in which licensees hold ''exclusive'' authority to use the spectrum in their service areas. We also inquire whether there are additional actions the Commission might take to improve the effectiveness of secondary markets in the context of other terrestrial wireless services, as well as satellite services. Finally, working within the statutory framework of the Communications Act, we undertake to remove impediments posed by our policies, such as our interpretation of requirements pertaining to transfer of control issues under Section 310(d), 47 U.S.C. 310(d), and the standard set forth in Intermountain Microwave, 12 FCC 2d 559 (1963), that appear to inhibit unnecessarily the development of secondary markets through spectrum leasing and other market arrangements. In addition to our spectrum leasing proposals, we seek to find ways to increase flexibility in technical and service rules to further promote secondary markets.

3. Our second goal is to encourage advances in equipment that will facilitate use of available spectrum for a broad range of services. Although we address many of our efforts in this regard in other proceedings, such as those on Software Defined Radio (SDR) and Ultra-Wideband technology, we inquire here about ways in which the Commission might revise its rules to promote technical flexibility in a manner that might further enable the use of spectrum efficient technologies. Finally, our third goal is to encourage the development of mechanisms, such as information sources, that help enable markets to work better. We also inquire about whether and how the Commission and the private sector could facilitate the availability of information on spectrum use that would further promote the development of secondary markets in radio spectrum usage rights.

II. Proposals for Advancing Secondary Markets

A. Removing Barriers to Leasing of Spectrum Usage Rights

1. General Concept and Approach

4. We tentatively conclude that permitting wider use of spectrum leasing would promote the public interest by increasing the efficiency of spectrum use. By bringing market forces more heavily to bear and facilitating more robust secondary markets in spectrum usage rights, leasing should promote more efficient use of spectrum and allow more entities to gain access to spectrum so that it may be put to innovative uses. We here are requesting comment on how to provide enhanced opportunities for spectrum leasing in a manner that best serves our public interest goals.

5. Under the general concept of spectrum leasing advanced in this document, we propose to allow licensees greater flexibility, consistent with the public interest and statutory requirements, to subdivide and apportion the spectrum and to lease their rights to use it to various third party users—in any geographic or service area, in any quantity of frequency, and for any period of time during the term of their licenses '' without having to secure prior Commission approval.

6. We recognize that spectrum leasing may encompass a continuum of arrangements, from the leasing of excess capacity on a licensee's system to the leasing of the rights to use all of the licensed spectrum itself. In certain ways, spectrum leasing conceptually resembles a kind of temporary partitioning, disaggregation, or partial assignment of a licensee's spectrum usage rights, without the complete and permanent transfer of control or assignment of the discrete leased portion of that spectrum license, and the full panoply of licensee responsibilities, to that particular lessee of spectrum usage rights (''spectrum lessee'') for the remainder of the license term.

7. We also seek comment on the potential role of band manager licensing as a vehicle for facilitating the leasing of the rights to use spectrum. In those instances to date in which we have adopted or proposed band manager licensing, we have envisioned band managers as a specifically designated class of licensees that engage in spectrum leasing as their core function.

8. We invite comment on whether the general concept of spectrum leasing described in this section is appropriately defined, or whether it should be defined differently, more narrowly, or more broadly. We seek comment on the potential benefits of spectrum leasing. We also invite comment on what problems such an approach might raise. Are there parties, such as other licensees, spectrum users, and the public, that may not benefit from the wider use of spectrum leasing? We invite comment on the practical limits to various forms of such leasing. For instance, would potential spectrum lessees be willing to build out facilities if they would be leasing the rights to use spectrum for only a short period of time? Also, we request comment on whether, for the purposes of our general analysis, it matters whether the spectrum leasing involves leasing of excess capacity on a licensee's system or the leasing of the rights to the use of the licensee's raw spectrum. We also seek comment on how spectrum leasing fits within the Commission's overall spectrum management and licensing responsibilities under the Communications Act. Finally, we invite comment on whether we should consider other types of arrangements that would meet similar goals.

2. Spectrum Leasing Proposal

9. We propose to clarify and/or revise our policies and rules to permit most Wireless Radio Services licensees with exclusive rights to use licensed spectrum in their service areas to lease all or portions of their licensed spectrum for use by non-licensees. We propose that these licensees be permitted to lease spectrum usage rights in any amount of spectrum and for any period during the term of the license, so long as the non-licensee spectrum users—the ''spectrum lessees''—comply with the technical and non-technical service rule requirements as discussed below. We apply our proposal to these particular licenses chiefly because, compared with the other Wireless Radio Services (i.e., those in which licensees ''share'' spectrum), exclusive licenses raise the fewest and least complicated concerns relating to interference, frequency coordination, and restricted use. We invite comment on this approach. We propose to permit not only leasing by these licensees to non-licensees, but also further subleasing by

spectrum lessees to other non-licensees. We invite comment on this approach as well.

(i) *Responsibility for compliance with Commission rules.*

10. As a core feature of our proposal on leasing of spectrum usage rights, we propose that the licensee retain ultimate responsibility for ensuring that the spectrum lessee complies with the Act and the Commission's applicable technical and service rules.

11. We invite comment on policies and rules we might adopt, or actions we might take, to ensure that the licensee meets this core responsibility with regard to the use of licensed spectrum being leased. We note at the outset that any requirements we would impose would be designed to ensure that the licensee had the full authority and duty to take whatever actions necessary to ensure the spectrum lessee's compliance with the Act and the rules. We do not intend to propose any requirements that would unnecessarily interfere with the ability of licensees and spectrum lessees to structure appropriately flexible arrangements.

12. *Licensee's ultimate responsibility for ensuring compliance.* As indicated, under our proposal the licensee would remain ultimately responsible to the Commission for compliance with all of the obligations of the Communications Act and our rules. We propose that, in the event of licensee or lessee non-compliance, the Commission would hold the licensee directly responsible and may take any action against the licensee provided for under our rules. We seek comment on this proposal. We also ask for comment on whether there are circumstances in which the Commission should hold a spectrum lessee responsible for its non-compliance with the rules in addition to, or instead of, the licensee. We seek comment, too, on how the licensee would remain ultimately responsible in the context of subleasing.

13. We also invite comment on whether we should impose any additional requirements on the licensee to ensure that each of its spectrum lessees complies with all of the applicable interference, technical, and service rules (as those rules may be revised, in this proceeding, with respect to spectrum leasing). Should there, for instance, be any ''due diligence'' required on the part of the licensee to ensure its lessees'' compliance? Should the spectrum lessee have to certify to the licensee that it complies with all rules? Should the licensee be required in some way to verify its lessees' compliance with the applicable rules? If the lessee is not also being held responsible, are there any requirements we need to place on the lessor? Another approach to ensuring that the licensee and spectrum lessee(s) meet their respective responsibilities could be to require all spectrum leasing arrangements to include certain contractual provisions defining, at a minimum, basic rights, obligations, and responsibilities of the licensee and the spectrum lessee(s) with respect to the Commission.

14. *Enforcement issues.* In authorizing wider use of spectrum leasing, the Commission must maintain its ability to exercise its duty to ensure compliance with the Act, our policies, and our rules, and to take action regarding violations when they occur. Because our leasing proposal relies on a licensee retaining ultimate responsibility for ensuring compliance by its spectrum lessees, we concluded that licensees should be held responsible for the operations of their spectrum lessees. Nonetheless, under the spectrum leasing provisions proposed in this document, we tentatively conclude that this action would not relieve spectrum lessees of their individual responsibilities to comply with the Act, our policies, and our rules.

15. Under our leasing proposal, a lessee or sublessee would operate its mobile or fixed stations under the authority included in the Commission license issued to the licensee. Thus, if a lessee operates outside the parameters of the licensee's authorization, the licensee would be subject to license revocation or other enforcement action. We seek comment on also holding the lessee directly responsible for violations of the Act or our rules. In addition, it may be necessary for the Commission to be able to obtain relevant information not only about the licensee, but also about spectrum lessees and sublessees.

16. *Contractual disputes.* The spectrum leasing proposals in this document, if adopted, may at times result in disputes between licensees and lessees regarding compliance with contractual terms. We tentatively conclude that such disputes should be resolved in the same manner that parties would resolve commercial disputes arising under contract, such as through the courts or some other means of dispute resolution (e.g., arbitration panels or mediators). We seek comment on this tentative conclusion, and what role, if any, the Commission should have in resolving such disputes.

(ii) *Interference, frequency coordination, and other technical rules.*

17. *Background.* At the heart of the Commission's concerns and obligations relating to Wireless Radio Services licenses is the need to protect the public and licensees providing service to the public from interference caused by other authorized or unauthorized users of spectrum. Under our proposal, the licensee retains ultimate responsibility to ensure that the spectrum lessee complies with all of the interference, frequency coordination, and other technical rules applicable to the licensed spectrum being leased.

18. *Interference and frequency coordination.* We tentatively conclude that the licensee would be responsible for ensuring that all spectrum lessees comply with the interference rules applicable to the license. We seek comment on how this requirement would work in practice.

19. *Other technical rules.* Similarly, we also tentatively conclude that the spectrum lessee would be required to comply with all other technical rules applicable to the licensed spectrum. Examples of these rules include equipment requirements (*e.g.,* tower height and power output), equipment authorizations, emission mask requirements, radio frequency (RF) safety standards, and spectral efficiency standards.

(i) *Service rules.*

20. In this document, we seek comment on the extent to which the existing service rules applicable to licensees should apply to spectrum lessees as well. In considering these issues, we seek to assess what measures can be taken to facilitate leasing, while at the same time ensuring that our approach does not invite circumvention of the underlying purposes of our service rules.

21. In the discussion that follows, we set forth and seek to examine a continuum of possible approaches to this issue. At one end of the continuum, one proposal would be to make all service rules that are applicable to the licensee applicable to the lessee as well. We examine and clarify how such a proposal might be implemented, and seek comment. We recognize, however, that strict adherence to such a proposal might unnecessarily impede the development of many kinds of spectrum leasing arrangements that would serve the public interest. Thus, at the other end of the continuum, we also set forth and seek comment on proposals under which spectrum lessees would not be subject to the same service rules as licensees. There may well be contexts in which such an approach would be justified, especially in the case of short term spectrum capacity leases. Ultimately, we seek to develop a record regarding how our service rules should be crafted in the context of spectrum

leasing in order to facilitate secondary markets without circumventing the underlying purposes of the rules.

22. *Qualification, eligibility and use restrictions.* As indicated, one possible proposal would be to apply the qualification and eligibility rules applicable to the licensee of any particular service to the entity seeking to lease the licensed spectrum. Under such a proposal, licensees would be responsible for ensuring that the same rules that restrict their qualification or their eligibility would restrict the respective qualification or eligibility of entities seeking to enter into spectrum leasing arrangements. We also seek comment on a different proposal, under which we would not require lessees to meet the same qualifications as that of the licensee. In what circumstances would such requirements not be necessary, without undermining the underlying purposes) of the particular service rule? Are there any implementation considerations we should take into account in this context?

23. *Attribution rules.* For many licenses, we have established various attribution rules that affect which entities might be licensees as well as what other interests entities may have in licenses that raise issues under various Commission policies and rules. One possible approach to addressing these service rules in the leasing context would be to require the attribution rules applicable to a licensee to be applied to a spectrum lessee as if that lessee were the licensee. We seek comment on this approach. We also seek comment on alternative proposals with regard to our attribution rules in the context of spectrum leasing. In what circumstances should we not apply our attribution rules to lessees? Why would such circumstances not circumvent the underlying purposes of our rules? To the extent we determine that attribution rules should apply to lessees, we also seek comment on how best to ensure that licensees and lessees comply with those rules. Should, for instance, licensees and/or lessees have to certify that they comply with the applicable attribution rules, and if so, to whom must they certify? Are there any additional compliance concerns raised with regard to subleasing?

24. *Aggregation limits.* With regard to the aggregation limit or ''spectrum cap'' that applies to some licenses, one approach would be to apply that aggregation limit to any of the licensed spectrum leased. Under this approach, if an entity leases any licensed spectrum that falls under the CMRS spectrum cap rule, 47 CFR 20.6, the amount of spectrum leased is attributable under current rules both to the licensee and to the spectrum lessee for the purpose of determining compliance with the cap. We seek comment on such a proposal. We also request comment on possible alternative proposals, including not applying the CMRS spectrum cap to spectrum leasing. In what instances does spectrum leasing not raise concerns about market concentration that the CMRS spectrum cap seeks to address?

25. *Construction or substantial service requirements.* Because a spectrum lessee operates under the authority granted to the licensee, we propose to permit a licensee to rely on the activities of its lessee(s) when establishing that the licensee has met the applicable construction, substantial service, or similar requirements.

26. *Bidding credits, installment payments, and unjust enrichment.* Bidding credits for small businesses are often made available for particular auctioned licenses. In addition, installment payment plans were available with respect to licenses won in certain past auctions. If we applied the existing rules to spectrum lessees, then if a licensee that received bidding credits or participates in an installment payment plan wishes to lease its rights to use portions of its licensed spectrum to an entity that would not meet the eligibility standards for a similar bidding credit, we would require the licensee to reimburse the government for unjust enrichment. We seek comment on such an approach, and how it could be implemented. We also seek comment on a different proposal, in which lessees would not be required to pay unjust enrichment payments in leasing contexts. In which spectrum leasing arrangements should we not require any unjust enrichment payments? Would there be any reason to apply unjust enrichment payments with respect to short-term leases, such as leases for one year or less? Should we establish any ''safe harbors'' in which unjust enrichment payments should not be required? Should we require such payments if the licensee leases only excess capacity on its own facilities?

27. *Regulatory status.* We also seek comment on how issues relating to a licensee's regulatory status should be applied with respect to spectrum lessees. We could require that spectrum lessees would be subject to the same rules regarding regulatory classification as the licensee, and would be required to meet the same regulatory requirements associated with its classification. For instance, in services such as cellular, our rules require licensees to provide service on a common carrier basis and to comply with the requirements of Title II of the Communications Act, 47 U.S.C. 201 *et seq.* Thus, under this approach, an entity leasing spectrum usage rights from a cellular carrier would also be classified as a common carrier (just as cellular resellers are currently), and would be held to the requirements of Title II. We seek comment on such a proposal. We also invite comment on a completely different approach. Should we determine that a licensee's regulatory status should not necessarily be applied to spectrum lessees? We also seek comment on whether the requirements placed on the licensee should apply to lessees in cases where services are not limited to one regulatory classification.

28. *Periodic filings and other interactions with Commission.* As for the filing requirements not discussed above and the other required interactions with the Commission, we propose that the licensee remain responsible for compliance. We seek comment, however, on whether placing this regulatory burden directly on licensees may unnecessarily restrict their ability to lease spectrum usage rights. Commenters should specifically address how the leasing of spectrum usage rights in the secondary market may be hindered by requiring licensees, rather than lessees (or sublessees), to bear these administrative burdens.

29. *Renewal.* Finally, given that a spectrum lessee can have no greater rights than the licensee, no spectrum lease agreement may legally grant an absolute term beyond the term of the licensee's authorization. This restriction does not, however, prohibit a spectrum lessee from entering into a contingent agreement with the licensee providing for an option or right to renew the agreement if it is able to renew its authorization with the Commission.

3. Other Licenses

30. As noted above, in this document our specific proposals focus on licenses in the Wireless Radio Services in which licensees have exclusive rights to use the licensed spectrum. We seek comment on whether we should clarify and/or revise policies and rules with respect to the following licenses in order further to promote the development of secondary markets in radio spectrum usage rights.

a. ''Shared use'' Wireless Radio Services licenses.

31. We invite comment on whether we should permit spectrum leasing by licensees that share use of the same spectrum. We believe there may be reasons to look at spectrum leasing

differently in the context of shared spectrum. First, radio services in which licensees share the use of spectrum raise interference and frequency coordination issues that are more complex than for licensees that have exclusive rights to use their licensed spectrum. In addition, where licensees do not hold spectrum on an exclusive basis, other potential spectrum users are not precluded from obtaining their own licenses, provided that appropriate sharing arrangements can be reached. This may reduce the need for leasing as an alternative to facilitate efficient spectrum use. We therefore seek comment on whether allowing spectrum leasing is likely to have any practical applicability to shared spectrum. Assuming that we do allow some form of spectrum leasing on shared spectrum, we seek comment on how it would be implemented. In particular, we seek comment on how licensees and lessees would coordinate frequency use with neighboring licensees and lessees so as to avoid interference problems.

b. Satellite licenses.

32. The Commission has interpreted its rules for the Fixed Satellite Service (FSS) in a manner that has fostered the development of a secondary market in space station capacity. Since 1981, the Commission has permitted satellites located in geostationary orbits and licensed as FSS satellites to lease or sell any or all of the transponders on the satellite to third parties. Further, we have permitted licensees of satellite systems operating on a non-common carrier basis, such as most Big and Little Low-Earth Orbit (LEO) satellite systems, to offer capacity on their satellites to individual customers on individualized terms, ranging from short-term leases to sales. In this document, we request comment on whether any changes are needed with respect to the Commission's policy on transponder leases or sales. In particular, are there any changes that we should consider making that would make it even easier to develop a market in the use of transponders or in the leasing of rights to use satellite spectrum? More generally, we also request comment on any other proposals to bolster secondary markets in or otherwise improve the efficiency of the use of satellite spectrum. We also seek comment on whether any modifications to our earth station rules might be appropriate as a means of fostering a more efficient secondary market in earth station capacity.

c. Mass Media licenses.

33. At this time, we are not exploring whether the Commission should revise any of its policies and rules within the mass media services to facilitate more robust secondary markets in the broadcast field. We make this decision because of the unique obligations placed on broadcasters and the public interest considerations applicable in this context. We seek comment on this approach and, in particular, whether the Commission should address the mass media services in any subsequent rulemaking regarding these issues.

4. The Commission's Requirements Relating to Transfer of Control

34. As we explore these spectrum leasing initiatives, we are mindful that there are statutory limitations on the kinds of arrangements which licensees may enter into with third parties without Commission approval. In particular, licensees may not enter into arrangements that would violate Section 310(d) of the Act, 47 U.S.C. 310(d), which requires prior Commission approval to transfer control of or assign licenses (or parts of licenses, where permitted) to third parties. This section has been interpreted such that approval must be sought not only for transfers of legal (de jure) control, but also for transfers of actual (de facto) control under the special circumstances presented.

35. For many of the Wireless Radio Services licenses, the Commission historically has interpreted Section 310(d) control requirements pursuant to its 1963 Intermountain Microwave decision, 12 FCC 2d 558, which set forth the following six factors for determining whether a de facto transfer of control has occurred: (1) Does the licensee have unfettered use of all facilities and equipment? (2) who controls daily operations? (3) who determines and carries out policy decisions, including preparing and filing applications with the Commission? (4) who is in charge of employment, supervision, and dismissal of personnel? (5) who is in charge of payment of financial obligations, including expenses arising out of operation? and (6) who receives monies and profits from the operations of the facilities? For other sets of licenses, however, the Commission has determined to apply other criteria, depending on the Commission's particular concerns about licensee control with respect to those licenses.

36. We recognize that the types of leasing arrangements that we propose to allow in this document potentially conflict with the six criteria that the Commission used to evaluate Section 310(d) control in the Intermountain Microwave decision. The Intermountain Microwave factors focus on whether the licensee, as opposed to an unlicensed third party, controls the operation of the facilities that are the subject of the license. In the leasing arrangements we propose here, however, a licensee could lease its facilities for use by a third party lessee, or could lease all or a portion of its spectrum usage rights, to enable a third party lessee to use the spectrum with facilities constructed and owned by the lessee.

37. In the context of the spectrum leasing arrangements discussed in this document, we tentatively conclude that the Intermountain Microwave criteria do not provide the appropriate framework for analysis of control under Section 310(d). As we consider the ''current realities'' of spectrum licensing today, however, we believe that it is no longer viable to analyze spectrum leasing arrangements through the lens of the Intermountain Microwave factors, even if we attempt to apply those factors ''flexibly.''

38. In our discussion of Intermountain Microwave in this document, we neither address, nor propose to limit, the use of the Intermountain Microwave standard in contexts other than spectrum leasing as discussed above. For instance, the Intermountain Microwave standard is applied when interpreting our spectrum aggregation and cellular cross-ownership rules. These rules deal with ''control'' issues that are distinct from those in this document. In particular, these rules are concerned with whether entities have a sufficient attributable interest in certain licenses to affect competition, even when such interests do not rise to the level of ''control'' under our precedent. Similarly, we have relied in part on Intermountain Microwave to determine de facto control for attribution purposes to determine eligibility for small business status under our competitive bidding rules and eligibility for the PCS C- and F-Blocks. These rules are intended to ensure that small entities are not controlled by larger entities that would not be eligible under our auction rules, and accordingly address concerns that are distinct from the secondary market issues we address here.

39. In lieu of Intermountain Microwave, we propose to develop a new standard for the purpose of interpreting Section 310(d) requirements relating to de facto control with respect to spectrum leasing arrangements and the licenses affected in this document. We seek to develop a standard that would permit greater flexibility to licensees to enter into spectrum leasing arrangements without the need for prior Commission approval.

40. We seek comment on a specific proposal that, at a minimum, includes certain essential rights and obligations

that licensees must retain as part of any lease agreement in order to ensure that licensees retain control for Section 310(d) purposes when entering into leasing arrangements. Specifically, we propose that a wireless licensee entering into a leasing arrangement must: (1) retain full responsibility for compliance with the Act and our rules with regard to any use of licensed spectrum by any lessee or sublessee; (2) certify that each spectrum lessee (or sublessee) meets all applicable eligibility requirements and complies with all applicable technical and service rules; (3) retain full authority to take all actions necessary in the event of noncompliance, including the right to suspend or terminate the lessee's operations if such operations do not comply with the Act or Commission rules.

41. We also seek comment on whether holding licensees responsible for their lessees' compliance with the Act and our rules, as described above, is sufficient to ensure that the licensee retains control of the license for purposes of Section 310(d), or whether additional provisions are also needed to ensure that the licensee retains control. We seek comment on whether other standards incorporating such provisions, or taking a different approach, might be appropriate.

42. To the extent that commenters believe instead that Section 310(d) requires licensees to obtain approval from the Commission in order to enter into some or all of the types of spectrum leasing arrangements proposed in this document, we seek comment on whether the Commission could make a blanket determination that such transfers of control were in the public interest and would be automatically granted, so long as the licensees complied with certain minimal requirements, as specified by the Commission. In other words, could the Commission, by policy or rule, determine that if licensees leased spectrum usage rights under the specific conditions set forth in this document, those transfers should be deemed automatically approved because they would satisfy the requirement under Section 310(d) that the Commission find that the transfers are in the public interest? We have issued such blanket determinations in other instances.

43. Finally, to the extent that commenters believe that Section 310(d) requires licensees to obtain approval from the Commission in order to lease spectrum usage rights, or alternatively that the Commission could not issue a blanket determination automatically approving such agreements, we seek comment on whether forbearance from enforcement of Section 310(d), pursuant to Section 10 of the Act, is permitted and warranted for spectrum in use for those telecommunications services subject to forbearance.

B. Increasing Flexibility in Technical Rules

44. We seek comment on whether there are technical requirements in spectrum-based services that unnecessarily deter the operation of secondary markets. As we observe in the Policy Statement, essential ingredients of fluid secondary markets include clearly defined technical rights and obligations, and harmonization of operating rules for similar services to promote the fungibility of spectrum usage rights. Where the potential uses of spectrum are fungible, or easily substitutable in a different frequency band or radio service, transactional costs of trading are lower and trading in spectrum rights may be facilitated. Put another way, where blocks of spectrum can be readily defined and grouped in a manner that spectrum users can easily understand, spectrum usage rights becomes more like a commodity and may be readily exchanged in a secondary market. Thus, we request comment on whether there are rules in specific services that might be revised to make spectrum usage rights in various bands more fungible. If so, how might these rules be changed?

C. Increasing Flexibility in Service Rules

45. We seek comment on revisions that should be made to our service rules that could promote the development of secondary markets while also continuing to serve the public interest objectives upon which the service rules are based. We are particularly interested in steps that can be taken to harmonize our service rules so that spectrum usage rights may be an increasingly fungible commodity in secondary markets. These steps may include eliminating unnecessary requirements, reducing the number of service categories, and other changes that will allow spectrum to be put to use in ways that maximize its value. These changes not only enhance secondary markets in the rights to use spectrum, but may also allow existing licensees to introduce innovative and distinct services that may not be permissible under our existing rules.

46. Flexible use—that is, expanding the range of permissible uses within a particular service—may increase efficient use of spectrum in general and enhance the operation of secondary markets in the use of spectrum. The Commission has recognized that public interest considerations may favor flexible use, particularly in regard to new spectrum allocations. We have taken a number of steps to establish or update our rules to provide more flexibility and eliminate unnecessary burdens. The Commission has, however, recognized that increased flexibility may not be appropriate in all instances.

47. We invite comment on specific service rules that might be revised to achieve more fluid secondary markets in spectrum usage rights. We encourage commenters to advance suggestions for changes to our service rules that may promote more flexible and efficient use of licensed spectrum either by licensees or through secondary market mechanisms. Specifically, we seek comment on whether the Commission should in some circumstances modify its various service rules to allow spectrum to be used for services other than that for which it was licensed.

48. In this context, we also seek specific comment on whether we should revise our policies and rules to allow for either license ''swaps'' or ''cross-leasing'' of spectrum usage rights by licensees for whom different eligibility or use restrictions apply.

49. We also seek comment on whether the Commission might take steps to lower barriers which unnecessarily inhibit the development and introduction of new spectrum-efficient technologies.

D. Facilitating Availability of Information on Spectrum

50. We believe that secondary markets in spectrum usage rights will operate more efficiently if adequate information on licensed spectrum that could potentially be available to secondary markets is readily accessible by entities interested in using such spectrum. We also request comment on whether the Commission should have a greater role in collecting and disseminating such information beyond the activities described above. We tentatively conclude, however, that the private sector is better suited both to determine what types of information parties might demand, and to develop and maintain information on the licensed spectrum that might be available for use by third parties. For example, band manager licensees will have incentives to disseminate this type of information in order to obtain third party spectrum users. We seek comment on how the Commission can encourage the creation of private information clearinghouses on available spectrum. We also seek comment on whether any regulatory barriers exist that may have the unintended effect of hindering private parties from developing such

information and contributing to fluid secondary markets in the use of licensed spectrum.

III. Procedural Matters

A. Ex Parte Rules—Permit-But-Disclose Proceeding

51. This is a permit-but-disclose notice and comment rule making proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206.

B. Initial Regulatory Flexibility Analysis

52. As required by the Regulatory Flexibility Act, see 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the proposals in the Notice of Proposed Rulemaking. The IRFA is set forth. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the Notice of Proposed Rulemaking, and they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Commission's Consumer Information Bureau, Reference Information Center, will send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act. See 5 U.S.C. 603(a).

C. Initial Paperwork Reduction Act of 1995 Analysis

53. This document seeks comment on a proposed information collection. As part of the Commission's continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this document and must have a separate heading designating them as responses to the Initial Paperwork Reduction Analysis (IPRA). OMB comments are due 60 days from date of publication of this document in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–XXXX.

Title: Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 50,000.

Estimated Time per Response: 1,050,000 hours.

Cost to Respondents: $144,250,000.00.

Needs and Uses: The information and verification requirements and the prospective coordination requirement proposed by this document will be used by the Commission to verify licensee compliance with Commission rules and regulations, and to ensure that licensees continue to fulfill their statutory responsibilities in accordance with the Communications Act of 1934, as amended. Such information and verification requirements have been used in the past and will continue to be used to minimize interference, verify that applicants are legally and technically qualified to hold licenses, and determine compliance with Commission Rules. The information that licensees and lessees may ultimately be asked to file will be used to assist parties interested in obtaining such spectrum.

D. Comment Dates

54. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before February 9, 2001, and reply comments on or before March 9, 2001. Comments and reply comments should be filed in WT Docket No. 00–230. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, interested parties must file an original and four copies of all comments, reply comments, and supporting comments.

55. Comments may also be filed using the Commission's Electronic Comment Filing System (ECFS). Comments filed through the 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. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet E-Mail. To obtain filing instructions for E-Mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message: ''get form <your E-Mail address>.'' A sample form and directions will be sent in reply.

56. Comments and reply comments will be available for public inspection during regular business hours at the FCC Reference Center, Room CY–A257, at the Federal Communications Commission, 445 Twelfth Street, S.W., Washington, D.C. 20554. Copies of comments and reply comments are available through the Commission's duplicating contractor: International Transcription Service, Inc. (ITS, Inc.), 1231 20th Street, N.W., Washington, D.C. 20037, (202) 857–3800.

Initial Regulatory Flexibility Analysis

57. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and proposals in this Notice of Proposed Rulemaking (document), WT Docket No. 00–230. Written public comments are requested on this IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of this document, as set forth above, and they must have a separate and distinct heading designating them as responses to IRFA.

A. Need for, and Objectives of, the Proposed Rules

58. This rulemaking proceeding outlines a number of approaches that would promote more robust secondary markets in radio spectrum usage rights. First, we propose to promote wider use of leasing of spectrum usage rights throughout our wireless services, particularly our Wireless Radio Services. In so doing, we examine whether Section 310(d) of the Communications Act, as amended (the ''Act''), 47 U.S.C. 310(d), or the Commission's policies and rules, including its application of the Intermountain Microwave standard for interpreting de facto transfer of control of licenses, may unnecessarily impede the ability of licensees to enter such leasing arrangements. Second, we

explore whether additional flexibility in our technical and service rules would further enhance the development of secondary markets. Finally, we request comment on whether, and if so how, the Commission should facilitate the development of secondary markets by making certain information on spectrum available to the public.

B. Legal Basis

59. The potential actions on which comment is sought in this document would be authorized under Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 309(j), and §§ 1.411 and 1.412 of the Commission's rules, 47 CFR 1.411 and 1.412.

C. Description and Estimate of the Small Entities Subject to the Rules

60. The RFA requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the Agency certifies that ''the rule will not, if promulgated, have a significant impact on a substantial number of small entities.'' See 5 U.S.C. 603(b)(3). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' This IRFA describes and estimates the number of small-entity licensees that may be affected if the proposals in this document are adopted.

61. This document could result in rule changes that, if adopted, would create new opportunities and obligations for Wireless Radio Services licensees and other entities that may lease spectrum usage rights from these licensees. To assist the Commission in analyzing the total number of potentially affected small entities, we request commenters to estimate the number of small entities that may be affected by any rule changes resulting from this document.

Wireless Radio Services

62. Many of the potential rules on which comment is sought in this document, if adopted, would affect small licensees of the Wireless Radio Services identified.

63. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms, which operated during 1992, had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent Telecommunications Industry Revenue data, 808 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 808 small cellular service carriers that may be affected by these proposals, if adopted.

64. 220 MHz Radio Service—Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms, which operated during 1992, had 1,000 or more employees. Therefore, if this general ratio continues in 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

65. 220 MHz Radio Service—Phase II Licensees. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, 62 FR 15978 (April 3, 1997), we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these definitions. An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. Nine hundred and eight (908) licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses.

66. 700 MHz Guard Band Licensees. In the 700 MHz Guardband Order, 65 FR 17594 (April 4, 2000), we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 176 Economic Area (EA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold.

67. Private and Common Carrier Paging. In the Paging Third Report and

Order, 62 FR 15978, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these definitions. An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. 57 companies claiming small business status won. At present, there are approximately 24,000 Private Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent Telecommunications Industry Revenue data, 172 carriers reported that they were engaged in the provision of either paging or ''other mobile'' services, which are placed together in the data. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 172 small paging carriers that may be affected by these proposals and policies, if adopted. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

68. Mobile Service Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. As noted above in the section concerning paging service carriers, the closest applicable definition under the SBA rules is that for radiotelephone (wireless) companies, and the most recent Telecommunications Industry Revenue data shows that 172 carriers reported that they were engaged in the provision of either paging or ''other mobile'' services. Consequently, we estimate that there are fewer than 172 small mobile service carriers that may be affected by the policies and proposals, if adopted.

69. Broadband Personal Communications Service (PCS). The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission reauctioned 347 C, D, E, and F Block licenses; there were 48 small business winning bidders. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks plus the 48 winning bidders in the re-auction, for a total of 231 small entity PCS providers as defined by the SBA and the Commission's auction rules.

70. Narrowband PCS. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

71. Rural Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). We will use the SBA's definition applicable to radiotelephone companies—*i.e.,* stan entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

72. Air-Ground Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.,* an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

73. Specialized Mobile Radio (SMR). Pursuant to 47 CFR 90.814(b)(1), the Commission has defined ''small business'' for purposes of auctioning 900 MHz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and 800 MHz SMR licenses for the lower 230 channels on the 800 MHz band as a firm that has had average annual gross revenues of $15 million or less in the three preceding calendar years. The SBA has approved this small business size standard for the 800 MHz and 900 MHz auctions. Sixty winning bidders for geographic area licenses in the 900 MHz SMR band qualified as small businesses under the $15 million size standard. The auction of the 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten (10) winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard.

74. The auction of the 1,030 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven (11) winning bidders for geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. The Commission anticipates that a total of 2,823 EA licenses will be auctioned in the lower 80 channels of

the 800 MHz SMR service. Therefore, we conclude that the number of 800 MHz SMR geographic area licensees for the lower 80 channels that may ultimately be affected by these proposals could be as many as 2,823. In addition, there are numerous incumbent site-by-site SMR licensees on the 800 and 900 MHz band. The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years.

75. Private Land Mobile Radio (PLMR). PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. Companies of all sizes operating in all U.S. business categories use these radios. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area.

76. The Commission is unable at this time to estimate the number of small businesses, which could be impacted by these policies and proposals. However, the Commission's 1994 Annual Report on PLMRs indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the policies and proposals in this context could potentially impact every small business in the United States.

77. Fixed Microwave Services. Microwave services include common carrier and private-operational fixed services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies '' i.e., an entity with no more than 1,500 persons. We estimate, for this purpose, that all of these Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

78. Offshore Radiotelephone Service. This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition for radiotelephone communications.

79. Local Multipoint Distribution Service. The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission defined ''small entity'' for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional classification for ''very small business'' was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of LMDS auctions have been approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A block licenses and 387 B block licenses. On March 27, 1999, the Commission reauctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licensees will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

80. 39 GHz Service. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The Commission defined ''small entity'' for 39 GHz licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional classification for ''very small business'' was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of 39 GHz auctions have been approved by the SBA.

81. Wireless Communications Services. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees affected is eight entities.

International Services

82. International Broadcast Stations. Commission records show that there are 20 international broadcast station licensees. We do not request or collect annual revenue information for these licenses, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition.

83. International Public Fixed Radio (Public and Control Stations). There are 3 licensees in this service. We do not request or collect annual revenue information for these licenses, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition.

84. Fixed Satellite Transmit/Receive Earth Stations. There are approximately 2,679 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request or collect annual revenue information for these licenses, and thus are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

85. Fixed Satellite Small Transmit/Receive Earth Stations. There are approximately 2,679 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request or collect annual revenue information for these licenses, and thus are unable to estimate the number of fixed satellite transmit/receive earth stations that would constitute a small business under the SBA definition.

86. Fixed Satellite Very Small Aperture Terminal (VSAT) Systems. These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single ''blanket'' application may be filed for a specified number of small antennas and one or more hub stations. The Commission has processed 377 applications. We do not request or collect annual revenue information for these licenses, and thus are unable to estimate the number of VSAT systems that would constitute a

small business under the SBA definition.

87. Mobile Satellite Earth Stations. There are 11 licensees. We do not request or collect annual revenue information for these licenses, and thus are unable to estimate the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

88. Radio Determination Satellite Earth Stations. There are four licensees. We do not request or collect annual revenue information for these licenses, and thus are unable to estimate the number of radio determination satellite earth stations that would constitute a small business under the SBA definition.

89. Space Stations (Geostationary). Commission records reveal that there are 64 Geostationary Space Station licensees. We do not request or collect annual revenue information for these licenses, and thus are unable to estimate the number of geostationary space stations that would constitute a small business under the SBA definition.

90. Space Stations (Non-Geostationary). There are 12 Non-Geostationary Space Station licensees, of which only three systems are operational. We do not request or collect annual revenue information for these licenses, and thus are unable to estimate the number of non-geostationary space stations that would constitute a small business under the SBA definition.

91. Direct Broadcast Satellites. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of ''Cable and Other Pay Television Services.'' This definition provides that a small entity is one with $11.0 million or less in annual receipts. As of December 1996, there were eight DBS licensees. However, the Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that would be impacted by these policies and proposals. Although DBS service requires a great investment of capital for operation, there are several new entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as small businesses, if independently owned and operated.

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

92. With certain exceptions, the polices and proposals in this document could apply to all Commission licensees holding licenses under Title III of the Communications Act or which engage in spectrum leasing on their authorized systems. This document proposes to require licensees and lessees engaging in spectrum leasing to comply with the Commission's rules and policies, including, but not limited to, regulatory fees, universal service fund, and reporting requirements. Licensees and lessees would ordinarily comply with these requirements as part of their normal business practices. This document also seeks comment on potential reporting, recordkeeping and compliance requirements for spectrum lessors and lessees including: (1) Retention of lease agreements; (2) reporting of spectrum leasing terms to the Commission; (3) licensee and lessee compliance with the Commission's technical and service rules; (4) licensee filings with the Commission on behalf of the lessee; (5) licensee verification of lessee compliance with FCC rules; (6) licensee supervision of a lessee's adherence to the Commission's rules and policies; and (7) the leasing of spectrum by entities designated as ''small business'' or ''very small business'' under the Commission's rules. Licensees and lessees may retain or hire outside professionals (e.g., legal and engineering staff) to draft lease agreements, provide consulting service, maintain records, and comply with applicable Commission rules. They also may choose employees to be responsible for reporting, recordkeeping and other compliance requirements.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

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

94. This document proposes to reduce regulatory burdens on Commission licensees (including small-business) that may wish to lease their spectrum to third parties. It also creates economic opportunities for third parties (including small businesses) that may wish to lease spectrum usage rights from certain licensees. In particular, it would provide licensees, including small-business licensees, flexibility to subdivide and apportion the spectrum and lease the spectrum usage rights to various third party users—in any geographic or service area, in any quantity of frequency, and for any period of time during the term of their licenses—without having to secure prior Commission approval. In addition, many different types of spectrum users (including small businesses) would be permitted to satisfy their spectrum needs without having to acquire a license or go through the Commission's procedures for assigning or transferring control of a license or a partial license through partitioning, disaggregation, or partial assignment. By reducing the transactional costs for users, including small businesses, spectrum leasing could facilitate more intensive and efficient use of spectrum in both underserved areas and more congested areas.

95. A key issue in this proceeding concerns how the Commission can ensure that licensees and lessees comply with the Communications Act and the Commission's rules. As explained below, we are considering a number of alternative approaches to achieve this goal. We consider these different alternatives partly because we seek to minimize, to the extent possible, the economic impact of these potential requirements on small businesses.

96. A core feature of this proposal is that licensees (including small-business licensees) will retain ultimate responsibility for ensuring that spectrum lessees comply with the Communications Act and the Commission's rules. We therefore solicit comment on whether we should impose additional requirements on the licensee to ensure that each lessee complies with the Commission's rules. These requirements could include having the licensee require that the lessee certify that it complies with all rules, and requiring the licensee to verify that the lessee is complying with all rules.

97. In addition, we seek comment on whether there are circumstances in which we should hold lessees (which would include small businesses) responsible for non-compliance with the Communications Act or the Commission's rules in addition to, or instead of, the licensee.

98. We also solicit comment on whether to require all spectrum leasing agreements to include certain contractual provisions, which would define the minimum basic rights, obligations, and responsibilities of the licensee and lessee. We also seek comment on whether to require licensees and lessees to keep copies of

spectrum leasing agreements and keep them current and available upon request for the inspection by the Commission.

99. The Commission's unjust enrichment rules require that licensees that received bidding credits or participated in installment plans, which are often small entities, reimburse the U.S. Treasury if they assign or transfer all or part of the licenses to an entity that would not meet the eligibility standards for similar bidding credits. In this document, we inquire whether licensees that received bidding credits or participates in installment plans should reimburse the U.S. Treasury if they lease spectrum usage rights to entities that would not meet the eligibility standards for similar bidding credits.

F. Federal Rules That May Duplicate, Overlap or Conflict With the Proposed Rules

None.

Ordering Clauses

100. Pursuant to the authority of Sections 1, 4(i), 7, 10, 201, 202, 208, 214, 301, 303, 308, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 208, 214, 301, 303, 308, 309, and 310, this Notice of Proposed Rulemaking is hereby adopted.

101. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of the Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

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