

Flooding source(s)	Location of referenced elevation **	*Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
West Fork Dairy Creek .....	Approximately .8 miles upstream of NW Wilson River Highway.	None	*191	City of Banks.
	Approximately .72 miles downstream of NW Banks Road.	None	*192	

\* National Geodetic Vertical Datum.

# Depth in feet above ground.

+ North American Vertical Datum.

\*\* BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

#### ADDRESSES

##### City of Banks

Maps are available for inspection at 100 S. Main Street, Banks, OR 97106.

##### City of Hillsboro

Maps are available for inspection at 150 East Main Street, Hillsboro, OR 97123.

##### Unincorporated Areas of Washington County

Maps are available for inspection at 155 North First Ave., Ste. 300, Hillsboro, OR 97124.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: April 21, 2008.

David I. Maurstad,

*Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. E8-10335 Filed 5-7-08; 8:45 am]

BILLING CODE 9110-12-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 27

[WT Docket Nos. 03-66; 03-67; 02-68; IB Docket No. 02-364; ET Docket No. 00-258; FCC 08-83]

#### Facilitating the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands; Reviewing of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this document, the Commission seeks comment on whether to assign Educational Broadband Service (EBS) spectrum in the Gulf of Mexico. It also seeks comment on how to license unassigned and available EBS spectrum. Specifically, we seek

comment on whether it would be in the public interest to develop a scheme for licensing unassigned EBS spectrum that avoids mutual exclusivity; we ask whether EBS eligible entities could participate fully in a spectrum auction; we seek comment on the use of small business size standards and bidding credits for EBS if we adopt a licensing scheme that could result in mutually exclusive applications; we seek comment on the proper market size and size of spectrum blocks for new EBS licenses; and we seek comment on issuing one license to a State agency designated by the Governor to be the spectrum manager, using frequency coordinators to avoid mutually exclusive EBS applications, as well as other alternative licensing schemes. The Commission must develop a new licensing scheme for EBS in order to achieve the Commission's goal of facilitating the development of new and innovative wireless services for the benefit of students throughout the nation.

**DATES:** Submit comments on or before July 7, 2008. Submit reply comments on or before August 6, 2008.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. You may submit comments, identified by FCC 08-83, or by WT Docket No. 03-66, WT Docket No. 03-67, WT Docket No. 02-68, IB Docket No. 02-364, or ET Docket No. 00-258, by any of the following methods:

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

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

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

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

**FOR FURTHER INFORMATION CONTACT:** For further information contact John Schauble, Broadband Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, at (202) 418-0797 or via the Internet to [John.Schauble@fcc.gov](mailto:John.Schauble@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the FCC's *Broadband Radio Service/Educational Broadband Service Second Further Notice of Proposed Rulemaking (BRS/EBS 2nd FNPRM)*, FCC 08-83, adopted on March 18, 2008, and released on March 20, 2008. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's

duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, (202) 488-5300, facsimile (202) 488-5563, or via e-mail at [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com). The complete text is also available on the Commission's Web site at [http://wireless.fcc.gov/edocs\\_public/attachment/FCC-08-83A1doc](http://wireless.fcc.gov/edocs_public/attachment/FCC-08-83A1doc). This full text may also be downloaded at: <http://wireless.fcc.gov/releases.html>. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available by contacting Brian Millin at (202) 418-7426, TTY (202) 418-7365, or via e-mail to [bmillin@fcc.gov](mailto:bmillin@fcc.gov).

## Summary

### *BRS/EBS 2nd FNPRM*

1. We seek comment on whether and how we license EBS spectrum in the Gulf of Mexico. Commenters should address the issue of whether there is a need in the Gulf of Mexico for the type of educational services that EBS is designed to meet. Because there are no schools or universities in the Gulf of Mexico, we seek comment on whether any changes to our educational use requirements are appropriate for the Gulf of Mexico.

2. We also seek further comment on the appropriate licensing scheme for new EBS licenses. We note that the opportunities presented by the new technical rules and band plan create additional demand for EBS spectrum, and that EBS eligible entities have not been able to file applications for new stations since 1995. The record developed to date is insufficient for us to adequately weigh the various options for licensing EBS spectrum, including options that might avoid mutually exclusive applications.

3. The Balanced Budget Act of 1997 (Budget Act) expanded the Commission's competitive bidding authority under section 309(j) of the Communications Act by adding, among other things, provisions governing auctions for broadcast and other previously exempt services. In a subsequent order, the Commission concluded that the legislation required that mutually exclusive applications for new Instructional Television Fixed Service (ITFS) stations be subject to auction. The Commission concluded that ITFS did not fall within the exemption from competitive bidding for noncommercial educational broadcast stations. The Commission expressed concern that section 309(j), as adopted, might not reflect Congress' intent with regard to the treatment of competing ITFS applications. Given the

instructional nature of the service and the reservation of ITFS spectrum for noncommercial educational use, the Commission thought it possible that Congress did not intend its expansion of our auction authority in the Budget Act to include that service. Accordingly, the Commission did not proceed immediately with an auction of ITFS applications but sought Congressional guidance with regard to assigning licenses for ITFS by competitive bidding and proposed that Congress exempt ITFS applications from competitive bidding. In 2000, the Commission opened a settlement window to resolve mutual exclusivity between applications by allowing payments to applicants in return for dismissing their applications and permitting agreements providing for the authorization to be awarded to a non-applicant third party.

4. In 2003, the Commission reiterated its prior conclusion that mutually exclusive applications for new ITFS stations would be subject to competitive bidding and noted the Commission's attempt to seek Congressional guidance on this issue. It also held that there would be no opportunity to file new ITFS applications, amendments, or modifications of any kind of station (except for applications that involved minor modifications, assignment of licenses, or transfer of control) while the Commission undertook a major restructuring of the 2.5 GHz band plan and technical rules. The Commission also sought comment on potential options for assigning licenses for unassigned ITFS spectrum by competitive bidding. While the Commission later lifted the freeze on modification applications, the freeze on applications for new EBS stations remained in place.

5. In the 2004 *BRS Further Notice of Proposed Rulemaking*, the Commission proposed to assign new EBS spectrum licenses using competitive bidding. The Commission also sought comment on geographic areas for new licenses, frequency blocks for new licenses, rules for auctions, bidding credits for small businesses and designated entities, and auctioning spectrum as a means of transitioning areas where a proponent has not come forward within the deadline established by the Commission.

6. Notwithstanding the Commission's prior determinations that applications for initial EBS spectrum licenses are not exempt from competitive bidding under the Communications Act, today, we seek comment on a mechanism for assigning EBS licenses by competitive bidding among applicants, as well as through other means that would avoid

mutual exclusivity among applications, obviating any need for competitive bidding.

5. Given various characteristics of eligible EBS licensees that are unique among potential Commission licensees, a licensing mechanism that depends on competitive bidding to assign licenses may not provide many otherwise eligible EBS licensees with a full opportunity to participate, accordingly, we seek further comment on the appropriate licensing mechanism for new EBS licenses. We do so without prejudging the appropriate time for issuing new EBS licenses, whether pursuant to competitive bidding or an alternative assignment mechanism.

6. We seek comment on several threshold questions involving the possibility of adopting a licensing scheme that provides for mutually exclusive applications and competitive bidding. First, do EBS eligible entities, in general, have the authority to bid for spectrum licenses? Second, if EBS eligible entities have the authority to bid for spectrum, do they have the authority to bid for spectrum outside of their respective jurisdictions? We seek comment on whether educational institutions would be able to competitively bid for Basic Trading Areas (BTAs), given that school districts are usually smaller than counties, while BTAs can be very large and frequently bisect state boundaries. If EBS eligible entities cannot bid for spectrum outside of their respective jurisdictions, but are otherwise able to bid for spectrum, we seek comment on whether educational institutions could form a consortium or some other joint entity to bid for spectrum in areas larger than their respective jurisdictions and as large as a BTA.

7. Moreover, we seek comment on how we should structure the auction to ensure that licenses are disseminated among a wide variety of applicants. In this connection, we seek comment on whether we should prohibit non-profit educational organizations from participating in an auction and limiting eligible bidders to EBS eligible entities that are publicly supported or privately controlled educational institutions accredited by the appropriate State department of education or the recognized regional and national accrediting organization.

8. We propose to conduct any auction of the EBS spectrum in conformity with the general competitive bidding rules set forth in part 1, subpart Q, of the Commission's rules, consistent with many of the bidding procedures that have been employed in previous auctions. Specifically, we propose to

employ the part 1 rules governing, among other things, competitive bidding design, designated entities, application and payment procedures, collusion issues, and unjust enrichment.

9. We seek comment on whether we should adopt bidding credits and small business size standards in the auction of EBS spectrum.

10. We seek comment on the size of the spectrum blocks to be auctioned. Under one possible scheme, the winning bidder would receive both the three low-power channels and the one high-power channel assigned to the group. We could also auction the high-power channels in the group separately from the low-power channels in the group. A third option would be to license all of the available spectrum in the Lower Band Segment (LBS) and Upper Band Segment (UBS) as one frequency block and all of the available Middle Band Segment (MBS) spectrum as a separate frequency block.

11. With respect to a geographic area licensing scheme, we seek comment on the size of the area to be licensed. Several commenters recommend that we license available and unassigned EBS spectrum by BTA to correspond to the BRS licensing area. We could also assign licenses by State. We also seek comment on whether we should license smaller areas such as cellular market areas. If we decide to license the low-power channels separately from the high-power channels, we seek comment on whether we should adopt a different geographic area for the MBS channels.

12. We also seek comment on whether special eligibility or spectrum aggregation limits would be appropriate or necessary to ensure that public and private educational institutions can successfully bid for spectrum.

13. If, as a result of the record developed in response to this *BRS/EBS 2nd FNPRM*, we learn that very few EBS eligible entities can bid for spectrum, we may find that the public interest of making this spectrum available will lead us to adopt a licensing scheme that avoids competitive bidding. In this connection, we seek comment on all available options for granting geographic area licenses without granting one of multiple mutually exclusive applications. Commenters proposing such options should provide a detailed description of how their proposed option would work, describe what they believe the proper geographic area and channel blocks should be for proposed licenses, and explain why they believe their proposed licensing scheme would allow vacant EBS spectrum to be rapidly placed into use by EBS-eligible licensees and meet the

educational, spectrum policy, and broadband goals underlying EBS.

14. One option would be to issue one license to a State agency designated by the Governor to be the spectrum manager for the entire State, using frequency coordinators to avoid mutually exclusive EBS applications, as well as other alternative licensing schemes. In connection with this state licensing option, we seek comment on whether any modifications to our Secondary Markets leasing rules would be appropriate for these state licenses. We also seek comment on whether any modifications to our special leasing rules for EBS stations would be appropriate for state licenses.

15. Under spectrum manager leasing arrangements and *de facto* transfer leasing arrangements, the licensee must meet the eligibility requirements in the Commission's rules. Thus, the State agency designated by the Governor would have to meet the eligibility requirements of § 27.1201 of our rules. We seek comment on whether any restrictions on a state's leasing discretion would be necessary to ensure that the full range of educational entities have access to EBS spectrum.

16. We also seek comment on whether any modifications to our special leasing rules for EBS stations would be appropriate for state licenses. Under § 27.1214 of our rules, a licensee must comply with certain educational programming requirements and retain the opportunity to purchase or to lease dedicated or common EBS equipment used for educational purposes or comparable equipment if the lease terminates.

17. Another option would adopt a licensing scheme similar to the one we use to license private land mobile radio spectrum. Under this approach, applicants could submit applications for new EBS stations at any time to certified frequency coordinators. The frequency coordinators would review the applications and, in case of conflict, certify the earlier filed application that complies with the Commission's rules for submission to the Commission.

18. Using frequency coordination to award licenses for new EBS stations raises a variety of issues. First, we seek comment on whether there are entities that could be qualified to serve as an EBS frequency coordinator and the process by which the Commission should select one or more frequency coordinators. Second, we seek comment on the processes that a frequency coordinator would use to handle requests for EBS frequencies and to determine whether an application complies with the Commission's rules.

We also seek comment on the appropriate geographic area for new licenses. We also seek comment on the appropriate size of the frequency block for EBS licenses awarded through the frequency coordination process. Available alternatives include: (1) Issuing a separate license for each channel group; (2) licensing MBS channels separately and licensing LBS and UBS channels together; (3) issuing one UBS license, one MBS license, and one LBS license in a given geographic area. Finally, we ask whether it is appropriate or necessary to place limitations on the number of applications that a licensee or its affiliates could file for new EBS stations in a given time period in order to ensure that a wide variety of EBS licensees can access spectrum. We seek comment on these and any other issues relating to the use of frequency coordination to assign new EBS licenses.

19. Our discussion of specific proposals and questions is not meant to preclude commenters from offering other proposals or raising other questions relating to the assignment of new EBS licenses. We seek comment on all questions and issues relating to the assignment of new EBS licenses.

#### *Procedural Matters*

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

20. This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules.

##### *Comment Period and Procedures*

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

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

- *For ECFS filers,* if multiple docket or rulemaking numbers appear in the

caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Comments shall be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- **Paper filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

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

- **Availability of Documents:** The public may view the documents filed in

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

#### Paperwork Reduction Analysis

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

#### Initial Regulatory Flexibility Analysis

23. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *BRS/EBS 2nd FNPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines specified in the *BRS/EBS 2nd FNPRM* for comments. The Commission will send a copy of this *BRS/EBS 2nd FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *BRS/EBS 2nd FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

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

24. The *BRS/EBS 2nd FNPRM* seeks comment on various alternatives to license unassigned and available EBS spectrum throughout the United States and the Gulf of Mexico. Specifically, the *BRS/EBS 2nd FNPRM* seeks comments on the following options:

- (a) Using competitive bidding to license unassigned and available spectrum. If this option is adopted the Commission proposes to use the competitive bidding rules in part 1, subpart Q of the Commission's rules. The Commission also seeks comment on whether to adopt bidding credits and

small business size standard, the size of the spectrum blocks to be auctioned, and the size of geographic areas to be licensed.

- (b) Issuing one license per State to a State agency designated by the Governor to act as a spectrum manager for the State. The State agency would be required to meet the eligibility restrictions in § 27.1201 of the Commission's rules. The State agency would be able use spectrum manager leasing arrangements or *de facto* transfer leasing arrangements.

- (c) Using a leasing scheme similar to the one used to license private land mobile radio spectrum. Under this approach, applicants could submit applications for new EBS stations at any time to frequency coordinators.

25. We believe our proposals will encourage utilization of this band and the development of new innovative services to the public such as providing wireless broadband services, including high-speed Internet access and mobile services while encouraging educators to use the band for educational services.

##### B. Legal Basis for Proposed Rules

26. The proposed action is authorized under sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333 and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333, and 706.

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

27. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules. 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 SBA. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term "small governmental jurisdiction" is defined as "governments of cities,

towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were "small governmental jurisdictions." Thus, we estimate that most governmental jurisdictions are small. Below, we discuss the total estimated numbers of small businesses that might be affected by our actions.

28. The Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)) is used to provide educational services to students. The SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating \$13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we estimate that at least 1,932 licensees are small businesses.

29. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions may be included in the definition of a small entity. EBS is a non-profit non-broadcast service. We do not collect, nor are we aware of other collections of, annual revenue data for EBS licensees. We find that up to 1,932 of these educational institutions are small entities that may take advantage of our amended rules to provide additional flexibility to EBS.

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

30. There are no new reporting, recordkeeping or other compliance

requirements proposed in the *BRS/EBS 2nd FNPRM*.

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

31. 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 (among others): "(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 such 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."

32. The Commission has not proposed an approach for licensing EBS spectrum. Instead, the Commission seeks comment on three distinct approaches for licensing EBS spectrum to determine which approach would best suit the needs of schools and universities and other non-profit educational institutions.

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

33. None.

#### **Ordering Clauses**

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

35. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Second Further Notice of Proposed Rulemaking*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E8-10105 Filed 5-7-08; 8:45 am]

**BILLING CODE 6712-01-P**

## **DEPARTMENT OF TRANSPORTATION**

### **National Highway Traffic Safety Administration**

#### **49 CFR Part 512**

[Docket No. NHTSA-06-26140; Notice 3]

RIN 2127-AJ95

#### **Confidential Business Information**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Denial of Petition for Reconsideration.

**SUMMARY:** This document denies a petition for reconsideration regarding amendments to NHTSA's regulation on Confidential Business Information. The petition, by the American Association for Justice, sought the rescission of class determinations that provide confidential treatment for certain categories of information submitted to NHTSA pursuant to the Early Warning Reporting regulations.

**FOR FURTHER INFORMATION CONTACT:** Michael Kido, Office of Chief Counsel, NHTSA, telephone (202) 366-5263, 1200 New Jersey Avenue, SE., Washington, DC 20590.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

Pursuant to the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, NHTSA has adopted Early Warning Reporting (EWR) regulations. 49 CFR Part 579. See 49 U.S.C. 30166(m), Public Law 106-414. Under these regulations, in general, larger manufacturers must submit certain data to the NHTSA on a quarterly basis. Their EWR reports include information on production, incidents involving deaths or injuries, property damage claims, consumer complaints, warranty claims, field reports and common green tires, with some variation based on the reporting sector. In general, smaller manufacturers must report on incidents involving deaths.

On October 19, 2007, NHTSA published regulations addressing the confidentiality of EWR data. 72 FR 59434. The Appendices to the October 2007 notice contain class determinations providing that certain EWR information is confidential. Under Appendix C to 49 CFR Part 512, EWR data on production (except for light vehicles), consumer complaints, warranty claims, field reports and common green tires, as well as copies of field reports are confidential. 72 FR at 59470. Under Appendix D, the last six