§ 165.T09–113 Safety Zone; Lake Michigan, Chicago, IL.

(a) *Location.* The following area is designated a safety zone: the waters of Lake Michigan within the arc of a circle with a 750-foot radius from the fireworks launch site with its center in the approximate position of 41(53′18″ N, 087° 36′08″ W. (NAD 1983).

(b) *Enforcement times and dates.* This section will be enforced from 8 p.m. until 11 p.m. (local), on October 13, October 20, and October 27, 2001.

(c) *Regulations.* This safety zone is being established to protect the boating public during a planned fireworks display. In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Chicago, or the designated Patrol Commander.

Dated: October 12, 2001.

R. E. Seebald,

Captain, U. S. Coast Guard, Captain of the Port Chicago.

[FR Doc. 01–27051 Filed 10–23–01; 3:04 pm]

BILLING CODE 4910–15–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 00–258; FCC 01–256]

New Advanced Wireless Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adds a mobile allocation to the 2500–2690 MHz band to provide additional near-term and long-term flexibility for use of this spectrum, thereby making this band potentially available for advanced mobile and fixed terrestrial wireless services, including third generation and future generations of wireless systems. This action promotes the continued introduction of fixed wireless broadband services; provides for the introduction of new advanced wireless services to the public, consistent with its obligations under section 706 of the Telecommunications Act; and promotes increased competition among terrestrial services.

DATES: Effective November 26, 2001.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 418–2452.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *First Report and Order*, ET Docket No. 00–258, FCC 01–256, adopted September 6, 2001, and released September 24, 2001. The full text of this Commission decision is available on the Commission's Internet site at *www.fcc.gov*. It 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, and also may be purchased from the Commission's duplication contractor, Qualex International, (202) 863–2893, Room CY–B402, 445 12th Street, SW., Washington, DC 20554.

Summary of the First Report and Order

1. In the *Notice of Proposed Rule Making* (*''Advanced Wireless Services NPRM''*), 66 FR 7483, January 23, 2001 in this proceeding, the Commission explored the possibility of introducing advanced wireless services in frequency bands currently used for cellular, broadband Personal Communications Service (''PCS''), and Specialized Mobile Radio services; in certain frequency bands already allocated for Fixed and Mobile services that could be used to deploy new advanced wireless services; and in five other frequency bands: 1710–1755 MHz, 1755–1850 MHz, 2110–2150 MHz, 2160–2165 MHz, and 2500–2690 MHz. Pursuant to its independent spectrum management responsibilities, the Commission undertook a study of the 2500–2690 MHz band. An *Interim Report* regarding this band was issued in November 2000, and a *Final Report* was issued in March 2001.

2. As commenters note, the 2500–2690 MHz band has been used for a number of years to provide one-way analog fixed services and is now being increasingly used to provide two-way digital, including broadband, fixed services. Nationwide deployment of two-way, digital Instructional Television Fixed Service (''ITFS'') and Multichannel Multipoint Distribution Services (''MMDS'') systems will provide Americans with another option for high-speed broadband access, furthering competition with other service providers such as digital subscriber line (''DSL''), cable modem, or satellite-based services provided by incumbent telephone companies, cable operators, or satellite operators. We will add a mobile allocation to this band in order to provide additional flexibility for use of this spectrum and promote more efficient use, thereby serving the public interest. However, we also conclude that we will not relocate, displace, or otherwise modify incumbent ITFS/MMDS operations. We will rely instead on a market-based approach to introduce additional flexibility in this band. We note that such additional flexibility will not necessarily result in any change in service offerings in the 2500–2690 MHz band because fixed uses could prove to be more highly-valued by the market than mobile uses.

3. We find that adding a mobile allocation to the 2500–2690 MHz band will further promote the public interest by providing an additional option to service providers in that band. As was stated in our November 1999 *Policy Statement* on principles for reallocation of spectrum: ''Flexible allocations may result in more efficient spectrum markets.'' We recognize that with flexible allocations, spectrum efficiencies can be accomplished in a number of ways. For example, licensees can negotiate among themselves arrangements for avoiding interference rather than relying on mandatory technical rules to control interference; relaxed service rules would allow licensees greater freedom in determining the specific services to be offered; and rules for similar services can be harmonized to provide regulatory neutrality to help establish a level playing field across technologies and foster more effective competition. We have already provided such flexibility in many services, including PCS, Wireless Communications Service, and new services operating on television channels 60–69; and have proposed flexibility in other services, including new services operating on television channels 52–59. In permitting new services to operate on television channels 60–69, we added Fixed and Mobile services to the Broadcasting allocation in the 746–806 MHz band. In our related proceeding that developed service rules for the 746–764 MHz and 776–794 MHz bands, we stated that our goal was ''enabling the broadest possible use of this spectrum, consistent with sound spectrum management * * *.'' We adopted service rules primarily oriented toward fulfilling the need for a variety of fixed and mobile wireless services in those bands, but did not structure the rules to establish a particular service configuration. Rather, the service rules would allow licensees to make determinations respecting the services provided and the technologies to be used, including new broadcast-type services so long as they complied with the technical rules adopted for the bands. In proposing to permit new services to operate on television channels 52–59, we also proposed a co-primary Fixed, Mobile, and Broadcasting allocation to ''enable service providers to select the

technology they wish to use to provide new broadband services in order to make the best use of this spectrum.'' Thus, we have provided flexible spectrum use for many services and are proposing to provide flexible spectrum use for other services.

4. Specifically with regard to ITFS/MMDS, we already have provided licensees with additional operational flexibility. First, in 1995 we expanded the protected service area contour for site-based MMDS licensees from a 15 mile radius to a 35 mile radius. Second, in 1996 we implemented rules for the use of digital modulation schemes, thereby allowing ITFS/MMDS licensees to provide multiple channels of video programming and high-speed data applications such as Internet access. Third, in 1998 we authorized the use of two-way transmissions on ITFS/MMDS frequencies, effectively enabling the provision of voice, video and data services and granted a 35-mile protected service area to every ITFS licensee. With the advent of two-way technology, ITFS/MMDS has become a vehicle for offering high-speed Internet access and broadband service to educational, residential and small office/home office customers. Finally, we note that, although many MMDS licenses were granted subject to area-wide (Basic Trading Areas or ''BTAs'') auctions in 1996, the secondary market for both MMDS licenses and ITFS spectrum on a leased basis has been very vibrant. Since 1998 WorldCom and Sprint have invested over $2 billion dollars in the acquisition, by purchase or lease, of MMDS and ITFS channel rights covering 60 million households.

5. The Communications Act of 1934, as amended, specifically authorizes the Commission to allocate spectrum to provide flexibility of use, if—

(1) such use is consistent with international agreements to which the United States is a party; and

(2) the Commission finds, after notice and an opportunity for public comment, that—

(A) such an allocation would be in the public interest;

(B) such use would not deter investment in communications services and systems, or technology development; and

(C) such use would not result in harmful interference among users.

6. With regard to the 2500–2690 MHz band, we find that the above conditions are met and that adding a mobile allocation to the band is in the public interest. First, as noted above and in *the Advanced Wireless Services NPRM,* the 2500–2690 MHz band is allocated in Region 2 on a primary basis to the Fixed, Fixed Satellite, Mobile except aeronautical mobile, and Broadcasting-Satellite Services. The 2000 World Radiocommunication Conference identified the 2500–2690 MHz band for possible terrestrial third generation mobile, or IMT–2000, use. While it is unclear whether other countries will use this band for advanced mobile systems, the band is potentially available in many countries, and it is possible that advanced wireless use will evolve there on a regional or worldwide basis. Therefore, adding a mobile allocation to the 2500–2690 MHz band in the United States is consistent with international agreements to which the United States is a party and will permit the possibility of long-term harmonized use of the band.

7. Second, we find that adding a mobile allocation to the band would not deter investment in current fixed wireless operations, and would not result in harmful interference if appropriate protective measures are taken. As discussed above, the public interest is served because a flexible allocation allows licensees to make efficient use of spectrum, especially if licensees are given greater freedom in determining the specific services to be offered. We also conclude that investment in communications services and systems and technology development would not be deterred by a flexible allocation in this band. While some ITFS/MMDS incumbents indicate that investment in the band, particularly for fixed broadband deployment, could be deterred and interference to incumbents could be caused if we were to add a mobile allocation to the band, we believe that a flexible allocation will actually encourage investment in and the development of new and innovative technology and services. For example, investment in ITFS/MMDS increased as the result of the Commission's decision to allow for two-way digital services in this band, thereby allowing for the deployment of fixed broadband services. A flexible allocation that permits mobile service will spur new technology developments and investment.

8. Third, we note that there is support for potentially using this spectrum for mobile services. Further, IPWireless, Inc. has developed and is testing technology for portable data services that it claims can operate under existing ITFS/MMDS service rules (*i.e.,* not cause harmful interference to incumbent one-way and two-way fixed services) without disrupting the provision of fixed services in the 2500–2690 MHz band. The addition of a mobile allocation will facilitate the introduction of these types of services and will provide flexibility for introducing other mobile applications in the future, thereby encouraging technology development and investment. We emphasize that this addition merely increases options for incumbents to employ spectrum in its highest-valued use, consistent with prior Commission policy, and does not change existing ITFS/MMDS service or technical rules.

9. Finally, we conclude that the introduction of additional mobile uses in the 2500–2690 MHz band can be accomplished without causing harmful interference to incumbent ITFS/MMDS operators. We emphasize that existing technical rules, including interference rules, will be maintained until a rulemaking proceeding has been completed that will address any changes to those rules that may be necessary. More importantly, we emphasize that until that occurs, any mobile use introduced in this band would be subject to existing technical rules or interference agreements between incumbent users and new mobile users. We note that changes in geographic or service applications by incumbent ITFS/MMDS operators may permit other types of mobile uses to be introduced in this band, licensees may partition their service areas, and parties may develop non-interference agreements. Under those circumstances, additional technical service rules would have to be established to protect incumbent operations.

10. We disagree with AT&T that our action here will necessarily result in a ''windfall'' to incumbent ITFS/MMDS licensees. Permitting mobile use of the 2500–2690 MHz band simply allows incumbent licensees an additional option, but it is entirely possible that fixed use of the band will continue to predominate. Additionally, we note that certain types of mobile applications could be deployed in the near-term under existing service rules; thus, as noted, our action is consistent with the type of flexibility already afforded other types of licensees, such as cellular and broadband PCS. Finally, it is reasonable for us to conclude that, on balance, although incumbents may enjoy some benefits by adding a mobile allocation to the band, permitting mobile use of the band by new service providers would pose a very high risk of disrupting important incumbent fixed operations that our decision does not pose. Accordingly, we find it in the public interest to permit ITFS/MMDS licensees the flexibility to offer mobile services, and we are adding a ''Mobile except aeronautical mobile'' allocation for the

United States to the 2500–2690 MHz band.

11. While we find that adding a mobile allocation in the 2500–2690 MHz band would be in the public interest, we find that relocating incumbent ITFS/MMDS operations would jeopardize the provision of important fixed wireless broadband services. The FCC staff's *Final Report* studied whether the band could be shared with or reallocated, in whole or in part, for new advanced mobile service providers. The FCC staff's *Final Report* concludes that in many cases lack of uniform geographic use in the band precludes co-frequency sharing between ITFS/MMDS and advanced mobile service providers. The FCC staff's *Final Report* recognized that although voluntary partitioning between incumbent users and new advanced mobile service operators offered some promise of sharing as an interim measure in some geographic areas, sufficient spectrum does not appear to be available in populated areas to support viable advanced mobile services operations. That conclusion is unchallenged by any party to this proceeding. The FCC staff's *Final Report* also studied permitting mobile use by new service providers by reallocating all or a portion of the 2500–2690 MHz band from fixed to mobile services. However, even the 60 MHz reallocation proposed by Verizon would cause severe disruptions to ITFS/MMDS incumbents if they were forced to vacate a segment of the band. Further, the option of relocating ITFS/MMDS incumbents to another band would likely impose even greater overall costs because existing licensees in all candidate relocation bands examined by the FCC staff's *Final Report* would also need to be relocated to accommodate displaced ITFS/MMDS incumbents. Based on this record, we find that relocating ITFS/MMDS incumbents would not be cost-effective or desirable.

12. Our assessment is shared by the majority of parties to this proceeding. Some parties contend that there will likely be insufficient spectrum for advanced mobile services if a portion of the 2500–2690 MHz band is not reallocated for exclusive mobile use. However, in our recent *Further NPRM* in this proceeding, we solicited comment on allocating additional bands for advanced mobile services. Further, as discussed above, we are adding a mobile allocation to the 2500–2690 MHz band to permit flexibility for incumbent licensees. We will be addressing the issue of how much additional spectrum from other bands is required for advanced mobile services in a forthcoming decision in this proceeding. Moreover, we have encouraged the provision of both advanced mobile and fixed services and note that the services currently being provided and planned in the 2500–2690 MHz band—while fixed in nature—have significant value. Accordingly, we find that displacing ITFS/MMDS incumbents to permit advanced mobile use of the 2500–2690 MHz band by new service providers would be detrimental to the public interest.

13. We recognize that, under current technology and service rules, fixed and mobile (other than portable) sharing of the 2500–2690 MHz band does not appear feasible, but we anticipate advances in technology that may permit such sharing. We further recognize that we will have to explore in a separate future proceeding the service rules that will apply to permit mobile operations in the band. The FCC staff's *Final Report* cites the possibility of interference to incumbent ITFS/MMDS operations from new advanced mobile service providers, and we would want to provide service and technical rules that would allow both incumbent ITFS/MMDS and mobile operations to co-exist in the band. As noted, in developing service rules for the 746–764 MHz and 776–794 MHz bands, we struck a balance in developing rules that would facilitate licensees' flexibility to provide either fixed or mobile services as well as certain broadcast-type services on a non-interference basis. We would want to strike the same balance for the 2500–2690 MHz band so that mobile use of the band will not impair fixed use of the band. We emphasize that if fixed and mobile sharing of the band continues to be infeasible in the long run, our service rules would ensure the protection of fixed operations.

Final Regulatory Flexibility Certification

14. The Regulatory Flexibility Act of 1980, as amended (''RFA'')[1] requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that ''the rule will not have a significant economic impact on a substantial number of small entities.''[2] The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[3] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[4] 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).[5]

15. In this *First Report and Order,* ''the Commission adds a mobile allocation to the 2500–2690 MHz band and thus provides ITFS/MMDS incumbent users of that band additional flexibility to offer mobile, as well as current fixed, services. This change may provide new opportunities for ITFS/MMDS incumbents, but will not adversely affect any incumbents because mobile use of the band will be at their discretion. As noted in paragraph 26 of the *First Report and Order,* the introduction of additional mobile uses in the 2500–2690 MHz band can be accomplished without causing harmful interference to incumbent ITFS/MMDS operators because * * * the incumbent licensees will have the flexibility to determine the specific services to be offered.'' Therefore, we certify that the requirements of this *First Report and Order* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *First Report and Order,* including a copy of this final certification, in a report to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the First Report and Order and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 605(b).

16. Authority for issuance of the First Report and Order is contained in sections 1, 4(i), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 308, and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 308, and 309(j).

[1] The RFA, *see* 5 U.S.C. S 601 *et. seq.,* has been amended by the Contract With America Advancement Act of 1996, Pub. L. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] 5 U.S.C. 605(b).

[3] 5 U.S.C. 601(6).

[4] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in Small Business Act, 15 U.S.C. S 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[5] Small Business Act, 15 U.S.C. S 632.

List of Subjects in 47 CFR Part 2

Communications equipment, Radio, Table of frequency allocation.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rules Changes

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

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

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

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

2. Section 2.106, the Table of Frequency Allocations, is amended by revising pages 52 and 53. The revisions read as follows:

§ 2.106 Table of Frequency Allocations.

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BILLING CODE 6712–01–P

2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) S5.351A Radiolocation S5.150 S5.371 S5.397 S5.398 S5.399 S5.400 S5.402	2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) S5.351A RADIOLOCATION RADIODETERMINATION-SATELLITE (space-to-Earth) S5.398 S5.150 S5.402	2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) S5.351A RADIOLOCATION Radiodetermination-satellite (space-to-Earth) S5.398 S5.150 S5.400 S5.402	2483.5-2500 MOBILE-SATELLITE (space-to-Earth) US319 RADIODETERMINATION-SATELLITE (space-to-Earth) S5.398 S5.150 S5.402 US41	2483.5-2500 MOBILE-SATELLITE (space-to-Earth) US319 RADIODETERMINATION-SATELLITE (space-to-Earth) S5.398 S5.150 S5.402 US41 NG147	ISM Equipment (18) Satellite Communications (25) Private Land Mobile (90) Fixed Microwave (101)
2500-2520 FIXED S5.409 S5.410 S5.411 MOBILE except aeronautical mobile S5.384A MOBILE-SATELLITE (space-to-Earth) S5.403 S5.351A S5.405 S5.407 S5.412 S5.414	2500-2520 FIXED S5.409 S5.411 FIXED-SATELLITE (space-to-Earth) S5.415 MOBILE except aeronautical mobile S5.384A MOBILE-SATELLITE (space-to-Earth) S5.403 S5.351A S5.404 S5.407 S5.414 S5.415A		2500-2655	2500-2655 FIXED S5.409 S5.411 US205 FIXED-SATELLITE (space-to-Earth) NG102 MOBILE except aeronautical mobile BROADCASTING-SATELLITE NG101	Domestic Public Fixed (21) Auxiliary Broadcasting (74)
2520-2655 FIXED S5.409 S5.410 S5.411 MOBILE except aeronautical mobile S5.384A BROADCASTING-SATELLITE S5.413 S5.416 S5.339 S5.403 S5.405 S5.412 S5.418	2520-2655 FIXED S5.409 S5.411 FIXED-SATELLITE (space-to-Earth) S5.415 MOBILE except aeronautical mobile S5.384A BROADCASTING-SATELLITE S5.413 S5.416 S5.339 S5.403	2520-2535 FIXED S5.409 S5.411 FIXED-SATELLITE (space-to-Earth) S5.415 MOBILE except aeronautical mobile S5.384A BROADCASTING-SATELLITE S5.413 S5.416 S5.403 S5.415A 2535-2655 FIXED S5.409 S5.411 MOBILE except aeronautical mobile S5.384A BROADCASTING-SATELLITE S5.413 S5.416 S5.339 S5.418	S5.339 US205 US269	S5.339 US269	

2655-3700 MHz (UHF/SHF)					Page 53
International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
2655-2670 FIXED S5.409 S5.410 S5.411 MOBILE except aeronautical mobile S5.384A BROADCASTING-SATELLITE S5.413 S5.416 Earth exploration-satellite (passive) Radio astronomy Space research (passive) S5.149 S5.412 S5.420	2655-2670 FIXED S5.409 S5.411 FIXED-SATELLITE (Earth-to-space) (space-to-Earth) S5.415 MOBILE except aeronautical mobile S5.384A BROADCASTING-SATELLITE S5.413 S5.416 Earth exploration-satellite (passive) Radio astronomy Space research (passive) S5.149 S5.420	2655-2670 FIXED S5.409 S5.411 FIXED-SATELLITE (Earth-to-space) S5.415 MOBILE except aeronautical mobile S5.384A BROADCASTING-SATELLITE S5.413 S5.416 Earth exploration-satellite (passive) Radio astronomy Space research (passive) S5.149 S5.420	2655-2690 Earth exploration-satellite (passive) Radio astronomy Space research (passive)	2655-2690 FIXED US205 FIXED-SATELLITE (Earth-to-space) NG102 MOBILE except aeronautical mobile BROADCASTING-SATELLITE NG101 Earth exploration-satellite (passive) Radio astronomy Space research (passive)	Domestic Public Fixed (21) Auxiliary Broadcasting (74)
2670-2690 FIXED S5.409 S5.410 S5.411 MOBILE except aeronautical mobile S5.384A MOBILE-SATELLITE (Earth-to-space) S5.351A Earth exploration-satellite (passive) Radio astronomy Space research (passive) S5.149 S5.419 S5.420	2670-2690 FIXED S5.409 S5.411 FIXED-SATELLITE (Earth-to-space) (space-to-Earth) S5.415 MOBILE except aeronautical mobile S5.384A MOBILE-SATELLITE (Earth-to-space) S5.351A Earth exploration-satellite (passive) Radio astronomy Space research (passive) S5.149 S5.419 S5.420	2670-2690 FIXED S5.409 S5.411 FIXED-SATELLITE (Earth-to-space) S5.415 MOBILE except aeronautical mobile S5.384A MOBILE-SATELLITE (Earth-to-space) S5.351A Earth exploration-satellite (passive) Radio astronomy Space research (passive) S5.149 S5.419 S5.420 S5.420A	US205 US269	US269 NG47	
2690-2700 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) S5.340 S5.421 S5.422			2690-2700 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		
2700-2900 AERONAUTICAL RADIONAVIGATION S5.337 Radiolocation S5.423 S5.424			2700-2900 AERONAUTICAL RADIO-NAVIGATION S5.337 METEOROLOGICAL AIDS Radiolocation G2 S5.423 US18 G15	2700-2900 S5.423 US18	

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[FR Doc. 01–26841 Filed 10–24–01; 8:45 am]

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