

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 02–55; ET Docket No. 00–258; ET Docket No. 95–18; RM–9498; RM–10024; FCC 04–294]

Private Land Mobile Services; 800 MHz Public Safety Interference Proceeding

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document clarifies and revises the technical and procedural measures that it adopted in a *Report and Order* on July 8, 2004 to address the ongoing and growing problem of interference to public safety communications in the 800 MHz band. In the *Report and Order*, the Commission concluded that a plan comprised of both long-term and short-term components represented the most effective solution to the public safety interference problem in the 800 MHz band. Subsequent to the release of the *Report and Order*, parties made a series of *ex parte* presentations which provided additional information. The Commission issued a *public notice* soliciting comment on certain *ex parte* presentations. Based on this supplementary record and review of the document, the Commission believes it appropriate to make the following clarifications of, and changes to, the provisions of the *Report and Order* and its accompanying rules. The Commission believe these changes will facilitate a more efficient and timely reconfiguration of the 800 MHz band.

DATES: Effective March 10, 2005.

FOR FURTHER INFORMATION CONTACT:

Technical Information: Brian Marenco, Brian.Marenco@FCC.gov, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418–0680, or TTY (202) 418–7233. Legal Information: Roberto Mussenden, Esq., Roberto.Mussenden@FCC.gov, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau (202) 418–0680, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This document summarizes the Federal Communications Commission's Supplemental Order and Order on Reconsideration (*Order*), FCC 04–294, adopted and released on December 22, 2004. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The

complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at Brian.Millin@fcc.gov.

1. The *Order* clarifies and revises portions of the *Report and Order*, 69 FR 67823 November 22, 2004, to create an environment conducive to the efficient implementation of the 800 MHz band reconfiguration and operations of 800 MHz band licensees. Specifically, the Commission:

a. Explicitly requires Nextel to submit its 700 MHz Guard Band licenses to the Commission for cancellation.

b. Modifies provisions relating to the letter of credit to provide that the letter of credit will serve as a security against default, and will not constitute the corpus of band reconfiguration funds absent a default. We also provide that up to ten financial institutions may issue the letter or letters of credit under certain conditions and provide that we will consider waiver of the conflict of interest provisions governing the Trustee.

c. Clarifies the scope of the acknowledgment that Nextel must file with the Commission as part of its acceptance of the terms and provisions of the *Report and Order*.

d. Clarifies the entities from which Nextel must obtain a Letter of Cooperation, committing such entities to make changes necessary to implement 800 MHz band reconfiguration.

e. Analyzes more recent and comprehensive data on the spectrum holdings of Nextel and revises, accordingly, the credit Nextel receives for spectrum it must surrender as part of the band reconfiguration process.

f. Sets interim received power level thresholds that non-cellular systems must maintain in order to claim protection against unacceptable interference during band reconfiguration. These interim threshold levels will remain in effect until band reconfiguration in a particular 800 MHz National Public Safety Planning Advisory Committee (NPSPAC) region is complete at which time the threshold levels adopted in the *Report and Order* go into effect.

g. Sets out provisions for abating interference to public safety systems that do not meet the interim received power level thresholds during the

period in which said interim received power level thresholds are in effect.

h. Clarifies and amplifies certain actions falling within the *Report and Order* requirement that parties conduct their relocation negotiations in good faith.

i. Modifies the eighteen-month benchmark so that, by that time, Nextel shall have relocated all non-Nextel and non-SouthernLINC incumbents from the former General Category channels 1–120 in at least twenty NPSPAC regions, and shall have initiated relocation negotiations with all NPSPAC licensees in said regions.

j. Clarifies that mobile-only systems operating on a secondary basis on former General Category Channels 1–120 may continue to operate on said channels on a secondary basis.

k. Clarifies when public safety and Critical Infrastructure Industry (CII) licensees gain exclusive access to channels vacated by “Enhanced Specialized Mobile Radio” (ESMR) licensees as a part of band reconfiguration.

l. Specifies that non-public safety and non-CII incumbents operating on Channels 231–260 may continue to operate on these channels.

m. Clarifies that a Commission-certified coordinator must coordinate channels vacated by ESMR licensees and applied for after completion of band reconfiguration of a given NPSPAC region.

n. Declines to impose a two percent limit on administrative costs associated with incumbent relocation.

o. Elaborates on the duties and authority of the Transition Administrator.

p. Clarifies which Economic Area (EA) licensees are eligible for relocation to channels above 817 MHz/862 MHz.

q. Declines to afford relocating licensees their choice of channels, provided that they are relocated to comparable facilities.

r. Declines to require that relocating licensees be assigned channels in any particular sequence, leaving such determinations to the Transition Administrator.

s. Defines the parameters governing the voluntary relocation of CMRS licensees to the Guard Band.

t. Clarifies the extent to which Nextel may be involved in the physical process of retuning incumbent systems.

u. Prohibits “high site” systems above 817 MHz/862 MHz.

v. Clarifies that relocation of EA licensees does not constitute issuance of “new” licenses.

w. Clarifies that license modifications necessary to implement band

reconfiguration do not implicate the Commission's "unjust enrichment" rule.

x. Modifies the rules affecting the "freeze" on 800 MHz license modification applications during reconfiguration of a given NPSPAC region.

y. Clarifies the applicability of Section 22.917 of the Rules to cellular systems causing interference to 900 MHz systems.

I. Procedural Matters

A. Paperwork Reduction Act Analysis

2. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA) and found to impose no new or modified reporting or recordkeeping requirements or burdens to the public, including businesses with fewer than 25 employees.

B. Supplemental Final Regulatory Flexibility Certification

3. The Regulatory Flexibility Act (RFA) requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

4. In the *Order* the Commission clarifies and revises portions of the *Report and Order* to further create a spectrum climate that is conducive to the efficient implementation of the 800 MHz band reconfiguration and operations of 800 MHz band licensees. With regard to the substantive rule changes, the revision to Section 90.175 is deregulatory as applications filed to implement band reconfiguration will not be subject to frequency coordination. The revision to Section 90.676 applies only to the Transition Administrator. Changes to Sections 90.613, 90.614, 90.615, 90.617, 90.621, 90.685, and 90.693 are designed to more accurately reflect the Commission's 800 MHz band plan. The Commission certifies, pursuant to the RFA, that the clarifications and rule changes

contained in this *Order* will not have a significant economic impact on a substantial number of small entities, including businesses with fewer than 25 employees.

5. The Commission will send a copy of this *Order*, including this Supplemental Final Regulatory Flexibility Certification, in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act. See 5 U.S.C. 801(a)(1)(A). In addition the Commission will send a copy of the *Order* including a copy of this Supplemental Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. See 5 U.S.C. 605(b). A summary of this *Order* and this certification will also be published in the **Federal Register**.

List of Subjects in 47 CFR Part 90

Communications.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 90 as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 302(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 2. Section 90.175 is amended by adding paragraph (j)(7) to read as follows:

§ 90.175 Frequency coordinator requirements.

* * * * *

(j) * * *

(7) Applications filed exclusively to modify channels in accordance with band reconfiguration in the 806–824/851–869 MHz band.

* * * * *

■ 3. Section 90.613 is amended by revising the introductory text to read as follows:

§ 90.613 Frequencies available.

The following tables indicate the channel designations of frequencies available for assignment to eligible applicants under this subpart. Frequencies shall be assigned in pairs, with mobile and control station transmitting frequencies taken from the

806–824 MHz band with corresponding base station frequencies being 45 MHz higher and taken from the 851–869 MHz band, or with mobile and control station frequencies taken from the 896–901 MHz band with corresponding base station frequencies being 39 MHz higher and taken from the 935–940 MHz band. Only the base station transmitting frequency of each pair is listed in the following tables. Applicants filing for channels prior to the announcement of an application freeze within an 800 MHz NPSPAC region, however, should specify channels based on the table listed in § 90.613 (2003).

* * * * *

■ 4. Amend § 90.614 by revising the introductory text, and paragraphs (a), (b), and (c) introductory text to read as follows:

§ 90.614 Cellular and non-cellular portions of 806–824/851–869 MHz band for non-border areas.

The 806–824/851–869 MHz band ("800 MHz band") will be divided as follows at locations farther than 110 km (68.4 miles) from the U.S./Mexico border and 140 km (87 miles) from the U.S./Canadian border ("non-border areas"):

(a) 800 MHz cellular systems—as defined in § 90.7—are prohibited from operating on channels 1–550 in non-border areas.

(b) Only ESMR systems—as defined in § 90.7—are permitted to operate on channels 551–830 in non-border areas.

(c) In the following counties and parishes, only ESMR systems—as defined in § 90.7—are permitted to operate on channels 411–830.

* * * * *

■ 5. Section 90.615 is revised to read as follows:

§ 90.615 Individual channels available in the General Category in 806–824/851–869 MHz band.

The General Category will consist of channels 231–260 and 511–550 at locations farther than 110 km (68.4 miles) from the U.S./Mexico border and 140 km (87 miles) from the U.S./Canadian border. All entities will be eligible for licensing on these channels except as described in paragraphs (a) and (b) of this section.

(a) In a given 800 MHz NPSPAC region, any channel in the 231–260 range which is vacated by an ESMR licensee and remains vacant after band reconfiguration will be available as follows:

(1) Only to eligible applicants in the Public Safety Category until three years after the release of a public notice

announcing the completion of band reconfiguration in that region;

(2) Only to eligible applicants in the Public Safety or Critical Infrastructure Industry Categories from three to five years after the release of a public notice announcing the completion of band reconfiguration in that region;

(3) To all entities five years after release of a public notice announcing the completion of band reconfiguration in that region.

(b) In a given 800 MHz NPSPAC region, any channel in the 231–260 range which is vacated by a licensee relocating to channels 511–550 and remains vacant after band reconfiguration will be available as follows:

(1) Only to eligible applicants in the Public Safety Category until three years after the release of a public notice announcing the completion of band reconfiguration in that region;

(2) Only to eligible applicants in the Public Safety or Critical Infrastructure Industry Categories from three to five years after the release of a public notice announcing the completion of band reconfiguration in that region;

(3) To all entities five years after release of a public notice announcing the completion of band reconfiguration in that region.

(c) Spectrum Block F1 consists of channels 236–260.

■ 6. Section 90.617 is amended by revising paragraphs (g) and (h) to read as follows:

§ 90.617 Frequencies in the 809.750–824/854.750–869 MHz, and 896–901/935–940 MHz bands available for trunked, conventional or cellular system use in non-border areas.

* * * * *

(g) In a given 800 MHz NPSPAC region, channels below 470 listed in Tables 2 and 4B which are vacated by an ESMR licensee and remain vacant after band reconfiguration will be available as follows:

(1) Only to eligible applicants in the Public Safety Category until three years after the release of a public notice announcing the completion of band reconfiguration in that region;

(2) Only to eligible applicants in the Public Safety or Critical Infrastructure Industry Categories from three to five years after the release of a public notice announcing the completion of band reconfiguration in that region;

(3) Five years after the release of a public notice announcing the completion of band reconfiguration in that region, these channels revert back to their original pool categories.

(h) In a given 800 MHz NPSPAC region, channels below 470 listed in

Tables 2 and 4B which are vacated by a licensee relocating to channels 511–550 and remain vacant after band reconfiguration will be available as follows:

(1) Only to eligible applicants in the Public Safety Category until three years after the release of a public notice announcing the completion of band reconfiguration in that region;

(2) Only to eligible applicants in the Public Safety or Critical Infrastructure Industry Categories from three to five years after the release of a public notice announcing the completion of band reconfiguration in that region;

(3) Five years after the release of a public notice announcing the completion of band reconfiguration in that region, these channels revert back to their original pool categories.

* * * * *

■ 7. Section 90.621 is amended by revising paragraphs (b) introductory text, (b)(1) and the text of (b)(3) before the table to read as follows. The note before the table in (b)(3) remains unchanged.

§ 90.621 Selection and assignment of frequencies.

* * * * *

(b) Stations authorized on frequencies listed in this subpart, except for those stations authorized pursuant to paragraph (g) of this section and EA-based and MTA-based SMR systems, will be assigned frequencies solely on the basis of fixed distance separation criteria. The separation between co-channel systems will be a minimum of 113 km (70 mi) with one exception. For incumbent licensees in Channel Blocks F1 through V, that have received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour (*see* § 90.693), the separation between co-channel systems will be a minimum of 173 km (107 mi). The following exceptions to these separations shall apply:

(1) Except as indicated in paragraph (b)(4) of this section, no station in Channel Blocks A through V shall be less than 169 km (105 mi) distant from a co-channel station that has been granted channel exclusivity and authorized 1 kW ERP on any of the following mountaintop sites: Santiago Peak, Sierra Peak, Mount Lukens, Mount Wilson (California). Except as indicated in paragraph (b)(4) of this section, no incumbent licensee in Channel Blocks F1 through V that has received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour shall be less than 229 km (142 mi)

distant from a co-channel station that has been granted channel exclusivity and authorized 1 kW ERP on any of the following mountaintop sites: Santiago Peak, Sierra Peak, Mount Lukens, Mount Wilson (California).

* * * * *

(3) Except as indicated in paragraph (b)(4) of this section, stations in Channel Blocks A through V that have been granted channel exclusivity and are located in the State of Washington at the locations listed in the table below shall be separated from co-channel stations by a minimum of 169 km (105 mi). Except as indicated in paragraph (b)(4) of this section, incumbent licensees in Channel Blocks F1 through V that have received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour, have been granted channel exclusivity and are located in the State of Washington at the locations listed in the table below shall be separated from co-channel stations by a minimum of 229 km (142 mi). Locations within one mile of the geographical coordinates listed in the table below will be considered to be at that site.

* * * * *

■ 8. Section 90.676 is amended by adding a new paragraph (b)(6) to read as follows:

§ 90.676 Transition administrator for reconfiguration of the 806–824/851–869 MHz band in order to separate cellular systems from non-cellular systems.

* * * * *

(b) * * *

(6) Notify the Commission when band reconfiguration is complete in each 800 MHz NPSPAC Region and identify which vacant channels are exclusively available to eligible applicants in the Public Safety or Critical Infrastructure Industry Categories as set forth in § 90.615(a), (b) and § 90.617(g), (h).

* * * * *

■ 9. Section 90.685 is amended by revising paragraph (b) to read as follows:

§ 90.685 Authorization, construction and implementation of EA licenses.

* * * * *

(b) EA licensees in the 809–824/854–869 MHz band must, within three years of the grant of their initial license, construct and place into operation a sufficient number of base stations to provide coverage to at least one-third of the population of its EA-based service area. Further, each EA licensee must provide coverage to at least two-thirds of the population of the EA-based service area within five years of the

grant of their initial license. EA-based licensees may, in the alternative, provide substantial service to their markets within five years of the grant of their initial license. Substantial service shall be defined as: "Service which is sound, favorable, and substantially above a level of mediocre service."

* * * * *

■ 10. Section 90.693 is amended by revising paragraphs (c), and (d)(2) to read as follows:

§ 90.693 Grandfathering provisions for incumbent licensees.

* * * * *

(c) *Special provisions for Spectrum Blocks F1 through V.* Incumbent licensees that have received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBµV/m signal strength interference contour shall have their service area defined by their originally-licensed 36 dBµV/m field strength contour and their interference contour shall be defined as their originally-licensed 18 dBµV/m field strength contour. The "originally-licensed" contour shall be calculated using the maximum ERP and the actual HAAT along each radial. Incumbent licensees seeking to utilize an 18 dBµV/m signal strength interference contour shall first seek to obtain the consent of affected co-channel incumbents. When the consent of a co-channel licensee is withheld, an incumbent licensee may submit to any certified frequency coordinator an engineering study showing that interference will not occur, together with proof that the incumbent licensee has sought consent. Incumbent licensees are permitted to add, remove or modify transmitter sites within their original 18 dBµV/m field strength contour without prior notification to the Commission so long as their original 18 dBµV/m field strength contour is not expanded and the station complies with the Commission's short-spacing criteria in §§ 90.621(b)(4) through 90.621(b)(6). Incumbent licensee protection extends only to its 36 dBµV/m signal strength contour. Pursuant to the minor modification notification procedure set forth in § 1.947(b) of this chapter the

incumbent licensee must notify the Commission within 30 days of any changes in technical parameters or additional stations constructed that fall within the short-spacing criteria. See 47 CFR 90.621(b).

(d) * * *

(2) *Special Provisions for Spectrum Blocks F1 through V.* Incumbent licensees that have received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBµV/m signal strength interference contour operating at multiple sites may, after grant of EA licenses has been completed, exchange multiple site licenses for a single license. This single site license will authorize operations throughout the contiguous and overlapping 36 dBµV/m field strength contours of the multiple sites. Incumbents exercising this license exchange option must submit specific information on Form 601 for each of their external base sites after the close of the 800 SMR auction. The incumbent's geographic license area is defined by the contiguous and overlapping 18 dBµV/m contours of its constructed and operational external base stations and interior sites that are constructed within the construction period applicable to the incumbent. Once the geographic license is issued, facilities that are added within an incumbent's existing footprint and that are not subject to prior approval by the Commission will not be subject to construction requirements.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22 and 90

[WT Docket No. 02-55; FCC 04-168]

Improving Public Safety Communications in the 800 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces that the information collection requirements adopted in the 800 MHz Report and Order are effective upon publication of this document in the **Federal Register**.

DATES: 47 CFR 22.972, 22.973, 90.674, 90.676, and 90.677, published at 68 FR 67823 (Nov. 22, 2004) are effective February 8, 2005.

FOR FURTHER INFORMATION CONTACT: John Evanoff, Esq., Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau at (202) 418-0680 or via the Internet at jevanoff@fcc.gov. For additional information concerning the Paperwork Reduction Act information collection requirements, contact Judith B. Herman at (202) 418-0214.

SUPPLEMENTARY INFORMATION: A summary of the 800 MHz Report and Order was published in the **Federal Register** on November 22, 2004, 68 FR 67823. The 800 MHz Report and Order adopted rules designed to abate interference to public safety entities. The summary stated that with the exception of rules requiring OMB approval, the rules adopted in the 800 MHz Report and Order would become effective January 21, 2005. With regard to rules requiring OMB approval, the Commission stated it will publish a document in the **Federal Register** announcing the effective date of these rules. The information collection requirements in §§ 22.972, 22.973, 90.674, 90.675, 90.676 and 90.677 have been approved by OMB. In a separate document published in this issue, the Commission has announced that OMB has approved the information collection requirements adopted in the 800 MHz Report and Order. With publication of the instant document in the **Federal Register**, all rules adopted in the 800 MHz Report and Order are now effective.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

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