

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 1****[WT Docket No. 01-319; FCC 01-333]****Review of Quiet Zones Application Procedures****AGENCY:** Federal Communications Commission.**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission, pursuant to staff recommendations of the 2000 Biennial Review Report, reviews the application procedures for Quiet Zones to determine whether they can be made more efficient while continuing to ensure that such zones are fully protected from interference. In this document, the Commission seeks comment on whether to certain microwave applicants to initiate conditional operation even if the proposed site is located within a defined distance from a quiet zone. The Commission also seeks comment on whether to expedite application processing where there are Quiet Zone implications; whether to allow parties to provide notification to and begin coordination with Quiet Zone entities in advance of filing an application, and seeks comment on any possible modification of the rule prescribing the procedures for coordination with quiet zones and any specific service rules that implement the Commission's goals regarding protection of Quiet Zones from unwarranted and unacceptable interference.

**DATES:** Comments are due on or before January 22, 2002; Reply comments are due on or before February 6, 2002.

**ADDRESSES:** Parties who choose to file comments by paper should send comments to Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW; TW-A325; Washington, D.C. 20554. Comments filed through the Commission's Electronic Comment Filing System (ECFS) can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>.

**FOR FURTHER INFORMATION CONTACT:** Katherine M. Harris at (202) 418-0609 (Wireless Telecommunications Bureau).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Notice of Proposed Rulemaking ("NPRM") in WT Docket No. 01-319, FCC 01-333, adopted November 9, 2001 and released November 21, 2001. The complete text is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12 Street,

SW, Washington, DC and also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW, CY-B402, Washington, DC 20554. The document is also available via the Internet at <http://www.fcc.gov/Bureaus/Wireless/Orders/2001/fcc01333.pdf>.

**Paperwork Reduction Act**

1. The NPRM contains no proposed information collection.

**Synopsis of Notice of Proposed Rulemaking**

2. This Notice of Proposed Rulemaking (NPRM) is a part of the Commission's biennial regulatory review, pursuant to section 11 of the Communications Act. In particular, this NPRM seeks comments on procedures for streamlining the Commission's rules for the processing of applications potentially affecting areas known as Quiet Zones.

**I. Discussion**

3. This NPRM seeks comments on procedures for streamlining the Commission's rules for the processing of applications potentially affecting areas known as Quiet Zones, currently set forth in 47 CFR 1.924 of our rules. Quiet Zones are defined as those areas where it is necessary to restrict radiation so as to minimize possible impact on the operations of radio astronomy or other facilities that are highly sensitive to interference. In seeking comments on these rules, the Commission is responding to concerns that the rules may be burdensome and unnecessarily delay the provision of service to the public. The Commission's purpose is to determine whether the required procedures can be streamlined to reduce the effect on wireless licenses while adequately protecting the operations of Quiet Zones.

4. The Commission seeks comments on whether to allow part 101 applicants to initiate conditional operation under § 101.31(b), notwithstanding the limitation contained in § 101.31(b)(1)(v), if they submit to the Commission written consent from the affected Quiet Zone entity and otherwise are eligible to initiate conditional operations over the proposed facility; whether to expedite application processing where there are Quiet Zone implications if the applicant provides written consent from the Quiet Zone entity; whether to allow parties to provide notification to and begin coordination with Quiet Zone entities in advance of filing an application with the Commission, including the appropriate period of time to prescribe for such advance notification and coordination;

and possible modification of 47 CFR 1.924, 90.655, 95.45, 101.1009, and 101.1329 and any other rules that implement the Commission's goals regarding protection of Quiet Zones from unwarranted and unacceptable interference.

**II. Filing Procedures**

5. Pursuant to 47 CFR 1.415 and 1.419, interested parties may file comments on or before January 22, 2001, and reply comments on or before February 6, 2002. Comments may be filed by using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents Rulemaking Proceeding, at 63 FR 24121 May 1, 1998.

6. Comments filed through 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. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. 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 electronic comments 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 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.

7. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, Washington, DC 20554.

8. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Qualex International, 445 12th Street, SW, CY-B402, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC 20554. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with 47 CFR 1.49, and all

other applicable sections of the Commission's rules. The Commission also directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of length of their submission.

### III. Initial Regulatory Flexibility Analysis

9. As required by the Regulatory Flexibility Act,<sup>1</sup> (RFA) has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the proposals in this Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the NPRM, and they must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer Information Bureau, Reference Information Center, will send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.<sup>2</sup> In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.<sup>3</sup>

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

10. In the *Quiet Zones NPRM*, the Commission seeks comment on a number of proposals to further its ongoing efforts under the Telecommunications Act of 1996<sup>4</sup> to foster competition in local communications markets. Specifically, the Commission seeks comments on: (1) whether to allow part 101 applicants to initiate conditional operation under 47 CFR 101.31(b), notwithstanding the limitation contained in 101.31(b)(1)(v), if they submit to the Commission written consent from the affected Quiet Zone entity and otherwise are eligible to initiate conditional operations over the proposed facility; (2) whether to expedite application processing where there are Quiet Zone implications if the applicant provides written consent from the Quiet Zone entity; (3) whether to allow parties to provide notification to and begin coordination with Quiet Zone entities in advance of filing an

application with the Commission, and the appropriate period of time to prescribe for such advance notification and coordination; and (4) any possible modification of 47 CFR 1.924, 90.655, 95.45, 101.1009, and 101.1329 and any other rules that implement the Commission's goals regarding protection of Quiet Zones from unwarranted and unacceptable interference.

#### B. Legal Basis

11. The potential actions on which comment is sought in this Quiet Zones NPRM would be authorized under sections 1, 4(i), 11,303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 161, 303(g), and 303(r).

#### Description and Estimate of the Number of Small Entities to which the Rules Will Apply

12. 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, if adopted.<sup>5</sup> The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>6</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business Act.<sup>7</sup> A small business concern is one that: (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.<sup>8</sup> A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."<sup>9</sup> Nationwide, as of 1992, there were approximately 275,801 small organizations.<sup>10</sup> "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a

population of less than 50,000."<sup>11</sup> As of 1992, there were approximately 85,006 such jurisdictions in the United States.<sup>12</sup> This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.<sup>13</sup> The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,6000 (96 percent) are small entities.

13. In the following paragraphs, we further describe and estimate the number of small entity licensees that may be affected by any streamlining changes in the proposed rules, if adopted. Since this rulemaking proceeding applies to multiple services, we will analyze the number of small entities affected on a service-by-service basis. The number of small entities identified below substantially overestimates the number of small entities that might be affected by any rule change in this docket, since only entities proposing or planning facilities in proximity to any of the Quiet Zones would be affected by any changes in the requirements.

14. *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.<sup>14</sup> According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms that operated during 1992 had 1,000 or more employees.<sup>15</sup> 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. 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, which are

<sup>1</sup> 5 U.S.C. 603.

<sup>2</sup> 5 U.S.C. 603(a).

<sup>3</sup> See id.

<sup>4</sup> Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56 codified at 47 U.S.C. 151 et seq. (1996 Act). The 1996 Act amended the Communications Act of 1934 (the "Communications Act" or the "Act").

<sup>5</sup> 5 U.S.C. 603(b)(3).

<sup>6</sup> 5 U.S.C. 601(6).

<sup>7</sup> 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, 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 terms which are appropriate to the activities for the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3).

<sup>8</sup> 15 U.S.C. 632.

<sup>9</sup> 5 U.S.C. 601(4).

<sup>10</sup> 1992 Economic Census, U.S. Bureau of Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

<sup>11</sup> 5 U.S.C. 601(5).

<sup>12</sup> U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

<sup>13</sup> Id.

<sup>14</sup> 13 CFR 121.201, Standard Industrial Code (SIC) code 4812.

<sup>15</sup> 1992 Census, Series UC92-S-1 at Table 5, SIC code 4812.

placed together in the data.<sup>16</sup> 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 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. We estimate that there are no more than 808 small cellular service carriers that may be affected by any proposed rules that may be adopted.

15. *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.<sup>17</sup> According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees.<sup>18</sup> Therefore, if this general ratio continues, in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

16. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order* in PR Docket No. 89–552, GN Docket No. 93–252, PP Docket No. 93–253, 62 FR 16004, 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. 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.<sup>19</sup> Two auctions of Phase II licenses have been conducted. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Economic Area Group (EAG) 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 percent of the regional licenses, and 54 percent of the EA licenses. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

17. *700 MHz Guard Band Licenses.* In the *700 MHz Guard Band Order* in CC Docket No. 99–168, 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. 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 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned at that time, 96 licenses were sold to 9 bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction began on February 13, 2001, and ended on February 21, 2001. A total of eight licenses were sold to three bidders. One of these bidders was a small business that won a total of two of these licenses.

18. *Paging.* In the *Paging Second Report and Order and Further Notice of Proposed Rulemaking* in WT Docket No. 96–18; PP Docket No. 93–253 at 62 FR 11616, March 12, 1997 and at 64 FR 33762, June 24, 1999, 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 for the three preceding years of not more than \$15 million. A very small business is defined as an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than \$3 million. The SBA has approved these definitions.<sup>20</sup> An auction of MEA licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won licenses. In addition, at present, there are approximately 24,000 Private Paging 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.<sup>21</sup> We are unable at this time to estimate with precision the number of paging carriers that would qualify as small business concerns, particularly among the pre-existing licensees.

Consequently, we estimate that there are fewer than, but up to, 172 small paging carriers that may be affected by the proposed rules, if adopted. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

19. *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 in a *Report and Order* in WT Docket No. 96–59; GN Docket No. 90–314, 61 FR 33859, July 1, 1996. For Block F, an additional classification for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. These regulations defining “small entity” in

<sup>16</sup> See *Telecommunications Industry Revenues: 1999*, Industry Analysis Division, Common Carrier Bureau (Sept. 2000).

<sup>17</sup> 13 CFR 121.201, WIC code 4812.

<sup>18</sup> U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC code 4812 (issued May 1995).

<sup>19</sup> See Letter to Daniel B. Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration (Jan. 6, 1998).

<sup>20</sup> See Letter to Amy J. Zoslov, Chief (Acting), Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, at 3–4 (Dec. 2, 1998).

<sup>21</sup> *Trends in Telephone Service*, Table 19.3 (Feb. 19, 1999).

the context of broadband PCS auctions have been approved by the SBA.<sup>22</sup> 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 percent of the 1,479 licenses for Blocks D, E, and F.<sup>23</sup> On March 23, 1999, the Commission reaucted 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. On January 26, 2001, the Commission completed the auction of 422 C and F block broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as small or very small businesses.

20. *Narrowband PCS.* To date, three auctions of narrowband PCS licenses have been conducted. Through these auctions, the Commission has awarded a total of 41 licenses, 11 of which were obtained by small businesses. For purposes of the first two auctions that have already been held, small businesses were defined as entities with average gross revenues for the prior three calendar years of \$40 million or less in the *Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* in PP Docket No. 93-253, 59 FR 44109, August 26, 1994. Four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the then existing rules. To ensure meaningful participation of small business entities in subsequent auctions, the Commission adopted a two-tiered definition of small businesses in the *Narrowband PCS Second Report and Order and Second Further Notice of Proposed Rulemaking* in GN Docket No. 90-314, ET Docket No. 92-100, PP Docket No. 93-253, at 65 FR 35843 and 65 FR 35875, June 6, 2000. A small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three

preceding years of not more than \$40 million. A very small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. These definitions have been approved by the SBA.<sup>24</sup> The third auction closed on October 16, 2001, and involved eight nationwide and 357 Metropolitan Trading Area (MTA) licenses. Five bidders won 317 licenses (309 MTA licenses and the eight nationwide licenses). Three of the five winning bidders were small businesses. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future auctions. The Commission assumes, for purposes of this IRFA, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

21. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.<sup>25</sup> A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).<sup>26</sup> We will use the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.<sup>27</sup> 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 definition.

22. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.<sup>28</sup> Accordingly, we will use the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.<sup>29</sup> 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.

23. *Specialized Mobile Radio (SMR).* 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.<sup>30</sup> The SBA has approved this small business size standard for the 800 MHz and 900 MHz auctions.<sup>31</sup> 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 winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz band qualified as small businesses under the \$15 million size standard. An auction of 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Of the 1,050 licenses offered in that auction, 1,030 licenses were sold. Eleven winning bidders for licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 EA licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed small business status. In addition, there are numerous incumbent site-by-site SMR licensees in the 800 and 900 MHz bands.

24. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. We assume, for purposes of this IRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

<sup>30</sup> 47 CFR 90.814(b)(1).

<sup>31</sup> See Letter to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration (Aug. 10, 1999) (800 MHz SMR); Letter to Michele C. Farquhar, Acting Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Philip Lader, Administrator, Small Business Administration (July 24, 1996) (900 MHz SMR).

<sup>22</sup> See Letter to Amy J. Zoslov, Chief (Acting), Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, at 3 (Dec 2, 1998).

<sup>23</sup> FCC News, *Broadband PCS, D., E and F Block Auction Closes*, No. 71744 (rel. Jan 14, 1997).

<sup>24</sup> See Letter to Amy J. Zoslov, Chief (Acting), Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration (Dec. 2, 1998).

<sup>25</sup> The service is defined in § 22.99 of the Commission's rules, 47 CFR 22.99.

<sup>26</sup> BETRS is defined in §§ 22.757 and 22.759 of the Commission's rules, 47 CFR 22.757 and 22.759.

<sup>27</sup> 13 CFR 121.201, SIC code 4812.

<sup>28</sup> The service is defined in § 22.99 of the Commission's rules, 47 CFR 22.99.

<sup>29</sup> 13 CFR 121.201, SIC code 4812.

25. *Private Land Mobile Radio (PLMR).* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. 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.

26. The Commission is unable at this time to estimate the number of small businesses that could be impacted by the rules. However, the Commission's 1994 Annual Report on PLMR<sup>32</sup> 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 proposed rules in this context could potentially impact every small business in the United States.

27. *Amateur Radio Service.* All Amateur Radio Service licenses are presumed to be individuals. Accordingly, no small business definition applies for this service.

28. *Aviation and Marine Radio Service.* Small businesses in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter. The Commission has not developed a definition of small entities specifically applicable to these small businesses. Therefore, the applicable definition of small entity is the definition under the SBA rules for radiotelephone communications.<sup>33</sup>

29. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. Therefore, for purposes of our evaluations and conclusions in this IRFA, we estimate that there may be at least 712,000 potential licensees that are individuals or small entities, as that term is defined by the SBA.

30. *Fixed Microwave Services.* Microwave services include common

carrier,<sup>34</sup> private-operational fixed,<sup>35</sup> and broadcast auxiliary radio services.<sup>36</sup> 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.<sup>37</sup> We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

31. *Public Safety Radio Services.* Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.<sup>38</sup> There are a total of approximately 127,540 licensees within these services. Governmental entities<sup>39</sup> as well as private businesses comprise the

licensees for these services. As indicated supra in paragraph four of this IRFA, all governmental entities with populations of less than 50,000 fall within the definition of a small entity.<sup>40</sup>

32. *Personal Radio Services.* Personal radio services provide short-range, low-power radio for personal communications, radio signaling, and business communications not provided for in other services. The services include the citizen's band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS).<sup>41</sup> Inasmuch as the CB, GMRS, and FRS licensees are individuals, no small business definition applies for these services. We are unable at this time to estimate the number of other licensees that would qualify as small under the SBA's definition.

33. *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.<sup>42</sup> 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.

34. *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 in a *Report and Order* in GN Docket No. 96-228, 62 FR 9636, March 3, 1997. 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 includes these eight entities.

<sup>40</sup> 5 U.S.C. 601(5).

<sup>41</sup> Licensees in the Citizens Band (CB) Radio Service, General Mobile Radio Service (GMRS), Radio Control (R/C) Radio Service and Family Radio Service (FRS) are governed by subpart D, subpart A, subpart C, and subpart B, respectively, of part 95 of the Commission's rules. 47 CFR 95.401-95.428; 95.1-95.181; 95.201-95.225; 95.191-95.194.

<sup>42</sup> This service is governed by subpart I of part 22 of the Commission's rules. See 47 CFR 22.1001-22.1037.

<sup>32</sup> Federal Communications Commission, *60th Annual Report, Fiscal Year 1994*, at 116.

<sup>33</sup> 13 CFR 121.201, SIC code 4812.

<sup>34</sup> 47 CFR part 101.

<sup>35</sup> Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. See 47 CFR Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

<sup>36</sup> Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's rules. See 47 CFR 74.501 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

<sup>37</sup> 13 CFR 121.201, SIC 4812.

<sup>38</sup> With the exception of the special emergency service, these services are governed by subpart B of part 90 of the Commission's rules, 47 CFR 90.15-90.27. The police service includes 26,608 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes 22,677 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service is currently comprised of 40,512 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are 7,325 licensees within the forestry service, which is comprised of licensees from state departments of conservation and private forest organizations that set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The 1,460 licensees in the Emergency Medical Radio Service (EMRS)

<sup>39</sup> 47 CFR 1.1162.

35. *Local Multipoint Distribution Service.* The Commission held two auctions for licenses in the Local Multipoint Distribution Services (LMDS) (Auction No. 17 and Auction No. 23). For both of these auctions, the Commission defined a small business as an entity, together with its affiliates and controlling principals, having average gross revenues for the three preceding years of not more than \$40 million in a *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking* in CC Docket No. 92–297, 62 FR 23148, April 29, 1997. A very small business was defined as an entity, together with affiliates and controlling principals, having average gross revenues for the three preceding years of not more than \$15 million in a *Second Order on Reconsideration* in CC Docket No. 92–297, 62 FR 48787, September 17, 1997. Of the 144 winning bidders in Auction Nos. 17 and 23, 125 bidders (87 percent) were small or very small businesses.

36. *24 GHz—Incumbent 24 GHz Licensees.* The rules that we may later adopt could affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The Commission did not develop a definition of small entities applicable to existing licensees in the 24 GHz band. Therefore, the applicable definition of small entity is the definition under the SBA rules for the radiotelephone industry, providing that a small entity is a radiotelephone company employing fewer than 1,500 persons.<sup>43</sup> The 1992 Census of Transportation, Communications and Utilities, conducted by the Bureau of the Census, which is the most recent information available, shows that only 12 radiotelephone firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees.<sup>44</sup> This information notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent<sup>45</sup> and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

37. *Future 24 GHz Licensees.* With respect to new applicants in the 24 GHz band, we have defined “small business”

as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of \$15 million. “Very small business” in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years in a *Report and Order* in WT Docket No. 99–327, 66 FR 11113, February 22, 2001.<sup>46</sup> The SBA has approved these definitions.<sup>47</sup> The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held. Even after that, the Commission will not know how many licensees will partition their license areas or disaggregate their spectrum blocks, if partitioning and disaggregation are allowed.

38. *39 GHz.* The Commission held an auction (Auction No. 30) for fixed point-to-point microwave licenses in the 38.6 to 40.0 GHz band (39 GHz Band).<sup>48</sup> For this auction, the Commission defined a small business as an entity, together with affiliates and controlling interests, having average gross revenues for the three preceding years of not more than \$40 million in a *Report and Order* in ET Docket No. 95–183; PP Docket No. 93–253, 63 FR 6079, February 6, 1998 and also in the *Second Notice of Proposed Rulemaking* at 63 FR 3075, January 21, 1998. A very small business was defined as an entity, together with affiliates and controlling principals, having average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these definitions.<sup>49</sup> Of the 29 winning bidders in Auction No. 30, 18 bidders (62 percent) were small business participants.

39. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 595 Metropolitan Statistical Area (MSA) licenses. Of the 595 licenses, 557 were won by entities qualifying as a small business. For that auction, we

defined a small business as an entity that, together with its affiliates, has no more than a \$6 million net worth, and after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years in the *Fourth Report and Order* in PP Docket No. 93–253, 59 FR 25825, May 18, 1994. In the *218–219 MHz Report and Order and Memorandum Opinion and Order* at 64 FR 59656, November 3, 1999, we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years WT Docket No. 98–169. A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years. These definitions have been approved by the SBA.<sup>50</sup> We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum. Given the success of small businesses in the previous auction, and the prevalence of small business in the subscription television services and message communications industries, we assume for purposes of this IRFA that in future auctions, all of the licenses may be awarded to small businesses.

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

40. The *Quiet Zones NPRM* proposes no additional reporting, recordkeeping or other compliance measures.

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

41. 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 (among others): (1) the establishment of different 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 rules for small entities; (3) the

<sup>46</sup> In the Matter of Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules To License Fixed Services at 24 GHz, *Report and Order*, 15 FCC Rcd at 16967; see also 47 CFR 101.538(a)(1).

<sup>47</sup> See Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Gary M. Jackson, Assistant Administrator, Small Business Administration (July 28, 2000).

<sup>48</sup> See 39 GHz Band Auction Closes; Winning Bidders of 2,173 Licenses Announced, *Public Notice*, DA 00–1035 (May 10, 2000).

<sup>49</sup> See Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration (Feb. 4, 1998).

<sup>50</sup> See Letter to Daniel B. Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration (Jan. 6, 1998).

<sup>43</sup> See 13 CFR 121.201, SIC code 4812.

<sup>44</sup> 1992 Census at Firm Size 1–123.

<sup>45</sup> Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

42. The purpose of this rulemaking is to seek comment on possible procedures for streamlining the regulatory obligations associated with wireless applications and facilities that may implicate the Commission's defined Quiet Zones, while still adequately and fully protecting the various operations located in the Quiet Zones. One alternative considered, as suggested by a commenter,<sup>51</sup> is to remove rules and provisions that restrict or limit activities of all entities, including small businesses, in the Quiet Zones. While evaluating this alternative, the Commission has carefully considered the overlying public policy and safety needs that necessitated maintaining the Quiet Zones provisions. Therefore, while the Commission does not intend to alter the basic protection given to Quiet Zones, it is willing to examine and give careful consideration to any proposals that would reduce or alleviate the burdens on small entities, as well as other affected parties.

43. More specifically, the Commission is considering as an alternative resuming processing of an application with Quiet Zone implications if written consent from the affected Quiet Zone entity is provided.<sup>52</sup> This alternative could greatly reduce the processing time for an application submitted by all entities, including small entities. Parties, including small entities, are encouraged to provide additional alternatives for consideration.

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

None.

### III. Ordering Clause

44. Pursuant to the authority of sections 1, 4(i), 11, 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 161, 303(g), and 303(r), that this Notice of Proposed Rulemaking is ADOPTED.

45. 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.

46. 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 in accordance with Sections 603(a) and 604(b) of the Regulatory Flexibility Act, Public Law 96-354, 94 Stat. 1164, 5 U.S.C.A. 603(a) and 604(b).

#### List of Subjects 47 CFR Part 1

Telecommunications.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. 01-31411 Filed 12-20-01; 8:45 am]

BILLING CODE 6712-01-P

### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[DA 01-2812, MM Docket No. 01-302, RM-10333]

#### Digital Television Broadcast Service; Fort Wayne, IN

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Indiana Broadcasting, LLC, licensee of station WANE-TV, NTSC channel 15, Fort Wayne, Indiana, proposing the substitution of DTV channel 31 for station WANE-TV's assigned DTV channel 4. DTV Channel 31 can be allotted to Fort Wayne, Indiana, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (41-05-38 N. and 85-10-48 W.). However, since the community of Fort Wayne is 400 kilometers within the U.S.-Canadian border, concurrence from the Canadian government must be obtained for this allotment. As requested, we propose to allot DTV Channel 31 to Fort Wayne with a power of 82 and a height above average terrain (HAAT) of 253 meters.

**DATES:** Comments must be filed on or before January 28, 2002, and reply comments on or before February 12, 2002.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: William H. Fitz, Covington & Burling, 1201 Pennsylvania

Avenue, NW., Washington, DC 20004 (Counsel for Indiana Broadcasting, LLC).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01-302, adopted December 4, 2001, and released December 6, 2001. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

### PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, and 336.

#### § 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Indiana is amended by removing DTV Channel 4 and adding DTV Channel 31 at Fort Wayne.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 01-31458 Filed 12-20-01; 8:45 am]

BILLING CODE 6712-01-P

<sup>51</sup> See Notice of Proposed Rulemaking, paragraphs 4-11.

<sup>52</sup> See *id.*, paragraph 9.