

information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

## II. What Action Is EPA Taking Today?

EPA is proposing to approve revisions to the Indiana SIP in three areas: (1) To amend the definition of “particulate matter,” and “ambient air quality standards,” add new rules consistent with these amended definitions, and amend rules pertaining to SO<sub>2</sub> and NO<sub>2</sub> ambient standards; (2) to update the references to the Code of Federal Regulations (CFR) from the 2000 edition to the 2002 edition; and (3) to add credible evidence provisions into state rules consistent with federal requirements.

## III. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information, see the Direct Final Rule which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA’s analysis are available electronically at RME or in hard copy at the above address. (Please telephone Julie

Henning at (312) 886–4882 before visiting the Region 5 Office.)

Dated: September 23, 2005.

**Norman Niedergang,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 05–20820 Filed 10–18–05; 8:45 am]

**BILLING CODE 6560–50–P**

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## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

#### 46 CFR Part 389

[Docket No. MARAD–2005–22050]

RIN 2133–AB67

#### Determination of Availability of Coastwise-Qualified Launch Barges

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice of reopening and extension of comment period.

**SUMMARY:** The Maritime Administration is hereby giving notice that the closing date for filing comments on the Determination of Availability of Coastwise-Qualified Launch Barges Notice of Proposed Rulemaking (NPRM) (Docket No. MARAD 2005–22050) has been extended to the close of business (5 p.m. EST) on December 13, 2005.

**DATES:** The comment date of the NPRM published in the **Federal Register** on August 15, 2005 (70 FR 47771) is extended from October 14, 2005, to December 13, 2005.

(Authority: 49 CFR 1.66)

Dated: October 12, 2005.

By order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 05–20700 Filed 10–18–05; 8:45 am]

**BILLING CODE 4910–81–P**

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## FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Parts 22, 24, and 27

[WT Docket Nos. 03–264; FCC 05–144]

#### Amendment of Various Rules Affecting Wireless Radio Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) requests comment on whether to implement a spectral density model to its radiated power rules for

wireless radio services (WRS); further increase its radiated power limits; specify radiated power as an average rather than peak; and apply the radiated power rule changes to other services. In a related document, the Commission has streamlined and harmonized licensing provisions in the WRS that were identified in part during the Commission’s 2000 and 2002 biennial regulatory reviews.

**DATES:** Submit comments on or before December 19, 2005, and submit reply comments on or before January 17, 2006. For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:**

Wilbert E. Nixon, Jr. and/or B.C. “Jay” Jackson, Jr. of the Mobility Division, Wireless Telecommunications Bureau, at 202–418–0620 or via e-mail at [Wilbert.Nixon@fcc.gov](mailto:Wilbert.Nixon@fcc.gov) and/or [Jay.Jackson@fcc.gov](mailto:Jay.Jackson@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Further Notice of Proposed Rulemaking (FNPRM)* portion of the Commission’s *Report and Order and Further Notice of Proposed Rulemaking*, FCC 05–144, in WT Docket Nos. 03–264, adopted July 22, 2005, and released August 9, 2005. The Commission is also concurrently publishing a summary of the *Report and Order* in the **Federal Register**. The full text of the document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, 445 12th St., SW., Room CY–A257, Washington, DC 20554. The complete text may be purchased from the Commission’s duplicating contractor: Best Copy & Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 800–378–3160, facsimile 202–488–5563, or via e-mail at [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com). 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](mailto:Brian.Millin@fcc.gov).

#### Synopsis of the Further Notice of Proposed Rulemaking

##### I. Introduction and Background

1. In the Report and Order portion of the *Report and Order and Further Notice of Proposed Rulemaking*, we revise the broadband PCS transmitting power rule by eliminating the transmitter output power limit portion of that rule. We note, however, that various proposals before us concerning

the radiated power portion of the rule (EIRP limits), particularly those introduced into the record by CTIA's recent *ex parte* filing, give rise to practical and technical issues that we believe should be further evaluated and addressed before we act on these proposals. Although it appears that some of these radiated power proposals have considerable merit, especially as applied across various bands or services in a harmonized fashion, we find that a more complete record would assist us in properly analyzing the technical details and specifics needed to craft a clear and workable radiated power rule that is not unduly burdensome. We also see no need to delay implementation of the other streamlining actions taken in the Report and Order while we consider this issue. Therefore, we are splitting off the radiated power issues from the *Report and Order* and consider them in the *FNPRM*. This will allow us to seek a more comprehensive record, and will provide an opportunity to comment for any parties that might wish to address any of the proposals in the CTIA filing and the issues discussed below.

2. Accordingly, in the *FNPRM*, we ask a number of questions on the details of the CTIA proposals, explained further below, for changes to the broadband PCS radiated power limits. In addition, we consider whether these proposals should be applicable to those part 22 and part 27 services that operate under a flexible regulatory framework similar to part 24 broadband PCS. We also seek comment on possible changes to other technical rules that may be appropriate if we adopt changes to the radiated power rules.

## II. Discussion

### A. The CTIA Proposal

3. CTIA's *ex parte* filing proposes that the Commission revise its PCS radiated power rules to limit average EIRP for broadband PCS stations having an antenna height of up to 300 meters above average terrain to the larger of: (1) 1640 Watts per carrier (3280 Watts in rural areas) which is the current rule, and (2) 3280 Watts per MHz of emission bandwidth (6560 Watts per MHz of emission bandwidth in rural areas). For stations using an antenna height greater than 300 meters above average terrain, CTIA proposes that the "per MHz" limit be set to 1640 rather than 3280 Watts. We note that the CTIA plan for revision of the radiated power rule comprises three related but independent proposals that we believe can and should be addressed and evaluated individually. First, CTIA proposes to add a power spectral density feature to the current

rule. This would allow more radiated power, the specific amount being proportional to emission bandwidth, for stations transmitting emissions with a bandwidth wider than 500 kHz, relative to stations transmitting emissions with a bandwidth less than 500 kHz. Under CTIA's proposal, the narrow emission bandwidth stations would remain subject to the current set radiated power limits, preventing the unintended result of narrowband systems actually having to decrease power. Second, CTIA generally proposes increasing the maximum radiated power for emissions with a bandwidth wider than 500 kHz, notwithstanding the implementation of a spectral density model. Third, CTIA proposes that the radiated power rule be specified in terms of average power rather than peak power. CTIA states that the issue of peak vs. average power is "logically separate" from the power spectral density issue, but believes that it is appropriate to address it because it arises in the "very same sentence in the rules." Finally, CTIA proposes that the Commission ensure regulatory parity for technically like services by mirroring the requested broadband PCS changes in our part 27 Advanced Wireless Service (AWS) rules.

4. We welcome comment on all aspects of the CTIA proposal. We recognize the effort CTIA has made to reconcile the differing positions filed earlier in the record and to craft a consensus among the parties. CTIA states that its proposal will facilitate deployment of wideband technologies and eliminate disadvantages for certain narrowband technologies, resulting in lower costs for consumers. Because many of the commenting parties support the proposal, we believe that it makes a good starting point for consideration of these issues. Nevertheless, as discussed in detail below, we have some concerns with CTIA's proposal, especially in circumstances where subsequent entrants operating within our rules and their licensed parameters seek to introduce technologies and services that are incompatible with existing systems. For instance, we question whether the proposal would serve the purpose of balancing the interference potential of various known and future technologies, as well as the relative coverage or performance of wideband versus narrowband systems. We also believe that the CTIA proposal, as outlined, may be unnecessarily complex in some respects, leading to practical difficulties in compliance. We question whether the proposed radiated power limits are comparable to power levels actually

used by licensees in their current systems.

5. We seek forward-looking comment to inform us on possible unintended consequences that might flow from the technical aspects of the CTIA proposal, such as the "peak vs. average power" issue. Our radiated power rules are intended to limit the interference potential of wireless systems while still providing technical flexibility to licensees. As a result, substantial changes to our radiated power rules may require consideration of how these changes may affect other related technical interference-limiting rules. Based on these considerations, we raise a number of questions in the following paragraphs about the three aspects of the CTIA proposal. We also suggest some simpler alternatives that might accomplish the same objectives as the CTIA proposal, and we seek comment on those as well.

6. We also seek comment on whether we should extend the relief CTIA's requests to other services. As noted, CTIA specifically requests that the proposed changes be mirrored in the part 27 rules governing AWS systems. If we adopt any or all of the proposed changes, should we implement them in other services, for example, part 27 (700 MHz and/or Wireless Communications Services (WCS)), or part 22 (Cellular)? We recognize that there may be concerns with applying the proposed changes to other services that may be less flexible than broadband PCS, or where there may be possible interference concerns to adjacent spectrum users (*i.e.*, Public Safety) or existing incumbent systems (*i.e.*, Broadcasters), and therefore we seek comment on whether CTIA's proposed changes should be extended beyond part 24 broadband PCS. In this regard, we note that Crown Castle International Corp. (Crown Castle) recently filed an *ex parte* in this proceeding. Crown Castle is the sole licensee of a nationwide authorization in the 1670–1675 MHz band with plans to deploy, through its subsidiary Crown Castle Mobile Media, a wide-band terrestrial wireless network to "transmit multiple channels of high-quality, digital video and audio programming to mobile phones and other hand-held devices." Crown Castle supports the CTIA proposal in principle, but also seeks application of the proposal, if implemented, on a proportional basis. We seek comment on application of CTIA's proposal in general to the 1670–1675 MHz band. Moreover, Crown Castle points out that CTIA seeks application of its proposal to part 24 PCS and part 27 AWS, *i.e.*, bands that were previously afforded

relief in the *Rural Report and Order*. In supporting CTIA's proposal, Crown Castle requests that the Commission increase power levels in rural areas for certain bands not afforded relief in the *Rural Report and Order*, published at 70 FR 21652, April 27, 2005, specifically the 1670–1675 MHz band, as the “reasoning provided by the Commission for increasing the base station power limits applicable to rural PCS and AWS operations also applies to 1670–75 MHz operations” (*i.e.*, allowing expanded rural coverage while using fewer base stations). We seek comment on this issue as well.

#### *B. Power Limits for Wide Bandwidth Emissions*

7. *Power spectral density limits.* In the Notice of Proposed Rule Making, the Commission requested that commenters consider a power spectral density (*i.e.*, power per unit of bandwidth) limit in the context of achieving a more “technology neutral” transmitter power output rule. The Commission was concerned that a “per carrier” (or “per emission”) wording, instead of the existing “per transmitter” language, would shift the burden of compliance with the transmitter output power rule from equipment manufacturers to individual licensees, who might find it impracticable to individually monitor each “carrier” (or emission). Because we decided to eliminate the transmitter output power rule, the compliance burden associated with it will no longer exist. Nevertheless, our question opened the door to consideration of power spectral density limits generally.

8. The Commission seeks to promulgate rules that are “technology neutral” because we believe that ideally it is in the public interest for competing telecommunications technologies to succeed or fail in the marketplace on the basis of their merits and other market factors, and not primarily because of government regulation. It should also be understood that “technology neutral” means that our rule should neither penalize *nor give advantage* to any particular technology unnecessarily. Sometimes, however, an FCC rule adopted under earlier unknown or different technological circumstances will inadvertently affect new and evolving technologies unequally and, in fact, this may be unavoidable in some cases, if the purpose of the rule (*e.g.*, avoiding harmful interference) is to be accomplished.

9. According to Motorola, adoption of a rule providing a power spectral density limit for broadband PCS can be considered in terms of leveling the competitive playing field between

narrow emission and wide emission technologies. Qualcomm and Motorola both argue that the current radiated power rule, by failing to taking emission bandwidth into consideration, authorizes narrow emission systems to transmit more aggregate radiated power than wide emission systems, within a given spectrum block. CTIA claims that the current EIRP limit is interpreted to place a limit on the power of a single carrier but to permit multiple carriers to be transmitted from a single base station. CTIA further claims that systems operating in smaller bandwidths are permitted to operate at higher power spectral density than those operating in larger bandwidths. CTIA argues that technologies, such as CDMA, W-CDMA, or OFDM, that combine many voice signals onto a single combined signal and that use advanced techniques to counter multipath fading therefore are disadvantaged by the per-carrier power constraint in the current rules. CTIA contends that removing an artificial handicap on the use of some technologies—such as W-CDMA—would facilitate the adoption and deployment of these technologies by wireless service providers. Moreover, CTIA contends that researchers and inventors would no longer be constrained to give up power in order to use wider bandwidths.

10. Existing narrow emission PCS technologies (*i.e.*, TDMA, GSM) carry 3 to 8 voice conversations per emission, while existing wide emission technologies (*i.e.*, CDMA) carry as many as 20 to 40 voice conversations per emission. Because the current rule makes no distinction between wide and narrow emissions, it applies the same maximum radiated power limit to both. Consequently, a wide emission system is allowed to provide only about one fifth of the radiated power for each voice conversation that a narrow emission system is allowed to provide, assuming that each system is fully loaded and operating at the maximum power permitted by rule. Thus the average voice conversation on the wide emission system would have a lower signal to noise ratio, which, despite the partially compensating processing gain provided by signal spreading, would reduce the coverage range. Motorola expressed a view that the Commission's current policy is biased against wider bandwidth technologies as it allows technologies that utilize a narrower bandwidth to radiate a higher power per unit bandwidth, thus placing wider bandwidth systems at a competitive disadvantage because wider bandwidth technologies will need to deploy

additional infrastructure to maintain the same coverage area as narrower bandwidth technologies.

11. Several of the comments reflect a concern that, if the Commission were to adopt a rule allowing more radiated power for wide emissions than for narrow emissions, the power allowed by such a rule for narrow emissions (such as GSM and TDMA) would be lower than is permitted by the current rule. These commenters argue that there should be no reduction in the radiated power limit currently applicable to existing PCS systems. We note that we did not propose in the NPRM to reduce the transmitting power limits for broadband PCS systems, nor do we do so here. Thus, even if we were to adopt the CTIA proposal, we assume that the current radiated power limits (1640 Watts EIRP non-rural, 3280 Watts EIRP rural) would be unchanged for all narrow emission types. The parties' comments have raised a good question however, and we seek comment on whether a power spectral density radiated power limit should be applied for narrow emissions as well as wide emissions. For example, should the radiated power limit for 30 kHz bandwidth emissions be lower than that for 200 kHz bandwidth emissions? Likewise, should the radiated power limit for 12.5 kHz bandwidth emissions be lower than that for 30 kHz bandwidth emissions?

12. One of our concerns is that a larger aggregate power presents a greater interference potential to other systems. In other words, the current rule may well allow systems employing narrow emission technologies to pose a greater interference potential than those employing wide emission technologies. We note that CTIA does not propose any upper limit or cap on radiated power under this approach, and consequently the power levels permitted under its proposal could easily reach some very large numbers (*i.e.*, 32,800 Watts in a rural area) for wider emission types such as Wideband Code Division Multiple Access (W-CDMA) using 5 MHz bandwidths. Moreover, existing licensees and new entrants may not have adequate information about the types of technology being deployed in adjacent bands or areas, including system architecture, nor the locations of base stations that could cause interference. This additional interference risk with limited information could lead to difficult negotiating positions among adjacent systems using different technologies, which could hinder coordination procedures that have been at the heart of the success of interference avoidance

in the broadband PCS service, and which will be applied to other flexible use bands (e.g., part 27 AWS). In considering the issue of whether to adopt a radiated power limit rule that would allow more power for wider bandwidth emissions, we must consider the primary objective of the rule, which is to limit interference potential between licensees. How should the Commission balance the interference potential of various technologies and facilitate information sharing in order to facilitate inter-system coordination negotiations between licensees?

13. If we ultimately decide to adopt a rule that allows a higher radiated power limit for wide emissions than for narrow emissions, we must define which emissions types are wide and which are narrow, and the basis for that classification. We note that typical systems using emissions that have a bandwidth wider than 1 MHz re-use the same channels in every cell, whereas systems using emissions with a bandwidth less than 1 MHz use a cellular frequency re-use pattern where different channel sets are used in adjacent cells. Another way of describing this is that systems using emissions that have a bandwidth wider than 1 MHz use their entire spectrum contiguously in each cell, whereas systems using emissions with a bandwidth less than 1 MHz use at each cell a number of narrower channels separated by several channels not used in that cell. We note that Motorola proposes in its earlier filings to utilize a bandwidth of 1 MHz as the dividing

line. The CTIA proposal, however, results in the division between narrow and wide emission bandwidths occurring at 500 kHz rather than 1 MHz. We believe however, that if a technology is developed using a 500 kHz–1MHz bandwidth, the technology is more likely to use different channels at different cells like other narrowband systems, rather than use a spread spectrum approach as is typically used in wideband systems. Accordingly, if we were to adopt a spectral density model similar to what CTIA proposes, we seek comment on whether to use 500 kHz, 1 MHz, or some other emission bandwidth as the dividing point between narrow and wide emissions, noting that we seek to logically divide wireless technologies into two groups that use differing system architectures.

14. Adoption of a radiated power rule that allows more power for wide emissions than for narrow emissions also raises a number of questions in regard to implementation. A “Watts per MHz” power spectral density limit, such as the CTIA proposal includes for wider bandwidth emissions, would define power limits based on a sliding scale with a potentially infinite number of linear scaled limit values. Initially, we question whether this is the best way to structure a radiated power limit rule for PCS and other flexible services. An alternative would be to use a “step” approach, with specific power limits for particular bandwidth ranges, which could perhaps be set forth in a table to make clear what limit is applicable in any given instance. For an analogy, if it

were desired in the interest of highway safety to require heavier vehicles to travel slower than lighter vehicles, it may make more sense to simply have two posted speed limits, one for automobiles and another for heavier vehicles such as trucks, rather than to adopt a “mph per ton of vehicle” ratio that would likely result in a different individual speed limit being applicable to each model of car or truck in accordance with how much that particular model weighs. While the latter might be more accurate in terms of equalizing the momentum of vehicles, the gained accuracy is greatly outweighed by the resultant complexity and difficulty in determining compliance. CTIA apparently differs with this assessment, stating that a “stepped limit” would be less appropriate than a power spectral density applied to “every contiguous 1 MHz region in the relevant band,” but offers no reasons, however, for that particular position. We therefore seek comment on whether, if we decide to allow higher radiated power for wide emission types, this power should be expressed in terms of a specific limit or series of limits for various emission bandwidths. We note that this could be easily codified in table form, as illustrated below. The simplest proposal would involve having only four power radiated limits: rural and non-rural power limits for wide emissions (for example, emissions with bandwidth exceeding 1 MHz), and rural and non-rural power limits for narrow bandwidth emissions.

TABLE 1.—PCS MAXIMUM EIRP LIMITS

Emission bandwidth	Non-rural	Rural
<1 MHz (narrow)	1640 Watts (no change)	3280 Watts (no change).
≥1 MHz (wide)	3280 Watts (for example)	6560 Watts (for example).

15. Another possible variation is the use of a series of radiated power limits corresponding to six common existing emission bandwidths as illustrated in Table 2: 6.25 kHz, 12.5 kHz, 16/20/25/30 kHz, 200 kHz, 1.25 MHz, 4.3/5 MHz. The value of each radiated power limit would be chosen as appropriate to the technologies commonly deployed in that emission bandwidth, and thus the

power levels would not necessarily be linearly scaled by bandwidth or otherwise related to each other, as would be the case with a pure power spectral density limit. Would the benefit of having custom tailored power levels for each common bandwidth justify the added complexity of an increased number of limits? What would be appropriate power levels for these

emission bandwidths? We seek comment on these methods for providing higher radiated power limits for systems employing emissions with wider bandwidths and any other alternatives, including CTIA’s preferred sliding scale approach in terms of “Watts per MHz.”

TABLE 2.—PCS MAXIMUM EIRP LIMITS

Emission bandwidth	Example technologies	Non-rural	Rural
1 to 10 kHz (very narrow)	FSK (digital voice)	410 Watts (for example)	820 Watts (for example).
10 kHz to 15 kHz (narrow)	NBFM, FSK	820 Watts (for example)	1640 Watts (for example).
15 kHz to 150 kHz (medium)	FM, AMPS, iDEN	1640 Watts (no change)	3280 Watts (no change).
150 kHz to 1 MHz (medium wide)	GSM, EDGE	1640 Watts (no change)	3280 Watts (no change).

TABLE 2.—PCS MAXIMUM EIRP LIMITS—Continued

Emission bandwidth	Example technologies	Non-rural	Rural
1 MHz to 3 MHz (wide) .....	CDMA, 1X–EVDO, OFDM .....	3280 Watts (for example) .....	6560 Watts (for example).
> 3 MHz (very wide) .....	CDMA2000–3X, WCDMA .....	6560 Watts (for example) .....	13,120 Watts (for example).

*C. Radiated Power Limit Increases*

16. Some of the commenters propose not only to allow more radiated power for wide emission systems relative to narrow emission systems, but also to increase the overall radiated power limit substantially over that permitted by the current rule. For example, Ericsson originally proposed to increase the maximum radiated power limit for non-rural broadband PCS from 1640 to 6560 Watts EIRP, and QUALCOMM proposed that the limit be increased similarly for wide emissions. We reiterate that, using an open-ended power spectral density limit such as that in the CTIA proposal, permissible radiated power could reach very high power levels for very wide emission systems (e.g., 16,400 Watts for a 5 MHz emission bandwidth in non-rural areas and 32,800 Watts for a 5 MHz emission bandwidth in rural areas).

17. We seek comment on whether these maximum power levels now being proposed by the parties for our rules may be far above power levels that licensees actually use in their systems. Do existing licensees use as much radiated power in their systems as is permitted by the current PCS radiated power rule? In this light, we ask what marginal benefit would be realized by further overall increases in our radiated power limits for broadband PCS or other flexible wireless services? We believe that our radiated power rule should be as flexible as possible, but it should also reflect realistic limits that are comparable to necessary power levels. We seek comment on how such levels should also accommodate implementation of future technologies and current situations that may prove unusual or exceptional, without imposing undue regulatory burdens or unnecessary risks of harmful interference. One reason to avoid unrealistically high limits in our rules would be, as CTIA has suggested, if we also were to specify radiated power limits in terms of average power instead of peak power (see discussion below). To build an adequate record on whether there is any routine or extraordinary need for very high power operation, we request that commenters supporting higher overall limits provide examples of actual situations in which licensees could beneficially use radiated power

levels on the order of what is being proposed by the parties. Are there particular coverage or service quality problems that could be solved by such an increase? What effect would increased radiated power have on the potential for harmful interference to adjacent spectrum users?

18. If we were to increase radiated power levels as CTIA proposes, it may be necessary to enhance coordination efforts between licensees, which will assist these licensees in minimizing instances of interference. We note that current rules do not require broadband PCS licensees to notify the Commission of the location of existing transmitter sites. We therefore seek comment on possible methods to improve information sharing among licensees, including comment on the types of circumstances that would trigger information disclosure or sharing requirements. For example, we note that an industry association made up of representatives of many current licensees has established a detailed protocol for exchanging technical information. We seek comment on whether this existing sharing protocol will be sufficient if we were to raise radiated power levels as CTIA proposes. As an alternative, should we require such licensees to notify adjacent licensees about the technical specifications of such base station prior to commencing operation, or should we require licensees (or lessees, in the case of secondary markets) to register such stations in ULS?

19. Finally, we seek comment regarding whether radiated power limit increases will impact licensee’s administrative burden in making filings required for proper evaluation of transmission sites in regard to environmental compliance. We note that wireless systems, including broadband PCS systems, are subject to environmental evaluation with respect to human exposure of RF radiation for non-building mounted antennas when the antenna height above ground level is less than 10 meters and the total power of all channels is greater than 2000 watts ERP and for building mounted antennas when the total power from all channels is greater than 2000 watts ERP. Otherwise, these systems are categorically excluded from such environmental evaluation. We note that

we are not proposing any change to RF exposure standards, and that CTIA “sees no connection between its proposal and RF exposure limits.” However, we seek comment as to whether adoption of higher radiated power limits would increase the number of facilities requiring full environmental evaluation rather than being categorically excluded, and whether adoption of higher radiated power limits would outweigh any possible increased administrative burden. We also note that engineers considering the RF environment at a site location which includes a PCS cell may not in fact know the exact operating power of all the transmitters at that location, since that information is not collected by Commission and is not typically made available by licensees. Nonetheless, we find it reasonable that an engineer assume that the power is no greater than our rules permit. How would an increase in the radiated power limits affect the ability of consultants to analyze a site? Would high power use “lock out” other users from co-locating at a site, because to do so would exceed the RF exposure limits?

*D. Peak vs. Average Radiated Power Limits*

20. For most of the last 50 years, wireless telecommunications services such as land mobile and public mobile telephone services, including analog cellular, used frequency or phase modulation (FM or PM) to transmit analog voice and/or tone modulation. The emissions from these older technologies have a “constant envelope,” which is to say, there are no peaks or valleys in the envelope of the modulated waveform. As a result, the peak power of such emissions is equal to the average power. In our power limit rules for private and public land mobile services, we did not need to specify either “peak” or “average” because the two were equal.

21. In recent years, we have allowed greater technical flexibility in many of our wireless services so that licensees could utilize newer technologies without having to obtain prior FCC approval. As a result, licensees in these services have employed a variety of newer and more efficient digital technologies, many of which produce an emission where the modulation

envelope is not of constant amplitude. With these emissions, the peak power is larger than the average power, and the ratio between the two is referred to as the peak-to-average ratio (PAR). Because the PAR can vary from 0 dB to as much as 13 dB, depending on the technology used and the modulation conditions, stations having equal average radiated powers could have substantially different peak radiated powers. Because receivers often begin to exhibit interference effects when the power of an undesired signal exceeds a certain value, even if only for a short duration, the peak radiated power of the emission can be an important factor in evaluating the interference potential of a transmitting station. Consequently, the Commission has in recent years adopted rules in our flexible services that limit peak radiated power rather than average radiated power.

22. The CTIA filing states that the Commission's use of peak radiated power is subject to interpretation and could lead to confusion and proposes that the Commission's radiated power limits for PCS and AWS be specified in terms of average power, either instead of, or as an alternative to, peak power. CTIA points out that when several signals are present in an amplifier, that they can combine to produce high peaks even though individually they would not have high peaks. Given this concern, we seek comment as to whether we should depart from the Commission's practice of specifying peak radiated power and specify average radiated power as CTIA proposes. We note that the peak power of a radiated emission is always equal to or higher than the average power. Under the CTIA proposal, peak power could reach levels much higher than the increased limits CTIA recommends for the rule. If we specify average radiated power, should we also include a limit on the PAR, in order to guard against interference, and what should that limit be? We request that commenters consider the pros and cons of peak and average radiated power limits in terms of controlling the interference potential of stations, conforming to current industry measurement procedures using available measuring instruments, minimizing the burden of compliance with the rules, and having applicability to the wide range of technologies in use today and in the future.

### III. Procedural Matters

#### A. Comment Filing Procedures

23. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file

comments on the Further Notice of Proposed Rulemaking, WT Docket No. 03-264, on or before December 19, 2005, and submit reply comments on or before January 17, 2006. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, published at 63 FR 24121, May 1, 1998.

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

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

- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail

and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

*People with Disabilities:* Contact the FCC to request materials in accessible formats (braille, large print, electronic files, audio format, etc.) by e-mail at [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0531 (voice), 202-418-7365 (TTY).

24. Regardless of whether parties choose to file electronically or by paper, they should also send one copy of any documents filed, either by paper or by e-mail, to each of the following: (1) Best Copy & Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, facsimile (202) 488-5563, or e-mail at <http://www.fcc@bcpiweb.com>; and (2) Wilbert E. Nixon, Jr., Mobility Division, Wireless Telecommunications Bureau, 445 12th Street, SW., Washington, DC 20554, or e-mail at [Wilbert.Nixon@fcc.gov](mailto:Wilbert.Nixon@fcc.gov).

#### B. Ex Parte Rules Regarding the Permit-But-Disclose Comment Proceeding

25. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206.

#### C. Initial Regulatory Flexibility Analysis

26. As required by the Regulatory Flexibility Act of 1980, as amended (RFA) (See 5 U.S.C. 601-612), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *FNPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed on or before December 19, 2005. Reply comments must be filed on or before January 17, 2006. The Commission will send a copy of the *Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

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

27. In the Report and Order, we revise the Broadband PCS transmitting power

rule by eliminating the transmitter output power limit portion of that rule. We note, however, that various proposals before us concerning the radiated power portion of the rule (EIRP limits), particularly those introduced into the record by CTIA's recent *ex parte* filing, give rise to practical and technical concerns that we believe should be further evaluated and addressed before we act on these proposals. Although it appears that some of these radiated power proposals have considerable merit, especially as applied across various bands or services in a harmonized fashion, we find that a more complete record would assist us in properly analyzing the technical details and specifics needed to craft a clear and workable radiated power rule that is not unduly burdensome. Accordingly, in the *FNPRM*, we ask a number of questions on the details of the CTIA proposals for changes to the broadband PCS radiated power limits. In addition, we consider whether these proposals should be applicable to those part 22 and part 27 services that operate under a flexible regulatory framework similar to part 24 Broadband PCS. Finally, we also seek comment on possible changes to other technical rules that may be appropriate if we adopt changes to the radiated power rules, as explained further below.

## 2. Legal Basis

28. The potential actions on which comment is sought in the *FNPRM* would be authorized under sections 4(i), 7, 11, 303(c), 303(f), 303(g), 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), 303(g), 303(r), and 332.

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

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

small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." This IRFA describes and estimates the number of small entity licensees that may be affected if the proposals in the *FNPRM* are adopted.

30. *Small Businesses*. Nationwide, there are a total of 22.4 million small businesses, according to SBA data.

31. *Small Organizations*. Nationwide, there are approximately 1.6 million small organizations.

32. *Small Governmental Jurisdictions*. The term "small governmental jurisdiction" is defined as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." As of 1997, there were approximately 87,453 governmental jurisdictions in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

33. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

34. When identifying small entities that could be affected by our new rules, we provide information describing auctions results, including the number of small entities that are winning bidders. We note, however, that the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily reflect the total number of small entities currently in a particular service. The Commission does not generally require that applicants provide business size information, except in the context of an assignment or transfer of control

application where unjust enrichment issues are implicated. Consequently, to assist the Commission in analyzing the total number of potentially affected small entities, we request commenters to estimate the number of small entities that may be affected by any rule changes resulting from the *FNPRM*.

35. The potential rules on which comment is sought in the *FNPRM*, if adopted, would possibly affect small entity licensees of the services identified below.

## Wireless Radio Services

36. *Cellular Licensees*. The SBA has developed a small business size standard for wireless firms within the broad economic census category "Cellular and Other Wireless Telecommunications." Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this category and size standard, the great majority of firms can be considered small. According to the most recent Trends in Telephone Service data, 719 carriers reported that they were engaged in the provision of cellular service, personal communications service, or specialized mobile radio telephony services, which are placed together in the data. We have estimated that 294 of these are small, under the SBA small business size standard.

37. *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 small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. This category provides that a small business is a wireless company employing no more than 1,500 persons. According to the Census Bureau data for 1997, only twelve firms out of a total of 977 such firms that operated for the entire year in 1997, had 1,000 or more employees. If

this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business standard.

38. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licensees. The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order*, published at 62 FR 16004, April 3, 1997, we adopted a small business size standard for defining "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business standard indicates that a "small business" is 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 do not exceed \$3 million for the preceding three years. The SBA has approved these small size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses. A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.

39. *Lower 700 MHz Band Licenses.* We adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 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 \$15 million for the preceding three years. Additionally, the lower 700 MHz Service has a third category of small business status that may be claimed for Metropolitan/Rural Service

Area (MSA/RSA) licenses. The third category is entrepreneur, which 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 small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 CMA licenses. Seventeen winning bidders claimed small or very small business status and won sixty licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.

40. *Upper 700 MHz Band Licenses.* The Commission released a Report and Order, published at 15 FCC Rcd 476 (2000), authorizing service in the upper 700 MHz band. This auction, previously scheduled for January 13, 2003, has been postponed.

41. *Paging.* In the *Paging Second Report and Order*, published at 62 FR 11616, March 12, 1997, we adopted a size standard for "small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. The SBA has approved this definition. An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. An auction of Metropolitan Economic Area (MEA) and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold. 132 companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093

licenses. Currently, there are approximately 24,000 Private Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the *Trends in Telephone Service* report, published in May 2002, 608 private and common carriers reported that they were engaged in the provision of either paging or "other mobile" services. Of these, we estimate that 589 are small, under the SBA-approved small business size standard. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

42. *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 has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. For Block F, an additional small business size standard 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 small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards 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. On March 23, 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.

43. *Narrowband PCS.* The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, "small businesses" were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission awarded a total of forty-one licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report*



and Order, published at 65 FR 35843, 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. The SBA has approved these small business size standards. A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (MTA and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

44. *Specialized Mobile Radio (SMR)*. The Commission awards "small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years. The Commission awards "very small entity" bidding credits to firms that had revenues of no more than \$3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

45. The auction of the 1,050 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area 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 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service

were sold. Of the 22 winning bidders, 19 claimed "small business" status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

46. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR 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 analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is established by the SBA.

47. *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, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we could use the definition for "Cellular and Other Wireless Telecommunications." This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We also note that PLMR licensees generally are not in the business of providing cellular or other wireless telecommunications services but instead use the licensed facilities in support of other business activities. According to the Bureau of the Census, only twelve firms out of a total of 977 cellular and other wireless telecommunications firms that operated for the entire year in 1997 had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all carriers are small businesses under the SBA's definition.

48. *Public Safety Radio Services*. Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance,

and emergency medical services. There are a total of approximately 127,540 licensees in these services.

Governmental entities as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.

49. *Fixed Microwave Services*. Fixed microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. Currently, 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 use the SBA's definition applicable to "Cellular and Other Wireless Telecommunications" companies—that is, an entity with no more than 1,500 persons. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are 22,015 or fewer small common carrier fixed licensees and 61,670 or fewer small private operational-fixed licensees and small broadcast auxiliary radio licensees in the microwave services that may be affected by the rules and policies adopted herein. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

50. *Wireless Communications Services*. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these definitions. The FCC auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity. An auction for one license in the 1670–

1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

51. *39 GHz Service.* The Commission defines "small entity" for 39 GHz licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. "Very small business" 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. The SBA has approved these definitions. The auction of the 2,173 39 GHz licenses began on April 12, 2000, and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses.

52. *Local Multipoint Distribution Service.* An auction of the 986 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. An additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. These regulations defining "small entity" in the context of LMDS auctions have been approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small business winning bidders that won 119 licenses.

53. *218–219 MHz Service.* The first auction of 218–219 MHz (previously referred to as the Interactive and Video Data Service or IVDS) spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas (MSAs). Of the 594 licenses, 567 were won by 167 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 *218–219 MHz Report and Order and Memorandum Opinion and Order*, published 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 exceeding \$15 million for the preceding three years. 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 its affiliates, has average annual gross revenues not exceeding \$3 million for the preceding three years. The SBA has approved of these definitions. At this time, we cannot estimate 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 businesses in the subscription television services and message communications industries, we assume for purposes of this IRFA that in future auctions, many, and perhaps all, of the licenses may be awarded to small businesses.

54. *Location and Monitoring Service (LMS).* Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$15 million. A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$3 million. These definitions have been approved by the SBA. An auction for LMS licenses commenced on February 23, 1999, and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses. We cannot accurately predict the number of remaining licenses that could be awarded to small entities in future LMS auctions.

55. *Rural Radiotelephone Service.* We use the SBA definition applicable to cellular and other wireless telecommunication companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

56. *Air-Ground Radiotelephone Service.* We use the SBA definition applicable to cellular and other wireless telecommunication companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the

Commission estimates that almost all of them qualify as small entities under the SBA definition.

57. *Offshore Radiotelephone Service.* This service operates on several ultra high frequency (UHF) TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. We use the SBA definition applicable to cellular and other wireless telecommunication companies, *i.e.*, an entity employing no more than 1,500 persons. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition. The Commission assumes, for purposes of this IRFA, that all of the 55 licensees are small entities, as that term is defined by the SBA.

58. *Multiple Address Systems (MAS).* Entities using MAS spectrum, in general, fall into two categories: (1) Those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, the Commission defines "small entity" for MAS licenses as an entity that has average gross revenues of less than \$15 million in the three previous calendar years. "Very small business" is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$3 million for the preceding three calendar years. The SBA has approved of these definitions. The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of January 20, 1999, there were a total of 8,670 MAS station authorizations. Of these, 260 authorizations were associated with common carrier service. In addition, an auction for 5,104 MAS licenses in 176 EAs began November 14, 2001, and closed on November 27, 2001. Seven winning bidders claimed status as small or very small businesses and won 611 licenses.

59. With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate their own internal communications needs, we note that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public

safety entities. For the majority of private internal users, the definitions developed by the SBA would be more appropriate. The applicable definition of small entity in this instance appears to be the "Cellular and Other Wireless Telecommunications" definition under the SBA rules. This definition provides that a small entity is any entity employing no more than 1,500 persons. The Commission's licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

60. *Incumbent 24 GHz Licensees.* The rules that we 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 "Cellular and Other Wireless Telecommunications." This definition provides that a small entity is any entity employing no more than 1,500 persons. We believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent 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.

61. *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 exceeding \$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. The SBA has approved these definitions. The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

62. *700 MHz Guard Band Licenses.* In the *700 MHz Guard Band Order*, published at 65 FR 17594, April 4, 2000, we adopted size standards for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this

service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. SBA approval of these definitions is not required. 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, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

63. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and Instructional Television Fixed Service.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the Commission defined "small business" as an entity that, together with its affiliates, has average gross annual revenues that are not more than \$40 million for the preceding three calendar years. The SBA has approved of this standard. The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 claimed status as a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than \$40 million and are thus considered small entities.

64. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating \$12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under \$10 million,

and an additional 52 firms had receipts of \$10 million or more but less than \$25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies proposed in the *FNPRM*.

65. Finally, while SBA approval for a Commission-defined small business size standard applicable to ITFS is pending, educational institutions are included in this analysis as small entities. There are currently 2,032 ITFS licensees, and all but 100 of these licenses are held by educational institutions. Thus, we tentatively conclude that at least 1,932 ITFS licensees are small businesses.

66. *Cable Television Relay Service.* This service includes transmitters generally used to relay cable programming within cable television system distribution systems. The SBA has defined a small business size standard for Cable and Other Program Distribution, consisting of all such companies having annual receipts of no more than \$12.5 million. According to Census Bureau data for 1997, there were 1,311 firms in the industry category Cable and Other Program Distribution, total, that operated for the entire year. Of this total, 1,180 firms had annual receipts of \$10 million or less, and an additional 52 firms had receipts of \$10 million or more but less than \$25 million. Thus, under this standard, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies proposed in the *FNPRM*.

67. *Multichannel Video Distribution and Data Service.* MVDDS is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. No auction has yet been held in this service, although an action has been scheduled for January 14, 2004. Accordingly, there are no licensees in this service.

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

68. The policy proposals in the *FNPRM* could apply to a significant number of Commission licensees of wireless services. Specifically, the *FNPRM* seeks comment on possible changes to the broadband PCS radiated power limits including the introduction of power spectral density limits and specifying average radiated power in addition to peak radiated power in measuring emissions. We recognize that if we were to increase radiated power levels, it may be necessary to enhance coordination efforts between licensees, which will assist licensees in minimizing instances of interference.

Also, we seek comment on possible methods to improve information sharing among licensees and the level of burden increase such information sharing might entail. We also note that we have discussed possible changes to the likelihood of needing environmental evaluations as a result of our proposed actions in Section E of this IRFA, *infra*.

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

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

70. In addition to our discussion of compliance burdens, *supra*, we have noted in this *FNPRM* that radiated power limit increases may impact licensee’s administrative burden in making filings required for proper evaluation of transmission sites in regard to environmental compliance. We have sought comment on this issue. We note that wireless systems, including broadband PCS systems, are subject to environmental evaluation with respect to human exposure of RF radiation for non-building mounted antennas when the antenna height above ground level is less than 10 meters and the total power of all channels is greater than 2000 watts ERP and for building mounted antennas when the total power from all channels is greater than 2000 watts ERP. Otherwise, these systems are categorically excluded from such environmental evaluation. Although we are not proposing any change to RF exposure standards, we seek comment as to whether adoption of higher radiated power limits would increase the number of facilities requiring full environmental evaluation rather than being categorically excluded, and whether adoption of higher radiated power limits would outweigh any possible increased administrative burden.

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

71. None.

#### D. Initial Paperwork Reduction Act of 1995 Analysis

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

73. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before December 19, 2005, and reply comments on or before January 17, 2006. Comments and reply comments should be filed in both WT Docket Nos. 03–103 and 05–42. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

74. Regardless of whether parties choose to file electronically or by paper, they should also send one copy of any documents filed, either by paper or by e-mail, to each of the following: (1) Best Copy & Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, facsimile (202) 488–5563, or e-mail at [http://www.fcc@bcpiweb.com](mailto:http://www.fcc@bcpiweb.com); and (2) Wilbert E. Nixon, Jr., Mobility Division, Wireless Telecommunications Bureau, 445 12th Street, SW., Washington, DC 20554, or e-mail at [Wilbert.Nixon@fcc.gov](mailto:Wilbert.Nixon@fcc.gov).

#### IV. Ordering Clauses

75. *It is further ordered* that the commission’s Consumer Information Bureau, Reference Information Center, shall send a copy of this *FNPRM*, including the Final Regulatory Flexibility Certification and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects

##### 47 CFR Part 22

Communications common carriers, Radio.

##### 47 CFR Part 24

Personal communications services, Radio.

##### 47 CFR Part 27

Wireless communications services.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

[FR Doc. 05–20928 Filed 10–18–05; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 05–2517; MB Docket No. 05–273, RM–11273]

### Radio Broadcasting Services; Charleston, TN

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document sets forth a proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission’s rules, 47 CFR 73.202(b). The Audio Division requests comment on a petition filed by Claire Giannasi, proposing the allotment of Channel 250A at Charleston, Tennessee as that community’s first local service. The proposed coordinates for Channel 250A at Charleston, Tennessee, are 35–19–11 NL and 84–37–00 WL. The allotment will require a site restriction of 13.4 km (8.3 miles) east of Charleston.

**DATES:** Comments must be filed on or before November 18, 2005, and reply comments on or before December 5, 2005.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the petitioner as follows: Kris R. Kendrick, Esq., Post Office Box 82032, Athens, Georgia 30608–2032.

**FOR FURTHER INFORMATION CONTACT:** Deborah A. Dupont, Media Bureau (202) 418–7072.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission’s Notice of Proposed Rule Making, MB Docket No. 05–273, adopted September 23, 2005, and released September 27, 2005. The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission’s copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company’s Web site, <http://www.bcpiweb.com>. This document does not contain proposed information