

previous surety is responsible for any overpayments, CMPs, or assessments that occurred up to the date of the change of surety.

(xi) *Parties to the bond.* The surety bond must name the DMEPOS supplier as Principal, CMS as Oblige, and the surety (and its heirs, executors, administrators, successors and assignees, jointly and severally) as surety.

(xii) *Effect of DMEPOS supplier's failure to obtain, maintain, and timely file a surety bond.*

(A) CMS will revoke the DMEPOS supplier's billing privileges if an enrolled supplier fails to obtain, file timely, or maintain a surety bond as specified in this subpart and CMS instructions. Notwithstanding paragraph (d) of this section, the revocation will be effective with the date the bond lapsed and any payments for items furnished on or after that date must be repaid to CMS by the DMEPOS supplier.

(B) CMS will deny billing privileges to a supplier if the supplier seeking to become an enrolled DMEPOS supplier fails to obtain and file timely a surety bond as specified with this subpart and CMS instructions.

(xiii) *Evidence of DMEPOS supplier's compliance.* CMS may at any time require a DMEPOS supplier to show compliance with the requirements of this subpart.

(xiv) *Effect of subsequent DMEPOS supplier payment.* If a surety has paid an amount to CMS on the basis of liability incurred under a bond and CMS subsequently collects from the DMEPOS supplier, in whole or in part, on the unpaid claim, CMPs, or assessment that was the basis for the surety's liability, CMS will reimburse the surety the amount that it collected from the DMEPOS supplier, up to the amount paid by the surety to CMS, provided the surety has no other liability to CMS under the bond.

(xv) *Effect of review reversing determination.* If a DMEPOS supplier has paid CMS on the basis of liability incurred under a bond and to the extent the DMEPOS supplier that obtained the bond (or the surety under paragraph (m) of this section) is subsequently successful in appealing the determination that was the basis of the unpaid claim or CMPs, or assessment that caused the DMEPOS supplier to pay CMS under the bond, CMS would refund the DMEPOS supplier the amount the DMEPOS supplier paid to CMS to the extent that the amount relates to the matter that was successfully appealed, provided all review, including judicial review, has been completed on the matter.

(Catalog of Federal Domestic Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 10, 2007.

Leslie V. Norwalk,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: June 22, 2007.

Michael O. Leavitt,

Secretary.

[FR Doc. 07-3746 Filed 7-27-07; 4:00 pm]

BILLING CODE 4120-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 15

[ET Docket No. 03-201; FCC 07-117]

Unlicensed Devices and Equipment Approval

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on recommendations for a spectrum etiquette in a Further Notice of Proposed Rule Making (Further NPRM) in this proceeding. Specifically, the Further NPRM seeks comment on a specific spectrum etiquette for unlicensed transmitters that operate in the 915 MHz band. The goal is to ensure that the different types of unlicensed devices that operate in a band have an opportunity for spectrum access.

DATES: Comments must be filed on or before October 15, 2007, and reply comments must be filed on or before November 14, 2007.

FOR FURTHER INFORMATION CONTACT:

Hugh Van Tuyl, Office of Engineering and Technology, (202) 418-7506, e-mail: Hugh.VanTuyl@fcc.gov, TTY (202) 418-2989.

ADDRESSES: You may submit comments, identified by ET Docket No. 03-201, by any of the following methods:

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

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

- *E-mail:* [Optional: Include the E-mail address only if you plan to accept comments from the general public]. Include the docket number(s) in the subject line of the message.

- *Mail:* [Optional: Include the mailing address for paper, disk or CD-ROM submissions needed/requested by your Bureau or Office. Do not include the

Office of the Secretary's mailing address here.]

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

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rule Making*, ET Docket No. 03-201, FCC 07-117, adopted June 19, 2007, and released June 22, 2007. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room, CY-B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The 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*, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the *Federal eRulemaking Portal:* <http://www.regulations.gov>.

Filers should follow the instructions provided on the Web site for submitting comments.

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. 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, 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: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Summary of Notice of Proposed Rulemaking

1. In the Further NPRM, the Commission seeks comment on whether there is a need to require unlicensed transmitters operating in the 915 MHz band under §§ 15.247 and 15.249 of the rules to comply with a spectrum etiquette requirement, and the impact that requiring an etiquette would have on the development and operation of unlicensed 915 MHz devices operating under those rule sections. The Commission also seeks comment on the particular etiquette suggested by Cellnet that would require digitally modulated spread spectrum transmitters operating in the 915 MHz band under § 15.247 of the rules to operate at less than the 1

Watt maximum power if they are continuously silent less than 90% of the time within a 0.4 second interval. This etiquette would require that the maximum permitted power level decrease in accordance with a specified formula as the silent interval between transmission decreases. The Commission further seeks comment on alternatives to the etiquette suggested by Cellnet.

2. The Commission concluded in the *Report and Order*, 69 FR 54027, September 7, 2004, that design flexibility has helped industry to develop efficient sharing and modulation schemes and that the existing regulations with no etiquette requirements have resulted in very efficient use of available unlicensed spectrum. However, the Commission notes Cellnet's observations regarding emerging products and its concern that digitally modulated 915 MHz devices operating under § 15.247 have no duty cycle limitation and may therefore transmit continuously at the maximum power permitted by the rules. Additionally, the Commission observes that there is no limitation on the maximum transmit bandwidth for digitally modulated 915 MHz devices other than the requirement to maintain the fundamental emissions within the authorized band of operation. Thus, there appears to be a potential for a digitally modulated device or a group of digitally modulated devices to essentially occupy the entire 915 MHz band, leaving little or no opportunity for other devices to gain access to the spectrum. The Commission believes that this has not been a problem in the past because the majority of spread spectrum devices operate at less than the maximum output power permitted in the rules to conserve battery power or because higher power is not necessary in many applications. Also, most spread spectrum devices that have been on the market in this band do not occupy the entire band simultaneously. However, as Cellnet and Itron observe, recently there has been increased use of the unlicensed 915 MHz band by parties providing wireless broadband services. These applications require operation at higher power and greater bandwidth than other unlicensed devices to provide service to users. While the Commission encourages the provision of wireless broadband service to all Americans, it recognizes that there is the potential under our rules for some unlicensed devices to preclude the operation of other unlicensed devices. The Commission believes it is now appropriate for it to consider whether

there is a need for a spectrum etiquette for unlicensed operation in the 915 MHz band. However, it recognizes concerns about the potential for a spectrum etiquette to limit design flexibility and stifle unlicensed product development and innovation. Therefore, the Commission seeks to balance the concerns about the co-existence of different types of unlicensed devices with the concerns about inhibiting unlicensed device innovation in determining whether a spectrum etiquette is necessary and the form that an etiquette would take.

3. The Commission used the term "spectrum etiquette" in the Notice of Proposed Rule Making (NPRM), 68 FR 68823, September 17, 2003, to refer to a set of requirements to enable better sharing of spectrum between devices. The Commission cited the unlicensed personal communication services (UPCS) rules as an example of a spectrum etiquette. These rules contain a "listen-before-talk" requirement for UPCS devices to monitor spectrum to ensure that it is not being used before transmitting. However, a spectrum etiquette could be comprised of other requirements that enable better sharing of spectrum, such as trade-offs between the transmission duty cycle, output power and bandwidth to enable more devices to co-exist within the same band of spectrum.

4. The Commission seeks comment on whether it should adopt a spectrum etiquette for unlicensed 915 MHz devices operating under §§ 15.247 and 15.249 of the rules. In considering the need for an etiquette, the Commission's intent is not to establish interference protection rights for unlicensed devices or to ensure that unlicensed devices are always able to operate without interference. Rather, the goal is to ensure that the different types of unlicensed devices that operate in a band have an opportunity for spectrum access. The Commission specifically seeks comment on Cellnet's contention that digitally modulated devices in the 915 MHz band that transmit continuously at maximum power and occupy wide bandwidths are creating emissions at levels that can cause interference to incumbent devices, irrespective of how well the incumbent devices may have been designed to operate in the presence of other users. In this regard, the Commission seeks comment on the tolerance of currently operating devices to emissions from other devices in the same frequency band. It also seeks comment on how effective an etiquette would be in improving spectrum sharing between unlicensed devices in the 915 MHz

band. The Commission further seeks comment about the potential for a spectrum etiquette to limit design flexibility and stifle unlicensed product innovation.

5. The Commission believes that the general approach to a 915 MHz spectrum etiquette recommended by Cellnet that would limit unlicensed devices that operate under §§ 15.247 and 15.249 with a high duty cycle to lower power is one possible way to enable more efficient spectrum sharing among unlicensed devices. Therefore, the Commission seeks comment on the proposed requirement that digitally modulated 915 MHz spread spectrum devices with a continuous silent interval of less than 90% within a 0.4 second window (0.36 seconds) operate with a lower power level than the 30 dBm (1 Watt) maximum currently permitted by the rules. Specifically, the maximum permitted power would range from 30 dBm (1 Watt) when there is a continuous silent interval of at least 90% between transmissions, down to 0 dBm (0.001 Watt) when there is no silent interval between transmissions, with the power limit in dBm linearly interpolated between the 90% silent and continuous operation duty cycle values. These recommended requirements could ensure that devices operating at high power levels leave a silent interval between transmissions that would provide an opportunity for other devices to transmit, and would prevent a high power device from operating continuously and precluding operation of other devices within a band. Devices that operate with shorter silent intervals between transmissions would be required to operate at less than the one watt maximum power to offset the increased interference potential of the longer duration transmissions. The decreasing power output limit would reduce the range at which interference can occur, thus increasing the likelihood that other devices could co-exist with them. The minimum power level of 0 dBm (0.001 Watt) that Cellnet recommends for devices that transmit continuously is comparable to the maximum level permitted for devices operating under § 15.249.

6. The Commission seeks comment on whether this type of spectrum etiquette is appropriate to enable more efficient sharing of spectrum between unlicensed 915 MHz devices and, if so, whether the suggested power levels and duty cycles are appropriate. It also seeks comment on whether an alternative type of etiquette would be more appropriate. For example, should an etiquette include limitations on the frequency range or bandwidth that a digitally

modulated device may occupy and/or a “listen-before-talk” requirement? Parties who believe that alternative approaches to an etiquette or different power levels are more appropriate are requested to supply specific technical details and justification for their recommendations. In addition, the Commission seeks comment on the impact an etiquette like the one suggested would have on other devices that operate in the 915 MHz band or other bands where it may be applied. For example, would manufacturers have to redesign or cease marketing certain equipment if all equipment in a band were required to comply with an etiquette? If so, what particular types of equipment would be affected?

7. If the Commission were to require a spectrum etiquette for the 915 MHz band, it seeks comment on whether there would be a need to prohibit the synchronization of transmissions from multiple devices in a system or otherwise under control of the same party in such a way as to more fully occupy the silent intervals between transmissions. Permitting synchronized transmissions of this nature could allow a group of devices to transmit essentially continuously, thus defeating the purpose of a spectrum etiquette.

8. The Commission seeks comment on whether a device operating under such a spectrum etiquette should be permitted to automatically change the power level and duty cycle at which it operates, or if the device should be required to operate using only one fixed duty cycle/power level combination. Could allowing automatic adjustments of the power level and duty cycle encourage efficient spectrum sharing between unlicensed devices since there is incentive to use only the transmit power necessary for the desired output data rates?

9. Cellnet recommends applying an etiquette only to digitally modulated devices operating under § 15.247 of the rules. The Commission seeks comment on the types of devices to which an etiquette should apply. For example, is an etiquette necessary for frequency hopping spread spectrum transmitters operating under § 15.247? The Commission notes that these transmitters have channel separation requirements and continually hop between a number of different channels, and that § 15.247(h) prohibits the synchronized hopping by a group of spread spectrum transmitters. These requirements would appear to obviate the need for an etiquette for frequency hopping spread spectrum transmitters. Is an etiquette necessary for devices operating under § 15.249 that are

permitted maximum field strength levels that are significantly less than the maximum permitted output for spread spectrum transmitters? The Commission also seeks comment on whether requiring an etiquette for digitally modulated transmitters but not frequency hopping transmitters would place digitally modulated transmitters at operational or other disadvantages.

10. The Commission notes that the 915 MHz band is the only one where a co-existence problem between unlicensed devices has been raised. However, it recognizes that unlicensed use of the 2.4 GHz and 5.8 GHz bands is also continuing to increase. These bands are used by many types of unlicensed devices, including cordless telephones and wireless broadband networking equipment. The Commission is aware that industry standards such as Wi-Fi, Bluetooth, and ZigBee have been developed for the various unlicensed frequency bands and these standards are designed to facilitate sharing among multiple unlicensed devices. The Commission has no intention of disrupting the private sector standards process. At the same time, it believes it is appropriate to consider whether its regulations should be amended to ensure that a single device or group of devices does not occupy all of the spectrum all of the time and thereby deny access to others. Accordingly, the Commission seeks comment on whether there is a similar need to adopt rules for digitally modulated transmitters or other devices operating in the 2.4 GHz and 5.8 GHz bands to better facilitate shared use of the spectrum among unlicensed devices.

11. The Commission seeks comment on the appropriate transition requirements if the Commission were to adopt a spectrum etiquette for unlicensed devices operating under §§ 15.247 and 15.249. In particular, it seeks comment on whether there should be a cutoff date after which new devices must comply with an etiquette requirement. The Commission also seeks comment on whether equipment certified before a cutoff date should be permanently grandfathered, or whether there should be a specific cutoff date on the manufacturing, importation, marketing and/or use of equipment that does not comply with any etiquette rules adopted in this proceeding. If so, for which of these actions should there be a cutoff date, and what is the appropriate date?

Initial Regulatory Flexibility Analysis

12. As required by the Regulatory Flexibility Act of 1980, as amended

(RFA),¹ the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities small entities by the policies and rules proposed in the Further Notice of Proposed Rule Making (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided in the item. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).²

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

13. This Further NPRM seeks comment on whether the Commission should require unlicensed devices to comply with rules to designed to ensure more efficient sharing of spectrum (i.e., a "spectrum etiquette") such as the one suggested by Cellnet. Cellnet's recommended spectrum etiquette would be a trade-off between transmitter power and transmission duration. Devices that operate with a duty cycle of 10% or less would be permitted to operate at the same one Watt power level currently permitted in the rules. As the transmission duty cycle is increased, the maximum permitted power would decrease, down to 0.001 Watts (1 milliwatt) for devices that transmit continuously.

B. Legal Basis

14. The proposed action is authorized under sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307.

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

15. 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.³ The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act.⁴

¹ See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 103–121, Title 11, 110 Stat. 857 (1996).

² See 5 U.S.C. 603(a).

³ See 5 U.S.C. 603(b)(3).

⁴ *Id.* 601(3).

Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operations; and (3) meets any additional criteria established by the Small Business Administration (SBA).⁵

16. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing*. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment."⁶ The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees.⁷ According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year.⁸ Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999.⁹ Thus, under this size standard, the majority of firms can be considered small.

17. *Wireless Service Providers*. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging"¹⁰ and "Cellular and Other Wireless

⁵ 15 U.S.C. 632.

⁶ U.S. Census Bureau, 2002 NAICS Definitions, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing"; <http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342>.

⁷ 13 CFR 121.201, NAICS code 334220.

⁸ U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334220 (released May 26, 2005); <http://factfinder.census.gov>.

The number of "establishments" is a less helpful indicator of small business prevalence in this context than would be the number of "firms" or "companies," because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 929.

⁹ *Id.* An additional 18 establishments had employment of 1,000 or more.

¹⁰ 13 CFR 121.201, NAICS code 517211.

Telecommunications."¹¹ Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.¹² Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.¹³ Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.¹⁴ Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.¹⁵ Thus, under this second category and size standard, the majority of firms can, again, be considered small.

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

18. Digitally modulated spread spectrum transmitters are already required to be authorized under the Commission's certification procedure as a prerequisite to marketing and importation, and no changes to that requirement are proposed. There would, however, be changes to the compliance requirements.

19. The applicant for certification would have to demonstrate in the application that the equipment complies with the etiquette requirements. These requirements may include a trade-off between the silent period between transmissions and output power as suggested by Cellnet, or other requirements such as the equipment monitoring spectrum to ensure it is unused before transmitting (listen-before-talk).¹⁶

¹¹ 13 CFR 121.201, NAICS code 517212.

¹² U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517211 (issued Nov. 2005).

¹³ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

¹⁴ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517212 (issued Nov. 2005).

¹⁵ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

¹⁶ See 47 CFR 15.323(c) and 15.407(h) for examples of listen-before-talk requirements currently in the rules.

20. Most unlicensed transmitters can be approved by either the Commission's Laboratory or a designated Telecommunication Certification Body (TCB). TCBS are private sector organizations that are permitted to issue equipment certifications in the same manner as the Commission. TCBS would not be permitted to certify equipment subject to the etiquette requirement until the Commission has experience with them and can properly advise TCBS on how to apply the applicable rules.

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

21. 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): "the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; the use of performance, rather than design standards; and an exemption from coverage of the rule, or any part thereof, for small entities."¹⁷

22. If the rules proposed in this notice are adopted, the Commission believes they might have a significant economic impact on a substantial number of small entities. For an entity that chooses to manufacture or import digitally modulated spread spectrum transmitters, the rules would impose costs for compliance with equipment technical requirements, such as modifying or redesigning equipment that does not comply with any new etiquette requirement. However, the burdens for complying with the proposed rules would be the same for both large and small entities. Further, the proposals in the *NPRM* are ultimately beneficial for both large and small entities. The Commission cannot find electrical engineering alternatives that would achieve our goals while treating small entities differently. Nonetheless, it solicits comment on any alternatives commenters may wish to suggest for the purpose of facilitating the Commission's intention to minimize the compliance burden on smaller entities.

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

None.

Ordering Clauses

23. The Further Notice of Proposed Rule Making is hereby adopted. This action is taken pursuant to the authority contained in sections 4(i), 301, 302, 303(e), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), and 303(r).

24. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 15

Communications equipment.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7-14930 Filed 7-31-07; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 07-3158; MB Docket No. 07-131; RM-11377]

Radio Broadcasting Services; Live Oak, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by RTG Radio, LLC ("Petitioner") proposing to substitute Channel *261A for Channel 259A* at Live Oak, Florida and to reserve the channel for noncommercial educational use. The proposed coordinates for Channel *261A at Live Oak are 30-12-26 NL and 83-01-26 WL with a site restriction of 10.4 Km (6.5 miles) south of city reference. Petitioner proposes the channel substitution to accommodate is pending construction permit application to increase the maximum effective radiated power of its Station WKAA(FM), Channel 258C1, Willacochee, Georgia.

DATES: Comments must be filed on or before September 3, 2007, and reply comments on or before September 18, 2007.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the Petitioner's counsel, as follows: David G. O'Neil, Esquire, Rini Coran, PC, 1615 L Street, NW., Suite 1325, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau, (202) 418-2738.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, MB Docket No. 07-131, adopted July 11, 2007, and released July 13, 2007. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center, 445 Twelfth Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160 or <http://www.BCPIWEB.com>.

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).

The 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* contact.

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

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

¹⁷ 5 U.S.C. 603(c)(1)-(c)(4).