

X. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action authorizes State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB. This action is not an Executive Order 14094 (88 FR 21879, April 11, 2023) regulatory action because actions such as the authorization of Tennessee's revised hazardous waste program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant, and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), the EPA grants a State's application for authorization as long as the State meets

the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 18, 1988), by examining the takings implications of this action in accordance with the “Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the Executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). “Burden” is defined at 5 CFR 1320.3(b). Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this action authorizes pre-existing State rules which are at least equivalent to, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, this rule is not subject to Executive Order 12898.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required

information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This final action will be effective January 21, 2025.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: November 6, 2024.

Jeaneanne Gettle,

Acting Regional Administrator, Region 4.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 90

[PS Docket No. 07–100; FCC 24–114; FR ID 258077]

Improving Public Safety Communications in the 4.9 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) takes another major step towards ensuring that the 4940–4990 MHz band (4.9 GHz band) is efficiently and intensely utilized in support of public safety missions nationwide. To that end, the Commission bolsters the coordinated nationwide approach to the band that it established in its *Seventh Report and Order*, FCC 23–3, in which it adopted a nationwide Band Manager framework to coordinate operations in the 4.9 GHz band, optimize public safety use, and facilitate the integration of the latest commercially available technologies, including 5G, for the benefit of public safety users. To further these goals—and ensure that the 4.9 GHz band is put to more robust use nationwide in the near term—the 4.9 GHz Band Manager, once selected, will be eligible to apply for a nationwide

overlay license and authorized to enter into a sharing agreement with the First Responder Network Authority (FirstNet). Pursuant to this sharing agreement, FirstNet may be permitted to use unassigned spectrum in the 4.9 GHz band as part of its nationwide public safety broadband network (NPSBN) in a manner that protects incumbent operations. In addition to expanding the Band Manager's responsibilities to include entering into a sharing agreement with FirstNet and establishing rules governing the nationwide Band Manager overlay license, the Commission also reaffirms its commitment to the nationwide Band Manager framework and clarifies the Band Manager's responsibilities to address the new rules we adopt herein.

DATES: Effective December 20, 2024.

ADDRESSES: Federal Communications Commission, 45 L St. NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Paul Powell of the Wireless Telecommunications Bureau, Mobility Division, at 202-418-1613 or Paul.Powell@fcc.gov, or Brian Marenco of the Public Safety and Homeland Security Bureau at 202-418-0838 or Brian.Marenco@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Eighth Report and Order in WP Docket No. 07-100; FCC 24-114, adopted on October 18, 2024, and released on October 22, 2024. The full text of this document is available for public inspection online at <https://www.fcc.gov/document/fcc-adopts-new-rules-public-safety-49-ghz-band>.

Synopsis

1. In the *Eighth Report and Order*, the Commission finds that its topline goals of preserving and expanding use to a variety of primary public safety operations would be best served by assigning a nationwide overlay license to the Band Manager. Rather than directly operating in the band, the Band Manager, once selected, will be authorized to enter into a sharing agreement with FirstNet to enable use of unassigned portions of the 4.9 GHz band as part of FirstNet's NPSBN in a manner that protects incumbent operations. The Commission also clarifies that FirstNet remains free to enter into additional sharing agreements with incumbent licensees to operate within their service areas consistent with § 90.1203(b) of the Commission's rules. After review of the record, the Commission concludes that allowing the Band Manager to enter into a sharing agreement with FirstNet to

enable broader access into the band by FirstNet's NPSBN, while also working with public safety licensees to coordinate and rationalize their use of the band, can enable greater public safety use, including for 5G, and has the potential to free up new opportunities for expanded use of the band in the near term. In addition, after review of the record, the Commission also finds that public safety entities would be better served by clarifying the Band Manager's primary responsibilities and revise § 90.1217 of our rules accordingly.

2. *Nationwide Overlay License.* Based on the Commission's review of this record, it is persuaded that expanding the Band Manager's role and responsibilities to encompass a nationwide overlay license and a sharing agreement with FirstNet for any unassigned spectrum is the best approach to ensure that 4.9 GHz band spectrum is more fully utilized in the near term, while at the same time protecting existing incumbent licensee usage. The Band Manager, once it has applied for and receives an overlay licensee, will obtain the rights to a nationwide geographic area license across the entire 50 megahertz of the band that is "overlaid" on top of the existing incumbent licenses and includes areas where spectrum is unassigned. The Commission finds that this licensing structure, combined with authorizing the Band Manager to enter into a sharing agreement enabling FirstNet to operate where white spaces exist, is the best mechanism for increasing public safety operations in this band in the near term.

3. The Band Manager will also carry with it important responsibilities in conjunction with its overlay licensee role, paramount among them being the obligation to oversee use of the spectrum pursuant to the sharing agreement to ensure that FirstNet's operations on these frequencies do not interfere with incumbent operations. The Band Manager will be authorized to enable FirstNet to operate anywhere within the geographic area of the overlay license, subject to the parameters of the sharing agreement and protection of incumbent licensees. If an incumbent licensee cancels or terminates its license, the Band Manager will be authorized to amend its sharing agreement with FirstNet, if necessary, to include the rights to operate in the geographic (or site-based) area and on the channel(s) of the cancelled license. For these reasons, the Commission believes that this mechanism is the best method to make certain that the 4.9 GHz band remains a public safety band which is more fully utilized, including

by existing incumbent licensees. The Band Manager will ensure that incumbent licensees can continue their existing operations to suit their unique spectrum needs while simultaneously and separately authorizing FirstNet's operations in areas of the band where there are no incumbent operations. The Commission clarifies that FirstNet remains free to enter into additional sharing agreements with incumbent licensees to allow it to operate within the service areas of incumbent licensees consistent with § 90.1203(b) of the Commission's rules.

4. The Commission also concludes that the future issuance of the Band Manager overlay license is consistent with our statutory authority under section 309(j) of the Communications Act. The Commission finds that this exemption applies to the 4.9 GHz band because the Commission specifically designated this band for services intended to protect the safety of life, health, or property. In the *Third Report and Order*, FCC 11-6, published at 76 FR 54977, September 6, 2011, the Commission concluded that eligibility for entrance into and operations in the 4.9 GHz band are primarily limited to the provision of public safety services as defined in § 90.523 of the Commission's rules. The Commission finds that because a majority of users licensed in the 4.9 GHz band are qualified to obtain auction-exempt spectrum, assigning a nationwide overlay license to the Band Manager is also exempt from auction. As explained in the *Eighth Report and Order*, the primary use of the band—protecting the safety of life, health, or property—will not change by assigning an overlay license to the Band Manager and authorizing it to enter into a sharing agreement with FirstNet. Thus, the Commission finds that it is appropriate and in the public interest to apply the public safety radio services exemption to this band to assign a nationwide overlay license to the 4.9 GHz Band Manager, once it is selected and has successfully applied for such a license.

5. *Spectrum Sharing Agreement with FirstNet.* In conjunction with issuance of a nationwide overlay license to the Band Manager, once selected, the Band Manager will be authorized to enter into a sharing agreement with FirstNet for use of the unassigned 4.9 GHz band spectrum that will be covered by the Band Manager's license. In furtherance of this model, the Commission clarifies that § 2.103(b) of the Commission's rules may enable any federal stations used by FirstNet to operate in the band pursuant to its anticipated sharing agreement with the Band Manager. Similarly, the Commission also clarifies that this

section may enable any federal stations used by FirstNet to operate in the band pursuant to a sharing agreement with incumbent licensees where that agreement is also consistent with § 90.1203(b) of our rules. While federal entities generally are not authorized by the Commission to use non-federal frequencies, limited exceptions exist where the Commission finds that doing so would be in the public interest, as codified in § 2.103. The Commission has found that both federal and non-federal public safety entities “could benefit from the same broadband communications technologies contemplated for this band.” Thus, the Commission agrees that the current structure of § 2.103 permits federal stations meeting certain conditions to operate on non-Federal spectrum and may in the instant scenario permit federal stations used by FirstNet to access the Band Manager’s licensed spectrum pursuant to the anticipated sharing agreement.

6. *Band Manager Responsibilities.* Based on the record in response to the *Ninth Further Notice* and the Commission’s decision in the *Eighth Report and Order*, the Commission clarifies that the Band Manager will continue to be tasked with the responsibilities that the Commission assigned to it in the *Seventh Report and Order*, published at 88 FR 12565, February 28, 2023. The Commission also amends its rules to give the Band Manager additional responsibilities to effectively implement the licensing and sharing regime described above. Thus, the Band Manager’s primary responsibilities will now include: (1) frequency coordination and interference protection for the operations of existing incumbent public safety licensees; (2) managing a spectrum sharing agreement with FirstNet; (3) incentivizing the use of the latest commercially available technologies; (4) facilitating non-public safety access through leasing; and (5) submitting an annual report to the Commission. The Commission also declines to make a determination as it pertains to allowing non-public safety operations in the band through a Band Manager-facilitated leasing model as this is not the best method of increasing utilization of the band at this time.

7. Prior to entering into its sharing agreement with FirstNet, the Band Manager will be required to make a filing associated with its license in ULS certifying to the Commission that the sharing agreement will be consistent with §§ 2.103(b) and 90.1207(h) of the Commission’s rules, and operations undertaken per the sharing agreement will not cause harmful interference to

incumbent licensees. If such interference occurs, the Band Manager must require FirstNet to immediately cease operations. The Commission will also require the Band Manager to certify that FirstNet has placed stations into operation within twelve months from the execution date of the sharing agreement. The Commission believes that this decision is consistent with our decision in the *Seventh Report and Order* to harmonize the construction deadlines for the 4.9 GHz band with the deadlines of § 90.155, which is the analogous rule for the majority of part 90 radio services. The Commission delegates authority and directs the Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau (collectively, the Bureaus) to establish the form and process for the submission of the required certifications detailed in the *Eighth Report and Order*. Finally, the Commission finds that the existing renewal standards and requirements that apply to our part 90 licenses will apply to the nationwide overlay license.

8. *Selection of the Band Manager.* In the *Seventh Report and Order*, the Commission concluded that the Band Manager would be identified by a selection committee to be named by the Commission and it sought comment on the nature of that committee and its processes in the *Ninth Further Notice*. In particular, the Commission sought comment on whether it should “direct specific organizations to designate a representative to serve on the selection committee” and whether the committee should include representatives of non-public safety users of the band in addition to public safety representatives. The Commission also tentatively concluded in the *Ninth Further Notice* that the selection committee should be “composed of an odd number of representatives to prevent deadlock.” As part of the Commission’s oversight of the selection committee, it proposed that the committee establish selection criteria based on the functions of the Band Manager.

9. Because the Commission’s decision in the *Eighth Report and Order* is geared towards maintaining the public safety nature of the band, we give deference to the views expressed by that community. The Commission concludes, however, that it is unnecessary to resolve the issues raised in the comments at this time. Instead, the Commission delegates broad authority to the Bureaus to establish the procedures by which a selection committee will be chosen, identify representatives to sit on the selection committee, determine the

requisite number of selection committee members, identify the applicable selection criteria, and establish the appropriate procedures and appropriate oversight for the selection process as part of choosing the Band Manager. The Commission instructs the Bureaus to consider the record in this proceeding in exercising their delegated authority.

10. *4.9 GHz Band Freeze.* Under the current freeze on applications for new licenses in the 4.9 GHz band, no new licensees may enter the band, but incumbents may file to modify their licenses or to license new sites in a fixed system. In the *Ninth Further Notice*, the Commission sought comment on whether to lift the freeze. We note that a freeze on new entrants has been in effect since 2020. We also continue to believe that issuing licenses to new entrants before the Commission has collected granular data from incumbent licensees would further complicate the spectrum environment and undermine the Band Manager’s flexibility to provide for efficient use of this spectrum.

11. While this process is ongoing, the Commission finds that freezing expansions, additions to, or modification of other technical parameters applicable to incumbent licensees is also necessary in light of our decision here to enable expanded public safety access to the band through the Band Manager’s nationwide overlay license and sharing agreement with FirstNet. The Commission is cognizant that some incumbent licensees, in reliance on the existing state of the freeze prior to the decision in the *Eighth Report and Order*, may have invested in systems that they hoped to use to modify or expand current operations. However, the Commission believes that a stable spectrum landscape reflecting the current state of operations in the band will better facilitate analysis of the upcoming granular data collection of licensed operations by the Commission, the Band Manager, and other interested parties. The Commission also reminds applicants and current licensees facing special circumstances that they may seek a waiver of the freeze pursuant to § 1.925 of the Commission’s rules.

12. Accordingly, until further notice, the Commission retains the freeze for all applicants who are not already 4.9 GHz licensees, and we reinstate the freeze as it applies to incumbent licensees that was lifted pursuant to the *2021 Order on Reconsideration*, FCC 21–106, published at 86 FR 59868, October 29, 2021, and the *Freeze Modification Public Notice*. Specifically, the Commission reinstates the freeze that was lifted on incumbents adding new

licenses or modifying existing licenses unless otherwise excepted, and unless incumbents are filing certain types of applications to comply with the granular data collection. The Commission directs the Bureaus to implement this change to the freeze via public notice within 30 days of the adoption of the *Eighth Report and Order*. The Bureaus will retain jurisdiction to manage and implement the freeze in the future, and we clarify that this freeze shall not apply to any necessary filings associated with issuance of the Band Manager's nationwide overlay license.

13. *Future Licensing of the Band*. In the *Seventh Report and Order* the Commission adopted its proposal to collect additional technical data on public safety operations stating that the submission of this data will improve interference protection and give public safety licensees more confidence in the band. The Commission also determined it would require incumbent licensees to supply complete microwave path data for fixed links, and to obtain a license for base stations (currently authorized under the geographic license scheme) on a site-by-site basis. The Bureaus will issue a Public Notice that will give incumbent licensees 6 months to make the appropriate filings in our Universal Licensing System. In connection with this decision, the Commission sought comment in the *Ninth Further Notice* on whether incumbent licensees should be allowed to retain their geographic-area licenses after they have been issued site-based licenses. The Commission also sought general comment on the future licensing of the band, noting our decision in the *Seventh Report and Order* to adopt a Band Manager regime and taking into consideration the questions regarding implementation.

14. We note that geographic licenses permit the licensee to use any channel in the band, while site-based licenses are frequency-specific. The results of the collection of granular technical data that the Commission initiated in the *Seventh Report and Order* will require the incumbent licensees to complete a thorough review of their current operations under their active PA licenses. The incumbents will then use ULS to create new licenses (with granular data) in newly created radio service codes PB (public safety licensees performing base/mobile, mobile-only or temporary fixed operations) and PF (public safety licensees operating fixed links). The Commission finds that the incumbent licensees' current PA licenses will be cancelled once the incumbents apply for and are authorized under the newly created

radio service codes. The Commission reminds incumbents that this decision to cancel the former licenses once the new licenses have been created does not modify or alter incumbents' rights to operate their existing networks. Instead, the Commission believes that this decision aligns with the intent of our decision in the *Seventh Report and Order* to collect more granular data such that it will "improve interference mitigation efforts and bolster public safety confidence in the band" and is the best approach to ensure that ULS does not contain duplicative or inaccurate licenses once the incumbents have received their new radio service codes.

15. The Commission likewise believes that the collection of this granular technical data will help the Band Manager identify specific frequency usage across all deployments in the band, and thus potentially unused channels within areas covered by certain geographic licenses. While PSSA's and AT&T's proposals to require that incumbent licensees surrender to the Band Manager or share with FirstNet any unused spectrum could potentially make more spectrum available to FirstNet and increase overall spectrum efficiency in the band, the Commission defers any consideration of those proposals until after the Commission has completed its collection and analysis of granular technical data on incumbent licensed public safety operations in the band.

Procedural Matters

Paperwork Reduction Act

16. The *Eighth Report and Order* may contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. All such requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on any new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

17. In this present document, the Commission has assessed the effects of our creation of a new Band Manager overlay license, and find that it will

have a small impact on small governmental entities which are currently 4.9 GHz licensees, mainly related to the collection of data about existing 4.9 GHz deployments.

Final Regulatory Flexibility Analysis

18. The Regulatory Flexibility Act of 1980, as amended (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in the *Eighth Report and Order* on small entities. The FRFA is set forth in appendix B of the *Eighth Report and Order*.

Congressional Review Act

19. The Commission will submit the *Eighth Report and Order* to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for concurrence as to whether this rule is "major" or "non-major" under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the *Eighth Report and Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Final Regulatory Flexibility Analysis

20. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Eighth Further Notice of Proposed Rulemaking (Eighth Further Notice)* released in October 2021, published at 86 FR 59934, October 29, 2021, and *Ninth Further Notice of Proposed Rulemaking (Ninth Further Notice)* released in January 2023, published at 88 FR 12637, February 28, 2023. The Federal Communications Commission (Commission) sought written public comment on the proposals in the *Eighth* and *Ninth Further Notices*, including comment on the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Report and Order

21. In the *Eighth Report and Order*, the Commission seeks to meet its objectives of ensuring efficient and effective utilization of the 4940–4990 MHz band (4.9 GHz band) in support of public safety missions nationwide. To

achieve these objectives, the *Eighth Report and Order* bolsters the coordinated nationwide approach to the band that the Commission established in its *Seventh Report and Order*, in which it adopted a nationwide Band Manager framework to coordinate operations in the 4.9 GHz band, optimize public safety use, and facilitate the integration of the latest commercially available technologies, including 5G, for the benefit of public safety users. To further these goals and to ensure efficient use of the 4.9 GHz band nationwide, the 4.9 GHz Band Manager, once selected, will be eligible to apply for a nationwide overlay license and authorized to enter into a sharing agreement with the First Responder Network Authority (FirstNet). Pursuant to this sharing agreement, FirstNet may be permitted to use unassigned spectrum in the 4.9 GHz band as part of its nationwide public safety broadband network (NPSBN) in a manner that fully protects incumbent operations. In addition to expanding the Band Manager's responsibilities to include entering into a sharing agreement with FirstNet and establishing rules governing the nationwide Band Manager overlay license, the adopted rules in the *Eighth Report and Order* also reaffirm the Commission's commitment to the nationwide Band Manager framework and clarify the Band Manager's responsibilities.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

22. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

23. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules or policies in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

24. 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 rules adopted herein. 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 SBA.

25. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, with translates to 33.2 million businesses.

26. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in the U.S. reporting revenue of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

27. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." U.S. Census Bureau data from the 2022 Census of Governments indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,845 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts) with

enrollment populations of less than 50,000. Accordingly, based on the 2022 U.S. Census of Government data, we estimate that at least 48,724 entities fall into the category of "small government jurisdictions."

28. Frequency Coordinators.

Frequency coordinators are entities or organizations certified by the Commission to recommend frequencies for use by licensees in the Private Land Mobile Radio (PLMR) Services that will most effectively meet the applicant's needs while minimizing interference to licensees already operating within a given frequency band. Neither the Commission nor the SBA have developed a small business size standard specifically applicable to spectrum frequency coordinators. Business Associations, which comprises establishments primarily engaged in promoting the business interests of their members, is the closest applicable industry with a SBA small business size standard.

29. The SBA small business size standard for Business Associations classifies firms with annual receipts of \$8 million or less as small. For this industry, U.S. Census Bureau data for 2017 show that there were 14,540 firms that operated for the entire year. Of these firms, 11,215 had revenue of less than \$5 million. Based on this data, the majority of firms in the Business Associations industry can be considered small. However, the Business Associations industry is very broad and does not include specific figures for firms that are engaged in frequency coordination. Thus, the Commission is unable to ascertain exactly how many of the frequency coordinators are classified as small entities under the SBA size standard. According to Commission data, there are 13 entities certified to perform frequency coordination functions under part 90 of the Commission's rules. For purposes of this FRFA, the Commission estimates that a majority of the 13 FCC-certified frequency coordinators are small.

30. *Private Land Mobile Radio Licensees.* PLMR systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. Companies of all sizes operating in all U.S. business categories use these radios. Wireless Telecommunications Carriers (*except Satellite*) which encompasses business entities engaged in *radiotelephone communications*, is the closest industry with an SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S.

Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates licensees in this industry can be considered small.

31. Based on Commission data as of December 14, 2021, there are approximately 387,370 active PLMR licenses. Active PLMR licenses include 3,577 licenses in the 4.9 GHz band; 19,011 licenses in the 800 MHz band; and 2,716 licenses in the 900 MHz band. Since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard. Nevertheless, the Commission believes that a substantial number of PLMR licensees are small entities.

32. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* 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. The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small. U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year. Of this number, 624 firms had fewer than 250 employees. Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

33. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally,

based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

34. The Commission anticipates that the rule changes adopted in the *Eighth Report and Order* will create *de minimis* new compliance requirements for small entities. The adopted rules will cause the 4.9 GHz Band Manager, once selected, to become eligible to apply for a nationwide overlay license and will authorize the Band Manager to enter into a sharing agreement with FirstNet. Pursuant to this sharing agreement, FirstNet may be permitted to use unassigned spectrum in the 4.9 GHz band as part of its NPSBN. Once selected, the Band Manager's primary responsibilities will include: (1) frequency coordination and interference protection for incumbent public safety licensees; (2) managing a spectrum sharing agreement with FirstNet; (3) incentivization of the use of the latest commercially available technologies; (4) facilitating non-public safety access through leasing; and (5) submitting an annual report to the Commission. The Commission notes that the rules adopted in the *Eighth Report and Order* do not create any significant additional compliance requirements for small entities. However, in assessing the cost of compliance for small entities, at this time the Commission is not in a position to determine whether these actions will require small entities to hire professionals to comply, and cannot quantify the cost of compliance with the rule changes that were adopted. Nevertheless, the Commission believes the benefits gained from the adopted rules by 4.9 GHz licensees and more optimized use of the band outweigh potential compliance costs incurred.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

35. The RFA requires an agency to provide, "a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . including a statement of the factual, policy, and legal reasons for

selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."

36. In the *Eighth Report and Order*, the Commission adopts measures to further promote use of the 4.9 GHz band for a variety of primary public safety operations. In doing so, it makes the 4.9 GHz Band Manager eligible to apply for a nationwide overlay license and authorizes the Band Manager to enter into a sharing agreement with FirstNet to enable use of the 4.9 GHz band as part of its NPSBN in a manner that fully protects incumbent operations. In this context, the Band Manager will be required to work with public safety licensees to rationalize their use. The Commission's actions do not alter any of the actions that the Commission adopted in the *Seventh Report and Order* as they pertain to requiring small and other public safety incumbents and future applicants for the 4.9 GHz band to submit data on FCC Form 601. As we noted in the *Seventh Report and Order*, collecting the additional technical data on public safety operations will benefit public safety licensees operating in the band because it will improve interference protection and give public safety licensees more confidence in the band without adding a significant economic or administrative burden on licensees or applicants to submit the data. The Commission considered alternative approaches, however, the record reflects support from commenters, some of which include or represent small entities, that agree our adopted approach in the *Eighth Report and Order* could have the effect of increasing band usage for first responders and other public safety missions, while preserving incumbent operations.

37. While small and other public safety applicants seeking to license facilities in the 4.9 GHz band will be subject to formal frequency coordination procedures, the economic impact will be minimized through the *Eighth Report and Order's* adoption of a frequency coordination process with which public safety licensees operating PLMR facilities in other frequency bands are familiar. Once in place, the formal frequency coordination process will ensure the efficient assignment and use of spectrum while minimizing interference to incumbents. Consequently, the frequency coordination process will improve interference protection and give public safety licensees more confidence in the

band without adding a significant economic burden on applicants.

38. Finally, all other Commission actions related to the Band Manager in the *Eighth Report and Order*, such as the Band Manager’s responsibility to identify unused spectrum access opportunities, do not create a significant economic impact on small entities.

G. Report to Congress

39. The Commission will send a copy of the *Eighth Report and Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Eighth Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Eighth Report and Order*, and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Ordering Clauses

40. Accordingly, *it is ordered* that, pursuant to the authority found in sections 4(i), 4(j), 302, 303(b), 303(f), 303(g), 303(r), 309(j) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 302a, 303(b), 303(f), 303(g), 303(r), 309(j), and 405, as well as § 1.429 of the Commission’s rules, 47 CFR 1.429, that this *Eighth Report and Order is hereby adopted*.

41. *It is further ordered* that this *Eighth Report and Order shall be effective* 30 days after publication in the **Federal Register**.

42. *It is further ordered* that the Commission’s Office of the Secretary, shall send a copy of this *Eighth Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

43. *It is further ordered* that the Commission shall send a copy of this *Eighth Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects

47 CFR Part 0

Authority delegations (Government agencies).

47 CFR Part 90

Administrative practice and procedure, Common carriers, Communications, Communications common carriers, Communications equipment, Emergency medical services, Organization and functions (Government agencies), Radio,

Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

Final Rules

For the reasons discussed in the document above, the Federal Communications Commission amends 47 CFR parts 0 and 90 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 409, and 1754, unless otherwise noted.

■ 2. Section 0.331 is amended by adding paragraph (i) to read as follows:

§ 0.331 Authority delegated.

* * * * *

(i) The Chief of the Wireless Telecommunications Bureau is delegated authority jointly with the Chief of the Public Safety and Homeland Security Bureau to administer provisions of §§ 90.1203, 90.1207, 90.1209, and 90.1217 of this chapter. The Chief of the Wireless Telecommunications Bureau is also delegated authority to establish the procedures by which a Band Manager selection committee will be chosen; identify representatives to sit on the selection committee; determine the requisite number of selection committee members; identify the applicable selection criteria; confirm that the Band Manager selectee meets the selection criteria; and establish the appropriate procedures and oversight for the selection process as part of choosing the Band Manager. The Chief of the Wireless Telecommunications Bureau is also delegated authority to develop the form and procedures pursuant to which the Band Manager will submit certifications required by §§ 90.1207(h)(3) and 90.1209(e) of this chapter to the Commission; to manage the process of determining the appropriate Band Manager funding mechanisms; and to perform oversight and any other functions for the administration of the Band Manager and its responsibilities.

■ 3. Section 0.392 is amended by adding paragraph (k) to read as follows:

§ 0.392 Authority delegated.

* * * * *

(k) The Chief of the Public Safety and Homeland Security Bureau is delegated authority jointly with the Chief of the

Wireless Telecommunications Bureau to administer provisions of §§ 90.1203, 90.1207, 90.1209, and 90.1217 of this chapter. The Chief of the Public Safety and Homeland Security Bureau is also delegated authority to establish the procedures by which a Band Manager selection committee will be chosen; identify representatives to sit on the selection committee; determine the requisite number of selection committee members; identify the applicable selection criteria; confirm that the Band Manager selectee meets the selection criteria; and establish the appropriate procedures and oversight for the selection process as part of choosing the Band Manager. The Chief of the Public Safety and Homeland Security Bureau is also delegated authority to develop the form and procedures pursuant to which the Band Manager will submit certifications required by §§ 90.1207(h)(3) and 90.1209(e) of this chapter to the Commission; to manage the process of determining the appropriate Band Manager funding mechanisms; and to perform oversight and any other functions for the administration of the Band Manager and its responsibilities.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

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

Authority: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401–1473.

■ 5. Section 90.175 is amended by revising paragraph (g)(2) to read as follows:

§ 90.175 Frequency coordinator requirements.

* * * * *

(g) * * *
(2) *For frequencies between 4940–4990 MHz:* A statement is required from the nationwide band manager recommending the most appropriate channel(s), bandwidth, operating power, and any other technical parameter which promotes robust and efficient use of the band while minimizing interference.

* * * * *

■ 6. Section 90.1203 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 90.1203 Eligibility.

* * * * *

(b) 4.9 GHz band licensees eligible pursuant to paragraph (a) of this section may enter into sharing agreements or other arrangements for use of the spectrum with entities that do not meet the eligibility requirements in this

section. However, all applications in the band are limited to operations in support of public safety.

(c) The 4.9 GHz Band Manager is eligible to hold a nationwide overlay license in the 4940–4990 MHz band consistent with the requirements of § 90.1207(h).

■ 7. Section 90.1207 is amended by revising paragraphs (a), (b) introductory text, (c), and (e) introductory text and adding paragraph (h) to read as follows:

§ 90.1207 Licensing.

(a) A 4940–4990 MHz band license held by an entity eligible under § 90.1203(a) gives the licensee authority to operate on any authorized channel in this band within its licensed area of operation. See § 90.1213. A 4940–4990 MHz band license will be issued for the geographic area encompassing the legal jurisdiction of the licensee or, in case of a nongovernmental organization, the legal jurisdiction of the State or local governmental entity supporting the nongovernmental organization.

(b) Subject to § 90.1209, a 4940–4990 MHz band license held by an entity eligible under § 90.1203(a) gives the licensee authority to construct and operate any number of base stations anywhere within the area authorized by the license, except as follows:

* * * * *

(c) A 4940–4990 MHz band license held by an entity eligible under § 90.1203(a) gives the licensee authority to operate base and mobile units (including portable and handheld units) and operate temporary (1 year or less) fixed stations anywhere within the area authorized by the license. Such licensees may operate base and mobile units and/or temporary fixed stations outside their authorized area to assist public safety operations with the permission of the jurisdiction in which the radio station is to be operated. Base and temporary fixed stations are subject to the requirements of paragraph (b) of this section.

* * * * *

(e) Applications for license in the 4940–4990 MHz band by an entity eligible under § 90.1203(a) must include the following technical information.

* * * * *

(h) The 4.9 GHz Band Manager is eligible under § 90.1203(c) to hold a nationwide overlay license for the 4940–4990 MHz band, subject to the exclusion of licensed geographic areas and frequencies held by an incumbent entity eligible under § 90.1203(a). The 4.9 GHz Band Manager:

(1) Shall not be eligible to independently operate stations in the 4940–4990 MHz band;

(2) Consistent with §§ 90.1217(a), (d) and 2.103(b) of this chapter, may allow the First Responder Network Authority, pursuant to a sharing agreement, to construct and operate stations at any geographic site within the Band Manager’s licensed area and on any channel for which the Band Manager is licensed, subject to the exclusions in this paragraph (h) and provided such stations do not cause harmful interference to incumbent licensees and otherwise comply with Commission rules and coordination requirements;

(3) Shall certify to the Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau prior to entering into any sharing agreement with the First Responder Network Authority that such agreement meets the requirements of § 2.103(b) of this chapter and this paragraph (h);

(4) Shall certify to the Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau when stations have been placed in operation pursuant to § 90.1209(e); and

(5) shall ensure that stations operating pursuant to a sharing agreement in this subpart comply with the relevant technical and licensing rules governing operations in the 4940–4990 MHz band in §§ 90.1205, 90.1209(b) through (c), (e), 90.1213, and 90.1215.

■ 8. Section 90.1209 is amended by revising paragraphs (a) and (d) and adding paragraph (e) to read as follows:

§ 90.1209 Policies governing the use of the 4940–4990 MHz band.

(a) Channels in this band licensed to any entity eligible under § 90.1203(a) are available on a shared basis only and will not be assigned for the exclusive use of any licensee.

* * * * *

(d) Stations used by an entity eligible under § 90.1203(a) must be placed into operation within twelve (12) months from the date of grant in accordance with § 90.155. Licensees of temporary fixed stations must place at least one such station in operation within twelve months of license grant.

(e) Stations used by an entity eligible under § 90.1203(h) must be placed into operation within twelve (12) months from the date that the Band Manager and the First Responder Network Authority execute a sharing agreement pursuant to §§ 90.1207(h) and 2.103(b) of this chapter.

- 9. Section 90.1217 is amended by:
- a. Revising the introductory text;
- b. Revising paragraphs (a) and (b); and
- c. Adding paragraphs (d) and (e).

The revisions and addition read as follows:

§ 90.1217 4.9 GHz Band Manager.

The 4.9 GHz Band Manager will have the following primary responsibilities:

(a) Frequency coordination and interference protection for 4.9 GHz band incumbent public safety operations;

(b) Incentivizing the use of the latest commercially available technologies, including 5G;

* * * * *

(d) Managing a sharing agreement with the First Responders Network Authority pursuant to §§ 90.1207(h) and 2.103(b) of this chapter; and

(e) Filing an annual report with the Commission.

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