FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[WT Docket No. 09–114; RM 11417; FCC 09–58]

Amendment of Part 101 of the Commission's Rules To Accommodate 30 Megahertz Channels in the 6525–6875 MHz Band; Amendment of Part 101 of the Commission's Rules to Provide for Conditional Authorization on Additional Channels in the 21.8–22.0 GHz and 23.0–23.2 GHz Band; Fixed Wireless Communications Coalition Request for Waiver

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, we seek comment on modifying the Commission's rules to authorize channels with bandwidths of as much as 30 MHz in the 6525–6875 MHz band. We also propose, on our own motion, to allow conditional authority on additional channels in the 21.8–22.0 GHz and 23.0–23.2 GHz band (23 GHz band).

DATES: Comments must be filed on or before August 21, 2009, and reply comments must be filed on or before September 8, 2009.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. You may submit comments, identified by WT Docket No. 09–114, 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.
- *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.

FOR FURTHER INFORMATION CONTACT: Charles Oliver, Attorney, Wireless Telecommunications Bureau at 202–418–1325 or via the Internet to *Charles.Oliver@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making (NPRM),* FCC 09–58, released June 29, 2009. The complete text of this document, including attachments and related Commission documents, 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 the *NPRM* and related Commission documents may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room, CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site *http://www.BCPIWEB.com.* When ordering documents from BCPI please provide the appropriate FCC document number, for example, FCC 09–58. The *NPRM* is available on the Commission's Web site at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-58A1.doc.*

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, 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,* 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).

I. Summary of Notice of Proposed Rulemaking

A. The 6 GHz Band

1. Most of the part 101 Fixed Service 6 GHz Band is made up of two sub-bands, 5925–6425 MHz (Lower 6 GHz Band) and 6525–6875 MHz (Upper 6 GHz Band). The Commission licenses terrestrial Fixed Services (FS) in both sub-bands, but there are several differences between them. The Commission issues licenses for satellite earth stations on a co-primary basis with FS in the Lower 6 GHz band but does not issue earth station licenses in the Upper 6 GHz Band. Lower 6 GHz channels are also available for television studio-to-transmitter links (STL) in the local television transmission service (LTTS); Upper 6 GHz channels are not. In addition, the maximum authorized bandwidth differs by sub-band: 30 megahertz is the maximum bandwidth allowed in the Lower 6 GHz Band, and 10 megahertz is the maximum allowed in the Upper 6 GHz Band. The Lower 6

GHz Band was historically assigned for wideband common carrier fixed use with 29.65 megahertz channels, while the Upper 6 GHz Band was historically assigned for private use with narrower channels. FWCC explains that fixed service bands such as the Lower 6 GHz Band and Upper 6 GHz Band carry critical services such as public safety communications (including police and fire vehicle dispatch), coordinating the movement of railroad trains, controlling natural gas and oil pipelines, regulating the electric grid, and backhaul for wireless traffic.

2. The Lower 6 GHz Band is increasingly congested. As of early May, 2009, there were 15,264 active FS licenses in the Lower 6 GHz Band. Furthermore, the Lower 6 GHz Band also has 1,602 licensed satellite earth stations. Each earth station is routinely coordinated for the entire 5925–6425 MHz band and for the entire geosynchronous arc, even if the earth station actually communicates with only one transponder on one satellite. Thus, a satellite earth station will place far greater limits on the ability to coordinate stations in adjacent areas than a terrestrial FS station, which is typically coordinated for a single channel, or a limited set of channels, with a narrow beamwidth. As noted above, existing rules also allow Lower 6 GHz FS stations to operate at up to triple the bandwidth authorized under existing Upper 6 GHz Band rules.

3. The congestion in the Lower 6 GHz Band has led a number of applicants to seek licenses to operate in the Upper 6 GHz Band pursuant to waivers that permit them to operate FS stations with bandwidths that are greater than the authorized 10 megahertz. As of May 11, 2009, the Commission had issued waivers authorizing 880 FS frequency paths with bandwidths greater than 10 megahertz in the Upper 6 GHz Band, of which 548 were authorized with 30 megahertz bandwidths. These waivers were granted upon showing that there were no channels available in the Lower 6 GHz Band, that other higher frequency bands were not suitable for the proposed path, and that there were no other alternatives. While the waiver process has provided an alternative for applicants seeking wider bandwidths in the Upper 6 GHz, some licensees have argued that the waiver process has the disadvantages of delay and additional preparation costs.

4. If certain conditions are met, the Commission's rules provide that applicants for FS licenses under part 101 may operate their proposed stations more quickly pursuant to conditional authority, although they do so at their own risk during the pendency of their applications. One of those conditions is that the applicant has successfully completed the frequency coordination procedures specified in § 101.103 of the Commission's rules. Conditional authority is not available, however, to applicants that must request waivers of existing rules.

5. On February 4, 2008, FWCC filed a petition proposing that the Commission change its rules to allow channels with 30 megahertz bandwidths in the Upper 6 GHz Band. Specifically, FWCC proposes that the Commission (1) amend § 101.109(c) of its rules to permit coordination and licensing of 30 megahertz channels in the Upper 6 GHz Band, (2) amend § 101.147(a) of the Commission's rules to state that coordination of a 30 megahertz link in the Upper 6 GHz Band should be attempted only if the link cannot be accommodated in the Lower 6 GHz Band, and (3) amend § 101.147(l) to specify frequency pairs for 30 megahertz channels, while retaining the present option of using narrowband channels and preserving frequencies that are presently allocated for emergency restoration.

6. FWCC states that the 10 megahertz maximum on authorized bandwidths in the Upper 6 GHz Band prevents links in that sub-band from handling data rates of more than about 50 megabits per second (Mbits/s). It asserts that larger bandwidths of up to 30 megahertz will allow the deployment of higher capacity broadband links and will enhance the delivery of critical infrastructure and business services when high-speed links are required over long distances. FWCC acknowledges that the Commission has granted waivers for bandwidths greater than 10 megahertz in the Upper 6 GHz Band, but argues that the unavailability of conditional authorizations represents a serious disadvantage. FWCC argues that FS facilities must often be installed on short notice to meet urgent public safety, infrastructure, and commercial needs, which makes conditional licensing important to industries and their customers. FWCC contends that applicants seeking to install high-speed links often have no alternative to the Upper 6 GHz Band.

7. To ensure that assignments for 30 megahertz links in the Upper 6 GHz will only be granted in cases of necessity, FWCC proposes that a new note be added to § 101.147(a) stating that location of a new 30 megahertz link in the Upper 6 GHz Band should be permitted only if it cannot be accommodated in the Lower 6 GHz Band. FWCC notes that existing rules already set minimum bits-per-second and loading requirements for the entire 6 GHz Band, and thereby discourage applicants from seeking wide-bandwidth assignments when narrower bandwidths would meet their needs.

8. Finally, FWCC proposes that § 101.147(l) be amended by adding a new paragraph to designate 30 megahertz bandwidth paired channels (for 60 megahertz total) at 6555 and 6725 MHz, 6595 and 6755 MHz, 6625 and 6785 MHz, 6655 MHz and 6815 MHz, and 6685 MHz and 6845 MHz. FWCC's proposed placement of those channels would avoid any overlap with the channels centered at 6535 and 6575 MHz, which are reserved for emergency restoration, maintenance bypass, and other temporary fixed uses.

9. AT&T, Comsearch, Harris, Radio Dynamics Corp., and UTC support FWCC's proposal. Those parties agree that the necessity of seeking waivers, and consequent inability to obtain conditional authorizations before the Commission approves applications, cause delays that have a significant impact on deployment of new services. They agree that there is rapidly increasing demand among wireless service providers for long-distance high-capacity links, and that there is limited space available in bands below the Upper 6 GHz Band, especially in major metropolitan areas. Commenters support FWCC's proposal that applicants for wide channels in the upper 6 GHz be required to demonstrate that the spectrum required is unavailable in the lower 6 GHz. Comsearch approves of FWCC's proposed channelization scheme and notes that the 30 megahertz channel pairs that FWCC proposes are formed by an appropriate aggregation of underlying 10 megahertz channels and eliminate any overlap with the channels at 6535 MHz and 6575 MHz that are reserved for emergency restoration and maintenance purposes.

10. API, however, argues that the Upper 6 GHz Band should be preserved for use by private operational fixed microwave licensees, including narrow bandwidth licensees that the Commission has required to vacate both the 1.9 GHz band and, more recently, the 2.1 GHz band. API contends that allowing 30 megahertz licenses in the Upper 6 GHz Band could cause congestion and encourage speculative licensing. API states that channel assignments for incumbent licensees in the 2.1 GHz band are generally limited to a maximum of 800 kHz, and that, as a consequence, those incumbents will not require 30 megahertz bandwidths when they are relocated. API contends that the availability of 30 megahertz

bandwidth channels in the lower 6 GHz is one of the reasons why the Lower 6 GHz Band has become congested, and that making such wide channels available in the upper 6 GHz would lead to similar congestion in the upper 6 GHz. That, in turn, it argues, could frustrate efforts to relocate displaced licensees from the 2.1 GHz band, potentially requiring them to resort to bands that cannot support the long signal paths that are feasible at 6 GHz.

11. FWCC and AT&T argue that API's concerns are misplaced. FWCC contends that the main source of congestion in the lower 6 GHz is satellite earth stations. FWCC contends that the Upper 6 GHz Band will probably not become seriously congested, whether or not 30 megahertz bandwidths are authorized, because satellite earth stations are not authorized in the Upper 6 GHz Band. FWCC also believes that the Commission's existing buildout and loading rules are sufficient to prevent speculative licensing. AT&T argues that the proposed rule changes would not frustrate the relocation plans of licensees that are forced to relocate from the 1.9 GHz and 2.1 GHz bands because, under existing rules, new licensees will be required to compensate displaced incumbents for the cost of relocations, regardless of whether the incumbent is relocated to a single link in the 6 GHz band or to multiple links in a higher band that requires shorter spacing between transmitters and receivers.

12. We propose to modify the Commission's rules to authorize 30 megahertz channels in the Upper 6 GHz Band. We find such action could serve the public interest by making more readily available an additional source of spectrum for high-speed microwave links. As FWCC states, such links support a variety of important commercial, public safety, and consumer uses, including backhaul for broadband systems. Furthermore, the high number of waiver requests we have received to allow licensing of channels greater than 10 megahertz in the Upper 6 GHz Band is evidence of a notable demand for wider channels in this band. We have already approved waivers for many applicants based on their showings that the applicants had no available alternative to operating in the Upper 6 GHz Band. We seek comment on this proposal.

13. We also seek comment on API's concerns that allowing 30 megahertz channels in the Upper 6 MHz Band could lead to congestion and speculative licensing. In particular, we ask commenters to indicate whether waiver requests the Bureau has granted for 30 megahertz channels in the Upper 6 MHz Band have caused problems to relocating licensees. Further, we ask commenters to indicate whether the Upper 6 GHz Band has any special characteristics that would cause it to be particularly susceptible to speculative licensing. We note that thirty megahertz channels in the 6 GHz band are already required to have a minimum payload capacity of 134.1 Mbits/s, and they must load at least 50 percent of that capacity within 30 months after they are licensed. In addition, our rules require FS links in the 6 GHz band to have a minimum path length of 17 kilometers (km). We seek comment on whether these requirements provide assurance that spectrum in the Upper 6 GHz Band will be used efficiently.

14. We also seek comment on whether additional requirements are necessary to ensure efficient usage, in the event that we allow 30 megahertz channels in the Upper 6 MHz Band. In particular, we seek comment on FWCC's proposal that we require applicants for 30 megahertz channels in the Upper 6 GHz Band to demonstrate that the requisite paths are not available in the Lower 6 GHz Band, as well as Comsearch's suggestion that we require a showing that channels in the 10.7–11.7 GHz band would not be available or sufficiently reliable.

15. In addition, we seek comment on whether authorizing 30 megahertz channels in the Upper 6 GHz Band would adversely impact the relocation of narrow-bandwidth links from other bands. We note API's concerns that sufficient spectrum be preserved to accommodate relocation of narrow-bandwidth links from other bands. We also note AT&T's assertion that most of the cost of relocating such licensees to higher bands, if that proves necessary, will fall upon the providers of emerging technologies that are newly licensed to the reallocated bands, not upon the displaced incumbents.

16. Further, we seek comment on the specific channel plan proposed by FWCC, which envisions 30 megahertz bandwidth paired channels (for 60 megahertz total for each authorized path) at 6555 and 6725 MHz, 6595 and 6755 MHz, 6625 and 6785 MHz, 6655 MHz and 6815 MHz, and 6685 MHz and 6845 MHz. We note that Comsearch and Harris support this proposal. We also seek comment on alternative band plans, in particular whether additional channel bandwidths besides 30 megahertz are needed.

B. 23 GHz Band

17. The Commission's rules provide for conditional authorization of fixed microwave links, allowing the license applicant to begin operating a link as soon as the application is filed, if the link has been frequency coordinated and certain other conditions are met. The frequencies in the 23 GHz band are shared by federal and non-federal users. For this reason, conditional authority in the band is limited to frequencies for which the Commission has an agreement with the National Telecommunications and Information Administration (NTIA) to permit conditional authorization. Thus, in the 23 GHz band, conditional authority is currently limited to four channel pairs—21.825/23.025 GHz, 21.875/23.075 GHz, 21.925/23.125 GHz, and 21.975/23.175 GHz—for non-federal applicants proposing to limit their equivalent isotropically radiated power (EIRP) to 55 dBm.

18. On November 7, 2007, FWCC submitted a petition for rulemaking requesting that the Commission allow conditional licensing for non-federal use, with NTIA's consent, in two additional channel pairs in the 23 GHz band—the 22.025/23.225 GHz and 22.075/23.275 GHz channel pairs—for applicants proposing to limit their EIRP to 55 dBm.

19. In response to FWCC's petition, we seek comment on whether to allow conditional authority on the 22.025/23.225 GHz and 22.075/23.275 GHz channel pairs for applicants proposing to limit their EIRP to 55 dBm, as set forth in the proposed rules in Appendix A. Our decision to seek comment on this proposal is predicated on NTIA's lack of opposition, following our coordination with that agency, to our granting conditional authority with respect to these additional channel pairs. The Commission has previously recognized that permitting conditional operation pending the approval of an application provides greater flexibility to Part 101 licensees and enables them to operate more efficiently.

II. Initial Paperwork Reduction Analysis

20. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002.

III. Initial Regulatory Flexibility Analysis

21. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), 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 this *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 specified in the *NPRM* for comments. The Commission will send a copy of this *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register.**

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

22. In this *NPRM,* we seek comment on a petition for rulemaking filed by the Fixed Wireless Communications Coalition (FWCC) on February 4, 2008, and on a rule change that we propose on our own motion.

23. The FWCC 6 GHz Petition requests that the Commission initiate a rulemaking to change its rules to allow channels with bandwidths of as much as 30 megahertz in the 6525–6875 MHz band (Upper 6 GHz Band). Specifically, FWCC proposes to amend § 101.109(c) of the Commission's rules to permit coordination and licensing of 30 megahertz channels in the Upper 6 GHz Band, amend § 101.147(a) of the Commission's rules to clarify that coordination of a 30 megahertz link in the Upper 6 GHz Band should be attempted only if the link cannot be accommodated in the 5925–6425 MHz band, and amend § 101.147(l) of the Commission's rules to specify frequency pairs for 30 megahertz channels, while retaining the present option of using narrowband channels and preserving frequencies that are presently allocated for emergency restoration.

24. The Lower 6 GHz Band, where 30 megahertz channels are allowed, is increasingly congested. As of early May, 2009, there were 15,264 active FS licenses in the Lower 6 GHz Band. Furthermore, the Lower 6 GHz Band also has 1,602 licensed satellite earth stations. Each earth station is routinely coordinated for the entire 5925–6425 MHz band, and for the entire geosynchronous arc, even if the earth station actually communicates with only one transponder on one satellite. Thus, a satellite earth station will place far greater limits on the ability to coordinate stations in adjacent areas than a terrestrial FS station, which is typically coordinated for a single channel, or a limited set of channels, with a narrow beamwidth.

25. The congestion in the Lower 6 GHz Band has led a number of applicants to seek licenses to operate in the Upper 6 GHz Band pursuant to waivers that permit them to operate FS stations with bandwidths that are greater than the authorized 10 megahertz. As of May 11, 2009, the Commission had issued waivers authorizing 880 FS frequency paths with bandwidths greater than 10 megahertz in the Upper 6 GHz Band, of which 548 were authorized with 30 megahertz bandwidths. These waivers were granted upon showing that there were no channels available in the Lower 6 GHz Band, that other higher frequency bands were not suitable for the proposed path, and that there were no other alternatives.

26. Allowing channels with bandwidths of as much as 30 megahertz in the Upper 6 GHz Band by rule could meet a variety of needs. Such action could serve the public interest by making more readily available an additional source of spectrum for high-speed microwave links, which are used for a variety of important commercial, public safety, and consumer uses, including backhaul for broadband systems. Furthermore, the high number of waiver requests we have received to allow licensing of channels greater than 10 megahertz in the Upper 6 GHz Band is evidence of a notable demand for wider channels in this band. On the other hand, the American Petroleum Institute (API) has expressed concern that allowing 30 megahertz licenses in the Upper 6 GHz Band could cause congestion, encourage speculative licensing, and make it more difficult for licensees to relocate out of the 2 GHz Band that has been reallocated for advanced technologies. The objective of the proposed rule is to provide the benefits of wider channels while avoiding the potential problems noted by API. We believe that increasing congestion in the Lower 6 GHz Band could justify expanding the maximum allowable bandwidth in the Upper 6 GHz Band to 30 megahertz. We also seek comment on concerns raised by the American Petroleum Institute Telecommunications Subcommittee that adopting these rules might lead to additional congestion in the upper 6 GHz band, cause speculative applications to be filed, and make it more difficult for applicants proposing narrower bandwidth links to coordinate their proposals with licensees in the Upper 6 GHz Band.

27. We also propose, on our own motion, to allow conditional licensing on two additional channel pairs for non-federal use in the 23 GHz band, if the National Telecommunications and Information Administration (NTIA) approves, for applicants proposing to limit their effective isotropically radiated power (E.I.R.P.) to 55 dBm.

28. If certain conditions are met, the Commission's rules provide that applicants for FS licenses under part 101 may operate their proposed stations more quickly pursuant to conditional authority, although they do so at their own risk during the pendency of their applications. Before exercising conditional authority, the applicant must successfully complete frequency coordination to ensure that the proposed facilities will not cause interference to other authorized facilities. Conditional authority ceases immediately if an application is returned as unacceptable for filing. The Commission's rules also provide that ''conditional authority may be modified or cancelled by the Commission at any time without hearing if, in the Commission's discretion, the need for such action arises.''

29. Fixed service bands carry critical services such as public safety communications (including police and fire vehicle dispatch), coordinating the movement of railroad trains, controlling natural gas and oil pipelines, regulating the electric grid, and backhaul for wireless traffic. Conditional authority allows an applicant to provide those types of services expeditiously before the Commission acts on its application. Because the 23 GHz Band is shared between federal and non-federal use, conditional authority in that band is limited to frequencies for which the Commission has an agreement with NTIA to permit conditional authorization. NTIA has not stated any objection to allowing conditional licensing on the additional two channel pairs. We therefore propose to add the 22.025/23.225 GHz and 22.075/23.275 GHz channel pairs to the list of frequencies on which we allow conditional authority. Such action would allow all licensees to provide service more rapidly (subject to the normal limitations on conditional authority noted above) while protecting existing licensees. We seek comment on allowing conditional authority on a permanent basis.

B. Legal Basis

30. The proposed action is authorized pursuant to Sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332 and 333 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i),

157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, and 333.

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

31. 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 and policies, if adopted. 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.

32. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data. A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small. Wireless Telecommunications Carriers (except satellite).

33. Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. At present, there are approximately 36,708 common carrier fixed licensees and 59,291 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 the IRFA, we will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—*i.e.,* an entity with no more than 1,500 persons. The Commission's most recent data were acquired when ''Cellular and Other Wireless Telecommunications Companies'' was the applicable industry category. Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small. We note that the number of firms does not necessarily track the number of licensees. We estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

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

34. This *NPRM* proposes no new reporting or recordkeeping requirements.

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

35. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of 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.

36. As noted above, this *NPRM* proposes rules to provide applicants with improved access to spectrum that is presently restricted with respect to bandwidth or that requires completion of frequency coordination with NTIA before the applicant can begin operations on a conditional basis. As noted above, virtually all microwave licensees under part 101 of the Commission's rules are considered small businesses. Under our rules, the opportunities to apply for 30 megahertz channels in the Upper 6 GHz Band and to take advantage of conditional authority 22.025/23.225 GHz and 22.075/23.275 GHz channel pairs would be equally available to all applicants, including small businesses. Thus, this proposed action would provide additional options to all licensees, including small entity licensees. In this *NPRM,* we seek comment on these proposed actions. Such action could serve the public interest by facilitating the efficient use of the 6 GHz and 23 GHz bands. The proposed rules could therefore open up economic opportunities to a variety of spectrum users, including small businesses.

37. The alternative approach would be to maintain the existing rules. If the rules were not changed to provide for 30 megahertz channels in the Upper 6 GHz Band, applicants who wished to obtain such channels would have to take additional time and money to prepare a request for waiver of the Commission's rules. Such additional time and expense may be particularly disadvantageous to small businesses. Furthermore, because a waiver request would be required, applicants cannot commence operation until the Commission grants their waiver request and application. The resulting delay can make it more difficult for applicants to meet their communications needs or the needs of their customers. With respect to the 23 GHz Band, the alternative approach would be to deny conditional authority on the two additional channel pairs and require applicants to wait until the Commission grants their application before they can commence service. Again, the resulting delay can make it more difficult for applicants to meet their communications needs or the needs of their customers.

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

None.

Ordering Clauses

38. Pursuant to sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332 and 333 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333, that this NPRM is hereby ADOPTED.

39. Notice is given of the proposed regulatory changes described in this NPRM, and that comment is sought on these proposals.

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

List of Subjects in 47 CFR Part 101

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 101 to read as follows:

PART 101—FIXED MICROWAVE SERVICES

1. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

2. Amend § 101.31 by revising paragraph (b)(1)(vii) to read as follows:

§ 101.31 Temporary and conditional authorizations.

* * * * *

(b) * * *

(1) * * *

(vii) With respect to the 21.8–22.0 GHz and 23.0–23.2 GHz band, the filed application(s) does not propose to operate on a frequency pair centered on other than 21.825/23.025 GHz, 21.875/23.075 GHz, 21.925/23.125 GHz, 21.975/23.175 GHz, 22.025/23.225 GHz or 22.075/23.275 GHz and does not propose to operate with an E.I.R.P. greater than 55 dBm. The center frequencies are shifted from the center frequencies listed above for certain bandwidths as follows: Add 0.005 GHz for 20 MHz bandwidth channels, add 0.010 GHz for 30 megahertz bandwidth channels, and subtract 0.005 GHz for 40 MHz bandwidth channels. *See* specific channel listings in § 101.147(s).

* * * * *

3. Amend § 101.109(c) table by revising the entry for the 6,525 to 6,875 Frequency band (MHz) to read as follows:

§ 101.109 Bandwidth.

* * * * *

(c) * * *

Frequency band (MHz)	Maximun authorized bandwidth
* * * * *	
6,525 to 6,875	30 MHz [1]
* * * * *	

4. Amend § 101.147 by revising entry 6,525–6,875 MHz (14) to entry 6,525–6,875 MHz (14)(33) in paragraph (a), by adding note (33) to paragraph (a) and by adding a new paragraph (l)(8) to read as follows:

§ 101.147 Frequency assignments.

(a) * * *

* * * * *

6,525–6,875 MHz (14)(33)

* * * * *

(33) The coordination of a new 30 MHz link in the 6,525–6,825 MHz band should be attempted only if it cannot be accommodated in the 5,925–6,425 MHz band.

* * * * *

(l) * * *

(8) 30 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6555	6725
6595	6755
6525	6785
6655	6815
6685	6845

* * * * *

[FR Doc. E9–17412 Filed 7–21–09; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 192, 193, and 195

[Docket No. PHMSA–2008–0301)

RIN 2137–AE41

Pipeline Safety: Periodic Updates of Regulatory References to Technical Standards and Miscellaneous Edits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: PHMSA is proposing to incorporate by reference (IBR) into the pipeline safety regulations all or parts of new editions of voluntary consensus standards to allow pipeline operators to use current technology, new materials, and other industry and management practices. In this document, PHMSA also proposes to make nonsubstantive edits and clarify regulatory language in certain provisions. These proposed amendments to the pipeline safety regulations would not require pipeline operators to undertake any significant new pipeline safety initiatives.

DATES: Submit comments on the subject of this proposed rule on or before September 21, 2009.

ADDRESSES: You may submit comments, identified by Docket No. PHMSA–2008–0301, by any of the following methods:

- *E-Gov Web: http://www.regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the online instructions for submitting comments.
- *Mail: Docket Management System:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* DOT Docket Management System: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: Identify the docket ID, PHMSA 2008–0301, at the beginning of your comments. If you submit your comments by mail, submit two copies. If you wish to receive confirmation that PHMSA received your comments, include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov.*

Note: All comments received will be posted without edits to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://docketsinfo.dot.gov/.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. Alternatively, you may review the documents in person at the street address listed above.

FOR FURTHER INFORMATION CONTACT:

Technical Information: Mike Israni, (202) 366–4571, or by e-mail at *mike.israni@dot.gov.*

Regulatory Information: Cheryl Whetsel by phone at (202) 366–4431 or by e-mail at *cheryl.whetsel@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113; signed into law March 7, 1996)