

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)
)
Allocation of Spectrum Below) **ET Docket No. 94-32**
5 GHz Transferred from)
Federal Government Use)
)
4660-4685 MHz)

SECOND REPORT AND ORDER

Adopted: July 31, 1995

Released: August 2, 1995

By the Commission:

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I. INTRODUCTION

1. By this action, the Commission creates the General Wireless Communications Service (GWCS), and adopts rules for licensing of this service in the 4660-4685 MHz band. The 25 megahertz of spectrum in the 4660-4685 MHz band was transferred from Federal Government to private sector use and was allocated to the Fixed and Mobile services in the First Report and Order in this proceeding adopted February 7, 1995.¹ Designating this spectrum for use by a new General Wireless Communications Service will benefit the public by permitting and encouraging the introduction of new uses and the enhancement of existing uses. These new and enhanced uses will create new jobs, foster economic growth, and improve access to communications by industry and the American public.

II. BACKGROUND

2. The Omnibus Budget Reconciliation Act of 1993² (Reconciliation Act) required that the Secretary of Commerce identify 200 megahertz of spectrum then allocated for use by Federal Government agencies that could be transferred to private sector use. All of the 200 megahertz of spectrum recommended for reallocation had to be located below 5 gigahertz, with at least 100 megahertz of this being below 3 gigahertz. The Reconciliation Act also required the Secretary of Commerce to issue within six months of its enactment a report making a preliminary identification of reallocable bands of frequencies and to issue within 18 months a final report recommending the spectrum for reallocation.³ In its report making a preliminary identification of spectrum, the Department of Commerce was required to identify at least 50 megahertz of spectrum for

¹ Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, ET Docket No. 94-32, First Report and Order and Second Notice of Proposed Rulemaking, 10 FCC Rcd 4769 (1995) (Report and Second NPRM).

² Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312 (enacted August 10, 1993) (Reconciliation Act).

³ See Reconciliation Act, § 6001(a)(3), as codified at 47 U.S.C. § 923.

immediate reallocation.⁴ The remaining spectrum was required to be made available over a ten-year period.⁵

3. In accordance with the requirements of the Reconciliation Act, on February 10, 1994, the Department of Commerce released its report making a preliminary identification of spectrum for reallocation (Preliminary Report).⁶ The frequency bands identified for reallocation in the Preliminary Report are listed in Appendix A of the Preliminary Report. Three of these frequency bands, 2390-2400 MHz, 2402-2417 MHz, and 4660-4685 MHz, were identified for immediate reallocation and are now available for private sector use.⁷ The Reconciliation Act also required that the Commission allocate, and propose regulations to assign, the 50 megahertz of spectrum that is immediately available no later than 18 months after its enactment (*i.e.*, by February 10, 1995).⁸

4. On May 4, 1994, the Commission released a Notice of Inquiry in this proceeding seeking information on potential applications for the 50 megahertz of spectrum transferred from Federal Government use.⁹ Following this, we released a Notice of Proposed Rule Making on November 8, 1994, proposing that all 50 megahertz of the transferred spectrum be allocated to Fixed and Mobile services.¹⁰ The Commission subsequently adopted a First Report and Order and Second Notice of Proposed Rule Making on February 7, 1995.¹¹ In the Order, the Commission allocated the 2390-2400 MHz band for use by unlicensed Personal Communications Services (PCS) devices, provided for continued use of the 2402-2417 MHz band by devices operating in

⁴ At least one-half of the 50 megahertz identified for immediate reallocation must be below 3 gigahertz and all of it must be identified for exclusive non-Federal use.

⁵ Reconciliation Act, § 6001(a)(3), as codified at 47 U.S.C. § 923(e)(2)(A).

⁶ Preliminary Spectrum Reallocation Report, U.S. Department of Commerce, NTIA Special Publication 94-27, Feb. 1994.

⁷ By letter dated October 27, 1994, the President notified the Chairman of the Commission that Federal Government frequency assignments in these bands have been withdrawn and that the National Table of Frequency Allocations has been modified to reflect the reallocation of these bands.

⁸ Reconciliation Act, § 6001(a)(3), as codified at 47 U.S.C. § 925(a).

⁹ Notice of Inquiry, ET Docket No. 94-32, 9 FCC Rcd 2175 (1994) (NOI).

¹⁰ Notice of Proposed Rule Making, ET Docket No. 94-32, 9 FCC Rcd 6779 (1994) (First NPRM).

¹¹ Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, ET Docket No. 94-32, FCC 95-47, released February 17, 1995 (Order and Second NPRM).

accordance with Part 15 of our Rules, upgraded the allocation of both of these bands for use by the Amateur service from secondary to primary, and allocated the 4660-4685 MHz band for use by Fixed and Mobile services. The Second NPRM proposed to designate the 4660-4685 MHz band for use by a new service, GWCS.

5. We received 13 comments and five reply comments¹² in response to the Second NPRM for use of the 4660-4685 MHz band.¹³ Several parties interested in providing commercial services support our proposal for GWCS with licenses assigned by competitive bidding.¹⁴ Parties opposing the designation of the 4660-4685 MHz spectrum for GWCS have provided information regarding specific services that they believe should receive a specific allocation in the 4 GHz band.¹⁵

III. DISCUSSION

A. Service Rules

6. **Background.** In the Second NPRM in this proceeding, the Commission proposed to create a new service, the General Wireless Communications Service (GWCS), for licensing of the 4660-4685 MHz band. This new service would allow a licensee to provide a range of Fixed or Mobile services. As stated in the Second NPRM, GWCS would provide licensees an opportunity to use the spectrum flexibly in order to meet the needs of consumers. For example, licensees could use this spectrum for dispatch service, point-to-point microwave, aeronautical audio and visual service, wireless local loop services, and terrestrial fixed and mobile auxiliary broadcast operations. Services that would not be within the proposed GWCS category included Broadcast services, Radiolocation services, and Satellite services (including the Mobile Satellite Service).¹⁶

7. We proposed to establish the flexible GWCS service classification in order to enhance the ability of service providers to meet a variety of user needs. We tentatively concluded that a flexible allocation of this spectrum would likely generate the highest and best use of the spectrum and ensure that it is used for services that are highly valued by licensees and their customers,

¹² Comments and reply comments received that relate only to the 2390-2400 MHz band and the 2402-2417 MHz band are not included in these numbers. A companion Report and Order is being issued to cover the issues concerning those bands.

¹³ See Appendix A.

¹⁴ Comments of ATI, Bell Atlantic, Ladybug, Leaco, PCIA, and WCAI, In-Flight Reply Comments.

¹⁵ Comments of API, APCO, and MSTV.

¹⁶ Second NPRM, at paras. 46, 60.

whether the ultimate use is for private or commercial use.¹⁷ We also acknowledged the possibility that these needs might better be accommodated by rules that prescribe the use of the 4660-4685 MHz frequency band only by specific services. Interested parties who opposed our proposed establishment of a GWCS category were asked to suggest ways in which use of the 4660-4685 MHz band could be limited to specific services. For example, we sought comment on (1) what services should be treated as eligible; (2) whether we should divide channels in the band in a manner which assigns Fixed services exclusively to certain channels and Mobile services exclusively to other channels in the band; (3) whether we should establish priorities for Fixed service or Mobile service use of some or all of the channels established in the band; and (4) whether we should assign some or all channels established in the band for exclusive use by private Fixed or Mobile Services.¹⁸ Proponents of this alternative approach for designating services in the 4660-4685 MHz frequency band were asked to provide facts and arguments supporting their view that such an approach would better serve the Commission's objectives and the public interest than would the establishment of GWCS, which would permit use of the spectrum for these as well as other applications.¹⁹

8. **Comments.** The majority of commenters support the designation of the 4660-4685 MHz band for the flexible GWCS category. ATI, PCIA, Leaco, Bell Atlantic, WCAI, In-Flight, and the SBA all expressed support for GWCS. WCAI applauds the proposal as offering the greatest possible incentive and opportunity to develop and introduce innovative service offerings based on emerging new technologies, and suggests that the Commission adopt rules governing the 4660-4685 MHz band that generally permit the licensee flexibility to use the spectrum as it sees fit within its geographic area, subject only to compliance with interference protection requirements. WCAI further states that an open, flexible service definition for the 4660-4685 MHz band will provide the most effective approach for achieving universality, speed of deployment, diversity of services, and competitive delivery.²⁰ The SBA describes the allocation as "Solomonic," given the diversity of views in the record on the appropriate use of the band.²¹ Bell Atlantic states that the proposed rules are consistent with the goal of promoting innovation and the best use of the available spectrum. The flexible use approach, allowing this spectrum to be used for a variety of current services and others not yet even developed would, according to Bell Atlantic, result in more efficient use of spectrum than a service-specific approach, which could cause the band to be under-utilized in some areas where demand for a particular service might be less than the available

¹⁷ Second Notice, at para. 60.

¹⁸ Second NPRM, at paras 62-63.

¹⁹ Second Notice, at para. 63.

²⁰ WCAI Comments at 4-5.

²¹ SBA Comments at 2.

spectrum.²²

9. Entities supporting the designation of GWCS in the 4660-4685 MHz band indicate that it would allow use of the spectrum for a variety of purposes. ATI commends the GWCS proposal as a rare, possibly unique, opportunity to allow wireless cable operators to provide the return-channel capability they need to offer competitive, interactive information services.²³ Leaco indicates that the spectrum can be used for a variety of interactive video, voice, and data services. Leaco opposes rules limiting use of the band only to specific services, urging that the Commission allow the various GWCS services to develop before considering any allocations for specific services.²⁴ Bell Atlantic states that a flexible use approach would allow use of this spectrum for wireless local loop services, interactive video services, dispatch services, data services, and others not yet developed.²⁵ In-Flight seeks to use the spectrum to provide nationwide multi-channel live audio and video programming service to commercial airline passengers.²⁶ In earlier comments, Tadiran proposed that 4660-4685 MHz be used for in-building communications.²⁷

10. Comments opposing the GWCS, and proposing the allocation of the spectrum to specific services, were filed by API, APCO, and MSTV. API, representing the oil and gas industry, proposes that the 4660-4685 MHz band be allocated for primary fixed use and narrowband channels to replace, to a limited extent, loss of the narrowband allocation from the 2 GHz bands to Personal Communications Services (PCS). API states that telecommunications facilities such as point-to-point and point-to-multipoint systems in the Private Operational-Fixed Microwave Service are used to support the search for, production, safe pipeline transmission, processing, and delivery of oil and gas products.²⁸ TIA and Alcatel support API's proposal in reply comments.²⁹ APCO also proposes designating the band for specific uses, in particular urging that at least a portion of the band be designated for public safety mobile and aeronautical video operations. APCO states that public safety agencies do not currently have any dedicated channels for live "bird's eye view" video operations, and this capability would be valuable in various

²² Bell Atlantic Comments at 2.

²³ API Comments at 1-2.

²⁴ Leaco Comments at 6.

²⁵ Bell Atlantic Comments at 2.

²⁶ In-Flight Comments at 1.

²⁷ Tadiran Comments to First NPRM at 2.

²⁸ API Comments at 9-11.

²⁹ TIA Reply Comments; Alcatel Reply Comments.

emergency situations.³⁰ MSTV contends that the 4660-4685 MHz band could best be used to support advanced broadcast auxiliary operations. It requests that the band be allocated to wideband advanced digital video services and terrestrial fixed and mobile auxiliary operations.³¹ ATI proposes that the band be allocated in whole or in part for use as a return channel by wireless cable providers.³²

11. Commenters opposing GWCS contend that GWCS is technically unsound and will retard innovation in the use of this spectrum. MSTV argues that GWCS will be plagued by interference problems caused from the operation of mutually-incompatible services.³³ Opposition commenters also contend that auctioning GWCS spectrum would be unlawful. API, APCO, and MSTV argue that utilizing auctions involving a variety of fixed and mobile services would be an improper means of allocating spectrum, because auctions are permitted under Section 309(j) of the Act only to assign licenses among mutually exclusive applicants, not to determine spectrum allocations.³⁴ They also question whether auctions necessarily lead to the "highest and best use" of the spectrum. API submits that only commercial users have subscriber bases to meet proposed construction requirements and to provide funds for auction bids, while private users would not ordinarily be able to compete. API asserts that the Commission's proposal would force private users to rely on commercial providers who cannot adequately meet the needs of private users during emergencies, and generally offer more expensive and less suitable communications, or no service at all in some remote areas.³⁵ APCO contends that the use of auctions deprives state and local government public safety agencies of any opportunity to obtain new radio spectrum for critical police, fire, emergency medical, and other communications systems, because these agencies will never be able to compete with for-profit commercial entities for spectrum.³⁶

12. **Decision.** We will adopt the proposed General Wireless Communications Service for the 4660-4685 MHz block, largely as proposed in the Second NPRM. Under GWCS, licensees may provide any Fixed or Mobile service except Broadcast services, Radiolocation services, and Satellite services, including the Mobile Satellite Service. This flexible, broadly defined service should accommodate a wide variety of potential Fixed and Mobile service uses, including all of those identified by the commenters, such as voice, video, and data transmission, private

³⁰ APCO Comments at 3.

³¹ MSTV Reply Comments at 7.

³² ATI Comments at 4-5.

³³ MSTV Reply Comments at 3.

³⁴ API Comments at 5; APCO Comments at 2; MSTV Reply Comments at 3, 6.

³⁵ API Comments at 5-9.

³⁶ APCO Comments at 2.

microwave, broadcast auxiliary, and ground-to-air voice and video. The flexibility of GWCS should also help make frequencies available for new technologies and services, including those that have been mentioned in the current comments and those that may be developed in the years ahead. In addition, as a service category that is not limited to specific past and current uses, but is available for the implementation of future technologies, we expect that GWCS will encourage research and investment to invent, develop, and market new technologies, and spur their deployment to serve consumers. We are not persuaded by arguments of some commenters that this spectrum would be better employed by assignments to specific current and planned services. The flexible GWCS approach should permit a range of qualified uses, including those preferred by each of the commenters, while permitting new technologies and services to emerge and encouraging efficient use of this spectrum.

13. Under the Reconciliation Act, the spectrum reallocated from Federal Government use is to be allocated and assigned to public use under a plan that makes frequencies available for new technologies and services, and stimulates the development of such technologies.³⁷ We believe that the General Wireless Communications Service will foster the accomplishment of these goals. The record in this proceeding demonstrates that there are several new technologies and services that might make effective use of this spectrum. The flexibility of GWCS permits a wide variety of such uses to be made of this spectrum, including all the technologies and services proposed in the comments. Entities seeking to introduce these new technologies and services would have the opportunity to obtain spectrum necessary to do so. GWCS will give such new technologies the opportunity to prove themselves in competition with others in the marketplace.

14. GWCS should also foster efficient use of the spectrum. Each licensee will have the opportunity and the incentive to make efficient use of the spectrum licenses it obtains. A licensee will not be constrained to employ the spectrum for a single use. Instead, the flexibility of GWCS will encourage licensees to find ways to use the spectrum for the variety of services allowed under the license, either for its private use or to meet current and future needs of its subscribers. The most valuable uses of this spectrum also may differ in urban and rural parts of the Nation, or in regions with different industries, and may change over time. The flexibility of GWCS will permit licensees to adapt to these circumstances without the need for Commission intervention, further contributing to efficient use.

15. Of equal importance, GWCS will accommodate and spur the development of new technologies and services. The Fixed and Mobile allocation and the GWCS service category will provide a block of spectrum that will accommodate a broad range of new technologies and services, with a minimum of administrative restrictions and requirements. Inventors and entrepreneurs seeking frequencies for future technologies and services will not need to bring their proposals for use of this spectrum to the Commission and succeed in the process of obtaining changes in allocation or assignment. Rather, they will have the opportunity to negotiate with

³⁷ Section 115(b)(2) of the Telecommunications Authorization Act of 1992, codified at 47 U.S.C. § 925(b)(2).

GWCS licensees to provide the new technology or service, based on the market value of current uses. If a new technology or service can make better, more efficient use of the spectrum, licensees are likely to migrate quickly to that use, especially in the competitive market that we expect will emerge.

16. Commenters have not persuaded us that limiting assignments to any of their specific proposed uses of the spectrum would better meet the goals of the Reconciliation Act, the Communications Act, and the public interest. Restricting the 4660-4685 MHz spectrum to defined uses or services, such as the specific uses proposed by various commenters, would tend to reduce the attractiveness of this spectrum for new technologies and services. Assignment of the block exclusively to broadcast auxiliary service (BAS), as requested by MSTV, would preclude the use of the spectrum for the new services proposed in the comments, and from any future alternative technology or use that might be developed. Similarly, the request of API and other commenters to assign portions of this spectrum exclusively to fixed microwave systems would have the effect of barring its use for new technologies and services. Moreover, the representations of API that additional spectrum is needed to accommodate fixed microwave systems that will be displaced by PCS is not persuasive. This topic was the focus of much consideration in our proceeding identifying spectrum for emerging technologies³⁸ and a recent NTIA study projects that spectrum needs for long haul fixed microwave systems will remain constant or decrease slowly, and that spectrum above 15 GHz can accommodate users displaced by PCS.³⁹ Commenters have provided no substantive support to demonstrate that sufficient spectrum for relocation has not been identified. We similarly find no evidentiary basis for API's claim that its proposed allocation of the band to private fixed users is justified by any public safety needs that are not adequately met by current allocations.⁴⁰

17. Moreover, as we discussed above, GWCS is flexible enough to permit these specific uses, as well as the other uses identified in the comments. If GWCS spectrum assignment applications submitted by qualified parties now seeking service-specific allocations are not mutually exclusive, those parties will be granted licenses to provide the specific services they wish to provide, as well as other permissible GWCS services. In the event the spectrum is assigned by auction because of mutual exclusivity, they will also be able to participate and seek to obtain licenses. Private users such as the oil and gas industry companies API represents are often large, well-capitalized businesses. API presents no persuasive evidence that private users will be unable to acquire spectrum by auction to satisfy any unmet needs. For example, these companies can seek to win licenses at auction and share or sell the spectrum they don't need for their own

³⁸ Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, ET Docket No. 92-9, 8 FCC Rcd 6495 (1993).

³⁹ U.S. National Spectrum Requirements, U.S. Department of Commerce, NTIA Special Publication 94-31, March 1995.

⁴⁰ See API Comments at 4, 8.

operations. There is also no reason to expect that commercial providers will be unwilling to provide the services and facilities private users require, including emergency services. If this spectrum is auctioned, we would expect that winning bidders would compete eagerly to provide service to private users in a cost-effective manner.

18. We also believe that any interference issues that may arise among GWCS licensees can be satisfactorily resolved by general non-interference standards and technical rules. We have eliminated many potential sources of unacceptable interference by barring use of GWCS for Broadcast services, Radiolocation services, and Satellite services. Licensees for GWCS should be able to provide other qualified Fixed and Mobile services without unacceptable interference with other users of this or other spectrum. In addition, the grant of each GWCS license will be made subject to the condition that the licensee not cause unacceptable interference with any other licensee or service. Failure to abide by this condition will render the licensee subject to fines, damages, or forfeiture of the license. We are adopting technical rules similar to those in place for PCS. To the extent it proves necessary, we can consider whether revisions to those rules are warranted after GWCS licenses are assigned.

19. We find no merit in arguments that the Fixed and Mobile allocation of this spectrum itself, and establishment of the flexible GWCS designation for assigning this spectrum, are unlawful. As we discussed in the First Report and Order, the Communications Act authorizes and Commission precedent supports allocating frequencies to more than one radiocommunication service, and assigning licenses for use by a broadly defined service.⁴¹ The Commission is required by the National Telecommunications and Information Administration Organization Act (NTIAO Act) to issue regulations to allocate the 50 megahertz of spectrum that the Secretary of Commerce identified and recommended for immediate reallocation from Federal Government use no later than 18 months from enactment of the Reconciliation Act.⁴² For purposes of this portion of the NTIAO Act, the term "allocation" is defined as "an entry in the National Table of Frequency Allocations of a given frequency band for the purpose of its use by one or more radiocommunication services."⁴³ The Table of Frequency Allocations often contains allocations to more than one type of service⁴⁴ and such allocations are specifically authorized in this instance by the NTIAO Act. Therefore, our allocation of the 4660-4685 MHz band to Fixed and Mobile Services is permissible and consistent with established practice.

20. We believe that such an allocation is consistent with the Commission's obligations

⁴¹ First Report and Order, at paras. 41-54.

⁴² Section 115(a) of the National Telecommunications and Information Administration Organization Act, 47 U.S.C. § 925(a) (NTIAO Act).

⁴³ Section 111(1) of the NTIAO Act, 47 U.S.C. § 921(1).

⁴⁴ See 47 C.F.R. § 2.106.

under the Communications Act. The Commission has broad authority under the Communications Act to allocate spectrum. Our authority derives from Section 303 of the Communications Act, which provides:⁴⁵

Except as otherwise provided in this Act, the Commission from time to time, as public convenience, interest, or necessity requires shall --

(a) Classify radio stations;

(b) Prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class;

(c) Assign bands of frequencies to the various classes of stations, and assign frequencies for each individual station

Nothing in the language of Section 303 establishes or suggests any limitation or restriction on the Commission's discretion to prescribe the nature of the service to be rendered over radio frequencies or authority to assign (or allocate) frequencies to the various classes of stations. Moreover, nothing in the language of Section 303 or its legislative history suggests that the Commission is prohibited from assigning spectrum to stations for more than one permissible use, or otherwise limits the Commission's discretion in making spectrum allocations that it deems to serve the public interest.⁴⁶ With respect to allocation decisions, courts have accorded "substantial deference" to Commission determinations.⁴⁷

21. Commission precedent also supports the permissibility of allocating spectrum in a manner that allows for its use by a broadly defined service. In 1986, the Commission allocated 2 megahertz of spectrum for a new General Purpose Mobile Service (GPMS) accessible to all land

⁴⁵ 47 U.S.C. § 303(a)-(c)

⁴⁶ We acknowledge that certain other sections of the Communications Act reflect the fact that Congress expected the Commission to utilize some amount of spectrum for particular types of services. See, e.g., 47 U.S.C. § 309(b) (referring to fixed point-to-point microwave stations, industrial radio positioning stations, and aeronautical stations); 47 U.S.C. § 319 (distinguishing between amateur stations, mobile stations, public coast stations, privately owned fixed microwave stations, common carrier stations, and broadcast stations). Nevertheless, these sections cannot be read to limit the Commission's discretion to permit the use of some spectrum for more broadly defined services.

⁴⁷ See National Ass'n of Regulatory Util. Comm'ners v. FCC, 525 F.2d 630, 636 (D.C. Cir.), cert. denied, 425 U.S. 992 (1976); see also Telocator Network of America v. FCC, 691 F.2d 525, 549 (D.C.Cir. 1982).

mobile, maritime mobile, and aeronautical mobile uses.⁴⁸ In that instance, the Commission found that the GPMS allocation served the public interest.⁴⁹ The Commission rejected claims that such an allocation was unlawful, noting that "[n]othing in Sections 303(a)-(c) suggests the Commission is not permitted to take into account marketplace forces when exercising its spectrum allocation responsibilities under the public interest standard."⁵⁰ Our current approach is also similar to that taken in our Emerging Technologies proceeding, ET Docket No. 92-9. In that proceeding, the Commission allocated 220 megahertz of spectrum to the Fixed and Mobile services and identified it for use by emerging technologies. Later, we permitted PCS providers to use 140 megahertz of this spectrum.⁵¹ We disagree with the contention made by some commenters that the current approach differs from that applied in allocating spectrum for PCS.⁵² While we envision service rules designed to accommodate a variety of uses, as with PCS, we conclude that the action we take in this Order fulfills our responsibility to employ a regulatory structure that provides for use of the spectrum that is in the public interest.

22. Moreover, our allocation and service designation decisions are not so broad as to permit use of the 4660-4685 MHz band for any purpose. Allocation to the Fixed and Mobile services and designation to GWCS will allow licensees to use the spectrum to provide any Fixed service, including Aeronautical Fixed, fixed point-to-point, and fixed point-to-multipoint systems, and any Mobile service, including Aeronautical mobile, Land mobile, or Maritime mobile service as long as those services meet the interference rules established for GWCS. The allocation does not, however, allow licensees to use the spectrum for Broadcast services, Radiolocation services, or any Satellite services, including the Broadcast or Mobile Satellite Service.⁵³

⁴⁸ Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications System, Report and Order, GEN Docket Nos. 84-1231, 84-1233, 84-1234, 2 FCC Rcd 1825, 1841 (1986), recon. denied, 2 FCC Rcd 6830 (1987).

⁴⁹ Id. at 1840.

⁵⁰ Id. at 1839. We note that this flexible use spectrum was never licensed. We ultimately reallocated this spectrum for narrowband PCS.

⁵¹ See generally Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, Memorandum Opinion and Order, 9 FCC Rcd 5031 (1994).

⁵² A broad variety of services are permitted under PCS. See Section 24.3 of the Commission's Rules, which permits PCS licensees to "provide any mobile communications service on their assigned spectrum. Fixed services may be provided only if they are ancillary to mobile operations. Broadcasting as defined by the Communications Act is prohibited." 47 C.F.R. § 24.3.

⁵³ We note that Broadcast Auxiliary services are not considered a Broadcasting service as defined in Section 2.1 of our Rules, 47 C.F.R. § 2.1.

23. *Footnote US245.* In the Second NPRM we noted that in addition to the Fixed and Mobile service allocation we have adopted in the First Report and Order, 4660-4685 MHz is allocated on a co-primary basis for non-government fixed-satellite service (FSS) space-to-Earth links, with use limited to international inter-continental systems and subject to a case-by-case electromagnetic analysis in accordance with US footnote 245 of the Table of Frequency Allocations. In the NOI in this proceeding we had requested comment on the necessity of maintaining the US245 restrictions on FSS use of this band, considering that it would no longer be available for Federal Government use.⁵⁴ We received no comments addressing this issue in response to the NOI. To facilitate the shared use of this band, we proposed in the Second NPRM to maintain the restrictions set forth in US footnote 245 on use of 4660-4685 MHz and requested comments on this proposal. Commenters seeking the elimination of this restriction were asked to describe fully how FSS service use would be compatible with Fixed and Mobile GWCS services.

24. We received only one comment regarding our proposal to retain US footnote 245 of the Table of Frequency Allocations, in order to facilitate shared use of this band.⁵⁵ PCIA states that the retention of footnote US 245, which restricts fixed-satellite space-to-Earth links, is necessary to prevent interference to terrestrial based mobile services.⁵⁶ We will adopt our proposal in the Second NPRM and retain the restriction in this footnote.

25. *Public Safety.* Under the NTIAO Act, the Commission's plan for allocating and assigning former Federal Government spectrum must contain appropriate provisions to ensure not only the availability of frequencies for new services, but also "the safety of life and property in accordance with the policies of Section 1 of the [Communications Act]"⁵⁷ In the current record, APCO proposes designating at least a portion of the 4660-4685 MHz band for public safety mobile and aeronautical video operations. APCO asserts that law enforcement and other public safety agencies do not currently have any dedicated channels for live "bird's eye view" video operations, which it says would be valuable for emergency situations.⁵⁸

26. We are firmly committed to ensuring that wireless and wired communications resources are deployed to promote the safety of life and property, as well as to carry out the other public interest goals of the Communications Act. The FCC and NTIA recently formed a Public Safety Wireless Advisory Committee to prepare a report on operational, technical and spectrum

⁵⁴ NOI, 9 FCC Rcd at 2177, n.23.

⁵⁵ See Second NPRM at para. 61.

⁵⁶ PCIA Comments at 3.

⁵⁷ Section 115(b)(2)(C) of the NTIAO Act, codified at 47 U.S.C. § 925(b)(2)(C).

⁵⁸ APCO Comments at 3.

requirements of Federal, state and local public safety entities through the year 2010.⁵⁹ This Committee is expected to begin its work in the very near future. The plan we are developing for the 200 MHz or more of Federal Government spectrum scheduled to be reallocated to non-Government use over the next 10 years will contain provisions to address how the reallocated Federal Government spectrum can best be used to satisfy unmet national safety needs. We are directed by statute to submit and implement this plan one year after receipt of NTIA's Spectrum Reallocation Final Report, in early 1996.⁶⁰

27. The current record does not, however, provide a sound basis for concluding that any or all of the 4660-4685 MHz band should be assigned as APCO suggests. In its comments requesting a dedicated channel for public safety mobile and aeronautical video operations, APCO recognizes that public safety video operations are now possible through frequency sharing with amateurs and broadcasters.⁶¹ It also suggests that the public safety needs it identifies may be met by priority access to some video channels.⁶² Moreover, it is unclear whether these needs, to the extent they are not currently met and could not be met using current broadcast auxiliary allocations, require nationwide channel assignments. APCO's request appears to be based primarily on the needs of the Los Angeles County Sheriff's Department. The extent of the need for public safety mobile and aeronautical video channels in other parts of the Nation is unclear.

28. It is our hope and intent that the gaps we have identified in the current record regarding the scope of public safety needs for additional wireless spectrum, and how those needs might best and most efficiently be met, will spur public safety organizations and other interested parties to work together to help us develop an effective plan for using wireless communications to meet any unmet and future public safety needs. The FCC-NTIA Public Safety Wireless Advisory Committee will offer one useful forum for such efforts. One of the tasks undertaken by the advisory committee will be to identify spectrum for federal, state, and local public safety use. As part of that process, the advisory committee may explore potential public safety uses of the 4635-4660 MHz band. We expect to begin proceedings in the near future to allocate and establish rules for assigning this band, which consists of reallocated Federal Government spectrum which is scheduled to become available in January 1997. This band is directly adjacent to the 4660-4685 MHz band we are designating to GWCS in this Order and thus has essentially the same technical characteristics and potential uses. The record in the proceeding to allocate and assign the 4635-4660 MHz band should also provide information useful for developing an overall plan for allocating and assigning the reallocated Federal Government spectrum.

⁵⁹ See Letter from Director, Office of Management and Budget to Chairman, FCC, June 2, 1995 approving request for Public Safety Wireless Advisory Committee.

⁶⁰ See Section 115(b) of the NTIAO Act, codified at 47 U.S.C. § 925(b).

⁶¹ APCO Comments at 3.

⁶² Id. at 4.

B. Use of Spectrum

29. **Background.** We expect that the General Wireless Communications Service will benefit the public by providing licensees the opportunity to use the spectrum in a variety of ways they find appropriate. In the Second NPRM, we tentatively concluded that it is likely that these uses will principally involve the provision of subscriber-based services. Based on this conclusion, we proposed to use competitive bidding as the assignment method for this spectrum if mutually exclusive applications are filed. Section 309(j)(2)(A) of the Communications Act provides that competitive bidding may be used by the Commission to assign spectrum if the "principal use" of the spectrum involves, or is reasonably likely to involve, the transmission or reception of communications signals to subscribers for compensation.⁶³

30. In the Competitive Bidding Second Report and Order, we established a general framework for evaluating whether particular service classifications can be considered to be used principally for the provision of subscriber-based services. We concluded therein that we will determine principal use by comparing the amount of non-subscription use made by the licensees in a service as a class with the amount of subscriber-based use "on the basis of information throughput, time, or spectrum."⁶⁴ We found that the competitive bidding assignment method is permissible if "at least a majority of the use of a Commission regulated service or class of service [is] for service to subscribers for compensation."⁶⁵ In arriving at this approach, we rejected the notion that we must examine individual applications to determine each licensee's intended use of the spectrum. In the Second NPRM we sought comment regarding whether that general framework should be used with regard to the assignment of spectrum in the 4660-4685 MHz band.⁶⁶

31. Based on the record, we tentatively concluded in the Second NPRM that the principal use of this spectrum under our proposed General Wireless Communications Service would involve, or was reasonably likely to involve, the receipt by the licensee of compensation from subscribers in return for enabling those subscribers to receive or transmit communications

⁶³ See 47 U.S.C. § 309(j)(2)(A). See also Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Second Report and Order, PP Docket No. 93-253, 9 FCC Rcd 2348, 2353 para. 30, (1994) (Competitive Bidding Second Report and Order), recon., Second Memorandum Opinion and Order, 9 FCC Rcd 7245 (1994) (Competitive Bidding Reconsideration Order).

⁶⁴ Id., 9 FCC Rcd at 2354. Given the fact that "there is no way to anticipate . . . all of the possible uses of the electromagnetic spectrum", we explicitly retained the discretion to use any of these measurement criteria in evaluating particular service classifications. Id. at 2354, _ n.21.

⁶⁵ Id. at 2354, para. 32.

⁶⁶ See Competitive Bidding Second Report and Order, 9 FCC Rcd at 2353-54, paras. 30-36.

signals.⁶⁷ These subscriber-based services include interactive wireless cable and other wireless data, voice, and interactive services. A number of commenters also proposed uses of this spectrum that would not be subscriber-based, such as for broadcast auxiliary services. Accordingly, we requested further comment on this tentative conclusion. Commenters addressing this issue were requested to describe fully the service that they contemplated for the spectrum, whether the service would be Fixed or Mobile, and whether it would be private (for a licensee's internal use), commercial (subscriber-based), or non-common carriage but subscriber-based.

32. To help us make an accurate determination regarding the extent to which this spectrum will be used for subscriber-based services, we also requested that commenters describe their spectrum needs and provide an indication of the degree of competition expected within a particular geographic service area. Commenters were also expected to describe as accurately as possible the types of geographic areas in which they would anticipate operating (e.g., rural, urban, top 50 markets), since the likelihood of subscriber use may vary among geographic areas.

33. **Comments.** Most commenters say that the principal use of this spectrum will be subscription-based. A few of the commenters disagree with that conclusion. PCIA asserts that there is no record in this proceeding to support the conclusion that the band would be used primarily for subscriber-based services.⁶⁸ MSTV concurs, and states that among potential uses of GWCS only one, wireless cable, qualifies as a subscriber service. It claims there is no evidence in the record to support the conclusion that a majority of the band's uses will be subscriber-based, and that a mere assumption that this will be so does not satisfy the "reasonable likelihood" standard.⁶⁹ UTC also states that the only evidence in the record that the principal use of the spectrum will be for subscriber-based services are the comments of entities that expressed interest in using it for interactive video or wireless cable.⁷⁰

34. In contrast, Bell Atlantic and Leaco state that the band is likely to be used for such consumer-oriented applications as interactive video, and voice and data services.⁷¹ ATI also foresees the use of this band for subscriber-based wireless cable services.⁷² In-Flight's proposed ground-to-air video and audio service would also apparently be provided to subscribing airline passengers or the airlines themselves.

⁶⁷ Second NPRM, at para. 66.

⁶⁸ PCIA Comments at 3.

⁶⁹ MSTV Reply Comments at 5-6.

⁷⁰ UTC Comments at 6.

⁷¹ Bell Atlantic Comments at 3; Leaco Comments at 6-7.

⁷² ATI Comments at 2.

35. The only comments responding to our request for information regarding spectrum needs, the degree of competition in geographic service areas, or the geographic areas in which operations are likely to be established, were filed by Leaco and In-Flight. Leaco says it operates in rural areas of New Mexico and Texas and could use all 25 megahertz of the block to provide wireless voice, data, and video services in this region. It does not anticipate any competing licensees in those areas.⁷³ In-Flight states that it plans to seek a nationwide license and indicates that other companies may compete in providing nationwide ground-to-air services.⁷⁴

36. Decision. We believe it is likely that the principal use of this band will be for subscription services. A majority of the commenters support this view and indicate that they anticipate using GWCS spectrum for various types of wireless video, audio, and data transmission services, wireless cable, or for ground-to-air video. All of these services are likely to be subscriber-based and there may well be several entities seeking spectrum to compete in providing these services. Entities wishing to provide subscriber-based services also appear likely, at least in some cases, to seek nationwide licenses. For example, In-Flight states that it requires a nationwide license to provide ground-to-air video. We agree with In-Flight's assertion that it may well face competitors who also wish to provide services to subscribing airlines and their passengers, and those competitors are also likely to seek nationwide licenses for portions of the 4660--4685 MHz block.

37. By contrast, it is uncertain that non-subscriber-based users will seek or obtain GWCS spectrum. APCO indicates that GWCS would not accommodate the video operations of public safety agencies and others.⁷⁵ These views reinforce the likelihood that GWCS licensees are likely to provide primarily subscriber-based services. We reject the contention from PCIA and MSTV that the evidence in the record is not sufficient to support a finding that the principal use of a GWCS service in the 4660-4685 MHz band would be subscriber-based services, and that GWCS would not be used primarily for such services.⁷⁶ PCIA and MSTV provide no basis for this conclusion and, as we have discussed, the record strongly supports the conclusion that GWCS will principally be used for subscriber-based services such as wireless cable, other voice, data, and video services, and ground-to-air video.

C. Assignment Method

⁷³ Leaco Comments at 7.

⁷⁴ In-Flight Reply Comments at 7.

⁷⁵ APCO Comments at 4.

⁷⁶ MSTV Reply Comments at 6, n.7.

38. **Background.** Sections 309(j)(1) and 309(j)(2) of the Communications Act⁷⁷ permit auctions where mutually exclusive applications for initial licenses or construction permits are accepted for filing by the Commission and where the principal use of the spectrum will involve or is reasonably likely to involve the receipt by the licensee of compensation from subscribers in return for enabling those subscribers to receive or transmit communications signals. As we explained above, we believe that the principal use of this spectrum will meet these requirements.⁷⁸ In addition, Section 309(j)(2)(B) requires the Commission, before it may adopt the use of auctions to award licenses, to determine that use of competitive bidding will promote the objectives described in Sections 1 and 309(j)(3) of the Communications Act.

39. In the Second NPRM, we tentatively concluded that the use of competitive bidding to assign licenses in the 4660-4685 MHz band would promote these objectives.⁷⁹ We explained that auctioning licenses in this band is likely to lead to more speedy initiation of services than would use of comparative hearings, and that auctions will place licenses in the hands of those who value the spectrum most highly. Thus, competitive bidding would promote the availability, to all the people of the United States, of a rapid, efficient, nationwide, and worldwide telecommunications system with adequate facilities at reasonable charges, satisfying the objectives of Section 1 and Section 309(j)(3) of the Communications Act.

40. We also requested comments on other possible assignment methods.⁸⁰ For example, if the principal use of the spectrum is found to be subscriber-based services, the only alternative to competitive bidding would be comparative hearings. On the other hand, we noted that if the principal use will not involve subscriber-based services, the Commission has discretion in cases of mutually exclusive applications to employ either lotteries or comparative hearings to assign licenses. We tentatively concluded that, in the latter case, a lottery system would be preferable to comparative hearings because it would expedite the grant of licenses and be capable of resulting in the provision of adequate service to users.⁸¹

41. **Comments.** We have already discussed comments addressing whether GWCS meets the initial statutory requirements for assignment by auction. As we have explained, the principal

⁷⁷ 47 U.S.C. §§ 309(j)(1), 309(j)(2).

⁷⁸ Based on this conclusion, we need not consider the comments of Ladybug Mountain PCS Corp. which recommends that, if the principal use of the spectrum does not involve subscriber-based services, the Commission should use comparative hearings rather than random selection to grant licenses.

⁷⁹ Second NPRM, at para. 69.

⁸⁰ Second NPRM, at paras. 70-75.

⁸¹ Second Notice, at para. 75.

use of spectrum is reasonably likely to involve subscriber-based services, and thus GWCS is eligible for assignment by competitive bidding as well as by comparative hearings, in cases where mutually exclusive applications are filed. Most commenters apparently assume that mutually exclusive applications will be filed and that auctions should be used to assign licenses.⁸² None of the comments proposes the use of comparative hearings rather than auctions in the event that mutually exclusive applications are filed for GWCS licenses. Leaco states that it is not opposed to the competitive bidding process in general.⁸³ UTC questions whether auctions will lead to more rapid deployment of new technologies and services than other licensing schemes, in view of the fact that the PCS systems that were licensed by auction are not operational yet, and argues that the Interactive Video Data Service auction indicates that auction winners do not necessarily have an incentive to deploy service or new technology rapidly.⁸⁴ UTC does not, however, appear to propose comparative hearings.

42. **Decision.** We conclude that, in cases of mutually-exclusive applications, GWCS spectrum should be assigned by auction, as we tentatively concluded in the Second NPRM. Based on our experience with comparative hearings, lotteries, and auctions, we believe that auctions will in this case achieve the statutory objectives of Section 309(j)(3) of the Communications Act.

43. Section 309(j)(3) of the Communications Act sets forth Congress's four objectives for competitive bidding, as follows:⁸⁵

(A) the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays;

(B) promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women;

(C) recovery for the public of a portion of the value of the public spectrum made available for commercial use and avoidance of unjust enrichment through the methods employed to award uses of that resource; and

⁸² See, e.g., SBA Comments at 1-3; Bell Atlantic Comments at 1-3.

⁸³ Leaco Comments at 7. Leaco does request several revisions to the proposed auction rules to ensure that rural areas obtain service. See e.g., para. 56 infra.

⁸⁴ UTC Comments at 7.

⁸⁵ See 47 C.F.R § 309(j)(3).

(D) efficient and intensive use of the electromagnetic spectrum.

44. We believe that using a system of competitive bidding for assignments in the 4660-4685 MHz band will promote these four objectives. First, our experience with the use of auctions to award licenses to provide both narrowband and broadband PCS demonstrates that auctions will, more quickly than other licensing schemes, lead to the development and rapid deployment of new technologies, products, and services, thus satisfying the objective expressed in Section 309(j)(3)(A). UTC's suggestion that the Commission has no experience to declare that auctions will lead to more rapid deployment of service or technology, because PCS systems are not operational yet, ignores the advantages of auctions over comparative hearings and lotteries. The licensing of PCS has proceeded far more rapidly than would have been the case if we had used comparative hearings or lotteries.⁸⁶ We expect that an auction of GWCS spectrum will produce similar benefits in assigning spectrum to qualified licensees as quickly as possible.

45. Second, we have in this Order adopted competitive bidding rules that will advance the objectives of Section 309(j)(3)(B) relating to the promotion of economic opportunity and the dissemination of licenses among a wide variety of applicants. These rules include the channelization of the block, limitations on ownership, geographic license areas, and provisions for partitioning of licenses.

46. Third, use of auctions to assign 4660-4685 MHz band licenses clearly advances the goals of Section 309(j)(3)(C) by enabling us to recover for the public a portion of the value of the public spectrum and avoid problems of unjust enrichment. Finally, as we stated in the Competitive Bidding Second Report and Order, auctions tend "to reinforce the desire of licensees to make efficient and intensive use of . . . spectrum. Auctions make explicit what others are willing to pay to use the spectrum, and the licensees' need to recoup the out-of-pocket expenditure for a license should provide additional motivation to get the most value out of the spectrum."⁸⁷ We anticipate that the system of competitive bidding we are adopting in this Order will lead to the issuance of licenses to those parties who value the licenses most highly and who thus can be expected to make efficient and intensive use of the spectrum, as contemplated by Section 309(j)(3)(D).

47. One important aspect of any assignment method is determining whether applications are mutually exclusive. In the Second NPRM, we proposed to use a 30-day filing window or other application cut-off method to allow for competing applications. We also sought comment on whether some other type of filing system would be more appropriate for determining whether initial applications are mutually exclusive. None of the commenters addresses this issue, except UTC, or suggests alternatives to the proposed 30-day filing window. UTC expresses no opinion as to the allocation of the 4660-4685 MHz band, but contends that the GWCS proposal

⁸⁶ See, e.g., "FCC Grants 99 Licenses for Broadband Personal Communications Services in Major Trading Areas," FCC News Release, June 23, 1995.

⁸⁷ Competitive Bidding Second Report and Order, 9 FCC Rcd at 2358.

constitutes "allocation by auction," which it opposes. UTC further contends that the proposed 30-day filing window represents one aspect of an attempt to encourage the filing of mutually exclusive applications, a precondition of auctions, rather than proposing solutions to avoid mutual exclusivity.⁸⁸ We have discussed the rationale and legal basis for allocating this spectrum to Fixed and Mobile services and for designating it for the GWCS in the Second Notice and elsewhere in this Report and Order. UTC does not propose any other application method or period, and we believe that the 30-day filing window will provide a fair and reasonable opportunity for entities seeking to obtain GWCS licenses. We will adopt the 30-day filing window as proposed for GWCS applications.

D. Channelization; Aggregation

48. **Background.** In the Second NPRM, we proposed that the 4660-4685 MHz band be licensed in five blocks, each of which would be 5 megahertz wide. We also proposed to permit licensees to obtain multiple 5 megahertz blocks. Based on available information about the likely services to be provided in this band, we tentatively concluded that no licensee would need more than 15 megahertz in a single market area. Therefore, we proposed to limit a single entity from obtaining more than three of these blocks in a single geographic licensing area. We also proposed that, regardless of the specific service to be provided, this spectrum will not count against the 45 megahertz spectrum cap that applies to certain commercial mobile radio service (CMRS) licensees, noting that the equipment to provide service competitive with CMRS is not now available for this higher frequency band, and that this allocation for single, unpaired bands is not likely to be competitive with other two-way CMRS services using paired frequency bands in the near future.⁸⁹

49. **Comments.** Leaco, opposing our limitation proposal, states that a limit on the amount of GWCS spectrum used for interactive video would be detrimental to rural providers seeking to use the technology for the provision of interactive video services in rural areas.⁹⁰ Bell Atlantic also supports setting no limits on the number of blocks bidders may acquire. It also agrees that this spectrum should not be counted against the 45 MHz spectrum cap that applies to certain CMRS licensees.⁹¹ In contrast, ATI and WCAI support a 10 megahertz limit that is stricter

⁸⁸ UTC Comments at 7.

⁸⁹ Implementation of Sections 3(n) and 332 of the Communications Act -- Regulatory Treatment of Mobile Services, Third Report and Order, GN Docket No. 93-252, 9 FCC Rcd 7988, 8109-10, para. 263 (1994), recon. pending. The spectrum cap currently applies to broadband personal communications services, specialized mobile radio services, and cellular services.

⁹⁰ Leaco Comments at 10.

⁹¹ Bell Atlantic Comments at 3-4.

than the 15 megahertz limit proposed by the Commission. ATI and WCAI contend that a 10 megahertz limit would assure that there are at least three wireless cable service providers in each geographic area.⁹²

50. **Decision.** We adopt the proposed channelization plan consisting of five 5 megahertz blocks. We also adopt the proposed aggregation limit of 15 megahertz of spectrum that may be obtained by a single entity. This limit will ensure that at least two competing entities will be able to provide GWCS-based services in each license area, helping achieve the statutory goals of encouraging competition and avoiding excessive concentration of licenses. At the same time, this 15 megahertz limit should permit licensees to acquire adequate spectrum to provide effective services. The 10 MHz limit proposed by ATI and WCAI is based on the assumption that only wireless cable providers will operate under GWCS and is, therefore, overly restrictive. The 15 megahertz aggregation limit will permit this level of competition while allowing flexibility that may be useful for some service plans, now and in the future. We believe further that competition may well be possible in many rural areas. Leaco presents no evidence to support a need for permitting the monopolization of this spectrum by rural telephone companies, and we expect encouraging competition will be beneficial, not detrimental to rural customers. We also adopt our tentative conclusion not to count this spectrum against the 45 megahertz spectrum cap that applies to certain CMRS licenses. As we indicated in the Second NPRM, we do not expect that it will be feasible to offer GWCS services that are competitive with existing and planned CMRS services in the near future. As wireless technology and services develop, however, we may consider revisions to the CMRS spectrum cap, other spectrum aggregation rules, and standards for review of mergers or acquisitions that may affect the concentration of spectrum, in order to ensure vigorous competition in wireless services and to implement the Communications Act.

E. License Areas

51. **Background.** Under our Fixed and Mobile allocation, we proposed that all licenses issued be based on 51 Major Trading Areas (MTA) and MTA-like areas.⁹³ We also expressed our

⁹² ATI Comments at 2-4; WCAI Comments at 5-7.

⁹³ MTAs are defined in the Rand McNally 1992 Commercial Atlas & Marketing Guide 36-39 (123d ed. 1992). There are 47 MTAs, as defined by Rand McNally. Following the approach we have taken with regard to other services in which we have used MTA license areas, we proposed in the Second NPRM to separate Alaska from the Seattle, Washington, MTA so that Alaska would be licensed as a separate MTA-like area. We also proposed to license separately the following additional MTA-like areas:

- (1) Guam and the Northern Marianas Islands.
- (2) Puerto Rico and the United States Virgin Islands.

concern regarding the importance of providing areas small enough to deploy "niche" services, or services aimed at rural or relatively rural areas, while providing a large enough area for those licensees that wish to provide wide-area or regional service. We tentatively concluded that MTAs provide the best compromise in this situation. We did not propose to restrict the number of MTAs in which a party may obtain a license. Thus, under our proposal a licensee would be permitted to aggregate licenses to offer a regional or nationwide service.

52. On the other hand, because the MTA may be too large for some licensees, we proposed to permit licensees to lease the rights to operate a general wireless communication system within portions of their authorized geographic service area or transfer a portion of their license to partition their service area geographically, allowing another party to be licensed in the partitioned area. As stated in the Second NPRM, such a transfer would be subject to Commission approval as required by the Communications Act.⁹⁴ In particular, we requested that commenters address specific procedures for leasing or partitioning a geographic area. For example, we asked whether the Commission should use partitioning procedures similar to those used for cellular licenses and adopted for broadband PCS licenses. Entities that believe that licensing should be based on areas other than MTAs were asked to support their alternative proposal.

53. **Comments:** RMC objects to the use of MTA or BTA listings without a license agreement.⁹⁵ The majority of the GWCS supporters oppose licensing on an MTA basis and propose smaller license regions. ATI opposes MTAs, and instead recommends the use of smaller service areas such as Metropolitan Statistical Areas (MSAs) or Rural Service Areas (RSAs), which it contends would better promote deployment of the "niche" services and services aimed at rural or relatively rural areas. ATI supports the Commission's tentative conclusion in the Second NPRM to use combinatorial bidding procedures and urges the Commission to implement MSA and RSA service areas, or at most BTA service areas, along with combinatorial bidding. ATI contends that use of anything larger than BTA service areas will defeat the Commission's objective of providing for a wide variety of usage within the GWCS.⁹⁶ PCIA believes that it may be more appropriate to use the Economic Areas (EAs) developed by the Bureau of Economic Analysis (BEA), Department of Commerce. PCIA states that EAs better approximate the natural radio usage patterns of users.⁹⁷

(3) American Samoa.

Thus, we proposed to license a total of 51 MTA or MTA-like areas on each spectrum block.

⁹⁴ See 47 U.S.C. § 310(d).

⁹⁵ RMC Comments, passim.

⁹⁶ ATI Comments at 3-4.

⁹⁷ PCIA Comments at 4.

54. Leaco submits that under specific circumstances (i.e., in rural areas where competition does not exist) market forces do not ensure that spectrum is awarded to those who value it most. By auctioning large market areas, Leaco argues, the Commission lumps rural areas, where auctions might not be required because of the lack of mutually exclusive applications, with highly competitive urban areas where mutually exclusive applications are sure to exist. Leaco suggests that licenses be awarded using cellular MSAs and RSAs.⁹⁸ For those providers serving larger areas, adjacent geographic areas could be consolidated. WCAI also supports the use of MSA and RSAs, stating that before an MTA can be partitioned, it must be acquired at auction. WCAI argues that it is asking too much of an entity that contemplates providing a local service to expect it to make the financial commitment necessary to acquire an MTA, even if that entity can then recoup part of its cost through partitioning. It is more reasonable to provide for smaller licensing areas, while affording those that desire to serve larger areas the opportunity to accumulate contiguous areas.⁹⁹ While deferring to the FCC's discretion to award spectrum on an MTA basis, the U.S. Small Business Administration "generally supports awards of licenses on a Basic Trading Area (BTA) basis because it requires less capital to obtain a license and construct an operational system."¹⁰⁰

55. Only Bell Atlantic and In-Flight support MTAs. In reply comments, In-Flight contends that partitioning will meet the objective that proponents of small service areas desire, and that it would be inequitable to award GWCS licenses to serve smaller areas than MTAs because those interested in applying for a nationwide license have no option but GWCS, while those interested in mobile GWCS in rural areas have the option of applying for PCS licenses.¹⁰¹ Bell Atlantic states that the Commission's proposal to base license areas on MTAs has proved successful to date in the PCS arena and should be adopted here as well, along with partitioning.¹⁰²

56. **Decision.** We will issue GWCS licenses based on EA-like geographic areas. Use of the smaller EA areas, as created and maintained by the U.S. Department of Commerce's Bureau of Economic Affairs, appears to be more consistent with the likely uses of GWCS licenses than use of MTAs and will increase opportunities for small businesses and other designated entities to obtain GWCS licenses. We agree with PCIA that the BEA Economic Areas approximate the natural radio usage patterns of users, as the boundaries of those areas are based on local area economic activity, local interindustry economic relationships, and internal population movements such as commuting patterns. Use of EAs will in addition address Leaco's concerns, facilitating the

⁹⁸ Leaco Comments at 11.

⁹⁹ WCAI Comments at 7-9.

¹⁰⁰ SBA Comment at 3.

¹⁰¹ In-Flight Reply Comments at 6.

¹⁰² Bell Atlantic Comments at 4.

provision of wireless GWCS services in rural areas. EA-based licenses also avoid the copyright problems and issues associated with MTAs. With the 172 EAs, plus 3 EA-like areas for Guam and the Northern Marianas, Puerto Rico and the United States Virgin Islands, and American Samoa, we will be awarding 875 licenses (five 5 MHz blocks in 175 EAs), more than three times as many licenses as would have been awarded using MTA-based regions. As the comments indicate, this change will allow more opportunities for designated entities to obtain licenses, and at lower cost for each license. We do not believe use of EAs will be unfair to licensees seeking to provide regional or nationwide service. Those entities will have the opportunity to aggregate licenses to serve those areas, and we are adopting bidding procedures that should be fair to small and large bidders alike.

57. The complete list of EA and EA-like areas is shown in Appendix C. The five 5 MHz blocks will be designated as Blocks A through E: Block A (4660-4665 MHz), Block B (4665-4670 MHz), Block C (4670-4675 MHz), Block D (4675-4680 MHz) and Block E (4680-4685 MHz). This configuration of licenses should contribute to competition and flexibility in use of these licenses.

F. Eligibility

58. **Background.** In the Second NPRM, we proposed, in the event we determined that it is reasonably likely that GWCS services would be commercial services, that there be no restrictions on eligibility to apply for licenses in this band other than those foreign ownership restrictions that apply to CMRS and common carrier fixed system licensees,¹⁰³ and the restriction on foreign governments or their representatives related to the holding of private mobile radio service licenses.¹⁰⁴ Although rural telephone companies would be eligible, we did not propose to treat them differently than other applicants. We sought comment on these proposals. We also requested that commenters seeking spectrum for non-commercial services (either private mobile radio services or private fixed services) provide as complete information as possible regarding eligibility restrictions that should apply.

59. **Comments.** Bell Atlantic, the only commenter addressing these issues, supports the proposal to impose no categorical restrictions on license eligibility in this band, reasoning that an open policy will help ensure that the entire industry can apply its entrepreneurial talents to the most innovative use of this spectrum.¹⁰⁵

60. **Decision.** We adopt our proposed broad eligibility standards for GWCS applications. Opening the GWCS market to a wide range of applicants will permit and encourage

¹⁰³ 47 U.S.C. § 310(b).

¹⁰⁴ 47 U.S.C. § 310(a).

¹⁰⁵ Bell Atlantic Comments at 4.

entrepreneurial efforts to develop new technologies and services, while helping to ensure the highest and best use of this spectrum.

G. Competitive Bidding Issues

61. In the Second NPRM, we proposed to use auctions to issue licenses for GWCS services in the 4660-4685 MHz band that meet the statutory auction criteria. We sought comment on a wide range of issues related to competitive bidding.

1. Competitive Bidding Design

a. General Competitive Bidding Principles

62. The Competitive Bidding Second Report and Order, as modified by the Competitive Bidding Reconsideration Order, established the criteria to be used in selecting which auction design method to use for each particular auctionable service. Generally, we concluded that awarding licenses to those parties who value them most highly will foster Congress's policy objectives. In this regard, we noted that since a bidder's ability to introduce valuable new services and to deploy them quickly, intensively, and efficiently increases the value of a license to that bidder, an auction design that awards licenses to those bidders with the greatest willingness to pay tends to promote the development and rapid deployment of new services and the efficient and intensive use of the spectrum.¹⁰⁶

63. Based on this analysis, we concluded that, where the licenses to be auctioned are interdependent and their value is expected to be high, simultaneous multiple round auctions would best achieve the Commission's goals for competitive bidding.¹⁰⁷ We also noted, however, that simultaneous multiple round auctions may not be appropriate for all licenses. For example, where there is less interdependence among licenses, there is less benefit to auctioning them simultaneously. Similarly, we explained that, when the values of particular licenses to be auctioned are low relative to the costs of conducting a simultaneous multiple round auction, we may consider auction designs that are relatively simple, with low administrative costs and minimal costs to the auction participants.¹⁰⁸

b. Competitive Bidding Methodology for Licenses in the 4660-4685 MHz Band

64. **Background.** In the Second NPRM, we proposed to use simultaneous multiple round bidding for licensing of the proposed 5 MHz-wide MTA spectrum blocks. Based on the

¹⁰⁶ See Competitive Bidding Second Report and Order, 9 FCC Rcd at 2360-61, para. 70.

¹⁰⁷ See id. at 2367, paras. 109-111.

¹⁰⁸ See id. at 2367, paras. 112-113.

record and our experience with the auctioning of other licenses, we expected that such licenses would be of sufficient value to warrant the use of simultaneous auctions. We also expressed the view that the value of these licenses for certain contemplated uses would be significantly interdependent because of the desirability of aggregation across spectrum blocks and geographic regions. We also tentatively proposed to auction all licenses simultaneously, because of the relatively high value and significant interdependence of the licenses. We asked commenters to address these tentative conclusions and whether any other competitive bidding designs might be more appropriate for the licensing of this spectrum.

65. **Comments.** In-Flight, the only commenter addressing these issues, supports awarding GWCS licenses in a single, simultaneous auction, in order to provide incentives for companies desiring to provide nationwide service to apply for a GWCS license.¹⁰⁹

66. **Decision.** We will adopt the tentative conclusion in the Second NPRM and auction this spectrum by simultaneous multiple round bidding. This bidding methodology will allow bidders to express the value of the interdependency among licenses better than if licenses are auctioned separately. Moreover, simultaneous multiple round bidding will provide bidders with the opportunity to pursue back-up strategies that enable them most efficiently to obtain the license combinations which satisfy their service needs. Simultaneous multiple round bidding is thus most likely to award GWCS licenses to bidders who value them the most highly and who are most likely to deploy new technologies and services rapidly. We reserve the discretion to hold one or more auctions. In addition, we reserve the discretion to test alternative procedures. We will announce by Public Notice before each auction the competitive bidding design to be employed in a particular auction.

c. Combinatorial Bidding

67. Combinatorial bidding is an auction method which allows applicants to bid for multiple licenses as all-or-nothing packages, e.g., all licenses nationwide on a particular spectrum block, with the licenses awarded as a package if the combinatorial bid is greater than the sum of the high bids on the individual licenses in the package.¹¹⁰ In the Competitive Bidding Second Report and Order, we recognized the potential benefits of combinatorial bidding in facilitating aggregations, but expressed concern about the complexity and cost of combinatorial bidding and the potential of such auctions to award licenses in combinations even though they may be of greater value if awarded separately. The advantage of combinatorial bidding is that it might be structured to award spectrum as either multiple or aggregated packages, based on the most valued use. The disadvantages are the complexity and cost of such bidding, and the potential that the procedures chosen will award licenses in combinations even though they might be of greater value

¹⁰⁹ In-Flight Reply Comments at 8.

¹¹⁰ Competitive Bidding Second Report and Order, 9 FCC Rcd at 2366-67, paras. 98-115.

if awarded separately.¹¹¹

68. In the Second NPRM, we sought comments on whether to allow combinatorial bidding for GWCS services, because it may be necessary or at least highly desirable that spectrum used for some services (e.g., air-ground service) be licensed to the same entity nationwide. While geographic aggregation is generally facilitated in a simultaneous auction, a business plan that depends critically on winning every regional license on a particular block nationwide may be at a disadvantage absent combinatorial bidding even if it represents the highest-valued use of the spectrum.¹¹² We discussed in the Second NPRM methods to overcome this difficulty, such as allowing the submission of combinatorial bids for all local licenses on the same spectrum blocks, but limiting combinatorial bids to nationwide aggregations in order to address concerns that unlimited combinatorial bidding might prove overly complex. We also discussed methods of addressing "free rider" situations that might result in licenses being assigned to those who value the licenses most highly. We suggested, for example, requiring a 5 percent bidding premium for a combinatorial, nationwide bid to be accepted.¹¹³ We also requested comment on other auction designs, such as the "Electronic Interactive Combinatorial Auction" (EICA) using the "Adaptive User Selection Mechanism" (AUSM) as developed by Banks, Ledyard, and Porter and proposed by NTIA.¹¹⁴

69. **Comments.** In-Flight, the only commenter addressing these issues, supports combinatorial bidding as necessary to allow participation by applicants desiring to provide a nationwide service. In-Flight also proposes that any applicant requiring a nationwide license be permitted to bid for a generic license, without specifying the channel block (or blocks) on which service would be provided. Under this proposal, the applicant for a nationwide license to operate on a single channel block would be the winning bidder if its bid was one of the top five bids when judged against the nationwide aggregated bids for each of the five GWCS channel blocks. In-Flight explains that this approach would reduce the risk that a nationwide applicant would be subject to a anticompetitive blocking action by a competitor, who otherwise might only need to bid on a single local license from the channels specified by the nationwide applicant to succeed in blocking the applicant's bid.¹¹⁵

¹¹¹ See Competitive Bidding Second Report and Order, 9 FCC Rcd at 2366-67, paras. 98-115.

¹¹² Second NPRM at paras. 89-92.

¹¹³ Id. at para. 91.

¹¹⁴ J. Banks, J. Ledyard & D. Porter, "Allocating Uncertain and Unresponsive Resources: An Experimental Approach," 20 RAND JOURNAL OF ECONOMICS 1 (1989). Ex parte submission of NTIA, Feb. 28, 1994. See also Competitive Bidding Second Report and Order, 9 FCC Rcd at 2365-66, paras. 99-105.

¹¹⁵ In-Flight Reply Comments at 8-11.

70. In-Flight also contends that this approach would reduce any "free rider" benefits that otherwise might accrue to an applicant for a nationwide license under combinatorial bidding, because other bidders would not know on which channel block (or blocks) the combinatorial bidder would operate if it submits a winning bid.¹¹⁶

71. **Decision.** We do not adopt combinatorial bidding, but will establish reduced bid withdrawal penalties for entities seeking nationwide licenses that should achieve results similar to combinatorial bidding, with far less uncertainty and complexity. The record in this proceeding does not, in our view, provide a sound basis for adopting combinatorial bidding. The only comments on this issue were submitted as reply comments by In-Flight. These comments do not address adequately the practical problems with implementing combinatorial bidding for which we sought comment in the Second NPRM. The comments do not, for example, address the issue of whether we should limit combinatorial bids to nationwide licenses, in order to reduce the complexity of the auction, or whether a bidding premium should be required of combinatorial bidders, or whether "stand-by queue" mechanisms should be employed.¹¹⁷ Of greatest significance, the record does not provide an adequate basis for concluding that any specific combinatorial bidding scheme would not be biased toward either individual or combinatorial bidders, resulting in an inefficient outcome.

72. We also conclude that the increased risk a bidder faces in seeking to aggregate individual EA licenses in order to offer a nationwide service can be addressed by reducing the withdrawal penalty for the nationwide bidder. As we discussed in the Second NPRM, geographic aggregation is generally facilitated in a simultaneous auction, but a bidder whose business plan depends critically on winning every license on a particular block nationwide may nonetheless be at a disadvantage. This problem could arise because of the increased risk a nationwide aggregator may face if the total price of the aggregation rises above its value to that bidder, but the bidder is not outbid on all its high bids. The nationwide aggregator may then be forced either to withdraw its remaining high bids late in the auction, possibly incurring a bid withdrawal penalty, or to pay too much for the remaining licenses. This risk could discourage nationwide bidders from fully expressing the value of nationwide aggregations, causing the spectrum to go to lower valued uses.¹¹⁸

73. One way to address this concern is to modify auction rules to limit the risk associated with bid withdrawal for those seeking nationwide aggregations, while still discouraging insincere bidding. To accomplish this, we will limit the withdrawal penalty for nationwide bidders to 5 percent of the aggregate withdrawn bids. The withdrawal penalty would be calculated as the difference between the sum of the withdrawn bids and the sum of the subsequent high bids on the

¹¹⁶ In-Flight Reply Comments at 9-10.

¹¹⁷ See Second NPRM, at paras. 91-92

¹¹⁸ Second NPRM, at para. 90.

withdrawn licenses up to a maximum of 5 percent of the withdrawn bids.¹¹⁹ Calculating the penalty in this way will reduce the expected penalty because bidders will "get credit" for the amounts by which subsequent high bids exceed the prices at which bids are withdrawn. To discourage insincere bidding, nationwide bidders would be required to declare the number of nationwide aggregations for which they will bid and to be active in every round of bidding on sufficient licenses to create the number of declared aggregations. We describe these and other modifications to bid withdrawal penalties and auction activity rules for nationwide aggregations in Appendix E. While these changes to the withdrawal and activity rules must be somewhat complex to ensure a fair and efficient auction, they should nonetheless be far simpler and easier to administer than combinatorial bidding. This approach should also permit a speedier auction, especially because, as we pointed out above, no detailed, practicable combinatorial bidding plan has been proposed or developed in this proceeding.

d. Bidding Procedures

74. **Background.** We also sought comment in the Second NPRM on bidding procedures to be used in the 4660-4685 MHz auctions, including bid increments, duration of bidding rounds, stopping rules, and activity rules. Assuming that we would use simultaneous multiple round auctions, we generally proposed to use the same or similar bidding procedures to those used in simultaneous multiple round bidding for MTA-based PCS licenses.¹²⁰ We sought comment on whether any variations on these procedures should be adopted for licenses in the 4660-4685 MHz band.

75. **Comments; Decision.** None of the comments addresses these bidding procedures issues, except with respect to designated entities, as we discuss in the next section of this Order. Based upon our successful experience in auctioning PCS spectrum and the absence of any dispute concerning the efficacy of the bidding procedures used there, we will adopt essentially the same procedures for GWCS licenses. We will describe these procedures briefly in this section of the Order. Additional, more detailed information on bidding procedures and other auction information will be made public prior to the auction.

2. Procedural and Payment Issues

76. In the Competitive Bidding Second Report and Order, as modified by the Competitive Bidding Reconsideration Order, the Commission established general procedural, payment, and penalty rules for auctions, but also stated that such rules may be modified on a service-specific

¹¹⁹ This 5 percent cap on the bid withdrawal penalty will only apply to withdrawn bids on licenses that are part of the nationwide aggregation.

¹²⁰ See, e.g., Competitive Bidding Fifth Report and Order, 9 FCC Rcd at 5541-56, recon., Competitive Bidding Fourth Memorandum Opinion and Order, 9 FCC Rcd at 6859-64.

basis.¹²¹ As discussed below, we will generally follow the procedural, payment, and penalty rules established in Subpart Q of Part 1 of the Commission's Rules.¹²²

a. Upfront Payments

77. As in the case of other auctionable services, we will require participants in the 4660-4685 MHz auction to tender to the Commission, in advance of the auction, a substantial upfront payment as a condition of bidding in order to ensure that only serious, qualified bidders participate in auctions and to ensure payment of the penalty (discussed *infra*) in the event of bid withdrawal or default. For GWCS, we adopt the standard upfront payment formula of \$0.02 per pop per MHz for the largest combination of MHz-pops a bidder anticipates bidding on in any single round of bidding. We do not find it necessary to set a minimum upfront payment for these licenses.

b. Down Payment and Full Payment for Licenses Awarded by Competitive Bidding

78. The Competitive Bidding Second Report and Order generally required successful bidders to tender a 20 percent down payment on their bids to discourage default between the auction and licensing and to ensure payment of the penalty if such default occurs.¹²³ We concluded that a 20 percent down payment was appropriate to ensure that auction winners have the necessary financial capabilities to complete payment for the license and to pay for the costs of constructing a system, while at the same time not being so onerous as to hinder growth and diminish access. We adopt this 20 percent downpayment requirement for 4660-4685 MHz GWCS licenses. Winning bidders will thus be required to supplement their upfront payments with a down payment sufficient to bring their total deposits up to 20 percent of their winning bid(s).

c. Bid Withdrawal, Default, and Disqualification

79. We adopt the bid withdrawal, default, and disqualification rules for 4660-4685 MHz licensing based on the procedures established in our general competitive bidding rules.¹²⁴ Under these procedures, any bidder who withdraws a high bid during an auction before the Commission declares bidding closed, or defaults by failing to remit the required down payment within the prescribed time, will be required to reimburse the Commission in the amount of the difference between its high bid and the amount of the winning bid the next time the license is offered by the

¹²¹ See Competitive Bidding Reconsideration Order, 9 FCC Rcd at 7249-50, paras. 23-26.

¹²² 47 C.F.R Part 1, Subpart Q.

¹²³ *Id.* at 2381-82, paras. 190-192.

¹²⁴ See 47 C.F.R. § 1.2109.

Commission, if the subsequent winning bid is lower. One exception, as we discussed above, is that we will limit the bid withdrawal payments for nationwide bidders to 5 percent of the withdrawn bids. See ¶ 75 *supra*. A defaulting auction winner will be assessed an additional amount of three percent of the subsequent winning bid or three percent of the amount of the defaulting bid, whichever is less. In the event that an auction winner defaults or is otherwise disqualified, we will re-auction the license either to existing or new applicants. The Commission will retain discretion, however, to offer the license to the next highest bidder at its final bid level if the default occurs within five business days of the close of bidding.

3. Regulatory Safeguards

a. Unjust Enrichment Provisions

80. The Reconciliation Act directs the Commission to "require such transfer disclosures and anti-trafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment as a result of the methods employed to issue licenses and permits."¹²⁵ We will adopt the transfer disclosure requirements contained in Section 1.2111(a) of our rules for all 4660-4685 MHz licenses obtained through the competitive bidding process. In addition, we adopt the specific rules governing unjust enrichment by designated entities, discussed below, as proposed in the Notice. Generally, applicants transferring their licenses within three years after the initial license grant will be required to file, together with their transfer application, the associated contracts for sale, option agreements, management agreements, and all other documents disclosing the total consideration received in return for the transfer of its license.

b. Performance Requirements

81. The Reconciliation Act requires the Commission to "include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services."¹²⁶ In the Competitive Bidding Second Report and Order, we decided that it was unnecessary and undesirable to impose additional performance requirements, beyond those already provided in the service rules, for all auctionable services.¹²⁷ Our 4660-4685 MHz service rules contain specific performance requirements, such as the requirement to construct and provide service within a specific period of time. Thus, we do not adopt any additional performance requirements for competitive bidding purposes.

¹²⁵ 47 U.S.C. § 309(j)(4)(E).

¹²⁶ 47 U.S.C. § 309(j)(4)(B).

¹²⁷ 9 FCC Rcd at 2386, para. 219.

c. Rules Prohibiting Collusion

82. In the Competitive Bidding docket, we adopted special rules prohibiting collusive conduct in the context of competitive bidding.¹²⁸ We indicated that such rules would serve the objectives of the Reconciliation Act by preventing parties, especially the largest firms, from agreeing in advance to bidding strategies that divide the market according to their strategic interests and disadvantage other bidders. We will apply these rules to the 4660-4685 MHz service. Under these procedures, bidders will be required to identify on their applications all parties with whom they have entered into any consortium arrangements, joint ventures, partnerships, or other agreements or understandings that relate to the competitive bidding process. Bidders will also be required to certify that they have not entered into any explicit or implicit agreements, arrangements, or understandings with any parties, other than those identified, regarding the amount of their bid, bidding strategies or the particular properties on which they will or will not bid.

4. Designated Entities

a. Introduction

83. In authorizing the Commission to use competitive bidding, Congress directed the Commission to advance various objectives and consider several alternative methods for achieving them. Specifically, the statute provides that, in establishing eligibility criteria and bidding methodologies, the Commission shall "promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women."¹²⁹ Small businesses, rural telephone companies and businesses owned by minorities and/or women are collectively referred to as "designated entities."¹³⁰ Section 309(j)(4)(A) provides that the Commission "shall consider alternative payment schedules and methods of calculation, including lump sums or guaranteed installment payments, with or without royalty payments or other schedules or methods . . . and combinations of such

¹²⁸ 47 C.F.R. § 1.2105(c). Competitive Bidding Second Report and Order, 9 FCC Rcd 2386-88, paras. 221-226; Competitive Bidding Reconsideration Order, 9 FCC Rcd at 7254, paras. 50-53; Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Memorandum Opinion and Order, PP Docket 93-253, 9 FCC Rcd 7684, 7687-89, paras. 8-12 (1994).

¹²⁹ 47 U.S.C. § 309(j)(3)(B).

¹³⁰ Competitive Bidding Second Report and Order, 9 FCC Rcd at 2388, para. 227.

schedules and methods."¹³¹ The statute also requires the Commission to "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services."¹³² To achieve that goal, the statute indicates that the Commission should "consider the use of tax certificates, bidding preferences, and other procedures."¹³³

84. In the Competitive Bidding docket, we established eligibility criteria and general rules that would govern the award of special provisions for designated entities. We also enumerated several possible special provisions that could be applied to designated entities in particular services, including installment payments, spectrum set-asides, bidding credits, and tax certificates. In addition, we set forth rules to prevent unjust enrichment by designated entities seeking to transfer licenses obtained through use of one of these special provisions.

85. In keeping with the general parameters set forth in the Competitive Bidding docket, we proposed in the Second NPRM specific measures and eligibility criteria for designated entities in the 4660-4685 MHz service, designed to ensure that such entities are given the opportunity to participate both in the competitive bidding process and in the provision of service in the 4660-4685 MHz band. We sought comment on these proposals, and specifically on identifying special provisions tailored to the unique characteristics of the service or services that might be offered in the 4660-4685 MHz band, in order to create meaningful incentives and opportunities in the service for small businesses and businesses owned by minorities and/or women.

86. In the Second NPRM, we discussed and sought comment on these special provisions for designated entities:

- 1) for businesses owned by women and minorities we proposed that installment payments be available on all licenses and that a bidding credit of 25 percent be available on one of the five proposed spectrum blocks;
- 2) for small business we sought comment on allowing a reduced down payment requirement coupled with installment payments;
- 3) we did not believe that special preferences are needed to ensure adequate participation of rural telephone companies;
- 4) we sought comments on reducing upfront payments to encourage participation in the auction, particularly by all eligible designated entities; and

¹³¹ 47 U.S.C. § 309(j)(4)(A).

¹³² 47 U.S.C. § 309(j)(4)(D).

¹³³ Id.

5) we sought comment on whether and how to designate one 5 MHz spectrum block as an "entrepreneurs' block."

We also discussed and solicited comments on issues of the eligibility criteria for designated entities and provisions to prevent unjust enrichment by trafficking in licenses acquired through the use of bidding credits or installment payments.

87. **Comments.** Commenters addressing methods of ensuring that designated entities will participate in an auction of 4660-4685 MHz spectrum primarily urge that licenses be awarded on geographic areas smaller than MTAs. Leaco states that "[i]f the licenses areas are smaller in size, rural telephone companies like Leaco would be able to acquire licenses without special considerations."¹³⁴ The SBA supports licenses on a smaller, Basic Trading Area basis because it requires less capital to obtain a license and construct an operational system. It states that "[l]arge service territories generally are appealing to large businesses and small firms have little chance of obtaining the financing needed to bid for MTA licenses absent special provisions."¹³⁵ ATI similarly supports smaller license areas than MTAs, and proposes entrepreneurial set-asides for small companies in order to "at least allow wireless cable operators to bid for spectrum in competition with other comparably smaller business entities."¹³⁶

88. To the extent that special provisions are needed for designated entities, SBA supports the adoption of bidding credits.¹³⁷ SBA and ATI urge in addition that bidding preferences for businesses owned by women and minorities should also extend to small businesses, which are also designated entities.¹³⁸ Leaco submits that rural telephone companies should be given all of the bidding preferences awarded to other entities.¹³⁹ Although SBA argues that bidding credits should apply to all small businesses, it notes that some differences in preferences for women and minorities may be appropriate to compensate for their greater difficulty in attracting capital than other small businesses.¹⁴⁰ WCAI believes that Congress's intent can best be served by permitting installment payments by small businesses in the same manner at the Commission did for PCS.¹⁴¹

¹³⁴ Leaco Comments at 7.

¹³⁵ SBA Comments at 5.

¹³⁶ ATI Comments at 6.

¹³⁷ SBA Comments at 6.

¹³⁸ SBA Comments at 6, ATI Comments at 6.

¹³⁹ Leaco Comments at 12.

¹⁴⁰ SBA Comments at 6-7.

¹⁴¹ WCAI Comments at 9.

89. Several commenters also support entrepreneurial blocks, especially if licenses are awarded on an MTA basis. SBA proposes an entrepreneurs' block for which all designated entities would be eligible so long as the entities' net worth was within the \$40 million net worth criteria established for the MTA narrowband PCS auction. SBA states that this definition is consistent with definitions adopted by the Commission for other services and approved by the SBA, that it isolates those companies that have significantly greater difficulty in obtaining capital than larger enterprises, and that these companies are sufficiently large that they could survive in a competitive wireless communications marketplace.¹⁴² ATI and WCAI also support \$40 million standard used for PCS as appropriate here.¹⁴³ ATI proposes an entrepreneurial set aside of at least two 5 megahertz channels.¹⁴⁴

90. **Decision.** Our plan to award licenses for the 4660-4685 MHz band based on EA regions, will substantially enhance the opportunities for designated entities to participate in the GWCS license auction. Partitioning of licenses will further increase the opportunities for designated entities. Based on our experience in the other auctions we have held to date, we are also adopting bidding and payment provisions that will help ensure that the auction assigns licenses to the bidders who value them most highly, while encouraging the participation of designated entities. Specifically, we will permit small business licensees to make their payments in installments computed at a reasonable rate of interest (the rate for ten year U.S. Treasury obligations plus 2.5 percent). Small businesses will in addition be permitted to make reduced down payments and interest-only payments in the first two years of the license term, and will be allowed a 10 percent bidding credit on all blocks of spectrum. We also adopt rules to prevent unjust enrichment from bidding preferences. We do not adopt an entrepreneurial set aside, but will apply the designated entity bidding preferences to all five spectrum blocks.

(1) Eligibility for Bidding Credits, Installment Payments, and Reduced Down Payments

91. We will limit eligibility for bidding credits, installment payments and reduced down payments to small businesses, including those owned by members of minority groups and women. Both the SBA and ATI encouraged the Commission to apply bidding credits to all small businesses. On the basis of this record, we lack the information necessary to set different eligibility criteria for minority and women-owned entities that do not meet our small business size standards in order to achieve the goals of Section 309(j) in the GWCS services.¹⁴⁵ By providing credits on

¹⁴² SBA Comments at 6.

¹⁴³ ATI Comments at 6-7; WCAI Comments at 9-11.

¹⁴⁴ ATI Comments at 6.

¹⁴⁵ The SBA proposed bidding credits for women and minorities from that would differ from credits available to small businesses, but provided no detailed support for their proposal. SBA

all blocks, licensing the blocks based on EA geographic areas, and permitting disaggregation and partitioning, we will create substantial opportunities for all small businesses, including those owned by minorities and women. For example, as we pointed out in our NPRM for 900 MHz SMR licensing, U.S. Census Data shows that approximately 99 percent of all women-owned businesses and 99 percent of all minority-owned businesses generated net receipts of \$1 million or less.¹⁴⁶ Thus, we will capture the overwhelming majority of minority and women-owned businesses in the small business category.

92. On March 15, 1995, in response to a request filed by Telephone Electronics Corp (TEC) alleging that our rules violated equal protection principles under the Constitution, the U.S. Circuit Court for the District of Columbia issued an *Order* stating that "those portions" of the Commission's *Order* "establishing minority and gender preferences . . . for that auction shall be stayed pending completion of judicial review."¹⁴⁷ The court explained that TEC had "demonstrated the requisite likelihood of success on the merits."¹⁴⁸ The stay, however, was subsequently lifted on May 1, 1995, on TEC's motion, after TEC decided to withdraw its lawsuit.¹⁴⁹ Most recently, the Supreme Court decided in *Adarand Constructors, Inc. v. Peña*¹⁵⁰ that "all racial classifications . . . must be analyzed by a reviewing court under strict scrutiny."¹⁵¹ The Court ruled that any federal program that makes distinctions on the basis of race must serve a compelling governmental interest and must be narrowly tailored to serve that interest.¹⁵² We believe that the holdings in *Adarand* and in the TEC case would affect any proposal to incorporate gender- and race-based measures into our GWCS auction rules and could potentially

Comments at 6-7.

¹⁴⁶ Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, Second Report and Order and Second Further Notice of Proposed Rulemaking, FCC 95-159, released April 17, 1995, at para. 135, fn. 192, citing Women-Owned Businesses, WB 87-1, 1987 Economic Census, p. 144, Table 8; Survey of Minority-Owned Business Enterprises, MB 87-4, 1987 Economic Census, pp. 81-82, Table 8..

¹⁴⁷ Telephone Electronics Corp. v. FCC, No. 95-1015 (D.C. Cir. March 15, 1995) (order granting stay).

¹⁴⁸ Id. at 2.

¹⁴⁹ Telephone Electronics Corp. v. FCC, No. 95-1015 (D.C. Cir. March 15, 1995) (order granting dismissal of petition for review).

¹⁵⁰ 63 U.S.L.W., No. 93-1841 (U.S. June 12, 1995).

¹⁵¹ 63 U.S.L.W. at 4530.

¹⁵² Id. at 4533.

delay the provision of service to the public.¹⁵³ The effect of the various actions we have taken to reduce the capital requirements for operating GWCS services should also be of particular benefit to minority and women-owned businesses. Our experience in prior auctions suggests that installment payments are particularly successful in encouraging participation in spectrum licensing by businesses that have difficulty attracting capital, a common condition of minority and women-owned businesses.

93. **Small Business Definition.** The Second NPRM requested comment on whether we should utilize the SBA net worth/net income definition of a small business (a net worth not in excess of \$6 million with average net income after Federal income taxes for the preceding years not in excess of \$2 million) we adopted in the Competitive Bidding Second Report and Order¹⁵⁴ or, in the alternative, a gross revenue standard like that used in the broadband PCS context (average gross revenues for the three preceding years not in excess of \$40 million). We also proposed to apply the same affiliation and attribution rules for calculating revenues that we have previously adopted in the PCS context.

94. **Comments.** The SBA believes that a definition of small businesses as those with less than \$40 million in revenues is appropriate to be consistent with definitions previously adopted by the SBA and the Commission, as well as to isolate those companies that have significantly greater difficulty in obtaining capital, but also are sufficiently large that they could survive in a competitive wireless communications marketplace. It considers survivability "particularly critical" where, as here, the market is not well-defined.¹⁵⁵ ATI proposes that the Commission apply revenue and asset criteria such as those established by the Commission for eligibility to bid for the Block C and F Broadband PCS allocations (i.e., gross revenues of less than \$125 million in each of the last two years and total assets of less than \$500 million.)¹⁵⁶ WCAI states that because at least some of the services that may be offered over the band will be PCS-like and require capital expenditure on the same order as PCS, use of the same eligibility requirements is appropriate.¹⁵⁷

95. **Decision.** Our decision to base GWCS licenses on EAs, rather than the larger MTAs, will substantially reduce the capital costs of acquiring GWCS licenses and constructing

¹⁵³ Under Section 309(j)(3)(A) of the Communications Act, the Commission's design for competitive bidding shall seek to promote "the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays."

¹⁵⁴ See Competitive Bidding Second Report and Order, 9 FCC Rcd at 2390, para. 238.

¹⁵⁵ SBA Comments at 6.

¹⁵⁶ ATI Comments at 3-4.

¹⁵⁷ WCAI Comments at 7.

operational systems. In this case, however, it seems likely that there will be a greater range of license sizes, from the local EA-like areas to regional and, possibly, national license aggregations. The capital costs of operational GWCS facilities are thus likely to vary widely as well. The flexibility to aggregate or disaggregate licenses may stimulate other license configurations. Overall, the capital requirements of this service may be similar to broadband PCS and we will adopt the small business definition adopted there, namely any firm, together with its attributable investors and affiliates, with average gross revenues for the three preceding years not in excess of \$40 million. We also apply to 4660-4685 MHz applicants the same affiliation and attribution rules for calculating revenues that we have previously adopted in the PCS context.

(2) Installment Payments and Down Payments

96. We believe that ensuring the opportunity for small businesses to participate in providing service in the 4660-4685 MHz band is important for the telecommunications industry. The record in the Competitive Bidding docket indicates that small businesses have not become major participants in telecommunications.¹⁵⁸ The record in that docket also shows that small businesses have particular difficulties obtaining capital.¹⁵⁹ Payment and bidding procedures that reduce capital outlays and risks are thus especially likely to enhance the opportunities and ability of small businesses to participate successfully in spectrum auctions. As we discussed in the Second NPRM, it appears that installment payments may have been more effective than bidding credits in attracting capital in the regional narrowband PCS auction, possibly because installment payments shift some of the financial risk of future failure to the Government.¹⁶⁰ Therefore, we adopt installment payments for any GWCS licensee meeting the definition of a small business.

97. Under this approach, small business licensees may elect to pay their winning bid amount (less upfront payments) in installments over the ten year term of the license, with interest charges to be fixed at the time of licensing at a rate equal to the rate for ten year U.S. Treasury obligations plus 2.5 percent. Installment payments would be due quarterly on the anniversary of the day the license was granted. Timely payment of all installments would be a condition of the license grant and failure to make such timely payments would be grounds for revocation of the license.

98. We will also adopt additional payment preferences to further reduce the capital needs of small businesses. Small business licensees will be permitted to make interest-only installment

¹⁵⁸ See Competitive Bidding Fifth Report and Order, 9 FCC Rcd at 5578, para. 108.

¹⁵⁹ Id. at 5573, para. 97. The findings made and discussion in the Competitive Bidding Fifth Report and Order on this subject are incorporated here by reference.

¹⁶⁰ Second NPRM at para. 109.

payments during the first two years of the license.¹⁶¹ We also reduce down payments for small businesses to 5 percent of the winning bid due five days after the auction closes and the remaining 5 percent down payment due five days after Public Notice that the license is ready for grant.

(3) Bidding Credits

99. In the Second NPRM, we proposed a 25 percent bidding credit on one of the five proposed spectrum blocks for small businesses owned by women and minorities. These bidding credits would be available exclusively to minority and women-owned businesses. We also proposed installment payments for these entities and sought comment on whether installment payments should also be available for small businesses. We did not believe that special preferences were needed to ensure adequate participation of rural telephone companies in the provision of services in this spectrum, in view of the uncertainty concerning what specific uses may emerge in this band, the potential prices that licenses may bring, the effects of provisions for partitioning or leasing spectrum, and the advantages of incumbency and economies of scale that may already benefit rural telephone companies. We sought comment on this analysis.¹⁶²

100. **Comments.** Leaco urges that, if the Commission uses MTA geographic licensing areas, rural telephone companies should be given all of the bidding preferences awarded to other designated entities, including bidding credits, installment payments, and reduced upfront payments.¹⁶³ The SBA opines that the same rationale for awarding bidding credits - the difficulty in raising capital and the low participation by small business in wireless telecommunications -- militates against limiting the bidding credit to women and minority enterprises. It supports a 25 percent bidding credit for women and minorities and a 10 percent bidding credit for small businesses.¹⁶⁴

101. **Decision.** We adopt a 10 percent bidding credit for all small businesses. As discussed above, we are adopting installment payments for small business bidders and the small EA geographic licensing areas. These changes will substantially reduce the capital costs of acquiring local GWCS licenses and providing service. Such changes should be of particular benefit to small businesses and rural telcos. In our judgment, these and other provisions of the licensing and auction rules should ensure that small businesses will be able to participate effectively in obtaining GWCS licenses, whether or not those licenses are auctioned.

102. We remain concerned that small businesses, including those owned by women and

¹⁶¹ See, e.g., Competitive Bidding Fifth Report and Order at para. 138-39.

¹⁶² Second NPRM at para. 104-115.

¹⁶³ Leaco Comments at 12-14.

¹⁶⁴ SBA Comments at 6-7.

minorities, will find it difficult to obtain the capital to compete effectively in GWCS auctions against large corporations and small telephone companies, with their potential advantages in incumbency and economies of scale in using existing facilities. To address these inequalities, we will adopt a 10 percent bidding credit for small businesses. This credit is smaller than the 25 percent for a single spectrum block we had proposed originally, and smaller than the credits we have adopted for other services. We find it reasonable in view of other revisions to our proposed rules which will benefit designated entities, including the EA-based license areas and the availability of installment payments. We are also widening the scope of the bidding credit by permitting eligible entities to apply the credit to all GWCS licenses. Taken together, we believe that these bidding preferences will carry out the Congressional intent and provide designated entities, including small businesses owned by women and minorities, with a meaningful opportunity to obtain GWCS licenses.

(4) Transfer Restrictions and Unjust Enrichment Provisions

103. Restrictions on the transfer or assignment of licenses acquired by designated entities are intended to promote the Congressional intent that designated entities be permitted to participate in the provision of spectrum-based services,¹⁶⁵ not simply to profit from trafficking in licenses acquired with the help of bidding preferences. In the Second NPRM, we proposed a payment requirement on transfers of such licenses to entities that are not DEs. DEs seeking to transfer a license to an entity that is not a DE would be required to reimburse the government for the amount of the bidding credit, plus interest at the rate imposed for installment financing at the time the license was awarded, before the transfer would be permitted. The amount of the penalty would be reduced over time so that a transfer in the first two years of the license would result in a payment of 100 percent of the value of the bidding credit; in year three of the license term the payment would be 75 percent; in year four the penalty would be 50 percent and in year five the payment would be 25 percent, after which there would be no payment.¹⁶⁶

104. **Decision.** There were no comments on this issue. We adopt the proposed transfer restrictions as a reasonable means of ensuring that bidding preferences are used by designated entities as the statute intends. Because the bidding preferences we are adopting apply to all small businesses, the transfer restrictions will similarly apply to small businesses that transfer licenses acquired with the assistance of bidding preferences to entities that are not small businesses under the definition we are adopting for GWCS.

(5) Rural Telephone Company Partitions

105. In the Second NPRM we proposed to permit partitioning of MTA-based licenses, to permit licensees to lease the rights to operate a GWCS system within portions of their geographic

¹⁶⁵ See 47 U.S.C. § 309(j)(4)(D).

¹⁶⁶ Second NPRM at para. 110.

service area or transfer their license to partition their service areas geographically, allowing another party to be licensed in the partitioned area, subject to Commission approval.¹⁶⁷ Leaco and SBA both recommended licensing of geographic areas smaller than MTAs, while also supporting partitioning if MTAs were adopted.¹⁶⁸ Leaco also urges that winning bidders be given the flexibility to subdivide and license the market to another entity regardless of the size of the geographic service areas selected by the Commission.¹⁶⁹ We believe that, even with license blocks based on the smaller EA regions, partitioning may help provide additional opportunities for small businesses to participate in providing GWCS-based services to customers. We will therefore adopt partitioning procedures for rural telephone companies similar to those used for cellular licenses and adopted for broadband PCS licenses. We adopt the definition of a rural telephone company in Part 1, Subpart Q of our Rules, *viz.*, any local exchange carrier including affiliates with 100,000 access lines or fewer.¹⁷⁰

(6) Entrepreneurs' Block

106. Our Second NPRM sought comment on whether to designate one 5 MHz spectrum block as an "entrepreneurs'" block. We were concerned that, even considering the special provisions proposed for designated entities, those entities would have difficulties competing for 4660-4685 MHz licenses against large firms with significant financial resources. We also sought comment on how eligibility for such a block should be defined.¹⁷¹

107. **Comments.** The SBA favors an entrepreneurs' block open for all designated entities who do not exceed the small company definition established for the MTA narrowband PCS auctions.¹⁷² ATI proposes an entrepreneurial set-aside of at least two 5 MHz, which it says would at least allow wireless cable operators to bid for spectrum in competition with other comparably smaller business entities.¹⁷³ WCAI similarly proposes setting aside two 5 MHz channels, because many of the services contemplated for the band will require more than 5 MHz.¹⁷⁴

¹⁶⁷ Second NPRM at para. 80.

¹⁶⁸ SBA Comments at 3, Leaco Comments at 10-11.

¹⁶⁹ Leaco Comments at 13.

¹⁷⁰ 47 C.F.R. § 1.2110(b)(3).

¹⁷¹ Second NPRM at para. 118-19.

¹⁷² SBA Comments at 5-6.

¹⁷³ ATI Comments at 6, Reply Comments at 4.

¹⁷⁴ WCAI Comments at 6-7.

108. **Decision.** We have decided not to adopt an entrepreneurs' block for this band. The large number of GWCS licenses that will be available, the relatively small geographic license areas, the flexibility of license aggregation and partitioning, the installment payment option, and the bidding credits for all blocks should stimulate extensive opportunities for participation in GWCS licensing by designated entities, including small businesses. In addition, due to the range of possible services that licensees may provide, the size of any effective set-aside is unclear. WCAI and ATI suggest that a single 5 megahertz block would not be adequate for some GWCS services. To the extent this is the case, a set-aside of one 5 megahertz block may be ineffective in facilitating participation of designated entities in GWCS licensing while barring other potential licensees from making efficient use of this band. On the other hand, a larger set-aside might make adequate spectrum available for designated entities, but preclude use of the spectrum by other potential licensees seeking to provide other services.

109. A single nationwide set-aside may also impede efficient use of this spectrum in different regions of the country where the band may be best suited to different uses. Set-asides also would tend to undercut a basic goal of GWCS, that of establishing a flexible spectrum block that will encourage the introduction and development of new technologies and services. A set-aside of spectrum for one set of licensees would prevent others from using the spectrum for new technologies and services, while discouraging them from undertaking the necessary research and development.

110. In sum, we believe that bidding credits, installment payment options, and the other approaches we have adopted will generate sufficient incentives to encourage participation in GWCS licensing by small businesses. Unlike a set-aside, they also should not generate the risk of inefficient use of the 4660-4685 MHz spectrum and of dampening incentives for innovation.

H. Technical Rules

111. **Background.** In the Second NPRM we proposed general and minimal technical restrictions that are based on the PCS rules. Specifically, we proposed to limit the field strength at licensees' service area boundaries to 55 dBu unless licensees operating in adjacent areas agree to higher field strengths along their mutual border.¹⁷⁵ We stated that licensees would be expected to coordinate their operations at the service area boundaries. Unlike PCS, where we require the power of any emission outside of the licensee's frequency block to be attenuated below the transmitter power (P) by at least 43 plus $10\log_{10}(P)$ or 80 decibels, whichever is less, we did not propose to establish adjacent-channel interference limits at the frequency boundaries between licensees in this band. Instead, we stated that we would encourage licensees to resolve adjacent channel interference problems. We did, however, propose to require licensees to attenuate the power below the transmitter power (P) by at least 43 plus $10\log_{10}(P)$ or 80 decibels, whichever is

¹⁷⁵ The minimum field strength required for a good quality service for mobile reception in an urban environment is 35 dBu (CCIR Report 358-5) and the proposed 55 dBu field strength limit allows 20 dB additional for location variability.

less, for any emission at the edges of the 4660-4685 MHz band. We requested comment on these proposals and any other technical rules that commenters believe are appropriate.

112. **Comments.** Leaco agrees with our proposed approach to establish flexible technical rules in the GWCS band. However, Leaco argues that rural and urban areas present different requirements and suggests allowing licensees to request waivers of any technical rules adopted.¹⁷⁶ WCAI echoes the merits of flexible technical standards.¹⁷⁷ Bell Atlantic agrees that the PCS rules provide the best model and opposes the specification of a maximum transmitter power restriction as long as licensees do not exceed the maximum permissible field strength at the border of their licensed areas.¹⁷⁸ In its comments opposing GWCS, MSTV states that the vagaries of the GWCS service, such as what technical standards will apply and what geographic range is possible, will prevent prospective users from making rational investment decisions and manufacturers from developing the appropriate equipment.¹⁷⁹

113. **Decision.** Based on the record, we are adopting the technical rules as proposed in the Second NPRM. The PCS-based technical rules appear to be the best available rules to govern the GWCS designation. However, we recognize that the technical rules may need to be adjusted to suit the needs of the licensees if the ones we adopt prove to be insufficient. As proposed in the Second NPRM, we expect that in the first instance licensees will seek to resolve any interference at their borders among themselves.

I. License Term

114. **Background.** The Communications Act allows the Commission to establish a license term of up to 10 years, except for television or radio broadcasting stations, which may have a license term of up to 5 and 7 years, respectively.¹⁸⁰ For services in the 4660-4685 MHz band, we proposed to establish a license term of 10 years, with a renewal expectancy similar to that of PCS and cellular telephone licensees. We stated in the Second NPRM that this relatively long license term, combined with a high renewal expectancy, should help provide a stable regulatory environment that will be attractive to investors and, thereby, encourage development of this new frequency band. We noted, however, that commenters have proposed using this band for auxiliary broadcast service and the statute requires that the term of any license for the operation of any auxiliary broadcast station or equipment must be concurrent with the term of the license for

¹⁷⁶ Leaco Comments at 14.

¹⁷⁷ WCAI Comments at 4.

¹⁷⁸ Bell Atlantic Comments at 5.

¹⁷⁹ MSTV Comments at 13-14.

¹⁸⁰ 47 U.S.C. § 307.

such primary television station.¹⁸¹ Therefore, we asked that commenters address whether we should allow differing license terms in this band.

115. Comments; Decision. We received only two comments concerning the license term. Leaco¹⁸² and MSTV¹⁸³ both support a 10 year license term. We adopt a 10 year licensing term for GWCS. This period is supported by the comments and, as we discussed in the Second NPRM, should provide a stable regulatory environment that will attract investors and encourage the development of this new band. We also conclude that a GWCS licensee that provides a broadcast auxiliary-type service will not generally be subject to the limited license term of a radio or television station license. Under Section 307(c), the limitation of a broadcast auxiliary license term to the period of the term of a primary station only applies where the auxiliary license is "for the operation of any auxiliary broadcast station or equipment which can be used only in conjunction with a primary radio, television, or translator station." Broadcast auxiliary operations are generally managed by coordinators on behalf of various eligible broadcast stations, not limited to a primary station. Therefore, the statutory provision that requires a shorter license term will generally not apply, except in the case of an applicant seeking to use GWCS for auxiliary broadcast use by a single station, within the meaning of Section 307(c).

J. Construction Requirements

116. Background. In the Second NPRM we acknowledged that the very wide array of potential services that could be offered in this band makes it difficult to develop construction requirements that can be applied fairly and equitably, without skewing the workings of the market. We also recognized our responsibility to ensure that the spectrum we assign is used effectively. Therefore, we proposed to require build-out rules modeled on those adopted for broadband PCS. Specifically, we proposed that within five years, licensees in this band offer service to one-third of the population in the area in which they are licensed. Further, licensees would have to serve two-thirds of the population in the area in which they are licensed within ten years of being licensed. We stated that failure by any licensee to meet these construction requirements will result in forfeiture of the license and the licensee will be ineligible to regain it. We requested comment on whether these requirements are appropriate for private radio licensees that may not have to serve particular population segments within their service areas. In addition, we asked for comment on whether the Commission should establish a licensee defined service area, such as a cellular geographic service area (CGSA) which would allow the Commission to license areas to a different party when the existing licensee has not constructed. We stated that such a proposal might encourage licensees to cover a larger geographic area or allow a new licensee to provide a service where the existing licensee believes that it is uneconomical to provide

¹⁸¹ 47 U.S.C. § 307(c).

¹⁸² Leaco Comments at 15.

¹⁸³ MSTV Comments at 19.

service in that area.

117. **Comments.** Leaco strongly urges the Commission not to adopt population-based service benchmarks, arguing that such benchmarks would provide no incentive for licensees to offer service to large rural areas of the country. Leaco instead proposes that construction deadlines be based on geographic area rather than population. Leaco submits that the Congressional requirement to ensure service to rural America can be met only if all licensees are required to relinquish their rights to serve any portion of their licensed markets which are unserved at the end of five years.¹⁸⁴

118. Bell Atlantic, on the other hand, urges the Commission not to prescribe deadlines for construction. Bell Atlantic states that the successful bidder's incentive to earn a return on its investment as early as possible provides enough incentive to use the spectrum in the most technically and economically efficient manner. Bell Atlantic further asserts that the flexible GWCS allocation policy for this spectrum reduces the need to impose a construction schedule, and that the proposed "aggressive" construction schedule may constrain licensees from using at least part of the spectrum for truly innovative technologies that may require longer lead times.¹⁸⁵

119. PCIA states that the implementation of geographic or population build-out requirements as proposed are inappropriate for private user systems. PCIA asserts that, for private users constructing systems to meet their own needs, it would not be spectrally efficient or cost effective to require that systems be built where there is no need for service.¹⁸⁶

120. In reply comments, In-Flight states that longer construction deadlines encourage speculators. In-Flight proposes that the Commission require that each GWCS licensee provide service to at least 70 percent of the population within its service area within three years of the license grant date and at least 85 percent of the population within five years of the grant date.¹⁸⁷

121. **Decision.** We will adopt the proposed build-out rules, modeled on those adopted for broadband PCS.¹⁸⁸ These rules will require that within five years licensees in this band offer service to one-third of the population in the area in which they are licensed, and to serve two-thirds within ten years of being licensed. These requirements should conform with the Act's direction that we "include performance requirements, such as appropriate deadlines and penalties

¹⁸⁴ Leaco at 15.

¹⁸⁵ Bell Atlantic Comments at 5-6.

¹⁸⁶ PCIA Comments at 4-5.

¹⁸⁷ In-Flight Reply Comments at 3-5.

¹⁸⁸ [Cite].

for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services."¹⁸⁹ Our adoption of EA-based licensing areas should largely moot Leaco's concerns that population-based build-out rules will not ensure that service will be provided in rural areas. We also believe that these rules, with their five and ten year deadlines, provide adequate time for licensees to develop and offer services. They also should not discourage the introduction of new services that can often be expected to use the in-place wireless infrastructure. We will consider waivers or modifications of the build-out rules based on demonstrations that the spectrum is being used efficiently, not warehoused or stockpiled. Failure by any licensee to meet the construction requirements will result in forfeiture of the license and the licensee will be ineligible to regain it. Overall, we believe that the broadband PCS-based standards strike a reasonable balance by allowing flexibility for licensees while implementing the goals and directives of the Act.

K. Regulatory Status

122. **Background.** The Communications Act and Commission rules often apply differing requirements based on the type of service and the regulatory status of licensees. For example, the Reconciliation Act created new statutory categories for mobile services: commercial mobile radio service (CMRS) and private mobile radio service (PMRS).¹⁹⁰ The Reconciliation Act provides that CMRS providers are treated as common carriers, but allows the Commission the authority to forbear from applying certain sections of Title II.¹⁹¹ For Fixed services, the Commission applies a judicial standard for determining whether a licensee is providing a common carrier service.¹⁹² The Commission does not have express statutory authority to forbear from applying any provisions of Title II to fixed service common carriers.

123. The new GWCS category for the 4660-4685 band would allow licensees to provide a variety or combination of Fixed and Mobile services. Under this service, both Fixed and Mobile applications would be permitted and an individual licensee could provide a number of Fixed and Mobile services. In the Second NPRM, we observed that it may be difficult to determine the regulatory status of GWCS licensees. We proposed to rely on applicants to identify specifically

¹⁸⁹ 47 U.S.C. § 309(j)(4)(B).

¹⁹⁰ 47 U.S.C. § 332(d)(1). See also Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, GN Docket No. 93-252, 9 FCC Rcd 1411 (1994) (CMRS Second Report and Order).

¹⁹¹ Specifically, the Commission may forbear from applying any section of Title II, except Sections 201, 202, and 208. Communications Act, § 332(c)(1)(A).

¹⁹² See National Association of Regulatory Utility Commissioners v. FCC, 525 F.2d 630, 642 (D.C. Cir.), cert. denied, 425 U.S. 999 (1976).

the type of service or services they intend to provide, and require them to include sufficient detail to enable the Commission to determine if the service will be Fixed or Mobile, and whether it will be offered as a commercial mobile radio service, a private mobile radio service, a common carrier Fixed service, or a private Fixed service. We requested comment on the most efficient manner in which to administer the requirements of the Communications Act and our rules, and grant licensees as much operational flexibility as possible.¹⁹³

124. We also solicited comments on whether the Commission should develop a new application long form for this general allocation or require an applicant to be responsible for filing the appropriate license application based upon the nature of the service designated by the applicant. Based on the showing made in the application form and actual service provided, the licensee would be subject to those rules and statutory requirements that apply to such service. We also requested that commenters address whether it is necessary for the Commission to require licensees to notify the Commission if they change the type of service offered using some or all of their licensed spectrum even though the new use would be permissible under our rules.¹⁹⁴

125. **Comments.** The only comments addressing this issue were filed by Leaco. Leaco believes that Commission rules give fairly clear definitions for fixed, mobile, private carrier, or common carrier service. However, mobile services are sometimes used on an ancillary basis as fixed services. Leaco states that, as a practical matter, neither the licensee nor the Commission can easily determine whether cellular mobile phones are being used as a fixed or mobile service. Leaco suggests that licensees initiating a new GWCS service first file a letter notifying the Commission of the proposed service. The notification letter should be filed fifteen days before the licensee files its regular application for service. The Commission, under Leaco's proposal, would have fifteen days to review the licensee's proposal and notify the licensee if the characterization of the service is inaccurate. Leaco reasons that this intermediate step would allow more flexibility and save the licensee and Commission staff time in processing inappropriately filed applications.¹⁹⁵

126. **Decision.** We will adopt the proposed approach of relying on applicants to identify the type of GWCS service or services each will provide, with sufficient detail to enable the Commission to determine the applicant's regulatory status. This approach should allow us to carry out our responsibilities while imposing minimal regulatory requirements upon licensees. Leaco's proposal that licensees seeking to initiate a new GWCS service file a separate letter 15 days prior to its regular application for service would add another procedural step for both licensees and Commission staff. The proposed added step would usually be unnecessary and would tend to delay the offering of new services. We believe that it would be in the public interest to develop an application form for the new service. Leaco's comments convince us that requiring applicants to

¹⁹³ Second NPRM at para. 125-126.

¹⁹⁴ Second NPRM at para. 127.

¹⁹⁵ Leaco Comments at 16-17.

determine the appropriate application to file based on the intended service offering would cause confusion and administrative burdens for GWCS applicants. By developing a standard application form, we should be able to minimize administrative burdens and delay while collecting necessary information. Consolidating regulatory status matters with other issues that might be raised in applications should also provide a fair opportunity for any party in interest to raise relevant issues in a petition to deny the application.¹⁹⁶ To clarify and simplify the regulatory status of licensees, we will also adopt a presumption that GWCS licenses are providing fixed common carrier services, which appears from the record to be the most likely and common use of this spectrum. This presumption may be rebutted by an appropriate showing. We delegate to the Wireless Telecommunications Bureau authority to develop forms appropriate to collect this data, and to monitor changes in licensee status.

L. Licensing Issues

127. We requested comment in the Second NPRM on whether the Commission is required or should find that it is in the public interest to adopt additional licensing rules in order to comply with the statutory requirement that we adopt assignment rules before August 10, 1995. For example, Section 309(b)(1) of the Communications Act requires all applications for common carrier station authorizations (other than minor amendments excepted under Section 309(c)) to be placed on public notice for 30 days prior to grant, and Section 309(d) allows petitions to deny to be filed against such applications during the public notice period. Because some licensees may provide common carrier service, we sought comment on whether the Commission should adopt public notice and petition to deny procedures for some or all applicants in the 4660-4685 MHz band. If we adopted such procedures, we proposed to use rules similar to those contained in Section 22.130 of our Rules. We also sought comment on whether to adopt rules regarding the amendment of applications and/or license modifications.

128. Finally, we requested comments on whether any existing application or regulatory fees would apply if we develop a new service. In addition, we noted that Section 310(d) of the Communications Act provides that no construction permit or station license may be transferred, assigned, or otherwise disposed of without Commission approval based on a finding that the public interest, convenience, and necessity will be served by the transaction. We sought comment on specific rules we should adopt in order to implement this provision of the Communications Act for purposes of licensing services in the 4660-4685 MHz frequency band.

129. **Comments.** Leaco states that initial applications for any service in the GWCS band should be subject to the public notice requirements of Section 309(d) of the Act and the transfer/assignment requirements of Section 310(d). It recommends that initial applications for any service in the GWCS band be placed on public notice for 30 days prior to grant to allow interested parties to file petitions to deny, a procedure that would allow the public to comment on

¹⁹⁶ See 47 U.S.C. § 309(d)

whether the proposed service has been properly classified and its regulatory status.¹⁹⁷

130. **Decision.** At present, it appears unnecessary to adopt additional license rules for GWCS. We will follow the statutory provisions of Section 309(d) for public notice and other requirements. With respect to other licensing issues, we will consider whether any additional rules are necessary, and what form those rules should take, after we have proceeded with the application and licensing process. We should at that time have a more detailed understanding of the services licensees intend to provide and their regulatory status.

IV. ORDERING CLAUSES

131. Accordingly, IT IS ORDERED that Part 26 of the Commission's Rules is added as set forth in the attached Appendix D. This action is taken pursuant to Sections 4(i), 303(r), 309, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 309, and 332.

132. IT IS FURTHER ORDERED that the rule changes made herein WILL BECOME EFFECTIVE at the time of their publication in the Federal Register.¹⁹⁸

V. PROCEDURAL MATTERS

Final Regulatory Flexibility Analysis

133. A Final Regulatory Flexibility Act Statement is contained in Appendix B of this Second Report and Order.

Contact Persons

134. For further information concerning this proceeding, contact Karen Rackley (202) 418-0620 or Dan Grosh (202) 418-1534, Wireless Telecommunications Bureau, Policy Division.

FEDERAL COMMUNICATIONS COMMISSION

¹⁹⁷ Leaco Comments at 17.

¹⁹⁸ This Order is adopted pursuant to a statutory requirement that the Commission, by August 9, 1995, allocate and establish licensing rules for 50 megahertz of spectrum that was transferred from Federal Government to private sector use, as required by the Budget Act. Thus, there is good cause to order the rule changes made by this Order to take effect upon Federal Register publication. See 5 U. S. C. § 553(d)(3).

William F. Caton
Acting Secretary

APPENDIX A

- Comments**
1. American Petroleum Institute (API)
 2. American Telecasting Inc. (ATI)
 3. Association for Maximum Service Television, Inc. and Other Major Television Broadcasting Entities (MSTV)
 4. Association of Public-Safety Communications Officials-International, Inc. (APCO)
 5. Bell Atlantic
 6. Chief Counsel for Advocacy of the United States Small Business Administration (SBA)
 7. Ladybug Mountain PCS Corp.
 8. Leaco Rural Telephone Cooperative, Inc. (Leaco)
 9. Motorola, Inc. (Motorola)
 10. Personal Communications Industry Association (PCIA)
 11. Rand McNally & Company (RMC)
 12. UTC
 13. The Wireless Cable Association International, Inc. (WCAI)

Reply Comments

1. Alcatel Network Systems, Inc.
2. American Telecasting Inc.
3. In-Flight Phone Corporation
4. Association for Maximum Service Television, Inc. and Other Major Television Broadcast Entities (MSTV)
5. Telecommunications Industry Association

APPENDIX B

Final Regulatory Flexibility Analysis

I. Need and Purpose of this Action:

This action is taken in further response to the Omnibus Budget Reconciliation of 1993 (which mandated the identification and transfer of spectrum currently allocated for use by the Federal Government which could be allocated for private sector use, and the and the ensuing Preliminary Spectrum Reallocation Report published by the Department of Commerce, which identified such spectrum. The establishment of the General Wireless Communications Service is intended to permit and encourage the introduction of new services and the enhancement of existing services. These new and enhanced services and uses will create new jobs, foster economic growth, and improve access to communications by industry and the public.

II. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis:

No comments were filed in response to the Initial Regulatory Flexibility Act Statement

III. Significant Alternatives Considered and Rejected:

Representatives of the public safety community, the fixed microwave community, and the broadcast industry opposed designating the 4 GHz band to the General Wireless Communications Service (GWCS) and asked that the Commission instead the band be allocated to their own specific existing services. The Second Notice of Proposed Rule Making acknowledged the option of limiting the use of the 4660-4685 MHz frequency band to specific services, and invited comment on this possibility. However, the Commission finds that the flexible GWCS approach should permit a range of qualified uses, including those preferred by commenters opposed to such an approach, while permitting new technologies and services to emerge and encouraging efficient use of this spectrum, thus best satisfying the goals of the Reconciliation Act. Restricting this spectrum to defined uses or services would tend to reduce the attractiveness of this spectrum for new technologies and services. Moreover, GWCS is flexible enough to permit such specific uses as well as other uses. The Commission finds that it has the legal authority, supported by precedence to allocate the spectrum in this manner and that establishing the GWCS is the option which most satisfies the concerns of the Reconciliation Act while responding to the needs of the public and of existing licensees.

The Commission also elects to resolve instances of mutually-exclusive applications by

auction rather than by comparative hearing. The comments filed in this proceeding support assignment of mutually-exclusive applications by auction and leads to the conclusion that an auction process best comports with the objectives set forth in Section 509(j)(3) of the Communications Act. The Commission's experience indicates that assignment such applications by auction is quicker than other licensing schemes, promotes economic opportunity and the dissemination of licenses among a wide variety of applicants, and enables the Commission to recover for the public a portion of the value of the public spectrum and avoid problems of unjust enrichment.

The Second NPRM proposed that all license issued by based on the 51 major trading areas (MTA) and MTA-like areas as a compromise between providing areas small enough to deploy services aimed at rural or relatively rural areas, while providing a large enough area for those licensees that wish to provide wide-area or regional service. The majority of GWCS supporters opposed licensing on an MTA basis and proposed smaller license regions. To accommodate the range of possible GWCS uses, the Commission elects to issue GWCS licenses based on three different geographic areas. Two of the five blocs will be assigned as a nationwide license, one will be assigned within five regional license areas, and the remaining two will be assigned based on EA-like geographical areas. The Commission believes that assigning licenses based on a range of geographic areas gives all potential licensees an opportunity to acquire spectrum within a geographic area that suits the natural technical and market area for the intended use. Moreover, the Commission anticipates that by giving licensees substantial flexibility to aggregate or disaggregate geographic regions, we will encourage intensive and efficient use of this spectrum.

APPENDIX C

Codes and Names for BEA Economic Areas (EAs)

Codes from 001 to 172 are assigned to the new EAs in approximate geographic order, beginning with 001 in northern Maine, continuing south to Florida, then north to the Great Lakes, and continuing in a serpentine pattern to the West Coast. Except for the Western Oklahoma EA (126), the Northern Michigan EA (058), and the 17 EAs that mainly correspond to consolidated metropolitan statistical areas (CMSAs), each EA is named for the metropolitan area or city that is the node of its largest component economic area (CEA) and that is usually, but not always, the largest metropolitan area or city in the EA. Each CEA consists of a single economic node and the surrounding counties that are economically related to the node. The following list provides EA codes and names. EA boundaries and codes are shown on the map following the list.

EA Code	Name	EA Code	Name
001	Bangor, ME	018	Greensboro-Winston-Salem- High Point, NC
002	Portland, ME	019	Raleigh-Durham-Chapel Hill, NC
003	Boston-Worcester-Lawrence- Lowell-Brockton, MA-NH	020	Norfolk-Virginia Beach-Newport News, VA-NC
004	Burlington, VT	021	Greenville, NC
005	Albany-Schenectady-Troy, NY	022	Fayetteville, NC
006	Syracuse, NY	023	Charlotte-Gastonia-Rock Hill, NC-SC
007	Rochester, NY	024	Columbia, SC
008	Buffalo-Niagara Falls, NY	025	Wilmington, NC
009	State College, PA	026	Charleston-North Charleston, SC
010	New York-No. New Jersey- Long Island, NY-NJ-CT-PA	027	Augusta-Aiken, GA-SC
011	Harrisburg-Lebanon-Carlisle, PA	028	Savannah, GA
012	Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD	029	Jacksonville, FL
013	Washington-Baltimore, DC-MD-VA-WV	030	Orlando, FL
014	Salisbury, MD	031	Miami-Fort Lauderdale, FL
015	Richmond-Petersburg, VA	032	Fort Myers-Cape Coral, FL
016	Staunton, VA	033	Sarasota-Bradenton, FL
017	Roanoke, VA	034	Tampa-St. Petersburg-Clearwater, FL
		EA	

Code	Name	Code	Name
035	Tallahassee, FL	075	Tupelo, MS
036	Dothan, AL	076	Greenville, MS
037	Albany, GA	077	Jackson, MS
038	Macon, GA	078	Birmingham, AL
039	Columbus, GA-AL	079	Montgomery, AL
040	Atlanta, GA	080	Mobile, AL
041	Greenville-Spartanburg-Anderson, SC	081	Pensacola, FL
042	Asheville, NC	082	Biloxi-Gulfport-Pascagoula, MS
043	Chattanooga, TN-GA	083	New Orleans, LA
044	Knoxville, TN	084	Baton Rouge, LA
045	Johnson City-Kingsport-Bristol, TN-VA	085	Lafayette, LA
046	Hickory-Morganton, NC	086	Lake Charles, LA
047	Lexington, KY	087	Beaumont-Port Arthur, TX
048	Charleston, WV	088	Shreveport-Bossier City, LA
049	Cincinnati-Hamilton, OH-KY-IN	089	Monroe, LA
050	Dayton-Springfield, OH	090	Little Rock-North Little Rock, AR
051	Columbus, OH	091	Fort Smith, AR-OK
052	Wheeling, WV-OH	092	Fayetteville-Springdale-Rogers, AR
053	Pittsburgh, PA	093	Joplin, MO
054	Erie, PA	094	Springfield, MO
055	Cleveland-Akron, OH	095	Jonesboro, AR
056	Toledo, OH	096	St. Louis, MO-IL
057	Detroit-Ann Arbor-Flint, MI	097	Springfield, IL
058	Northern Michigan, MI	098	Columbia, MO
059	Green Bay, WI	099	Kansas City, MO-KS
060	Appleton-Oshkosh-Neenah, WI	100	Des Moines, IA
061	Traverse City, MI	101	Peoria-Pekin, IL
062	Grand Rapids-Muskegon-Holland, MI	102	Davenport-Moline-Rock Island, IA-IL
063	Milwaukee-Racine, WI	103	Cedar Rapids, IA
064	Chicago-Gary-Kenosha, IL-IN-WI	104	Madison, WI
065	Elkhart-Goshen, IN	105	La Crosse, WI-MN
066	Fort Wayne, IN	106	Rochester, MN
067	Indianapolis, IN	107	Minneapolis-St. Paul, MN-WI
068	Champaign-Urbana, IL	108	Wausau, WI
069	Evansville-Henderson, IN-KY	109	Duluth-Superior, MN-WI
070	Louisville, KY-IN	110	Grand Forks, ND-MN
071	Nashville, TN	111	Minot, ND
072	Paducah, KY	112	Bismarck, ND
073	Memphis, TN-AR-MS	113	Fargo-Moorhead, ND-MN
074	Huntsville, AL	114	Aberdeen, SD
		115	Rapid City, SD
		116	Sioux Falls, SD
		117	Sioux City, IA-NE
			EA
			Code Name
			EA
			Code Name
		118	Omaha, NE-IA

- | | | | |
|-----|--------------------------------|-----|--|
| 119 | Lincoln, NE | 161 | San Diego, CA |
| 120 | Grand Island, NE | 162 | Fresno, CA |
| 121 | North Platte, NE | 163 | San Francisco-Oakland-
San Jose, CA |
| 122 | Wichita, KS | 164 | Sacramento-Yolo, CA |
| 123 | Topeka, KS | 165 | Redding, CA |
| 124 | Tulsa, OK | 166 | Eugene-Springfield, OR |
| 125 | Oklahoma City, OK | 167 | Portland-Salem, OR-WA |
| 126 | Western Oklahoma, OK | 168 | Pendleton, OR |
| 127 | Dallas-Fort Worth, TX | 169 | Richland-Kennewick-Pasco, WA |
| 128 | Abilene, TX | 170 | Seattle-Tacoma-Bremerton, WA |
| 129 | San Angelo, TX | 171 | Anchorage, AK |
| 130 | Austin-San Marcos, TX | 172 | Honolulu, HI |
| 131 | Houston-Galveston-Brazoria, TX | | |
| 132 | Corpus Christi, TX | | |
| 133 | McAllen-Edinburg-Mission, TX | | |
| 134 | San Antonio, TX | | |
| 135 | Odessa-Midland, TX | | |
| 136 | Hobbs, NM | | |
| 137 | Lubbock, TX | | |
| 138 | Amarillo, TX | | |
| 139 | Santa Fe, NM | | |
| 140 | Pueblo, CO | | |
| 141 | Denver-Boulder-Greeley, CO | | |
| 142 | Scottsbluff, NE | | |
| 143 | Casper, WY | | |
| 144 | Billings, MT | | |
| 145 | Great Falls, MT | | |
| 146 | Missoula, MT | | |
| 147 | Spokane, WA | | |
| 148 | Idaho Falls, ID | | |
| 149 | Twin Falls, ID | | |
| 150 | Boise City, ID | | |
| 151 | Reno, NV | | |
| 152 | Salt Lake City-Ogden, UT | | |
| 153 | Las Vegas, NV-AZ | | |
| 154 | Flagstaff, AZ | | |
| 155 | Farmington, NM | | |
| 156 | Albuquerque, NM | | |
| 157 | El Paso, TX | | |
| 158 | Phoenix-Mesa, AZ | | |
| 159 | Tucson, AZ | | |

EA
Code Name

- | | |
|-----|---|
| 160 | Los Angeles-Riverside-
Orange County, CA |
|-----|---|

APPENDIX D

Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1 -- PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

2. New paragraph (a)(8) is added to Section 1.2102 to read as follows:

§ 1.2102 Eligibility of applications for competitive bidding.

(a) ***

(8) General Wireless Communications Service (GWCS) (see Part 26 of this chapter).

* * * * *

PART 26 -- GENERAL WIRELESS COMMUNICATIONS SERVICE

1. Authority: 47 U.S.C. Sections 154, 301, 302, 303, 309 and 332, unless otherwise noted.

2. Part 26 of Chapter 1 of Title 47 of the Code of Federal Regulations is added to read as follows:

PART 26 -- GENERAL WIRELESS COMMUNICATIONS SERVICE

Subpart A -- General Information

Sec.

26.1 Basis and purpose.

26.2 Other applicable rule parts.

26.3 Permissible communications.

26.4 Terms and definitions.

Subpart B -- Applications and Licenses

26.11 Initial authorization.

- 26.12 Eligibility.
- 26.13 License period.
- 26.14 Criteria for comparative renewal proceedings.

Subpart C -- Technical Standards

- 26.51 Equipment authorization.
- 26.52 RF hazards.
- 26.53 Emission limits.
- 26.54 Frequency stability.
- 26.55 Field strength limits.

Subpart D -- Miscellaneous

- 26.101 Multiple ownership restrictions.
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- 26.103 Frequencies.
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- 26.203 Competitive bidding mechanisms.
- 26.204 Withdrawal, default and disqualification penalties.
- 26.205 Bidding application (FCC Form 175 and 175-S Short-Form).
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- 26.207 Long form applications.
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Subpart F -- Application, Licensing, and Processing Rules for GWCS

- 26.301 Authorization required.
- 26.302 Eligibility.
- 26.303 Formal and informal applications.
- 26.304 Filing of GWCS applications, fees, and numbers of copies.
- 26.305 Standard application forms and permissive changes or minor modifications for the General Wireless Communications Service.
- 26.306 Miscellaneous forms.
- 26.307 General application requirements.

- 26.308 Technical content of applications; maintenance of list of station locations.
- 26.309 Station antenna structures.
- 26.310 Waiver of rules.
- 26.311 Defective applications.
- 26.312 Inconsistent or conflicting applications.
- 26.313 Amendment of application for General Wireless Communications Service filed on FCC Form 175.
- 26.314 Amendment of applications for General Wireless Communications Service (other than applications filed on FCC Form 175).
- 26.315 Application for temporary authorizations.
- 26.316 Receipt of application; applications in the General Wireless Communications Service filed on FCC Form 175 and other applications in the GWCS.
- 26.317 Public notice period.
- 26.318 Dismissal and return of applications.
- 26.319 Ownership changes and agreements to amend or to dismiss applications or pleadings.
- 26.320 Opposition to applications.
- 26.321 Mutually exclusive applications.
- 26.322 Consideration of applications.
- 26.323 Post-auction divestitures.
- 26.324 Transfer of control or assignment of station authorization.
- 26.325 Extension of time to complete construction.
- 26.326 Termination of authorization.

Subpart A -- General Information

§ 26.1 Basis and purpose.

This section contains the statutory basis for this part of the rules and provides the purpose for which this part is issued.

(a) *Basis*. The rules for the general wireless communications service (GWCS) in this part are promulgated under the provisions of the Communications Act of 1934, as amended, that vests authority in the Federal Communications Commission to regulate radio transmission and to issue licenses for radio stations.

(b) *Purpose*. This part states the conditions under which portions of the radio spectrum are made available and licensed for GWCS.

(c) *Scope*. The rules in this part apply only to stations authorized under this part.

§ 26.2 Other applicable rule parts.

Other FCC rule parts applicable to licensees in the general wireless communications service

include the following:

(a) *Part 0*. This part describes the Commission's organization and delegations of authority. Part 0 of this chapter also lists available Commission publications, standards and procedures for access to Commission records, and location of Commission Field Offices.

(b) *Part 1*. This part includes rules of practice and procedure for license applications, adjudicatory proceedings, procedures for reconsideration and review of the Commission's actions; provisions concerning violation notices and forfeiture proceedings; and the environmental requirements that, if applicable, must be complied with prior to the initiation of construction.

(c) *Part 2*. This part contains the Table of Frequency Allocations and special requirements in international regulations, recommendations, agreements, and treaties. This part also contains standards and procedures concerning the marketing and importation of radio frequency devices, and for obtaining equipment authorization.

(d) *Part 5*. This part contains rules prescribing the manner in which parts of the radio frequency spectrum may be made available for experimentation.

(e) *Part 17*. This part contains requirements for construction, marking and lighting of antenna towers.

(f) *Part 68*. This part contains technical standards for connection of terminal equipment to the telephone network.

§ 26.3 Permissible communications.

GWCS licensees may provide any fixed or mobile communications service on their assigned spectrum. Broadcasting services, Radiolocation services and satellite services, as defined in §2.1 of this Chapter, are prohibited.

§ 26.4 Terms and definitions.

Assigned Frequency. The center of the frequency band assigned to a station.

Authorized Bandwidth. The maximum width of the band of frequencies permitted to be used by a station. This is normally considered to be the necessary or occupied bandwidth, whichever is greater.

Average Terrain. The average elevation of terrain between 3 and 16 kilometers from the antenna site.

Effective Radiated Power (e.r.p.) (in a given direction). The product of the power supplied to the antenna and its gain relative to a half-wave dipole in a given direction.

Equivalent Isotropically Radiated Power (e.i.r.p.). The product of the power supplied to the antenna and the antenna gain in a given direction relative to an isotropic antenna.

Fixed Service. A radio communication service between specified fixed points.

Fixed Station. A station in the fixed service.

Gross Revenues. *Gross revenues* shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (e.g. cost of goods sold), as evidenced by audited financial statements for the relevant number of calendar years preceding

January 1, 1994, or, if audited financial statements were not prepared on a calendar-year basis, for the most recently completed fiscal years preceding the filing of the applicant's short-form application (Form 175). For applications filed after December 31, 1995, gross revenues shall be evidenced by audited financial statements for the preceding relevant number of calendar or fiscal years. If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate.

Land Mobile Service. A mobile service between base stations and land mobile stations, or between land mobile stations.

Land Mobile Station. A mobile station in the land mobile service capable of surface movement within the geographic limits of a country or continent.

Land Station. A station in the mobile service not intended to be used while in motion.

Mobile Service. A radio communication service between mobile and land stations, or between mobile stations.

Mobile Station. A station in the mobile service intended to be used while in motion or during halts at unspecified points.

National Geodetic Reference System (NGRS): The name given to all geodetic control data contained in the National Geodetic Survey (NGS) data base. (Source: National Geodetic Survey, U.S. Department of Commerce)

Rural Telephone Company. A rural telephone company is a local exchange carrier having 100,000 or fewer access lines, including all *affiliates*.

Small Business: Consortium of Small Businesses.

(1) A small business is an entity that, together with its affiliates and persons or entities that hold interest in such entity and their affiliates, has average annual gross revenues that are not more than \$40 million for the preceding three years.

(2) A small business consortium is conglomerate organization formed as a joint venture between or among mutually-independent business firms, each of which individually satisfies the definition of a small business.

Total assets. *Total assets* shall mean the book value (except where generally accepted accounting principles (GAAP) require market valuation) of all property owned by an entity, whether real or personal, tangible or intangible, as evidenced by the most recent audited financial statements.

Subpart B -- Applications and Licenses

§ 26.11 Initial authorization.

(a) An applicant must file an application for an initial authorization in each market and frequency block desired.

(b) Blanket licenses are granted for each market and frequency block. Applications for

individual sites are not required and will not be accepted.

§ 26.12 Eligibility.

Any entity, other than those precluded by section 310 of the Communications Act of 1934, as amended, 47 U.S.C. § 310, is eligible to hold a license under this part.

§ 26.13 License period.

Licenses for service areas will be granted for ten year terms from the date of original issuance or renewal.

§ 26.14 Criteria for comparative renewal proceedings.

A renewal applicant involved in a comparative renewal proceeding shall receive a preference, commonly referred to as a renewal expectancy, which is the most important comparative factor to be considered in the proceeding, if its past record for the relevant license period demonstrates that the renewal applicant:

(a) Has provided "substantial" service during its past license term. "Substantial" service is defined as service which is sound, favorable, and substantially above a level of mediocre service which might just minimally warrant renewal; and

(b) Has substantially complied with applicable Commission rules, policies and the Communications Act.

Subpart C -- Technical Standards

§ 26.51 Equipment authorization.

(a) Each transmitter utilized for operation under this part and each transmitter marketed, as set forth in § 2.803 of this chapter, must be of a type that has been authorized by the Commission under its type acceptance procedure.

(b) The Commission periodically publishes a list of type accepted equipment, entitled "Radio Equipment List, Equipment Accepted for Licensing." Copies of this list are available for public reference at the Commission's offices in Washington, D.C., at each of its field offices, and may be ordered from its copy contractor.

(c) Any manufacturer of radio transmitting equipment to be used in these services may request equipment authorization following the procedures set forth in Subpart J of part 2 of this chapter. Equipment authorization for an individual transmitter may be requested by an applicant for a station authorization by following the procedures set forth in part 2 of this chapter. Such equipment if approved or accepted will not normally be included in the Commission's Radio Equipment List but will be individually enumerated on the station authorization.

(d) Applicants for type acceptance of transmitters that operate in these services must determine that the equipment complies with IEEE C95.1-1991, "IEEE Standards for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz" as measured using methods specified in IEEE C95.3-1991, "Recommended Practice for the Measurement of Potentially Hazardous Electromagnetic Fields - RF and Microwave." The applicant for type acceptance is required to submit a statement affirming that the equipment complies with these standards as measured by an approved method and to maintain a record showing the basis for the statement of compliance with IEEE C.95.1-1991.

§ 26.52 RF hazards.

(a) Licensees and manufacturers are required to ensure that their facilities and equipment comply with IEEE C95.1-1991 (ANSI/IEEE C95.1-1992), "Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz." Measurement methods are specified in IEEE C95.3-1991, "Recommended Practice for the Measurement of Potentially Hazardous Electromagnetic Fields - RF and Microwave." Copies of these standards are available from IEEE Standards Board, 445 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855-1331. Telephone: 1-800-678-4333. The limits for both "controlled" and "uncontrolled" environments, as defined by IEEE C95.1-1991, will apply to all GWCS base and mobile stations, as appropriate. The application for equipment authorization must contain a statement confirming compliance with IEEE C95.1-1991. Technical information showing the basis for this statement must be submitted to the Commission upon request.

(b) GWCS hand-held devices whose maximum radiated power is 100 milliwatts or less are not required to be evaluated for compliance with ANSI/IEEE SAR (specific absorption rate) requirements, as long as a 2.5 cm separation distance is maintained between the radiating structure and the body of the user. (The ANSI/IEEE standard uses the term "radiated power," meaning input power to the antenna.)

(c) For further information on the Commission's environmental rules see §§ 1.1301 through 1.1319 of this chapter.

§ 26.53 Emission limits.

(a) The power of any emission at the edges of the 4660-4685 MHz band shall be attenuated below the transmitter power (P) by at least $43 + 10 \log_{10}(P)$ or 80 decibels, whichever is less.

(b) Compliance with these provisions is based on the use of measurement instrumentation employing a resolution bandwidth of 1 MHz or greater. However, in the 1 MHz bands immediately outside and adjacent to the frequency block a resolution bandwidth of at least one percent of the emission bandwidth of the fundamental emission of the transmitter may be employed. The emission bandwidth is defined as the width of the signal between two points, one below the carrier center frequency and one above the carrier center frequency, outside of which all emission are attenuated at least 26 dB below the transmitter power.

(c) When measuring the emission limits, the nominal carrier frequency shall be adjusted as close the license's frequency block edges, both upper and lower, as the design permits.

(d) The measurements of emission power can be expressed in peak or average values, provided that they are expressed in the same parameters as the transmission power.

(e) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

§ 26.54 Frequency stability.

The frequency stability shall be sufficient to ensure that the fundamental emission stays within the authorized frequency block.

§ 26.55 Field strength limits.

The predicted or measured median field strength at any location on the border of the GWCS service area shall not exceed 55 dBu unless licensees operating in adjacent areas agree to a higher field strengths along their mutual borders.

Subpart D -- Miscellaneous

§ 26.101 Multiple ownership restrictions.

(a) GWCS licensees shall not have an ownership interest in more than three of the five, 5 megahertz wide channels available in any geographic area. For purposes of this restriction, a GWCS licensee is:

(1) Any institutional investor, as defined in § 26.4, with an ownership interest of ten or more percent in a GWCS license; and

(2) Any other person or entity with an ownership interest of five or more percent in a GWCS license.

(b) In cases where a party had indirect ownership, through an interest in an intervening entity (or entities) that has ownership in the GWCS license, that indirect ownership shall be attributable if the percentages of ownership at each level, multiplied together, equal five or more percent ownership of the GWCS license, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

Example: Party X has a non-controlling ownership interest of 25 percent in Company Y, which in turn has a non-controlling ownership interest of 10 percent in Company Z, the GWCS licensee. Party X's effective ownership interest in Company Z is Party X's ownership interest in Company Y (25 percent) times Company Y's ownership interest in Company Z (10 percent). Therefore, Party X's effective ownership interest in Company Z is 2.5 percent, and is not attributable.

(c) Notwithstanding paragraph (b) of this section, the following interests shall not constitute attributable ownership interests for purposes of paragraph (a) of this section:

(1) A limited partnership interest held by an institutional investor (as defined § 26.4) where the

limited partner is not materially involved, directly or indirectly, in the management or operation of the GWCS holdings of the partnership, and the licensee so certifies. The criteria which would assure adequate insulation for the purposes of this certification require: (i) Prohibiting limited partners from acting as employees of the limited partnership if responsibilities relate to the carrier activities of the licensee;

(ii) Barring the limited partners from serving as independent contractors;

(iii) Restricting communication among limited partners and the general partner regarding day-to-day activities of the licensee;

(iv) Empowering the general partner to veto admissions of new general partners;

(v) Restricting the circumstances in which the limited partners can remove the general partner;

(vi) Prohibiting the limited partners from providing services to the partnership relating to the GWCS holdings of the licensee; and

(vii) Stating that the limited partners may not become involved in the management or operation of the licensee.

§ 26.102 Service areas.

GWCS service areas are based on Economic Areas developed by the Bureau of Economic Analysis, Department of Commerce, referred to as "EAs" and three additional EA-like service areas: Guam and the Northern Mariana Islands (combined as one service area), Puerto Rico and the United States Virgin Islands (combined as one service area), and American Samoa.

(a) *Economic Areas*. Codes from 001 to 172 are assigned to the EAs in approximate geographic order, beginning with 001 in northern Maine, continuing south to Florida, then north to the Great Lakes, and continuing in a serpentine pattern to the West Coast. Except for the Western Oklahoma EA (126), the Northern Michigan EA (058), and the 17 EAs that mainly correspond to consolidated metropolitan statistical areas (CMSAs), each EA is named for the metropolitan area or city that is the node of its largest component economic area (CEA) and that is usually, but not always, the largest metropolitan area or city in the EA. Each CEA consists of a single economic node and the surrounding counties that are economically related to the node. The following list provides EA codes and names.

EA Code	Name
001	Bangor, ME
002	Portland, ME
003	Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH
004	Burlington, VT
005	Albany-Schenectady-Troy, NY
006	Syracuse, NY
007	Rochester, NY
008	Buffalo-Niagara Falls, NY

009 State College, PA
010 New York-No. New Jersey-Long Island, NY-NJ-CT-PA
011 Harrisburg-Lebanon-Carlisle, PA
012 Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD
013 Washington-Baltimore, DC-MD-VA-WV
014 Salisbury, MD
015 Richmond-Petersburg, VA
016 Staunton, VA
017 Roanoke, VA
018 Greensboro-Winston-Salem-High Point, NC
019 Raleigh-Durham-Chapel Hill, NC
020 Norfolk-Virginia Beach-Newport News, VA-NC
021 Greenville, NC
022 Fayetteville, NC
023 Charlotte-Gastonia-Rock Hill, NC-SC
024 Columbia, SC
025 Wilmington, NC
026 Charleston-North Charleston, SC
027 Augusta-Aiken, GA-SC
028 Savannah, GA
029 Jacksonville, FL
030 Orlando, FL
031 Miami-Fort Lauderdale, FL
032 Fort Myers-Cape Coral, FL
033 Sarasota-Bradenton, FL
034 Tampa-St. Petersburg-Clearwater, FL
035 Tallahassee, FL
036 Dothan, AL
037 Albany, GA
038 Macon, GA
039 Columbus, GA-AL
040 Atlanta, GA
041 Greenville-Spartanburg-Anderson, SC
042 Asheville, NC
043 Chattanooga, TN-GA
044 Knoxville, TN
045 Johnson City-Kingsport-Bristol, TN-VA
046 Hickory-Morganton, NC
047 Lexington, KY
048 Charleston, WV
049 Cincinnati-Hamilton, OH-KY-IN
050 Dayton-Springfield, OH
051 Columbus, OH

052 Wheeling, WV-OH
053 Pittsburgh, PA
054 Erie, PA
055 Cleveland-Akron, OH
056 Toledo, OH
057 Detroit-Ann Arbor-Flint, MI
058 Northern Michigan, MI
059 Green Bay, WI
060 Appleton-Oshkosh-Neenah, WI
061 Traverse City, MI
062 Grand Rapids-Muskegon-Holland, MI
063 Milwaukee-Racine, WI
064 Chicago-Gary-Kenosha, IL-IN-WI
065 Elkhart-Goshen, IN
066 Fort Wayne, IN
067 Indianapolis, IN
068 Champaign-Urbana, IL
069 Evansville-Henderson, IN-KY
070 Louisville, KY-IN
071 Nashville, TN
072 Paducah, KY
073 Memphis, TN-AR-MS
074 Huntsville, AL
075 Tupelo, MS
076 Greenville, MS
077 Jackson, MS
078 Birmingham, AL
079 Montgomery, AL
080 Mobile, AL
081 Pensacola, FL
082 Biloxi-Gulfport-Pascagoula, MS
083 New Orleans, LA
084 Baton Rouge, LA
085 Lafayette, LA
086 Lake Charles, LA
087 Beaumont-Port Arthur, TX
088 Shreveport-Bossier City, LA
089 Monroe, LA
090 Little Rock-North Little Rock, AR
091 Fort Smith, AR-OK
092 Fayetteville-Springdale-Rogers, AR
093 Joplin, MO
094 Springfield, MO

095 Jonesboro, AR
096 St. Louis, MO-IL
097 Springfield, IL
098 Columbia, MO
099 Kansas City, MO-KS
100 Des Moines, IA
101 Peoria-Pekin, IL
102 Davenport-Moline-Rock Island, IA-IL
103 Cedar Rapids, IA
104 Madison, WI
105 La Crosse, WI-MN
106 Rochester, MN
107 Minneapolis-St. Paul, MN-WI
108 Wausau, WI
109 Duluth-Superior, MN-WI
110 Grand Forks, ND-MN
111 Minot, ND
112 Bismarck, ND
113 Fargo-Moorhead, ND-MN
114 Aberdeen, SD
115 Rapid City, SD
116 Sioux Falls, SD
117 Sioux City, IA-NE
118 Omaha, NE-IA
119 Lincoln, NE
120 Grand Island, NE
121 North Platte, NE
122 Wichita, KS
123 Topeka, KS
124 Tulsa, OK
125 Oklahoma City, OK
126 Western Oklahoma, OK
127 Dallas-Fort Worth, TX
128 Abilene, TX
129 San Angelo, TX
130 Austin-San Marcos, TX
131 Houston-Galveston-Brazoria, TX
132 Corpus Christi, TX
133 McAllen-Edinburg-Mission, TX
134 San Antonio, TX
135 Odessa-Midland, TX
136 Hobbs, NM
137 Lubbock, TX

- 138 Amarillo, TX
- 139 Santa Fe, NM
- 140 Pueblo, CO
- 141 Denver-Boulder-Greeley, CO
- 142 Scottsbluff, NE
- 143 Casper, WY
- 144 Billings, MT
- 145 Great Falls, MT
- 146 Missoula, MT
- 147 Spokane, WA
- 148 Idaho Falls, ID
- 149 Twin Falls, ID
- 150 Boise City, ID
- 151 Reno, NV
- 152 Salt Lake City-Ogden, UT
- 153 Las Vegas, NV-AZ
- 154 Flagstaff, AZ
- 155 Farmington, NM
- 156 Albuquerque, NM
- 157 El Paso, TX
- 158 Phoenix-Mesa, AZ
- 159 Tucson, AZ
- 160 Los Angeles-Riverside-Orange County, CA
- 161 San Diego, CA
- 162 Fresno, CA
- 163 San Francisco-Oakland-San Jose, CA
- 164 Sacramento-Yolo, CA
- 165 Redding, CA
- 166 Eugene-Springfield, OR
- 167 Portland-Salem, OR-WA
- 168 Pendleton, OR
- 169 Richland-Kennewick-Pasco, WA
- 170 Seattle-Tacoma-Bremerton, WA
- 171 Anchorage, AK
- 172 Honolulu, HI

(b) Other eligible areas not included in the Bureau of Economic Analysis's list of EAs include: Guam and the Northern Mariana Islands, Puerto Rico and United States Virgin Islands, and American Samoa.

§ 26.103 Frequencies

The following frequencies are available for GWCS in the Economic Areas and other areas described in § 26.102 as shown below.

Channel Block	Frequency Band
Block A:	4660-4665 MHz
Block B:	4665-4670 MHz
Block C:	4670-4675 MHz
Block D:	4675-4680 MHz
Block E:	4680-4685 MHz

§ 26.104 Construction requirements.

(a) GWCS licensees shall within five years of initial license grant date offer service to one-third of the population in the area in which they are licensed. Licensees shall serve two-thirds of the population in the area in which they are licensed within ten years of initial license grant date.

(b) In demonstrating compliance with the above construction requirements, licensees must base their calculations on signal field strengths that ensure reliable service for the technology utilized. Licensees may use any service radius contour formula developed or generally used by industry, provided that such formula is based on the technical characteristics of their system.

(c) Upon meeting the five and ten year benchmarks in paragraph (a) of this section, licensees shall file a map and other supporting documentation that demonstrates compliance with the geographic area or population coverage requirement. Licensees shall file a statement indicating commencement of service. The filing must be received at the Commission on or before expiration of the relevant period.

(d) If the sale of a license is approved, the new licensee is held to the original build-out requirement.

(e) Failure by a licensee to meet the above construction requirements may result in forfeiture of the license and ineligibility to regain it.

Note: Population-based construction requirements contained in this section shall be based on the 1990 census.

Subpart E - Competitive Bidding Procedures for GWCS

§ 26.201 GWCS subject to competitive bidding.

Mutually exclusive initial applications to provide GWCS service are subject to competitive bidding procedures. The general competitive bidding procedures found in 47 CFR Part 1, Subpart Q, will apply unless otherwise provided in this part.

§ 26.202 Competitive bidding design for GWCS licensing.

(a) The Commission will employ the following competitive bidding designs when choosing from among mutually exclusive initial applications to provide GWCS service:

(1) Simultaneous multiple round auctions

(2) Sequential oral auctions

(b) The Commission may design and test alternative procedures. The Commission will announce by Public Notice before each auction the competitive bidding design to be employed in a particular auction.

(c) The Commission may use single combined auctions, which combine bidding for two or more substitutable licenses and award licenses to the highest bidders until the available licenses are exhausted. This technique may be used in conjunction with any type of auction.

§ 26.203 Competitive bidding mechanisms.

(a) *Sequencing.* The Commission will establish and may vary the sequence in which GWCS licenses will be auctioned.

(b) *Reservation Price.* The Commission may establish a reservation price, either disclosed or undisclosed, below which a license subject to auction will not be awarded.

(c) *Minimum Bid Increments.* The Commission may, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms. The Commission may also establish by Public Notice a suggested opening bid or a minimum opening bid on each license.

(d) *Stopping Rules.* The Commission may establish stopping rules before or during multiple round auctions in order to terminate an auction within a reasonable time.

(e) *Activity Rules.* The Commission may establish activity rules which require a minimum amount of bidding activity. In the event that the Commission establishes an activity rule in connection with a simultaneous multiple round auction, each bidder will be entitled to request and will be automatically granted one activity rule waiver during each stage of an auction, or one automatic waiver during a specified number of bidding rounds. The Commission may change by Public Notice the number and frequency of such automatic activity rule waivers for a specific auction.

(f) *Bidder Identification During Auctions.* The Commission may choose, on an auction-by-auction basis, to release the identity of the bidders associated with bidder identification numbers. The Commission will announce by Public Notice before each auction whether bidder identities will be revealed.

(g) *Nationwide Bidders.* Bidders seeking to aggregate EA-based GWCS licenses into nationwide licenses are required to declare the number of nationwide aggregations for which they will bid and to be active in every round of bidding on sufficient licenses to create the number of declared aggregations.

§ 26.204 Withdrawal, default and disqualification penalties.

(a) When the Commission conducts a simultaneous multiple round auction pursuant to § 26.202 (a)(1), the Commission will impose penalties on bidders who withdraw high bids during the

course of an auction, or who default on payments due after an auction closes or who are disqualified.

(1) *Bid withdrawal prior to close of auction.* A bidder who withdraws a high bid during the course of an auction will be subject to a penalty equal to the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission. No withdrawal penalty would be assessed if the subsequent winning bid exceeds the withdrawn bid. This penalty amount will be deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission. The withdrawal penalty for a nationwide bidder for each aggregation is limited to 5 percent of the aggregate withdrawn bids. The withdrawal penalty for a nationwide bidder is calculated between the sum of the withdrawn bids and the sum of the subsequent high bids on the withdrawn licenses.

(2) *Default or disqualification after close of auction.* If a high bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to the penalty in paragraph (a)(1) of this section plus an additional penalty equal to three (3) percent of the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the 3 percent penalty will be calculated based on the defaulting bidder's bid amount. These amounts will be deducted from any upfront payments or down payments that the defaulting or disqualified bidder has deposited with the Commission.

(b) When the Commission conducts sequential oral auctions, the Commission may modify the penalties to be paid in the event of bid withdrawal, default or disqualification; provided, however, that such penalties shall not exceed the penalties specified above.

(c) In the case of single round bidding for GWCS licenses:

(1) If a bid is withdrawn before the Commission releases the initial Public Notice announcing the winning bidder(s), no bid withdrawal penalty will be assessed.

(2) If a bid is withdrawn after the Commission releases the initial Public Notice announcing the winning bidder(s), the bid withdrawal penalty will be equal to the difference between the high bid amount and the amount of the next highest valid bid. A bid will be considered valid for this purpose if the bidder has not already been designated the winning bidder on more licenses than it is permitted to be awarded. Losing bidders will only be subject to this bid withdrawal penalty for a period of 30 days after the Commission releases the initial Public Notice announcing the winning bidders.

(d) In the case of oral sequential bidding for GWCS licenses:

(1) If a bid is withdrawn before the Commission has declared the bidding to be closed for the license bid on, no bid withdrawal penalty will be assessed.

(2) If a bid is withdrawn after the Commission has declared the bidding to be closed for the license bid on, the bid withdrawal penalty of § 1.2104(g) of this chapter and paragraphs (a)(1) and (a)(2) of this section will apply.

§ 26.205 Bidding application (FCC Form 175 and 175-S Short-Form).

All applicants for initial provision of GWCS service must submit applications on FCC Forms 175 and 175-S pursuant to the procedures set forth in § 1.2105 of part 1 of this chapter. The Commission will issue a Public Notice announcing the date of a GWCS auction, the licenses

which are to be auctioned, and the date on or before which applicants intending to participate in an upcoming GWCS auction must file their applications in order to be eligible for that auction. The Public Notice will also contain information necessary for completion of the application as well as other important information such as the materials which must accompany the Forms, any filing fee that must accompany the application or any upfront payment that will need to be submitted, and the location where the application must be filed.

§ 26.206 Submission of upfront payments and down payments.

(a) Where the Commission uses simultaneous multiple round auctions or oral sequential auctions bidders will be required to submit an upfront payment pursuant to the procedures set forth in § 1.2106 of this chapter.

(b) Winning bidders in an auction must submit a down payment to the Commission in accordance with the procedures set forth in § 1.2107 (a) and (b) of this chapter.

(c) Notwithstanding paragraphs (a) and (b) of this section, eligible small businesses may submit a down payment of 5 percent of the winning bid five days after the auction closes and 5 percent five days after public notice that the license is ready for grant.

§ 26.207 Long form applications.

Winning bidders will be required to submit long form applications on FCC form **XXX**, as modified, within ten (10) business days after being notified that they are the winning bidder. Applications on FCC Form **XXX** shall be submitted pursuant to the procedures set forth in subpart G of this part and § 1.2107 (c) and (d) of this chapter and any associated Public Notices. Only auction winners will be eligible to file applications on FCC Form **XXX** for initial GWCS licenses in the event of mutual exclusivity between applicants filing Form 175. Winning bidders need not complete Schedule B to Form **XXX**.

§ 26.208 License grant, denial, default, and disqualification.

(a) Unless eligible for installment payments and/or a bidding credit, each winning bidder is required to pay the balance of its winning bid in a lump sum payment within five (5) business days following the award of the license. Grant of the license will be conditioned upon full and timely payment of the winning bid amount.

(b) A bidder who withdraws its bid, defaults on a payment or is disqualified will be subject to the penalties specified in § 1.2109 of this Chapter.

(c) An eligible small business may elect to pay its winning bid, less up-front payments, over the term of the license. Interest charges are fixed at the time of licensing at the rate equal to U.S. Treasury obligation plus 2.5 percent. Installment payments are due quarterly on the anniversary of the day the license was granted, except that interest-only installment payments are permitted during the first two years of the license.

§ 26.209 Eligibility for partitioned licenses.

(a) Notwithstanding § 26.102, an applicant that is a rural telephone company, as defined in § 26.4, may be granted a GWCS license that is geographically partitioned from a separately licensed EA, so long as the EA applicant or licensee has voluntarily agreed (in writing) to partition a portion of the license to the rural telephone company.

(b) If partitioned licenses are being applied for in conjunction with a license(s) to be awarded through competitive bidding procedures --

(1) The applicable procedures for filing short-form applications and for submitting upfront payments and down payments contained in this part and Part 1 of this chapter shall be followed by the applicant, who must disclose as part of its short-form application all parties to agreement(s) with or among rural telephone companies to partition the license pursuant to this section, if won at auction (*see* §1.2105(a)(2)(viii));

(2) Each rural telephone company that is a party to an agreement to partition the license shall file a long-form application for its respective, mutually agreed-upon geographic area together with the application for the remainder of the EA filed by the auction winner.

(c) If the partitioned license is being applied for as a partial assignment of the EA license following grant of the initial license, request for authorization for partial assignment of a license shall be made pursuant to § 26.324.

(d) Each application for a partitioned area (long-form initial application or partial assignment application) shall contain a partitioning plan that must propose to establish a partitioned area to be licensed that meets the following criteria:

(1) Conforms to established geopolitical boundaries (such as county lines);

(2) Includes the wireline service area of the rural telephone company applicant; and

(3) Is reasonably related to the rural telephone company's wireline service area.

Note to paragraph (d)(3) of this section: A partitioned service area will be presumed to be reasonably related to the rural telephone company's wireline service area if the partitioned service area contains no more than twice the population overlap between the rural telephone company's wireline service area and the partitioned area.

(e) Each licensee in each partitioned area will be responsible for meeting the construction requirements in its area (*see* § 26.104).

§ 26.210 Provisions for small businesses.

(a) *Bidding Credits.* A winning bidder that qualifies as a small business or a consortium of small businesses may use a bidding credit of ten percent to lower the cost of its winning bid.

(b) *Installment Payments.* A winning bidder that qualifies as a small business may pay its winning bid amount (less upfront payments) in installments over the ten year term of the license, with interest charges to be fixed at the time of licensing at a rate equal to the rate for ten year U.S. Treasury obligations plus 2.5 percent. Installment payments are due quarterly on the anniversary of the day the license is granted. Failure to make timely installment payments may result in revocation of the license. Small businesses are permitted to make interest-only installment payments during the first two years of the license.

(c) *Down Payments.* A winning bidder that qualifies as a small business is permitted to make a down payment equal to 5 percent of the winning bid due five days after the auction closes with

the remaining 5 percent down payment dues five days after Public Notice that the license is ready for grant.

(d) *Unjust Enrichment.* If a licensee that utilizes a bidding credit under this section seeks to assign or transfer control of its license to an entity not meeting the eligibility standards for bidding credits or seeks to make any other change in ownership that would result in the licensee no longer qualifying for bidding credits under this section, the licensee must seek Commission approval and reimburse the government for the amount of the bidding credit, plus interest at the rate imposed for installment financing at the time the license was awarded as a condition of the approval of such assignment, transfer or other ownership change. The amount of the payment would be reduced over time so that a transfer in the first two years of the license would result in a payment of 100 percent of the value of the bidding credit; in year three of the license term the payment would be 75 percent; in year four the payment would be 50 percent and in year five the payment would be 25 percent, after which there would be no payment. Transfer of control or assignment of station license is also subject to provisions of § 1.2111 of this chapter.

Subpart F -- Application, Licensing, and Processing Rules for GWCS

§ 26.301 Authorization required.

No person shall use or operate any device for the transmission of energy or communications by radio in the services authorized by this part except as provided in this part.

§ 26.302 Eligibility.

(a) *General.* Authorizations will be granted upon proper application if:

- (1) The applicant is qualified under the applicable laws and the regulations, policies and decisions issued under those laws, including § 26.101 and 26.12;
- (2) There are frequencies available to provide satisfactory service; and
- (3) The public interest, convenience or necessity would be served by a grant.

(b) Alien ownership. A GWCS authorization to provide Commercial Mobile Radio Service may not be granted to or held by:

- (1) Any alien or the representative of any alien.
- (2) Any corporation organized under the laws of any foreign government.
- (3) Any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or any corporation organized under the laws of a foreign country.
- (4) Any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign

country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

(c) A GWCS authorization to provide Private Mobile Radio Service may not be granted to or held by a foreign government or a representative thereof.

§ 26.303 Formal and informal applications.

(a) Except for an authorization under any of the conditions stated in section 308(a) of the Communications Act of 1934 (47 U.S.C. 308(a)), the Commission may grant only upon written application received by it, the following authorization: station licenses; modifications of licenses; renewals of licenses; transfers and assignments of station licenses, or any right thereunder.

(b) Except as may be otherwise permitted by this part, a separate written application shall be filed for each instrument of authorization requested. Applications may be:

- (1) "Formal applications" where the Commission has prescribed in this Part a standard form; or
- (2) "Informal applications" (normally in letter form) where the Commission has not prescribed a standard form.

(c) An informal application will be accepted for filing only if:

- (1) A standard form is not prescribed or clearly applicable to the authorization requested;
- (2) It is a document submitted, in duplicate, with a caption which indicates clearly the nature of the request, radio service involved, location of the station, and the application file number (if known); and
- (3) It contains all the technical details and informational showings required by the rules and states clearly and completely the facts involved and authorization desired.

§ 26.304 Filing of GWCS applications, fees, and numbers of copies.

(a) As prescribed by §§ 26.305 and 26.307, standard formal application forms applicable to the GWCS may be obtained from either:

- (1) Federal Communications Commission, Washington, DC 20554; or
- (2) By calling the Commission's Forms Distribution Center, (202) 418-3676.

(b) Applications for the initial provision of GWCS service must be filed on FCC Form 175 in accordance with the rules in § 26.305 and Part 1, Subpart Q of this chapter. In the event of mutual exclusivity between applicants filing FCC Form 175, only auction winners will be eligible to file subsequent long form applications on FCC Form **XXX** for initial GWCS licenses. Mutually exclusive applications filed on Form 175 are subject to competitive bidding under those rules. GWCS applicants filing Form **XXX** need not complete Schedule B.

(c) All applications for GWCS radio station authorizations (other than applications for initial provision of GWCS service filed on FCC Form 175) shall be submitted for filing to: Federal Communications Commission, Washington, DC 20554, Attention: GWCS Processing Section. Applications requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of this chapter.

(d) All correspondence or amendments concerning a submitted application shall clearly identify

the name of the applicant, applicant identification number or Commission file number (if known) or station call sign of the application involved, and may be sent directly to the Wireless Telecommunications Bureau, Washington, DC 20554, GWCS Processing Section.

(e) Except as otherwise specified, all applications, amendments, correspondence, pleadings and forms (including FCC Form 175) shall be submitted on one original paper copy and with three microfiche copies, including exhibits and attachments thereto, and shall be signed as prescribed by § 1.743 of this chapter. Unless otherwise provided by the FCC, filings of five pages or less are exempt from the requirement to submit on microfiche, as well as emergency filings like letters requesting special temporary authority. Those filing any amendments, correspondence, pleadings, and forms must simultaneously submit the original hard copy which must be stamped "original". In addition to the original hard copy, those filing pleadings, including pleadings under § 1.2108 of this chapter shall also submit 2 paper copies as provided in § 1.51 of this chapter.

(1) Microfiche copies. Each microfiche copy must be a copy of the signed original. Each microfiche copy shall be a 148mm 0A 105mm negative (clear transparent characters appearing on an opaque background) at 240A to 270A reduction for microfiche or microfiche jackets. One of the microfiche sets must be a silver halide camera master or a copy made on silver halide film such as Kodak Direct Duplicatory Film. The microfiche must be placed in paper microfiche envelopes and submitted in a B6 (125 mm 0A 176 mm) or 5 0A 7.5 inch envelope. All applicants must leave Row "A" (the first row for page images) of the first fiche blank for in-house identification purposes.

(2) All applications and all amendments must have the following information printed on the mailing envelope, the microfiche envelope, and on the title area at the top of the microfiche: (i)

The name of the applicant;

(ii) The type of application (e.g. nationwide, or EA);

(iii) The month and year of the document;

(iv) Name of the document;

(v) File number, applicant identification number, and call sign, if assigned; and

(vi) The identification number and date of the Public Notice announcing the auction in response to which the application was filed (if applicable). Each microfiche copy of pleadings shall include:

(A) The month and year of the document;

(B) Name of the document;

(C) Name of the filing party;

(D) File number, applicant identification number, and call sign, if assigned;

(E) The identification number and date of the Public Notice announcing the auction in response to which the application was filed (if applicable). Abbreviations may be used if they are easily understood.

§ 26.305 Standard application forms and permissive changes or minor modifications for the General Wireless Communications Service.

(a) Applications for the initial provision of GWCS service must be filed on FCC Forms 175 and 175-S.

(b) Subsequent application by auction winners or non-mutually exclusive applicants for GWCS

radio station(s) under Part 26. FCC Form **XXX** ("Application for New or Modified General Wireless Communications Service Under Part 26") shall be submitted by each auction winner for each GWCS license applied for on FCC Form 175. In the event that mutual exclusivity does not exist between applicants filing FCC Form 175, the Commission will so inform the applicant and the applicant will also file FCC Form **XXX**. Blanket licenses are granted for each market frequency block. Applications for individual sites are not needed and will not be accepted. See § 26.11. GWCS applicants filing Form **XXX** need not complete Schedule B.

(c) Extensions of time and reinstatement. When a licensee cannot complete construction in accordance with the provisions of § 26.104, a timely application for extension of time (FCC Form 489) must be filed.

§ 26.306 Miscellaneous forms.

(a) Licensee qualifications. FCC Form 430 ("Common Carrier and Satellite Radio Licensee Qualifications Report") shall be filed by General Wireless Communications Service licensees only as required by Form 490 (Application for Assignment or Transfer of Control Under part 22).

(b) Renewal of station license. Except for renewal of special temporary authorizations, FCC Form 405 ("Application for Renewal of Station License") must be filed in duplicate by the licensee between thirty (30) and sixty (60) days prior to the expiration date of the license sought to be renewed.

§ 26.307 General application requirements.

(a) Each application (including applications filed on Forms 175 and **XXX**) for a radio station authorization or for consent to assignment or transfer of control in the GWCS shall disclose fully the real party or parties in interest and must include the following information:

(1) A list of its subsidiaries, if any. Subsidiary means any business five per cent or more whose stock, warrants, options or debt securities are owned by the applicant or an officer, director, stockholder or key management personnel of the applicant. This list must include a description of each subsidiary's principal business and a description of each subsidiary's relationship to the applicant.

(2) A list of its affiliates, if any. Affiliates means any business which holds a five per cent or more interest in the applicant, or any business in which a five per cent or more interest is held by another company which holds a five per cent interest in the applicant (e.g. Company A owns 5% of Company B and 5% of Company C; Companies B and C are affiliates).

(3) A list of the names, addresses, citizenship and principal business of any person holding five per cent or more of each class of stock, warrants, options or debt securities together with the amount and percentage held, and the name, address, citizenship and principal place of business of any person on whose account, if other than the holder, such interest is held. If any of these persons are related by blood or marriage, include such relationship in the statement.

(4) In the case of partnerships, the name and address of each partner, each partner's citizenship and the share or interest participation in the partnership. This information must be provided for all partners, regardless of their respective ownership interests in the partnership. A signed and dated

copy of the partnership agreement must be included in the application. This information must be included in Exhibit V of the application.

(b) Each application for a radio station authorization in the GWCS must:

- (1) Submit the information required by the Commission's rules, requests, and application forms;
- (2) Be maintained by the applicant substantially accurate and complete in all significant respects in accordance with the provisions of § 1.65 of this chapter; and
- (3) Show compliance with and make all special showings that may be applicable.

(c) Where documents, exhibits, or other lengthy showings already on file with the Commission contain information which is required by an application form, the application may specifically refer to such information, if:

(1) The information previously filed is over one A4 (21 cm x 29.7 cm) or 8.5 x 11 inch (21.6 cm x 27.9 cm) page in length, and all information referenced therein is current and accurate in all significant respects under § 1.65 of this chapter; and

(2) The reference states specifically where the previously filed information can actually be found, including mention of:

(i) The station call sign or application file number whenever the reference is to station files or previously filed applications;

(ii) The title of the proceeding, the docket number, and any legal citations, whenever the reference is to a docketed proceeding. However, questions on an application form which call for specific technical data, or which can be answered by a "yes" or "no" or other short answer shall be answered as appropriate and shall not be cross-referenced to a previous filing.

(d) In addition to the general application requirements of Subpart F of this part and § 1.2105 of this chapter, applicants shall submit any additional documents, exhibits, or signed written statements of fact:

(1) As may be required by these rules; and

(2) As the Commission, at any time after the filing of an application and during the term of any authorization, may require from any applicant, permittee, or licensee to enable it to determine whether a radio authorization should be granted, denied, or revoked.

(e) Except when the Commission has declared explicitly to the contrary, an informational requirement does not in itself imply the processing treatment of decisional weight to be accorded the response.

(f) All applicants (except applicants filing FCC Form 175) are required to indicate at the time their application is filed whether or not a Commission grant of the application may have a significant environmental impact as defined by § 1.1307 of this chapter. If answered affirmatively, the requisite environmental assessment as prescribed in § 1.1311 of this chapter must be filed with the application and Commission environmental review must be completed prior to construction. See § 1.1312 of this chapter. All GWCS licensees are subject to a continuing obligation to determine whether subsequent construction may have a significant environmental impact prior to undertaking such construction and to otherwise comply with §§ 1.1301 through 1.1319 of this chapter. See § 1.1312 of this chapter.

§ 26.308 Technical content of applications; maintenance of list of station locations.

All applications required by this part shall contain all technical information required by the application forms or associated Public Notice(s). Applications other than initial applications for a GWCS license must also comply with all technical requirements of the rules governing the GWCS (see Subparts C and D as appropriate).

§ 26.309 Station antenna structures.

(a) Unless the GWCS licensee has received prior approval from the FCC, no antenna structure, including radiating elements, tower, supports and all appurtenances, may be higher than 61 m (200 feet) above ground level at its site.

(b) Unless the GWCS licensee has received prior approval from the FCC, no antenna structure at an airport or heliport that is available for public use and is listed in the Airport Directory of the current Airman's Information Manual or in either the Alaska or Pacific Airman's Guide and Chart Supplement; or at an airport or heliport under construction that is the subject of a notice or proposal on file with the FAA, and except for military airports, it is clearly indicated that the airport will be available for public use; or at an airport or heliport that is operated by the armed forces of the United States; or at a place near any of these airports or heliports, may be higher than:

(1) 1 m above the airport elevation for each 100 m from the airport runway longer than 1 km within 6.1 km of the antenna structure.

(2) 2 m above the airport elevation for each 100 m from the nearest runway shorter than 1 km within 3.1 km of the antenna structure.

(3) 4 m above the airport elevation for each 100 m from the nearest landing pad within 1.5 km of the antenna structure.

(c) A GWCS station antenna structure no higher than 6.1 m (10 feet) above ground level at its site or no higher than 6.1 m above any natural object or existing manmade structure, other than an antenna structure, is exempt from the requirements of paragraphs (a) and (b) of this section.

(d) Further details as to whether an aeronautical study and/or obstruction marking and lighting may be required, and specifications for obstruction marking and lighting are contained in Part 17 of this chapter, Construction, Marking and Lighting of Antenna Structures. To request approval to place an antenna structure higher than the limits specified in paragraphs (a), (b), and (c) of this section, the licensee must notify the Federal Aviation Administration (FAA) on FAA Form 7460-1 and the FCC on FCC Form 854.

§ 26.310 Waiver of rules.

(a) *Request for waivers.* (1) Waivers of these rules may be granted upon application or by the Commission on its own motion. Requests for waivers shall contain a statement of reasons sufficient to justify a waiver. Waivers will not be granted except upon an affirmative showing:

(i) That the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and that grant of the waiver is otherwise in the public interest; or

(ii) That the unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest. Applicants must also

show the lack of a reasonable alternative.

(2) If the information necessary to support a waiver request is already on file, the applicant may cross-reference to the specific filing where it may be found.

(b) *Denial of waiver, alternate showing required.* If a waiver is not granted, the application will be dismissed as defective unless the applicant has also provided an alternative proposal which complies with the Commission's rules (including any required showings).

§ 26.311 Defective applications.

(a) Unless the Commission shall otherwise permit, an application will be unacceptable for filing and will be returned to the applicant with a brief statement as to the omissions or discrepancies if:

(1) The application is defective with respect to completeness of answers to questions, informational showings, execution, or other matters of a formal character; or

(2) The application does not comply with the Commission's rules, regulations, specific requirements for additional information or other requirements. See also § 1.2105 of this chapter.

(b) Some examples of common deficiencies which result in defective applications under paragraph (a) of this section are:

(1) The application is not filled out completely and signed;

(2) The application (other an application filed on FCC Form 175) does not include an environmental assessment as required for an action that may have a significant impact upon the environment, as defined in § 1.1307 of this chapter.

(3) The application is filed prior to the Public Notice issued under § 26.317 announcing the application filing date for the relevant auction or after the cutoff date prescribed in that Public Notice;

(c) If an applicant is requested by the Commission to file any documents or any supplementary or explanatory information not specifically required in the prescribed application form, a failure to comply with such request within a specified time period will be deemed to render the application defective and will subject it to dismissal.

§ 26.312 Inconsistent or conflicting applications.

While an application is pending and undecided, no subsequent inconsistent or conflicting application may be filed by the same applicant, his successor or assignee, or on behalf or for the benefit of the same applicant, his successor or assignee.

§ 26.313 Amendment of application for General Wireless Communications Service filed on FCC Form 175.

(a) The Commission will provide bidders a limited opportunity to cure defects in FCC Form 175 specified herein except for failure to sign the application and to make certifications. These are defects which may not be cured. See also § 1.2105 of this chapter.

(b) For GWCS, applicants will be permitted to amend their Form 175 applications to make minor amendments to correct minor errors or defects such as typographical errors. Applicants

will also be permitted to amend FCC Form 175, to make ownership changes or changes in the identification of parties to bidding consortia, provided such changes do not result in a change in control of the applicant and do not involve another applicant (or parties in interest to an applicant) who has applied for any of the same licenses as the applicant. Amendments which change control of the applicant will be considered major amendments. An FCC Form 175 which is amended by a major amendment will be considered to be newly filed and cannot be resubmitted after applicable filing deadlines. See also § 1.2105 of this chapter.

§ 26.314 Amendment of applications for General Wireless Communications Service (other than applications filed on FCC Form 175).

This section applies to all applications for General Wireless Communications Service other than applications filed on FCC Form 175.

(a) *Amendments as of right.* A pending application may be amended as a matter of right if the application has not been designated for hearing.

(1) Amendments shall comply with § 26.319, as applicable; and

(2) Amendments which resolve interference conflicts or amendments under § 26.319 may be filed at any time.

(b) The Commission or the presiding officer may grant requests to amend an application designated for hearing only if a written petition demonstrating good cause is submitted and properly served upon the parties of record.

(c) *Major amendments, minor amendments.* The Commission will classify all amendments as minor except in the cases listed below. An amendment shall be deemed to be a major amendment subject to § 26.317 under any of the following circumstances:

(1) Change in technical proposal. If the amendment results in a substantial change in the engineering proposal such as (but not necessarily limited to) a change in, or an addition of, a radio frequency; or

(2) Amendment to proposed service area. If the amendment extends the reliable service area of the proposed facilities outside its EA or other applicable market area as defined in § 26.102; or

(3) A substantial change in ownership or control.

(d) If a petition to deny (or other formal objection) has been filed, any amendment, requests for waiver, (or other written communications) shall be served on the petitioner, unless waiver of this requirement is granted pursuant to paragraph (e) of this section. See also § 1.2108 of this chapter.

(e) The Commission may waive the service requirements of paragraph (d) of this section and prescribe such alternative procedures as may be appropriate under the circumstances to protect petitioners' interests and to avoid undue delay in a proceeding, if an applicant submits a request for waiver which demonstrates that the service requirement is unreasonably burdensome.

(f) Any amendment to an application shall be signed and shall be submitted in the same manner, and with the same number of copies, as was the original application. Amendments may be made in letter form if they comply in all other respects with the requirements of this chapter.

(g) An application will be considered to be a newly filed application if it is amended by a major amendment (as defined in this section), except in the following circumstances:

(1) The amendment reflects only a change in ownership or control found by the Commission to be in the public interest;

(2) The amendment corrects typographical transcription, or similar clerical errors which are clearly demonstrated to be mistakes by reference to other parts of the application, and whose discovery does not create new or increased frequency conflicts;

(3) The amendment does not create new or increased frequency conflicts, and is demonstrably necessitated by events which the applicant could not have reasonably foreseen at the time of filing, such as, for example:

(i) The loss of a transmitter or receiver site by condemnation, natural causes, or loss of lease or option; or

(ii) Obstruction of a proposed transmission path caused by the erection of a new building or other structure.

§ 26.315 Application for temporary authorizations.

(a) In circumstances requiring immediate or temporary use of facilities, request may be made for special temporary authority to install and/or operate new or modified equipment. Any such request may be submitted as an informal application in the manner set forth in § 26.303 and must contain full particulars as to the proposed operation including all facts sufficient to justify the temporary authority sought and the public interest therein. No such request will be considered unless the request is received by the Commission at least 10 days prior to the date of proposed construction or operation or, where an extension is sought, expiration date of the existing temporary authorization. A request received within less than 10 days may be accepted upon due showing of sufficient reasons for the delay in submitting such request.

(b) Special temporary authorizations may be granted without regard to the 30-day public notice requirements of § 26.317 when:

(1) The authorization is for a period not to exceed 30 days and no application for regular operation is contemplated to be filed;

(2) The authorization is for a period not to exceed 60 days pending the filing of an application for such regular operation;

(3) The authorization is to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as previously authorized; or

(4) The authorization is made upon a finding that there are extraordinary circumstances requiring operation in the public interest and that delay in the institution of such service would seriously prejudice the public interest.

(c) Temporary authorizations of operation not to exceed 180 days may be granted under the standards of section 309(f) of the Communications Act where extraordinary circumstances so require. Extensions of the temporary authorization for a period of 180 days each may also be granted, but the renewal applicant bears a heavy burden to show that extraordinary circumstances warrant such an extension.

(d) In cases of emergency found by the Commission, involving danger to life or property or due to damage of equipment, or during a national emergency proclaimed by the president or declared by the Congress or during the continuance of any war in which the United States is engaged and

when such action is necessary for the national defense or safety or otherwise in furtherance of the war effort, or in cases of emergency where the Commission finds that it would not be feasible to secure renewal applications from existing licensees or otherwise to follow normal licensing procedure, the Commission will grant radio station authorizations and station licenses, or modifications or renewals thereof, during the emergency found by the Commission or during the continuance of any such national emergency or war, as special temporary licenses, only for the period of emergency or war requiring such action, without the filing of formal applications.

§ 26.316 Receipt of application; applications in the General Wireless Communications Service filed on FCC Form 175 and other applications in the GWCS Service.

(a) All applications for the initial provision of GWCS service must be submitted on FCC Forms 175 and 175-S. Mutually exclusive initial applications in the General Wireless Communications Services are subject to competitive bidding. FCC Form **XXX** ("Application for New or Modified General Wireless Communications Service Radio Station Under Part 26") must be submitted by each winning bidder for each GWCS license applied for on FCC Form 175. In the event that mutual exclusivity does not exist between applicants filing FCC Form 175, the applicant will also file FCC Form 401. The aforementioned Forms 175, 175-S, and **XXX** are subject to the provisions of Part 1, Subpart Q ("Competitive Bidding Proceedings") and subpart E of this part. Blanket licenses are granted for each market frequency block. Applications for individual sites are not needed and will not be accepted. See § 26.11.

(b) Applications received for filing are given a file number. The assignment of a file number to an application is merely for administrative convenience and does not indicate the acceptance of the application for filing and processing. Such assignment of a file number will not preclude the subsequent return or dismissal of the application if it is found to be not in accordance with the Commission's rules.

(c) Acceptance of an application for filing merely means that it has been the subject of a preliminary review as to completeness. Such acceptance will not preclude the subsequent return or dismissal of the application if it is found to be defective or not in accordance with the Commission's rules.

§ 26.317 Public notice period.

- (a) At regular intervals, the Commission will issue a public notice listing:
- (1) The acceptance for filing of all applications and major amendments thereto;
 - (2) Significant Commission actions concerning applications listed as acceptable for filing;
 - (3) Information which the Commission in its discretion believes of public significance. Such notices are solely for the purpose of informing the public and do not create any rights in an applicant or any other person.
 - (4) Special environmental considerations as required by part 1 of this chapter.
- (b) The Commission will not grant any application until expiration of a period of thirty (30) days following the issuance date of a public notice listing the application, or any major amendments

thereto, as acceptable for filing. Provided, that the Commission will not grant an application filed on Form **XXX** filed either by a winning bidder or by an applicant whose Form 175 application is not mutually exclusive with other applicants, until the expiration of a period of forty (40) days following the issuance of a public notice listing the application, or any major amendments thereto, as acceptable for filing. See also § 1.2108 of this chapter.

(c) As an exception to paragraphs (a)(1), (a)(2) and (b) of this section, the public notice provisions are not applicable to applications:

(1) For authorization of a minor technical change in the facilities of an authorized station where such a change would not be classified as a major amendment (as defined by § 26.314) were such a change to be submitted as an amendment to a pending application;

(2) For issuance of a license subsequent to a radio station authorization or, pending application for a grant of such license, any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such license;

(3) For extension of time to complete construction of authorized facilities, see § 26.104;

(4) For temporary authorization pursuant to § 26.315;

(5) For an authorization under any of the proviso clauses of section 308(a) of the Communications Act of 1934 (47 U.S.C. 308(a));

(6) For consent to an involuntary assignment or transfer of control of a radio authorization; or

(7) For consent to a voluntary assignment or transfer of control of a radio authorization, where the assignment or transfer does not involve a substantial change in ownership or control.

§ 26.318 Dismissal and return of applications.

(a) Any application may be dismissed without prejudice as a matter of right if the applicant requests its dismissal prior to designation for hearing or, in the case of applications filed on Forms 175 and 175-S, prior to auction. An applicant's request for the return of his application after it has been accepted for filing will be considered to be a request for dismissal without prejudice. Applicants requesting dismissal of their applications are also subject to § 1.2104 of this chapter.

(b) A request to dismiss an application without prejudice will be considered after designation for hearing only if:

(1) A written petition is submitted to the Commission and is properly served upon all parties of record, and

(2) The petition complies with the provisions of this Section and demonstrates good cause.

(c) The Commission will dismiss an application for failure to prosecute or for failure to respond substantially within a specified time period to official correspondence or requests for additional information. Dismissal shall be without prejudice if made prior to designation for hearing or prior to auction, but dismissal may be made with prejudice for unsatisfactory compliance or after designation for hearing or after the applicant is notified that it is the winning bidder under the auction process.

§ 26.319 Ownership changes and agreements to amend or to dismiss applications or pleadings.

(a) Applicability. Subject to the provisions of § 1.2105 of this chapter (Bidding Application and Certification Procedures; Prohibition of Collusion), this section applies to applicants and all other parties interested in pending applications who wish to resolve contested matters among themselves with a formal or an informal agreement or understanding. This section applies only when the agreement or understanding will result in:

(1) A major change in the ownership of an applicant to which § 26.323 and 26.324 would apply, or

(2) The individual or mutual withdrawal, amendment or dismissal of any pending application, amendment, petitioner or other pleading.

(b) Parties that have filed an application in the GWCS that is mutually exclusive with one or more other applications, and then enter into an agreement to resolve the mutual exclusivity by withdrawing or requesting dismissal of the application or an amendment thereto, must obtain the approval of the FCC. Parties that have filed a petition to deny, informal objection or other pleading against a pending application, and then seek to withdraw or request dismissal of the petition, either unilaterally or in exchange for a financial consideration, must obtain the approval of the FCC.

(1) The party withdrawing or requesting dismissal of its application, petition to deny, informal objection or other pleading must submit to the FCC a request for approval of the withdrawal or dismissal, a copy of any written agreement related to the withdrawal or dismissal, and an affidavit setting forth:

(i) A certification that neither the party nor its principals has received or will receive any money or other consideration in excess of the legitimate and prudent expenses incurred in prosecuting the application, petition to deny, informal objection or other pleading in exchange for the withdrawal or dismissal of the application, petition to deny, informal objection or other pleading, except that this provision does not apply to dismissal or withdrawal of applications pursuant to bona fide merger agreements;

(ii) The exact nature and amount of any consideration received or promised;

(iii) An itemized accounting of the expenses for which it seeks reimbursement; and

(iv) The terms of any oral agreement related to the withdrawal or dismissal of the application, petition to deny, informal objection or other pleading.

(2) In addition, within 5 days of the filing date of the applicant's or petitioner's request for approval, each remaining party to any written or oral agreement must submit an affidavit setting forth:

(i) A certification that neither the applicant nor its principals has paid or will pay money or other consideration in excess of the legitimate and prudent expenses of the petitioner in exchange for withdrawing or dismissing the application, petition to deny, informal objection or other pleading; and

(ii) The terms of any oral agreement relating to the withdrawal or dismissal of the application, petition to deny, informal objection or other pleading.

(3) For the purposes of this section:

(i) Affidavits filed pursuant to this section must be executed by the filing party, if an individual, a partner having personal knowledge of the facts, if a partnership, or an officer having personal knowledge of the facts, if a corporation or association.

(ii) Applications, petitions to deny, informal objections and other pleadings are deemed to be pending before the FCC from the time the application or petition to deny is filed with the FCC until such time as an order of the FCC granting, denying or dismissing the application, petition to deny, informal objection or other pleading is no longer subject to reconsideration by the FCC or to review by any court.

(iii) "Legitimate and prudent expenses" are those expenses reasonably incurred by a party in preparing to file, filing, prosecuting and/or settling its application, petition to deny, informal objection or other pleading for which reimbursement is sought.

(iv) "Other consideration" consists of financial concessions, including, but not limited to, the transfer of assets or the provision of tangible pecuniary benefit, as well as non-financial concessions that confer any type of benefit on the recipient.

(v) Reimbursement by an applicant of the legitimate and prudent expenses of a potential petitioner or objector, incurred reasonably and directly in preparing to file a petition to deny, will not be considered to be payment for refraining from filing a petition to deny or an informal objection. Payments made directly to a potential petitioner or objector, or a person related to a potential petitioner or objector, to implement non-financial promises are prohibited unless specifically approved by the FCC.

§ 26.320 Opposition to applications.

(a) Petitions to deny (including petitions for other forms of relief) and responsive pleadings for Commission consideration must comply with § 1.2108 of this chapter and must:

(1) Identify the application or applications (including applicant's name, station location, Commission file numbers and radio service involved) with which it is concerned;

(2) Be filed in accordance with the pleading limitations, filing periods, and other applicable provisions of §§ 1.41 through 1.52 of this chapter except where otherwise provided in § 1.2108 of this chapter;

(3) Contain specific allegations of fact which, except for facts of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof, and which shall be sufficient to demonstrate that the petitioner (or respondent) is a party in interest and that a grant of, or other Commission action regarding, the application would be prima facie inconsistent with the public interest;

(4) Be filed within thirty (30) days after the date of public notice announcing the acceptance for filing of any such application or major amendment thereto (unless the Commission otherwise extends the filing deadline); and

(5) Contain a certificate of service showing that it has been mailed to the applicant no later than the date of filing thereof with the Commission.

(b) A petition to deny a major amendment to a previously filed application may only raise matters directly related to the amendment which could not have been raised in connection with the underlying, previously filed application. This does not apply to petitioners who gain standing because of the major amendment.

(c) parties who file frivolous petitions to deny may be subject to sanctions including monetary forfeitures, license revocation, if they are FCC licensees, and may be prohibited from participating

in future auctions.

§ 26.321 Mutually exclusive applications.

(a) The Commission will consider applications to be mutually exclusive if their conflicts are such that the grant of one application would effectively preclude by reason of harmful electrical interference, or other practical reason, the grant of one or more of the other applications. The Commission will presume "harmful electrical interference" to mean interference which would result in a material impairment to service rendered to the public despite full cooperation in good faith by all applicants or parties to achieve reasonable technical adjustments which would avoid electrical conflict.

(b) Mutually exclusive applications filed on Form 175 for the initial provision of GWCS service are subject to competitive bidding in accordance with the procedures in Subpart F of this part and in Part 1, Subpart Q of this chapter.

(c) An application will be entitled to comparative consideration with one or more conflicting applications only if the Commission determines that such comparative consideration will serve the public interest.

§ 26.322 Consideration of applications.

(a) Applications for an instrument of authorization will be granted if, upon examination of the application and upon consideration of such other matters as it may officially notice, the Commission finds that the grant will serve the public interest, convenience, and necessity. See also § 1.2108 of this chapter.

(b) The grant shall be without a formal hearing if, upon consideration of the application, any pleadings or objections filed, or other matters which may be officially noticed, the Commission finds that:

(1) The application is acceptable for filing, and is in accordance with the Commission's rules, regulations, and other requirements;

(2) The application is not subject to a post-auction hearing or to comparative consideration pursuant to § 26.321 with another application(s);

(3) A grant of the application would not cause harmful electrical interference to an authorized station;

(4) There are no substantial and material questions of fact presented; and

(5) The applicant is qualified under current FCC regulations and policies.

(c) If the Commission should grant without a formal hearing an application for an instrument of authorization which is subject to a petition to deny filed in accordance with § 26.320, the Commission will deny the petition by the issuance of a Memorandum Opinion and Order which will concisely report the reasons for the denial and dispose of all substantial issues raised by the petition.

(d) Whenever the Commission, without a formal hearing, grants any application in part, or subject to any terms or conditions other than those normally applied to applications of the same type, it shall inform the applicant of the reasons therefor, and the grant shall be considered final

unless the Commission should revise its action (either by granting the application as originally requested, or by designating the application for a formal evidentiary hearing) in response to a petition for reconsideration which:

(1) Is filed by the applicant within thirty (30) days from the date of the letter or order giving the reasons for the partial or conditioned grant;

(2) Rejects the grant as made and explains the reasons why the application should be granted as originally requested; and,

(3) Returns the instrument of authorization.

(e) The Commission will designate an application for a formal hearing, specifying with particularity the matters and things in issue, if, upon consideration of the application, any pleadings or objections filed, or other matters which may be officially noticed, the Commission determines that:

(1) A substantial and material question of fact is presented (see also § 1.2108 of this chapter);

(2) The Commission is unable for any reason to make the findings specified in paragraph (a) of this section and the application is acceptable for filing, complete, and in accordance with the Commission's rules, regulations, and other requirements; or

(3) The application is entitled to comparative consideration (under § 26.321) with another application (or applications).

(f) The Commission may grant, deny or take other action with respect to an application designated for a formal hearing pursuant to paragraph (e) of this section or Part 1 of this chapter.

(g) Reconsideration or review of any final action taken by the Commission will be in accordance with Part 1, Subpart A of this chapter.

§ 26.323 Post-auction divestitures.

Any parties sharing a common non-controlling ownership interest who aggregate more GWCS spectrum among them than a single entity is entitled to hold will be permitted to divest sufficient properties within 90 days of the license grant to come into compliance with the spectrum aggregation limits as follows:

(a) The GWCS applicant shall submit a signed statement with its long-form application stating that sufficient properties will be divested within 90 days of the license grant. If the licensee is otherwise qualified, the Commission will grant the applications subject to a condition that the licensee come into compliance with the GWCS spectrum aggregation limits within 90 days of grant.

(b) Within 90 days of license grant, the licensee must certify that the applicant and all parties to the application have come into compliance with the GWCS spectrum aggregation limits. If the licensee fails to submit the certification within 90 days, the Commission will immediately cancel all broadband GWCS licenses won by the applicant, impose the default payment and, based on the facts presented, take any other action it may deem appropriate. Divestiture may be to an interim trustee if a buyer has not been secured in the required time frame, as long as the applicant has no interest in or control of the trustee, and the trustee may dispose of the property as it sees fit. In no event may the trustee retain the property for longer than six months from grant of license.

§ 26.324 Transfer of control or assignment of station authorization.

(a) Authorizations shall be transferred or assigned to another party, voluntarily (for example, by contract) or involuntarily (for example, by death, bankruptcy, or legal disability), directly or indirectly or by transfer of control of any corporation holding such authorization, only upon application and approval by the Commission. A transfer of control or assignment of station authorization in the General Wireless Communications Service is also subject to § 1.2111 of this chapter (Assignment or transfer of control: unjust enrichment)

(1) A change from less than 50% ownership to 50% or more ownership shall always be considered a transfer of control.

(2) In other situations a controlling interest shall be determined on a case-by-case basis considering the distribution of ownership, and the relationships of the owners, including family relationships.

(b) Form required:

(1) *Assignment.*

(i) FCC Form 490 shall be filed to assign a license or permit.

(ii) In the case of involuntary assignment, FCC Form 490 shall be filed within 30 days of the event causing the assignment.

(2) *Transfer of control.*

(i) FCC Form 490 shall be submitted in order to transfer control of a corporation holding a license or permit.

(ii) In the case of involuntary transfer of control, FCC Form 490 shall be filed within 30 days of the event causing the transfer.

(3) *Form 430.* Whenever an application must be filed under paragraphs (a) (1) or (a)(2) of this section, the assignee or transferee shall file FCC Form 430 ("Common Carrier Radio License Qualification Report") unless an accurate report is on file with the Commission.

(4) *Notification of completion.* The Commission shall be notified by letter of the date of completion of the assignment or transfer of control.

(5) If the transfer of control of a license is approved, the new licensee is held to the original build-out requirement of § 26.104.

(c) In acting upon applications for transfer of control or assignment, the Commission will not consider whether the public interest, convenience, and necessity might be served by the transfer or assignment of the authorization to a person other than the proposed transferee or assignee.

(d) Applicants seeking to transfer their licenses within three years after the initial license grant date are required to file, together with their transfer application, the associated contracts for sale, option agreements, management agreements, and all other documents disclosing the total consideration to be received in return for the transfer of the license.

§ 26.325 Extension of time to complete construction.

(a) If construction is not completed within the time period set forth in § 26.104, the authorization will automatically expire. Before the period for construction expires an application for an extension of time to complete construction (FCC Form 489) may be filed. See subsection

(b) of this section. Within 30 days after the authorization expires an application for reinstatement may be filed on FCC Form 489.

(b) An application for extension of time to complete construction may be made on FCC Form 489. Extension of time requests must be filed prior to the expiration of the construction period. Extensions will be granted only if the licensee shows that the failure to complete construction is due to causes beyond his control. An application for modification of an authorization (under construction) does not extend the initial construction period. If additional time to construct is required, an FCC Form 489 must be submitted.

§ 26.326 Termination of authorization.

(a)(1) All authorizations shall terminate on the date specified on the authorization or on the date specified by these rules, unless a timely application for renewal has been filed.

(2) If no application for renewal has been made before the authorization's expiration date, a late application for renewal will only be considered if it is filed within 30 days of the expiration date and shows that the failure to file a timely application was due to causes beyond the applicant's control. During this 30 day period reinstatement applications must be filed on FCC Form 489. Service to subscribers need not be suspended while a late filed renewal application is pending, but such service shall be without prejudice to Commission action on the renewal application and any related sanctions. See also § 26.14 (Criteria for Comparative Renewal Proceedings).

(b) Special Temporary Authority. A special temporary authorization shall automatically terminate upon failure to comply with the conditions in the authorization.

APPENDIX E

Bidders would be required to state the number of nationwide aggregations on which they wish to bid prior to the auction. A nationwide aggregation must have one license in each EA but all licenses need not be on the same frequency block. Since the spectrum aggregation rule limits bidders to acquiring no more than three GWCS licenses in any EA, a bidder could specify that it seeks up to three nationwide aggregations as a Nationwide Bidder. If it specifies that it seeks one or two nationwide aggregations it would also be permitted to bid on additional individual licenses subject to the standard activity and bid withdrawal rules, as a Hybrid bidder.

- Hybrid bidders would be required to specify in each round which licenses are to be counted as part of their nationwide aggregations (and subject to different bid withdrawal and activity rules).
- A nationwide or hybrid bidder that wishes to withdraw subject to the nationwide bid withdrawal rules must withdraw all its high bids on each nationwide aggregation it wishes to withdraw. For example, if a nation wide bidder were bidding on three nationwide aggregations and chose to withdraw on one, after withdrawal it must have no more than two high bids subject to nationwide bidding rules in each BEA. The standard bid withdrawal payment will be limited in two ways for bidders that withdraw all their high bids in one or more nationwide aggregations:
 - The bid withdrawal payment will be limited to five (5) percent of the withdrawn bids.
 - The withdrawal payment will be calculated as the difference between the sum of the withdrawn bids and the sum of the subsequent high bids on the withdrawn licenses. (The standard payment is calculated on a license by license basis.) Calculating the payment in this way will reduce the expected payment because bidders will "get credit" for the amounts by which subsequent high bids exceed the prices at which bids are withdrawn.
- A nationwide or hybrid bidder has the option of declaring during the auction that is reducing the number of nationwide aggregations on which it is bidding. It will then be subject to the same activity rule requirements and bid withdrawal payments as other bidders on the licenses that are not part of its remaining nationwide aggregations. Thus if a nationwide bidder wished to withdraw only some of its bids it could do so by declaring that it is reducing its nationwide aggregations by one, and be subject to the standard bid withdrawal payments on the licenses that are no longer part of a nationwide aggregation. Bidders cannot declare during the auction that they are increasing the number of nationwide aggregations on which they are bidding.

- Nationwide and hybrid bidders would be required to be active in every round of bidding on sufficient licenses to create the number of nationwide aggregations for which they have declared they are bidding. For example, if they have declared that they are bidding for two nationwide aggregations, they must be active on two licenses in each EA in each round of the auction for which the declaration is in effect. Bidding on licenses in excess of the activity needed to meet this requirement would be subject to the standard activity rules. For example, a hybrid bidder who has declared interest in two nationwide aggregations could be active on a third license in various EAs and subject to the standard activity rule for these licenses. If a nationwide or hybrid bidder fails to meet the activity rule for a nationwide aggregation, after the end of the bid withdrawal period it will be treated as if it had declared that it is reducing the number of nationwide aggregations on which it is bidding and its remaining bids not sufficient to meet the activity requirement for a nationwide aggregation will be subject to the standard activity and bid withdrawal rules. For example, if it declared that it is bidding on two nationwide aggregations and its activity were sufficient to form only one nationwide aggregation, it would be eligible for nationwide bid withdrawal payments on only one nationwide aggregation, if it does not withdraw under the nationwide withdrawal rules in the withdrawal period at the end of the round in which its activity is insufficient.
- If any bidder withdraws a bid, the eligibility of all other bidders will be increased by the amount of the withdrawn bid up to each bidder's initial maximum eligibility. Without this provision few bidders may be eligible to bid on licenses withdrawn late in an auction and thus the licenses may go unsold. This problem could be especially serious if there is a nationwide withdrawal.