

§ 431.1002 Recoveries.

States must return to CMS the Federal share of overpayments identified in the sampled claims reviewed for data processing and medical necessity within 60 days in accordance with section 1903(d)(2) of the Act and related regulations at part 433, subpart F of this chapter. Payments based on erroneous eligibility determinations are exempt from this provision because they are addressed under section 1903(u) of the Act and related regulations at part 431, subpart P of this chapter.

SUBCHAPTER D—STATE CHILDREN'S HEALTH INSURANCE PROGRAM**PART 457—ALLOTMENTS AND GRANTS TO STATES****Subpart G—Strategic Planning, Reporting, and Evaluation**

3. The authority citation for part 457 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 457.720 is revised to read as follows:

§ 457.720 State plan requirement: State assurance regarding data collection, records, and report.

A State plan must include an assurance that the State collects data, maintains records, and furnishes reports to the Secretary, at the times and in the standardized format the Secretary may require to enable the Secretary to monitor State program administration and compliance and to evaluate and compare the effectiveness of State plans under title XXI. This includes collection of data and reporting as required under § 431.950 through § 431.1002 of this chapter.

(Catalog of Federal Domestic Assistance Program No. 93.767, State Children's Insurance Program)

Dated: January 8, 2004.

Dennis G. Smith,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: May 20, 2004.

Tommy G. Thompson,

Secretary.

[FR Doc. 04-19603 Filed 8-26-04; 8:45 am]

BILLING CODE 4120-01-P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Parts 0, 2 and 101**

[FCC 04-78; ET Docket No. 95-183; RM-8553; PP Docket No. 93-253]

37.0-38.6 GHz and 38.6-40.0 GHz Bands—Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes to amend the rules for fixed, point-to-point microwave service in the 38.6-40.0 GHz ("39 GHz") band, and to adopt a conforming set of new rules for the virtually unused 37.0-38.6 GHz ("37 GHz") band in order to allow for the expansion of 39 GHz type service. In this Third Notice of Proposed Rule Making, (Third NPRM), we propose service rules for the 37 GHz and also for the 42.0-42.5 GHz ("42 GHz") ("37/42 GHz") bands that would substantially conform to the rules adopted for the 39 GHz band in the *Report and Order and Second Notice of Proposed Rule Making* and the *Second Report and Order* in this proceeding. Our goal is to establish a flexible regulatory and licensing framework that would promote seamless deployment of a host of services and technologies in the 37 GHz and 42 GHz bands. We seek to enhance opportunities for deployment of broadband wireless services, foster effective competition, promote innovation and further our efforts for consistent rule application regarding broadband wireless services.

DATES: Comments are due on or before October 26, 2004, and reply comments are due to be filed by November 26, 2004. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before October 26, 2004.

ADDRESSES: In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to Judith-B.Herman@fcc.gov, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, via the Internet to Kristy_L.LaLonde@omb.eop.gov, or via fax at (202) 395-5167.

LaLonde@omb.eop.gov, or via fax at (202) 395-5167.

FOR FURTHER INFORMATION CONTACT: Charles Oliver (legal) or Michael Pollak (engineering), Wireless Telecommunications Bureau, (202) 418-2487. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judith B. Herman at (202) 418-0214, or via the Internet at Judith-B.Herman@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third NPRM, released on May 5, 2004, (FCC 04-78). The full text of the Third NPRM is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445 12th St., SW., Washington DC 20554. The complete text may also be purchased from the Commission's duplicating contractor, Best Copy and Printing Inc., (BCPI), Portals II, 445 12th St., SW., Room CY-B402, Washington DC. Additionally, the complete item is available on the Commission's Web site at <http://www.fcc.gov/wtb>.

I. Summary of Notice of Proposed Rulemaking

1. In the Notice of Proposed Rule Making and Order that initiated the above-captioned proceeding in 1995, we proposed to amend the rules for fixed, point-to-point microwave service in the 38.6-40.0 GHz ("39 GHz") band, and to adopt a conforming set of new rules for the virtually unused 37.0-38.6 GHz ("37 GHz") band in order to allow for the expansion of 39 GHz-type service. In this Third NPRM, we propose service rules for the 37 GHz and also for the 42.0-42.5 GHz ("42 GHz") ("37/42 GHz") bands that would substantially conform to the rules adopted for the 39 GHz band in the *Report and Order and Second Notice of Proposed Rule Making* and the *Second Report and Order* in this proceeding. We recognize, however, that conditions have changed considerably over the past few years, and we are willing to consider alternatives if commenters demonstrate that a different regulatory framework would be more appropriate for the 37/42 GHz bands. Our goal is to establish a flexible regulatory and licensing framework that would promote seamless deployment of a host of services and technologies in the 37 GHz and 42 GHz bands. We seek to enhance opportunities for deployment of broadband wireless services, foster effective competition, promote innovation and further our efforts for consistent rule application regarding broadband wireless services.

2. Significant changes in spectrum allocations, technology, and market conditions have occurred since the adoption of the 39 GHz rules and auction. Consequently, we invite comments on all of the unresolved issues in this proceeding. We do not seek comment on issues that were decided in the allocation item in the *Second Report and Order*, 63 FR 3075, (January 21, 1998), such as the soft segmentation of the frequency bands for satellite and terrestrial services. Accordingly, we seek comment on proposed 37/42 GHz band service rules that are affected by these proposed changes, and in one case we propose to apply these rules to the 39 GHz band as well. Specifically:

- We propose to license the 37/42 GHz bands on a geographic basis using Economic Areas (EAs), consistent with the licensing scheme adopted for the 39 GHz band, but we invite comment on alternative approaches as well. Specifically, we invite comment on the possibility of authorizing service using a first-in-time site registration process.
- We propose to permit point-to-point, point-to-multipoint, and future mobile operations.
- We propose to adopt a “substantial service” build-out requirement if the band is licensed using EA licenses, but we invite comment on alternative build-out requirements if we adopt a different licensing scheme.
- We propose technical rules designed to provide licensees with operational flexibility.
- We propose to permit 37/42 GHz band licensees to partition and disaggregate spectrum if the band is licensed by EAs.
- We seek comment on whether to adopt a channeling plan for the 37/42 GHz bands, and, if so, what plan to propose.
- We propose to require coordination whenever and wherever facilities have optical radio line-of-sight into another licensee’s geographic area or registered site license.
- We seek comment on the appropriate coordination method to employ between adjacent licensees and with the Federal government. We propose to apply these changes to the 39 GHz band as well as the 37/42 GHz bands.
- If we license the bands by EAs when awarding 37/42 GHz licenses, we propose to use the competitive bidding procedures set out in part 1, subpart Q of our rules.

Procedural Matters

Paperwork Reduction Analysis

A. Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (“RFA”) of 1980, the Commission has prepared an Initial Regulatory Flexibility Analysis (“IRFA”), with respect to this *Third Notice of Proposed Rule Making*, of the possible significant economic impact on small entities of the policies and rules proposed in this document. The IRFA is set out further. We request written public comment on the IRFA. Comments must be filed in accordance with the same filing deadlines as comments filed in this rulemaking proceeding and must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis.

B. Paperwork Reduction Analysis

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due October 26, 2004. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

OMB Control Number: 3060–0690.

Title: Amendment of the Commission’s Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands, Third Notice of Proposed Rulemaking.

Form No.: N/A.

Type of Review: Revision a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, Federal

government, and State, local or tribal government.

Number of Respondents: 10,000.

Estimated Time Per Response: .5–11 hours.

Frequency of Response: Every 10 years.

Total Annual Burden: 169,626 hours.

Total Annual Costs: \$55,000,000.

Needs and Uses: The Commission proposes to issue geographic area licenses for the 37.0–38.6 GHz band, or in the alternative, seeks comment on the possibility of using a first-come, first-served link-by-link registration approach comparable to the regulations that the Commission recently applied to the *70/80/90 GHz Report and Order*. In that proceeding, the Commission decided to issue non-exclusive nationwide licenses conditioned upon site and path-specific coordination wherein many service providers would engineer their systems to operate in close proximity, without causing mutual interference. In order to facilitate such coordination, the Commission adopted non-interference requirements and required all licensees to register their facilities in a database accessible to other licensees on a first-come, first-served basis. Although the Commission determined not to impose a limit to the number of non-exclusive nationwide licenses, licensees would be required to construct individual links within 12 months after registering them.

C. Ex Parte Presentations

1. For purposes of this permit-but-disclose notice and comment rulemaking proceeding, members of the public are advised that *ex parte* presentations are permitted, provided they are disclosed under the Commission’s rules.

D. Comment Dates

1. Pursuant to §§ 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before September 27, 2004, and reply comments on or before October 12, 2004. Comments may be filed using the Commission’s Electronic Comment Filing System (“ECFS”) or by filing paper copies.

2. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, *i.e.*, PP Docket No. 93–253, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing

the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

E. Further Information

1. For further information concerning this rulemaking proceeding, contact Charles Oliver (legal) or Michael Pollak (engineering) at (202) 418-2487, TTY (202) 418-7233, Wireless Telecommunications Bureau, Federal Communications Commission, Washington, DC 20554.

2. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426, TTY (202) 418-7365, or via e-mail to bmillin@fcc.gov. This *Notice of Proposed Rulemaking* can be downloaded at <http://www.fcc.gov/Wireless/Orders/2003/>.

II. Initial Regulatory Flexibility Analysis

4. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Third NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on this Third NPRM provided in Section IV, (Procedural Matters), of the item. The Commission will send a copy of the Third NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Third NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Third NPRM

5. This rulemaking action is being undertaken to propose a licensing plan, a channeling plan, certain technical rules, and competitive bidding procedures for the 37.0-38.6 and 42.0-42.5 ("37/42") GHz spectrum bands. Currently, there are no such rules in place for these bands. Our objective is to facilitate spectrum aggregation, equipment development and service planning, and otherwise to create rules that will maximize efficient use of these bands, and that are in the public interest. We note specifically that, as described below, we propose to provide bidding credits to small and very small businesses.

B. Legal Basis for Proposed Rules

6. The proposed action is authorized under Sections 1, 4(i), 7, 301, 303, 308 and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 301, 303, 308, 309(j).

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

7. The RFA requires that an initial regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the Agency certifies that "the rule will not, if promulgated, have a significant impact on a substantial number of small entities. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.

A "small business concern" is one which: (i) Is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." This IRFA describes and estimates the number of small entity licensees that may be affected if the proposals in this Third NPRM are adopted.

8. When identifying small entities that could choose to participate in an auction and be affected by our new rules, we provide information describing auctions results, including the number of small entities that are winning bidders. We note, however, that the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily reflect the total number of small entities currently in a particular service. The Commission does not generally require, post-auction, that applicants provide business size information, except in the context of an assignment or transfer of control application where unjust enrichment issues are implicated. Consequently, to assist the Commission in analyzing the total number of potentially affected small entities, we request commenters to estimate the number of small entities that may be affected by any rule changes resulting from this Third NPRM.

National Figures

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

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

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

Wireless Service Providers

12. The SBA has developed a small business size standard for wireless small

businesses within the two separate categories of *Paging and Cellular and Other Wireless Telecommunications*. Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. According to Commission data, 1,387 companies reported that they were engaged in the provision of wireless service. Of these 1,387 companies, an estimated 945 have 442 or fewer employees and 586 have more than 1,500 employees. Consequently, the Commission estimates that most wireless service providers are small entities that may be affected by the rules and policies adopted herein.

39 GHz Service

13. The Commission created a special small business size standard for 39 GHz licenses "an entity that has average gross revenues of \$40 million or less in the three previous calendar years. An additional size standard for "very small business" is: an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies proposed herein.

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

14. Generally, all applicants are required to seek authorizations to construct and operate and to adhere to the technical criteria set out in the final rules. However, this Third NPRM proposes service rules and auction rules for the 37.0–38.6 GHz band and the 42.0–42.5 GHz band ("37/42 GHz bands") either by a geographic area licensing approach or the first-come, first-served link-by-link registration approach, in order to coordinate spectrum use that will affect reporting, recordkeeping and other compliance requirements. Each of these changes is described below:

15. The Third NPRM proposes to require users in the 37/42 GHz bands to coordinate procedures with the National Telecommunications and Information Administration (NTIA) in negotiations with non-Government and Government stations in the band and that these negotiations would apply the geographic area licensing regulatory framework. However, independent of

the licensing approach the Commission chooses, the basic coordination procedures with NTIA will be the same because they are based on a site-by-site method, consistent with Section IV(6) of the Memorandum of Understanding (MOU) between the Commission and NTIA dated January 31, 2003, wherein the Commission and NTIA would maintain current lists of authorized frequency assignments on the ULS and the Government Master File (GMF) and exchange information as appropriate to coordinate spectrum use. Also, the site-based coordination procedures proposed here involve coordination between the Interdepartment Radio Advisory Committee (IRAC), Commission licensees, and Government agencies through the Commission, which represents the non-Government facilities, and the NTIA, which represents the Government agencies. Problems would be referred by the Commission back to its licensees/applicants and by the NTIA to Government agencies for resolution.

16. The Third NPRM proposes to require non-Government operators/licensees in the 37.0–38.6 GHz frequency band to maintain databases of their fixed stations, including sufficient data for other licensees, coordinators, and the Government to make a determination of potential interference. Non-Government licensees would have the option of maintaining their own databases for their facilities or of selecting third-party database managers, frequency coordinators, or other entities to maintain their database of facilities. The database manager would be responsible to the licensee and would share the technical data with the Commission and other database managers as needed for proper coordination, and retain records of the coordination agreements with other parties. All coordination agreements would remain in force in the event the licensee transfers its license, partitions its service area, or disaggregates its spectrum, until new agreements are reached.

17. The Third NPRM proposes to require the non-Government operators/licensees to make available all necessary technical database information to the Commission in a timely and convenient manner sufficient for resolving interference complaints with NTIA in the event of disputes. The Third NPRM also proposes to require non-Government licensees to register their technical data electronically into the ULS for each station in their authorized service areas in order to make available accurate information with Government facilities such as, the date of the initial

operating capability of each station, specific information identifying the station locations, technical operating capabilities of the stations, and, if known, whether the station has optical line-of-site to another facility with which it is being coordinated. This site-based information would be entered into the record of the area license in the ULS database by electronically registering notifications to the initial Commission Form 601 using Schedule I, but not more than twelve (12) months before operations are scheduled to begin. The Third NPRM also proposes that notification and response for site-by-site coordination for geographic area licensees requires variations in the general coordination procedures as given in Section 101.103 of our rules. The Third NPRM further proposes that geographic area licensees must select site frequencies within their assignment blocks of spectrum and initiate the coordination process by notifying the other parties with whom they must coordinate and that registrations of licensee sites on Schedule I of Form 601 must include the licensees determination of whether possible optical line-of-site exists to relevant (future) Government facilities. If it is determined that optical line-of-site does not exist, the applicant is required to explain the determination. Coordination involving existing and future Government facilities would require licensees and applicants to ensure that their data is accurately reflected in ULS.

18. The Third NPRM also proposes that licensees would be required to follow existing practices and precedents regarding fees associated with initial licenses, and to file notifications in the ULS to supply the technical information needed to coordinate each station with Government facilities. When revisions to ULS are developed for adding the capability to handle licensees in the 37.0–38.6 GHz band, the capability to collect this additional site-based information for notifications would be added to the capability to handle "initial" auction winners as licensees.

19. The Third NPRM proposes to conduct an auction of initial exclusive area licenses in the 37/42 GHz band which would be required to conform with general competitive bidding rules set out in part 1, subpart Q, of our rules, substantially consistent with the bidding procedures that have been employed in previous auctions, and specifically, rules governing competitive bidding design, designated entities, application and payment procedures, reporting requirements, collusion issues, and unjust enrichment. In this connection, the Third NPRM also would

require, pursuant to Section 309(j) of the Communications Act, resolution of such applications by competitive bidding.

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

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

21. In the Third NPRM, we propose service and auction rules for the 37/42 GHz bands in order to establish a flexible regulatory and licensing framework that would promote seamless deployment of a host of services and technologies. We seek comment on the possibility of conducting an auction—where applications are mutually exclusive and issuing exclusive licenses for the 37/42 GHz bands on a geographic basis. We believe that our proposed approach would provide a variety of businesses with the opportunity to participate in an auction of licenses in this band and afford licensees substantial flexibility for the provision of services with varying capital costs. We also believe that geographic area licensees in these bands would be presented with issues and costs similar to those presented to 39 GHz band licensees, including those involved in developing markets, technologies, and services. Smaller service areas make it easier for small businesses to bid successfully for licenses, but viable businesses may require larger service areas. We believe that the technical rules that apply to the 39 GHz band would also be appropriate for the 37/42 GHz bands, if we decide to adopt a geographic area licensing approach. It would be inappropriate to apply the 70/80/90 GHz technical rules to the 37/42 GHz bands because the bands differ significantly from each other. Because the 37/42 GHz band has such a large amount of spectrum, license portions of these blocks by Economic Areas (EAs) or other portions on a site-by-site basis could be other alternatives. By using this combined approach to licensing, the Commission may address the needs

of large entities, as well as smaller businesses, including public safety entities. Therefore, we also seek comment on the benefits of having some spectrum licensed by geographic areas and some spectrum licensed on a site-by-site basis. As an alternative, we could also pair some of the channels in the 37.0–38.6 GHz portion with some of the channels in the 42.0–42.5 GHz portion or allocate channel sizes of 30 or 40 megahertz or even smaller. Perhaps smaller channels might allow for smaller businesses and private entities to effectively compete for spectrum needed for more limited applications without needing to obtain a larger amount of spectrum that would require substantial outlays of initial investment. We hope that these alternatives, which might especially affect small entity participation in the auction, will be addressed by commenters.

22. We note that if we adopt a geographic area licensing framework, we propose to permit 37/42 GHz licensees to partition and disaggregate spectrum freely within those bands. These options tend to assist small entities. For the geographic area approach, we propose to allow partitioning of any licensee-defined service area, disaggregation of any amount of spectrum and combined partitioning and disaggregation. The Third NPRM proposes to permit the 37/42 GHz bands to partition and disaggregate spectrum if the Commission adopts a geographic area licensing framework using EAs by competitive bidding and through private negotiation and agreement. Our Part 1 unjust enrichment provisions would govern partitioning and disaggregation arrangements involving licenses authorized to small businesses afforded a bidding credit, including those that later elect to partition or disaggregate their licenses to an entity that is not eligible for the same bidding credit. In addition, Section 309(j)(3)(B) of the Communications Act provides that, in establishing eligibility criteria and bidding methodologies, the Commission shall promote “economic opportunity and competition * * * 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.” The Commission concluded in the *First NPRM and Order*, that it should make partitioning and disaggregation available to all 39 GHz licensees, because these capabilities would

promote flexibility both in system design and service, and encourage new entrants into the market by creating smaller, less capital-intensive service areas that may be more accessible to small entities.

23. In contrast, in the *70/80/90 GHz Report and Order*, the Commission noted that the use of partitioning and disaggregation is pertinent only in geographic licensing settings, where the licensee has exclusive use of a particular area. It determined that its decision to authorize the 70/80/90 GHz bands on the basis of nationwide non-exclusive licensing obviated the need for partitioning and disaggregation. A viable alternative to the geographic area licensing approach would be to issue an unlimited number of non-exclusive nationwide licenses, with licensees authorized to deploy point-to-point “pencil beam” links on a first-come-first-served basis. Thus, there will be no need for partitioning and disaggregation if we adopt a non-exclusive link-by-link registration approach. We seek comment on all of these proposals.

24. Also, as an alternative, and in the interest of regulatory certainty, if we adopt a geographic area licensing structure, we propose to adopt a rule specifically permitting spectrum aggregation. The Commission has also concluded that permitting aggregation of channels might benefit the public through efficiencies and flexibility in the types of services this would allow, and might provide for lower costs or greater ability to compete with established service providers with large transmission capacity. We also propose that 37/42 GHz licensees be allowed to aggregate their spectrum in order to provide greater flexibility of service. In other services, the Commission has adopted a rule expressly permitting aggregation.

25. The Third NPRM proposes competitive bidding procedures if we license bands by EAs when awarding 37/42 GHz licenses set out in part 1, subpart Q of our rules. Small businesses that choose to participate in the competitive bidding for these services and utilize a bidding credit are required to demonstrate that they meet the criteria set out to qualify as small businesses, as required under part 1, subpart Q of the Commission’s rules, 47 CFR part 1, subpart Q. We believe that the small business size standards and corresponding bidding credits proposed would provide a variety of businesses with opportunities to participate in the auction of licenses for the 37/42 GHz band and afford licensees substantial flexibility for the provision of services with varying capital costs. We further

propose to provide small businesses with a bidding credit of fifteen percent and very small businesses with a bidding credit of twenty-five percent. The bidding credits we propose here are those set out in the standardized schedule in part 1 of our rules. We also seek comment on the use of these standards and associated bidding credits for applicants to be licensed in the 37/42 GHz band, with particular focus on the appropriate definitions of small and very small businesses as they relate to the size of the geographic area to be covered and the spectrum allocated to each license. In developing these proposals, however, we acknowledge the difficulty in accurately predicting the market forces that will exist at the time we license these frequencies. Thus, our forecasts of types of services that licensees will offer over these bands may require adjustment depending upon ongoing technological developments and changes in market conditions. Accordingly, to the extent commenters support a different bidding credit regime, or believe that there are any distinctive characteristics to the 37/42 GHz band that suggest we should not employ bidding credits in this instance, commenters should support their proposals with relevant information. For example, commenters should provide information on the types of system architecture that licensees are likely to deploy in these bands, the availability of equipment, market conditions, and other factors that may affect the capital requirements or the types of services that licensees may provide.

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

None.

Ordering Clauses

Pursuant to sections 1, 4(i), 7, 301, 303, 308 and 309(j) of the

Communications Act of 1934, 47 U.S.C. 151, 154(i), 157, 301, 303, 308, 309(j), *notice is hereby given* of the proposed regulatory changes described above and as specified in Rule Changes, and that comment is sought on these proposals.

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

List of Subjects

47 CFR Part 0

Reporting and recordkeeping.

47 CFR Part 2

Communications Equipment, Radio, and Reporting and recordkeeping.

47 CFR Part 101

Communications Equipment, Radio, Reporting and recordkeeping, Satellites, Telecommunications.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 0, 2, and 101 as follows:

PART 0—COMMISSION ORGANIZATION

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

Authority: Sec. 5, 48 Stat 1068, as amended; 47 U.S.C. 155, 225 unless otherwise noted.

2. Section 0.331(d) is amended by revising paragraph (d) introductory text to read as follows:

§ 0.331 Authority delegated.

* * * * *

(d) *Authority concerning rulemaking proceedings.* The Chief, Wireless Telecommunications Bureau shall not have the authority to act upon notices of proposed rulemaking and inquiry, final order in rulemaking proceedings and inquiry proceedings, and reports arising from any of the foregoing except such orders involving ministerial conforming amendments to rule parts, or order conforming any of the applicable rules to formally adopted international conventions or agreements where novel question of fact, law, or policy are not involved. Updates to the list of NTIA facilities in § 101.147 of this chapter need not be referred to the Commission if they do not involve novel questions of fact, policy or law. Also the addition of new Marine VHF frequency coordination committee(s) to § 80.514 of this chapter need not be referred to the Commission if they do not involve novel questions of fact, policy or law, as well as requests by the United States Coast Guard to:

* * * * *

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Section 2.106, is amended as follows:

a. Revise pages 76 and 77 of the Table.

b. In the list of United States footnotes, add footnote USxxx.

c. In the list of non-Federal government footnotes, add footnote NGxxx.

The revisions and additions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

BILLING CODE 6712-01-P

<p>36-37 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) 5.149</p>	<p>36-37 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) US263 US342</p>	
<p>37-37.5 FIXED MOBILE SPACE RESEARCH (space-to-Earth) 5.547</p>	<p>37-37.5 FIXED MOBILE USxxx</p>	<p>Fixed Microwave (101)</p>
<p>37.5-38 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE SPACE RESEARCH (space-to-Earth) Earth exploration-satellite (space-to-Earth) 5.547</p>	<p>37.5-38.6 FIXED FIXED-SATELLITE (space-to-Earth) NGxxx MOBILE USxxx</p>	<p>Satellite Communications (25) Fixed Microwave (101)</p>
<p>38-39.5 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE Earth exploration-satellite (space-to-Earth) 5.547</p>	<p>38-38.6 FIXED MOBILE 38.6-39.5</p>	
<p>39.5-40 FIXED FIXED-SATELLITE (space-to-Earth) 5.516B MOBILE MOBILE-SATELLITE (space-to-Earth) Earth exploration-satellite (space-to-Earth) 5.547</p>	<p>39.5-40 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) US382 G117</p>	
<p>40-40.5 EARTH EXPLORATION-SATELLITE (Earth-to-space) FIXED FIXED-SATELLITE (space-to-Earth) 5.516B MOBILE MOBILE-SATELLITE (space-to-Earth) SPACE RESEARCH (Earth-to-space) Earth exploration-satellite (space-to-Earth)</p>	<p>40-40.5 EARTH EXPLORATION- SATELLITE (Earth-to-space) FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) SPACE RESEARCH (Earth-to-space) Earth exploration-satellite (space-to-Earth) G117</p>	<p>Satellite Communications (25)</p>

* * * * *
United States (U.S.) Footnotes
* * * * *

U.S.xxx In the band 37–38 GHz, the following Government receiving earth stations have been coordinated with the FCC and shall be protected from non-operations in the fixed and mobile services in the band 37–38 GHz and from non-Government earth stations in the fixed-satellite service (space-to-Earth) in the sub-band 37.5–38 GHz. Non-Government applications for fixed and mobile service use of frequencies in the band 37–38 GHz shall be coordinated with NTIA through the Frequency Assignment Subcommittee within the following coordination areas/distances. The coordinates listed below are specified in terms of the North American Datum of 1983.

In the band 37–38 GHz, the following stations in the space research service (space-to-Earth) have been coordinated:

Site	Coordination area
NASA Goldstone Deep Space Communications Complex, Goldstone, California.	30 kilometer (18.64 mile) radius centered on latitude 35° 9'00" N, longitude 116° 50'06" W.
National Radio Astronomy Observatory, Green Bank, West Virginia.	Rectangle between latitudes 37° 30' N and 39° 15' N and between longitudes 78° 30' W and 80° 30' W (National Radio Quiet Zone).

Non-Federal Government (NG) Footnotes

* * * * *
NGxxx The use of the band 37.5–40 GHz by the fixed-satellite service (space-to-Earth) is limited to gateway earth station operations as set out in 47 CFR part 25.
* * * * *

PART 101—FIXED MICROWAVE SERVICES

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

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

2. Section 101.17 is revised to read as follows:

§ 101.17 Performance requirements for the 37.0–40.0 GHz and 42.0–42.5 GHz frequency bands.

(a) All 37.0–40.0 GHz and 42.0–42.5 GHz band licensees must demonstrate substantial service at the time of license renewal. A licensee's substantial service showing should include, but not be limited to, the following information for each channel for which they hold a license, in each EA or portion of an EA covered by their license, in order to qualify for renewal of that license. The information provided will be judged by the Commission to determine whether the licensee is providing service which

risers to the level of "substantial." Licensees, whether the license was obtained through competitive bidding or partitioning/aggregation/disaggregation, may build facilities anywhere within the authorized service area without further authority from the Commission, provided that they have complied with applicable Commission requirements. The Commission does not require individual licenses for each terrestrial fixed facility.

(1) A description of the 37.0–40.0 GHz, or 42.0–42.5 GHz band licensee's current service in terms of geographic coverage;

(2) A description of the 37.0–40.0 GHz, or 42.0–42.5 GHz band licensee's current service in terms of population served, as well as any additional service provided during the license term;

(3) A description of the 37.0–40.0 GHz, or 42.0–42.5 GHz band licensee's investments in its system(s) (type of facilities constructed and their operational status is required);

(b) Any 37.0–40.0 GHz and 42.0–42.5 GHz band licensees adjudged not to be providing substantial service will not have their licenses renewed.

3. Sections 101.56 is amended by revising paragraphs (a)(1), (a)(2)(ii), (b), (f), (g), (h) and (i) to read as follows:

§ 101.56 Partitioned services areas (PSAs) and disaggregated spectrum.

(a)(1) The holder of an EA authorization to provide service pursuant to the competitive bidding process areas in the 37.0–40.0 GHz and 42.0–42.5 GHz bands and any incumbent licensee of rectangular service areas in the 38.6–40.0 GHz band may enter into agreements with eligible parties to partition any portion of its service area as defined by the partitioner and partitionee. Alternatively, licensees may enter into agreements or contracts to aggregate/disaggregate any amount of spectrum, provided acquired spectrum is aggregated/disaggregated in frequency pairs.

(2) * * *
(a)(2)(ii) The contracts must include descriptions of the areas being partitioned or spectrum being aggregated/disaggregated. The partitioned service area shall be defined by coordinate points at every 3 seconds along the partitioned service area unless an FCC recognized service area is utilized (*i.e.*, Metropolitan Service Area or Rural Service Area) or county lines are followed. If geographic coordinate points are used, they must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude and must be based upon the 1983 North American Datum (NAD83). In the case

where an FCC recognized service area or county lines are utilized, applicants need only list the specific area(s) (through use of FCC designations or county names) that constitute the partitioned area.

(b) The eligibility requirements applicable to EA authorization holders also apply to those individuals and entities seeking partitioned or aggregated/disaggregated spectrum authorizations.

* * * * *
(f) The duties and responsibilities imposed upon EA authorization holders in this part, apply to those licensees obtaining authorizations by partitioning or spectrum aggregation/disaggregation.

(g) The build out requirements for the partitioned service area or aggregated/disaggregated spectrum shall be the same as applied to the EA authorization holder.

(h) The license term for the partitioned service area or aggregated/disaggregated spectrum shall be the remainder of the period that would apply to the EA authorization holder.

(i) Licensees, including those using bidding credits in a competitive bidding procedure, shall have the authority to partition service areas or aggregated/disaggregated spectrum.

4. Subpart B is amended by adding § 101.58 to read as follows:

§ 101.58 System operations.

(a) The licensee in the 37.0–40.0 GHz and 42.0–42.5 GHz bands may construct and operate any number of fixed stations anywhere within the area authorized by the license without prior authorization, except as follows:

(1) A station is required to be individually licensed under part 101 if:

(i) International agreements require coordination;

(ii) Submission of an Environmental Assessment is required under § 1.1307 of this chapter.

(iii) The station would affect the radio quiet zones under § 1.924 of this chapter.

(2) Any antenna structure that requires notification to the Federal Aviation Administration (FAA) must be registered with the Commission prior to construction under § 17.4 of this chapter.

(3) Frequencies in the 37.0–38.6 GHz band are co-primary and shared with the Government. All parties concerned should complete coordination based on a first in time sharing basis and obtain coordination agreements with prior licensed facility operators before operating.

(b) Whenever a licensee constructs or makes system changes as described in

paragraph (a) of this section, the licensee is required to notify the Commission within 30 days of the change under § 1.947 of this chapter and include a statement of the technical parameters of the changed station.

5. Section 101.63 is amended by revising paragraph (a) to read as follows:

§ 101.63 Period of construction; certification of completion of construction.

(a) Each station, except in Local Multipoint Distribution Services, 24 GHz Service, the 37.0–40.0 GHz and 42.0–42.5 GHz bands, authorized under this part must be in operation within 18 months from the initial date of grant. For the 70 GHz, 80 GHz, and 90 GHz bands, each 18-month construction

period will commence on the date of each registration of each individual link; adding links will not change the overall renewal period of the license.

* * * * *

6. Section 101.64 is revised to read as follows:

§ 101.64 Service areas.

Service areas for 37.0–40.0 GHz and 42.0–42.5 GHz service are Economic Areas (EAs) as defined below and in effect as of April 12, 2000. EAs are delineated by the Regional Economic Analysis Division, Bureau of Economic Analysis, U.S. Department of Commerce, 1995. The Commerce Department organizes the 50 States and

the District of Columbia into 172 EAs. Additionally, there are four EA-like areas: Guam and Northern Mariana Islands; Puerto Rico and the U.S. Virgin Islands; American Samoa and the Gulf of Mexico. A total of 175 authorizations (excluding the Gulf of Mexico EA-like area) will be issued for each channel block in the 37.0–40.0 GHz and 42.0–42.5 GHz bands.

7. Section 101.101 is amended by adding in numerical order to the table entries for “37,000–38,600 MHz” and “42,000–42,500 MHz” and by revising the entry for “38,600–40,000 MHz” to read as follows:

§ 101.101 Frequency availability.

Frequency band (MHz)	Radio service				Notes
	Common carrier (part 101)	Private radio (part 101)	Broadcast auxiliary (part 74)	Other (parts 15, 21, 22, 24, 25, 74, 78 & 100)	
* * * * *	*	*	*	*	*
37,000–38,600	CC	OFS			25 F/M/TF
38,600–40,000	CC	OFS	TV BAS		25 F/M/TF
42,000–42,500	CC	OFS			F/M/TF
* * * * *	*	*	*	*	*

* * * * *
8. Section 101.103 is amended by revising paragraph (i) and by adding paragraphs (j) and (k) to read as follows:

§ 101.103 Frequency coordination procedures.

* * * * *

(i)(1) When fixed microwave or fixed satellite earth station facilities licensed under Part 101 are to be operated in the band 37,000 MHz to 40,000 MHz or 42,000 MHz to 42,500 MHz, the following coordination procedures shall apply:

(i) All harmful interference to other users and blocking of adjacent channel use in the same or adjacent geographical area is prohibited. In areas near the border between two licensees’ service areas, careful consideration should be given to minimum power requirements and to the location, height, and radiation pattern of the transmitting antenna. Licensees are expected to cooperate fully in attempting to resolve problems of potential interference before bringing the matter to the attention of the Commission.

(ii) Each licensee must engineer its system to be reasonably compatible with adjacent and co-channel operations in the same or adjacent areas, and cooperate fully and in good faith to resolve whatever potential interference

and transmission security problems may be present in adjacent and co-channel operations.

(iii) A licensee shall coordinate its facilities whenever the facilities have optical line-of-sight (calculated using the formula $d = 3.57\sqrt{h}$, where d is the distance between the antenna and the horizon in kilometers and h is the antenna height in meters) into another licensee’s geographic area where that licensee’s facilities may be located or into another licensee’s facilities within the same or adjacent geographic area, and the power flux density of the licensee’s system calculated at the service area boundary of the neighboring service area(s) exceeds -125 dBW/m² in any 1 megahertz band. This line of site should take into consideration all the possible relevant heights of the other licensee’s antenna(s). Power flux density is calculated using accepted engineering practices, taking into account such factors as propagation loss, atmospheric loss, curvature of the Earth, and gain of the antenna in the direction of the service area boundary. Licensees are encouraged to develop operational agreements with relevant licensees in the same or adjacent areas.

(iv) In the event no licensee in the bands 37,000 MHz to 40,000 MHz or

42,000 MHz to 42,500 MHz is immediately available in an adjacent or same area, the first-in-time licensee would have to coordinate its stations when future licensees appear in order to accommodate other licensees’ rights and to ensure cooperative and effective use of the spectrum in each area. This may include reducing powers to levels which are agreeable to both parties.

(i)(2) Response to notification should be made as quickly as possible, even if no technical problems are anticipated. Any response to notification indicating potential interference must specify the technical details and must be provided to the licensee, either electronically or in writing, within 10 days of notification. Every reasonable effort should be made by all licensees to eliminate all problems and conflicts. If no response to notification is received within 10 days, the licensee will be deemed to have made reasonable efforts to coordinate and may commence operation without a response. The beginning of the 10-day period is determined pursuant to § 101.103(d)(2)(v).

(i)(3) Licensees shall comply with the appropriate coordination agreements between the United States and Canada and the United States and Mexico concerning cross-border sharing and use

of the 37.0–40. GHz and 42.0–42.5 GHz bands.

(j) *Special consideration for coordinating with Government stations in the 37–38.6 GHz band:*

(1) In the band 37–38 GHz, use of the space research service (space-to-Earth) shall be on a primary basis only at Goldstone, California. Stations in the fixed and mobile services within 80 kilometers (50 miles) of 35° 18' North Latitude and 116° 54' West Longitude shall be coordinated through contacting the facility directly. Stations in the 37.0–38.6 GHz band in the vicinity of Green Bank, West Virginia must also coordinate as required by Section 1.924. The interference protection criterion to these facilities is – 130 dBW/m² in any 1 MHz, and licensees must obtain letters of approval for their operations from the relevant Government facility. Other uses of the space research service (space-to-Earth) in the band 37–38 GHz shall be on a secondary basis.

(2) Non-Government licensees in the 37–38.6 GHz band must register their technical data electronically into the ULS for each station in each of their geographic areas in order to make available accurate information on the use of the facilities and also to implement the “first-in-time” principle for coordination with Government facilities. This data shall include: 1) the date of the initial operating capability (IOC) of each station, 2) specific information identifying the station locations, 3) technical operating capabilities of the stations, including all of the power and antenna characteristics specified in Section 101.103(d)(2)(ii) of this section, and 4) whether the station has optical line-of-site to another facility with which it is being coordinated, if known at the time. If it is determined that optical line-of-site does not exist, the applicant should explain the determination. This site-based information shall be entered into the record of the area license in the ULS database by electronically registering notifications to the initial FCC Form 601 using Schedule I, but not more than twelve (12) months before operations are scheduled to begin.

(3) The FCC will note the activation date of the station, but will not make a determination that any of the information is correct or acceptable for filing. Coordination involving current and future Government facilities will require licensees and applicants to ensure that their data is accurately reflected in the ULS.

(4) Government operators with existing facilities in the 37.0–38.6 GHz band should cooperate in the coordination process by responding to

non-Government coordination notifications. Government operators with new stations to coordinate can identify and directly access the technical information of the non-Government licensees through the ULS. Examining the data in the ULS before formally coordinating with the FCC in the appropriate frequency band and geographic service area may speed up the frequency selection process. Government operators with new stations should notify the FCC through the IRAC process with sufficient technical detail to determine whether potential interference is possible with facilities of our licensees/applicants.

(5) *Non-Government Operations Coordinating with Existing Government Operations.* Non-Government terrestrial users in the band 37.0–38.6 GHz, and also operators who wish to protect an FSS (downlink) earth station in the band 37.5–38.6 GHz, shall coordinate with the existing military terrestrial Government facilities in 37.0–38.6 GHz (existing stations are identified in Appendix E) through the ULS and IRAC process. The proposed coordination triggers for non-Government stations are that the antenna must have optical line-of-sight to the Government facilities and that the PFD at the site exceeds a threshold of – 125 dBW/m² in any 1 MHz band. Harmful interference is not anticipated if neither of these conditions exist. The FCC and NTIA will resolve interference problems referred to them to their mutual satisfaction based on first-in-time sharing basis.

(6) *Non-Government Operations Coordinating with Future Government Operations.* Government terrestrial users in the band 37.0–38.6 GHz, and also operators who are required to protect an FSS (downlink) earth station in the band 37.5–38.6 GHz, are required to coordinate with future Government SRS (downlink space research antennas) operations and Government terrestrial facilities in the band 37.0–38.6 GHz at locations not identified at this time. The coordination triggers for non-Government stations are that the antenna must be within optical line-of-sight of an authorized Government site and that the station have a PFD at the site exceeding a threshold of – 130 dBW/m² in any 1 MHz band for the SRS (downlink) operations and – 125 dBW/m² in any 1 MHz band for the terrestrial facilities. Harmful interference is not anticipated if neither of these conditions exist. The coordinating parties are expected to resolve interference protection to their mutual satisfaction based on first-in-time sharing or to derive written sharing agreements.

(7) *Government Operations Coordinating with Future Non-Government Operations.* Government SRS (downlink space research antennas) users and Government terrestrial users in the 37.0–38.6 GHz band are expected to coordinate with existing and future non-Government operations. The coordination triggers for Government SRS stations are that the antenna have optical line-of-sight to an authorized non-Government site and have a vulnerability threshold PFD at the SRS receiver of – 130 dBW/m² in any 1 MHz band. The coordinating parties are expected to resolve interference protection to their mutual satisfaction based on first-in-time sharing. The coordination triggers for Government terrestrial stations are that the transmitting antenna have optical line-of-sight to the site of an authorized non-Government facility and have a PFD at the non-Government site exceeding a threshold of – 125 dBW/m² in any 1 MHz band. The FCC and NTIA will resolve interference problems referred to them to their mutual satisfaction based on first-in-time sharing.

(k) *Special consideration for coordinating Government stations in the 39.5–40.06 GHz band.* Government operators who are required to coordinate and protect non-Government terrestrial stations or FSS (downlink) earth stations in the band 39.5–40.061 GHz shall coordinate directly with the existing non-Government licensee for any earth stations located on military bases, and with the non-Government terrestrial licensee in whose service area the Government earth station is to be located. All parties concerned should resolve the coordination problems based on a first in time sharing basis and obtain coordination agreements with prior licensed facility operators.

9. Section 101.107 is amended by adding footnote 9 to the table in paragraph (a) to read as follows:

§ 101.107 Frequency tolerance.

(a) * * *

Frequency (MHz)	Frequency tolerance (percent)
* * * *	
31,300 to 40,000 ^{4,9}	0.03
71,000 to 76,000 ^{8,9}	
81,000 to 86,000 ^{8,9}	
92,000 to 95,000 ^{8,9}	

Frequency (MHz)	Frequency tolerance (percent)
-----------------	-------------------------------

Frequency band (MHz)	Maximum authorized bandwidth
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§ 101.113 Transmitter power limitations.
(a) * * *

Frequency band (MHz)	Maximum allowable EIRP ¹²	
	Fixed (dBW)	Mobile (dBW)
37,000 to 40,000 ...	+55
42,000 to 42,500 ...	+55

⁹Equipment authorized to be operated in the 37,000–40,000 MHz, 42,000–42,500 MHz, 71,000–76,000 MHz, 81,000–86,000 MHz, 92,000–94,000 MHz and 94,100–95,000 MHz bands is exempt from the frequency tolerance requirement noted in the above table.

37,000 to 40,000	50 MHz ⁷
42,000 to 42,500	50 MHz ⁷

⁷For channel block assignments in the 24,250–25,250 MHz, 37,000–40,000 MHz, and 42,200–42,500 MHz bands, the authorized bandwidth is equivalent to an unpaired channels block assignment or to either half of a symmetrical paired channel block assignment. When adjacent channels are aggregated, equipment is permitted to operate over the full channel block aggregation without restriction.

10. Section 101.109 is amended by removing the entry for “38,600–40,000 MHz” and adding in numerical order entries for “37,000–40,000 MHz” and “42,000–42,500 MHz” in the table in paragraph (c) and by revising footnote 7 to read as follows:

§ 101.109 Bandwidth.

(c) * * *

11. Section 101.113(a) is amended by removing the entry for “38,600–40,000 MHz” and by adding in numerical order entries in the table for “37,000–40,000 MHz” and for “42,000–42,500 MHz” to read as follows:

12. Section 101.115 is amended by removing the entry for “38,600–40,000 MHz”, adding in numerical order entries in the table for “37,000–40,000 MHz” and “42,000–42,500 MHz”, and by revising footnote 14 in paragraph (b) to read as follows:

§ 101.115 Directional antennas.

(b) * * *

37,000 to 40,000 ¹⁴	A	n/a	38	25	29	33	36	42	55	55
	B	n/a	38	20	24	28	32	35	36	36
42,000 to 42,500 ¹⁴	A	n/a	38	25	29	33	36	42	55	55
	B	n/a	38	20	24	28	32	35	36	36

¹⁴Stations authorized to operate in these bands may use antennas other than those meeting the Category A standard. However, the Commission may require the use of higher performance antennas where interference problems can be resolved by the use of such antennas.

13. Section 101.147 is amended by revising paragraph (v) to read as follows:

§ 101.147 Frequency assignments.
(v)(1) Assignments in the bands 37,000–40,000 MHz and 42,000–42,500

MHz must be according to the following frequency plan:

OPTION 1

[Unpaired channels are at lower end of 37.0–38.6 GHz]

Paired channel blocks			
Channel Group A		Channel Group B	
Channel No.	Frequency block (MHz)	Channel No.	Frequency block (MHz)
1–A	38,600–38,650 ...	1–B	39,300–39,350.
2–A	38,650–38,700 ...	2–B	39,350–39,400.
3–A	38,700–38,750 ...	3–B	39,400–39,450.
4–A	38,750–38,800 ...	4–B	39,450–39,500.
5–A	38,800–38,850 ...	5–B	39,500–39,550.
6–A	38,850–38,900 ...	6–B	39,550–39,600.
7–A	38,900–38,950 ...	7–B	39,600–39,650.
8–A	38,950–39,000 ...	8–B	39,650–39,700.
9–A	39,000–39,050 ...	9–B	39,700–39,750.
10–A	39,050–39,100 ...	10–B	39,750–39,800.
11–A	39,100–39,150 ...	11–B	39,800–39,850.
12–A	39,150–39,200 ...	12–B	39,850–39,900.
13–A	39,200–39,250 ...	13–B	39,900–39,950.
14–A	39,250–39,300 ...	14–B	39,950–40,000.
19–A	37,200–37,250 ...	19–B	37,900–37,950.
20–A	37,250–37,300 ...	20–B	37,950–38,000.
21–A	37,300–37,350 ...	21–B	38,000–38,050.
22–A	37,350–37,400 ...	22–B	38,050–38,100.

OPTION 1—Continued

[Unpaired channels are at lower end of 37.0–38.6 GHz]

Paired channel blocks			
Channel Group A		Channel Group B	
Channel No.	Frequency block (MHz)	Channel No.	Frequency block (MHz)
23-A	37,400–37,450 ...	23-B	38,100–38,150.
24-A	37,450–37,500 ...	24-B	38,150–38,200.
25-A	37,500–37,550 ...	25-B	38,200–38,250.
26-A	37,550–37,600 ...	26-B	38,250–38,300.
27-A	37,600–37,650 ...	27-B	38,300–38,350.
28-A	37,650–37,700 ...	28-B	38,350–38,400.
29-A	37,700–37,750 ...	29-B	38,400–38,450.
30-A	37,750–37,800 ...	30-B	38,450–38,500.
31-A	37,800–37,850 ...	31-B	38,500–38,550.
32-A	37,850–37,900 ...	32-B	38,550–38,600.
33-A	42,000–42,050 ...	33-B	42,250–42,300.
34-A	42,050–42,100 ...	34-B	42,300–42,350.
35-A	42,100–42,150 ...	35-B	42,350–42,400.
36-A	42,150–42,200 ...	36-B	42,400–42,450.
37-A	42,200–42,250 ...	37-B	42,450–42,500.

Unpaired channel blocks	
Channel No.	Frequency block (MHz)
15	37,000–37,050.
16	37,050–37,100.
17	37,100–37,150.
18	37,150–37,200.

OPTION 2

[Unpaired channels are at upper end of 37.0–38.6 GHz]

Paired channel blocks			
Channel Group A		Channel Group B	
Channel No.	Frequency block (MHz)	Channel No.	Frequency block (MHz)
1-A	38,600–38,650 ...	1-B	39,300–39,350.
2-A	38,650–38,700 ...	2-B	39,350–39,400.
3-A	38,700–38,750 ...	3-B	39,400–39,450.
4-A	38,750–38,800 ...	4-B	39,450–39,500.
5-A	38,800–38,850 ...	5-B	39,500–39,550.
6-A	38,850–38,900 ...	6-B	39,550–39,600.
7-A	38,900–38,950 ...	7-B	39,600–39,650.
8-A	38,950–39,000 ...	8-B	39,650–39,700.
9-A	39,000–39,050 ...	9-B	39,700–39,750.
10-A	39,050–39,100 ...	10-B	39,750–39,800.
11-A	39,100–39,150 ...	11-B	39,800–39,850.
12-A	39,150–39,200 ...	12-B	39,850–39,900.
13-A	39,200–39,250 ...	13-B	39,900–39,950.
14-A	39,250–39,300 ...	14-B	39,950–40,000.
15-A	37,000–37,050 ...	15-B	37,700–37,750.
16-A	37,050–37,100 ...	16-B	37,750–37,800.
17-A	37,100–37,150 ...	17-B	37,800–37,850.
18-A	37,150–37,200 ...	18-B	37,850–37,900.
19-A	37,200–37,250 ...	19-B	37,900–37,950.
20-A	37,250–37,300 ...	20-B	37,950–38,000.
21-A	37,300–37,350 ...	21-B	38,000–38,050.
22-A	37,350–37,400 ...	22-B	38,050–38,100.
23-A	37,400–37,450 ...	23-B	38,100–38,150.
24-A	37,450–37,500 ...	24-B	38,150–38,200.
25-A	37,500–37,550 ...	25-B	38,200–38,250.
26-A	37,550–37,600 ...	26-B	38,250–38,300.
27-A	37,600–37,650 ...	27-B	38,300–38,350.
28-A	37,650–37,700 ...	28-B	38,350–38,400.
33-A	42,000–42,050 ...	33-B	42,250–42,300.
34-A	42,050–42,100 ...	34-B	42,300–42,350.
35-A	42,100–42,150 ...	35-B	42,350–42,400.
36-A	42,150–42,200 ...	36-B	42,400–42,450.

OPTION 2—Continued

[Unpaired channels are at upper end of 37.0–38.6 GHz]

Paired channel blocks			
Channel Group A		Channel Group B	
Channel No.	Frequency block (MHz)	Channel No.	Frequency block (MHz)
37-A	42,200–42,250 ...	37-B	42,450–42,500.

Unpaired channel blocks	
Channel No.	Frequency block (MHz)
29	38,400–38,450.
30	38,450–38,500.
31	38,500–38,550.
32	38,550–38,600.

(v)(2) Channel Blocks 1 through 37 are assigned for use within Economic Areas (EAs). Applicants are to apprise themselves of any licensed rectangular service areas in the band 38,6000–40,000 MHz within the EA for which they seek a license and comply with the requirements set out in § 101.103. All of the channel blocks may be subdivided as desired by the licensee as frequency pairs and used within its service area as desired without further authorization subject to the terms and conditions set out in § 101.149.

* * * * *

14. Section 101.149 is amended by revising introductory text and by adding paragraphs (d) and (e) to read as follows:

§ 101.149 Special requirements for operation in the bands 37,000–40,000 MHz, and 42,000–42,500 MHz.

Assigned frequency channels in the bands 37,000–40,000 MHz, and 42,000–42,500 MHz may be aggregated/ disaggregated with no limits and used anywhere in the authorized service area, subject to the following terms and conditions:

* * * * *

(d) Point-to-point, point-to-multipoint, fixed and mobile terrestrial operations (upon adoption of interference protection criteria for mobile operations) shall be permitted in the bands 37,000–40,000 MHz, and 42,000–42,500 MHz. Fixed satellite earth station operations may also be permitted if the license is obtained through competitive bidding, partitioning, and/or aggregation/ disaggregation under part 101.

(e) For the frequency bands 37,000–40,000 MHz, and 42,000–42,500 MHz, spectrum must be aggregated/ disaggregated by frequency pairs.

15. Subpart N of part 101 is amended by revising the subpart heading to read as follows:

Subpart N—Competitive Bidding Procedures for the 37.0–40.0 GHz and 42.0–42.5 GHz Bands

* * * * *

16. Section 101.1201 is revised to read as follows:

§ 101.1201 37.0–40.0 GHz and 42.0–42.5 GHz subject to competitive bidding.

Mutually exclusive initial applications for 37.0–40.0 GHz and 42.0–42.5 GHz band licenses are subject to competitive bidding. The general competitive bidding procedures set forth in 47 CFR part 1, subpart Q will apply unless otherwise provided in this subpart.

17. Subpart N is amended by adding § 101.1212 to read as follows:

§ 101.1212 Designated entities.

(a) *Eligibility for small business provisions.* (1) A small business is an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than \$40 million for the preceding three years.

(2) A very small business is an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than \$15 million for the preceding three years.

(b) *Bidding credits.* (1) A winning bidder that qualifies as a small business, as defined in this section, or a consortium of small businesses may use a bidding credit of 15 percent, as specified in § 1.2110(f)(2)(iii), to lower the cost of its winning bid on any of the licenses in this part.

(2) A winning bidder that qualifies as a very small business, as defined in this section, or a consortium of very small businesses may use a bidding credit of 25 percent, as specified in § 1.2110(f)(2)(ii), to lower the cost of its winning bid on any of the licenses in this part.

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