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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 02-55; DA 12-1343]

Public Safety and Homeland Security Bureau Seeks Comment on Post-Reconfiguration 800 MHz Band Plan Along the U.S. – Mexico Border

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document seeks comment on post-reconfiguration 800 MHz band channel plans along the U.S. – Mexico border. The Public Safety and Homeland Security Bureau (Bureau), by this action, affords interested parties an opportunity to submit comments and reply comments on proposals for establishing and implementing reconfigured 800 MHz channel plans along the U.S.-Mexico border.

DATES: Comments are due on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and reply comments are due on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESS: You may submit comments, identified by WT Docket 02-55, by any of the following methods:

- Federal Communications Commission's Web Site: <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

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

FOR FURTHER INFORMATION CONTACT: Brian Marengo, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418-0838.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fourth Further Notice of Proposed Rulemaking, DA 12-1343, released on August 17, 2012. The document is available for download at http://fjallfoss.fcc.gov/edocs_public/. The complete text may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160, or via e-mail to fcc@bcpiweb.com.

SUMMARY

1. In a July 2004 Report and Order, the Commission reconfigured the 800 MHz band to eliminate interference to public safety and other land mobile communication systems operating in the band, 69 FR 67823, November 22, 2004. However, the Commission deferred consideration of band reconfiguration plans for the border areas, noting that “implementing the band plan in areas of the United States bordering Mexico and Canada will require modifications to international agreements for use of the 800 MHz band in the border areas.” The Commission stated that “the details of the border plans will be determined in our ongoing discussions with the Mexican and Canadian governments.”

2. In a Second Memorandum Opinion and Order, adopted in May 2007, the Commission delegated authority to Public Safety and Homeland Security Bureau to propose and adopt border area band plans once agreements are reached with Canada and Mexico, 72 FR 39756, July 20, 2007. Specifically, the Commission noted that “once those discussions are completed, and any necessary modifications to our international agreements have been made, we will need to amend our rules to implement the agreements and identify the portions of the 800 MHz band that will be available to U.S. licensees on a primary basis. In addition, we will need to adopt a band plan for the border regions that specifies the ESMR and non-ESMR portions of the band and the distribution of channels to public safety, B/ILT, and SMR licensees.”

3. On June 8, 2012, the United States and Mexico signed an agreement modifying the international apportionment of 800 MHz spectrum in the U.S.-Mexico border region, which enables the U.S. to proceed with 800 MHz band reconfiguration along the U.S. – Mexico border. In the Fourth Further Notice of Proposed Rulemaking, the Public Safety and Homeland Security Bureau, on delegated authority, seeks comment on proposals for establishing and implementing reconfigured 800 MHz channel plans along the U.S.-Mexico border.

4. Pursuant to §§ 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All filings related to this Fourth Further Notice of Proposed Rulemaking (Fourth FNPRM) should refer to WT Docket No. 02-55. Comments may be filed using: (1) the Commission’s Electronic Comment Filing System (ECFS), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

5. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-

A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

6. Interested parties may view documents filed in this proceeding on the Commission's Electronic Comment Filing System (ECFS) using the following steps: (1) Access ECFS at <http://www.fcc.gov/cgb/ecfs>. (2) In the introductory screen, click on "Search for Filed Comments." (3) In the "Proceeding" box, enter the numerals in the docket number. (4) Click on the box marked "Retrieve Document List." A link to each document is provided in the document list. The public may inspect and copy filings and comments during regular business hours at the FCC Reference Information Center, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. The public may also purchase filings and comments from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160, or via e-mail to fcc@bcpiweb.com. The public may also download this Fourth Further Notice of Proposed Rulemaking from the Commission's web site at <http://www.fcc.gov/>.

7. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

8. Commenters who file information that they believe should be withheld from public inspection may request confidential treatment pursuant to Section 0.459 of the Commission's rules. Commenters should file both their original comments for which they request

confidentiality and redacted comments, along with their request for confidential treatment. Commenters should not file proprietary information electronically. See Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, Report and Order, 13 FCC Rcd 24816 (1998), Order on Reconsideration, 14 FCC Rcd 20128 (1999). Even if the Commission grants confidential treatment, information that does not fall within a specific exemption pursuant to the Freedom of Information Act (FOIA) must be publicly disclosed pursuant to an appropriate request. See 47 CFR 0.461; 5 U.S.C. 552. We note that the Commission may grant requests for confidential treatment either conditionally or unconditionally. As such, we note that the Commission has the discretion to release information on public interest grounds that does fall within the scope of a FOIA exemption

9. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with 47 CFR 1.1206(b). In proceedings governed by 47 CFR 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex

parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Analysis

10. Pursuant to the Regulatory Flexibility Act (RFA), the Federal Communications Commission's Public Safety and Homeland Security Bureau (Bureau) has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the proposals considered in this Fourth FNPRM. The text of the IRFA is set forth in Appendix A. Written public comments are requested on this IRFA. Comments must be filed in accordance with the same filing deadlines for comments on the Fourth FNPRM, and they should have a separate and distinct heading designating them as responses to the IRFA. The Bureau will send a copy of the Fourth FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

B. Initial Paperwork Reduction Act of 1995 Analysis

11. This document proposes no additional information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13 beyond those already approved for this proceeding. See OMB Control No. 3060-1080 for Improving Public Safety Communications in the 800 MHz Band (exp. September 30, 2014). Therefore, it contains no new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

INITIAL REGULATORY FLEXIBILITY ANALYSIS

12. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Federal Communications Commission's Public Safety and Homeland Security Bureau (Bureau) has

prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Fourth Further Notice of Proposed Rule Making (Fourth FNPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the first page of the Fourth FNPRM. The Commission will send a copy of this Fourth FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the Fourth FNPRM and IRFA (or summaries thereof) will be published in the Federal Register.

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

13. In the Fourth FNPRM, the Bureau proposes channels plans for reconfiguring the 800 MHz band along the U.S.- Mexico border. The channel plans we propose in the Fourth FNPRM will be incorporated into the Commission's rules and are needed to implement and complete the Commission's band reconfiguration program along the U.S.-Mexico border. The Commission ordered reconfiguration of the 800 MHz band to address an ongoing nationwide problem of interference created by a fundamentally incompatible mix of technologies in the band. The Commission resolves the interference by reconfiguring the band to spectrally separate incompatible technologies. The Commission delegated authority to the Bureau in May 2007 to propose and adopt channel plans for implementing band reconfiguration along the U.S.-Mexico border. The band plans we propose in the Fourth FNPRM will separate incompatible technologies along the U.S.-Mexico border and thus resolve the ongoing interference problem in that region.

B. Legal Basis

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

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

15. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” Below, we further describe and estimate the number of small entities that may be affected by the rules changes proposed in this Fourth FNPRM.

16. Private Land Mobile Radio Licensees (PLMR). PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by entities of all sizes operating in all U.S. business and public sector categories, and are often used in support of the licensee’s primary (non-telecommunications) operations. For the purpose of determining whether a licensee of a PLMR system is a small entity as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business and

governmental activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

17. As of May 2012, there were approximately 220 PLMR licensees operating in the PLMR band between 806-824/851-869 MHz along the U.S. - Mexico border. We note that many government and commercial actors are eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

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

18. The Fourth FNPRM does not propose a rule that will entail additional reporting, recordkeeping, and/or third-party consultation or other compliance efforts beyond those already approved for this proceeding. See OMB Control No. 3060-1080 for Improving Public Safety Communications in the 800 MHz Band (exp. September 30, 2014).

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

19. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

20. The Fourth FNPRM will create no significant economic impact on small entities because Sprint Nextel Corporation will pay all reasonable costs associated with retuning incumbent licensees to the post-reconfiguration channel plans proposed by the Bureau. Further, once the channel plans proposed in the Fourth FNPRM are implemented, licensees will no longer be

subject to on-going interference in the band and will therefore save costs that would otherwise be associated with resolving interference. Finally, the Bureau specifically seeks comment on alternatives to the proposed channel plans it proposes and will consider such alternatives as may be recommended in comments to the Fourth FNPRM.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

21. None.

ORDERING CLAUSES

22. Accordingly, **IT IS ORDERED**, pursuant to sections 4(i) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 332, that this Fourth Further Notice of Proposed Rulemaking **IS ADOPTED**.

23. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Fourth Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration

FEDERAL COMMUNICATIONS COMMISSION

David S. Turetsky
Chief, Public Safety and Homeland Security Bureau

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