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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 27, and 90

[PS Docket 12-94; PS Docket No. 06-229; WT Docket 06-150; DA 12-1462]

Implementing Public Safety Broadband Provisions of the Middle Class Tax Relief and Job Creation Act of 2012

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Public Safety and Homeland Security Bureau (Bureau) of the Commission implemented certain provisions of the Middle Class Tax Relief and Job Creation Act of 2012 (Public Safety Spectrum Act) governing deployment of a nationwide public safety broadband network in the 700 MHz band. Pursuant to clear statutory directives, the Bureau reallocated the D Block (758-763/788-793 MHz) for “public safety services” and delete Commission rules that are plainly inconsistent with this revised allocation; deleted the rules establishing, providing license authority with respect to, and governing operations under the Public Safety Broadband License in the existing public safety broadband spectrum; and adopted rules implementing the clear mandate of the Public Safety Spectrum Act to grant a license with respect to the public safety broadband spectrum (763-768/793-798 MHz), guard band (768-769/798-799 MHz), and the D Block to the First Responder Network Authority (FirstNet). By eliminating any confusion or uncertainty about the new regulatory framework applicable to the public safety broadband network, these action takes further steps necessary to facilitate the transition of this spectrum to FirstNet as required by the Act.

DATES: Effective [INSERT DATE THIRTY DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], except for the removal of §§ 90.18 and 90.528 of the Commission’s rules. The Commission will publish a separate document in the Federal Register announcing the subsequent effective date of these removals.

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SUPPLEMENTARY INFORMATION: In the Report and Order, DA 12-1462, adopted and released September 7, 2012, the Bureau implements certain provisions of the Middle Class Tax Relief and Job Creation Act of 2012 (“Public Safety Spectrum Act” or “Act”)¹ governing deployment of a nationwide public safety broadband network in the 700 MHz band. The Public Safety Spectrum Act establishes the First Responder Network Authority (FirstNet) to oversee the construction and operation of this network as licensee of both the “existing public safety broadband spectrum” (763-769/793-799 MHz) and the spectrally adjacent “700 MHz D Block spectrum” (758-763/788-793 MHz).² The Act directs the Federal Communications Commission (FCC or Commission) to reallocate the D Block for public safety services,³ to license the D Block and the existing public safety broadband spectrum to FirstNet⁴ and to take other actions necessary to “facilitate the transition” of the existing public safety broadband spectrum to FirstNet.

¹ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (2012).

² See *id.* Secs. 6201(a), 6202 and 6204(a); see also *id.* sec. 6001(2) (defining “700 MHz D Block spectrum”) and (14) (defining “existing public safety broadband spectrum”).

³ See *id.* sec. 6101.

⁴ See *id.* sec. 6201(a).

In the Report and Order, the Bureau implements clear directives of Congress set forth in the Public Safety Spectrum Act. The Bureau reallocates the D Block for “public safety services” and deletes Commission rules that are plainly inconsistent with this revised allocation. It also deletes the Commission rules establishing, providing license authority with respect to, and governing operations under the Public Safety Broadband License in the existing public safety broadband spectrum. The Bureau replaces these with rules implementing the clear mandate of the Public Safety Spectrum Act to grant a license with respect to this spectrum and the D Block to FirstNet. The rule changes adopted by the Bureau in this order are strictly limited to implementation of aspects of that mandate that leave no room for agency discretion, and thus fall within the Bureau’s delegated authority and are consistent with the requirements of the Administrative Procedure Act.⁵ As noted below, by eliminating any confusion or uncertainty about the new regulatory framework applicable to the public safety broadband network, the Bureau’s action takes further steps necessary to facilitate the transition of this spectrum to FirstNet as the prospective licensee established by the Act;. The Report and Order is available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0907/DA-12-1462A1.pdf.

This Report and Order will become effective [INSERT DATE THIRTY DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], except for the deletion of sections 90.18 and 90.528 of the Commission’s rules. Following that date, the Commission will publish a separate notice in the Federal Register announcing the subsequent effective date of these rule deletions, which shall be the date of issuance of a

⁵ See *id.*; 5 U.S.C. 553(b)(B).

license to the First Responder Network Authority pursuant to Section 6201(a) of the Middle Class Tax Relief and Job Creation Act of 2012.

Under Section 603(a) of the Regulatory Flexibility Act (RFA), the Commission is not required to prepare a final regulatory flexibility analysis relating to the Report and Order because it was not required to publish general notice of proposed rulemaking before effecting the rule changes set forth therein. The Report and Order contains no new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. The Commission shall send a copy of the Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects

47 CFR Part 0

Classified information, Freedom of information, Government publications, Infants and children, Organization and functions (Government agencies), Privacy, Reporting and recordkeeping requirements, Sunshine Act.

47 CFR Part 27

Communications common carriers, Radio.

47 CFR Part 90

Administrative practice and procedure, Business and industry, Civil defense, Common carriers, Communications equipment, Emergency medical services, Incorporation by reference, Individuals with disabilities, Radio, Reporting and recordkeeping requirements.

FEDERAL COMMUNICATIONS COMMISSION.

Timothy A. Peterson,
Chief of Staff, Public Safety and Homeland Security Bureau.

For the reasons discussed in the preamble, The Federal Communications Commission amends 47 CFR parts 0, 27, and 90 as follows:

PART 0 – COMMISSION ORGANIZATION

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

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

§ 0.181 [Amended]

2. Section 0.181 is amended by removing paragraph (k).

PART 27 – MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

3. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

4. Section 27.1 is amended by revising paragraph (b)(2) to read as follows:

§ 27.1 Basis and purpose.

* * * * *

(b) * * *

(2) 746–758 MHz, 775–788 MHz, and 805-806 MHz.

* * * * *

§ 27.4 [Amended]

5. Section 27.4 is amended by removing the following definitions “700 MHz Public/Private Partnership,” “Network Assets Holder,” “Network Sharing Agreement (NSA)” Operating Company, “Public Safety Broadband License,” “Special Purpose Bankruptcy Remote Entity Public Safety Broadband Licensee,” “Shared Wireless Broadband Network,” “Special Purpose Bankruptcy Remote

Entity,” “Upper 700 MHz D Block license,” “Upper 700 MHz D Block licensee.”

6. Section 27.5 is amended by revising paragraph (b) to read as follows:

§ 27.5 Frequencies.

* * * * *

(b) 746–758 MHz, 775–788 MHz, and 805-806 MHz bands. The following frequencies are available for licensing pursuant to this part in the 746-758 MHz, 775-788 MHz, and 805-806 MHz bands:

(1) Two paired channels of 1 megahertz each are available for assignment in Block A in the 757-758 MHz and 787-788 MHz bands.

(2) Two paired channels of 1 megahertz each are available for assignment in Block B in the 775-776 MHz and 805-806 MHz bands.

(3) Two paired channels of 11 megahertz each are available for assignment in Block C in the 746-757 MHz and 776-787 MHz bands. In the event that no licenses for two channels in this Block C are assigned based on the results of the first auction in which such licenses were offered because the auction results do not satisfy the applicable reserve price, the spectrum in the 746-757 MHz and 776-787 MHz bands will instead be made available for assignment at a subsequent auction as follows:

(i) Two paired channels of 6 megahertz each available for assignment in Block C1 in the 746-752 MHz and 776-782 MHz bands.

(ii) Two paired channels of 5 megahertz each available for assignment in Block C2 in the 752-757 MHz and 782-787 MHz bands.

* * * * *

Subpart N ---[Removed]

7. Remove subpart N, consisting of §§ 27.1301 through 27.1340.

PART 90 – PRIVATE LAND MOBILE RADIO SERVICES

8. The authority citation for part 90 is amended to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7), and Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156.

9. Section 90.7 is amended by removing the following definitions “700 MHz Public/Private Partnership,” “Network Assets Holder,” “Network Sharing Agreement (NSA),” “Operating company,” “Public safety broadband license,” “Public Safety Broadband Licensee,” “Public safety broadband network operator,” “Shared Wireless Broadband Network, “ “Special Purpose Bankruptcy Remote Entity,” “Upper 700 MHz D Block license,” “Upper 700 MHz D Block licensee,” and adding the definition “First Responder Network Authority” to read as follows :

§ 90.7 Definitions.

* * * * *

First Responder Network Authority. An entity established by the Middle Class Tax Relief and Job Creation Act of 2012 as an independent authority within the National Telecommunications and Information Administration and designated by that statute to hold a nationwide license associated with the 758-769 MHz and 788-799 MHz bands for use in deploying a nationwide public safety broadband network.

* * * * *

§90.18 [Removed]

10. Section 90.18 is removed.

11. Add § 90.19 to read as follows:

§90.19 Nationwide Public Safety Broadband Network.

Pursuant to the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (2012), the 758-769 MHz and 788-799 MHz bands are allocated for use by the First Responder Network Authority to deploy a nationwide public safety broadband network as prescribed by statute.

12. Section 90.20 is amended in the table in paragraph (c)(3) by removing the entries for “763 to 775” and “793 to “805” and adding in their place entries for “758 to 775” and “788 to 805” and by revising paragraph (d)(77) to read as follows:

§ 90.20 Public Safety Pool.

* * * * *

(c) * * *

(3) *Frequencies.*

Public Safety Pool Frequency Table

Frequency or band	Class of station(s)	Limitations	Coordinator
**	*	**	*
758 to 775	Base, mobile	77	PX

788 to 805	Mobile	77	PX
* *	*	**	*

(d) * * *

(77) Subpart R of this part contains rules for assignment of channels in the 758-775 MHz and 788-805 MHz bands.

* * * * *

Subpart R – Regulations Governing the Licensing and Use of Frequencies in the 758-775 and 788-805 MHz Bands

13. Revise the subpart heading to subpart R to read as set forth above.

14. Section 90.521 is amended by revising the first sentence to read as follows:

§ 90.521 Scope.

This subpart sets forth the regulations governing the licensing and operations of all systems operating in the 758-775 MHz and 788-805 MHz frequency bands. * * *

* * * *

§ 90.528 [Removed]

15 Remove §90.528.

16. Section 90.531 is amended by revising the introductory text and paragraph (g) to read as follows:

§ 90.531 Band plan.

This section sets forth the band plan for the 758-775 MHz and 788-805 MHz public safety bands.

* * * * *

(g) Broadband. The 758-768 MHz and 788-798 MHz bands are allocated for broadband communications.

17. Add § 90.532 to read as follows:

§ 90.532 Licensing of the 758-769 MHz and 788-799 MHz Bands.

Pursuant to Section 6201 of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (2012), a nationwide license for use of the 758-769 MHz and 788-799 MHz bands shall be issued to the First Responder Network Authority for a initial license term of ten years from the date of the initial issuance of the license. Prior to expiration of the term of such initial license, the First Responder Network Authority shall submit to the Commission an application for the renewal of such license. Such renewal application shall demonstrate that, during the preceding license term, the First Responder Network Authority has met the duties and obligations set forth under the foregoing Act. A renewal license shall be for a term not to exceed ten years.

Subpart AA [Removed]

18. Remove subpart AA, consisting of §§ 90.1401 through 90.1440.

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