ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL–6715–3]

Reopening of Comment Period on Revisions to the Interim Enhanced Surface Water Treatment Rule (IESWTR), the Stage 1 Disinfectants and Disinfection Byproducts Rule (Stage 1 DBPR) and Revisions to State Primacy Requirements to Implement the Safe Drinking Water Act (SDWA) Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule, notice of reopening of comment period.

SUMMARY: EPA is reopening the comment period for the proposed rule revising the Interim Enhanced Surface Water Treatment Rule (IESWTR), the Stage 1 Disinfectant and Disinfection Byproducts Rule (Stage 1 DBPR), and the Primacy Rule which was published in the **Federal Register** April 14, 2000 (65 FR 20314). The reopening of the comment period will allow all interested parties to submit written comments on the proposal.

DATES: Written comments must be received by July 13, 2000.

ADDRESSES: Send written comments to the Comment Clerk, docket number W–99–11, Water Docket (MC 4101), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The record for this proposed rule is established under docket number W–99–11. The record is available for inspection from 9 a.m. to 4 p.m. Monday through Friday, excluding legal holidays at the Water Docket, East Tower Basement, US EPA, 401 M Street, SW., Washington DC. For access to docket materials, please call 202–260–3027 to schedule an appointment. Comments may be hand-delivered to the Water Docket, U.S. Environmental Protection Agency; 401 M Street SW., East Tower Basement, Washington, DC 20460. Comments may be submitted electronically to *ow-docket@epamail.epa.gov.* No facsimiles (faxes) will be accepted. See **SUPPLEMENTARY INFORMATION** section for further details about comment submission.

FOR FURTHER INFORMATION CONTACT: Jennifer Melch, Implementation and Assistance Division, Office of Ground Water and Drinking Water (MC–4606), U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460, (202) 260–7035. Information may also be obtained from the EPA Safe Drinking Water Hotline. Callers within the United States may reach the Hotline at (800) 426–4791. The Hotline is open Monday through Friday, excluding Federal holidays, from 9:00 a.m. to 5:30 p.m. EST.

SUPPLEMENTARY INFORMATION: The reopened comment period for the proposed rulemaking now ends July 13, 2000. All comments submitted in accordance with the instructions in the Notice of Proposed Rulemaking will be considered and incorporated into the Record.

Additional Information for Commenters

Please submit an original and three copies of your comments and enclosures (including references). Comments must be received by July 13, 2000.

Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. Electronic comments must be submitted as a WP5/6/7/8 file or an ASCII File, avoiding the use of special characters and form and encryption. Electronic comments must be identified by the docket number W–99–11.

Dated: June 8, 2000.

J. Charles Fox,

Assistant Administrator, Office of Water.

[FR Doc. 00–14885 Filed 6–12–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 24

[WT Docket No. 97–82; FCC 00–197]

Installment Payment Financing for Personal Communications Services (PCS) Licensees

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: In this document the Federal Communications Commission (Commission) tentatively concludes that it is in the public interest to modify certain aspects of its rules for the upcoming C and F block auction. The Commission seeks public comment on various issues, including proposals to reconfigure the size of C block spectrum licenses; to modify the entrepreneur eligibility restrictions for certain licenses in both large and small markets; and to retain the spectrum cap.

DATES: Comments are due on or before June 22, 2000 and reply comments are due on or before June 30, 2000. Final *ex parte* presentations are due on July 12, 2000.

ADDRESSES: All comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Audrey Bashkin, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of a Further Notice of Proposed Rule Making (*Further Notice*) adopted on May 31, 2000, and released on June 7, 2000. The complete text of this *Further Notice,* including attachments, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. It is also available on the Commission's web site at http://www.fcc.gov/wtb/auctions.

Synopsis of the Further Notice of Proposed Rule Making

I. Introduction and Overview

1. On January 12, 2000, the Wireless Telecommunications Bureau (''Bureau'') announced that a broadband Personal Communications Services (''PCS'') C and F block auction—Auction No. 35—would begin on July 26, 2000. Under the Commission's current rules, applicants for C and F block auctions must meet specified financial size requirements to qualify as ''entrepreneurs'' and to be eligible to compete in the auction. Following the announcement of Auction No. 35, the Commission received several formal requests to waive, modify, or eliminate the C and F block auction and service rules. These requests seek, among other things, modification of the various C and F block eligibility requirements for the upcoming auction, reconfiguration of available 30 MHz C block licenses, and adoption of an alternative bidding plan.

2. As justification for the proposed changes, the petitioners point to the relatively small percentage of C and F block licensees that have begun providing service in the years since the initial entrepreneurs' block auctions were held. They also note the increasing trend in the wireless marketplace toward nationwide service, their need for additional spectrum in order to ease spectrum capacity constraints, and their financial readiness to construct and

operate C and F block systems should they win licenses in the upcoming auction. Numerous parties have filed opposing and supportive pleadings in response to these petitions. Opponents argue that businesses that qualify as ''entrepreneurs'' under our rules are more likely than larger companies to provide innovative and niche services and to serve rural areas; that the Commission's previous C and F block installment payment program was largely responsible for the dearth of build-out among C and F block licensees; and that changing the eligibility criteria at this juncture would be detrimental to the existing business plans of current C and F block ''entrepreneur'' licensees developed based upon these rules, and to the ability of small businesses to secure needed financing to provide valuable wireless services.

3. Several parties have also asked that we consider whether we should revise, waive, or forbear from applying the Commercial Mobile Radio Service (''CMRS'') spectrum cap for Auction 35. In support of these requests, the petitioners assert that the demand for CMRS services has significantly increased and created substantial spectrum constraints over the last few years. Further, petitioners contend that lifting the spectrum cap would better enable them to roll out Third Generation (''3G'') and other advanced services, as well as otherwise help ensure the rapid and efficient development of the C and F block spectrum. Those opposing these requests claim that the current spectrum cap allows sufficient spectrum in local geographic markets to roll out 3G services in the foreseeable future and that petitioners failed to establish any basis for waiving the spectrum cap.

4. Upon consideration of the petitions and responsive pleadings received to date, we have tentatively concluded that it is in the public interest to revise certain aspects of the C and F block rules. Accordingly, we seek comment in this Further Notice on the following specific proposals to:

• *Reconfigure C Block Spectrum License Size*

We tentatively conclude that we will reconfigure each 30 MHz C block license available in future broadband PCS auctions into three 10 MHz C block licenses.

• *Apply a Tiered Approach to Basic Trading Areas (BTAs)*

We tentatively conclude that we will divide BTAs into two tiers according to the population size of the BTA. Under this proposal, ''Tier 1'' would comprise BTAs at and above a 2.5 million population threshold; and ''Tier 2'' would comprise BTAs below that population threshold.

• *Eliminate Eligibility Restrictions For Certain Licenses In Tiers*

We further propose to remove the auction eligibility restrictions for certain of the newly reconfigured 10 MHz C block licenses, thereby establishing ''open'' bidding for these licenses. We tentatively conclude that we will allow ''open'' bidding (*i.e.,* remove the eligibility restrictions) for two of the three 10 MHz C Block licenses in Tier 1, and one of the three 10 MHz C Block licenses in Tier 2. We also invite comment on whether to allow ''open'' bidding for all three of the 10 MHz C Block licenses in Tier 1, and two of the three 10 MHz C Block licenses in Tier 2.

We tentatively conclude that we will allow ''open'' bidding for all available 15 MHz C block licenses, which have previously been auctioned but not sold.

We seek comment on whether to allow ''open'' bidding for all available F block licenses. We also seek comment on whether, instead, to adopt a tiered approach to eligibility for F block licenses or to retain existing F block eligibility requirements.

• *Retain Our Current License Grouping for Bidding in the Auction*

We tentatively conclude that we will retain BTA service areas and a license-by-license bidding design for Auction No. 35.

• *Clarify the Grandfather Exception*

We invite comment in this proceeding on a number of issues raised by parties seeking reconsideration of the grandfather exception to the eligibility rules, which is provided in § 24.709(b)(9)(i) of the Commission's rules. On the issue of how the exception applies in a merger situation, we tentatively conclude that when each of the merging entities is eligible for the ''grandfather'' exception, the exception extends to the resulting entity, but that when one (or more) of the merging entities is not eligible for the ''grandfather'' exception, the exception does not extend to the resulting entity.

• *Revise the Bidding Credits Available for Auction No. 35*

We seek comment on whether to retain existing small and very small business bidding credits (15 percent and 25 percent, respectively) for licenses subject to ''open'' bidding or whether to increase them to 25 percent and 40 percent, respectively. We also seek comment on whether we should change the bidding credits for licenses subject to ''closed'' bidding, *i.e.,* bidding where eligibility restrictions apply.

• *Alter the Transfer Requirements for Certain Licenses*

Licenses Won in ''Open'' Bidding: We tentatively conclude that we will eliminate the § 24.839 eligibility requirements for the assignment or transfer of control of C and F block licenses won in Auction No. 35 ''open'' bidding.

Licenses Won in ''Closed'' Bidding: We seek comment on allowing a licensee to assign or transfer its license to any qualified entity, entrepreneur or not, upon the licensee's completion of its first construction benchmark, whether or not it takes the full five years allowed under our rules.

Licenses Held by Incumbent Licensees: We seek comment on allowing an incumbent licensee to assign or transfer its license to any qualified entity, entrepreneur or not, upon the licensee's completion of its first construction benchmark, whether or not it takes the full five years allowed under our rules. We also seek comment on whether we should allow some flexibility for incumbent licensees to transfer certain licenses where the carrier can demonstrate ''substantial service'' throughout its system, rather than on a market-by-market basis.

• *Eliminate the License Cap*

We tentatively conclude that we will eliminate the § 24.710 cap on the number of C and F block licenses a single entity may win at auction.

• *Retain the Spectrum Cap*

We tentatively conclude that we will retain the current spectrum cap.

II. Background

5. In the Omnibus Budget Reconciliation Act of 1993, Congress authorized the Commission to use systems of competitive bidding to award licenses for rights to use the radio spectrum. This authorization is codified as section 309(j) of the Communications Act. Section 309(j)(3) directs the Commission to ''seek to promote'' a number of objectives, including:

• The development and rapid deployment of new services for the benefit of the public, including those residing in rural areas;

• Promoting economic opportunity and competition and ensuring that new and innovating technologies are readily accessible to the public 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, *i.e.,* ''designated entities;''

• Recovery for the public of a portion of the value of the public spectrum resource made available for commercial use;

• Avoidance of unjust enrichment through the methods employed to award uses of that resource; and

• Efficient and intensive use of the electromagnetic spectrum.

6. Section 309(j)(4) directs the Commission, in prescribing regulations to implement the objectives of section 309(j)(3), to, *inter alia,* (i) establish performance requirements to ensure prompt delivery of service to rural areas and prevent warehousing of spectrum by licensees; (ii) prescribe area designations and bandwidth assignments that promote an equitable geographic distribution of licenses and services, economic opportunity for a wide variety of applicants, including designated entities, and rapid deployment of services; and (iii) ensure that designated entities are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider using bidding preferences and other procedures.

7. The Commission outlined the original framework for C and F block auctions in 1994, establishing the C and F blocks as ''set-aside'' blocks for ''entrepreneurs'' in which eligibility would be restricted to entities below a specified financial threshold. The Commission concluded that if it was to meet the Congressional goals of promoting economic opportunity and competition by dissemination of licenses among a wide variety of providers, it should take certain affirmative steps to mitigate barriers to entry faced by smaller businesses. The Commission also stated its intention to take steps to assure that designated entities that win licenses have the opportunity to become strong competitors in providing service. Thus, in attempting to address the imbalance between small businesses' and large businesses' relative abilities to access capital, the Commission established two set-aside blocks (C and F) in which large companies (those over the financial thresholds) would be prohibited from bidding or holding licenses for a period of time.

8. The initial C block licenses were awarded through two auctions, Auction No. 5, which ended on May 6, 1996, and Auction No. 10, which concluded on July 16, 1996. Auction No. 11, the initial F block auction, ended on January 14, 1997, and also included D and E block licenses. Auction No. 22, which concluded on April 15, 1999, made available C and F block licenses that had been returned to, or reclaimed by, the Commission. Since the establishment of C and F block rules in 1994, no auctions, other than the C and F block auctions, have been conducted on a closed basis due to eligibility restrictions. Instead, in the other 23 auctions held by the Commission, we have typically provided opportunities for small businesses through bidding credits without a set-aside.

9. Since adoption of the original rules for auctions of C and F block licenses, these rules have steadily evolved in response to legislative changes, judicial decisions, the needs of licensees striving to succeed in a rapidly developing wireless market, and the demand of the public for greater access to wireless services. Two-and-a-half years ago, in this docket, the Commission responded to requests from some C block auction winners to revise the auction rules and procedures for the C and F blocks. In the 1997 *C Block Second Report and Order,* as modified by the 1998 *C Block Reconsideration Order,* the Commission created a package of financial restructuring options to be offered to C block licensees experiencing financial difficulties in the wake of Auctions No. 5 and No. 10. *See* Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses Second Report and Order, (*C Block Second Report and Order)* 62 FR 55348 (October 24, 1997) and *(C Block Reconsideration Order)* 63 FR 17111 (April 8, 1998). The Commission also decided in the *C Block Second Report and Order,* as modified by the 1998 *C Block Fourth Report and Order,* to allow, for a period of two years from the beginning of the first post-restructuring C block auction (Auction No. 22), participation in bidding for C block licenses by entities that had participated in Auctions No. 5 and 10, even if such entities had since become too large to qualify as entrepreneurs under the Commission's rules. *See* Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses Fourth Report and Order, *(C Block Fourth Report and Order),* 65 FR 14213 (March 16, 2000).

10. Prior to the start of Auction No. 22, three C block licensees filed for bankruptcy protection. Other C block licensees defaulted on payments owed for their licenses. Bankruptcy filings and payment defaults by other C block licensees followed the auction; and, to date, a total of 232 C and F block licenses, covering a population (''pops'') of approximately 191 million, have been involved in bankruptcy proceedings and/or defaulted on license payments. It appears that the vast majority of the defaulted licenses have never been placed into service.

11. The Bureau, pursuant to its delegated authority, announced that we would be holding a C and F block auction on July 26, 2000. The current inventory for this auction includes 93 30-MHz C block licenses, 21 15-MHz C block licenses and 40 10-MHz F block licenses for operation on frequencies for which previous licenses have automatically cancelled, *see* 47 CFR 1.2110(f)(4)(iii) and (iv) or have been returned to the Commission. The announcement of Auction No. 35 prompted petitions from SBC Communications Inc. (''SBC''), Nextel Communications, Inc. (''Nextel''), and other parties asking that we waive, modify, or eliminate our entrepreneur eligibility requirements for participation in the auction. In response to those filings, a number of parties also proposed that we make other modifications to our C and F block rules. Additionally, US WEST Wireless, LLC (''US West'') and Sprint Spectrum L.P. dba Sprint PCS (''Sprint'') filed a joint petition for reconsideration of our, Order on Reconsideration of the Fourth Report and Order in WT Docket No. 97–82. The *C Block Fourth Report and Order* addressed certain of the rules governing auctions of C block licenses. Sprint and US West request that the Commission eliminate its eligibility restrictions for participation in the upcoming auction as well as modify other C block rules. In addition, Verizon Wireless (''Verizon'') petitioned the Commission for clarification or reconsideration of our two-year C block auction eligibility ''grandfather'' rule, § 24.709(b)(9)(i). The SBC, Nextel, and US West/Sprint petitions were placed on public notice, prompting more than 210 comments and other pleadings in response. A number of parties argue that all, or at least some portion, of the C and F block spectrum should be open to all participants in order to satisfy the Commission's obligations under section 309(j)(4). Other parties oppose these arguments.

12. We have also received petitions from three parties that, under our proposed revisions to the C block rules, would become eligible to bid for licenses in the upcoming C and F block auction. These parties request that the Commission waive, or forbear from applying, the CMRS spectrum cap with regard to the spectrum available in Auction No. 35. We placed these petitions on public notice and received comments from 23 parties and reply comments from 14 parties.

13. Based upon the extensive record before us, and our continuing obligation to weigh important spectrum policy management considerations in addressing the public interest, we have tentatively concluded that we will revise our rules for C and F block spectrum. We set forth our proposals and tentative conclusions concerning possible revisions in the rules in this *Further Notice.*

III. Discussion

A. Reconfiguration of C Block Spectrum License Size

14. *Background.* In 1994, the Commission established a band plan for broadband PCS that provides for 30 MHz ''C block'' licenses and 10 MHz ''F block'' licenses. Each C and F block license covers a specific geographic service area known a Basic Trading Area (''BTA''). BTAs fall within still larger geographic service areas known as Major Trading Areas (''MTAs''). BTA and MTA service areas are based on the Rand McNally 1992 Commercial Atlas Marketing Guide. As noted, in 1997 the Commission created a package of financial restructuring options designed to provide limited relief to C block licensees experiencing financial difficulties in the wake of Auction No. 5. Under one of the available options, licensees were allowed to disaggregate 15 MHz of each of their 30 MHz C block licenses in an MTA. In disaggregating a 30 MHz C block license, a licensee would retain a 15 MHz C block license and would return the remaining 15 MHz of C block spectrum to the Commission for inclusion in the next C block auction, Auction No. 22. Because several of the available 15 MHz C block licenses were not won in Auction No. 22, the license inventory for Auction No. 35 includes both 15 and 30 MHz C block licenses, as well as 10 MHz F block licenses.

15. A number of parties have suggested various proposals to alter the Commission's current band plan. Several parties propose that we subdivide each available 30 MHz C block license into three 10 MHz licenses. Others suggest that we subdivide each available 30 MHz C block license into a 20 MHz and a 10 MHz license. Other parties argue against subdividing the C block license spectrum size.

16. *Discussion.* We tentatively conclude that each 30 MHz C block license available in Auction No. 35 should be reconfigured into three 10 MHz C block licenses. We believe that by increasing the number of available licenses through this reconfiguration, taken together with our proposals to lift certain of our eligibility requirements, we will promote wider auction participation and license distribution in accordance with the goals of section 309(j) of the Communications Act. Small bidders should find bidding for 10 MHz licenses more affordable, while large bidders should enjoy greater flexibility in tailoring their bidding to their business plans without running afoul of the spectrum cap. We further tentatively conclude that a 10 MHz C block license is a viable minimum size for voice and some data services including Internet access and provides an appropriate building block for bidders that wish to acquire a larger amount of spectrum. Accordingly, we propose to permit bidders to aggregate the 10 MHz C block licenses, subject only to the overall 45 MHz CMRS spectrum cap, and the relevant remaining eligibility restrictions for these licenses. We seek comment on this proposal and our tentative conclusions. We also seek comment on whether a different configuration, including adoption of blocks of 20 MHz where possible, would be more appropriate to provide meaningful opportunities for potential bidders, including new entrants into particular geographic markets.

17. Finally, with respect to aggregation of 10 MHz licenses, we note that the Wireless Telecommunications Bureau recently sought comment on procedures for implementing a combinatorial (''package'') bidding design for the auction of licenses in the 700 MHz bands, which would facilitate aggregations of complementary licenses into larger blocks. *See* Auction of Licensees in the 747–762 and 777–792 MHz Bands Scheduled for September 6, 2000; Comment Sought on Modifying the Simultaneous Multiple Round Auction Design to Allow Combinatorial (Package) Bidding, 65 FR 35636 (June 5, 2000). While given the much larger number of licenses in this auction, true combinatorial bidding would be more complex and perhaps impractical to implement in the near term, we invite parties to suggest ways in which bidders could efficiently aggregate licenses in the auction process.

B. Eliminate Eligibility Restrictions for Certain Licenses Under a Tiered Approach

18. *Background.* Under the Commission's current rules, only qualified ''entrepreneurs'' are permitted to participate in auctions of C and F block licenses. To be considered an entrepreneur eligible for C and F block auction participation, an applicant (together with its affiliates and persons or entities that hold interests in the applicant and their affiliates) must have had gross revenues of less than $125 million in each of the last two years and must have total assets of less than $500 million. *See* 47 CFR 24.709.

19. We seek comment on proposals to lift the entrepreneur eligibility restrictions for some, but not all, licenses available in Auction No. 35 and in future C and F block auctions. Our proposals take into account the contention of many entrepreneurs and their representatives that argue that fairness requires the Commission to continue to maintain the present eligibility requirements. These parties contend that entrepreneurs developed business plans in the expectation that the C and F block licenses would remain set aside for them and that any auctions of reclaimed C and F block licenses would be subject to the same eligibility restrictions that applied in the original auctions of those licenses. These parties also point out that successful entrepreneurs have achieved substantial public interest benefits by providing types of services and service packages not offered by larger providers, and extending service to rural markets. These parties also argue that the continuation of the eligibility restrictions will better serve their ability to expand their service area as a competing carrier and to enter roaming relationships with other regional carriers.

20. Our proposals also take into account some of the arguments of several CMRS providers seeking to participate in the upcoming auction that currently do not qualify for entrepreneur eligibility. Such providers argue that opening up the entire auction to all bidders would be pro-competitive because it would allow them to acquire additional spectrum to meet capacity concerns, provide advanced services, and increase the size of their subscriber ''footprints.'' They contend that they, unlike many entrepreneurs, possess the operational expertise and substantial resources necessary to construct and successfully operate PCS systems in already highly competitive markets. These commenters also point to evidence that suggests that the set-aside of C and F Block spectrum has not been successful in encouraging entrepreneurs to participate in the provision of spectrum-based services, particularly in large markets.

21. We note that, in apparent recognition of the Commission's obligation to balance a number of spectrum policy considerations, many parties have offered compromise

suggestions as alternatives to the current C block rules should the Commission choose not to adopt their preferred approaches. Some commenters, including a number of entrepreneurs, have suggested compromise alternatives that would eliminate the set-aside (in whole or in part) for markets with populations in excess of certain specified amounts ranging from 700,000 to five million. According to these commenters, such compromise alternatives to the current C block rules would provide companies with greater financial resources access to licenses for markets with larger populations, without foreclosing the opportunity for entrepreneurs to bid for those licenses. The suggested alternatives would also maintain the eligibility restrictions in markets where entrepreneurs might have a reasonable chance of success.

22. Some commenters suggest compromises that would not use tiers, but would disaggregate the 30 MHz C block licenses into three 10 MHz blocks and would open up the bidding on one or two of the three 10 MHz licenses in all markets.

23. While most of the commenters have focused on the Commission's treatment of the C block spectrum, as a general matter, current entrepreneurs argue in favor of keeping the 10 MHz F block licenses as restricted. On the other hand, companies currently ineligible to participate in Auction 35 argue in favor of open eligibility for those licenses.

24. *Discussion.* As the expert agency charged with the management of the nation's radio spectrum, the Commission must continually evaluate the provision of service to the American public, weigh a variety of public interest considerations, and assess the changing needs of the industry. In doing so, we must always remain cognizant of our statutory obligations. These obligations often require that we balance a number of different, and at times competing, spectrum policy goals. In discharging these responsibilities, we seek to provide meaningful opportunities to small businesses, to speed the deployment and development of new services to the public to encourage the efficient use of spectrum, and to recover for the public a portion of the value of spectrum.

25. When we adopted the original rules for C and F block spectrum in 1994, PCS was in its infancy. Since 1994, circumstances in the industry have changed. In light of significant technology developments and increased demand for spectrum, it is appropriate for the Commission to consider reassessing the proper balance of its spectrum policies including whether its current C and F block rules continue to serve the public interest in all respects. In crafting rules for the upcoming auction, we recognize that we cannot overlook the difficulties that followed the original C block spectrum auction and our commitment, to promote opportunities for designated entities. We maintain our commitment to provide meaningful opportunities for entrepreneurs, including those that participated in our most recent auction of C block spectrum. We also recognize that some qualifying entrepreneurs have been successful innovators, providing service to rural markets and niche services in other markets. Our desire to promote the continued success of such entities, as they seek to fill in gaps in their service areas or otherwise strive to expand their service offerings, also factor into our decision regarding the extent to which we should revise our current rules.

26. Thus, we believe that entrepreneurs raise legitimate issues about preserving the eligibility restrictions on at least a portion of the spectrum that will be awarded in the upcoming auction. However, based on the demand for spectrum to satisfy congestion, new technology and competitive needs, we tentatively conclude that it would serve the public interest to make some additional spectrum available to all interested bidders. In balancing these factors, we believe parties on both sides of this debate have suggested a number of possible compromises that better advance the public interest than either maintaining the status quo or, conversely, eliminating the eligibility restrictions entirely. In particular, we think the parties suggesting tiering approaches have proposed creative solutions to balancing the competing interests by recognizing both that the need for additional unrestricted spectrum is greatest in the larger markets and that the track record for success for smaller entities is strongest in mid-sized and smaller markets.

27. With these factors in mind, we seek comment on the following proposals to lift the entrepreneur eligibility requirements for some of the licenses available in Auction No. 35 and future auctions. Consistent with several of the recommendations we have received, these proposals vary in the amount of spectrum that would remain set-aside according to the size of both the available licenses and the markets.

28. *Available 30 MHz C block licenses:* For markets with available 30 MHz C block licenses, we seek comment on a proposal based on our tentative conclusion to reconfigure these licenses into three 10 MHz licenses. Our proposal is further based on dividing the available BTAs into two tiers: ''Tier 1'' would comprise BTAs with populations at or above a certain threshold, and ''Tier 2'' would comprise BTAs below that population threshold. We tentatively conclude that we should allow ''open'' bidding (i.e. remove eligibility requirements) for two of the three 10 MHz C block licenses in Tier 1, and one of the three 10 MHz C block licenses in Tier 2. We seek comment on this tentative conclusion.

29. We recognize that in balancing the interests served by preserving meaningful opportunities for designated entities and those served by opening up the spectrum to bidding by all entities, there may be other proposals we should consider. Thus, we also seek comment on whether we should allow ''open'' bidding for all three of the 10 MHz C block licenses in Tier 1, and two of the three 10 MHz C block licenses in Tier 2.

30. *Tiers:* We also seek comment on what population threshold we should use to divide the Tier 1 and Tier 2 BTAs. As discussed, the record provides some indication that designated entities have had greater success in markets with smaller populations, particularly below the top twenty markets. Markets with larger populations inevitably require more capital to build out and provide service. Moreover, as noted by commenters, there is evidence that spectrum is needed by incumbents to provide new generation wireless services and to alleviate congestion or by new entrants to fill out service footprints. Accordingly, we tentatively conclude that a population of 2.5 million or greater is the proper cut-off for Tier 1 BTAs (the 17 largest markets); however, we also seek comment on establishing the threshold for Tier 1 at those BTAs with populations at or greater than either 2 million (the 23 largest markets) or 1.5 million (the 32 largest markets). We recognize that other alternatives might also make sense. For example, we might also create a ''Tier 3'' for BTAs with populations below 700,000, the demarcation line that SBC recommends, establishing in this tier a larger set-aside for entrepreneurs. We also might instead decline to adopt a tiered approach at all, instead applying changes in eligibility restrictions to all BTAs, regardless of size. We seek comment on these alternatives, as well as on other possible tier divisions and other options for opening the bidding for some of the available C block licenses.

31. *Available F block licenses:* We seek comment on eliminating the

eligibility requirements for all of the 10 MHz F block licenses available in Auction No. 35. We note that from a historical perspective, F block did not face the same types of problems and difficulties as C block. This difference is evidenced by the fact that the Commission did not see the need to allow F block licensees to restructure their spectrum holdings, nor did it provide for the grandfathering of eligibility for entrepreneur entities in future F block auctions. Thus, we have consistently treated the F block spectrum differently than C block in recognition of the fact that the history of these spectrum blocks evolved in divergent manners. Accordingly, we may not be faced with the same equity considerations in maintaining a set-aside of F block spectrum as we are for C block. Moreover, we note that in virtually all markets where there is an available F block license, there is a 30 MHz license held by a current C block entrepreneur. Thus, there is already significant set-aside spectrum in each of these markets. Further, despite the lack of historical controversy regarding the F block spectrum, build out of these licenses has not progressed as quickly as we may have anticipated, especially in larger markets. Allowing open eligibility for all 10 MHz F block licenses might lead to more expeditious provision of service to American consumers. Alternatively, we recognize that we could adopt a tiered approach similar to the proposals for C block licenses discussed, or we could retain the existing F block eligibility requirements. We seek comment on these alternatives.

32. *15 MHz C block licenses:* Finally, we propose, and seek comment on, eliminating the eligibility requirements for all 15 MHz C block licenses that will be available in Auction No. 35 and in future C block auctions. As noted previously, all of the 15 MHz licenses available in Auction No. 35 were available in restricted Auction No. 22, yet remained unsold. Accordingly, we believe that it is appropriate to make these licenses, located principally in rural markets, immediately available to any interested bidder.

33. *Unsold C and F block licenses:* We also seek comment on whether we should establish a rule that lifts eligibility restrictions on any C or F block licenses that remain unsold after Auction No. 35 or in other future auctions. Such licenses could then promptly be put up for auction under open bidding.

C. License Grouping for Bids

34. *Background.* In past C and F block auctions (as well as D and E block auctions), participants have bid separately for each license. Nextel proposes that all available 30 MHz licenses be reconfigured into 20 MHz and 10 MHz licenses and that the newly created 20 MHz C block licenses and the available 15 MHz C block licenses be offered together on a ''bulk bid'' (*i.e.,* winner take all) basis in an expedited auction.

35. *Discussion.* We tentatively conclude that we will take bids separately on each license in Auction No. 35 on a simultaneous multiple round basis as we have done in the past. We are persuaded by commenters that the massive scale of Nextel's bulk bid proposal (or something similar based upon a 10 MHz C block license configuration) would exclude all but a very few competitors. Small entities would be hard pressed to obtain the financing necessary to win and pay for the licenses and construct the systems included in the bulk bid proposal. Many other carriers would be constrained from participating by the CMRS spectrum cap. While we agree with Nextel that bidding for individual licenses will make it somewhat more challenging for it to win the very broad aggregation of licenses it seeks to acquire, we do not think this requires us to resort to its bulk bid proposal. Experience in our auctions to date demonstrates that significant aggregations of licenses through the auction process are feasible. For this reason, we believe that bidding for each license separately is unlikely to preclude carriers from aggregating licenses on a nationwide or regional basis, and at the same time provides carriers who have intense spectrum needs in a particular market the opportunity to compete for licenses as well.

D. Grandfather Exception

36. *Background:* In the *C Block Second Report and Order*, the Commission established in § 24.709(b)(9)(i) a ''grandfather'' exception to the entrepreneur eligibility requirement for participation in C block auctions. Under that exception, all entities that had been eligible for and had participated in Auction No. 5 or Auction No. 10 would be eligible to bid on C block licenses in Auction No. 22, regardless of their financial size at the time of the auction. We declined to apply the ''grandfather'' exception to bidding on F block licenses, based on our belief that F block licensees did not have the same need for financial relief. In the *C Block Fourth Report and Order*, we decided, in fairness to other future bidders, to limit the grandfather exception to a two-year period beginning on the start date of Auction No. 22, *i.e.,* through March 23, 2001. In the *C Block Fourth Report and Order*, we denied a petition by Omnipoint asking that we extend the grandfather exception indefinitely.

37. *Discussion*: In a petition for reconsideration or clarification of the *C Block Fourth Report and Order*, Verizon asks us to reexamine the grandfather exception and limit resulting eligibility to those Auction No. 5 and 10 participants that won licenses in the auctions and then returned spectrum pursuant to the Commission's C block restructuring options. We seek comment on the issues raised in the Verizon petition and, more generally, on whether the grandfather exception should be revised or clarified in light of current circumstances.

38. We note that Nextel makes arguments similar to Verizon's in response to the US West/Sprint petition and also objects to the fact that the grandfather exception in that it does not extend to Auction No. 11 and Auction No. 22 participants. We have received notice that currently ''grandfathered'' companies intend to combine with other carriers, some of which are also eligible for the grandfather exception. We believe that the eligibility of successor entities for participation in ''closed'' bidding is a subject that may also be ripe for clarification in our upcoming order. Accordingly, we seek comment on our tentative conclusion that upon the merger of two entities, each of which is eligible for the ''grandfather'' exception, the exception extends to the resulting entity, but that, upon the merger of two entities, only one of which is eligible for the ''grandfather'' exception, the exception does not extend to the resulting entity. We recognize that our tentative conclusion is based upon simplified examples, and we encourage comment on how to determine C and F block eligibility when faced with more complex transactions.

E. Bidding Credits

39. Under current rules, a winning C or F block bidder that qualifies as a small business (*i.e.,* a business that, together with its affiliates and persons or entities that hold interests in such entity and their affiliates, has had average annual gross revenues that are not more than $40 million for the preceding three years) or a small business consortium may use a bidding credit of 15 percent. *See* 47 CFR 24.712(a); 24.717(a); *id.*, 1.2110(e)(2)(iii). A winning bidder that qualifies as a very small business (*i.e.,*

a business that, together with its affiliates and persons or entities that hold interests in such entity and their affiliates, has had average annual gross revenues that are not more than $15 million for the preceding three years) or a very small business consortium may use a bidding credit of 25 percent. *See* 47 CFR 24.712(b); 24.717(b); *id.,* 1.2110(e)(2)(ii).

40. Since the Commission first established the entrepreneurs' block set-aside and C and F block bidding credits, its experience has demonstrated that bidding credits without a set-aside enable small businesses to compete effectively in open auctions, even auctions of broadband PCS licenses.

41. *Discussion.* A number of entrepreneurial firms have argued that if we open eligibility for some portion of the C block spectrum, we should increase the bidding credits applicable to those licenses. We seek comment on whether we should retain existing small and very small business bidding credits (15 percent and 25 percent, respectively) for licenses subject to ''open'' bidding or whether we should increase them to 25 percent and 40 percent, respectively.

42. We also seek comment on whether we should change the bidding credits for licenses subject to ''closed'' bidding, *i.e.,* bidding where eligibility restrictions apply. For example, we could increase the bidding credits for these licenses, or we could keep them at their current level since the rationale for increasing the credits in open auctions—to provide additional assistance for small companies bidding against major wireless providers—does not apply to restricted auctions. Finally, we could eliminate bidding credits altogether on the ground that they are unnecessary and perhaps even counterproductive in ensuring opportunities for small business in the set-aside auctions. In this regard, we recognize that among those eligible to participate in the closed, entrepreneurs' auctions, some well capitalized new entities with small gross revenues qualify for bidding credits, while some older companies with small total assets and net revenues but high gross revenues do not. We seek comment on these various proposals.

F. Transfer Requirements

43. To ensure that C and F block licensees did not take advantage of the eligibility set-aside by immediately assigning or transferring control of their licenses to entities that do not meet the eligibility requirements, the Commission established a holding rule for these licenses as well as unjust enrichment provisions. Under the current holding rule, C and F block licensees may, for the first five years from the date of their initial license grant, assign or transfer control of their C and F block licenses only to entities that meet the eligibility requirements or to other C and F block licensees that obtained their licenses while meeting the requirements. *See* 47 CFR 24.839. The Commission set the current holding period at five years to guarantee that a C or F block licensee would hold and build out the license until the first construction benchmark, which currently occurs five years after the date of licensing.

44. *Discussion.* We propose to modify our transfer requirements to correspond to our proposed changes in the eligibility requirements and to encourage rapid construction of C and F block systems. Specifically, we tentatively conclude that C and F block licenses won pursuant to open bidding at Auction No. 35, or any future open auction for such spectrum, would not be subject to a transfer holding rule. For licenses won in closed bidding in any C or F block auction, past or future, we seek comment on tying the holding period to completion of build-out requirements. Under this proposal, a licensee would be able to assign or transfer its license to any qualified entity, entrepreneur or not, upon the licensee's completion of its first construction benchmark, whether or not it takes the full five years allowed by our rules. In this way, we can continue to minimize the trafficking of C and F block licenses won pursuant to closed bidding, while enhancing the likelihood of early build-out. We seek comment on these proposals.

45. Additionally, we seek comment on whether to allow some further flexibility for incumbent licensees that may not have fully satisfied their construction requirements for all their licenses. We wish to examine whether we should, under certain circumstances, evaluate a licensee's compliance with construction requirements on a system-wide basis. For example, we seek comment on whether we should allow a carrier to exchange and transfer licenses if the carrier can demonstrate ''substantial service'' throughout its system, rather than in that particular market. We also seek comment on any other modifications to our transfer restrictions that would provide incumbent licensees with the flexibility to restructure their business plans without decreasing their incentive to rapidly construct systems and place them in operation.

G. License Cap

46. *Background.* Section 24.710 of the Commission's rules prohibits an auction applicant from winning more than 98 C and F block licenses. The rule requires an applicant that is the high bidder for more than 98 C and F block licenses to withdraw its bids for a sufficient number of licenses to comply with the 98-license limit. The limit applies only to licenses won at auction, not to the total number of licenses that may be obtained post auction. When established in 1994, the license cap was intended to facilitate a fair distribution of licenses within the two blocks by preventing an entity from winning more than approximately 10 percent of the then-total of 986 C and F block licenses.

47. *Discussion.* We tentatively conclude that we will remove § 24.710 from the Commission's rules. In 1994, when the rule was implemented, the Commission anticipated holding only one C block and one F block auction. To date, however, four C and F block auctions have been held, with the fifth, Auction No. 35, scheduled and one or more additional auctions anticipated. Many different entrepreneurs have won C and F block licenses at auction, and substantial diversity among C and F block licensees continues to exist. The Commission has achieved its initial objective of a fair distribution C and F block licenses. Moreover, our proposal to reconfigure available 30 MHz C block licenses, if implemented, would create an additional 186 C block licenses, while adoption of our proposal to eliminate the eligibility restrictions for many of the available C and F block licenses would significantly enhance the likelihood that these licenses would be won by a variety of entities. Accordingly, we seek comment on this tentative conclusion.

H. Spectrum Cap

48. *Background.* The CMRS spectrum cap, set forth in § 20.6 of the Commission's rules, limits the amount of cellular, broadband PCS, and digital Specialized Mobile Radio (''SMR'') spectrum in which any entity may have an attributable interest in any geographic area. As discussed, we received petitions from three parties that request that the Commission waive, or forbear from applying, the CMRS spectrum cap with regard to any spectrum awarded in the upcoming C and F blocks auction.

49. *Discussion.* We tentatively conclude that we should not grant the petitions seeking waiver of or forbearance from, the CMRS spectrum cap rules and, accordingly, we will

apply the cap to licenses of PCS C and F block spectrum to be auctioned in Auction No. 35. In September 1999, after extensive analysis of spectrum allocation and competitive market conditions, we determined in our *Biennial CMRS Spectrum Cap Order* that the CMRS spectrum cap, with some modification, continued to be a necessary and efficient means to promote competition and protect the public interest. Specifically, we concluded that a cap on this spectrum serves the public interest by promoting competition, preventing excessive concentration of licenses, providing incentives for licensees to make more efficient use of their spectrum, encouraging innovation, and promoting dissemination of licenses to a wide variety of applicants. We also concluded that the ''bright-line'' test afforded by the CMRS spectrum cap rule efficiently promoted regulatory certainty and regulatory efficiency. For any carrier with a demonstrable need for additional spectrum in a particular geographic area, we established and clarified a process by which it could obtain a waiver of the spectrum cap rule.

50. On the basis of the petitions and the record filed in response, we propose not to revise the CMRS spectrum cap in light of the upcoming auction and our proposed rule changes described herein. Since its inception in 1994, the cap on the 180 MHz of CMRS spectrum (*i.e.,* cellular A and B blocks, PCS A through F blocks, and digital SMR) has limited the amount of spectrum any carrier could aggregate from any part of the CMRS spectrum, including spectrum in the PCS C and F blocks, so as to ensure the many benefits of competition. The pleadings filed in connection with the upcoming auction contain no new material information regarding the costs and benefits of the spectrum cap and do not purport to make a waiver showing under the standard set forth in the *Biennial CMRS Spectrum Cap Order. See* 1998 Biennial Regulatory Review, Report and Order 64 FR 54564 (October 7, 1999). Our proposal to revise the rules pertaining to the PCS C and F block spectrum helps ease the impact of the cap in this auction, and thereby renders cap relief unnecessary. By proposing to divide the 30 MHz blocks of C block spectrum into 10 MHz blocks in the upcoming auction, we would better enable carriers to obtain additional spectrum without the need to exceed the CMRS spectrum cap. Carriers currently have accumulated spectrum up to the CMRS spectrum cap limits, either the general 45 MHz cap or the 55 MHz cap that applies to rural areas, in only a few locations. With regard to the C and F block spectrum to be auctioned, in every market almost all carriers could obtain additional spectrum in blocks of 10 MHz (or 15 MHz where applicable) and still comply with the spectrum cap without any need for disaggregation. As discussed, for those carriers that require more than 45 MHz of spectrum in the near term, we have established a process for granting waiver of the spectrum cap. We stated that we would consider granting a waiver of the spectrum cap in a particular geographic area to the extent a carrier could credibly demonstrate that the spectrum cap was having a significantly adverse effect on its ability to provide 3G or other advanced services. We also note that our year 2000 biennial review of the spectrum cap rule commences later this year. This proceeding will provide us another opportunity to revisit, in a more comprehensive manner than the pleadings before us, issues pertaining to the CMRS spectrum cap and whether it should be retained, modified, or eliminated. We seek comment on our tentative conclusion to retain the CMRS spectrum cap on the PCS C and F block spectrum scheduled for auction.

IV. Conclusion

51. Based on the foregoing, we seek comment on overall changes to the C and F block rules that take into account our competing statutory objectives to manage spectrum in the public interest. We conclude that this *Further Notice* will provide us with an opportunity to develop a record on the specific proposals to open eligibility for this spectrum and otherwise revise the C and F block rules for the benefit of consumers and the economy.

V. Procedural Matters

A. Ex Parte Rules—Permit-But-Disclose Proceeding

52. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206.

B. Regulatory Flexibility Act Analysis

53. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the proposals and tentative conclusions set forth in the *Further Notice* in WT Docket No. 97–82. Written public comments are requested on the IRFA. Comments on the IRFA must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines for comments on the *Further Notice*. In accordance with the RFA, the Commission will send a copy of this *Further Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act Analysis

54. This *Further Notice* contains neither a new nor a modified information collection.

D. Comment Dates

55. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before June 22, 2000, and reply comments on or before June 30, 2000. 47 CFR 1.415, 1.419. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (May 1, 1998).

56. Comments filed through ECFS may be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Comments filed through the ECFS may 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; however, if multiple docket or rulemaking numbers appear in the caption of this proceeding, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. When 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 receive 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.

57. Parties who choose to file by paper must file an original and four copies of each filing. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. 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. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal

Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. A courtesy copy should be delivered to Audrey Bashkin, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Room 4A–665, Washington, DC 20554. Parties should reference WT Docket No. 97–82 in their comments. Pursuant to § 1.1200(a) of the Commission's rules, presentations on issues in this proceeding will be prohibited after 7 p.m., July 12, 2000, until release of the Commission's order dealing with those issues. 47 CFR 1.1200(a) and 1.1202(a). All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Information Center of the Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

E. Ordering Clauses

58. Authority for issuance of this *Further Notice* is contained in sections 4(i), 309(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 309(j).

Initial Regulatory Flexibility Analysis

59. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible economic impact on small entities of the rules proposed in this *Further Notice* in WT Docket No. 97–82. Written public comments are requested on the IRFA. Comments on the IRFA must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines for comments on the Notice. The Commission will send a copy of the *Further Notice,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a).

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

60. Section 309(j) of the Communications Act directs the Commission to disseminate licenses among a wide variety of applicants, including small businesses and other designated entities. Section 309(j) also requires that the Commission ensure the development and rapid deployment of new technologies, products, and services for the benefit of the public, and recover for the public a portion of the value of the public spectrum resource made available for commercial use. To date, the Commission has received numerous requests to waive, modify, or eliminate certain of the C and F block auction and service rules for C and F block broadband Personal Communications Services (''PCS'') licenses. As discussed more fully in section E of this IRFA, *infra*, these requests seek, among other things, modification of the C and F block entrepreneur eligibility requirements for the upcoming C and F block auction, reconfiguration of available 30 MHz C block licenses, and adoption of an alternative bidding plan. Upon consideration of these numerous requests, the Commission has tentatively concluded that it is in the public interest to revise certain aspects of the C and F block rules. This *Further Notice* sets forth the Commission's proposals and tentative conclusions concerning possible revisions to the rules governing the C and F block spectrum. The Commission believes that this *Further Notice* will provide the Commission with an opportunity to develop a record on the specific proposals to open eligibility for this spectrum and otherwise revise the C and F block rules for the benefit of consumers and the economy. In addition, the Commission believes that the tentative conclusions and proposals set forth in this *Further Notice* help meet the goals and objectives of section 309(j), and promote competition while maintaining the fair and efficient implementation of the auctions program. Accordingly, the Commission seeks comment on all proposals, alternatives, tentative conclusions, and other issues described in the *Further Notice;* and the impact that such proposals, alternatives, tentative conclusions, and other issues may have on small entities.

B. Legal Basis

61. This action is authorized under sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 309(j).

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

62. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. Generally, the RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' The term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities. 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) meets 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.'' Nationwide, as of 1992, there were approximately 275,801 small organizations.'' ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 local governments in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

63. The possible rule changes described in the *Further Notice* affect all small entities that choose to participate in the upcoming auction of C and F block spectrum and other future auctions of C and F block spectrum, including small businesses currently holding C and F block licenses and other small businesses that may acquire licenses through the auction. The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has auctioned licenses in each block. Frequency blocks C and F have been designated by the Commission as ''entrepreneurs' blocks,'' and participation in auctions of C and F block licenses is limited to entities qualifying under the Commission's rules as entrepreneurs. The Commission's rules define an entrepreneur as an entity, together with its affiliates, having gross revenues of less than $125 million and total assets of less than $500 million at the time the FCC Form 175 application is filed. For blocks C and F, the Commission has defined ''small business'' as a firm, together with its affiliates, that had average gross revenues of not more than $40 million in the three previous calendar years, and ''very small business'' has been

defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These definitions have been approved by the SBA.

64. On May 6, 1996, the Commission concluded the first broadband PCS C block auction. On July 16, 1996, the second C block auction closed. On January 14, 1997, the broadband PCS D, E, and F block auction closed. Ninety bidders (prior to any defaults by winning bidders) won 493 C block licenses and 88 bidders won 491 F block licenses. Small businesses, placing high bids in these C and F block auctions were eligible for bidding credits and installment payment plans. On April 15, 1999, Auction No. 22, which included 347 C and F block licenses, closed. On January 12, 2000, the Wireless Telecommunications Bureau announced the Commission's intention to auction C and F block PCS licenses on July 26, 2000. The auction is currently scheduled to include ninety-three 30 MHz C block licenses, twenty-one 15 MHz C block licenses, and forty 10 MHz F block licenses. For purposes of our evaluations and conclusions in this IRFA, we assume that all of the original 90 C block broadband PCS licensees and 88 F block broadband PCS licensees, a total of 178 licensees potentially affected by this *Further Notice,* are small entities. In addition to the 178 original small business licensees that may participate in the auction of the C block licenses, a number of additional small business entities may seek to acquire licenses through auction; thus, these business entities would be affected by these rules.

D. Reporting, Recordkeeping, and Other Compliance Requirements

65. At this time, the Commission does not anticipate the imposition of new reporting, recordkeeping, or other compliance requirements as a result of this Notice. We seek comment on this tentative conclusion. Auction participants will need to follow the standard procedural rules used for broadband PCS spectrum auctions, including application and payment rules.

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

66. 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): (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. 5 U.S.C. 603.

67. The Commission tentatively concludes that it is in the public interest to revise certain aspects of the C and F block rules to encourage participation by small businesses while at the same time helping to ensure the best use of spectrum through the competitive bidding process.

68. *Reconfigure C Block Spectrum Size:* The Commission tentatively concludes it will reconfigure each 30 MHz C block license available in future broadband PCS auctions into three 10 MHz C block licenses. The Commission believes that by increasing the number of available licenses through this reconfiguration, taken together with the Commission's proposals to lift certain of our eligibility requirements, the Commission will promote wider auction participation and license distribution in accordance with the goals of section 309(j) of the Communications Act. Small bidders should find bidding for 10 MHz licenses more affordable, while large bidders should enjoy greater flexibility in tailoring their bidding to their business plans without running afoul of the spectrum cap. The Commission also seeks comment on whether a different configuration would be more appropriate to provide meaningful opportunities for potential bidders, including new entrants into particular markets.

69. *Eliminate Eligibility Restrictions for Certain Licenses in Tiers:* The Commission proposes to remove the entrepreneur eligibility restrictions for some, but not all, licenses available in Auction No. 35 and in future C and F block auctions. Based on the demand for spectrum to satisfy congestion, new technology and competitive needs, the Commission tentatively concludes that it would serve the public interest to make some additional spectrum available to all interested bidders. In light of the Commission's commitment to providing meaningful opportunities for entrepreneurs, the Commission seeks comment on proposals to lift the entrepreneur eligibility requirements for some of the licenses available in Auction No. 35 and future auctions, which vary in the amount of spectrum that would remain set-aside according to the size of both the available licenses and the markets. The Commission tentatively concludes that it will divide BTAs into two tiers according to population size of the BTA. ''Tier 1'' would comprise BTAs at and above a 2.5 million population threshold; ''Tier 2'' would comprise BTAs below that population threshold. For available 30 MHz C block licenses, the Commission tentatively concludes to allow ''open'' bidding for two of the three 10 MHz C block licenses in Tier 1, and one of the three 10 MHz C block licenses in Tier 2. The Commission also seeks comment on whether there should be ''open'' bidding for all three of the 10 MHz licenses in Tier 1, and two of the three in Tier 2. With respect to available F block licenses, the Commission seeks comment on eliminating the eligibility requirements, or, alternatively, applying a tiered approach or retaining the existing eligibility rules. Finally, the Commission also tentatively concludes it will allow ''open'' bidding for all available 15 MHz C block licenses, which have previously been auctioned but not sold. These alternatives would affect the configuration and set-aside of spectrum. We seek comment on the impact of these alternatives on small businesses.

70. *Retain Current License Grouping for Bidding in Auction:* The Commission tentatively concludes to take bids on each license separately in Auction No. 35 on a simultaneous multiple round basis as the Commission has previously done in the past. The Commission believes that bidding for each license separately is unlikely to preclude carriers from aggregating licenses on a nationwide or regional basis, and at the same time will provide carriers that have intense spectrum needs in a particular market the opportunity to compete for licenses as well.

71. *Grandfather Exception:* The Commission seeks comment on whether the grandfather eligibility exception should be revised or clarified. The Commission also tentatively concludes that upon the merger of two entities, each of which is eligible for the ''grandfather'' exception, the exception extends to the resulting entity; but that, upon the merger of two entities, only one of which is eligible for the ''grandfather'' exception, the exception does not extend to the resulting entity.

72. *Revise the Bidding Credits Available for Auction No. 35:* For those licenses that are not subject to eligibility restrictions, the Commission seeks comment on whether to increase bidding credits for small and very small businesses, and consortia thereof, to 25 and 40 percent, respectively, or to retain existing bidding credit levels. We expect that this departure from previous

procedure will provide small businesses with a meaningful opportunity to compete in an open auction.

73. *Alter the Transfer Requirements for Certain Licenses:* The Commission proposes to modify the Commission's transfer requirements to correspond to the Commission's proposed changes in the eligibility requirements, and to encourage rapid construction of C and F block systems. Specifically, the Commission tentatively concludes that C and F block licenses won pursuant to open bidding at Auction No. 35, or any future open auction for such spectrum, would not be subject to a transfer holding rule. For licenses won in closed bidding in any C or F block auction, the Commission seeks comment on a proposal that will allow a licensee to assign or transfer its license to any qualified entity, entrepreneur or not, upon the licensee's completion of its first construction benchmark, whether or not it takes the full five years allowed by the rules. The Commission also seeks comment on whether it should evaluate a licensee's compliance with construction requirements on a system-wide basis.

74. *Eliminate the License Cap:* The Commission proposes to remove § 24.710 from the Commission's rules which prohibits an auction applicant from winning more than 98 C and F block licenses. When this rule was established, the license cap was intended to facilitate a fair distribution of licenses within the C and F blocks. The Commission has achieved this objective; moreover, the Commission's proposal to reconfigure the available 30 MHz C block licenses would create additional C block licenses, while the Commission's proposal to eliminate the eligibility restrictions would increase the chances of C and F block licenses being won by a variety of entities.

75. *Retain the Spectrum Cap:* The Commission tentatively concludes that it should not grant the petitions seeking waiver of, or forbearance from, the CMRS spectrum cap rules and, accordingly, it would apply the spectrum cap to licenses of PCS C and F block spectrum to be auctioned in Auction 35. The Commission's proposal to revise the rules pertaining to the PCS C and F block spectrum helps ease the impact of the cap in this auction, and thereby renders cap relief unnecessary.

76. Section 309(j) of the Communications Act directs the Commission to disseminate licenses among a wide variety of applicants, including small businesses and other designated entities. Section 309(j) also requires that the Commission ensure the development and rapid deployment of new technologies, products, and services for the benefit of the public, and recover for the public a portion of the value of the public spectrum resource made available for commercial use. The Commission believes that the proposals, alternatives, and tentative conclusions described in this Notice promote these goals while maintaining the fair and efficient execution of the auctions program. The Commission, therefore, seeks comment on all issues, proposals, tentative conclusions, and alternatives described in the Notice, and the impact they may have on small entities.

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

77. None.

List of Subjects in 47 CFR Part 24

Communications common carriers, Personal communications services, Radio.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00–14881 Filed 6–12–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Chapter IV

[Docket: 000214043–0043–01]

RIN 1018–AF55, 0648–AL91

Announcement of Draft Policy for Evaluation of Conservation Efforts When Making Listing Decisions

AGENCIES: Fish and Wildlife Service, Interior; National Marine Fisheries Service, NOAA, Commerce.

ACTION: Announcement of draft policy.

SUMMARY: We, the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (Services), announce a draft policy for the evaluation of conservation efforts when making listing decisions under the Endangered Species Act of 1973, as amended (Act). While the Act requires us to consider all conservation efforts being made to protect a species, the policy identifies criteria we will use in determining whether formalized conservation efforts contribute to making listing a species as threatened or endangered unnecessary. The policy applies to conservation efforts identified in conservation agreements, conservation plans, management plans, or similar documents developed by Federal agencies, State and local governments, Tribal governments, businesses, organizations, and individuals.

DATES: Send your comments on the draft policy to us (see **ADDRESSES** section) by August 14, 2000.

ADDRESSES: Send your comments on the draft policy to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, N.W., (MS–420 ARLSQ), Washington, DC 20240, or to FW9_FWE_DTEFR@fws.gov. You may examine the comments we receive by appointment during normal business hours in Room 420, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Nancy Gloman, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service at the above address, telephone 703/358–2171 or facsimile 703/358–1735, or Wanda Cain, Chief, Endangered Species Division, National Marine Fisheries Service, 1315 East-West Highway, 13th Floor, Silver Spring, Maryland 20910, telephone 301/713–1401 or facsimile 301/713–0376.

SUPPLEMENTARY INFORMATION:

Draft Policy

Policy Purpose

We have proposed this policy in order to ensure consistent and adequate evaluation of formalized conservation efforts (conservation efforts identified in conservation agreements, conservation plans, management plans, and similar documents) when making listing decisions under the Act. We have also proposed this policy to facilitate the development of conservation efforts that sufficiently improve a species' status so as to make listing the species as threatened or endangered unnecessary.

Policy Scope

This policy applies to our evaluation of all formalized conservation efforts when making listing decisions for species not listed, including findings on petitions to list species and decisions on whether to assign candidate status, to remove candidate status, to issue proposed listing rules, and to finalize or withdraw proposed listing rules. This policy applies to formal conservation efforts developed with or without a specific intent to influence a listing