FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 27

[WT Docket No. 03–66; RM–10586; FCC 04–135]

Facilitating the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, a Further Notice of Proposed Rulemaking (FNPRM), the Federal Communications Commission (FCC) proposes rules concerning the Broadband Radio Service (BRS) and the Educational Broadband Service (EBS) in the 2496–2690 MHz band. The FNPRM further proposes rules to govern the transition of the 2500–2690 MHz band when the transition has not occurred according to the timeframes adopted by the FCC. The NPRM seeks comment on numerous issues concerning these proposals.

DATES: Comments are due on or before January 10, 2005. Reply comments are due February 8, 2005. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before February 8, 2005.

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

FOR FURTHER INFORMATION CONTACT: Genevieve Ross or Nancy Zaczek at 202–418–2487. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judith B. Herman at 202–418–0214, or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's FNPRM, released on July 29, 2004, FCC 04–135. The full text of the FNRM is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, 202–488–5300. The complete item is also available on the Commission's Web site at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC–04–135A1.doc.* The proposed rule was published in the **Federal Register** on June 10, 2003 (68 FR 34560).

I. Summary of Further Notice of Proposed Rulemaking

1. We seek comment on the following issues in the *Further Notice of Proposed Rulemaking (FNPRM):*

- In markets where proponents file transition plans, we propose to assign licenses for unassigned spectrum. We seek comment on the timing of such auctions, the appropriate geographic area licensing definitions for new licenses, the proper grouping of frequency blocks for new licenses, and the appropriate bidding credits for such licenses.
- We also seek comment on alternative methods to transition licensees to the extent that licensee-negotiated transitions do not occur within the three-year transition period. Specifically, we seek comment on utilizing a system whereby existing licenses would be exchanged for a modified license and a tradable instrument. Upon completion of such exchange, the entire band will be auctioned, and entities can utilize these tradable instruments in this or any other Commission auction. The tradable instruments would be divisible and transferable. Existing licensees would be able to continue operating until the new licensee certifies that it is ready to commence service. Those licensees who chose to opt-out would receive one six megahertz channel in the Middle Band Segment, and new licensees would be required to pay for the relocation of licensees that opt-out.
- We seek comment on establishing performance requirements for BRS and EBS licensees. We tentatively conclude that any performance requirements should be based on a ''substantial service'' standard and seek comment on appropriate safe harbors that licensees could rely upon to demonstrate that they have provided substantial service.
- We seek comment on modifying the respective rights of grandfathered EBS stations operating on the E and F channel groups and BRS stations operating on those channel groups.
- We seek comment on eliminating, in markets that have not yet transitioned, the rule that limits EBS licensees to four channels, from in the same channel group, in a single area of operation. We conclude that the rule will not apply in markets that have transitioned.
- We seek comment on eliminating, in markets that have not yet transitioned, the rule that allows wireless cable operators to be licensed on EBS channels under certain conditions. We conclude that the rule will not apply in markets that have transitioned. Existing licenses will be grandfathered.
- We seek comment on revising the methodology used to calculate regulatory fees for BRS or EBS licensee.
- We seek comment on issues relating to the definition of the Gulf of Mexico service area and service rules relating to that area.
- We seek comment on ways to streamline our current procedures for reviewing transactions in order to facilitate more efficient transactions.
- We also seek comment on future trends that licensees, equipment manufacturers, and other stakeholders expect for BRS and EBS.

Procedural Matters

Ex Parte Rules

2. 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.

Comment Period and Procedures

3. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on this Notice on or before January 10, 2005, and reply comments on or before February 8, 2005. Comments and reply comments should be filed in WT Docket No. 03–66, and may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

4. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket

number. Parties may also submit an electronic comment by e-mail via the Internet. To obtain 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.

5. Parties who choose to file by paper must file an original and four copies of each filing. If parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. Furthermore, parties are requested to provide courtesy copies for the following Commission staff: (1) Nancy Zaczek, Genevieve Ross, and Stephen Zak, Broadband Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room 3–C124, Washington, DC 20554; and (2) William Huber and Erik Salovaara, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–A760, Washington, DC 20554. One copy of each filing (together with a diskette copy, as indicated below) should also be sent to the Commission's copy contractor, Best Copy and Printing, Inc, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, 1–800–378–3160.

6. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be attached to the original paper filing submitted to the Office of the Secretary. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft TM Word 97 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters should send diskette copies to the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, 202–863–2893.

7. The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, and on the Commission's Internet Home Page: *http://www.fcc.gov*. Copies of comments and reply comments are also available through the Commission's duplicating contractor: Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, 1–800–378–3160. Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202) 418–7426, TTY (202) 418–7365, or at *bmillin@fcc.gov*.

Initial Paperwork Reduction Analysis

8. This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. Public and agency comments are due on or before November 23, 2004. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control No.: 3060–XXXX.

Title: Transition of the 2500–2690 MHz band.

Form No.: N/A.

Type of Review: New Collection.

Respondents: Business or other for-profit; State, and local government; Not-for-profit institutions; Individuals or household.

Number of Respondents: 2500.

Estimated Time Per Response: 1 to 25 hours.

Frequency of Response: One time reporting requirements.

Total Annual Burden: 32,000.

Total Annual Cost: $7,000,000.

Needs and Uses: The Commission adopted on June 10, 2004 and released on July 29, 2004, rules to transition licensees in the 2500–2690 MHz band. Specifically, licensees in the Multichannel Multipoint Distribution Service (MMDS) (renamed the Broadband Radio Service (BRS)) and the Instructional Television Fixed Service (ITFS) (renamed the Educational Broadband Service (EBS)), must transition to a new band plan in the 2500–2690 MHz band. This transition is to take place by Major Economic Area (MEA). If a transition in a particular MEA is not initiated within three years of the effective date of the rules adopted by the Commission, the transition procedure adopted by the Commission will not apply and the licensees in that MEA will not be required to comply with any of the following paperwork requirements.

9. If a transition is initiated in a given MEA within three years of the effective date of the rules adopted by the Commission, the following paperwork requirements apply. First, the proponent or joint proponents (hereinafter proponent) must send a notice to every BRS and EBS licensee in the MEA seeking information. Second, the BRS and EBS licensees must respond to this request by submitting a pre-transition data request to the proponent. Third, the proponent must send a transition notice to all BRS and EBS licensees in the MEA once the proponent has decided to transition a given MEA. Fourth, the proponent must provide a transition plan to every BRS and EBS licensee in the MEA. Fifth, the proponent must submit an Initiation Plan to the Commission once it has decided to transition a given MEA. Sixth, once the transition is completed the proponent and BRS and EBS licensees in the MEA must jointly file a post-transition notification with the Commission. The purpose of collecting this information is to enable a proponent to assess whether to transition a particular MEA, to provide BRS and EBS licensees with information on how they are to be transitioned, and to inform the Commission of the status of the transition. BRS and EBS licensees will provide the Commission with technical information in the post-transition notification on FCC Form 601. The FCC Form 601 is a consolidated multi-part application or ''long form'' for market-based licensing and site-by-site

licensing in the Universal Licensing System.

Initial Regulatory Flexibility Analysis

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

Need for, and Objectives of, the Proposed Rules

11. In this *FNPRM* we seek comments on solutions to implement in the event that the plan we adopt today for transitioning to the new band plan, set forth in section IV. A.5, *supra* does not reach a satisfactory stage of implementation within three years. A quick and efficient transition to a segmented, de-interleaved band plan is critical to ensuring that the public spectrum resource represented by the 2500–2690 MHz band does not remain underutilized. We have adopted a new band plan to further the public interest in efficient and intensive use of spectrum. To prevent undue delay in implementing the new band plan, the transition process will sunset in each major economic area where a proponent does not timely file within three years of the rules' effective date a transition proposal that has resolved, pursuant to the Commission's rules, any properly presented objections. This three year time limit will provide an incentive for existing users to develop transition proposals in a timely manner. Finally, recognizing that parties may not be able to control the timing of all aspects of the transition, we require only that the proposal be finalized, with any objections addressed, and filed within the three-year period.

12. Irrespective of how well the transition process to the new band plan is designed, it may not be possible for private parties to transition existing uses to the new band plan in a way that balances the public interest in protecting those uses with the public interest in the new band plan. There are large numbers of existing users in the band with varied and disparate interests. A proponent therefore must coordinate large numbers of substantially varying interests in order to transition to the new band plan. A proponent may not come forward in every major economic area and every proponent that comes forward may not be able to resolve all reasonable objections made to its proposal. Furthermore, the transition process may not perfectly define reasonable transition proposals or rapidly and accurately determine whether particular objections to particular transitions are reasonable. Consequently, transitions to the new band plan may not occur within one or more major economic area within the allotted time.

13. Consequently, we tentatively conclude herein that in major economic areas that are not transitioned to the new band plan pursuant to the transition process we have adopted herein, the public interest in services made possible by the new band plan will be best served by clearing existing users from the spectrum. The transition process we have adopted represents the best effort at transitioning existing use to facilities compatible with the new band plan. While new transition plans, including in areas otherwise without one, might result from refinements to the transition process, we conclude that the absence of a timely filed Initiation Plan indicates that existing uses cannot be reasonably balanced with the new band plan in the relevant area. Consequently, the public will receive the benefits of the new band plan only if existing users are cleared from the spectrum and the Commission grants new licenses to use the spectrum consistent with the new band plan. Accordingly, we propose to implement this transition process in areas where the requirements we have instituted herein are not met within the required time frame.

14. As stated in the text of the *FNPRM*, we request comment on a number of issues relating to competitive bidding procedures that could be used to assign new licenses in this band by auction. We propose to conduct any such auction in conformity with the general competitive bidding rules set forth in part 1, subpart Q, of the Commission's rules, and substantially consistent with many of the bidding procedures that have been employed in previous auctions. Specifically, we propose to employ the part 1 rules governing, among other things, competitive bidding design, designated entities, application and payment procedures, collusion issues, and unjust enrichment. Under this proposal, such rules would be subject to any modifications that the Commission may adopt in our part 1 proceeding. In addition, consistent with current practice, matters such as the appropriate competitive bidding design, as well as minimum opening bids and reserve prices, would be determined by the Wireless Telecommunications Bureau pursuant to its delegated authority. We seek comment on whether any of our part 1 rules or other auction procedures would be inappropriate or should be modified for an auction of new licenses in this band, and on whether alternative rules would more effectively serve our basic purposes.

15. We seek comment on the appropriate definition(s) of small business that should be used to determine eligibility for bidding credits in the auction. With respect to the auction of EBS licenses, we further seek comment on any special challenges associated with governmental educational institutions or non-governmental non-profit educational institutions participating in auctions.

16. In the part 1 *Third Report and Order*, we adopted a standard schedule of bidding credits for certain small business definitions, the levels of which were developed based on our auction experience. The standard schedule appears at section 1.2110(f)(2) of the Commission's rules. Are these levels of bidding credits appropriate for this band? For this proceeding, we would propose to define an entity with average annual gross revenues not exceeding $40 million for the preceding three years as a ''small business;'' an entity with average gross revenues not exceeding $15 million for the same period as a ''very small business;'' and an entity with average gross revenues not exceeding $3 million for the same period as an ''entrepreneur.'' In the event that we offer bidding credits on this basis, we propose to provide qualifying ''small businesses'' with a bidding credit of 15%, qualifying ''very small businesses'' with a bidding credit of 25%; and qualifying ''entrepreneurs'' with a bidding credit of 35%, consistent with section 1.2110(f)(2).

17. Finally, we invite comment on the effect of potentially having three small business sizes, and bidding credits, for new licenses in this band while having had only one small business size (average annual gross revenues for the preceding three years not exceeding $40 million) and one credit (15%) in the BRS service. We seek comment on this proposal.

18. We recognize that educational institutions and non-profit educational

organizations eligible to hold EBS licenses may have unique characteristics. We therefore invite comment on whether distinctive characteristics of EBS licensees require distinct rules for assessing the relative size of potential participants in an auction. How do our designated entity provisions comport with the unique challenges and status of educational institutions? Should we establish special provisions for non-profit educational institutions that may want to have access to EBS spectrum but do not have the financial capability to compete in an auction for spectrum licenses? We seek comment on whether the non-commercial character of EBS licensees requires any special procedures for determining the average annual gross revenues of such entities. For example, are our standard gross revenue attribution rules an appropriate method of evaluating the relative resources of universities and government entities? We also invite comment on whether some other criterion besides average annual gross revenues should be used for identifying small entities among EBS licensees and similar applicants.

19. Commenters proposing alternative business size standards should give careful consideration to the likely capital requirements for developing services in this spectrum. In this regard, we note that new licensees may be presented with issues and costs involved in transitioning incumbents and developing markets, technologies, and services.

20. Commenters also should consider whether the band plan and characteristics of the band suggest adoption of other small business size definitions and/or bidding credits in this instance.

21. We believe our proposals will encourage utilization of this band and the development of new innovative services to the public such as providing wireless broadband services, including high-speed Internet access and mobile services. We also believe that our proposals will provide licensees flexibility of use which will allow them to adapt quickly to changing market conditions and the marketplace.

Legal Basis

22. The proposed action is authorized under sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333 and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333, and 706.

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

23. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms, ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (i) Is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the SBA.

24. Nationwide, there are 4.44 million small business firms, according to SBA reporting data. In this section, we further describe and estimate the number of small entity licensees and regulatees that may be affected by rules adopted pursuant to this *NPRM.* The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, Paging, and Cellular and Other Wireless Telecommunications. Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

25. Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and ITFS. Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

26. In connection with the 1996 MDS auction, the Commission defined ''small business'' as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. The Commission established this small business definition in the context of this particular service and with the approval of SBA. The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 MDS licensees that are defined as small businesses under either the SBA or the Commission's rules. Some of those 440 small business licensees may be affected by the proposals in this *NPRM & MO&O.*

27. Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and Instructional Television Fixed Service. Multichannel Multipoint Distribution Service (MMDS) systems,

often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the Commission defined ''small business'' as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. The SBA has approved of this standard. The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 claimed status as a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities.

28. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million, and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the proposed rules and policies.

29. Finally, while SBA approval for a Commission-defined small business size standard applicable to ITFS is pending, educational institutions are included in this analysis as small entities. There are currently 2,032 ITFS licensees, and all but 100 of these licenses are held by educational institutions. Thus, we tentatively conclude that at least 1,932 ITFS licensees are small businesses.

30. Cable and Other Program Distribution. This category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. The SBA has developed small business size standard for this census category, which includes all such companies generating $12.5 million or less in revenue annually. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies proposed herein.

31. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions (these 100 fall in the MDS category, above). Educational institutions may be included in the definition of a small entity. ITFS is a non-profit non-broadcast service that, depending on SBA categorization, has, as small entities, entities generating either $10.5 million or less, or $11.0 million or less, in annual receipts. However, we do not collect, nor are we aware of other collections of, annual revenue data for ITFS licensees. Thus, we find that up to [1,932] of these educational institutions are small entities, some of which these providers, specifically those who have not met the requirements for transition articulated herein may be affected by our spectrum clearing proposal.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

32. There are no new reporting, recordkeeping or other compliance requirements proposed in the *FNPRM.*

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

33. 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: ''(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 such 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.''

34. In this *FNPRM,* we seek comment on a spectrum clearing proposal to ensure that the 2500–2690 MHz band does not lie fallow. Inasmuch as this proposal provides opportunities for new entrants in the band, it opens up economic opportunities to a variety of spectrum users, including small businesses. In the *R&O* portion of this document, we have adopted an alternative to this spectrum clearing proposal, which consists of transitioning current users to the new band plan also adopted. Our spectrum clearing proposal could be implemented in the event that the plan we adopt is not satisfactorily implemented within three years. Therefore, affected parties have been given an alternative to our spectrum clearing proposal, and will only be subject thereto in the event that they do not comply with our new rules in a reasonable amount of time. We also seek comment on significant alternatives commenters believe we should adopt.

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

35. None

Ordering Clause

36. Pursuant to sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333 and 706 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333, and 706, that this *Further Notice of Proposed Rulemaking* is hereby adopted.

37. The proposed regulatory changes described in this *FNPRM,* and that comment is sought on these proposals.

38. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *R&O & FNPRM,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Radio, Reporting and recordkeeping requirements.

47 CFR Part 27

Communications common carriers, Radio.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 04–26831 Filed 12–9–04; 8:45 am]

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