



**Federal Communications Commission
Washington, D.C. 20554**

January 22, 2014

DA 14-73

Small Entity Compliance Guide

Service Rules for Advanced Wireless Services H Block - Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915-1920 MHz and 1995-2000 MHz Bands (H Block R&O)

FCC Number: 13-88
WT Docket Nos.: 12-357
Released: June 27, 2013
Auction: Number 96
Auction Date: January 22, 2014

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the new rules adopted in the above-referenced FCC rulemaking docket(s). This Guide is not intended to replace the rules and, therefore, final authority rests solely with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide may, perhaps, not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to

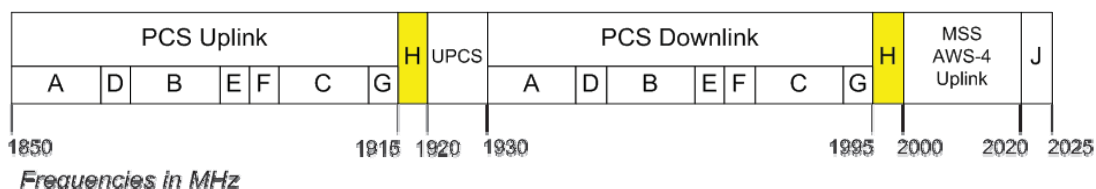
clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

1-888-CALL-FCC (1-888-225-5322)
TTY: 1-888-TELL-FCC (1-888-835-5322)
Fax: 1-866-418-0232
fccinfo@fcc.gov

I. OBJECTIVES OF THE PROCEEDING

1. The *H Block R&O* increased the Nation’s supply of flexible-use spectrum for mobile broadband, by adopting rules for fixed and mobile services, including advanced wireless services, in the 1915-1920 MHz band and the 1995-2000 MHz band. These paired spectrum bands are collectively known as the “H Block.” The *H Block R&O* implemented the Congressional directive in the Middle Class Tax Relief and Job Creation Act of 2012 (“Spectrum Act”) that the Federal Communications Commission (FCC/Commission) grant new initial licenses for these spectrum bands through a system of competitive bidding. The Spectrum Act states that the Commission, by February 2015, shall allocate the H Block bands for commercial use, and through a system of competitive bidding grant new initial licenses for the use of each band, subject to flexible use service rules. In compliance with the Spectrum Act, the Commission has adopted auction procedures and scheduled an auction for the H Block, Auction 96, that is set to start on January 22, 2014. This additional spectrum for mobile use will help ensure that the speed, capacity, and ubiquity of the Nation’s wireless networks keep pace with the skyrocketing demand for mobile services.

II. H BLOCK BAND PLAN



H Block Bands

Block	Frequencies (MHz)	Bandwidth	Pairing	Area Type	Licenses
H	1915-1920/1995-2000	10 MHz	2 x 5 MHz	EA	176

H Block License Summary

A. H Block Band Plan

2. The 1915-1920 MHz band will be used for mobile and low power fixed (*i.e.*, uplink) operations and the 1995-2000 MHz band will be used for base station and fixed (*i.e.*, downlink) operations, configured as paired 5 + 5 megahertz blocks. The Commission adopted a geographic-area licensing scheme and concluded, based on the record, that the H Block spectrum should be licensed on an Economic Area (EA) basis, including for the Gulf of Mexico. Auction 96 will offer one license for each of the 176 EAs. The existing definition of the Gulf of Mexico EA contained in Section 27.6 of the Commission rules will be used to license the Gulf.

III. SMALL BUSINESS PROVISIONS FOR GEOGRAPHIC AREA LICENSES

3. The auction provisions of the Communications Act mandate that the Commission “ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services.” In addition, those provisions require that, in establishing eligibility criteria and bidding methodologies, the Commission shall seek to promote a number of objectives, including “promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people 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.” One of the principal means by which the Commission fulfills this mandate is through the award of bidding credits to small businesses.

4. In the *Competitive Bidding Second Memorandum Opinion and Order*, the Commission stated that it would define eligibility requirements for small businesses on a service-specific basis, taking into account the capital requirements and other characteristics of each particular service in establishing the appropriate threshold.

5. In the *H Block R&O*, the Commission defined a small business as an entity with average gross revenues for the preceding three years not exceeding \$40 million, and a very small business as an entity with average gross revenues for the preceding three years not exceeding \$15 million. For the H Block auction, small businesses will be provided with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent, consistent with the standardized schedule in Part 1 of the Commission’s rules.

IV. PROCEDURES FOR COMPETITIVE BIDDING

A. Application of Part 1 Competitive Bidding Rules

6. The Commission will conduct the auction for H Block licenses in conformity with the general competitive bidding rules set forth in Part 1, Subpart Q, of the Commission’s rules. Additionally, the Commission will employ the Part 1 rules governing competitive bidding design, designated entity preferences, unjust enrichment, application and payment procedures, reporting requirements, and the prohibition on certain communications between auction applicants. Part 1 rules would be subject to any modifications that the Commission may adopt for its Part 1 general competitive bidding rules in the future.

B. National-security Certification

7. The Commission will implement the national security restriction of Section 6004 of the Spectrum Act by adding a certification to the short-form application filed by auction applicants. Section 6004 prohibits “a person who has been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant” from participating in a system of competitive bidding that is required to be conducted by Title VI of the Spectrum Act. The Commission will require that an auction applicant certify, under penalty of perjury, that it and all of the related individuals and entities required to be disclosed on the short-form application are not persons who have been so barred. For purposes of this certification, a “person” is defined as an individual, partnership, association, joint-stock company, trust, or corporation. “[R]easons of national security” means

matters relating to the national defense and foreign relations of the United States. As with other required certifications, an auction applicant's failure to include the required certification by the applicable filing deadline would render its short-form application unacceptable for filing, and its application would be dismissed with prejudice.

C. Revision to Part 1 Certification Procedures

8. The Commission has extended the national security requirement to applicants that are obtaining H Block licenses through to secondary markets. In the *H Block R&O*, the Commission determined that Section 6004 applies to transfers, assignments, or other secondary market mechanisms transactions. The Commission concluded that it is reasonable to assume that Congress did not intend to permit persons barred on national security grounds from "participating in an auction" for certain licenses to acquire those same licenses in such an indirect fashion. In any event, given the policies reflected in Section 6004, the Commission concluded that it is appropriate to extend such a national security bar to the acquisition of Commission licenses through the secondary market. Therefore, applicants requesting approval for a secondary market transaction must certify that the applicants are not persons barred from participating in an auction by Section 6004 of the Spectrum Act. For applicants that are not individuals, the Commission will apply the same attribution standard that was adopted for short-form applications.

V. REGULATORY ISSUES; LICENSING AND OPERATING RULES

A. Regulatory Framework

9. The Commission decided that the Commission's flexible, market-oriented Part 27 rules should be applied to the H Block including, in particular, the Commission's Part 27 rules applicable to other AWS bands, and the Commission's wireless rules that are generally applicable across multiple commercial bands. The regulatory framework will establish the license term, criteria for renewal, and other licensing and operating rules that will govern operations in the H Block.

B. Regulatory Status

10. The Commission decided to apply § 27.10 of its rules to the H Block because this will achieve efficiencies in the licensing and administrative process, and provide licensees with additional flexibility. Under this flexible regulatory approach, licensees in the H Block may provide common carrier, non-common carrier, private internal communications or any combination of these services, so long as the provision of service otherwise complies with applicable service rules.

11. In order to fulfill the Commission's enforcement obligations and ensure compliance with Titles II and III of the Communications Act, the Commission required applicants and licensees of H Block Spectrum to identify the regulatory status of the services they intend to provide. Applicants and licensees will not be required to describe their particular services, but only to designate the regulatory status of the service(s). The Commission reminded potential applicants that an election to provide service on a common carrier basis requires that the elements of common carriage be present; otherwise the applicant must choose non-common carrier status. If a potential applicant is unsure of the nature of its services and its classification

as common carrier services, it may submit a petition to the Commission with its applications, or at any time, requesting clarification and including service descriptions for that purpose.

12. If a licensee elects to change the service or services it offers such that its regulatory status would change, it must notify the Commission within 30 days of making the change. A change in the licensee's regulatory status will not require prior Commission authorization, provided the licensee is in compliance with the foreign ownership requirements of Section 310(b) of the Communications Act that apply as a result of the change. The Commission noted that a different time period (other than 30 days) may apply, as determined by the Commission, where the change results in the discontinuance, reduction, or impairment of the existing service.

C. Ownership Restrictions

13. *Foreign Ownership.* The Commission determined that all H-Block applicants and licensees shall be subject to the provisions of § 27.12 of the Commission's rules.¹ All such entities are subject to Section 310(a) of the Communications Act, which prohibits licenses from being "granted to or held by any foreign government or the representative thereof." In addition, a licensee that would provide a common carrier, aeronautical en route, or aeronautical fixed service in this band would also be subject to the foreign ownership and citizenship requirements in Section 310(b) of the Communications Act.

14. All applicants must provide the same foreign ownership information, which covers both Sections 310(a) and 310(b), regardless of which service they propose to provide in the band. The Commission is unlikely to deny a license to an applicant requesting to provide services exclusively that are not subject to Section 310(b), solely because its foreign ownership would disqualify it from receiving a license if the applicant had applied for authority to provide Section 310(b) services. However, if any such licensee later desires to provide any services that are subject to the restrictions in Section 310(b), the Commission will require the licensee to apply to the Commission for an amended license, and the Commission would consider issues related to foreign ownership at that time.

D. Eligibility

15. The Commission found that open eligibility is appropriate for the H Block band and is consistent with the Commission's statutory mandate to promote the development and rapid deployment of new technologies, products, and services; economic opportunity and competition; and the efficient and intensive use of the electromagnetic spectrum.

16. As noted above, the Commission further required that applicants requesting approval for a secondary market transaction must certify that the applicants are not persons barred from participating in an auction by Section 6004 of the Spectrum Act. Until the Commission revises the appropriate applications forms to add a certification, applicants for spectrum subject to Section 6004 will be required to include a certification as an attachment to the application.

E. Mobile Spectrum Holding Policies

17. The Commission found that the record did not support addressing in the *H Block R&O* whether the general mobile spectrum holdings for wireless services should apply to H Block, particularly given the pendency of the *Mobile Spectrum Holdings Policies* proceeding.

¹ See *supra* ¶ 7.

F. License Term

18. License Term. The Commission adopted a license term for H Block spectrum rights of ten years and subsequent renewal terms of ten years. In addition, the Commission required that, in the event that the terrestrial portion of a license is partitioned or disaggregated, any partitionee or disaggregatee will be authorized to hold its license for the remainder of the partitioner's or disaggregator's license term.

G. Performance Requirements

19. EA-Based and Population-Based benchmarks will be used to measure the H Block's band performance requirements. The Commission adopted the following buildout requirements:

- *H Block Interim Buildout Requirement:* Within four (4) years, a licensee shall provide reliable signal coverage and offer service to at least forty (40) percent of the population in each of its license areas.
- *H Block Final Buildout Requirement:* Within ten (10) years, a licensee shall provide reliable signal coverage and offer service to at least seventy-five (75) percent of the population in each of its license areas.

20. In addition, the Commission adopted the following penalties for failure to meet the buildout benchmarks:

- *Failure to Meet H Block Interim Buildout Requirement:* Where a licensee fails to meet the H Block Interim Buildout Requirement in its license area, the H Block license term and the Final Buildout Requirement shall be accelerated by two years (for both the license term and final requirement, from ten to eight years).
- *Failure to Meet H Block Final Buildout Requirement:* Where a licensee fails to meet the H Block Final Buildout Requirement in any EA, its authorization for each EA in which it fails to meet the requirement shall terminate automatically without Commission action.

H. Compliance Procedures

21. Licensees must certify compliance by filing a construction notification that they have met the benchmark within 15 days of the relevant milestone.² Each construction notification must include electronic coverage maps and supporting documentation, which must be truthful and accurate and must not omit material information that is necessary for the Commission to determine compliance with its performance requirements.

22. The Commission emphasized that electronic coverage maps must accurately depict the boundaries of each license area in the licensee's service territory. If a licensee does not provide reliable signal coverage to an entire EA, its map must accurately depict the boundaries of the area or areas within each EA not being served. Each licensee also must file supporting documentation certifying the type of service it is providing for each EA within its service territory and the type of technology used to provide such service. Supporting documentation must include the assumptions used to create the coverage maps, including the propagation

² See 47 C.F.R. § 27.14(k).

model and the signal strength necessary to provide reliable service with the licensee's technology.

23. Licensees must use the most recently available decennial U.S. Census Data at the time of measurement to meet the population-based buildout requirements. Specifically, licensee must base its claims of population served on areas no larger than the Census Tract level.

I. Renewal Criteria

24. The Commission found that all H Block licensees seeking renewal of their authorizations at the end of their license term must file a renewal application, demonstrating that they have been and are continuing to provide service to the public over the license term (or, if consistent with the licensee's regulatory status, that it used the spectrum for private, internal communication), and are otherwise complying with the Commission's rules and policies (including any applicable performance requirements) and with the Communications Act. The Commission emphasized that the concept of a renewal showing is distinct from a performance showing. A performance showing provides a snapshot in time of the level of a licensee's service, while a renewal showing provides information regarding the level and types of service provided over the entire license term. The Commission explained that a licensee that meets the applicable performance requirements might nevertheless fail to meet the renewal requirements.

25. The Commission adopted the following renewal criteria requirements. The Commission required that the renewal showing include a detailed description of the renewal applicant's provision of service during the entire license period and discuss: (1) the level and quality of service provided by the applicant (e.g., the population served, the area served, the number of subscribers, the services offered); (2) the date service commenced, whether service was ever interrupted, and the duration of any interruption or outage; (3) the extent to which service is provided to rural areas; (4) the extent to which service is provided to qualifying Tribal land as defined in § 1.2110(e)(3)(i) of the Commission's rules; and (5) any other factors associated with the level of service to the public. A licensee must also demonstrate at renewal that it has substantially complied with all applicable Commission rules and policies, and the Communications Act, including any applicable performance requirements.

26. In addition, the Commission determined that the filing of competing applications against a licensee's renewal application will not be permitted. If a license is not renewed, the associated spectrum will be returned to the Commission and then made available for assignment.

J. Permanent Discontinuance of Operations

27. The Commission's permanent discontinuance rule (47 C.F.R. § 1.955(a)(3)) applies to H Block spectrum. Thus, an H Block operator's authorization will automatically terminate, without specific Commission action, if service is "permanently discontinued." For providers that identify their regulatory status as common carrier or non-common carrier, "permanently discontinued" is defined as a period of 180 consecutive days during which the licensee does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to, the provider in an EA (or smaller service area in the case of a partitioned EA license). For licensees that use their licenses for private, internal communications, because such licensees generally do not provide service to unaffiliated subscribers, "permanent discontinuance" shall be defined as a period of 180 consecutive days during which the licensee does not operate.

28. Furthermore, in accordance with Section 1.955(a)(3) of the Commission's rules, if a licensee permanently discontinues service, the licensee must notify the Commission of the discontinuance within ten days by filing FCC Form 601 or 605 and requesting license cancellation. However, even if the licensee fails to file the required form requesting license cancellation, an authorization will automatically terminate without specific Commission action if service is permanently discontinued.

29. In addition, the operation of so-called channel keepers, e.g., devices that transmit test signals, tones, and/or color bars, do not constitute "operation" under Section 1.955(a)(3) or the Commission's other permanent discontinuance rules.

30. Once a license is terminated, the spectrum will become available under the competitive bidding provisions of Section 309(j) of the Communications Act.

K. Secondary Markets

31. *Partitioning and Disaggregation.* Geographic partitioning and spectrum disaggregation are permitted in the H Block. The license term for H Block spectrum rights is ten years. If an H Block license is partitioned or disaggregated, any partitionee or disaggregatee would be authorized to hold its license for the remainder of the partitioner's or disaggregator's original license term. A licensee, by partitioning or disaggregation, will not be able to confer greater rights than it was awarded under the terms of its license grant; nor would any partitionee or disaggregatee obtain rights in excess of those previously possessed by the underlying Commission licensee. Each H Block licensee that is a party to a partitioning or disaggregation arrangement (or combination of both) is required to independently meet the applicable performance and renewal requirements.

32. *Spectrum leasing.* The Commission's current spectrum leasing policies, rules, and procedures contained in Part 1 of the Commission's rules, will be applied to the H Block in the same manner as those policies, rules, and procedures apply to other Part 27 services.

L. Other Operating Requirements

33. The Commission adopted Part 27 rules for the H Block, and in order to maintain general consistency among various wireless communication services, the Commission also required any licensee of H Block operating authority to comply with other rule parts that pertain generally to wireless communication services. For example, Section 27.3 of the Commission's rules lists some of the other rule parts applicable to wireless communications service licensees generally; the Commission thus found it appropriate to apply this and similar rules to the H Block. Some of these other rule parts will be applicable by virtue of the fact that they apply to all licensees, and others will apply depending on the type of service that a licensee provides. For example:

- Applicants and licensees will be subject to the application filing procedures for the Universal Licensing System, set forth in Part 1 of the Commission's rules.
- Licensees will be required to comply with the practices and procedures listed in Part 1 of the Commission's rules for license applications, adjudicatory proceedings, etc.
- Licensees will be required to comply with the Commission's environmental provisions, including Section 1.1307 of the Commission's rules.

- Licensees will be required to comply with the antenna structure provisions in Part 17 of the Commission's rules.
- To the extent a licensee provides a Commercial Mobile Radio Service, such service is subject to the provisions in Part 20 of the Commission's rules, including 911/E911 and hearing-aid compatibility requirements, along with the provisions in the rule part under which the license was issued.
- To the extent a licensee provides interconnected VoIP services, the licensee will be subject to the E9-1-1 service requirements set forth in Part 9 of the Commission's rules.
- The application of general provisions in Parts 22, 24, 27, or 101 of the Commission's rules will include rules related to equal employment opportunity, etc.

34. *Tribal Lands*. The application of any rules and policies for facilitating access to spectrum and the provision of service to Tribal lands will be referred to the Tribal Lands proceeding.

VI. TECHNICAL ISSUES

A. Upper H Block: 1995-2000 MHz

1. Upper H Block Power Limits

35. The Commission adopted a power limit of 1640 watts EIRP for emissions with less than 1 MHz channel bandwidth and 1640 watts/MHz for emissions greater than 1 MHz in non-rural areas and of 3280 watts EIRP for emissions with less than a 1 MHz channel bandwidth and 3280 watts/MHz EIRP for emissions greater than 1 MHz in rural areas. These power limits were deemed sufficient to protect PCS licensees in the 1930-1995 MHz band from harmful interference and to adequately protect AWS-4 uplink operations based on the record in this proceeding and on the Commission's prior experience with similar limits in the PCS and AWS bands. For purposes of this rule, a rural area refers to a county with a population density of 100 persons or fewer per square mile. Further, the Commission required base stations operating at an EIRP in excess of either the 1640 watts or 1640 watts/MHz limits to coordinate with all adjacent block PCS G Block licensees within 120 km of the proposed H Block base station. This requirement is similar to that imposed on operations in the AWS and PCS services.

2. Upper H Block Out-of-Band Emission (OOBE) Limits

36. *General protection levels*. Except as otherwise specified, the Commission adopted a rule requiring all out-of-band emissions (OOBE) be attenuated by at least $43 + 10 \log_{10}(P)$ dB, where (P) is the transmitter power in watts, for Upper H Block base station transmissions outside of 1995-2000 MHz. In particular, this limit applies to the adjacent 1930-1995 MHz and 2000-2005 MHz bands.

37. *Additional protection levels*. The Commission also established a more stringent OOBE limit of $70 + 10 \log_{10}(P)$ dB, where (P) is the transmitter power in watts, for transmissions from the Upper H Block into the 2005-2020 portion of the AWS-4 band.

38. *Measurement Procedure*. Finally, to fully define an emissions limit, it is necessary to specify the measurement procedure to determine the power of the emissions, such as the

measurement bandwidth. The Commission adopted the requirement that compliance with the emissions limits established herein will be determined by using a 1 MHz measurement bandwidth.

3. Co-Channel Interference between Licensees Operating in Adjacent Regions

39. The Commission found that a boundary limit approach is the best method to address potential harmful co-channel interference between licensees operating in adjacent geographic regions. Setting a default field strength limit at the boundary of a geographic license area can enable licensees to deploy with fewer delays than if the alternative method of coordination with other parties was required. The field strength at the license area boundary between two co-channel operators must be limited to 47 dB μ V/m. The Commission also decided adjacent affected area licensees may voluntarily agree upon higher field strength boundary levels.

B. Lower H Block: 1915-1920 MHz

40. The Commission determined that appropriate technical rules, as described below, will ensure that mobile or low power fixed operations in the Lower H Block do not cause harmful interference to PCS downlink operations.

1. Lower H Block Power Limits

41. The Commission adopted transmitter power limits for the Lower H Block that will maximize the full flexible use of the spectrum while protecting adjacent operations from harmful interference due to receiver overload.

42. The Commission adopted a limit of 25 dBm EIRP, which is equivalent to 300 milliwatts EIRP, as the power limit for mobile and low power fixed operations in the entire Lower H Block and found, consistent with the Spectrum Act harmful interference condition, that operations subject to this power limit will not cause harmful interference to operations in the PCS downlink band.

2. Lower H Block Out-of-Band Emissions Limits

43. The Commission adopted a rule requiring out of band emissions be attenuated by at least $43 + 10 \log_{10}(P)$ dB, where (P) is the transmitter power in watts, for Lower H Block transmissions outside of the 1915-1920 MHz band. Protections are required for the emissions into the 1930-1995 MHz band to protect PCS mobile receivers. For emissions from the lower H Block into the 1930-1995 MHz band, the Commission established an OOB limit of $70 + 10 \log_{10}(P)$ dB, where (P) is the transmitter power in watts.

C. Other Technical Issues

1. Broadband PCS Spectrum

44. The H Block spectrum is adjacent to Broadband PCS spectrum, which is administered under Part 24. It is possible that a single entity could obtain licenses for both bands in the same geographic area and seek to deploy a wider channel bandwidth in that area across both bands. The Commission will permit operations across the PCS downlink band and the Upper H Block in the event that an entity obtains licenses to operate in the same geographic area in both bands. In particular, the Commission adopted an EA-based licensing scheme for H Block, and the PCS G Block, 1990-1995 MHz, has also been licensed on an EA basis. The

Commission applied the more restrictive rule across the combined band in situations where the Part 24 and Part 27 interference or other technical rules differ. For example, in the event a single licensee operates in a unified manner in a geographic area across both the PCS G Block at 1990-1995 MHz and the Upper H Block, that entity would be required to comply with the H Block requirement for Out-of-Band Emission (OOBE) from the combined 1990-2000 MHz band into frequencies above 2000 MHz.

2. Canadian and Mexican Coordination

45. In the *H Block R&O*, the Commission applied the approach used by AWS-1 operations to coordinate with Canada and Mexico to H Block operations. Because of its shared borders with Canada and Mexico, the Commission routinely works in conjunction with the United States Department of State and Canadian and Mexican government officials to ensure the efficient use of the spectrum, as well as interference-free operations in the border areas. Until such time as any adjusted agreements, as needed, between the United States, Mexico and/or Canada can be agreed to, operations must not cause harmful interference across the border, consistent with the terms of the agreements currently in force. The Commission noted that further modifications of the rules might be necessary in order to comply with any future agreements with Canada and Mexico regarding the use of these bands.

D. Cost Sharing

46. The 1915-1920 MHz Band (Lower H Block) and the 1995-2000 MHz Band (Upper H Block) are subject to cost-sharing requirements related to the past clearing and relocation of incumbent users from these bands. Consistent with its long-standing policy that cost-sharing obligations for both the Lower H Block and the Upper H Block be apportioned on a pro rata basis against the relocation costs attributable to the particular band, the Commission adopted cost-sharing rules that require H Block licensees to pay a pro rata share of expenses previously incurred by UTAM, Inc. (“UTAM”) and by Sprint Nextel, Inc. (“Sprint”) in clearing incumbents from the Lower H Block and the Upper H Block, respectively.

47. The Commission noted that \$12,629,857 is the amount UTAM has identified as the amount collectively owed to UTAM by future Lower H Block licensees for UTAM’s clearing of the 1910-1930 MHz band; that is, this amount represents one-fourth of UTAM’s total reimbursable clearing costs for the entire 1910-1930 MHz band. The Commission similarly noted that the pro rata share of the overall Broadcast Auxiliary Service (BAS) relocation costs attributable to Upper H Block Licensees amounts to \$94,875,516.

48. The reimbursement amount owed (“RN”) to UTAM with respect to the 1915-1920 MHz band will be determined by dividing the gross winning bid (“GWB”) for an H Block license by the sum of the gross winning bids for all H Block licenses won in the first auction of the spectrum and then multiplying that result by \$12,629,857—the total amount owed to UTAM for clearing the Lower H Block. The cost-sharing formula for the Lower H Block is as follows:

$$RN = \left(\frac{\text{EA GWB}}{\text{Sum of GWBs}} \right) \times \$12,629,857$$

49. The Commission adopted the same cost-sharing formula for the Upper H Block (1995-2000 MHz band) related to Sprint's clearing costs of \$94,875,516:

$$RN = \left(\frac{\text{EA GWB}}{\text{Sum of GWBs}} \right) \times \$94,875,516$$

50. Winning bidders are required to pay UTAM and Sprint, as applicable, the reimbursement amounts owed within thirty days after the grant of the winning bidders' long-form license applications. Winning bidders in the first auction may not seek reimbursement from other H Block licensees, including for licenses granted as a result of subsequent auctions.

51. In the event that licenses won in the first auction of the spectrum cover less than forty percent of the U.S. population, winning bidders—in the first auction and in subsequent H Block auctions—will be required to timely pay UTAM and Sprint, respectively, their pro rata share calculated by dividing the population of the individual EA by the total U.S. population and then multiplying this quotient by \$12,629,857 for UTAM and by \$94,875,516 for Sprint. Under this contingency, the population would be measured using 2010 Census data, which is the most recent decennial census data.

52. The cost-sharing rules and contingency plan are designed to ensure that UTAM and Sprint receive full reimbursement after auction by apportioning the reimbursement costs associated with any unsold H Block licenses among the winning bidders, except in cases where the above-described contingency plan is triggered or a successful bidder's long-form application is not filed or granted. If any of the licenses won at auction are not awarded, the license at issue will be deemed to have triggered a reimbursement obligation that will be paid by the licensee acquiring the license in a subsequent auction.

53. The cost-sharing obligations for the Lower H Block and for the Upper H Block will sunset ten years after the first Upper H Block license is issued in the respective band. The failure to timely satisfy a payment obligation in full prior to the applicable sunset date will not terminate the debt owed or a party's right to collect the debt. Complaints regarding failure to timely make required cost-sharing payments will be addressed on a case by case basis through existing enforcement mechanisms.

VII. INTERNET LINK AND CITATIONS

“Service Rules for Advanced Wireless Services H Block—Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915-1920 and 1995-2000 MHz Bands.”

Report and Order: http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-13-88A1.docx

FCC Record and Federal Register – Final Rules: 28 FCC Rcd 9483 (2013); 78 Fed. Reg. 50214 (2013).