

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Facilitating Shared Use in the 3100-3550 MHz
Band
WT Docket No. 19-348

ORDER

Adopted: March 11, 2024

Released: March 11, 2024

By the Chiefs, Wireless Telecommunications Bureau and the Office of Engineering and Technology:

I. INTRODUCTION

1. In this Order, the Wireless Telecommunications Bureau and the Office of Engineering and Technology (WTB/OET) make a non-substantive, editorial revision to section 2.106(c)(431), Table 22. Consistent with the recommendation of the Department of Defense (DoD), WTB/OET revise section 2.106(c)(431), Table 22, of the Commission’s rules to delete the Norfolk, Virginia Cooperative Planning Area (CPA) (Norfolk CPA) from the list of CPAs and Periodic Use Areas (PUAs) in Table 22 as redundant because the Norfolk CPA is entirely encompassed within the larger Newport News, Virginia CPA/PUA. As part of this change, and consistent with DoD’s request, WTB/OET also rename the Newport News CPA/PUA as the “Newport News-Norfolk CPA/PUA.”

II. BACKGROUND

2. Historically, the 3.45 GHz band (3450–3550 MHz) was a predominantly federal band, with limited non-federal use, and DoD in particular operated a number of defense radar systems in the band. In 2020, the Commission adopted the 3.45 GHz R&O and FNPRM, in which it removed

1 47 CFR § 2.106(c)(431), Table 22.

2 The Commission was notified of DoD’s recommendation to delete the Norfolk, Virginia CPA by the National Telecommunications and Information Administration (NTIA). See Letter from Scott Patrick, Executive Director, Office of Spectrum Management, U.S. Department of Commerce, National Telecommunications and Information Administration, to Ronald T. Repasi, Chief, Office of Engineering and Technology, and Joel Taubenblatt, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, WT Docket No. 19-348 (filed Feb. 29, 2024) (NTIA Letter), https://www.fcc.gov/ecfs/document/10229079099187/1 (citing Memorandum from Vernita D. Harris, Director, Electromagnetic Spectrum Enterprise Policy and Programs, Department of Defense to Associate Administrator, Office of Management, National Telecommunications and Information Administration, https://www.fcc.gov/ecfs/document/10229079099187/2 (DoD Memorandum)). NTIA supports DoD’s recommendation and has requested that the Commission modify its regulatory guidance accordingly for the 3.45 GHz band. See NTIA Letter at 2.

3 See DoD Memorandum at 1.

4 See Facilitating Shared Use in the 3100-3550 MHz Band, WT Docket No. 19-348, Second Report and Order, Order on Reconsideration, and Order of Proposed Modification, 36 FCC Rcd 5987, 5992, para. 9 (2021) (3.45 GHz Band Second R&O). In March 2021, the Commission announced Auction 110, which offered 100 megahertz of mid-band spectrum in the 3.45-3.55 GHz band for flexible use. See Auction of Flexible-Use Service Licenses in the 3.45-3.55 GHz Band for Next-Generation Wireless Services; Comment Sought on Competitive Bidding Procedures

(continued...)

secondary, non-federal allocations from the band and sought comment on restructuring the band to permit coordinated federal and non-federal use.⁵ In 2021, the Commission adopted the *3.45 GHz Second R&O*, which created a new 3.45 GHz Service, including a cooperative sharing regime.⁶ Under this sharing regime, non-federal systems have unencumbered, full-power use of the entire band across the contiguous United States except for limited locations and circumstances—in effect, within CPAs and PUAs, where current incumbent federal systems remain in the band and non-federal systems are not entitled to protection from federal operations.⁷

3. Commercial operations are not precluded in CPAs and PUAs, but prior coordination between federal incumbents and commercial operations is required.⁸ Consistent with DoD’s recommendation, the Commission defined CPAs as “geographic locations in which non-federal operations shall coordinate with federal systems in the band to deploy non-federal operations in a manner that shall not cause harmful interference to federal systems operating in the band.”⁹ In CPAs, operators of non-federal stations may be required to modify their operations to protect federal operations against harmful interference and may not claim interference protection from federal systems.¹⁰ For each CPA, the Commission provided either a point and radius or a series of geographic coordinates (creating a polygon) to define the boundary of the area, which allows non-federal operators to determine precisely which areas require coordination with DoD.¹¹ DoD also identified several PUAs, which, consistent with DoD’s recommendation, the Commission defined as “geographic locations in which non-Federal operations in the band shall not cause harmful interference to Federal systems operating in the band *for episodic periods*.”¹² To enable non-federal licensees to determine the areas that require coordination with DoD, the center locations and dimensions for all CPA and PUA coordination areas are defined in section 2.106(c)(431) of the Commission’s rules.¹³

4. In the *3.45 GHz Band Second R&O*, the Commission expressly delegated authority to WTB and OET to reduce the size of CPAs and PUAs.¹⁴ The Commission provided that “in the event that the DoD modifies its use in any existing Cooperative Planning or Periodic Use Area so as to *decrease* the size of such area, we delegate authority to [WTB/OET], in coordination with NTIA, to reflect such smaller areas in our rules.”¹⁵ In addition to this specific delegation, the Commission broadly delegated additional authority to WTB and OET to create additional CPAs and PUAs as necessary to facilitate commercial network expansion into areas outside the contiguous United States when NTIA provides notice that non-federal operations can occur, to consider applications and assign licenses for partial

for Auction 110, AU Docket No. 21-62, Public Notice, 36 FCC Rcd 6100 (2021); *see also 3.45 GHz Band Second R&O*.

⁵ *See generally Facilitating Shared Use in the 3100-3550 MHz Band*, WT Docket No. 19-348, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 11078 (2020) (*3.45 GHz R&O and FNPRM*).

⁶ *See generally 3.45 GHz Band Second R&O*, 36 FCC Rcd 5987.

⁷ *Id.* at 5997, para. 21. The auction of 3.45 GHz Service licenses was completed, and winning bidders were announced in January 2022. *See Auction of Flexible-Use Service Licenses in the 3.45-3.55 GHz Band Closes, Winning Bidders Announced for Auction 110*, AU Docket No. 21-62, Public Notice, 37 FCC Rcd 308 (2022).

⁸ *3.45 GHz Band Second R&O*, 36 FCC Rcd at 5997, para. 21.

⁹ *Id.* at 5998, para 23.

¹⁰ *See id.*

¹¹ *Id.* at 5999, para. 24.

¹² *Id.* at 5999, para. 25 (emphasis added).

¹³ 47 CFR § 2.106(c)(431).

¹⁴ *3.45 GHz Band Second R&O*, 36 FCC Rcd at 6000, para. 27.

¹⁵ *Id.*

economic areas associated with such CPAs/PUAs, and to conduct a rulemaking if it became necessary to authorize non-federal operations to these new license areas on the basis of rules that differ from the rules adopted in the *3.45 GHz Band Second R&O*.¹⁶ In addition, OET has delegated authority to make non-substantive, editorial revisions to Part 2 of the Commission's rules.¹⁷

5. In a Memorandum to the National Telecommunications and Information Administration (NTIA), DoD requests the deletion of the Norfolk CPA from the list of CPAs and PUAs in section 2.106(c)(431), Table 22 of the Commission's rules.¹⁸ DoD maintains that the Norfolk CPA is redundant because the Norfolk CPA is entirely encompassed within the larger Newport News, VA CPA/PUA.¹⁹ As part of this change, DoD also asks that the Newport News CPA/PUA be renamed the "Newport News-Norfolk CPA/PUA."²⁰

III. DISCUSSION

6. Pursuant to the delegation of authority by the Commission in the *3.45 GHz Band Second R&O*, as well as OET's authority to make non-substantive revisions to the Part 2 rules, WTB/OET revise the Part 2 rules to delete the redundant Norfolk CPA as requested by DoD and rename the Newport News CPA/PUA as the "Newport News-Norfolk CPA/PUA." For the reasons discussed below, we find that this modification falls within the "good cause" exception to the notice and comment requirements of the Administrative Procedure Act.²¹

7. As a practical matter—and as DoD points out—the Norfolk CPA is entirely subsumed in the larger Newport News CPA/PUA, and any non-federal operations in the former CPA would be required to follow the same coordination procedures after such a change as those required pursuant to the current rule. The larger area also includes the same responsibility for PUA coordination, which currently applies to the entire region, so no protections or coordination requirements will be lost or changed as a result of this rule modification. The only change resulting from this rule modification is that federal and non-federal operators will no longer have to conduct a duplicative coordination process but will instead be able to follow a single coordination procedure for the entire, encompassing area. Thus, while the Newport News CPA/PUA will not decrease in size, the elimination of the Norfolk CPA will have the effect of eliminating a duplicative coordination burden for both federal and non-federal operations, and as such, falls within the authority delegated to WTB/OET.

8. As discussed above, the change proposed by DoD, and conveyed through NTIA, merely deletes a redundant component of the rule, would not alter the compliance obligations of any party, and seeking notice and comment on this technical correction would be a waste of Commission resources. "The larger Newport News CPA/PUA commands the requisite coordination to protect DoD missions operating within the band, to include episodic DoD operations[,]"²² rendering the Norfolk CPA redundant and unnecessary. Accordingly, without notice and comment, WTB/OET delete the Norfolk CPA from section 2.106(c)(431), Table 22, and rename the Newport News CPA/PUA, the "Newport News-Norfolk CPA/PUA

¹⁶ *Id.* at 6028, para. 115.

¹⁷ 47 CFR § 0.241(i).

¹⁸ *See* DoD Memorandum at 1.

¹⁹ *See id.*

²⁰ *See id.*

²¹ *See* 5 U.S.C. § 553(b)(B) (notice and comment is not necessary "when the agency for good cause finds (and incorporates the finding and a brief statement for reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest").

²² *See* DoD Memorandum at 1.

IV. PROCEDURAL MATTERS

9. *Regulatory Flexibility Act.* Because this rule change is being adopted without notice and comment, the Regulatory Flexibility Act does not apply.²³

10. *Paperwork Reduction Act.* This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).²⁴ In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.²⁵

11. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is “non-major” under the Congressional Review Act, 5 U.S.C. § 804(2). The Office of the Managing Director will send a copy of this Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

V. ORDERING CLAUSES

12. IT IS ORDERED, pursuant to sections 1, 4(i), and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 303, that this Order IS ADOPTED.

13. IT IS FURTHER ORDERED that part 2 of the Commission’s rules is AMENDED as set forth in the Appendix, effective immediately upon publication in the *Federal Register*.

14. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance Program Management, SHALL SEND a copy of this Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

²³ 5 U.S.C. § 601 *et seq.*; *see id.* § 601(2).

²⁴ Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

²⁵ The Small Business Paperwork Relief Act of 2002 (SBPRA), Pub. L. No. 107-198, 116 Stat. 729 (2002) (codified in Chapter 35 of title 44 U.S.C.); *see* 44 U.S.C. § 3506(c)(4).

15. These actions are taken under delegated authority pursuant to sections 0.31, 0.131, 0.241, and 0.331 of the Commission's rules, 47 CFR §§ 0.31, 0.131, 0.241, and 0.331, and the *3.45 GHz Band Second R&O*.²⁶

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt
Chief, Wireless Telecommunications Bureau

Ronald Repasi
Chief, Office of Engineering and Technology

²⁶ *3.45 GHz Band Second R&O* at 6000, para. 27.

APPENDIX A

Final Rules

The Federal Communications Commission amends 47 CFR part 2 as follows:

PART 2 – FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Amend § 2.106 by Table 22

to remove the Norfolk CPA and rename the Newport

News CPA/PUA, the “Newport News-Norfolk CPA/PUA.”

The revision reads as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

(c) * * *

(431) * * *

Table 22 to Paragraph (c)(431) – Department of Defense Cooperative Planning Areas and Periodic Use Areas

Location name	State	CPA	PUA	Latitude	Longitude	Radius (km)
* * * * *						
Newport News-Norfolk* (includes Fort Story SESEF range)	VA	Yes	Yes	36° 58' 24"	76° 26' 07"	93
* * * * *						