

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

In the Matter of)
)
Improving Public Safety Communications in the) WT Docket No. 02-55
800 MHz Band)

ORDER AND SIXTH FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: October 25, 2019

Released: October 28, 2019

Comments Date: 30 days following Federal Register publication.

Reply Comment Date: 45 days following Federal Register Publication.

By the Commission: Chairman Pai and Commissioner O’Rielly issuing separate statements.

I. INTRODUCTION

1. In this *Order and Sixth Further Notice of Proposed Rulemaking*, we take steps to streamline our rules and procedures to accelerate the successful conclusion of the Commission’s 800 MHz band reconfiguration program, or rebanding. The 800 MHz rebanding initiative is a 14-year, \$3.6 billion program, involving Sprint Corporation (Sprint)¹ and 800 MHz licensees. At the conclusion of this initiative, public safety, critical infrastructure and other 800 MHz licensees will operate in a reconfigured 800 MHz band free of the interference that plagued first responders’ mission-critical communications before the Commission instituted rebanding in the *800 MHz Report and Order*.²

2. As 800 MHz rebanding nears completion, we take this opportunity to immediately streamline the process by which rebanding licensees certify that the rebanding of licensees’ systems is complete. We also propose to (a) delete Section 90.676(b)(4) of the Commission’s rules³ which sets forth an annual audit of the rebanding program as well as, (b) relieve the 800 MHz Transition Administrator⁴ of the responsibility to review and approve amendments to licensee Frequency Reconfiguration Agreements—the contracts between Sprint and licensees for rebanding of licensees’ systems, with respect to cost creditability. We believe that taking these steps in the final stage of the rebanding program will lower program costs and administrative burdens and expedite completion of the rebanding process without adversely affecting full achievement of the program’s goals.

¹ On July 11, 2013 a wholly-owned subsidiary of Softbank Corporation (Softbank) and Sprint Nextel Corporation merged to form Sprint Corporation, making Sprint Corporation a subsidiary of Softbank. Nextel Communications, Inc., Sprint Nextel Corporation, Sprint Corporation, and any subsidiary or successor to any of them are together referred to herein as “Sprint.”

² *Improving Public Safety Communications in the 800 MHz Band*, WT Docket 02-55, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969 (2004), amended by *Erratum*, WT Docket 02-55 (Sep. 10, 2004); *Second Erratum*, 19 FCC Rcd 19651 para. 27 (2004); *Third Erratum*, 19 FCC Rcd 21818 (2004) (*800 MHz Report and Order*).

³ 47 CFR § 90.676(b)(4).

⁴ The 800 MHz Transition Administrator is an independent entity established to administer the rebanding program under Commission oversight. See *800 MHz Report and Order*, 19 FCC Rcd at 14969, 14986.

II. BACKGROUND

3. In 2004, the FCC initiated the 800 MHz rebanding program to alleviate harmful interference to 800 MHz public safety radio systems (and other high-site, non-cellular systems operating in the 800 MHz band). The interference was caused by their proximity to the cellular-architecture multi-cell systems— primarily Sprint’s commercial “Enhanced” Specialized Mobile Radio system—also authorized to operate in that band.⁵ To increase the spectral separation between the high-site, non-cellular systems (primarily public safety) and the cellular-based systems like Sprint’s, the Commission adopted a plan backed by Sprint and others, which required the relocation of the bulk of Sprint’s system, as well as the systems of other cellular-based licensees in the band, to spectrum at the upper end of the band, and the relocation of the public safety and other high-site, non-cellular licensees, to spectrum at the lower end of the band. The Commission further required Sprint to pay, in addition to its own relocation costs, all the reasonable relocation costs incurred by the other incumbent licensees in the band, and to relinquish a portion of its spectrum holdings in the 800 MHz and surrounding bands (thereby freeing up additional spectrum for public safety) in exchange for which, the Commission awarded Sprint a separate block of spectrum in the 1.9 GHz band.⁶

4. The *800 MHz Report and Order* also required Sprint to make an anti-windfall payment to the United States Treasury if the costs Sprint incurred in paying for rebanding did not exceed the value of the 1.9 GHz spectrum to which Sprint was assigned in exchange for assuming cost responsibility for rebanding.⁷ In 2017, in response to a petition filed by Sprint, the Public Safety and Homeland Security Bureau (Bureau) found that Sprint’s rebanding costs significantly exceeded the value of the spectrum Sprint had received, and held that Sprint no longer was liable for an anti-windfall payment.⁸ As a consequence, the anti-windfall obligation conditions imposed by the *800 MHz Report and Order* have been satisfied and any obligation to make an anti-windfall payment has been terminated.

5. The rebanding process has taken substantially longer than originally contemplated. Nevertheless, rebanding has substantially alleviated the interference risk to public safety, and the process is now nearing completion. The 800 MHz Transition Administrator reports that 2,088 licensees have successfully completed physical reconfiguration of their systems, and that only 19 licensees, all in the Mexican border region, have yet to complete physical reconfiguration.⁹

6. Additionally, since the 2002 rebanding *Notice of Proposed Rulemaking*,¹⁰ the 800 MHz band has undergone significant regulatory change. In 2017, the Commission implemented major rule

⁵ See generally, *800 MHz Report and Order*.

⁶ Sprint was also required to pay the relocation costs of 1.9 GHz Broadcast Auxiliary Service incumbents that occupied a portion of the 1.9 GHz band, and to reimburse the Unlicensed PCS Ad Hoc Committee for 2 GHz Microwave Transition and Management (UTAM) for costs it incurred in clearing incumbent microwave licensees from the other portion. See *800 MHz Report and Order*, 19 FCC Rcd at 14988-89, paras. 33-34. See also, *Amendment of the Commission’s Rules to Establish New Personal Communications Services*, Memorandum Opinion and Order, 9 FCC Rcd 4957 (1994).

⁷ See *800 MHz Report and Order*, 19 FCC Rcd at 15123-25.

⁸ *Improving Public Safety Communications in the 800 MHz Band*, Declaratory Ruling, 32 FCC Rcd 7528 (PSHSB 2017) (*Declaratory Ruling*).

⁹ 800 MHz Transition Administrator, LLC, Quarterly Progress Report for The Quarter Ended June 30, 2019, WT Docket No. 02-55, at 19, Appendix 1 and Appendix 3 (filed Sept. 13, 2019). Completion of physical reconfiguration occurs when all system infrastructure and radios have been retuned, the licensee has commenced operations on its assigned post-rebanding frequencies, and, when required by the rebanding agreement between Sprint and the licensee, pre-rebanding channels have been removed from the licensee’s radios. *Id.* at 2 n.6.

¹⁰ The proceeding was initiated by a March 2002 *Notice of Proposed Rulemaking*. *Improving Public Safety Communications in the 800 MHz Band*, Notice of Proposed Rulemaking, 17 FCC Rcd 7169 (2002).

revisions affecting cellular systems in the 800 MHz band, including the adoption of power spectral density as a means of specifying power in the cellular portion of the 800 MHz band lying immediately above the spectrum used by public safety, industrial/business and high-site Specialized Mobile Radio licensees.¹¹ In 2018, the Commission added 800 MHz interstitial channels to the 800 MHz mid-band. These channels, located between 25 kilohertz-spaced channels in the band, will provide new opportunities for public safety, industrial/business and high-site Specialized Mobile Radio applicants to offer service in areas where channels previously were not available because of crowded band conditions.¹²

III. ORDER

7. In the following section, we outline several steps directed to streamlining 800 MHz rebanding with the objective of bringing the rebanding project to a quicker conclusion while still maintaining the goals expressed in the *800 MHz Report and Order* and subsequent 800 MHz Commission rebanding orders.

8. The *800 MHz Report and Order* requires the Transition Administrator, at the conclusion of band reconfiguration, to provide the Commission with “certifications from each relocated licensee that all necessary reconfiguration work has been completed and that [Sprint] and said licensee agree on the sum paid for such work.”¹³ In support of this requirement, the Transition Administrator created a closing procedure for the parties to each Frequency Reconfiguration Agreement to document completion of their contractual obligations. Under this closing procedure, which is outlined in the Transition Administrator’s Reconfiguration Handbook,¹⁴ a licensee must provide Sprint with detailed supporting documentation (e.g., invoices, timesheets, receipts) of its reconfiguration costs, which Sprint then validates and compares to the estimated costs provided for in the Frequency Reconfiguration Agreement.¹⁵ If the estimated costs paid by Sprint exceed the actual costs, Sprint is due a refund from the licensee. If the estimated costs paid by Sprint are less than the actual costs, Sprint pays the licensee the difference.¹⁶ Once Sprint and the licensee have reconciled costs, Sprint sends a package of closing documents to the licensee for execution, including a completion certification to be signed by the licensee.¹⁷ Upon execution of the closing

¹¹ See *Amendment of Parts 1 and 22 of the Commission’s Rules with Regard to the Cellular Service, Including Changes in Licensing of Unserved Area, Amendment of the Commission’s Rules with Regard to Relocation of Part 24 to Part 27; Interim Restrictions and Procedures for Cellular Service Applications; Amendment of Parts 0, 1, and 22 of the Commission’s Rules with Regard to Frequency Coordination for the Cellular Service; Amendment of the Commission’s Rules Governing Radiated Power Limits for the Cellular Service; Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 to Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services; 2016 Biennial Review of Telecommunications Regulations*, WT Docket Nos. 12-40, 10-112, and 16-138, RM Nos. 11510 and 11660, Second Report and Order, Report and Order, and Second Further Notice of Proposed Rulemaking, 32 FCC Rcd 2518 (2017).

¹² *Creation of Interstitial 12.5 Kilohertz Channels in the 800 MHz Band Between 809-817/854-862 MHz*, Report and Order and Order, ___ FCC Rcd ___ (October 22, 2018).

¹³ *800 MHz Report and Order* at 15124, 15132, paras. 330, 355. The Transition Administrator must furnish such certifications to the Commission within six months of the conclusion of rebanding. *Id.*

¹⁴ Reconfiguration Handbook release 5.0 (Sept. 6, 2013) (Reconfiguration Handbook), available at http://800ta.org/content/resources/Reconfiguration_Handbook.pdf.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 125. The closing documents include closing certificates and mutual assignment of licenses that are executed by both Sprint and the licensee as part of the closing of the Frequency Reconfiguration Agreement. The completion certification is a certification that the *800 MHz Report and Order* requires each licensee to provide, stating that all necessary reconfiguration work has been completed and that the licensee and Sprint agree on the sums paid for such work. See *800 MHz Report and Order* at 14989, para. 35.

documents, the licensee delivers them to Sprint, who then submits them to the Transition Administrator for review and approval.¹⁸

9. When Sprint was potentially liable for an anti-windfall payment, it was critical that the Transition Administrator have the option of reviewing licensee invoices, timesheets, and other documentation when necessary to confirm that a licensee's actual costs were fully creditable so that Sprint's payment of such costs could be credited against its potential anti-windfall liability. Now that the anti-windfall condition has been satisfied,¹⁹ the only circumstance where the Transition Administrator might need to review the licensee's supporting documentation before approving the closing of the band reconfiguration process for that licensee, is if there is a dispute over expenditures. When Sprint and the licensee do not have an unresolved dispute and the licensee has executed the required completion certification, there are no disputes to resolve, and thus no need for the Transition Administrator to review documentation before determining that the band reconfiguration process for that licensee has been completed as required. Under these circumstances, the Transition Administrator should be able to signal its approval by simply acknowledging receipt of the completion certification attesting to the completion of the reconfiguration work and the agreement between Sprint and the licensee over all sums paid for that work.

10. We therefore direct the Transition Administrator to streamline its closing process going forward to provide that, when Sprint and an individual licensee have completed physical reconfiguration and there are no unresolved disputes between them, closing of the band reconfiguration process for that licensee will be deemed final upon Sprint's delivery of the executed completion certification to the Transition Administrator and the Transition Administrator acknowledging receipt by letter to the licensee. Upon completion of these steps, the licensee will have no further rebanding obligations to Sprint, the Transition Administrator, or the Commission, and will no longer have recourse to Transition Administrator mediation or the Commission's processes for rebanding-related matters.²⁰

11. We also conclude that the closing process can be streamlined in circumstances where physical reconfiguration is complete, but closing has been delayed either because (1) Sprint and the licensee still have unresolved disputes between them, or (2) no unresolved disputes remain, but the licensee has not provided the required completion certification to Sprint for delivery to the Transition Administrator.²¹ To minimize further delay and expedite completion of the rebanding program, we adopt the following procedures:

12. Licensees that have completed physical reconfiguration as of the effective date of this *Order* and have unresolved disputes with Sprint: To promote facilitation of the dispute resolution process established in the *800 MHz Report and Order*, we direct licensees to provide notice of any unresolved dispute to the Transition Administrator and Sprint within 20 business days of the effective date of this *Order*.²² Thereafter, the licensee and Sprint must enter mediation as directed by the Transition

¹⁸ See Reconfiguration Handbook, pp 123-126 (documentation required).

¹⁹ See *Declaratory Ruling*.

²⁰ In the unlikely event that a rebanding-related claim were to arise after the completion certification has been submitted, e.g., a claim of waste, fraud, or abuse, the aggrieved party could seek recourse through a civil action, but the Commission's dispute resolution processes established in the *800 MHz Report and Order* would no longer be available.

²¹ In some instances, delays occurred when licensees were unable to compile supporting documentation, such as staff timesheets or supplier invoices that had been misplaced or discarded due to the passage of time.

²² Sprint will also notify the Transition Administrator of a dispute or an unresolved issue with a licensee, subject to the same deadline.

Administrator, pursuant to the Commissions' rules.²³ We direct the Transition Administrator to hold mediation sessions each weekday, except for federal holidays. If agreement is not reached after 10 mediation sessions,²⁴ the designated mediator, within 5 business days, will forward the mediation record to the Bureau for decision.²⁵ On notification to the parties by the Transition Administrator that the record has been submitted, the parties have 5 business days to submit statements of position. No responsive pleadings will be accepted.²⁶ If a licensee does not participate in mediation, does not submit a timely statement of position to the Bureau, or does not file a timely petition for reconsideration, application for review, or petition for a *de novo* hearing following a Bureau order adjudicating the dispute, the licensee will be deemed by the Bureau to have completed rebanding, and all of its rights under the Commission's 800 MHz rebanding orders, including, without limitation, the right to the Transition Administrator's dispute resolution process and reimbursement of costs, will be terminated.²⁷

13. Licensees that have completed physical reconfiguration as of the effective date of this *Order*, have no unresolved dispute with Sprint, but have not provided a completion certification to Sprint: Such licensees must submit an executed completion certification to Sprint within 20 business days of the effective date of this *Order*. Upon verification from Sprint that, despite the completion of physical reconfiguration and the absence of any disputes related to costs and expenditures, a licensee has not timely provided a completion certification as required,²⁸ the Bureau will deem the licensee to have completed rebanding and all of its rights under the Commission's 800 MHz rebanding orders, including, without limitation, the right to the Transition Administrator's dispute resolution process and reimbursement of costs, will be terminated.

14. Finally, consistent with the streamlining steps taken above, we adopt an expedited closing process applicable to those licensees that have not completed physical reconfiguration as of the effective date of the instant *Order*. Upon completion of physical reconfiguration, such licensees will have 45 calendar days to either, (1) complete cost reconciliation and submit an executed completion certification to Sprint, or (2) notify the Transition Administrator of any unresolved dispute with Sprint regarding their

²³ See 47 CFR § 90.676(b)(5) (providing that, once band reconfiguration starts in a region, the Transition Administrator will facilitate resolution of disputes by mediation).

²⁴ On notification by parties that additional negotiation time would facilitate identification or resolution of disputes, the Transition Administrator, at its discretion, may allow the parties additional negotiation time under the aegis of a mediator appointed by the Transition Administrator, not to exceed 15 business days.

²⁵ The mediation procedure implemented here is an accelerated version of the mediation process already used when parties are unable to agree on a Frequency Reconfiguration Agreement. See *800 MHz Report and Order*, 19 FCC Rcd at 15071-72, para. 194. The accelerated process dispenses with preparation of a recommended resolution by the Transition Administrator mediator and shortens response times.

²⁶ Any party with standing could dispute the Bureau's decision by filing a timely petition for reconsideration pursuant to 47 CFR § 1.106, or a timely application for review pursuant to 47 CFR § 1.115. In the alternative, any party with standing could seek a *de novo* evidentiary hearing before an administrative law judge pursuant to 47 CFR § 90.677(d)(2). Any such petition must be filed no later than 30 calendar days after the effective date of the Bureau's decision. We note that Sprint is not required to reimburse licensees' fees and expenses associated with rebanding-related proceedings before the Bureau or the Commission. See *Improving Public Safety Communications in the 800 MHz Band*, Second Memorandum Opinion and Order, 22 FCC Rcd 10467, 10483, para. 47 (2007).

²⁷ In instances in which a licensee's rights under the Commission's 800 MHz rebanding orders have been terminated as provided for in this *Order* and *Sixth Further Notice of Proposed Rulemaking*, the Transition Administrator need not provide a Completion Certification to the Commission.

²⁸ After receiving the verification, the Bureau will confirm that physical reconfiguration was in fact completed as of the effective date of this *Order*, that neither Sprint nor the licensee has raised any disputes about the rebanding, and that the licensee has not executed the completion certification.

reconfiguration.²⁹ Licensees will then be subject to the expedited closing or dispute resolution procedures described above, as applicable.

15. We direct the Transition Administrator to revise its processes and documentation in accordance with the foregoing and we modify our procedures accordingly. Notice and comment are not necessary here because the changes that streamline the filings required of the parties to rebanding agreements and the process by which we direct the Transition Administrator to review those filings are “rules of agency organization, procedure, or practice.”³⁰

IV. SIXTH FURTHER NOTICE OF PROPOSED RULEMAKING

16. With experience gained in the implementation of rebanding thousands of licensee systems, we have identified certain provisions required by the *800 MHz Report and Order* that we believe safely may be eliminated in the interest of the timely conclusion of the rebanding project. More specifically, we believe that an annual auditing requirement, as well as the responsibility of the Transition Administrator to review and approve amendments to licensee Frequency Reconfiguration Agreements with respect to cost credibility, may no longer be of benefit and, if retained, potentially would increase the time necessary to reach project conclusion.

A. Transition Administrator Auditing of Sprint Expenditures

17. As described *supra*, at the outset of the rebanding program, the Commission imposed an “anti-windfall” obligation on Sprint to ensure that Sprint did not reap an economic windfall from the spectrum award that Sprint received in exchange for undertaking the financial obligation to support 800 MHz rebanding.³¹ The Transition Administrator made creditability assessments of each rebanding expenditure submitted by Sprint to determine whether Sprint could credit the expenditure against the anti-windfall threshold.³² The *800 MHz Report and Order* required the Transition Administrator to provide the Bureau with an annual, independently audited, statement of program expenditures.³³ These audited statements were used to further validate Sprint’s expenditures that could be credited toward its anti-windfall obligation.³⁴

18. With the anti-windfall threshold having been met,³⁵ we see no programmatic need for the Transition Administrator to continue with annual auditing of Sprint’s rebanding expenditures. We therefore propose to eliminate the Section 90.676 (b)(4) requirement that the Transition Administrator

²⁹ Sprint will also notify the Transition Administrator of a dispute or an unresolved issue with a licensee, subject to the same deadline.

³⁰ Administrative Procedure Act, 5 U.S.C. § 553(b)(A) (APA). *See, e.g., Jem Broadcasting Co. v. FCC*, 22 F.3d 320, 326 (D.C. Cir. 1994) (Commission adoption of a “hard look” policy for F.M. Radio applications was procedural rule for which notice and comment was not required under the APA), *citing Batterton v. Marshall*, 648 F.2d 694, 707 (D.C.Cir.1980) (“critical feature” of the procedural exception “is that it covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency”). *See also, Neighborhood TV Co. v. FCC*, 742 F.2d 629, 637 (D.C.Cir.1984) (upholding the adoption of interim processing rules as a procedural rule change not requiring notice and comment).

³¹ *See 800 MHz Report and Order*, 19 FCC Rcd at 15123-25.

³² *Sprint Nextel Corp., Petition for Declaratory Ruling*, Memorandum Opinion and Order and Order of Proposed Modification, 29 FCC Rcd 11549, 11554, para. 17 (2014) (*Proposed Modification Order*) (“Specifically, the TA evaluates costs submitted to it by Sprint and determines whether such costs are creditable as against the potential anti-windfall payment.”).

³³ *Id.* 29 FCC Rcd at 15073, para. 196; 47 CFR §90.676 (b)(4).

³⁴ *See id.* at 14989, 15124, paras. 35, 330.

³⁵ *See Declaratory Ruling*.

furnish the Commission with an annual audit of rebanding expenditures and propose that no further financial reconciliation be required from the Transition Administrator.³⁶ We seek comment on this proposal. Are there any other underlying requirements or processes that are no longer necessary given that the Transition Administrator need not assess the credibility of Sprint's expenditures against the anti-windfall threshold? We seek comment on any such requirements but note that under our proposed approach, the Transition Administrator and Commission staff would continue to conduct various tracking, reporting and analytical functions directed to the progress of rebanding, the *bona fides* of rebanding expenditures and Sprint's compliance with its responsibilities under the *800 MHz Report and Order* and subsequent rebanding orders.³⁷

B. Transition Administrator Review and Approval of Frequency Reconfiguration Agreement Changes

19. The rebanding of each licensee's 800 MHz communications system is done pursuant to a Frequency Reconfiguration Agreement—a contract between Sprint and the licensee establishing the terms, conditions and costs associated with the system's rebanding. The Frequency Reconfiguration Agreement is negotiated between the two parties and, if they are unable to agree, they are required to submit to mediation of their differences. If mediation is unsuccessful, disputed matters are submitted to the Bureau for resolution. Throughout the process, the parties are assisted by the 800 MHz Transition Administrator which provides mediation services in its role as facilitator for resolving disputes over relocation cost estimates between the incumbent and Sprint,³⁸ and currently reviews and approves each 800 MHz licensee's Frequency Reconfiguration Agreement or amendment thereto.

20. The requirement that the Transition Administrator review Frequency Reconfiguration Agreements ensured that agreements comported with two principles: Sprint must pay the licensee for facilities comparable to those the licensee had prior to rebanding; and the licensee was entitled to be reimbursed only for expenses reasonably necessary to achieve comparable facilities.³⁹ An incidental

³⁶ 47 CFR § 90.676(b)(4). Our proposal herein extends to the annual audits that otherwise would have been due for: (i) the year ended December 31, 2017 and the period from August 6, 2004 (Inception) through December 31, 2017 and (ii) the year ended December 31, 2018 and the period from Inception through December 31, 2018. The *800 MHz Report and Order* also required the Transition Administrator to provide a financial reconciliation, or true-up, at the completion of the 800 MHz rebanding program to confirm that no anti-windfall payment was due. *800 MHz Report and Order* at 14989, 15124, paras. 35, 330. The Transition Administrator's audited Statement of Program Expenditures for the year ended December 31, 2016 and the period from Inception through December 31, 2016 stated that the submission was intended to serve as the required true-up. In response, the Bureau found that it was "satisfied that the Transition Administrator has correctly determined, based on documentation provided by Sprint and independently audited financial statements commissioned by the Transition Administrator, that Sprint has exceeded \$2.8 billion in creditable expenses associated with rebanding 800 MHz licensees and clearing the 1.9 GHz band of incumbents." See *Declaratory Ruling*, 32 FCC Rcd at 7531, para. 8.

³⁷ Under our proposal, the Transition Administrator will continue to be responsible for reviewing the sufficiency of the Letter of Credit that the Commission required Sprint to maintain as financial security for its rebanding performance. The Transition Administrator monitors Sprint's expenditures to ensure that the Letter of Credit balance is sufficient to cover all remaining licensee expenses that Sprint is obligated to pay. Similarly, the Bureau authorizes reductions in the Letter of Credit when requested by Sprint and recommended by the Transition Administrator based on the Transition Administrator's analysis of Sprint's expenditures and the amount that the Transition Administrator projects as necessary to complete rebanding, plus an additional amount to account for contingencies. *Proposed Modification Order*, 29 FCC Rcd at 11550, n.10 (affirming the Bureau's ability to reduce Sprint's Letter of Credit and citing a series of Bureau-approved reductions in the letter of credit balance from the original \$2.5 billion). We also note that the Transition Administrator would continue to have access to documentation of expenditures in support of its role as mediator in any disputes between Sprint and the licensees over coverage of reasonable relocation expenses.

³⁸ See *800 MHz Report and Order* at 15074, para. 198.

³⁹ See *id.* at 15077 para. 201.

benefit of the Transition Administrator's review was that it guarded against Sprint agreeing to licensees' unrealistically high rebanding costs in an attempt to more rapidly reach the anti-windfall expense threshold that would allow it to avoid a payment to the Treasury.⁴⁰

21. With elimination of Sprint's anti-windfall obligation, the possibility of artificial inflation of rebanding expenses is no longer an issue to which the Transition Administrator need address itself. Only one Frequency Reconfiguration Agreement remains to be approved and potential amendments to Frequency Reconfiguration Agreements are likely to be few given the small number of licensees that have not completed rebanding. There also is an ample body of precedent from decisions issued by the Bureau establishing what is and is not necessary to supply licensees with comparable facilities at minimum reasonable cost, such that licensees are unlikely to make unreasonable cost claims. Moreover, with Sprint no longer having an incentive to support excessive licensee costs so that it would more rapidly meet the anti-windfall threshold, it is likely that Sprint would resist overreaching by licensees because it no longer is to Sprint's advantage.

22. Taking all of the above factors into consideration, we perceive little or no benefit in having the Transition Administrator continue to review amendments to Frequency Reconfiguration Agreements with respect to cost creditability – a determination rendered unnecessary by the Bureau's declaratory ruling.⁴¹ We do, however, intend that the Transition Administrator continue to ascertain the overall cost of Frequency Reconfiguration Agreement amendments to the extent such cost may affect their recommendations to the Commission respecting reductions in the amount of the Letter of Credit.⁴² We also expect the Transition Administrator to continue to respond to any requests for mediation from a licensee or Sprint in the Transition Administrator's role as the analogue of a special master in a judicial proceeding.⁴³ We note, however, that although the Transition Administrator may incidentally review a Frequency Reconfiguration Agreement amendment while assisting the parties in mediation, we do not propose that the Transition Administrator be responsible for approving or disapproving such amendments.⁴⁴

23. By proposing to eliminate the time-consuming and expensive effort inherent in the Transition Administrator reviewing and approving every Frequency Reconfiguration Agreement amendment, we believe we can reach a timelier and less burdensome completion of the rebanding program. We thus seek comment on our proposal to eliminate the requirement that the Transition Administrator review and approve all amendments to Frequency Reconfiguration Agreements as outlined above.

V. PROCEDURAL MATTERS

24. *Comment Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R §§ 1.415, 1.419, interested parties may file comments related to paragraphs 16 through

⁴⁰ See *Supplemental Order* at 25151, para. 70 (stating that the Transition Administrator serves, "*inter alia*, as a watchdog over excess transactional costs and 'goldplating'").

⁴¹ See *Declaratory Ruling, supra*. The Transition Administrator ensures that the Letter of Credit amount remains adequate to complete rebanding (plus an amount to cover contingencies) in the event of a Sprint default.

⁴² *Proposed Modification Order*, 29 FCC Rcd at 11550, n.10 (affirming the Bureau's ability to reduce Sprint's Letter of Credit and citing a series of Bureau-approved reductions in the letter of credit balance from the original \$2.5 billion).

⁴³ "The Transition Administrator will serve both a ministerial role and a function similar to a special master in a judicial proceeding. In the latter role, the Transition Administrator may mediate any disputes that may arise in the course of band reconfiguration." *800 MHz Report and Order*, 19 FCC Rcd at 15071, para. 194.

⁴⁴ We note, however, that the Transition Administrator's obligation to review any non-payment-related Frequency Reconfiguration Agreement amendments (*e.g.*, changes in the replacement frequencies assigned to a licensee) would be unaffected by this proposal.

21, *supra*, and reply comments on or before the dates indicated on the first page of this document. **All filings related to the Order and Sixth Further Notice of Proposed Rulemaking should refer to WT Docket 02-55.** 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 (1998).

25. Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/>.

26. Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing.

27. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

28. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

29. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

30. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

31. *Accessible Formats.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

32. *Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, *see* 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to this *Order and Sixth Further Notice of Proposed Rulemaking* as set forth above and have a separate and distinct heading designating them as responses to the IRFA.

VI. ORDERING CLAUSES

33. Accordingly, **IT IS ORDERED**, pursuant to Sections 4(i), 4(j), 301, 303, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 301, 303, and 403, that this *Order and Sixth Further Notice of Proposed Rulemaking* **IS HEREBY ADOPTED**.

34. **IT IS FURTHER ORDERED**, that this *Order and Sixth Further Notice of Proposed Rulemaking* shall be effective 30 days after its publication in the Federal Register.

35. **IT IS FURTHER ORDERED** that the Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this *Order and Sixth Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, and shall cause it to be published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Proposed Rules

The Federal Communications Commission proposes to amend 47 CFR part 90 as follows:

PART 90 – PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401-1473.

2. Amend Section 90.676 by removing paragraph (b)(4) and reserving it.

APPENDIX B

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this 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 the *Sixth Further Notice of Proposed Rulemaking (Sixth 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 for comments provided on the first page of the *Sixth FNPRM*. The Commission will send a copy of the *Order and Sixth Further Notice of Proposed Rulemaking*² including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).³ In addition, the *Order and Sixth Further Notice of Proposed Rulemaking* and the IRFA (or summaries thereof) will be published in the Federal Register.⁴

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

2. The Commission initiates this rulemaking proceeding to seek comment on certain proposals designed to improve the efficiency of the 800 MHz band reconfiguration process set out in the *800 MHz Report and Order*,⁵ and to advance the conclusion the rebanding process. The Commission initiated the 800 MHz rebanding program to alleviate harmful interference to 800 MHz public safety radio systems caused by their proximity in the band to the 800 MHz commercial cellular system operated by Sprint Corporation (Sprint). To increase the spectral separation between Sprint and public safety, Sprint was required to relocate its system to spectrum at the upper end of the band and public safety licensees were relocated to the lower end of the band. Sprint was also required to pay the accumulated relocation costs of public safety licensees as well as its own relocation costs, and in exchange Sprint received a separate block of spectrum outside of the 800 MHz band from the Commission. At the outset of the rebanding program, the Commission imposed an “anti-windfall” obligation on Sprint to ensure that Sprint did not reap an economic windfall from the spectrum award that Sprint received in exchange for undertaking the financial obligation to support 800 MHz rebanding.

3. In the *Sixth FNPRM* the Commission proposes to eliminate, certain obligations imposed on the 800 MHz Transition Administrator which are no longer necessary in light of the Public Safety and Homeland Security Bureau’s order determining that Sprint no longer is responsible for making a windfall

¹ See 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² Notice and comment are not required for matters addressed in the Order because the changes that streamline the filings required of the parties to rebanding agreements and the process by which the Commission directs the TA to review those filings are “rules of agency organization, procedure, or practice.” Administrative Procedure Act, 5 U.S.C. § 553(b)(A) (APA). See, e.g., *Jem Broadcasting Co. v. FCC*, 22 F.3d 320, 326 (D.C. Cir. 1994) (Commission adoption of a “hard look” policy for F.M. Radio applications was procedural rule for which notice and comment was not required under the APA, citing *Batterton v. Marshall*, 648 F.2d 694, 707 (D.C.Cir.1980) (“‘critical feature’ of the procedural exception ‘is that it covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency’”). See also, *Neighborhood TV Co. v. FCC*, 742 F.2d 629, 637 (D.C.Cir.1984) (upholding the adoption of interim processing rules as a procedural rule change not requiring notice and comment).

³ See 5 U.S.C. § 603(a).

⁴ *Id.*

⁵ *Improving Public Safety Communications in the 800 MHz Band*, WT Docket 02-55, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969 (2004), amended by Erratum, WT Docket 02-55 (Sep. 10, 2004); Second Erratum, 19 FCC Rcd 19651 (2004); Third Erratum, 19 FCC Rcd 21818 (2004).

payment to the Treasury. The proposed changes will apply to 800 MHz licensees that either (a) have not completed the rebanding process; or (b) having completed the rebanding process have not fulfilled the contract-closing obligations imposed on them by the Commission's rules and their Frequency Reconfiguration Agreements (FRAs) with Sprint. The proposed changes make relatively small adjustments to the policies that affect 800 MHz Private Land Mobile Radio (PLMR) licensees. Additionally, the proposed changes will also apply to the 800 MHz Transition Administrator and Sprint, which as discussed below are not small entities for purposes of the RFA.

4. The Commission tentatively concludes that the changes proposed in the *Sixth FNPRM* are necessary to accelerate the conclusion of the rebanding proceeding initiated in 2002, thereby lessening the logistic and economic burdens that certain procedures impose on the Commission, the 800 MHz Transition Administrator and Sprint. The Commission's objectives are to improve the rebanding process now that certain procedures no longer are necessary and confer no benefit on the parties to 800 MHz rebanding.

B. Legal Basis

5. The proposed action is authorized pursuant to Sections 4(i),4(j), 301, 303, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i),154(j), 301, 303, and 403.

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

6. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules.⁶ The RFA generally defines the term "small entity" as encompassing the terms "small business," "small organization," and "small governmental entity."⁷ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁸ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁹

7. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, three broad groups of small entities that could be directly affected herein.¹⁰ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.¹¹ These types of small businesses represent

⁶ 5 U.S.C. § 603(b)(3).

⁷ 5 U.S.C. § 601(6).

See 5 U.S.C. § 603(a).

⁸ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

⁹ 15 U.S.C. § 632.

¹⁰ *See* 5 U.S.C. § 601(3)-(6).

¹¹ *See* SBA, Office of Advocacy, "Frequently Asked Questions, Question 1 – What is a small business?" https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf, June 2016)

99.9% of all businesses in the United States which translates to 28.8 million businesses.¹²

8. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹³ Nationwide, as of Aug 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).¹⁴

9. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁵ U.S. Census Bureau data from the 2012 Census of Governments¹⁶ indicates that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁷ Of this number there were 37, 132 General purpose governments (county¹⁸, municipal and town or township¹⁹) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts²⁰ and special districts²¹) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of

¹² See SBA, Office of Advocacy, “Frequently Asked Questions, Question 2- How many small businesses are there in the U.S.?” https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016).

¹³ 5 U.S.C. § 601(4).

¹⁴ Data from the Urban Institute, National Center for Charitable Statistics (NCCS) reporting on nonprofit organizations registered with the IRS was used to estimate the number of small organizations. Reports generated using the NCCS online database indicated that as of August 2016 there were 356,494 registered nonprofits with total revenues of less than \$100,000. Of this number 326,897 entities filed tax returns with 65,113 registered nonprofits reporting total revenues of \$50,000 or less on the IRS Form 990-N for Small Exempt Organizations and 261,784 nonprofits reporting total revenues of \$100,000 or less on some other version of the IRS Form 990 within 24 months of the August 2016 data release date. See <http://nccs.urban.org/sites/all/nccs-archive/html/tablewiz/tw.php> where the report showing this data can be generated by selecting the following data fields: Report: “The Number and Finances of All Registered 501(c) Nonprofits”; Show: “Registered Nonprofits”; By: “Total Revenue Level (years 1995, Aug to 2016, Aug)”; and For: “2016, Aug” then selecting “Show Results”.

¹⁵ 5 U.S.C. § 601(5).

¹⁶ See 13 U.S.C. § 161. The Census of Government is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Program Description Census of Government <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=program&id=program.en.COG#>.

¹⁷ See U.S. Census Bureau, 2012 Census of Governments, Local Governments by Type and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG02.US01>. Local governmental jurisdictions are classified in two categories - General purpose governments (county, municipal and town or township) and Special purpose governments (special districts and independent school districts).

¹⁸ See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>. There were 2,114 county governments with populations less than 50,000.

¹⁹ See U.S. Census Bureau, 2012 Census of Governments, Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States – States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>. There were 18,811 municipal and 16,207 town and township governments with populations less than 50,000.

²⁰ See U.S. Census Bureau, 2012 Census of Governments, Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. There were 12,184 independent school districts with enrollment populations less than 50,000.

²¹ See U.S. Census Bureau, 2012 Census of Governments, Special District Governments by Function and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG09.US01>. The U.S. Census Bureau data did not provide a population breakout for special district governments.

governments in the local government category shows that the majority of these governments have populations of less than 50,000.²² Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of “small governmental jurisdictions.”²³

10. *Public Safety Radio Licensees.* As a general matter, Public Safety Radio Pool licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.²⁴ Because of the vast array of public safety licensees, the Commission has not developed a small business size standard specifically applicable to public safety licensees. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engaged in radiotelephone communications. The appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees.²⁵ For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.²⁶ Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.²⁷ Thus under this category and the associated size standard, the Commission estimates that the majority of firms can be considered small.

11. *Private Land Mobile Radio Licensees.* Private land mobile radio (PLMR) systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. Companies of all sizes operating in all U.S. business categories use these radios. Because of the vast array of PLMR users, the Commission has not developed a small business size standard specifically applicable to PLMR users. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engaged in radiotelephone communications. The appropriate size standard for this category under SBA rules is that such a business

²² See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States - <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>; Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States-States - <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>; and Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. While U.S. Census Bureau data did not provide a population breakout for special district governments, if the population of less than 50,000 for this category of local government is consistent with the other types of local governments the majority of the 38, 266 special district governments have populations of less than 50,000.

²³ *Id.*

²⁴ See subparts A and B of Part 90 of the Commission’s Rules, 47 C.F.R. §§ 90.1-90.22. Police licensees serve state, county, and municipal enforcement through telephony (voice), telegraphy (code), and teletype and facsimile (printed material). Fire licensees are comprised of private volunteer or professional fire companies, as well as units under governmental control. Public Safety Radio Pool licensees also include state, county, or municipal entities that use radio for official purposes. State departments of conservation and private forest organizations comprise forestry service licensees that set up communications networks among fire lookout towers and ground crews. State and local governments are highway maintenance licensees that provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. Emergency medical licensees use these channels for emergency medical service communications related to the delivery of emergency medical treatment. Additional licensees include medical services, rescue organizations, veterinarians, persons with disabilities, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities.

²⁵ See 13 CFR § 121.201, NAICS code 517210.

²⁶ U.S. Census Bureau, 2012 Economic Census of the United States, Table EC1251SSSZ5, Information: Subject Series: Estab. and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210 (rel. Jan. 8, 2016). https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517210.

²⁷ *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

is small if it has 1,500 or fewer employees.²⁸ For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.²⁹ Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.³⁰ Thus under this category and the associated size standard, the Commission estimates that the majority of PLMR Licensees are small entities.

12. According to the Commission's records, a total of approximately 400,622 licenses comprise PLMR users.³¹ Of this number there are a total of approximately 3,174 PLMR licenses in the 4.9 GHz band;³² 29,187 PLMR licenses in the 800 MHz band;³³ and 3,374 licenses in the frequencies range 173.225 MHz to 173.375 MHz.³⁴ The Commission does not require PLMR licensees to disclose information about number of employees, and does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. The Commission however believes that a substantial number of PLMR licensees may be small entities despite the lack of specific information.

13. *Specialized Mobile Radio Licenses.* The Commission awards "small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years.³⁵ The Commission awards "very small entity" bidding credits to firms that had revenues of no more than \$3 million in each of the three previous calendar years.³⁶ The SBA has approved these small business size standards for the 900 MHz Service.³⁷ The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995 and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million

²⁸ See 13 CFR § 121.201, NAICS code 517210.

²⁹ U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, Information: Subject Series: Estab. and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210. https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517210.

³⁰ *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

³¹ This figure was derived from Commission licensing records as of September 19, 2016. Licensing numbers change on a daily basis. This does not indicate the number of licensees, as licensees may hold multiple licenses. There is no information currently available about the number of PLMR licensees that have fewer than 1,500 employees.

³² Based on an FCC Universal Licensing System search of January 26, 2018. Search parameters: Radio Service = PA – Public Safety 4940-4990 MHz Band; Authorization Type = Regular; Status = Active.

³³ Based on an FCC Universal Licensing System search of May 15, 2017. Search parameters: Radio Service = GB, GE, GF, GJ, GM, GO, GP, YB, YE, YF, YJ, YM, YO, YP, YX; Authorization Type = Regular; Status = Active.

³⁴ This figure was derived from Commission licensing records as of August 16, 2013. Licensing numbers change daily. We do not expect this number to be significantly smaller today. This does not indicate the number of licensees, as licensees may hold multiple licenses. There is no information currently available about the number of licensees that have fewer than 1,500 employees.

³⁵ 47 CFR § 90.814(b)(1).

³⁶ *Id.*

³⁷ See Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (filed Aug. 10, 1999) (*Alvarez Letter 1999*).

size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.³⁸ A second auction for the 800 MHz band conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.³⁹

14. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band and qualified as small businesses under the \$15 million size standard.⁴⁰ In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded.⁴¹ Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all four auctions, 41 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small businesses.

15. In addition, there are numerous incumbent site-by-site SMR licenses and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees, which is the SBA-determined size standard.⁴² We assume, for purposes of this analysis, that all of the remaining extended implementation authorizations are held by small entities, as defined by the SBA.

16. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.⁴³ The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.⁴⁴ For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.⁴⁵ Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.⁴⁶ Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

17. The Commission's own data—available in its Universal Licensing System—indicate that,

³⁸ See *Correction to Public Notice DA 96-586 "FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,"* Public Notice, 18 FCC Rcd 18367 (WTB 1996).

³⁹ See *Multi-Radio Service Auction Closes*, Public Notice, 17 FCC Rcd 1446 (WTB 2002).

⁴⁰ See *800 MHz Specialized Mobile Radio (SMR) Service General Category (851–854 MHz) and Upper Band (861–865 MHz) Auction Closes; Winning Bidders Announced*, Public Notice, 15 FCC Rcd 17162 (2000).

⁴¹ See *800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced*, Public Notice, 16 FCC Rcd 1736 (2000).

⁴² See generally 13 CFR § 121.201, NAICS code 517210.

⁴³ U.S. Census Bureau, 2012 NAICS Definitions, "517210 Wireless Telecommunications Carriers (Except Satellite)," See <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en./ECN.NAICS2012.517210>.

⁴⁴ 13 CFR § 121.201, NAICS code 517210.

⁴⁵ U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210. https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517210.

⁴⁶ *Id.* Available census data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

as of August 31, 2018 there are 265 Cellular licensees.⁴⁷ The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.⁴⁸ Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees.⁴⁹ Thus, using available data, we estimate that the majority of wireless firms can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

18. The requirement that the Commission proposes to eliminate in the *Sixth FNPRM* will not impose new or additional reporting, recordkeeping, or other compliance obligations on a substantial number of small entities. Nor will small entities be required to hire attorneys, engineers, consultants, or other professionals to comply with the proposed rule change, if adopted. Small entities that are 800 MHz licensees participating in the rebanding program who have negotiated FRAs with Sprint will no longer be required to have any costs/payments covered in the FRA or in any FRA amendments pre-approved by the TA which should yield them the benefit of faster completion of their rebanding process.

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

19. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.⁵⁰

20. The *Sixth FNPRM* is deregulatory in nature and will not have a significant economic impact on a substantial number of small entities. As mentioned above small entities should benefit the proposed rule elimination with faster completion of their rebanding process. Faster completion should result in cost savings for such entities. The alternative of continuing to require a pre-approval requirement which is no longer needed would impose unnecessary burdens on and would not further or facilitate prompt completion of the rebanding process. We note in the *Sixth FNPRM* that we will to continue to require 800 MHz licensees to get pre-approval from the TA for any non-payment related FRA amendments and to have the Bureau address any payment related issues that arise from FRA amendments. However, to assist in the Commission's evaluation of the economic impact on small entities, and to better explore options and alternatives, the Commission has sought comment from the parties on these matters. The Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments and recommendations filed in response to the *Sixth FNPRM*.

⁴⁷ See <http://wireless.fcc.gov/uls>. For the purposes of this IRFA consistent with Commission practice for wireless services, the Commission estimates the number of licensees based on the number of unique FCC Registration Numbers.

⁴⁸ See Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

⁴⁹ See *id.*

⁵⁰ 5 U.S.C. § 603(c)(1)-(4).

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

21. None.

**STATEMENT OF
CHAIRMAN AJIT PAI**

Re: *Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55.

2004 was a notable year in many respects. For example, it was the last year the Expos franchise would play in Montreal before relocating to become the Washington Nationals. It was also the year the FCC embarked on reconfiguring the 800 MHz band to alleviate harmful interference by Sprint's commercial "Enhanced" Specialized Mobile Radio System to public safety radio systems using this spectrum.

Now, just as the Nationals' quest to win the World Series is tantalizingly close to success, our 800 MHz rebanding journey is nearing a successful conclusion as well. Both of these efforts have taken a lot of time and hard work. It took the Nationals over 2,000 games over 15 seasons to reach the World Series. And over the last fifteen years, 2,088 public safety licensees have successfully completed physical reconfiguration of their radio systems. The Nationals now need only two more wins to capture the championship. And only 19 licensees, all in the Mexican border region, still need to complete rebanding.

So today, as the Nationals gear up for Game 3 of the World Series, we take action to expedite the completion of the rebanding process. By streamlining our processes, I'm confident that we'll be able to bring this 15-year project to a swifter resolution, which will be good for all involved.

And while the Nationals have stars like Anthony Rendon and Juan Soto who have helped bring the National League pennant to Washington, we have our own stars who have worked hard on the 800 MHz rebanding effort and this item. In particular, I'd like to thank Emily Talaga from the Office of Economics and Analytics; Deborah Broderson, David Horowitz, and William Richardson from the Office of the General Counsel; John Evanoff, David Furth, Brian Marengo, Roberto Mussenden, Renee Roland, and Michael Wilhelm from the Public Safety and Homeland Security Bureau; and Scot Stone from the Wireless Telecommunications Bureau.

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55.

This item signifies the dubious reality that fourteen years later we are still trying to conclude the 800 MHz rebanding project, initiated to protect public safety and critical infrastructure systems from receiving harmful interference from commercial operations. Remember this the next time someone tries to argue the Commission can quickly do this or that. In this specific instance, 2,093 out of 2,107 licensees have been reconfigured, with approximately 214 licensees left to close their contracts with Sprint. Why there are still outstanding issues is unclear, but what we do know is that this process still is not done. So, today's order takes definitive steps to streamline the certification process and seeks comment on relieving the parties of additional burdens that have outlived their usefulness in order to bring this program to finality. This makes abundant sense, and I approve.

I am sure many lessons have been learned through this process and, if we knew back then what we know today, things may have been done differently. For those of you keeping track of the numbers, there are 14 licensees located by the Mexican border that still have not been reconfigured, highlighting that cross-border coordination can be extremely tricky. Currently, the Commission and others are dealing with a similar problem involving the channelization and cross-border interference issues between some of our largest wireless providers, FirstNet, and a Mexican licensee in the 700 MHz band. In that instance, we must finalize a plan between the FCC, State Department, and Mexican government to bring this to a resolution immediately, while providing the U.S. and Mexican providers the flexibility to negotiate an alternative solution later, if necessary or possible.

In the meantime, I am pleased to see the 800 MHz effort come closer to completion and I thank all of those who made today's item possible.