

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

In the Matter of
Shared Use of the 42-42.5 GHz Band
Use of Spectrum Bands Above 24 GHz For
Mobile Radio Services
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WT Docket No. 23-158
GN Docket No. 14-177

NOTICE OF PROPOSED RULEMAKING

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By the Commission: Chairwoman Rosenworcel issuing a statement.

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I. INTRODUCTION

1. In order to bring next generation services to consumers, support expanding access for 5G, and prepare for 6G and beyond, we seek ways to ensure that spectrum is used efficiently and effectively. As more advanced, spectrum-intensive technologies develop, finding new ways to increase access to spectrum will only become more important. Innovative, non-exclusive spectrum access models have the potential to provide solutions in this evolving space. This Notice of Proposed Rulemaking (Notice) seeks comment on how such models might be deployed in the 42 GHz band (42-42.5 GHz) to provide increased access to high-band spectrum, particularly by smaller wireless service providers, and to support efficient,

1 High-band spectrum is generally defined as above 24 GHz. See GAO Report, 5G Deployment: FCC Needs Comprehensive Strategic Planning to Guide Its Efforts, GAO 20-468, at 4 (2020), https://www.gao.gov/products/gao-20-468.

intensive use of the band. We also seek comment on how potential sharing and licensing regimes might lower barriers to entry for smaller or emerging wireless service providers, encourage competition, and prevent spectrum warehousing.

II. BACKGROUND

2. As part of a multiyear effort to enable deployment of advanced wireless services such as 5G, the Commission has made 4.95 gigahertz of spectrum above 24 GHz available on an exclusively-licensed geographic area basis.² The Commission has already established service and licensing rules for the 24 GHz, 28 GHz, Upper 37 GHz, 39 GHz, and 47 GHz bands, all of which are available on either a county or a Partial Economic Area (PEA) basis.³ The Commission has held three auctions to award licenses in these bands, the most recent of which was completed in 2020.⁴

3. The Commission also has made available a significant amount of high-band spectrum for unlicensed use. The rules for unlicensed device use at 57-64 GHz were expanded in 2016 to include 64-71 GHz, bringing the total amount of high-band spectrum available on an unlicensed basis to 14 gigahertz.⁵

4. The 42 GHz band is currently allocated to non-Federal Fixed and Mobile services on a primary basis; there is no Federal allocation in the band.⁶ Although the Commission sought comment previously on proposed service rules for this band among other bands above 24 GHz, none are currently in place, and the band has no incumbent licensees.⁷ The lower adjacent 40-42 GHz band has been designated for satellite use.⁸ The upper adjacent 42.5-43.5 GHz band is allocated to radio astronomy

² 47 CFR §§ 30.4, 30.5.

³ See *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014, 8154, para. 403 (2016); *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services, et al.*, Second Report and Order, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, and Memorandum Opinion and Order, 32 FCC Rcd 10988 (2017); *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services, et al.*, Third Report and Order, Memorandum Opinion and Order, and Third Further Notice of Proposed Rulemaking, 33 FCC Rcd. 5576 (2018); *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services, et al.*, Fourth Report and Order, 33 FCC Rcd 12168 (2018). See also 47 CFR §§ 30.4, 30.5. When citing to the *Report and Order* portions of the 2016 or 2018 documents, we will refer to the *First R&O* or *Third R&O*, respectively. When citing to the *Memorandum Opinion and Order* portion of the 2018 document, we will refer to the *MO&O*. When citing to the *Further Notice of Proposed Rulemaking* portion of the 2016 or 2018 document, we will refer to the *First FNPRM* or *Third FNPRM*, respectively.

⁴ See *Incentive Auction of Upper Microwave Flexible Use Service Licenses in the Upper 37 GHz, 39 GHz, and 47 GHz Bands for Next-Generation Wireless Services Closes*, AU Docket No. 19-59, Public Notice, DA 20-253 (OEA-WTB 2020).

⁵ *First R&O*, 31 FCC Rcd at 8062-66, paras. 125-131.

⁶ 47 CFR § 2.106.

⁷ See *First NPRM*, 31 FCC Rcd at 8153-55, paras. 400-407, *Third NPRM*, 33 FCC Rcd at 5595-5600, paras. 47-57. Nine experimental licenses are authorized for testing using this frequency range. Pursuant to the Commission's rules, operation of an experimental radio station is permitted only on the condition that harmful interference is not caused to licensees. If harmful interference to an established radio service occurs, upon becoming aware of such harmful interference the Experimental Radio Service licensee must immediately cease transmissions. See 47 CFR § 5.84.

⁸ See *Allocation and Designation of Spectrum for Fixed-Satellite Services in the 37.5-38.5 GHz, 40.5-41.5 GHz and 48.2-50.2 GHz Frequency Bands; Allocation of Spectrum to Upgrade Fixed and Mobile Allocations in the 40.5-42.5 GHz Frequency Band; Allocation of Spectrum in the 46.9-47.0 GHz Frequency Band for Wireless Services; and Allocation of Spectrum in the 37.0-38.0 GHz and 40.0-40.5 GHz for Government Operations*, Second Report and Order, 18 FCC Rcd 25428, 25434, para. 14 (2003) (*V-Band Second Report and Order*).

services (RAS) on a primary basis for Federal and non-Federal use and to the Federal fixed, fixed-satellite (Earth-to-space), and mobile—except aeronautical mobile—services on a primary basis.⁹

5. The Commission previously sought comment on a proposal to authorize flexible fixed and mobile operations in the 42 GHz band under the new part 30 Upper Microwave Flexible Use Service (UMFUS) rules, but only on the condition that adjacent channel RAS at 42.5-43.5 GHz could be protected.¹⁰ Specifically, the Commission sought comment and detailed information on what protections should be established for this adjacent band—for example, whether out-of-band emission limits into the 42.5-43.5 GHz band should be established or whether it was necessary to create a guard band below 42.5 GHz.¹¹ The Commission also sought comment on the appropriate band plan for the 42 GHz band, including whether the band should be licensed as a single channel, split into two channels, or split into multiple 100 megahertz channels.¹² The Commission proposed licensing the band geographically using PEAs.¹³

6. Pursuant to the directives in the MOBILE NOW Act,¹⁴ the Commission later included in the *Third FNPRM* requests for further comment on a regulatory framework to enable licensed and/or unlicensed uses of the 42 GHz band.¹⁵ The Commission received 17 comments and six reply comments to the *Third FNPRM* relating to the 42 GHz band; a list of these filers and *ex parte* participants addressing the 42 GHz band is contained in Appendix B.¹⁶

III. DISCUSSION

A. Potential Benefits of Shared Licensing

7. Millimeter wave¹⁷ transmissions have a shorter propagation range than lower-frequency spectrum and are blocked by walls and other obstacles, making it easier to reuse the same band or channel within a smaller geographic area. Technological advances such as MIMO (multiple-input multiple-output) and beamforming antennas offer additional possibilities for reuse between multiple operators. Given that the Commission already has offered both traditionally-licensed spectrum (on a geographic basis) and made spectrum available on a flexible basis for unlicensed devices in the millimeter wave bands, and that the characteristics of millimeter wave spectrum lend themselves to sharing and reuse, we seek to explore how novel approaches to shared licensing may support increased efficiency and intensity of use among a wider range of users within this millimeter wave spectrum.

⁹ 47 CFR § 2.106. Footnote US211 urges applicants for airborne or space stations assignments in the 40.5-42.5 GHz band to take all practicable steps to protect radio astronomy observations in the 42.5-43.5 GHz band from harmful interference. 47 CFR § 2.106 n.US211.

¹⁰ *First NPRM*, 31 FCC Rcd at 8154, para. 403.

¹¹ *First FNPRM*, 31 FCC Rcd at 8154, para. 405.

¹² *First FNPRM*, 31 FCC Rcd at 8154, para. 406.

¹³ *First FNPRM*, 31 FCC Rcd at 8154, para. 403.

¹⁴ MOBILE NOW Act, Pub. L. No. 115-141, Div. P, tit. VI, 132 Stat. 1097 (2018), § 604(a), (b)(1), (b)(2) (codified at 47 U.S.C. § 1503) (requiring the Commission to publish a Notice of Proposed Rulemaking to consider service rules to authorize mobile or fixed terrestrial wireless operations, including for advanced mobile service operations, in the 42 GHz band).

¹⁵ *Third FNPRM*, 33 FCC Rcd at 5595-5600, paras. 47-57.

¹⁶ When citing comments to the *Third FNPRM*, we will use the short name of the commenter contained in Appendix B, followed by the words “Comments” or “Reply Comments.” When citing comments to the 2016 *FNPRM*, we will use the short name of the commenter followed by “First FNPRM Comments” or “First FNPRM Reply Comments.” Similarly, for *ex parte* filings, we will use the name of the commenter along with the date the *ex parte* was filed as listed in ECFS (this date may be different from the date on the actual *ex parte* letter).

¹⁷ Generally, spectrum between 30 GHz and 300 GHz.

8. Unlike many other millimeter wave bands, the 42 GHz band has no existing operations, either federal or non-federal.¹⁸ This “greenfield” spectrum gives the Commission greater flexibility in designing a shared licensing scheme that may be optimized for future use and can take advantage of new developments in technology more easily than a band with existing deployments. We therefore believe that consideration of alternatives to exclusive geographic area licensing in the 42 GHz band is appropriate.

9. Although the Commission has previously sought comment on licensing the 42 GHz band on the same geographic area basis as the UMFUS bands such as the 37/39 GHz bands,¹⁹ those two ranges are separated by the 40-42 GHz satellite-only band.²⁰ This separation means that there appear to be fewer potential synergies to using the same licensing approach in both bands than if the two could be combined into a single continuous band.

10. The benefits of potential unlicensed use of the 42 GHz band also appear to be limited. No commenter previously supported making this band available on an unlicensed basis, and de Vries suggested that unlicensed use of the band would not provide adequate protection against harmful interference.²¹ This latter point is significant given the importance of protecting RAS operations in the adjacent 42.5-43.5 GHz band. Harmful interference from unlicensed devices would likely be more difficult to resolve, given the additional difficulty relative to licensed operations of identifying the specific interferer.

11. In light of these considerations, we seek comment on applying a shared approach to the 42 GHz band. We ask commenters to enumerate the benefits or drawbacks of this approach, as compared with either an exclusive-use licensed²² or unlicensed approach.

B. Shared Licensing Approaches

12. In this section, we discuss a variety of potential approaches to licensing the 42 GHz band on a shared basis. These approaches may have different costs and benefits in different situations, and some may facilitate certain uses better than others. We seek comment on these approaches and on any alternatives that might better promote our goals of more efficient spectrum use and lower barriers to spectrum access compared with traditional exclusive-use licensing in this band.

13. *Nationwide non-exclusive licensing.* Under this approach, currently in use in the 70/80/90 GHz bands,²³ operators would first obtain a nationwide non-exclusive license from the Commission, and then coordinate specific deployment sites with a third-party database. This approach would likely require advance work in identifying and setting up a database administrator but could facilitate quick and efficient site registration once established. OTI, focusing on point-to-multipoint service, supports this licensing regime for the 42 GHz band (as well as for the Lower 37 GHz band), and

¹⁸ As of March 31, 2023, nine experimental licenses are authorized for testing using this frequency range; however, as noted above, these licenses are issued on a noninterference basis. *See* 47 CFR § 5.84.

¹⁹ Some commenters supported this approach. *See* AT&T Comments at 4-5; CCA Comments at 2-4; CTIA Comments at 11-12; Ericsson Comments at 9; Nokia Comments at 2; Qualcomm Comments at 14; T-Mobile Comments at 3-5; U.S. Cellular Comments at 6-7. *See also* Verizon First FNPRM Comments at 3.

²⁰ *Third R&O*, 33 FCC Rcd at 5595-5600, paras. 47-57, 47 CFR § 2.106.

²¹ de Vries Comments at 2.

²² We note that the Commission has already established a record on an exclusive-use licensed approach for the 42 GHz band. *See Third FNPRM*, 33 FCC Rcd at 5599, para. 54; *see also* Appendix B (identifying the commenters addressing the 42 GHz band, in response to the *Third FNPRM*).

²³ 47 CFR §§ 101.1501, 101.1523.

it argues that such a system would reduce costs and facilitate entry and coexistence between licensees.²⁴ Charter also supports this approach for the Lower 37 GHz band, in order to promote greater efficiency.²⁵

14. We seek comment on the potential use of this nationwide non-exclusive licensing approach for the 42 GHz band. Would this model best facilitate efficient use of this spectrum? Would it lower barriers to entry as compared with either traditional exclusive-use licensing, or the other shared licensing approaches discussed in this Notice? Commenters advocating such an approach should also provide information regarding any limitations that should be placed on users. For example, should all licensees operating in a common area have access to the full 500 megahertz or only a portion to preserve the ability of other licensees to operate in that same area? Should there be limitations on the size of a service area that could be registered with a database to promote coexistence and enable access by other licensees? Should the Commission simply make the band available and require licensees to cooperate in the selection and use of frequencies in the band? What are the costs and benefits of taking this approach? We note that OTI's proposal focuses on fixed point-to-multipoint service.²⁶ Would it be possible to use this approach to license mobile service as well? What would be the costs or obstacles associated with identifying and establishing a database administrator? We seek comment on these issues and any other considerations involved with a nationwide non-exclusive model for this band.

15. *Site-based licensing.* Alternatively, the Commission could license the 42 GHz band on a site-by-site basis directly, without the use of a nationwide non-exclusive license regime or a third-party database. This approach might provide greater transparency than the use of third-party databases, because information for each licensed site—including, for example, construction notifications demonstrating whether buildout requirements have been met—would be publicly available in the Commission's Universal Licensing System (ULS). This would also allow the Commission to be more responsive to potential disputes, and facilitate easier administration and enforcement of buildout requirements, without needing to communicate with the third-party database manager as part of this process.

16. We seek comment on a potential site-based licensing approach in this context. Would licensing each individual site directly be overly burdensome on licensees? Would adopting a site-based licensing approach facilitate the easier enforcement of buildout requirements as compared to using a third party database registrar, and therefore contribute to greater efficiency and less warehousing of this spectrum? To what extent would the lack of a third-party database administrator result in logistical hurdles that might increase costs or decrease efficiency of licensees' operations, or would it be a benefit to have license issues addressed directly with the Commission? Would prospective licensees be able to access this spectrum more quickly and easily under a third-party database approach, versus licensing each site with the Commission? Would there be additional or different technical or operational rules needed under either approach, for example specific rules for resolving coexistence issues under site-based licensing versus relying on the database for this purpose in a third-party registration approach? We seek comment on these and any other considerations relating to this licensing model.

17. *Technology-based sensing.* In the context of the Lower 37 GHz band, Qualcomm proposes that the Commission adopt a technology-based long-term sensing mechanism for millimeter wave spectrum. Qualcomm suggests that this approach would allow "multiple licensees each using any air interface, to share on a licensed basis the entire...band in the same location, on the same frequencies, and at the same time, by taking advantage of the highly directional nature of millimeter wave communications."²⁷ This proposal, which describes technology-based sensing using a geographic area licensing regime, would require that licensees coordinate among themselves a measurement window

²⁴ OTI Feb. 27, 2022 *Ex Parte* at 1-2. *See also* OTI Comments at 2-3.

²⁵ Charter Mar. 4, 2022 *Ex Parte* at 2-3.

²⁶ OTI Feb. 27, 2022 *Ex Parte* at 1.

²⁷ Qualcomm Mar. 18, 2022 *Ex Parte* at 1 (emphasis removed). *See also* Qualcomm Oct. 2, 2021 *Ex Parte* at 2.

during which all licensees (except for a priority user in each channel) cease transmissions for a given time period in order to use long-term sensing to detect any active receivers, and then transmit afterwards only in directions where no such receivers are detected.²⁸ Qualcomm suggests that, if properly implemented, this system would provide priority licensees with more reliable protection than other sensing-based systems such as Listen Before Talk, and would also allow indoor operation across the entire band without disrupting priority or outdoor operations, and without requiring a database.²⁹

18. We seek comment on applying this potential approach to the 42 GHz band, and the attendant costs and benefits of adopting a technology-based sensing framework. Because Qualcomm designed this proposal for the Lower 37 GHz band, are there changes that would need to be made to make it suitable for the 42 GHz band? For example, would this proposal be viable without a priority user in a given channel? Similarly, given that Qualcomm's proposal demonstrates how technology-based sensing operates using geographic license areas, would adjustments need to be made to the proposal for a different type of licensing regime? Further, would the measurement and sensing requirements mean that users of the 42 GHz band could not take advantage of the equipment ecosystems of existing millimeter-wave bands? If so, would it increase equipment costs or increase barriers to entry for smaller or emerging operators? Are there other long-term sensing systems that should be considered? We seek comment on what steps the Commission or industry should take to ensure that, if adopted, any technology-based sensing protocols are non-proprietary/open-source or widely available to maximize use and drive innovation. We seek comment on these and any other considerations for this approach.

19. *Coordination mechanism.* We assume that any shared licensing regime will require a coordination mechanism to protect all licensees from harmful interference. Examples of potential coordination mechanisms include the third-party database queries used in 70/80/90 GHz,³⁰ the Spectrum Access Systems (SAS) used in the Citizens Broadband Radio Service to manage access to spectrum by different classes of licensed users in the 3550-3700 MHz band,³¹ the Automated Frequency Coordination (AFC) system recently established in 6 GHz to facilitate coexistence of unlicensed devices with incumbent operations and radio astronomy observatories,³² and equipment-based long-term sensing like the approach proposed by Qualcomm for the Lower 37 GHz band.³³ We seek comment on these and other potential coordination mechanisms.³⁴ What are the costs and benefits of each model? Which model would work best for each potential licensing regime? Are there concerns specific to the 42 GHz band that might recommend one coordination mechanism over another?

20. *Other Considerations.* We seek general comment on the sharing and licensing mechanisms described above, as applied to the 42 GHz band. Which model would be most conducive to the intensive and efficient use of this spectrum? Which model would yield the greatest benefits, at the least cost? What are the potential barriers to deployment, operation, or equipment availability under each model? We also seek comment on which types of services might be accommodated by these shared licensing regimes. OTI suggests the Commission also allow for point-to-multipoint service in this

²⁸ Qualcomm Mar. 18, 2022 *Ex Parte* at Attach. 8-9.

²⁹ Qualcomm Mar. 18, 2022 *Ex Parte* at Attach. 8-10.

³⁰ 47 CFR § 101.1523.

³¹ See *Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, Report and Order and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 3959 (2015); 47 CFR § 96.59.

³² See *6 GHz Report and Order*, 35 FCC Rcd 3852, para. 22; 47 CFR § 15.407(k) (Automated Frequency Coordination (AFC) system for 6 GHz devices).

³³ See Qualcomm Mar. 16, 2022 *Ex Parte* at 2-3, Attach. 8-10.

³⁴ See, e.g., Michael DiFrancisco et al., *Incumbent Informing Capability (IIC) for Time-Based Spectrum Sharing* (2021), https://www.ntia.gov/sites/default/files/publications/iic_for_time-based_spectrum_sharing_0.pdf.

context.³⁵ Would it be possible to accommodate both point-to-point and point-to-multipoint services in the 42 GHz band? Would it also be possible to accommodate mobile service? Are there specific licensing or sharing mechanisms that would better facilitate multiple services in the band? Are there specific technical or licensing requirements or coordination mechanisms that would better facilitate the inclusion of mobile service?

21. We seek comment on whether first-in-time protections³⁶ are necessary or appropriate for each of the shared licensing regimes discussed above, and if so, what form they should take. Charter argues that the use of time division duplex (TDD) synchronization would enable multiple operators to coexist in exactly the same area.³⁷ Would requiring TDD synchronization be sufficient to enable such reuse? If so, would such a system render first-in-time protections moot? To what extent would the certainty provided by a first-in-time guarantee be necessary to encourage deployment in this band? Would the lack of such a guarantee deter investment by potential licensees? Do the answers to these questions depend on which shared licensing regime we adopt? Are there licensing mechanisms (such as technology-based sensing) for which a first-in-time guarantee would be unnecessary, or more burdensome than beneficial? If we do not adopt first-in-time protections, what other mechanisms might resolve situations of congestion or harmful interference in a particular area? We seek general comment on this issue, including on any other potential costs or benefits not mentioned here.

22. We also seek comment on the appropriate coordination requirements for site-based licensing or site-based registration (in conjunction with a nationwide license), should we adopt it. OTI suggests that site-based licensing (or registration) should require coordination not only on a site-by-site basis, but on a sector-by-sector basis, to increase spectrum reuse, avoid warehousing, and encourage competition.³⁸ Would this level of specificity be feasible from a deployment perspective? Would it be unduly burdensome on licensees who might wish to license or register multiple sectors at the same site? How prevalent are deployment scenarios in which operators use only a subset of sectors? Would access to one sector (or some subset of a full arc) at a particular site provide smaller or later-deploying operators with a greater opportunity to deploy alongside other licensees? If we do incorporate sector-level licensing or registration, what would the appropriate sector size be? Is it 30-degree sectors, as OTI suggests?³⁹ Should we allow licensees or registrants to specify a sector size when applying or registering? If sector-based licensing is not appropriate in the 42 GHz band, is there some other way of licensing or registering sites that might facilitate greater spectrum reuse while still providing licensees with adequate spectrum access?

23. We also seek comment on whether there would be any potential synergies in the instant context with approaches being considered for the Lower 37 GHz (37-37.6 GHz) band. In 2016, the Commission adopted rules to permit fixed and mobile terrestrial operation across the 37 GHz band (37-38.6 GHz) and made the Lower 37 GHz band available for coordinated co-primary sharing between Federal and non-Federal users, with the non-Federal users licensed by rule.⁴⁰ The Commission indicated that both Federal and non-Federal users would access the band by registering individual sites through a coordination mechanism and sought comment on the details of that coordination mechanism and what

³⁵ OTI Feb. 27, 2022 *Ex Parte* at 2.

³⁶ We could, for example adopt a first-come-first-served licensing or registration scheme in which the first actual users that are licensed/registered have a right to interference protection (provided they deploy their systems within the requisite time period), but they have no right to exclude other users.

³⁷ Charter Mar. 4, 2022 *Ex Parte* at 2.

³⁸ OTI Feb. 27, 2022 *Ex Parte* at 2 (“For example, coordination could be by sector (e.g., 30-degree sectors), since directional antennas can accommodate multiple deployments in an area”).

³⁹ OTI Feb. 27, 2022 *Ex Parte* at 2.

⁴⁰ *First R&O*, 31 FCC Rcd at 8057, 8059, 8060, paras. 105, 111, 113.

functions it should perform.⁴¹ In 2018, the Commission sought comment on several specific proposals for this coordination mechanism, including first-come-first-served site-based licensing or registration in conjunction with several different types of potential licenses.⁴² In addition to OTI, Charter, and Qualcomm, whose proposals are discussed above, several commenters suggest that Commission base its rules for Lower 37 GHz on those adopted for the 70/80 GHz bands.⁴³ We seek comment on whether we should adopt a shared licensing approach for the 42 GHz band that mirrors the Commission's approach to the Lower 37 GHz band.⁴⁴ What would be the benefits or costs to doing so? Are there other ways to leverage the potential of these bands together? We note that unlike the 42 GHz band, the Lower 37 GHz band must accommodate sharing and coordination between Federal and non-Federal users.

24. Finally, we also seek comment on any other model or mechanism for non-exclusive licensing not discussed here which may be better suited for the 42 GHz band, or any other relevant considerations for these or other shared licensing regimes. Commenters suggesting alternative approaches should do so with as much specificity as possible, including discussing the potential costs and benefits of their proposed option as compared with the approaches above and either an exclusive-use licensed or unlicensed approach. We also seek comment on whether we could enable secondary operations in the 42 GHz band, while still ensuring primary licensees protection from harmful interference.⁴⁵

C. Buildout Requirements

25. In traditional exclusive-use geographic area licensing regimes, the Commission typically sets buildout requirements in terms of service coverage of a given percentage of the population of the license area.⁴⁶ For licensing regimes not tied to a particular license area, or where a license area is shared among multiple licensees, however, this metric may not be suitable or feasible. Our overarching goal is to adopt a buildout metric that ensures in each circumstance that spectrum is meaningfully being put to use in practice. To this end, we seek comment on the appropriate buildout requirements for potential licensees under the various approaches described above.

26. One buildout approach could be to require licensees to begin operations within a specified time. OTI has proposed that an appropriate timeframe would be 12 months or less from site registration, after which a licensee would lose any first-in-time protections for that site.⁴⁷ We seek comment on this proposal, including any alternative timeframes. We also seek comment on whether this approach would be better suited to certain sharing and licensing regimes, and, conversely, whether it might be unsuitable or inapplicable to certain others. Recognizing that we seek comment above on whether we should adopt first-in-time protections for this band, if we ultimately do not adopt such protections as part of the shared licensing regime here, what other consequence for failing to meet a buildout deadline might be appropriate? Would any consequence for failure to build out in a timely manner be necessary in such circumstances?

27. We also seek general comment on the appropriate buildout metrics for potential technology-based sharing regimes. If we ultimately adopt a sharing mechanism where the equipment itself determines access to spectrum, should we impose any buildout requirement at all, or is the inherently non-exclusive nature of such a regime sufficient to ensure efficient use and prevent spectrum

⁴¹ *First R&O*, 31 FCC Rcd at 8060, para. 113; *First FNPRM*, 31 FCC Rcd at 8170, paras. 448-49.

⁴² *Third FNPRM*, 33 FCC Rcd at 5602, 5604-5, paras. 65, 69-73.

⁴³ Ericsson Comments at 12; TIA Comments at 3-4.

⁴⁴ See NCTA Jun. 1, 2023 *Ex Parte*.

⁴⁵ See Kuiper May 31, 2023 *Ex Parte*.

⁴⁶ See, e.g., 47 CFR § 30.104.

⁴⁷ OTI Feb. 27, 2022 *Ex Parte* at 2.

warehousing? We seek comment on these and any other considerations for buildout requirements under sharing regimes based on technology-based long-term sensing, including any potential solutions not discussed here.

28. We also seek comment on any other potential buildout requirement metrics or levels suitable for the sharing mechanisms discussed in this Notice. Additionally, to the extent that commenters have suggestions for other potential sharing or licensing mechanisms, we encourage them to include suggestions for corresponding buildout requirements, or other methods of ensuring efficient spectrum use and preventing spectrum warehousing.

D. License Term and Applicability of Part 30 Technical Rules

29. The Commission previously sought comment on licensing the 42 GHz band under the part 30 UMFUS licensing and technical rules.⁴⁸ Although we are not proposing to adopt an exclusive-use licensing regime, we do propose to adopt a ten-year license term for licenses in this band, similar to other part 30 services. We seek comment on this proposal, and ask whether there are additional considerations in adopting a ten-year license term under a shared licensing approach.

30. The millimeter wave bands the Commission has previously licensed are all governed by the technical rules found in part 30.⁴⁹ This uniform treatment facilitates development of a common equipment ecosystem and easier operator deployment, and is supported generally in the underlying record in this proceeding.⁵⁰ Inclusion in this uniform technical regime might allow these benefits to also accrue to the 42 GHz band. If this band is made available under a licensing scheme significantly different from the other part 30 bands, however, it is possible that those benefits might be diminished, or costs or other inefficiencies incurred.

31. We seek comment on the applicability of the part 30 technical rules to the 42 GHz band as licensed under the various potential sharing regimes outlined above. Should we apply these existing technical rules for the 42 GHz band, regardless of the licensing regime we ultimately adopt? Are there changes to the technical rules that might be appropriate or necessary to accommodate shared licensing? Are there different costs or benefits that may be associated with the existing part 30 technical rules in this context, which we have not previously considered?

E. Band Plan

32. In the *Third FNPRM*, the Commission proposed to license the 42 GHz band as five 100 megahertz channels.⁵¹ Most commenters supported the Commission's proposal.⁵² They noted that a 100 megahertz channel is a building block for millimeter wave mobile equipment, and that this channel size is consistent with 3rd Generation Partnership Project ("3GPP") standards in the millimeter wave bands.⁵³ Several commenters also asserted that 100 megahertz block sizes would facilitate the deployment of 5G services.⁵⁴ A few commenters advocated using 200 MHz channels. For example, TIA argues that wider

⁴⁸ *FNPRM*, 31 FCC Rcd at 8154, para. 403.

⁴⁹ 47 CFR §§ 30.201-.209.

⁵⁰ See, e.g., CTIA First FNPRM Comments at 11-12, Verizon First FNPRM Comments at 9. No commenters oppose the inclusion of 42 GHz in these technical rules, or suggest specific variations.

⁵¹ *Third FNPRM*, 33 FCC Rcd at 5600, para. 57.

⁵² AT&T Comments at 4; CCA Comments at 4; CTIA Comments at 12; Ericsson Comments at 9; Nokia Comments at 2; T-Mobile Comments at 6; U.S. Cellular Comments at 7-8.

⁵³ T-Mobile Comments at 6; see also U.S. Cellular Comments at 7.

⁵⁴ CTIA Comments at 12. See also AT&T Comments at 3; CCA Comments at 4; U.S. Cellular Comments at 2-3.

channels will better support 5G services.⁵⁵ In response to the *First FNPRM*, Qualcomm also supported a band plan with two 200 megahertz channels.⁵⁶

33. We again propose to license the 42 GHz band in five 100 megahertz channels and seek comment on this proposal in the context of the new proposals under consideration here. Would the benefits previously noted by commenters supportive of 100 megahertz channels still apply under the sharing regimes discussed above? Would the increased flexibility of a non-exclusive licensing regime benefit more from 100 megahertz channels, or from another channel size? Are there particular sharing or licensing regimes that would benefit most from a different channel size?

F. Protecting RAS Services at 42.5-43.5 GHz

34. As noted above, in the *First FNPRM*, the Commission proposed to authorize flexible mobile and fixed operations in the 42 GHz band, provided that RAS could be protected in the adjacent 42.5-43.5 GHz band.⁵⁷ The Commission sought comment on the forms that such protection should take, *e.g.*, whether it should establish special out-of-band emission (OOBE) limits into the 42.5-43.5 GHz band or create a guard band below 42.5 GHz.⁵⁸ After noting the National Academy of Sciences' Committee on Radio Frequencies (CORF) and T-Mobile's agreement that RAS bands could be protected by limiting UMFUS operations near an RAS observatory, the Commission renewed its call in the *Third FNPRM* for interested parties to provide detailed technical analysis of the coexistence of RAS with terrestrial mobile operations that fully supported any proposed methodology.⁵⁹ Specifically, we asked whether our rules should be based on the International Telecommunication Union Radiocommunication Sector (ITU-R) RA.769 parameters, or alternate protection criteria, and sought comment on whether to establish coordination zones around relevant RAS facilities.⁶⁰

35. CORF has asserted that frequency lines at 42.519, 42.821, 43.122, and 43.424 GHz are of the greatest importance for the detection of strong silicon monoxide maser emissions from stars and star forming regions, which facilitates the measurement of stellar temperature, density, wind velocity and other parameters.⁶¹ The 42 GHz band also is one of the preferred bands for measuring continuum observations.⁶² RAS observations are currently made at a limited set of observatories around the United States.⁶³ Additionally, according to a report by the National Academy of Sciences, Engineering, and Medicine, the Next Generation Very Large Array (ngVLA) is a top priority for U.S. astronomy in the coming decade and would include new sites predominantly near the current VLA, but also throughout New Mexico and adjacent states with long baseline stations in close proximity to existing VLBA

⁵⁵ TIA addressed this issue in its comments to a separate Further Notice. *See Use of Spectrum Bands Above 24 GHz For Mobile Radio Services*, GN Docket 14-177, Fourth Further Notice of Proposed Rulemaking, 33 FCC Rcd 7674 (2018) (Fourth FNPRM). *See* TIA Fourth FNPRM Comments at 5-6, Table 1, 11.

⁵⁶ Qualcomm First FNPRM Comments at 9.

⁵⁷ *First FNPRM*, 31 FCC Rcd at 8154, para. 405. The adjacent band, 42.5-43.5 GHz, is allocated for federal and non-federal RAS operations and federal fixed, earth-to-space satellite and mobile services. 47 CFR § 2.106.

⁵⁸ *First FNPRM*, 31 FCC Rcd at 8154, para. 405.

⁵⁹ *Third FNPRM*, 33 FCC Rcd at 5599-5600, para. 56.

⁶⁰ *Third FNPRM*, 33 FCC Rcd at 5600, para. 56.

⁶¹ CORF First FNPRM Comments at 8 n.6; CORF Mar. 14, 2016 NPRM Reply Comments at 8-9.

⁶² CORF First FNPRM Comments at 9.

⁶³ RAS observations in this band are currently made at various U.S. observatories: Green Bank Telescope (GBT), WV; VLA Socorro, NM; Westford, MA (Haystack); Brewster, WA; Fort Davis, TX; Hancock, NH; Kitt Peak, AZ; Los Alamos, NM; Mauna Kea, HI; North Liberty, IA; Owens Valley, CA; Pie Town, NM; St. Croix, VI. CORF FNPRM Comments at 9 & n.7 (*citing* 47 CFR § 2.106, n.US131).

stations.⁶⁴ Because a typical radio telescope receives less than 1 percent of one-billionth of one-billionth of a watt (10^{-20} W) from a typical cosmic object, the telescope is particularly vulnerable to in-band emissions, spurious out-of-band emissions, and emissions producing harmonics, making protection important.⁶⁵ CORF has represented that the detrimental levels for continuum and spectral line radio astronomy observations for single dishes are -227 dBW/m²/Hz and -210 dBW/m²/Hz, respectively, for the average across the full 1 gigahertz of the 42.5-43.5 GHz band and the peak level in any single 500 kHz channel, as based upon ITU-R RA.769, Tables 1 and 2, respectively.⁶⁶ For observations using the entire VLBA, CORF represented that the corresponding limit is -175 dBW/m²/Hz.⁶⁷ T-Mobile agreed that the ITU PFD limits are appropriate to address potential interference to RAS.⁶⁸

36. Proponents of using the 42 GHz band for flexible terrestrial wireless use have generally agreed that various practical methods may be effective at protecting RAS, including use of exclusion zones, coordination zones, and aggregate emissions limits—particularly because RAS sites are remotely located.⁶⁹ None provide detailed information or examples showing how these proposed methods would work in practice.⁷⁰ Regarding whether it is necessary or appropriate to establish a guard band below 42.5 GHz in order to protect RAS, CORF stated that a guard band of 200 MHz within the radio horizon around radio astronomy sites would meet the ITU-R RA.769 protection criteria.⁷¹ T-Mobile argued that a guard band is unnecessary and the ITU protection threshold can be met with minimum exclusion distances.⁷² In response to the *First FNPRM*, some commenters asserted that a guard band would narrow the usable aspects of the 42 GHz band.⁷³ TIA argued it should be possible to craft UMFUS operating rules that protect adjacent RAS services via geographic coordination or otherwise, making guard bands unnecessary, especially since they interfere with the Commission's channel block plans.⁷⁴

⁶⁴ See National Academy of Sciences, Engineering, and Medicine, Pathways to Discovery in Astronomy and Astrophysics for the 2020s S-34, § 7.6.1.4 (2021), <https://doi.org/10.17226/26141>.

⁶⁵ CORF Comments at 3. See also CORF First FNPRM Comments at 3.

⁶⁶ CORF Comments at 6; CORF First FNPRM Comments at 9. See also *First FNPRM*, 31 FCC Rcd at 8154, para. 405 (citing CORF Mar. 14, 2016 NPRM Reply Comments at 8-9).

⁶⁷ CORF Comments at 6; CORF First FNPRM Comments at 9. See also *First FNPRM*, 31 FCC Rcd at 8154, para. 405 (citing CORF Mar. 14, 2016 NPRM Reply Comments at 9).

⁶⁸ T-Mobile Comments at 8. See also T-Mobile First FNPRM Comments at 13-14 & Appendix B (citing ITU-R RA.769).

⁶⁹ See AT&T Comments at 6-7; CORF Comments at 8; CTIA Comments at 12-13; Ericsson Comments at 10; Nokia Comments at 2; T-Mobile Comments at 7-8; U.S. Cellular Comments at 6; CORF Reply Comments at 14; U.S. Cellular Reply Comments at 4. See also T-Mobile First FNPRM Comments at 13-14; TIA First FNPRM Comments at 7; AT&T First FNPRM Reply Comments at 7; CTIA First FNPRM Reply Comments at 16; Qualcomm First FNPRM Reply Comments at 4; T-Mobile First FNPRM Reply Comments at 25.

⁷⁰ Although they provide no new studies, Nokia and others direct the Commission to T-Mobile's RAS sharing study, produced for the 32/47/50 GHz bands and assert this study is well-suited to also calculating protection zones for RAS sites operating adjacent to the 42 GHz band. See Nokia Comments at 2; Ericsson Comments at 10, n.33; CTIA Comments at 12-13. CORF agrees this study could be applicable for calculating coordination distances. CORF Reply Comment at 14 & n.52. We do not find this study sufficient to establish coordination distances because it is based on an analysis done with respect to different systems in the 32 GHz band.

⁷¹ CORF Comments at 8-9.

⁷² T-Mobile Reply Comments at 6-8.

⁷³ FWCC First FNPRM Comments at 5; TIA First FNPRM Comments at 7. FWCC urges that any guard band adopted should be limited to fixed-only operations subject to full fixed service frequency coordination to control emissions in the direction of RAS sites. FWCC First FNPRM Comments at 6.

⁷⁴ TIA First FNPRM Comments at 7.

37. We agree with CORF and T-Mobile that RAS bands can probably be protected by limiting 42 GHz operations near a RAS facility to reduce the risk of terrestrial interference. Because we believe that geographic separation of 42 GHz licensed operations and RAS facilities will provide sufficient protection of RAS facilities, we do not propose to impose out-of-band emissions limits on licenses in the 42 GHz band that are tighter than out-of-band-emissions limits on UMFUS licenses in other millimeter wave bands. Furthermore, we do not propose to establish coordination zones around RAS facilities because we believe that compliance with the limits we propose today will be sufficient to protect RAS observations. The record to date does not contain sufficient information to determine whether, and if so, at what distances, coordination zones would be appropriate, but we invite the submission of such information from commenters.

38. We propose to require 42 GHz licensees to limit emissions into the 42.5-43.5 GHz passive band at those relatively few locations where RAS observatories make observations in this band. We propose to adopt the parameters established by ITU-R RA.769 as the interference protection criteria for RAS operations, as suggested by CORF and T-Mobile. While we believe that these parameters are extremely conservative, no one has previously submitted studies suggesting alternative criteria, and the ITU's analysis indicates compliance with those criteria are likely to protect the RAS facilities from harmful interference. Given that the observatories are mostly located in remote areas and signals in this frequency range are significantly attenuated by terrain and clutter, we expect that adopting these conservative criteria would have only a small impact on 42 GHz licensed operations.

39. Therefore, for all 42 GHz licensees operating near designated RAS facilities, we propose that: (1) the spectral power flux density received at the RAS sites at the Haystack Observatory (Westford, MA), the Green Bank Telescope (Green Bank, WV) and the Very Large Array (Socorro, NM) averaged over the entire 42.5-43.5 GHz frequency range must not exceed -227 dBW/m²/Hz; (2) the spectral power flux density received within any 500 kHz channel within the 42.5-43.5 GHz frequency range for the three sites noted above must not exceed -210 dBW/m²/Hz; and, (3) the spectral power flux density within the 42.5-43.5 GHz frequency range for the Very Long Baseline Array (VLBA) Stations must not exceed -175 dBW/m²/Hz. We propose to list the relevant sites in a new footnote to the United States Table of Frequency Allocations for clarity. We believe that these limits are sufficient to protect RAS operations in the adjacent band without establishing a guard band within the 42 GHz band. We emphasize that our proposal to adopt these limits is based on the specific factors present in the 42 GHz band and would not necessarily control future decisions we make regarding other frequency bands subject to note US342. In addition to these requirements, the existing requirements for coordination in the National Radio Quiet Zone will be maintained.⁷⁵ We seek comment on this proposal.

G. Costs and Benefits and Diversity, Equity, and Inclusion

40. We invite comment generally on the costs and benefits associated with the various approaches discussed in this Notice. Are there any aspects of the above issues that the Commission has not considered? Are there any studies, efforts, or analyses that we should consider? If so, we ask that commenters identify them and explain why they should be considered.

41. *Digital Equity and Inclusion.* Finally, the Commission, as part of its continuing effort to advance digital equity for all,⁷⁶ including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely

⁷⁵ 47 CFR § 1.924.

⁷⁶ Section 1 of the Communications Act of 1934 as amended provides that the FCC “regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.” 47 U.S.C. § 151.

affected by persistent poverty or inequality, invites comment on any equity-related considerations⁷⁷ and any potential benefits that may be associated with the various approaches and issues discussed herein. Specifically, we seek comment on how the various approaches that the Commission may consider may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

IV. PROCEDURAL MATTERS

42. *Filing of Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document.⁷⁸ Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).⁷⁹

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/filings>.
- Paper Filers:
 - Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
 - Filings can be sent 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.
 - 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.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
 - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.⁸⁰
- Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also

⁷⁷ The term "equity" is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. See Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Jan. 20, 2021).

⁷⁸ 47 CFR §§ 1.415, 1.419.

⁷⁹ See FCC, Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (May 1, 1998).

⁸⁰ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice*, 35 FCC Rcd 2788 (OMD 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

comply with section 1.49 and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to use a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in the Notice of Proposed Rulemaking in order to facilitate our internal review process.

43. *People with Disabilities.* 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 and Governmental Affairs Bureau at 202-418-0530.

44. *Ex Parte Rules.* The proceeding that this Notice of Proposed Rulemaking initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁸¹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in the prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b).⁸² In proceedings governed by section 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

45. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),⁸³ requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."⁸⁴ Accordingly, we have prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible impact of the rule changes proposed in this *Notice of Proposed Rulemaking* on small entities. The IRFA is set forth in Appendix A. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the Notice indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

46. *Initial Paperwork Reduction Act of 1995 Analysis.* This *Notice of Proposed Rulemaking* may contain proposed new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA).⁸⁵ If the Commission adopts any new or modified information collection requirements, they will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d)

⁸¹ 47 CFR § 1.1200 *et seq.*

⁸² *Id.* § 1.1206(b).

⁸³ 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).

⁸⁴ 5 U.S.C. § 605(b).

⁸⁵ Pub. L. No. 104-13.

of the PRA. OMB, the general public, and other federal agencies are invited to comment on the new or modified information collection requirements contained in these proceedings. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,⁸⁶ we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”⁸⁷

47. *Further Information.* For further information on this proceeding, contact Catherine Schroeder of the Wireless Telecommunications Bureau, Broadband Division, at 202-418-1956, or Catherine.Schroeder@fcc.gov.

V. ORDERING CLAUSES

48. Accordingly, IT IS ORDERED, pursuant to Sections 1, 2, 4, 301, 302, 303, 304, 307, 309, and 310 of the Communications Act of 1934, 47 U.S.C. §§ 151, 152, 154, 301, 302a, 303, 304, 307, and 309, Section 604 of the MOBILE NOW Act, 47 U.S.C. § 1503, and Section 1.411 of the Commission’s Rules, 47 CFR § 1.411, that this *Notice of Proposed Rulemaking* IS HEREBY ADOPTED.

49. IT IS FURTHER ORDERED that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁸⁶ Pub. L. No. 107-198.

⁸⁷ 44 U.S.C. § 3506(c)(4).

APPENDIX A

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 this *Notice of Proposed Rulemaking (Notice)*. 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 in the *Notice*. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.³

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

2. In the *Notice*, we propose to increase the Nation's supply of spectrum for mobile broadband by adopting rules for fixed and mobile services in the 42-42.5 GHz band. We propose to license this spectrum on a shared, non-exclusive basis. This additional spectrum for mobile use will help ensure that the speed, capacity, and ubiquity of the nation's wireless networks keeps pace with the skyrocketing demand for mobile service. It will also make possible new types of services for consumers and businesses. We seek comment on the specific types of licenses under which we should make this spectrum available, including non-exclusive nationwide licensing, site-based licensing, and technology-based sensing. We seek comment in particular on what licensing models might best facilitate entry and participation by smaller and emerging entities as well as comments that provide options for potentially lowering barriers to entry for smaller or emerging wireless service providers, encourage competition, and avoid spectrum warehousing.

3. Until recently, the millimeter wave (mmW) bands were generally considered unsuitable for mobile applications because of propagation losses at such high frequencies and the inability of mmW signals to propagate around obstacles. As increasing congestion has begun to fill the lower bands and carriers have resorted to smaller and smaller microcells in order to re-use the available spectrum, the industry is taking another look at the mmW bands and beginning to realize that at least some of the presumed disadvantages can be turned to advantages. For example, short transmission paths and high propagation losses can facilitate spectrum re-use in microcellular deployments by limiting the amount of interference between adjacent cells. Furthermore, where longer paths are desired, the extremely short wavelengths of mmW signals make it feasible for very small antennas to concentrate signals into highly focused beams with enough gain to overcome propagation losses. The short wavelengths of mmW signals also make it possible to build multi-element, dynamic beam-forming antennas that will be small enough to fit into handsets—a feat that might never be possible at the lower, longer-wavelength frequencies below 6 GHz where cell phones operate today.

B. Legal Basis

4. The proposed action is authorized pursuant to Sections 1, 2, 4, 301, 302, 303, 304, 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 301, 302a, 303, 304, 307, and 309, Section 604 of the MOBILE NOW Act, 47 U.S.C. § 1503, and Section 1.411 of the Commission's Rules, 47 CFR § 1.411.

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 See 5 U.S.C. § 603(a).

³ See *id.*

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

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁴ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁵ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁶ 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 SBA.⁷

6. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.⁸ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.⁹ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.¹⁰

7. 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.”¹¹ The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.¹² Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.¹³ Finally, the

⁴ 5 U.S.C. § 603(b)(3).

⁵ 5 U.S.C. § 601(6).

⁶ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), 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.”

⁷ 15 U.S.C. § 632.

⁸ See 5 U.S.C. § 601(3)-(6).

⁹ See SBA, Office of Advocacy, Frequently Asked Questions, “What is a small business?,” <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/11/03093005/Small-Business-FAQ-2021.pdf>. (Nov 2021).

¹⁰ *Id.*

¹¹ See 5 U.S.C. § 601(4).

¹² The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

¹³ See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-ao-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO

(continued....)

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.”¹⁴ U.S. Census Bureau data from the 2017 Census of Governments¹⁵ indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁶ Of this number, there were 36,931 general purpose governments (county,¹⁷ municipal, and town or township¹⁸) with populations of less than 50,000 and 12,040 special purpose governments—-independent school districts¹⁹ with enrollment populations of less than 50,000.²⁰ Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”²¹

8. *Fixed Microwave Services.* Fixed microwave services include common carrier,²² private-operational fixed,²³ and broadcast auxiliary radio services.²⁴ They also include the Upper Microwave

(Continued from previous page)

BMF data for businesses for the tax year 2020 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

¹⁴ See 5 U.S.C. § 601(5).

¹⁵ See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

¹⁶ See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also tbl.2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

¹⁷ See *id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

¹⁸ See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

¹⁹ See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

²⁰ While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

²¹ This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls.5, 6 & 10.

²² See 47 CFR Part 101, Subparts C and I.

²³ See *id.* Subparts C and H.

²⁴ Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission’s Rules. See 47 CFR Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary

(continued....)

Flexible Use Service (UMFUS),²⁵ Millimeter Wave Service (70/80/90 GHz),²⁶ Local Multipoint Distribution Service (LMDS),²⁷ the Digital Electronic Message Service (DEMS),²⁸ 24 GHz Service,²⁹ Multiple Address Systems (MAS),³⁰ and Multichannel Video Distribution and Data Service (MVDDS),³¹ where in some bands licensees can choose between common carrier and non-common carrier status.³² Wireless Telecommunications Carriers (*except* Satellite)³³ is the closest industry with a SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees.³⁴ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.³⁵ Of this number, 2,837 firms employed fewer than 250 employees.³⁶ Thus under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

9. The Commission's small business size standards with respect to fixed microwave services involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in fixed microwave services. When bidding credits are adopted for the auction of licenses in fixed microwave services frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in Part 101 of the Commission's rules for the specific fixed microwave services frequency bands.³⁷

10. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect

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microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

²⁵ See 47 CFR Part 30.

²⁶ See 47 CFR Part 101, Subpart Q.

²⁷ See *id.* Subpart L.

²⁸ See *id.* Subpart G.

²⁹ See *id.*

³⁰ See *id.* Subpart O.

³¹ See *id.* Subpart P.

³² See 47 CFR §§ 101.533, 101.1017.

³³ See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (*except* Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

³⁴ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

³⁵ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePrevious=false>.

³⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

³⁷ See 47 CFR §§ 101.538(a)(1)-(3), 101.1112(b)-(d), 101.1319(a)(1)-(2), and 101.1429(a)(1)-(3).

data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

11. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment.³⁸ Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.³⁹ The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.⁴⁰ U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.⁴¹ Of this number, 624 firms had fewer than 250 employees.⁴² Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

12. *Satellite Telecommunications.* This industry comprises firms "primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."⁴³ Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with \$38.5 million or less in annual receipts as small.⁴⁴ U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.⁴⁵ Of this number, 242 firms had revenue of less than \$25 million.⁴⁶ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 71 providers that reported they were engaged in the provision of satellite telecommunications services.⁴⁷ Of these providers, the Commission estimates that approximately

³⁸ See U.S. Census Bureau, *2017 NAICS Definition*, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing," <https://www.census.gov/naics/?input=334220&year=2017&details=334220>.

³⁹ *Id.*

⁴⁰ See 13 CFR § 121.201, NAICS Code 334220.

⁴¹ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 334220, <https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

⁴² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴³ See U.S. Census Bureau, *2017 NAICS Definition*, "517410 Satellite Telecommunications," <https://www.census.gov/naics/?input=517410&year=2017&details=517410>.

⁴⁴ See 13 CFR § 121.201, NAICS Code 517410.

⁴⁵ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517410, <https://data.census.gov/cedsci/table?y=2017&n=517410&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

⁴⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

⁴⁷ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

48 providers have 1,500 or fewer employees.⁴⁸ Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

13. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.⁴⁹ 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.⁵⁰ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁵¹ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.⁵² Of that number, 2,837 firms employed fewer than 250 employees.⁵³ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services.⁵⁴ Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees.⁵⁵ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

14. *All Other Telecommunications*. This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.⁵⁶ This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.⁵⁷ Providers of Internet services (e.g. dial-up ISPs) or Voice over Internet Protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry.⁵⁸ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.⁵⁹ U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.⁶⁰ Of those firms, 1,039 had revenue of less than \$25 million.⁶¹ Based on this

⁴⁸ *Id.*

⁴⁹ See U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite)"*, <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁵⁰ *Id.*

⁵¹ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁵² See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePrevious=false>.

⁵³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵⁴ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

⁵⁵ *Id.*

⁵⁶ See U.S. Census Bureau, *2017 NAICS Definition, "517919 All Other Telecommunications"*, <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

⁶⁰ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919,

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data, the Commission estimates that the majority of “All Other Telecommunications” firms can be considered small.

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

15. We expect the proposed rules in the *Notice* will impose new or additional reporting or recordkeeping and/or other compliance obligations on small entities as well as other licensees and applicants. At this time however, the Commission is not in a position to determine whether, if adopted, our proposals and the matters upon which we seek comment will require small entities to hire professionals to comply and cannot quantify the cost of compliance with the potential rule changes discussed herein.

16. Depending on the licensing model we ultimately adopt for the 42 GHz band, applicants for licenses may be required to coordinate their proposed operations with other licensees and applicants. Under the relevant licensing models, such coordination would be necessary to ensure that neighboring operations will not interfere with each other. The Commission seeks comment on the cost to small entities for this potential coordination with operations.

17. Small entities and other applicants in the 42 GHz band may be required to meet buildout requirements. Depending on the type of buildout requirement we ultimately adopt, licensees may be required to provide information to the Commission on the facilities they have constructed, the nature of the service they are providing, and the extent to which they are providing coverage in their license or registered site area. Any performance or buildout requirements we adopt will be structured to ensure that spectrum is being put into use and to encourage rapid deployment of next generation wireless services, including 5G, which would benefit small entities and the industry as a whole. The Commission seeks comment as to the potential equipment, operational and implementation costs to small entities working towards complying with these buildout requirements.

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

18. 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 and reporting requirements under the rule for such 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.”⁶²

19. We believe the potential licensing models on which we seek comment would facilitate access to spectrum by small businesses and a wide variety of other entities. However, to assist in the Commission’s evaluation of the economic impact on small entities as a result of actions that have been proposed in the *Notice*, and to better explore options and alternatives, the Commission has sought comment from the parties. Of particular interest are those comments providing insight as to whether any of the costs associated with any potential performance or buildout requirements can be alleviated for

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<https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

⁶¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

⁶² 5 U.S.C. § 603(a)(1)-(4).

small businesses. The Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments filed in response to the *Notice*.

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

20. None.

APPENDIX B**List of Commenters to *Third FNPRM* Addressing 42 GHz****Comments**

5G Americas

AT&T Services Inc. (AT&T)

Competitive Carriers Association (CCA)

The National Academy of Sciences, through its Committee on Radio Frequencies (CORF)

CTIA

Ericsson

Intel Corporation and Cisco Systems, Inc. (Intel/Cisco)

Nokia

Petri Mähönen, Ljiljana Simić and Pierre de Vries (de Vries)

Qualcomm Incorporated (Qualcomm)

Samsung Electronics America (Samsung)

SES Americom, Inc. and its affiliate O3b Limited (SES)

Telecommunications Industry Association (TIA)

T-Mobile USA, Inc. (T-Mobile)

United States Cellular Corporation (U.S. Cellular)

Reply Comments

AT&T

CTIA

TIA

T-Mobile

U.S. Cellular

Ex Parte Filers

Kuiper Systems, LLC (Kuiper)

NCTA – The Internet & Television Association (NCTA)

Open Technology Institute (OTI)

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Shared Use of the 42-42.5 GHz Band*, WT Docket No. 23-158; *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services*, GN Docket No. 14-177 (June 8, 2023)

I spent the first half of this week in Sharm El-Sheikh, Egypt at a gathering of the International Telecommunication Union. It was a whirlwind of a trip. But it was worth every minute. Because in these international fora the United States can make clear to our counterparts around the world that we intend to lead on spectrum policy.

So much of what is creative in wireless happened here first, on our shores. And this agency played no small part in making this true. We were the first to borrow the academic ideas of Ronald Coase and reimagine the distribution of airwaves with auctions. More than three decades later we have raised \$233 billion using this tool—one we need Congress to continue. We were also the first to take a handful of underused frequencies known as “garbage bands” in the 900 MHz, 2.4 GHz, and 5.8 GHz range and do something radical—give the public access to these airwaves. It worked because this is the unlicensed spectrum where Wi-Fi was born. More recently, we blazed a trail for incentive auctions—again, the first to do this in the world. We also created an innovative structure with a hierarchy of rights in the 3.5 GHz band combined with new systems to support dynamic spectrum access.

Our goal today is to continue that creative streak. This time we are going to do it with a millimeter wave band. When I took over at the Federal Communications Commission, I believed the agency had overinvested in millimeter wave auctions at the expense of moving to market the mid-band spectrum essential for nationwide 5G service. So we pivoted—fast. With the help of my colleagues, we quickly launched auctions in the 3.45 GHz band and 2.5 GHz band. With those successful mid-band efforts in the rear-view mirror, we are now turning back to millimeter wave. But this time we want to consider something different.

In Egypt, so many of my global counterparts are wrestling with the same thing. They look at the wireless future and wonder what to do with high-band airwaves that have so much capacity but such limited propagation. In the United States, we have already auctioned nearly five gigahertz of this spectrum for traditional exclusive use. I believe now it’s time for something new.

In the 42 GHz band we have 500 megahertz of greenfield airwaves with no federal or commercial incumbencies. So we are putting out ideas. We are exploring non-exclusive access models. This could entail using a technology-based sensing mechanism to help operators actively detect and avoid one another. It could involve non-exclusive nationwide licenses that leverage a database to facilitate co-existence. It could also entail site-based licensing. To get even more out of this effort we ask if our approaches could be combined with shared-used models in other spectrum bands, like the lower 37 GHz band.

Our goal here is to come up with a new model to lower barriers, encourage competition and maximize the opportunities in millimeter wave spectrum. In short, it’s time to be creative. I look forward to the record that develops—and then look forward to sharing our creativity with the world.

I want to thank the staff responsible for getting this effort underway: John Lockwood, Susan Mort, John Schauble, Blaise Scinto, Catherine Schroeder, Joel Taubenblatt, and Jennifer Tomchin from the Wireless Telecommunications Bureau; Bahman Badipour, Michael Ha, Ira Keltz, Nicholas Oros, Ron Repasi, and Dana Shaffer from the Office of Engineering and Technology; Judith Dempsey, Evan Kwerel, Paul Lafontaine, Catherine Matraves, Giulia McHenry, Gary Michaels, Martha Stancill, and Don Stockdale from the Office of Economics and Analytics; Karl Kensinger and Troy Tanner from the Space Bureau; Deborah Broderon, Doug Klein, and William Richardson from the Office of General Counsel; and Michael Gussow, Joy Ragsdale, and Chana Wilkerson from the Office of Communications Business Opportunities.