



## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1 and 90

[WP Docket No. 07-100; FCC 21-106; FR ID 54675]

### Improving Public Safety Communications in the 4.9 GHz Band

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; grants of petitions for reconsideration; and final rule; correction.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) grants three petitions for reconsideration insofar as the petitions sought deletion of the rules adopted in the *Sixth Report and Order* in this proceeding governing the 4.9 GHz (4940-4990 MHz) band. The Commission also partially lifts the licensing freeze to allow incumbents to modify their existing licenses or to license new permanent fixed sites.

**DATES:** This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. As of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], the final rule published on November 30, 2020 (85 FR 76469), is corrected.

**FOR FURTHER INFORMATION CONTACT:** For additional information on this proceeding, contact Jon Markman of the Wireless Telecommunications Bureau, Mobility Division, at (202) 418-7090 or [Jonathan.Markman@fcc.gov](mailto:Jonathan.Markman@fcc.gov) or Thomas Eng of the Public Safety and Homeland Security Bureau at (202) 418-0019 or [Thomas.Eng@fcc.gov](mailto:Thomas.Eng@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order on Reconsideration, in WP Docket No. 07-100; FCC 21-106, adopted on September 30, 2021, and released on October 1, 2021. The full text of this document is available for public inspection online at <https://docs.fcc.gov/public/attachments/FCC-21-106A1.pdf>.

### Congressional Review Act

The Commission will send a copy of the *Order on Reconsideration* in a report to be sent

to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

### **Final Regulatory Flexibility Certification**

Pursuant to Section 605(b) of the RFA, if a proposed or final rule, “...will not, if promulgated, have a significant economic impact on a substantial number of small entities[.]” an agency is permitted to file a certification with the rulemaking containing a statement that provides a factual basis for its conclusion that there will not be significant economic impact on a substantial number of small entities. The certification and statement must be filed in the Federal Register and sent to the Chief Counsel for Advocacy of the Small Business Administration (SBA). The *Order on Reconsideration* in this proceeding grants in part the petitions for reconsideration of the *Sixth Report and Order* (85 FR 76469, Nov. 30, 2020), in WP Docket No. 07-100, reverting back to the rules that were in effect prior to modification by the *Sixth Report and Order*. No petitions for reconsideration of the Final Regulatory Flexibility Analysis (FRFA) that accompanied the *Sixth Report and Order* were received by the Commission. Accordingly, the Commission has prepared a Final Regulatory Flexibility Certification (FRFC) providing the factual basis for its determination that the Order on Reconsideration will not have significant economic impact on a substantial number of small entities. The Commission will publish a copy of the Order on Reconsideration and the FRFC in the Federal Register and send a copy to the Chief Counsel for Advocacy of the Small Business Administration (SBA). The FRFC is set forth in Appendix B of the *Order on Reconsideration*.

### **Synopsis**

On September 30, 2020, the Commission adopted the *Sixth Report and Order* and *Seventh Further Notice of Proposed Rulemaking (FNPRM)* (85 FR 76505, Nov. 30, 2020) (36 FCC Rcd 1958) in this proceeding. The leasing framework adopted in the *Sixth Report and Order* granted states, through a single statewide entity designated as the State Lessor, the option to lease spectrum access to state and local entities—whether public safety or non-public safety—

as well as to commercial and other private entities in their jurisdictions. State Lessors were also permitted to use the band for non-public safety purposes themselves. Prior to the issuance of the *Sixth Report and Order* and *Seventh FNPRM*, the Public Safety and Homeland Security Bureau and the Wireless Telecommunications Bureau announced a freeze on applications in the 4.9 GHz band. Pursuant to the *Freeze Public Notice* (85 FR 63553, Oct. 8, 2020), the Bureaus are not accepting applications for new or modified licenses, including both geographic area licenses and individual fixed-site licenses.

On December 30, 2020, the Public Safety Spectrum Alliance (PSSA), APCO International (APCO), and the National Public Safety Telecommunications Council (NPSTC, and with PSSA and APCO, the Petitioners) filed petitions for reconsideration of the *Sixth Report and Order* (the Petitions). The Petitioners asked the Commission to vacate the *Sixth Report and Order* because that the new leasing framework adopted in the *Sixth Report and Order* fails to provide for protection of current and future public safety use of the band.

The *Order on Reconsideration* grants the Petitions insofar as they sought deletion of the rules adopted in the *Sixth Report and Order*. We agree that the framework, which allows State Lessors to use and lease the band for non-public safety purposes, is not in the public interest, and that the public interest would be better-served by considering other models. We also lift, in part, the licensing freeze adopted in advance of the *Sixth Report and Order*, thereby allowing incumbents to modify their existing licenses or to license new permanent fixed sites. We direct the Bureaus to implement this change to the freeze via public notice within 30 days of the adoption of this item.

## **List of Subjects in 47 CFR Parts 1 and 90**

Communications equipment, Organization and functions (Government agencies), Radio, Reporting and recordkeeping requirements, Telecommunications.

FEDERAL COMMUNICATIONS COMMISSION.

**Katura Jackson,**

Federal Register Liaison Officer.

### **Correction**

In FR Doc. 2020-23506, appearing on page 76469 in the Federal Register of Monday, November 30, 2020, the following correction is made:

PART 90 [Corrected]

1. On page 76480, in the first column, in part 90, amendatory instruction 7 (adding §90.1217) is removed.

## Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1 and 90 as follows:

### **PART 1 – PRACTICE AND PROCEDURE**

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

AUTHORITY: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

2. Amend § 1.9001 by:

a. Revising paragraph (b); and

b. Removing paragraph (c).

The revision reads as follows:

#### **§ 1.9001 Purpose and scope.**

\* \* \* \* \*

(b) Licensees holding exclusive use rights are permitted to engage in spectrum leasing whether their operations are characterized as commercial, common carrier, private, or non-common carrier.

#### **§ 1.9005 [Amended]**

3. Amend § 1.9005 by:

a. Adding the word “and” at the end of paragraph (nn); and

b. Removing and reserving paragraph (oo).

4. Revise § 1.9048 to read as follows:

#### **§ 1.9048 Special provisions relating to spectrum leasing arrangements involving licensees in the Public Safety Radio Services.**

Licensees in the Public Safety Radio Services (see part 90, subpart B, and § 90.311(a)(1)(i) of this chapter) may enter into spectrum leasing arrangements with other public safety entities eligible for such a license authorization as well as with entities providing communications in support of public safety operations (see § 90.523(b) of this chapter).

### **PART 90 – PRIVATE LAND MOBILE RADIO SERVICES**

5. 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.

6. Amend § 90.1203 by:

a. Revising paragraph (b); and

b. Removing paragraph (c).

The revision reads as follows:

**§ 90.1203 Eligibility.**

\* \* \* \* \*

(b) 4.9 GHz band licensees may enter into sharing agreements or other arrangements for use of the spectrum with entities that do not meet the eligibility requirements in this section. However, all applications in the band are limited to operations in support of public safety.

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