

21870–21924 kHz. Also, the Commission found no apparent domestic support for adopting international footnote 5.155B, which limits most fixed use of the band to the provision of services related to aircraft flight safety. Therefore, the Commission did not implement footnote 5.155B domestically, but maintains the footnote in the International Table for informational purposes.

17. *Amateur Service.* Because ITU Resolution No. 640 and international footnote 5.120 have been removed from the ITU *Radio Regulations*, the Commission removed footnote 5.120 and § 97.401(b) from the Commission's rules. The Commission did not think this would have an impact on the amateur stations to communicate with foreign stations in disaster areas, making the provisions based on the former ITU Resolution No. 640 unnecessary.

18. *Frequencies Available for Forest Products Licensees.* The Commission revised footnote US298 to agree with terminology now used in part 90 of the Commission's rules and added the frequencies indicated in the footnote to the Industrial/Business Radio Pool Frequency Table in § 90.35, with an appropriate note describing the limited use that is permitted. This decision does not change any regulatory requirements, but merely makes the Commission's rules easier to understand.

19. *Ministerial Conforming Actions.* The Commission made many non-substantive changes to update and correct the U.S. Table with regards to frequency allocations below 28 MHz, while the Commission also changed U.S. footnotes to conform to previous decisions and to update material in certain rule parts. These changes were made to remove unnecessary material from the Commission's rules and to reflect WRC-2000 Final Acts with regard to the International Table of Frequency Allocations within the Rules.

20. The Commission removed international footnote 5.60 from the bands 70–90 kHz and 110–130 kHz because this footnote addressed a limitation on an allocation that was never made domestically. Further, the Commission removed the superfluous international footnote 5.80 from the band 415–435 kHz because it addressed limitations that did not apply to this band. The Commission also removed the secondary direct U.S. Table allocation for the space research service in the band 19990–19995 kHz because this allocation was contained in footnote G106, which was recently added to the band 19990–20010 kHz. The Commission updated footnote US28 by removing maritime channels that

were reallocated for other purposes in 1991, thus indicating clearly the channels that are available for ship and coast station operations.

21. Further, the Commission added an informational note to § 90.35 stating that the use of frequencies 25120 kHz, 25140 kHz, 25160 kHz, 25180 kHz, and 25200 kHz were on a secondary basis to stations in the maritime mobile service (part 80). In footnote US281, the Commission changed the band "25.07–25.11 MHz" to "25070–25210 kHz" and updated "industrial radio service" and "Forest Products Radio Service" to "Industrial/Business Pool." Limitation 9 in 47 CFR 90.35 states this fact about footnote US281 and was added to the frequencies 25120 kHz, 25140 kHz, 25160 kHz, 25180 kHz, and 25200 kHz.

22. Additionally, the Commission updated rule part cross reference in the U.S. Table. Specifically, the Commission deleted approximately 50 cross references to the International Fixed Public Radiocommunication Services ("IFPRS") that no longer existed. Finally, the Commission updated 18 international country footnotes for informational purposes because they did not apply to Region 2.

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act ("RFA"),¹ the Commission incorporated an Initial Regulatory Flexibility Analysis ("IRFA") in the Notice of Proposed Rulemaking and Order ("Notice"), ET Docket No. 02–16.² The Commission sought written public comments on the proposals in the *Notice*, including the IRFA. The Final Regulatory Flexibility Analysis ("FRFA") in the *Report and Order* conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 ("CWAAA"), Public Law 104–121, 110 Stat. 847 (1996).

By this action, the Commission reallocated 1640 kilohertz of spectrum from the fixed and mobile services to the broadcasting service. This action provides exclusive availability to broadcasting service in the HFBC bands. The Commission made consequential changes to various service rules that updated the rules for bands below 28000 kHz, so that they better comport with international regulations. Finally, this action clarifies the status of services

in the AM Expanded Band (1605–1705 kHz).

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 action taken.³ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁴ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁵ A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration ("SBA").⁶ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."⁷ Nationwide, as of 1992, there were approximately 275,801 small organizations.⁸ Finally, "small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."⁹

Fixed Service. It is noted that there are 162 fixed assignments authorized under section 90.266 for long distance communications,¹⁰ Alaska private-fixed assignments,¹¹ and 5 aeronautical fixed station assignments¹² that operate in the bands that were reallocated pursuant to this Report and Order. Using the small business size standard, the Commission believed that most of the section 90.266 licensees are telephone, gas, and power companies that are not small businesses. Because the Commission estimated that most of these fixed service licensees would not qualify as small entities under the SBA definition, it is estimated

³ 5 U.S.C. 603(b)(3).

⁴ *Id.* 601(6).

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

⁶ Small Business Act, 15 U.S.C. 632.

⁷ 5 U.S.C. 601(4).

⁸ 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

⁹ 5 U.S.C. 601(5).

¹⁰ 47 CFR 90.266.

¹¹ 47 CFR 80, subpart O—Alaska Fixed Stations.

¹² 47 CFR 87.275, 87.277, 87.279.

¹ See 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title I of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² See *Notice of Proposed Rule Making and Order*, 17 FCC Rcd 2789 (2002).