

to seek reimbursement of 50 percent of its relocation costs from the licensee that ultimately uses frequencies in the second path. All new licensees, regardless of whether they relocate paired or unpaired microwave incumbents, would be subject to the modified relocation rules (such as the shortened mandatory negotiation period).

14. We conclude that the modified relocation procedures, as proposed, represent the best course. A unified approach to our rules and procedures serves the public interest, and can promote the rapid development of AWS, which many commenters support. Moreover, if the demand for the advanced services is as robust as commenters claim, incumbent licensees should find new licensees particularly eager to reach relocation agreements so as not to be competitively disadvantaged by a delay in their service deployment. Finally, we note that under our basic relocation principles, incumbents retain a right to comparable facilities. We stress that we are not altering this process, nor an incumbent's right to seek relief if it believes the relocation process has not been conducted in good faith. We observe, however, that we may need to modify the reimbursement provisions if MDS is reassigned to the 2155–2165 MHz band because Fixed Service microwave operations in the 2160–2165 MHz band would have to be relocated. Under the current rules, for example, MDS would have to reimburse a new AWS entrant who is trying to clear paired microwave links at 2110–2115 and 2160–2165 MHz.

Other Bands

15. 1755–1850 MHz. In the *NPRM*, we identified the 1755–1850 MHz band for consideration for the provision of AWS. The 1755–1770 MHz band segment was considered as part of the initial NTIA studies, and was again evaluated in the 2002 *Viability Assessment*. In this most recent review, NTIA concluded that the 1755–1850 MHz band is not viable for use by AWS due to the extensive and critical Federal Government operations in the band, including DOD mobile systems operating in the 1755–1850 MHz range that “have recently been elevated in importance due [to] the war on terrorism, homeland defense, and possible requirements for ballistic missile defense.” Moreover, NTIA was unable to identify alternative spectrum bands that could readily accommodate many of these systems, including air combat training systems, the Land Warrior systems, and DOD satellite telemetry, tracking and command

facilities that operate in the 1761–1842 MHz band segment and which cannot be easily re-tuned. The 1770–1850 MHz band segment was previously rejected by NTIA as incompatible for shared use and was not included in the most recent band evaluation process. Throughout the evaluation process, Federal Government users have consistently expressed skepticism that any portion of the 1755–1850 MHz band segment can be made available for advanced commercial wireless systems, either through relocation of Federal users or by shared use. Moreover, NTIA anticipates that the process that will allow it to relocate Federal users from the 1710–1755 MHz band segment will result in system relocations to spectrum above 1755 MHz, as well as a generally more intensive use of the 1770–1850 MHz band segment for existing, relocated, and new systems. We note that some commenters identify benefits from the use of this band for AWS, including regional harmonization and the possibility that allocation of the 1755–1850 MHz band (in conjunction with the 1710–1755 MHz band) would serve as a catalyst for making these frequencies as globally accepted as the core bands identified in IMT–2000.

16. Given the statements by NTIA regarding the intense use of this band by military users and other Federal Government agencies that provide critical safety-of-life operations, and the concern expressed by many commenters about clearing existing government users, we conclude that this band is too encumbered to be used for the provision of AWS. We note that while some comments suggest that we explore a combination of sharing and migration for incumbent users, NTIA and other commenters do not believe that co-channel sharing is possible. We acknowledge the 2002 *Viability Assessment's* conclusion that “[a] leap forward in technology may permit extensive sharing in all bands below 3 GHz in the future,” but that until such developments occur, it appears that use of the 1755–1770 MHz band for advanced wireless applications is not technically viable. Accordingly, we conclude that the 1755–1850 MHz band is not suitable for the provision of AWS at this time.

17. Currently Allocated Spectrum. In the *NPRM*, we noted that currently allocated spectrum may also be suitable for the provision of AWS. This spectrum includes television bands that were reallocated to commercial fixed, mobile, and broadcast services and are in the process of being vacated as part of the transition to digital television. We note that the disposition of these bands has

taken place in separate proceedings. The record in the instant proceeding contains nothing that would cause us to revisit these decisions, nor to reassess our general conclusion that the reallocated television bands will be available for new uses, including AWS. However, we reach an opposite conclusion with respect to the 2390–2400 MHz band. The record reflects little support for AWS use of this band, which is designated for UPCS and Amateur Service use, and the 2002 *Viability Assessment* identified this spectrum as suitable replacement spectrum for some Government systems currently operating in the 1710–1755 MHz band. Therefore, we will not further examine the possible use of the 2390–2400 MHz band for the provision of AWS.

18. The 90 megahertz of spectrum that has been allocated will promote the robust deployment of AWS, and we will continue to strive to make allocation decisions that can lead to the wide-scale deployment of innovative new services. Moreover, technological developments may foster further efficiencies in the deployment of AWS. These technologies include software defined radio (SDR) and adaptive antenna technology (increasing directionality) or new modulation or coding techniques (more information in the same spectrum) that may allow for greater spectral efficiency than that which is typically associated with current wireless systems. Finally, we stress that this action is part of a continuing effort to identify and evaluate both the current and future spectrum needs for AWS. The further decisions that we make in this continuing proceeding may well result in the allocation of additional spectrum for commercial use, including the provision of AWS.

Final Regulatory Flexibility Analysis

19. As required by the Regulatory Flexibility Act (RFA)¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking and Order* (NPRM),² as well as the *Memorandum Opinion and Order and Further Notice of Proposed Rule Making* (Further NPRM), 66 FR 47591, September 13,

¹ See 5 U.S.C. 603. The RFA (codified at 5 U.S.C. 601–612) has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, title II, 110 Stat. 857 (1996).

² Amendment of part 2 of the Commission's rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00–258, *Notice of Proposed Rulemaking and Order*, 16 FCC Rcd 596 (2001).