

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's *Third Report and Order*, FCC 03–99, adopted on April 23, 2003, and released on May 2, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC–03–99A1.pdf.

Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at bmillin@fcc.gov.

1. In this *Third Report and Order* (*Third R&O*), the FCC establishes licensing and service rules for the 4940–4990 MHz band (4.9 GHz band). In the *Second Report and Order and Further Notice of Proposed Rule Making*, 67 FR 20914, April 29, 2002, in this proceeding, the FCC allocated the fifty megahertz of spectrum in the 4.9 GHz band for fixed and mobile services (except aeronautical mobile service) and designated the band for use in support of public safety. The FCC also sought comment on licensing and service rules, eligibility, and other technical issues concerning the 4.9 GHz band.

2. By this action, the FCC seeks to promote effective public safety communications and innovation in wireless broadband services in support of public safety. The rules adopted herein represent another step in the FCC's ongoing efforts to develop a regulatory framework in which to meet the current and future public safety communications needs. For example, the rules for the 4.9 GHz band that the FCC adopts herein are intended to accommodate a variety of new broadband applications such as high-speed digital technologies and wireless local area networks for incident scene management, dispatch operations and vehicular operations. The FCC's action also fosters interoperability by providing a regulatory framework in which traditional public safety entities can pursue strategic partnerships with both traditional public safety entities, such as the Federal Government, and non-traditional public safety entities, such as utilities and commercial entities, in support of their missions regarding homeland security and protection of life and property.

3. The FCC envisions that the 4.9 GHz band will be able to accommodate a variety of broadband applications, including technologies and operations

requiring varying bandwidths and operations that are both temporary and permanent in nature. Consequently, in this *Third R&O*, the FCC endeavors to provide 4.9 GHz band licensees with the maximum operational flexibility practicable and to encourage effective and efficient utilization of the spectrum. The FCC believes that its actions herein make significant strides towards ensuring that agencies involved in the protection of life and property possess the communications resources needed to successfully carry out their mission.

4. In the *Third R&O*, the FCC establishes licensing and service rules for the 4.9 GHz band. The major decisions the FCC reaches are as follows:

- Limits eligibility for licensing in the 4.9 GHz band to those entities providing “public safety services” wherein public safety services are defined as services:

- (A) The sole or principal purpose of which is to protect the safety of life, health, or property;

- (B) that are provided
 - (i) by State or local government entities; or

- (ii) by nongovernmental organizations that are authorized by a government entity whose primary mission is the provision of such services; and

- (C) that are not made commercially available to the public by the provider.

- The FCC permits broadband mobile operations, fixed hotspot use, and temporary fixed links on a primary basis in the band. Furthermore, the FCC allows fixed point-to-point operations on a secondary basis.

- The FCC establishes a “jurisdictional” geographical licensing approach for operations in the band, whereby licensees will be authorized to operate in those geographic areas over which they have jurisdiction and will be required to cooperate in use of the spectrum.

Procedural Matters

A. *Ex Parte* Rules—Permit-But-Disclose Proceeding

5. This is a permit-but-disclose notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the FCC's rules.

B. Regulatory Flexibility Act

6. The Regulatory Flexibility Act (RFA) 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. Accordingly, the FCC has prepared a Final Regulatory Flexibility Analysis concerning the impact of the rule changes contained in the *Third R&O* on small entities. The Final Regulatory Flexibility Analysis is set forth below.

C. Paperwork Reduction Act

7. This *Third R&O* contains new information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under the PRA. The FCC, as part of its continuing effort to reduce paperwork burdens, invites the general public, the OMB and other Federal agencies to comment on the information collection(s) contained in this *Third R&O*, as required by the PRA.

8. Public and agency comments are due August 29, 2003. Comments should address: (a) Whether the modified collection of information is necessary for the proper performance of the functions of the FCC, including whether the information shall have practical utility; (b) the accuracy of the FCC's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Final Regulatory Flexibility Analysis

9. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Further Notice of Proposed Rule Making (FNPRM)*. The FCC sought written public comment on the proposals in the *FNPRM*, including comment on the IRFA. No comments were submitted specifically in response to the IRFA; the FCC nonetheless discusses certain general comments below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Report and Order

10. In this *Third Report and Order* (*Third Report and Order*), the FCC adopts eligibility and service rules for the licensing and operation of fixed and mobile services in the 4.9 GHz band pursuant to the Omnibus Budget Reconciliation Act. These rules provide 4.9 GHz band eligibles with maximum flexibility to employ a variety of new broadband applications such as high-speed digital technologies, wireless local area networks for incident scene