

the rule requiring the rapid relocation of these facilities.

57. We retained the general rule that staggers the relocation of BAS facilities based on a market-size approach. Under this rule, the burden of MSS entrants to relocate BAS facilities is staggered over time, based on the size of a particular BAS market. Unlike mobile BAS operations, which can typically be tuned to operate on different channels, fixed BAS facilities are tuned to a single channel. Because of the importance of these fixed channels and because the temporary loss of channels 1 and 2 could uniquely impair operations for BAS licensees with fixed facilities tuned to these channels, we concluded that such facilities should be relocated without delay. We also rejected proposals that would have MSS relocate all BAS facilities, regardless of their fixed or mobile status or the size of market in which they operate. Although this action would have provided the same relief for fixed BAS facilities operating on channels 1 and 2, a wholesale front-loaded relocation of all BAS facilities would have imposed significant burdens on MSS licensees, including those MSS licensees that are small entities.

F. Report to Congress

58. The Commission will send a copy of the *Third Report and Order and Third Memorandum Opinion and Order* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.³² In addition, the Commission will send a copy of the Second Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of this *Third Report and Order and Third Memorandum Opinion and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.³³

Ordering Clauses

59. Pursuant to sections 4(i), 7, 302, 303(c), 303(e), 303(f), 303(g) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 157, 302, 303(c), 303(e), 303(f), 303(g) and 303(r), this Third Report and Order and Third Memorandum Opinion and Order IS ADOPTED and that parts 2, 74, 78, and 101 of the Commission's Rules ARE AMENDED as specified in rule changes, effective January 7, 2004.

60. Pursuant to sections 4(i), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f), and 303(r), and 553(d) of the

Administrative Procedure Act, 5 U.S.C. 553(d), the expiration date of the initial two-year mandatory BAS negotiation period for Phase I set forth in the *Second Report and Order* in ET Docket No. 95–18 IS HEREBY SUSPENDED until the effective date of the rules adopted in this *Third Report and Order and Third Memorandum Opinion and Order*, effective immediately upon release of this order, consistent with the terms discussed in the order.

61. Pursuant to sections 4(i), 302, 303(e), 303(f), 303(g), 303(r) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, 303(e), 303(f), 303(g) and 405, that the petitions for reconsideration in ET Docket No. 95–18 filed by Joint Petitioners (CICC, FWCC, *et al*), Broadcast Filers (Cosmos Broadcasting Corp., Cox Broadcasting, *et al*), Society of Broadcast Engineers, Inc., and National Association of Broadcasters and the Association for Maximum Service Television, Inc., ARE GRANTED to the extent discussed in the Third Report and Order and Third Memorandum Opinion and Order.

62. The petitions for reconsideration in ET Docket No. 95–18 filed by Joint Petitioners (CICC, FWCC, *et al*) and Celsat America, Inc. ARE DISMISSED AS MOOT.

63. The petitions for reconsideration in ET Docket No. 95–18 filed by Joint Petitioners (CICC, FWCC, *et al*), Enron North America Corp., SBC Communications, Inc., Broadcast Filers (Cosmos Broadcasting Corp., Cox Broadcasting, *et al*), Society of Broadcast Engineers, Inc., and National Association of Broadcasters and the Association for Maximum Service Television, Inc., ARE DENIED in all other respects.

64. The Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Third Report and Order and Third Memorandum Opinion and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

65. The proceeding in ET Docket No. 95–18 IS TERMINATED.

List of Subjects

47 CFR Part 2

Communications equipment, Radio.

47 CFR Part 74 and 101

Radio.

47 CFR Part 78

Cable television, Radio.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 74, 78 and 101 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106, the Table of Frequency Allocations, is amended by revising footnotes NG156, NG168, NG177 and NG178 in the list of non-Federal Government (NG) Footnotes to read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

Non-Federal Government (NG) Footnotes

* * * * *

NG156 The band 2000–2020 MHz is also allocated to the fixed and mobile services on a primary basis for facilities where the receipt date of the initial application was prior to June 27, 2000, and on a secondary basis for all other initial applications. Not later than December 9, 2013, the band 2000–2020 MHz is allocated to the fixed and mobile services on a secondary basis.

* * * * *

NG168 The band 2180–2200 MHz is also allocated to the fixed and mobile services on a primary basis for facilities where the receipt date of the initial application was prior to January 16, 1992, and on a secondary basis for all other initial applications. Not later than December 9, 2013, the band 2180–2200 MHz is allocated to the fixed and mobile services on a secondary basis.

* * * * *

NG177 In the bands 1990–2000 MHz and 2020–2025 MHz, where the receipt date of the initial application for facilities in the fixed and mobile services was prior to June 27, 2000, said facilities shall operate on a primary basis and all later-applied-for facilities shall operate on a secondary basis to any service licensed pursuant to the allocation adopted in FCC 03–16, 68 FR 11986, March 13, 2003 (“Advanced Wireless Services”). Not later than December 9, 2013, all such facilities in the bands 1990–2000 MHz and 2020–

³² See 5 U.S.C. 801(a)(1)(A).

³³ See 5 U.S.C. 604(b).