

user fees at this time will enable the Commission to consider how such fees can best be implemented in the PLMR bands, so that if fee authority is granted, the Commission will be able to act quickly to implement such authority.

7. Third, the Commission seeks comment on introducing competitive bidding into the PLMR bands as an alternative to user fees. Specifically, the Commission seeks comment on a proposal to create geographic overlay licenses and use competitive bidding as the assignment mechanism for these overlay licenses. Competitive bidding of overlay licenses could promote efficiency by allowing the marketplace to determine the value of spectrum and by awarding licenses to those who value them most highly, thus ensuring that spectrum will be put to its highest value use. As with exclusivity, competitive bidding of overlay licenses attaches a cost to inefficient spectrum use. The Commission's current auction authority does not permit the use of competitive bidding to assign private licenses because these licenses are not mutually exclusive and the principal use of the spectrum does not involve the provision of service to subscribers for a fee. However, expanded auction authority which could include private wireless users is proposed by the Administration and the U.S. Senate. Accordingly, the Commission believes that it is appropriate at this time to seek comment on how auctions could best be implemented for PLMR licenses, if such authority is granted.

8. Additionally, the Commission tentatively concludes that public safety users should be exempt from market-based incentives. Public safety users are charged with the protection of life and property, and the Commission is committed to ensuring that such users have access to spectrum to perform their critical function. We seek comment on exempting public safety users from spectrum fees and competitive bidding, or developing a reduced fee structure and a protected auction environment for these users.

9. The proposed rules are set forth at the end of this document.

#### 10. FURTHER INITIAL REGULATORY FLEXIBILITY ANALYSIS

##### *Reason for Action*

This rule making proceeding was initiated to secure comment on proposals for establishing shared exclusive assignments arrangements in the PLMR bands which will grant licensees flexibility to voluntarily adopt new technology and thereby achieve more efficient use of spectrum. We also

propose to permit licensees who convert to narrowband technology to sell or lease excess capacity to PMRS eligibles as a means of enhancing the competitive potential of the PLMR services in the marketplace. The proposals advanced in the Further Notice of Proposed Rule Making are also designed to respond to the increasing need for spectrum and considerable changes in the mobile communications landscape.

##### *Objectives*

The Commission proposes changes to its rules for the PLMR services for use of spectrum in a manner that yields the greatest potential benefit to the public. Specifically, the exclusivity proposal will promote more efficient use of spectrum by encouraging licensees participating in exclusive sharing agreements to convert to innovative narrowband technology in an expeditious manner. Further, the proposal relating to the sale or lease of excess capacity will provide for the enhancement of the PLMR services by allowing marketplace mechanisms to intervene to give insight into the value of the PLMR bands to private eligibles. These new proposals will result in improving the quality of service, increasing the level of technology, and fostering economic growth in the private land mobile environment.

##### *Legal Basis*

The legal basis for these rule changes is found in Section 4(i), 303(g), 303(r), 332(a), 332(c), and 332(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 303(g), 303(r), 332(a), 332(c), and 332(d), as amended.

##### *Reporting, Recordkeeping, and Other Compliance Requirements*

Under the proposal for shared exclusivity agreements in the Further Notice of Proposed Rule Making, existing licensees will be required to report information regarding its plans for implementation of narrowband systems within 5 year guidelines after entering the exclusivity arrangement. These reports will serve as a benchmark for the Commission to measure the progress of licensees in fulfilling their plans to determine whether a specific exclusivity agreement should be rescinded.

##### *Federal Rules Which Overlap, Duplicate or Conflict With These Rules*

None.

##### *Description, Potential Impact, and Number of Small Entities Involved*

The Further Notice of Proposed Rule Making potentially affects numerous

small entities, as the private land mobile services is comprised of millions of small business entities operating in urban and rural areas across the United States. The shared exclusivity and the sale or lease of excess capacity proposals are options available for small business licensees, as well as all other entities utilizing the private land mobile service. Many small entities could be positively affected by the proposals because they provide for new exclusive communications assignments that will foster new technologies and promote the competitive potential of the PLMR spectrum. The full extent of the impact on small entities cannot be predicted until various issues raised in the proceeding have been resolved. After evaluating the comments filed in response to the Further Notice, the Commission will examine further the impact of all final rules in this proceeding on small entities and set forth its findings in the Final Regulatory Flexibility Analysis.

##### *Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives*

This Further Notice of Proposed Rule Making solicits comments on a variety of alternatives. Any additional significant alternatives presented in the comments will also be considered.

##### **List of Subjects in 47 CFR Part 90**

Communications equipment, Radio.  
Federal Communications Commission.

**William F. Caton,**  
*Acting Secretary.*

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

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

1. The authority citation for Part 90 continues to read as follows:

**Authority:** Sections 4, 302, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 302, 303, and 332, unless otherwise noted.

2. Section 90.175 is amended by revising paragraph (a) to read as follows:

##### **§ 90.175 Frequency coordination requirements.**

\* \* \* \* \*

(a) For frequencies between 25 and 470 MHz: A statement from the applicable frequency coordinator recommending the most appropriate frequency. The coordinator's recommendation may include comments on technical factors such as power, antenna height and gain, terrain and other factors which may serve to