Communications Service will foster the accomplishment of these goals. Additionally, GWCS should stimulate efficient use of the spectrum by encouraging licensees to find ways to use the spectrum for the variety of services allowed under the license. Of equal importance, GWCS will accommodate and spur the development of new technologies and services.

7. Commenters have not persuaded the Commission that limiting assignments to any of their specific proposed uses of the spectrum would better meet the goals of the Reconciliation Act, the Communications Act, and the public interest. Restricting the 4660-4685 MHz spectrum to defined uses or services, such as the specific uses proposed by various commenters, would tend to reduce the attractiveness of this spectrum for new technologies and services. Moreover, as discussed above, GWCS is flexible enough to permit the specific uses suggested by such commenters, as well as the other uses identified in the comments. If GWCS spectrum assignment applications submitted by qualified parties now seeking servicespecific allocations are not mutually exclusive, those parties will be granted licenses to provide the specific services they wish to provide, as well as other permissible GWCS services. In the event the spectrum is assigned by auction because of mutual exclusivity, they will also be able to participate and seek to obtain licenses.

8. The Commission also believes that any interference issues that may arise among GWCS licensees can be satisfactorily resolved by general noninterference standards and technical rules. Many potential sources of unacceptable interference have been eliminated by barring use of GWCS for Broadcast services, Radiolocation services, and Satellite services. Further, the grant of each GWCS license will be made subject to the condition that the licensee not cause unacceptable interference with any other licensee or service. Failure to abide by this condition will render the licensee subject to fines, damages, or forfeiture of the license. The Commission is adopting technical rules similar to those in place for PCS. To the extent it proves necessary, the Commission can consider whether revisions to those rules are warranted after GWCS licenses are assigned.

9. The Commission finds no merit in arguments that the Fixed and Mobile allocation of this spectrum, and use of the flexible GWCS designation for assigning this spectrum, are unlawful. As discussed in the First Report and

Order the provisions of the Communications Act and Commission precedent support the legality of allocating frequencies to more than one radiocommunication service, and of assigning licenses for use by a broadly defined service. The Commission is required by the National Telecommunications and Information Administration Organization Act (NTIAO Act) to issue regulations to allocate the 50 megahertz of spectrum that the Secretary of Commerce identified and recommended for immediate reallocation from Federal Government use no later than 18 months from enactment of the Reconciliation Act. 1 For purposes of this portion of the NTIAO Act, the term "allocation" is defined as "an entry in the National Table of Frequency Allocations of a given frequency band for the purpose of its use by one or more radiocommunication services." 2 The Table of Frequency Allocations often contains allocations to more than one type of service 3 and such allocations are specifically authorized in this instance by the NTIAO Act. Therefore, allocation of the 4660-4685 MHz band to Fixed and Mobile Services is permissible and consistent with established practice.

10. The Commission also believes that such an allocation is consistent with the Commission's obligations under the Communications Act. The Commission has broad authority under the Communications Act to allocate spectrum. This authority derives from Section 303 of the Communications Act. Nothing in the language of Section 303 establishes or suggests any limitation or restriction on the Commission's discretion to prescribe the nature of the service to be rendered over radio frequencies or authority to assign (or allocate) frequencies to the various classes of stations. Moreover, nothing in the language of Section 303 or its legislative history suggests that the Commission is prohibited from assigning spectrum to stations for more than one permissible use, or otherwise limits the Commission's discretion in making spectrum allocations that it deems to serve the public interest. With respect to allocation decisions, courts have accorded "substantial deference" to Commission determinations.⁴ Finally,

Commission precedent supports the permissibility of allocating spectrum in a manner that allows for its use by a broadly defined service.

11. The Commission, in the Second NPRM, noted that, in addition to the Fixed and Mobile service allocation adopted in the First R&O, 4660-4685 MHz is allocated on a co-primary basis for non-government fixed-satellite service (FSS) space-to-Earth links, with use limited to international intercontinental systems and subject to a case-by-case electromagnetic analysis in accordance with US footnote 245 of the Table of Frequency Allocations. The *NOI* in this proceeding requested comment on the necessity of maintaining the US245 restrictions on FSS use of this band, considering that it would no longer be available for Federal Government use. To facilitate the shared used of this band, the Second NPRM proposed to maintain the restrictions set forth in US footnote 245 on use of 4660-4685 MHz and requested comments on this proposal. The Commission adopts the proposal as contained in the Second NPRM and retains the restriction in this footnote.

12. The Commission next considers public safety issues. Under the NTIAO Act, the Commission's plan for allocating and assigning former Federal Government spectrum must contain appropriate provisions to ensure not only the availability of frequencies for new services, but also "the safety of life and property in accordance with the policies of Section 1 of the [Communication Act]" 5 In the current record, the Association of Public-Safety Communications Officials-International, Inc. (APCO) proposes designating at least a portion of the 4660-4685 MHz band for public safety mobile and aeronautical video operations. The current record does not, however, provide a sound basis for concluding that any or all of the 4660-4685 MHz band should be assigned as APCO suggests.

13. The Commission is firmly committed to ensuring that wireless and wired communications resources are deployed to promote the safety of life and property, as well as to carry out the other public interest goals of the Communications Act. The FCC and NTIA recently formed a Public Safety Wireless Advisory Committee to prepare a report on operational, technical and spectrum requirements of Federal, state and local public safety entities through

¹ Section 115(a) of the National Telecommunications and Information Administration Organization Act, 47 U.S.C. § 925(a) (NTIAO Act).

² Section 111(1) of the NTIAO Act, 47 U.S.C. § 921(1).

³ See 47 C.F.R. § 2.106.

⁴ See National Ass'n of Regulatory Util. Comm'ners v. FCC, 525 F.2d 630, 636 (D.C. Cir.), cert. denied, 425 U.S. 992 (1976); see also Telocator

Network of America v. FCC, 691 F.2d 525, 549 (D.C.Cir. 1982).

⁵ Section 115(b)(2)(C) of the NTIAO Act, codified at 47 U.S.C. § 925(b)(2)(C).