could be offered in this band makes it difficult to develop construction requirements that can be applied fairly and equitably, without skewing the workings of the market. The Commission also recognized our responsibility to ensure that the spectrum we assign is used effectively. Therefore, the Second NPRM proposed, and the Commission now adopts, rules that would require build-out rules modeled on those adopted for broadband PCS. Specifically, these rules will require that within five years licensees in this band offer service to one-third of the population in the area in which they are licensed, and to serve two-thirds within ten years of being licensed. The Commission will also consider waivers or modification of these rules based on demonstrations that the spectrum is being used efficiently, not warehoused or stockpiled.

## **Regulatory Status**

51. The Communications Act and Commission rules often apply differing requirements based on the type of service and the regulatory status of licensees. The new GWCS category for the 4660-4685 band would allow licensees to provide a variety or combination of Fixed and Mobile services. Under this service, both Fixed and Mobile applications would be permitted and an individual licensee could provide a number of Fixed and Mobile services. In the Second NPRM, the Commission observed that it may be difficult to determine the regulatory status of GWCS licensees. The Commission proposed to rely on applicants to identify specifically the type of service or services they intend to provide, and require them to include sufficient detail to enable the Commission to determine if the service will be Fixed or Mobile, and whether it will be offered as a commercial mobile radio service, a private mobile radio service, a common carrier Fixed service, or a private Fixed service. Comment was requested on the most efficient manner in which to administer the requirements of the Communications Act and the Commission's Rules, and grant licensees as much operational flexibility as possible. The Commission also solicited comments on whether to develop a new application long form for this general allocation or require an applicant to be responsible for filing the appropriate license application based upon the nature of the service designated by the applicant. Commenters were asked to address whether it is necessary for the Commission to require licensees to notify the Commission if they change

the type of service offered using some or all of their licensed spectrum even though the new use would be permissible under the Commission's rules.

52. The Commission adopts the proposed approach of relying on applicants to identify the type of GWCS service or services each will provide, with sufficient detail to enable the Commission to determine the applicant's regulatory status. The proposed added step would usually be unnecessary and would tend to delay the offering of new services. The Commission believes that it would be in the public interest to develop an application form for the new service. To clarify and simplify the regulatory status of licensees, the Commission also adopts a presumption that GWCS licenses are providing fixed common carrier services, which appears from the record to be the most likely and common use of this spectrum. This presumption may be rebutted by an appropriate showing. The Commission delegates to the Wireless Telecommunications Bureau authority to develop forms appropriate to collect this data, and to monitor changes in licensee status.

#### **Licensing Issues**

53. The Second NPRM requested comment on whether the Commission is required or should find that it is in the public interest to adopt additional licensing rules in order to comply with the statutory requirement that we adopt assignment rules before August 10, 1995. The Commission finds it unnecessary at present to adopt additional license rules for GWCS. The Commission will follow the statutory provisions of Section 309(d) for public notice and other requirements. With respect to other licensing issues, the Commission will consider whether any additional rules are necessary, and what form those rules should take, after we have proceeded with the application and licensing process. The Commission should at that time have a more detailed understanding of the services licensees intend to provide and their regulatory status.

## **Final Regulatory Flexibility Analysis**

54. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that this decision will have an impact on small entities interested in operating on the 4660–4685 MHz band. As detailed in the full text of the *Second Report and Order*, the Commission has attempted, wherever possible within the statutory constraints, to establish regulations which, to the extent possible, minimize the burdens on such small businesses while providing maximum flexibility. The full text of the Commission's final regulatory flexibility analysis may be found in paragraph \_\_\_\_\_ of the full text of this decision.

#### **Ordering Clauses**

55. Accordingly, IT IS ORDERED that Part 26 of the Commission's Rules is added as set forth below. This action is taken pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r).

56. IT IS FURTHER ORDERED that the rule changes made herein WILL BECOME EFFECTIVE at the time of their publication in the **Federal Register**.<sup>10</sup>

### List of Subjects

47 CFR Part 1

Telecommunications.

### 47 CFR Part 26

General wireless communications service.

Federal Communications Commission. William F. Canton,

Acting Secretary.

#### **Rule Changes**

Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

# PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

2. New paragraph (a)(8) is added to Section 1.2102 to read as follows:

# §1.2102 Eligibility of applications for competitive bidding.

(a) \* \* \*

(8) General Wireless Communications Service (GWCS) (see Part 26 of this chapter).

\* \* \* \*

Part 26 of Chapter I of Title 47 of the Code of Federal Regulations is added to read as follows:

<sup>&</sup>lt;sup>10</sup> This Order is adopted pursuant to a statutory requirement that the Commission, by August 9, 1995, allocate and establish licensing rules for 50 megahertz of spectrum that was transferred from Federal Government to private sector use, as required by the Budget Act. Thus, there is good cause to order the rule changes publication. See 5 U.S.C. § 553(d)(3).