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Federal Communications Commission FCC 98-180

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DISPATCH

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Parts 13 and 80 of the	)	
Commission's Rules to Implement the Global	)	PR Docket No. 90-480
Maritime Distress and Safety System (GMDSS)	)	
to Improve the Safety of Life at Sea	)	
	)	

MEMORANDUM OPINION AND ORDER

Adopted: July 28, 1998 **Released: August 10, 1998**

By the Commission:

I. INTRODUCTION AND EXECUTIVE SUMMARY

1. By this action, we deny a Petition for Partial Reconsideration (Petition) of our *Report and Order* in the above-captioned matter, which added the technical and operational requirements of the Global Maritime Distress and Safety System (GMDSS) to Part 80 of the Commission's Rules.[1] In its Petition, the American Radio Association (ARA)[2] asks the Commission to revise the previously adopted rules to: (1) require at-sea maintenance for U.S. vessels carrying a GMDSS radio installation, and (2) require vessels carrying a GMDSS radio installation to additionally carry manual Morse code radiotelegraph installations and Radio Officers until the GMDSS is fully implemented on February 1, 1999.[3]

2. The arguments presented by ARA are essentially the same as those we previously considered in this proceeding. Our rules are consistent with the GMDSS provisions of the International Convention for the Safety of Life at Sea (Safety Convention)[4] as adopted by the International Maritime

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[1] *Report and Order*, 7 FCC Rcd 951 (1992).

[2] The ARA is "an organization of U.S. merchant marine Radio Officers and Radio Electronics Officers (collectively 'Radio Officers'). ARA's members are licensed by both the FCC and the Coast Guard." ARA Petition, n.1.

[3] The term "Radio Officer" used herein refers to an FCC licensed technician holding a First or Second Class Radiotelegraph Operator's Permit. Such individuals are trained to operate and maintain manual Morse code radiotelegraph installations.

[4] International Convention for the Safety of Life at Sea, 1974 (Safety Convention), 32 U.S.T. 47, T.I.A.S. 9700.

radio communications system that relies on satellites and advanced terrestrial systems.[11] In 1992, the Commission adopted rules implementing the new international GMDSS requirements, requiring each passenger vessel and cargo vessel over 300 gross tons (hereafter "compulsory vessels") to carry a complete GMDSS radio installation by February 1, 1999.[12] Four years later, in 1996, Congress amended the Communications Act to eliminate the radiotelegraph carriage requirement for vessels carrying a GMDSS radio installation.[13]

4. Compulsory vessels operating under the radiotelegraph-based safety system are required by statute to carry Commission-licensed personnel responsible for the operation, and sometimes maintenance, of ship radiotelegraph and radiotelephone installations. The number and type of personnel required depend on the type of vessel, size of vessel, and whether automated radio monitoring equipment is carried on board. Passenger vessels are required to carry two persons licensed by the Commission to operate and maintain radiotelegraph equipment.[14] Cargo vessels of more than 1,600 gross tons that are equipped with an autoalarm must carry one person, with at least six months experience, who is licensed by the Commission to operate and maintain radiotelegraph equipment.[15] The licensed operator on board a radiotelegraph-equipped vessel must maintain a watch for eight hours per day, and rely on the autoalarm for the remainder (16 hours) of the day.[16] Cargo vessels of more than 300 gross tons, but less than 1,600 gross tons, must carry one person licensed by the Commission to operate radiotelephone equipment.[17] The crew on the bridge of each radiotelephone equipped vessel is required to maintain a continuous watch on the radiotelephone distress frequencies while performing normal duties.[18]

5. Similar to the statutory requirements under the radiotelegraph-based safety system, the GMDSS rules adopted by the Commission ensure that qualified personnel are available to operate the radio installation during an emergency. Each GMDSS vessel must carry two persons licensed by the

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[11] *See* Final Acts of the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974, on the Global Maritime Distress and Safety System, London (1988) (1988 SOLAS Amendments).

[12] *Report and Order*, 7 FCC Rcd at 951.

[13] The Commission implemented Section 365 of the Communications Act -- a provision created by Section 206 of the 1996 Telecommunications Act -- by *Order* released April 12, 1996. *See* Amendment of the Commission's Rule to Conform the Maritime Service Rules to the Provisions of the Telecommunications Act of 1996, *Order*, 11 FCC Rcd 17069 (1996).

[14] 47 C.F.R. § 80.159(a).

[15] 47 C.F.R. § 80.159(b). Vessels that are not equipped with an autoalarm must carry a second person licensed to operate and maintain radiotelegraph equipment.

[16] 47 C.F.R. § 80.305(a).

[17] 47 C.F.R. § 80.159(c). The licensed operator must either hold a marine radio operator permit or a general radiotelephone operator license (or optionally a higher class license), depending on the maximum power used at the radiotelephone station.

[18] 47 C.F.R. § 80.305(b).

qualified for operation and maintenance of GMDSS equipment. Transportation Secretary Andrew H. Card, Jr. filed a letter supporting the "initiatives taken by the FCC to reform expeditiously the 1934 Act to permit U.S. ship operators to use the options available under the GMDSS."[26]

III. DISCUSSION

7. We have carefully reviewed the arguments of ARA and the commenters, but affirm our original decisions. All arguments presented by the petitioner and commenters are essentially the same as those previously considered by the Commission.[27] Moreover, these issues are the same as those examined by the international maritime community during the development of the GMDSS. Although we fully considered all arguments in the *Report and Order*, we will reiterate our views on several issues related to the GMDSS to allay the public safety concerns expressed by some of the parties.

A. At-sea maintenance for GMDSS vessels

8. In its Petition, ARA claims that safety of life and property at sea and the quality of the marine environment will be compromised unless the Commission requires at-sea maintenance on each GMDSS vessel. ARA contends that when breakdowns occur at sea, at-sea maintenance offers the only possibility of expeditious repair, and that the major advantage of at-sea maintenance is that adjustments and repairs can be done continuously throughout the voyage. ARA again notes specific examples where Radio Officers were able to repair or "rig" temporary equipment to provide emergency communications.[28] Further, ARA argues that mandating at-sea maintenance would supplement, not contravene, the IMO requirements for GMDSS.[29] This position is supported by Congressional correspondence.[30]

9. Moreover, we fully considered this at-sea maintenance issue in the *Report and Order* and noted that this topic was also one of the most controversial areas of discussion for the international maritime community.[31] In adopting the GMDSS rules in 1992, we found that requiring two licensed GMDSS radio operators and providing maintenance options based on vessels' routes would ensure safety at sea.[32] All safety concerns were reviewed by the IMO and again in the Commission's *Report and Order* with emphasis on U.S. vessels. In addition, the Commission concurred with the IMO view that, in considering the proper operation of radio equipment, requiring two licensed GMDSS radio operators is superior to reliance on one individual who might be unable to perform communications during a distress

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[26] Letter from Andrew H. Card, Jr., Secretary of Transportation, to Alfred C. Sikes, Chairman, Federal Communications Commission (Aug. 11, 1992).

[27] *See Report and Order*, 7 FCC Rcd at 955-58.

[28] ARA Petition at 10.

[29] ARA Reply at 3-5.

[30] *See* para. 6 *supra*.

[31] *Report and Order*, 7 FCC Rcd at 954.

[32] *Id.* at 954.

however, the Commission fully discussed each of the three maintenance options: duplication of equipment, shore-based maintenance, and at-sea maintenance. The Commission noted that each, by itself, has limitations. As a result, GMDSS vessels on the high seas must use a combination of at least two of the maintenance options. For example, the Commission stated that at-sea maintenance was limited by "[l]ack of extensive technical knowledge and limited spare parts and test equipment."[39] Unlike the radiotelegraph installations under the old safety system, the GMDSS is made up of several different types of radio equipment. As AIMS points out, under the GMDSS, shore-based maintenance may be more desirable than at-sea maintenance for vessels on the high seas due to the vast array of equipment types, combinations of equipment, manufacturers, and different models available.[40] Also, the duplication of equipment option provides additional safety and flexibility for vessels because duplicate equipment provides immediate backup communications. For these reasons, we concluded in the *Report and Order* that the inherent limitations of at-sea maintenance made the other two methods -- duplication of equipment and shore-based maintenance -- at least as effective in ensuring equipment availability and preserving safety at sea.[41] AIMS contends that the flexibility represented by the three options is desirable to allow U.S. ships to respond to their maintenance needs in the most efficient manner possible.[42]

13. We agree with AIMS's contention that the flexible approach towards maintenance options is desirable, particularly given that an operator's selection of specific maintenance options will most likely vary based on factors such as size of vessel and routes travelled. We continue to believe that the flexible approach approved by IMO and implemented in the Safety Convention will ensure safety of life and property at sea. While at-sea maintenance should be an allowable maintenance method, we note that it may not be desirable in all instances. Under the GMDSS, several crew members will be trained to operate the communications equipment and will be familiar with emergency procedures. The international community believes, and we agree, that emergency communications would be enhanced by having redundant automated systems and several licensed radio operators, rather than relying on a single individual and maintenance method.

14. In an effort to fully address the safety issues raised regarding at-sea maintenance for GMDSS vessels, we are amending Section 80.1074(b) to require that all at-sea maintenance be conducted by an FCC-licensed technician holding a GMDSS Radio Maintainer's License, and providing a grace period until February 1999 so that existing technicians have an opportunity to obtain the license. In the *Report and Order* in this proceeding, the Commission decided to recognize FCC-licensed technicians holding a First or Second Class Radiotelegraph Operator's Certificate or a General Radiotelephone Operator License as GMDSS at-sea maintainers until testing procedures could be developed to issue

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[39] *Report and Order*, 7 FCC Rcd at 955.

[40] AIMS Comments to the *Notice of Proposed Rule Making* in this proceeding at 2-3. *See* Amendment of Parts 13 and 80 of the Commission's Rules to Implement the Global Maritime Distress and Safety System (GMDSS) to Improve the Safety of Life at Sea, PR Docket No. 90-480, *Notice of Proposed Rule Making*, 5 FCC Rcd 6212 (1990) (*NPRM*).

[41] *Report and Order*, 7 FCC Rcd at 955. In this regard, we examined the maintenance record submitted by ARA with its comments to the *Notice of Proposed Rule Making*. We also considered AIMS's survey that most modern radio equipment is replaced, not repaired, if problems occur.

[42] AIMS Opposition at 3-4.

kHz is superior over longer ranges than voice radiotelephony on 2,182 kHz;[49] and that the Morse code system is still needed because the 406 MHz EPIRB only signals a distress.[50] ARA argues that U.S. ships should be required to carry the Morse code system during the transition period because there is a heightened potential for a lapse in communications that could severely compromise safety due to ships operating under different systems.[51]

17. As a threshold matter, the Commission no longer has the statutory authority to require GMDSS vessels to carry a manual Morse code radiotelegraph installation. As noted above, Section 365 of the Communications Act prohibits any requirement that compulsory vessels carry manual Morse code radiotelegraph installations, so long as they operate in accordance with the GMDSS provisions of the Safety Convention and have been certified by the U.S. Coast Guard as having GMDSS equipment installed and operating in good working condition.[52] On April 12, 1996, the Commission released an *Order* implementing Section 365 of the Communications Act by revising the general exemption in 47 C.F.R. § 80.836. Thus, the Commission cannot require dual safety systems during the remaining portion of the GMDSS implementation period. While we do not dispute the technical merits of 500 kHz Morse code radiotelegraphy, we note that ships between 300 and 1600 gross tons have relied on the 2,182 kHz radiotelephony system as their primary safety system for some time without serious safety problems.[53] Furthermore, 2182 kHz is currently used as the communications link between "radiotelegraph" ships and "radiotelephone" ships and is the only system common to all compulsory ships during the transition. In addition to the 2182 kHz system, all compulsory ships must carry 406 MHz EPIRBs for alerting purposes as of August 1, 1993. While the 406 MHz EPIRB cannot provide two-way communications (as pointed out by ARA), it is one of the most reliable means of distress alerting available today.[54] Once a rescue vessel is in the proximity of the vessel in distress, subsequent communications can be conducted through the on-scene radio communications systems, *i.e.*, voice on 2182 kHz and marine VHF Channel 16 or telex on 2174.5 kHz.

18. As we noted in our previous decision in this proceeding, perpetuating an outmoded ship-to-ship manual Morse code radiotelegraph system on 500 kHz that has little potential to communicate with

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[49] ARA offers the additional technical arguments that reliance on 2,182 kHz fails to note the superior groundwave characteristics of 500 kHz; that the 500 kHz system offers twice the range of the 2,182 kHz system using similar facilities; that Morse Code can be received under greater noise than voice; and that Morse Code does not suffer from language problems inherent in voice.

[50] ARA Reply at 7-10.

[51] ARA Petition at 19-20.

[52] 47 U.S.C. § 363.

[53] Ships of 1600 gross tons or more have both systems, the radiotelegraphy system (500 kHz) and the radiotelephony system (2,182 kHz and VHF Channel 16), while ships between 300-1600 gross tons are required to have only the radiotelephony system (2,182 kHz and VHF Channel 16).

[54] It has been in use since 1982 with remarkable success and is capable of signaling the ship's name and position as well as including a short distress message. Carriage of this device greatly improves the probability that a distress alert will be received at the shore station that is responsible for conducting coordinated search and rescue operations.

22. IT IS FURTHER ORDERED that, pursuant to the authority contained in Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and 405, and Section 1.429(i) of the Commission's Rules, 47 C.F.R. § 1.429(i), the Petition for Partial Reconsideration filed by the American Radio Association IS DENIED.

23. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas
Secretary

FINAL RULES

Chapter I of Title 47 of the Code of Federal Regulations Part 80 is amended as follows:

1. The authority citation for Part 80 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e) unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.1074 is amended by revising paragraph (b) to read as follows:

§ 80.1074 Radio maintenance personnel for at-sea maintenance.

* * * * *

(b) The following licenses qualify personnel as GMDSS radio maintainers to perform at-sea maintenance of equipment specified in this subpart. For the purposes of this subpart, no order is intended by this listing or the alphanumeric designator.

(1) GM: GMDSS Maintainer's License;

(2) GB: GMDSS Operator's/Maintainer's License; or,

(3) Until February 1, 1999:

(i) T-1: First Class Radiotelegraph Operator's Certificate;

(ii) T-2: Second Class Radiotelegraph Operator's Certificate; or,

(iii) G: General Radiotelephone Operator License.

* * * * *

radio stations of the major maritime nations risks American lives and property.[55] Many countries are already in the process of eliminating the 500 kHz manual Morse code system and converting their ships to GMDSS. Further, the Coast Guard has already eliminated its shore watch on 500 kHz. Thus, carrying dual systems is not required by the international regulations and would be an unnecessary burden for the U.S. shipping industry.

IV. PROCEDURAL MATTERS

19. Section 1.412(c) of the Commission's Rules, 47 C.F.R. § 1.412(c), provides that rule changes may be adopted without prior notice where the Commission for good cause finds that notice and comment procedures are unnecessary and contrary to the public interest, so long as the basis for the good cause finding is published with the rule changes. Section 1.412(c) of the Rules reflects the requirements contained in the Administrative Procedure Act (APA), 5 U.S.C. § 553(b)(B).

20. We find that a notice and comment rulemaking proceeding in this matter is unnecessary and would be contrary to the public interest. As noted in the discussion above, amending Section 80.1074(b) adds the GMDSS Maintainer's License to the GMDSS rules to ensure that only qualified, FCC licensed technicians would provide at-sea maintenance on board GMDSS-equipped vessels. In creating the GMDSS Maintainer's License in 1993, the Commission postponed making such a rule change pending final resolution of the maintenance issues included in ARA's Petition. Now that the maintenance issues have been resolved, this amendment is necessary in order to ensure that at-sea maintenance is provided by qualified individuals. This rule amendment does not constitute a burden to compulsory vessels, nor does it significantly add to the burdens imposed by the Commission in adopting the GMDSS rules. Accordingly, we conclude that notice and comment would serve no useful purpose and would delay the public safety benefits inherent in the rule change. Therefore, it is unnecessary to comply with the notice and comment requirements of the APA.

V. ORDERING CLAUSES

21. IT IS ORDERED that, pursuant to the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), and the authority contained in Section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. § 553(b)(B), and Section 1.412(c) of the Commission's Rules, 47 C.F.R. § 1.412(c), Part 80 of the Commission's Rules is amended as set forth below, effective thirty days after publication in the Federal Register.

[55] *Report and Order*, 7 FCC Rcd at 953.

GMDSS Radio Maintainer's Licenses.[43] In 1993, the Commission amended Part 13 of the Rules, creating a GMDSS Radio Maintainer's License to ensure that only qualified, FCC-licensed technicians would provide at-sea maintenance on board GMDSS-equipped vessels.[44] In order to be licensed by the Commission as a GMDSS Radio Maintainer, an applicant must pass a written examination demonstrating knowledge of GMDSS systems and repair procedures.[45] We have declined, however, to add the new license to the GMDSS requirements in Part 80, pending resolution of the at-sea maintenance issues in ARA's Petition. Now that these issues have been resolved, we are amending the Rules to reflect the Commission's intent in creating the new GMDSS Radio Maintainer's License.

15. Presently, Section 80.1074(b) permits at-sea maintenance to be performed by a licensed technician holding either a First Class Radiotelegraph Operator's Certificate (T-1), Second Class Radiotelephone Operator's Certificate (T-2), or a General Radiotelephone Operator License (G). In order to minimize the impact of this amendment on vessel operators that may have already made arrangements for at-sea maintenance, we are providing a grace period whereby persons holding the non-GMDSS related licenses listed above will have ample opportunity to take the examination(s) required to obtain a GMDSS Maintainer's License.[46] Therefore, persons holding a T-1, T-2, or G may serve as an at-sea maintainer on GMDSS vessels until the full implementation of the GMDSS on February 1, 1999.

B. Dual safety systems and Radio Officers during the transition period

16. ARA argues that the Commission should mandate the retention of Radio Officers and the existing manual Morse code radiotelegraph system on 500 kHz until the end of the transition period (February 2, 1999), and that reliance on the 2,182 kHz radiotelephony (voice) system is problematic at best.[47] AIMS responds that the GMDSS amendments identify the 2,182 kHz system as the common communications method during the transition period and notes that the early implementation of the 406 MHz emergency position-indicating radiobeacon (EPIRB) provides yet another common means of initiating distress alerts.[48] ARA replies that nothing precludes the United States from ensuring more effective communications than those prescribed internationally; that Morse code radiotelegraphy on 500

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[43] *Report and Order,* 7 FCC Rcd at 957-58.

[44] Amendment of Part 13 of the Commission's Rules to Privatize the Administration of Examinations for Commercial Operator Licenses and to Clarify Certain Rules, FO Docket No. 92-206, *Report and Order*, 8 FCC Rcd 1046 (1993). *See also* Public Notice, 8 FCC Rcd 919 (1993).

[45] 47 C.F.R. § 13.203(a)(7).

[46] First and Second Class Radiotelegraph Operator's License holders must pass written elements 3 and 9, while General Radiotelephone Operator License holders must pass written element 9 in order to qualify for a GMDSS Maintainer's License. *See* 47 C.F.R. § 13.201. Examinations are available nationwide from the Commission-certified Commercial Operator License Examination Managers.

[47] During the transition period between 1992 and 1999, the GMDSS provisions specify continuing the radiotelephony system on 2,182 kHz as the link between radiotelegraph ships and GMDSS ships.

[48] AIMS Opposition at 6. The rules specify that all GMDSS ships must carry a 406 MHz EPIRB as of August 1, 1993. 47 C.F.R. § 80.1065(b)(1).

situation.[33] The GMDSS requires multiple radio operators who are familiar with the radio equipment and who use it daily to satisfy the ship's operational needs. They must be licensed and familiar with GMDSS emergency procedures, and possess the basic technical skills necessary to replace equipment and adjust antennas. In response to safety concerns expressed by ARA and others about operator availability during a distress situation, we adopted the Coast Guard's suggestion that the radio operator and his/her alternate must be listed on the ship's station bill.[34]

10. ARA has produced no evidence that distress communications aboard U.S. ships would be jeopardized by enacting the approach adopted by the international community. We previously noted that under the GMDSS a failure in one system would not prevent critical communications by alternate systems or duplicative equipment; therefore, at-sea maintenance would be unwarranted.[35] We also note that the use of either at-sea maintenance, shore-based maintenance, or duplication of equipment does not eliminate the requirement for ship owners to ensure a good maintenance program for their radio equipment. In fact, the Commission's GMDSS rules implement the Safety Convention regulations that require vital safety communications equipment to be functioning properly before a ship leaves port and rely on either at-sea maintainers or duplication of equipment to ensure those functions during the voyage.[36]

11. Moreover, in 1996 Congress endorsed the GMDSS requirements set forth in the Safety Convention, which do not require at-sea maintenance. Section 365 of the Communications Act,[37] as enacted by Section 206 of the 1996 Telecommunications Act,[38] prohibits any requirement that compulsory vessels carry manual Morse code radiotelegraph installations, or radio officers to maintain such installations, so long as they operate in accordance with the GMDSS provisions of the Safety Convention. Both the Safety Convention and the GMDSS Rules adopted by the Commission in 1992 provide flexibility for vessels sailing the high seas to choose two of the three GMDSS maintenance methods: duplication of equipment, shore-based maintenance, and at-sea maintenance. Likewise, vessels sailing close to shore are required to choose only one of the methods. Under the Safety Convention, however, no GMDSS vessel is required to use at-sea maintenance. Thus, Congress, the Safety Convention, and the Commission's GMDSS Rules are in agreement concerning at-sea maintenance.

12. ARA also contends that the Commission failed to articulate any basis for concluding that the other maintenance methods are "at least as viable" as at-sea maintenance. In the *Report and Order*,

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[33] This position was reaffirmed at the World Administrative Radio Conference held in February 1992 (WARC-92), where the international community conformed the international Radio Regulations to the 1988 SOLAS Amendments concerning this point. The GMDSS represents thousands of hours of planning, testing, and evaluation by the world's leading experts on maritime matters in the IMO, the International Radio Consultative Committee (CCIR), and other international organizations. *Id.* at 957.

[34] *Id.* at 955.

[35] *Id.* at 955.

[36] 47 C.F.R. § 80.1105(e).

[37] 47 U.S.C. § 363.

[38] 1996 Telecommunications Act, Section 206.

Commission to operate the radio installation. Although these operators may have other duties on board the vessel, one of them must be dedicated to operating the GMDSS installation during an emergency, while the other operator serves as a backup.[19] In addition to the two licensed operators on board, the vessel owner must choose among three maintenance methods: duplication of equipment, shore-based maintenance, and/or at-sea maintenance.[20] If at-sea maintenance is chosen, the vessel must carry one person licensed by the Commission to maintain the GMDSS radio installation.[21] The number and types of maintenance options required depend on the routes of the vessel. For example, vessels sailing coastwise (within radio range of a VHF or MF band digital selective calling-equipped coast station) must choose at least one of the three maintenance options. Vessels sailing on the high seas (hundreds of miles from land) must choose at least two of the three maintenance methods. Irrespective of the maintenance methods chosen, a GMDSS vessel may not leave any port until the radio installation is capable of performing all vital distress and safety functions.[22]

6. *Petition.* On April 12, 1992, ARA filed a Petition requesting that the Commission reconsider its requirements concerning (1) the radio personnel and maintenance aboard GMDSS ships and (2) the required communications facilities until full implementation of the GMDSS in 1999.[23] The American Institute of Merchant Shipping (AIMS) filed a Reply in Opposition (Opposition) to ARA's Petition.[24] ARA filed a Reply to AIMS's Opposition (Reply). Letters were also submitted by Senator Daniel K. Inouye and jointly by Congressmen Edward J. Markey and Matthew J. Rinaldo (hereafter, Congressional letters).[25] ARA and the Congressional letters request the Commission to reconsider its decision and urge that it require GMDSS ships to have an operator on board who is dedicated to and

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[19] 47 C.F.R. § 80.1073.

[20] The term "duplication of equipment" refers to carrying redundant systems to meet GMDSS functional requirements as specified in 47 C.F.R. § 80.1105(g). The term "shore-based maintenance" refers to maintaining and repairing GMDSS systems at ports of call as specified in 47 C.F.R. § 80.1105(i). The term "at-sea maintenance" refers to carrying at least one person qualified to maintain and repair GMDSS systems while the vessel is at sea, as specified in 47 C.F.R. § 80.1105(j).

[21] 47 C.F.R. § 80.1074.

[22] 47 C.F.R. § 80.1105. These "vital functions" include: transmitting ship-shore distress alerts via at least two independent means; receiving shore-ship distress alerts, transmitting and receiving search and rescue coordination communications, on-scene communications, signals for locating, and maritime safety information; transmitting and receiving general radio communications to and from shore; and transmitting and receiving bridge-to-bridge communications. *See* 47 C.F.R. § 80.1081(a).

[23] FCC Public Notice, No. 1886 (April 12, 1992).

[24] AIMS describes itself as "a national trade association representing 24 U.S.-flag carriers which own or operate approximately twelve million deadweight tons of tankers, dry bulk carriers, containerships, and other oceangoing vessels engaged in the domestic and international trade of the United States. AIMS represents a majority of U.S.-flag tanker and liner tonnage." AIMS Reply at 1.

[25] Letter from Senator Daniel K. Inouye to Alfred C. Sikes, Chairman, Federal Communications Commission (May 21, 1992); Letter from Congressmen Edward J. Markey and Matthew J. Rinaldo to Alfred C. Sikes, Chairman, Federal Communications Commission (June 9, 1992).

Organization (IMO)[5] and provide flexibility for vessel operators to choose maintenance methods based on the routes of each particular vessel and the availability of shore-based maintenance. As we found in the *Report and Order*, duplication of equipment and shore-based maintenance are as effective a means for ensuring successful operation of GMDSS radio installations as at-sea maintenance. Finally, Congress recently affirmed that U.S. vessels should not have to carry dual safety systems prior to full implementation of the GMDSS in 1999. Section 365 of the Communications Act of 1934, as amended, (Communications Act) prohibits any requirement that passenger vessels and large cargo vessels carry manual Morse code radiotelegraph installations, so long as these vessels operate in accordance with the GMDSS provisions of the Safety Convention,[6] and have been certified by the U.S. Coast Guard as having GMDSS equipment installed and operating in good working condition.[7]

II. BACKGROUND

3. Prior to the enactment of the 1996 Telecommunications Act, Section 351 of the Communications Act required passenger vessels and large cargo vessels to be equipped with manual Morse code radiotelegraph installations when navigating on the open seas or on international voyages.[8] This requirement in the original Communications Act of 1934 derived from the Wireless Ship Act of 1910,[9] and the Radio Communications Act of 1912.[10] At that time, the radiotelegraph was part of an international distress communications system providing a common radio link between large vessels at sea via manual Morse code telegraphy on 500 kHz. In 1988, the international maritime community agreed to replace the required radiotelegraph with the GMDSS -- an automated ship-to-shore distress and safety

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[5] The IMO is a specialized agency of the United Nations that promotes the safety of ships and property at sea and the lives of people on board.

[6] Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Telecommunications Act). The term "passenger vessels" refers to U.S. vessels certified by the U.S. Coast Guard to carry more than 12 passengers for hire in the open sea. The term "large cargo vessels" refers to U.S. vessels of more than 1,600 gross tons operating in the open sea, not certified to carry passengers.

[7] *See* Section 365 of the Communications Act, as amended, 47 U.S.C. § 363. Congressman Tauzin, principal author of Section 365 of the conference report, described the intended role of the U.S. Coast Guard in a separate statement: "In implementing this section ... we do not contemplate the Coast Guard conducting a rule making, public hearing, or other lengthy regulatory process. Rather, we contemplate a simple adaptation of current, well-established Commission certification procedures." 104 Cong. Rec. H1178 (daily ed. February 1, 1996) (statement of Rep. Tauzin). Effective July 1, 1998, the Commission no longer inspects large cargo vessels or small passenger ships. Ship owners or operators are required to arrange for an inspection by an FCC-licensed technician. Inspection of Radio Installations on Large Cargo and Small Passenger Ships, CI Docket No. 95-55, *Report and Order*, 63 Fed. Reg. 29656 (1998).

[8] 47 U.S.C. § 351. More specifically, the vessels covered by this requirement include all passenger ships irrespective of size that are certified to carry more than twelve passengers when traveling on international voyages or in the open sea, and cargo ships of 1,600 tons gross tonnage and over when traveling on international voyages or in the open sea.

[9] Pub. L. No. 262, 36 Stat. 629 (1910).

[10] Pub. L. 264, 37 Stat. 302 (1912).