by the ITU. However, as is the case with HF radiotelephone frequency pairs, some frequencies allotted to multiple regions are as a practical matter not available in each of those regions, for assignment to different licensees would result in harmful interference. Consequently, our current practice is to grant a later license on such a frequency only on a secondary, non-interference basis with respect to the first licensee. We propose to codify this policy. Another similarity to HF radiotelephone frequencies is that HF radiotelegraph frequencies formerly were subject to a channel loading requirement,[233] and an increase in applications, particularly from incumbents seeking additional frequencies, is foreseeable now that we have eliminated the requirement.[234]

66. In addition to the radiotelegraph table frequencies, the following frequencies also are available for assignment for public coast station radiotelegraph use, upon IRAC coordination and approval: (1) LF and MF frequencies offset from the radiotelegraph table frequencies,[235] and (2) any frequency in addition to the radiotelegraph table frequencies that is within the segments of the maritime mobile HF bands where coast station use of facsimile is permitted internationally ("the facsimile bands").[236]

67. Facsimile frequencies are assigned for nationwide use to a single public coast station.[237] Our rules do not establish specific frequencies for high seas public coast station facsimile use;[238] rather, licensees may select for facsimile use any 3 kHz channel in (1) the facsimile bands,[239] or (2) the 2000-27500 kHz bands (except 4000-4063 kHz and 8100-8195 kHz) listed in Part 2 of the Commission's Rules as available for shared use by the maritime mobile service and other radio services ("the shared bands").[240] After coordination and approval by IRAC, the chosen frequency will be assigned if its use will not cause harmful interference to another licensee, even if such use will preclude assignment of an unassigned frequency also allocated to another service or another type of transmission.[241]

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233 *See Second Further Notice*, 12 FCC Rcd at 17003.

234 *See supra*, ¶ 26.

235 *Second Further Notice*, 12 FCC Rcd at 17002. Licensees obtain these frequencies in order to avoid interference from a co-channel or adjacent channel station in another region or another country. *Id.*

236 47 C.F.R. § 80.357(b)(1). The HF radiotelegraph table frequencies fall within the facsimile bands. *Compare id. with* 47 C.F.R. § 80.363(a)(2).

237 *Second Further Notice*, 12 FCC Rcd at 17002.

238 *See* Commission's Rules to Provide for Facsimile Communications in the Maritime Mobile Service, PR Docket No. 83-90, 48 Fed. Reg. 9890, 9890 (1983) (*Facsimile NPRM*).

239 *See* 47 C.F.R. § 80.363(a)(2); Amendment of Parts 2 and 80 of the Commission's Rules Regarding Revision of the High Frequency (HF) Channels for the Maritime Mobile Service to Implement the Final Acts of the World Administrative Radio Conference for the Mobile Services, Geneva, 1987, *Notice of Proposed Rule Making*, PR Docket No. 90-133, 5 FCC Rcd 1838, 1839 (1990).

240 47 C.F.R. §§ 80.122(b)(1), 80.363(a)(2); *see* Amendment of Parts 2, 81 and 83 to Provide for Facsimile Communications in the Maritime Mobile Service, *Report and Order*, PR Docket No. 83-90, 95 FCC 2d 349, 351 (1983) (*Facsimile Report and Order*).

241 *See* 47 C.F.R. § 80.363(a)(2).

68. We tentatively conclude that the radiotelegraph table frequencies should remain available for radiotelegraph use, so that high seas radiotelegraph public coast station operators can take advantage of the elimination of the channel loading requirement, and for facsimile use, because we expect more facsimile use of these frequencies than telegraph use in the future. One way to accomplish both goals within a competitive bidding procedure for resolving mutually exclusive applications would be to divide the facsimile bands into frequencies set aside for radiotelegraph use only and frequencies set aside for facsimile use only. However, the Commission found in an earlier proceeding that clearing usable 3 kHz slots for facsimile use amid existing radiotelegraph and facsimile licensees would be impractical, and we tentatively conclude that this remains true.[242] Further complicating such an effort is the fact that the facsimile bands are allocated to Government and non-Government users, so any channelization of the facsimile bands would have to take into account present Government users and future Government needs.[243]

69. We propose to retain our current procedures for assigning the radiotelegraph and facsimile frequencies. Where mutually exclusive applications are filed (*i.e.*, applications for the same frequency or overlapping frequencies in the same or nearby regions where granting both would result in harmful interference), competitive bidding procedures will be used. We realize that the possibility exists that applicants might request frequencies adjacent to or overlapping other requested frequencies, thus causing mutually exclusive "daisy chain" situations[244] and complicating the resolution of mutually exclusive applications by competitive bidding. We note, however, that mutual exclusivity has not to date been a problem with these frequencies, even without any channel loading requirement for the facsimile frequencies. We, therefore, seek comment on the proposal to retain our current assignment procedures, *i.e.*, putting applications for licenses on public notice individually to allow for the filing of competing applications. We also seek comment on whether, in the alternative, we should proceed with scheduling an auction of all currently unassigned spectrum.

70. In addition, we request comment on whether we should eliminate the operator licensing requirement for all public coast stations transmitting radiotelegraph (manual Morse code),[245] an issue regarding which the Commission inadvertently failed to seek comment in the *Second Further Notice*.[246]

3. NB-DP and data transmission

71. Frequency pairs for narrow-band direct printing (NB-DP)[247] and data transmission are distributed among the HF bands, and are assigned for nationwide use to a single public coast station.[248] In

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242 *Facsimile Report and Order*, 95 FCC 2d at 351; *Facsimile NPRM*, 48 Fed. Reg. at 9890.

243 *See* 47 C.F.R. § 2.106.

244 Daisy chains occur when an application is mutually exclusive with (*i.e.*, would cause harmful interference to) a second application, which is mutually exclusive with a third application, and so on, even though the first application may not be directly mutually exclusive with any application except the second. Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, *First Report and Order*, MM Docket No. 97-234, 13 FCC Rcd 15920, 15966 (1998).

245 *See* MMR Comments at 7-8.

246 *See Third Report and Order*, 13 FCC Rcd at 19889 (citing *Second Report and Order*, 12 FCC Rcd at 16976-77).

the *Second Report and Order* in this proceeding the Commission expanded NB-DP public coast stations' technical flexibility,[249] and in the *Fourth Report and Order* we eliminated the channel loading requirement, so an increase in applications, particularly from incumbents seeking additional frequency pairs, is possible.[250] We seek comment on whether we should continue assigning these frequency pairs individually using current procedures. Thus, the Commission would continue to put applications on public notice individually to allow for the filing of competing applications. Where mutually exclusive applications are filed, competitive bidding procedures would be used. Finally, we seek comment on whether, in the alternative, we should proceed with scheduling an auction of all currently unassigned frequency pairs for NB-DP and data transmission.

4. Use flexibility

72. As indicated above, high seas public correspondence spectrum is allocated for specific uses in accordance with the ITU Radio Regulations. We also note that we have in recent years experienced low demand for some of this spectrum. We recognize that this insufficient demand may be due to certain aspects of our Rules that prevent this spectrum from being used for other services. We therefore seek comment on whether we should introduce flexibility into our Rules to permit additional uses of this spectrum, for domestic use only and/or on a secondary basis to maritime communications. Commenters should consider whether the Radio Regulations and the characteristics of this spectrum would make such use flexibility impractical. Commenters making suggestions for additional uses that should be permitted on this spectrum are requested to propose appropriate changes to specific service rules. Finally, we note that the introduction of additional flexibility into these rules could lead us to reconsider some of the proposals set forth above regarding competitive bidding procedures for high seas spectrum. We encourage any commenters proposing additional flexibility to address whether our existing proposals would remain appropriate if their suggestions were adopted. We also seek comment on whether now is the appropriate time to transition this spectrum to a new use. We note that it may not always be in the public interest to distribute spectrum resources immediately to licensees. Based on the apparently limited demand for this spectrum, we seek comment on the best Commission approach to this spectrum.

5. Partitioning and disaggregation

73. We propose to permit partitioning pursuant to the Commission's current procedures by incumbents and auction winners on all high seas frequencies allotted nationwide or to multiple regions.[251] Specifically, we propose to permit partitioning of any geographic portion of the licensee's frequencies at any time to any entity eligible for a public coast station license, with one exception. The exception is that in instances where there are multiple incumbents, only the prior incumbent be allowed to partition frequencies and that the partitionee's operation be conditioned on a secondary, non-interference basis to the later

(Continued from previous page)

247 NB-DP is a form of radiotelegraphy, standardized internationally for the automatic transmission and reception of data communications in the marine HF band. NB-DP is used for communications either from ships to public coast stations or between ships.

248 *Second Further Notice*, 12 FCC Rcd at 17002; *see* 47 C.F.R. § 80.361(a)(1).

249 *Second Report and Order*, 12 FCC Rcd at 16974.

250 *See supra*, ¶ 26.

251 *See* 47 C.F.R. § 1.948.

incumbent. Partitioning of frequencies subject to IRAC approval and coordination requirements would itself require IRAC approval and coordination. Partitionees would hold their licenses for the remainder of the original licensee's term, and be eligible for the same renewal expectancy as other high seas public coast station licensees. We seek comment on these proposals, and on how to apportion responsibility for satisfying the twelve-month construction requirement.[252] One alternative is to give the parties the same options possessed by parties partitioning VHF geographic area licenses.[253] Another alternative is simply to prohibit partitioning by licensees that have not already satisfied their construction requirement.[254]

74. We tentatively conclude that no purpose would be served by permitting single-region licensees to partition their frequencies, for their authorized service areas cannot accommodate multiple co-channel licensees without harmful interference resulting. In addition, because we propose to continue assigning high seas spectrum by individual frequency (or, as the case may be, individual frequency pair) rather than by frequency block, disaggregation is not an option, and normal assignment procedures will continue to apply.

C. Competitive Bidding Procedures

75. In the *Third Report and Order* in this proceeding, the Commission decided that the general competitive bidding rules found in Subpart Q of Part 1 of the Commission's Rules should apply to the auction of public coast spectrum.[255] The Commission also adopted provisions to facilitate the participation of small businesses in auctions of public coast licenses.[256] Stating that it would base its definitions of small businesses on the characteristics and capital requirements of the specific service,[257] the Commission defined small businesses as those entities, together with their affiliates and controlling interests, with not more than fifteen million dollars in average gross revenues for the preceding three years, and very small businesses as those entities, together with their affiliates and controlling interests, with not more than three million dollars in average gross revenues for the preceding three years.[258] The Commission further provided that small businesses and very small businesses would receive bidding credits pursuant to the schedule set forth in the Part 1 rules. Thus, small businesses would receive a bidding credit of 25 percent and very small businesses would receive a bidding credit of 35 percent.[259] We tentatively conclude that these provisions, which were applied to the auction of VHF public coast licenses, would also be appropriate for the auction of the AMTS and high seas services licenses. In this

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252 47 C.F.R. § 80.49(a)(2) (as amended herein).

253 *See supra*, ¶ 55.

254 *See 220 MHz Fifth Report and Order*, 13 FCC Rcd at 24629.

255 *Third Report and Order*, 13 FCC Rcd at 19884; *see* 47 C.F.R. §§ 80.1251, 80.1252(a).

256 *Third Report and Order*, 13 FCC Rcd at 19884-88.

257 *Id.* at 19885; *see also* Amendment of Part 1 of the Commission's Rules – Competitive Bidding, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 388 (1997).

258 *Third Report and Order*, 13 FCC Rcd at 19884; *see* 47 C.F.R. § 80.1252(b).

259 *Third Report and Order*, 13 FCC Rcd at 19888; *see* 47 C.F.R. § 80.1252(d).

regard, we note that the three maritime radio services operate under many of the same Part 80 service rules. Moreover, AMTS transmitting equipment is similar in technology and cost to VHF transmitting equipment. Thus, we believe that the capital requirements for AMTS and high seas public coast services may be comparable to those for VHF public coast service. Although we recognize that the transmitting equipment used by high seas public coast providers can cost more than the equipment used by AMTS and VHF public coast providers, we nonetheless believe, considering the rules under which these service providers operate and the similarities in services provided, that the small business definitions and bidding credits that were applied in the VHF public coast auction would also be appropriate for AMTS and high seas public coast services. We seek comment on whether any of these provisions should be modified for the auction of licenses for the AMTS and high seas public coast spectrum.[260]

V. PROCEDURAL MATTERS

A. Suspension of Acceptance and Processing of Applications

76. In light of the fundamental changes we have proposed for our AMTS and high seas public coast station licensing rules, we are suspending acceptance of applications for new licenses, applications to modify existing licenses, and amendments to applications for new licenses or modifications, for AMTS (217-220 MHz)[261] and HF radiotelephone (4-27.5 MHz)[262] frequencies as of the release date of this *Fourth Report and Order and Third Further Notice of Proposed Rule Making*, except as provided in the following paragraph.[263] Any such applications received on or after that date will be returned as unacceptable for filing. We believe that after the public has been placed on notice of our proposed rule changes, continuing to accept new applications under the current rules would impair the objectives of this proceeding, particularly in light of our decision today to eliminate the channel loading requirements for high seas radiotelephone (HF only) spectrum. We also note that this is consistent with the approach we have taken in other existing services where we have proposed to adopt geographic area licensing and auction rules.[264] We therefore find that this temporary measure is in the public interest.

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260 We note that we have recently clarified and amended the Commission's Part 1 competitive bidding procedures for all auctionable services. In so doing, we have, *inter alia*, adopted a general attribution rule that supersedes the attribution rule for public coast services currently set forth at 47 C.F.R. § 80.1252(c). *See* Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, FCC 00-274, ¶¶ 59-67 (rel. Aug. 14, 2000). We have also delegated to the Wireless Telecommunications Bureau the authority to make any revisions to the Code of Federal Regulations that are necessary to conform existing service-specific auction rules to the Part 1 general competitive bidding rules. *Id.* at ¶ 78. If such conforming revisions have not been made prior to AMTS and high seas public coast service auctions, the Part 1 general attribution rule will nonetheless apply. We also note that when such conforming revisions are made, 47 C.F.R. § 1.1252(d) will be amended to reflect the fact that 47 C.F.R. § 1.2110(e) has been redesignated as 47 C.F.R. § 1.2110(f).

261 47 C.F.R. § 80.385(a)(2).

262 47 C.F.R. § 80.371(b).

263 That is, we suspend the acceptance and processing of applications only for that spectrum for which we propose to hold an auction.

264 *See, e.g., Second Further Notice*, 12 FCC Rcd at 17015-16; Licensing of General Category Frequencies in the 806-809.750/851.750 MHz Bands, *Order*, 10 FCC Rcd 13190, 13190 (WTB 1995).

77. We will continue to accept and process applications for such frequencies involving renewals, transfers, assignments, and modifications, and amendments to such applications, that propose neither to expand a station's (or AMTS system's) service area or to obtain additional spectrum.[265] This exception should permit modifications that can improve the efficiency of incumbent operations without affecting the effective and orderly resolution of the issues in this proceeding.

78. With respect to applications for such frequencies that were filed prior to the release date of this *Fourth Report and Order and Third Further Notice of Proposed Rule Making*, and which are pending, we will process such applications provided that, as of the deadline stated above, they are not mutually exclusive with any other applications[266] and the relevant period for filing competing applications has expired. This approach gives the appropriate consideration to those applicants who filed applications prior to our proposed changes and whose applications are not subject to competing applications. Pending applications not meeting the above criteria will be held in abeyance until the conclusion of this proceeding, whereupon we will determine, in accordance with such new rules as are adopted, whether to process or return any such pending applications.

79. These decisions are procedural in nature and therefore not subject to the notice and comment and effective date requirements of the Administrative Procedure Act.[267] Moreover, there is good cause for proceeding in this manner; to do otherwise would be impractical, unnecessary, and contrary to the public interest because compliance would undercut the purposes of these interim measures.[268]

B. Regulatory Flexibility Act

80. Appendix B contains a Final Regulatory Flexibility Analysis (FRFA) with respect to the *Fourth Report and Order* and an Initial Regulatory Flexibility Analysis (IRFA) with respect to the *Third Further Notice of Proposed Rule Making*. As required by the Regulatory Flexibility Act,[269] the Commission

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265 The following modifications will not be deemed to expand a station's or system's service area: a modification that expands an AMTS station's or system's contour over water only (disregarding uninhabited islands), and a modification to relocate a radiotelephone station within the same licensing region.

266 We note that AMTS stations are licensed only as part of a system, and that ordinarily each station is the subject of a separate application. For puposes of this suspension of processing of pending applications, we will treat as mutually exclusive AMTS applications that are not themselves mutually exclusive with any other applications, but which are part of a proposed system that includes applications that are mutually exclusive as of the deadline stated above, if the non-mutually exclusive applications are not otherwise grantable. That is, we will suspend processing of all of the applications for the proposed system if the non-mutually exclusive applications cannot be granted without the suspended mutually exclusive applications because the partial system would not provide the required coverage, *see* 47 C.F.R. § 80.475(a), or would otherwise not satisfy the technical requirements in our AMTS rules. Only if the non-mutually exclusive applications are grantable without granting the mutually exclusive applications will we process the non-mutually exclusive applications, provided that the relevant period for filing competing applications has expired.

267 *See* 5 U.S.C. § 553(b)(A), (d); *Kessler v. FCC*, 326 F.2d 673 (D.C. Cir. 1963).

268 *See* 5 U.S.C. § 553(b)(B), (d)(3).

269 *See* 5 U.S.C. § 601, *et. seq.*

has prepared the analysis of the possible impact on small entities of the rules and proposed rules set forth in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Third Further Notice of Proposed Rule Making*, but they must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer Information Bureau, Reference Information Center, will send a copy of this *Fourth Report and Order and Third Further Notice of Proposed Rule Making*, including the FRFA and IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the Regulatory Flexibility Act.

C. Ex Parte Rules -- Permit-But-Disclose Proceeding

81. This is a permit-but-disclose notice and comment rule making proceeding. Ex parte presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.[270]

D. Paperwork Reduction Act of 1995

82. This *Fourth Report and Order* contains a new information collection that the Commission is submitting to the Office of Management and Budget (OMB) requesting emergency clearance under the Paperwork Reduction Act of 1995, Pub. L. No. 104-13.

83. This *Third Further Notice of Proposed Rule Making* contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to take this opportunity to comment on the information collections contained herein, as required by the Paperwork Reduction Act of 1995. Public and agency comments are due at the same time as other comments on this *Third Further Notice of Proposed Rule Making*; OMB comments are due 60 days from the date of publication of this *Third Further Notice of Proposed Rule Making* in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 Twelfth St., S.W., Room 1-C804, Washington, D.C. 20554, or via the Internet to jboley@fcc.gov, and to Virginia Huth, OMB Desk Officer, 10236 NEOB, 725 17th St., N.W., Washington, D.C. 20503, or via the Internet to vhuth@omb.eop.gov Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

E. Comment Dates

84. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before [60 days after Federal Register publication], and reply comments on or before [90 days after Federal Register publication].[271] Comments may be filed using the Commission's Electronic

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270 *See* 47 C.F.R. §§ 1.1202, 1.1203, 1.1206.

271 47 C.F.R. §§ 1.415, 1.419.

Comment Filing System (ECFS) or by filing paper copies.[272] Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit an electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message: "get form <your e-mail address." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth St., S.W., Room TW-A325, Washington, D.C. 20554.

F. Ordering Clauses

85. Authority for the issuance of this *Fourth Report and Order and Third Further Notice of Proposed Rule Making* is contained in Sections 4(i), 4(j), 7(a), 302, 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), and 332(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 157(a), 302, 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), and 332(c).

86. Accordingly, IT IS ORDERED that Parts 80 and 95 of the Commission's Rules, 47 C.F.R. Parts 80 and 95, ARE AMENDED as specified in Appendix C.

87. IT IS FURTHER ORDERED that, except for the temporary suspension set forth in paragraphs 88 to 89, this *Fourth Report and Order and Third Further Notice of Proposed Rule Making* will be effective 30 days after publication in the Federal Register.

88. IT IS FURTHER ORDERED that, effective November 16, 2000, no new applications to use the frequencies listed in Sections 80.371(b), and 80.385(a)(2) of the Commission's Rules, 47 C.F.R. §§ 80.371(b), and 80.385(a)(2), will be accepted for filing, except applications that do not propose to (1) expand a station's or system's service area, or (2) obtain additional spectrum, until the conclusion of this proceeding.

89. IT IS FURTHER ORDERED that pending applications to use the frequencies listed in Sections 80.371(b), and 80.385(a)(2) of the Commission's Rules, 47 C.F.R. §§ 80.371(b), and 80.385(a)(2), WILL BE PROCESSED provided that (1) they are not mutually exclusive with other applications as of November 16, 2000, nor, with respect to the frequencies listed in Section 80.385(a)(2), part of a proposed system that does not meet the requirements of our rules without reference to any applications that are mutually exclusive with other applications as of November 16, 2000; and (2) the relevant period for filing competing applications has expired as of that date. Pending applications to use those frequencies not meeting the above criteria WILL BE HELD IN ABEYANCE until the conclusion of this proceeding. We will determine later, in accordance with such new rules as are adopted, whether to process or return any such pending applications.

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[272] *See* Electronic Filing of Documents in Rulemaking Proceedings, *Report and Order*, GC Docket No. 97-113, 13 FCC Rcd 11322 (1998).

90. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this *Fourth Report and Order and Third Further Notice of Proposed Rule Making*, including the Final and Initial Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

G. Contact for Information

91. For further information, contact Keith Fickner of the Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Policy and Rules Branch, at (202) 418-0680, TTY (202) 418-7233, or via e-mail to kfickner@fcc.gov.

92. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418-0260, TTY (202) 418-2555, or via e-mail to mcontee@fcc.gov. This *Fourth Report and Order and Third Further Notice of Proposed Rule Making* can be downloaded at http://www.fcc.gov/Wireless/Orders/2000/fcc00370.txt.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas
Secretary

APPENDICES

APPENDIX A - LIST OF COMMENTERS TO THE *SECOND FURTHER NOTICE OF PROPOSED RULE MAKING*

Comments

American Waterways Operators
Association of Public-Safety Communications Officials-International, Inc. (APCO)
Murray Cohen
Forestry-Conservation Communications Association (FCCA)
Globe Wireless
Industrial Telecommunications Association and Council of Independent Communications Suppliers (ITA/CICS)
WJG MariTEL Corporation (MariTEL)
Mobile Marine Radio, Inc. (MMR)
State of Montana
National Association of Broadcasters and Association for Maximum Service Television (NAB/MSTV)
National Marine Electronics Association (NMEA)
Paging Systems, Inc. (PSI)
RegioNet Wireless LLC (RegioNet)
Ross Engineering Company (Ross)
Robert H. Sassaman
United States Coast Guard (Coast Guard)
UTC, The Telecommunications Association
Waterway Communications System LLC (Watercom)

Reply Comments

BR Communications (BRC)
Globe Wireless
ITA/CICS
MariTEL
NAB/MSTV
RegioNet
Ross
Coast Guard

APPENDIX B - REGULATORY FLEXIBILITY ANALYSIS

I. Final Regulatory Flexibility Analysis (for *Fourth Report and Order*)

As required by the Regulatory Flexibility Act (RFA),[273] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Second Further Notice of Proposed Rule Making*[274] in this proceeding. The Commission sought written public comment on the IRFA. The present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[275]

A. Need for, and Objectives of, the *Fourth Report and Order*:

Our objective is to promote operational, technical, and regulatory flexibility for Automated Maritime Telecommunications System (AMTS) and high seas public coast stations. Specifically, this action will: (1) provide additional flexibility for AMTS coast stations by permitting the construction and operation of fill-in stations without prior Commission authorization, eliminating the current emission restrictions and channel plan, and increasing the permitted power levels for point-to-point communications, and (2) eliminate the required showing of channel loading and extend the construction period for high seas public coast stations. We find that these actions will allow maritime CMRS providers to better respond to market demand, increase competition in the provision of telecommunications services, promote more efficient use of marine spectrum, increase the types of telecommunications services available to vessel operators, and reduce regulatory burdens on coast station licensees. Thus, we conclude that the public interest is served by amending our rules as described above.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA:

No comments were submitted in response to the IRFA. In general comments on the *Second Further Notice*, however, some small business commenters (*i.e.*, Paging Systems, Inc., RegioNet Wireless LLC, Waterway Communications System LLC) raised issues that might affect small business entities. In particular, some small business commenters argued that the construction period for AMTS and high seas public coast stations should be extended from eight months to two years, and that AMTS licensees should be permitted to construct fill-in stations without prior Commission approval. The Commission carefully considered each of these comments in reaching the decision set forth herein.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply:

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[276] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small

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[273] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[274] *Second Report and Order and Second Further Notice*, 12 FCC Rcd at 17108.

[275] *See* 5 U.S.C. § 604.

[276] 5 U.S.C. § 603(b)(3).

organization," and "small governmental jurisdiction."[277] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[278] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[279] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[280]

The rules adopted herein will affect licensees using AMTS and high seas public coast spectrum. In the *Third Report and Order* in this proceeding, the Commission defined the term "small entity" specifically applicable to public coast station licensees as any entity employing fewer than 1,500 persons, based on the definition under the Small Business Administration rules applicable to radiotelephone service providers. *See* Amendment of the Commission's Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd 19853, 19893 (1998) (citing 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812). Since the size data provided by the Small Business Administration does not enable us to make a meaningful estimate of the number of AMTS and high seas public coast station licensees that are small businesses, and no commenters responded to our request for information regarding the number of small entities that use or are likely to use public coast spectrum, we have used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated in 1992 had 1,000 or more employees. There are three AMTS public coast station licensees and approximately thirteen high seas public coast station licensees. Based on the rules adopted herein, it is unlikely that more than seven licensees will be authorized in the future. Therefore, for purposes of our evaluations and conclusions in this FRFA, we estimate that there are approximately twenty-five AMTS and high seas public coast station licensees that are small businesses, as that term is defined by the Small Business Administration.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements:

In order to permit AMTS licensees to construct fill-in stations without notifying the Commission, while still enabling amateur radio licensees to abide by the exclusion and notification distances in our rules, we are requiring AMTS licensees to notify two organizations that represent amateur licensees of the location of their fill-in stations. The estimated time for preparing these letters is twenty minutes per fill-in station. This is the same time requirement for both large and small entities, however, it is such a nominal requirement that it should not be a burden to any entity.

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[277] 5 U.S.C. § 601(6).

[278] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

[279] Small Business Act, 15 U.S.C. § 632 (1996).

[280] 5 U.S.C. § 601(4).

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered:

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

The Commission in this proceeding has considered comments on implementing broad changes to the maritime service rules. It has adopted alternatives which minimize burdens placed on small entities. First, it has decided to permit AMTS licensees to construct fill-in stations without notifying the Commission, avoiding the need to file an application. Also, it has extended the eight-month construction requirement to two years for all AMTS stations and one year for all high seas public coast stations. In addition, the Commission has eliminated the requirement that applicants for HF high seas frequencies show that their current channels are fully loaded before they may obtain additional channels.

The Commission considered and rejected several significant alternatives. It rejected the National Association of Broadcasters and Association for Maximum Service Television's alternative of moving the rules governing the Low Power Radio Service from Part 95 to Part 80 of its rules. This was rejected because it could have caused confusion among licensees. Instead, the Commission will leave the LPRS rules in place. The Commission also rejected the alternative of basing the construction requirement for high seas public coast stations on the population of the station's service area as it has for other services, such as AMTS. This would have required licensees to acquire and act upon additional data. Instead, the Commission used a time-based construction requirement because it will ensure rapid delivery of service to the public.

Report to Congress: The Commission will send a copy of the *Fourth Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the SBREFA, *see* 5 U.S.C. § 801(a)(1)(A). In addition, the Commission will send a copy of the *Fourth Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the *Fourth Report and Order* and FRFA (or summaries thereof) will be published in the Federal Register. *See* 5 U.S.C. § 604(b).

II. Initial Regulatory Flexibility Analysis (for *Third Further Notice of Proposed Rule Making*)

As required by the RFA,[281] the Commission has prepared this present IRFA of the possible significant economic impact on small entities of the policies and rules proposed in the *Third Further Notice of Proposed Rule Making*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Third Further Notice of Proposed Rule Making* provided in the item. The Commission will send a copy of the *Third Further Notice of Proposed Rule Making*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. § 603(a). In addition, the *Third Further Notice of Proposed Rule Making* and IRFA (or summaries thereof) will be published in the Federal Register. *See id.*

[281] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

A. Need for, and Objectives of, the Proposed Rules:

Our objective is to determine whether it is in the public interest, convenience, and necessity to simplify our licensing process for AMTS and high seas public coast stations. These proposals include (1) converting licensing of AMTS coast station spectrum from site-based to geographic area licensing, (2) simplifying the AMTS licensing procedures and rules, (3) increasing AMTS and high seas public coast station licensee flexibility to provide service over a wide area, and (4) employing the Commission's Part 1 standardized competitive bidding procedures to resolve mutually exclusive applications. In addition, we temporarily suspend the acceptance and processing of certain AMTS and high seas public coast station applications because we believe that after the public has been placed on notice of our proposed rule changes, continuing to accept new applications under the current rules would impair the objectives of this proceeding. These proposed rules and actions should increase the number and types of communications services available to the maritime community.

B. Legal Basis:

Authority for issuance of this item is contained in Sections 4(i), 4(j), 7(a), 302, 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), and 332(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 157(a), 302, 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), and 332(c).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply:

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[282] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[283] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[284] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[285] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[286]

[282] 5 U.S.C. § 603(b)(3).

[283] 5 U.S.C. § 601(6).

[284] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

[285] Small Business Act, 15 U.S.C. § 632 (1996).

[286] 5 U.S.C. § 601(4).

The proposed rules would affect licensees using AMTS and high seas public coast spectrum. In the *Third Report and Order* in this proceeding, the Commission defined the term "small entity" specifically applicable to public coast station licensees as any entity employing less than 1,500 persons, based on the definition under the Small Business Administration rules applicable to radiotelephone service providers. *See* Amendment of the Commission's Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd 19853, 19893 (1998) (citing 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812). Since the size data provided by the Small Business Administration does not enable us to make a meaningful estimate of the number of AMTS and high seas public coast station licensees that are small businesses, we have used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated in 1992 had 1,000 or more employees. Thus, we estimate that no fewer than 1,166 small entities will be affected. Any entity that is capable of providing radiotelephone service is eligible to hold a public coast license. Therefore, we seek comment on the number of small entities that use AMTS and high seas public coast spectrum and the number of small entities that are likely to apply for licenses under the various proposals described herein.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements:

We will award licenses by competitive bidding where mutually exclusive applications are filed. Prior to auction, all applicants, including small businesses, will be required to submit an FCC Form 175, OMB Clearance Number 3060-0600. If we use small business definitions for the purpose of providing bidding credits to auction participants, then all small businesses that choose to participate in these services will be required to demonstrate that they meet the criteria set forth to qualify as small businesses, as required under Part 1, Subpart Q of the Commission's Rules. *See* 47 C.F.R. Part 1, Subpart Q. Any small business applicant wishing to avail itself of small business provisions will need to make the general financial disclosures necessary to establish that the small business is in fact small. The estimated time for filling out an FCC Form 175 is 45 minutes. Each applicant will have to submit information regarding the ownership of the applicant, any joint venture arrangements or bidding consortia that the applicant has entered into, and, if claiming eligibility for bidding credits, financial information demonstrating that the applicant qualifies as a small business. Applicants that do not have audited financial statements available will be permitted to certify the validity of their financial showings. While many small businesses have chosen to employ attorneys prior to filing an application to participate in an auction, the rules are intended to enable a small business to file an application on its own using the short form application preparation guidelines that are made available by the Commission before any auction. When an applicant wins a license, it will be required to submit an FCC Form 601 license application, which will require technical information regarding the applicant's proposals for providing service and other information. This application will require information provided by an engineer who will have knowledge of the system's design. The estimated time for completing an FCC Form 601 is one hour and fifteen minutes.

E. Significant Alternatives Minimizing the Economic Impact on Small Entities:

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

In the *Third Further Notice of Proposed Rule Making*, the Commission proposes that the Part 1 unjust enrichment provisions will govern partitioning and disaggregation arrangements involving AMTS licenses owned by small businesses that were afforded a bidding credit and later elect to partition or disaggregate their licenses to an entity that does not qualify as a small business. The alternative to applying the unjust enrichment provisions would be to allow an entity who had benefited from the special bidding provisions for small businesses to become unjustly enriched by partitioning or disaggregating its licenses to parties that do not qualify for such benefits.

The *Third Further Notice of Proposed Rule Making* solicits comment on a variety of alternatives set forth herein. Any significant alternative presented in the comments will be considered.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules:

None.

APPENDIX C - FINAL RULES

Chapter I of Title 47 of the Code of Federal Regulations, Parts 80 and 95 are amended as follows:

I. Part 80 - Stations in the Maritime Services

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

AUTHORITY: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, 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 80.25 is amended by revising paragraph (b) to read as follows:

§ 80.25 License term.

* * * * *

(b) Licenses other than ship stations in the maritime services will normally be issued for a term of ten years from the date of original issuance, major modification, or renewal.

* * * * *

3. Section 80.49 is amended by revising paragraph (a)(2) and adding a new paragraph (a)(3) to read as follows:

§ 80.49 Construction and regional service requirements.

(a) *Public coast stations.*

* * * * *

(2) For LF, MF, and HF band public coast station licensees, when a new license has been issued or additional operating frequencies have been authorized, if the station or frequencies authorized have not been placed in operation within twelve months from the date of grant, the authorization becomes invalid and must be returned to the Commission for cancellation.

(3) For AMTS band public coast station licensees, when a new license has been issued or additional operating frequencies have been authorized, if the station or frequencies authorized have not been placed in operation within two years from the date of grant, the authorization becomes invalid and must be returned to the Commission for cancellation.

4. Section 80.105 is revised to read as follows:

§ 80.105 General obligations of coast stations.

Each coast station or marine-utility station must acknowledge and receive all calls directed to it by ship or aircraft stations. Such stations are permitted to transmit safety communication to any ship or aircraft station. VHF (156-162 MHz) and AMTS (216-220 MHz) public coast stations may provide fixed or hybrid services on a co-primary basis with mobile operations.

5. Section 80.213 is amended by revising paragraphs (a)(2) and (d) to read as follows:

§ 80.213 Modulation requirements.

(a) * * *

(2) When phase or frequency modulation is used in the 156-162 MHz band the peak modulation must be maintained between 75 and 100 percent. A frequency deviation of ± 5 kHz is defined as 100 percent peak modulation; and

* * * * *

(d) Ship and coast station transmitters operating in the 156-162 MHz band must be capable of proper operation with a frequency deviation of ± 5 kHz when using any emission authorized by § 80.207 of this part.

* * * * *

6. Section 80.215 is amended by removing and reserving footnote 7, and revising paragraphs (h)(2), (h)(5), and (i) introductory paragraph to read as follows:

§ 80.215 Transmitter power.

* * * * *

(h) * * *

(2) Coast stations located less than 169 kilometers (105 miles) from a channel 13 TV station, or less than 129 kilometers (80 miles) from a channel 10 TV station, or when using a transmitting antenna height above ground greater than 61 meters (200 feet), must submit a plan to limit interference to TV reception, unless the station's predicted interference contour is fully encompassed by the composite interference contour of the system's existing stations, or the station's predicted interference contour extends the system's composite interference contour over water only (disregarding uninhabited islands). The plan must include:

* * * * *

(5) The transmitter power, as measured at the input terminals to the station antenna, must be 50 watts or less.

(i) A ship station must have a transmitter output not exceeding 25 watts and an ERP not exceeding 18 watts. The maximum transmitter output power is permitted to be increased to 50 watts under the following conditions:

* * * * *

7. Section 80.357 is amended by deleting paragraphs (b)(2)(ii)(A)-(C) and revising paragraph (b)(2)(ii) to read as follows:

§ 80.357 Morse code working frequencies.

* * * * *

(b) * * *

(2) * * *

(ii) Frequencies above 5 MHz may be assigned primarily to stations serving the high seas and secondarily to stations serving inland waters of the United States, including the Great Lakes, under the condition that interference will not be caused to any coast station serving the high seas.

* * * * *

8 Section 80.371 is amended by removing paragraph (b)(4), redesignating paragraph (b)(3) as paragraph (b)(2), and revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 80.371 Public correspondence frequencies.

* * * * *

(b) *Working frequencies in the 4000-27500 kHz band.*

(1) The following table specifies the carrier frequencies available for assignment to public coast stations. The paired ship frequencies are available for use by authorized ship stations. The specific frequency assignment available to public coast stations for a particular geographic area is indicated by an "x" under the appropriate column. The allotment areas are in accordance with the "Standard Defined Areas" as identified in the International Radio Regulations, Appendix 25 Planning System, and indicated in the preface to the International Frequency List (IFL).

Working carrier frequency pairs in the 4000-27500 kHz band											
Channel	Ship transmit	Coast transmit	USA-E	USA-W	USA-S	USA-C	VIR	NWA	ALS	PTR	GUM
401	4065	4357	x	x	x	x	–	–	–	–	–
403	4071	4363	x	x	x	x	–	x	–	x	–
404	4074	4366	x	x	–	x	–	–	x	–	–

405	4077	4369	x	x	x	x	--	x	x	--	--
409	4089	4381	x	x	x	x	--	--	--	--	--
410	4092	4384	x	--	--	--	--	--	--	--	x
411	4095	4387	x	x	--	x	--	--	--	--	--
412	4098	4390	x	x	x	--	--	--	--	--	--
414	4104	4396	x	--	x	--	--	--	x	x	--
416	4110	4402	x	x	--	x	--	--	x	--	--
417	4113	4405	x	x	x	x	--	--	--	--	--
418	4116	4408	--	--	--	x	--	x	--	--	--
419	4119	4411	--	x	x	--	--	x	--	x	x
422	4128	4420	x	x	--	--	--	--	x	--	--
423	4131	4423	x	x	x	x	--	--	x	--	--
424	4134	4426	--	--	--	x	--	--	--	--	--
427	4143	4435	x	x	x	x	x	x	x	--	--
428	4060	4351	--	--	x	--	--	--	--	--	--
604	6209	6510	x	x	x	x	--	x	x	x	x
605	6212	6513	--	--	--	x	--	--	--	--	--
607	6218	6519	--	--	x	--	--	--	--	--	--
802	8198	8722	x	--	x	--	--	x	x	--	--
803	8201	8725	--	--	--	x	--	--	--	--	--
804	8204	8728	x	x	x	--	--	--	--	--	--
805	8207	8731	x	x	x	--	--	--	--	--	--
807	8213	8737	--	--	--	x	--	--	--	--	--
808	8216	8740	x	x	--	--	--	x	x	--	x
809	8219	8743	x	x	--	--	--	--	--	--	--
810	8222	8746	x	x	x	--	--	--	--	--	--
811	8225	8749	x	x	x	--	--	--	--	--	--
814	8234	8758	x	x	x	x	--	x	x	--	--

815	8237	8761	x	x	x	--	--	--	--	--	--
817	8243	8767	--	--	--	x	--	--	--	--	--
819	8249	8773	--	--	--	x	--	--	--	--	--
822	8258	8782	x	x	x	--	--	--	--	--	--
824	8264	8788	x	x	x	--	--	--	--	--	--
825	8267	8791	x	x	x	--	--	--	--	--	--
826	8270	8794	x	--	--	x	--	--	--	--	x
829	8279	8803	x	x	x	--	--	--	--	x	--
830	8282	8806	--	--	x	--	--	--	--	x	--
831	8285	8809	--	x	x	--	--	--	--	x	--
836	8113	8713	--	--	x	--	--	--	--	--	--
837	8128	8716	--	--	x	--	--	--	--	--	--
1201	12230	13077	x	x	x	--	--	--	--	--	--
1202	12233	13080	x	x	x	x	--	--	--	--	--
1203	12236	13083	x	x	x	x	--	x	x	--	--
1206	12245	13092	x	x	x	--	--	--	--	--	--
1208	12251	13098	x	--	x	--	--	--	--	--	--
1209	12254	13101	x	x	x	--	--	--	x	--	--
1210	12257	13104	x	x	x	--	--	--	--	--	x
1211	12260	13107	x	x	x	x	--	--	x	--	--
1212	12263	13110	x	--	x	--	--	x	x	x	--
1215	12272	13119	--	x	x	--	--	--	--	x	--
1217	12278	13125	--	--	--	x	--	--	--	--	--
1222	12293	13140	--	--	--	--	--	x	--	--	--
1223	12296	13143	x	x	x	--	--	--	--	--	x
1225	12302	13149	x	--	x	--	--	--	--	--	--
1226	12305	13152	x	x	x	--	--	--	--	--	--
1228	12311	13158	x	x	--	x	--	--	--	--	--

1229	12314	13161	–	x	–	–	–	–	–	–	–
1230	12317	13164	x	x	x	–	–	x	–	–	–
1233	12326	13173	–	–	x	–	–	–	–	–	–
1234	12329	13176	–	x	x	–	–	x	x	–	–
1235	12232	13179	–	–	x	–	–	–	–	–	–
1236	12335	13182	–	–	x	–	–	–	–	–	–
1237	12338	13185	x	–	x	x	x	–	–	–	–
1601	16360	17242	x	–	x	–	–	x	x	–	–
1602	16363	17245	x	x	x	–	–	–	–	–	–
1603	16366	17248	x	x	x	–	–	–	x	–	–
1605	16372	17254	x	x	–	–	–	–	–	–	–
1607	16378	17260	x	x	x	–	–	–	x	–	–
1609	16384	17266	x	x	x	–	–	–	–	–	–
1610	16387	17269	x	x	x	–	–	–	–	–	–
1611	16390	17272	x	x	x	–	–	–	–	–	–
1616	16405	17287	x	x	x	–	–	x	x	–	–
1620	16417	17299	x	–	–	x	–	–	–	–	–
1624	16429	17311	x	x	x	–	–	–	–	–	–
1626	16435	17317	x	–	–	–	–	–	–	–	–
1631	16450	17332	x	–	–	–	–	–	–	–	–
1632	16453	17335	x	x	x	–	–	–	x	–	–
1641	16480	17362	x	x	x	–	–	–	–	–	–
1642	16483	17365	x	x	x	x	x	x	x	x	–
1643	16486	17368	–	–	x	–	–	–	–	–	–
1644	16489	17371	x	x	x	x	–	x	x	–	–
1645	16492	17374	–	–	x	–	–	–	–	–	–
1646	16495	17377	–	x	–	–	–	–	–	–	–
1647	16498	17380	x	x	x	x	–	–	x	–	–

1648	16501	17383	--	x	--	x	x	x	x	x	--
1801	18780	19755	x	x	x	x	x	x	x	x	--
1802	18783	19758	x	--	x	x	x	--	--	x	--
1803	18786	19761	x	x	--	x	x	x	x	x	--
1804	18789	19764	--	x	x	--	--	x	x	--	--
1805	18792	19767	--	x	--	--	--	--	x	--	--
1807	18798	19773	--	--	x	--	--	--	--	--	--
1808	18801	19776	x	x	x	x	x	x	x	x	--
2201	22000	22696	x	x	x	--	--	--	--	--	x
2205	22012	22708	x	x	x	--	--	--	--	--	--
2210	22027	22723	x	--	--	--	--	--	--	--	--
2214	22039	22735	x	x	x	--	--	--	--	--	--
2215	22042	22738	x	x	x	--	--	--	--	--	--
2216	22045	22741	x	--	x	--	--	--	--	--	x
2222	22063	22759	x	--	--	--	--	--	--	--	--
2223	22066	22762	x	x	x	--	--	x	x	x	--
2227	22078	22774	x	x	x	--	--	--	--	--	--
2228	22081	22777	x	x	--	--	--	--	--	--	--
2231	22090	22786	x	x	x	--	--	--	x	--	--
2236	22105	22801	x	x	--	--	--	--	--	--	--
2237	22108	22804	x	x	x	--	--	--	--	--	--
2241	22120	22816	x	x	x	x	x	x	x	x	--
2242	22123	22819	--	--	x	--	--	--	--	--	--
2243	22126	22822	x	x	x	x	x	x	x	x	--
2244	22129	22825	--	x	--	--	--	x	x	--	--
2245	22132	22828	--	x	x	--	--	x	x	--	--
2246	22135	22831	--	--	x	--	--	--	--	--	--
2247	22138	22834	x	x	x	x	x	x	x	--	--

2501	25070	26145	x	x	x	x	--	x	x	--	--
2502	25073	26148	x	x	x	x	x	x	x	x	--
2503	25076	26151	--	--	x	--	--	--	--	--	--
2504	25079	26154	x	x	x	x	x	x	x	x	--

(2) The following table specifies the non-paired carrier frequencies that are available for assignment to public coast stations for simplex operations. These frequencies are available for use by authorized ship stations for transmissions to coast stations (simplex operations). Assignments on these frequencies must accept interference. They are shared with government users and are considered "common use" frequencies under the international Radio Regulations. They cannot be notified for inclusion in the Master International Frequency Register, which provides stations with interference protection, but may be listed in the international List of Coast Stations. (*See* Radio Regulation No. 1220 and Recommendation 304.)

* * * * *

9. Section 80.374 is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as (a) and (b) respectively.

10. Section 80.475 is amended by redesignating paragraph (b) as paragraph (c), and revising paragraph (a) and adding a new paragraph (b) to read as follows:

§ 80.475 Scope of service of the Automated Maritime Telecommunications System (AMTS).

(a) * * *

(1) Applicants proposing to locate a coast station transmitter within 169 kilometers (105 miles) of a channel 13 TV station or within 129 kilometers (80 miles) of a channel 10 TV station or with an antenna height greater than 61 meters (200 feet), must submit an engineering study clearly showing the means of avoiding interference with television reception within the grade B contour, *see* § 80.215(h) of this chapter, unless the proposed station's predicted interference contour is fully encompassed by the composite interference contour of the applicant's existing system, or the proposed station's predicted interference contour extends the system's composite interference contour over water only (disregarding uninhabited islands).

(2) * * *

(b) Coast stations for which the above specified need not be submitted because the proposed station's predicted interference contour is fully encompassed by the composite interference contour of the applicant's existing system or the proposed station's predicted interference contour extends the system's

composite interference contour over water only (disregarding uninhabited islands) must, at least 15 days before the station is put into operation, give written notice to the television stations which may be affected of the proposed station's technical characteristics, the date it will be put into operation, and the licensee's representative (name and phone number) to contact in the event a television station experiences interference. No prior FCC authorization is required to construct and operate such a station, but, at the time the station is added, the AMTS licensee must make a record of the technical and administrative information concerning the station and, upon request, supply such information to the FCC. In addition, when the station is added, the AMTS licensee must send notification of the station's location to the American Radio Relay League, Inc., 225 Main Street, Newington, CT 06111-1494, and Interactive Systems, Inc., Suite 1103, 1601 North Kent Street, Arlington, VA 22209.

* * * * *

11. Section 80.477 is amended by adding new subsection (d) to read as follows:

§ 80.477 AMTS points of communication.

* * * * *

(d) AMTS licensees may use AMTS coast and ship frequencies on a secondary basis for fixed service communications to support AMTS deployment in remote fixed locations at which other communications facilities are not available.

12. A new Section 80.481 is added to read as follows:

§ 80.481 Alternative technical parameters for AMTS transmitters.

In lieu of the technical parameters set forth in this part, AMTS transmitters may utilize any modulation or channelization scheme so long as emissions are attenuated, in accordance with § 80.211 of this chapter, at the band edges of each station's assigned channel group or groups.

II. Part 95 - Personal Radio Services

13. The authority citation for Part 95 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

14. Section 95.1013 is amended by revising paragraph (a) to read as follows:

§ 95.1013 Antennas.

(a) The maximum allowable ERP for a station in the LPRS other than an AMTS station is 100 mW. The maximum allowable ERP for an AMTS station in the LPRS is 1 W, so long as emissions are attenuated, in accordance with § 80.211 of this chapter, at the band edges.

* * * * *

APPENDIX D - PROPOSED RULES

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

Part 80 - Stations in the Maritime Services

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

AUTHORITY: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, 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 80.49 is amended by revising paragraph (a)(3) to read as follows:

§ 80.49 Construction and regional service requirements.

(a) *Public coast stations.*

* * * * *

(3) Each AMTS coast station geographic area licensee must make a showing of substantial service within its region or service area within five years of the initial license grant, and again within ten years of the initial license grant, or the authorization becomes invalid and must be returned to the Commission for cancellation. "Substantial" service is defined as service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal. For site-based AMTS coast station licensees, when a new license has been issued or additional operating frequencies have been authorized, if the station or frequencies authorized have not been placed in operation within two years from the date of the grant, the authorization becomes invalid and must be returned to the Commission for cancellation.

* * * * *

3. Section 80.60 is amended by revising paragraphs (a) and (b)(2) to read as follows:

§ 80.60 Partitioned licenses and disaggregated spectrum.

(a) *Eligibility.* Parties seeking approval for partitioning and disaggregation shall request an authorization for partial assignment pursuant to § 1.948 of this chapter.

(1) VHF Public Coast area licensees, *see* § 80.371(c)(1)(B) of this part, may partition their geographic service area or disaggregate their spectrum pursuant to the procedures set forth in this section.

(2) AMTS geographic area licensees may partition their geographic service area or disaggregate their spectrum pursuant to the procedures set forth in this section. Site-based AMTS public coast station licensees may disaggregate their spectrum pursuant to the procedures set forth in this section, provided that the disaggregatee's operations do not extend the disaggregator's service area.

(3) Nationwide or multi-region LF, MF, and HF public coast station licensees, *see* §§ 80.357(b)(1), 80.361(a), 80.363(a)(2), 80.371(b), and 80.374 of this part, may partition their spectrum pursuant to the procedures set forth in this section, except that frequencies licensed to more than one licensee as of **date of adoption** may be partitioned only by the earliest licensee, and only on the condition that the partitionee shall operate on a secondary, non-interference basis to stations licensed as of **date of adoption** other than the earliest licensee. Coordination with government users is required for partitioning of spectrum the licensing of which is subject to coordination with government users.

(b) *Technical standards.* (1) * * * * *

(2) *Disaggregation.* Spectrum may be disaggregated in any amount, except that VHF (156-162 MHz) spectrum may only be disaggregated according to frequency pairs.

* * * * *

4. Section 80.122 is amended by revising paragraph (b)(1) to read as follows:

§ 80.122 Public coast stations using facsimile and data.

* * * * *

(b) * * *

(1) Frequencies in the 2000-27500 kHz bands in part 2 of the Commission's rules as available for shared use by the maritime mobile service and other radio services are assignable to public coast stations for providing facsimile communications with ship stations. Additionally, frequencies in the 156-162 MHz and 216-220 MHz bands available for assignment to public coast stations for radiotelephone communications that are contained in subpart H of this part are also available for facsimile and data communications.

* * * * *

5. Section 80.207 is amended by revising paragraph (d) to read as follows:

§ 80.207 Classes of emission.

* * * * *

(d) The authorized classes of emission are as follows:

Types of stations	Classes of emission
Ship Stations[1] Radiotelegraphy:	

* * * * * 216-220 MHz[3] ..... * * * * * * Land Stations[1] Radiotelegraphy: * * * * * 216-220 MHz[3] ..... * * * * *	 F1B, F2B, F2C, F3C, F1D, F2D F1B, F2B, F2C, F3C, F1D, F2D

[1] Excludes distress, EPIRBs, survival craft, and automatic link establishment.

* * * * *

[3] Frequencies used in the Automated Maritime Telecommunications System (AMTS). See § 80.385(b).

* * * * *

6. Section 80.215 is amended by revision paragraph (h)(3)(i) to read as follows:

§ 80.215 Transmitter power

* * * * *

(h) * * *

(3) * * *

(i) Shows that the proposed site is the only suitable location (which, at the application stage, requires a showing that the proposed site is especially well-suited to provide the proposed service);

* * * * *

6. Section 80.357 is amended by revising paragraph (b)(1) to read as follows:

§ 80.357 Morse code working frequencies.

* * * * *

(b) *Coast station frequencies.*

(1) *Frequencies in the 100-27500 kHz band.* The following table describes the working carrier

frequencies in the 100-27500 kHz band which are assignable to coast stations located in the designated geographical areas. The exclusive maritime mobile HF bands listed in the table contained in § 80.363(b) of this part are also available for assignment to public coast stations for A1A or J2A radiotelegraphy following coordination with government users. With respect to frequencies that are assignable in more than one geographical area, once the frequency is assigned to one licensee, any subsequent license will be authorized on a secondary, non-interference basis with respect to the incumbent license's existing operation. If the first licensee later seeks authorization to operate in an additional geographic area, such authorization will be on a secondary, non-interference basis to other co-channel licensees.

* * * * *

8. Section 80.371 is amended by revising paragraphs (a), (b) and (b)(1) to read as follows:

§ 80.371 Public correspondence frequencies.

* * * * *

(a) *Working frequencies in the 2000-4000 kHz band.* The following table describes the working carrier frequency pairs in the 2000-4000 kHz band.

Working frequency pairs in the 2000-4000 kHz band		
Region	Carrier frequencies (kHz) Ship transmit	Coast transmit
East Coast:	* * *	* * *
* * *	2118.0	[1]2514.0
	* * *	* * *
	2382.0	[5]2482.0
	* * *	* * *
	2406.0	[4]2506.0
West Coast:	* * *	* * *
	2430.0	[5]2482.0
Gulf Coast:	* * *	* * *
	[1]2158.0	[1]2550.0
	* * *	* * *
	2382.0	[5]2482.0
* * *	* * *	* * *
Alaska:	2131.0	[5]2309.0
* * *	* * *	* * *

[1] Unlimited hours of use from December 15 to April 1 and day only from April 1 to December 15. Harmful interference must not be caused to any station in the Great Lakes region.

* * * * *

[4] Harmful interference must not be caused to any coast station in the Caribbean region.

[5] *But see* section 80.373(c)(3) of this chapter.

(b) *Working frequencies in the 4000-27500 kHz band.* This paragraph describes the working carrier frequencies in the 4000-27500 kHz band. With respect to frequencies that are assignable in more than one geographical area, once the frequency is assigned to one licensee, any subsequent license will be authorized on a secondary, non-interference basis with respect to the incumbent license's existing operation. If the first licensee later seeks authorization to operate in an additional geographic area, such authorization will be on a secondary, non-interference basis to other co-channel licensees.

(1) The following table specifies the carrier frequencies available for assignment to public coast stations. The geographic areas for which the licensee may use each frequency are indicated by an "x" under the appropriate column, which are in accordance with the "Standard Defined Areas" as identified in the International Radio Regulations, Appendix 25 Planning System, and indicated in the preface to the International Frequency List (IFL). The paired ship frequencies are available for use by authorized ship stations.

* * * * *

9. Section 80.373 is amended by adding a new paragraph (c)(3) to read as follows:

§ 80.373 Private communications frequencies.

* * * * *

(c) * * *

(3) In addition to the frequencies shown in paragraph (c)(1) of this section, the following coast transmit frequencies listed in the table in § 80.371(a) of this chapter are available for assignment to private coast stations and authorized ship stations for simplex business and operational radiotelephone communications: in the East Coast, West Coast, and Gulf Coast regions, 2482 kHz; in the Alaska region, 2309 kHz. These frequencies shall not be assigned to public coast stations before [insert date one year after effective date]. After that date, only the above frequencies in the above regions that have been assigned to at least one private coast station shall continue to be available for assignment to private coast stations. If, by that date, in any of the above regions, any of the above frequencies has not been assigned to a private coast station, that frequency in that region shall be available for assignment only to public coast stations.

10. Section 80.385 is amended by redesignating paragraph (c) as paragraph (f), and adding new paragraphs (c), (d), and (e) and revising paragraph (a)(2) to read as follows:

§ 80.385 Frequencies for automated systems.

* * * * *

(a) * * *

(1) * * *

(2) The following carrier frequencies are available for assignment to public coast stations for public correspondence communications with ship stations and units on land. AMTS operations must not cause harmful interference to the U.S. Navy SPASUR system which operates in the band 216.880-217.080 MHz.

* * *

* * * * *

(c) Subject to the requirements of § 80.21, each AMTS geographic area licensee may place stations anywhere within its region without obtaining prior Commission approval provided:

(1) The AMTS geographic area licensee must locate its stations at least 120 kilometers from the stations of co-channel site-based AMTS licensees. Shorter separations between such stations will be considered by the Commission on a case-by-case basis upon submission of a technical analysis indicating that at least 10 dB protection will be provided to an incumbent's predicted 38 dBu signal level contour. The site-based licensee's predicted 38 dBu signal level contour shall be calculated using the F(50, 50) field strength chart for Channels 7-13 in § 73.699 (Fig. 10) of this chapter, with a 9 dB correction for antenna height differential. The 10 dB protection to the site-based licensee's predicted 38 dBu signal level contour shall be calculated using the F(50, 10) field strength chart for Channels 7-13 in § 73.699 (Fig. 10a) of this chapter, with a 9 dB correction factor for antenna height differential.

(2) The locations and/or technical parameters of the transmitters are such that individual coordination of the channel assignment(s) with a foreign administration, under applicable international agreements and rules in this part, is not required.

(3) For any construction or alteration that would exceed the requirements of § 17.7 of this chapter, licensees must notify the appropriate Regional Office of the Federal Aviation Administration (FAA Form 7460-1) and file a request for antenna height clearance and obstruction marking and lighting specifications (FCC Form 854) with the FCC, Attn: Information Processing Branch, 1270 Fairfield Rd., Gettysburg, PA 17325-7245.

(4) The transmitters must not have a significant environmental effect as defined by §§ 1.1301 through 1.1319 of this chapter.

(5) The locations and/or technical parameters of the transmitters are such that no engineering study is required by §§ 80.215(h) and 80.475(a)(1) of this chapter.

(6) The AMTS geographic area licensee must, at the time a station blanket-licensed under this section is put into operation, send notification of the station's location to the American Radio Relay League, Inc., 225 Main Street, Newington, CT 06111-1494. In addition, the AMTS geographic area licensee must make a record of the technical and administrative information concerning the station and, upon request, supply such information to the FCC.

(d) A site-based AMTS licensee may transfer or assign its frequency block(s) to another entity. If the proposed transferee or assignee is the geographic area licensee for the geographic area to which the frequency block is allocated, such transfer or assignment will be deemed to be in the public interest. However, such presumption will be rebuttable.

(e) Any recovered frequency blocks will revert automatically to the holder of the geographic area license within which such frequencies are included. Any frequency blocks recovered where there is no geographic area licensee will be retained by the Commission for future licensing.

* * * * *

11. Section 80.475 is amended by revising paragraph (a) to read as follows:

§ 80.475 Scope of service of the Automated Maritime Telecommunications System (AMTS).

(a) A separate Form 601 is not required for each coast station in a system. However, except as provided in § 80.385(c) of this part and paragraph (b) of this section, the applicant must provide the technical characteristics for each proposed coast station, including transmitter type, operating frequencies, emissions, transmitter output power, antenna arrangement, and location.

* * * * *

12. Section 80.479 is amended by revising paragraph (b) to read as follows:

§ 80.479 Assignment and use of frequencies for AMTS.

(a) The frequencies assignable to AMTS stations are listed in Subpart H of this part. These frequencies are assignable to ship and public coast stations for voice, facsimile, radioteletypewriter, and data communications.

(b) The transmissions from a station of an AMTS geographic area licensee may not exceed a predicted 38 dBu field strength at the geographic area border, unless all affected co-channel geographic area licensees agree to the higher field strength. The predicted 38 dBu field strength is calculated using the F(50, 50) field strength chart for Channels 7-13 in § 73.699 (Fig. 10) of this chapter, with a 9 dB correction factor for antenna height differential. Geographic area licensees must coordinate to minimize interference at or near their geographic area borders, and must cooperate to resolve any instances of interference in accordance with the provisions of § 80.70(a) of this part.