



Federal Communications Commission
Washington, D.C. 20554

June 6, 2008

DA 08-1311

Small Entity Compliance Guide

Amendments to the Commission's Rules to Provide Additional Flexibility for AMTS and VHF Public Coast Station Licensees

WT Docket No. 04-257; FCC 07-87

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the above-referenced FCC rules. This Guide is not intended to replace the rules and final authority rests solely with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide may not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may revise this Guide without public notice to clarify or update the contents. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

1-888-CALL-FCC (1-888-225-5322)

TTY: 1-888-TELL-FCC (1-888-835-5322)

Fax: 202-418-0232

fccinfo@fcc.gov

TABLE OF CONTENTS

I. OBJECTIVES OF THE PROCEEDING..... 3

**II. REGULATIONS AND POLICIES THAT THE COMMISSION ADOPTED OR
MODIFIED, INCLUDING COMPLIANCE REQUIREMENTS..... 3**

A. VPC and AMTS Provision of Private Correspondence Service to Units on Land..... 4

B. Ensuring that Maritime Communications Have Priority 4

C. Requests for Additional Flexibility to Provide Land Mobile Service..... 4

D. Use of VPC Spectrum for Port Operations and Ship Movement Communications 6

III. RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS..... 6

IV. WEBLINKS 6

I. OBJECTIVES OF THE PROCEEDING

In the *Report and Order*, WT Docket No. 04-257, the Federal Communications Commission (Commission or FCC) amended part 80 of its rules to afford licensees of VHF Public Coast (VPC) stations and Automated Maritime Telecommunications System (AMTS) stations additional operational flexibility to provide service to units on land.

Specifically, the Commission adopted rule changes to permit VPC and AMTS licensees to offer private correspondence service to units on land, *i.e.*, private land mobile radio (PLMR) service, in addition to the public correspondence service they already are authorized to provide to units on land. Allowing these coast stations to provide such private land mobile radio service, in addition to public correspondence service, is a logical extension of prior rulemaking decisions expanding operational and technical flexibility for coast station services, and comports with the Commission's policies of favoring a level playing field in commercial mobile radio services (CMRS) competition, relying to the extent feasible on marketplace forces to determine the nature of services offered, facilitating efficient use of the scarce spectrum resource, and making additional spectrum available for public safety communications.

In order to maintain VPC and AMTS licensees' paramount role as providers of service to the maritime community, however, the Commission declined to afford VPC and AMTS licensees unfettered discretion to provide PLMR service pursuant to technical and service rules other than those contained in part 80 of the Commission's rules, which governs the Maritime Radio Service. The Commission decided to continue to require coast station licensees and lessees to request and obtain waivers before providing service to units on land pursuant to the rules generally applicable to land mobile radio services.

II. REGULATIONS AND POLICIES THAT THE COMMISSION ADOPTED OR MODIFIED, INCLUDING COMPLIANCE REQUIREMENTS

In brief, in this *Report and Order* the Commission took the following actions:

- Afforded VPC and AMTS licensees additional operational flexibility to provide service to units on land by adopting rule changes to permit VPC and AMTS licensees to offer private correspondence service (which consists of communications serving the user's business and operational needs) to units on land, *i.e.*, PLMR service, in addition to the public correspondence service they already are authorized to provide to units on land. Public correspondence communications are personal or private communications between two or more persons. Reflecting that public correspondence service is offered by coast stations on a common carrier basis, public correspondence is defined more precisely under the Part 80 Maritime Service Rules as "[a]ny telecommunication which the offices and stations must, by reason of their being at the disposal of the public, accept for transmission." *See* 47 C.F.R. § 80.5.
- Specified that AMTS stations providing PLMR service do not have to be interconnected to the public switched telephone network, but retained that interconnection requirement for AMTS stations providing CMRS.
- Clarified that VPC and AMTS licensees providing service to units on land must continue to ensure that maritime communications have priority, while also clarifying that a licensee's practice of dedicating separate channels for land mobile communications, on the one hand, and maritime communications, on the other, does not necessarily satisfy the maritime priority requirement although it may satisfy the requirement in certain circumstances.
- Declined to afford VPC and AMTS licensees unfettered discretion to provide PLMR service pursuant to technical and service rules other than those contained in Part 80 of the Rules (47 C.F.R. § 80.1 *et seq.*) which governs the Maritime Radio Service, except pursuant to waiver.

- Declined to amend the Part 80 rules to specify that VPC channels may be used for port operations and ship movement services, either in simplex or duplex mode.

A. VPC and AMTS Provision of Private Correspondence Service to Units on Land

The Commission concluded that the current rules are unnecessarily restrictive for VPC and AMTS licensees alike, and therefore, the following sections were amended as follows:

- Section 80.123 by removing the reference to “public correspondence” in the introductory paragraph;
- Section 80.475(c) by removing the references to ships and ship stations;
- Section 20.9(b) to expressly include AMTS licensees among those licensees eligible to rebut the presumption that they are CMRS providers;
- Sections 80.5 and 80.475(d) by eliminating the interconnection requirement for AMTS stations providing private correspondence service. (The interconnection requirement for CMRS offerings by AMTS licensees is still applicable.)
- Sections 80.371(c)(1)(i) and 80.479(a) by removing the “public correspondence” qualifiers to conform with the other rule amendments;
- Section 80.5 by removing the words “interconnected” and “integrated” from the definition of AMTS.

B. Ensuring that Maritime Communications Have Priority

The Commission declined to rule that a separate-channels approach, in any form and without regard to the channel capacity designated for maritime use, automatically satisfies the maritime priority requirement. The FCC emphasized that the rules do not prescribe or prefer any particular means of ensuring priority for maritime communications, but simply require that, whatever approach the licensee employs, it must in fact ensure that priority is accorded to maritime communications in a meaningful sense, *i.e.*, that maritime communications are transmitted immediately, reliably, and accurately.

The Commission declined to require maritime licensees proposing to provide or lease spectrum for PLMR service to routinely submit, as a prerequisite, a plan explaining how priority will be accorded to maritime communications. Noting that it had declined to impose such a requirement on VPC and AMTS licensees proposing to provide public correspondence radio service to units on land, the Commission stated that adding a private correspondence option to their land mobile operations, without any other change in the rules governing VPC/AMTS service to land units, should not greatly increase the likelihood that the maritime licensees will be unable or unwilling to provide priority for maritime communications. Routinely requiring the submission and the evaluation of such plans for ensuring maritime priority, even where the licensee intends to operate in accordance with the Part 80 rules, would represent an unnecessary paperwork burden for licensees, and could unnecessarily delay implementation of arrangements to provide, or lease spectrum for, PLMR operations that would serve the public interest.

C. Requests for Additional Flexibility to Provide Land Mobile Service

The Commission declined to amend the Part 80 rules to permit VPC and AMTS licensees to provide (or lease spectrum for) PLMR service under a Part 22 or Part 90 framework without a waiver because it was concerned that providing VPC and AMTS licensees and lessees with such largely unfettered freedom and discretion to use VPC and AMTS spectrum for non-Part 80-compliant operations might lead to a *de facto* reallocation of the spectrum from maritime to land mobile use. Reliance on the waiver process ensures that new proposals for the use of maritime spectrum outside of a Part 80 framework receive close scrutiny

to prevent any unintended erosion of the maritime allocation.

The Commission clarified that mobile units certified under Parts 22 or 90 are permitted to operate in conjunction with base station equipment certified under Part 80. Although Section 80.203(b) of the Rules proscribes the certification under Part 80 of transmitters that can be programmed using external controls to operate on channels not authorized for maritime use (such as channels allocated for Part 22 or Part 90 use, a mobile unit certified under Part 22 or Part 90 may also be certified under Part 80 for land mobile use pursuant to Section 80.123(d), provided that the only additional functionality, beyond the functionality of the device as certified under Part 22 or Part 90, is the capability to operate on the public correspondence channels authorized for use by the associated public coast station, and the unit does not exceed the twenty-five-watt transmitter output power limit for maritime frequencies and otherwise fully complies with the technical parameters of Part 22 or Part 90. The FCC noted that this is consistent with the intent of Section 80.203(b) to “inhibit operation of VHF maritime transmitters on unauthorized [*i.e.*, non-maritime] frequencies,” rather than to restrict authorized land mobile operations on maritime frequencies. The addition of capability to manually program Part 80 channels necessitates recertification of the device and labeling with a separate FCC ID number.

In order to reduce potential administrative burdens, delay and uncertainty, the Commission provided prospective waiver applicants seeking to provide land mobile service under non-Part 80 rules with guidance regarding the factors that will be considered in evaluating requests for such waivers.

- First, waivers of the Part 80 rules by parties seeking to use VPC or AMTS spectrum for land mobile radio operations are, like other waivers of the rules pertaining to Wireless Radio Services, assessed under the criteria set forth in Section 1.925 of the Commission’s Rules. Waiver applicants will be expected to explain, among other things,, how they intend to provide priority to maritime communications or why they believe the requirement should be waived. If the applicant does not seek a waiver of the priority requirement, but instead intends to comply with that requirement, and satisfactorily demonstrates how it will achieve such compliance, that showing will be a factor favoring grant of the waiver(s).
- Second, the distance of a proposed land mobile radio operation from the nearest navigable waterways will be a factor in evaluating whether to grant the requested waiver(s); the greater the distance, the more favorably the waiver request will be viewed. The Commission is neither requiring as an absolute precondition to waiver relief that the proposed land mobile radio operation be located at a fixed minimum distance from the nearest navigable waterway, nor establishing a “safe harbor” distance beyond which a proposed land mobile radio operation would be presumed to be entitled to waiver relief.
- Third, with respect to requested waivers of Part 80 technical requirements, such as power limits and emission masks, the magnitude of the divergence from Part 80 will be considered in evaluating the waiver. Relatively small variations from the Part 80 technical requirements will be viewed more favorably than larger variations.
- Fourth, a showing that alternative spectrum that could accommodate the proposed PLMR or other land mobile radio service is unavailable or unsuitable for that purpose will be a factor militating in favor of grant of a waiver.
- Fifth, although the Commission is not confining PLMR use of VPC and AMTS spectrum to public safety or critical infrastructure industry entities, a showing that authorization of the proposed operation, and grant of the associated waiver(s), would benefit public safety or homeland security will be a factor militating in favor of granting the waiver(s).

D. Use of VPC Spectrum for Port Operations and Ship Movement Communications

The Commission was not persuaded that the Part 80 rules governing the VPC channels need to be amended in order to avoid inconsistency with the ITU *Radio Regulations*. There is no existing regulatory impediment to the use of the VPC channels for port operations and ship movement communications. VPC geographic licensees are permitted to provide private correspondence service to the maritime community. The Commission clarified that port operations and ship movement communications are a type of private correspondence service that may be provided on VPC channels pursuant to Section 20.9(b) of the Commission's Rules. Although the Part 80 rules currently do not permit the use of VPC spectrum on a simplex basis, whereas the ITU *Radio Regulations* authorize such simplex operation, the Commission does not view this as creating a fundamental incompatibility between Part 80 and the *Radio Regulations*. The ITU does not mandate that the use of VPC channels for port operations and ship movement communications be on a simplex basis, but only authorizes simplex operation on a permissive basis. In addition, the current record does not indicate support from any VPC licensee for authorizing simplex use of the VPC channels, for this or any other purpose. Therefore, the Commission declined to amend the rules now to permit such simplex operations solely on speculation that VPC licensees or lessees may desire to operate in simplex mode in the future, but retained discretion to revisit this issue if it appears in the future that the prohibition on simplex communications would preclude implementation of an agreed-upon service offering or secondary markets transaction.

III. RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS

The rules adopted in the *Report and Order* do not impose any new requirements, or compliance burdens, any reporting, recordkeeping, or other compliance requirements on small entities, but rather benefit such entities by providing them with additional operational flexibility and will not have any adverse economic impact on small entities. To the contrary, these rules remove existing regulatory restrictions on the affected entities.

IV. WEBLINK

Report and Order, FCC 07-87, 22 FCC Rcd. 8971 (2007), released May 10, 2007.

http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07-87A1.doc
http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07-87A1.pdf
http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07-87A1.txt