

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

In the Matter of)	
)	
Amendment of Parts 0, 80, and 90 of the)	
Commission's Rules to Make the Frequency)	WT Docket No. 99-332
156.250 MHz Available for Port Operations)	
Purposes in Los Angeles and Long Beach,)	
CA Ports)	

REPORT AND ORDER (Proceeding Terminated)

Adopted: June 15, 2000

Released: June 20, 2000

Before the Commission:

I. INTRODUCTION AND EXECUTIVE SUMMARY

1. On November 15, 1999, we proposed to amend Part 80 of the Commission's Rules to designate marine VHF Channel 05A for port operations communications in Los Angeles and Long Beach, California ports.¹ Additionally, we proposed to authorize the Chief, Wireless Telecommunications Bureau (WTB) to amend the maritime service rules, at the request of the United States Coast Guard, to indicate that the use of marine VHF frequencies in defined port areas are available for intership communications related to port operations to alleviate the communications congestion related to port operations. We believe that the assignment of an intership marine VHF channel dedicated to port operations in the Ports of Los Angeles and Long Beach, California will foster reliable marine communications and increase safe vessel transit in the ports. We further believe that delegation of authority to the WTB to handle such future requests will result in their expeditious disposition, which will increase safe vessel transit and protect U.S. waters and associated natural resources from environmental harm. Given these public interest benefits and the unanimous support in the record for our proposals, this *Report and Order* ("*Report and Order*") adopts the rules proposed in the *Notice*.

II. BACKGROUND

2. The Los Angeles and Long Beach Port Pilots (jointly, LA/LB Pilots) requested by letter the assignment of an intership marine VHF channel dedicated to port operations, namely, pilot-tug communications in the Los Angeles and Long Beach, California ports.² They recommended that frequency 156.250 MHz be used. In addition, they noted that 156.250 MHz currently is allocated to maritime mobile radio and was made available for port operations purposes within the Coast Guard-designated Houston and New Orleans VTS systems,³ and Seattle VTS system.⁴ The LA/LB Pilots state

¹ Amendment of Parts 0, 80, and 90 of the Commission's Rules to Make the Frequency 156.250 MHz Available for Port Operations Purposes in Los Angeles and Long Beach, CA Ports, Notice of Proposed Rule Making and Order, WT Docket No. 99-332, FCC 99-348, 64 Fed. Reg. 71456 (December 21, 1999) ("*Notice*").

² Letter to Daniel B. Phythyon, Acting Chief, Wireless Telecommunications Bureau from Los Angeles and Long Beach Port Pilots, dated April 30, 1997 (*LA/LB Letter*).

that their monitoring of this channel detected no users in the area of the Ports of Los Angeles and Long Beach.⁵ Five parties filed comments in response to the *Notice*.⁶

III. DISCUSSION

A. Establishment of 156.250 MHz for Port Operations

3. The ports of Los Angeles and Long Beach are among the busiest in the world, with considerable vessel congestion.⁷ In this type of environment, it is our understanding that harbor pilots rely upon clear and effective radio communications with tugs to help ensure the safe ingress and egress of large vessels. Currently there is only one frequency, marine VHF Channel 77 (156.875 MHz), dedicated to intership communications related to port operations in the subject ports.⁸ The Commission, in conjunction with the Coast Guard and industry, investigated the feasibility of using frequency 156.250 MHz for intership communications and tentatively concluded in the *Notice* that 156.250 MHz (marine VHF Channel 05A) could be utilized without harmful interference to existing radio operations in the Los Angeles and Long Beach port areas. We also tentatively concluded to make assignments on Public Safety Pool frequencies of 156.240 and 156.2475 MHz within 100 miles of the geographic center of Los Angeles, defined as 34° 03' 15" north latitude and 118° 14' 28" west longitude, secondary to marine port operations on 156.250 MHz.

4. All commenters unanimously supported our proposals regarding the establishment of the frequency 156.250 MHz for intership communications related to port operations in the Los Angeles and Long Beach, California ports.⁹ For example, the Coast Guard states that large amounts of oil and containers are moved in the Los Angeles and Long Beach port complex, the third busiest port complex in the world. In this connection, it noted that this already crowded port complex is undergoing rapid growth as seen by a doubling of ship traffic since 1994.¹⁰ As a result of this growth, pilots and tug operators have experienced interference to their communications to maneuver vessels resulting in confused orders and disrupted communications.¹¹ The Coast Guard believes this is an urgent safety matter that needs to be remedied by providing relief for communications involving vessel movement.¹²

(Continued from previous page) _____

³ Amendment of Parts 2, 81, and 83 of the Rules to Make the Frequency 156.250 MHz Available for Port Operation Purposes in Certain Coast Guard Designated Vessel Traffic Services Radio Protection Areas, Docket No. 21370, *Report and Order*, 42 FR 64896 (December 29, 1977) (*Houston Report and Order*).

⁴ See 47 C.F.R. § 80.383.

⁵ LA/LB Letter at 2.

⁶ Comments were filed by United States Coast Guard, WJG MariTEL Corporation, Princess Cruises, Foss Maritime, and George E. Mason. No reply comments or *ex parte* submissions were filed.

⁷ LA/LB Letter at 1.

⁸ *Id.*

⁹ United States Coast Guard Comments at 1, WJG MariTEL Comments at 1, Princess Cruises Comments at 1, Foss Maritime Comments at 1, and George E. Mason Comments at 1.

¹⁰ United States Coast Guard Comments at 2.

¹¹ *Id.*

¹² *Id.*

5. WJG MariTel (MariTel) also supported the proposal to designate 156.250 MHz for intership communications related to port operations in Los Angeles and Long Beach ports.¹³ MariTel believes that our proposal serves the public interest because it recognizes that 156.250 MHz currently is underutilized in the port areas and should be reviewed and updated to keep pace with changing needs.¹⁴ It also states that advances in radio receiver technology and the promotion of more efficient methods to utilize spectrum further support adoption of the proposal to allow the use of 156.250 MHz for port operations¹⁵

6. Based on the record in this proceeding, we conclude that designating 156.250 MHz for intership communications related to port operations for the ports of Los Angeles and Long Beach, CA will allow the Marine Exchange of Los Angeles-Long Beach Harbor, Inc.¹⁶ to manage vessel traffic in those areas more efficiently. Further we believe that this action will help protect the marine environment by preventing vessel collisions and groundings. Therefore, we are amending Section 80.373(f) of the Commission's Rules to indicate that frequency 156.250 MHz (marine VHF Channel 05A) is available only for intership communications related to port operations within the Los Angeles and Long Beach harbor areas. The radio protection area will be defined as "within a 25-nautical mile radius of Point Fermin, California."

7. In the *Notice*, we stated that no applications for Public Safety Pool frequencies of 156.240 and 156.2475 MHz within 100 miles of the geographic center of Los Angeles would be accepted for filing during the pendency of the *Notice*. In light of our action designating 156.250 MHz for intership communications related to port operations for the ports of Los Angeles and Long Beach, CA, we will lift the current freeze imposed on licensing the Public Safety Pool frequencies of 156.240 and 156.2475 MHz within 100 miles of the geographic center of Los Angeles. The freeze will be lifted as of the date of the release of this *Report and Order*. In addition, we are adopting our proposal to make assignments on these Public Safety Pool frequencies within 100 miles of the geographic center of Los Angeles, CA secondary to marine port operations on 156.250 MHz. By secondary, we mean that radio communications from licensees on the Public Safety Pool frequencies 156.240 and 156.2475 MHz may not cause interference to marine port operations on 156.250 MHz and licensees on the Public Safety Pool frequencies are not protected from interference from marine port operations on 156.250 MHz.

B. Amendment of Section 0.331 of the Commission's Rules.

8. In the *Notice*, we proposed to amend Section 0.331 of the Commission's Rules to authorize the Chief, WTB to amend the maritime service rules at the request of the Coast Guard to indicate that the use of marine VHF private communications frequencies¹⁷ in defined port areas are available for intership communications related to such port operations in order to alleviate the communications congestion related to such port operations. Two commenters addressed the proposal to delegate authority to the Chief, Wireless Telecommunications Bureau to amend the maritime service rules at the request of the

¹³ WJG MariTel Comments at 3.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ The Marine Exchange of Los Angeles-Long Beach Harbor, Inc provides a Vessel Traffic Information Service that offers advisory service to coordinate vessel movement in the ports of Los Angeles and Long Beach, CA.

¹⁷ See 47 C.F.R. § 80.373

Coast Guard. The Coast Guard fully supported the proposal,¹⁸ and MariTel did not object to the proposal but expressed concern that the proposed regulation may go too far in allowing the Chief, Wireless Telecommunications Bureau to designate any marine channel for intership port operation.¹⁹ MariTel participated in the December 3, 1998, 156-162 MHz VHF Public Coast (VPC) Service - Auction No. 20, and was the winning bidder for nine regional licenses in that auction.²⁰ Currently, MariTel is constructing a national network of VHF Public Coast stations to provide advanced maritime communications.²¹

9. We do not envision or anticipate that allowing the Chief, WTB at the request of the Coast Guard to amend the frequency table in 47 C.F.R. § 80.373(f) and make marine VHF frequencies available for intership port operations communications in defined port areas will impact those licenses sold in Auction No. 20. The forty-two licenses that were auctioned involved the nine channels ("working frequencies") in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit) bands assignable to VHF public coast stations for public correspondence.²² These auctioned frequencies are assigned for radiotelephone working frequencies and are assignable to ship and public coast stations. The frequencies in 47 C.F.R. § 80.373(f) are for private communications and are assignable for ship-to-ship and ship-to-coast private communications and are below the frequency range of the auctioned public correspondence frequencies. Therefore the auctioned public correspondence frequencies will not be considered for intership port operations.

10. Overall, we believe the approach outlined above will allow the Commission to expedite Coast Guard requests, which will promote increased safe vessel transit and protect U.S. waters and associated natural resources from environmental harm. Therefore, we are amending Section 0.331 of the Commission's Rules to authorize the Chief, Wireless Telecommunications Bureau to amend the maritime service rules at the request of the United States Coast Guard to indicate that the use of marine VHF frequencies in defined port areas are available for intership communications related to port operations.

IV. CONCLUSION

11. In light of the support received for our proposals in the *Notice*, and for the foregoing reasons, we adopt rules: (a) to amend Section 80.373(f) of the Commission's Rules to indicate that frequency 156.250 MHz (marine VHF Channel 05A) is available only for intership communications related to port operations within the Los Angeles and Long Beach harbor areas. The radio protection area for these harbors will be defined as "within a 25-nautical mile radius of Point Fermin, California;" (b) to amend Section 90.20(c) of the Commission's Rules to indicate that assignments on public safety pool frequencies of 156.240 and 156.2475 MHz within 100 miles of the geographic center of Los Angeles are secondary to marine port operations on 156.250 MHz, and; (c) to amend Section 0.331 of the Commission's Rules to authorize the Chief, Wireless Telecommunications Bureau to amend the maritime service rules at the request of the Coast Guard to indicate that the use of marine VHF private communications frequencies in defined port areas are available for intership communications related to port operations. We conclude that adoption of these rule changes will allow the vessel traffic in the

¹⁸ Coast Guard Comments at 1.

¹⁹ MariTel Comments at 4.

²⁰ *Id.* at 2.

²¹ *Id.* at 5.

²² See 47 C.F.R. § 80.371(c).

congested areas of the Los Angeles and Long Beach harbors to be managed more efficiently and will protect the marine environment by preventing vessel collisions and groundings.

V. PROCEDURAL MATTERS

Final Regulatory Flexibility Analysis

12. A Final Regulatory Flexibility Analysis is included in Appendix A.

Alternative Formats

13. Alternative formats (computer diskette, large print, audio cassette and Braille) of this *Report and Order* are available to persons with disabilities by contacting Martha Contee at (202) 418-0260, TTY (202) 418-2555, or at mcontee@fcc.gov. This *Report and Order* can also be downloaded at <http://www.fcc.gov/dtf/>.

VI. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED, pursuant to the authority of Sections 4(i), 303(r), and 332(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 332(a)(2), Parts 0, 80 and 90 of the Commission's Rules, that 47 C.F.R. Parts 0, 80 and 90 ARE AMENDED as set forth in the attached Appendix B.

15. IT IS FURTHER ORDERED that the rule changes adopted herein will become effective [thirty days after publication in the Federal Register].

16. IT IS FURTHER ORDERED that the Commission's Reference Information Center, Consumer Information Bureau, SHALL SEND a copy of this *Report and Order*, WT Docket No. 99-332, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

17. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), that this proceeding IS TERMINATED.

18. For further information, contact James Shaffer of the Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, at (202) 418-0680 or via E-mail at "mayday@fcc.gov".

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

APPENDIX A

FINAL REGULATORY FLEXIBILITY ANALYSIS (FRFA)

As required by the Regulatory Flexibility Act (RFA),²³ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice* prepared in this proceeding.²⁴ The Commission sought written public comment on the proposals in the *Notice*, including comments on the IRFA. This present FRFA conforms to the RFA.²⁵

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

1. In this proceeding, we amend Parts 0, 80 and 90 of the Commission's Rules to indicate that frequency 156.250 MHz (marine VHF Channel 05A) is available for intership communications related to port operations within the Los Angeles and Long Beach harbor areas. The adopted rules will promote safe vessel transit and protect U.S. waters and associated natural resources from environmental harm.

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

2. No comments were submitted specifically in response to the IRFA.

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

3. 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.²⁶ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."²⁷ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.²⁸ 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

²³ 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).

²⁴ See Amendment of Parts 0, 80, and 90 of the Commission's Rules to Make the Frequency 156.250 MHz Available for Port Operations Purposes in Los Angeles and Long Beach, CA Ports, *Notice of Proposed Rule Making*, WT Docket No. 99-332, FCC 99-348, (*Notice*).

²⁵ See 5 U.S.C. § 604.

²⁶ 5 U.S.C. 603(b)(3).

²⁷ *Id.* 601(6).

²⁸ 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).

(SBA).²⁹ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."³⁰ The adopted rules would apply to small businesses in the marine radio services that use a marine VHF radio. According to SBA's regulations, a radiotelephone (wireless) must employ no more than 1,500 persons less in order to qualify as a small business concern. According to the Bureau of the Census, only twelve radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.

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

5. There are no reporting, recordkeeping and other compliance requirements proposed.

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

6. By making frequency spectrum available, the adopted rules will have a beneficial economic impact on small business entities that use the frequency 156.250 for intership communications related to port operations within the Los Angeles and Long Beach harbor areas. This flexible approach allows the vessel pilots to manage vessel traffic in the Los Angeles and Long Beach harbor areas more efficiently and protect the marine environment by preventing vessel collisions and groundings. Currently under the rules frequency 156.250 MHz is similarly made available to maritime mobile and was made available for port operations purposes within the Coast Guard designated Houston and New Orleans, and Seattle Vessel Traffic Service (VTS) systems. The alternative in this context – to retain the allocation for maritime mobile in the two ports – would not assist the maritime community in the way expected, including the small entities affected. We believe that the adopted rules are sufficient to alleviate the communications congestion related to port operations in the Los Angeles and Long Beach harbor areas. This decision benefits small entities and seeks to ensure reliable marine communications, increase safe vessel transit to protect U.S. waters and associated natural resources from environmental harm, and increase port efficiency thereby promoting growth within the shipping community.

Report to Congress: The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. § 801(a)(1)(A). In addition, the Commission will send a copy of the *Report and Order*, including FRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register. *See* 5 U.S.C. § 604(b).

²⁹ Small Business Act, 15 U.S.C. 632 (1996).

³⁰ 5 U.S.C. 601(4).

APPENDIX B

Title 47 of the Code of Federal Regulations, parts 0, 80 and 90, are proposed to be amended as follows:

Part 0 -- Commission organization

1. The authority citation for part 0 continues to read as follows:

AUTHORITY: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.331 is amended by adding new paragraph (d)(3) to read as follows:

§ 0.331 Authority delegated.

* * * * *

(d) * * *

(3) Designate by footnote to frequency table in § 80.373(f) of this chapter marine VHF frequencies are available for intership port operations communications in defined port areas.

Part 80 -- Stations in the Maritime Services

3. The authority citation for part 80 continues to read as follows:

AUTHORITY: Secs. 4, 303, 307 (e), 309 and 322, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307 (e), 309 and 322 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.

4. In § 80.373 (f), footnote 2 to the table is amended as follows:

§ 80.373 Private communications frequencies.

* * * * *

² 156.250 MHz is available for port operations communications use only within the U.S. Coast Guard designated VTS radio protection areas of New Orleans and Houston described in § 80.383. 156.250 MHz is available for intership port operations communications used only within the area of Los Angeles and Long Beach harbors, within a 25-nautical mile radius of Point Fermin, California.

* * * * *

Part 90 -- Private Land Mobile Radio Services

5. The authority citation for part 90 continues to read as follows:

AUTHORITY: Secs. 4, 251-2, 303, 309 and 322, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 251-2, 303, 309 and 322 unless otherwise noted.

6. Section 90.20 (c) (3) is amended by revising the entry to read as follows:

§ 90.20 Public Safety Pool.

* * * * *

(c) * * *

(3) * * *

PUBLIC SAFETY POOL FREQUENCY TABLE

Frequency or Band	Class of sta-	Limitations	Coordinator
* * * * *			
156.240 do..... 43, 79..	PH
* * * * *			

* * * * *

7. In section 90.20 is amended by redesignating the second (d) (77) to (d) (78) and by adding paragraph (d)(79) to read as follows

(d) * * *

(79) This frequency will be secondary to marine port operations within 100 miles of Los Angeles (coordinates 34° 03' 15" north latitude and 118° 14' 28" west longitude).

* * * * *