

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

In the Matter of	)	
	)	
Amendment of the Commission's Rules	)	PR Docket No. 92-257
Concerning Maritime Communications	)	
	)	
Petition for Rule Making filed by	)	RM-9664
RegioNet Wireless License, LLC	)	

**FOURTH REPORT AND ORDER AND  
THIRD FURTHER NOTICE OF PROPOSED RULE MAKING**

**Adopted: October 13, 2000**

**Released: November 16, 2000**

**Comment Date:** [60 days after Federal Register publication]

**Reply Comment Date:** [90 days after Federal Register publication]

By the Commission:

**TABLE OF CONTENTS**

	<b>Paragraph</b>
I. INTRODUCTION AND EXECUTIVE SUMMARY .....	1
II. BACKGROUND .....	4
III. FOURTH REPORT AND ORDER .....	10
A. Automated Maritime Telecommunications System (AMTS) Spectrum .....	10
1. Siting flexibility .....	11
2. Construction flexibility .....	16
3. Technical flexibility .....	18
B. High Seas Public Coast Station Spectrum .....	24
IV. THIRD FURTHER NOTICE OF PROPOSED RULEMAKING .....	29
A. AMTS Spectrum .....	29
1. Geographic area licensing .....	29
2. Service areas .....	31
3. Treatment of incumbent licensees .....	34
4. Licensing .....	38
5. Engineering study requirement .....	45
6. Broadcaster notification requirement .....	50

7.	Coverage requirements .....	54
		<b>Paragraph</b>
8.	Partitioning and disaggregation .....	55
9.	Technical flexibility .....	58
B.	High Seas Public Coast Station Spectrum .....	59
1.	Radiotelephone (voice).....	59
2.	Radiotelegraph (manual Morse code) and facsimile .....	65
3.	NB-DP and data transmission .....	71
4.	Use flexibility .....	72
5.	Partitioning and disaggregation .....	73
C.	Competitive Bidding Procedures .....	75
V.	PROCEDURAL MATTERS .....	76
A.	Suspension of Acceptance and Processing of Applications .....	76
B.	Regulatory Flexibility Act .....	80
C.	Ex Parte Rules -- Permit-But-Disclose Proceeding .....	81
D.	Paperwork Reduction Act of 1995 .....	82
E.	Comment Dates .....	84
F.	Ordering Clauses .....	85
G.	Contact for Information .....	91
		<b>Page</b>
APPENDICES .....		40
	APPENDIX A - LIST OF COMMENTERS TO THE <i>SECOND FURTHER NOTICE</i> <i>OF PROPOSED RULEMAKING</i> .....	40
	APPENDIX B - REGULATORY FLEXIBILITY ANALYSIS .....	41
	APPENDIX C - FINAL RULES .....	47
	APPENDIX D - PROPOSED RULES .....	56

## I. INTRODUCTION AND EXECUTIVE SUMMARY

1. In the *Second Further Notice of Proposed Rule Making* in this proceeding,<sup>1</sup> the Commission sought comment on proposals to promote innovative telecommunications services, improve communications capabilities, and reduce regulatory burdens in the Maritime Services.<sup>2</sup> In this *Fourth Report and Order and Third Further Notice of Proposed Rule Making*, we amend our rules to promote operational, technical, and regulatory flexibility for Automated Maritime Telecommunications System (AMTS) and high seas public coast stations.<sup>3</sup> Specifically, we provide additional flexibility for AMTS coast stations by permitting the construction and operation of fill-in stations without prior Commission authorization, extending the construction period, eliminating the current emission restrictions and channel plan, and increasing the permitted power level for point-to-point communications. We also provide additional flexibility for high seas public coast stations by eliminating the required showing of channel loading and extending the construction period. We believe that these rule changes will increase competition in the provision of telecommunications services, promote more efficient use of maritime spectrum, increase the types of telecommunications services available to vessel operators, allow maritime commercial mobile radio service (CMRS) providers to respond more quickly to market demand, and reduce regulatory burdens on AMTS and high seas public coast station licensees. We conclude that giving licensees more flexibility in the use of maritime spectrum, while preserving the core purpose of this internationally allocated radio service, *i.e.*, to promote safety of life and property at sea, serves the public interest.

2. In the *Third Report and Order and Memorandum Opinion and Order* in this proceeding, we adopted rules to convert the licensing of very high frequency (VHF) (156-162 MHz) public coast stations from a site-based approach to geographic licensing.<sup>4</sup> In light of the changes to the VHF licensing scheme, we believe that it serves the public interest to reexamine our licensing of AMTS and high seas public coast stations. Therefore, in the *Third Further Notice of Proposed Rule Making*, we seek comment on the following:

- We propose to designate licensing regions and authorize one licensee for each currently unassigned AMTS frequency block on a geographic basis, in lieu of the current site-based approach. Under our proposal, incumbent AMTS licensees would be permitted to operate their systems indefinitely, and incumbents and geographic licensees would have to afford each other interference protection.

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<sup>1</sup> Amendment of the Commission's Rules Concerning Maritime Communications, *Second Report and Order and Second Further Notice of Proposed Rule Making*, PR Docket No. 92-257, 12 FCC Rcd 16949 (1997) (*Second Report and Order and Second Further Notice*).

<sup>2</sup> The Maritime Services consist of the services governed by Part 80 of the Commission's Rules, and include public coast stations, private coast stations, and ship stations. See 47 C.F.R. Part 80.

<sup>3</sup> See *infra*. ¶ 10.

<sup>4</sup> Amendment of the Commission's Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order*, PR Docket No. 92-257, 13 FCC Rcd 19853 (1998) (*Third Report and Order*).

- We seek comment on a petition for rule making filed by RegioNet Wireless License, LLC, (RegioNet) proposing to eliminate the engineering study requirement for AMTS stations.
- We seek comment on using our Part 1 competitive bidding procedures, and the small business definitions applied to the VHF public coast service auction, to resolve mutually exclusive applications for AMTS and high seas public coast spectrum.
- We seek comment on whether we should set aside any AMTS spectrum for public safety use instead of auctioning it for commercial use.
- We propose to permit partitioning and disaggregation of the AMTS geographic area licenses, disaggregation of site-based AMTS licenses, and partitioning of most high seas public coast station licenses.
- We also seek comment on whether we should introduce flexibility into our Rules in order to permit other uses for spectrum that is currently allocated for high seas public coast station use.

3. In developing these proposals we are guided by several broad policy initiatives. First, we seek to establish a flexible regulatory framework that will (1) provide opportunities for continued development of competitive new services using maritime spectrum, (2) expedite market entry through streamlined licensing procedures, (3) promote technological innovation, and (4) eliminate unnecessary regulatory burdens. Second, we seek to enhance regulatory symmetry among maritime CMRS providers and between maritime CMRS providers and other CMRS providers to ensure that market forces, rather than regulatory forces, shape the development of the CMRS marketplace. Finally, we take into account the unique nature of the Maritime Services. Specifically, we note that (1) frequencies are allocated internationally to facilitate interoperability; (2) use of maritime spectrum is subject to various statutes, treaties, and agreements; and (3) the primary purpose of these services is to provide for the safety of life and property at sea and on inland waterways.

## II. BACKGROUND

4. The Maritime Services provide for the unique distress, operational, and personal communications needs of vessels at sea and on inland waterways.<sup>5</sup> There are two types of coast stations: public coast stations and private coast stations. Public coast stations are CMRS providers that allow ships at sea to send and receive messages and to interconnect with the public switched network.<sup>6</sup> Each public coast station has exclusive use of one or more public correspondence channels within its service area or region of operation. In contrast, private coast stations operate on shared frequencies to serve vessels' business and operational needs, and may not charge fees for the provision of communications services. Both public and private coast stations may use VHF band frequencies to serve a port or coastal area; or low frequency (LF), medium frequency (MF), and high frequency (HF) band frequencies to serve vessels

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<sup>5</sup> For a fuller description of the Maritime Services and the history of this proceeding, see *Second Report and Order*, 12 FCC Rcd at 16953-56.

<sup>6</sup> See Implementation of Sections 3(n) and 332 of the Communications Act -- Regulatory Treatment of Mobile Services, *Second Report and Order*, GN Docket No. 93-252, 9 FCC Rcd 1411, 1448 (1994); see also 47 C.F.R. § 20.9(a)(5).

on the high seas, often hundreds or even thousands of miles from land. Maritime frequencies are allocated internationally by the International Telecommunication Union (ITU) to facilitate interoperable radio communications among vessels of all nations and stations on land worldwide.

5. Based on the comments received in response to the 1992 *Notice of Proposed Rule Making and Notice of Inquiry* in this proceeding,<sup>7</sup> the Commission released a *First Report and Order* in 1995 adopting rules that increased the flexibility of VHF and high seas public coast station licensees.<sup>8</sup> It also released a *Further Notice of Proposed Rule Making* in response to commenters' requests for more flexible regulatory treatment of public coast stations and accommodations for enhancements in marine communications equipment.<sup>9</sup> In 1997, the Commission released a *Second Report and Order and Second Further Notice of Proposed Rule Making (Second Report and Order and Second Further Notice)*, in which it adopted rules to allow public coast stations to use various innovative technologies.<sup>10</sup> The Commission also proposed rules for geographic area licensing in the VHF public coast station service, and sought comment on various related proposals; proposed to streamline AMTS licensing procedures, eliminate the current emission restrictions and channel plan, and increase the permitted power level for AMTS point-to-point communications; and proposed to extend the construction requirement and eliminate the channel loading requirement for high seas public coast stations, and to permit high seas private coast stations to share certain high seas public coast station frequencies.<sup>11</sup> Eighteen comments and eight reply comments to the *Second Further Notice* were received.<sup>12</sup>

6. Section 309(j)(2) of the Communications Act formerly stated that mutually exclusive applications for initial licenses or construction permits were auctionable if the principal use of the spectrum was for subscriber-based services, and competitive bidding would promote the expressed objectives of the Communications Act.<sup>13</sup> The Commission concluded that the public coast service, including VHF, high seas, and AMTS public coast stations, was a CMRS<sup>14</sup> and subsequently decided that mutually exclusive

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<sup>7</sup> Amendment of the Commission's Rules Concerning Maritime Communications, *Notice of Proposed Rule Making and Notice of Inquiry*, PR Docket No. 92-257, 7 FCC Rcd 7863 (1992).

<sup>8</sup> Amendment of the Commission's Rules Concerning Maritime Communications, *First Report and Order*, PR Docket No. 92-257, 10 FCC Rcd 8419, 8421-25, 8431 (1995).

<sup>9</sup> Amendment of the Commission's Rules Concerning Maritime Communications, *Further Notice of Proposed Rule Making*, PR Docket No. 92-257, 10 FCC Rcd 5725 (1995) (*Further Notice*).

<sup>10</sup> *Second Report and Order*, 12 FCC Rcd at 16951-52.

<sup>11</sup> *Id.* at 16952.

<sup>12</sup> A list of commenters is provided in Appendix A.

<sup>13</sup> *See* 47 U.S.C. § 309(j) (1996).

<sup>14</sup> *See Second Further Notice*, 12 FCC Rcd at 17011 (citing Implementation of Sections 3(n) and 332 of the Communications Act – Regulatory Treatment of Mobile Services, *Second Report and Order*, GN Docket No. 93-252, 9 FCC Rcd 1411, 1448 (1994)).

applications for public coast station licenses would be resolved through competitive bidding.<sup>15</sup> On August 5, 1997, after release of the *Second Further Notice*, President Clinton signed into law the Balanced Budget Act of 1997 (Balanced Budget Act),<sup>16</sup> which expanded the Commission's auction authority by amending Section 309(j) of the Communications Act to provide that all mutually exclusive applications for initial licenses or construction permits *shall* be auctioned, with certain exceptions not applicable here.<sup>17</sup> The Balanced Budget Act does not require a reexamination of the conclusion that public coast station licenses are auctionable.<sup>18</sup>

7. On July 9, 1998, the Commission released a *Third Report and Order and Memorandum Opinion and Order (Third Report and Order)* in this proceeding, in which it adopted rules to utilize a geographic area licensing approach for VHF public coast stations.<sup>19</sup> We designated forty-two licensing regions, known as VHF Public Coast Areas (VPCs): nine maritime VPCs near major waterways based on U.S. Coast Guard Districts, and thirty-three inland VPCs based on the Commerce Department's Economic Areas (EAs).<sup>20</sup> The new rules provided for a single licensee for all unassigned VHF public correspondence channels in each VPC, to be selected by competitive bidding.<sup>21</sup> We permitted the continued operation of incumbents using VHF public coast station spectrum, and required incumbents and VPC licensees to afford each other interference protection.<sup>22</sup> We also adopted a substantial service construction requirement for VPC licenses and permitted partitioning<sup>23</sup> and disaggregation<sup>24</sup> of those licenses.<sup>25</sup> The *Third Report and Order* did not address the proposals in the *Second Further Notice* regarding AMTS and high seas

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<sup>15</sup> See *Third Report and Order*, 13 FCC Rcd at 19881 (citing *Second Further Notice*, 12 FCC Rcd at 17011 (citing Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2348, 2356-57 (1994) (*Competitive Bidding Second Report and Order*))).

<sup>16</sup> Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 (Balanced Budget Act).

<sup>17</sup> 47 U.S.C. § 309(j) (as amended by Balanced Budget Act, § 3002).

<sup>18</sup> *Third Report and Order*, 13 FCC Rcd at 19881.

<sup>19</sup> *Id.* at 19855-56.

<sup>20</sup> *Id.* The Bureau of Economic Analysis of the Department of Commerce has divided the United States into 172 EAs to facilitate regional economic analysis. Each EA consists of one or more economic nodes (metropolitan areas or similar areas that serve as centers of economic activity) and the surrounding counties that are economically related to the nodes. Final Redefinition of the BEA Economic Areas, Department of Commerce, Docket No. 950-3020-64-5064-01, 60 Fed. Reg. 13114 (Mar. 10, 1995).

<sup>21</sup> *Third Report and Order*, 13 FCC Rcd at 19855-56.

<sup>22</sup> *Id.*

<sup>23</sup> "Partitioning" is the assignment of geographic portions of a license along geopolitical or other boundaries.

<sup>24</sup> "Disaggregation" is the assignment of discrete portions or "blocks" of spectrum licensed to a geographic licensee or qualifying entity.

<sup>25</sup> *Third Report and Order*, 13 FCC Rcd at 19872-74.

spectrum, deferring resolution of those issues until they could be considered as part of a broader reexamination of the AMTS and high seas licensing schemes.<sup>26</sup>

8. In accordance with the *Third Report and Order*, the Commission conducted an auction of the forty-two VPC licenses from December 3, 1998, to December 14, 1998.<sup>27</sup> On May 19, 1999, twenty-six VPC licenses were granted by the Commission.<sup>28</sup>

9. While our actions in this proceeding are designed to improve maritime telecommunications, applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. The FCC does not endorse any particular services, technologies, or products, and grant of an FCC license does not guarantee business success. Applicants should perform their individual due diligence before proceeding in an auction, as they would with any new business venture.

### III. FOURTH REPORT AND ORDER

#### A. Automated Maritime Telecommunications System (AMTS) Spectrum

10. An AMTS is a specialized system of coast stations providing integrated and interconnected marine voice and data communications, somewhat like a cellular phone system, for tugs, barges, and other vessels on waterways.<sup>29</sup> AMTS licensees must provide continuity of service to either a substantial navigational area along a coastline; or sixty percent of one or more inland waterways, except that a waterway less than 240 kilometers (150 miles) long must be served in its entirety,<sup>30</sup> and waterways small enough to be served by a single station are not eligible for AMTS service.<sup>31</sup> There currently are three AMTS providers<sup>32</sup>: RegioNet Wireless LLC (RegioNet)<sup>33</sup> and Paging Systems, Inc. (PSI), which are

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<sup>26</sup> *Id.* at 19855 n.3.

<sup>27</sup> See Auction of 156-162 MHz VHF Public Coast Service Licenses, *Public Notice*, 13 FCC Rcd 24874, 2874 (1998); VHF Public Coast Service Auction Closes, *Public Notice*, 14 FCC Rcd 480, 480 (1999).

<sup>28</sup> See FCC Announces the Conditional Grant of 26 VHF Public Coast Service Licenses, *Public Notice*, DA 99-195, at 1 (rel. May 21, 1999).

<sup>29</sup> Amendment of Parts 2 and 80 of the Commission's Rules Applicable to Automated Maritime Telecommunications Systems (AMTS), *First Report and Order*, RM-5712, 6 FCC Rcd 437, 437 (1991) (*AMTS First Report and Order*).

<sup>30</sup> 47 C.F.R. § 80.475(a).

<sup>31</sup> Fred Daniel d/b/a Orion Telecom, *Memorandum Opinion and Order*, 13 FCC Rcd 25313, 25315 (WTB PS&PWD 1998), *aff'd*, *Order on Reconsideration*, 14 FCC Rcd 1050 (WTB PS&PWD 1999), *review denied*, *Memorandum Opinion and Order*, FCC 99-358 (rel. Nov. 24, 1999).

<sup>32</sup> In addition, Warren C. Havens recently was authorized to construct and operate AMTS stations along certain inland waterways.

<sup>33</sup> RegioNet is the successor of Fred Daniel d/b/a Orion Telecom (Orion). Orion submitted comments in this proceeding, but, for consistency, we will refer to the company as RegioNet.

licensed to serve much of the Atlantic, Pacific, Hawaii (PSI only), Great Lakes, and Puerto Rico (PSI only) coastlines,<sup>34</sup> and Waterway Communications System LLC (Watercom), serving the Mississippi River system and Gulf of Mexico.<sup>35</sup> There are two frequency groups of twenty channel pairs each in the 217-220 MHz band available for assignment to AMTS stations<sup>36</sup> to use for voice, facsimile, and radioteletypewriter communications.<sup>37</sup> AMTS stations also are licensed, by rule, to use the 216.750-217 MHz band for low power point-to-point network control communications under the Low Power Radio Service (LPRS) in Part 95 of our Rules.<sup>38</sup> The Commission requested comment on a variety of AMTS licensing issues in the *Second Further Notice* in this proceeding.<sup>39</sup>

### 1. Siting flexibility

11. *Proposal.* In establishing the AMTS service, the Commission considered the potential for interference to television reception, particularly Channels 13 and 10.<sup>40</sup> Consequently, applications for authority to operate a new AMTS transmitter within 169 kilometers (105 miles) of a Channel 13 television station or 129 kilometers (80 miles) of a Channel 10 television station, or with an antenna height greater than 61 meters (200 feet) above ground, must include an engineering study showing how harmful interference to television reception will be avoided,<sup>41</sup> and the applicant must notify each television station that may be affected so that the broadcaster can comment on the proposed construction.<sup>42</sup> Moreover, any AMTS licensee that causes such interference must cure the problem or cease operations.<sup>43</sup> In addition,

<sup>34</sup> Fred Daniel d/b/a Orion Telecom, *Memorandum Opinion and Order*, DA 98-1368, ¶¶ 3-4, 15-16 (WTB PSP&PWD rel. July 9, 1998).

<sup>35</sup> *Second Further Notice*, 12 FCC Rcd at 17005. In addition, applications from other parties are pending.

<sup>36</sup> 47 C.F.R. § 80.385(a)(2). AMTS originally was allocated eighty frequency pairs, divided into four twenty-pair groups: Groups A and B in the 217-218 MHz and 219-220 MHz bands, and Groups C and D in the 216-217 MHz and 218-219 MHz bands. The 216-217 MHz band, however, was found to be unusable by high power AMTS coast stations close to television broadcast stations due to the potential for harmful interference to television reception, and in 1996 the Commission designated this band for low power communications. In addition, the 218-219 MHz band has been reallocated to the 218-219 MHz Service. Thus, Groups C and D are no longer assignable to AMTS coast stations. *Second Further Notice*, 12 FCC Rcd at 17005 n.242.

<sup>37</sup> 47 C.F.R. § 80.479(a).

<sup>38</sup> 47 C.F.R. § 95.629(a).

<sup>39</sup> *Second Further Notice*, 12 FCC Rcd at 17004-11.

<sup>40</sup> *AMTS First Report and Order*, 6 FCC Rcd at 437.

<sup>41</sup> The Commission conducted a study to analyze the interference potential from AMTS systems to TV reception. See R. Eckert, *Guidance for Evaluating the Potential for Interference to TV from Stations of Inland Waterways Communications Systems*, FCC/OST TM82-5 (July 1982). This report is a model for applicants to use in performing any required engineering analysis of potential interference, including determination of interference contours. *AMTS First Report and Order*, 6 FCC Rcd at 437.

<sup>42</sup> 47 C.F.R. § 80.475(a).

<sup>43</sup> 47 C.F.R. § 80.215(h)(4).



AMTS operations must not cause harmful interference to the United States Navy's Space Surveillance System (SPASUR),<sup>44</sup> which operates in the 216.880-217.080 MHz band.<sup>45</sup> The Commission tentatively concluded in the *Second Further Notice* that AMTS licensees should be permitted to construct "fill-in" sites and stations<sup>46</sup> at remote fixed locations within their service areas with a minimum of regulatory burdens, and sought comment on how to streamline regulatory procedures while still protecting over-the-air television reception.<sup>47</sup>

12. *Decision.* As requested by RegioNet, PSI, and Watercom, we will revise our Rules to eliminate the application and engineering study requirements and modify the broadcaster notification requirement for new AMTS stations whose predicted interference contours do not encompass any land area beyond the composite interference contour of the applicant's existing system.<sup>48</sup> We conclude that this approach is consistent with our treatment of certain other CMRS licensees.<sup>49</sup> The AMTS licensee shall be required, at least 15 days before the station is put into operation, to notify, in writing, all television stations that might be affected by the fill-in station of its technical characteristics, the date it will be put into operation, and the licensee's contact representative in the event a broadcaster experiences interference. In addition, AMTS licensees will be required to provide the location of fill-in stations to the organizations that keep track of AMTS locations for amateur operators<sup>50</sup> so that amateur service licensees can abide by the notification and exclusion distances in our Rules.<sup>51</sup> Licensees need not file applications to construct and operate fill-in stations, but must, upon request by the Commission, supply administrative and technical information concerning such stations.<sup>52</sup> Fill-in stations shall be fully subject to the requirement that AMTS stations cause no harmful interference to television reception, or discontinue operations.<sup>53</sup> We believe that

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<sup>44</sup> The SPASUR radar system is located in the southern United States and consists of three high-power transmitter locations and six receiver locations. Amendment of the Commission's Rules Concerning Low Power Radio and Automated Maritime Telecommunications System Operations in the 216-217 MHz Band, *Report and Order*, 11 FCC Rcd 18517, 18519 (1996) (*LPRS Report and Order*).

<sup>45</sup> 47 C.F.R. § 80.385(a)(2).

<sup>46</sup> "Fill-in" stations are stations that do not expand the interference contour of the system as a whole. *See* Implementation of Sections 3(n) and 332 of the Communications Act, *Further Notice of Proposed Rule Making*, 9 FCC Rcd 2863, 2873-74 (1994).

<sup>47</sup> *Second Further Notice*, 12 FCC Rcd at 17006.

<sup>48</sup> RegioNet Comments at 5, Reply Comments at 4-5; PSI Comments at 3; Watercom Comments at 2.

<sup>49</sup> *See* 47 C.F.R. § 22.165(d)(1), (g); *see also* Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *Second Report and Order*, PR Docket No. 93-144, 12 FCC Rcd 19079, 19096-98 (1997) (*800 MHz SMR Second Report and Order*).

<sup>50</sup> The two organizations are the American Radio Relay League, Inc., and Interactive Systems, Inc. *See* 47 C.F.R. § 97.303(e).

<sup>51</sup> *See* 47 C.F.R. §§ 80.385(a), 97.303(e)(4), (5).

<sup>52</sup> *Cf.* 47 C.F.R. § 22.165(i).

<sup>53</sup> 47 C.F.R. § 80.215(h).

this procedure will streamline the licensing process for fill-in stations and facilitate service to currently unserved areas, while still providing a sufficient safeguard against harmful interference.

13. The AMTS operators note that nearly all of their transmitters have required engineering studies and broadcaster notification, but none have caused harmful interference.<sup>54</sup> Orion and PSI argue that the distance and antenna height criteria triggering the engineering study and broadcaster notification requirements, which have not changed since 1981,<sup>55</sup> are obsolete due to technological changes in television receivers and the expansion of cable television.<sup>56</sup> The National Association of Broadcasters and the Association for Maximum Service Television (NAB/MSTV), associations representing television stations, respond that these rules should not be relaxed, because there have been few changes in technology that would justify less restrictive protection criteria, and, even if the technology has improved, many older television receivers remain in use.<sup>57</sup> They further argue that a lack of complaints does not necessarily indicate a lack of interference, because viewers respond to interference by changing channels rather than complaining.<sup>58</sup> NAB/MSTV further argue that it is unclear whether digital television receivers are any less susceptible to AMTS interference than analog receivers.<sup>59</sup> We are unpersuaded by NAB/MSTV, and we find that adding flexibility as discussed above to our AMTS licensing rules with respect to fill-in stations will not result in increased interference to television stations.<sup>60</sup>

14. As requested by RegioNet and PSI,<sup>61</sup> we also amend Section 80.477 of our Rules to authorize AMTS stations to provide fixed service communications on a secondary basis to support AMTS deployment in remote fixed locations at which other communications facilities are not available.<sup>62</sup> We already provide AMTS licensees in the offshore waters of the Gulf of Mexico with authority to use AMTS coast and ship station frequencies on a secondary basis for fixed service communications to support off-

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<sup>54</sup> RegioNet Comments at 7-8; PSI Comments at 2; Watercom Comments at 2.

<sup>55</sup> See Amendment of Parts 2, 81 and 83 of the Commission's Rules to Allocate Spectrum for an Automated Inland Waterways Communications System (IWCS) along the Mississippi River and Connecting Waterways, *Report and Order*, GEN Docket No. 80-1, 84 FCC 2d 875 (*IWCS Report and Order*), on reconsideration, *Memorandum Opinion and Order*, GEN Docket No. 80-1, 88 FCC 2d 678 (1981) (*IWCS MO&O*), *aff'd sub nom. WJG Tel. Co. v. FCC*, 675 F.2d 386 (D.C. Cir. 1982).

<sup>56</sup> RegioNet Comments at 5-7, Reply Comments at 2-3; PSI Comments at 2.

<sup>57</sup> NAB/MSTV Comments at 3-4, Reply Comments at 2-3.

<sup>58</sup> NAB/MSTV Comments at 4-5.

<sup>59</sup> *Id.* at 5-6.

<sup>60</sup> See *LPRS Report and Order*, 11 FCC Rcd at 18526. We address RegioNet's proposal to eliminate the engineering study for all AMTS stations in the *Third Further Notice of Proposed Rule Making, infra*, ¶¶ 45-49.

<sup>61</sup> RegioNet Comments at 5; PSI Comments at 3; see also Request for Advisory Opinion from Dennis C. Brown, counsel for RegioNet, to Roger Noel, Private Wireless Division, Wireless Telecommunications Bureau (Mar. 5, 1996).

<sup>62</sup> See 47 C.F.R. § 80.453(b).

shore AMTS operations.<sup>63</sup> This amendment of Section 80.477 of our Rules will enhance regulatory symmetry among maritime CMRS providers and other CMRS providers.

15. Finally, we deny RegioNet's request that AMTS licenses be modified by rule to include temporary fixed station authority allowing licensees to conduct short duration tests of expanded service areas.<sup>64</sup> We note that RegioNet's request goes far beyond the authority granted to the Offshore Radiotelephone Service, which applies only when the service of permanent fixed stations is disrupted by storms or other emergencies.<sup>65</sup>

## 2. Construction flexibility

16. *Proposal.* Because an AMTS licensee must provide continuity of service to its service area, which entails a system of stations, we typically grant authorizations for each station in the system on the same date.<sup>66</sup> Currently, AMTS stations must be placed in operation within eight months from when the license is granted,<sup>67</sup> but licensees often have found eight months to be insufficient to construct an entire system, and have routinely requested additional time, up to two years.<sup>68</sup> The Commission proposed in the *Second Further Notice* to extend the construction period to two years for each station within a new AMTS system and one year for subsequently licensed stations that extend an existing system's service area (a "system extension"), with no construction requirements for fill-in stations.<sup>69</sup>

17. *Decision.* We agree with RegioNet that the construction requirement for new AMTS systems and system extensions should be extended from eight months to two years because our experience has shown that eight months generally is not sufficient time in which to construct a system of coast stations.<sup>70</sup> At this time, we do not believe it is necessary to distinguish between new systems and system extensions, or among system extensions, so we reject PSI's suggestion that the construction requirement for a multiple-station system extension be two years but the requirement for a single-station extension be one year.<sup>71</sup> We reserve the discretion to revisit this issue at a future time should circumstances so dictate. No construction requirement will apply to fill-in stations because of our decision today eliminating the requirement of prior Commission authorization.<sup>72</sup>

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<sup>63</sup> *Id.*

<sup>64</sup> RegioNet Comments at 5-6.

<sup>65</sup> *See* 47 C.F.R. § 22.1031.

<sup>66</sup> *Second Further Notice*, 12 FCC Rcd at 17007.

<sup>67</sup> *See* 47 C.F.R. § 80.49(a)(2).

<sup>68</sup> *Second Further Notice*, 12 FCC Rcd at 17007.

<sup>69</sup> *Id.* at 17007-08.

<sup>70</sup> *See* RegioNet Comments at 8.

<sup>71</sup> *See* PSI Comments at 4.

<sup>72</sup> *See supra*, ¶ 12.

### 3. Technical flexibility

18. *Proposal.* The Commission's technical requirements governing the authorized power, emission types, and bandwidth of AMTS transmissions sometimes limit the particular technologies that licensees can use and the services they may offer to the maritime community.<sup>73</sup> For example, the requirement that AMTS stations use FM radio equipment for all transmissions precludes the use of narrowband technologies such as amplitude compandored single sideband,<sup>74</sup> which is used in the immediately adjacent 220-222 MHz band.<sup>75</sup> The Commission proposed in the *Second Further Notice* to eliminate the modulation and channelization requirements for AMTS coast stations, so long as transmissions do not exceed the adjacent channel emission limitations of each station's authorization.<sup>76</sup> It also proposed to amend the rule governing power output measurement of AMTS coast stations to measure transmission power at the antenna input,<sup>77</sup> rather than the transmitter output,<sup>78</sup> and to increase AMTS transmitter power under the Low Power Radio Service (LPRS)<sup>79</sup> beyond the current 100 mW limit.<sup>80</sup> Finally, the Commission proposed affording AMTS stations flexibility to provide fixed or hybrid CMRS services.<sup>81</sup>

19. *Decision.* We conclude that the record in this proceeding supports allowing AMTS transmitters to use any modulation or channelization scheme so long as emissions are attenuated at the band edges of each station's assigned frequency group(s) in accordance with Section 80.211 of our Rules.<sup>82</sup> This action will benefit the maritime community by increasing the number and types of telecommunications services available while promoting more efficient use of the maritime radio spectrum. We believe that the

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<sup>73</sup> *Second Further Notice*, 12 FCC Rcd at 17008-09.

<sup>74</sup> Amplitude compandored single sideband is an AM modulated scheme that suppresses the main carrier and puts all the power into one of the sidebands. See Applications of Contemporary Communications Corporation for Developmental Authorization for New Two-Way Stations Using Amplitude Compandored Single Sideband in the Public Land Mobile Service, *Memorandum Opinion and Order*, 98 FCC 2d 1229 (1984).

<sup>75</sup> See Amendment of Part 90 of the Commission's Rules To Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, *Report and Order*, PR Docket No. 89-552, 6 FCC Rcd 2356 (1991).

<sup>76</sup> *Second Further Notice*, 12 FCC Rcd at 17009.

<sup>77</sup> *Id.*

<sup>78</sup> 47 C.F.R. § 80.215(h)(5).

<sup>79</sup> *Second Further Notice*, 12 FCC Rcd at 17010-11.

<sup>80</sup> 47 C.F.R. § 95.1013(a).

<sup>81</sup> *Second Further Notice*, 12 FCC Rcd at 16999-17000.

<sup>82</sup> See 47 C.F.R. § 80.211.

modulation and channelization requirements, which are designed to prevent co-channel interference, are unnecessary here because AMTS channels are licensed in blocks.<sup>83</sup> Further, we conclude that eliminating these requirements will allow AMTS licensees to take advantage of technological developments in an effort to provide both additional and improved services. Given the current rules requiring AMTS applicants to notify broadcasters and eliminate any interference, we find NAB/MSTV's concern that eliminating the modulation and channelization requirements could result in increased out-of-band emissions insufficient to defeat the proposed rule change.<sup>84</sup>

20. We also conclude that the record supports amending the rules governing output power measurement for AMTS stations. The amended rules will provide that the transmission power be measured at the antenna input rather than the transmitter output. We agree with RegioNet that this will make AMTS system designers better able to use innovative transmission combining solutions without sacrificing system performance, and will make the AMTS rules consistent with those governing VHF public coast stations.<sup>85</sup>

21. In addition, we conclude that the permissible effective radiated power should be increased from 100 mW to 1 W for AMTS point-to-point network control communications over LPRS spectrum.<sup>86</sup> We believe that this is a reasonable power limit which will result in minimal harmful interference potential for television reception and other LPRS users. As requested by NAB/MSTV,<sup>87</sup> we will revise our rules to make clear that any emissions at or below 216 MHz must be attenuated in accordance with Section 80.211 of our Rules,<sup>88</sup> and we shall retain the broadcaster notification<sup>89</sup> and interference resolution requirements for these links.<sup>90</sup> However, we find unpersuasive NAB/MSTV's suggestions to move the requirements for these links from Part 95 of the Commission's Rules to Part 80, and to subject these links to the same engineering study requirements as apply to other AMTS transmissions.<sup>91</sup> The Commission generally relocates rules only to eliminate redundancy or make them easier to understand and use, and we do not believe that moving the LPRS rules, or copying them, to the Part relating to only one group of LPRS users<sup>92</sup> would accomplish either of these goals.<sup>95</sup> We do not believe that requiring engineering studies for

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<sup>83</sup> RegioNet Comments at 3; *see also* PSI Comments at 4; National Marine Electronics Association Comments at 1.

<sup>84</sup> NAB/MSTV Comments at 7-8.

<sup>85</sup> *See* RegioNet Comments at 3.

<sup>86</sup> *Id.* at 8-9; PSI Comments at 4.

<sup>87</sup> NAB/MSTV Comments at 7.

<sup>88</sup> 47 C.F.R. § 80.211.

<sup>89</sup> 47 C.F.R. § 95.1015(b).

<sup>90</sup> 47 C.F.R. §§ 80.215(h)(4), 80.385(a)(2), 95.1011(c); *see LPRS Report and Order*, 11 FCC Rcd at 18533.

<sup>91</sup> NAB/MSTV Comments at 7.

<sup>92</sup> In addition to AMTS point-to-point network control transmitters, the LPRS consists of the following types of devices: auditory assistance devices for persons with disabilities, health care assistance devices, and law enforcement tracking systems. 47 C.F.R. § 95.1009.

AMTS LPRS transmitters is necessary to protect television reception.<sup>94</sup> Generally, AMTS LPRS transmitters, like AMTS fill-in sites, have interference contours fully encompassed by the system's composite interference contour. Thus, as we have concluded above with reference to fill-in sites, we believe that television reception will be sufficiently protected by notification to broadcasters of the location of LPRS transmitters and the requirement that an AMTS licensee causing harmful interference alleviate the problem or cease operating.

22. In addition, RegioNet proposes eliminating the requirement in Section 80.215(e)(2), (i) of our Rules that AMTS ship radios include the capacity to reduce the carrier power to 2.5 W with a front panel control.<sup>95</sup> RegioNet argues that the requirement increases terminal costs and complicates subscriber operation.<sup>96</sup> We also note that no such requirement applies to VHF ship radios used in automated systems.<sup>97</sup> We conclude that the requirement of a front panel power control is not necessary for purposes of avoiding harmful interference from AMTS transceivers, and that the requirement should be eliminated.<sup>98</sup> RegioNet also seeks a ruling that Section 80.70 of our Rules, which requires coast stations above 150 MHz to minimize interference to other coast stations, does not apply to AMTS stations,<sup>99</sup> but, because RegioNet has not explained how Section 80.70 prevents AMTS licensees from using new technology or offering additional services, we find this request to be beyond the scope of this proceeding.<sup>100</sup>

23. Finally, we agree with RegioNet that allowing AMTS licensees to provide fixed or hybrid CMRS services on a co-primary basis with mobile services will be beneficial.<sup>101</sup> Affording AMTS licensees operational flexibility will enhance their ability to meet customer requirements and demand, and

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<sup>93</sup> See, e.g., Reorganization and Revision of Parts 1, 2, 21, and 94 of the Commission's Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services, *Report and Order*, WT Docket No. 94-148, 11 FCC Rcd 13449, 13452 (1996); Reorganization and Revision of Parts 81 and 83 of the Rules to Provide a New Part 80 Governing the Maritime Radio Services, *Report and Order*, PR Docket No. 85-145, 60 Rad. Reg. 2d (P & F) 1550, FCC 86-141, ¶ 1 (rel. Apr. 25, 1986).

<sup>94</sup> See RegioNet Reply Comments at 5-6.

<sup>95</sup> RegioNet Comments at 4 (citing 47 C.F.R. § 80.215(e)(2), (i)).

<sup>96</sup> *Id.*

<sup>97</sup> 47 C.F.R. § 80.215(e)(1).

<sup>98</sup> See Kenwood Communications Corp., *Order*, 13 FCC Rcd 4415, 4417 (WTB PS&PWD 1998) (granting waiver of the requirement).

<sup>99</sup> RegioNet Comments at 3 (citing 47 C.F.R. § 80.70).

<sup>100</sup> See *Second Further Notice*, 12 FCC Rcd at 17008.

<sup>101</sup> See RegioNet Comments at 2.

promote regulatory parity among maritime CMRS providers<sup>102</sup> and between maritime CMRS providers and other CMRS providers.<sup>103</sup>

## B. High Seas Public Coast Station Spectrum

24. High seas public coast stations, which operate on LF (.100-.160 MHz band), MF (.405-.525 and 2 MHz bands), and HF (4, 6, 8, 12, 16, 18/19, 22, and 25/26 MHz bands) frequencies, can serve vessels thousands of miles away.<sup>104</sup> These stations provide a variety of voice and data telecommunications services, including radiotelephone (voice), radiotelegraph (manual Morse code), facsimile, and narrow-band direct printing (NB-DP) and data transmission.<sup>105</sup> High seas public coast frequencies are assigned for exclusive use in accordance with the ITU Radio Regulations, which specify how each frequency may be used.<sup>106</sup> They are allotted on a geographic or nationwide basis, depending on the type of service to which they are allocated, and are assigned on a site-by-site basis.<sup>107</sup> These frequencies' propagation characteristics make some bands unusable at certain hours due to varying atmospheric or solar conditions, so high seas stations require frequencies in several bands in order to be able to provide service at all times.<sup>108</sup> Presently, an initial application for high seas public coast HF radiotelephone, radiotelegraph (except on the Mississippi River), or NB-DP frequencies is limited to one frequency in each band, and licensees may be assigned additional frequencies only if certain loading criteria are met.<sup>109</sup>

25. *Proposal.* The Commission proposed in the *Second Further Notice* to eliminate channel loading requirements for high seas public coast stations, and sought comment on modifying the number of frequencies that may be obtained per application.<sup>110</sup> It also proposed to extend the existing construction requirement from eight months<sup>111</sup> to twelve months.<sup>112</sup> In addition, the Commission tentatively decided, in

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<sup>102</sup> See *Third Report and Order*, 13 FCC Rcd at 19877.

<sup>103</sup> See Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Service, *First Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 96-6, 11 FCC Rcd 8965, 8973-77 (1996).

<sup>104</sup> *Second Further Notice*, 12 FCC Rcd at 17001-02.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.* at 17002.

<sup>107</sup> *Id.* at 17002-04.

<sup>108</sup> *Id.* at 17001.

<sup>109</sup> An additional channel may be authorized when a foreign station causes harmful interference on the initially granted channel, or the assigned channel(s) is occupied more than 40 percent of the time during the busiest hours of operation. 47 C.F.R. §§ 80.357(b)(2)(ii)(B), 80.361(a)(2), 80.371(b), 80.374(a)(2).

<sup>110</sup> *Second Further Notice*, 12 FCC Rcd at 17003-04.

<sup>111</sup> 47 C.F.R. § 80.49.

<sup>112</sup> *Second Further Notice*, 12 FCC Rcd at 17003-04.

light of comments received in response to the *Further Notice*, to redistribute MF marine frequencies by permitting MF private coast stations to use unassigned public coast station frequency pairs in the 2 MHz band on a shared basis with other private coast stations, and sought further comment regarding the procedures that would govern such an arrangement, and on expanding it to all MF and HF bands below 27.5 MHz.<sup>113</sup> Finally, the Commission proposed that where two or more entities apply for an authorization on the same channel in the same region (where applicable) within thirty days of the date that the first application is placed on public notice, the applications would be considered mutually exclusive and the frequency assigned by competitive bidding procedures.<sup>114</sup>

26. *Decision.* We agree with public coast station licensees Globe Wireless and Mobile Marine Radio, Inc. (MMR) that we should eliminate the HF channel loading requirements, including any limit on the number of frequencies that may be obtained in an initial or subsequent application.<sup>115</sup> Continuing to impose such requirements could unfairly impair the ability of service providers to compete with other maritime CMRS providers. Efficient use of high seas public coast station spectrum is more appropriately monitored through construction requirements than by requiring channel loading.

27. In addition, we are extending the high seas public coast station construction requirement to twelve months. We agree with Globe Wireless and MMR<sup>116</sup> that this construction requirement will encourage intensive use of the spectrum.<sup>117</sup> Given that a single high seas public coast station can serve vessels thousands of miles away, we believe that employing long-term construction requirements based on population or geographic service areas is inappropriate. Rather, we believe that rapid delivery of service to the public will be promoted by requiring high seas public coast licensees to place each newly assigned channel in operation -- that is, being capable of transmitting and receiving public correspondence on the channel -- within twelve months of the initial license grant. This twelve-month period is consistent with the construction periods the Commission has adopted for other site-based CMRS licensees.<sup>118</sup> We reject MMR's argument that we should require licensees to be able to transmit on each channel simultaneously instead of using frequency-agile transmitters,<sup>119</sup> for other CMRS providers are not subject to such a

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<sup>113</sup> *Id.* at 17013-14.

<sup>114</sup> *Id.* at 17004.

<sup>115</sup> *See* Globe Wireless Comments at 3; MMR Comments at 12-13.

<sup>116</sup> *See* Globe Wireless Comments at 3; MMR Comments at 13.

<sup>117</sup> *See* 47 U.S.C. § 309(j)(4)(B).

<sup>118</sup> *See* Implementation of Sections 3(n) of the Communications Act - Regulatory Treatment of Mobile Services, *Third Report and Order*, GN Docket No. 93-252, 9 FCC Rcd 7988, 8074-75 (1994).

<sup>119</sup> MMR Comments at 13; *see also* Globe Wireless Reply Comments at 1. *But see* BRC Reply Comments at 3.



requirement,<sup>120</sup> which we find would increase the cost of placing a new public coast station into service and thereby undermine the development of competition in the Maritime Services.<sup>121</sup>

28. In the *Third Further Notice of Proposed Rule Making*, we undertake a broad reexamination of the high seas public coast station licensing scheme. Consequently, we will not adopt our proposal for identifying and resolving mutually exclusive high seas public coast station applications, or the proposal to reallocate 2 MHz frequencies to private coast station use.

#### IV. THIRD FURTHER NOTICE OF PROPOSED RULE MAKING

##### A. AMTS Spectrum

##### 1. Geographic area licensing

29. Unlike most other CMRS providers, AMTS stations are licensed by individual sites within multi-station systems, rather than by Commission-defined service areas.<sup>122</sup> As noted above, the *Third Report and Order* in this proceeding adopted rules to convert the licensing of VHF public coast stations from site-based licensing to geographic licensing.<sup>123</sup> We concluded that such an approach would facilitate the development of wide-area systems and provide greater operational flexibility for licensees, promote competition and regulatory symmetry between VHF public coast stations and other CMRS providers, and reduce administrative burdens on the public and the Commission.<sup>124</sup> We note that in many respects VHF and AMTS public coast stations are governed by the same rules, and we tentatively conclude that they serve similar markets. We therefore must consider whether the statutory objective of regulatory symmetry among CMRS providers dictates that we convert AMTS licensing to a geographic basis.<sup>125</sup> We tentatively conclude that our current procedure for determining mutual exclusivity is no longer in the public interest because it could delay assignment of subsequent AMTS licenses and place undue administrative burdens on the public and the Commission. In addition, because the Balanced Budget Act mandates the use of competitive bidding procedures to resolve mutually exclusive applications for initial licenses (except for

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<sup>120</sup> See, e.g., Amendment of the Commission's Rules to Establish New Personal Communications Services, *Third Report and Order*, GEN Docket No. 90-314, 9 FCC Rcd 1337, 1341, 1359-60 (1994).

<sup>121</sup> *Third Report and Order*, 13 FCC Rcd at 19870-71; see AT&T Corp., *Memorandum Opinion and Order*, 14 FCC Rcd 13225, 13227 ¶ 6 (IB 1999) (regarding AT&T's application to close its high seas public coast stations because they were no longer economically viable).

<sup>122</sup> 47 C.F.R. § 80.54; *Second Further Notice*, 12 FCC Rcd at 17007.

<sup>123</sup> *Third Report and Order*, 13 FCC Rcd at 19855-56.

<sup>124</sup> *Id.* at 19859-60; *Second Further Notice*, 12 FCC Rcd at 16988.

<sup>125</sup> 47 U.S.C. § 332; see, e.g., Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, *Second Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 96-18, 12 FCC Rcd 2732, 2737 (1997).

certain types of licenses that do not include AMTS and other public coast stations), our current procedure for resolving mutually exclusive AMTS applications may no longer be used. We acknowledge that the Commission has retained site-based licensing for some auctionable services, but those decisions were based on unique circumstances relating to those services, which are not relevant for AMTS.<sup>126</sup>

30. We propose a transition from the current licensing approach to geographic area licensing. We tentatively conclude that such an approach would speed assignment of subsequent AMTS licenses, reduce processing burdens on the Commission, facilitate the expansion of existing AMTS systems and the development of new AMTS systems, eliminate inefficiencies arising from the intricate web of relationships made possible by site-specific authorization, and enhance regulatory symmetry.<sup>127</sup> We seek comment on our proposal to use a geographic licensing approach for AMTS spectrum, and on the tentative conclusions underlying it. To the extent that commenters oppose a geographic licensing approach, we ask them to discuss which changes, if any, should be made to our current rules in order to achieve the goals we have identified in our proposed transition to another licensing approach. In addition, we seek comment on whether the use of band manager licensing may also be an appropriate alternative method of accomplishing the objectives that we strive to achieve through our partitioning and disaggregation rules. Band managers would be a class of Commission licensee that would engage in the business of making spectrum available for use by others through private, written contracts. We seek comment generally on the possible use of band managers for the AMTS spectrum. Should we decide to license band managers for this spectrum, we seek comment on whether licensees should be permitted to choose to operate either as band managers (*i.e.*, spectrum brokers), or as traditional licensees, or both. We invite comment on the advantages and disadvantages of band manager licensing and the approaches identified above. We also seek comment on all the rules that would apply to band managers.<sup>128</sup> Commenters also should address whether some other licensing approach would be most effective for AMTS spectrum.

## 2. Service areas

31. In the *Third Report and Order*, we established VPCs as the geographic licensing areas for VHF public coast stations.<sup>129</sup> The VPCs near major waterways,<sup>130</sup> known as maritime VPCs,<sup>131</sup> are

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<sup>126</sup> See Implementation of Sections 309(j) of the Communications Act, Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, *First Report and Order*, 13 FCC Rcd 15920 (1998) (commercial analog broadcast service and Instructional Television Fixed Service licenses); See Implementation of Sections 309(j) of the Communications Act, Competitive Bidding, PP Docket No. 93-253, Amendment of Part 22 of the Commission's Rules to Provide for the Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, CC Docket No. 90-6, *Ninth Report and Order*, 11 FCC Rcd 14769 (1996) (licenses for cellular unserved areas created from the geographic area not covered by the Cellular Geographic Service Area of each licensee).

<sup>127</sup> See Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as amended, *Notice of Proposed Rule Making*, 14 FCC Rcd 5206, 5237-38 (1999).

<sup>128</sup> See Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99-168, *Second Report and Order*, 15 FCC Rcd 5299, 5321-28, 5331-33 (2000) (establishing Guard Band Manager licenses for the 700 MHz guard bands and adopting Subpart G of Part 27 of the Commission's rules and other rules governing Guard Band Manager licenses).

<sup>129</sup> *Third Report and Order*, 13 FCC Rcd at 19862.

composed of one or more EAs and approximate the nine U.S. Coast Guard Districts.<sup>132</sup> The VPCs in other areas, known as inland VPCs, consist of individual EAs no part of which is within one hundred miles of a major waterway.<sup>133</sup> The division of the country into large maritime VPCs and small inland VPCs furthered the Commission's goal of facilitating the development of wide-area multi-channel systems along waterways, while accommodating the current use of those frequencies away from waterways, where the spectrum is shared by certain private land mobile radio (PLMR) licensees.<sup>134</sup>

32. We seek comment on whether VPCs provide an appropriate basis for defining AMTS geographic licensing areas.<sup>135</sup> Commenters should discuss whether, in light of the fact that there are no PLMR licensees sharing AMTS spectrum in inland areas, the VPC boundaries should be adapted for AMTS by combining the inland VPCs into a single licensing area, or redistributing the inland VPCs among the surrounding maritime VPCs so as to approximate Coast Guard Districts. Another alternative is to base the AMTS service areas on those used in the adjacent 220-222 MHz band, where some channels are licensed nationwide, others are licensed among six Regional Economic Area Groupings, and some are licensed by EA.<sup>136</sup> Because there are two AMTS frequency blocks, we could adopt no more than two of the 220 MHz band licensing schemes. We ask commenters to discuss these and any other alternative service area definitions, and the advantages and disadvantages of each.

33. We also seek comment, in light of our continuing commitment to take measures to ensure that the current and future communications needs of the public safety community are addressed, on whether the Commission should take any steps to facilitate use of AMTS spectrum by public safety entities, including setting aside some channels for public safety use.<sup>137</sup> We note that the Commission set aside two channels in each inland VPC for public safety use.<sup>138</sup> In addition, we note that some channels in the

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<sup>130</sup> *I.e.*, the Atlantic and Pacific Oceans; the Gulf of Mexico and Gulf Intracoastal Waterway; the Great Lakes; and the Mississippi, Missouri, Ohio, Tennessee, Arkansas, Red, and Columbia Rivers. *Id.* at 19862 n.46.

<sup>131</sup> *Id.* at 19862.

<sup>132</sup> *See* 33 C.F.R. Part 3.

<sup>133</sup> *Third Report and Order*, 13 FCC Rcd at 19862.

<sup>134</sup> *Id.* at 19861-62.

<sup>135</sup> Commenters should note that AMTS service may not be provided in American Samoa, Guam, and the Northern Mariana Islands, for they lie within ITU Region 3, and the ITU has allocated the 216-220 MHz band for AMTS use in Region 2 only. *See* 47 C.F.R. § 2.104(b); *AMTS First Report and Order*, 6 FCC Rcd at 437.

<sup>136</sup> Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Service, *Third Report and Order; Fifth Notice of Proposed Rulemaking*, PR Docket No. 89-552, 12 FCC Rcd 10943, 10949 (1997) (*220 MHz Third Report and Order*).

<sup>137</sup> *See, e.g.*, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, *Second Notice of Proposed Rulemaking*, WT Docket No. 96-86, 12 FCC Rcd 17706, 17710-12 (1997).

<sup>138</sup> *Third Report and Order*, 13 FCC Rcd at 19869. Recently, we designated these channels as primarily for interoperability purposes. *See* Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, *Third* (continued....)

adjacent 220 MHz band have been set aside for public safety use.<sup>139</sup> We also seek comment on whether any steps are necessary to protect public safety operations in the 220 MHz band from AMTS interference.

### 3. Treatment of incumbent licensees

34. In tandem with our geographic licensing proposal, we must assess the potential impact on incumbents currently licensed to operate on AMTS spectrum. There are approximately 215 AMTS stations licensed to provide public correspondence service along the coastlines and navigable inland waterways of the United States to vessel owners and units on land. Because these stations provide an important link between waterborne vessels and the public switched network, we tentatively conclude that the public interest would be best served by providing for their continued operation while, at the same time, reducing implementation barriers for geographic licensees. Therefore, we propose that each incumbent AMTS licensee continue to be authorized to operate under the terms of its current station license.

35. Our rules currently do not define a co-channel interference protection standard for AMTS stations,<sup>140</sup> so we propose to rely on the co-channel interference protection standard for the 220 MHz band, which requires geographic licensees to locate their base stations at least 120 kilometers from the base stations of co-channel incumbents, except that such licensees may on a case-by-case basis be permitted to locate their base stations closer if the geographic licensees provide 10 dB protection to the incumbent's predicted 38 dBuV/m service contour.<sup>141</sup> We seek comment on whether this is the best co-channel interference protection standard for AMTS, or whether there is a more appropriate alternative. For example, for protection of VHF public coast stations, we specify a 12 dB ratio of desired to undesired signal strength within the incumbent's service area,<sup>142</sup> and we specify an 80 kilometer (49.7 mile) exclusion distance for protection of AMTS licensees from amateur operations in the 219-220 MHz band.<sup>143</sup>

36. In turn, we propose to protect geographic area licensee operations by allowing each incumbent AMTS licensee to renew, transfer, assign, or modify its license only if the modifications do not

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*Memorandum Opinion and Order and Third Report and Order*, WT Docket No. 96-86, FCC 00-348, ¶¶ 91-94 (rel. Oct. 10, 2000).

<sup>139</sup> See *220 MHz Third Report and Order*, 12 FCC Rcd at 11003.

<sup>140</sup> See *Second Further Notice*, 12 FCC Rcd at 17008. We note that AMTS stations in a system typically are spaced thirty to fifty miles apart. *Id.* at 17010.

<sup>141</sup> 47 C.F.R. §§ 90.723(i), 90.763(b)(1)(i).

<sup>142</sup> 47 C.F.R. § 80.773(a). We note that RegioNet suggested using the VHF standard in response to the Commission's request in the *Second Further Notice* for comments and technical data in support of a proposed definition of AMTS service areas for the purpose distinguishing between new systems and system extensions, *Second Further Notice*, 12 FCC Rcd at 17008. RegioNet Comments at 1-2. With respect to recent applications, RegioNet used the VHF standard to calculate the proposed stations' service contours, while PSI used the 220 MHz standards. Fred Daniel d/b/a Orion Telecom, *Memorandum Opinion and Order*, DA 98-1368, ¶ 7 n.19 (WTB PS&PWD rel. July 9, 1998).

<sup>143</sup> 47 C.F.R. §§ 80.385(a)(3), 97.303(e)(5).

extend the system's service area<sup>144</sup> or frequency assignment, as we have for incumbents using VHF public coast spectrum.<sup>145</sup> Proposed modifications that would extend an AMTS incumbent's service area or request the use of additional frequencies would be contingent upon an agreement with each affected geographic area licensee. We also propose to entertain incumbents' modification requests, after the close of the auction for geographic area licenses, to consolidate the stations of each system under a single license with a single call sign, as we will for VHF public coast station incumbents.<sup>146</sup> To avoid manipulation and evasion of construction and renewal requirements, we propose that such consolidated licenses ordinarily expire on the expiration date of the earliest-to-expire license.<sup>147</sup> We seek comment on these proposals.

37. Finally, in the *Third Report and Order*, we concluded that mobile-to-mobile communications should not be permitted on VHF public coast stations because there was insufficient information regarding channel capacity and co-channel interference protection.<sup>148</sup> We were also concerned that permitting mobile-to-mobile communications may impair the Maritime Services' safety functions.<sup>149</sup> For the same reasons, we reach the tentative conclusion that such communications should not be permitted on AMTS spectrum either. We seek comment on this tentative conclusion.

#### 4. Licensing

38. Presently, each AMTS must provide continuity of service to either a substantial navigational area along a coastline or sixty percent of one or more inland waterways (except that a waterway less than 240 kilometers (150 miles) long must be served in its entirety).<sup>150</sup> This requirement reflects the original purpose of AMTS service, which was to authorize and provide radio frequencies for automated, interconnected marine communications systems that would provide commercial vessels moving along a waterway with more convenient service than was available from individual public coast stations, by, *e.g.*, relieving them from having to repeatedly change frequencies and contact new coast stations (which may have different call set-up and billing procedures).<sup>151</sup> The Commission proposed in the *Further Notice* in this proceeding,<sup>152</sup> and adopted in the *Second Report and Order*, a rule permitting VHF and AMTS public coast stations to provide service to units on land, so long as marine-originating communications receive priority.<sup>153</sup> The Commission subsequently received a significant number of applications for

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<sup>144</sup> Expanding a system's contour over water only (disregarding uninhabited islands) shall not be deemed to extend the system's service area.

<sup>145</sup> *Third Report and Order*, 13 FCC Rcd at 19864.

<sup>146</sup> *Id.* at 19865.

<sup>147</sup> *See id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> 47 C.F.R. § 80.475(a).

<sup>151</sup> *See IWCS Report and Order*, 84 FCC 2d at 876.

<sup>152</sup> *Further Notice*, 10 FCC Rcd at 5729.

<sup>153</sup> *See Second Report and Order*, 12 FCC Rcd at 16964-65; 47 C.F.R. § 80.123(b).

individual AMTS stations to serve small navigable inland waterways in or near large metropolitan areas, apparently intended to serve land units in areas with little marine-originating traffic. These applications, which were denied on the grounds that waterways small enough to be served by a single station are not eligible for AMTS service, indicate a demand for AMTS spectrum away from large waterways.<sup>154</sup>

39. We tentatively conclude that the current requirement to serve a waterway should be modified because it is inconsistent with geographic licensing. We find that requiring AMTS stations to serve coastlines or sizable navigable inland waterways could prevent service from being offered in some licensing areas. We propose to permit each geographic area licensee to place stations anywhere within its service area to serve vessels or units on land, so long as marine-originating traffic is given priority and incumbent operations are protected. We will, however, propose to require licensees whose service areas encompass certain major waterways to provide coverage to those waterways.<sup>155</sup> Consistent with the rules for VHF public coast stations,<sup>156</sup> all base stations and land units would be blanket licensed under the geographic area license, except that we propose to require geographic area licensees to individually license any base station that requires an Environmental Assessment pursuant to Section 1.1307 of the Commission's Rules<sup>157</sup> or international coordination, or would affect the radio frequency quiet zones described in Section 80.21 of the Commission's Rules,<sup>158</sup> or would require broadcaster notification and an engineering study under our rules. We seek comment on this proposal.

40. Currently, our rules provide that an applicant for a station falling within the broadcaster notification and engineering study requirements, the interference contour of which encompasses at least one hundred residences, must show, among other things, that the proposed location is the "only suitable location" from which the proposed service can be provided.<sup>159</sup> We propose to revise the rule to make clear that, at the application stage, the applicant need only demonstrate that the proposed application is especially suitable; the suitability of alternative locations for serving the area need not be refuted unless or until a third party opposes the application. This revision is not meant to be substantive, but is intended to clarify the regulation to reflect how it has been interpreted by the Commission.<sup>160</sup> We also propose to maintain the requirement that an AMTS licensee that causes interference to television reception or to the U.S. Navy SPASUR system cure the problem or discontinue operations.<sup>161</sup> We seek comment on these proposals.

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<sup>154</sup> See Fred Daniel d/b/a Orion Telecom, *Memorandum Opinion and Order*, 13 FCC Rcd 25313, 25315 (WTB PS&PWD 1998), *aff'd*, *Order on Reconsideration*, 14 FCC Rcd 1050 (WTB PS&PWD 1999), *review denied*, *Memorandum Opinion and Order*, FCC 99-358 (rel. Nov. 24, 1999).

<sup>155</sup> See *infra* ¶ 54.

<sup>156</sup> *Third Report and Order*, 13 FCC Rcd at 19867.

<sup>157</sup> 47 C.F.R. § 1.1307.

<sup>158</sup> 47 C.F.R. § 80.21.

<sup>159</sup> 47 C.F.R. § 80.215(h)(3)(i).

<sup>160</sup> See Waterway Communications System, Inc., *Memorandum Opinion and Order*, Mimeo 36540, at ¶¶ 8, 13, 14 (rel. Mar. 31, 1986); Fred Daniel d/b/a Orion Telecom, *Memorandum Opinion and Order*, 13 FCC Rcd 15446, 15448-50 (WTB PS&PWD 1998).

<sup>161</sup> 47 C.F.R. §§ 80.215(h)(4), 80.385(a)(2).

41. The 219-220 MHz band is allocated to the Amateur Radio Service on a secondary basis.<sup>162</sup> We seek comment on our tentative conclusions that we should retain this allocation,<sup>163</sup> and require AMTS geographic area licensees to provide the location of their blanket-licensed stations to the administrator of the database of amateur radio service stations that transmit in the 219-220 MHz band,<sup>164</sup> so amateur service licensees can abide by the notification and exclusion distances in our rules.<sup>165</sup>

42. In other services, we have required geographic area licensees to also provide co-channel interference protection to other geographic area licensees.<sup>166</sup> Accordingly, we propose to use the standard adopted for the 220 MHz band, where geographic area licensees may transmit up to a predicted 38 dBu field strength at their geographic area boundaries, unless the bordering geographic area licensee agrees to a higher field strength.<sup>167</sup> We seek comment on whether this is the most appropriate standard, or whether another option, such as the VHF public coast station geographic area boundary field strength limit of +5 dBu (decibels referenced to one microvolt per meter), should be used instead.<sup>168</sup>

43. To assist geographic area licensees in consolidating spectrum, we also propose, consistent with the rules for VHF public coast station geographic area licensees, that (1) if an AMTS incumbent fails to construct, discontinues operations, or otherwise has its license terminated by the Commission, the spectrum covered by the incumbent's authorization will automatically revert to the geographic area licensee (even in an area partitioned by the geographic area licensee, unless the partitioning agreement provides otherwise), and (2) if a geographic area licensee negotiates to acquire an incumbent station by assignment or transfer, the assignment or transfer will be presumed to be in the public interest.<sup>169</sup> An incumbent would be permitted to assign its existing license to any qualified entity whether or not that entity is the geographic area licensee. We tentatively conclude that an incumbent should be permitted to assign or transfer any part of an existing system, even if the assigned portion or the remainder would no longer satisfy the current AMTS coverage requirements. We seek comment on these proposals.

44. We propose to authorize two geographic area licensees in each licensing area, with each licensee authorized to use one of the two AMTS frequency blocks. We tentatively conclude that this will

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<sup>162</sup> 47 C.F.R. §§ 80.385(a)(3), 97.301(a).

<sup>163</sup> Cf. Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service, *Report and Order*, GN Docket No. 96-228, 12 FCC Rcd 10785, 10802 (1997).

<sup>164</sup> Currently, the administrator is the American Radio Relay League, Inc. See 47 C.F.R. § 97.303(e).

<sup>165</sup> 47 C.F.R. §§ 80.385(a)(3), 97.303(e)(4), (5).

<sup>166</sup> See, e.g., 47 C.F.R. § 80.773 (co-channel interference protection requirement for VHF public coast station geographic area licensee).

<sup>167</sup> See 47 C.F.R. § 90.771(a).

<sup>168</sup> *Third Report and Order*, 13 FCC Rcd at 19867. This limitation is based on the standards found in 47 C.F.R. Subpart P for computing VHF public coast station coverage.

<sup>169</sup> *Id.*; see also Amendment of Part 90 Concerning the Commission's Finder's Preference Rules, *Report and Order*, WT Docket No. 96-199, 13 FCC Rcd 23816, 23818 (1998).

contribute to competition in the maritime CMRS marketplace. The Commission has never assigned both AMTS frequency blocks at one time to one licensee, but has permitted a licensee with one frequency block to obtain the other block upon a showing of need.<sup>170</sup> We decided to authorize a single licensee in each VHF public coast station geographic area, but that was due to the limited number of channels available in that band.<sup>171</sup> We seek comment on whether to permit a single licensee to acquire more than one AMTS frequency block in the same geographic area, either initially or by partitioning and disaggregation.<sup>172</sup>

## 5. Engineering study requirement

45. As indicated above, our rules require an AMTS applicant proposing to locate a transmitter within 169 kilometers (105 miles) of a Channel 13 television station or 105 kilometers (80 miles) of a Channel 10 television station, or with an antenna height greater than 61 meters (200 feet), to provide an engineering study showing how harmful interference to television reception will be avoided.<sup>173</sup> In 1982, the Commission conducted a study (“the Eckert Report”) to analyze the interference potential from AMTS systems to TV reception.<sup>174</sup> This report is a model for applicants to use in performing any required engineering analysis of potential interference from AMTS systems to television reception.<sup>175</sup>

46. RegioNet, in its petition for rule making, proposes that the engineering study requirement be eliminated.<sup>176</sup> RegioNet argues that the engineering study’s high costs<sup>177</sup> have deterred further entry into AMTS, and that these costs are incurred with no associated benefit because the Eckert Report’s prescribed method is based on data obtained several decades ago.<sup>178</sup> RegioNet proffers two technical studies

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<sup>170</sup> See *Riverphone, Inc., Memorandum Opinion and Order*, 2 FCC Rcd 239, 239 (1987); *Waterway Communications System, Inc., Order*, FCC 86-230, ¶ 3 (rel. May 8, 1986) (in the application for the additional frequency block, Waterway Communications System, Inc., included supporting traffic projection analysis, propagation test results and studies of potential intra-system interference).

<sup>171</sup> *Third Report and Order*, 13 FCC Rcd at 19866; *Second Further Notice*, 12 FCC Rcd at 16991.

<sup>172</sup> That is, commenters should consider whether the licensee of one frequency block should be able to acquire a portion of the other block, or whether an entity should be able to acquire portions of both blocks equivalent to more than one block.

<sup>173</sup> 47 C.F.R. § 80.475(a).

<sup>174</sup> See R. Eckert, *Guidance for Evaluating the Potential for Interference to TV from Stations in the Inland Waterways Communications Systems*, FCC/OST TM 82-5 (July 1982) (*Eckert Report*); see also H. Davis, *Field Tests of 216 to 220 MHz Transmitters for Compatibility with TV Channels 13 and 10*, FCC/OST TM 82-4 (July 1982); L. Middlekamp, H. Davis, *Interference to TV Channels 10 and 13 from Transmitters Operating at 216-225 MHz*, Project No. 2229-71 (Oct. 1975).

<sup>175</sup> *AMTS First Report and Order*, 6 FCC Rcd at 437.

<sup>176</sup> RegioNet Wireless License, LLC, *Petition for Rule Making*, RM-9664 (filed May 12, 1999) (RegioNet Petition).

<sup>177</sup> RegioNet states that an engineering study costs as much as \$3,000 per site. *Id.* at 5.

<sup>178</sup> *Id.*



performed at its request as evidence that the Eckert Report methodology greatly overstates an AMTS station's potential for interference to television reception. The study by Professor A.E. Hull of the California State Polytechnic Institute<sup>179</sup> concludes that improvements in broadcast technology have made current television receivers less susceptible to interference.<sup>180</sup> The study by Allen Davidson of Davidson Consulting Engineering,<sup>181</sup> concludes that the Eckert Report procedure yields too much coverage for the television stations.<sup>182</sup> The studies make valid points about the continued reliability of the data underlying the Eckert Report, both currently and with respect to the conversion to digital television (DTV). On the other hand, the commenters,<sup>183</sup> representing broadcasting interests, oppose the elimination of the engineering study, and note several flaws in the Hull and Davidson studies' methods.

47. In establishing AMTS, the Commission considered the potential for interference to television reception and conditioned the operation of AMTS coast stations on the requirement that no harmful interference to television reception would be caused.<sup>184</sup> We continue to believe that it is of paramount importance to ensure that AMTS operations do not interfere with television reception on Channels 10 and 13, so we are reluctant to eliminate a measure designed to protect television broadcasters when we are less than certain as to the consequences. In this proceeding, given the substantial questions that have been raised regarding the studies upon which RegioNet bases its argument for eliminating the engineering study requirement, we tentatively conclude that there should be no modification to the engineering study requirement for new AMTS stations that are not fill-in stations because we are unconvinced that the requirement can be eliminated while still protecting television reception. We seek comment on this tentative conclusion.

48. Moreover, we tentatively conclude that we need not resolve the technical dispute over the validity of the Eckert Report and of the studies criticizing the Eckert Report, because nothing in our Rules requires an AMTS applicant to use the Eckert Report methodology for its engineering studies. Indeed, the Commission expressly stated that the Eckert Report methodology is "not . . . prescribed, merely a sample

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<sup>179</sup> Analysis of the Potential for Interference to Television Reception of Channel 13 by Base Station Transmitters in the Automated Maritime Telecommunications System (AMTS), Professor A.E. Hull, California State Polytechnic University, Department of Electrical and Computer Engineering (Apr. 16, 1999).

<sup>180</sup> *Id.* at 7.

<sup>181</sup> Analysis of Potential Interference from Automated Maritime Telecommunications Service to NTSC TV Receivers, Technical Report 99-01, Davidson Consulting Engineering (Apr. 30, 1999).

<sup>182</sup> *Id.* at 11.

<sup>183</sup> See Comments of KM Communications, Inc., RM-9664 (filed July 16, 1999) (KM Comments); Comments of National Association of Broadcasters, RM-9664 (filed July 16, 1999); Comments of Dispatch Broadcasting Group, RM-9664 (filed July 16, 1999); Comments of Maximum Service Television, RM-9664 (filed July 16, 1999); Comments of Oklahoma Educational Television Authority, RM-9664 (filed July 16, 1999); Comments of North Texas Public Broadcasting, Inc., RM-9664 (filed July 16, 1999); and Comments of Gateway Communications, Inc., RM-9664 (filed July 16, 1999). KM, Dispatch, OETA, North Texas, and Gateway also subscribe to the conclusions that were reached by Cohen, Dippell and Everist, P.C., Consulting Engineers, Radio and Television, in their Engineering Statement Concerning RegioNet's Petition for Rule Making, (July 15, 1999).

<sup>184</sup> *IWCS Report and Order*, 84 FCC 2d at 897.

of an acceptable format” for demonstrating that television reception will be protected.<sup>185</sup> If AMTS applicants so prefer, then they may use a study methodology other than that of the Eckert Report, provided that it is adequate to show that interference to television reception will be avoided.<sup>186</sup>

49. RegioNet suggests that the aim of identifying harmful interference to television reception can be achieved by simply submitting a survey plan in cases where a top 25 market is involved. The survey plan would include: (1) an advertisement in the local community newspaper; and (2) a notice to 10-100 residences (depending on the distance of the AMTS facility from the Channel 10 or 13 broadcast facility) that are located within one mile of the AMTS transmitter.<sup>187</sup> KM Communications, Inc. (KM) finds RegioNet’s plan to survey only 10-100 residences to be inadequate.<sup>188</sup> It suggests that all residences within five miles of the AMTS transmitter should be surveyed.<sup>189</sup> We find that a survey plan is not a reasonable substitute for an engineering study because our Rules require a prospective showing that television reception will be protected, and a survey can only identify interference after it has occurred. It has previously been suggested that in cases where there is potential AMTS interference in an area that encompasses an extraordinary number of residences, it may be advisable that the applicant include a plan (e.g., by direct mailing or advertising) that demonstrates its commitment to seeking out instances of interference.<sup>190</sup> We find it unnecessary, however, to require that all AMTS applicants, no matter what their circumstances, include a plan to survey a pre-determined number of residences, for such a requirement would place a burden on applicants who propose AMTS stations with a reasonable number of residences in their interference contour and the local television station’s Grade B contour. We seek comment on our tentative conclusion.

## 6. Broadcaster notification requirement

50. As noted earlier, our rules require an AMTS applicant proposing to locate a transmitter within 169 kilometers (105 miles) of a Channel 13 television station or 105 kilometers (80 miles) of a Channel 10 television station, or with an antenna height greater than 61 meters (200 feet), to give written notice of the application to the television stations that may be affected.<sup>191</sup> RegioNet favors retention of the broadcaster notification requirement.<sup>192</sup> KM suggests that the rules be amended to require that the

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<sup>185</sup> *Id.* at 900; *see also Eckert Report* at 1 (“This report provides guidance for determining the area of potential interference.”).

<sup>186</sup> In this regard, we concur with KM Communications, Inc.’s criticism of Hull and Davidson for their conclusion that the proliferation of residences that subscribe to cable reduces the concern regarding AMTS interference. *See* KM Comments at 5. The Commission has a duty to protect from interference those viewers who cannot afford or who decline to pay for cable service.

<sup>187</sup> RegioNet Petition at 12, and Attachment I.

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> *See* Fred Daniel d/b/a Orion Telecom, *Memorandum Opinion and Order*, 13 FCC Rcd 15446, 15451 (WTB PSPWD 1998), *aff’d*, *Order on Reconsideration*, 14 FCC Rcd 1057 (WTB PSPWD 1999).

<sup>191</sup> 47 C.F.R. § 80.475(a)(2).

<sup>192</sup> RegioNet Petition at 12.

notification be made at or near the same time that the application is filed.<sup>193</sup> It states that under current practices, the notification often precedes the filing of the application by several months.<sup>194</sup>

51. No revision is required to implement KM's suggestion, because the broadcaster notification rule already requires that the broadcasters be notified when the application is filed. AMTS applicants must give broadcasters "written notice of the *filing* of such applications," not notice of the intent to file an application.<sup>195</sup> Therefore, a notification that unreasonably precedes the filing of the application does not satisfy the requirement, one reason for which is to facilitate comment by broadcasters on filed applications.<sup>196</sup>

52. That the notification required by Section 80.475(a)(2) must be made on or near the date the application is filed does not preclude earlier, additional notification. Indeed, we encourage such conduct. Early notification enables AMTS applicants and broadcasters to resolve technical disputes before the application is filed, without Commission involvement. This furthers another purpose of the notification requirement: to encourage coordination and reduce potential interference problems.<sup>197</sup>

53. KM also requests that the application be provided with the broadcaster notification, because "it often is difficult to obtain a copy from the Commission promptly."<sup>198</sup> Providing a copy of the application is one way to provide the information necessary to put broadcasters on notice of the proposed construction, but it is not the only way. We tentatively conclude that it is unnecessary to require every AMTS applicant for a station meeting the broadcaster notification criteria to provide a copy of the entire application to every potentially affected broadcaster, given that KM has provided no explanation of any difficulty in obtaining applications.<sup>199</sup> Also, we have no reason to believe that AMTS applicants would not comply with requests from interested broadcasters for copies of applications.

## 7. Coverage requirements

54. We propose to require construction by AMTS geographic area licensees. We solicit comment on our proposal to adopt construction requirements similar to those we adopted for VHF public coast station geographic area licensees. Specifically, we propose that AMTS licensees be required to

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<sup>193</sup> KM Comments at 8.

<sup>194</sup> *Id.*

<sup>195</sup> 47 C.F.R. § 80.475(a)(2) (emphasis is added); *see also* 47 C.F.R. § 95.1015(b) (referring to the "[broadcaster] notification provided with the station's license applications").

<sup>196</sup> *See Second Further Notice*, 12 FCC Rcd at 17006.

<sup>197</sup> *IWCS MO&O*, 88 FCC 2d at 684-85.

<sup>198</sup> KM Comments at 8.

<sup>199</sup> Moreover, in the foreseeable future, all interested parties will be able to review AMTS applications and licensing information in our Universal Licensing System, which can be accessed through the Internet. *See* Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Second Report and Order*, WT Docket No. 98-20, 14 FCC Rcd 9851, 9851 (1999).

provide substantial service to their service areas within five years (which for service areas that contain major waterways<sup>200</sup> can be demonstrated by coverage of one-third of those waterways; and for service areas without major waterways can be demonstrated by coverage of one-third of the area's population) and ten years (which for service areas that contain major waterways can be demonstrated by continuous coverage of two-thirds of those waterways; and for service areas without major waterways can be demonstrated by coverage to two-thirds of the area's population).<sup>201</sup> We note that regardless of the specific construction requirement we ultimately adopt, the construction requirements could be reviewed in the future if we receive complaints or if our own monitoring initiatives or investigations indicate that a reassessment is warranted.<sup>202</sup> Licensees failing to satisfy the requirement would be subject to forfeiture of their licenses.

## 8. Partitioning and disaggregation

55. We propose to adopt for AMTS geographic area licensees the same partitioning and disaggregation provisions that we adopted for VHF public coast station geographic area licensees.<sup>203</sup> Specifically, we propose to allow them to partition any portion of their geographic service area, and to disaggregate any amount of spectrum, at any time to any entity eligible for a public coast station license.<sup>204</sup> Partitionees and disaggregatees would hold their licenses for the remainder of the original licensee's license term, and qualify for a renewal expectancy, if they provide substantial service and comply with the Commission's rules and policies and the Communications Act. In authorizing partitioning and disaggregation, we propose to follow existing assignment procedures.<sup>205</sup> This approach is consistent with our action in other CMRS contexts.<sup>206</sup> We propose to allow parties to partitioning agreements to choose

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<sup>200</sup> Such areas include those near the Atlantic Ocean; the Pacific Ocean below the Arctic Circle; the Great Lakes; the Gulf of Mexico and Gulf Intracoastal Waterway; the Mississippi River upriver to Brainerd, Minnesota; the Missouri River to Sioux City, Iowa; the Ohio River to Pittsburgh, Pennsylvania; the Tennessee River to Knoxville, Tennessee; the Arkansas River to Tulsa, Oklahoma; the Red River to Fulton, Arkansas; and the Columbia River to Richland, Washington. *Third Report and Order*, 13 FCC Rcd at 19862.

<sup>201</sup> *Id.* at 19870-71.

<sup>202</sup> See 47 U.S.C. § 309(j)(4)(B) (requiring Commission to employ performance requirements such as deadlines or coverage rules to prevent warehousing of spectrum).

<sup>203</sup> See *Third Report and Order*, 13 FCC Rcd at 19871-73.

<sup>204</sup> In light of our decision today to eliminate the AMTS channelization plan, *see supra* at ¶ 19, we do not propose to require that AMTS spectrum be disaggregated by frequency pair. See also Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89-552, *Fifth Report and Order*, 13 FCC Rcd 24615, 24626-27 (1998) (*220 MHz Fifth Report and Order*).

<sup>205</sup> See 47 C.F.R. § 1.948 (enacted in Biennial Regulatory Review -- Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Report and Order*, WT Docket No. 98-20, 13 FCC Rcd 21027 (1998)).

<sup>206</sup> See *Geographic Partitioning and Spectrum Disaggregation by Commercial Radio Services Licensees, Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 96-148, 11 FCC Rcd 21831, 21860 (1996). In another proceeding, we have sought comment on whether bidding credits should be made available to carriers that enter into certain types of partitioning arrangements that facilitate deployment of service (continued....)

between two options for satisfying the construction requirements: (a) the parties may either agree to meet the construction requirements for their respective portions of the service area, or (b) the original licensee may certify that it has met or will meet the construction requirements for the entire market. We also propose to establish two options for disaggregating licensees: (a) the disaggregator and disaggreatee may certify that they will share responsibility for meeting the substantial service requirements for the geographic service area, or (b) the parties may agree that either the disaggregator or the disaggreatee will be responsible for meeting the substantial service requirements for the geographic service area. Our Part 1 unjust enrichment provisions would govern partitioning and disaggregation arrangements involving licenses owned by small businesses afforded a bidding credit that later elect to partition or disaggregate their licenses to an entity that does not qualify as a small business.<sup>207</sup>

56. We also propose to permit disaggregation by incumbent AMTS licensees, provided that the disaggreatee's operations do not extend beyond the disaggregator's service area. Disaggreatees would hold their licenses for the remainder of the original licensee's term, and be eligible for the same renewal expectancy as other site-based AMTS licensees. We seek comment on how to apportion responsibility for satisfying the two-year construction requirement.<sup>208</sup> One alternative is to give the parties the same options possessed by parties disaggregating geographic area licenses. Another alternative is simply to prohibit disaggregation by licensees that have not already satisfied their construction requirements.<sup>209</sup> We propose not to permit partitioning by incumbent AMTS licensees, because our rules do not clearly define the service area of an incumbent AMTS station that would be available for partitioning. We permitted partitioning by site-based incumbents in the 220 MHz band,<sup>210</sup> but those licensees have a defined coverage area, eliminating any confusion regarding what they may partition to others.<sup>211</sup>

57. We seek comment on these proposals. Any commenter opposing our proposal concerning AMTS geographic area licenses should explain why the rules for VHF geographic area licenses are not suitable for AMTS.

## 9. Technical flexibility

58. Unlike VHF coast stations, AMTS coast stations currently are not permitted by our rules to transmit data.<sup>212</sup> The Commission has, however, granted a number of applications with waiver requests to authorize AMTS stations to use data emissions, and we have received no complaints of harmful  
(Continued from previous page) \_\_\_\_\_

to tribal areas. *See* Extending Wireless Telecommunications Services to Tribal Lands, *Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 99-266, FCC 00-209, ¶ 72 (rel. Jun. 30, 2000).

<sup>207</sup> *See Third Report and Order*, 13 FCC Rcd at 19874 (citing Amendment of Part 1 of the Commission's Rules -- Competitive Bidding, *Third Report and Order and Second Further Notice of Proposed Rule Making*, WT Docket No. 97-82, 13 FCC Rcd 374, 405 (1997)); 47 C.F.R. § 1.2111.

<sup>208</sup> 47 C.F.R. § 80.49(a)(2) (as amended herein).

<sup>209</sup> *See 220 MHz Fifth Report and Order*, 13 FCC Rcd at 24629.

<sup>210</sup> *Id.* at 24622.

<sup>211</sup> *See* 47 C.F.R. § 90.723(i).

<sup>212</sup> *See* 47 C.F.R. § 80.207(d).

interference. In light of our tentative conclusion that VHF and AMTS public coast stations serve similar markets, we propose to authorize AMTS coast stations to use the same types of data emissions as VHF coast stations are permitted to use.

## **B. High Seas Public Coast Station Spectrum**

### **1. Radiotelephone (voice)**

59. *HF radiotelephone frequencies.* HF public coast station radiotelephone frequencies are allotted among four Standard Defined Areas encompassing the continental United States and five other geographic regions encompassing Alaska and United States islands in the Caribbean and Pacific, and are assigned by frequency pair on a site-by-site basis.<sup>213</sup> These regions are defined by the ITU, and our rules reflect the ITU allotment of frequencies to those regions.<sup>214</sup> Many frequency pairs are listed as available in multiple regions, but as a practical matter some are not available in each listed region, 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.

60. Formerly, initial applications were limited to one HF radiotelephone frequency pair per MHz band, with additional frequency pairs available only upon a showing that the initial frequency pair was fully loaded,<sup>215</sup> but we have eliminated the channel loading requirement in the *Fourth Report and Order*.<sup>216</sup> Consequently, we anticipate an increase in applications, especially from incumbents seeking additional frequency pairs.

61. As discussed above, the Commission has previously decided that mutually exclusive applications for initial public coast licenses will be auctioned.<sup>217</sup> We propose to continue to license the HF radiotelephone frequency pairs individually, rather than licensing all currently unassigned frequency pairs in each MHz band to a single licensee, as we have decided to do within regions for VHF public coast station frequencies.<sup>218</sup> Our decision to license VHF frequencies by block was intended to facilitate the development of wide-area, multi-channel systems, but a block of frequencies in one HF MHz band cannot be put to such use, due to propagation characteristics and insufficient demand.<sup>219</sup> We seek comment on these proposals.

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<sup>213</sup> See 47 C.F.R. § 80.371(b). The four Standard Defined Areas are USA-E, USA-W, USA-S, and USA-C. See *Second Further Notice*, 12 FCC Rcd at 17032.

<sup>214</sup> See 47 C.F.R. § 80.371(b)(1) (as amended herein).

<sup>215</sup> See *Second Further Notice*, 12 FCC Rcd at 17003.

<sup>216</sup> See *supra*, ¶ 26.

<sup>217</sup> See *supra*, ¶ 6.

<sup>218</sup> *Third Report and Order*, 13 FCC Rcd at 19877.

<sup>219</sup> *Id.*

62. *MF radiotelephone frequencies.* MF public coast station radiotelephone frequencies, all in the 2 MHz band, are allotted among eight geographic regions and are assigned by frequency pair on a site-by-site basis.<sup>220</sup> These regions and the allotment of frequency pairs thereto are the result of a Commission decision and are not required by the ITU. The allotments were designed to minimize interference between licensees using the same frequency in different regions. Moreover, the table cannot easily be revised to assign these frequencies on a nationwide basis, because it does not always pair a coast transmit frequency with the same ship transmit frequency. That is, frequencies are reused in multiple, non-interfering regions, but they are reused in different pairings. Therefore, establishing nationwide channel pairs would require some incumbent coast stations to receive transmissions on a different ship transmit frequency from the one currently paired with their coast transmit frequency, and would require ships to receive messages from coast stations on different coast transmit frequencies from the frequencies currently assigned to those stations. We tentatively conclude that disrupting incumbent operations and imposing transition costs in order to simplify Commission procedures would not be in the public interest, particularly in light of the limited recent demand for these frequencies.<sup>221</sup> Therefore, we propose to make no change to the MF radiotelephone frequency allotments and method of assignment. 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 (*i.e.*, applications for the same frequency in the same or nearby regions where granting both would result in harmful interference), competitive bidding procedures would be used. We seek comment on this proposal. We also seek comment on whether, in the alternative, we should proceed with scheduling an auction of all currently unassigned MF radiotelephone spectrum. We seek comment on these tentative conclusions, and on whether, in order to enhance licensee certainty regarding the siting of facilities, we should establish definitions for the regions (which currently are undefined), such as by reference to the analogous ITU regions<sup>222</sup> or Coast Guard Districts.<sup>223</sup>

63. In the *Second Further Notice*, we tentatively decided, in light of comments received in response to the *Further Notice*, to redistribute radiotelephone frequency pairs by permitting MF private coast stations to use unassigned public coast station radiotelephone frequency pairs in the 2 MHz band for non-CMRS services, and we sought comment regarding the procedures that would govern such an arrangement.<sup>224</sup> We continue to believe that permitting private coast stations to share 2 MHz public

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<sup>220</sup> The regions are East Coast, West Coast, Gulf Coast, Great Lakes, Alaska, Hawaii, Caribbean, and Guam. See 47 C.F.R. § 80.371(a).

<sup>221</sup> Since the beginning of 1996, the Commission has received applications for four MF radiotelephone public correspondence frequency assignments. In addition, the number of public coast stations operating in this band has decreased by twenty-five percent since 1989. *Second Further Notice*, 12 FCC Rcd at 17013.

<sup>222</sup> Specifically, the East Coast region would be coterminous with USA-E, the West Coast region with USA-W, the Gulf Coast region with USA-S, the Great Lakes region with USA-C, the Caribbean region with the ITU regions for Puerto Rico and the U.S. Virgin Islands, and the Alaska, Hawaii, and Guam regions with the ITU regions of the same names.

<sup>223</sup> Specifically, the East Coast region would be coterminous with the First, Fifth, and Seventh (excluding the Caribbean) Districts; the West Coast region with the Eleventh and Thirteenth Districts; the Gulf Coast region with the Eighth District; the Great Lakes region with the Ninth District; the Caribbean region with the remainder of the Seventh District; the Alaska region with the Seventeenth District; the Hawaii region with the Hawaii portion of the Fourteenth District; and the Guam region with the remainder of the Fourteenth District.

<sup>224</sup> *Second Further Notice*, 12 FCC Rcd at 17013-14.

correspondence frequencies would promote the more efficient use of maritime spectrum and reduce congestion for MF private coast licensees, so we propose to make a 2 MHz frequency available for assignment to private coast stations for business and operational radiotelephone communications in each region with unassigned frequencies.<sup>225</sup> If any of these frequencies has not been assigned to a private coast station within one year of being made available for such use, then the frequency shall revert to a public correspondence frequency. We seek comment on this proposal.

64. *Shared 4/8 MHz spectrum.* Frequencies in the 4000-4063 kHz and 8100-8195 kHz bands are shared on a co-primary basis between the fixed and maritime mobile services.<sup>226</sup> These frequencies are available to ship and public coast stations for supplementary ship-to-shore duplex operations with public coast stations already assigned HF radiotelephone frequencies, intership simplex operations and crossband operations, and ship-to-shore or shore-to-ship simplex operations.<sup>227</sup> In addition, frequencies in the 4000-4063 kHz band are available for simplex operations between ships and certain private coast stations, which, as noted above, use frequencies only on a shared basis.<sup>228</sup> When a 4000-4063 kHz band frequency is licensed first to a private coast station, it remains available to other private coast stations, but not to public coast stations. If a public coast station is the initial licensee on a frequency in the 4/8 MHz bands, that public coast station has exclusive nationwide use of the frequency. Frequency availability in the 4/8 MHz bands is limited, because assignments require government coordination and approval by the Interdepartment Radio Advisory Committee (IRAC),<sup>229</sup> and these bands are used extensively by the government fixed services.<sup>230</sup> In addition, use of these frequencies by U.S. stations is not protected against harmful interference from, and must not cause harmful interference to, foreign ship stations.<sup>231</sup> In consideration of the foregoing factors, and the current limited use and low demand for these frequencies, we propose to retain our current procedures for assigning these frequencies. Thus, the Commission would

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<sup>225</sup> An analysis of our licensing database indicates that there are presently eleven unassigned MF public coast frequencies on the East Coast (2400 kHz, 2442 kHz, 2450 kHz, 2490 kHz, 2506 kHz, 2514 kHz, 2522 kHz, 2538 kHz, 2558 kHz, 2566 kHz, and 2590 kHz), five on the West Coast (2450 kHz, 2466 kHz, 2482 kHz, 2506 kHz, and 2598 kHz), seven on the Gulf Coast (2450 kHz, 2466 kHz, 2482 kHz, 2530 kHz, 2538 kHz, 2550 kHz, and 2598 kHz), two in Alaska (2309 kHz and 2312 kHz), one in the Virgin Islands (2530 kHz), and one in Guam (2506 kHz). See 47 C.F.R. § 80.371 for a complete list of 2 MHz band public coast station frequencies.

<sup>226</sup> 47 C.F.R. § 80.374; 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, *Report and Order*, PR Docket No. 90-133, 6 FCC Rcd 786, 790 n.21 (1991) (*HF Report and Order*).

<sup>227</sup> 47 C.F.R. § 80.374(b)(1), (c)(1).

<sup>228</sup> 47 C.F.R. § 80.374(b)(1)(iv).

<sup>229</sup> 47 C.F.R. § 80.374. IRAC is responsible for frequency coordination efforts on behalf of the Federal Government and is composed of representatives of various government agencies. It advises the National Telecommunication and Information Administration concerning spectrum management issues and coordinates spectrum issues among government users and with the Commission. *Second Further Notice*, 12 FCC Rcd at 17002 n.237.

<sup>230</sup> *HF Report and Order*, 6 FCC Rcd at 787.

<sup>231</sup> 47 C.F.R. § 80.374; *HF Report and Order*, 6 FCC Rcd at 790 n.23.



continue to put applications for exclusive licenses on public notice individually to allow for the filing of competing applications. Where mutually exclusive applications are filed, competitive bidding procedures would be used. We seek comment on this proposal. We also seek comment on whether, in the alternative, we should proceed with scheduling an auction of all currently unassigned spectrum in the 4000-4063 kHz and 8100-8195 kHz bands that is available for exclusive use.

## 2. Radiotelegraph (manual Morse code) and facsimile

65. High seas public coast station radiotelegraph frequencies, distributed among the LF, MF, and HF bands ("the radiotelegraph table frequencies"), are allotted among eleven geographic regions and are assigned on a site-by-site basis.<sup>232</sup> This regional allotment was a Commission decision, and is not required 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,<sup>233</sup> and an increase in applications, particularly from incumbents seeking additional frequencies, is foreseeable now that we have eliminated the requirement.<sup>234</sup>

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,<sup>235</sup> 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").<sup>236</sup>

67. Facsimile frequencies are assigned for nationwide use to a single public coast station.<sup>237</sup> Our rules do not establish specific frequencies for high seas public coast station facsimile use;<sup>238</sup> rather, licensees may select for facsimile use any 3 kHz channel in (1) the facsimile bands,<sup>239</sup> or (2) the 2000-

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<sup>232</sup> See 47 C.F.R. § 80.357(b)(1).

<sup>233</sup> See *Second Further Notice*, 12 FCC Rcd at 17003.

<sup>234</sup> See *supra*, ¶ 26.

<sup>235</sup> *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.*

<sup>236</sup> 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).

<sup>237</sup> *Second Further Notice*, 12 FCC Rcd at 17002.

<sup>238</sup> 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*).

<sup>239</sup> 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 (continued....)

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").<sup>240</sup> 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.<sup>241</sup>

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.<sup>242</sup> 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.<sup>243</sup>

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<sup>244</sup> 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

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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).

<sup>240</sup> 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*).

<sup>241</sup> *See* 47 C.F.R. § 80.363(a)(2).

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

<sup>243</sup> *See* 47 C.F.R. § 2.106.

<sup>244</sup> 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).

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),<sup>245</sup> an issue regarding which the Commission inadvertently failed to seek comment in the *Second Further Notice*.<sup>246</sup>

### 3. NB-DP and data transmission

71. Frequency pairs for narrow-band direct printing (NB-DP)<sup>247</sup> and data transmission are distributed among the HF bands, and are assigned for nationwide use to a single public coast station.<sup>248</sup> In the *Second Report and Order* in this proceeding the Commission expanded NB-DP public coast stations' technical flexibility,<sup>249</sup> 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.<sup>250</sup> 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

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<sup>245</sup> See MMR Comments at 7-8.

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

<sup>247</sup> 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.

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

<sup>249</sup> *Second Report and Order*, 12 FCC Rcd at 16974.

<sup>250</sup> See *supra*, ¶ 26.

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.<sup>251</sup> 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 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.<sup>252</sup> One alternative is to give the parties the same options possessed by parties partitioning VHF geographic area licenses.<sup>253</sup> Another alternative is simply to prohibit partitioning by licensees that have not already satisfied their construction requirement.<sup>254</sup>

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.<sup>255</sup> The Commission also adopted provisions to facilitate the participation of small businesses in auctions of public coast licenses.<sup>256</sup> Stating that it would base its definitions of small

<sup>251</sup> See 47 C.F.R. § 1.948.

<sup>252</sup> 47 C.F.R. § 80.49(a)(2) (as amended herein).

<sup>253</sup> See *supra*, ¶ 55.

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

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

<sup>256</sup> *Third Report and Order*, 13 FCC Rcd at 19884-88.

businesses on the characteristics and capital requirements of the specific service,<sup>257</sup> 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.<sup>258</sup> 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.<sup>259</sup> 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 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.<sup>260</sup>

## 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

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<sup>257</sup> *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).

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

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

<sup>260</sup> 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).

modify existing licenses, and amendments to applications for new licenses or modifications, for AMTS (217-220 MHz)<sup>261</sup> and HF radiotelephone (4-27.5 MHz)<sup>262</sup> 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.<sup>263</sup> 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.<sup>264</sup> We therefore find that this temporary measure is in the public interest.

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.<sup>265</sup> 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<sup>266</sup> 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

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<sup>261</sup> 47 C.F.R. § 80.385(a)(2).

<sup>262</sup> 47 C.F.R. § 80.371(b).

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

<sup>264</sup> 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).

<sup>265</sup> 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.

<sup>266</sup> 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 purposes 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.

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.<sup>267</sup> 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.<sup>268</sup>

#### **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,<sup>269</sup> the Commission 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.<sup>270</sup>

#### **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

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

<sup>268</sup> See 5 U.S.C. § 553(b)(B), (d)(3).

<sup>269</sup> See 5 U.S.C. § 601, *et. seq.*

<sup>270</sup> See 47 C.F.R. §§ 1.1202, 1.1203, 1.1206.

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](mailto: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](mailto: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].<sup>271</sup> Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.<sup>272</sup> 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](mailto: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.

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<sup>271</sup> 47 C.F.R. §§ 1.415, 1.419.

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



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.

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](mailto: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](mailto: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  
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),<sup>273</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Second Further Notice of Proposed Rule Making*<sup>274</sup> in this proceeding. The Commission sought written public comment on the IRFA. The present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>275</sup>

**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.<sup>276</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small

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<sup>273</sup> 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).

<sup>274</sup> *Second Report and Order and Second Further Notice*, 12 FCC Rcd at 17108.

<sup>275</sup> See 5 U.S.C. § 604.

<sup>276</sup> 5 U.S.C. § 603(b)(3).

organization," and "small governmental jurisdiction."<sup>277</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>278</sup> 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).<sup>279</sup> A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."<sup>280</sup>

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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<sup>277</sup> 5 U.S.C. § 601(6).

<sup>278</sup> 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).

<sup>279</sup> Small Business Act, 15 U.S.C. § 632 (1996).

<sup>280</sup> 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,<sup>281</sup> 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*

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<sup>281</sup> *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).

*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.*

**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.<sup>282</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>283</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>284</sup> 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).<sup>285</sup> A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is

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<sup>282</sup> 5 U.S.C. § 603(b)(3).

<sup>283</sup> 5 U.S.C. § 601(6).

<sup>284</sup> 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).

<sup>285</sup> Small Business Act, 15 U.S.C. § 632 (1996).

not dominant in its field.”<sup>286</sup>

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:**

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<sup>286</sup> 5 U.S.C. § 601(4).

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  $\pm 5$  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  $\pm 5$  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											
Chan- nel	Ship trans- mit	Coast trans- mit	USA-E	USA-W	USA-S	USA-C	VIR	HWA	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	1223 0	1307 7	x	x	x	--	--	--	--	--	--
1202	1223 3	1308 0	x	x	x	x	--	--	--	--	--
1203	1223 6	1308 3	x	x	x	x	--	x	x	--	--
1206	1224 5	1309 2	x	x	x	--	--	--	--	--	--
1208	1225 1	1309 8	x	--	x	--	--	--	--	--	--
1209	1225 4	1310 1	x	x	x	--	--	--	x	--	--
1210	1225 7	1310 4	x	x	x	--	--	--	--	--	x
1211	1226 0	1310 7	x	x	x	x	--	--	x	--	--
1212	1226 3	1311 0	x	--	x	--	--	x	x	x	--
1215	1227 2	1311 9	--	x	x	--	--	--	--	x	--

1217	1227 8	1312 5	--	--	--	x	--	--	--	--	--
1222	1229 3	1314 0	--	--	--	--	--	x	--	--	--
1223	1229 6	1314 3	x	x	x	--	--	--	--	--	x
1225	1230 2	1314 9	x	--	x	--	--	--	--	--	--
1226	1230 5	1315 2	x	x	x	--	--	--	--	--	--
1228	1231 1	1315 8	x	x	--	x	--	--	--	--	--
1229	1231 4	1316 1	--	x	--	--	--	--	--	--	--
1230	1231 7	1316 4	x	x	x	--	--	x	--	--	--
1233	1232 6	1317 3	--	--	x	--	--	--	--	--	--
1234	1232 9	1317 6	--	x	x	--	--	x	x	--	--
1235	1223 2	1317 9	--	--	x	--	--	--	--	--	--
1236	1233 5	1318 2	--	--	x	--	--	--	--	--	--
1237	1233 8	1318 5	x	--	x	x	x	--	--	--	--
1601	1636 0	1724 2	x	--	x	--	--	x	x	--	--
1602	1636 3	1724 5	x	x	x	--	--	--	--	--	--
1603	1636 6	1724 8	x	x	x	--	--	--	x	--	--
1605	1637 2	1725 4	x	x	--	--	--	--	--	--	--
1607	1637	1726	x	x	x	--	--	--	x	--	--

	8	0									
1609	1638 4	1726 6	x	x	x	--	--	--	--	--	--
1610	1638 7	1726 9	x	x	x	--	--	--	--	--	--
1611	1639 0	1727 2	x	x	x	--	--	--	--	--	--
1616	1640 5	1728 7	x	x	x	--	--	x	x	--	--
1620	1641 7	1729 9	x	--	--	x	--	--	--	--	--
1624	1642 9	1731 1	x	x	x	--	--	--	--	--	--
1626	1643 5	1731 7	x	--	--	--	--	--	--	--	--
1631	1645 0	1733 2	x	--	--	--	--	--	--	--	--
1632	1645 3	1733 5	x	x	x	--	--	--	x	--	--
1641	1648 0	1736 2	x	x	x	--	--	--	--	--	--
1642	1648 3	1736 5	x	x	x	x	x	x	x	x	--
1643	1648 6	1736 8	--	--	x	--	--	--	--	--	--
1644	1648 9	1737 1	x	x	x	x	--	x	x	--	--
1645	1649 2	1737 4	--	--	x	--	--	--	--	--	--
1646	1649 5	1737 7	--	x	--	--	--	--	--	--	--
1647	1649 8	1738 0	x	x	x	x	--	--	x	--	--
1648	1650 1	1738 3	--	x	--	x	x	x	x	x	--

1801	1878 0	1975 5	x	x	x	x	x	x	x	x	--
1802	1878 3	1975 8	x	--	x	x	x	--	--	x	--
1803	1878 6	1976 1	x	x	--	x	x	x	x	x	--
1804	1878 9	1976 4	--	x	x	--	--	x	x	--	--
1805	1879 2	1976 7	--	x	--	--	--	--	x	--	--
1807	1879 8	1977 3	--	--	x	--	--	--	--	--	--
1808	1880 1	1977 6	x	x	x	x	x	x	x	x	--
2201	2200 0	2269 6	x	x	x	--	--	--	--	--	x
2205	2201 2	2270 8	x	x	x	--	--	--	--	--	--
2210	2202 7	2272 3	x	--	--	--	--	--	--	--	--
2214	2203 9	2273 5	x	x	x	--	--	--	--	--	--
2215	2204 2	2273 8	x	x	x	--	--	--	--	--	--
2216	2204 5	2274 1	x	--	x	--	--	--	--	--	x
2222	2206 3	2275 9	x	--	--	--	--	--	--	--	--
2223	2206 6	2276 2	x	x	x	--	--	x	x	x	--
2227	2207 8	2277 4	x	x	x	--	--	--	--	--	--
2228	2208 1	2277 7	x	x	--	--	--	--	--	--	--
2231	2209	2278	x	x	x	--	--	--	x	--	--



	0	6									
2236	2210 5	2280 1	x	x	--	--	--	--	--	--	--
2237	2210 8	2280 4	x	x	x	--	--	--	--	--	--
2241	2212 0	2281 6	x	x	x	x	x	x	x	x	--
2242	2212 3	2281 9	--	--	x	--	--	--	--	--	--
2243	2212 6	2282 2	x	x	x	x	x	x	x	x	--
2244	2212 9	2282 5	--	x	--	--	--	x	x	--	--
2245	2213 2	2282 8	--	x	x	--	--	x	x	--	--
2246	2213 5	2283 1	--	--	x	--	--	--	--	--	--
2247	2213 8	2283 4	x	x	x	x	x	x	x	--	--
2501	2507 0	2614 5	x	x	x	x	--	x	x	--	--
2502	2507 3	2614 8	x	x	x	x	x	x	x	x	--
2503	2507 6	2615 1	--	--	x	--	--	--	--	--	--
2504	2507 9	2615 4	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
-------------------	---------------------

<p style="text-align: center;">Ship Stations<sup>1</sup></p> <p>Radiotelegraphy:                  * * * * *                  216-220 MHz<sup>3</sup> .....                  * * *                  * * *</p> <p style="text-align: center;">Land Stations<sup>1</sup></p> <p>Radiotelegraphy:                  * * * * *                  216-220 MHz<sup>3</sup> .....                  * * * * *</p>	<p>F1B, F2B, F2C, F3C, F1D, F2D</p> <p>F1B, F2B, F2C, F3C, F1D, F2D</p>
--	---

<sup>1</sup> Excludes distress, EPIRBs, survival craft, and automatic link establishment.

\* \* \* \* \*

<sup>3</sup> 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	<sup>1</sup> 2514.0
	* * *	* * *
	2382.0	<sup>5</sup> 2482.0
	* * *	* * *
	2406.0	<sup>4</sup> 2506.0
West Coast: .....	* * *	* * *
	2430.0	<sup>5</sup> 2482.0
Gulf Coast: .....	* * *	* * *
	<sup>1</sup> 2158.0	<sup>1</sup> 2550.0
	* * *	* * *
	2382.0	<sup>5</sup> 2482.0
* * *	* * *	* * *
Alaska: .....	2131.0	<sup>5</sup> 2309.0
* * *	* * *	* * *

<sup>1</sup> 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.

\* \* \* \* \*

<sup>4</sup> Harmful interference must not be caused to any coast station in the Caribbean region.

<sup>5</sup> *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 licensee'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.