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

In the Matter of	)	
	)	
Amendment of Part 15 of the Commission's Rules	)	ET Docket No. 10-26
to Amend the Definition of Auditory Assistance	)	
Device in Support of Simultaneous Language	)	
Interpretation	)	

ORDER AND NOTICE OF PROPOSED RULEMAKING

Adopted: September 9, 2011 **Released: September 16, 2011**

Comment Date: [30 days after date of publication in the Federal Register]
Reply Comment Date: [45 days after date of publication in the Federal Register]

By the Commission:

I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (Notice), we propose to amend the definition of "auditory assistance device" in Part 15 of our rules to allow such devices to be used by anyone at any location for simultaneous language interpretation, where the spoken words are translated continuously in near real time. Auditory assistance devices transmit audio signals via radio frequency (RF) waves, magnetic fields, or infrared light waves to specialized receivers used by listeners to enhance the reception of speech. By minimizing the disproportionate effects of background noise and reverberation on speech perception by people with hearing disabilities, auditory assistance devices improve the quality of the sound over that which would be received via a loudspeaker system.

2. We take this action in response to a petition for declaratory ruling filed by Williams Sound Corporation (Williams Sound Petition), a provider of wireless auditory assistance devices.[1] Williams Sound asks the Commission to clarify that Part 15 auditory assistance devices may be used to provide simultaneous language interpretation.[2] This proposed amendment would expand the opportunities to deploy auditory assistance devices and remove barriers to communication, provide greater flexibility and enhanced benefits for persons wishing to use auditory assistance technologies, and harmonize the definition of "auditory assistance device" in Part 15 of our rules with the definition of "auditory assistance communications" in Part 95 of our rules. In the Order, we decline to grant the relief that Williams Sound has requested and instead are incorporating the issues raised therein into the Notice.

II. BACKGROUND

3. Part 15 of the Commission's rules provides for the operation of low power RF devices without an individual license from the Commission. A party seeking to market a Part 15 unlicensed device to the public must first comply with the Commission's equipment authorization procedures, which,

[1] *See* "Petition for Declaratory Ruling to Clarify That Part 15 Auditory Assistance Devices May Be Used in Support of Simultaneous Language Translation," Petition for Declaratory Ruling, filed Sept. 25, 2009, by Williams Sound Corporation, ET Docket No. 10-26.

[2] *See* Williams Sound Petition at 1.

inter alia, require a demonstration that the device complies with the Commission's rules. As a general condition of operation, Part 15 devices may not cause harmful interference to any authorized services (including licensed services that operate in the same or adjacent frequency bands) and must accept any interference that may be received from any authorized services or other Part 15 devices.[3] Examples of common Part 15 devices include cordless telephones, garage door openers, automated utility meter reading equipment, and auditory assistance devices.

4. The Commission authorizes auditory assistance devices under both the Part 15 and the Part 95 rules. Auditory assistance devices operating under the Part 15 rules are permitted in the 72.0-73.0 MHz, 74.6-74.8 MHz, and 75.2-76.0 MHz very high frequency (VHF) bands (72-76 MHz bands).[4] Section 15.3(a) defines an auditory assistance device as "[a]n intentional radiator used to provide auditory assistance to a handicapped person or persons. Such a device may be used for auricular training in an educational institution, for auditory assistance at places of public gatherings, such as a church, theater, or auditorium, and to handicapped individuals, only, in other locations."[5] Section 95.1009(a)(1)-(3) permits Low Power Radio Service (LPRS) stations in the 216-217 MHz band to provide "auditory assistance communications (including but not limited to applications such as assistive listening devices, audio description for the blind, and simultaneous language translation)" for persons with disabilities, persons who require language translation, or persons who may otherwise benefit from auditory assistance in educational settings.[6] On September 25, 2009, Williams Sound filed a petition for declaratory ruling asking the Commission to clarify that auditory assistance devices that operate under the Part 15 rules in the 72-76 MHz bands may be used for simultaneous language interpretation, as is permitted under the Part 95 definition of auditory assistance communications.[7]

5. Williams Sound states that because the Part 15 rules expressly permit the use of auditory assistance devices by any individual in places of public gathering, simultaneous language interpretation should be permitted under the existing rules.[8] Williams Sound submits that current law requires auditory assistance devices to be available in places of public gatherings, and the interference potential of these devices is unrelated to the number of users and type of use.[9] Williams Sound also argues that the inability of a listener to understand a foreign language can be considered a handicap, which justifies permitting auditory assistance devices that operate in the 72-76 MHz bands to provide simultaneous language interpretation.[10] Williams Sound claims that its requested clarification would promote consistency between the Part 15 rules that govern auditory assistance devices and the Part 95 rules that pertain to

[3] 47 C.F.R. § 15.5.

[4] 47 C.F.R. § 15.237. Under Section 15.237, unlicensed use of the 72-76 MHz bands is restricted to auditory assistance devices. *Id*.

[5] 47 C.F.R. § 15.3(a).

[6] 47 C.F.R. § 95.1009(a)(1)-(3).

[7] *See* Williams Sound Petition at 1. *See also* Williams Sound *Ex Parte* submission, ET Docket No. 10-26, filed Feb. 1, 2010, at 1. Simultaneous language interpretation is the translation of a spoken language into a second language as the first language is being spoken. Typically, the listener hears both languages simultaneously, with the translated language at full volume and the original language at a substantially reduced volume. *See* Williams Sound Petition at 4.

[8] *See* Williams Sound Petition at 8-9.

[9] *See id.* at 9.

[10] *See id.* at 9-10.

auditory assistance communications.[11] It also states that this action would eliminate confusion within the industry over the permissible uses of FCC-regulated auditory assistance devices.[12]

6. The Commission first authorized Part 15 auditory assistance devices to use the 72-73 MHz and 75.4-76 MHz bands in 1972, and expanded that authorization to include the 74.6-74.8 MHz and 75.2-75.4 MHz bands in 1992.[13] Part 15 auditory assistance devices share the 72-76 MHz bands with licensed stations in the Public Mobile Service (Part 22), the Aviation Service (Part 87), the Private Land Mobile Radio Service (Part 90), and the Radio Control (R/C) Radio Service (Part 95). Auditory assistance devices authorized under the Part 15 rules use 200-kilohertz wide two-way channels with a maximum effective radiated power (ERP) of 1.2 milliwatts (mW).[14]

7. In 1996, in response to claims that Part 15 auditory assistance devices were experiencing significant interference from high power paging and land mobile systems that share the 72-76 MHz bands, the Commission authorized Part 95 LPRS auditory assistance devices to operate in the 216-217 MHz band on a non-interference basis to the U.S. Navy's Space Surveillance (SPASUR) radar system in the 216.88-217.08 MHz sub-band and VHF TV Channel 13 reception at 210-216 MHz.[15] Part 95 LPRS auditory assistance devices share the 216-217 MHz band on a licensed-by-rule basis[16] with Part 95 LPRS health care assistance devices, law enforcement tracking systems, and Automated Maritime Telecommunications System (AMTS) point-to-point network control stations. Auditory assistance devices authorized under Part 95 use 5, 25, and 50-kilohertz wide one-way only channels with a maximum ERP of 100 mW.[17]

8. On January 26, 2010, the Commission issued a *Public Notice* seeking comment on the Williams Sound Petition. The comment period on the Petition closed on March 15, 2010, and 13 parties filed comments in response to the *Public Notice*.[18]

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[11] *See id.* at 11-12.

[12] *See id.* at 16.

[13] *See* Amendment of the Commission's Rules and Regulations to Provide for the Licensing of Auditory Training Devices for the Partially Deaf in the Bands 72-73 and 75.4-76 MHz, Docket No. 19185, *Report and Order*, 35 FCC 2d 677 (1972) ("*1972 Auditory Training Device Order*"); Amendment of Part 15 to Provide Additional Frequencies for Auditory Assistance Devices for the Hearing Impaired, ET Docket No. 91-150, *Report and Order*, 7 FCC Rcd 2256 (1992).

[14] *See* 47 C.F.R. §§ 2.106, 15.237(b), (c). The power limit in Section 15.237(c) is 80 millivolts per meter measured at a distance of 3 meters, which is equivalent to an ERP of 1.2 mW.

[15] *See* Amendment of the Commission's Rules Concerning Low Power Radio and Automated Maritime Telecommunications System Operations in the 216-217 MHz Band, WT Docket No. 95-56, *Report and Order*, 11 FCC Rcd 18517 (1996).

[16] "Licensed-by-rule" means that authorized users can access the entire available spectrum without individual station licenses. *See* 47 U.S.C. § 307(e). Thus, no one has exclusive rights to any portion of the spectrum and all spectrum use is shared.

[17] *See* 47 C.F.R. §§ 95.629, 95.1001, 95.1009, 95.1013.

[18] *See* Office of Engineering and Technology Declares the Williams Sound Corporation Petition Regarding Part 15 Auditory Assistance Devices in the 72-76 MHZ and 902-928 MHz Bands To Be A "Permit-But-Disclose" Proceeding for *Ex Parte* Purposes and Requests Comments, ET Docket No. 10-26, *Public Notice*, 25 FCC Rcd 902 (2010). The following parties filed comments in response to the *Public Notice*: A Bridge Between Nations, American Language Services, Deaf & Hard of Hearing Consumer Advocacy Network, Hearing Loss Association of America, Infinity Translation Services, Keir Milan, Listen Technologies Corp., National Association of the Deaf, (continued...)

III. ORDER

9. We first address the Williams Sound petition for declaratory ruling. As noted above, Williams Sound seeks a ruling that auditory assistance devices which operate under the Part 15 rules in the 72-76 MHz bands may be used to provide simultaneous language interpretation and that such use is expressly included in the uses defined by 47 C.F.R. Sec. 15.3(a).[19] Under such an interpretation, the existing definition of an "auditory assistance device" would allow Part 15 devices that operate in the 72-76 MHz bands to be used to provide simultaneous language interpretation for any individual that does not understand the language spoken in an audio presentation.[20]

10. We conclude that a declaratory ruling is not the appropriate vehicle to grant the relief requested by Williams Sound. Pursuant to Section 1.2 of the Commission's rules, the Commission may issue a declaratory ruling for purposes of "terminating a controversy or removing uncertainty."[21] However, a declaratory ruling may not be used to substantively change a rule.[22] An analysis of our auditory assistance device rules in Part 15 leads us to the conclusion that by accepting Williams Sound's proposed interpretation, we would expand the scope of permitted uses so significantly as to constitute a change in the rule. As previously explained, Section 15.3(a) of our rules states that an auditory assistance device is "[a]n intentional radiator used to provide auditory assistance to a handicapped person or persons. Such a device may be used for auricular training in an education institution, for auditory assistance at places of public gatherings, such as a church, theater, or auditorium, and for auditory assistance to handicapped individuals, only, in other locations."[23]

11. In 1982, the Commission addressed the issue of whether auditory assistance devices that operate in the 72-73 MHz and 75.4-76 MHz bands could be used for purposes other than serving handicapped individuals in response to petitions for rulemaking filed by Williams Sound and Phonic Ear, Inc.[24] In that proceeding, the Commission expanded the use of auditory assistance devices that operate in the 72-73 MHz and 75.4-76 MHz bands beyond the initial limitations of operating solely in educational institutions and mere amplification of sounds to include any aural assistance that may be given to a handicapped person (*e.g.*, audio description for the blind) but maintained the restrictions that these devices be used only by and for handicapped persons.[25]

(Continued from previous page)

New Life Russian Church, ProLingo, Stuart Smith, Telecommunications for the Deaf & Hard of Hearing, and Williams Sound.

[19] *See* Williams Sound Petition at 1.

[20] *See id.* at 2.

[21] 47 C.F.R. § 1.2 (incorporating declaratory ruling provision of the Administrative Procedure Act, 5 U.S.C. § 554(e)).

[22] *See U.S. Telecom Association v. FCC*, 400 F.3d 29, 35 (D.C. Cir 2005) ("[F]idelity to the rulemaking requirements of the APA bars courts from permitting agencies to avoid those requirements by calling a substantive regulatory change an interpretative rule.").

[23] 47 C.F.R. § 15.3(a).

[24] *See* Amendment of Subpart G of Part 15 of the Commission's Rules and Regulations regarding Auditory Training Devices., General Docket No. 81-786, RM-3832, RM-3126, *Report and Order*, 90 FCC 2d 1015 (1982) ("*1982 Auditory Training Device Order*").

[25] *See 1982 Auditory Training Device Order*, 90 FCC 2d at 1017 ¶ 5; 1018 ¶ 8. Initially, Part 15 auditory assistance devices were restricted to auditory training systems in institutional education programs for auricular instruction of persons having speech or hearing handicaps. *See 1972 Auditory Training Device Order*, 35 FCC 2d at 685 ¶ 34; 688, Appendix, Subpart G – Auditory Training Devices, § 15.331.

12. In 2009, the Commission issued a citation to ProLingo, a provider of simultaneous interpretation equipment and services, for marketing, as a component of its simultaneous language interpretation systems, transmitters operating on frequencies in the 72-76 MHz bands. ProLingo was found to have violated Section 302(b) of the Communications Act and Sections 2.803(a)(1) and 15.237 of the Commission's rules.[26] Williams Sound appears to seek approval by declaratory ruling to conduct substantially the same activity that we found to violate our rules. Furthermore, we reject Williams Sound's assertion that the inability to understand a foreign language can be considered a handicap, which thereby justifies permitting auditory assistance devices that operate in the 72-76 MHz bands to be used for simultaneous language interpretation. Such an interpretation is not consistent with the meaning given to the term "handicap" historically in Part 1, Subpart N of the Commission's rules, which was based on the Rehabilitation Act of 1973. The term was defined as a physical or mental impairment that substantially limits one or more of the major life activities of an individual. In 2003, the Commission replaced "handicap" with "disability" in Part 1, Subpart N, to be consistent with the Americans with Disabilities Act of 1990,[27] but did not make any substantive changes to the definition.[28] Williams Sound does not provide a basis for interpreting the term "handicap" in Part 15 differently than the Commission has interpreted that term in Part 1.

13. Together, these reasons lead us to conclude that it would not be appropriate to grant the relief that Williams Sound has requested. We believe, however, that Williams Sound provides good reasons for exploring whether expanding the Part 15 definition of an "auditory assistance device" to permit such devices to be used for simultaneous language interpretation would benefit the public interest. Accordingly, and on our own motion, we address this matter in the Notice below.

IV. NOTICE OF PROPOSED RULEMAKING

14. In this Notice, we propose to amend the Part 15 definition of an "auditory assistance device" to permit these devices to be used by anyone at any location for simultaneous language interpretation. As discussed by Williams Sound, we believe that there are sound public policy reasons for allowing auditory assistance devices that operate in the 72-76 MHz bands to be used by persons who have language barriers but who may not be disabled. Expanding the scope of the rule would appear to be consistent with our goal of facilitating public access to telecommunications technologies. Many commenters, several of them providers of auditory assistance devices and/or simultaneous interpretation systems, support Williams Sound's Petition.[29] Several of these commenters submit that allowing auditory assistance devices to be used in support of simultaneous language interpretation would also benefit individuals who have a hearing disability by promoting wider availability of auditory assistance devices in general. This, in turn, could facilitate communications with individuals that require both amplification

[26] *See* Letter from Kathryn Berthot, Chief, Spectrum Enforcement Division, to Mark Stammel, General Manager, ProLingo, File No. EB-08-SE-1094, DA 09-831 (Apr. 17, 2009) ("FCC Citation to ProLingo"). Section 302(b) of the Communications Act of 1934 as amended by the Telecommunications Act of 1996 provides that "[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section." 47 U.S.C. § 302a(b).

[27] *See* 29 U.S.C. § 706(8)(B) (1982); 42 U.S.C. § 12102(2)(A). *See also* H.R. Rep. No. 101-485, 101st Cong. 2d Sess. (1990) at 50-54, available at <http://www.fcc.gov/Bureaus/OSEC/library/legislative_histories/1390.pdf>.

[28] *See* Amendment of Part 1, Subpart N of the Commission's Rules Concerning Non-Discrimination on the Basis of Disability in the Commission's Programs and Activities, *Order*, FCC 03-48, 18 FCC Rcd 4034 (2003).

[29] *See generally* A Bridge Between Nations Comments; American Language Services Comments; Hearing Loss Association of America, Deaf & Hard of Hearing Consumer Advocacy Network, National Association of the Deaf, and Telecommunications for the Deaf & Hard of Hearing Comments; Infinity Translation Services Comments; Listen Technologies Corp. Comments; New Life Russian Church Comments; ProLingo Comments; and Stuart Smith Comments.

and language interpretation.[30] We also find merit in Williams Sound's observation that the use of auditory assistance devices that operate in the 72-76 MHz bands in support of simultaneous language interpretation would not only improve the aural experience and comprehension of those who need interpretation, but also would lower the noise level for those who do not care to listen to an interpreter, thereby enhancing the auditory experience of both groups.[31]

15. Although current law requires operators of public gathering places to provide auditory assistance devices for use by persons with disabilities, operators of such venues may not decide who may benefit from these devices.[32] However, the interference potential of an auditory assistance device is unrelated to the number of users or type of use. We expect that expanding the permitted uses of Part 15 auditory assistance devices that operate in the 72-76 MHz bands to include simultaneous language interpretation by anyone at any location will not increase their potential for harmful interference to authorized users in the 72-76 MHz or adjacent bands or impede the operation of other Part 15 auditory assistance devices operating in the 72-76 MHz bands. In addition, because Part 15 auditory assistance devices that operate in the 72-76 MHz bands use 200-kilohertz wide channels, ample spectrum is available for multiple applications. Thus, we believe that Part 15 auditory assistance devices that operate in the 72-76 MHz bands and provide simultaneous language interpretation should be able to simultaneously provide auditory assistance to persons with disabilities, and in any event, will not diminish the ability to provide auditory assistance to persons with disabilities.

16. For these reasons, we propose to amend the Part 15 definition of "auditory assistance device" to permit these devices to be used by anyone at any location for simultaneous language interpretation as permitted under Part 95, as reflected in the proposed rules set forth in Appendix A. The expanded definition would include any person requiring simultaneous language interpretation at any location. We seek comment on this proposal and its advantages and disadvantages. We believe this action would serve the public interest by aiding the comprehension of individuals who require such interpretation. Moreover, expanding the permissible uses of Part 15 auditory assistance devices to include simultaneous language interpretation would allow these devices to be used to provide either simultaneous language interpretation or auditory assistance, or both, thereby potentially providing a significant benefit to the public at no apparent additional cost. We seek comment on the potential benefits of expanding the allowable uses of Part 15 auditory assistance devices to include simultaneous language interpretation. Do commenters agree with our assessment that our proposed rule change would not appear to impose additional costs? If not, we seek comment on any qualitative or quantitative costs associated with our proposal.

17. We expect that expanding the types of operation permitted for Part 15 auditory assistance devices to include simultaneous language interpretation for anyone at any location will result in an increase in their use. This could include operation of devices at locations where they are not also used to provide auditory assistance to disabled individuals. In addition, a greater number of channels may be operated at any given location where auditory assistance devices are used to provide both simultaneous language interpretation and auditory assistance for persons with disabilities. Thus, we must also consider the effect that such increased use may have on other in-band, as well as adjacent-band, services.

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[30] *See* A Bridge Between Nations' comments at 1; American Language Services' comments at 1; Hearing Loss Association of America's, Deaf & Hard of Hearing Consumer Advocacy Network's, National Association of the Deaf's, and Telecommunications for the Deaf & Hard of Hearing's comments at 1; Infinity Translation Services' comments at 1; and ProLingo's comments at 1.

[31] *See* Williams Sound Petition at 7.

[32] *See* 42 U.S.C. §§ 12103, 12181(7)(A)-(L), 12182.

18. The 72-73 MHz, 74.6-74.8 MHz, and 75.2-76 MHz bands, where Part 15 auditory assistance device transmitters operate, are allocated on a primary basis to the fixed and mobile services. As indicated above, these bands are available for licensed use under the Public Mobile Service (Part 22), the Aviation Service (Part 87), the Private Land Mobile Radio Service (Part 90), and the Radio Control (R/C) Radio Service (Part 95).[33] In the bands adjacent to those where Part 15 auditory assistance devices operate, the 73-74.6 MHz band is allocated on a primary basis for radio astronomy, and the 74.8-75.2 MHz band is allocated on a primary basis to the aeronautical radionavigation service and is available for licensed use in the Radiodetermination Service (Part 87).[34] Additionally, the 66-72 MHz and 76-82 MHz bands (VHF TV channels 4 and 5, respectively) are allocated to the broadcast service and are available for licensed television broadcast stations (Part 73).[35]

19. With a maximum permissible ERP of 1.2 mW, the power of auditory assistance devices that operate in the 72-76 MHz bands is relatively low compared to that of authorized services in the 72-76 MHz and adjacent bands.[36] Under the current rules which limit the location and types of use of Part 15 auditory assistance devices, these devices have not been sources of interference to authorized services in these bands. We seek comment on whether increased use of Part 15 auditory assistance devices for simultaneous language interpretation would increase the potential for harmful interference to authorized services in the 72-76 MHz and adjacent bands.[37] If so, by how much, and what would the specific effects of such harmful interference be? If commenters believe there are qualitative or quantitative costs associated with increased use of Part 15 auditory assistance devices for simultaneous language interpretation, we ask that they discuss them. In particular, we seek comment on whether increased use of Part 15 auditory assistance devices for simultaneous language interpretation would require additional safeguards or changes to the technical requirements to prevent harmful interference to authorized services in the 72-76 MHz (72-73 MHz, 74.6-74.8 MHz, and 75.2-76 MHz) and adjacent (66-72 MHz, 73-74.6 MHz, 74.8-75.2 MHz, and 76-82 MHz) bands, and if so, what rule changes are necessary. Are there any qualitative or quantitative costs associated with such rule changes? If so, we ask commenters to discuss them.

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[33] *See* 47 C.F.R. § 2.106. Specifically, the 72-73 MHz and 75.4-76 MHz bands are available for use under the Public Mobile, Aviation, Private Land Mobile, and Personal Radio Services. The 74.6-74.8 MHz and 75.2-75.4 MHz bands are available for only the Private Land Mobile Service. Under Part 22, frequencies in the 72-76 MHz bands are allocated for assignment to fixed transmitters that support other transmitters that provide public mobile service. *See* 47 C.F.R. § 22.591. Under Part 87, frequencies in the 72-76 MHz bands are assignable to operational fixed stations, which provide control, repeater, or relay functions for their associated aeronautical station (*i.e.*, a land station in the aeronautical mobile service). *See* 47 C.F.R. §§ 87.5, 87.445, 87.449. Under Part 90, frequencies in the 72-76 MHz bands may be licensed in the Public Safety Radio Pool and the Industrial/Business Radio Pool. Frequencies in the 72-76 MHz bands may also be authorized under Part 90 for telemetry operations; assigned for the operation of radio call boxes to be used by the public to request fire, police, ambulance, road service, and other emergency assistance; or used for radio remote control of models. *See* 47 C.F.R. §§ 90.31, 90.35, 90.238, 90.241, 90.257. Under Part 95, R/C Radio Service stations may use frequencies in the 72-76 MHz bands to operate model aircraft and model surface craft devices. *See* 47 C.F.R. §§ 95.201, 95.207.

[34] *See* 47 C.F.R. § 2.106. Under Part 87, aeronautical marker beacon (*i.e.*, radionavigation land) stations may be authorized to transmit on 75 MHz to provide position information to aircraft. *See* 47 C.F.R. §§ 87.173, 87.475(b)(3).

[35] *See* 47 C.F.R. § 2.106.

[36] *See* n.14, *supra*.

[37] Harmful interference is defined as interference which endangers the functioning of a radionavigation service or of other safety services or seriously degrades, obstructs, or repeatedly interrupts a radiocommunication service operating in accordance with the International Telecommunication Union Radio Regulations. 47 C.F.R. § 2.1(c).

20. Outside of the 72-76 MHz bands in which they operate, Part 15 auditory assistance devices must comply with an emissions limit of 1,500 microvolts per meter (μV/m) measured at a distance of 3 meters.[38] As noted above, the aeronautical radiodetermination, radio astronomy, and TV broadcast services are in bands adjacent to the Part 15 auditory assistance device bands and are therefore potentially affected by out-of-band emissions from these auditory assistance devices. As with the case of in-band emissions from Part 15 auditory assistance devices, we are not aware of instances where auditory assistance devices have caused harmful interference to authorized services in adjacent bands. However, since the time the Commission adopted the rules for auditory assistance device transmitters in 1972, all full-service TV stations have converted from analog to digital transmissions. We note that in its proceeding proposing steps to open the TV spectrum to new wireless broadband services, the Commission has sought comment on measures it could take to improve TV reception for consumers on VHF channels and encourage broadcasters to use these channels in the future.[39] It noted that one of the problems with indoor VHF reception is noise from nearby consumer electronics equipment. The Commission stated that it would be desirable to reduce that noise, and while it declined to propose any specific changes, it sought comment on what actions it might take to reduce noise in the VHF TV bands.[40]

21. We note that the allowed out-of-band emissions limit of 1,500 μV/m at 3 meters for auditory assistance devices that operate in the 72-76 MHz bands is 15 times higher (23.5 dB more power) than the Section 15.209 emissions limit of 100 μV/m at 3 meters that applies to most other Part 15 devices' emissions in the 72-76 MHz and adjacent bands. It is also 18 times higher (25 dB more power) than the out-of-band emissions limit that applies to Part 15 personal/portable TV bands devices that operate in bands adjacent to occupied TV channels, which corresponds to 84 μV/m at 3 meters for a device operating at 40 mW.[41] In light of our proposal to expand the permissible uses for Part 15 auditory assistance devices to include simultaneous language interpretation and our goal of improving VHF TV reception, we seek comment on whether there is a need to tighten the out-of-band emissions limits for Part 15 auditory assistance devices. If so, what limit is appropriate – the Section 15.209 limit, the unlicensed TV bands device limit, or some other limit? What are the potential advantages and disadvantages of each limit, and what specific qualitative or quantitative costs are associated with each limit? Are any other safeguards or technical requirements necessary to prevent harmful interference to authorized services in the adjacent 66-72 MHz, 73-74.6 MHz, 74.8-75.2 MHz, and 76-82 MHz bands? If so, what are the potential advantages and disadvantages and specific qualitative or quantitative costs associated with each? We also note that, based upon our review of the equipment authorization records for auditory assistance devices that operate in the 72-76 MHz bands, currently available equipment would not comply with the Section 15.209 limits. If tighter limits are necessary, what would be the appropriate transition period for compliance with new limits? Should currently approved equipment be grandfathered, either for a limited time or permanently? If not, what specific qualitative or quantitative costs would be associated with acquiring equipment that complies with the Section 15.209 limits?

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[38] 47 C.F.R. § 15.237(c).

[39] *See* Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF, ET Docket No. 10-235, *Notice of Proposed Rule Making*, 25 FCC Rcd 16498 (2010) ("*Spectrum Reallocation NPRM*").

[40] *See Spectrum Reallocation NPRM*, 25 FCC Rcd at 16513 ¶ 47.

[41] *See* 47 C.F.R. § 15.709(a)(2). Personal/portable TV bands devices are not permitted to operate on TV channels below 21; however, we are considering those limits here for the purpose of comparison to the Part 15 auditory assistance device limits. 47 C.F.R. §§ 15.707(a), (b). Personal/portable TV bands devices operating adjacent to an occupied TV channel may operate with an EIRP of 40 mW (40 mW conducted power into an antenna with a gain of 0 dBi). Emissions from TV bands devices that fall within adjacent channels must be 72.8 dB below the total in-band conducted power, which corresponds to 2.1 nanowatts. Assuming a 0 dBi gain transmitting antenna, the radiated field strength would be 84 μV/m at a distance of 3 meters. 47 C.F.R. §§ 15.709(a)(2), (c).

22. We recognize that further restricting the out-of-band emissions of Part 15 auditory assistance devices to protect the adjacent VHF TV bands would impose additional costs on manufacturers of these devices. Would the advantages of improving the reception of VHF TV channels 4 and 5 outweigh the disadvantages associated with further restricting Part 15 auditory assistance device emissions to both manufacturers and users of these devices? We request specific information and data on the qualitative and quantitative costs associated with complying with additional safeguards or changes to the technical requirements and/or more restrictive out-of-band emissions limits. For example, we request information on technologies that could be used to decrease out-of-band emissions and the advantages and disadvantages of each; the cost to manufacturers and users to meet lower out-of-band emissions limits; and whether further reducing the out-of-band emissions would in any way impair the device's performance in other ways and how. We also request comment on any benefits for authorized services in the 72-76 MHz and adjacent bands by reducing the out-of-band emissions of these devices.

V. PROCEDURAL MATTERS

A. Ex Parte Rules – Permit-But-Disclose

23. The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[42] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with Section 1.1206(b). In proceedings governed by Section 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Comment Period and Procedures

24. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed: (1) using the Commission's Electronic Comment Filing System (ECFS); (2) through the Federal Government's eRulemaking Portal; or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS at http://fjallfoss.fcc.gov/ecfs2/.

[42] 47 C.F.R. §§ 1.1200 *et seq.*

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

  Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

  - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

  - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

C. Initial Regulatory Flexibility Analysis

25. As required by the Regulatory Flexibility Act of 1980 (RFA),[43] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the Notice. The IRFA is set forth in Appendix B. We request written public comment on the analysis. Comments must be filed in accordance with the same deadlines as comments filed in response to the Notice and must have a separate and distinct heading designating them as responses to the IRFA.

D. Paperwork Reduction Analysis

26. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

E. Further Information

27. For further information regarding this Notice of Proposed Rulemaking, please contact Patrick Forster, Spectrum Policy Branch, Policy and Rules Division, Office of Engineering and Technology, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, at 202-418-7061 or via the Internet at Patrick.Forster@fcc.gov.

[43] *See* 5 U.S.C. § 603.

VI. ORDERING CLAUSES

28. Accordingly, IT IS ORDERED that, pursuant to Sections 2, 4(i), 302(a), 303(f), and 303(r) of the Communications Act of 1934, 47 U.S.C. §§ 152, 154(i), 302(a), 303(f), and 303(r), this Notice of Proposed Rulemaking is hereby ADOPTED.

29. IT IS FURTHER ORDERED that pursuant to Sections 4(i), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(f), and 303(r), the petition for declaratory ruling filed by Williams Sound Corporation filed on September 25, 2009, IS DENIED.

30. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

31. IT IS FURTHER ORDERED that pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R §§ 1.415, 1.419, interested parties may file comments on this Notice of Proposed Rulemaking on or before 30 days after publication in the Federal Register, and interested parties may file reply comments on or before 45 days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend Part 15 of Title 47 of the Code of Federal Regulations to read as follows:

PART 15 – RADIO FREQUENCY DEVICES

1. The authority citation for Part 15 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 302a, 303, 304, 307, 336, and 544a.

2. Section 15.3 is amended by revising paragraph (a) to read as follows:

§ 15.3 Definitions.

(a) *Auditory assistance device*. An intentional radiator used to provide auditory assistance communications (including but not limited to applications such as assistive listening, auricular training, audio description for the blind, and simultaneous language translation) for:

(1) Persons with disabilities. In the context of the Part 15 rules, the term "disability," with respect to the individual, has the meaning given to it by section 3(2)(A) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(2)(A)), *i.e.*, a physical or mental impairment that substantially limits one or more of the major life activities of such individuals;

(2) Persons who require language translation; or

(3) Persons who may otherwise benefit from auditory assistance communications in places of public gatherings, such as a church, theater, auditorium, or educational institution.

* * * * *

APPENDIX B

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines specified on the first page of this Notice. The Commission will send a copy of this Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need for, and Objectives of, the Proposed Rule.

This Notice proposes to modify the Section 15.3(a) definition of "auditory assistance device" to allow Part 15 unlicensed auditory assistance devices to be used by anyone at any location for simultaneous language interpretation. The proposal is designed to expand the permitted uses of Part 15 auditory assistance devices to include a use other than those for the disabled (*i.e.*, amplification of sound for those with a hearing disability and audio description for the blind) to facilitate public access to telecommunications technology. Permitting Part 15 audio assistance devices that operate in the 72.0-73.0 MHz, 74.6-74.8 MHz, and 75.2-76.0 MHz bands (72-76 MHz bands) to be used by anyone at any location for simultaneous language interpretation would benefit persons requiring simultaneous language interpretation whether or not they have a disability. The Notice seeks comment on whether allowing auditory assistance devices that operate in the 72-76 MHz bands to also be used by anyone at any location for simultaneous language interpretation will increase the potential for harmful interference to authorized services in the 72-76 MHz and adjacent bands (*i.e.*, 66-72 MHz, 73-74.6 MHz, 74.8-75.2 MHz, and 76-82 MHz), and if so, whether additional safeguards or technical requirements are necessary to prevent harmful interference to these authorized services.

B. Legal Basis.

This action is authorized under Sections 1, 4(i), 302, 303(f) and (r), 332, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 1, 4(i), 154(i), 302a, 303(f) and (r), 332, 337.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rule 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.[4] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same

[1] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (SBREFA) Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *See* 5 U.S.C. § 603(a).

[3] *See* 5 U.S.C. § 603(a).

[4] *Id*. at § 603(b)(3).

meaning as the term "small business concern" under the Small Business Act.[5] 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 SBA.[6]

Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.[7] A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[8] Nationwide, as of 2002, there were approximately 1.6 million small organizations.[9] The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[10] Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.[11] We estimate that, of this total, 84,377 entities were "small governmental jurisdictions."[12] Thus, we estimate that most governmental jurisdictions are small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.

This Notice addresses the possibility of allowing additional flexibility for Part 15 auditory assistance devices that operate in the 72-76 MHz bands by expanding the definition of allowed uses of Part 15 auditory assistance devices to include simultaneous language interpretation for anyone at any location. This item does not contain any new reporting or recording keeping requirements.

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 (among others): (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.[13]

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[5] 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).

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

[7] *See* SBA, Office of Advocacy, "Frequently Asked Questions," http://web.sba.gov/faqs/faqindex.cfm?areaID=24 (revised Sept. 2009).

[8] 5 U.S.C. § 601(4).

[9] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[10] 5 U.S.C. § 601(5).

[11] U.S. Census Bureau, Statistical Abstract of the United States: 2006, Section 8, page 272, Table 415.

[12] We assume that villages, school districts, and special districts are small, and they total 48,558. *See* U.S. Census Bureau, Statistical Abstract of the United States: 2006, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

[13] 5 U.S.C. § 603(c).

If the Part 15 definition of auditory assistance device is expanded to include simultaneous language interpretation for anyone as an allowed use at any location, it may be necessary to modify the administrative and/or technical requirements for auditory assistance devices that operate in the 72-76 MHz bands to prevent harmful interference to authorized services in the 72-76 MHz and adjacent bands (*i.e.*, 66-72 MHz, 73-74.6 MHz, 74.8-75.2 MHz, and 76-82 MHz).

Although the proposed rule is not expected to have a significant economic impact on small entities, we will continue to examine alternatives with the objectives of eliminating unnecessary regulations and minimizing significant economic impact on small entities. We seek comment on significant alternatives commenters believe we should adopt.

F. Federal Rules That May Duplicate, Overlap, or Conflict with the Proposed Rule.

None.