

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: September 2, 1998.

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 98-24703 Filed 9-14-98; 8:45 am]

BILLING CODE 6718-05-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 98-17; RM-8819]

#### Radio Broadcasting Services; Beaver Dam and Brownsville, KY

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Charles M. Anderson, substitutes Channel 264C3 for Channel 264A at Beaver Dam, reallots Channel 264C3 from Beaver Dam to Brownsville, Kentucky, and modifies Station WKLX(FM)'s construction permit accordingly. See 63 FR 8606, February 20, 1998. Channel 264C3 can be substituted at Brownsville in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioner's requested site. The coordinates for Channel 264C3 at Brownsville are North Latitude 37-10-34 and West Longitude 86-18-08. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** October 19, 1998.

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 98-17, adopted August 26, 1998, and released September 4, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

### Part 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

**Authority:** Sections 47 U.S.C. 154, 303, 334, 336.

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 264A at Beaver Dam, and adding Brownsville, Channel 264C3.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 98-24663 Filed 9-14-98; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 97-186; RM-9130]

#### Radio Broadcasting Services; Canton and Glasford, IL

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Neil A. Rones and Luann C. Dahl, reallots Channel 266A from Canton to Glasford, Illinois, and modifies Station WBDM(FM)'s construction permit accordingly. See 62 FR 45784, August 29, 1997. Channel 266A can be allotted to Glasford in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioner's requested site. The coordinates for Channel 266A at Glasford are North Latitude 40-34-20 and West Longitude 89-48-47. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** October 19, 1998.

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 97-186, adopted August 26, 1998, and released September 4, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription

Service, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

### PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

**Authority:** Sections 47 U.S.C. 154, 303, 334, 336.

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by removing Channel 266A at Canton, and adding Glasford, Channel 266A.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 98-24664 Filed 9-14-98; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 90

[PR Docket No. 89-552; GN Docket No. 93-252; FCC 98-186]

#### Geographic Partitioning and Spectrum Disaggregation for the 220-222 MHz Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) amends its rules to allow the holders of licenses in the 220-222 MHz band to partition their licensed geographic area and disaggregate their licensed spectrum.

**DATES:** Effective November 16, 1998.

**FOR FURTHER INFORMATION CONTACT:** Scott A. Mackoul or Janet L. Sievert, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418-7240.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Fifth Report and Order in PR Docket No. 89-552, adopted on August 4, 1998, and released on August 6, 1998. The full text of the Fifth Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, NW, Washington, DC. The complete text of this decision may also

be purchased from the Commission's duplicating contractor, International Transcription Services, 1231 20th Street, NW, Washington, DC 20036, (202) 857-3800. The complete text is also available under the name "fcc98186.wp" on the Commission's Internet site at <http://www.fcc.gov/Bureaus/Wireless/Orders/1998/index.html>.

This Report and Order contains no new or modified information collection requirements. The information collections referenced in the item are contained in information collections previously approved by the Office of Management and Budget under the Paperwork Reduction Act.

### Synopsis

1. In 1991, the Commission adopted service rules in PR Docket No. 89-552 and accepted applications of licenses in the 220-222 MHz band. These licensees, referred to as Phase I 220 MHz licensees, were issued in 1993-1994. In 1997, the Commission adopted service rules to govern the second phase of operation and licensing in the 220-222 MHz band. These licensees, referred to as Phase II 220 MHz licensees, will be licensed through competitive bidding. As part of the rules governing Phase II 220 MHz licenses, the Commission authorized any holder of an Economic Area, Regional, or nationwide Phase II license to partition portions of its authorization. At the same time, the Commission requested comment on proposals to permit partitioning and disaggregation for all licensees in the 220 MHz service, and on what specific procedural, administrative and operational rules will be necessary to implement these options.

2. This Fifth Report and Order in PR Docket No. 89-552 addresses the issues of partitioning and disaggregation in the 220 MHz service. The Commission first addressed which licensees would be allowed to partition. Already permitting geographic-based Phase II licensees to partition their license, the Commission found no compelling reason to withhold from site-specific licensees the flexibility gained by having the option to partition their license. Although it may be easier to partition a license that is based on a geographic area, the Commission recognized that a number of non-nationwide Phase I licensees have acquired several site-specific licenses that create a contiguous, compatible, interconnected system. Consolidation of site-specific licenses is more likely to occur since the Commission eliminated the forty-mile restriction in the Fourth Report and Order in PR Docket 89-552. Instead of

limiting partitioning through regulation, the Commission determined that the marketplace will best decide if partitioning is economically or technologically feasible. Moreover, finding that the benefits of partitioning outweigh a desire for a nationwide license that is used for a single service, the Commission concluded that nationwide Phase I licensees will also be allowed to geographically partition their licenses.

3. The one exception to extending partitioning to all 220 MHz licensees is in the context of Public Safety and EMRS licensees. The Commission concluded that partitioning is unnecessary in the Public Safety and EMRS context because those licensees have the options of sharing frequencies and short-spacing their base stations. In addition, because applications for Public Safety and EMRS 220 MHz licenses are not subject to competitive bidding, the Commission found it inappropriate to allow them to partition their licensed geographic area for monetary compensation.

4. In addition, consistent with the partitioning policies in other wireless services, the Commission decided to not limit the maximum size of geographic area that a 220 MHz licensee may partition and will permit partitioning based on any area defined by the parties to the partitioning agreement. Finding that areas defined by county lines or other geopolitical boundaries may not reflect market realities and may instead inhibit partitioning, the Commission concluded that the parties to the partitioning agreement are in the best position to know what service area will work best for their business needs, which, in turn, will allow the marketplace to shape optimal service areas. The Commission decided that any other approach would inevitably lead to inefficient use of the spectrum by forcing a partitionee to take on more area than they are willing or capable of serving.

5. The Commission also stated that, consistent with other wireless services, all proposed partitioning agreements, like disaggregation agreements, will be subject to Commission review and approval under the public interest standard of section 310 of the Communications Act. The Commission will require partitioning applicants to submit, as separate attachments to the partial assignment application, a description of the partitioned service area and a calculation of the population of the partitioned service area and licensed market.

6. Finding that disaggregation will allow licensees to divest themselves of

spectrum that may be more efficiently and profitably used by another entity or to acquire additional amounts of spectrum to satisfy their consumer demands, the Commission permitted all 220 MHz licensees, except Public Safety and EMRS licensees. As in the context of partitioning, spectrum held by Public Safety and EMRS entities is more easily shared than disaggregated, and the Commission found that it would be inappropriate for these licensees to disaggregate spectrum for monetary compensation. The Commission also concluded that there should be no minimum or maximum limits imposed on spectrum disaggregation in the 220 MHz service. Instead, the Commission felt the market will best determine what amount of spectrum is technically and economically feasible to disaggregate and will best accommodate future technology.

7. Moreover, the Commission permitted 220 MHz licensees to both partition their area and disaggregate their spectrum in any combination. The Commission found that allowing combinations of partitioning and disaggregation will help licensees respond to market forces and demands in service relevant to their particular locations and service offerings, as well as allow licensees to enter or increase their presence in a market. As in other wireless services, in the event that there is a conflict in the application of the partitioning and disaggregation rules, the partitioning rules will prevail.

8. In deciding when a 220 MHz licensee may partition or disaggregate its license, the Commission separately addressed the various type of 220 MHz licensees. First, the Commission stated that non-nationwide Phase I licensees may partition or disaggregate only after they have fully constructed their base station and placed it into operation. Because non-nationwide Phase I licensees were initially required to fully construct their base stations and place them into operation within eight months of the initial authorization, the construction deadline for most of these licensees has already passed. However, for those non-nationwide Phase I licensees that have not yet been required to construct (i.e., located near the Canadian border), the Commission felt that requiring construction as a prerequisite was consistent with the rule prohibiting transfer or assignment of non-nationwide 220 MHz licensees prior to full construction and operation. The Commission found that the construction prerequisite will reduce potential speculation by persons with no real interest in constructing systems, and deter those who would use

partitioning or disaggregation to speculate. Moreover, since construction will be complete before any partitioning or disaggregation is allowed, no construction requirement will be imposed on a partitionee or disaggregatee.

9. Second, consistent with the restriction on the transfer or assignment of nationwide Phase I 220 MHz licenses, the Commission will require a nationwide Phase I licensee to meet the four-year construction benchmark before it may partition or disaggregate. Again, the transfer or assignment restriction was created to reduce any potential speculation or trafficking in licenses by persons who have no real interest in constructing systems, and the Commission believed keeping the current rule will clearly demonstrate the licensees' commitment to promptly implementing nationwide 220 MHz networks.

10. As for when Phase II licenses may be partitioned, the Commission found that the different application and licensing processes between Phase I and Phase II licensees allow it to permit an eligible Phase II licensee (*i.e.*, non-Public Safety or EMRS) that wishes to partition or disaggregate to do so once it receives its license. Phase I licenses were distributed on a random selection basis, where the only up-front cost to the applicant was the application fee. In contrast, covered Phase II applicants will have to bid for the licenses, and will have the financial incentive to develop their 220 MHz systems in order to recover the costs of the auction. The Commission concluded that this financial incentive that Phase II licensees have to build-out their system will mitigate the concern that partitioning and disaggregation might be used as a means to delay construction.

11. The Commission also addressed the post-assignment construction requirements of both the assignor and assignee(s). While the goal of post-assignment construction requirements is to ensure that the spectrum is used to the same degree that would have been required had the partitioning or disaggregation transaction not taken place, the Commission also desired to give licensees and their assignees certain flexibility to determine how the construction requirements will be met. Because only nationwide Phase I licensees and non-Public Safety/EMRS Phase II licensees are allowed to partition or disaggregate before fully constructing, the Commission addressed how each of these entities will be able to meet the construction requirements. First, the Commission decided that it will combine the number of constructed

base stations of the nationwide Phase I licensee and their assignee(s) to determine if they collectively meet the six and ten year construction benchmarks. The Commission concluded that this approach is consistent with the original development of nationwide 220 MHz systems, and serves the public interest the same as if no assignment had occurred. If the combined construction fails to meet the construction requirements, both the original licensee and the assignee(s) would be subject to cancellation according to the Commission's original rules for nationwide Phase I 220 MHz licensees.

12. Second, the Commission allowed the parties to the assignment agreement involving an eligible Phase II license to negotiate and choose who will be responsible for satisfying the Commission's construction requirements. The Commission believed that the parties involved should have the flexibility to determine their respective responsibilities for satisfying the Commission's construction requirements, and that, as long as the parties' collective obligations provide the requisite system coverage, the public interest in having the system built-out will be met. Specifically, if the assignee certifies that it will satisfy the same construction requirements as the original licensee, then the assignee must meet the prescribed service requirements in its partitioned area (or for its disaggregated spectrum) while the original licensee would be responsible for meeting those requirements in the area (or for the spectrum) it has retained. Alternatively, if one party (generally the original licensee) certifies that it will meet all future construction requirements, the other party need only demonstrate that it is providing "substantial service" (as defined in the Commission's rules) for its remaining license. Moreover, consistent with other wireless services, in the event that both parties agree to share the responsibility for meeting the construction requirement and either party fails to do so, both parties' licenses will be subject to forfeiture. If one party agrees to take responsibility for meeting the construction requirement and later fails to do so, that party's license will be subject to forfeiture, but the other party's license will not be affected.

13. Finally, the Commission also addressed a number of minor issues surrounding partitioning and disaggregation. First, the Commission decided that partitionees and disaggregatees will hold their license for the remainder of the original licensee term and will be eligible for the same

renewal expectancy as the original licensee. Second, if a 220 MHz licensee that received a small or very small business credit in the auction partitions or disaggregates to an entity that would not be eligible for the same credit, the unjust enrichment rules established in 47 CFR part 1 must be applied. Third, the Commission stated that because it considers partitioning and disaggregation transactions to be essentially partial assignments of a license, it will eliminate the rule that forbids partial assignment of Phase I 220 MHz licenses and adopt the partial assignment procedures for commercial mobile radio stations to review all 220 MHz partitioning and disaggregation transactions, both commercial and non-commercial. As with most assignments and transfers, Commission review and approval is necessary to ensure compliance with the Commission's rules. This process includes placing all partial assignment applications on public notice and making them subject to public comment. The Commission believes the public notice process is even more important in the context of partitioning and disaggregation because of the potential interference conflicts such transactions can create.

14. The Fifth Report and Order in PR Docket No. 89-552 also contained a Final Regulatory Flexibility Analysis pursuant to the Regulatory Flexibility Act, 5 U.S.C. 604. It is as follows:

#### *A. Need for and Purpose of This Action*

15. In the *Fifth R&O*, the Commission modifies the 220-222 MHz band service (220 MHz) rules to permit partitioning and disaggregation for all 220 MHz licensees. With more open partitioning and disaggregation, additional entities, including small businesses, may participate in the provision of the 220 MHz service without needing to acquire wholesale an existing license (with all of the rights currently associated with the existing license). Acquiring "less" than the current license will presumably be a more flexible and less expensive alternative for entities desiring to enter these services.

#### *B. Summary of Issues Raised in Response to the Initial Regulatory Flexibility Analysis*

16. None of the commenters submitted comments that were specifically in response to the IRFA.

#### *C. Description and Number of Small Entities Involved*

17. The rules adopted in the *Fifth R&O* will affect all small businesses which avail themselves of these rule changes, including small businesses that

will obtain 220 MHz licenses through auction and subsequently decide to partition or disaggregate, and small businesses who may acquire licenses through partitioning and/or disaggregation.

*D. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements*

18. The rules adopted in the *Fifth R&O* will impose reporting and recordkeeping requirements on small businesses seeking licenses through partitioning and disaggregation. The information requirements will be used to determine whether the licensee is a qualifying entity to obtain a partitioned license or disaggregated spectrum. This information will be given in a one-time filing by any applicant requesting such a license. The information will be submitted on the FCC Form 430 which is currently in use and has already received Office of Management and Budget clearance. The Commission estimates that the average burden on the applicant is three hours for the information necessary to complete these forms. The Commission estimates that 75 percent of the respondents (which may include small businesses) will contract out the burden of responding. The Commission estimates that it will take approximately 30 minutes to coordinate information with those contractors. The remaining 25 percent of respondents (which may include small businesses) are estimated to employ in-house staff to provide the information.

*E. Steps Taken To Minimize Burdens on Small Entities*

19. The rules adopted in the *Fifth R&O* are designed to implement Congress' goal of giving small businesses, as well as other entities, the opportunity to participate in the provision of spectrum-based services and are consistent with the Communications Act's mandate to identify and eliminate market entry barriers for entrepreneurs and small businesses in the provision and ownership of telecommunications services.

20. Allowing non-restricted partitioning and disaggregation will facilitate market entry by parties who may lack the financial resources for participation in auctions, including small businesses. Some small businesses may have been unable to obtain 220 MHz licenses through auction due to high bidding. By allowing open partitioning and disaggregation, small businesses will be able to obtain licenses for smaller service areas and smaller amounts of

spectrum at presumably reduced costs, thereby providing a method for small businesses to enter the 220 MHz service marketplace.

21. Allowing geographic partitioning of 220 MHz licenses by areas defined by the parties will provide an opportunity for small businesses to obtain partitioned 220 MHz license areas designed to serve smaller, niche markets. This will permit small businesses to enter the 220 MHz service marketplace by reducing the overall cost of acquiring a partitioned 220 MHz license.

22. Allowing disaggregation of spectrum in any amount will also promote participation by small businesses who may seek to acquire a smaller amount of 220 MHz spectrum tailored to meet the needs of their proposed service.

*F. Significant Alternatives Considered and Rejected*

23. The Commission considered and rejected the following alternative proposals concerning 220 MHz partitioning and disaggregation.

24. The Commission tentatively concluded in the *Fifth NPRM* to not adopt partitioning for non-nationwide Phase I licensees and non-covered Phase II licensees because their licenses were awarded on a site-specific basis rather than for a geographic area. However, the Commission rejected this proposal because it found no compelling reason to withhold from site-specific licensees the flexibility gained by having the option to partition their license. The Commission noted that a number of non-nationwide Phase I licensees have acquired several site-specific licenses and that such consolidation is more likely since the prohibition of a Phase I licensee operating more than one 220 MHz station within a 40-mile geographic area has been eliminated. Both of these developments have created contiguous, compatible and interconnected 220 MHz systems from non-nationwide Phase I licensees. Therefore, the Commission concluded that non-nationwide Phase I licensees should be allowed the same opportunity to partition their systems and will allow that the marketplace to determine if partitioning is economically or technically feasible for those systems. The Commission did, however, maintain that non-covered Phase II licensees, as well as those Phase I licensees that are Public Safety or EMRS entities, do not need partitioning or disaggregation, but rather should continue to share their licensed spectrum in accordance with § 90.179 of the Commission's rules.

25. The Commission declined to create a minimum standard for the amount of spectrum that a 220 MHz licensee can disaggregate. In place of regulation, the Commission found that the marketplace will best determine the amount of disaggregated spectrum that is economically or technically feasible and that any minimum standard would not allow for future technology.

26. The Commission rejected the proposal of Rush Network Corp. (Rush) that all construction requirements be eliminated and, in their place, allow the market to dictate when construction will occur. Recognizing that the most of the 220 MHz licensees have the incentive to construction, the Commission, nonetheless, reaffirmed that construction requirements play a vital role in encouraging rapid deployment of the 220 MHz system and avoid inefficient use of the spectrum.

27. Along the same lines, the Commission declined permitting nationwide Phase I licensees to partition or disaggregate before meeting the four-year construction benchmark. Current rules prohibit the transfer or assignment of nationwide Phase I licenses prior to the build out of 40 percent of their system to reduce any potential speculation or trafficking in licenses by persons who have no real interest in constructing systems. The Commission concluded that this rationale should also apply to partial assignments, especially for Phase I licensees which received their licenses by lottery and thus lack the financial incentive to recoup their upfront costs.

28. The Commission also rejected the proposal by American Mobile Telephone Association (AMTA) to convert the six-and ten-year construction requirements for nationwide Phase I licensees to population-based criteria. The Commission found that AMTA's approach would be unnecessarily confusing and inconsistent because those nationwide Phase I licensees that decided to partition or disaggregate would have one set of requirements, while those that did not would have different requirements. Moreover, the Commission found no public benefit to switching the construction requirement criteria after the licenses had already been granted.

29. Finally, the Commission rejected the recommendation by Rush to eliminate the public notice requirements in licensing partial assignments. The Commission believed that any delay or extra work created by putting the partial assignment applications on public notice would be outweighed by the benefits of public

notice, especially because of the potential interference conflicts that partitioning and disaggregation may create.

#### G. Report to Congress

30. The Commission shall include a copy of this Final Regulatory Flexibility Analysis, along with this *Fifth R&O*, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A).

#### Ordering Clauses

31. Accordingly, *It is Ordered That*, pursuant to the authority of sections 4(i), 303(g), 303(r), and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(g), 303(r), and 332(a), § 90.709 of the Commission's rules, 47 CFR 90.709, *is amended*.

32. *It is further ordered that*, pursuant to the authority of Sections 4(i), 303(g), 303(r), and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(g), 303(r), and 332(a), § 90.725 of the Commission's rules, 47 CFR 90.725, *is amended*.

33. *It is further ordered that*, pursuant to the authority of Sections 4(i), 303(g), 303(r), and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(g), 303(r), and 332(a), § 90.1019 of the Commission's rules, 47 CFR 90.1019, *is amended*.

34. *It is further ordered that* the rule change adopted herein *shall become effective* sixty days after date of publication in the **Federal Register**. This action is taken pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

35. *It is further ordered that* the Office of Public Affairs, Reference Operations Division, *shall send* a copy of this *Fifth Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601(a).

#### List of Subjects in 40 CFR Part 90

Business and industry, Radio.  
Federal Communications Commission.  
**Magalie Roman Salas**,  
Secretary.

#### Rule Changes

For the reasons discussed in the preamble of part 90 of Title 47 of the Code of Federal Regulations is amended as follows:

### PART 90—PRIVATE LAND MOBILE RADIO SERVICES

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

**Authority:** Secs. 4, 251–2, 303, 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 251–2, 303, 309 and 332, unless otherwise noted.

2. Section 90.709 is amended by revising paragraph (d) to read as follows:

**§ 90.709 Special limitations on amendment of applications and on assignment or transfer of authorizations licensed under this subpart.**

\* \* \* \* \*

(d) A licensee may partially assign any authorization in accordance with § 90.1019.

\* \* \* \* \*

3. Section 90.725 is amended by revising paragraph (a) introductory text to read as follows:

**§ 90.725 Construction requirements for Phase I licensees.**

(a) Licensees granted commercial nationwide authorizations will be required to construct base stations and placed those base stations in operation as follows:

\* \* \* \* \*

4. Section 90.1019 is revised to read as follows:

**§ 90.1019 Partitioning and disaggregation.**

(a) **Definitions.**

**Disaggregation.** The assignment of discrete portions or “blocks” of spectrum licensed to a geographic licensee or qualifying entity.

**Partitioning.** The assignment of geographic portions of a licensee's authorized service area along geopolitical or other geographic boundaries.

(b) **Eligibility.** (1) Phase I non-nationwide licensees may apply to partition their licensed geographic service area or disaggregate their licensed spectrum after constructing their systems and placing their in operation or commencing service in accordance with the provisions in § 90.725(f) of this part.

(2) Phase I nationwide licensees may apply to partition their licensed geographic service area or disaggregate their licensed spectrum after constructing at least 40 percent of the geographic areas designated in their applications in accordance with the provisions in § 90.725(a) of this part.

(3) Phase II licensees may apply to partition their licensed geographic service area or disaggregate their licensed spectrum at any time following the grant of their licenses.

(4) Phase I and Phase II licensees authorized to operate on Channels 161 through 170 or Channels 181 through 185 are not eligible to partition their geographic service area or disaggregate their licensed spectrum.

(5) Parties seeking approval for partitioning and disaggregation shall request authorization for partial assignment of a license pursuant to § 90.709 of this part, as amended.

(c) **Technical Standards—(1)**

**Partitioning.** In the case of partitioning, requests for authorization for partial assignment of a license must include, as an attachment, a description of the partitioned service area. The partitioned service area shall be defined by coordinate points at every 3 degrees along the partitioned service area agreed to by both parties, unless either an FCC-recognized service area is utilized (*i.e.*, Major Trading Area, Basic Trading Area, Metropolitan Service Area, Rural Service or Economic Area) or county lines are followed. The geographical coordinates must be specified in degrees, minutes and seconds to the nearest second latitude and longitude, and must be based upon the 1983 North American Datum (NAD83). In the case where an FCC-recognized service area or county lines are utilized, applicants need only list the specific area(s) through use of FCC designations or county names that constitute the partitioned area. In such partitioning cases where an unjust enrichment payment is owed the Commission, the request for authorization for partial assignment of a license must include, as an attachment, a calculation of the population of the partitioned service area and licensed geographic service area.

(2) **Disaggregation.** Spectrum may be disaggregated in any amount.

(3) **Combined Partitioning and Disaggregation.** The Commission will consider requests for partial assignment of licenses that propose combinations of partitioning and disaggregation. In the event that there is a conflict in the application of the partitioning and disaggregation rules, the partitioning rules take precedence.

(d) **License Term.** The license term for a partitioned license area and for disaggregated spectrum shall be the remainder of the original licensee's license term.

(e) **Construction requirements—(1) Requirements for partitioning.** Phase II EA, Regional or nationwide licensees seeking authority to partition must meet one of the following construction requirements:

(i) The partitionee may certify that it will satisfy the applicable construction

requirements set forth in §§ 90.767 or 90.769 of this part, as applicable, for the partitioned license area; or

(ii) The original licensee may certify that it has or will meet its five-year construction requirement and will meet the ten-year construction requirement, as set forth in §§ 90.767 or 90.769 of this part, as applicable, for the entire license area. In that case, the partitionee must only satisfy the requirements for "substantial service," as set forth in § 90.743(a)(1) of this part, for the partitioned license area by the end of the original ten-year license term of the licensee.

(iii) Applications requesting partial assignments of license for partitioning must include a certification by each party as to which of the above construction options they select.

(iv) Partitionees must submit supporting documents showing compliance with the respective construction requirements within the appropriate five-year and ten-year construction benchmarks set forth in § 90.767 or 90.769 of this part, as applicable.

(v) Failure by any partitionee to meet its respective construction requirements will result in the automatic cancellation of the partitioned license without further Commission action.

(2) *Requirements for disaggregation.* Parties seeking authority to disaggregate spectrum from a Phase II EA, Regional or nationwide license, must submit with their partial assignment application a certification signed by both parties stating which of the parties will be responsible for meeting the five-year and ten-year construction requirements for the particular market as set forth in § 90.767 or 90.769 of this part, as applicable. Parties may agree to share responsibility for meeting the construction requirements. If one party accepts responsibility for meeting the construction requirements and later fails to do so, then its license will cancel automatically without further Commission action. If both parties accept responsibility for meeting the construction requirements and later fail to do so, then both their licenses will cancel automatically without further Commission action.

[FR Doc. 98-24625 Filed 9-14-98; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 285

[I.D. 090898A]

#### Atlantic Tuna Fisheries; Atlantic Bluefin Tuna; Closure

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Incidental Other category closure.

**SUMMARY:** NMFS has determined that the Atlantic bluefin tuna (BFT) Incidental Other category has attained its 1998 annual quota. Therefore, the Incidental Other category for 1998 will be closed.

**DATES:** Effective 11:30 p.m. local time on September 10, 1998, through December 31, 1998.

**FOR FURTHER INFORMATION CONTACT:** Pat Scida, 978-281-9260, or Sarah McLaughlin, 301-713-2347.

**SUPPLEMENTARY INFORMATION:** Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the U.S. quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories.

NMFS is required, under § 285.20(b)(1), to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the catch of BFT will equal the quota and to publish a **Federal Register** announcement to close the applicable fishery.

Implementing regulations for the Atlantic tuna fisheries at 50 CFR 285.22 provide for a subquota of 1 mt of large medium and giant BFT to be harvested from the regulatory area by vessels fishing under the Incidental Other category quota over the period January 1 through December 31. Based on reported catch, NMFS has determined that this quota has been reached; reported landings as of September 8, 1998, total 1.06 mt. Therefore, retaining, possessing, or landing large medium or giant BFT under the Incidental Other category quota must cease at 11:30 p.m. local time on September 10, 1998.

## Classification

This action is taken under 50 CFR 285.20(b) and 50 CFR 285.22 and is exempt from review under E.O. 12866.

**Authority:** 16 U.S.C. 971 *et seq.*

Dated: September 9, 1998.

**Gary C. Matlock,**

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 971208297-8054-02; I.D. 090998A]

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 in the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Modification of a closure.

**SUMMARY:** NMFS is opening directed fishing for pollock in Statistical Area 610 in the Gulf of Alaska (GOA). This action is necessary to fully utilize the 1998 total allowable catch (TAC) of pollock in this area.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), September 9, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(ii), the Final 1998 Harvest Specifications of Groundfish for the GOA (63 FR 12027, March 12, 1998) established the amount of the 1998 TAC of pollock in Statistical Area 610 in the GOA as 29,790 metric tons (mt).

The Administrator, Alaska Region, NMFS (Regional Administrator), has established a directed fishing allowance of 29,590 mt, and set aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries.