

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 80**

[PR Docket No. 92–257; RM–9664; FCC 03–270]

Maritime Communications**AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

SUMMARY: In this document, the Commission addresses petitions for reconsideration of the *Second Memorandum Opinion and Order and Fifth Report and Order* in this proceeding. The reconsideration petitions pertain to the Commission's decisions regarding the licensing approach for spectrum allotted to Automated Maritime Telecommunications System (AMTS) stations, including application processing issues and the incumbent co-channel interference protection standard. Based on the record now presented to the Commission, it believes that reconsideration of the AMTS incumbent co-channel interference protection standard is warranted. Therefore, in the *Third Memorandum Opinion and Order*, the Commission adopts a larger interference contour, which will better preserve AMTS incumbent systems' current operating parameters and afford licensees with an opportunity to construct fill-in stations.

DATES: Effective May 17, 2004.**FOR FURTHER INFORMATION CONTACT:**

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SUPPLEMENTARY INFORMATION: The Commission's *Third Memorandum Opinion and Order*, PR Docket No. 92–257, FCC 03–270, was adopted October 31, 2003, and released on November 18, 2003. The full text of this Commission's *Third Memorandum Opinion and Order* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, Qualex International, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20037. The full text may also be downloaded at: <http://www.fcc.gov/Wireless/Orders/2003/fcc03270.txt>. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Synopsis of the MO&O

1. The Commission denied two petitions for reconsideration of the Commission's decision to dismiss AMTS applications the processing of which had been suspended because they were mutually exclusive with other applications and/or the relevant filing period had not expired as of November 16, 2000. The Commission stated that § 1.934 of the Commission's rules did not obligate the Wireless Telecommunications Bureau to automatically dismiss mutually exclusive applications that did not comply with certain technical AMTS requirements prior to accepting them for filing.

2. The Commission granted in part a petition for reconsideration of the *Second Memorandum Opinion and Order and Fifth Report and Order* 67 FR 48560 (July 25, 2002), co-channel interference protection standard of 10 dB protection to the incumbent's predicted 38 dBu contour. The Commission concluded that it would be possible for a geographic licensee to interpose a facility between co-system incumbent base stations if the incumbent stations are provided 10 dB protection. Consequently, based on this further review, it decided that geographic area licensees should provide 18 dB protection to an incumbent's service contour, in order to be assured of protecting incumbents' continuity of service.

Final Regulatory Flexibility Analysis

3. As required by the Regulatory Flexibility Act (RFA), a Final Regulatory Flexibility Analysis (IRFA) was incorporated into the *Second Memorandum Opinion and Order and Fifth Report and Order* in this proceeding. 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, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). In view of the fact that we have adopted a further rule amendment in the *Third Memorandum Opinion and Order*, we have included this Supplemental Final Regulatory Flexibility Analysis (SFRFA). The present SFRFA conforms to the RFA.

A. Need for, and Objectives of the Third Memorandum Opinion and Order

4. In the *Third Memorandum Opinion and Order*, we amend a rule regarding co-channel interference protection that was adopted in the *Second*

Memorandum Opinion and Order and Fifth Report and Order. We believe that this rule amendment supports the objectives that the Commission has established for this proceeding (*i.e.*, to increase the number and types of communications services available to the maritime community and improve the safety of life and property at sea, and that the potential benefits to the maritime community exceed any negative effects that may result from the promulgation of rules for this purpose).

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

5. We received no comments in response to the FRFA in the *Second Memorandum Opinion and Order and Fifth Report and Order*. However, we continue to believe that the policies and rules adopted in the *Second Memorandum Report and Order and Fifth Report and Order* will better enable small entities to compete for licenses in the AMTS band.

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

6. 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. 5 U.S.C. 603(b)(3). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 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). A small business concern is one which: (i) Is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the Small Business Administration (SBA). Small Business Act, 15 U.S.C. 632 (1996). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and

is not dominant in its field.” 5 U.S.C. 601(4).

7. The rules adopted in this proceeding will affect licensees using AMTS 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. Since the size data provided by the Small Business Administration does not enable us to make a meaningful estimate of the number of AMTS 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 that 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 in this proceeding, it is unlikely that more than seven licensees will be authorized in the future. Therefore, for purposes of our evaluations and conclusions in this SFRFA, we estimate that there are approximately twenty-three 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

8. The *Third Memorandum Opinion and Order* imposes no new reporting, recordkeeping or other compliance requirements not previously adopted in this proceeding.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

9. 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: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (iii) the use of performance, rather than design, standards; and (4) an exemption from

coverage of the rule, or any part thereof, for small entities.

10. The rule amendment adopted in this *Third Memorandum Opinion and Order* will have no significant economic impact on 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. In the *Second Memorandum Report and Order* and *Fifth Report and Order*, it decided to adopt for AMTS the small business provisions that were adopted in the auction of VHF public coast spectrum. Specifically, the Commission has concluded that AMTS small businesses will receive a bidding credit of 25 percent and very small businesses will receive a bidding credit of 35 percent. It has 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. These small business size standards have been approved by the U.S. Small Business Administration, pursuant to section 3 of the Small Business Act. *See* Letter from Aida Alvarez, Administrator, Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission (dated November 3, 2000) (approving size standards for AMTS and high seas public coast services); *see also* 15 U.S.C. 632(a)(2) (establishment of size standards by federal agencies); 13 CFR 121.90(b) (promulgation of special size standards by federal agencies).

11. *Report to Congress:* The Commission will send a copy of the *Third Memorandum Opinion and Order*, including this SFRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Third Memorandum Opinion and Order*, including this SFRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

12. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Third Memorandum Opinion and Order*, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 80

Communications equipment, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 80 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 80.385 is amended by revising paragraph (b)(1) to read as follows:

§ 80.385 Frequencies for automated systems.

* * * * *

(b) * * *

(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 18 dB protection will be provided to a site-based licensee'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 18 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.

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■ 3. Section 80.475(a) is amended by adding new paragraphs (a)(1) and (a)(2) 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) Additionally, applicants required to submit the above specified must give

written notice of the filing of such applications(s) to the television stations which may be affected. A list of the notified television stations must be submitted with the subject applications.

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