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Dated: July 14, 1998.

David J. Barram,*Administrator of General Services.*

[FR Doc. 98-20010 Filed 7-24-98; 8:45 am]

BILLING CODE 6820-23-U

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Parts 20, 80, and 90**

[PR Docket No. 92-257; FCC 98-151]

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

SUMMARY: The Commission has adopted a *Third Report and Order and Memorandum Opinion and Order* in PR Docket No. 92-257 which simplifies the licensing process and introduces additional flexibility for public coast stations. Specifically, the Commission amends the maritime service rules to designate geographic licensing regions for very high frequency (VHF) public coast stations, and assign all currently unassigned VHF public correspondence channels on a geographic basis by competitive bidding. The uniform competitive bidding rules will apply in public coast station auctions. The Commission also adopts small business provisions for qualifying public coast station applicants, and defines the criteria used to determine eligibility for these provisions. The effect will be to promote and facilitate the participation of small businesses in the Commission's auctions and in the provision of spectrum-based services.

EFFECTIVE DATE: September 25, 1998.**FOR FURTHER INFORMATION CONTACT:**

Non-auction information: Scot Stone of the Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, at (202) 418-0680 or via E-mail to "sstone@fcc.gov". *Auction information:* Anne Napoli of the Wireless Telecommunications Bureau, Auctions and Industry Analysis Division, Legal Branch, at (202) 418-0660. TTY: (202) 418-7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Report and Order and Memorandum Opinion and Order*, PR Docket No. 92-257, FCC 98-51, adopted, July 6, 1998, and released, July 9, 1998. The full text of this *Third Report and Order and Memorandum Opinion 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 may be purchased from the Commission's copy contractor, International Transcription Services, 1231 20th Street, NW, Washington, DC 20036, telephone (202) 857-3800, facsimile (202) 857-3805. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418-0260, TTY (202) 418-2555, or at mcontee@fcc.gov. The full text of the *Third Report and Order and Memorandum Opinion and Order* can also be downloaded at: <http://www.fcc.gov/Bureaus/Wireless/Orders/1998/fcc98151.txt> or <http://www.fcc.gov/Bureaus/Wireless/Orders/1998/fcc98151.wp>, and the map set out in the paper version may be downloaded at <http://www.fcc.gov/Bureaus/Wireless/Orders/1998/fc98151a.pdf>.

Summary of the Third Report and Order and Memorandum Opinion and Order

1. The Commission initiated the instant proceeding to update the Maritime Service rules to promote the use of new, spectrally efficient radio communications techniques. In the *Second Further Notice of Proposed Rule Making* (62 FR 37533, July 14, 1997), the Commission proposed rules to simplify the license process for VHF public coast stations.

2. The Commission amends the rules to license VHF public correspondence channel pairs on a geographic basis, in lieu of the site-based approach presently used. The Commission designates forty-two licensing areas: nine maritime VHF Public Coast areas (VPCs), each consisting of one or more Economic Areas (EAs) within one hundred miles of major waterways and grouped together in accordance with Coast Guard Districts; and thirty-three inland VPCs, each consisting of a single EA no part of which is within one hundred miles of a major waterway.

3. The Commission amends the rules to authorize a single geographic area licensee to operate on all currently unassigned VHF public correspondence frequencies within its licensing area for a ten-year license term. Each geographic area licensee may place stations anywhere within its region to serve vessels or units on land, so long as marine-originating traffic is given priority and incumbent operations are protected. Base stations and land units will be blanket licensed under the geographic license, except that individual licensing is required for base stations that require submission of an

Environmental Assessment under 47 CFR 1.1307 or international coordination, or will affect the radio frequency quiet zones described in 47 CFR 80.21. The Commission amends the rules to permit partitioning and disaggregation of the geographic licenses, with partitionees and disaggregates to hold their licenses for the remainder of the original licensee's term and to have a renewal expectancy.

4. Incumbent VHF public coast station licensees, and private land mobile radio (PLMR) licensees sharing marine spectrum in inland regions, may continue operating indefinitely, and incumbents and geographic area licensees must afford interference protection to one another. If an incumbent fails to construct, discontinues operations, or otherwise has its license terminated, its authorization automatically reverts to the geographic licensee. Incumbent licensees may renew, transfer, assign, and modify their license in any manner so long as such modifications do not extend the incumbent's service area; proposed modifications that would extend an incumbent's service area or request additional frequencies are contingent upon an agreement with each affected licensee.

5. Geographic licensees must provide substantial service. Licensees' showings will be reviewed on a case-by-case basis, but the Commission provides the following safe-harbor examples: for maritime VPC licensees, coverage to one-third of the region's major waterways within five years, and continuous to two-thirds of the region's major waterways within ten years; for inland VPC licensees (and partitionees of maritime VPC licensees where the partitioned area is not contiguous with a major waterway), coverage to one-third of the population of the region within five years and two-thirds of the region's population within ten years.

Competitive Bidding Procedures

6. *Background.* In Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, *Second Report and Order*, 59 FR 18493 (March 7, 1994), the Commission classified the public coast station service as a commercial mobile radio service (CMRS). Subsequently, in Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Second Report and Order*, 59 FR 22980 (May 4, 1994), the Commission determined that as a CMRS service, mutually exclusive applications for public coast station licenses would be resolved through competitive

bidding. The Commission proposed to establish competitive bidding rules for public coast station licenses in the *Second Further Notice*. Following the release of the *Second Further Notice*, Congress passed the Balanced Budget Act of 1997, Pub. L. 105-33, 111 Stat. 251 (Aug. 5, 1997) (Balanced Budget Act), which expanded and extended the Commission's auction authority.

7. *Decision*. The Commission earlier concluded that the public coast station service is subject to competitive bidding. This conclusion is unchanged by the Balanced Budget Act, which provides that all licenses and construction permits for which mutually exclusive applications are accepted, with certain exceptions not applicable here, shall be granted by means of competitive bidding. The Commission therefore believes that it lacks discretion to resolve mutually exclusive public coast license applications by any means other than competitive bidding. Since the Balanced Budget Act expressly provides that competitive bidding shall not be used for public safety radio services, the inland VPC channel pairs set aside for public safety use shall be awarded by other means, to be decided as part of the Commission's pending public safety proceeding, see 62 FR 60199 (November 7, 1997).

Competitive Bidding Issues

8. *Proposal*. The Commission proposed in the *Second Further Notice* to adopt service specific rules to govern public coast station auction(s), pending the adoption of final uniform competitive bidding rules, as proposed in Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, *Second Report and Order*, *Order on Reconsideration*, and *Fifth Notice of Proposed Rule Making*, 62 FR 13540 (March 21, 1997). In accordance with the Commission's practice of establishing definitions for "small business" on a service-by-service basis, the Commission also sought comment on establishing a "small business" definition for public coast station auction(s). The Commission tentatively concluded that, to determine small business status, public coast station applicants should attribute the gross revenues of their controlling principals and affiliates, and that the definition of affiliate in the public coast context should include an exception for Indian tribes, Alaska Region and Village Corporations. The Commission tentatively decided not to provide special consideration for incumbent licensees in the competitive bidding process.

9. *Decision*. The uniform competitive bidding rules recently adopted in Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, *Third Report and Order*, 63 FR 2315 (January 15, 1998) (*Part 1 Third Report and Order*), and found in Subpart Q of Part 1 of the Commission's rules, will apply in public coast station auction(s). Thus, the Part 1 definition of affiliate, which includes an exemption for Indian Tribes and Alaska Region and Village Corporations, will apply in public coast station auction(s), see 47 CFR 1.2110(b)(4). Consistent with this approach, procedural matters such as the general design and timing of the auction(s); license grouping; bid increments; activity and stopping rules; and application and payment requirements, including upfront payments, will be determined by the Wireless Telecommunications Bureau pursuant to its delegated authority. See 47 CFR 0.131(c), 0.331, 0.332.

10. For purposes of public coast auction(s), the Commission defines a *small business* as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed fifteen million dollars, and a "very small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed three million dollars. A two-tiered definition will allow very small incumbents to compete favorably with larger entities, and will provide entities with relatively low gross revenues an opportunity to participate meaningfully in the auction(s).

11. The Commission also adopts its tentative conclusion to attribute the gross revenues of the applicant, its controlling principals and their affiliates in determining small business eligibility. However, the adopted rule refers to "controlling interests" rather than "controlling principals," and provides a definition of this term for further clarification. A "controlling interest" includes individuals or entities with *de jure* and *de facto* control of the applicant. *De jure* control is 50.1% of the voting stock of a corporation or, in the case of a partnership, the general partners. *De facto* control is determined on a case-by-case basis. The *controlling interest* definition also provides for attribution of partnership and other ownership interests, and offers guidance on calculation of various types of ownership interests. When an applicant cannot identify controlling interests under the definition, the revenues of all interest holders in the applicant and

their affiliates are counted. This approach is consistent with the Commission's proposal in Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, *Second Further Notice of Proposed Rule Making*, 63 FR 770 (January 7, 1998), and with the attribution rules applied in recent Commission auctions. The effect will be to ensure that only qualifying entities receive small business benefits, and to enable these entities to attract passive financing in a highly competitive and evolving market. The Commission also emphasizes that all bidders are subject to the ownership disclosure requirements set forth in 47 CFR 1.2112.

12. The Commission adopts its tentative decision not to provide special consideration to incumbent public coast service licensees that participate in the auction(s), because the Commission believes that new entrants and incumbents should have an equal opportunity to obtain spectrum. Qualifying incumbents may benefit from the adopted small business provisions.

13. The bidding credit levels for public coast auction(s) will conform to the schedule adopted in the *Part 1 Third Report and Order*. The *Part 1 Third Report and Order* adopted bidding credits of thirty-five percent for entities with annual gross revenues not to exceed three million, and twenty-five percent for entities with annual gross revenues not to exceed fifteen million. See 47 CFR 1.21110(e)(2)(i)–(ii). Thus, public coast station applicants meeting the definition of "very small" business will receive a thirty-five percent bidding credit, and applicants meeting the definition of "small" business will receive a twenty-five percent bidding credit.

14. In the *Part 1 Third Report and Order*, the Commission held that installment payments will not be used in the immediate future as a means of financing small business participation in Commission auctions. Since the Commission received no comment on this issue in this proceeding, installment payments will not be available in public coast station auctions for reasons discussed in the *Part 1 Third Report and Order*.

15. The Commission also received no comments or proposals regarding the sufficiency of small business provisions in promoting participation by minority- and women-owned businesses and rural telephone companies. Therefore, the Commission concludes that it lacks a sufficient record to support such provisions at this time.

16. The Commission may seek comment in a future proceeding on

whether the adopted small business provisions should be modified for auctions of high seas and Automated Maritime Telecommunications Service public coast station spectrum.

Regulatory Flexibility Act

17. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Second Further Notice of Proposed Rule Making* in this proceeding (*Second Further Notice*). The Commission sought written public comment on the proposals in the *Second Further Notice*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

18. *Need for, and Objectives of, the Third Report and Order and Memorandum Opinion and Order.* Our objective is to simplify our licensing process for VHF public coast stations. Specifically, this action will: (1) convert licensing of VHF public coast station spectrum from site-by-site licensing to geographic area licensing, (2) simplify and streamline the VHF public coast spectrum licensing procedures and rules, (3) increase licensee flexibility to provide communication services that are responsive to dynamic market demands, and (4) introduce market-based forces into the Maritime Services by using competitive bidding procedures (auctions) to resolve mutually exclusive applications for public coast spectrum. We find that these actions will 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. Thus, we conclude that the public interest is served by amending our rules as described above.

19. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* No comments were submitted in response to the IRFA. In general comments on the *Second Further Notice*, however, some small business commenters raised issues that might affect small business entities. In particular, some small business commenters argued that geographic licensing should be used only in certain areas; or that incumbent licensees be permitted to expand their systems before any auctions are held; or that license areas should be smaller than Coast Guard Districts, to permit smaller licensees to participate in auctions without having to bid for territory far exceeding their operating needs. The

Commission carefully considered each of these comments in reaching the decision set forth herein.

20. *Description and Estimate of the Number of Small Entities to Which Rules Will Apply.* The rules adopted herein will apply to licensees using public coast spectrum. The Commission has not developed a definition of the term "small entity" specifically applicable to public coast station licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration rules applicable to radiotelephone service providers. This definition provides that a small entity is any entity employing less than 1,500 persons. See 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812. Since the size data provided by the Small Business Administration does not enable us to make a meaningful estimate of the number of current or prospective public coast station licensees which are small businesses, no commenters responded to our request for information regarding the number of small entities that use or are likely to use public coast spectrum, we used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of Census, which is the most recent information available. This document shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. There are over 100 public coast station licensees. Based on the proposals contained herein, it is unlikely that more than 50 licensees will be authorized in the future. Therefore, for purposes of our evaluations and conclusions in this FRFA, we estimate that there are approximately 150 public coast station licensees which are small businesses, as that term is defined by the Small Business Administration.

21. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* All small businesses that choose to participate in the competitive bidding for these services will be required to demonstrate that they meet the criteria set forth to qualify as small businesses, as required under part 1, subpart Q of the Commission's Rules, 47 CFR part 1, subpart Q. Any small business applicant wishing to avail itself of small business provisions will need to make the general financial disclosures necessary to establish that the small business is in fact small. Prior to auction each small business applicant will be required to submit an FCC Form 175, OMB Clearance Number 3060-0600. The

estimated time for filling out an FCC Form 175 is 45 minutes. In addition to filing an FCC Form 175, each applicant will have to submit information regarding the ownership of the applicant, any joint venture arrangements or bidding consortia that the applicant has entered into, and financial information demonstrating that a business wishing to qualify for bidding credits is a small business. Applicants that do not have audited financial statements available will be permitted to certify to the validity of their financial showings. While many small businesses have chosen to employ attorneys prior to filing an application to participate in an auction, the rules are intended to enable a small business working with the information in a bidder information package to file an application on its own. When an applicant wins a license, it will be required to submit an FCC Form 494 (common carrier), which will require technical information regarding the applicant's proposals for providing service. This application will require information provided by an engineer who will have knowledge of the system's design.

22. *Steps Taken to Minimize Burdens of Small Entities, and Significant Alternatives Considered.* The Commission in this proceeding has considered comments on ways to implement broad changes to the Maritime Service rules. In doing so, the Commission has adopted alternatives which minimize burdens placed on small entities. First, it has decided to establish a presumption that geographic area licensees are telecommunications carriers, avoiding the need for small telecommunications to provide detailed information about their operations. Also, it has exempted by rule from the Channel 16 safety watch requirement public coast stations eligible whose areas are served by government stations, replacing the prior requirement that such coast stations individually request an exemption. In addition, the Commission has eased the construction requirements for VHF public coast stations.

23. The Commission considered and rejected several significant alternatives. It rejected the alternative of licensing all VHF public coast spectrum by Coast Guard District. Instead, it will license such spectrum in areas removed from major waterways by inland VHF Public Coast Station Area (VPCs), identical to Economic Areas (EAs), allowing small entities there to participate in the auction without bidding for territory far exceeding their operating needs. The Commission rejected the alternative of

delaying the auctions for the inland VPCs by holding frequencies open for public safety applications. Instead, the Commission designated public safety channels in advance. The Commission rejected the alternative of requiring each geographic area licensee to provide detailed information about the services it will offer, so the Commission could determine whether the licensee is a telecommunications carrier. Instead, the Commission established a rebuttable presumption that geographic area licensees are telecommunications carriers, so only those seeking to avoid that classification need submit such information.

24. The Commission will send a copy of the *Third Report and Order and Memorandum Opinion and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Third Report and Order and Memorandum Opinion and Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business.

Paperwork Reduction Act

25. This *Third Report and Order and Memorandum Opinion and Order* contains neither a modified nor a new information collection.

List of Subjects

47 CFR Part 20

Communications common carriers, Radio, Reporting and recordkeeping requirements.

47 CFR Part 80

Communications equipment, Radio, Vessels.

47 CFR Part 90

Communications equipment, Radio.
Federal Communications Commission.
Magalie Roman Salas,
Secretary.

Rule Changes

Accordingly, 47 CFR parts 20, 80, and 90 are amended as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for part 20 continues to read as follows:

Authority: Secs. 4, 251–2, 303, and 332, 48 Stat. 1066, 1062, as amended; 47 U.S.C. 154, 251–4, 303, and 332 unless otherwise noted.

2. Amend § 20.9 by revising paragraph (b) introductory text and paragraph (b)(1) to read as follows:

§ 20.9 Commercial mobile radio service.

* * * * *

(b) Licensees of a Personal Communications Service or applicants for a Personal Communications Service license, and Public Coast Station licensees or applicants, proposing to use any Personal Communications Service or Public Coast Station spectrum to offer service on a private mobile radio service basis must overcome the presumption that Personal Communications Service and Public Coast Stations are commercial mobile radio services.

(1) The applicant or licensee (who must file an application to modify its authorization) seeking authority to dedicate a portion of the spectrum for private mobile radio service, must include a certification that it will offer Personal Communications Service or Public Coast Station service on a private mobile radio service basis. The certification must include a description of the proposed service sufficient to demonstrate that it is not within the definition of commercial mobile radio service in § 20.3 of this chapter. Any application requesting to use any Personal Communications Service or Public Coast Station spectrum to offer service on a private mobile radio service basis will be placed on public notice by the Commission.

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PART 80—STATIONS IN THE MARITIME SERVICES

3. The authority citation for part 80 is revised 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.

4. Amend § 80.3 by revising paragraph (b) to read as follows:

§ 80.3 Other applicable rule parts of this chapter.

* * * * *

(b) *Part 1.* This part includes rules of practice and procedure for license applications, adjudicatory proceedings, procedures for reconsideration and review of Commission actions; provisions concerning violation notices and forfeiture proceedings; and the environmental processing requirements that, if applicable, must be complied with prior to the initiation of construction. Subpart Q of Part 1 contains rules governing competitive bidding procedures for resolving

mutually exclusive applications for certain initial licenses.

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5. Amend § 80.25 by revising paragraph (b) to read as follows:

§ 80.25 License term.

* * * * *

(b) Licenses other than ship stations in the maritime services will normally be issued for a term of five years from the date of original issuance, major modification, or renewal, except that licenses for VHF public coast stations will normally be issued for a term of ten years from the date of original issuance, major modification, or renewal. Licenses, other than Public Coast and Alaska Public Fixed stations, may be renewed up to ninety (90) days after the date the license expires.

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6. Revise § 80.49 to read as follows:

§ 80.49 Construction and regional service requirements.

(a) *Public coast stations.* (1) Each VHF public coast station geographic area licensee must make a showing of substantial service within its region or service area (subpart P) within five years of the initial license grant, and again within ten years of the initial license grant, or the authorization becomes invalid and must be returned to the Commission for cancellation. “Substantial” service is defined as service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal. For site-based VHF public coast station licensees, when a new license has been issued or additional operating frequencies have been authorized, if the station or frequencies authorized have not been placed in operation within twelve months from the date of the grant, the authorization becomes invalid and must be returned to the Commission for cancellation.

(2) For LF, MF, HF, and AMTS band public coast station licensees, when a new license has been issued or additional operating frequencies have been authorized, if the station or frequencies authorized have not been placed in operation within eight months from the date of the grant, the authorization becomes invalid and must be returned to the Commission for cancellation.

(b) *Public fixed stations.* When a new license has been issued or additional operating frequencies have been authorized, if the station or frequencies authorized have not been placed in operation within twelve months from the date of the grant, the authorization

becomes invalid and must be returned to the Commission for cancellation.

7. Add § 80.60 to subpart B to read as follows:

§ 80.60 Partitioned licenses and disaggregated spectrum.

(a) *Eligibility.* VHF Public Coast Station Area (VPCSA) licensees, *see* § 80.371(c)(1)(ii) of this part, may partition their geographic service area or disaggregate their spectrum pursuant to the procedures set forth in this section. Parties seeking approval for partitioning and disaggregation shall request an authorization for partial assignment pursuant to § 1.924 of this chapter.

(b) *Technical standards.* (1) *Partitioning.* In the case of partitioning, all 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 unless an FCC-recognized service area is utilized (e.g., Metropolitan Service Area, Rural Service Area, or Economic Area) or county lines are used. The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude, and must be based upon the 1983 North American Datum (NAD83). In a 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.

(2) *Disaggregation.* Spectrum may be disaggregated in any amount, provided acquired spectrum is disaggregated according to frequency pairs.

(3) *Combined partitioning and disaggregation.* The Commission will consider requests for partial assignment of licenses that propose combinations of partitioning and disaggregation.

(c) *License term.* The license term for a partitioned license area and for disaggregated spectrum shall be the remainder of the original licensee's term as provided for in § 80.25 of this part.

(d) *Construction Requirements.* (1) *Partitioning.* Partial assignors and assignees for license partitioning have two options to meet construction requirements. Under the first option, the partitionor and partitionee would each certify that they will independently satisfy the substantial service requirement for their respective partitioned areas. If either licensee failed to meet its substantial service showing requirement, only the nonperforming licensee's renewal application would be subject to

dismissal. Under the second option, the partitioner certifies that it has met or will meet the substantial service requirement for the entire market. If the partitioner fails to meet the substantial service standard, however, only its renewal application would be subject to forfeiture at renewal.

(2) *Disaggregation.* Partial assignors and assignees for license disaggregation have two options to meet construction requirements. Under the first option, the disaggregator and disaggregatee would certify that they each will share responsibility for meeting the substantial service requirement for the geographic service area. If parties choose this option and either party fails to do so, both licenses would be subject to forfeiture at renewal. The second option would allow the parties to agree that either the disaggregator or the disaggregatee would be responsible for meeting the substantial service requirement for the geographic service area. If parties choose this option, and the party responsible for meeting the construction requirement fails to do so, only the license of the nonperforming party would be subject to forfeiture at renewal.

8. Amend § 80.70 by adding new paragraph (c) to read as follows:

§ 80.70 Special provisions relative to coast station VHF facilities.

(c) A VHF (156–162 MHz) public coast station licensee initially authorized on any of the channels listed in the table in § 80.371(c)(1)(i) of this part may transfer or assign its channel(s) to another entity. If the proposed transferee or assignee is the geographic area licensee for the geographic area to which the channel is allocated, such transfer or assignment will be deemed to be in the public interest. However, such presumption will be rebuttable.

9. Revise § 80.105 to read as follows:

§ 80.105 General obligations of coast stations.

Each coast station or marine-utility station must acknowledge and receive all calls directed to it by ship or aircraft stations. Such stations are permitted to transmit safety communication to any ship or aircraft station. VHF (156–162 MHz) public coast stations may provide fixed or hybrid services on a co-primary basis with mobile operations.

10. Amend § 80.303 by revising paragraph (b) to read as follows:

§ 80.303 Watch on 156.800 MHz (Channel 16).

(b) A coast station is exempt from compliance with the watch requirement

when Federal, State, or Local Government stations maintain a watch on 156.800 MHz over 95% of the coast station's service area. Each licensee exempted by rule must notify the nearest district office of the U.S. Coast Guard at least thirty days prior to discontinuing the watch, or in the case of new stations, at least thirty days prior to commencing service. The Coast Guard may require any coast station to maintain the watch temporarily or permanently. The Coast Guard may also require any coast station to remain capable of either immediately resuming the watch or providing the Coast Guard direct dial-up access to the necessary 156.800 MHz transceiver at no charge so that the Coast Guard can maintain the watch.

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11. Amend § 80.371 by revising paragraph (c) introductory text, adding paragraph (c)(1)(i) before the table, and adding paragraphs (c)(1)(ii), (c)(2), (c)(3), and (c)(4) to read as follows:

§ 80.371 Public correspondence frequencies.

* * * * *

(c) *Working frequencies in the marine VHF 156–162 MHz band.* (1)(i) The frequency pairs listed in the table in paragraph (c)(1)(ii) are available for assignment to public coast stations for public correspondence communications with ship stations and units on land.

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(ii) Service areas in the marine VHF 156–162 MHz band are VHF Public Coast Station Areas (VPCSAs). As listed in the table in this paragraph, VPCSAs are based on, and composed of one or more of, the U.S. Department of Commerce's 172 Economic Areas (EAs). See 60 FR 13114 (March 10, 1995). In addition, the Commission shall treat Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, American Samoa, and the Gulf of Mexico as EA-like areas, and has assigned them EA numbers 173–176, respectively. Maps of the EAs and VPCSAs are available for public inspection and copying at the Public Safety and Private Wireless Division, room 8010, 2025 M Street, NW, Washington, DC. Except as shown in the table, the frequency pairs listed in paragraph (c)(1)(i) of this section are available for assignment to a single licensee in each of the VPCSAs listed in the table in this paragraph. In addition to the listed EAs listed in the table in this paragraph, each VPCSA also includes the adjacent waters under the jurisdiction of the United States.

VHF Public coast station areas (VPCSA's)

VPCSA's	EAs	Frequency pairs not available for assignment
1 (Northern Atlantic)	1-5, 10	
2 (Mid-Atlantic)	9, 11-23, 25, 42, 46	
3 (Southern Atlantic)	24, 26-34, 37, 38, 40, 41, 174	
4 (Mississippi River)	34, 36, 39, 43-45, 47-53, 67-107, 113, 116-120, 122-125, 127, 130-134, 176.	
5 (Great Lakes)	6-8, 54-66, 108, 109	
6 (Southern Pacific)	160-165	
7 (Northern Pacific)	147, 166-170	
8 (Hawaii)	172, 173, 175	
9 (Alaska)	171	
10 (Grand Forks)	110	84, 25.
11 (Minot)	111	84, 25.
12 (Bismarck)	112	84, 25.
13 (Aberdeen)	114	84, 25.
14 (Rapid City)	115	84, 25.
15 (North Platte)	121	84, 25.
16 (Western Oklahoma)	126	25, 85.
17 (Abilene)	128	25, 85.
18 (San Angelo)	129	25, 85.
19 (Odessa-Midland)	135	25, 85.
20 (Hobbs)	136	25, 85.
21 (Lubbock)	137	25, 85.
22 (Amarillo)	138	25, 85.
23 (Santa Fe)	139	84, 25.
24 (Pueblo)	140	84, 25.
25 (Denver-Boulder-Greeley)	141	84, 25.
26 (Scottsbluff)	142	84, 25.
27 (Casper)	143	84, 25.
28 (Billings)	144	84, 25.
29 (Great Falls)	145	84, 25.
30 (Missoula)	146	84, 25.
31 (Idaho Falls)	148	25, 85.
32 (Twin Falls)	149	25, 85.
33 (Boise City)	150	84, 25.
34 (Reno)	151	84, 25.
35 (Salt Lake City-Ogden)	152	25, 85.
36 (Las Vegas)	153	84, 25.
37 (Flagstaff)	154	84, 25.
38 (Farmington)	155	84, 25.
39 (Albuquerque)	156	84, 25.
40 (El Paso)	157	25, 85.
41 (Phoenix-Mesa)	158	84, 25.
42 (Tucson)	159	84, 25.

(iii) Subject to paragraph (c)(3) of this section, each licensee may also operate on 12.5 kHz offset frequencies in areas where the licensee is authorized on both frequencies adjacent to the offset frequency, and in areas where the licensee on the other side of the offset frequency consents to the licensee's use of the adjacent offset frequency.

(2) Any recovered channel pairs will revert automatically to the holder of the VPCSA license within which such channels are included, except the channel pairs listed in the table in paragraph (c)(1)(ii) of this section. Those channel pairs, and any channel pairs recovered where there is no VPCSA licensee, will be retained by the Commission for future licensing.

(3) VPCSA licensees may not operate on Channel 228B (162.0125 MHz),

which is available for use in the Coast Guard's Ports and Waterways Safety System (PAWSS). In addition, within six months of the conclusion of the competitive bidding procedures to determine the licensees in each VPCSA, the U.S. Coast Guard shall submit to each licensee of VPCSA's 1-9 a plan specifying up to two narrowband channel pairs offset 12.5 kHz from the channels set forth in the table in paragraph (c)(1)(i) of this section, for use in the PAWSS. The final selection of the PAWSS channel pairs can be negotiated (if the VPCSA licensee objects to the Coast Guard proposal, it shall make a counterproposal within three months) and established by an agreement between the parties. All parties are required to negotiate in good faith. If no agreement is reached within one year of

the date the Coast Guard submitted its plan, the Coast Guard may petition the Commission to select the channel pairs.

(4) Subject to the requirements of § 80.21, each VPCSA licensee may place stations anywhere within its region without obtaining prior Commission approval provided:

(i) It provides to co-channel coast station incumbent licensees, and incumbent Private Land Mobile Radio licensees authorized under part 90 of this chapter on a primary basis, protection as defined in subpart P of this part. VPCSA licensees that share a common border may either distribute the available frequencies upon mutual agreement or request that the Commission assign frequencies along the common border.

(ii) The locations and/or technical parameters of the transmitters are such that individual coordination of the channel assignment(s) with a foreign administration, under applicable international agreements and rules in this part, is not required.

(iii) For any construction or alteration that would exceed the requirements of § 17.7 of this chapter, licensees must notify the appropriate Regional Office of the Federal Aviation Administration (FAA Form 7460-1) and file a request for antenna height clearance and obstruction marking and lighting specifications (FCC Form 854) with the FCC, Attn: Information Processing Branch, 1270 Fairfield Rd., Gettysburg, PA 17325-7245.

(iv) The transmitters must not have a significant environmental effect as defined by §§ 1.1301 through 1.1319 of this chapter.

* * * *

12. Revise § 80.751 to read as follows:

§ 80.751 Scope.

This subpart specifies receiver antenna terminal requirements in terms of power, and relates the power available at the receiver antenna terminals to transmitter power and antenna height and gain. It also sets forth the co-channel interference protection that VHF public coast station geographic area licensees must provide to incumbents.

13. Revise § 80.773 to read as follows:

§ 80.773 Co-channel interference protection.

(a) Where a VHF public coast station geographic area licensee shares a frequency with an incumbent VHF public coast station licensee, the ratio of desired to undesired signal strengths must be at least 12 dB within the service area of the station.

(b) Where a VHF public coast station geographic area licensee shares a frequency with an incumbent private land mobile radio licensee, the VHF public coast station geographic area licensee must provide at least 10 dB protection to the PLMR incumbent's predicted 38 dBu signal level contour. The PLMR incumbent's predicted 38 dBu signal level contour is calculated using the F(50, 50) 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, and is based on the licensee's authorized effective radiated power and antenna height-above-average-terrain.

14. Add new subpart Y to read as follows:

Subpart Y—Competitive Bidding Procedures

Sec.

80.1251 Maritime communications services subject to competitive bidding.

80.1252 Designated entities.

§ 80.1251 Maritime communications services subject to competitive bidding.

Mutually exclusive initial applications for VPCSA licenses, high seas public coast station licenses, and AMTS coast station licenses are subject to competitive bidding procedures. The procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this part.

§ 80.1252 Designated entities.

(a) This section addresses certain issues concerning designated entities in maritime communications services subject to competitive bidding. Issues that are not addressed in this section are governed by the designated entity provisions in part 1, subpart Q of this chapter.

(b) *Eligibility for small business provisions.* (1) A small business is an entity that, together with its affiliates and controlling interests, has average gross revenues not to exceed \$15 million for the preceding three years.

(2) A very small business is an entity that, together with its affiliates and controlling interests, has average gross revenues not to exceed \$3 million for the preceding three years.

(3) For purposes of determining whether an entity meets either of the definitions set forth in paragraph (b)(1) or (b)(2) of this section, the gross revenues of the entity, its affiliates, and controlling interests shall be considered on a cumulative basis and aggregated.

(4) Where an applicant or licensee cannot identify controlling interests under the standards set forth in this section, the gross revenues of all interest holders in the applicant, and their affiliates, will be attributable.

(5) A consortium of small businesses (or a consortium of very small businesses) is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (b)(1) of this section (or each of which individually satisfies the definition in paragraph (b)(2) of this section). Where an applicant or licensee is a consortium of small businesses (or very small businesses), the gross revenues of each small business (or very small business) shall not be aggregated.

(c) *Controlling interest.* (1) For purposes of this section, controlling

interest includes individuals or entities with *de jure* and *de facto* control of the applicant. *De jure* control is greater than 50 percent of the voting stock of a corporation, or in the case of a partnership, the general partner. *De facto* control is determined on a case-by-case basis. An entity must disclose its equity interest and demonstrate at least the following indicia of control to establish that it retains *de facto* control of the applicant:

(i) The entity constitutes or appoints more than 50 percent of the board of directors or management committee;

(ii) The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and

(iii) The entity plays an integral role in management decisions.

(2) *Calculation of certain interests.* (i) Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised.

(ii) Partnership and other ownership interests and any stock interest equity, or outstanding stock, or outstanding voting stock shall be attributed as specified in paragraphs (c)(2)(iii) through (c)(2)(ix) of this section.

(iii) Stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and, to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal, or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust.

(iv) Non-voting stock shall be attributed as an interest in the issuing entity.

(v) Limited partnership interests shall be attributed to limited partners and shall be calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses.

(vi) Officers and directors of an entity shall be considered to have an attributable interest in the entity. The officers and directors of an entity that controls a licensee or applicant shall be considered to have an attributable interest in the licensee or applicant.

(vii) Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and

application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

(viii) Any person who manages the operations of an applicant or licensee pursuant to a management agreement shall be considered to have an attributable interest in such applicant or licensee if such person, or its affiliate pursuant to § 1.2110(b)(4) of this chapter, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

(A) The nature or types of services offered by such an applicant or licensee;

(B) The terms upon which such services are offered; or

(C) The prices charged for such services.

(ix) Any licensee or its affiliate who enters into a joint marketing arrangement with an applicant or licensee, or its affiliate, shall be considered to have an attributable interest, if such applicant or licensee, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence,

(A) The nature or types of services offered by such an applicant or licensee;

(B) The terms upon which such services are offered; or

(C) The prices charged for such services.

(d) A winning bidder that qualifies as a small business or a consortium of small businesses as defined in § 80.1252(b)(1) or § 80.1252(b)(5) of this subpart may use the bidding credit specified in § 1.2110(e)(2)(ii) of this chapter. A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in § 80.1252(b)(2) or § 80.1252(b)(5) of this subpart may use the bidding credit specified in § 1.2110(e)(2)(i) of this chapter.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

15. 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.

§ 90.283 [Removed and Reserved]

16. Removed and reserve § 90.283.

[FR Doc. 98–19943 Filed 7–24–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 971015246–7293–02; I.D. 072098D]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for Massachusetts

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

ACTION: Commercial quota harvest.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the Commonwealth of Massachusetts has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Massachusetts for the remainder of calendar year 1998, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this document to advise the Commonwealth of Massachusetts that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in Massachusetts.

DATES: Effective 0001 hours, July 23, 1998, through December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Tom Warren, Fishery Management Specialist, (978) 281–9347.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The initial total commercial quota for summer flounder for the 1998 calendar year was set equal to 11,105,636 lb (5,037,432 kg) (62 FR 66304, December 18, 1997). The percent allocated to vessels landing summer flounder in Massachusetts is 6.82046 percent, or 757,841 lb (343,751 kg).

Section 648.100(e)(4) stipulates that any overages of commercial quota landed in any state be deducted from that state's annual quota for the

following year. In the calendar year 1997, a total of 745,171 lb (338,004 kg) were landed in Massachusetts, creating a 35,942 lb (16,303 kg) overage that was deducted from the amount allocated for landings in the Commonwealth during 1998 (63 FR 23227, April 28, 1998). The resulting quota for Massachusetts is 721,899 lb (327,488 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor state commercial quotas and to determine when a state's commercial quota is harvested. The Regional Administrator is further required to publish a document in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the Commonwealth of Massachusetts has attained its quota for 1998.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours July 23, 1998, further landings of summer flounder in Massachusetts by vessels holding commercial Federal fisheries permits are prohibited for the remainder of the 1998 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective July 23, 1998, federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in Massachusetts for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 21, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–19975 Filed 7–22–98; 2:35 pm]

BILLING CODE 3510–22–F