

period of SSM, then the owner or operator must take steps to minimize emissions to the extent practicable." 70 FR at 43993.

The exception to technology-based emission standards during SSM events, which applies when a source cannot meet the technology-based standard using all practicable steps to minimize emissions that are consistent with safety and good air pollution control practices, is appropriate and may be necessary to preserve the reasonableness of the underlying MACT standards. *Essex Chemical Corporation v. EPA*, 486 F.2d. 427, 432–33 (D.C. Cir 1973) (addressing exemption from New Source Performance Standards during SSM events); *Portland Cement Association v. Ruckelshaus*, 486 F.2d. 375, 398–99 (D.C. Cir. 1973) (same); *Marathon Oil v. EPA*, 564 F.2d. 1253, 1272–73 (9th Cir. 1977) (discussing need to provide upset defense for technology-based effluent limits to account for technology failure).

As discussed above and in the preamble to the proposed and final rules, the general duty to minimize emissions is sufficiently specific (71 FR 20448–49), and the SSM recordkeeping and reporting requirements are sufficient to assure compliance with the general duty clause. We note that in the Title V context, EPA's regulations specifically provide that recordkeeping requirements can adequately assure compliance. In particular, 40 CFR 70.6(a)(3)(i), which implements the statutory requirement of section 504(a) of the CAA, specifies that periodic testing and monitoring to determine compliance with an applicable requirement "may consist of recordkeeping designed to serve as monitoring." Moreover, 40 CFR 70.6(a)(3)(i)(b) (which requires title V permits to include monitoring and testing provisions when an underlying applicable requirement does not contain provisions) specifies that "[r]ecordkeeping provisions may be sufficient to meet the requirements of this paragraph (a)(3)(i)(B)."

Dated: April 12, 2007.

**Stephen L. Johnson,**  
Administrator.

[FR Doc. E7–7362 Filed 4–17–07; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 07–1447; RM–10798]

#### Radio Broadcasting Services; Annville, Manchester, Mt. Vernon, West Liberty, KY

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; denial of petition for reconsideration.

**SUMMARY:** This document denies a Petition for Reconsideration filed jointly by Vernon R. Baldwin, Inc., Morgan County Industries, Inc., and Vernon R. Baldwin ("Petitioners") directed to a letter which returned their Joint Petition for Rule Making ("Joint Petition"). The Joint Petition was defective because the proposed site at Mt. Vernon failed to provide a 70 dBu signal over the entire community due to terrain obstruction. This document finds that it is not in the public interest to allow Petitioners on reconsideration to reinstate and amend their Joint Petition with a new site because a Petition for Rule Making must be technically correct at the time of filing. With this action, the proceeding is terminated.

**FOR FURTHER INFORMATION CONTACT:** Helen McLean, Media Bureau (202) 418–2738.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Memorandum Opinion and Order*, adopted March 28, 2007, and released March 30, 2007. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, and Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or [www.BCPIWEB.com](http://www.BCPIWEB.com). This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this *Memorandum Opinion and Order* to the Government Accountability Office, pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A) because the petition for reconsideration was denied.

Federal Communications Commission.

**John A. Karousos,**

Assistant Chief, Audio Division Media Bureau.

[FR Doc. E7–7257 Filed 4–17–07; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 90

[WT Docket No. 99–87; RM 9332; FCC 07–39]

#### Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission or FCC) declines, for now, to establish a schedule for Private Land Mobile Radio (PLMR) systems in the 150–174 MHz and 421–512 MHz bands to transition to 6.25 kHz technology; and revises the implementation date of the 6.25 kHz requirement for equipment certification from January 1, 2005 to January 1, 2011.

**DATES:** Effective May 18, 2007.

**FOR FURTHER INFORMATION CONTACT:** Melvin Spann, [Melvin.Spann@FCC.gov](mailto:Melvin.Spann@FCC.gov), Mobility Division, Wireless Telecommunications Bureau at (202) 418–1333.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's *Third Report and Order* in WT Docket No. 99–87 (*Third Report and Order*), FCC 07–39, adopted on March 22, 2007, and released on March 26, 2007. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by sending an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or by calling the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

1. The *Third Report and Order* addresses issues raised in the *Second*

*Report and Order and Second Further Notice of Proposed Rule Making, (2nd R&O and 2nd FNPRM) and Third Memorandum Opinion and Order, Third Further Notice of Proposed Rule Making and Order (3rd MO&O, 3rd FNPRM and Order)* in this proceeding. The Commission takes the following significant actions in the *Third Report and Order*: (i) declines to establish a schedule for PLMR systems in the 150–174 MHz and 421–512 MHz bands to transition to 6.25 kHz technology, and (ii) revises the implementation date of the 6.25 kHz requirement for equipment certification from January 1, 2005 to January 1, 2011.

## I. Procedural Matters

### A. Paperwork Reduction Act Analysis

2. The *Third Report and Order* does not contain any new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

### B. Report to Congress

3. The Commission will send a copy of this *Third Report and Order* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

### C. Final Regulatory Flexibility Analysis

4. As required by the Regulatory Flexibility Act (RFA), *see* 5 U.S.C. 604, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible impact of the rule changes contained in this *Third Report and Order* on small entities. The Commission’s Consumer Information Bureau, Reference Information Center, will send a copy of this *Third Report and Order*, including the FRFA Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Need for, and Objectives of, the Third Report and Order

5. The *Third Report and Order* addresses comments in response to the *Third Further Notice of Proposed Rule Making*, in WT Docket 99–87; FCC 04–292 at 70 FR 34666, concerning a contemplated mandatory transition to 6.25 kHz technology for Private Land Mobile Radio (PLMR) users. In the *Third Report and Order*, we change the

implementation date of 47 CFR 90.203(j)(4)–(5) from January 1, 2005, to January 1, 2011. The rule change reduces burdens on equipment manufacturers and furthers the Commission’s objectives to encourage the development and use of increasingly spectrally efficient technology. Once the rule change becomes effective, applications for equipment certification received on or after January 1, 2011, will be granted only if the equipment either (1) is capable of operating on 6.25 kHz channels, or (2) meets a narrowband efficiency standard, *i.e.*, one channel per 6.25 kHz (voice) or 4800 bits per second per 6.25 kHz (data).

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

6. No comments or reply comments were filed in direct response to the IRFA. The Commission has, however, reviewed the general comments that may impact small businesses. Much of the potential impact on small businesses arose from the previous requirement that applications for equipment certification received on or after January 1, 2005, will be granted only if the equipment either (1) is capable of operating on 6.25 kHz channels, or (2) meets a narrowband efficiency standard, *i.e.*, one channel per 6.25 kHz (voice) or 4800 bits per second per 6.25 kHz (data). The burdens and hardships associated with equipment manufacturers meeting this requirement were cited in opposition to this requirement.

Description and Estimate of the Number of Small Entities To Which Rules Will Apply

7. 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 rules adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data. A “small organization” is generally “any not-for-profit enterprise which is independently owned and

operated and is not dominant in its field.” Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were “small governmental jurisdictions.” Thus, we estimate that most governmental jurisdictions are small.

8. The rule change effectuated by this *Third Report and Order* applies to manufacturers of radio equipment designed to operate on private land mobile frequencies in the 150–174 MHz and 421–512 MHz bands. The rule change and decisions herein also have a nominal, merely indirect application to users of Public Safety Radio Pool services and private radio licensees that are regulated under part 90 of the Commission’s rules.

9. *Equipment Manufacturers.* We anticipate that at least six radio equipment manufacturers will be affected by our decisions in this proceeding. The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.” The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year. Of this total, 1,010 establishments had employed less than 500, and an additional 13 had employed 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

10. *Public safety services and Governmental entities.* Public safety radio services include police, fire, local governments, forestry conservation, highway maintenance, and emergency medical services. The SBA rules contain a definition for small radiotelephone

(wireless) companies that encompass business entities engaged in radiotelephone communications employing no more than 1,500 persons. There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. The RFA also includes small governmental entities as a part of the regulatory flexibility analysis. As noted, under the RFA, the term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were "small governmental jurisdictions." Thus, we estimate that most governmental jurisdictions are small.

11. *Estimates for PLMR Licensees.* Private land mobile radio systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed a definition of small entities specifically applicable to PLMR users, nor has the SBA developed any such definition. The SBA rules do, however, contain a definition for small radiotelephone (wireless) companies. Included in this definition are business entities engaged in radiotelephone communications employing no more than 1,500 persons. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging" and "Cellular and Other Wireless Telecommunications." Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer

employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small. Thus, under this size standard, the majority of firms can be considered small. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The Commission's fiscal year 1994 annual report indicates that, at the end of fiscal year 1994, there were 1,101,711 licensees operating 12,882,623 transmitters in the PLMR bands below 512 MHz.

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

12. Equipment manufacturers need to make note of the new implementation date of January 1, 2011, for 47 CFR 90.203(j)(4)-(5) of the Commission's Rules, as established in this *Third Report and Order*. Applications for equipment certification and received on or after January 1, 2011, will be granted only if the equipment either (1) is capable of operating on 6.25 kHz channels, or (2) meets a narrowband efficiency standard, *i.e.*, one channel per 6.25 kHz (voice) or 4800 bits per second per 6.25 kHz (data). We believe that both small and large entities will encounter the same proportional costs to comply with these requirements.

#### Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

13. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."

14. The only rule change we adopt herein is to delay the implementation date of our certification requirements from January 1, 2005, to January 1, 2011. Applications for equipment certification received on or after January 1, 2011, will be granted only if the equipment either (1) is capable of operating on 6.25 kHz channels, or (2) meets a narrowband

efficiency standard, *i.e.*, one channel per 6.25 kHz (voice) or 4800 bits per second per 6.25 kHz (data). This rule change reduces the impact on equipment manufacturers of the prior rule, which required compliance sooner. We delayed the implementation date because a majority of commenters believed that enforcing an equipment authorization cut-off now would place onerous burdens on manufacturers. We anticipate that small licensees will experience little impact as a result of this rule change. By 2011, licensees in the market for new equipment will have a choice between 12.5 kHz-capable and 6.25 kHz-capable equipment.

15. We investigated alternatives to the January 1, 2011, implementation date of our certification requirements, including elimination of the requirements, as requested by some commenters. We rejected earlier dates because they might not allow enough time for 6.25 kHz standards to be finalized. We believe that earlier dates would not provide significant relief to equipment manufacturers, and that they would incur excessive costs to meet our certification requirements. Next, we considered dates after 2011, as well as eliminating our 6.25 kHz equipment certification requirements completely. While we realize that these options would further minimize the economic impact on equipment manufacturers, we rejected these options they would excessively delay our objective to encourage the development and use of spectrally efficient technology.

#### D. Report to Congress

16. The Commission will send a copy of this *Third Report and Order* in WT Docket No. 99-87, including the Final Regulatory Flexibility Analysis, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Third Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the SBA. A copy of the *Third Report and Order* and the Final Regulatory Flexibility Analysis (or summaries thereof) will also be published in the **Federal Register**.

Federal Communications Commission.

**Marlene H. Dortch,**  
Secretary.

#### Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 90 as follows:

## PART 90—PRIVATE LAND MOBILE RADIO SERVICES

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

**Authority:** Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 2. Amend § 90.203 by revising paragraph (j)(4) introductory text and paragraph (j)(5); and removing paragraph (j)(6); and by redesignating paragraphs (j)(7) through (j)(11) as (j)(6) through (j)(10) to read as follows:

### § 90.203 Certification required.

\* \* \* \* \*

(j) \* \* \*

(4) Applications for part 90 certification of transmitters designed to operate on frequencies in the 150.8–162.0125 MHz, 173.2–173.4 MHz, and/or 421–512 MHz bands, received on or after January 1, 2011, except for hand-held transmitters with an output power of two watts or less, will only be granted for equipment with the following channel bandwidths:

\* \* \* \* \*

(5) Applications for part 90 certification of transmitters designed to operate on frequencies in the 150.8–162.0125 MHz, 173.2–173.4 MHz, and/or 421–512 MHz bands, received on or after January 1, 2011, must include a certification that the equipment meets a spectrum efficiency standard of one voice channel per 6.25 kHz of channel bandwidth. Additionally, if the equipment is capable of transmitting data, has transmitter output power greater than 500 mW, and has a channel bandwidth of more than 6.25 kHz, the equipment must be capable of supporting a minimum data rate of 4800 bits per second per 6.25 kHz of channel bandwidth.

\* \* \* \* \*

[FR Doc. E7–7252 Filed 4–17–07; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 070404078–7078–01; I.D. 082806B]

RIN 0648–AV52

### Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures; Inseason Adjustments

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

**ACTION:** Final rule; inseason adjustments to groundfish management measures; request for comments.

**SUMMARY:** This final rule takes two actions: It establishes the 2007 harvest specifications for Pacific whiting (whiting) in the U.S. exclusive economic zone (EEZ) and state waters off the coasts of Washington, Oregon, and California; and, it announces inseason changes to management measures in the commercial and recreational Pacific Coast groundfish fisheries. These actions are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP). The 2007 whiting harvest specifications include the level of the acceptable biological catch (ABC), optimum yield (OY), tribal allocation, and allocations for the non-tribal commercial whiting sectors, and are intended to establish allowable harvest levels of whiting based on the best available scientific information. The inseason changes to fishery management measures are intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted species, and to reduce possible confusion to the public over differing state and Federal regulations.

**DATES:** Effective April 17, 2007.

Comments on this rule must be received no later than 5 p.m., local time on May 18, 2007.

**ADDRESSES:** You may submit comments, identified by I.D. 082806B by any of the following methods:

- E-mail:

*WhitingABCOYInseason1.nwr@noaa.gov*. Include I.D. 082806B in the subject line of the message.

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

- Fax: 206–526–6736, Attn: Gretchen Arentzen

- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, Attn: Gretchen Arentzen.

#### FOR FURTHER INFORMATION CONTACT:

Gretchen Arentzen (Northwest Region, NMFS), phone: 206–526–6147, fax: 206–526–6736 and e-mail *gretchen.arentzen@noaa.gov*; or Becky Renko (Northwest Region, NMFS), phone: 206–526–6110 fax: 206–526–6736 and e-mail *becky.renko@noaa.gov*.

#### SUPPLEMENTARY INFORMATION:

#### Electronic Access

This final rule is accessible via the Internet at the Office of the **Federal Register's** Web site at *http://www.gpoaccess.gov/fr/index.html*. Background information and documents are available at the Pacific Fishery Management Council's (Council's) Web site at *http://www.pcouncil.org/*.

#### Background

The Pacific Coast Groundfish FMP and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subpart G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Council, and are implemented by NMFS. A proposed rulemaking to implement the 2007–2008 specifications and management measures for the Pacific Coast groundfish fishery and Amendment 16–4 of the FMP was published on September 29, 2006 (71 FR 57764). The final rule to implement the 2007–2008 specifications and management measures for the Pacific Coast Groundfish Fishery was published on December 29, 2006 (71 FR 78638). These specifications and management measures were codified in the CFR (50 CFR part 660, subpart G). The final rule was subsequently amended on March 20, 2007 via a correcting amendment (71 FR 13043).

Changes to current groundfish management measures implemented by this action were recommended by the Council, in consultation with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, at its March 5–9, 2007, meeting in Sacramento, California. The Council recommended changes to current regulations pertaining to two separate actions: (1) Setting the final 2007 ABC and OY values for the Pacific coast whiting fishery and the 2007 tribal