

to the U.S. Coast Guard. We stated that technical details for this procedure (*e.g.*, where the MMSI database will reside, and how to ensure database access for all parties) would be developed upon mutual agreement between the participants, the Commission, and the U.S. Coast Guard. We have received letters from seven parties expressing interest in issuing domestic MMSIs and supporting our effort to privatize the procedures for issuing domestic MMSIs. We believe that multiple entities will allow increased options for vessel operators to choose an MMSI and that competition between the entities will help insure reasonable fees.

4. In order to expedite the issuing of domestic MMSIs by private entities, we are amending § 0.331 to delegate authority to the Chief, Wireless Telecommunications Bureau to enter into written agreements on a nondiscriminatory basis with qualified entities who desire to issue domestic MMSIs. The form and general terms of these agreements will be announced at a later date by Public Notice, as well as the names and addresses of entities with whom we have entered into written agreements. This list of entities will be updated and announced by Public Notice as necessary. This delegation of authority will reduce unnecessary administrative burdens and processing delays for both the maritime community and the Commission and allow us to expedite the issuing of domestic MMSIs.

5. Our decision to delegate authority to the Chief, Wireless Telecommunications Bureau is procedural in nature and therefore is not subject to the notice and comment and effective date requirements of the Administrative Procedures Act. *See* 5 U.S.C. 553(b)(A), (d); *Kessler v. FCC*, 326 F.2d 673 (D.C. Cir. 1963).

Ordering Clauses

6. The authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), part 0 of the Commission's rules IS AMENDED as set forth in the rule changes below, effective upon the adoption date of this *Order*.

List of Subjects in 47 CFR Part 0

Administrative practice and procedure.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

Accordingly, Title 47 of the Code of Federal Regulations, Part 0, is amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.131 paragraph (n) is revised to read as follows:

§ 0.131 Functions of the Bureau.

* * * * *

(n) Administers the Commission's commercial radio operator (part 13 of this chapter) and amateur radio programs (part 97 of this chapter) and the program for construction, marking and lighting of antenna structures (part 17 of this chapter) and the issuing maritime mobile service identities (MMSIs).

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 96-46; FCC 99-341]

Implementation of Section 302 of the Telecommunications Act of 1996: Open Video Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule; order on remand.

SUMMARY: This document amends various Commission rules in connection with the open video system proceeding as a result of rulings in the United States Court of Appeals Fifth Circuit case, *City of Dallas, Texas v. FCC*. The Fifth Circuit considered consolidated appeals of the Commission's open video system rules, affirming in part, reversing in part, and remanding in part, those rules to meet the needs of consumers and competitive entities.

DATES: Effective January 5, 2000.

FOR FURTHER INFORMATION CONTACT:

Steve Broeckaert at (202) 418-7200 or via internet at sbroecka@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Order on Remand*, CS Docket No. 96-46, FCC 99-341, adopted November 9, 1999 and released November 19, 1999. The Commission adopted proposed rules on Open Video Systems in *Notice of Proposed Rule Making*, 61 FR 10496 (1996). The complete text of this *Order on Remand* is available for inspection and copying during normal business hours in the FCC Reference Center

(Room CY-A257) at its headquarters, 445 12th Street, SW Washington, D.C. 20554, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, D.C. 20036, or may be reviewed via internet at <http://www.fcc.gov/csb/>.

Synopsis of Order on Remand

I. Introduction and Background

1. In this *Order on Remand*, the Commission amends its rules in accordance with the Fifth Circuit's decision in *City of Dallas, Texas v. FCC* which reviewed consolidated appeals of the Commission's open video system rules. The Telecommunications Act of 1996 ("1996 Act") added section 653 to the Communications Act of 1934, establishing open video systems as a framework for entry into the video programming marketplace. The Commission adopted a series of orders prescribing rules and policies governing the establishment and operation of open video systems. Among the decisions reached in rulemakings implementing the open video system provision of the 1996 Act, the Commission concluded that Congress did not intend to restrict open video system service to telephone companies alone, and permitted non-local exchange carriers and cable operators to operate, and to obtain carriage on open video systems where consistent with the public interest, convenience, and necessity.

2. Five petitions were filed with the Fifth Circuit and the challenges fell into three separate categories: (i) National Association of Telecommunications Advisors and Officers, the City of Dallas, and the U.S. Conference of Mayors challenged the impact of the Commission's open video system rules on local governments; (ii) National Cable Television Association challenged the treatment of cable operators under the video system rules; and (iii) BellSouth challenged the requirement that open video system operators obtain Commission certification before commencing construction related to open video systems.

3. The Fifth Circuit affirmed the Commission's rules: (i) limiting the fees that localities may charge to open video system operators pursuant to section 653(c)(2)(B) of the Communications Act; (ii) prohibiting localities from requiring open video systems to provide institutional networks; and (iii) prohibiting non-local exchange carrier cable operators and cable operators whose franchises have expired from becoming open video system operators

unless they face effective competition. Key provisions of the Commission's open video system rules, however, were reversed and remanded by the Fifth Circuit, requiring amendment of those rule provisions by the Commission. The following outlines the changes.

II. Key Changes

4. *Preemption of Open Video System Franchises.* Section 653(c)(1)(C) of the Communications Act provides that Parts III and IV of Title VI shall not apply to open video system operators. Included in Title VI is section 621(b)(1), which provides that a cable operator may not provide cable service without a franchise. The Commission concluded, in *Implementation of Section 302 of the Telecommunications Act of 1996: Open Video Systems*, ("Second Report and Order"), FCC-96-249, 11 FCC Rcd 18223 (1996) that localities are prohibited from requiring that open video system operators obtain a franchise prior to construction and operation of its system.

5. The Fifth Circuit concluded that the Commission's preemption of local franchising requirements is at odds with the 1996 Act's preservation of state and local authority. However, the Court ruled that simply saying that section 621 shall not apply to open video system operators does not expressly preempt local franchising authority, as section 601(c)(1) of the 1996 Act directs that amendments shall not be construed to modify, impair, or supercede Federal, State or local law unless expressly so provided in such Act or amendments.

6. While discussed in detail by the Court, the franchise prohibition had not been codified and the Commission had implemented no rules. Consequently, in this *Order on Remand* the Commission need not amend its rules to effectuate the Fifth Circuit's decision on this matter. The decision to impose a franchise requirement on an open video system operator is left to the discretion of a locality.

7. *Commission Certification Prior to Construction of New Facilities.* In the *Second Report and Order*, the Commission stated that open video system operators may apply for certification at any time before commencement of service. If construction of a new plant is required, however, the applicant must obtain Commission approval of its certification prior to commencement of construction. Bell South argued to the Fifth Circuit that the Commission's pre-construction certification requirement was contrary to language of sections 651 and 653 of the Communications Act. The Fifth Circuit agreed, finding that the

Commission erred in adopting a pre-construction certification rule.

8. The Commission codified the pre-construction requirement at § 76.1502(a) of its rules. As a result of the Fifth Circuit's decision, the Commission deletes the pre-construction certification requirement from § 76.1502(a) of the Commission's Rules.

9. *Local Exchange Carriers as Cable Operators.* Section 653(a)(1) states that a local exchange carrier ("LEC") may provide cable service to subscribers in its telephone service area through an open video system. In adopting rules to effectuate this provision the Commission determined that it would not permit a cable operator to become an open video system operator in its cable franchise area if effective competition is not present for video programming delivery, even if it also becomes certified as a local exchange carrier within the franchise area. The Commission concluded that although section 653(a) allows LECs, without qualification, to operate open video systems within their telephone service area, it does not apply to cable operators that are also LECs. The Commission codified this provision at § 76.1501 of its rules.

10. The Fifth Circuit disagreed with the Commission's determination, as it applied to LEC cable operators, holding that a local exchange carrier, without qualification, may provide cable service in its telephone area through an open video system. In accordance with the Fifth Circuit's decision, the Commission amends § 76.1501 to provide that the effective competition requirement does not apply to a LEC cable operator that seeks open video system certification within its cable service area.

11. *Open Video System Operator Discretion.* In the *Second Report and Order*, the Commission granted open video system operators discretion to permit carriage of competing, in-region cable operators or their affiliates' programming. This provision was codified in § 76.1503(c)(2)(v)(A) of the Commission's rules. The Fifth Circuit invalidated the Commission's rules permitting an open video system operator discretion to permit carriage of a competing, in-region cable operator's programming, finding that section 653(b)(1)(A) requires the Commission to prohibit an operator of an open video system from discriminating among video programming providers with regard to carriage on its open video system. The Fifth Circuit instructed the Commission, on remand, to forbid discrimination among video programming providers, as section 653(b)(1)(A) requires. In this *Order on*

Remand, the Commission concludes that the most efficient and expeditious method of discharging the Fifth Circuit's remand is to delete § 76.1503(c)(2)(v)(A) of the Commission's rules which grants discretion to open video system operators with regard to carriage of the programming of competing, in-region cable operators and their affiliates.

III. Ordering Clauses

12. Pursuant to sections 4(i), 303(r) and 653 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 573, the Commission's rules are hereby amended.

13. The Commission's Office of Public Affairs, Reference Operation Division, shall send a copy of this *Order on Remand* including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of Small Business Administration, in accordance with paragraph section 603(a) of this Regulatory Flexibility Act. Public Law 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 76

Open video system.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.

For the reasons discussed in the preamble, The Federal Communications Commission amends 47 CFR Part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.1501 is revised to read as follows:

§ 76.1501 Qualifications to be an open video system operator.

Any person may obtain a certification to operate an open video system pursuant to Section 653(a)(1) of the Communications Act, 47 U.S.C. 573(a)(1), except that an operator of a cable system may not obtain such certification within its cable service area unless it is subject to "effective competition" as defined in Section 623(l)(1) of the Communications Act, 47 U.S.C. 543(l)(1). The effective competition requirement of the preceding sentence does not apply to a local exchange carrier that is also a cable operator that seeks open video system certification within its cable

service area. A cable operator that is not subject to effective competition within its cable service area may file a petition with the Commission, seeking a finding that particular circumstances exist that make it consistent with the public interest, convenience, and necessity to allow the operator to convert its cable system to an open video system. Nothing herein shall be construed to affect the terms of any franchising agreement or other contractual agreement.

3. Section 76.1502 is amended by revising paragraph (a) to read as follows:

§ 76.1502 Certification.

(a) An operator of an open video system must certify to the Commission that it will comply with the Commission's regulations in 47 CFR 76.1503, 76.1504, 76.1506(m), 76.1508, 76.1509, and 76.1513. The Commission must approve such certification prior to the commencement of service at such a point in time that would allow the applicant sufficient time to comply with the Commission's notification requirements.

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4. Section 76.1503 is amended by revising paragraph (c)(2)(v) to read as follows:

§ 76.1503 Carriage of video programming providers on open video systems.

* * * * *

(c) * * *

(2) * * *

(v) Notwithstanding the general prohibition on an open video system operator's discrimination among video programming providers contained in paragraph (a) of this section, a competing, in-region cable operator or its affiliate(s) that offer cable service to subscribers located in the service area of an open video system shall not be entitled to obtain capacity on such open video system, except where a showing is made that facilities-based competition will not be significantly impeded.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 991217342-9342-01; I.D. 120199D]

RIN 0648-AN15

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework 31 to the Northeast Multispecies Fishery Management Plan

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

ACTION: Final rule and technical amendment.

SUMMARY: NMFS issues this final rule to implement management measures contained in Framework (FW) 31 of the Northeast Multispecies Fishery Management Plan (FMP). These measures include: An increase in the Gulf of Maine (GOM) cod trip limit to 400 lb (181.4 kg) per day with a maximum possession limit of 4,000 lb (1,814.4 kg); modification of the manner in which allowable trip limit overages are permitted and are calculated; and closure of an inshore area comprising Massachusetts Bay and Stellwagen Bank for February 2000. These measures constitute an inseason adjustment to the measures currently in place. The intent of this rule is to reduce discards in the GOM cod fishery while still achieving mortality objectives of the rebuilding plan in the FMP. In addition, this rule corrects errors contained in the final rule published October 15, 1999 (64 FR 55821), which implemented the approved measures contained in Amendment 9 to the FMP. The October 15, 1999, rule inadvertently omitted regulatory text to implement the approved Atlantic halibut measures.

DATES: Effective January 5, 2000, except for amendments to § 648.81 which are effective January 31, 2000, and the revision of § 648.88 (a)(1) which is effective November 15, 1999.

ADDRESSES: Copies of the FW 31 document, its Regulatory Impact Review (RIR), the Environmental Assessment (EA), and other supporting documents, and documents regarding Amendment 9 are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906-1036.

FOR FURTHER INFORMATION CONTACT:

Thomas A. Warren, Fishery Management Specialist, 978-281-9347.

SUPPLEMENTARY INFORMATION:

GOM Cod Measures

FW 27, which became effective on May 1, 1999, implemented measures to address overfishing and achieve the rebuilding goals of the FMP for GOM cod for the 1999 fishing year (May 1, 1999, through April 30, 2000). Because the status of the GOM cod stock was characterized by the Multispecies Monitoring Committee as collapsing, the New England Fishery Management Council (Council) chose a target total allowable catch (TAC) of 782 mt, which corresponded to the precautionary fishing mortality rate (F) goal of $F_{0.01}$. This TAC was selected as a target to ensure that the F_{MAX} TAC of 1,340 mt was not exceeded. FW 27 increased the size and duration of closed areas, decreased the cod landing limit to 200 lb (90.7 kg) per day at sea (DAS), and required the Regional Administrator (RA) to reduce the landing limit to between 5 and 100 lb (2.3 kg and 45.4 kg) per DAS, when 402 mt of GOM cod was landed (30 percent of the F_{MAX} target and 50 percent of the $F_{0.1}$ target). The 200-lb (90.7-kg) landing limit was reduced to 30 lb (13.6 kg) per DAS on May 28, 1999, based upon the RA's projection that 402 mt had been landed. Meanwhile, industry reports of high levels of discarding of cod precipitated the Council's May 28, 1999, request for emergency action to raise the GOM cod trip limit. NMFS determined that the situation did not meet the requirements for emergency action. Instead, on August 3, 1999, NMFS implemented interim measures to reduce levels of discarding and overall fishing mortality. These interim measures consisted of a landing limit of 100 lb (45.4 kg) per DAS, with a maximum possession limit of 500 lb (226.8 kg). The procedure for landing trip limit overages and the associated accounting of DAS (running clock) were revised to limit the amount of allowed overage to the equivalent of 1 day's landing limit. The interim measures are in effect through January 30, 2000.

FW 31 contains three measures with respect to GOM cod: (1) A GOM cod landing limit of 400 lb (181.4 kg) per DAS with a maximum possession limit of 4,000 lb (1,814.4 kg); (2) the closure, in February 2000, of an area of the GOM comprising Massachusetts Bay and Stellwagen Bank to vessels using gear capable of catching groundfish, with the exception of vessels using scallop dredge gear; and (3) an extension of the