

Dated: November 16, 1998.

William J. Muszynski,

Acting Regional Administrator, Region 2.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 98-182, RM-9222; FCC 98-251]

1998 Biennial Regulatory Review—Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes several amendments to the Commission's Rules as part of its 1998 biennial review of regulations. Additionally, this document addresses certain rules regarding extended implementation periods for public safety licensees, and an *ex parte* filing in the Commission's Refarming Proceeding, PR Docket No. 92-235, regarding trunking on frequencies in the bands between 150 and 512 MHz. This document proposes various rule changes applicable to the Private Land Mobile Radio Services that will either simplify and upgrade part 90 and/or be deregulatory in nature. The proposed rules will reduce the regulatory burden on licensees, and will promote more efficient and flexible use of the private land mobile radio frequency spectrum.

DATES: Comments are due January 4, 1999, and reply comments are due January 22, 1999.

ADDRESSES: Federal Communications Commission, Office of the Secretary, Room 222, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Gene Thomson, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418-0680.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, ("Notice"), WT Docket No. 98-182, FCC 98-251, adopted September 30, 1998, and released October 20, 1998. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, Room 246, 1919 M Street N.W. Washington, D.C. The complete text may be purchased from the Commission's copy contractor, ITS, Inc., 1231 20th St. N.W., Washington, D.C.

20036, telephone (202) 857-3800. The complete (but unofficial) text is also available on the Commission's Internet site at <<http://www.fcc.gov/Bureaus/Wireless/Notices/1998/index.html>> under the file name "fcc98251.txt" in ASCII text and "fcc98251.wp" in Word Perfect format.

Synopsis of the Notice of Proposed Rule Making

1. The Commission has released a *Notice of Proposed Rule Making* that proposes several amendments to the part 90 Private Land Mobile Radio Services rules. This action is part of our 1998 biennial review of regulations pursuant to Section 11 of the Communications Act of 1934, as amended. Section 11 requires us to review all our regulations applicable to providers of telecommunications service and determine whether any rule is no longer in the public interest as a result of meaningful economic competition between providers of telecommunications service, and whether such regulations should be deleted or modified. However, we believe it is appropriate to review all of our regulations relating to administering wireless services, not just those pertaining to providers of a telecommunications service, to determine which regulations can be streamlined or eliminated. A comprehensive review of part 90 of the Commission's Rules determined which regulations were either not in the public interest or were obsolete, overly complex, required editorial change, or redundant in nature.

2. The document proposes:

- a. to amend 47 CFR 90.35(c)(60) to indicate that, in addition to permitting the use of the listed frequencies at any location for low power, non-voice operation, voice operation will be permitted when the frequencies are used specifically for cargo handling purposes.
- b. to amend 47 CFR 90.149(a) to provide that licenses for stations authorized under part 90 will be issued for a term not to exceed ten years from the date of initial issuance or renewal.
- c. to amend 47 CFR 90.155 to permit any public safety applicant to seek extended implementation authorization pursuant to the provisions of 47 CFR 90.629.
- d. to amend 47 CFR 90.175(i)(14), to require that applicants for any of the fifteen 220 MHz public safety channels set forth in 47 CFR 90.719(c) and 90.720, submit their applications to a public safety frequency coordinator for frequency coordination prior to

submission of the applications to the Commission.

e. to amend 47 CFR 90.179 to provide that a radio facility authorized to a public safety licensee may be shared with a Federal government entity on a cost-shared, non-profit basis.

3. Additionally, the document requests comments on: (1) An *ex parte* filing in the Commission's Refarming Proceeding, PR Docket No. 92-235, regarding trunking on frequencies in the bands between 150 and 512 MHz; (2) the Land Mobile Communications Council's suggestion that decentralized trunking systems be designated as such on the licensees' authorizations, and whether two separate authorizations are needed for "hybrid" trunked systems; (3) whether the licensing requirement can be eliminated for certain part 90 frequencies and; (4) the concept of Adjacent Channel Coupled Power as proposed by Motorola, Inc. as an alternative approach to emission masks for limiting out-of-band emissions. The document proposes these rule changes applicable to the Private Land Mobile Radio Services that will either simplify and upgrade part 90 and/or be deregulatory in nature. The document also invites commenters to submit information on the costs and benefits of the rules at issue in this proceeding and of the Commission's proposed modifications. The document does not address the part 90 Commercial Radio Services.

Administrative Matters

Initial Regulatory Flexibility Analysis

4. As required by the Regulatory Flexibility Act ("RFA"), the Commission has prepared this present Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rule Making* ("Notice"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on this Notice. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 603(a).

A. Need For, and Objectives Of, the Proposed Rules

5. Although not required by statute, we initiate this proceeding in conjunction with the Commission's 1998 biennial regulatory under Section 11 of the Communications Act of 1934, 47 U.S.C. 161. Section 11 requires us to

review all our regulations applicable to providers of telecommunications service and determine whether any rule is no longer in the public interest as a result of meaningful economic competition between providers of telecommunications service, and whether such regulations should be deleted or modified. As part of our biennial review of regulations required under Section 11, however, we believe it is appropriate to review all of our regulations relating to administering wireless services, not just those pertaining to providers of a telecommunications service, to determine which regulations can be streamlined or eliminated. Therefore, to streamline part 90 of the rules and reduce regulatory requirements, the Commission proposes to amend part 90 of its rules to: (1) Modify the language of specific rules to eliminate the confusions that applicants have had, which in many cases, has caused additional effort on the part of the applicant and resultant delays in application processing; (2) extend all five-year license terms to ten years, thus reducing the licensee's burden and costs for license renewal; (3) for stations with an eight-month construction period, increase the time in which a station must be placed in operation from eight to twelve months; (4) provide extended implementation periods for public safety licensees under identical parameters regardless of the operating frequency band and; (5) permit public safety licensees with excess communications capacity to provide communications service to the Federal Government on a non-profit, cost-shared basis. We believe these changes will encourage growth of land mobile systems and enhance telecommunications offerings for consumers, producers and new entrants.

B. Legal Basis

6. Authority for issuance of this *Notice of Proposed Rulemaking* is 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).

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

7. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term "small business" as having the same meaning as "small business concern" under the Small Business Act, 15 U.S.C. 632. 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"). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

8. Depending upon individual circumstances, the various proposed rules will apply to only certain businesses and local government entities that operate radio systems for their own internal use in the Private Land Mobile Radio (PLMR) services. PLMR 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 nor would it be possible to develop a definition of small entities specifically applicable to PLMR users. 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.

9. We note that the Commission's 1994 Annual Report indicates that at the end of fiscal year 1994, there were approximately 292,000 stations and 5.4 million transmitters operating just in the 800 and 900 MHz and 24 GHz bands. Further, because any entity engaged in a business activity is eligible to hold a PLMR license, these proposed rules could potentially impact every small business in the U.S.

10. The RFA also includes small governmental entities as a part of the regulatory flexibility analysis. The definition of a small governmental entity is one with a population of less than 50,000. There are 85,006 governmental entities in the nation. This number includes such entities as states, counties, cities, utility districts, and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities, and towns, and of those, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we

estimate that 96 percent, or 81,600 are small entities that may be affected by our proposed rules. Therefore in this IRFA, we seek comment on the number of small businesses which could be impacted by the proposed rule changes.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

11. No new reporting, recordkeeping, or other compliance requirements would be imposed on applicants or licensees as a result of the actions proposed in this rulemaking proceeding.

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

12. Many of our proposed rules will result in economic benefits to small business and local government entities. We believe that there would be several public interest benefits gained by extending the license term for all part 90 licensees to ten years. First, there would be an economic benefit to new applicants in that their licensing costs would effectively be lowered. Under the Commission's current license fee structure, a part 90 licensee with a ten-year authorization has an economic advantage over a licensee with a five-year license in that it enjoys a longer license term at less cost. Second, under our proposal, existing five-year licenses would receive a ten-year renewal period upon expiration of the five-year license, thus halving the licensee's long-term renewal costs.

13. Regarding the proposal to increase the time in which a station must be placed in operation from eight to twelve months, we envision that this change in the regulatory treatment of PLMR stations would reduce the necessity for a licensee to request an extension of the time to construct, and thus would eliminate the costs necessary to make such a request.

14. The distinction between systems operating above and below 800 MHz is about to change because recently adopted rules will lead to the availability of new narrowband equipment and increase the possibility of using trunked equipment. This will, in turn, lead to larger, more complex public safety systems. Our proposal to permit "slow growth" extended implementation periods under the same parameters for systems operating below and above 800 MHz will enable faster system planning and implementation, resulting in reduced costs to licensees.

15. Permitting a public safety licensee to share its station with a Federal government entity, is on a non-profit, cost-sharing basis would be beneficial to

both parties. It would lower the operational costs of the public safety system in that the public safety licensee would obtain cost-sharing benefits from the Federal agency, and it would enable the Federal agency to obtain needed communications at a lower cost than if the Federal agency had to implement its own communications system.

16. We seek comments on these tentative conclusions.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

17. None.

Ordering Clauses

18. It is ordered that, pursuant to Sections 4(i), 4(j), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r) and 403, notice is hereby given of proposed amendments to part 90 of the Commission's Rules, 47 CFR part 90, in accordance with the proposals, discussions, and statement of issues in this *Notice of Proposed Rulemaking*.

19. It is further ordered that the Petition for Rulemaking submitted by the Association of Public-Safety Communications Officials-International, Inc. is granted to the extent indicated in the *Notice of Proposed Rulemaking*.

20. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 90

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

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 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, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 90.1 is amended by revising paragraph (b) to read as follows:

§ 90.1 Basis and purpose.

* * * * *

(b) *Purpose.* This part states the conditions under which radio communications systems may be licensed and used in the Public Safety Pool, Industrial/Land Transportation Pool, and the Radiolocation Radio Service. These rules do not govern radio systems employed by agencies of the Federal Government.

3. Section 90.35 is amended by revising paragraph (c)(60)(i) to read as follows:

§ 90.35 Industrial/Business Pool.

* * * * *

(c) * * *
(60) (i) Frequencies subject to this limitation may be used for voice or non-voice communications when utilized for cargo handling from a dock, or a cargo handling facility, to a vessel alongside. Any number of the frequencies may be authorized to one licensee for the purpose. Mobile relay stations may be temporarily installed at or in the vicinity of a dock or cargo handling facility and used when a vessel is alongside the dock or cargo handling facility.

* * * * *

4. Section 90.149 is amended by revising paragraph (a) to read as follows:

§ 90.149 License term.

(a) Licenses for stations authorized under this part will be issued for a term not to exceed ten (10) years from the date of the original issuance, modification, or renewal.

* * * * *

5. Section 90.155 is revised to read as follows:

§ 90.155 Time in which station must be placed in operation.

(a) All stations authorized under this part, except as provided in §§ 90.629, 90.665, and 90.685, must be placed in operation within twelve (12) months from the date of grant or the authorization cancels automatically and must be returned to the Commission.

(b) A local government entity in the Public Safety Pool, applying for any frequency in this part, may also seek extended implementation authorization pursuant to § 90.629.

(c) For purposes of this section, a base station is not considered to be placed in operation unless at least one associated mobile station is also placed in operation. See also §§ 90.633(d) and 90.631(f).

(d) Multilateration LMS systems authorized in accordance with § 90.353 must be constructed and placed in operation within twelve (12) months from the date of grant or the authorization cancels automatically and

must be returned to the Commission. MTA-licensed multilateration LMS systems will be considered constructed and placed in operation if such systems construct a sufficient number of base stations that utilize multilateration technology (see paragraph (e) of this section) to provide multilateration location service to a substantial portion of at least one BTA in the MTA.

(e) A multilateration LMS station will be considered constructed and placed in operation if it is built in accordance with its authorized parameters and is regularly interacting with one or more other stations to provide location service, using multilateration technology, to one or more mobile units. Specifically, LMS multilateration stations will only be considered constructed and placed in operation if they are part of a system that can interrogate a mobile, receive the response at 3 or more sites, compute the location from the time of arrival of the responses and transmit the location either back to the mobile or to a subscriber's fixed site.

(f) For purposes of this section, a station licensed to provide commercial mobile radio service is not considered to have commenced service unless it provides service to at least one unaffiliated party.

(g) Application for extension of time to commence service may be made on FCC Form 600. Extensions of time must be filed prior to the expiration of the construction period. Extensions will be granted only if the licensee shows that the failure to commence service is due to causes beyond its control. No extensions will be granted for delays caused by lack of financing, lack of site availability, for the assignment or transfer of control of an authorization, or for failure to timely order equipment. If the licensee orders equipment within 90 days of the license grant, a presumption of due diligence is created.

(h) An application for modification of an authorization (under construction) at the existing location does not extend the initial construction period. If additional time to commence service is required, a request for such additional time must be submitted on FCC Form 600, either separately or in conjunction with the submission of the FCC Form 600 requesting modification.

§ 90.167 [Removed]

6. Section 90.167 is removed.

7. Section 90.175 is amended by revising paragraph (i)(14) to read as follows:

§ 90.175 Frequency coordination requirements.

* * * * *

(i) * * *

(14) Except for applications for the frequencies set forth in §§ 90.719(c) and 90.720, applications for frequencies in the 220–222 MHz band.

* * * * *

8. Section 90.177 is amended by revising the second sentence of paragraph (d)(2) to read as follows:

§ 90.177 Protection of certain radio receiving locations.

* * * * *

(d) * * *

(2) * * * Prospective applicants should communicate with: Chief, Compliance and Information Bureau, Federal Communications Commission, Washington, D.C. 20554.

* * * * *

9. Section 90.179 is amended by adding paragraph (h) to read as follows:

§ 90.179 Shared use of radio stations.

* * * * *

(h) Licensees authorized to operate radio systems on Public Safety Pool frequencies designated in § 90.20 may share their facilities with Federal Government entities on a non-profit, cost-shared basis. Such a sharing arrangement is subject to the provisions of paragraphs (b), (d), and (e) of this section.

10. Section 90.187 is amended by adding paragraph (d) to read as follows:

§ 90.187 Trunking in the bands between 150 and 512 MHz.

* * * * *

(d) The maximum number of frequency pairs that may be assigned at any one time for the operation of a trunked radio station (class of station YG or YW) is ten.

11. Section 90.421 is revised to read as follows:

§ 90.421 Operation of mobile station units not under the control of the licensee.

Mobile stations, as defined in § 90.7 include vehicular-mounted and hand-held units. Such units may be operated by persons other than the licensee, as provided for below, when necessary for the licensee to meet its requirements in connection with the activities for which it is licensed. If the number of such units, together with units operated by the licensee, exceeds the number of mobile units authorized to the licensee, license modification is required. The licensee is responsible for taking necessary precautions to prevent unauthorized operation of such units not under its control.

(a) *Public Safety Pool.* (1) Mobile units licensed in the Public Safety Pool may be installed in any vehicle which in an emergency would require cooperation and coordination with the licensee, and in any vehicle used in the performance, under contract, of official activities of the licensee. This provision does not permit the installation of radio units in non-emergency vehicles that are not performing governmental functions under contract but with which the licensee might wish to communicate.

(2) Mobile units licensed under § 90.20(a)(2)(iii) may be installed in a vehicle or be hand-carried for use by any person with whom cooperation or coordinations is required for medical services activities.

(b) *Industrial/Business Pool.* Mobile units licensed in the Industrial/Business Pool may be installed in vehicles of persons furnishing under contract to the licensee and for the duration of the contract, a facility or service directly related to the activities of the licensee.

(c) In addition to the above, frequencies assigned to licensees in the Private Land Mobile Radio Services may be installed in the facilities of those who assist the licensee in emergencies and with whom the licensee must communicate in situations involving imminent safety to life or property.

12. Section 90.629 is amended by revising paragraphs (a)(1) and (a)(2) and adding paragraph (f) to read as follows:

§ 90.629 Extended implementation period.

* * * * *

(a) * * *

(1) The proposed system will require longer than twelve (12) months to construct and place in operation because of its purpose, size, or complexity; or

(2) The proposed system is to be part of a coordinated or integrated wide-area system which will require more than twelve (12) months to plan, approve, fund, purchase, construct, and place in operation; or

* * * * *

(f) Pursuant to § 90.155(b), the provisions of this section shall apply to local government entities applying for any frequency in the Public Safety Pool.

[FR Doc. 98–31608 Filed 11–25–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 648**

[I.D. 111698A]

New England Fishery Management Council; Public Meeting

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

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting to consider actions affecting New England fisheries in the exclusive economic zone.

DATES: The meeting will be held on Wednesday, December 9, 1998, at 9:00 a.m. and on Thursday, December 10, 1998, at 8:30 a.m.

ADDRESSES: The meeting will be held at the Sheraton Colonial Hotel, 427 Walnut Street, Wakefield, MA 01880; telephone (781) 245–9300. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036; telephone: (781) 231–0422.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231–0422.

SUPPLEMENTARY INFORMATION:**Wednesday, December 9, 1998**

The meeting will begin with reports on recent activities from the Council Chairman, Executive Director, the NMFS Acting Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, and representatives of the Coast Guard, the Atlantic States Marine Fisheries Commission, and the U.S. Fish and Wildlife Service. Following reports, the Chairman of the Herring Committee will ask for approval of draft regulations and other documents associated with the submission of the Fishery Management Plan (FMP) for the Atlantic Herring Fishery to NMFS. After a noon break, the Council intends to seek approval of management measures and draft regulations for Amendment 12 to the Northeast Multispecies FMP (for whiting, offshore hake, and red hake). As part of the whiting discussion, the Council also will resolve issues relative to meeting the plan objectives, the Sustainable Fisheries Act requirements, and provide an update on document