

adopted May 12, 2009 and released May 14, 2009 (*NPRM*), in CG Docket No. 03–123, seeking comment on whether the Commission should adjust VRS rates for the 2009–2010 Fund year. The full text of FCC 09–39 and subsequently filed documents in this matter are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission’s duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; the contractor’s Web site, <http://www.bcpweb.com>; or by calling (800) 378–3160. FCC 09–39 and subsequently filed documents in this matter may also be found by searching ECFS at <http://www.fcc.gov/cgb/ecfs> (insert CG Docket No. 03–123 into the Proceeding block).

To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). FCC 09–39 can also be downloaded in Word or Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/dro/trs.html>.

Initial Paperwork Reduction Act of 1995 Analysis

The *NPRM* does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed 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).

Synopsis

In the *NPRM*, the Commission seeks comment on whether it should recalculate the VRS rates established in *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, CG Docket No. 03–123, FCC 07–186, published at 73 FR 44170, July 30, 2008 (*2007 TRS Rate Methodology Order*) for the 2009–2010 Fund year based on recent data reflecting the actual costs of providing this service. The funding requirement for all forms of TRS has grown from approximately \$64 million for the 2002–2003 Fund year (the first year VRS was widely offered) to a proposed \$890,992,075 for the 2009–2010 Fund

year, and VRS continues to represent an increasingly large percentage of the total Fund size (for 2009–2010, 123,844,666 projected minutes of use, with payments totaling approximately \$779,873,811, or 87 percent of the total Fund). The *NPRM* notes that the VRS rates adopted in 2007 may not accurately reflect the providers’ reasonable actual costs of providing service in compliance with FCC rules. Current data show that VRS providers’ average actual costs per minute were \$4.5568 in 2006, \$3.9950 in 2007, and \$4.1393 in 2008.

The Commission, therefore, seeks comment on whether, for the 2009–2010 Fund year, it should adopt new VRS rates that correlate to providers’ cost data, rather than continuing to base rates on the *2007 TRS Rate Methodology Order*.

Initial Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” 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 that: (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). The *NPRM* seeks comment on a proposal for recalculating the VRS rates for the 2009–2010 Fund year based on recent data reflecting the actual costs of providing this service. The Commission notes that the funding requirement has grown from approximately \$64 million for the 2002–2003 Fund year to a proposed \$890,992,075 for the 2009–2010 Fund year, and that VRS continues to represent an increasingly large percentage of the total Fund size (for 2009–2010, 123,844,666 projected minutes of use, with payments totaling approximately \$779,873,811, or 87 percent). The Commission also notes that the Fund administrator has indicated that VRS providers’ average actual cost per minute was \$4.5568 in 2006, \$3.9950 in 2007, and \$4.1393 in 2008. The Commission now has the benefit of experience with two VRS rate cycles since the adoption of the *2007*

TRS Rate Methodology Order, and the VRS rates adopted in that order may not accurately reflect the providers’ reasonable actual costs of providing service in compliance with our rules. The Commission therefore seeks comment on whether to adopt new VRS rates that reflect providers’ cost data, rather than continue to base rates on the *2007 TRS Rate Methodology Order* that may result in the overpayment of providers contrary to section 225 and our rules. The Commission believes this action is consistent with its duty to protect the integrity of the Fund and American consumers who pay into the Fund, and with the statutory mandate to ensure that TRS is offered “in the most efficient manner” to persons with hearing and speech disabilities, 47 U.S.C. 225(b)(1); *see also Teleocator Network of America v. FCC*, 691 F.2d 525, 550 n. 191 (DC Cir. 1982) (“The Commission has an ongoing obligation to monitor its regulatory programs and make adjustments in light of actual experience. * * * This duty to finetune its regulatory approach as more information becomes available is necessarily the price of leeway the courts accord the Commission to pursue plans and policies bottomed on informed prediction.”).

Ordering Clauses

Pursuant to Sections 1, 4(i) and (o), 225, 303(r), 403, 624(g), and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (o), 225, 303(r), 403, 554(g), and 606, the *Notice of Proposed Rulemaking is adopted*.

The Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

[FR Doc. E9–11934 Filed 5–20–09; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WP Docket No. 07–100; FCC 09–29]

Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes revisions to the Commission's rules and policies regarding public safety operations in the private land mobile radio services. In the *Further Notice of Proposed Rulemaking* portion of this document the Commission proposes to reinstate an exemption for 4.9 GHz band applications from coordination via a certified frequency coordinator. Notwithstanding this proposal, the Commission also proposes a licensee-to-licensee coordination requirement for primary permanent fixed stations operating in the 4.9 GHz band. The remaining proposals consist of corrections and clarifications of frequency tables. The Commission makes first proposal because the Commission tentatively concludes that the exemption was deleted by inadvertent omission. The Commission makes the second proposal because it is concerned that the existing coordination rules may not protect primary permanent fixed stations from interference. The Commission proposes the frequency table corrections to fix various errors. The intended effects are to relieve 4.9 GHz band applicants from the cost of certified frequency coordination; ensure sufficient interference protection of 4.9 GHz band permanent fixed primary stations; and eliminate uncertainty regarding the licensing of particular public safety frequencies.

DATES: Comments are due July 20, 2009. Reply comments are due August 19, 2009.

ADDRESSES: You may submit comments, identified by WP Docket No. 07–100, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Thomas Eng, Policy Division, Public Safety and Homeland Bureau, Federal Communications Commission, Washington, DC 20554, at (202) 418–0019, TTY (202) 418–7233, via e-mail at

Thomas.Eng@fcc.gov, or via U.S. Mail at Federal Communications Commission, Public Safety and Homeland Security Bureau, 445 12th Street, SW., Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This is a summary of the *Further Notice of Proposed Rulemaking* portion of the Commission's *Report and Order and Further Notice of Proposed Rulemaking* in WP Docket No. 07–100, adopted on April 7, 2009, and released on April 9, 2009. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., in person at 445 12th Street, SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 488–5300, via facsimile at (202) 488–5563, or via e-mail at FCC@BCPIWEB.com. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities or by sending an e-mail to FCC504@fcc.gov or calling the Consumer and Governmental Affairs Bureau at (202) 418–0530, TTY (202) 418–0432. This document is also available on the Commission's Web site at <http://www.fcc.gov>.

The major proposals in the *Further Notice of Proposed Rulemaking* are as follows:

- Reinstatement to § 90.175 an exemption for 4.9 GHz band applications from coordination via a certified frequency coordinator.
- Impose a more formal licensee-to-licensee coordination requirement on primary fixed links in the 4.9 GHz band.
- Correct and clarify the 4.9 GHz band plan:
 - Amend § 90.1213 by correcting the channel number 14 bandwidth from five megahertz to one megahertz.
 - Amend the table in § 90.1213 to list all the center frequencies that should be used for every possible channel aggregation permitted in the rules.
 - Make three corrections to § 90.20 of the Commission's rules relating to the Public Safety Pool Frequency Table and associated limitations:
 - Amend the § 90.20(d)(66)(i) table of frequency pairs by correcting the mobile-only frequency for Channel MED–4 from 463.075 MHz to 468.075 MHz.
 - Amend § 90.20(c)(3) by replacing limitation 38 with limitation 10 on nine frequencies.
 - Amend § 90.20(c)(3) by replacing the text in the limitation column "O=xl'>72" with the numeral "72."

4.9 GHz General Exemption From Certified Frequency Coordination

We take this opportunity to address an apparent inadvertent omission of a Commission rule that provided an exemption to 4.9 GHz band applicants from certified frequency coordination. By this *Further Notice of Proposed Rulemaking*, we seek comment on reinstating the omitted language into the Commission's part 90 rules. When the Commission originally crafted the 4.9 GHz rules, it did not require frequency coordinators to certify applications because "all frequencies will be shared among licensees, and adjacent and co-located licensees are required to cooperate and coordinate in use of the spectrum." Accordingly, the Commission codified a frequency coordination exemption for applications for frequencies in the 4940–4990 MHz band (4.9 GHz exemption). The 4.9 GHz exemption appeared in the **Federal Register** entry for the *4.9 GHz Third Report and Order*, 68 FR 38635, June 30, 2003, as well as the 2003 and 2004 editions of the Commission's rules on § 90.175(j). However, in 2005 and subsequent editions of the Code of Federal Regulations, the exemption for 4.9 GHz applications was omitted.

The omission of the 4.9 GHz exemption appears to have occurred inadvertently as a result of a rulemaking in 2004. On February 10, 2004, the Commission released a *5.9 GHz Report and Order*, 69 FR 46438, August 3, 2004, to revise, inter alia, § 90.175(j) "by adding a new subparagraph (17)" to exempt from frequency coordination "applications for DSRCS [Dedicated Short-Range Communications Service] licensees (as well as registrations for Roadside Units) in the 5850–5925 GHz band" (DSRCS exemption). However, the 2003 Code of Federal Regulations, which was in effect at the time the *5.9 GHz Report and Order* was released, already contained seventeen exemptions in § 90.175(j). Because the *5.9 GHz Report and Order* stated that it was adding a new subparagraph, we tentatively conclude that the Commission did not intend to delete the 4.9 GHz exemption, then listed as § 90.175(j)(17). We base this tentative conclusion on the lack of any corresponding discussion in the *5.9 GHz Report and Order* relating to such a deletion, or any evidence of such an intention in subsequent proceedings. On July 1, 2004, as the result of an unrelated rulemaking, § 90.175 was further revised by removing subparagraph (j)(13) and redesignating subparagraphs (j)(14) through (17) as (j)(13) through (16). On August 3, 2004,

the **Federal Register** entry for the *5.9 GHz Report and Order* was published, 69 FR 46438, August 3, 2004, which overwrote the existing 4.9 GHz exemption in § 90.175(j)(16) with the DSRCS exemption rather than adding a new subparagraph as intended in the *5.9 GHz Report and Order*. Subsequently, the omission of the 4.9 GHz exemption was perpetuated through other rulemakings, such as the Commission's Biennial Regulatory Review in 2005. Because there is no evidence that the Commission intended to impose a requirement for certified frequency coordination on applicants in the 4.9 GHz band, we believe that the subparagraph numbering in the *5.9 GHz Report and Order* and the subsequent overwriting of the 4.9 GHz exemption were ministerial errors that contributed to the omission.

We find that reinstating the 4.9 GHz exemption would relieve applicants from burdens and fees associated with obtaining certified frequency coordination and would satisfy the Commission's original intent to encourage licensees to cooperate and coordinate with each other in use of the spectrum. In this regard, we tentatively conclude that correcting the error would serve the public interest. However, the omission has been in effect for a substantial period of time, and some entities may be operating under the assumption that formal coordination from a certified frequency coordinator is required for 4.9 GHz applications. We tentatively conclude that correcting the error by restoring the 4.9 GHz exemption would eliminate such uncertainty. Therefore, we seek comment on our tentative conclusion to amend § 90.175(j) to restore the exemption for applications for frequencies in the 4940–4990 MHz band from certified frequency coordination requirements. Notwithstanding this tentative conclusion, we propose a separate, more formal licensee-to-licensee coordination requirement for applications seeking authorization for primary permanent fixed stations, as discussed below.

Coordination for 4.9 GHz Primary Permanent Fixed Stations

As discussed in the *Report and Order*, we accord primary status to certain permanent fixed point-to-point and point-to-multipoint stations. We are also licensing all permanent fixed point-to-point and point-to-multipoint stations on an individual, site-by-site basis. As we seek to make clear in the previous proposal, 4.9 GHz licensees are not subject to a formal frequency coordination requirement via certified

frequency coordinators. Section 90.1209(b) addresses coordination matters by requiring that “[a]ll licensees shall cooperate in the selection and use of channels in order to reduce interference and make the most effective use of the authorized facilities.” We are concerned that the current rule language in § 90.1209(b) may not ensure that applicants for primary permanent fixed stations offer sufficient protection to other primary permanent fixed stations and other co-primary users. Without a specific coordination procedure in place, interference issues may arise between co-primary permanent fixed stations or other co-primary users of the band. We thus believe that additional measures are required to minimize the potential for interference.

Section 101.103(d) presently establishes a prior coordination process that we believe would also serve the application process for primary fixed 4.9 GHz stations. Section 101.103(d) provides that proposed frequency usage of fixed microwave stations must be prior coordinated with existing licensees, permittees, and applicants in the area. The coordination involves two separate elements: notification and response. To be acceptable for filing, all applications and major technical amendments must certify that coordination, including response, has been completed. The notification must specify the names of the licensees, permittees, and applicants with which coordination was accomplished. The notification must include relevant technical details of the proposal. Once notification is provided, affected parties have thirty days to respond. Accordingly, we propose to modify § 90.1209(b) to require applicants for primary fixed stations providing point-to-point and point-to-multipoint communications to successfully complete the prior coordination procedures of § 101.103(d). We seek comment on this proposal. Additionally, we invite commenters to suggest any alternative measures that would serve the purpose of our proposal.

4.9 GHz Band Plan Correction and Clarification

We seek comment on correcting an apparent error in the 4.9 GHz band plan and clarifying which center frequencies may be licensed when aggregating multiple channels into larger bandwidths. The band plan is governed by § 90.1213 of the Commission's rules. First, we identify an error in the bandwidth designated to channel number 14. In the *4.9 GHz Third Report and Order*, the Commission decided

that “the frequency utilization plan will consist of ten one-megahertz channels and eight five-megahertz channels * * *.” However, in the rule, “[c]hannel numbers 1 through 5 and 15 through 18 are 1 MHz channels and channels [sic] numbers 6 through 14 are 5 MHz channels,” which results in nine one-megahertz channels and nine five-megahertz channels. Accordingly, there is a discrepancy between the Commission's decision and the rule concerning the number of channels designated for each bandwidth.

Channel number 14 is designated as a five-megahertz bandwidth channel in the rules. However, the band edges of its upper neighbors, channel numbers 15 and 16 (each one megahertz wide) are only 0.5 and 1.5 megahertz away, respectively, and the band edge of its lower neighbor, channel number 13 (five megahertz wide) is only 0.5 megahertz away. Therefore, the five megahertz bandwidth of channel number 14 overlaps the bandwidth of channel numbers 13, 15 and 16. Since none of the other channels in the 4.9 GHz band have overlapping bandwidth, we tentatively conclude that the channel plan contains an error in the bandwidth of channel number 14. We propose to correct the channel number 14 bandwidth from five megahertz to one megahertz. We note that this correction would eliminate bandwidth overlap with adjacent channels, improve spectrum efficiency, restore symmetry to the band plan, and result in ten one-megahertz channels and eight five-megahertz channels, consistent with the Commission's intent in the *4.9 GHz Third Report and Order*. Also, we propose to grandfather existing licensees to minimize the effect of this rule change on existing operations. We seek comment on this proposed correction.

Finally, the Commission's Universal Licensing System accepts 4.9 GHz channel requests based on the center frequency. The Commission has been receiving applications for aggregated channels on improper center frequencies, which results in inefficient spectrum usage. For example, if a user seeks to aggregate two five-megahertz channels into a ten-megahertz bandwidth, the user might improperly request a frequency centered on one of the existing five-megahertz channels rather than centered in the middle of the desired ten-megahertz channel. The user takes up bandwidth over three or more channels rather than just the two channels that are needed. To resolve this problem, we propose to amend the table in § 90.1213 to list the center frequencies that should be requested for

every possible channel aggregation permitted in the rules. We believe that clarifying the band plan in this manner would improve spectrum efficiency and eliminate confusion over how to license aggregated channels. Also, we propose to grandfather existing licensees to minimize the effect of this clarification on existing operations. We seek comment on this proposal.

Public Safety Pool Corrections

We seek comment on making three “clean-up” amendments to § 90.20 relating to the Public Safety Pool Frequency Table and its associated limitations. The following proposed amendments would rectify three errors that Commission staff has discovered in this rule section since the release of the earlier *Notice of Proposed Rulemaking*, 72 FR 35190, June 27, 2007, in this proceeding. Although these errors may appear ministerial in nature, they have been in effect for a substantial period of time, and thus, we seek comment on the corrections.

First, in the § 90.20(d)(66)(i) table of frequency pairs, we note that Channel MED-4 has a mobile-only frequency of 463.075 MHz, unlike the other listed channels, which have mobile-only frequencies in the 468 MHz range. We tentatively conclude that 463.075 MHz was a typographical error, and we seek comment on a proposal to correct the mobile-only frequency for Channel MED-4 to 468.075 MHz. The lower half of the MED-4 pair, frequency 463.075 MHz in the base and mobile column, would remain unchanged.

Second, nine frequencies in the Public Safety Pool Frequency Table contain limitation 38; however, § 90.20(d)(38) only contains the text, “[Reserved].” We propose to replace limitation 38 with limitation 10 on those frequencies. In 2005, the Commission issued an order that, *inter alia*, replaced limitation 38 with limitation 10 in the Public Safety Pool Frequency Table because the two limitations were identical. A portion of the final rule appendix reads: “Section 90.20 is further amended by replacing limitation 38 with 10 in the Public Safety Pool Frequency Table of Section 90.20(c)(3) (Frequencies.) for frequencies 155.325, 155.3325, 155.355, 155.3625, 155.385, 155.3925, 155.4, 155.4075, 462.9375, 462.95625, 462.9625, 462.96875, 462.975, 462.98125, 462.9875, 462.99375, 467.95, 467.95625, 467.9625, 467.96875, 467.975, 467.98125, 467.9875 and 467.99375 * * *.” However, the list erroneously included frequency 462.9375 MHz, which does not have limitation 38, and excluded frequency

462.95 MHz, which has limitation 38. Also, the rule implementation was never completed for the listed frequencies in the 467 MHz range. Therefore, we seek comment on a proposal to complete the rule implementation of the *2005 Biennial Review Report and Order*, 70 FR 61049, October 20, 2005, and amend § 90.20(c)(3) by replacing limitation 38 with limitation 10 on the nine frequencies 462.95, 467.95, 467.95625, 467.9625, 467.96875, 467.975, 467.98125, 467.9875 and 467.99375 MHz.

Third, the frequency band 1427–1432 MHz in the Public Safety Pool Frequency Table contains an apparent error in the limitation column. The limitation reads, “O=’xl’>72.” We seek comment on a proposal to amend § 90.20(c)(3) by replacing the text in the limitation column “O=’xl’>72” with the numeral “72.” This correction would clarify that limitation 72 applies to this band. Limitation 72 reads, “[t]his frequency band is available to stations in this service subject to the provisions of § 90.259,” and § 90.259 contains provisions for the 1427–1432 MHz band.

Procedural Matters

Initial Paperwork Reduction Act Analysis

This document does not contain new or modified proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified proposed 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).

Comment and Reply Comment Filing Instructions

Pursuant to §§ 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated above. Comments may be filed using: (1) The Commission’s Electronic Comment Filing System (ECFS), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions

provided on the Web site for submitting comments.

- **For ECFS filers,** if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message “get form.” A sample form and directions will be sent in response.

- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission’s Secretary, Federal Communications Commission.

- The Commission’s contractor will receive hand-delivered or messenger-delivered paper filings for the Commission’s Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: To request materials in alternative formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Government Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty).

Interested parties may view documents filed in this proceeding on the Commission’s Electronic Comment Filing System (ECFS) using the

following steps: (1) Access ECFS at <http://www.fcc.gov/cgb/ecfs>. (2) In the introductory screen, click on "Search for Filed Comments." (3) In the "Proceeding" box, enter the *numerals* in the docket number. (4) Click on the box marked "Retrieve Document List." A link to each document is provided in the document list. Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. Filings and comments also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160, or via e-mail to fcc@bcpweb.com. This *Report and Order and Further Notice of Proposed Rulemaking* also may be downloaded from the Commission's Web site at <http://www.fcc.gov/>.

Ex Parte Presentations

This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. See generally 47 CFR 1.1202, 1.1203, 1.1206(a).

Initial Regulatory Flexibility Act Analysis

As required by the Regulatory Flexibility Act, the Commission has

prepared a Initial Regulatory Flexibility Analysis (IRFA) of the possible impact of the proposed rule changes contained in this *Further Notice of Proposed Rulemaking* on small entities. The IRFA is set forth in Appendix D of the *Report and Order and Further Notice of Proposed Rulemaking*. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to the *Further Notice of Proposed Rulemaking* and must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer Information Bureau, Reference Information Center, will send a copy of this *Report and Order and Further Notice of Proposed Rulemaking*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses

Accordingly, it is ordered, pursuant to sections 4(i), 303(r), and 403 of the Communications Act of 1934, 47 U.S.C. 154(i), 303(r), and 403, that this *Report and Order and Further Notice of Proposed Rulemaking* is hereby adopted.

It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Report and Order and Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the

Chief Counsel for Advocacy of the U.S. Small Business Administration.

List of Subjects in 47 CFR Part 90

Communications equipment, Radio.
Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Proposed Rules

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:

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) and 332(c)(7).

2. Section 90.20 is amended by revising the Frequency or band entries 462.950, 467.950, 467.95625, 467.9625, 467.96875, 467.975, 467.98125, 467.9875, 467.99375 and 1,427 to 1,432 in the Public Safety Pool Frequency Table of paragraph (c)(3) and the Frequencies base and mobile entry 463.075 in the table of paragraph (d)(66)(i) to read as follows:

§ 90.20 Public Safety Pool.

* * * * *

(c) * * *

(3) * * *

PUBLIC SAFETY POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
* * * * *	Megahertz		
462.950	do	10, 65	PM
467.950	do	10, 65	PM
467.95625	do	10, 44, 65	PM
467.9625	do	10, 27, 65	PM
467.96875	do	10, 44, 65	PM
467.975	do	10, 65	PM
467.98125	do	10, 44, 65	PM
467.9875	do	10, 27, 65	PM
467.99375	do	10, 44, 65	PM
1,427 to 1,432	Base, mobile or operational fixed	72.	

* * * * *

(d) * * *

(66) * * *

(i) * * *

Frequencies base and mobile (megahertz)	Mobile only (MHz)	Channel name
* * * * *	* * * * *	* * * * *
463.075	468.075	MED-4
* * * * *	* * * * *	* * * * *

* * * * *

3. Section 90.175 is amended by adding paragraph (j)(19) to read as follows:

§ 90.175 Frequency coordinator requirements.

* * * * *

(j) * * *

(19) Applications for frequencies in the 4940–4990 MHz band, except for primary, permanent fixed point-to-point and point-to-multipoint stations, which shall be subject to the requirements of §§ 90.1209(b) and 101.103(d) of this chapter.

4. Section 90.1209 is amended by revising paragraph (b) to read as follows:

§ 90.1209 Policies governing the use of the 4940–4990 MHz band.

* * * * *

(b) All licensees shall cooperate in the selection and use of channels in order to reduce interference and make the most effective use of the authorized facilities. Licensees of stations suffering or causing harmful interference are expected to cooperate and resolve this problem by mutually satisfactory arrangements. If licensees are unable to do so, the Commission may impose

restrictions including specifying the transmitter power, antenna height, or area or hours of operation of the stations concerned. Further, the Commission may prohibit the use of any 4.9 GHz channel under a system license at a given geographical location when, in the judgment of the Commission, its use in that location is not in the public interest. Applicants for primary, permanent fixed point-to-point and point-to-multipoint stations as defined in § 90.1207 shall be subject to the requirements of § 101.103(d) of this chapter.

* * * * *

5. Section 90.1213 is revised to read as follows:

§ 90.1213 Band plan.

(a) The following channel center frequencies are permitted to be aggregated for channel bandwidths of 5, 10, 15 or 20 MHz as described in paragraph (b) of this section. Channel numbers 1 through 5 and 14 through 18 are 1 MHz bandwidth channels, and channel numbers 6 through 13 are 5 MHz bandwidth channels.

Center frequency (MHz)	Bandwidth (MHz)	Channel Nos.
4940.5	1	1
4941.5	1	2
4942.5	1	3
4943.5	1	4
4944.5	1	5
4947.5	5	6
4952.5	5	7
4957.5	5	8
4962.5	5	9
4967.5	5	10
4972.5	5	11
4977.5	5	12
4982.5	5	13
4985.5	1	14
4986.5	1	15
4987.5	1	16
4988.5	1	17
4989.5	1	18

(b) The following tables list center frequencies to be licensed for aggregated channels only. A license may contain any combination of bandwidths from aggregated channels provided that the bandwidths do not overlap. The bandwidth edges (lower and upper frequencies) are provided to aid in planning.

(1) 5 MHz bandwidth aggregation:

Center frequency (MHz)	Channel Nos. employed	Lower frequency (MHz)	Upper frequency (MHz)
4942.5	1 to 5 ¹	4940	4945
4947.5	6	4945	4950
4952.5	7	4050	4955
4957.5	8	4955	4960
4962.5	9	4960	4965
4967.5	10	4965	4970
4972.5	11	4970	4975
4977.5	12	2975	4980
4982.5	13	4980	4985
4987.5	14 to 18 ¹	4985	4990

¹ These channels should only be used if all other channels are blocked.

(2) 10 MHz bandwidth aggregation:

Center frequency (MHz)	Channel Nos. employed	Lower frequency (MHz)	Upper frequency (MHz)
4945	1 to 6 ¹	4940	4950
4950	6 & 7	4945	4955
4955	7 & 8	4950	4960
4960	8 & 9	4955	4965
4965	9 & 10	4960	4970
4970	10 & 11	4965	4975

Center frequency (MHz)	Channel Nos. employed	Lower frequency (MHz)	Upper frequency (MHz)
4975	11 & 12	4970	4980
4980	12 & 13	4975	4985
4985	13 to 18 ¹	4980	4990

¹ These channels should only be used if all other channels are blocked.

(3) 15 MHz bandwidth aggregation:

Center frequency (MHz)	Channel Nos. employed	Lower frequency (MHz)	Upper frequency (MHz)
4947.5	1 to 7 ¹	4940	4955
4952.5	6 to 8	4945	4960
4957.5	7 to 9	4950	4965
4962.5	8 to 10	4955	4970
4967.5	9 to 11	4960	4975
4972.5	10 to 12	4965	4980
4977.5	11 to 13	4970	4985
4982.5	12 to 18 ¹	4975	4990

¹ These channels should only be used if all other channels are blocked.

(4) 20 MHz bandwidth aggregation:

Center frequency (MHz)	Channel Nos. employed	Lower frequency (MHz)	Upper frequency (MHz)
4950	1 to 8 ¹	4940	4960
4955	6 to 9	4945	4965
4960	7 to 10	4950	4970
4965	8 to 11	4955	4975
4970	9 to 12	4960	4980
4975	10 to 13	4965	4985
4980	11 to 18 ¹	4970	4990

¹ These channels should only be used if all other channels are blocked.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 070910507-81216-02]

RIN 0648-AV94

Endangered and Threatened Wildlife and Plants: Proposed Rulemaking to Establish Take Prohibitions for the Threatened Southern Distinct Population Segment of North American Green Sturgeon

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

ACTION: Proposed rule; request for comments; notice of availability of a draft environmental assessment.

SUMMARY: Under section 4(d) of the Endangered Species Act (ESA), the Secretary of Commerce (Secretary) is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. This proposed ESA 4(d) rule represents the regulations that we, the National Marine Fisheries Service (NMFS), believe necessary and advisable to conserve the threatened Southern Distinct Population Segment of North American green sturgeon (*Acipenser medirostris*; hereafter Southern DPS). We propose to apply the prohibitions listed under ESA sections 9(a)(1)(A) through 9(a)(1)(G) for the Southern DPS, and we highlight specific categories of activities that are likely to result in take of Southern DPS fish. We do not find it necessary and advisable to apply the take prohibitions to certain categories of activities that contribute to conserving the Southern DPS. We also propose a variety of methods by which take of the Southern DPS may be authorized.

We announce the availability of a draft environmental assessment (EA) that analyzes the environmental impacts of promulgating these proposed 4(d) regulations for the Southern DPS. Finally, we solicit comments regarding the draft EA and this proposed rule.

DATES: Comments regarding the proposed rule and supporting documents may be sent to the appropriate address or fax number (see **ADDRESSES**), no later than 5 p.m. Pacific Standard Time on July 20, 2009. A public hearing will be held promptly if any person so requests by July 6, 2009. Notice of the location and time of any such hearing will be published in the **Federal Register** not less than 15 days before the hearing is held.

ADDRESSES: You may submit comments, identified by RIN 0648-AV94, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.
- Facsimile (fax): 562-980-4027, Attn: Melissa Neuman.