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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 05-312; FCC 05-192]

Digital Television Distributed Transmission System Technologies; Clarification Order

AGENCY: Federal Communications Commission.

ACTION: Clarification.

SUMMARY: In this document, the Commission clarifies the interim guidelines relating to DTS that were established in the *Second DTV Periodic Report and Order*. The interim rules apply to stations that wish to use DTS during the pendency of this rulemaking proceeding in this docket.

DATES: Effective October 4, 2004.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Evan Baranoff, Evan.Baranoff@fcc.gov of the Media Bureau, Policy Division, (202) 418-2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Clarification Order*, FCC 05-192, adopted on November 3, 2005, and released on November 4, 2005. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. These documents will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Paperwork Reduction Act of 1995 Analysis

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13.

Summary of the Clarification

I. Introduction

1. In the *Second DTV Periodic Report and Order*, we approved in principle the use of distributed transmission system (DTS) technologies but deferred to a separate proceeding the development of rules for DTS operation and the examination of several policy issues related to its use. (See *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 69 FR 59500, October 4, 2004, (*Second DTV Periodic Report and Order*)). With this *Clarification*, we clarify the interim rules established in the *Second DTV Periodic Report and Order*, which will continue to be available for stations that wish to apply to use DTS technology during the pendency of this rulemaking proceeding. In the Notice of Proposed Rulemaking (*NPRM*), which is published elsewhere in this issue of the **Federal Register**, we examine the issues related to the use of DTS and propose rules for future DTS operation. The rules we propose in the *NPRM* will apply with respect to existing authorized facilities and to use of DTS after establishment of the new DTV Table of Allotments, which may afford stations the opportunity to apply to maximize their service areas after our current freeze on the filing of most applications.

II. Background

2. In the *Second DTV Periodic NPRM* in MB Docket No. 03-15, we sought comment on whether we should permit DTV stations to use DTS technologies. (See *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 03-15, 68 FR 7737 February 18, 2003, (*Second DTV Periodic NPRM*)). A DTV distributed transmission system would employ multiple synchronized transmitters spread around a station's service area. Each transmitter would broadcast the station's DTV signal on the same channel, relying on the performance of "adaptive equalizer" circuitry in DTV receivers to cancel or combine the multiple signals plus any reflected signals to produce a single signal. Such distributed transmitters could be considered to be similar to analog TV booster stations, a secondary, low power service used to fill in unserved areas in the parent station's coverage area, but DTV technology has the ability to enable this type of operation in a much more efficient manner. For analog TV boosters, in contrast to DTV DTS operation, significant self-interference

will occur unless there is substantial terrain blocking the arrival of multiple signals into the same area (for example, interference will occur if one signal arrives from the primary analog station directly and a second signal arrives from a booster station).

3. We received 18 comments in the *Second DTV Periodic Report and Order* relating to the use of DTS, with the parties generally supporting use of this technology. We agreed with the generally supportive comments that DTS technology offers potential benefits to the public and noted the encouraging, though limited, reports of the technology tested thus far. Accordingly, in the *Second DTV Periodic Report and Order* we approved in principle the use of DTS technology, set forth interim guidelines, and committed to undertake a rulemaking proceeding to adopt rules for DTS operations. We now initiate that rulemaking to propose rules for future DTS operation, seek further comment on DTS operations and clarify certain aspects of the interim rules established in the *Second DTV Periodic Report and Order*.

III. Clarification of DTS Interim Authorization Policy

4. In the *Second DTV Periodic Report and Order*, we decided to permit interim DTS operations if they provided predicted service only within a station's currently authorized area (including its replication area as well as any maximization area resulting from facilities granted by a construction permit or license). In addition, for an interim DTS proposal to be approved, we stated that it needed to be designed to serve essentially all of its replication coverage area. We now take this opportunity to respond to informal industry inquiries by clarifying how the interim guidelines apply to DTS during the pendency of this proceeding. Specifically, consistent with the requirement to serve the population that is currently served, DTS transmitters must be located within the DTV station's predicted noise-limited service contour (PNLC). We will consider on a case-by-case basis requests to extend beyond the PNLC by a minimal distance, provided such extension is necessary to permit coverage of the area within the PNLC. Further, consistent with this limitation, DTS transmitters will be limited to power levels such that any individual DTS transmitter's PNLC would only exceed the station's PNLC by a minimal amount consistent with the use of DTS to serve viewers within the PNLC. For this interim policy, a station's PNLC is based on its existing authorizations (combined coverage areas

from its DTV allotment, also referred to as its "replication" service area, plus its maximization construction permit, if any, and maximization license, if any). This policy reflects the decisions made in the *Second DTV Periodic Review Report and Order* to (1) require that DTS provide service to essentially all of a station's replication coverage area; (2) permit but not require coverage of any maximization area; and (3) prohibit use of DTS on a primary basis beyond a station's currently authorized area (including its replication area as well as any maximization area resulting from facilities granted by a construction permit or license).

5. We also clarify the requirement that the combined DTS noise-limited service be provided over all of a station's replication service area. To evaluate whether a request to use DTS during this interim period conforms to this requirement, we examine whether every location in a station's replication service area is within the PNLC of at least one proposed DTS transmitter. Because we do not protect DTS service beyond the station's PNLC, DTS signals beyond the PNLC are considered to have secondary status and must protect other licensed operations. Stations designing DTS operations should also recognize that DTS service beyond the area that the station "certified" it intends to serve (on Form 381 filed in accordance with the channel election process) may be considered secondary and unprotected in the planning for post-transition DTV service, and therefore may not be allowed to continue past the end of the transition unless specifically re-authorized. Consistent with our determination in the *Second DTV Periodic Report and Order*, the threshold for unacceptable interference to other stations will be new interference exceeding 0.1 percent based on the strongest of the multiple DTS signals (not based on the combined effect of the multiple DTS transmitters). Stations wishing to use DTS, like all other stations, are required to comply with § 73.625 of our rules with respect to service within the station's community of license (sometimes referred to as a predicted signal strength that is "noise-limited plus 7 dB") (47 CFR 73.625).

6. A station's desire to explore DTS operation is not acceptable grounds for an extension of the replication and maximization interference protection deadline. Any station employing an interim arrangement of DTS transmitters on its build-out deadline will be expected to demonstrate that its DTS operation meets the appropriate build-out requirement. Beyond these

decisions, our staff will determine on a case-by-case basis the adequacy of other aspects of proposed operation (including permissible power, antenna height, and the acceptability of interference showings).

IV. Procedural Matters

A. Regulatory Flexibility Act Analysis

7. No Regulatory Flexibility Act Analysis is legally required in the case of this *Clarification*.

B. Paperwork Reduction Act of 1995 Analysis

8. This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13.

C. Congressional Review Act

9. In order to supplement the submission of the *Second Periodic DTV Report and Order* which was made on October 8, 2004, the Commission will send a copy of *Clarification* in a report to be sent to Congress and the General Accountability Office, pursuant to the Congressional Review Act.

IV. Ordering Clauses

10. *It is ordered* pursuant to sections 1, 4(i) and (j), 5(c)(1), 7, 301, 302, 303(f) and (r), 307, 308, 309, 316, 319, and 336, of the Communications Act of 1934, as amended, 47 U.S.C. 51, 154(i) and (j), 155(c)(1), 157, 301, 302, 303(f) and (r), 307, 308, 309, 316, 319, and 336, that the policy regarding interim use of distributed transmission systems (DTS) is *clarified* as described herein. *It is further ordered* that, pursuant to 47 U.S.C. 155(c), the Chief, Media Bureau, is *granted delegated authority* to review and process applications to use DTS.

List of Subjects in 47 CFR Part 73

Digital television, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 112305D]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS has determined that an Atlantic bluefin tuna (BFT) quota transfer from the Atlantic tunas General category to the Reserve category in the amount of 200 metric tons (mt), is warranted. This action is being taken to account for any potential overharvests that may occur in the Angling category during the 2005 fishing year (June 1, 2005 through May 31, 2006) and to ensure that U.S. BFT harvest is consistent with recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), pursuant to the Atlantic Tunas Convention Act (ATCA), and to meet the domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP).

DATES: The effective date of the BFT quota transfer is December 2, 2005 through May 31, 2006.

FOR FURTHER INFORMATION CONTACT: Brad McHale, 978-281-9260.

SUPPLEMENTARY INFORMATION:

Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Act, (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by ICCAT among the various domestic fishing categories. The categories, together with the General category effort controls, are specified annually through procedures provided at § 635.23(a) and § 635.27(a). The 2005 BFT fishing year began on June 1, 2005, and ends May 31, 2006. The final initial 2005 BFT specifications and General category effort controls were published on June 7, 2005 (70 FR 33033).

Quota Transfer

To date, preliminary fishing reports from the 2005 recreational BFT fishery indicate a season of strong effort and participation which could potentially equate to high landings. This is in contrast with the low landing rates across the commercial BFT categories. The Angling category quota allocation of 288.6 mt for the 2005 season addressed several issues including Angling category quota overages during the last several years, consistency with baseline quota percentages established in the HMS FMP, and the Agency's intent to