

approved waterfowl hunting blinds along the shorelines of Bloodsworth Island range complex, provided that all necessary licenses and permits have been obtained from the Maryland Department of Natural Resources and the completed copy of the permit has been submitted to the Conservation Division Director at NAS Patuxent River. Waterfowl hunters must observe all warnings and range clearances, as noted herein.

(10) The regulations in this section shall be enforced by the Commander, Naval Air Station Patuxent River, Maryland, and such agencies as he/she may designate.

Dated: November 16, 2007.

**Lawrence A. Lang,**

*Deputy, Operations, Directorate of Civil Works.*

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## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

#### 33 CFR Part 334

#### United States Army Restricted Area, Kuluk Bay, Adak, AK

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Final rule.

**SUMMARY:** The Corps of Engineers is issuing a final rule establishing a restricted area within Kuluk Bay, Adak, Alaska. The purpose of this restricted area is to ensure the security and safety of the Sea Based Radar, its crew, and other vessels transiting the area. The restricted area is within an established moorage restriction area for the U.S. Navy. The restricted area will be marked on navigation charts to ensure security and safety for the public.

**DATES:** *Effective Date:* December 24, 2007.

**ADDRESSES:** U.S. Army Corps of Engineers, Attn: CECW-CO (David B. Olson), 441 G Street, NW, Washington, DC 20314-1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at (202) 761-4922, or Mr. Leroy Phillips, Corps of Engineers, Alaska District, Regulatory Branch, at (907) 753-2828.

**SUPPLEMENTARY INFORMATION:** In the July 30, 2007, issue of the **Federal Register** (72 FR 41470), the Corps published a proposed rule to establish a restricted

area in Kuluk Bay, Adak, Alaska. No comments were received in response to the proposed rule.

Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C.1) and Chapter XIX, of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C.3), the Corps is amending the restricted area regulations in 33 CFR 334 by adding § 334.1325 as a restricted area within Kuluk Bay, Adak, Alaska as described below. The restricted area is completely within an existing restricted area for the United States Navy in Kuluk Bay, Adak, Alaska, which was established at 33 CFR 334.1320 and designated on NOAA chart 16475.

#### Procedural Requirements

a. *Review under Executive Order 12866.* This rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. *Review under the Regulatory Flexibility Act.* This rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96-354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The Corps has determined that the establishment of this restricted area would have practically no economic impact on the public and no anticipated navigational hazard or interference with existing waterway traffic. Accordingly, the Corps certifies that this regulation will have no significant economic impact on small entities.

c. *Review under the National Environmental Policy Act.* Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps has determined that this regulation will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. An environmental assessment has been prepared. It may be reviewed at the district office listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

d. *Unfunded Mandates Act.* This rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small Governments

will not be significantly and uniquely affected by this rulemaking.

e. *Submission to Congress and the General Accountability Office.* Pursuant to Section 801(a)(1)(A) of the Administrative Procedure Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, the Corps has submitted a report containing this rule to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accountability Office. This rule is not a major rule within the meaning of section 804(2) of the Administrative Procedure Act, as amended.

#### List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

■ For the reasons set out in the preamble, the Corps amends part 334 as follows:

#### PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for 33 CFR part 334 continues to read as follows:

**Authority:** 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Add § 334.1325 to read as follows:

#### § 334.1325 United States Army Restricted Area, Kuluk Bay, Adak, Alaska.

(a) *The area.* The area within a radius 1,000 yards around the Sea Base Radar mooring site in all directions from latitude 51°53'05.4" N, longitude 176°33'47.4" W (NAD 83).

(b) *The regulation.* (1) No vessel, person, or other craft shall enter or remain in the restricted area except as may be authorized by the enforcing agency.

(2) A ring of eight lighted and marked navigation buoys marking the perimeter of the mooring anchor system will provide a visible distance reference at a radius of approximately 800 yards from latitude 51°53'05.4" N, longitude 176°33'47.4" W (NAD 83). Each buoy has a white light, flashing at 3 second intervals with a 2 nautical mile range. Vessels, persons or other craft must stay at least 200 yards outside the buoys.

(3) The regulation in this section shall be enforced by personnel attached to the Missile Defense Agency and/or by such other agencies as the Director, MDA—AK, Fort Richardson, Alaska, may designate.

Dated: November 16, 2007.

**Lawrence A. Lang,**

*Deputy, Operations, Directorate of Civil Works.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 76

[MB Docket No. 05-311; FCC 07-190]

#### Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission adopts rules and provides guidance to implement section 621(a)(1) of the Communications Act. The Commission solicited and reviewed comments on this section and found that to promote the federal goals of enhanced cable competition and accelerated broadband development, the Commission's rules regarding the local franchising process should be extended to incumbent cable operators. The Commission adopts measures to address a variety of means by which local franchising authorities are unreasonably refusing to award competitive franchises. The rules and guidance will facilitate enhanced cable competition and accelerated broadband development.

**DATES:** The rules contained in this Second Report and Order (*Second Report and Order*) will become effective December 24, 2007.

**FOR FURTHER INFORMATION CONTACT:** For additional information on this proceeding, contact Holly Saurer, [Holly.Saurer@fcc.gov](mailto:Holly.Saurer@fcc.gov) or Brendan Murray, [Brendan.Murray@fcc.gov](mailto:Brendan.Murray@fcc.gov) of the Media Bureau, Policy Division, (202) 418-2120.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Second Report and Order*, FCC 07-190, adopted on October 31, 2007, and released on November 6, 2007. 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](mailto:fcc504@fcc.gov) or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

### Summary of the Report and Order

#### I. Introduction

1. In this *Second Report and Order*, we provide further guidance on the operation of the local franchising process. To promote the federal goals of enhanced cable competition and accelerated broadband development, we extend a number of the rules promulgated in this docket's preceding First Report and Order (*First Report and Order*), 72 FR 13189, March 21, 2007, to incumbents as well as new entrants. We also decline to preempt state or local customer service laws that exceed the Commission's standards.

#### II. Background

2. New competitors are entering markets for the delivery of services historically offered by monopolists: traditional phone companies are entering the multichannel video market, while traditional cable companies are competing in the telephone market. Ultimately, both types of companies are projected to offer customers a "triple play" of voice, high-speed Internet access, and video services over their respective networks. These entities also face competition from other new providers of bundled services, including overbuilders and utility companies. We believe this competition for the delivery of bundled services will benefit consumers by reducing prices and improving the quality of service offerings. In the *First Report and Order*, we stated our concerns that competitive applicants seeking to enter the video market faced unreasonable regulatory obstacles, to the detriment of competition generally and cable subscribers in particular.

3. Specifically, in the *First Report and Order*, we adopted rules and provided guidance to implement section 621(a)(1) of the Communications Act of 1934, as amended (the Act), which prohibits franchising authorities from unreasonably refusing to award competitive franchises for the provision

of cable services. The record in the *First Report and Order* showed that new entrants eager to provide video service are often delayed, and in some cases derailed, by the unreasonable demands made by local franchising authorities (LFAs) during the franchising process. The *First Report and Order* found that these delays contravened the dual congressional goals of enhancing cable competition and accelerating broadband deployment. As such, the Commission found that the operation of the local franchising process in many jurisdictions constituted an unreasonable barrier to entry.

4. To eliminate unreasonable barriers to entry into the cable market, and to encourage investment in broadband facilities, we found in the *First Report and Order* that: (1) An LFA's failure to issue a decision on a competitive application within the timeframes specified in the order constitutes an unreasonable refusal to award a competitive franchise within the meaning of section 621(a)(1); (2) an LFA's refusal to grant a competitive franchise because of an applicant's unwillingness to agree to unreasonable build-out mandates constitutes an unreasonable refusal to award a competitive franchise within the meaning of section 621(a)(1); (3) an LFA's refusal to grant a competitive franchise because of an applicant's unwillingness to agree to a variety of franchise fee requirements that are impermissible under section 622 of the Act constitutes an unreasonable refusal to award a competitive franchise within the meaning of section 621(a)(1); (4) it would be an unreasonable refusal to award a competitive franchise if the LFA denied an application based upon a new entrant's refusal to undertake certain obligations relating to public, educational, and government channels (PEG) and institutional networks (I-Nets); and (5) it is unreasonable under section 621(a)(1) for an LFA to refuse to grant a franchise based on issues related to non-cable services or facilities.

5. Some of the Commission's findings in the *First Report and Order* relied, in part, on statutory provisions that do not distinguish between incumbent providers and new entrants; however, in light of the fact that the NPRM in this proceeding focused on competitive entrants, the findings were made applicable only to new entrants. At the same time that we adopted the *First Report and Order*, we therefore issued a *Further Notice of Proposed Rulemaking* (FNPRM), 72 FR 13230, March 21, 2007, to provide interested parties with the opportunity to provide comment on