

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Amendment of the Commission's Rules
Concerning Maritime Communications
PR Docket No. 92-257
RM-7956, 8031, 8352

THIRD REPORT AND ORDER AND
MEMORANDUM OPINION AND ORDER

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By the Commission:

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I. INTRODUCTION AND EXECUTIVE SUMMARY

1. In the *Second Report and Order* in this proceeding¹ the Commission adopted rules to promote operational, technical, and regulatory flexibility in the Maritime Services.² In the *Second Further Notice of Proposed Rulemaking* in this proceeding the Commission sought comment on proposals to simplify the licensing process for very high frequency (VHF) public coast stations.³ In this *Third Report and Order and Memorandum Opinion and Order*, we address the petition for reconsideration of our decisions in the *Second Report and Order* filed by WJG MariTEL (MariTEL).⁴ We also adopt rules aimed at streamlining our licensing process for VHF public coast stations. We conclude that the public interest would be served by providing licensees more flexibility in the use of maritime spectrum, while preserving this internationally-allocated radio service's core purpose of promoting the safety of life and property at sea. Moreover, we believe that these changes will (1) increase competition in the provision of telecommunications services; (2) increase the types of telecommunications services available to vessel operators; (3) promote more efficient use of maritime spectrum; (4) reduce regulatory and economic burdens on coast station licensees; and (5) allow maritime commercial mobile radio service (CMRS) providers to more quickly respond to market demand. The major rule changes we adopt today are summarized below.

- We modify our rules to adopt a geographic area licensing approach for VHF public coast stations. We designate nine licensing regions near major waterways (defined as maritime VHF Public Coast areas (VPCs)), based roughly on U.S. Coast Guard Districts, and thirty-three inland licensing regions (defined as inland VPCs), based on Economic Areas. We authorize a single licensee for all currently unassigned VHF public correspondence channels in each licensing region in lieu of the site-based approach presently used.
- We permit the continued operation of incumbent VHF public coast station licensees and private land mobile radio (PLMR) licensees sharing maritime spectrum in inland areas. Additionally, we require incumbents and geographic licensees to afford each other interference protection.
- We adopt a substantial service construction requirement for VHF public coast station licenses and permit partitioning and disaggregation of those licenses.

¹ Amendment of the Commission's Rules Concerning Maritime Communications, *Second Report and Order and Second Further Notice of Proposed Rule Making*, PR Docket No. 92-257, 12 FCC Rcd 16949 (1997) (*Second Further Notice*).

² The Maritime Services consist of the services governed by Part 80 of the Commission's Rules, and include public coast stations, private coast stations, and ship stations. See 47 C.F.R. Part 80.

³ The *Second Further Notice* also sought comment on specific proposals to simplify the regulatory treatment of high seas public coast stations and Automated Maritime Telecommunications System (AMTS) coast stations. *Second Further Notice*, 12 FCC Rcd at 17001-11. However, in light of the changes we adopt today to VHF public coast station licensing, we believe that it would be prudent to undertake a more comprehensive reexamination of the high seas and AMTS licensing schemes, particularly to determine whether the statutory objective of regulatory symmetry among CMRS providers requires the implementation of similar changes to high seas and AMTS licensing. See Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 6002(a)(2)(A), (B), 107 Stat. 312 (largely codified at 47 U.S.C. § 332 *et seq.*); see, e.g., Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, *Second Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 96-18, 12 FCC Rcd 2732, 2737 (1997) (*Paging Second Report and Order*). Therefore, we shall defer resolution of the proposals in the *Second Further Notice* regarding high seas and AMTS spectrum. Comments filed in this proceeding regarding these proposals will become a part of the record in our comprehensive reexamination of the high seas and AMTS licensing schemes. Applications for that spectrum will be governed by current procedures, but we nonetheless note that mutually exclusive applications for high seas and AMTS public coast spectrum cannot be resolved until competitive bidding procedures are adopted for those services, and that such applications may ultimately be dismissed. See Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, *Report and Order and Second Notice of Proposed Rule Making*, ET Docket No. 95-183, 12 FCC Rcd 18600, 18641-42 (1997) (*39 GHz Report and Order*).

⁴ MariTEL Petition for Reconsideration (filed Aug. 14, 1997) (MariTEL Petition).

- We clarify the safety watch requirements of VHF public coast station licensees.
- We adopt competitive bidding procedures to resolve mutually exclusive initial applications for VHF public coast station licenses, pursuant to Section 309(j) of the Communications Act.

2. Our decisions in this *Third Report and Order and Memorandum Opinion and Order* further our goal to improve maritime communications. In developing these new rules we are guided by several broad policy initiatives. First, we seek to establish a flexible regulatory framework that will (1) provide opportunities for continued development of competitive new services using maritime spectrum, (2) expedite market entry through streamlined licensing procedures, (3) promote technological innovation, and (4) eliminate unnecessary regulatory burdens. Second, we seek to enhance regulatory symmetry between maritime CMRS providers and other CMRS providers to ensure that market forces, and not regulatory forces, shape the development of the CMRS marketplace. Finally, we take into account the unique nature of the Maritime Services. Specifically, we note that (1) the frequencies are allocated internationally to facilitate interoperability; (2) use of maritime spectrum is subject to various statutes, treaties, and agreements; and (3) the primary purpose of these services is to provide for the safety of life and property at sea.

II. BACKGROUND

3. The Maritime Services provide for the unique distress, operational, and personal communications needs of vessels at sea and on inland waterways.⁵ Maritime frequencies are allocated internationally by the International Telecommunication Union (ITU) to facilitate interoperable radio communications among vessels of all nations and stations on land worldwide. Public coast stations, which are CMRS providers that allow ships at sea to send and receive messages and to interconnect with the public switched network, use VHF band frequencies to serve a port or coastal area.⁶

4. In November 1992, the Commission released a *Notice of Proposed Rule Making and Notice of Inquiry* in this proceeding to examine the expanding communications needs of the maritime community.⁷ Based on the comments received, it released a *First Report and Order* in May 1995, adopting rules that, *inter alia*, allowed the use of maritime VHF (156-162 MHz) band public correspondence frequencies by eligible entities in the Industrial and Land Transportation (I/LT) Radio Services⁸ away from navigable waterways. Additionally, the Commission released a *Further Notice of Proposed Rule Making* in response to commenters' requests for more flexible regulatory treatment of public

⁵ For a fuller description of the Maritime Services and the history of this proceeding, see *Second Further Notice*, 12 FCC Rcd at 16953-56.

⁶ See Implementation of Sections 3(n) and 332 of the Communications Act -- Regulatory Treatment of Mobile Services, *Second Report and Order*, GN Docket No. 93-252, 9 FCC Rcd 1411, 1448 (1994) (*CMRS Second Report and Order*); see also 47 C.F.R. § 2

⁷ Amendment of the Commission's Rules Concerning Maritime Communications, *Notice of Proposed Rule Making and Notice of Inquiry*, PR Docket No. 92-257, 7 FCC Rcd 7863 (1992) (*Notice of Inquiry*).

⁸ Part 90 of the Commission's Rules subsequently was amended to consolidate the private land mobile radio (PLMR) services into two service pools. Entities formerly eligible in any of the I/LT Radio Services are now included in the Industrial/Business Pool. 47 C.F.R. § 90.283 was amended, however, to retain the eligibility requirements originally governing the sharing of maritime frequencies by PLMR licensees. See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignments Policies of the Private Land Mobile Service, *Second Report and Order*, PR Docket No. 92-235, 12 FCC Rcd 14307 (1997) (*Refarming Second Report and Order*).

⁹ Amendment of the Commission's Rules Concerning Maritime Communications, *First Report and Order*, PR Docket No. 92-257, 10 FCC Rcd 8419, 8421-25, 8431 (1995).

coast stations and enhancements in marine communications equipment.¹⁰

5. On June 26, 1997, the Commission released a *Second Report and Order and Second Further Notice of Proposed Rule Making*, in which it adopted rules to, *inter alia*, permit the automated operation of public coast stations, reduce congestion through intra-service frequency sharing and inter-service frequency sharing with PLMR licensees, and permit the use of innovative technologies (such as automatic link establishment and the expanded use of narrow-band direct-printing (NB-DP) frequencies).¹¹ The Commission also proposed rules for geographic area licensing of VHF public coast stations, and sought comment on various proposals -- including permitting partitioning¹² and disaggregation¹³ of geographic licenses, and allowing incumbent VHF public coast station licensees and PLMR licensees sharing marine spectrum in inland regions to operate indefinitely.¹⁴ In addition, it proposed competitive

¹⁰ Amendment of the Commission's Rules Concerning Maritime Communications, *Further Notice of Proposed Rule Making*, PR Docket No. 92-257, 10 FCC Rcd 5725 (1995).

¹¹ *Second Further Notice*, 12 FCC Rcd at 16951-52.

¹² "Partitioning" is the assignment of geographic portions of a geographic service area along geopolitical or other boundaries.

¹³ "Disaggregation" is the assignment of discrete portions of spectrum licensed to a geographic area licensee.

¹⁴ *Second Further Notice*, 12 FCC Rcd at 16952.

bidding rules for public coast stations.¹⁵ Seventeen comments and eight reply comments to the *Second Further Notice* were received.¹⁶

6. On August 5, 1997, shortly before the comment period for the *Second Further Notice* closed, President Clinton signed into law the Balanced Budget Act of 1997 (Balanced Budget Act).¹⁷ Section 309(j)(2) of the Communications Act formerly stated that mutually exclusive applications for initial licenses or construction permits were auctionable if the principal use of the spectrum was for subscriber-based services, and competitive bidding would promote the expressed objectives of the Act.¹⁸ We concluded under former Section 309(j)(2) that, because public coast stations are CMRS providers,¹⁹ mutually exclusive initial applications were auctionable.²⁰ This conclusion is unchanged by the Balanced Budget Act, which expanded the Commission's auction authority by amending Section 309(j) to provide that all mutually exclusive applications for initial licenses or construction permits *shall* be auctioned, with certain limited exceptions.²¹

7. While our actions in this proceeding are designed to improve maritime telecommunications, applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. The FCC does not endorse any particular services, technologies, or products, and grant of an FCC license does not guarantee business success. Applicants should perform their individual due diligence before proceeding in an auction, as they would with any new business venture.

III. DISCUSSION

A. VHF Public Coast Station Spectrum

8. There are only nine channel pairs in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit) bands assignable to VHF public coast stations for public correspondence.²² Along the Canadian border, even fewer channel pairs are available for U.S. stations.²³ Currently, these channel pairs also are assignable

¹⁵ *Id.* at 17011.

¹⁶ A list of commenters is provided in Appendix A. On October 6, 1997, MariTEL filed Reply Comments, along with a Motion to Accept Late-Filed Reply Comments. *See* MariTEL Motion to Accept Late-Filed Reply Comments at 1. On February 26, 1998, MariTEL filed Supplemental Comments, along with a Motion to Accept Supplemental Comments. *See* MariTEL Motion to Accept Supplemental Comments at 1. Since MariTEL's additional comments could have been labeled as *ex parte* filings, we find no reason not to accept its Reply Comments and Supplemental Comments, and thus we grant MariTEL's motions.

¹⁷ Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 (1997) (Balanced Budget Act).

¹⁸ *See* 47 U.S.C. § 309(j) (1996).

¹⁹ *CMRS Second Report and Order*, 9 FCC Rcd at 1448.

²⁰ *See* Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2348, 2356-57, on reconsideration, *Second Memorandum Opinion and Order*, 9 FCC Rcd 7245 (1994) (*Competitive Bidding Second Report and Order*).

²¹ 47 U.S.C. § 309(j) (as amended by Balanced Budget Act, § 3002).

²² 47 C.F.R. § 80.371(c).

²³ *See* 47 C.F.R. § 80.57. In addition, VHF Channel 88 may be authorized within 120 kilometers (75 miles) of the Canadian border on the Great Lakes, the St. Lawrence Seaway, and the Puget Sound and the Strait of Juan de Fuca and its approaches. *See* 47 C.F.R. § 80.371(c).

to I/LT users in areas removed from public coast stations and navigable waterways.²⁴

1. Geographic area licensing

9. *Proposal.* Under our current rules, the service area for VHF public coast stations is applicant-defined based on predicted signal strength over the waterway to be served.²⁵ The size of each station's service area also determines the mileage separation between co-channel assignments. Using a conservative estimate, service areas for VHF band public coast stations extend 20 to 30 miles from the transmitter. In order to establish a comprehensive and consistent regulatory approach that enhances maritime communications, in the *Second Further Notice* the Commission proposed a transition from site-specific "service area"-based licensing to licensing based on FCC-defined geographic areas.²⁶

10. *Decision.* We conclude that the public interest will best be served by a transition to geographic area licensing for VHF public coast station spectrum. This approach will facilitate the development of wide-area, multi-channel automated maritime communications systems. It also will promote regulatory symmetry between maritime licensees and other CMRS providers where geographic licensing has been introduced, consistent with the congressional directive set forth in the Omnibus Budget Reconciliation Act of 1993.²⁷ We disagree with Mobile Marine Radio, Inc. (MMR), an MF, HF, and VHF public coast station licensee, that our pursuit of this objective is futile due to the limited amount of available VHF public coast station spectrum.²⁸ We believe that CMRS licensees should be afforded regulatory symmetry wherever feasible, regardless of the amount of spectrum designated for specific CMRS uses.²⁹ In addition, we agree with MariTEL, a VHF public coast station licensee, that changing our current licensing approach in favor of geographic licensing will enable public coast station licensees to be more competitive with other CMRS providers and better serve the public.³⁰ Further, we disagree with the contentions of MMR that geographic area licensing will undermine the essential purposes of the Maritime Services, so should be employed only in those areas where PLMR sharing is permitted.³¹ As we indicated in the *Second Further Notice*, our goal in this proceeding is to improve maritime radio in ways that take into account the unique nature of the Maritime Services, including its primary purpose of providing for safety of life and property at sea.³² We believe that the geographic licensing approach will enhance maritime communications by expediting the assignment of the remaining channel pairs and facilitating development of automated coastal systems.

²⁴ 47 C.F.R. § 90.283(d).

²⁵ See 47 C.F.R. Part 80 Subpart P.

²⁶ *Second Further Notice*, 12 FCC Rcd at 16988.

²⁷ Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 6002(a)(2)(A), (B), 107 Stat. 312 (largely codified at 47 U.S.C. § 332 *et seq.*); see, e.g., *Paging Second Report and Order*, 12 FCC Rcd at 2737.

²⁸ MMR Comments at 4-5.

²⁹ See Implementation of Sections 3(n) and 332 of the Communications Act--Regulatory Treatment of Mobile Services, *Third Report and Order*, GN Docket No. 93-252, 9 FCC Rcd 7988, 8001-03 (1994), *aff'd on other grounds sub nom.* Suncom Mobile & Data, Inc. v. FCC, 87 F.3d 1386 (D.C. Cir. 1996).

³⁰ MariTEL Comments at 2.

³¹ MMR Comments at 5-8; see also, e.g., Ross Comments at 8; Robert Sassaman Comments at 1.

³² *Second Further Notice*, 12 FCC Rcd at 16956.

11. Moreover, we are not persuaded by the concerns of UTC, the Telecommunications Association (UTC), which represents utility and pipeline companies, and the Industrial Telecommunications Association and the Council of Independent Communications Suppliers (ITA/CICS), which represent PLMR users, that geographic licensing will adversely affect PLMR incumbents' operations and access to this spectrum.³³ As discussed below, incumbents' operations will be protected under the new licensing approach. In addition, partitioning and disaggregation will be permitted, which will allow PLMR users to obtain spectrum through partitioning and disaggregation arrangements in areas beyond those in which Section 90.283 of our Rules currently allows them to be licensed.³⁴ Thus, this action will potentially increase their access to this spectrum.

2. Service areas

12. *Proposal.* The Commission proposed in the *Second Further Notice* to divide the nation -- coastline and interior -- into nine regions, based on U.S. Coast Guard Districts,³⁵ as listed below:

Proposed Regions (*Coast Guard District*)

Northern Atlantic (<i>1st</i>)	Gulf of Mexico (<i>8th</i>)
Mid-Atlantic (<i>5th</i>)	Northern Pacific (<i>13th</i>)
Southern Atlantic (<i>7th</i>)	Southern Pacific (<i>11th</i>)
Great Lakes (<i>9th</i>)	Alaska (<i>17th</i>)
Hawaii (<i>14th</i>)	

The Commission sought comment on whether U.S. Coast Guard Districts provide an appropriate basis for defining service areas for the VHF public coast service, and asked commenters to discuss alternative service area definitions.³⁶

13. *Decision.* After reviewing the record in this proceeding and our initial proposals, we believe that the best service area definition for VHF public coast station spectrum deviates slightly from our initial approach. We conclude that regions analogous to U.S. Coast Guard Districts should be the licensing areas near major waterways, but not elsewhere. We partially agree with the suggestion that we use smaller units than U.S. Coast Guard Districts, such as Rand McNally's Basic Trading Areas (BTAs) or the Commerce Department's Economic Areas (EAs),³⁷ in order to permit smaller entities to participate in auctions without having to bid for territory far exceeding their operating needs.³⁸ When we converted from site-based licensing to geographic licensing of 220-222 MHz band frequencies (the

³³ UTC Comments at 3-4; ITA/CICS Comments at 4-5; ITA/CICS Reply Comments at 2-3.

³⁴ 47 C.F.R. § 90.283.

³⁵ See 33 C.F.R. Part 3.

³⁶ *Second Further Notice*, 12 FCC Rcd at 16989.

³⁷ See 47 C.F.R. §§ 24.102, 90.7; see also *Rand McNally Commercial Atlas & Marketing Guide* 38-39 (128th ed. 1997). We have sometimes referred to EAs as Basic Economic Areas. See Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, *Third Notice of Proposed Rulemaking and Supplemental Tentative Decision*, CC Docket No. 92-297, 11 FCC Rcd 53, 85 (1995).

³⁸ Robert Sassaman Comments at 1; UTC Comments at 3-4. Commenters particularly object to creating just one licensing area in the Eighth U.S. Coast Guard District, which covers North Dakota, South Dakota, Wyoming, Nebraska, Iowa, Colorado, Kansas, Missouri, Kentucky, West Virginia, Tennessee, Arkansas, Oklahoma, New Mexico, Texas, Louisiana, Mississippi, Alabama, and parts

frequency band designated for auction that most closely approximates public coast VHF spectrum), we used different-sized licensing areas in order to afford licensees the opportunity to provide different types of service offerings.³⁹ The smallest licensing area we used was the EA because we believed that it best approximated the smallest area desired by the typical user.⁴⁰ Similarly, we find that EAs, as defined in Section 27.6 of our Rules,⁴¹ are appropriate licensing areas for the VHF public coast spectrum in inland areas, because they reflect urban, suburban, and rural traffic patterns, and thus approximate the smallest area desired by a typical user.⁴²

14. Yet one of our principal reasons for converting to geographic licensing is that our current licensing approach has "ma[d]e it extremely difficult for a single entity to obtain enough geographically and spectrally contiguous stations to develop an automated coastal system."⁴³ We believe that using licensing areas smaller than U.S. Coast Guard Districts in maritime areas would similarly impede the development of such systems.⁴⁴ Thus, we conclude that using areas analogous to U.S. Coast Guard Districts in the maritime areas is the most appropriate alternative, because, as MariTEL notes, coast station operators are required to coordinate safety communications services with the Coast Guard, and because the U.S. Coast Guard Districts reflect vessel movement patterns.⁴⁵ Thus, geographic licensees will be able to provide appropriate wide-area services to vessels, and to better compete with other CMRS providers.

15. Therefore, licensing areas identical to EAs shall be used in inland regions, but licensing areas analogous to U.S. Coast Guard Districts shall be used in maritime areas. We will distinguish between EAs that are near one or more major waterways,⁴⁶ referred to herein as maritime EAs, and those EAs no part of which is within one hundred miles of a major waterway, referred to herein as inland EAs.⁴⁷ Each inland EA will constitute a separate licensing area,

of Pennsylvania, Ohio, Indiana, Illinois, Wisconsin, Minnesota, Florida, Georgia, and the Gulf of Mexico, *see* 33 C.F.R. § 3.40-1. ITA/CICS Comments at 4-5; Robert Sassaman Comments at 1.

³⁹ Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, *Third Report and Order and Fifth Notice of Proposed Rulemaking*, PR Docket No. 89-552, 12 FCC Rcd 10943, 10982 (1997) (*220 MHz Third Report and Order*); *see* Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, *Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking*, PR Docket No. 89-552, 11 FCC Rcd 188, 220 (1995), *aff'd on other grounds sub nom. Suncom Mobile & Data, Inc. v. FCC*, 87 F.3d 1386 (D.C. Cir. 1996).

⁴⁰ *220 MHz Third Report and Order*, 12 FCC Rcd at 10982.

⁴¹ 47 C.F.R. § 27.6.

⁴² Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *Second Report and Order*, PR Docket No. 93-144, 12 FCC Rcd 19079, 19088 (1997).

⁴³ *Second Further Notice*, 12 FCC Rcd at 16988.

⁴⁴ Foreexample, we note that if we were to utilize Major Trading Areas, which are larger than EAs or BTAs, we would divide the Great Lakes and the lower Mississippi River into six licensing areas each, reducing the likelihood of there being a single licensee there.

⁴⁵ MariTEL Reply Comments at 5-6.

⁴⁶ Such EAs include those near the Atlantic Ocean; the Pacific Ocean below the Arctic Circle; the Great Lakes; the Gulf of Mexico and Gulf Intracoastal Waterway; the Mississippi River upriver to Brainerd, Minnesota; the Missouri River to Sioux City, Iowa; the Ohio River to Pittsburgh, Pennsylvania; the Tennessee River to Knoxville, Tennessee; the Arkansas River to Tulsa, Oklahoma; the Red River to Fulton, Arkansas; and the Columbia River to Richland, Washington. These are the chief navigable rivers in the United States. *See Webster's New Geographical Dictionary* 1191, 1247 (1977).

⁴⁷ *Cf.* 47 C.F.R. § 90.283 (defining inland areas where I/LT sharing is permitted as beginning 72-116 miles from navigable waterways, depending on the I/LT station's power and antenna height).

or VHF Public Coast area (VPC), and VPCs consisting of a single inland EA will be known as inland VPCs.⁴⁸ This approach will more closely mirror the current nature of this service away from waterways, and will help differentiate between water and inland areas. Parties interested in bidding for new geographic area licenses will be able to choose between geographic areas near water and those that are on land. Each inland VPC shall be referred to by the name of the EA it comprises.

16. Maritime EAs, on the other hand, shall be grouped into larger VPCs, known as maritime VPCs. The maritime VPC boundaries will correspond roughly to U.S. Coast Guard District boundaries, thus providing, along major waterways, the benefits of wide-area licensing by U.S. Coast Guard District. In addition, maritime EAs straddling U.S. Coast Guard District boundaries have been assigned to the most appropriate maritime VPC.⁴⁹ We note that each maritime VPC includes the adjacent waters under the jurisdiction of the United States, because public coast service is marine-based, without distinct markets for land and marine customers.⁵⁰ The maritime VPCs will be referred to by the titles set forth in the table above (*see* paragraph 12), except that the maritime VPC analogous to the Eighth Coast Guard District shall be referred to as the Mississippi River VPC.

3. Treatment of incumbent licensees

17. *Proposal.* The Commission proposed in the *Second Further Notice* that each incumbent maritime licensee, including PLMR licensees, be permitted to continue operating pursuant to its current station license.⁵¹ It proposed to require the new geographic area licensees to afford interference protection in accord with Section 80.773 of our Rules.⁵² Section 80.773 specifies a 12 dB ratio of desired to undesired signal strength within the incumbent's service area as the criterion for VHF public coast station co-channel interference protection.⁵³ In turn, the Commission proposed to allow each incumbent licensee to renew, transfer, assign, or modify its license only to the extent that it did not extend its service area or spectrum allotment.⁵⁴ Finally, it proposed that modifications that would extend an incumbent's service area or use additional frequencies would be contingent upon an agreement with each affected geographic area licensee.⁵⁵ The Commission sought comment from both the maritime and PLMR communities concerning the general treatment of incumbent licensees, the appropriate interference protection criteria, and whether mobile-to-mobile communications should be permitted.⁵⁶

⁴⁸ Licensing by inland EAs will reduce the size of the geographic service area corresponding to the Eighth U.S. Coast Guard District, as the commenters requested. Of the 93 EAs located entirely or mostly in the Eighth District, 21 are inland EAs. Inland EAs constitute all of Montana, Wyoming, Nevada, Utah, Colorado, New Mexico; most of Arizona, Idaho, North Dakota, and South Dakota; and part of Oregon, California, Nebraska, Kansas, Oklahoma, Texas, and Minnesota. *See* Appendix D.

⁴⁹ Information regarding the VPCs and their constituent EAs is set forth in Appendix D and in 47 C.F.R. § 80.371(c), as amended herein.

⁵⁰ *See* MariTEL Comments at 8-9; Orion Comments at 2.

⁵¹ *Second Further Notice*, 12 FCC Rcd 16989-90.

⁵² 47 C.F.R. § 80.773.

⁵³ *Second Further Notice*, 12 FCC Rcd 16989-90.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at 16990.

18. *Decision.* We conclude that allowing incumbent licensees (including I/LT users and other PLMR licensees operating on this spectrum pursuant to waivers) to continue operating under the terms of their current station licenses will further the public interest by avoiding interruption of the services they provide.⁵⁷ We agree, however, with the commenters that oppose using Section 80.773 for all types of incumbent.⁵⁸ Therefore, we will require geographic area licensees to afford incumbent coast station licensees co-channel interference protection in accord with Section 80.773 of our Rules, but co-channel interference protection for I/LT and other PLMR incumbents shall be based on the standard for SMR services in the 220-222 MHz band.⁵⁹ This alternative resembles the proposal of ITA/CICS and UTC that the Commission afford incumbent PLMR users the interference protection provided for in the rules applicable to the PLMR users' various services.⁶⁰ That precise proposal cannot be adopted, however, because PLMR licensees use these frequencies only on a shared basis, so no protection standard currently exists.⁶¹ With respect to the particular standard, then, we conclude that the same 12 dB undesired signal strength standard as Section 80.773 provides for VHF public coast stations should be used for incumbent public coast station operations, while incumbent PLMR operations will receive at least 10 dB protection to their 38 dBu contours.

19. While we will not require that incumbents provide a map of their coverage areas in order to be entitled to interference protection, as proposed by MariTEL, we nonetheless note that the protection afforded to incumbent licensees will be dependent upon the technical information on file with the Commission, from which the geographic area licensees will be able to determine the appropriate level of co-channel interference protection.⁶² We encourage incumbents to verify the information in our database concerning their operations in advance of the auction to ensure that their existing operations are in accordance with their station authorizations.

20. We also conclude that incumbents should be prohibited from renewing, transferring, assigning, or modifying their licenses in any manner that extends their service area or results in their acquiring additional frequencies, without the consent of each affected geographic area licensee. We reject MMR's proposal to allow incumbent public coast station licensees to expand their systems, both geographically and by additional frequencies, before the commencement of geographic area licensing.⁶³ Similarly, we disagree with MariTEL's suggestion that we permit such expansion by incumbents on the condition that such operations cease if the incumbent does not acquire the geographic area license including the subject service area, or make suitable arrangements with the geographic area licensee.⁶⁴ We believe that permitting such incumbent expansion, whether permanently or conditionally, would undermine implementation of and a smooth transition to the geographic licensing approach we adopt today.⁶⁵ In addition, conditional expansion would not be in the public interest because users would not have certainty as to

⁵⁷ See APCO Comments at 2 n.1.

⁵⁸ See, e.g., MariTEL Comments at 5.

⁵⁹ See 47 C.F.R. §§ 90.723(i), 90.763(b)(1)(i).

⁶⁰ ITA/CICS Comments at 6-7; UTC Comments at 5.

⁶¹ See 47 C.F.R. § 90.173(a).

⁶² MariTEL Comments at 6.

⁶³ MMR Comments at 9; see also Robert Sassaman Comments at 1-2.

⁶⁴ MariTEL Reply Comments at 8.

⁶⁵ The auction of public coast station geographic licenses is scheduled for the fourth quarter of this year. See FCC Announces Spectrum Auction Schedule for 1998, Public Notice No. DA 97-2497, at 3 (released Nov. 25, 1997).

whether service would continue. Moreover, our treatment of incumbents here is consistent with our approach in other CMRS contexts where we have transitioned to geographic area licensing.⁶⁶

21. We also disagree with MariTEL's assertion that existing licensees providing contiguous coverage on a given channel pair should be permitted to obtain a combined authorization for that coverage area, which would enable an incumbent to relocate its facilities within its combined coverage area for that channel pair without making arrangements with the geographic area licensee.⁶⁷ The proposal, which is based on a similar provision for 800 MHz Specialized Mobile Radio (SMR) incumbents, is unsuited to the public coast service.⁶⁸ Unlike 800 MHz SMR, public coast station licensees with contiguous stations do not use the same channel pairs at each site, so the proposal would require the issuance of a different combined license for each channel pair.⁶⁹ Also, unlike SMR systems, which serve land areas, public coast station systems are unlikely to have "dead spots" completely surrounded by facilities licensed to the same operator on the same frequency, so a primary reason for granting such licenses to SMR operators is not present in the public coast service.⁷⁰ Finally, we already have granted MariTEL the siting flexibility it seeks: incumbents will have the right to renew, transfer, assign, or modify a license in a manner that does not extend the licensee's service area or acquire additional frequencies. Thus, even without the procedure requested by MariTEL, incumbents may add, modify, relocate, or eliminate facilities within their combined contour for a given channel pair, provided they do not expand their current service areas or obtain additional frequencies.

22. We nevertheless recognize that maintaining records for a large number of separate call signs for one regional system can be burdensome. For example, multiple call signs can require multiple modification requests and staggered renewal applications. We have granted waivers to consolidate multiple facilities within a single system under a single license with a single call sign in the past, and we will, after the close of the auction for geographic area licenses, entertain modification requests to this effect from incumbents. To avoid manipulation and evasion of construction and renewal requirements, such consolidated licenses ordinarily will expire on the expiration date of the earliest-to-expire site license.

23. Finally, we are not persuaded that MariTEL's proposal to permit mobile-to-mobile communications in coastal areas⁷¹ is appropriate at this time, because the record contains insufficient information regarding channel capacity and co-channel interference protection. We also are concerned that permitting mobile-to-mobile communication may impair the Maritime Services' safety functions.⁷²

⁶⁶ See Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking*, 11 FCC Rcd 1463, 1513-14 (1995), *aff'd on other grounds sub nom.* Chadmoore Communications, Inc. v. FCC, 113 F.3d 235 (D.C. Cir. 1997) (*800 MHz SMR O*

⁶⁷ MariTEL Comments at 4.

⁶⁸ 47 C.F.R. § 90.693(a).

⁶⁹ MariTEL's Maryland operations provide an example. MariTEL's Baltimore station operates on Channels 25 and 28, but its Cambridge station operates only on Channel 28. The Cambridge station's service area overlaps the Baltimore station's service area. The service area of MariTEL's Point Lookout Ridge facility, which operates on Channel 25, overlaps the Cambridge service area and a small part of the Baltimore service area. Thus, the three stations would need a Channel 25 combined license and a Channel 28 combined license, because the two combined contours differ.

⁷⁰ See *800 MHz SMR Order*, 11 FCC Rcd at 1514-1515.

⁷¹ MariTEL Comments at 6-7.

⁷² Cf. Amendment of Subparts A and E of Part 95 to Improve the General Mobile Radio Service (GMRS), *Report and Order*, PR Docket No. 87-265, 3 FCC Rcd 6554, 6560 (1988).

4. Licensing

24. *Proposal.* The Commission proposed in the *Second Further Notice* to authorize a single licensee to operate on all unassigned VHF public correspondence frequencies within a geographic area for a ten-year license term.⁷³ It also proposed to permit each geographic area licensee to place stations anywhere within its geographic area to serve vessels or units on land, so long as marine-originating traffic is given priority and incumbent operations are protected.⁷⁴ The Commission proposed that, with certain exceptions, base stations and land units be blanket licensed under the geographic area license.⁷⁵ It also proposed that the spectrum authorized to an incumbent that fails to construct, discontinues operations, or otherwise has its license terminated by the Commission would automatically revert to the geographic licensee, and that the Commission would presume a negotiated assignment or transfer of an incumbent station to a geographic area licensee to be in the public interest.⁷⁶ Finally, the Commission proposed to use the current rules regarding VHF public coast operations to define a licensee's permissible field strength at its service area boundaries; and to authorize the use of VHF public coast spectrum in waterways near Canada pursuant to coordination with Industry Canada,⁷⁷ as outlined in the Canada/U.S.A. channel agreements. The Commission also sought comment on whether to take any steps to facilitate use of this spectrum by public safety entities.⁷⁹

25. *Decision.* We conclude that authorizing a single geographic area licensee to operate on all unassigned VHF public correspondence frequencies within the defined service areas for a ten-year license term will further the public interest and the goals underlying this proceeding. Contrary to Murray Cohen's contention,⁸⁰ we believe that multiple public coast station licensees in the same area are not necessary to foster competition, because, as MariTEL notes, vessel operators operating along the coast already have a variety of CMRS providers from which to select.⁸¹ Thus, we conclude that the level of competition will not be adversely affected by authorizing a single geographic licensee. In fact, we believe that competition in the maritime market will be fostered because such licensee will be better able to expand its service offerings and establish an automated system. Each geographic licensee will be permitted to place stations anywhere within its region, on land or water, and to serve vessels or units on land provided that marine-originating traffic is given priority and incumbent operations are protected. This increased flexibility will enable licensees to serve additional markets and will promote the delivery of innovative telecommunications services, while preserving service that protects the safety of life and property at sea.

26. We also conclude that the geographic license will constitute a blanket authorization for both base stations and land units. However, geographic area licensees will be required to individually license any base station that requires an Environmental Assessment pursuant to Section 1.1307 of the Commission's Rules or international

⁷³ *Second Further Notice*, 12 FCC Rcd at 16991-92.

⁷⁴ *Id.*

⁷⁵ 47 C.F.R. § 80.21.

⁷⁶ *Second Further Notice*, 12 FCC Rcd at 16992.

⁷⁷ *Id.* at 16993.

⁷⁸ 47 C.F.R. § 80.57.

⁷⁹ *Second Further Notice*, 12 FCC Rcd at 16993.

⁸⁰ Murray Cohen Comments at 1.

⁸¹ MariTEL Reply Comments at 4-5.

coordination, or would affect the radio frequency quiet zones described in Section 80.21 of the Commission's Rules. This simplified approach toward initial licensing and subsequent system modification is consistent with the approach we have taken for geographic area licensing in other wireless services.⁸² In addition, we believe that such an approach will increase operational flexibility (resulting in faster, more responsive service to the public) while reducing administrative burdens on both licensees and the Commission. If an incumbent fails to construct, discontinues operations, or otherwise has its license terminated by the Commission, the spectrum covered by the incumbent's authorization will automatically revert to the geographic area licensee (even in a geographic area partitioned by the licensee, unless the partitioning agreement provides otherwise), except for spectrum set aside for public safety use.⁸³ If a licensee negotiates to acquire an incumbent station by assignment or transfer, the assignment or transfer will be presumed to be in the public interest.⁸⁴ This will assist geographic licensees in consolidating spectrum, and give them greater flexibility in managing the spectrum and establishing coastal and wide-area systems.

27. MariTEL, in its petition for reconsideration of the *Second Report and Order*, proposes that VHF public coast station and Automated Maritime Telecommunications System (AMTS) coast station licensees and applicants intending to serve units on land be required to submit plans demonstrating how they will afford priority to maritime communications.⁸⁵ We agree with Fred Daniel d/b/a Orion Telecom (Orion), an AMTS station licensee, that such a requirement is not needed.⁸⁶ We believe that licensees will comply with the requirements of Section 80.123(b) of our Rules, which requires public coast stations serving stations on land to afford priority to marine-originating communications through any appropriate electrical or mechanical means.⁸⁷ If, however, our experience shows us otherwise, we reserve the right to revisit this issue.

28. Geographic licensees and incumbents will be prohibited from exceeding a field strength of +5 dBu (decibels referenced to one microvolt per meter) at their service area boundaries (unless the bordering licensee agrees to a higher field strength). Rather than extending precise VPC boundaries into the oceans, we expect adjacent VPC licensees (or their partitionees) to coordinate water-based site selection to avoid harmful interference. This approach provides licensees the ability to operate their systems up to the borders of their service areas, while also providing protection to adjacent licensees. The use of VHF public coast spectrum in areas along the Great Lakes, St. Lawrence Seaway, and the coastal waters of Washington will be authorized pursuant to coordination with Industry Canada, as outlined in the Canada/U.S.A. channel agreements set forth in Section 80.57 of the Commission's Rules.⁸⁸

29. Regarding whether we should take steps to facilitate use of this spectrum by public safety entities, the Association of Public-Safety Communications Officials-International, Inc. (APCO), the frequency coordinator for the Part 90 Police, Local Government, and 800 MHz Public Safety Pool channel, and the Forestry-Conservation Communications Association (FCCA), the frequency coordinator for the Forestry-Conservation Radio Service, propose

⁸² See, e.g., 47 C.F.R. §§ 22.165, 101.1009(a).

⁸³ See 47 C.F.R. § 90.173(n).

⁸⁴ See 47 C.F.R. § 90.687.

⁸⁵ MariTEL Petition at 5.

⁸⁶ See Orion Petition to Deny at 3-4 (filed Sept. 9, 1997).

⁸⁷ 47 C.F.R. § 80.123(b).

⁸⁸ 47 C.F.R. § 80.57.

that public safety users be afforded a reasonable opportunity to seek any currently unused frequencies before any geographic area licenses are auctioned; and that extra channel pairs be excluded from auctions and be made available only to public safety entities for at least five years thereafter.⁸⁹ They state that public coast VHF spectrum is ideal for many public safety and forestry-conservation operations because it permits wide-area coverage with fewer sites than higher frequency bands.⁹⁰ In addition, this spectrum would be fully interoperable with existing public safety and forestry-conservation VHF channels.⁹¹ We note that public safety and forestry-conservation agencies need additional spectrum, but in many areas no VHF public safety or forestry-conservation spectrum is available.⁹² APCO states that giving public safety entities a priority to obtain vacant public coast VHF channels would accord with longstanding Commission policy and with the Balanced Budget Act, which requires the Commission, under certain conditions, to waive any requirement of the Communications Act or the regulations thereunder (except regulations regarding harmful interference) to permit a public safety entity to use unassigned frequencies.⁹³

30. Other commenters oppose APCO's proposal, on the grounds that these frequencies are not well-suited for use by public safety entities, because most of the available channels are in rural areas while the greatest public safety needs are in urban areas.⁹⁴ In this connection, they note⁹⁵ that 24 MHz in the 746-806 MHz band have been reallocated for public safety entities.⁹⁶ They also contend that setting maritime spectrum aside for public safety is not necessary or warranted because public coast station licensees already provide emergency communication services.⁹⁷

31. We conclude that designating two contiguous channel pairs for public safety users⁹⁸ in each inland VPC, but not in the maritime VPCs, will best further the public interest.⁹⁹ We believe that such a set-aside is not likely to adversely affect the development of new systems in these regions. We also find that allotting fewer channel pairs would be of little utility to public safety, while allotting more could leave the licensee with too little spectrum to be useful. Designating the channels in advance, and not holding any other channels aside, also avoids unnecessary delay of the auction for public coast spectrum and allows prospective bidders to have a clearer understanding of what spectrum is vacant and available. The ultimate use for these reserved frequencies, and the

⁸⁹ APCO Comments at 3-4; FCCA Comments at 2-3; *see also* State of Montana Comments at 1.

⁹⁰ APCO Comments at 2-3; FCCA Comments at 2.

⁹¹ APCO Comments at 2-3; FCCA Comments at 2.

⁹² Public Safety Wireless Advisory Comm., *Final Report* 32-33 (Sept. 1996).

⁹³ APCO Comments at 4 (citing Balanced Budget Act of 1997, § 3004 (to be codified at 47 U.S.C. § 337)).

⁹⁴ ITA/CICS Comments at 8; Coast Guard Comments at 2.

⁹⁵ MariTEL Reply Comments at 11.

⁹⁶ *See* 47 U.S.C. § 337 (as amended by Balanced Budget Act, § 3004); Reallocation of Television Channels 60-69, the 746-806 MHz Band, *Notice of Proposed Rule Making*, ET Docket No. 97-157, 12 FCC Rcd 14141, 14145 (1997).

⁹⁷ ITA/CICS Comments at 8; MariTEL Comments at 8; Ross Comments at 3-4.

⁹⁸ Public safety users are persons and entities eligible for licensing under 47 C.F.R. Part 90, Subpart B.

⁹⁹ The channels designated in each inland VPC are set forth in Appendix E.

procedures for licensing this spectrum, shall be decided as part of our pending public safety proceeding.¹⁰⁰ We decline to set aside channel pairs in any of the larger VPCs because, due to the scarcity of spectrum, such an action, as noted by MariTEL, would make the development of wide-area coastal systems very difficult.¹⁰¹ Moreover, we believe that the public coast spectrum that we are setting aside for public safety use will sufficiently accommodate public safety needs in this band without undermining the goals underlying this proceeding and the new licensing approach we adopt today.

5. Coverage requirements

32. *Proposal.* In the *Second Further Notice*, the Commission solicited comment on an appropriate construction requirement for VHF public coast geographic area licensees.¹⁰² One option suggested was to require provision of "substantial service" to their service areas within ten years.¹⁰³ Alternatively, the Commission requested comment on subjecting geographic area licensees to the current eight-month construction requirement for public coast stations or establishing a different construction requirement, such as requiring coverage of at least twenty percent of the population or fifty percent of navigable waterways in the service area within five years.¹⁰⁴

33. *Decision.* We conclude that requiring provision of substantial service to the geographic area licensees' service areas within ten years, as proposed in the *Second Further Notice*, would not achieve our goals of promoting efficient use of the spectrum; encouraging the provision of service to rural, remote, and insular areas; and preventing the warehousing of spectrum. We remain convinced, however, that the current eight-month construction requirement, unmodified, would impose an unreasonable burden on geographic area licensees. We therefore believe it necessary to establish a construction requirement that will encourage construction and prevent spectrum warehousing while providing geographic licensees with sufficient flexibility to meet market demands for service. We agree with MMR and MariTEL that, because of the importance of public coast stations to maritime safety, the construction requirement should not be too loose, particularly along coastlines and other "navigable waterways."¹⁰⁵ In light of the maturity of the Maritime Services along the busiest waterways, however, we do not believe that requirements as strict as they suggest are necessary.¹⁰⁶ We shall instead require substantial service within five and ten years, as described below. In addition, geographic area licensees shall be afforded a renewal expectancy when their license terms expire, provided that they demonstrate that they (1) have provided substantial service during their license term; and (2) have

¹⁰⁰ See Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, *Second Notice of Proposed Rulemaking*, 12 FCC Rcd 17706 (1997) (*Public Safety Second NPRM*).

¹⁰¹ MariTEL Comments at 7-8.

¹⁰² *Second Further Notice*, 12 FCC Rcd at 16994-95.

¹⁰³ *Id.* "Substantial service" generally is defined as service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal. See, e.g., 47 C.F.R. § 90.816(b)(1)(i).

¹⁰⁴ *Second Further Notice*, 12 FCC Rcd at 16994-95.

¹⁰⁵ MariTEL Comments at 9; MMR Comments at 10; see also ITA/CICS Comments at 10. "Navigable waters" are the territorial waters of the United States, and its internal waters that are or have been susceptible for use as highways for interstate or foreign commerce. 47 C.F.R. § 80.5.

¹⁰⁶ MMR proposes requiring service to the region's navigable waterways within one year. MMR Comments at 10. MariTEL proposes that geographic area licensees be required to construct at least ten percent of their authorized channels along eighty percent of the region's navigable waterways within one year of authorization, and fifty percent of the channels along eighty percent of the waterways within ten years. MariTEL Comments at 10.

complied with applicable Commission rules and policies, and the Communications Act.¹⁰⁷

34. We will require maritime VPC licensees to provide substantial service within five years of initial authorization, which can be satisfied by a demonstration of coverage to one-third of the maritime VPC's major waterway(s)¹⁰⁸; and again within ten years, which can be satisfied by a demonstration of continuous coverage to two-thirds of the major waterway(s). To satisfy the requirement along a river or the Gulf Intracoastal Waterway, service should be provided across the entire width. To satisfy the requirement on other waterways, coverage should extend out 20 nautical miles¹⁰⁹ (unless limited to a smaller area by an international or VPC border) from the coastline or, where applicable, from the line established by the Coast Guard to divide inland waters from territorial seas.¹¹⁰ In maritime VPCs with more than one major waterway, the coverage refers to the total length of all major waterways; coverage need not necessarily be provided to every major waterway, or to any minimum percentage of each major waterway. These "safe-harbor" examples are intended to provide licensees a degree of certainty regarding how to comply with the substantial service requirement. The requirement can be met in other ways, which will vary depending on the market served, and we will review licensees' showings on a case-by-case basis.

35. MMR proposes to require construction of sufficient transmitters to provide service on all authorized frequencies simultaneously rather than using a frequency-agile transmitter (which MMR contends is merely a channel-warehousing device).¹¹¹ However, we agree with BR Communications (BRC), a developer of HF radio systems, which says that such a requirement "would prevent licensees from using modern broadband antennas and radio amplifiers, locking them instead into outdated, 1960's-era architecture. Moreover, it would increase dramatically the costs of placing a new coast station into service and, as a result, would undermine the development of competition in the maritime service."¹¹² We endeavor to adopt technology-neutral policies, so licensees can choose the equipment best suited to their needs.¹¹³ We also note that no such requirement is imposed on other CMRS providers.¹¹⁴

36. We also will require inland VPC licensees to provide substantial service within five and ten years. For inland VPC licensees, substantial service can be satisfied by a demonstration of coverage to at least one-third of the population of the VPC within five years of initial authorization and at least two-thirds of the population within ten years. This is similar to the approach we adopted for geographic area licensees in the 220 MHz Service.¹¹⁵

¹⁰⁷ See 800 MHz SMR Order, 11 FCC Rcd at 1502.

¹⁰⁸ As defined in note 46, *supra*.

¹⁰⁹ See 47 C.F.R. §§ 80.225(b), 80.905(a)(1).

¹¹⁰ See 33 C.F.R. § 2.05-20(b), Part 80.

¹¹¹ MMR Comments at 10.

¹¹² BRC Reply Comments at 3.

¹¹³ See, e.g., Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, Report and Order and Further Notice of Proposed Rulemaking, PR Docket No. 92-235, 10 FCC Rcd 10076, 10095 (1995), *on reconsideration*, Memorandum Opinion and Order, 11 FCC Rcd 17676 (1996) (PLMR Report and Order).

¹¹⁴ See, e.g., Amendment of the Commission's Rules to Establish New Personal Communications Services, Third Report and Order, GEN Docket No. 90-314, 9 FCC Rcd 1337, 1341, 1359-60, *on reconsideration*, Memorandum Opinion and Order, 9 FCC Rcd 7805 (1994), *aff'd on other grounds sub nom.* Freeman Eng'g Assocs., Inc. v. FCC 103 F.3d 169 (D.C. Cir. 1997).

¹¹⁵ See 220 MHz Third Report and Order, 12 FCC Rcd at 11020.

As is the case with the maritime VPC safe-harbor examples, these safe-harbor examples are intended to provide licensees a degree of certainty regarding how to comply with the substantial service requirement. The requirement can be met in other ways, and we will review licensees' showings case by case if they rely on a different basis. Service need not be provided to waterways in the inland VPC, but if waterways are served, public coast stations' maritime obligations (e.g., safety watch and priority to marine-originating traffic) shall apply. We decline to adopt the proposal of ITA/CICS that the Commission prevent warehousing of inland spectrum by "permit[ting] the continued licensing of I/LT radio systems in the areas away from the navigable waters -- even if only on a secondary basis."¹¹⁶ We also decline to adopt their proposal that after a period of time equal to the original construction period, PLMR users licensed on a secondary basis be converted to primary status. We believe that the construction requirement is sufficient to prevent spectrum warehousing and, thus, such measures are not necessary.¹¹⁷

6. Partitioning and disaggregation

37. *Proposal.* The Commission proposed in the *Second Further Notice* to permit partitioning and disaggregation by geographic area licensees, and that such transactions would be governed by the Commission's current partial assignment procedures.¹¹⁸ The Commission proposed to allow geographic area licensees to partition and/or disaggregate geographic area and any amount of spectrum at any time to any entity eligible in the Maritime Services.¹¹⁹ It also proposed to permit combined partitioning and disaggregation.¹²⁰ In addition, the Commission proposed that partitionees and disaggregatees hold their licenses for the remainder of the original licensee's term and be entitled to establish a renewal expectancy.¹²¹ Finally, it proposed to apply unjust enrichment payments, including accelerated payment of any bidding credit we adopt for small businesses, as a condition for approving partitioning and disaggregation arrangements involving a complete or partial transfer of a license owned by a qualified small business to an entity that does not qualify as a small business.¹²² The Commission sought comment on these tentative conclusions, and on the respective obligations of the parties to a partitioning or disaggregation arrangement.¹²³

38. *Decision.* We conclude that public coast geographic area licensees should be permitted to partition any portion of their geographic service area, and to disaggregate any amount of spectrum, at any time to any entity eligible for a public coast station license. This approach will afford parties flexibility to pursue a variety of competitive service offerings, facilitate new market entrants, and promote delivery of quality service to the public.

¹¹⁶ ITA/CICS Comments at 10; see ITA/CICS Reply Comments at 3; see also Petition for Rule Making Submitted by the Land Mobile Communications Council, RM 9262 (filed Apr. 22, 1998) (proposing allocation of additional spectrum for PLMR use).

¹¹⁷ See also MariTEL Reply Comments at 12.

¹¹⁸ *Second Further Notice*, 12 FCC Rcd 16995-96.

¹¹⁹ *Id.* at 16996.

¹²⁰ *Id.* at 16995.

¹²¹ *Id.*

¹²² *Id.* at 16997.

¹²³ *Id.* at 16996-97.

Moreover, contrary to Murray Cohen's assertion,¹²⁴ such approach is consistent with our action in other CMRS contexts.¹²⁵ In addition, partitionees and disaggregatees shall hold their licenses for the remainder of the original licensee's license term, and be able to qualify for a renewal expectancy, provided that they provide substantial service and comply with the Commission's rules and policies and the Communications Act. We believe that these requirements are necessary in order to prevent licensees from using partitioning and disaggregation to circumvent our rules governing license term and construction requirements, and to ensure that there will be maximum incentive for parties to pursue available spectrum as quickly as practicable.

39. Public coast station licensees will be permitted to acquire partitioned and/or disaggregated licenses in either of two ways: (1) they may form bidding consortia to participate in auctions, and then partition or disaggregate the licenses won among consortia participants after grant; or (2) they may acquire partitioned or disaggregated licenses from other licensees through private negotiation and agreement either before or after the auction. A licensee planning to partition or disaggregate its license must file an assignment application. We consider partitioning and disaggregation to be assignments of license, which will, therefore, require prior approval by the Commission. In authorizing partitioning and disaggregation arrangements, we will follow existing assignment procedures.¹²⁶ Under our current rules,¹²⁷ the licensee must file FCC Form 1046, Assignment of Authorization, signed by both the licensee and the qualifying entity,¹²⁸ and the qualifying entity also must file FCC Form 503, Application for Land Radio Station License in the Maritime Services.¹²⁹ We will require that a licensee disaggregate by frequency pairs. This requirement is necessary for administrative purposes: updates to the database necessary to track authorizations could otherwise become delayed or prone to error.¹³⁰

40. MariTEL argues that geographic area licensees that partition and/or disaggregate should remain ultimately responsible for satisfying their coverage requirements.¹³¹ We have determined that the public interest will be served by following the approach we have taken in other geographic licensing contexts; *i.e.* permitting licensees to negotiate which party will be responsible for meeting the applicable construction requirements.¹³² Our goal is to ensure that licensees have the flexibility to structure their business plans, while ensuring that partitioning and

¹²⁴ Murray Cohen Comments at 1.

¹²⁵ See Geographic Partitioning and Spectrum Disaggregation by Commercial Radio Services Licensees, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 96-148, 11 FCC Rcd 21831, 21860 (1996) (*Partitioning and Disaggregation Report and Order*).

¹²⁶ See 47 C.F.R. § 1.924.

¹²⁷ We have adopted a Notice of Proposed Rulemaking proposing a Universal Licensing System (ULS) for wireless applications. Biennial Regulatory Review -- Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Notice of Proposed Rulemaking*, WT Docket No. 98-20, FCC 98-3 (released Mar. 18, 1998). If the ULS rules are adopted as proposed, FCC Form 603 will be used for requesting approval of assignment of licenses, including partitioning and disaggregation requests.

¹²⁸ 47 C.F.R. § 80.19.

¹²⁹ 47 C.F.R. § 1.924(b)(2)(iv). If the ULS rules are adopted as proposed, *see supra* note 127, FCC Schedule G will be used for requesting public coast station licenses.

¹³⁰ See *39 GHz Report and Order*, 12 FCC Rcd at 18635; *Partitioning and Disaggregation Report and Order*, 11 FCC Rcd at :

¹³¹ MariTEL Comments at 11.

¹³² See *Partitioning and Disaggregation Report and Order*, 11 FCC Rcd at 21857.

disaggregation not be used as a vehicle for circumventing the applicable construction requirements.

41. We will allow parties to partitioning agreements to choose between two options for satisfying the construction requirements: (a) the parties may either agree to meet the construction requirements for their respective portions of the service area; or (b) the original licensee may certify that it has met or will meet the construction requirements for the entire market. Under the first option, the partitionor and partitionee would each certify that they will independently satisfy the substantial service requirement for their respective partitioned areas. If either licensee failed to meet its substantial service showing requirement, only the non-performing licensee's renewal application would be subject to forfeiture at renewal. Under the second option, the partitionor certifies that it has met or will meet the substantial service requirement for the entire market. If the partitionor fails to meet the substantial service standard, however, only its renewal application would be subject to forfeiture at renewal. The partitionee's license would not be affected by that failure.

42. We will establish two options for disaggregating licensees. We believe that it is appropriate for the disaggregator or the disaggreatee to assume full responsibility for construction within the shared service area, because service would be offered over the relevant population, even if not on the entire spectrum. Under the first option, the disaggregator and disaggreatee would certify that they each will share responsibility for meeting the substantial service requirement for the geographic service area. If parties choose this option and either party fails to do so, both licenses would be subject to forfeiture at renewal. The second option would allow the parties to agree that either the disaggregator or the disaggreatee would be responsible for meeting the substantial service requirement for the geographic service area. If parties choose this option, and the party responsible for meeting the construction requirement fails to do so, only the license of the nonperforming party would be subject to forfeiture at renewal.

43. We no longer need to establish a separate unjust enrichment requirement for approving partitioning and disaggregation in the public coast service, because we have in another proceeding adopted a uniform requirement in Part 1 of our Rules for all services.¹³³ The unjust enrichment provisions adopted therein will also apply to VHF public coast geographic licensees that are afforded a bidding credit and later elect to partition or disaggregate their licenses.

7. Technical flexibility

44. *Proposal.* As the Commission noted in the *Second Further Notice*, the basic channelization for VHF public coast spectrum is set forth in the ITU Radio Regulations as 25 kHz.¹³⁴ However, AMTS coast stations (216-220 MHz) are permitted the flexibility to use narrowband technologies in addition to the 25 kHz channel plan set forth in our rules.¹³⁵ The Commission proposed in the *Second Further Notice* that each geographic area licensee, as well as incumbent licensees, be authorized to use narrowband technologies in the same manner as AMTS coast stations.¹³⁶

45. *Decision.* We conclude that public coast licensees should be permitted to use frequencies offset 12.5 kHz from the marine VHF band (156-162 MHz) public correspondence channels where they are authorized on both adjacent

¹³³ See Amendment of Part 1 of the Commission's Rules--Competitive Bidding, *Third Report and Order and Second Further Notice of Proposed Rule Making*, WT Docket No. 97-82, 13 FCC Rcd 374, 405 (1997) (*Part 1 Third Report and Order*); see also 47 C.F.R. § 1.2111(c).

¹³⁴ *Second Further Notice*, 12 FCC Rcd at 16997.

¹³⁵ See 47 C.F.R. § 80.385(b).

¹³⁶ *Second Further Notice*, 12 FCC Rcd at 16998.

frequencies, and, as suggested by Murray Cohen,¹³⁷ where the licensee on the other side of the offset frequency consents to such use. After the close of the comment period in this proceeding, the 1997 World Radiocommunication Conference (WRC-97) authorized the use of 12.5 kHz narrowband channels to reduce local congestion,¹³⁸ so we adopt that narrowband channelization plan, in lieu of our proposal to not specify a plan.¹³⁹ The WRC-97 action also resolves the objections of the Coast Guard and Ross Engineering (Ross), a manufacturer of marine radio equipment and provider of VHF radio services, against authorizing narrowband technology without an international consensus. Those commenters also oppose the use of offset channels because, among other reasons, they see no need for the additional channels, and no Part 80 12.5 kHz equipment has been type accepted.¹⁴⁰ We agree with MariTEL and MMR that additional channels are needed because without narrowband channel pairs, public coast licensees will be hampered in their efforts to compete effectively with other CMRS providers. We also are not persuaded that the lack of type accepted equipment is a sufficient reason not to adopt our proposal. In fact, the Commission has previously adopted regulations permitting the use of equipment for which there is not yet type acceptance.¹⁴¹

46. In addition to commenting on our proposal in the *Second Further Notice*, the Coast Guard filed a petition for rulemaking, which we elected to treat as a comment in this proceeding.¹⁴² The Coast Guard requests that we amend Part 80 of our Rules to set aside duplex channel pairs offset 12.5 kHz from the marine VHF band public correspondence channels, and marine VHF Channel 228B (162.0125 MHz).¹⁴³ In those areas where Channel 88 is available to maritime users,¹⁴⁴ Channel 228B is a VHF public correspondence narrowband frequency; in other areas, Channel 228B is a federal government frequency.¹⁴⁵ The Coast Guard proposes that these channels be used for Automatic Identification Systems (AIS) and related safety systems, in support of its Ports and Waterways Safety System (PAWSS) project, which will provide Vessel Traffic Services (VTS) to facilitate the safe and efficient transit of vessel traffic to prevent collisions, groundings, and environmental damage associated with maritime accidents.¹⁴⁶ Specifically, the Coast

¹³⁷ Murray Cohen Comments at 1.

¹³⁸ See *Final Acts of the World Radiocommunication Conference (WRC-97)*, Geneva, 1997 (amending ITU Radio Regulations Art. S52, App. S18 n.e).

¹³⁹ *Second Further Notice*, 12 FCC Rcd at 16998.

¹⁴⁰ Coast Guard Comments at 5; Ross Comments at 5-7; Ross Reply Comments at 2-3.

¹⁴¹ MariTEL Comments at 12; MariTEL Reply Comments at 12-14; MMR Comments at 9.

¹⁴² See Letter from David E. Horowitz, Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, to J.D. Hersey, Jr., Chief, Spectrum Management Division, United States Coast Guard (August 29, 1997). Orion opposes addressing the petition in this proceeding, on the grounds that the issues raised therein should not delay enactment of the proposals in the *Second Further Notice*. Orion Petition to Set Aside at 2 (filed Sept. 9, 1997); see also MariTEL Reply Comments at 14-16. Because our consideration of the Coast Guard Petition did not delay the release of this *Third Report and Order*, the Petition to Set Aside is denied. Cf. *Public Safety Second NPRM*, 12 FCC Rcd at 17785.

¹⁴³ Coast Guard Petition for Rule Making at 2-3 (filed Aug. 4, 1997) (Coast Guard Petition).

¹⁴⁴ See 47 C.F.R. § 80.57.

¹⁴⁵ See 47 C.F.R. § 2.106 n.G5.

¹⁴⁶ Coast Guard Petition at 1.

Guard, supported by Ross and others,¹⁴⁷ proposes that the channels be used on a shared, need-determined basis with VHF public coast stations, and that at least two of the eight offset channels available nationwide, plus Channel 228B, be reserved in any given geographic area for such use.¹⁴⁸ MariTEL proposes awarding the offset frequencies to VHF public coast spectrum licensees initially, but on the condition that the Commission can later designate such channels for AIS use.¹⁴⁹

47. We believe that three subsequent developments must be considered in connection with the Coast Guard's proposal. First, the Department of Transportation appropriation for fiscal year 1998 contains funding for the PAWSS project, with both houses of Congress expressing strong support for the Coast Guard's efforts.¹⁵⁰ As the House report stated,

[AIS] technology should be the foundation of [f] any future VTS system. The AIS technology employs on-board transponders, electronic charts, and Differential Global Positioning System technology to provide direct, vessel-to-vessel, voiceless electronic data communications. The Committee strongly believes that this technology will significantly improve navigational safety, not just in select VTS target ports, but throughout the navigable waters of the United States. The Committee encourages the Coast Guard to continue working with its PAWSS stakeholders, during the development and implementation of this national system, to ensure that it provides the greatest amount of navigational and environmental safety for the broadest geographical area at the lowest cost to the American taxpayers.¹⁵¹

Second, the Interdepartment Radio Advisory Committee (IRAC)¹⁵² approved the Coast Guard's request to use Channel 228B in those areas where it is allocated to the federal government. Finally, WRC-97 set aside Channels 87B (161.975 MHz) and 88B (162.025 MHz) for AIS, but provided that, where those frequencies are unavailable, other frequencies may be used.¹⁵³ Channel 87 (including Channel 87B) is currently allocated to VHF public correspondence,¹⁵⁴ and Channel 88B is allocated to Government non-military agencies.¹⁵⁵

48. We conclude that the Coast Guard request should be granted, and two channel pairs (plus Channel 228B, where it is a maritime frequency) should be set aside in each maritime VPC for AIS. We believe that setting aside these

¹⁴⁷ Ross Comments at 2-3; Ross Reply Comments at 1-2; Robert Sassaman Comments at 2; American Waterways Operators Comments at 1.

¹⁴⁸ Coast Guard Petition at 2, 7.

¹⁴⁹ MariTEL Supplemental Comments at 2-3.

¹⁵⁰ See H.R. Rep. No. 236, 105th Cong., 1st Sess. (1997); S. Rep. No. 55, 105th Cong., 1st Sess. (1997); H.R. Rep. No. 188, 105th Cong., 1st Sess. (1997).

¹⁵¹ H.R. Rep. No. 236, 105th Cong., 1st Sess. (1997).

¹⁵² IRAC is responsible for frequency coordination efforts on behalf of the federal government, and is composed of representatives from various government agencies. In this connection, IRAC advises the National Telecommunication and Information Administration concerning spectrum management issues and coordinates spectrum issues among government users and with the Commission.

¹⁵³ See *Final Acts of WRC-97* (amending ITU Radio Regulations App. S18 n.I).

¹⁵⁴ 47 C.F.R. § 80.371(c).

¹⁵⁵ 47 C.F.R. § 2.106 n.G5.

frequencies for this purpose will enhance the safety of life and property on vessels in United States waters by reducing collisions, groundings, and environmental harm,¹⁵⁶ further effectuating our regulatory goal of fostering the protection of life and property at sea through the use of maritime radio spectrum. While we considered setting aside Channel 87B as one of the AIS channels, we conclude that the public interest benefits flowing from such an approach are minimal as compared to the potential adverse impact on our licensing of public coast stations. First, setting aside Channel 87B as an AIS channel would require relocation of the thirty-four public coast stations currently authorized to use Channel 87. Second, we believe that setting aside one broadband channel and one narrowband channel for AIS might complicate AIS implementation or raise the cost of the necessary equipment. Third, this approach would encumber one broadband channel and *three* narrowband channels, instead of encumbering two narrowband channels as proposed by the Coast Guard, because setting aside Channel 87B would leave the surrounding narrowband channels unavailable. Finally, setting aside Channel 87B would harm maritime VPC licensees' ability to construct wide-area systems by leaving most with no more than eight broadband channels. Thus, we will not designate Channel 87B as an AIS channel.

49. Instead of selecting the channel pairs for an AIS set-aside, we believe the most prudent course of action in furtherance of the public interest would be for the Coast Guard to negotiate with each individual maritime VPC licensee to select narrowband frequencies for AIS use. Within six months of the conclusion of the auction, we will require that the Coast Guard and each maritime VPC licensee begin to negotiate a plan specifying narrowband duplex channel pairs within the maritime VPC (including areas beyond the major waterways). The Coast Guard proposal should specify which frequencies, up to two, the Coast Guard seeks. We note the possibility that the channels need not be the same throughout the maritime VPC. If the maritime VPC licensee objects to the Coast Guard proposal, it shall make a counterproposal within three months of receipt of the Coast Guard's plan. The final agreement shall set aside up to two channel pairs throughout the maritime VPC, or implement whatever other arrangement is amenable to both parties (*e.g.*, more than two channel pairs in some places, and one or no channel pairs elsewhere). If good faith negotiations yield no agreement within one year of the date the Coast Guard submitted its initial proposal, the Coast Guard may ask the Commission to revisit this issue and select the channels and locations. We prefer this procedure to setting channels aside in advance because we believe that it will allow the Coast Guard time to develop its AIS plans fully and coordinate AIS frequencies with neighboring countries.¹⁵⁷ We also believe that such approach will enhance each maritime VPC licensee's ability to pursue its own business plan and allow the parties to determine how many channels are needed in each location. In addition, this approach avoids the problems associated with uniformly setting aside Channel 87B, discussed above.

50. Finally, in its petition for reconsideration of the *Second Report and Order*, MariTEL contends that the Commission erred in declining to adopt rules regarding maritime sharing of land mobile frequencies,¹⁵⁸ and argues that such rules could be adopted now and held in abeyance pending developments in other proceedings.¹⁵⁹ However, the continued validity of one of the premises of that sharing proposal¹⁶⁰ -- that few PLMR licensees operate within 80 kilometers of the United States coastline¹⁶¹ -- is questionable in light of our decision to consolidate the PLMR

¹⁵⁶ See 47 C.F.R. § 80.5.

¹⁵⁷ Because the United States will not be using the AIS channels designated by the ITU, the Coast Guard will need to inform foreign ships of the applicable AIS channels in each region.

¹⁵⁸ *Second Report and Order*, 12 FCC Rcd at 16986.

¹⁵⁹ MariTEL Petition for Reconsideration at 5-6.

¹⁶⁰ *Second Report and Order*, 12 FCC Rcd at 16986.

¹⁶¹ *Notice of Inquiry*, 7 FCC Rcd at 7868.

services in an effort to introduce more flexibility.¹⁶² Moreover, we believe that going forward with a sharing proposal could impede the orderly and effective resolution of the issues in our pending proceeding concerning the introduction of market-based incentives for PLMR spectrum.¹⁶³ MariTEL has not convinced us that the public interest would be served by our making a decision on sharing before reaching a final decision in that proceeding; thus, we decline to do so.

8. Operational flexibility

51. *Proposal.* The Commission noted in the *Second Further Notice* its conclusion in another proceeding that broadband and narrowband CMRS licensees should have operational flexibility to provide fixed, mobile, or hybrid services,¹⁶⁴ and sought comment on whether to afford such flexibility to public coast stations.¹⁶⁵

52. *Decision.* We agree with MariTEL that allowing VHF public coast stations to provide fixed, mobile, or hybrid CMRS services on a co-primary basis with mobile services will be beneficial.¹⁶⁶ We believe that affording public coast station licensees operational flexibility will enhance their ability to meet customer requirements and demand, and promote regulatory symmetry between maritime CMRS providers and other CMRS providers. We further believe that this approach, combined with our enforcement of the construction requirements adopted today, will address MariTEL's concern about preserving the distress and safety features of the Maritime Services, particularly along waterways.¹⁶⁷

9. Regulatory status

53. *Proposal.* The Commission noted in the *Second Further Notice* that allowing geographic area licensees, partitionees, or disaggregatees to use their spectrum to provide a variety of commercial or private mobile communications would make it difficult to determine the regulatory status of each licensee.¹⁶⁸ The Commission proposed to establish a presumption that geographic area licensees are telecommunications carriers, or, in the alternative, to rely on applicants to specify the type of service(s) they intend to provide in sufficient detail to enable the Commission to determine whether the particular licensee will be a CMRS or a PMRS provider,¹⁶⁹ *i.e.*, whether the licensee offers a mobile service that is provided for profit, interconnected with the public switched network, and is available to the public or a substantial portion of the public.¹⁷⁰ It also proposed to allow any interested party to challenge

¹⁶² *Refarming Second Report and Order*, 12 FCC Rcd at 14317-18.

¹⁶³ *See PLMR Report and Order*, 10 FCC Rcd at 10138-41.

¹⁶⁴ In this context, "broadband CMRS licensees" included PCS, cellular, and SMR, while "narrowband CMRS licensees" included paging, narrowband PCS, commercial 220MHz service, and for-profit interconnected Business Radio Service. *See* Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Service, *First Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 96-6, 11 FCC Rcd 8965, 8976 (1996).

¹⁶⁵ *Second Further Notice*, 12 FCC Rcd at 16999.

¹⁶⁶ *See* MariTEL Comments at 13; *see also* Orion Comments at 2.

¹⁶⁷ *See* MariTEL Comments at 13.

¹⁶⁸ *Second Further Notice*, 12 FCC Rcd at 16999.

¹⁶⁹ *Id.* at 16999-17000.

¹⁷⁰ *See* 47 U.S.C. § 332(d)(1).

the regulatory status originally granted to a geographic area licensee.¹⁷¹ The Commission sought comment on this approach and on the most efficient manner in which to administer the requirements of the Communications Act with respect to public coast station licensees.¹⁷²

54. *Decision.* We conclude that, as a general matter, geographic area licensees should be subject to a presumption that they are telecommunications carriers under the Communications Act, because this is the current nature of the public coast service. We note, however, that this presumption can be rebutted by specifically identifying the type of service or services the licensee intends to provide in sufficient detail to enable the Commission to determine whether the nature of the service will be CMRS or PMRS, common carrier or non-common carrier.¹⁷³ As in other licensing contexts,¹⁷⁴ we intend to rely primarily upon applicants' representations regarding their regulatory status while affording interested parties the opportunity to demonstrate that a licensee has not rebutted our presumption, provided these parties present specific allegations of fact supported by an affidavit of a person or persons with personal knowledge.¹⁷⁵ If a public coast station licensee who is authorized to provide only PMRS or non-common carrier service actually provides CMRS or common carrier service under that license, it will be subject to appropriate enforcement action.¹⁷⁶ This approach will allow us to carry out our regulatory responsibilities without imposing a hardship upon licensees.

55. In addition, we disagree with MariTEL's suggestion that we should forbear from imposing common carrier requirements on public coast stations pursuant to Section 10 of the Communications Act,¹⁷⁷ which regulation MariTEL contends is "unnecessary and not in the public interest."¹⁷⁸ MariTEL's request cannot be granted because it is too vague, both as to the specific provisions from which we should forbear from enforcing,¹⁷⁹ and as to why forbearance would be in the public interest.¹⁸⁰ We note, however, that we already forbear from enforcing some common

¹⁷¹ *Second Further Notice*, 12 FCC Rcd at 16999-17000.

¹⁷² *Id.*

¹⁷³ *See* MariTEL Comments at 14.

¹⁷⁴ *See CMRS Second Report and Order*, 9 FCC Rcd at 1461.

¹⁷⁵ *See* 47 U.S.C. § 309(d)(1). Geographic area licensees authorized to provide PMRS or non-common carrier services will be subject to Part 80 of our rules. Geographic area licensees authorized to provide CMRS or common carrier services will also be subject to our Title II rules applicable to other CMRS providers. *See CMRS Second Report and Order*, 9 FCC Rcd at 1475-85.

¹⁷⁶ *See, e.g.*, 47 U.S.C. §§ 312(a), 503(b).

¹⁷⁷ 47 U.S.C. § 160.

¹⁷⁸ MariTEL Comments at 14.

¹⁷⁹ *See CMRS Second Report and Order*, 9 FCC Rcd at 1475.

¹⁸⁰ *See* Hyperion Telecommunications, Inc., *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, CCB/CPD No. 96-3, 12 FCC Rcd 8596, 8607 (1997) ("While we are required under Section 10 to grant petitions for forbearance when we are able to make the requisite statutory findings, petitioners must support such requests with more than broad, unsupported allegations in order for us to exercise that statutory authority.").

carrier requirements against CMRS operators,¹⁸¹ and that further forbearance is under consideration.¹⁸²

10. Safety watch

56. *Proposal.* Public coast stations serving rivers, bays, and inland lakes must maintain a continuous safety watch on marine VHF Channel 16 (156.800 MHz).¹⁸³ Presently, public coast licensees may request an exemption from this requirement upon demonstrating that federal, state, or local governments maintain a continuous watch over ninety-five percent of the station's service area.¹⁸⁴ The Commission proposed in the *Second Further Notice* to relieve public coast stations of the Channel 16 watch requirement by rule in cases where federal, state, or local governments already maintain the requisite coverage.¹⁸⁵

57. *Decision.* We adopt our safety watch proposal, with some modifications requested by the Coast Guard.¹⁸⁶ Specifically, a coast station where federal, state, or local governments maintain a continuous watch over ninety-five percent of the station's service area will not be required to maintain a safety watch, provided that the licensee (1) determines that the "ninety-five percent" criteria is met, (2) is responsible for notifying the appropriate Coast Guard district office thirty days prior to discontinuing the watch, and (3) is responsible for resuming the watch at the request of the Coast Guard or Commission. We nonetheless note that the Coast Guard may require a public coast licensee to continue or resume its safety watch temporarily during a system outage or until a replacement Coast Guard system is in place, or permanently. Notwithstanding our decision here, all coast stations shall, if required by the Coast Guard, remain capable of either immediately resuming the watch, or of providing the Coast Guard direct dial-up access to the necessary Channel 16 transceiver at no charge, so the Coast Guard can maintain the watch. In this connection, we note¹⁸⁷ the Coast Guard's description of the shortcomings of its VHF National Distress System, which is aging and has many coverage gaps.¹⁸⁸ Consequently, we reject MMR's suggestion that the safety watch requirement be eliminated because we conclude that its continuation is in the public interest in that it promotes safety at sea.¹⁸⁹ In addition, as MariTEL and Orion note, MMR incorrectly compares other CMRS providers, who have no safety watch requirement, to the Maritime Services, failing to take into account that other services are intended to be fully automated, and that they emerged in a different context from the Maritime Services, with their public safety

¹⁸¹ *CMRS Second Report and Order*, 9 FCC Rcd at 1475-85.

¹⁸² Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance for Broadband Personal Communications Services, *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, WT Docket No. 98-100, FCC 98-134 (released July 2, 1998).

¹⁸³ 47 C.F.R. § 80.303(a).

¹⁸⁴ 47 C.F.R. § 80.303(b).

¹⁸⁵ *Second Further Notice*, 12 FCC Rcd at 17000-01.

¹⁸⁶ *See* Coast Guard Comments at 6.

¹⁸⁷ Amendment of Part 81 of the Commission's Rules to Specify the Circumstances under which Class III-B Public Coast Stations May Be Exempted from the Watch Requirement on 156.8 MHz, *Report and Order*, PR Docket No. 79-68, 81 FCC 2d 340, 343 (1980).

¹⁸⁸ *See* Coast Guard Comments at 6.

¹⁸⁹ MMR Comments at 11.

component.¹⁹⁰

58. In the *Second Report and Order*, we authorized automated interconnection and therefore eliminated the requirement that each radiotelephone public coast station have a licensed radiotelephone operator at the station's control point.¹⁹¹ MariTEL argues in its petition for reconsideration that we should have retained a requirement that there always be an operator on duty somewhere in the system (though not necessarily at the nearest control point) with whom a vessel can communicate during an emergency.¹⁹² Orion opposes any such requirement for AMTS stations, on the grounds that such stations are intended to be fully automated.¹⁹³ We are not persuaded that the continued existence of public coast stations being required to maintain a safety watch justifies the reinstatement and expansion of the operator requirement for other stations. The Coast Guard did not contend that eliminating the operator requirement would jeopardize safety at sea,¹⁹⁴ though it notes that the MariTEL proposal would be one means of maintaining an exempt station's ability to resume a safety watch upon request.¹⁹⁵ Amending the operator requirement in the manner proposed by MariTEL would amount to reinstating that requirement for individual, non-integrated stations, and to creating a new requirement for AMTS stations and automated multi-station systems, which already were exempt from the operator requirement, and MariTEL has not shown that its proposal would produce a benefit commensurate with such a burden.¹⁹⁶ Thus, we decline to adopt MariTEL's proposal.

B. Competitive Bidding Procedures

1. Use of Competitive Bidding

59. *Proposal.* The Commission, in the *CMRS Second Report and Order*, classified the public coast service, including VHF, high seas, and AMTS public coast stations, as a CMRS.¹⁹⁷ Subsequently, in the *Competitive Bidding Second Report and Order*, the Commission determined that mutually exclusive applications for public coast station licenses would be resolved through competitive bidding.¹⁹⁸ It therefore proposed in the *Second Further Notice* to prescribe competitive bidding rules and designated entity provisions for auctioning public coast spectrum.¹⁹⁹

60. Following release of the *Second Further Notice*, Congress passed the Balanced Budget Act of 1997,

¹⁹⁰ See MariTEL Comments at 3-7; Orion Petition to Deny at 3.

¹⁹¹ *Second Report and Order*, 12 FCC Rcd at 16959.

¹⁹² MariTEL Petition at 3-4.

¹⁹³ Orion Petition to Deny at 3.

¹⁹⁴ *Second Further Notice*, 12 FCC Rcd at 16976-77.

¹⁹⁵ Coast Guard Reply Comments at 1.

¹⁹⁶ See 47 C.F.R. § 80.179(d) (1996).

¹⁹⁷ *Second Further Notice*, 12 FCC Rcd at 17011 (citing *CMRS Second Report and Order*, 9 FCC Rcd at 1448).

¹⁹⁸ *Second Further Notice*, 12 FCC Rcd at 17011 (citing *Competitive Bidding Second Report and Order*, 9 FCC Rcd 2348); 47 C.F.R. § 1.2102(a)(2) (citing 47 C.F.R. Part 80, Subpart J).

¹⁹⁹ *Second Further Notice*, 12 FCC Rcd at 17011-12.

which expanded and extended the Commission's auction authority.²⁰⁰ Section 309(j)(2) of the Communications Act formerly stated that mutually exclusive applications for initial licenses or construction permits were auctionable if the principal use of the spectrum was for subscription-based services and competitive bidding would promote the expressed objectives of the Act.²⁰¹ As amended by the Balanced Budget Act, Section 309(j) of the Communications Act provides that, "If . . . mutually exclusive applications are accepted for any initial license or construction permit, then, except as provided in paragraph (2) the Commission *shall* grant the license or permit to a qualified applicant through a system of competitive bidding that meets the requirements of this subsection."²⁰²

61. *Decision.* Several commenters support the use of competitive bidding.²⁰³ While some parties oppose the use of competitive bidding to grant licenses for the public coast spectrum, their contentions are inconsistent with our earlier conclusion that the public coast service is subject to competitive bidding, which conclusion is unchanged by the Balanced Budget Act.²⁰⁴ As noted, the Balanced Budget Act provides that all licenses and construction permits for which mutually exclusive applications are accepted, with certain exceptions not relevant here, shall be granted by means of competitive bidding.²⁰⁵ We therefore believe that we lack discretion to resolve mutually exclusive public coast license applications by any means other than competitive bidding. Similarly, the Balanced Budget Act expressly provides that competitive bidding shall not be used for public safety radio services, so the inland VPC channel pairs set aside for public safety use shall be distributed by other means, to be decided as part of our pending public safety proceeding.²⁰⁶ Therefore, we reiterate that we shall employ competitive bidding procedures to resolve mutually exclusive public coast station applications.

2. Competitive Bidding Issues

62. *Proposal.* The *Second Further Notice* was released shortly after the *Part I Order and Notice of Proposed Rulemaking* that adopted certain rules to streamline auction procedures and proposed uniform competitive bidding rules that would apply generally to all auctionable services.²⁰⁷ Pending the adoption of final uniform competitive bidding rules, however, the Commission proposed to adopt service-specific rules to govern public coast auctions.²⁰⁸ In addition, it sought comment in the *Second Further Notice* on the establishment of a "small business" definition for public coast spectrum, noting our intention, as iterated in the *Second Memorandum Opinion and Order*

²⁰⁰ See 47 U.S.C. § 309(j) (as amended by Balanced Budget Act, § 3002).

²⁰¹ 47 U.S.C. § 309(j)(2) (1996).

²⁰² 47 U.S.C. § 309(j)(1) (as amended by Balanced Budget Act, § 3002) (emphasis added).

²⁰³ MariTEL Comments at 7 (urging the Commission to act as expeditiously as possible to license this spectrum using competitive bidding because it is the most efficient and speedy means of licensing multiple channels on a geographic basis); MariTEL Reply Comments at 3; Orion Comments at 10; BRC Reply Comments at n.2 (noting that under the Balanced Budget Act, "the FCC must use auctions to award initial licenses and construction permits in virtually all cases where mutual exclusivity exists").

²⁰⁴ Globe Wireless Comments at 3-4; Robert Sassaman Comments at 1.

²⁰⁵ See 47 U.S.C. §§ 309(j)(1), 309(j)(2) (as amended by Balanced Budget Act, § 3002).

²⁰⁶ See *supra* note 100.

²⁰⁷ *Second Further Notice*, 12 FCC Rcd at 17011 (citing Amendment of the Commission's Competitive Bidding Rules, *Order and Notice of Proposed Rulemaking*, WT Docket No. 97-82, 12 FCC Rcd 5686 (1997)).

²⁰⁸ *Id.*

in the competitive bidding docket, of establishing definitions for "small business" on a service-by-service basis.²⁰⁹ Specifically, the Commission sought comment on whether we should apply one of the existing "small business" definitions to public coast stations or adopt a new definition, and comment on what small business provisions and terms should be offered to public coast small business licensees.²¹⁰ The Commission tentatively concluded that, for purposes of determining small business status of public coast applicants, it would attribute the gross revenues of all the applicants' affiliates, its controlling principals, and their affiliates, and that the definition of affiliate in the public coast context should include an exception for Indian tribes, Alaska Region, and Village Corporations.²¹¹ The Commission also tentatively decided against providing special consideration in the competitive bidding procedures for incumbent licensees.²¹²

63. In authorizing the Commission to use competitive bidding, Congress mandated that we "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services."²¹³ Congress further provided that, in establishing eligibility criteria and bidding methodologies, the Commission shall promote "economic opportunity and competition . . . by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women."²¹⁴ The Commission therefore sought comment in the *Second Further Notice* on whether small business provisions are sufficient to promote participation by businesses owned by minorities and women and rural telephone companies.²¹⁵ To the extent that commenters proposed additional provisions to ensure participation by minority- and women-owned businesses, they were invited also to address how such provisions should be crafted to meet the relevant standards of judicial review.²¹⁶

64. *Decision.* Recently, we adopted the *Part I Third Report and Order*, which establishes a uniform set of provisions, based on our experience with auctions to date, and allows us to conduct future auctions in a more consistent, efficient, and effective manner.²¹⁷ Therefore, we will follow the uniform provisions adopted in the *Part I Third Report and Order* for most of the competitive bidding issues raised in the *Second Further Notice*, and the uniform competitive bidding rules found in Subpart Q of Part 1 of the Commission's rules will apply to the auction of public coast spectrum. Consistent with this approach, matters such as the appropriate competitive bidding design for the auction of public coast spectrum, as well as minimum opening bids or reserve prices and maximum bid increments, will

²⁰⁹ *Second Further Notice*, 12 FCC Rcd at 17012 (citing Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Second Memorandum Opinion and Order*, PP Docket No. 93-253, 9 FCC Rcd 7245, 7268-69 (1994)); see also *Part I Third Report and Order*, 13 FCC Rcd at 388.

²¹⁰ *Second Further Notice*, 12 FCC Rcd at 17012.

²¹¹ *Id.*

²¹² *Id.* at 16898-90.

²¹³ 47 U.S.C. § 309(j)(4)(D).

²¹⁴ 47 U.S.C. § 309(j)(3)(B).

²¹⁵ *Second Further Notice*, 12 FCC Rcd at 17012.

²¹⁶ *Id.* at 17012-13 (citing *United States v. Virginia*, 116 S.Ct. 2264 (1996); *Adarand Constructors v. Peña*, 115 S.Ct. 2097 (1995)).

²¹⁷ See *Part I Third Report and Order*, 13 FCC Rcd at 377-81.

be determined by the Wireless Telecommunications Bureau pursuant to its delegated authority.²¹⁸ In this *Third Report and Order and Memorandum Opinion and Order*, however, we adopt service-specific provisions applicable to designated entities bidding in the public coast spectrum auctions. We note, however, that we may seek comment in a future proceeding regarding whether these provisions should be modified for auctions of spectrum allocated to the high seas and AMTS services.²¹⁹

65. As we noted in the *Second Further Notice*, our goal in adopting special small business provisions is to promote and facilitate the participation of small businesses in the public coast auctions and in the provision of service.²²⁰ For purposes of public coast auctions, we will define "small" businesses as entities that, together with controlling interests and affiliates, have average gross revenues for the preceding three years not to exceed fifteen million dollars.²²¹ We will define "very small" businesses as entities that, together with controlling interests and affiliates, have average gross revenues for the preceding three years not to exceed three million dollars. MariTEL proposes that small businesses be defined as those with gross revenues not exceeding three million dollars (averaged over the past three years), because the Commission has employed this standard elsewhere and it represents the level of income a small business in the Maritime Services today can expect to produce, while a higher level would allow larger companies to compete with the same bidding credits as current public coast licensees.²²² However, we share the concern of Orion and Murray Cohen that a single definition of small business could effectively exclude from participation a number of current licensees that are too small to compete with large well-capitalized entities unless they are made eligible for additional bidding credits.²²³ Also, we note that all of the services MariTEL cited as precedent for using a three million dollar standard also featured a second tier with a threshold of not more than fifteen million dollars in gross revenues. Thus, we believe that two tiers of bidding credits will allow current public coast licensees to compete favorably with larger entities, without denying entities with relatively small gross revenues the opportunity to participate meaningfully in the auctions.

66. We decided in the *Part 1 Third Report and Order* to continue to define small businesses as we have in the past, based on the characteristics and capital requirements of the specific service,²²⁴ rather than, as suggested by MariTEL, on the prospective and likely applicants' assets.²²⁵ This approach has afforded us desirable flexibility to benefit small businesses, and is consistent with the Small Business Administration's practice of approving small business size standards on a service-by-service basis.²²⁶ We determined in the *Part 1 Third Report and Order* that our

²¹⁸ See, e.g., *id.* at 448-49, 454-55; see also 47 C.F.R. §§ 0.131(c), 0.331, 0.332.

²¹⁹ See *supra* note 3.

²²⁰ *Second Further Notice*, 12 FCC Rcd at 17012.

²²¹ This formulation is consistent with our determination in the *Part 1 Third Report and Order* that our service-specific small business definitions will be expressed in terms of average gross revenues for the preceding three years "not to exceed" particular amounts. See *Part 1 Third Report and Order*, 13 FCC Rcd at 388-89.

²²² MariTEL Comments at 15-16 (noting the size standards employed in paging, the upper 10 MHz of 800 MHz SMR, and 900 MHz SMR).

²²³ Orion Comments at 10; Murray Cohen Comments at 1.

²²⁴ See *Part 1 Third Report and Order*, 13 FCC Rcd at 388.

²²⁵ MariTEL Comments at 15 (citing Implementation of Section 309(j) of the Communications Act--Competitive Bidding, *Fifth Memorandum Opinion and Order*, PP Docket No. 93-253, 10 FCC Rcd 403 (1994)).

²²⁶ See *Part 1 Third Report and Order*, 13 FCC Rcd at 388.

service-specific small business definitions thenceforth would be expressed in terms of average gross revenues, which we believe provides an accurate, equitable, and easily ascertainable measure of business size.²²⁷ Assets, being potentially fluid and subject to inconsistent valuation (*e.g.*, intangibles), are generally much less ascertainable than gross revenues or numbers of employees. Although we have adopted an asset test for eligibility for particular blocks of licenses in broadband PCS auctions, we have never before employed an asset test for eligibility for small business size standards. We also note that the Small Business Administration, the rules of which have formed the basis for much of our own consideration of small business provisions, presently does not employ asset tests in its business size standards except in the context of national and commercial banks, savings institutions, and credit unions.²²⁸ Nor does the Small Business Act's statutory definition of small business size use a total assets test.²²⁹ Consistent with the *Part 1 Third Report and Order*, we therefore reject MariTEL's suggestion and will not adopt an asset test for the auction of public coast licenses.

67. Since we received no comments to the contrary, we also adopt, with a slight modification, our tentative conclusion to attribute the gross revenues of the applicant, its controlling principals and their affiliates. Specifically, we refer to "controlling interests" rather than "controlling principals." In addition, we provide a definition of "controlling interest" to clarify the application of the attribution rule in determining whether an entity qualifies to bid as a small business. In calculating gross revenues for purposes of small business eligibility, applicants will be required to count the gross revenues of the controlling interests of the applicant and their affiliates.²³⁰ This approach is consistent with our proposal in the *Part 1 Second Further Notice*,²³¹ and is similar to the attribution rules we have employed for the recent LMDS and 800 MHz SMR auction proceedings.²³²

68. A "controlling interest" includes individuals or entities with *de jure* and *de facto* control of the applicant. *De jure* control is 50.1% of the voting stock of a corporation or, in the case of a partnership, the general partners. *De facto* control is determined on a case-by-case basis, and includes the criteria set forth in *Ellis Thompson*.²³³ We recently sought comment in the *Part 1 Second Further Notice* on whether we should impose a minimum equity requirement (*e.g.*, fifteen percent) on any person or entity identified as a controlling interest.²³⁴ The "controlling

²²⁷ See *id.* at 388-89.

²²⁸ See 13 C.F.R. § 121.201, Standard Industrial Classifications 6021-6082 & n. 7.

²²⁹ See 15 U.S.C. § 632(c).

²³⁰ We note that in the *Part 1 Third Report and Order*, we exempted Indian Tribes and Alaska Region and Village Corporations from the definition of affiliate found in Part 1, Subpart Q of our rules. See *Part 1 Third Report and Order*, 13 FCC Rcd at 392-93. This definition will apply in the public coast auction. See 47 C.F.R. § 1.2111(b)(4)(xi).

²³¹ See *Part 1 Third Report and Order*, 13 FCC Rcd at 477-78.

²³² See Amendment of Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking*, CC Docket No. 92-297, 12 FCC Rcd 12545, 12692-93 (1997); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, FCC 97-223, *Second Report and Order*, PR Docket No. 93-144, 12 FCC Rcd 19079, 19169 (1997).

²³³ See *Ellis Thompson Corp.*, 76 Rad. Reg. 2d (P & F) 1125, 1127-28 (1994) ("*Ellis Thompson*"), in which the Commission identified the following factors used to determine control of a business: (1) use of facilities and equipment; (2) control of day-to-day operations; (3) control of policy decisions; (4) personnel responsibilities; (5) control of financial obligations; and (6) receipt of monies and profits. See also *Intermountain Microwave*, 24 Rad. Reg. (P & F) 983 (1963); Stephen F. Sewell, *Assignments and Transfers of Control of FCC Authorizations Under Section 309(d) of the Communications Act of 1934*, 43 FED. COMM. L.J. 277 (1997).

²³⁴ See *Part 1 Third Report and Order*, 13 FCC Rcd at 478.

interest" definition also provides specific guidance on calculation of various types of ownership interests. For purposes of calculating equity held in an applicant, the definition provides for full dilution of certain stock interests, warrants, and convertible debentures.²³⁵ In addition, the definition provides for attribution of partnership and other ownership interests including stock interests held in trust, non-voting stock, and indirect ownership through intervening corporations. Once principals or entities with a controlling interest are determined under the definition, only the revenues of those principals or entities and their affiliates will be counted for small business eligibility.

69. When an applicant cannot identify controlling interests under the definition, the revenues of all interest holders in the applicant and their affiliates will be counted. For example, if a company is owned by four entities, each of which has twenty-five percent voting equity and no shareholders' agreement or voting trust gives any one of them control of the company, the revenues of all four entities must be counted. Treating such a corporation in this way is similar to our treatment of a general partnership—all general partners are considered to have a controlling interest. This rule, we believe, looks to substance over form in assessing eligibility for small business status.

70. We note that our intent here is to provide flexibility that will enable legitimate small businesses to attract passive financing in a highly competitive and evolving telecommunications marketplace.²³⁶ We believe that this controlling interest threshold will function effectively to ensure that only those entities truly meriting small business status are eligible for small business provisions. In particular, we believe that the *de jure* and *de facto* concepts of control used to determine controlling interest in an applicant and the application of our affiliation rules will effectively prevent larger firms from illegitimately seeking status as a small business. Moreover, as we discussed in the *Part 1 Third Report and Order*, we believe that requiring detailed ownership information will ensure that applicants claiming small business status qualify for such status, and ensure compliance by all applicants with spectrum caps and other ownership limits.²³⁷ Therefore, we emphasize that bidders will be subject to the ownership disclosure requirements set forth in Section 1.2112 of our rules.²³⁸

71. MariTEL and Ross contend that incumbent public coast service licensees should be given special consideration in our competitive bidding procedures, because incumbent licensees merely extending their coverage would provide service sooner than new geographic area licensees, and the public safety nature of the public coast service mandates procedures that will lead to prompter service.²³⁹ We agree with BRC,²⁴⁰ however, that new entrants and

²³⁵ See 47 C.F.R. § 1.2110(b)(4)(v); cf. 47 C.F.R. § 24.709(b)(7).

²³⁶ We note, however, that in seeking comment regarding the auction of initial licenses for certain broadcast stations, the Commission has proposed stricter attribution standards and eligibility requirements for applicants seeking to qualify for minority-based provisions. See Implementation of Section 309(j) of the Communications Act—Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, Notice of Proposed Rulemaking, MM Docket No. 97-234, 12 FCC Rcd 22363, 22399-401 (1997).

²³⁷ *Part 1 Third Report and Order*, 13 FCC Rcd at 419.

²³⁸ See 47 C.F.R. § 1.2112.

²³⁹ MariTEL Comments at 3-4; Ross Comments at 3.

²⁴⁰ BRC Reply Comments at 2.

incumbents should have an equal opportunity to obtain spectrum.²⁴¹ Moreover, we have never given incumbents such a benefit (which appears to be prohibited by Section 309(j)(4)(D) of the Communications Act), and any incumbents that qualify can avail themselves of the special consideration available to small businesses.²⁴²

72. In addition, we note that we received no comments suggesting any particular level of bidding credits. Thus, we will conform our bidding credit levels for the public coast auctions to the schedule adopted in the *Part I Third Report and Order*.²⁴³ Specifically, the *Part I Third Report and Order* adopted bidding credits of thirty-five percent for entities with annual gross revenues not to exceed three million dollars, and twenty-five percent for entities with annual gross revenues not to exceed fifteen million dollars.²⁴⁴ In conformity with the small business size definitions that we adopt herein, we thus determine that entities that, together with controlling interests and affiliates, have average gross revenues for the preceding three years not to exceed three million dollars will receive a thirty-five percent bidding credit, and entities that, together with controlling interests and affiliates, have average gross revenues for the preceding three years not to exceed fifteen million dollars will receive a twenty-five percent bidding credit. In addition, in the *Part I Third Report and Order*, we held that installment payments will not be used in the immediate future as a means of financing small business participation in Commission auctions, and we received no comment in this proceeding on the use of installment payments.²⁴⁵ Thus, installment payments will not be available to public coast auction participants for the reasons discussed in the *Part I Third Report and Order*.

73. We also received no comments on whether small business provisions are sufficient to promote participation by businesses owned by minorities and women and rural telephone companies. No commenter proposed additional provisions to ensure participation by minority- and women-owned businesses, or suggested how such provisions should be crafted to meet the relevant standards of judicial review. We remain committed to meeting the statutory objectives of promoting economic opportunity and competition, of avoiding excessive concentration of licenses, and of ensuring access to new and innovative technologies by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. However, commenters in this proceeding have submitted no suggestions, evidence, or data to support race- or gender-based auction provisions. Therefore, we conclude that we do not have a sufficient record to support such special provisions at this time. As we noted in the *Part I Third Report and Order*, we have commenced a series of studies, and have other studies in the planning process, to examine barriers encountered by minorities and women in the auctions process and the secondary market for licenses.²⁴⁶ Once those studies are complete, we will have a more extensive record to judge our ability to provide through our auctions program economic opportunity among businesses owned by members of minority groups and women, as required in Section 309(j).²⁴⁷ We also believe that our

²⁴¹ See, e.g., Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, *Report and Order*, PR Docket No. 94-131, 10 FCC Rcd 9589, 9607 (1995) (it is in the public interest to encourage the widest possible variety of applicants by not giving a preference to incumbents, for new entrant may value the spectrum more highly than existing licensee).

²⁴² 47 U.S.C. § 309(j)(4)(D).

²⁴³ *Part I Third Report and Order*, 13 FCC Rcd at 402-03.

²⁴⁴ *Id.* at 404.

²⁴⁵ *Id.* at 397-98.

²⁴⁶ *Id.* at 386-87 & n. 36 (citing, e.g., Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Business, *Report*, GN Docket No. 96-113, 12 FCC Rcd 16802 (1997)).

²⁴⁷ See 47 U.S.C. § 309(j)(4)(C),(D).

standardization, through the *Part 1 Third Report and Order*, of the rules regarding definitions of eligible entities, unjust enrichment, and bidding credits will assist small, minority- and women-owned businesses because the resulting predictability will facilitate effective business planning and capital accumulation.²⁴⁸

IV. PROCEDURAL MATTERS

A. Suspension of Acceptance and Processing of Applications

74. In the *Second Further Notice*, the Commission temporarily suspended, until March 17, 1998, acceptance of public coast station and PLMR applications for new licenses to use VHF spectrum (156-162 MHz), amendments to such applications, applications to modify existing licenses, and amendments to such modifications, except applications involving renewals, transfers, assignments, and modifications that proposed neither to (1) expand a station's service area nor (2) obtain additional public coast VHF spectrum.²⁴⁹ It also suspended the processing of public coast station applications to use VHF spectrum that were pending when the *Second Further Notice* was adopted, except those (1) that were not mutually exclusive with other applications as of the date the *Second Further Notice* was adopted, and (2) as to which the relevant period for filing competing applications had expired as of that date.²⁵⁰ On March 17, 1998, the Wireless Telecommunications Bureau extended the suspension until the effective date of the final rules adopted in this *Third Report and Order and Memorandum Opinion and Order*.²⁵¹

75. Due to the transition to geographic area licensing in this *Third Report and Order and Memorandum Opinion and Order*, all applications to use VHF public coast spectrum the processing of which was suspended shall be dismissed. This action is consistent with the general approach we have taken in other services where we have transitioned to geographic area licensing and auction rules.²⁵² In addition, the freeze on filing new applications to use this spectrum shall remain in effect beyond the date that the final rules adopted herein become effective, and until such time as the Wireless Telecommunications Bureau begins to accept applications for the VHF public coast auction. We decline the suggestion of UTC and ITA/CICS to lift the freeze on PLMR applications proposing to share public coast VHF spectrum.²⁵³ They contend that such licenses present no barrier to the proposed geographic licensing process or to existing or future maritime services, but we conclude that maintaining the freeze in all areas for all applicants is necessary for the orderly and effective implementation of the decisions made in this proceeding.

76. In the *Part 1 Third Report and Order*, the Commission delegated to the Chief of the Wireless Telecommunications Bureau authority to prescribe and set forth procedures for individual auctions.²⁵⁴ The Wireless Telecommunications Bureau shall implement auction procedures for VHF (156-162 MHz) public coast stations, including the general design and timing of the auctions; the number and grouping of authorizations to be offered in a particular auction; the manner of submitting bids; the amount of bid increments; activity and stopping rules; and application

²⁴⁸ See *Part 1 Third Report and Order*, 13 FCC Rcd at 386.

²⁴⁹ *Second Further Notice*, 12 FCC Rcd at 17015.

²⁵⁰ *Id.*

²⁵¹ Applications for Very High Frequency (VHF) Public Coast Spectrum in the 156-162 MHz Bands, *Order*, 13 FCC Rcd 5240, 5241 (WTB 1998).

²⁵² See, e.g., *Paging Second Report and Order*, 12 FCC Rcd at 2739.

²⁵³ UTC Comments at 4; ITA/CICS Comments at 5-6.

²⁵⁴ *Part 1 Third Report and Order*, 13 FCC Rcd at 484.

and payment requirements, including the amount of upfront payments; and shall announce such procedures by Public Notice.

B. Additional Matters

77. In the *Second Report and Order*, the Commission deleted the operator requirement for radiotelephone coast stations, but declined to address MMR's suggestion to delete the radiotelegraph coast station operator requirement.²⁵⁵ The Commission stated that it would request comments on the issue in the *Second Further Notice*, but it inadvertently failed to do so.²⁵⁶ MMR again has suggested eliminating the operator requirement for radiotelegraph coast stations,²⁵⁷ but we cannot act on the proposal because potentially affected parties have not received adequate notice.²⁵⁸ We conclude that this issue presently is not ripe for decision, but we may revisit it at a later time.

C. Regulatory Flexibility Act

78. Appendix B contains a Final Regulatory Flexibility Analysis with respect to this *Third Report and Order and Memorandum Opinion and Order*.

D. Paperwork Reduction Act of 1995 Analysis

79. This *Third Report and Order and Memorandum Opinion and Order* contains neither a new nor a modified information collection.

E. Ordering Clauses

80. Authority for issuance of this *Third Report and Order and Memorandum Opinion and Order* is contained in Sections 4(i), 4(j), 7(a), 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), and 332(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 157(a), 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), and 332(c).

81. Accordingly, IT IS ORDERED that Parts 20, 80, and 90 of the Commission's Rules, 47 C.F.R. Parts 20, 80, 90, and 95, ARE AMENDED as specified in Appendix F.

82. IT IS FURTHER ORDERED that, except for the dismissal set forth in paragraph 83 and the temporary suspension set forth in paragraph 84, this *Third Report and Order and Memorandum Opinion and Order* will be effective 60 days after publication in the Federal Register.

83. IT IS FURTHER ORDERED that, effective July 6, 1998, pending applications to use public coast station spectrum under Parts 80 or 90 of the Commission's Rules, 47 C.F.R. Parts 80 and 90 that were held in abeyance pursuant to the *Second Report and Order and Second Further Notice of Proposed Rulemaking* and Applications for Very High Frequency (VHF) Public Coast Spectrum in the 156-162 MHz Bands, *Order*, DA 98-522 (WTB released Mar. 17, 1998), ARE DISMISSED.

²⁵⁵ *Second Report and Order*, 12 FCC Rcd at 16976-77.

²⁵⁶ *Id.*

²⁵⁷ MMR Comments at 8.

²⁵⁸ *MCITelecommunications Corp. v. FCC*, 57F.3d 1136, 1142 (D.C. Cir. 1995); *AFL-CIO v. Donovan*, 757F.2d 330, 339-40 (D.C. Cir. 1985).

84. IT IS FURTHER ORDERED that, effective July 6, 1998, no new applications to use VHF public coast station spectrum under Parts 80 or 90 will be accepted for filing, except applications that do not propose to (1) expand a station's service area, or (2) obtain additional public coast spectrum frequencies, until the Wireless Telecommunications Bureau begins to accept applications to participate in the VHF public coast auction, which shall be announced by Public Notice.

85. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this *Third Report and Order and Memorandum Opinion and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

86. IT IS FURTHER ORDERED, pursuant to Section 1.46(b) of the Commission's Rules, 47 C.F.R. § 1.46(b), that the Motion to Accept Late-Filed Comments filed by MariTEL Corporation IS GRANTED.

87. IT IS FURTHER ORDERED that Orion Telecom's Petition to Set Aside the Coast Guard Petition for Rule Making IS DENIED.

88. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by MariTEL Corporation IS DENIED.

F. Contact for Information

89. For further information, contact Scot Stone of the Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Policy and Rules Branch, at (202) 418-0680 or via E-Mail to "sstone@fcc.gov"; or Anne Napoli of the Wireless Telecommunications Bureau, Auctions and Industry Analysis Division, Legal Branch, at (202) 418-0660 or via E-mail to "anapoli@fcc.gov".

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

APPENDICES**APPENDIX A - LIST OF COMMENTERS****Comments**

American Waterways Operators

Association of Public-Safety Communications Officials-International, Inc. (APCO)

Murray Cohen

Forestry-Conservation Communications Association (FCCA)

Globe Wireless

Industrial Telecommunications Association and Council of Independent Communications Suppliers (ITA/CICS)

WJG MariTEL Corporation (MariTEL)

Mobile Marine Radio, Inc. (MMR)

State of Montana

National Association of Broadcasters and Association for Maximum Service Television (NAB/MSTV)

National Marine Electronics Association (NMEA)

Fred Daniel d/b/a Orion Telecom (Orion)

Paging Systems, Inc. (PSI)

Ross Engineering Company (Ross)

Robert H. Sassaman

United States Coast Guard (Coast Guard)

UTC

Reply Comments

BR Communications (BRC)

Globe Wireless

ITA/CICS

MariTEL

NAB/MSTV

Orion

Ross

Coast Guard

APPENDIX B - FINAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Second Further Notice of Proposed Rule Making* in this proceeding (*Second Further Notice*). The Commission sought written public comment on the proposals in the *Second Further Notice*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the *Third Report and Order*

Our objective is to simplify our licensing process for VHF public coast stations. Specifically, this action will: (1) convert licensing of VHF public coast station spectrum from site-by-site licensing to geographic area licensing, (2) simplify and streamline the VHF public coast spectrum licensing procedures and rules, (3) increase licensee flexibility to provide communication services that are responsive to dynamic market demands, and (4) introduce market-based forces into the Maritime Services by using competitive bidding procedures (auctions) to resolve mutually exclusive applications for public coast spectrum. We find that these actions will increase the number and types of communications services available to the maritime community and improve the safety of life and property at sea, and that the potential benefits to the maritime community exceed any negative effects that may result from the promulgation of rules for this purpose. Thus, we conclude that the public interest is served by amending our rules as described above.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

No comments were submitted in response to the IRFA. In general comments on the *Second Further Notice*, however, some small business commenters raised issues that might affect small business entities. In particular, some small business commenters argued that geographic licensing should be used only in certain areas; or that incumbent licensees be permitted to expand their systems before any auctions are held; or that license areas should be small enough to permit smaller licensees to participate in auctions, so that small business do not have to bid for territory far exceeding their operating needs. The Commission carefully considered each of these comments in reaching the decision set forth herein.

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

The rules adopted herein will apply to licensees using public coast spectrum. The Commission has not developed a definition of the term "small entity" specifically applicable to public coast station licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration rules applicable to radiotelephone service providers. This definition provides that a small entity is any entity employing less than 1,500 persons. See 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812. Since the size data provided by the Small Business Administration does not enable us to make a meaningful estimate of the number of current or prospective public coast station licensees which are small businesses, and no commenters responded to our request for information regarding the number of small entities that use or are likely to use public coast spectrum, we used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of Census, which is the most recent information available. This document shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. There are over 100 public coast station licensees. Based on the proposals contained herein, it is unlikely that more than 50 licensees will be authorized in the future. Therefore, for purposes of our evaluations and conclusions in this FRFA, we estimate that there are approximately 150 public coast station licensees which are small businesses, as that term is defined by the Small Business Administration.

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

All small businesses that choose to participate in the competitive bidding for these services will be required to demonstrate that they meet the criteria set forth to qualify as small businesses, as required under Part 1, Subpart Q of the Commission's Rules, 47 C.F.R. Part 1, Subpart Q. Any small business applicant wishing to avail itself of small business provisions will need to make the general financial disclosures necessary to establish that the business is in fact small. Prior to auction each small business applicant will be required to submit an FCC Form 175, OMB Clearance Number 3060-0600. The estimated time for filling out an FCC Form 175 is 45 minutes. In addition to filing an FCC Form 175, each applicant will have to submit information regarding the ownership of the applicant, any joint venture arrangements or bidding consortia that the applicant has entered into, and financial information demonstrating that a business wishing to qualify for installment payments and bidding credits is a small business. Applicants that do not have audited financial statements available will be permitted to certify to the validity of their financial showings. While many small businesses have chosen to employ attorneys prior to filing an application to participate in an auction, the rules are intended to enable a small business working with the information in a bidder information package to file an application on its own. When an applicant wins a license, it will be required to submit an FCC Form 494 (common carrier), which will require technical information regarding the applicant's proposals for providing service. This application will require information provided by an engineer who will have knowledge of the system's design.

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

The Commission in this proceeding has considered comments on ways to implement broad changes to the Maritime Services rules. In doing so, the Commission has adopted alternatives which minimize burdens placed on small entities. First, it has decided to establish a presumption that regional licensees are telecommunications carriers, avoiding the need for small telecommunications to provide detailed information about their operations. Also, it has exempted by rule from the Channel 16 safety watch requirement public coast stations whose areas are served by government stations, replacing the prior requirement that such coast stations individually request an exemption. In addition, the Commission has eased the construction requirements for VHF public coast stations.

The Commission considered and rejected several significant alternatives. It rejected the alternative of licensing all VHF public coast spectrum by Coast Guard District. Instead, it will license such spectrum in areas removed from major waterways by inland VHF Public Coast Station Area (VPCs), identical to Economic Areas (EAs), allowing small entities there to participate in the auction without bidding for territory far exceeding their operating needs. The Commission rejected the alternative of delaying the auctions for the inland VPCs by holding frequencies open for public safety applications. Instead, the Commission designated public safety channels in advance. The Commission rejected the alternative of requiring each geographic area licensee to provide detailed information about the services it will offer, so the Commission could determine whether the licensee is a telecommunications carrier. Instead, the Commission established a rebuttable presumption that geographic area licensees are telecommunications carriers, so only those seeking to avoid that classification need submit such information.

The Commission will send a copy of the *Third Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. § 801(a)(1)(A). In addition, the Commission will send a copy of the *Third Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business. A copy of the *Third Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register. *See* 5 U.S.C. § 604(b).

APPENDIX C - VHF COAST STATION INFORMATION

The table below lists the public correspondence frequency pairs as set forth in 47 C.F.R. § 80.371(c).

Channel number	Carrier frequency (MHz)	
	Ship transmit	Coast transmit
24	157.200	161.800
25	157.250	161.850
26	157.300	161.900
27	157.350	161.950
28	157.400	162.000
84	157.225	161.825
85	157.275	161.875
86	157.325	161.925
87	157.375	161.975
88	157.425	162.025

APPENDIX D - VHF PUBLIC COAST STATION AREA (VPC) INFORMATION

VPC 1 (Northern Atlantic) consists of EAs 1-5, and 10.

VPC 2 (Mid-Atlantic) consists of EAs 9, 11-23, 25, 42, and 46.

VPC 3 (Southern Atlantic) consists of EAs 24, 26-34, 37, 38, 40, 41, and 174.

VPC4(Mississippi River) consists of EAs 35, 36, 39, 43-45, 47-53, 67-107, 113, 116-120, 122-125, 127, 130-134, and 176.

VPC 5 (Great Lakes) consists of EAs 6-8, 54-66, 108, and 109.

VPC 6 (Southern Pacific) consists of EAs 160-165.

VPC 7 (Northern Pacific) consists of EAs 147 and 166-170.

VPC 8 (Hawaii) consists of EA 172, 173, and 175.

VPC 9 (Alaska) consists of EA 171.

VPC 10 (Grand Forks) consists of EA 110.

VPC 11 (Minot) consists of EA 111.

VPC 12 (Bismarck) consists of EA 112.

VPC 13 (Aberdeen) consists of EA 114.

VPC 14 (Rapid City) consists of EA 115.

VPC 15 (North Platte) consists of EA 121.

VPC 16 (Western Oklahoma) consists of EA 126.

VPC 17 (Abilene) consists of EA 128.

VPC 18 (San Angelo) consists of EA 129.

VPC 19 (Odessa-Midland) consists of EA 135.

VPC 20 (Hobbs) consists of EA 136.

VPC 21 (Lubbock) consists of EA 137.

VPC 22 (Amarillo) consists of EA 138.

VPC 23 (Santa Fe) consists of EA 139.

VPC 24 (Pueblo) consists of EA 140.

VPC 25 (Denver-Boulder-Greeley) consists of EA 141.

VPC 26 (Scottsbluff) consists of EA 142.

VPC 27 (Casper) consists of EA 143.

VPC 28 (Billings) consists of EA 144.

VPC 29 (Great Falls) consists of EA 145.

VPC 30 (Missoula) consists of EA 146.

VPC 31 (Idaho Falls) consists of EA 148.

VPC 32 (Twin Falls) consists of EA 149.

VPC 33 (Boise City) consists of EA 150.

VPC 34 (Reno) consists of EA 151.

VPC 35 (Salt Lake City-Ogden) consists of EA 152.

VPC 36 (Las Vegas) consists of EA 153.

VPC 37 (Flagstaff) consists of EA 154.

VPC 38 (Farmington) consists of EA 155.

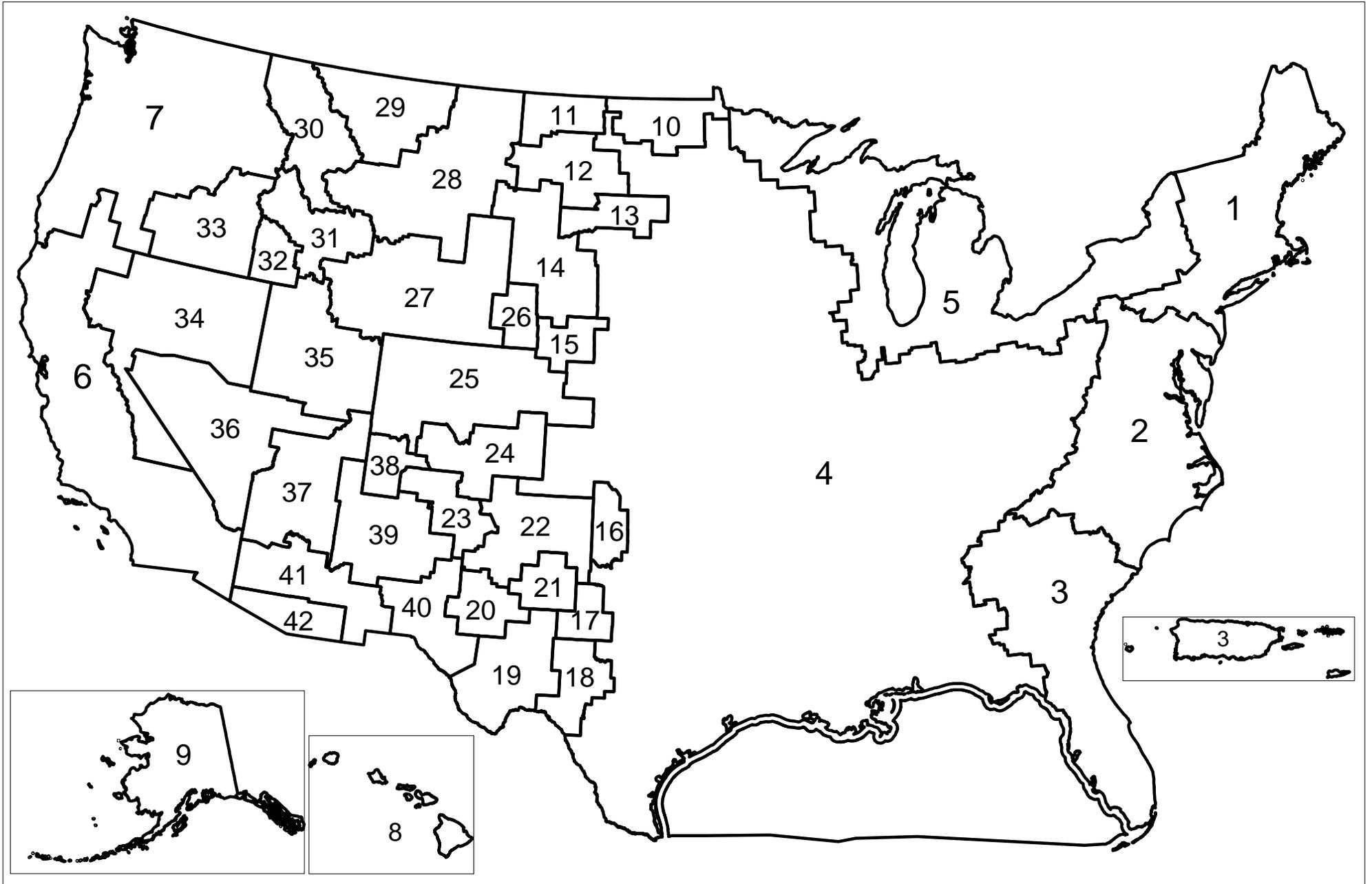
VPC 39 (Albuquerque) consists of EA 156.

VPC 40 (El Paso) consists of EA 157.

VPC 41 (Phoenix-Mesa) consists of EA 158.

VPC 42 (Tucson) consists of EA 159.

VHF Public Coast Station Areas (VPC)



VPC 8 includes BEA 173 Guam and the Northern Mariana Islands and BEA 175 American Samoa
VPC 4 includes BEA 176 Gulf of Mexico

Federal Communications Commission
Wireless Telecommunications Bureau

APPENDIX E - PUBLIC SAFETY SET-ASIDE

Inland VPC	Channels Set Aside for Public Safety
10	84, 25
11	84, 25
12	84, 25
13	84, 25
14	84, 25
15	84, 25
16	25, 85
17	25, 85
18	25, 85
19	25, 85
20	25, 85
21	25, 85
22	25, 85
23	84, 25
24	84, 25
25	84, 25
26	84, 25
27	84, 25
28	84, 25
29	84, 25
30	84, 25
31	25, 85
32	25, 85
33	84, 25
34	84, 25
35	25, 85

36	84, 25
37	84, 25
38	84, 25
39	84, 25
40	25, 85
41	84, 25
42	84, 25

APPENDIX F - FINAL RULES

Chapter I of Title 47 of the Code of Federal Regulations, Parts 20, 80, and 90 are amended as follows:

I. Part 20 - Commercial Mobile Radio Services

1. The authority citation for Part 20 continues to read as follows:

AUTHORITY: Secs. 4, 251-2, 303, and 332, 48 Stat. 1066, 1062, as amended; 47 U.S.C. 154, 251-54, 303, and 332 unless otherwise noted.

2. Section 20.9 is amended by revising paragraphs (b) and (b)(1) to read as follows:

§ 20.9 Commercial mobile radio service.

* * * * *

(b) Licensees of a Personal Communications Service or applicants for a Personal Communications Service license, and Public Coast Station licensees or applicants, proposing to use any Personal Communications Service or Public Coast Station spectrum to offer service on a private mobile radio service basis must overcome the presumption that Personal Communications Service and Public Coast Stations are commercial mobile radio services.

(1) The applicant or licensee (who must file an application to modify its authorization) seeking authority to dedicate a portion of the spectrum for private mobile radio service, must include a certification that it will offer Personal Communications Service or Public Coast Station service on a private mobile radio service basis. The certification must include a description of the proposed service sufficient to demonstrate that it is not within the definition of commercial mobile radio service in § 20.3 of this chapter. Any application requesting to use any Personal Communications Service or Public Coast Station spectrum to offer service on a private mobile radio service basis will be placed on public notice by the Commission.

* * * * *

II. Part 80 - Stations in the Maritime Services

3. The authority citation for Part 80 is amended to read as follows:

AUTHORITY: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

4. Section 80.3 is amended by revising paragraph (b) to read as follows:

§ 80.3 Other applicable rule parts of this chapter.

* * * * *

(b) *Part 1.* This part includes rules of practice and procedure for license applications, adjudicatory proceedings, procedures for reconsideration and review of Commission actions; provisions concerning violation notices and forfeiture proceedings; and the environmental processing requirements that, if applicable, must be complied with prior to the initiation of construction. Subpart Q of Part 1 contains rules governing competitive

bidding procedures for resolving mutually exclusive applications for certain initial licenses.

* * * * *

5. Section 80.25 is revised to read as follows:

§ 80.25 License term.

* * * * *

(b) Licenses other than ship stations in the maritime services will normally be issued for a term of five years from the date of original issuance, major modification, or renewal, except that licenses for VHF public coast stations will normally be issued for a term of ten years from the date of original issuance, major modification, or renewal. Licenses, other than Public Coast and Alaska Public Fixed stations, may be renewed up to ninety (90) days after the date the license expires.

* * * * *

6. Section 80.49 is revised to read as follows:

§80.49 Construction and regional service requirements.

(a) *Public coast stations.*

(1) Each VHF public coast station geographic area licensee must make a showing of substantial service within its region or service area (subpart P) within five years of the initial license grant, and again within ten years of the initial license grant, or the authorization becomes invalid and must be returned to the Commission for cancellation. "Substantial" service is defined as service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal. For site-based VHF public coast station licensees, when a new license has been issued or additional operating frequencies have been authorized, if the station or frequencies authorized have not been placed in operation within twelve months from the date of the grant, the authorization becomes invalid and must be returned to the Commission for cancellation.

(2) For LF, MF, HF, and AMTS band public coast station licensees, when a new license has been issued or additional operating frequencies have been authorized, if the station or frequencies authorized have not been placed in operation within eight months from the date of the grant, the authorization becomes invalid and must be returned to the Commission for cancellation.

(b) *Public fixed stations.* When a new license has been issued or additional operating frequencies have been authorized, if the station or frequencies authorized have not been placed in operation within twelve months from the date of the grant, the authorization becomes invalid and must be returned to the Commission for cancellation.

7. A new section 80.60 is added to read as follows:

§ 80.60 Partitioned licenses and disaggregated spectrum.

(a) *Eligibility.* VHF Public Coast area (VPC) licensees, *see* § 80.371(c)(1)(B) of this part, may partition their geographic service area or disaggregate their spectrum pursuant to the procedures set forth in this section. Parties seeking approval for partitioning and disaggregation shall request an authorization for

partial assignment pursuant to § 1.924 of this chapter.

(b) *Technical standards.* (1) *Partitioning.* In the case of partitioning, all requests for authorization for partial assignment of a license must include, as an attachment, a description of the partitioned service area. The partitioned service area shall be defined by coordinate points at every 3 degrees along the partitioned service area unless an FCC-recognized service area is utilized (e.g., Metropolitan Service Area, Rural Service Area, or Economic Area) or county lines are used. The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude, and must be based upon the 1983 North American Datum (NAD83). In a case where an FCC-recognized service area or county lines are utilized, applicants need only list the specific area(s) (through use of FCC designations or county names) that constitute the partitioned area.

(2) *Disaggregation.* Spectrum may be disaggregated in any amount, provided acquired spectrum is disaggregated according to frequency pairs.

(3) *Combined partitioning and disaggregation.* The Commission will consider requests for partial assignment of licenses that propose combinations of partitioning and disaggregation.

(c) *License term.* The license term for a partitioned license area and for disaggregated spectrum shall be the remainder of the original licensee's term as provided for in § 80.25 of this part.

(d) *Construction Requirements.*

(1) *Partitioning.* Partial assignors and assignees for license partitioning have two options to meet construction requirements. Under the first option, the partitionor and partitionee would each certify that they will independently satisfy the substantial service requirement for their respective partitioned areas. If either licensee failed to meet its substantial service showing requirement, only the non-performing licensee's renewal application would be subject to dismissal. Under the second option, the partitionor certifies that it has met or will meet the substantial service requirement for the entire market. If the partitionor fails to meet the substantial service standard, however, only its renewal application would be subject to forfeiture at renewal.

(2) *Disaggregation.* Partial assignors and assignees for license disaggregation have two options to meet construction requirements. Under the first option, the disaggregator and disaggregatee would certify that they each will share responsibility for meeting the substantial service requirement for the geographic service area. If parties choose this option and either party fails to do so, both licenses would be subject to forfeiture at renewal. The second option would allow the parties to agree that either the disaggregator or the disaggregatee would be responsible for meeting the substantial service requirement for the geographic service area. If parties choose this option, and the party responsible for meeting the construction requirement fails to do so, only the license of the nonperforming party would be subject to forfeiture at renewal.

8. Section 80.70 is amended by adding new subsection (c) as follows:

§ 80.70 Special provisions relative to coast station VHF facilities.

* * * * *

(c) A VHF (156-162 MHz) public coast station licensee initially authorized on any of the channels listed in the table in § 80.371(c)(1)(A) of this part may transfer or assign its channel(s) to another entity. If the proposed transferee or assignee is the geographic area licensee for the geographic area to which the channel is allocated, such transfer or assignment will be deemed to be in the public interest. However, such presumption will

be rebuttable.

9. Section 80.105 is revised to read as follows:

§ 80.105 General obligations of coast stations.

Each coast station or marine-utility station must acknowledge and receive all calls directed to it by ship or aircraft stations. Such stations are permitted to transmit safety communication to any ship or aircraft station. VHF (156-162 MHz) public coast stations may provide fixed or hybrid services on a co-primary basis with mobile operations.

10. Section 80.213 is amended by revising paragraphs (a)(2) and (d) to read as follows:

§ 80.213 Modulation requirements.

(a) * * * * *

(2) When phase or frequency modulation is used in the 156-162 MHz band the peak modulation must be maintained between 75 and 100 percent. * * *

* * * * *

(d) Ship and coast station transmitters operating in the 156-162 MHz band must be capable of proper operation with a frequency deviation of ± 5 kHz when using any emission authorized by § 80.207 of this part.

11. Section 80.303 is amended by revising paragraph (b) to read as follows:

§ 80.303 Watch on 156.800 MHz (Channel 16).

* * * * *

(b) A coast station is exempt from compliance with the watch requirement when Federal, State, or Local Government stations maintain a watch on 156.800 MHz over 95% of the coast station's service area. Each licensee exempted by rule must notify the nearest district office of the U.S. Coast Guard at least thirty days prior to discontinuing the watch, or in the case of new stations, at least thirty days prior to commencing service. The Coast Guard may require any coast station to maintain the watch temporarily or permanently. The Coast Guard may also require any coast station to remain capable of either immediately resuming the watch or providing the Coast Guard direct dial-up access to the necessary 156.800 MHz transceiver at no charge so that the Coast Guard can maintain the watch.

* * * * *

12. Section 80.371 is amended by revising paragraph (c) to read as follows:

§ 80.371 Public correspondence frequencies.

* * * * *

(c) Working frequencies in the marine VHF 156-162 MHz band. (1)(A) The frequency pairs listed in the table below are available for assignment to public coast stations for public correspondence communications with

ship stations and units on land.

* * *

(B) Service areas in the marine VHF 156-162 MHz band are VHF Public Coast areas (VPCs). As listed in the table below, VPCsAs are based on, and composed of one or more of, the U.S Department of Commerce's 172 Economic Areas (EAs). See 60 FR 13114 (March 10, 1995). In addition, the Commission shall treat Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, American Samoa, and the Gulf of Mexico as EA-like areas, and has assigned them EA numbers 173-176, respectively. Maps of the EAs and VPCsAs are available for public inspection and copying at the Public Safety and Private Wireless Division, room 8010, 2025 M Street, NW, Washington, DC. Except as shown below, the frequency pairs listed in paragraph (c)(1)(A) of this section are available for assignment to a single licensee in each of the VPCs listed in the table below. In addition to the listed EAs listed in the table below, each VPC also includes the adjacent waters under the jurisdiction of the United States.

VHF Public Coast areas (VPCs)		
VPCs	EAs	Frequency Pairs Not Available for Assignment
1 (Northern Atlantic)	1-5, 10	--
2 (Mid-Atlantic)	9, 11-23, 25, 42, 46	--
3 (Southern Atlantic)	24, 26-34, 37, 38, 40, 41, 174	--
4 (Mississippi River)	34, 36, 39, 43-45, 47-53, 67-107, 113, 116-120, 122-125, 127, 130-134, 176	--
5 (Great Lakes)	6-8, 54-66, 108, 109	--
6 (Southern Pacific)	160-165	--
7 (Northern Pacific)	147, 166-170	--
8 (Hawaii)	172, 173, 175	--
9 (Alaska)	171	--
10 (Grand Forks)	110	84, 25
11 (Minot)	111	84, 25
12 (Bismarck)	112	84, 25
13 (Aberdeen)	114	84, 25
14 (Rapid City)	115	84, 25
15 (North Platte)	121	84, 25
16 (Western Oklahoma)	126	25, 85

17 (Abilene)	128	25, 85
18 (San Angelo)	129	25, 85
19 (Odessa-Midland)	135	25, 85
20 (Hobbs)	136	25, 85
21 (Lubbock)	137	25, 85
22 (Amarillo)	138	25, 85
23 (Santa Fe)	139	84, 25
24 (Pueblo)	140	84, 25
25 (Denver-Boulder-Greeley)	141	84, 25
26 (Scottsbluff)	142	84, 25
27 (Casper)	143	84, 25
28 (Billings)	144	84, 25
29 (Great Falls)	145	84, 25
30 (Missoula)	146	84, 25
31 (Idaho Falls)	148	25, 85
32 (Twin Falls)	149	25, 85
33 (Boise City)	150	84, 25
34 (Reno)	151	84, 25
35 (Salt Lake City-Ogden)	152	25, 85
36 (Las Vegas)	153	84, 25
37 (Flagstaff)	154	84, 25
38 (Farmington)	155	84, 25
39 (Albuquerque)	156	84, 25
40 (El Paso)	157	25, 85
41 (Phoenix-Mesa)	158	84, 25
42 (Tucson)	159	84, 25

(C) Subject to paragraph (c)(3) of this section, each licensee may also operate on 12.5 kHz offset frequencies in areas where the licensee is authorized on both frequencies adjacent to the offset frequency, and in areas where the licensee on the other side of the offset frequency consents to the licensee's use of the adjacent offset frequency.

(2) Any recovered channel pairs will revert automatically to the holder of the VPC license within which such channels are included, except the channel pairs listed in the table in paragraph (c)(1)(B) of this section. Those channel pairs, and any channel pairs recovered where there is no VPC licensee, will be retained by the Commission for future licensing.

(3) VPC licensees may not operate on Channel 228B (162.0125 MHz), which is available for use in the Coast Guard's Ports and Waterways Safety System (PAWSS)). In addition, within six months of the conclusion of the competitive bidding procedures to determine the licensees in each VPC, the U.S. Coast Guard shall submit to each licensee of VPCs 1-9 a plan specifying up to two narrowband channel pairs offset 12.5 kHz from the channels set forth in the table in paragraph (c)(1)(A) of this section, for use in the PAWSS. The final selection of the PAWSS channel pairs can be negotiated (if the VPC licensee objects to the Coast Guard proposal, it shall make a counterproposal within three months) and established by an agreement between the parties. All parties are required to negotiate in good faith. If no agreement is reached within one year of the date the Coast Guard submitted its plan, the Coast Guard may petition the Commission to select the channel pairs.

(4) Subject to the requirements of § 80.21, each VPC licensee may place stations anywhere within its region without obtaining prior Commission approval provided:

(A) It provides to co-channel coast station incumbent licensees, and incumbent Private Land Mobile Radio licensee authorized under part 90 of this chapter on a primary basis, protection as defined in subpart P of this part. VPC licensees that share a common border may either distribute the available frequencies upon mutual agreement or request that the Commission assign frequencies along the common border.

(B) The locations and/or technical parameters of the transmitters are such that individual coordination of the channel assignment(s) with a foreign administration, under applicable international agreements and rules in this part, is not required.

(C) For any construction or alteration that would exceed the requirements of § 17.7 of this chapter, licensees must notify the appropriate Regional Office of the Federal Aviation Administration (FAA Form 7460-1) and file a request for antenna height clearance and obstruction marking and lighting specifications (FCC Form 854) with the FCC, Attn: Information Processing Branch, 1270 Fairfield Rd., Gettysburg, PA 17325-7245.

(D) The transmitters must not have a significant environmental effect as defined by §§ 1.1301 through 1.1319 of this chapter.

* * * * *

13. Section 80.751 is amended to read as follows:

§ 80.751 Scope.

This subpart specifies receiver antenna terminal requirements in terms of power, and relates the power available at the receiver antenna terminals to transmitter power and antenna height and gain. It also sets forth the co-channel interference protection that VHF public coast station geographic area licensees must provide to incumbents.

14. Section 80.773 is amended to read as follows:

§ 80.773 Co-channel interference protection.

(a) Where a VHF public coast station geographic area licensee shares a frequency with an incumbent VHF public coast station licensee, the ratio of desired to undesired signal strengths must be at least 12 dB within the service area of the station.

(b) Where a VHF public coast station geographic area licensee shares a frequency with an incumbent private land mobile radio licensee, the VHF public coast station geographic area licensee must provide at least 10 dB protection to the PLMR incumbent's predicted 38 dBu signal level contour. The PLMR incumbent's predicted 38 dBu signal level contour is calculated using the F(50, 50) field strength chart for Channels 7-13 in § 73.699 (Fig. 10) of this chapter, with a 9 dB correction factor for antenna height differential, and is based on the licensee's authorized effective radiated power and antenna height-above-average-terrain. The 10 dB protection to the incumbent's predicted 38 dBu signal level contour shall be calculated using the F(50, 10) field strength chart for Channels 7-13 in § 73.699 (Fig. 10a) of this chapter, with a 9 dB correction factor for antenna height differential.

15. New subpart Y is added to read as follows:

Subpart Y -- Competitive Bidding Procedures

§ 80.1251 Maritime communications services subject to competitive bidding.

§ 80.1252 Designated entities.

§ 80.1251 Maritime communications services subject to competitive bidding.

Mutually exclusive initial applications for VPC licenses, high seas public coast station licenses, and AMTS coast station licenses are subject to competitive bidding procedures. The procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this part.

§ 80.1252 Designated entities.

(a) This section addresses certain issues concerning designated entities in maritime communications services subject to competitive bidding. Issues that are not addressed in this section are governed by the designated entity provisions in part 1, subpart Q of this chapter.

(b) *Eligibility for small business provisions.*

(1) A small business is an entity that, together with its affiliates and controlling interests, has average gross revenues not to exceed \$15 million for the preceding three years.

(2) A very small business is an entity that, together with its affiliates and controlling interests, has average gross revenues not to exceed \$3 million for the preceding three years.

(3) For purposes of determining whether an entity meets either of the definitions set forth in paragraph (b)(1) or (b)(2) of this section, the gross revenues of the entity, its affiliates, and controlling interests shall be considered on a cumulative basis and aggregated.

(4) Where an applicant (or licensee) cannot identify controlling interests under the standards set forth in this section, the gross revenues of all interest holders in the applicant, and their affiliates, will be attributable.

(5) A consortium of small businesses (or a consortium of very small businesses) is a conglomerate

organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (b)(1) of this section (or each of which individually satisfies the definition in paragraph (b)(2) of this section). Where an applicant or licensee is a consortium of small businesses (or very small businesses), the gross revenues of each small business (or very small business) shall not be aggregated.

(c) *Controlling interest.*

(1) For purposes of this section, controlling interest includes individuals or entities with *de jure* and *de facto* control of the applicant. *De jure* control is greater than 50 percent of the voting stock of a corporation, or in the case of a partnership, the general partner. *De facto* control is determined on a case-by-case basis. An entity must disclose its equity interest and demonstrate at least the following indicia of control to establish that it retains *de facto* control of the applicant:

(A) the entity constitutes or appoints more than 50 percent of the board of directors or management committee;

(B) the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and

(C) the entity plays an integral role in management decisions.

(2) *Calculation of certain interests.*

(A) Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised.

(B) Partnership and other ownership interests and any stock interest equity, or outstanding stock, or outstanding voting stock shall be attributed as specified below.

(C) Stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and, to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal, or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust.

(D) Non-voting stock shall be attributed as an interest in the issuing entity.

(E) Limited partnership interests shall be attributed to limited partners and shall be calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses.

(F) Officers and directors of an entity shall be considered to have an attributable interest in the entity. The officers and directors of an entity that controls a licensee or applicant shall be considered to have an attributable interest in the licensee or applicant.

(G) Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual

control, it shall be treated as if it were a 100 percent interest.

(H) Any person who manages the operations of an applicant or licensee pursuant to a management agreement shall be considered to have an attributable interest in such applicant or licensee if such person, or its affiliate pursuant to § 1.2110(b)(4) of this chapter, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence

- (i) The nature or types of services offered by such an applicant or licensee;
- (ii) The terms upon which such services are offered; or
- (iii) The prices charged for such services.

(I) Any licensee or its affiliate who enters into a joint marketing arrangement with an applicant or licensee, or its affiliate, shall be considered to have an attributable interest, if such applicant or licensee, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence,

- (i) The nature or types of services offered by such an applicant or licensee;
- (ii) The terms upon which such services are offered; or
- (iii) The prices charged for such services.

(d) A winning bidder that qualifies as a small business or a consortium of small businesses as defined in § 80.1252(b)(1) or § 80.1252(b)(5) of this subpart may use the bidding credit specified in § 1.2110(e)(2)(ii) of this chapter. A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in § 80.1252(b)(2) or § 80.1252(b)(5) of this subpart may use the bidding credit specified in § 1.2110(e)(2)(i) of this chapter.

III. Part 90 - Private Land Mobile Radio Services

16. The authority citation for Part 90 continues to read as follows:

AUTHORITY: Secs. 4, 251-2, 303, 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 251-2, 303, 309 and 332, unless otherwise noted.

17. Section 90.283 is removed.