

for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Illinois, is amended by removing DTV Channel *33 and adding DTV Channel *9 at Urbana.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00-25359 Filed 10-10-00; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00-2104; MM Docket No. 00-109; RM-9899]

Radio Broadcasting Services; Ravenwood, MO; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule concerning Radio Broadcasting Service; Ravenwood, MO published in the **Federal Register** on September 26, 2000, 65 FR 57745.

DATES: Effective October 30, 2000.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: We published a document amending part 73 in the **Federal Register** of September 26, 2000, 65 FR 57745 (FR Doc. 00-24647). In that document, the Commission is correcting § 73.202(b) to reflect a change in the community in the Table of FM Allotments from Ravenwood, Florida to

Ravenwood, Missouri. In rule FR Doc. 00-24647, published September 26, 2000, 65 FR 57745, make the following corrections:

PART 73—[CORRECTED]

§ 73.202 [Corrected]

1. On page 57745, in the third column, in amendatory instruction 2, in the second line, correct "Florida" to read "Missouri."

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00-26013 Filed 10-10-00; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 93-144; FCC 00-288]

Rules To Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band

AGENCY: Federal Communications Commission.

ACTION: Final rule; compliance deadline requirement.

SUMMARY: In this document, the Commission sets forth the construction requirements that the Commission will impose on incumbent 800 MHz Specialized Mobile Radio (SMR) commercial licensees operating wide area systems that include Business and Industrial/Land Transportation (BI/LT) channels obtained prior to 1995 through inter-category sharing. This action is taken in light of the Commission's *Memorandum Opinion and Order on Remand (Remand Order)* and the appellate court decision, *Fresno Mobile Radio, Inc. v. FCC (Fresno)*. We will allow incumbent wide-area 800 MHz SMR licensees using BI/LT channels an analogous construction period as we allowed eligible licensees of the *Remand Order* provided that such eligible licensees satisfy the conditions described herein and provide the requisite certification to the Commission.

DATES: Effective October 11, 2000. Incumbent wide-area licensees must file certifications of construction within fifteen (15) days after the licensee's applicable construction deadline or December 11, 2000, whichever is later.

FOR FURTHER INFORMATION CONTACT: Chris Gacek, Wireless Telecommunications Bureau, at (202)

418-1743; for additional information concerning the information collections contained in this document contact Judy Boley at (202) 418-0214, or via the Internet at jbole@fcc.gov.

SUPPLEMENTARY INFORMATION: This *Memorandum Opinion & Order (MO&O)* in PR Docket No. 93-144, adopted August 2, 2000, and released August 4, 2000, is available for inspection and copying during normal business hours in the FCC Reference Center, 445 Twelfth Street, S.W., Washington D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington D.C. 20036 (202) 857-3800. The document is also available via the internet at: <http://www.fcc.gov/Bureaus/Wireless/Orders/2000/fcc00288.doc>.

Synopsis of Memorandum Opinion and Order

I. Introduction

In this *Memorandum Opinion and Order (MO&O)*, we set forth the construction requirements that the Commission will impose on incumbent 800 MHz Specialized Mobile Radio (SMR) commercial licensees operating wide area systems that include Business and Industrial/Land Transportation (BI/LT) channels obtained prior to 1995 through inter-category sharing. This action is taken in light of the Commission's decision in its *Memorandum Opinion and Order on Remand (Remand Order)*, 14 FCC Rcd. 21679 (1999), published 65 FR 7751 (Feb. 16, 2000), which responded to the decision of the U.S. Court of Appeals for the District of Columbia Circuit (Court) in *Fresno Mobile Radio, Inc. v. FCC (Fresno)*, 165 F.3d 965 (D.C. Cir. 1999). Incumbent wide-area licensees must file certifications of construction within fifteen (15) days after the licensee's applicable construction deadline or December 11, 2000, whichever is later.

II. Summary of the Memorandum Opinion and Order

A. Background

The 800 MHz band is divided into four channel groups—SMR, General Category, BI/LT, and Public Safety, each with its own eligibility rules. 800 MHz SMR channels are designated for commercial use, while 800 MHz BI/LT channels are designated for non-commercial internal use by the licensee. Prior to 1995, in certain circumstances, the Commission allowed SMR licensees to apply for BI/LT channels under inter-category sharing rules, which the SMR licensee could then use commercially

despite the eligibility criteria that otherwise reserved these channels for private internal use. Inter-category sharing by SMR licensees was permitted if the BI/LT channel sought by the SMR licensee was unoccupied and if there were no SMR channels available in the licensee's service area.

On December 23, 1999, in response to a remand of its *800 MHz SMR Reconsideration Order*, 12 FCC Rcd. 9972 (1997), published at 62 FR 41225 (July 31, 1997), by the District of Columbia Circuit in *Fresno*, the Commission released its *Remand Order* determining that incumbent 800 MHz SMR licensees who had obtained extended implementation ("EI") authority to build wide-area systems and who were within their extended construction periods at the time of the *Fresno* decision could apply construction requirements similar to those given to SMR Economic Area ("EA") licensees in the 800 MHz band. In the *Remand Order*, however, we granted relief only to wide-area incumbents operating on SMR channels. We did not address the construction status of wide-area incumbents operating on non-SMR channels obtained through inter-category sharing, because we concluded that this issue was beyond the scope of the proceeding. We indicated that we would determine the construction requirements for wide-area licensees on these channels in WT Docket No. 99-87, the pending Balanced Budget Act (BBA) proceeding.

Upon further reflection, the Commission decided to determine the construction status of BI/LT channels used by wide-area 800 MHz SMR licensees in this proceeding which responds to the court's action in *Fresno*, rather than in the BBA proceeding. On March 2, 2000, therefore, we released a *Public Notice* seeking comment on whether we should adopt construction rules for wide-area incumbent 800 MHz SMR licensees using BI/LT channels that would be similar to those adopted in the *Remand Order* for wide-area SMR licensees using SMR channels. We also requested comment on the applicable construction requirements (e.g., substantial service or population-based) for wide-area incumbent 800 MHz SMR licensees using BI/LT channels.

In response to that *Public Notice*, we received four comments and one reply comment. All but one of the commenters contend that wide-area 800 MHz SMR licenses using BI/LT channels should receive the same construction requirements established by the *Remand Order* for wide-area incumbents using SMR channels. Nextel Communications, Inc. (Nextel) and

Southern Communications (Southern) maintain that regulatory parity requires giving wide-area 800 MHz SMR licenses using BI/LT channels the same flexible construction requirements as those given to other CMRS providers because they provide similar services. The American Mobile Telecommunication Association, Inc. (AMTA) maintains that all channels properly licensed to a wide-area SMR system under the Commission's rules are part of that system and should be subject to the same regulatory treatment.

B. Discussion

We conclude that wide-area incumbent 800 MHz SMR licensees operating on BI/LT channels are sufficiently similar to wide-area incumbent 800 MHz licensees operating on SMR channels that they should have the same flexibility with respect to construction requirements. The record demonstrates that some of the wide-area SMR licensees who received EI authorizations from the Commission are licensed to operate both on SMR channels and on BI/LT channels that they obtained through inter-category sharing for commercial use. In Southern's case, the vast majority of channels in its wide-area SMR system are BI/LT channels obtained through inter-category sharing. The record further demonstrates that wide-area SMR licensees such as Southern use inter-category BI/LT channels interchangeably with SMR channels, and that the BI/LT channels licensed on this basis are used to provide service that is similar, if not identical, to that provided on SMR channels by 800 MHz EA and incumbent wide-area SMR licensees. Accordingly, we agree with Southern, AMTA, and other supporting commenters that wide-area 800 MHz SMR licensees using BI/LT channels should be subject to the same construction requirements given to 800 MHz SMR EA licensees by our rules and to eligible wide-area SMR licensees by our *Remand Order*.

Recognizing that these licensees may already have constructed their systems in accordance with the requirements in place at the time (i.e., site-by-site, channel-by-channel), we will give eligible wide-area 800 MHz SMR licenses using BI/LT channels the option of complying with the site-specific construction requirements associated with their EI authorizations or applying the EA population coverage requirements to their wide-area systems. This option applies only to wide-area 800 MHz SMR licensees using BI/LT channels obtained through inter-category sharing. We believe that giving

wide-area 800 MHz SMR licenses using BI/LT channels the choice between applying site-specific requirements or the EA coverage requirements will establish regulatory parity among all similarly situated wide-area 800 MHz SMR licensees.

We did not receive any comment on when the five-year construction period should begin for BI/LT channels licensed to wide-area SMR licensees that elect to apply the EA construction requirements. We therefore adopt the framework outlined in the *Remand Order*, which begins the construction period from the licensee's EI grant date. Therefore, an eligible wide-area SMR licensee that elects to apply the EA construction requirements to its BI/LT channels must have constructed and placed into operation a sufficient number of base stations to provide coverage to at least two-thirds of the population of its wide-area system, or must provide substantial service to the licensed area, within five years of EI grant plus the tolling period described.

For all licensees entitled to relief under this decision, we will add 546 days to their construction periods, representing the amount of time between the *Fresno* decision and the release of this order. Therefore, the applicable construction deadline for any eligible wide-area licensee that elects to apply the EA coverage requirements will be five years from the date of EI grant plus 546 days. Likewise, the applicable construction deadline for eligible licensees that do not elect the EA requirements will be 546 days after the EI deadline established in the *800 MHz Rejustification Orders*, 13 FCC Rcd. 1533 (WTB: 1997), recon., 12 FCC Rcd. 18349 (WTB: 1997).

A wide-area SMR licensee that is eligible for relief under this Order must certify in a filing with the Bureau that it has either met the EA construction requirements, as set out herein, or complied with the terms of its EI authorization. In addition to the certification, if a licensee chooses to meet the EA requirements for channels in the lower 230 channels using the substantial service option, it must demonstrate in the same filing with the Bureau how it is providing substantial service. All filings must be made within fifteen (15) days after the licensee's applicable construction deadline, as defined supra, or December 11, 2000, whichever is later.

When determining if an eligible licensee has met a specific coverage requirement (i.e., covering two-thirds of the population), the population should be measured using the licensee's wide-area "footprint" as established in the

licensee's EI justification submission. For this purpose, we adopt the guidelines in the *Remand Order*, i.e., the licensee should compute the population covered within its footprint on a county basis using 1990 U.S. Census information. In cases in which the footprint does not align with county boundaries, the licensee should include the entire population of the county if the licensee covers any portion of it.

III. Conclusion

For the reasons given above, any incumbent wide-area 800 MHz SMR licensee that uses BI/LT channels obtained through inter-category sharing and was still in its construction period as of the date of the *Fresno* decision may choose to apply either the existing site-by-site, channel-by-channel construction requirements or the alternative construction requirements set forth in this *MO&O*. Eligible licensees must certify in a filing with the Commission their compliance with one of the enumerated requirements within the later of fifteen days from their applicable construction benchmarks, as defined herein, or December 11, 2000.

IV. Procedural Matters

Paperwork Reduction Act of 1995 Analysis

Supplementary Information: This *MO&O* contains a modified information collection, which has been submitted to the Office of Management and Budget for approval. As part of our continuing effort to reduce paperwork burdens, we invite the general public to take this opportunity to comment on the information collection contained in this *MO&O*, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public comments should be submitted to OMB and the Commission, and are due November 13, 2000. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060-0307.

Title: Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 15.

Estimated Time Per Response: 2 hours.

Total Annual Burden: 30 hours.

Frequency of Response: Single response.

Total Annual Estimated Costs: \$6,000. This cost includes an estimate that 100% of the respondents will hire an outside consultant at \$200 per hour to prepare the information.

Needs and Uses: The Commission will use this information to determine whether wide-area SMR licensees have complied with the Commission's 800 MHz construction requirements for their respective systems.

Address: In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, S.W., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov; and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725-17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain_t@al.eop.gov.

Regulatory Flexibility Act

The order, adopted by the Commission on August 17, 2000, contained a Supplemental Final Regulatory Flexibility Analysis that is now being retracted. As part of this submission we are including a Final Regulatory Flexibility Act Certification in its place. The Regulatory Flexibility Act (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."¹ The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by our rules.² The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation;

and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."³ More specifically the Commission has used the term "small business" in the wireless auction context as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.

We certify that this memorandum opinion and order (MO&O) will not have a significant economic impact on a substantial number of small business entities for the following reasons. First, the direct effect of this MO&O is to give eligible wide-area 800 MHz SMR licensees using BI/LT channels through inter-category sharing the option of complying with the site-specific construction requirements originally given with their EI authorizations or of complying with the more liberal EA population coverage requirements. For any small entity that would be able to exercise this new option as its buildout requirement, we believe there would be no detrimental impact or economic cost. In actuality, there might be a positive benefit to the licensees in this category in that small entities might find it easier to satisfy the buildout requirements.

Second, of the nine licensees directly effected by this order, three belong to extremely large corporations. Of the remaining six, all or none could be small business entities, our data do not permit a more accurate estimate at this time. However, as noted above, we believe that they will not experience a significant economic impact as a result of the revisions set forth in this *MO&O*.

Third, any indirect effects of this decision will be minimal. Currently, Commission rules do not allow the commercial use of BI/LT channels. The directly effected parties, mentioned above, obtained their BI/LT channels prior to 1995. Therefore, they are allowed to use those channels commercially. However, since 1995 users of newly available BI/LT channels are restricted to private mobile service use—that is, a non-commercial, non-business use. Consequently, even though the more liberalized build-out requirement adopted in this *MO&O* may lead to fewer channels reverting to the BI/LT channel pool because the licensees failed to timely construct, there will be no impact on small business entities because any such

¹ 5 U.S.C. 605(b).

² 5 U.S.C. 603(b)(3).

³ 5 U.S.C. 601(4).

reversionary channels could not be licensed for commercial purposes.

Accordingly, we certify, pursuant to Section 605(b) of the RFA, that any effects flowing from this MO&O will not have a significant economic impact upon a substantial number of small entities, as that term is defined in the RFA. The Commission will send a copy of this MO&O, including a copy of this certification, in a report to Congress pursuant to SBREFA.⁴ In addition, the MO&O and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**.⁵

V. Ordering Clauses

Accordingly, pursuant to the authority of section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), incumbent wide-area 800 MHz SMR licensees eligible for relief as described herein must comply with the terms of their extended implementation authorizations or apply the alternative construction requirements described herein.

Incumbent wide-area 800 MHz SMR licensees eligible for relief as described herein must certify in a filing with the Wireless Telecommunications Bureau their compliance with the construction requirements as described herein within the later of fifteen days after the licensee's applicable construction deadline or December 11, 2000.

The Commission's Consumer Information Bureau, the Reference Information Center, SHALL SEND a copy of this MO&O, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00-25387 Filed 10-10-00; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[ET Docket No. 95-18; FCC 00-233]

Allocation of Spectrum at 2 GHz for Use by the Mobile-Satellite Service; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On August 7, 2000 (65 FR 48174), the Commission published final rules in the Second Report and Order and Second Memorandum Opinion and Order, which revised the rules governing the 2 GHz Mobile-Satellite Service. In that document a new CFR section added in the Fixed Microwave Service inadvertently carried the same CFR section number used subsequently in a final rule published September 7, 2000. This correction renumbers the section published on August 7, 2000.

DATES: Effective September 6, 2000.

FOR FURTHER INFORMATION CONTACT: Sean White, Office of Engineering and Technology, (202) 418-2453.

SUPPLEMENTARY INFORMATION: On August 7, 2000 (65 FR 48174), a new § 101.83 entitled "Reimbursement of relocation expenses in the 2115-2150 MHz and 2165-2200 MHz bands" was added. However, § 101.83 entitled "Modification of station license" was added on September 7, 2000 (65 FR 54155). This correction renumbers the section added on August 7, 2000 as § 101.99.

Accordingly, in FR Doc. 00-19478 published on August 7, 2000 (65 FR 48174), make the following corrections:

PART 101—[CORRECTED]

1. On page 48183, in the first column, in amendatory instruction 16, correct "§ 101.83" to read "§ 101.99".

2. On page 48183, in the first column, correctly designate "§ 101.83" as "§ 101.99".

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00-26012 Filed 10-10-00; 8:45 am]

BILLING CODE 6712-01-U

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172, 173, 177

[Docket No. RSPA-00-7755 (HM-189Q)]

RIN 2137-AD47

Hazardous Materials Regulations: Editorial Corrections and Clarifications; Corrections

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; corrections.

SUMMARY: This document contains corrections to a final rule (RSPA-00-

7755 (HM-189Q)), which was published in the **Federal Register** on Friday, September 29, 2000. That final rule amended the Hazardous Materials Regulations (HMR) to correct editorial errors, make minor regulatory changes and, in response to requests for clarification, improve the clarity of certain provisions in the HMR.

EFFECTIVE DATE: October 1, 2000.

FOR FURTHER INFORMATION CONTACT: Charles E. Betts, Office of Hazardous Materials Standards, (202) 366-8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 2000, RSPA published a final rule under Docket HM-189Q (65 FR 58614) to correct editorial errors, make minor regulatory changes and, in response to requests for clarification, improve the clarity of certain provisions in the HMR. This amendment makes minor changes to correct wording omissions and typographical errors to the September 29 final rule, which was effective October 1, 2000.

Because the amendments do not impose new requirements, notice and public comment are unnecessary.

Correction

In rule document 00-24633, beginning on page 58614, in the issue of Friday, September 29, 2000, make the following corrections:

PART 172—[CORRECTED]

§ 172.101 [Corrected]

1. On page 58620, in column 3, in § 172.101, in paragraph (g), in line two, correct the wording "§ 173.248" to read "§ 173.428".

2. On page 58624, in § 172.101, in the table, for the entry "*Organic peroxide type A, liquid or solid.*" add the word "Forbidden" to column 3.

3. On the same page, in § 172.101, in the table, for the entry "Phenylenediamines (*o*-, *m*-, *p*-)" add a "+" in column 1.

§ 172.403 [Corrected]

4. On page 58626, in column 3, in § 172.403, in paragraph (a), in line 2, remove the two asterisks "*" immediately following the two section symbols.

5. On the same page, in column 3, in § 172.403, in paragraph (g)(2), in the last line, correct the wording "(uCi)" to read "(uCi)".

⁴ 5 U.S.C. 801(a)(1)(A).

⁵ 5 U.S.C. 605(b).