

MHz spectrum cap for cellular telephone service, Specialized Mobile Radio (SMR) service, and broadband Personal Communications Service (PCS). While the spectrum cap currently applies only to licensees in these services who are classified as Commercial Mobile Radio Service (CMRS) providers, the Commission proposes to extend the cap to all cellular, SMR, and broadband PCS providers regardless of their regulatory classification. The *Third Further Notice of Proposed Rulemaking* also seeks comment on applying the spectrum cap to those "grandfathered" SMR licensees who continue to be regulated as Private Mobile Radio Service (PMRS) providers until August 10, 1996. The intended effect of the proposed rule for cellular, SMR and PCS providers is to ensure regulatory symmetry in the regulation of competing commercial mobile radio services.

**DATES:** Comments are to be filed on or before June 5, 1995. Reply Comments are to be filed on or before June 26, 1995.

**ADDRESSES:** Comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Lisa Warner, (202) 418-0620, Wireless Telecommunications Bureau.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the *Third Further Notice of Proposed Rulemaking*, adopted April 10, 1995, and released May 5, 1995. The complete text of this *Further Notice of Proposed Rulemaking* is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 239, 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

### Synopsis of the Third Further Notice of Proposed Rulemaking

Adopted: April 10, 1995.

Released: May 5, 1995.

1. The Commission initially proposed the spectrum cap in the *Further Notice of Proposed Rulemaking*, GN Docket No. 93-252, 59 Fed. Reg. 28,042 (May 31, 1994), in this proceeding. The Commission framed the spectrum cap issue in terms of CMRS spectrum, and did not address the aggregation of PMRS spectrum. On August 9, 1994, in the *Third Report and Order* in this proceeding, GN Docket No. 93-252, 59 Fed. Reg. 59945 (Nov. 21, 1994), the Commission applied the spectrum cap

only to cellular, SMR, and broadband PCS services. The cap only applied to cellular, SMR, and broadband PCS licensees whose activities are regulated as CMRS.

2. The Commission notes in the *Third Further Notice of Proposed Rulemaking* that there is potential for a licensee to reduce the number of competitors by aggregating spectrum regardless of whether the licensee is providing CMRS or PMRS. Moreover, the services provided by PMRS providers may well be viewed as competitive alternatives to CMRS by customers; thus, excluding them from the cap could provide PMRS providers with an unfair competitive advantage over CMRS providers. In addition, even if most cellular, SMR, and broadband PCS providers provide CMRS services, as is likely to be the case, determining the precise amount of CMRS spectrum that should be attributed for spectrum cap purposes is likely to be difficult, particularly in the case of PCS, SMR, and possibly cellular licensees who provide both CMRS and PMRS offerings under a single authorization.

3. For all of these reasons, the Commission proposes that the 45 MHz spectrum cap be revised to apply to cellular, SMR, and broadband PCS licensees regardless of regulatory classification. The Commission believes that such a revision will greatly simplify the application of the cap and will provide greater certainty regarding its effect to cellular, SMR, and broadband PCS applicants and licensees.

### Initial Regulatory Flexibility Analysis

4. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and rules proposed in this *Further Notice of Proposed Rulemaking*. Written public comments are requested on the IRFA.

5. *Reason for Action:* This rule making proceeding was initiated to secure comment on proposals for revising the 45 MHz spectrum cap for cellular telephone service, SMR, and PCS. The spectrum cap currently applies to CMRS providers. The Commission proposes to extend the cap to all cellular, SMR, and broadband PCS providers regardless of their regulatory classification. The proposals advanced in the *Third Further Notice of Proposed Rulemaking* are designed to implement Congress's goal of regulatory symmetry in the regulation of competing commercial mobile radio services as described in Section 3(n) and 332 of the

Communications Act, 47 U.S.C. §§ 153(n), 332, as amended.

6. *Objective:* The Commission proposed to adopt a rule for cellular, SMR and PCS providers that is intended to ensure regulatory symmetry in the regulation of competing commercial mobile radio services.

7. *Legal Basis:* The proposed action is authorized under Sections 3(n), 4(i), 332(a), 332(c) and 332(d) of the Communications Act of 1934, 47 U.S.C. §§ 153(n), 154(i), 332(a), 332(c) and 332(d), as amended.

8. *Reporting, Recordkeeping, and Other Compliance Requirements:* Under the proposal contained in the *Third Further Notice of Proposed Rulemaking* there are no additional reporting or recordkeeping requirements.

9. *Federal Rules Which Overlap, Duplicate or Conflict With These Rules:* None.

10. *Description, Potential Impact, and Number of Small Entities Involved:* The *Third Further Notice of Proposed Rulemaking* does not potentially affect small entities. After evaluating comments filed in response to the *Third Further Notice of Proposed Rulemaking*, the Commission will examine further the impact of all rule changes on small entities and set forth its findings in the Final Regulatory Flexibility Analysis.

11. *IFRA Comments:* The Commission requests written public comment on the foregoing Initial Regulatory Flexibility Analysis. Comments must have a separate and distinct heading designating them as responses to IRFA and must be filed by the deadlines provided above.

### Ex Parte Rules—Non-Restricted Proceeding

12. This is a non-restricted notice and comment rule-making proceeding. *Ex Parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

### List of Subjects in 47 CFR Part 20

Commercial mobile radio services.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 424

[I.D. 050895C]

**Endangered and Threatened Species; Notice of Public Hearing On Proposed Status for the Klamath Mountains Province Steelhead**

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

**ACTION:** Notice of public hearings; request for public comments and extension of the public comment period.

**SUMMARY:** NMFS is announcing dates and locations for public meetings concerning the proposed listing of natural steelhead (*Oncorhynchus mykiss*) populations occurring between Cape Blanco, OR, and the Klamath River Basin, CA (referred to as the Klamath Mountains Province), as threatened under the Endangered Species Act (ESA). Hearings on the proposed listing will provide the opportunity for the public to give comments and will permit an exchange of information and

opinion among interested parties. In addition, this notice serves to extend the public comment period an additional 60 days until July 14, 1995.

**DATES:** The hearings on the proposed listing will be held as follows:

1. June 21, 1995, 6:30 p.m. to 9:30 p.m., Medford, OR
2. June 22, 1995, 6:30 p.m. to 9:30 p.m., Gold Beach, OR
3. June 27, 1995, 7:00 p.m. to 9:30 p.m., Crescent City, CA

**ADDRESSES:** Send written comments to Garth Griffin, Environmental and Technical Services Division, NMFS, Northwest Region, 525 NE Oregon St, Suite 500, Portland, OR 97232-2737. The hearings on the proposed listing will be held at the following locations:

1. Medford—Medford City Hall—City Council Chambers, 411 W. 8th Street, Medford, OR
2. Gold Beach—Gold Beach City Hall—City Council Chambers, 510 S. Ellensburg Avenue, Gold Beach, OR
3. Crescent City—Crescent City Community Cultural Center—Atrium Room, 1001 Front Street, Crescent City, CA

**FOR FURTHER INFORMATION CONTACT:** Garth Griffin; 503-231-2005; R. Craig Wingert, 310-980-4021; or Marta Nammack, 301-713-2322.

**SUPPLEMENTARY INFORMATION:** On March 16, 1995, NMFS issued a proposed rule (60 FR 14253) to list natural steelhead (*Oncorhynchus mykiss*) populations occurring between Cape Blanco, OR, and the Klamath River Basin, CA, as threatened under the ESA. The Department of Commerce's ESA implementing regulations state that the Secretary of Commerce shall promptly hold at least one public hearing if any person so requests within 45 days of publication of a proposed regulation to list...a species (50 CFR 424.16 (c)(3)).

The public will have an opportunity to provide oral or written testimony at the public hearings. Written comments on the proposed rule may also be sent to Garth Griffin (see **ADDRESSES**). These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Garth Griffin (see **ADDRESSES**).

Dated: May 16, 1995.

**Russell J. Bellmer,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

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