

Second R&O we affirm our proposals in the NPRM to clarify what entities, services, and facilities are subject to CALEA.<sup>59</sup> In addition, we provide guidance regarding the factors the Commission will consider when determining under section 109 of CALEA if compliance with the assistance capability requirements of the Act is reasonably achievable, as well as the showings that entities filing petitions under section 109 will be expected to make.<sup>60</sup> These actions impose no reporting, recordkeeping or other compliance requirements beyond those imposed by CALEA itself.

63. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered. We have largely adopted the tentative conclusions of the NPRM as to what entities are and are not subject to the assistance capability requirements. Although section 102(8)(B)(ii) of CALEA gives us the discretion, we have decided not to exempt any categories in our rules. We have resolved the concern mentioned most frequently in the comments' regarding the dispatch service of "traditional" SMR operators—by finding such operations to be outside CALEA's definition of "telecommunications carrier" insofar as the service is not interconnected with the public switched network. We have considered AMTA's argument that CMRS providers serving niche business markets with limited interconnect capability are not technologically capable of CALEA compliance, but we have found that to the extent their services meet the definition of CMRS set forth in section 332(d) of the Communications Act, such entities must be considered subject to CALEA. In response to those commenters who argue that a private mobile radio service (PMRS) operator cannot be subject to CALEA for any reason, we have found that where a PMRS operator uses its facilities to offer a service that qualifies as CMRS, that service is subject to CALEA.

64. We recognize that compliance with the assistance capability requirements may be economically burdensome for some entities. CALEA provides two mechanisms through which carriers may seek relief: they may petition the Commission for an extension of the compliance date under section 107(c), and they may petition the Commission for a determination that compliance is not reasonably achievable under section 109(b). We believe these

mechanisms provide the best approach to avoiding undue burdens on small entities, without undercutting the objectives of CALEA.<sup>61</sup> We are also prepared to reexamine whether any categories of service providers should be exempted, once we have gained some experience in applying section 109.

65. We have decided that in determining whether compliance with the assistance capability requirements is reasonably achievable, we will not at this time accord special significance to any particular factor enumerated in section 109 and we will not adopt any additional factors. As we note in the Second R&O, "the technological diversity of carrier networks, as well as other carrier characteristics, will, as a matter of course, mean that certain factors will be more important to the arguments of certain carriers than others, and not all of the factors enumerated in section 109 may be relevant to the analysis of a given reasonable achievability petition."<sup>62</sup> We recognize, however, that carrier size may be a significant consideration in particular cases, and we reject AT&T's assertion that special consideration for a new market entrant could be tantamount to an unfair subsidy.

66. Report to Congress. The Commission shall send a copy of the Second R&O, including this FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.<sup>63</sup> In addition, the Commission shall send a copy of the Second R&O, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Second R&O and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 99-2035; MM Docket No. 99-167; RM-9391]

### Radio Broadcasting Services; Mount Olive and Staunton, IL

**AGENCY:** Federal Communications Commission.

<sup>61</sup> See *id.*, pars. 36-45.

<sup>62</sup> *Id.*, par. 37.

<sup>63</sup> See 5 U.S.D. 801 (a)(1)(A).

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Talley Broadcasting Corporation, reallocates Channel 287A from Mount Olive to Staunton, Illinois as its first local aural transmission service, and modifies Station WAOX(FM)'s construction permit accordingly. See 64 FR 28133, May 25, 1999. Channel 287A can be reallocated to Staunton in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioner's authorized construction permit site. The coordinates for Channel 287A at Staunton are 39-02-37 North Latitude and 89-44-56 West Longitude. With this action, this proceeding is terminated.

**DATES:** Effective November 15, 1999.

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 99-167, adopted September 22, 1999, and released October 1, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

### List of Subjects in 47 CFR Part 73

Radio 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.

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by removing Mount Olive, Channel 287A, and adding Staunton, Channel 287A.

Federal Communications Commission.

**John A. Karousos,**

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

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<sup>59</sup> Second Report and Order, pars. 6-28.

<sup>60</sup> *Id.* pars. 29-45.