

(3) The Maritime Administrator will issue a written decision for each timely appeal. This decision constitutes final agency action.

(4) If a student or graduate fails to appeal within the time set forth in paragraph (h)(2) of this section, the decision of the designated official will be final and constitute final agency action.

Dated: June 19, 2000.

By Order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 00-15852 Filed 6-26-00; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 90

[PR Docket No. 89-552 and GN Docket No. 93-252; FCC 00-187]

#### Use of the 220-222 MHz Band by the Private Land Mobile Radio Service Regarding Geographic Partitioning and Spectrum Disaggregation

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document disposes of two Petitions for Reconsideration of the *Fifth Report and Order* in this docket, in which the Commission adopted geographic partitioning and spectrum disaggregation rules for the 220-222 MHz service. This document dismisses as moot Rand McNally & Company's (RMC's) Petition for Reconsideration to remove the references to Major Trading Areas (MTAs) and Basic Trading Areas (BTAs) in the 220 MHz partitioning rules. This document also grants in part Intek's Petition for Reconsideration by clarifying that the options afforded to 220 MHz service licensees for satisfying the Commission's construction requirements in cases of partitioning and disaggregation, and the consequences of not satisfying such requirements, exactly mirror the options and consequences for partitioning and disaggregation imposed on broadband personal communications service (PCS) licensees. In all other respects, Intek's Petition for Reconsideration is denied. Finally, this document amends the construction requirements of the Commission's rules for licensing and use of frequencies in the 220-222 MHz band to restore language that was inadvertently deleted in an earlier order specifying the consequences of failure to construct by parties to a disaggregation

agreement. The Commission's goals in taking these actions are to promote more efficient use of the spectrum, increase opportunities for a variety of entities to participate in the provision of 220 MHz service, and expedite delivery of 220 MHz service to unserved areas.

**DATES:** Effective August 28, 2000.

**FOR FURTHER INFORMATION CONTACT:**

Jeffrey Steinberg, Wireless Telecommunications Bureau at (202) 418-0896.

**SUPPLEMENTARY INFORMATION:** This document addresses implementing Congress' goal of giving small businesses, as well as other entities, who lack the financial resources for participation in auctions, the opportunity to participate in the provision of spectrum-based services. Also, this document is consistent with the Communications Act's mandate to identify and eliminate market entry barriers for entrepreneurs and small businesses in the provisions and ownership of telecommunications services. This document also clarifies aspects of the construction requirements for 220 MHz licensees as set out in the Commission's rules, as well as, disposes of two Petitions for Reconsideration of the *Fifth Report and Order*, 63 FR 49291 (September 15, 1998).

2. This Memorandum Opinion and Order was released on May 30, 2000, and is available for inspection and copying during normal business hours in the FCC Reference Center, 445 Twelfth Street, SW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036 / (202) 857-3800. This Memorandum Opinion and Order is also available via the Internet at <http://www.fcc.gov/Bureaus/Wireless/Orders/2000/>.

#### Supplemental Final Regulatory Flexibility Certification

3. The Regulatory Flexibility Act of 1980, as amended,<sup>1</sup> requires that a final regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.<sup>2</sup> We certify that the rule change adopted in this *Memorandum Opinion and*

<sup>1</sup> The Regulatory Flexibility Act of 1980, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>2</sup> 5 U.S.C. 605(b).

*Order* will not have a significant economic impact on a substantial number of small entities because it does not effect any substantive policy change, but only restores language that was previously inadvertently deleted from the Commission's rules.

#### A. Report to Congress

4. The Commission will send a copy of this *Memorandum Opinion and Order*, including a copy of the Supplemental Final Regulatory Flexibility Certification, in a report to Congress pursuant to SBREFA, *see* 5 U.S.C. 801(a)(1)(A). In addition, the *Memorandum Opinion and Order* 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**. *See* 5 U.S.C. 605(b).

#### B. Ordering Clauses

5. Pursuant to section 4(i) of the Communications Act, 47 U.S.C. 154(i), and section 1.108 of the Commission's rules, the *Memorandum Opinion and Order* in this proceeding released on March 29, 2000, FCC 00-102, IS VACATED.

6. Pursuant to sections 4(i), 303(g), 303(r), 332(a)(2), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(g), 303(r), 332(a)(2), and 405, the Petition for Reconsideration filed by Rand McNally & Company on October 13, 1998, *is dismissed*, and the Petition for Reconsideration filed on October 15, 1998, by Intek Global Corporation IS GRANTED to the extent stated herein and otherwise *denied*.

7. The rule adopted shall become effective August 28, 2000. This action is taken pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

8. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Memorandum Opinion and Order*, including the Supplemental Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects in 47 CFR Part 90

Reporting and recordkeeping requirements.

Federal Communications Commission.

**Magalie Roman Salas,**  
*Secretary.*

#### Rule Changes

For the reasons discussed in the preamble, the Federal Communications

Commission amends 47 CFR part 90 as follows:

#### **PART 90—PRIVATE LAND MOBILE RADIO SERVICES**

1. The authority citation for part 90 continues to read as follows:

**Authority:** Sections 4(i), 11, 303(g), 303(r), 332(c)(7) of the Commissions Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

2. Section 90.1019 is amended by revising paragraph (d)(2) to read as follows:

#### **§ 90.1019 Eligibility for partitioned licenses.**

\* \* \* \* \*

(d) \* \* \*

##### *(2) Requirements for disaggregation.*

Parties seeking authority to disaggregate spectrum must certify in FCC Form 601 which of the parties will be responsible for meeting the five-year and ten-year construction requirements for the particular market as set forth in §§ 90.767 or 90.769, as applicable. Parties may agree to share responsibility for meeting the construction requirements. If one party accepts responsibility for meeting the construction requirements and later fails to do so, then its license will cancel automatically without further Commission action. If both parties accept responsibility for meeting the construction requirements and later fail to do so, then both their licenses will cancel automatically without further Commission action.

[FR Doc. 00-16187 Filed 6-26-00; 8:45 am]

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#### **NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

##### **50 CFR Part 228**

[Docket No. 000619186-0186-01; I.D.051500B]

RIN 0648-AO17

#### **Reinstatement of Procedures for Hearings Conducted Pursuant to Section 103(d) of the Marine Mammal Protection Act**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule reinstates rules of practice and procedure for formal rulemaking hearings conducted under the Marine Mammal Protection Act

(MMPA). These rules were removed from the Code of Federal Regulations in 1995 because of non-use. NMFS now anticipates the need for formal rulemaking hearings. The intent of this action is to reinstate the rules of practice and procedure for formal rulemaking hearings conducted under the MMPA.

**DATES:** Effective June 27, 2000.

**ADDRESSES:** Donna Wieting, Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Caroline Good, (301) 713-2322, x117.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The MMPA gives the Secretaries of Commerce and Interior broad authority to issue and implement regulations related to the conservation or taking of marine mammals. In some cases (e.g., regulating subsistence harvest by Alaskan Natives), the MMPA requires a hearing on the record as provided in section 103(d) of the MMPA. The Endangered Species Act (ESA) also requires a formal rulemaking hearing before the Secretaries of Commerce or Interior can limit the subsistence take of threatened or endangered species of fish or wildlife by Alaska Natives. These ESA formal rulemaking provisions cross-reference section 103(d) of the MMPA, 16 U.S.C. 1539(e)(4).

Prior to 1995, the rules of practice and procedure for hearings conducted pursuant to section 103(d) of the MMPA were codified at 50 CFR 216.71. In 1995, NMFS removed these rules as part of an effort to simplify the Code of Federal Regulations. Such hearings had not been convened for more than 15 years, and NMFS did not anticipate using the rules in the foreseeable future.

NMFS now anticipates conducting formal rulemaking to promulgate regulations governing the subsistence harvest of certain marine mammals by Alaska Natives. NMFS is reinstating the rules of practice and procedure that were removed in 1995. This final rule reinstates these rules as they appeared prior to 1995 with only minor technical corrections to incorporate current terminology, such as Assistant Administrator for Fisheries rather than Director, NMFS.

##### **Classification**

This final rule establishes agency rules of practice and procedure. Under section 553(b)(3)(A) of the Administrative Procedure Act (APA), prior notice and opportunity for comment is not required for the

promulgation of agency rules of practice and procedure. Under section 553(d) of the APA, only substantive rules require publication 30 days prior to their effective date. This final rule is effective upon publication.

Because prior notice and opportunity for public comment are not required to be provided for this final rule by 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act do not apply.

This final rule is not subject to review under Executive Order 12866.

The promulgation of regulations establishing rules of practice and procedure in this instance is categorically excluded by NOAA Administrative Order 216-6 from the requirement to prepare an environmental assessment or an environmental impact statement under the National Environmental Policy Act. This final rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act of 1980. This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 13132.

##### **List of Subjects in 50 CFR Part 228**

Administrative practice and procedure, Endangered and threatened species, Marine mammals.

Dated: June 21, 2000.

**Andrew A. Rosenberg,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For reasons set forth in the preamble, 50 CFR part 228 is added to read as follows:

#### **PART 228—NOTICE AND HEARING ON SECTION 103(d) REGULATIONS**

Sec.

- 228.1 Basis and purpose.
- 228.2 Definitions.
- 228.3 Scope of regulations.
- 228.4 Notice of hearing.
- 228.5 Notification by interested persons.
- 228.6 Presiding officer.
- 228.7 Direct testimony submitted as written documents.
- 228.8 Mailing address.
- 228.9 Inspection and copying of documents.
- 228.10 Ex parte communications.
- 228.11 Prehearing conference.
- 228.12 Final agenda of the hearing.
- 228.13 Determination to cancel the hearing.
- 228.14 Rebuttal testimony and new issues of fact in final agenda.
- 228.15 Waiver of right to participate.
- 228.16 Conduct of the hearing.
- 228.17 Direct testimony.
- 228.18 Cross-examination.
- 228.19 Oral and written arguments.