

and Order, MM Docket No. 02-12 adopted November 21, 2003, and released November 26, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. The document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202 863-2893, facsimile 202 863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

#### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

#### PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 reads as follows:

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

#### § 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Ash Fork, Channel 267A, by removing Channel 224C at Dolan Springs, by adding Fredonia, Channel 278C1, by adding Peach Springs, Channel 285C3, by removing Channel 221A and by adding Channel 222A at Tusayan.

■ 3. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by adding Channel 224C, Moapa Valley.

■ 4. Section 73.202(b), the Table of FM Allotments under Utah, is amended by adding Beaver, Channel 246A, by removing Channel 223C, and by adding Channel 221C at Cedar City.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 03-30767 Filed 12-11-03; 8:45 am]

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#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[DA 03-3747; MB Docket No.03-195; RM-10745]

#### Radio Broadcasting Services; Dripping Springs & Marble Falls, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 285A for Channel 285C2 at Marble Falls, Texas, reallocates Channel 285A to Dripping Springs, Texas, and modifies the license for Station KXXS to specify operation Channel 285A at Dripping Springs in response to a petition filed by Amigo Radio, Ltd. See 68 FR 54878, September 19, 2003. The coordinates for Channel 285A at Dripping Springs are 30-11-54 and 98-00-46. Although Mexican concurrence has been requested for the allotment of Channel 285A at Dripping Springs, notification has not been received. Therefore, operation with the facilities specified for channel 285A at Dripping Springs is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement or if specifically objected to by Mexico. With this action, this proceeding is terminated.

**DATES:** Effective January 12, 2004.

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

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MB Docket No. 03-195, adopted November 21, 2003, and released November 26, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Natek, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893.

#### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

#### PART 73—RADIO BROADCAST SERVICES

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

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

#### § 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Marble Falls, Channel 285C2 and by adding Dripping Springs, Channel 285A.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 03-30766 Filed 12-11-03; 8:45 am]

BILLING CODE 6712-01-P

#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 74

[ET Docket No. 01-75; FCC 03-246]

#### Revision of Broadcast Auxiliary Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document addresses petitions for reconsideration of the *Report and Order* in this proceeding, filed by Nassau County Police Department (NCPD) and the Society of Broadcast Engineers, Inc. (SBE). In the Report and Order, the Commission amended the rules in part 74, Broadcast Auxiliary Service (BAS), part 78, Cable Television Relay Service (CARS), and part 101, Fixed Microwave Service (FS) to permit stations in these services to use digital technology. It also made conforming amendments so that the stations in these services, which share frequency bands and use similar transmission technologies, will operate under consistent regulations.

**DATES:** Effective January 12, 2004.

**FOR FURTHER INFORMATION CONTACT:** Ted Ryder, Office of Engineering and Technology, (202) 418-2803.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Memorandum Opinion and Order*, ET Docket No. 01-75, FCC 03-246, adopted October 15, 2003, and released October 20, 2003. The full text of this document is available on the Commission's Internet site at [www.fcc.gov](http://www.fcc.gov). It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY-A257), 445 12th St., SW, Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Qualex International, Portals II, 445 12th St., SW., Room CY-B402, Washington, DC 20554; telephone (202) 863-2893; fax (202) 863-2898; e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

#### Summary of the Report and Order

1. In the *Memorandum Opinion and Order*, the Commission addressed petitions for reconsideration of the

*Report and Order (R&O)* in this proceeding, filed by Nassau County Police Department (NCPD) and the Society of Broadcast Engineers, Inc. (SBE). In the *R&O*, the Commission amended the rules in part 74, Broadcast Auxiliary Service (BAS), part 78, Cable Television Relay Service (CARS), and part 101, Fixed Microwave Service (FS) to permit stations in these services to use digital technology. It also made conforming amendments so that the stations in these services, which share frequency bands and use similar transmission technologies, will operate under consistent regulations. Specifically, the actions in the *R&O* permit BAS licensees to use digital modulation in all of the Aural and Television (TV) BAS bands; update and conform BAS and CARS rules with FS rules; simplify and streamline BAS processing via our licensing database, the Universal Licensing System (ULS); and allow the operation of Wireless Assist Video Devices (WAVDs) under part 74.

2. The Commission granted NCPD's petition to exclude WAVDs from the band 500–506 MHz (UHF–TV channel 19) in the New York/Northeast New Jersey (NY/NJ) area in order to protect incumbent public safety land mobile operations in that area. In addition we exclude, to a lesser extent, WAVD operation on adjacent bands 494–500 MHz (UHF–TV channel 18) and 506–512 MHz (UHF–TV channel 20) in that area. We also denied SBE's petition to treat composite, dual carrier analog/digital TV BAS emissions within a single channel as separate emissions.

3. On March 28, 2003, the NCPD filed a Petition for Reconsideration of the *R&O* asking that we exclude WAVDs from the band 500–506 MHz (UHF–TV channel 19) in the NY/NJ area. Additionally, on April 4, 2003, the SBE filed a Petition for Reconsideration asking that we: (1) Treat composite, dual carrier analog/digital TV BAS emissions within a single BAS channel as separate emissions; (2) accommodate elective registration of BAS Mobile TV Pick-up (TVPU) receive sites on the ULS; (3) confirm that multiple BAS emissions of reduced bandwidth are permissible on standard TV BAS channels; and (4) clarify that BAS RPUs may continue to operate with 20 and 25 kHz bandwidths in the 450/455 MHz RPU band.

#### *A. Exclusion of WAVDs From UHF–TV Channel 19 in the NY/NJ Area*

4. We agree with NCPD that WAVD operations should be excluded from the band 500–506 MHz (UHF–TV channel 19) in the NY/NJ area. First, we agree with NCPD that there is a need for

public safety land mobile use of UHF–TV channel 19, as evidenced by numerous existing public safety operations authorized under waiver on this channel in the NY/NJ area. We find that deployment of WAVDs on this channel in accordance with the rules as adopted in the *R&O*, *i.e.*, absent an exclusion, could thus pose a risk of interference to those public safety land mobile operations. We therefore exclude WAVD operation UHF–TV channel 19 in the NY/NJ area. We also exclude WAVD operation on adjacent UHF–TV Channels 18 and 20 in the NY/NJ area, to a lesser extent, consistent with the approach in the WAVD rules adopted by the *R&O*. We note that, because WAVDs are authorized on all 42 assignable channels, they may use other channels in the NY/NJ area to satisfy their communications needs, and thus this exclusion will not overly constrain WAVD deployment in the NY/NJ area. We also note that no WAVDs have yet been applied for or licensed, and we thus find that no existing WAVD licensee would be affected by this new exclusion. Accordingly, we granted NCPD's Petition and amend § 74.870(c)(4) to exclude WAVD operation on the band 500–506 MHz (UHF–TV channel 19) for a radius of 200 km around the coordinates listed in section 90.303 for the NY/NJ area, and on the bands 494–500 MHz (lower adjacent UHF–TV channel 18) and 506–512 MHz (upper adjacent UHF–TV channel 20) for a radius of 128 km around those coordinates.

#### *B. Treatment of Composite, Dual Carrier Analog/Digital Emissions*

5. In the *R&O*, the Commission decided that hybrid TV BAS systems, where an analog signal and a digital signal are transmitted in a single channel, would be treated as a single, aggregate emission regarding emission mask, emission designator, and Equivalent Isotropically Radiated Power (EIRP) determinations in the equipment authorization and station licensing processes. This approach conforms with the treatment of similar equipment used by the FS under part 101 and best addresses how various emissions fit within a single BAS channel. The Commission also adopted a similar approach for TV BAS composite systems under part 74. The Commission observed that hybrid and composite systems will accommodate both existing analog and new digital TV signals simultaneously over a common TV BAS channel, which will ease the transition to DTV. These systems provide a migration mechanism from using an analog signal to a combination analog/

digital signal, and eventually to only a digital signal. The Commission stated that conforming the treatment of these systems with existing rules for the FS under part 101 would simplify manufacturing processes, equipment authorization, and licensing.

6. We continue to believe that conforming the treatment of composite systems under part 74 with the aggregate treatment of hybrid systems under parts 74 and 101 would simplify equipment authorization and licensing for these systems without complicating or compromising frequency coordination. We note that, under the rules adopted in the *R&O*, manufacturers only need to ensure compliance with a single bandwidth, emission mask, and EIRP to obtain certification for their equipment, rather than conducting separate measurements for the analog and digital portions of their signal. Moreover, because TV BAS licenses in the 2 GHz band designate the upper and lower edges of the licensed channel, rather than the assigned center frequency, our approach provides licensees with flexibility to accommodate multiple signals within their assigned channel. Requiring separate emission designators, as requested by SBE, would reduce this flexibility because each emission must then be associated with a specific frequency. In addition, because such a change would entail a wholesale restructuring of the way TV BAS is licensed in the 2 GHz band, making the requested change would entail a restructuring of the ULS and a requirement for many licensees to modify their licenses to conform. With respect to frequency coordination, we reiterate that for specific composite systems, coordinators could determine individual technical and operational details and interference protection criteria via the manufacturer and model shown in the individual license record in the ULS or, when necessary, contact the licensee to obtain this information through the normal coordination process, as is appropriate wherever additional technical or operational details are needed. In response to SBE's concern regarding the determination of whether the analog or digital carrier is on the low or high side of the channel, we note that the licensee could similarly be contacted. Finally, because the need to accommodate analog emissions will likely decrease after transition to DTV, we believe that the utility of these transitional analog/digital systems, as well as any need to obtain additional technical details for frequency coordination, will be relatively short-

lived. Accordingly, we do not find that frequency coordination would be unnecessarily complicated by aggregate treatment of BAS emissions within a channel, and consequently deny SBE's Petition. We therefore find separate treatment of analog and digital emissions unnecessary.

### C. Additional Requests

7. *Elective Registration of BAS TVPU Receive Sites*: In its Petition, SBE asks that we allow licensees to electively register fixed receive sites associated with BAS TVPU stations in the ULS. SBE states that this information would be used to protect TVPU receive sites, especially during frequency coordination along international borders. As noted by SBE, frequency coordination of BAS TVPU stations necessitates information on TVPU receive sites, and registration of such receive sites may offer some benefit to frequency coordination by facilitating their identification. However, we find that, because registration of BAS TVPU receive sites in the ULS was neither at issue nor addressed by the *R&O*, it is beyond the scope of the *Memorandum Opinion and Order*. At this time, we find that such elective registration is unnecessary. However if parties continue to believe that such a requirement would be beneficial they may file a petition for rulemaking seeking the imposition of TVPU receive site registration.

8. *Reduced Bandwidth on TV BAS Channels*: SBE seeks clarification of several issues related to the use of digital links in the TV BAS bands. First, SBE asks that the Commission clarify that the Commission will not routinely dismiss applications specifying narrowband digital emissions. SBE notes that only a wideband (25 MHz) channel plan currently exists for the 7 and 13 GHz bands, but some newer digital equipment operates with only 6.5 MHz bandwidths. Second, SBE asks that the Commission clarify that a narrowband channel may operate on a frequency offset from the channel center. Finally, SBE asks the Commission to clarify that licensees may stack multiple narrowband emissions within a channel.

9. As an initial matter, we note that the Commission does not routinely dismiss applications for underutilization of the spectrum. If no other deficiencies exist, an application for narrowband emissions within a wideband channel will not be routinely dismissed. In addition, we note that the Commission grants licenses for these bands by specifying a band of operation, not a specific operating frequency.

Therefore, a licensee has flexibility to locate its emissions within a channel where it is most advantageous. Finally, to promote spectrum efficiency, we note that the rules allow licensees to multiplex multiple signals within a channel. Under this rule, licensees may provide information using multiple narrowband channels within the larger channel subject to the condition that the composite emissions meet the rules for out-of-band emissions. In these instances, we note that spectral efficiency will be further enhanced if the presence of systems operating on frequencies other than the channel center is accounted for in the frequency coordination process.

10. *RPU BAS with 20 kHz and 25 kHz Bandwidths*: Finally, in its Petition, SBE notes that the Commission, in the *R&O*, rechanneled the BAS RPU 450/455 MHz band into 6.25 kHz blocks, stackable to 50 kHz maximum channel bandwidth, and adopted certain Part 90 technical standards, including the § 90.210 emission mask requirements, for authorized bandwidths of 30 kHz or less. SBE, claiming that the part 90 technical standards only allow a maximum channel width of 12.5 kHz, requests that we clarify that licensees may continue to use channel widths up to 25 kHz. The rules adopted in the *R&O*, which permit narrowband channels to be stacked to form wider channels, have not changed and are not restricted by the part 90 limitations on channel bandwidth. Thus, licensees may continue to stack these channels as needed, up to a maximum channel bandwidth of 50 kHz. However, we encourage licensees to operate with spectrally efficient equipment and use the minimum bandwidth necessary for their operation.

### Final Regulatory Flexibility Certification

11. The Regulatory Flexibility Act of 1980, as amended (RFA)<sup>1</sup> requires that a regulatory flexibility analysis be prepared for 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> The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>3</sup> In

<sup>1</sup> The RFA, see 5 U.S.C. 601–612, 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 (SBREFA).

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

<sup>3</sup> 5 U.S.C. 601(6).

addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>4</sup> 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).<sup>5</sup>

12. In the *Report and Order* in this proceeding, the Commission established Wireless Assist Video Devices (WAVDs), allowing them to operate on certain unused TV channels on a secondary basis to other services. To provide flexibility, WAVDs are authorized on 42 TV channels, which include TV channels 8–12, 14–36, and 38–51, with operation subject to certain separation rules to protect other services. In this connection, WAVD operation is excluded on four channels, TV channels 14–17, in the New York/NE New Jersey (NY/NJ) area, to protect incumbent land mobile operations. In the *Memorandum Opinion and Order*, the Commission excludes WAVD operation on three additional channels, TV channels 18–20, in the NY/NJ area, to protect incumbent public safety land mobile operations authorized pursuant to waivers of the Commission's rules.

13. We believe that these additional exclusions are necessary to protect incumbent public safety land mobile licensees and will have only minimal impact on prospective WAVD licensees. We note that public safety operations are extensive in this area on these frequencies and it is unlikely that perspective WAVD licensees could find the frequencies usable. We find that increasing the number of channels from which WAVD operation is excluded in the NY/NJ area from four to seven is insignificant given the total number of TV channels generally available to WAVD licensees. We also note that no WAVDs have yet been applied for or licensed, and we thus find that no existing WAVD licensee is affected by these new exclusions. Finally, we note that wherever WAVDs cannot be used, whether due to these exclusions, to other channel separations, or to conflicting frequency usage, cabled video assist devices would remain a

<sup>4</sup> 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the *Federal Register*."

<sup>5</sup> Small Business Act, 15 U.S.C. 632.

viable option for WAVD licensees. We thus conclude that these additional exclusions will have only a minor effect on WAVD operations, and hence a minimal economic impact on WAVD licensees. Therefore, we certify that the requirements of the *Memorandum Opinion and Order* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *Memorandum Opinion and Order*, including a copy of this final certification, in a report to Congress pursuant to the Congressional Review Act, *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.

**Ordering Clauses**

14. Pursuant to sections 1, 4(i), 302, 303(f), 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 302a, 303(f), 303(r), and 332, this Memorandum Opinion and Order *is adopted*.

15. Part 74 of the Commission's Rules is amended as specified in Rule

Changes, effective January 12, 2004. This action is taken pursuant to sections 1, 4(i), 302, 303(f), 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 302a, 303(f), 303(r), and 332.

16. The petition for reconsideration of the *Report and Order* in this proceeding filed by Nassau County Police Department (NCPD) *is granted*, and the petition for reconsideration filed by the Society of Broadcast Engineers, Inc., *is granted in part and denied in part*, consistent with the terms of this Memorandum Opinion and Order.

17. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Memorandum Opinion and Order, ET Docket No. 01-75, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

18. Finally, the proceeding in ET Docket No. 01-75 *is terminated*.

**List of Subjects in 47 CFR Part 74**

Communications equipment, Radio, Reporting and recordkeeping requirements, Television.

Federal Communications Commission.

**Marlene H. Dortch**,  
*Secretary*.

**Rule Changes**

■ For the reasons set forth in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 74 as follows:

**PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCASTING, AND OTHER PROGRAM DISTRIBUTIONAL SERVICES**

■ 1. The authority citation for part 74 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

■ 2. Section 74.870 is amended by revising the entry for New York/NE New Jersey in the table of paragraph (c)(4) to read as follows:

**§ 74.870 Wireless video assist devices.**

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

Area	North latitude	West longitude	Excluded frequencies (MHz)	Excluded channels		
				200	128	52 km
* * * * *						
New York/NE New Jersey	40°45'	73°59'37.5"	470-476	14	.	*
			476-482	15	.	
			482-488	16	.	
			488-494	.....		17
			494-500	.....		18
			500-506	19	.....	
			506-512	.....		20
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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 600**

[Docket No. 020424095-3252-02, I.D. 032801B]

RIN 0648-AP25

**Fishing Capacity Reduction Program for the Crab Species Covered by the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs**

**AGENCY:** National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes a fishing capacity reduction program in the fishery for the crab species managed under the Bering Sea/Aleutian Islands King and Tanner Crabs Fishery Management Plan (crab FMP). The program will reduce excess capacity and promote economic efficiency in the crab fishery. It is authorized under both special legislation and existing National Marine Fisheries Service (NMFS) regulations governing fishing capacity reduction programs. Its objectives include: increasing harvesting productivity for crab fishermen who remain after capacity reduction, helping conserve and manage fishery resources, and encouraging harvesting effort rationalization. Program participation is