

automated collection techniques or other forms of information technology.

#### D. Comment Filing Procedures

25. We invite comment on the issues and questions set forth in the Notice and Initial Regulatory Flexibility Analysis contained herein. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before August 6, 2004, and reply comments on or before September 7, 2004. All filings should refer to CC Docket No. 96-45. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

26. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

27. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East

Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

28. Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Room 5-B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20054.

#### IV. Ordering Clauses

29. Pursuant to the authority contained in sections 4(i), 4(j), 201, 205, 214, 218-220, 254, 403, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201, 205, 214, 218-220, 254, 403, and 410 this *Notice of Proposed Rulemaking* is adopted.

30. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04-15240 Filed 7-6-04; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 101

[WT Docket No. 04-143; FCC 04-77]

#### Rechannelization of the 17.7-19.7 GHz Frequency Band for Fixed Microwave Services.

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The NPRM proposes rechannelization of portions of the 17.7-19.7 GHz band ("18 GHz band"). We believe that such action is necessary to accommodate the terrestrial fixed services ("FS") licensees within the 18 GHz band that need to relocate and to meet the needs of those FS licensees

who seek narrow bandwidth channels. We believe that our proposals and decisions herein will promote more efficient use of the remaining FS spectrum in the 18 GHz band and help to increase spectrum availability for new FS operations, both by incumbents and new entrants.

**DATES:** Comments are due on or before August 6, 2004, Reply comments are due September 7, 2004.

**FOR FURTHER INFORMATION CONTACT:** Peter Daronco, Attorney, 202-418-2487.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking, (NPRM), released on April 19, 2004, (FCC 04-77). The full text of the NPRM is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445 12th St., SW., Washington DC 20554. The complete text may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., (BCPI), Portals II, 445 12th St., SW., Room CY-B402, Washington DC, the complete item is available on the Commission's Web site at <http://www.fcc.gov/wtb>.

#### Overview

1. In this NPRM, we address the channelization of the 17.7-19.7 GHz band ("18 GHz band") in an effort to promote effective utilization of the portion of the band that is designated for use by terrestrial fixed services ("FS"). Previously, the Commission adopted a band plan to accommodate sharing of the 18 GHz band by the FS, Geostationary Satellite Orbit Fixed Satellite Service ("GSO/FSS"), Non-Geostationary Satellite Orbit Fixed-Satellite Service ("NGSO/FSS"), and Mobile-Satellite Service feeder links ("MSS/FL"). As part of this band plan, the Commission authorized the "blanket licensing" of satellite earth stations in some portions of the band where the FS had previously been co-primary. While the FS community continues to have access to portions of the 18 GHz band either on an exclusive primary or co-primary basis, there is a need to rechanelize the FS portion of the 18 GHz band so that it can effectively and efficiently utilize the spectrum. We believe that such action is necessary not only to accommodate the FS licensees within the 18 GHz band that need to relocate but also to meet the needs of those FS licensees who seek narrow bandwidth channels. We believe that our proposals and decisions herein will promote more efficient use of the remaining FS spectrum in the 18 GHz band and help to increase spectrum

availability for new FS operations, both by incumbents and new entrants.

2. The significant proposals contained in the NPRM are as follows:

We propose a band plan for the FS paired and unpaired spectrum from 17.7–18.3 GHz and 19.3–19.7 GHz, based on a filing by the Fixed Wireless Communications Coalition (“FWCC”), consisting of a variety of channel bandwidths (including narrower bandwidths and those of thirty and fifty megahertz) and a block of unpaired spectrum from 17.7–17.74 GHz.

We propose to designate a contiguous 500 megahertz block of one-way spectrum from 17.8–18.3 GHz for use by multichannel video programming distributors (“MVPDs”). We give licensees flexibility within such block to determine the appropriate bandwidth for their operations.

We decline to grant a request filed by the FWCC and the National Spectrum Managers Association (“NSMA”) for a blanket waiver of the Commission’s Rules to permit FS users to be licensed largely in accordance with the proposed band plan. Instead, we have determined that we will consider individual waiver requests meeting the conditions stated in the NPRM.

#### A. Initial Regulatory Flexibility Analysis

3. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (“IRFA”) of the possible economic impact on small entities of the policies and rules proposed in this NPRM. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (“SBA”). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

#### B. Need for and Objectives of the Proposed Rule

4. The Commission undertook this rulemaking proceeding to rechannelize that portion of the 17.7–19.7 GHz (18 GHz) band that is now designated as either exclusively primary or co-primary for the terrestrial fixed service (“FS”), in order to accommodate the licensees who need to relocate and to suit the needs of those who seek narrow bandwidth channels. Our proposed actions in this proceeding will also create more efficient use of the remaining FS

spectrum and help to increase spectrum availability for new licensees.

5. Specifically, we propose a band plan for the FS paired and unpaired spectrum from 17.7–18.3 GHz and 19.3–19.7 GHz consisting of a variety of channel bandwidths (including narrower bandwidths and those of thirty and fifty megahertz) and a block of unpaired spectrum from 17.7–17.74 GHz. We also propose to designate a contiguous 500 megahertz block of one-way spectrum from 17.8–18.3 GHz for use by multichannel video programming distributors (“MVPDs”). We propose to give MVPD and private cable operator (“PCO”) licensees flexibility within such block to determine the appropriate bandwidth for their operations.

#### C. Legal Basis

6. The proposed action is authorized under the Administrative Procedure Act, 5 U.S.C. 553; and Sections 1, 4(i), 7, 301, 303, 308, and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 301, 303, 308, and 309(j)

#### D. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

7. 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 the proposed rules, if adopted. The RFA 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: (i) is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the Small Business Administration.

8. *Small Businesses.* Nationwide, there are a total of 22.4 million small businesses, according to SBA data.

9. *Small Organizations.* Nationwide, there are approximately 1.6 million small organizations.

10. *Small Governmental Jurisdictions.* The term “small governmental jurisdiction” is defined as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” As of 1997, there were approximately 87,453 governmental jurisdictions in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 37,546

(approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

11. The proposed rechannelization would affect all common carrier and private operational fixed microwave licensees who are authorized under part 101 of the Commission’s Rules for use of the 18 GHz spectrum.

12. *Fixed Microwave Services.* The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA size standard for the category “Cellular and Other Telecommunications,” which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA’s small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed microwave licensees and up to 61,670 private operational-fixed microwave licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

13. Other proposed rule changes would affect PCOs and other MVPDs. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by these rules.

14. *Cable and Other Program Distribution.* This category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. The SBA has developed small business size standard for this census category, which includes all such companies generating \$12.5 million or less in revenue annually. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under \$10 million and an additional 52 firms had receipts of \$10 million or more but less than \$25 million. Consequently, the Commission estimates that the majority

of providers in this service category are small businesses that may be affected by the rules and policies proposed herein.

15. *Cable System Operators (Rate Regulation Standard)*. The Commission has developed its own small business size standard for cable system operators, for purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. The most recent estimates indicate that there were 1,439 cable operators who qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are now fewer than 1,439 small entity cable system operators that may be affected by the rules and policies proposed herein.

16. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that there are 67,700,000 subscribers in the United States. Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Based on available data, the Commission estimates that the number of cable operators serving 677,000 subscribers or fewer, totals 1,450. The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, and therefore are unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act of 1934.

17. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and Instructional Television Fixed Service*. Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint

Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the Commission defined "small business" as an entity that, together with its affiliates, has average gross annual revenues that are not more than \$40 million for the preceding three calendar years. The SBA has approved of this standard. The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 claimed status as a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than \$40 million and are thus considered small entities.

18. *Satellite Master Antenna Television ("SMATV") Systems*. The SBA definition of small entities for cable and other program distribution services includes SMATV services and, thus, small entities are defined as all such companies generating \$12.5 million or less in annual receipts. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of July 2001. The best available estimates indicate that the largest SMATV operators serve between 15,000 and 55,000 subscribers each. Most SMATV operators serve approximately 3,000–4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities.

19. *Open Video Services*. Open Video Service (OVS) systems provide subscription services. The SBA has created a small business size standard for Cable and Other Program Distribution. This standard provides that a small entity is one with \$12.5 million or less in annual receipts. The Commission has certified approximately 25 OVS operators to serve 75 areas, and some of these are currently providing service. Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS

systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 24 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies proposed herein.

#### *E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

20. Under the proposal contained in the NPRM, we are effecting a change wherein we will allow 18 GHz applicants to propose to operate on spectrum utilizing different bandwidth channels in addition to the ones already in existence. The proposal does not include any changes in the language of FCC Forms nor does it require extra filings. We are also allowing certain flexibility for some modifications to be achieved without the necessity of filing any applications.

#### *F. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

21. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (iii) the use of performance, rather than design standards; and (iv) an exemption from coverage of the rule, or any part thereof, for small entities."

22. We note that, although we decline to grant a blanket waiver to accommodate licensees needing an immediate switch to channels of sizes not currently available, we will consider granting waivers as appropriate where applicants have met the conditions stated in the NPRM. This will assist all such licensees, and especially small entity licensees, that need less bandwidth than is currently provided.

23. We are attempting to reduce a regulatory burden. We will continue to examine alternatives in the future with the objective of eliminating unnecessary

regulations and minimizing any significant impact on small entities. We seek comment on significant alternatives commenters believe we should adopt.

*G. Federal Rules That Overlap, Duplicate, or Conflict With These Proposed Rules*

None.

**Paperwork Reduction Analysis**

24. This NPRM does not contain either a proposed or modified information collection.

**Ordering Clauses**

1. Pursuant to sections 1, 4(i), 302, and 303(f) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 302, and 303(f) and (r), notice is hereby given of the proposed regulatory changes described in this NPRM and that comment is sought on these proposals.

2. Pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and § 1.925 of the Commission's rules, 47 CFR 1.925, the Request for Blanket Waiver, filed May 29, 2002, by the Fixed Wireless Communications Coalition and the National Spectrum Managers Association, is hereby denied.

3. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

**List of Subjects in 47 CFR Part 101**

Federal Communications Commission.

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

**Proposed Rules**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 101 as follows:

**PART 101—FIXED MICROWAVE SERVICES**

1. The authority citation for part 101 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

2. Section 101.147 is amended by revising paragraph (r) to read as follows:

**§ 101.147 Frequency assignments.**

\* \* \* \* \*

(r) 17,700 to 19,700 and 24,250 to 25,250 MHz: Operation of stations using frequencies in these bands is permitted to the extent specified in this paragraph. Until November 19, 2012, stations

operating in the band 18.3–18.58 GHz that were licensed or had applications pending before the Commission as of November 19, 2002 shall operate on a shared co-primary basis with other services under parts 21, 25, and 74 of this chapter. Until October 31, 2011, operations in the band 19.26–19.3 GHz and low power systems operating pursuant to § 101.147(r)(10) shall operate on a co-primary basis. Until June 8, 2010, stations operating in the band 18.58–18.8 GHz that were licensed or had applications pending before the Commission as of June 8, 2000 may continue those operations on a shared co-primary basis with other services under parts 21, 25, and 74 of this chapter. Until June 8, 2010, stations operating in the band 18.8–19.3 GHz that were licensed or had applications pending before the Commission as of September 18, 1998 may continue those operations on a shared co-primary basis with other services under parts 21, 25, and 74 of this chapter. After November 19, 2012, stations operating in the band 18.3–18.58 GHz are not entitled to protection from fixed-satellite service operations and must not cause unacceptable interference to fixed-satellite service station operations. After June 8, 2010, operations in the 18.58–19.30 GHz band are not entitled to protection from fixed-satellite service operations and must not cause unacceptable interference to fixed-satellite service station operations. After November 19, 2002, no applications for new stations for part 101 licenses will be accepted in the 18.3–18.58 GHz band. After June 8, 2000, no applications for new stations for part 101 licenses will be accepted in the 18.58–19.3 GHz band. Licensees, except 24 GHz band licensees, may use either a two-way link or one frequency of a frequency pair for a one-way link and must coordinate proposed operations pursuant to the procedures required in § 101.103.

[Option 1] Applicants who request one-way spectrum in 17.7–18.3 GHz can use any size channels necessary, but must request contiguous spectrum (minus channels that are already licensed in the area and thus blocked) for all their needs in order to prevent such applicants from spacing their channels in a manner that effectively could prevent other licensees from using the remaining spectrum within the same area. However, channels still must meet the efficiency requirements of § 101.141.

[Option 2] Applicants who request one-way spectrum in 17.7–18.58 GHz can use any size channels necessary, but must request contiguous spectrum

(minus channels that are already licensed in the area and thus blocked) for all their needs in order to prevent such applicants from spacing their channels in a manner that effectively could prevent other licensees from using the remaining spectrum within the same area. However, channels still must meet the efficiency requirements of § 101.141.

(1) 1.25 Megahertz maximum authorized bandwidth channels:

| Transmit (receive) (MHz) | Receive (transmit) (MHz) |
|--------------------------|--------------------------|
| 17700.625 .....          | NA                       |
| 17701.875 .....          | NA                       |
| 17703.125 .....          | NA                       |
| 17704.375 .....          | NA                       |
| 17705.625 .....          | NA                       |
| 17706.875 .....          | NA                       |
| 17708.125 .....          | NA                       |
| 17709.375 .....          | NA                       |
| 17710.625 .....          | NA                       |
| 17711.875 .....          | NA                       |
| 17713.125 .....          | NA                       |
| 17714.375 .....          | NA                       |
| 17715.625 .....          | NA                       |
| 17716.875 .....          | NA                       |
| 17718.125 .....          | NA                       |
| 17719.375 .....          | NA                       |
| 17721.625 .....          | NA                       |
| 17722.875 .....          | NA                       |
| 17723.125 .....          | NA                       |
| 17724.375 .....          | NA                       |
| 17725.625 .....          | NA                       |
| 17726.875 .....          | NA                       |
| 17728.125 .....          | NA                       |
| 17729.375 .....          | NA                       |
| 17730.625 .....          | NA                       |
| 17731.875 .....          | NA                       |
| 17733.125 .....          | NA                       |
| 17734.375 .....          | NA                       |
| 17735.625 .....          | NA                       |
| 17736.875 .....          | NA                       |
| 17738.125 .....          | NA                       |
| 17739.375 .....          | NA                       |
| 18060.625 .....          | 19620.625                |
| 18061.875 .....          | 19621.875                |
| 18063.125 .....          | 19623.125                |
| 18064.375 .....          | 19624.375                |
| 18065.625 .....          | 19625.625                |
| 18066.875 .....          | 19626.875                |
| 18068.125 .....          | 19628.125                |
| 18069.375 .....          | 19629.375                |
| 18070.625 .....          | 19630.625                |
| 18071.875 .....          | 19631.875                |
| 18073.125 .....          | 19633.125                |
| 18074.375 .....          | 19634.375                |
| 18075.625 .....          | 19635.625                |
| 18076.875 .....          | 19636.875                |
| 18078.125 .....          | 19638.125                |
| 18079.375 .....          | 19639.375                |
| 18080.625 .....          | 19640.625                |
| 18081.875 .....          | 19641.875                |
| 18083.125 .....          | 19643.125                |
| 18084.375 .....          | 19644.375                |
| 18085.625 .....          | 19645.625                |
| 18086.875 .....          | 19646.875                |
| 18088.125 .....          | 19648.125                |
| 18089.375 .....          | 19649.375                |
| 18090.625 .....          | 19650.625                |
| 18091.875 .....          | 19651.875                |



| Transmit (receive) (MHz)   | Receive (transmit) (MHz) | Transmit (receive) (MHz) | Receive (transmit) (MHz) | Transmit (receive) (MHz)                                   | Receive (transmit) (MHz) |
|--|--------------------------|--------------------------|--------------------------|--|--------------------------|
| <b>1560 Megahertz separation (* channels are no longer available on primary basis)</b> |                          |                          |                          |  |                          |
| 17705.0 .....  | 19265.0*                 | 17935.0 .....            | 19495.0                  | 18605.0* .....   | 18945.0*                 |
| 17715.0 .....  | 19275.0*                 | 17945.0 .....            | 19505.0                  | 18615.0* .....   | 18955.0*                 |
| 17725.0 .....  | 19285.0*                 | 17955.0 .....            | 19515.0                  | 18625.0* .....   | 18965.0*                 |
| 17735.0 .....  | 19295.0*                 | 17965.0 .....            | 19525.0                  | 18635.0* .....   | 18975.0*                 |
| 17745.0 .....  | 19305.0                  | 17975.0 .....            | 19535.0                  | 18645.0* .....   | 18985.0*                 |
| 17755.0 .....  | 19315.0                  | 17985.0 .....            | 19545.0                  | 18655.0* .....   | 18995.0*                 |
| 17765.0 .....  | 19325.0                  | 17995.0 .....            | 19555.0                  | 18665.0* .....   | 19005.0*                 |
| 17775.0 .....  | 19335.0                  | 18005.0 .....            | 19565.0                  | 18675.0* .....   | 19015.0*                 |
| 17785.0 .....  | 19345.0                  | 18015.0 .....            | 19575.0                  | 18685.0* .....   | 19025.0*                 |
| 17795.0 .....  | 19355.0                  | 18025.0 .....            | 19585.0                  | 18695.0* .....   | 19035.0*                 |
| 17805.0 .....  | 19365.0                  | 18035.0 .....            | 19595.0                  | 18705.0* .....   | 19045.0*                 |
| 17815.0 .....  | 19375.0                  | 18045.0 .....            | 19605.0                  | 18715.0* .....   | 19055.0*                 |
| 17825.0 .....  | 19385.0                  | 18055.0 .....            | 19615.0                  | 18725.0* .....   | 19065.0*                 |
| 17835.0 .....  | 19395.0                  | 18065.0 .....            | 19625.0                  | 18735.0* .....   | 19075.0*                 |
| 17845.0 .....  | 19405.0                  | 18075.0 .....            | 19635.0                  | 18745.0* .....   | 19085.0*                 |
| 17855.0 .....  | 19415.0                  | 18085.0 .....            | 19645.0                  | 18755.0* .....   | 19095.0*                 |
| 17865.0 .....  | 19425.0                  | 18095.0 .....            | 19655.0                  | 18765.0* .....   | 19105.0*                 |
| 17875.0 .....  | 19435.0                  | 18105.0 .....            | 19665.0                  | 18775.0* .....   | 19115.0*                 |
| 17885.0 .....  | 19445.0                  | 18115.0 .....            | 19675.0                  | 18785.0* .....   | 19125.0*                 |
| 17895.0 .....  | 19455.0                  | 18125.0 .....            | 19685.0                  | 18795.0* .....   | 19135.0*                 |
| 17905.0 .....  | 19465.0                  | 18135.0 .....            | 19695.0                  | 18805.0* .....   | 19145.0*                 |
| 17915.0 .....  | 19475.0                  |                          |                          | 18815.0* .....   | 19155.0*                 |
| 17925.0 .....  | 19485.0                  |                          |                          |  |                          |
| <b>340 Megahertz Separation</b>  |                          |                          |                          |  |                          |
|  |                          | 18585.0* .....           | 18925.0*                 | (8) 20 Megahertz maximum<br>authorized bandwidth channels: |                          |
|  |                          | 18595.0* .....           | 18935.0*                 |  |                          |

| Transmit (receive) (MHz) | Receive (transmit) (MHz) |
|--------------------------|--------------------------|
|--------------------------|--------------------------|

**1560 Megahertz Separation (\* channels are no longer available on primary basis)**

|               |          |
|---------------|----------|
| 17710.0 ..... | 19270.0* |
| 17730.0 ..... | 19290.0* |
| 17750.0 ..... | 19310.0  |
| 17770.0 ..... | 19330.0  |
| 17790.0 ..... | 19350.0  |
| 17810.0 ..... | 19370.0  |
| 17830.0 ..... | 19390.0  |
| 17850.0 ..... | 19410.0  |
| 17870.0 ..... | 19430.0  |
| 17890.0 ..... | 19450.0  |
| 17910.0 ..... | 19470.0  |
| 17930.0 ..... | 19490.0  |
| 17950.0 ..... | 19510.0  |
| 17970.0 ..... | 19530.0  |
| 17990.0 ..... | 19550.0  |
| 18010.0 ..... | 19570.0  |
| 18030.0 ..... | 19590.0  |
| 18050.0 ..... | 19610.0  |
| 18070.0 ..... | 19630.0  |
| 18090.0 ..... | 19650.0  |
| 18110.0 ..... | 19670.0  |
| 18130.0 ..... | 19690.0  |

**340 Megahertz Separation**

|                |          |
|----------------|----------|
| 18590.0* ..... | 18930.0* |
| 18610.0* ..... | 18950.0* |
| 18630.0* ..... | 18970.0* |
| 18650.0* ..... | 18990.0* |
| 18670.0* ..... | 19010.0* |
| 18690.0* ..... | 19030.0* |
| 18710.0* ..... | 19050.0* |
| 18730.0* ..... | 19070.0* |
| 18750.0* ..... | 19090.0* |
| 18770.0* ..... | 19110.0* |
| 18790.0* ..... | 19130.0* |
| 18810.0* ..... | 19150.0* |

(9) 30 Megahertz maximum authorized bandwidth channels:

| Transmit (receive) (MHz) | Receive (transmit) (MHz) |
|--------------------------|--------------------------|
|--------------------------|--------------------------|

**1560 Megahertz Separation**

|         |         |
|---------|---------|
| 17715.0 | N/A     |
| 17755.0 | 19315.0 |
| 17785.0 | 19345.0 |
| 17815.0 | 19375.0 |
| 17845.0 | 19405.0 |
| 17875.0 | 19435.0 |
| 17905.0 | 19465.0 |
| 17935.0 | 19495.0 |
| 17965.0 | 19525.0 |
| 17995.0 | 19555.0 |
| 18025.0 | 19585.0 |
| 18055.0 | 19615.0 |
| 18085.0 | 19645.0 |
| 18115.0 | 19675.0 |

(10) 40 Megahertz maximum authorized bandwidth channels:

| Transmit (receive) (MHz) | Receive (transmit) (MHz) |
|--------------------------|--------------------------|
|--------------------------|--------------------------|

**1560 Megahertz Separation (\* channels are no longer available on primary basis)**

|         |          |
|---------|----------|
| 17720.0 | 19280.0* |
| 17760.0 | 19320.0  |
| 17800.0 | 19360.0  |
| 17840.0 | 19400.0  |
| 17880.0 | 19440.0  |
| 17920.0 | 19480.0  |
| 17960.0 | 19520.0  |
| 18000.0 | 19560.0  |

Transmit (receive) (MHz) Receive (transmit) (MHz)

|         |         |
|---------|---------|
| 18040.0 | 19600.0 |
| 18080.0 | 19640.0 |
| 18120.0 | 19680.0 |

(11) 50 Megahertz maximum authorized bandwidth channels:

| Transmit (receive) (MHz) | Receive (transmit) (MHz) |
|--------------------------|--------------------------|
|--------------------------|--------------------------|

**1560 Megahertz Separation**

|         |         |
|---------|---------|
| 17765.0 | 19325.0 |
| 17815.0 | 19375.0 |
| 17865.0 | 19425.0 |
| 17915.0 | 19475.0 |
| 17965.0 | 19525.0 |
| 18015.0 | 19575.0 |
| 18065.0 | 19625.0 |
| 18115.0 | 19675.0 |

(12) 80 Megahertz maximum authorized bandwidth channels:

| Transmit (receive) (MHz) | Receive (transmit) (MHz) |
|--------------------------|--------------------------|
|--------------------------|--------------------------|

**1560 Megahertz Separation (\* channels are no longer available on primary basis)**

|         |          |
|---------|----------|
| 17740.0 | 19300.0* |
| 17820.0 | 19380.0  |
| 17900.0 | 19460.0  |
| 17980.0 | 19540.0  |
| 18060.0 | 19620.0  |

(13) 220 Megahertz maximum authorized bandwidth channels:

| Transmit (receive) (MHz) | Receive (transmit) (MHz) |
|--------------------------|--------------------------|
|--------------------------|--------------------------|

**(\* channels are no longer available on primary basis)**

|                               |          |
|-------------------------------|----------|
| 17810.0                       | 18470.0* |
| 18030.0                       | 19370.0* |
| 18250.0*                      | 19590.0  |
| 17810.0 (new channel pairing) | 19590.0  |

(14) The following frequencies on channels 35–39 are available for point-to-multipoint systems and are available by geographic area licensing in the 24 GHz Service to be used as the licensee desires. The 24 GHz spectrum can be aggregated or disaggregated and does not have to be used in the transmit/receive manner shown except to comply with international agreements along the U.S. borders. Channels 35 through 39 are licensed in the 24 GHz Service by Economic Areas for any digital fixed service. Channels may be used at either nodal or subscriber station locations for transmit or receive but must be coordinated with adjacent channel and adjacent area users in accordance with the provisions of § 101.509. Stations also must comply with international coordination agreements.

| Channel No. | Nodal station frequency band (MHz) limits | User station frequency band (MHz) limits |
|-------------|---|--|
| 25          | 18,820–18,830                             | 19,160–19,170                            |
| 26          | 18,830–18,840                             | 19,170–19,180                            |
| 27          | 18,840–18,850                             | 19,180–19,190                            |
| 28          | 18,850–18,860                             | 19,190–19,200                            |
| 29          | 18,860–18,870                             | 19,200–19,210                            |
| 30          | 18,870–18,880                             | 19,210–19,220                            |
| 31          | 18,880–18,890                             | 19,220–19,230                            |
| 32          | 18,890–18,900                             | 19,230–19,240                            |
| 33          | 18,900–18,910                             | 19,240–19,250                            |
| 34          | 18,910–18,920                             | 19,250–19,260                            |
| 35          | 24,250–24,290                             | 25,050–25,090                            |
| 36          | 24,290–24,330                             | 25,090–25,130                            |
| 37          | 24,330–24,370                             | 25,130–25,170                            |
| 38          | 24,370–24,410                             | 25,170–25,210                            |
| 39          | 24,410–24,450                             | 25,210–25,250                            |

(15) Special provision for low power systems in the 17,700–19,700 MHz band: Notwithstanding other provisions in part 101 and except for specified areas around Washington, DC, and Denver, Colorado, licensees of point-to-multipoint channel pairs 25–29 identified in paragraph (r)(9) of this section may continue to operate in accordance with the requirements of § 101.85 and may operate multiple low

power transmitting devices within a defined service area. Operations are prohibited within 55 km when used outdoor and within 20 km when used indoor of the coordinates 38 deg.48' N/ 76 deg.52' W (Washington, DC area) and 39 deg.43' N/104 deg.46' W (Denver, Colorado area). The service area will be a 28 kilometer omnidirectional radius originating from specified center reference coordinates. The specified

center coordinates must be no closer than 56 kilometers from any co-channel nodal station or the specified center coordinates of another co-channel system. Applicants/licensees do not need to specify the location of each individual transmitting device operating within their defined service areas. Such

operations are subject to the following requirements on the low power transmitting devices:

- (i) Power must not exceed one watt EIRP and 100 milliwatts transmitter output power;
- (ii) A frequency tolerance of 0.001% must be maintained; and
- (iii) The mean power of emissions shall be attenuated in accordance with the following schedule:

(A) In any 4 kHz band, the center frequency of which is removed from the center frequency of the assigned channel by more than 50 percent of the channel bandwidth and is within the bands 18,820–18,870 MHz or 19,160–19,210 MHz:

A = 35 + .003(F - 0.5B) dB

or,

80 dB (whichever is the lesser attenuation).

Where

A = Attenuation (in decibels) below output power level contained within the channel for a given polarization.

B = Bandwidth of channel in kHz.

F = Absolute value of the difference between the center frequency of the 4 kHz band measured at the center frequency of the channel in kHz.

(B) In any 4 kHz band the center frequency of which is outside the bands 18.820–18.870 GHz: At least 43+10 log P (mean output power in watts) decibels.

(iv) Low power stations authorized in the band 18.8–19.3 GHz after June 8, 2000, are restricted to indoor use only.

\* \* \* \* \*

3. Section 101.603 is amended by revising paragraphs (a)(2) and (b)(3) to read as follows:

§ 101.603 Permissible communications.

(a) \* \* \*

(2) In the frequency bands 6425–6525 MHz, 17,800–18,580 MHz, and on frequencies above 21,200 MHz, licensees may deliver any of their own products and services to any receiving location;

\* \* \* \* \*

(b) \* \* \*

(3) Be used to provide the final RF link in the chain of transmission of program material to cable television systems, multipoint distribution systems or master antenna TV systems, except in the frequency bands 6425–6525 MHz and 17,800–18,580 MHz and on frequencies above 21,200 MHz.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D.062804C]

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Petition for Rulemaking; Request for Comments

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

ACTION: Notice of receipt of a petition for rulemaking; request for comments.

SUMMARY: NMFS announces receipt of a petition for rulemaking from the Fisheries Survival Fund (FSF) and the Garden State Seafood Association (GSSA) (Petitioners), both of which represent participants in the commercial fishing industry. The Petitioners request that NMFS develop and implement an emergency rule pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to require specific modifications to the fishing gear used by Atlantic sea scallop vessels fishing south of Long Island and north of Cape Hatteras, from May 1 through October 15. The gear measures requested are the installation of a chain mesh configuration (“turtle chains”) in dredge gear and the installation of turtle excluder devices (TEDs) in trawl gear. These measures would be required for any Atlantic sea scallop vessel, whether fishing under a Limited Access or General Category permit, to protect sea turtles from incidental capture.

DATES: Comments will be accepted through August 6, 2004.

ADDRESSES: You may submit comments by any of the following methods:

• Federal e-Rulemaking Portal http://www.regulations.gov. Follow the instructions for submitting comments.

• Email: SCAPetition@noaa.gov. Include in the subject line of the e-mail comment the following identifier: Scallop Gear Petition

• Mail: Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298

• Fax: 978–281–9135

Copies of this petition may be obtained by contacting the NMFS Northeast Regional Office at the above address.

FOR FURTHER INFORMATION CONTACT: Peter Christopher, Fishery Policy

Analyst, 978–281–9288; fax 978–281–9135.

SUPPLEMENTARY INFORMATION: On June 17, 2004, the Petitioners submitted a petition for rulemaking requesting that NMFS promulgate an emergency rule pursuant to section 305(c) of the Magnuson-Stevens Act. The Petitioners assert that sea turtle captures in the scallop fishery, “represent a recently-emerging and relatively modest phenomenon.” Petitioners state that, after incidental sea turtle captures were documented in 2001, the FSF began working with Dr. William DuPaul of the Virginia Institute of Marine Sciences (VIMS) and Captain Ronald Smolowitz, a gear researcher, to design and test a chain configuration for the front of the scallop dredge to reduce or eliminate the catch of sea turtles in scallop dredges. The petition describes the 2 years of field trials during which the experimental dredge recorded no takes of sea turtles, while the control dredge recorded nine takes. The petition references an interim report authored by W. DuPaul, D. Rudders, and R. Smolowitz, “Interim Report: Industry Trials of a Modified Sea Scallop Dredge to Minimize the Catch of Sea Turtles,” VIMS Marine Research Report No. 2004–08 (May 2004).

The Petitioners note that the VIMS Sea Grant Program and FSF have developed instruction cards for vessel captains, which set forth specifications for use of the turtle chains. They also have developed and distributed instruction cards on how to handle the dredge to reduce interactions with sea turtles not actually caught in the dredge and to minimize potential injury or mortality to any turtle brought to the surface.

The Petitioners request that NMFS initiate immediately emergency rulemaking to require use of the modified gears and encourage adherence to the specifications set forth on the instruction cards, on all vessels fishing for sea scallops south of Long Island and north of Cape Hatteras. The Petitioners request that scallop dredge vessels be required to use “turtle chains” and that scallop trawl vessels be required to install an effective TED to fish in the specified area from May 1 through October 15.

The Assistant Administrator for Fisheries, NOAA (AA) has determined that the petition contains enough information to enable NMFS to consider the substance of the petition. NMFS will consider public comments received in determining whether to proceed with the development of the regulations requested by the Petitioners. Upon