

**§ 900.405 Proposals normally requiring an EIS.**

The responsible official shall assure that an EIS will be prepared and issued for proposals when it is determined that any of the following conditions exist:

(a) The proposal may significantly affect the pattern and type of land use (industrial, commercial, agricultural, recreational, residential) or the growth and distribution of population;

(b) The effects resulting from any structure or facility constructed or operated under the proposal may conflict with local, regional or State land use plans or policies;

(c) The proposal may have significant adverse effects on wetlands, including indirect and cumulative effects, or any major part of a structure or facility constructed or operated under the proposal may be located in wetlands;

(d) The proposal may likely adversely affect species protected under the Endangered Species Act or their habitats, such as when a structure or a facility constructed or operated under the proposal may be located in the habitat;

(e) Implementation of the proposal may directly cause or induce changes that significantly:

- (1) Displace population;
- (2) Alter the character of existing residential areas;
- (3) Adversely affect a floodplain.

**Appendix A to Part 900—Categorical Exclusions****A. General Categorical Exclusions**

Actions consistent with any of the following categories are eligible for a categorical exclusion:

A1. Routine administrative and management activities including, but not limited to, those activities related to budgeting, finance, personnel actions, procurement activities, compliance with applicable executive orders and procedures for sustainable or "greened" procurement, retaining legal counsel, public affairs activities (e.g., issuing press releases, newsletters and notices of funding availability), internal and external program evaluation and monitoring (e.g., site visits), database development and maintenance, and computer systems administration.

A2. Routine activities that the Commission does to support its program partners and stakeholders, such as serving on task forces, ad hoc committees or representing Commission interests in other forums.

A3. Approving and issuing grants for administrative overhead support.

A4. Approving and issuing grants for social services, education and training programs, including but not limited to support for Head Start, senior citizen programs, drug treatment programs, and funding internships, except for projects involving construction, renovation, or changes in land use.

A5. Approving and issuing grants for facility planning and design.

A6. Nondestructive data collection, inventory, study, research, and monitoring activities (e.g., field, aerial and satellite surveying and mapping).

A7. Research, planning grants and technical assistance projects that are not reasonably expected to commit the Federal government to a course of action, to result in legislative proposals, or to result in direct development.

**B. Program Categorical Exclusions**

Actions consistent with any of the following categories are eligible for a categorical exclusion upon completion of the Denali Commission categorical exclusion checklist:

B1. Acquisition and installation of equipment including, but not limited to, EMS, emergency and non-expendable medical equipment (e.g., digital imaging devices and dental equipment) and communications equipment (e.g., computer upgrades) provided all requirements for permits, registrations, and licenses are met and provided the equipment involves use of generally accepted technology.

B2. Routine upgrade, repair, maintenance, replacement or minor renovations, and additions to buildings, roads, airfields, grounds, equipment, and other facilities including, but not limited to, roof replacement, foundation repair, ADA access ramp and door improvements, HVAC renovations, painting, floor system replacement, repaving parking lots and ground maintenance that do not result in a change in the functional use of the real property.

B3. Engineering studies and investigations, including soil boring and test well drilling, to gather data for the purpose of determining engineering feasibility and permitting facility design.

B4. Construction or lease of new facilities including, but not limited to, portable facilities, trailers, health care facilities, bulk commodity storage and power generation facilities where such lease or construction:

- (a) Is at the site of an existing facility and the facility capacity is not substantially increased;
- (b) Is for buildings of less than 12,000 square feet of useable space when less than five acres of surface land area are involved at a new site; or
- (c) Is for projects other than buildings when one of the following conditions exist:

1. The project lies within existing boundaries of a previously disturbed site;
2. Less than two acres of surface land area involving known high-value wetlands are involved at a new site; or
3. Less than five acres of surface land area not involving high-value wetlands are involved at a new site.

B5. Actions associated with construction of sanitation facilities to serve rural homes and communities with the exception of the following actions: (a) Construction of a sanitary landfill at a new solid waste disposal site, and (b) Construction of a new wastewater treatment facility with direct discharge of treated sewage to surface waters.

B6. Construction of electric power stations (including switching stations and support facilities) with power delivery at 480 kV or below, modification (other than voltage increases) of existing stations and support facilities that could involve the construction of electric powerlines approximately ten miles in length or less, or relocation of existing electric powerlines approximately twenty miles in length or less, but not the integration of major new generation resources into a main transmission system.

B7. Construction of electric powerlines approximately ten miles in length or less that are not intended to integrate major new generation resources into a main transmission system.

B8. Reconstruction (upgrading or rebuilding) and/or minor relocation of existing electric powerlines approximately twenty miles in length or less to enhance environmental and land use values. Such actions include relocations to avoid right-of-way encroachments, resolve conflict with property development, accommodate road/highway construction, allow for the construction of facilities such as canals and pipelines, or reduce existing impacts to environmentally sensitive areas.

Dated: July 29, 2004.

**Jeffrey B. Staser,**  
*Federal Co-Chair.*

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**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Parts 20 and 80**

**[WT Docket No. 04-257; RM-10743; FCC 04-171]**

**Maritime Communications**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission addresses petitions for rulemaking that were filed by Maritel, Inc. (Maritel), a VHF public coast (VPC) station licensee, on May 16, 2003, and Mobex Network Services, LLC (Mobex), an automated maritime telecommunications system (AMTS) station licensee, on June 13, 2003. Both petitions seek additional flexibility for public coast station licensees. The Commission proposes to amend its rules to permit VPC and AMTS licensees to provide private mobile radio service to units on land. The proposed rule changes further the Commission's ongoing goal of establishing a regulatory framework that will enhance operational flexibility and enable maritime spectrum licensees to compete more effectively against other commercial mobile radio service

(CMRS) providers. The Commission tentatively concludes that the actions proposed herein will not adversely affect the essential purpose of the Maritime Services to promote safety of life and property at sea and on inland waterways. At the same time, the Commission tentatively concludes that Maritel's suggested broader rule changes, which would permit VPC licensees essentially to choose whether or not to comply with various regulatory obligations pertaining to the Maritime Services, are not in the public interest.

**DATES:** Written comments are due on or before October 12, 2004, and reply comments are due on or before November 8, 2004.

**FOR FURTHER INFORMATION CONTACT:**

Jeffrey Tobias, *Jeff.Tobias@FCC.gov*, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418-0680, or TTY (202) 418-7233.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), WT Docket No. 04-257, FCC 04-171, adopted on July 8, 2004, and released on July 30, 2004. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365 or at *bmillin@fcc.gov*.

1. In the NPRM, the Commission tentatively agrees that prohibiting VPC and AMTS licensees from providing private correspondence to mobile units on land appears to conflict with the Commission's goal of providing CMRS licensees with optimal operational flexibility in utilizing their authorized spectrum. Accordingly, the Commission proposes to permit VPC and AMTS licensees to provide private land mobile radio service to units on land by deleting the reference "public correspondence" in 47 CFR 80.123, and removing the discussion of "ships" in 47 CFR 80.475(c). The Commission also proposes to amend 47 CFR 20.9 to give AMTS geographic licensees the same flexibility as VPC geographic area licensees to choose between offering commercial and private services. The Commission seeks comment on these tentative conclusions. The Commission

also seeks comment on how VPC and AMTS stations can technically and practically serve both maritime and land mobile interests in areas near navigable waterways, especially in the VPC service, where maritime and mobile users may utilize different equipment. In addition, the Commission seeks comment on how these providers can ensure that priority would always be given to maritime communications.

2. The Commission also tentatively agrees that AMTS stations providing private correspondence service should not be required to be interconnected to the public switched network. Consequently, the Commission proposes to retain the interconnection requirement for AMTS licensees providing public correspondence service, but to amend 47 CFR 80.475 to provide that such licensees may also provide non-interconnected service, and that AMTS licensees providing only private mobile radio service need not be interconnected. In this regard, the Commission also proposes to revise 47 CFR 80.5 to remove "interconnected" as a required characteristic of all AMTS operations.

3. The Commission declines to propose other rule changes requested by Maritel that would permit VPC geographic area licensees to choose whether to provide maritime public correspondence services; and to have VPC licensees governed by the rules and decisions applicable to the particular type of service they elect to provide, and not necessarily the rules governing the Maritime Services. The Commission is concerned that the rule changes requested by Maritel would undermine the core purpose of the Maritime Services—providing for the unique distress, operational, and personal communications needs of vessels at sea and on inland waterways.

**I. Procedural Matters**

*A. Ex Parte Rules—Permit-but-Disclose Proceeding*

4. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.

*B. Paperwork Reduction Act of 1995*

5. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25

employees," pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107-193, *see* 44 U.S.C. 3506(c)(4).

*C. Comments*

6. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before October 12, 2004 and reply comments on or before November 8, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

7. 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, 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*, 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. 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. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th St., SW., Washington, DC 20554. Filings can be sent first class by the U.S. Postal Service, by an overnight courier or hand and message-delivered. Hand and message-delivered paper filings must be delivered to 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. Filings delivered by overnight courier (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

8. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Jeffrey Tobias, Wireless Telecommunications Bureau, 445 12th St., SW., Room 3-A432, Washington, DC 20554. Such a submission should be

on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, WT Docket No. 04-257), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters should send diskette copies to the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th St., SW., Room CY-B402, Washington, DC 20054.

## II. Initial Regulatory Flexibility Analysis

9. As required by the RFA, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the rules proposed or discussed in the NPRM. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the NPRM in WT Docket No. 04-257, and they should have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

### A. Need for, and Objectives of, the Proposed Rules

10. In the NPRM, the Commission seeks comment on whether it is in the public interest, convenience, and necessity to provide VHF public coast stations and AMTS stations with the additional flexibility to offer non-interconnected private communications to units on land.

### B. Legal Basis for Proposed Rules

11. The proposed action is authorized under sections 4(i), 7(a), 302, 303(b), 303(f), 303(g), 303(r), 332(a) and 332(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a) 302, 303(b), 303(f), 303(g), 303(r), 332(a) and 332(c).

### C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

12. 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 (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 governmental entities in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96%, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96%) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by adoption of rules discussed in the NPRM.

13. The proposed rules would affect licensees using AMTS and VHF public coast spectrum. In the *Third Report and Order* in PR Docket No. 92-257, the Commission defined the term "small entity" specifically applicable to public coast station licensees as any entity employing less than 1,500 persons, based on the definition under the Small Business Administration rules applicable to radiotelephone service providers. See Amendment of the Commission's Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order*, PR Docket No. 92-257, 13 FCC Rcd 19853, 19893 (1998) (citing 13 CFR 121.201, Standard Industrial Classification (SIC) Code

4812, now NAICS Code 513322). Since the size data provided by the Small Business Administration do not enable us to make a meaningful estimate of the number of public coast station licensees that are small businesses, we have used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that 12 radiotelephone firms out of a total of 1,178 such firms which operated in 1992 had 1,000 or more employees. There are three AMTS public coast station licensees and approximately thirty-five VPC licensees. It is unlikely that more than seven more AMTS or five more VPC licensees will be authorized in the future. Therefore, we estimate that no fewer than fifty small entities will be affected.

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

14. The NPRM neither proposes nor anticipates any additional reporting, recordkeeping or other compliance measures.

### E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

15. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (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.

16. The NPRM solicits comment on a variety of alternatives set forth herein. For example, the Commission seeks comment on its proposal to reduce the regulatory burden for all entities, including small entities, by eliminating the current requirement that part 80 public coast licensees provide interconnected service to land units. It also seeks comment on the proposal of Maritel, Inc. that licensees elect to provide either Commercial Mobile Radio Service or Private Mobile Radio Service and then be regulated by the Commission rules that govern that service.

*F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules*

None.

**III. Ordering Clauses**

17. This *Notice of Proposed Rule Making* is contained in Sections 4(i), 4(j), 7(a), 302, 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), and 332(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 157(a), 302, 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), and 332(c).

18. The proposed regulatory changes described in the *Notice of Proposed Rule Making* are contained in rule changes.

19. The petition for rulemaking filed by Maritel, Inc. on May 16, 2003 is granted in part and denied in part, to the extent set forth herein, and the petition for rulemaking filed by Mobex Network Services, LLC on June 13, 2003 is granted.

20. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects**

47 CFR Parts 20 and 80

Communications equipment, Radio, Federal Communications Commission.

**William F. Caton,**  
*Deputy Secretary.*

**Proposed Rules**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 20 and 80 as follows:

**PART 20—COMMERCIAL MOBILE RADIO SERVICES**

1. The authority citation for part 20 continues to read as follows:

**Authority:** Secs. 4, 10, 251–254, 303, and 332; 47 U.S.C. 154, 160, 251–254, 303, and 332, unless otherwise noted.

2. Section 20.9 is amended by revising paragraphs (b) introductory text and (b)(1) to read as follows:

**§ 20.9 Commercial mobile radio service.**

\* \* \* \* \*

(b) Licensees of a Personal Communications Service or applicants for a Personal Communications Service license, and VHF Public Coast Station geographic area licensees or applicants, and automated maritime telecommunications system (AMTS)

geographic area licensees or applicants, proposing to use any Personal Communications Service, VHF Public Coast Station, or AMTS spectrum to offer service on a private mobile radio service basis must overcome the presumption that Personal Communications Service, VHF Public Coast, and AMTS Stations are commercial mobile radio services.

(1) The applicant or licensee (who must file an application to modify its authorization) seeking authority to dedicate a portion of the spectrum for private mobile radio service, must include a certification that it will offer Personal Communications Service, VHF Public Coast Station, or AMTS service on a private mobile radio service basis. The certification must include a description of the proposed service sufficient to demonstrate that it is not within the definition of commercial mobile radio service in § 20.3. Any application requesting to use any Personal Communications Service, VHF Public Coast Station, or AMTS spectrum to offer service on a private mobile radio service basis will be placed on public notice by the Commission.

\* \* \* \* \*

**Part 80—STATIONS IN THE MARITIME SERVICES**

1. The authority citation for part 80 continues to read as follows:

**Authority:** Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.5 is amended by revising the definition of automated maritime telecommunications system to read as follows:

**§ 80.5 Definitions.**

\* \* \* \* \*

*Automated maritime telecommunications system (AMTS).* An automatic, integrated maritime communications system.

\* \* \* \* \*

3. Section 80.123 is amended by revising the introductory paragraph to read as follows:

**§ 80.123 Service to stations on land.**

Marine VHF public coast stations, including AMTS coast stations, may provide service to stations on land in accordance with the following:

\* \* \* \* \*

4. Section 80.475 is amended by revising paragraph (c) and adding a new paragraph (d) to read as follows:

**§ 80.475 Scope of service of the Automated Maritime Telecommunications System (AMTS).**

\* \* \* \* \*

(c) In lieu of public correspondence service, an AMTS system may provide a private mobile radio service. However, such communications may be provided only to stations whose licensees make cooperative arrangements with the AMTS coast station licensees. In emergency and distress situations, services must be provided to ship stations without prior arrangements.

(d) AMTS systems providing private mobile radio service in lieu of public correspondence service are not required to be interconnected to the public switched network. AMTS systems providing public correspondence service must be interconnected to the public switched network, but the licensee may also offer non-interconnected services.

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

[DA 04–2392; MB Docket No. 04–287, RM–11044; MB Docket No. 04–288, RM–11045]

**Radio Broadcasting Services; Booneville, KY and Rhinelander, WI**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes new allotments in separate communities, Booneville, Kentucky and Rhinelander, Wisconsin. The Audio Division requests comment on a petition filed by East Kentucky Educational Radio, proposing the allotment of Channel 227A at Booneville, Kentucky, as the community's first local aural transmission service. Channel 227A can be allotted to Booneville in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.1 kilometers (8.8 miles) northwest of the community. The reference coordinates for Channel 227A at Booneville are 37–34–24 NL and 83–46–40 WL, 24–55–05 NL and 80–38–04 WL. The Audio Division also requests comments on a petition filed by Results Broadcasting of Rhinelander, Inc., proposing the allotment of Channel 243C3 at Rhinelander, Wisconsin, as the community's fourth local aural transmission service. Channel 243C3 can be allotted to Rhinelander in compliance with the Commission's