

may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998. 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. 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 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 send an original and four (4) copies of each filing. Filings can be sent by hand or messenger delivery, by electronic media, 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 or electronic media 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 and electronic media sent by 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, 445 12th Street, SW., Room TW-B204, Washington, DC 20554.

This proceeding shall be treated as a "permit but disclose" proceeding in accordance with the Commission's *ex parte* rules, 47 CFR 1.1200. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substances of the presentations and not merely a listing of the subjects discussed. More than a one

or two sentence description of the views and arguments presented is generally required. See 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

Synopsis

On August 11, 2003, Mark Boling filed a *Petition* "individually and on behalf of California consumers and California businesses" asking the Commission to declare that particular provisions of the California Consumer Legal Remedies Act ("CLRA"), as applied to interstate telephone calls, are not preempted by the Telephone Consumer Protection Act ("TCPA"). The Commission seeks comment on the issues raised in the *Petition*.

Mr. Boling states that he has acted as a party, representative party, or legal representative in numerous California lawsuits in which defendants have asserted as a defense that particular provisions of the CLRA are preempted by the TCPA. Mr. Boling indicates that the CLRA, as set forth in California Civil Code § 1770(a), contains a list of unlawful practices. He notes that California Civil Code § 1770(a)(22)(A), in particular, makes unlawful the "dissemination of an unsolicited prerecorded message by telephone without an unrecorded, natural voice first informing the person answering the telephone of the name of the caller or the organization being represented, and either the address or the telephone number of the caller, and without obtaining the consent of that person to listen to the prerecorded message."

Mr. Boling further notes that § 227(b)(1)(B) of the Communications Act, as amended by the TCPA, makes it unlawful for any person "to initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes or is exempted by rule or order by the Commission under paragraph (2)(B)." Asserting that this provision of Federal law poses no conflict with the relevant provisions of the CLRA, Mr. Boling explains that:

In this instance, the CLRA controls dissemination of a prerecorded message and does not control the telephone call containing that message. The TCPA controls the call, and not the dissemination of the message. Therefore, when a party initiates the unlawful call it violates the TCPA and when the unlawful message is received in California it violates the CLRA.

As such, Mr. Boling asserts that "no conflict exists in the enforcement of the TCPA or the CLRA as it relates to the activities set forth in this action, as the actionable conduct in each law is separately defined." Finally, Mr. Boling asserts that, because the practices at issue in the *Petition* do not pertain to technical and procedural requirements for identification of senders of telephone facsimile messages or autodialed artificial or prerecorded voice messages, as described in section 227(d) of the TCPA, they are not subject to § 227(e) of the TCPA.

Accordingly, Mr. Boling asks the Commission to issue a declaratory ruling that the identified provisions of the California Civil Code, as applied to interstate calling, are not preempted by the TCPA.

Federal Communications Commission.

Monica Desai,

Acting Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 05-11910 Filed 6-14-05; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 99-87; RM-9332; FCC 04-292]

Promotion of Spectrum Efficient Technologies on Certain Frequencies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comments on whether to defer or eliminate the requirement in the rules that certain applications for equipment authorization received on or after January 1, 2005, specify 6.24 kHz capability.

DATES: Submit comments on or before August 15, 2005, and reply comments are due on or before September 13, 2005.

FOR FURTHER INFORMATION CONTACT:

Rodney Conway,
Rodney.Conway@fcc.gov, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418-0680, TTY (202) 418-7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Third Further Notice of Proposed Rule Making (3rd Further NPRM)*, FCC 04-292, adopted on December 20, 2004, and released on December 23, 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 FCC'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 *Second Further Notice of Proposed Rule Making (2nd Further NPRM)* in this proceeding (68 FR 42337, July 17, 2003), the Commission sought comment on whether it should adopt measures to facilitate the migration to 6.25 kHz operations. In comments to the *(2nd Further NPRM)* and in separate pleadings, parties argued that the Commission should eliminate or, in the alternative, defer, the requirement in 47 CFR 90.203(j)(5) that equipment approval applications received on or after January 1, 2005 for equipment operating in the 150–174 MHz and/or 421–512 MHz bands must either be capable of operating on 6.25 kHz channels or meet a narrowband efficiency standard of one channel per 6.25 kHz (voice) or 4800 bits per second per 6.25 kHz (data).

2. Because these pleadings raise an issue beyond but connected to the Commission's inquiry in the *2nd Further NPRM*, the *3rd Further NPRM* seeks comment on this proposal. Specifically, it seeks comment on the petitioners' assumption that the current rule would place onerous burdens on manufacturers and jeopardize the promotion of interoperability between users in the absence of a 6.25 kHz equivalent efficiency standard. It also seeks comment on whether the question hinges on a distinction between equipment-based technologies that are specifically manufactured to utilize 6.25 kHz channel bandwidth as opposed to reconfigured 12.5 kHz equipment or software-defined 12.5 kHz equipment made capable of operating on channel bandwidths with an equivalent efficiency of 6.25 kHz. In the absence of a single, equipment-based 6.25 kHz technology standard, would the deployment of non-standardized equipment capable of utilizing 6.25 kHz efficiency channel bandwidths significantly hamper interoperability? The Commission seeks comment on these and any other related issues, but emphasizes that it is not reopening the record for comments regarding the broader issues raised in the *2nd Further*

NPRM regarding migration to 6.25 kHz technology.

3. For Commission licensees operating in the Federal Government bands 150.05–150.8 MHz, 162.0125–173.2 MHz, and 173.4–174 MHz, we recognize that a separate ongoing proceeding—ET Docket No. 04–243—is addressing whether different narrowbanding requirements are needed to account for the Federal Government's own narrowbanding plans in those bands. Accordingly, we defer decisions with respect to those bands to that proceeding.

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. Comment Dates

5. 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 August 15, 2005, and reply comments on or before September 13, 2005. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

6. 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.

7. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Rodney Conway, Wireless Telecommunications Bureau, 445 12th St., SW., Room 3-C405, 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 docket number in this case, WT Docket No. 99–87), 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 20554.

C. Paperwork Reduction Act

8. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 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, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

II. Regulatory Flexibility Act Analysis

9. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Third Further Notice of Proposed Rule Making (3rd Further NPRM)*. Written public

comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on this Further NPRM provided above in para. 5, *supra*. The Commission will send a copy of the *3rd Further NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *3rd Further NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

10. The purpose of this *3rd Further NPRM* is to determine whether it would be in the public interest, convenience, and necessity to amend our rules governing private land mobile radio licensees in the 150–174 MHz and 421–512 MHz bands to modify or eliminate the requirement in § 90.203(j)(5) of the Commission's rules that require applications for certification of equipment received on or after January 1, 2005 operating with a 25 kHz bandwidth only to the extent that the equipment meets the spectrum efficiency standard of one channel per 6.25 kHz of channel bandwidth (voice) or 4800 bits per second per 6.25 kHz (data).

Legal Basis

11. Authority for issuance of this *3rd Further NPRM* is contained in sections 4(i), 303(r), and 332(a)(2) of the Communications Act of 1934, as amended.

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. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. The RFA generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act. 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 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.

13. The proposed rule amendments may affect users of Public Safety Radio Pool services and private radio licensees that are regulated under part 90 of the Commission's rules, and may also affect manufacturers of radio equipment. An analysis of the number of small entities affected follows.

14. *Public safety services and Governmental entities.* Public safety radio services include police, fire, local governments, forestry conservation, highway maintenance, and emergency medical services. The SBA rules contain a definition for small radiotelephone (wireless) companies that encompass business entities engaged in radiotelephone communications employing no more than 1,500 persons. There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. The RFA also includes small governmental entities as a part of the regulatory flexibility analysis. "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 such jurisdictions in the United States. This number includes 38,978 counties, cities and towns; of these, 37,566, or 96 percent, 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, the Commission estimates that 81,600 (96 percent) are small entities.

15. *Estimates for PLMR Licensees.* Private land mobile radio systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed a definition of small entities specifically applicable to PLMR users, nor has the SBA developed any such definition. The SBA rules do, however, contain a definition for small radiotelephone (wireless) companies. Included in this definition are business entities engaged in radiotelephone communications employing no more than 1,500 persons. Entities engaged in telegraph and other message communications with no more than \$5 million in annual receipts also qualify as small business concerns. According to the Bureau of the Census, only twelve radiotelephone firms of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. For the purpose of

determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The Commission's fiscal year 1994 annual report indicates that, at the end of fiscal year 1994, there were 1,101,711 licensees operating 12,882,623 transmitters in the PLMR bands below 512 MHz.

16. *Equipment Manufacturers.* We anticipate that at least six radio equipment manufacturers will be affected by our decisions in this proceeding. According to the SBA's regulations, a radio and television broadcasting and communications equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicate that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would therefore be classified as small entities.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

17. This *3rd Further NPRM* stays the January 1, 2005 date in § 90.203(j)(5) of the Commission's rules pending resolution of the issues presented in the *2nd Further NPRM* and the Petition to Defer. Therefore, the *3rd Further NPRM* removes any administrative or recordkeeping burdens associated with the requirement that applications for certification of equipment received on or after January 1, 2005 operating with a 25 kHz bandwidth will be permitted only to the extent that the equipment meets the spectrum efficiency standard of one channel per 6.25 kHz of channel bandwidth (voice) or 4800 bits per second per 6.25 kHz (data) pursuant to § 90.203 (j)(5) of the Commission's rules.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

18. 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 (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from

coverage of the rule or any part thereof for small entities.

19. The objective in the *Refarming* proceeding was to provide a means to transition licensees to 6.25 kHz technology. Migration to 12.5 kHz technology was viewed as a stepping stone to operation at 6.25 kHz technology. However, requiring the use of 6.25 kHz technology by a date certain could impact some small entities requiring them to upgrade their communications systems before they would otherwise do so. An alternative would be to maintain the current rules, which are intended to foster migration to narrowband technology by way of progressively more stringent type certification requirements. We issue this *3rd Further NPRM* to stay the effectiveness of § 90.203(j)(5) of the Commission's rules and thereby ensure that a January 1, 2005 deadline would not injure any party while we consider whether a change in the Commission's rules would benefit small entities and other PLMR licensees.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

III. Ordering Clauses

20. Pursuant to sections 1, 2, 4(i), 301, 302, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 301, 302, and 303, and §§ 1.421 and 1.425 of the Commission's rules, 47 CFR 1.421 and 1.425, it is ordered that the *Third Further Notice of Proposed Rule Making* is hereby adopted.

21. It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Third Memorandum Opinion and Order, Third Further Notice of Proposed Rule Making* 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 90

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05-11476 Filed 6-14-05; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, and 175

[Docket No. PHMSA-02-11989 (HM-224C)]

RIN 2137-AD48

Hazardous Materials; Transportation of Lithium Batteries

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Initial regulatory flexibility analysis.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration (PHMSA) is publishing this initial regulatory flexibility analysis to aid the public in commenting upon the potential small business impacts of the proposals in our April 2, 2002 notice of proposed rulemaking to amend the requirements in the Hazardous Materials Regulations (HMR) on: (1) Exceptions for "small" and for "mid-size" batteries (*i.e.*, cells up to 5 grams of lithium content and batteries up to 25 grams of lithium content); and (2) exceptions for aircraft passengers and crew. These changes are being proposed in order to clarify requirements to promote safer transportation practices; promote compliance and enforcement; eliminate unnecessary regulatory requirements; facilitate international commerce; and make these requirements easier to understand. We will consider comments received to improve our regulatory flexibility analysis and in making our decision on a final rule.

DATES: Written comments must be received on or before August 1, 2005.

ADDRESSES: You may submit comments (identified by DOT DMS Docket Number PHMSA-02-11989 (HM-224C)) by any of the following methods:

- Web site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 202-493-2251.

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, PL-401, Washington, DC 20590-0001.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: You must include the agency name (Pipeline and Hazardous Materials Safety Administration) and the Docket number (PHMSA-02-11989 (HM-224C)) or the Regulatory Identification Number (RIN 2137-AD48) for this rulemaking at the beginning of your comments. You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that PHMSA received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted, without change, to <http://dms.dot.gov> including any personal information provided and will be available to internet users. Please see the Privacy Act section of this document.

Docket: For access to the docket to read background documents and comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Gale, Office of Hazardous Materials Standards, PHMSA, Department of Transportation, 400 Seventh St., SW., Washington, DC 20590-0001, Telephone (202) 366-8553.

SUPPLEMENTARY INFORMATION: In our April 2, 2002 notice of proposed rulemaking (NPRM) under this docket (67 FR 15510), the Research and Special Programs Administration (RSPA)—PHMSA's predecessor agency—explained that lithium batteries and equipment containing or packed with lithium batteries are regulated as Class 9 materials unless they meet an exception in the Hazardous materials Regulations (HMR, 49 CFR Parts 171-180). In that NPRM, RSPA proposed (1) changes to test methods for lithium batteries, (2) that excepted "small" batteries must be tested and each package containing more than 24 cells or 12 batteries must meet packaging standards, including a maximum gross mass, and have certain communication of the hazards (marking and accompanying documentation), (3) elimination of the exception for "mid-size" cells and batteries, and (4) exceptions for airline passengers and crew members to carry consumer electronic devices and spare batteries aboard aircraft, subject to limits on the lithium content and number of spare batteries.

Our April 2, 2002 NPRM did not include an initial regulatory flexibility analysis (IRFA) pursuant to the Regulatory Flexibility Act (5 U.S.C. 603)