

§ 401.710 Operating requirements for holders of Certificates of Authorization

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(f) Comply with all accounting procedures and the reporting requirements in this chapter;

(g) Make available to the Commandant all of its financial and operating records;

(h) Comply immediately and professionally with all lawful requests and directions received from U.S. and Canadian Coast Guard units and personnel, vessel traffic service personnel, and other lawful authority; and

(i) A violation of any of these provisions may be punished in accordance with 46 CFR 401.500 and be grounds for the suspension or revocation of a pilot association's certificate of authorization to operate a pool pursuant to 46 CFR 401.335.

Dated: January 29, 2008.

Brian M. Salerno,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security & Stewardship.

[FR Doc. 08-474 Filed 1-30-08; 8:45am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 98-120; FCC 07-170]

Carriage of Digital Television Broadcast Signals

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: While the *Third Report and Order* resolves the major questions about material degradation and viewability after the transition, we now seek comment on a number of related issues which were not specifically raised in the *Second Further Notice of Proposed Rulemaking*. Now that the general rules are in place, the Commission believes it is appropriate to move toward an expeditious resolution of these outstanding matters so that all parties will have sufficient time to prepare for compliance with these new rules.

DATES: Comment Date: March 3, 2008. Reply Comment Date: March 17, 2008.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, please contact Lyle Elder, Lyle.Elder@fcc.gov, or Eloise Gore,

Eloise.Gore@fcc.gov, of the Media Bureau, Policy Division, (202) 418-2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Third Further Notice of Proposed Rule Making (Third FNPRM) in CS Docket No. 98-120, FCC 07-170, adopted September 11, 2007, and released November 30, 2007. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. These documents will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Summary of the Third Notice of Proposed Rule Making

A. Issues Related to Downconversion

1. Channel Placement: Section 614(b)(6) generally provides that commercial television stations carried pursuant to the mandatory carriage provision are entitled to be carried on a cable system on the same channel number on which the station broadcasts over-the-air. Under Section 615(g)(5) noncommercial television stations generally have the same right. The Act also permits commercial and noncommercial television stations to negotiate a mutually beneficial channel position with the cable operator. In the *First Report and Order*, the Commission found that it was unnecessary to place broadcast signals on a specific frequency in order to ensure nondiscriminatory treatment of television stations by cable operators. Instead, the Commission required that channel mapping information be passed through as part of the program and system information protocol ("PSIP"), linking the digital channel number with the appropriate primary video and program-related content. How should these channel positioning rules apply to operators carrying more than one version of a station's signal? We seek comment on this question. For systems

that provide analog service, we propose that the analog version be physically located on the appropriate channel as determined by the channel placement rules, and that the version as broadcast appear on that same channel for digital subscribers who can view it. We seek comment on this proposal. We also seek comment on whether it will be technically possible for multiple digital versions to appear on the same channel from a subscriber perspective (e.g., channel 35 in HD for subscribers with HD, and the same channel 35 in SD for subscribers with SD). If so, should we adopt such a requirement?

2. Format: NAB and MSTV raise the point that "[w]hen digital programming is broadcast in a 16:9 format, downconversion of the signal to analog generally requires that the program be reformatted to fit the 4:3 analog aspect ratio." Broadcasters may broadcast not only in different resolutions—HD, ED, SD—but also in different formats—16:9 or 4:3. When a digital signal is downconverted, particularly from HD to analog, it is likely to be a 16:9 signal being adjusted for display on a 4:3 screen. However, at times, particularly during the early years of the post-transition period, even HD broadcasters are likely to occasionally show images in a 4:3 aspect ratio, adding static bars to the edge of the broadcast picture to compensate. How should the downconverted signal be adjusted (letterboxing, centering, etc.), and if the Commission does not adopt a rule, who should make that decision? NAB proposes that, for signals converted at the headend, broadcasters make the determination, and for signals converted at a converter box, the boxes be required to allow the consumer to determine the format (as in the NTIA boxes). NCTA responds with a proposal to allow operators to determine the format of downconverted signals, arguing that operators are best able to determine how to "serve the needs of their analog viewing customers." We seek comment on the appropriate approach for the Commission to take, and the costs and benefits of these proposals and any others offered by commenters.

B. Material Degradation Issues

3. As NAB and MSTV note, the Commission found in 1993 that the material degradation rules apply equally to must carry stations and retransmission consent stations. They argue that this should be the case after the transition as well. NCTA, however, notes that in the *First Report and Order*, the Commission said that:

In the context of mandatory carriage of digital broadcast signals, a cable operator may not provide a digital broadcast signal in a lesser format or lower resolution than that afforded to any digital programmer (e.g., non-broadcast cable programming, other broadcast digital program, etc.) carried on the cable system.

We seek comment on the applicability of the material degradation rules adopted by this Order.

C. Availability of Signals

4. Notice: As discussed above in paragraph 38, we will require that cable operators notify their subscribers if they decide to become an all-digital system. We believe that the existing notice provisions are sufficient to enforce this requirement. We request comment on these rules, and on whether we need more specific rules to govern notice to subscribers.

D. Small Business

5. As we noted in the *Second Further Notice of Proposed Rulemaking (Second FNPRM)*, we particularly welcome comments offering alternative rules that would “minimize the economic impact for small cable operators while still complying with the statutory requirements.” Several commenters argue that the rules we adopt in the *Third FNPRM* would impose high costs, particularly on small cable companies. ACA states that carriage of a single HD broadcast station could cost as much as \$34,000 under our rules. We observe that these estimates appear to involve duplication of equipment, and that 75% of the listed costs are for equipment dealing with format conversion, something not resolved by this Order because it was first raised in comments and which is the subject of this *Third FNPRM*, *supra*. ACA’s estimates are in contrast to the comments of NAB, who describe the costs of downconversion as “modest.” We welcome comment on these cost estimates. We also urge commenters to offer alternatives and explain how they would comply with the statute as well as minimize the impact on small operators.

6. The American Cable Association (ACA) offers three proposals, and argues that failing to adopt them, at least as to small cable operators, would cause “many” financial failures among independent cable companies.

7. They propose: (1) No change to the material degradation rules; (2) allowing operators to meet the viewability requirement by converting broadcast signals into a format that they can cablecast to all their subscribers; and (3) requiring must-carry broadcasters to pay the cost of any downconversion. The

decisions made in the *Third Report and Order* largely track the first two of these proposals. Specifically, we retained the material degradation requirements described in the *First Report and Order* and expressly provided that cable systems may convert digital signals to analog format to be viewable for their subscribers. We also found that operators of systems with an activated channel capacity of 552 MHz or less could seek a waiver from the Commission if they do not have the capacity to carry the additional digital versions of must-carry stations.

We seek comment on whether it would be appropriate to adopt the other rules proposed by ACA, for small cable operators only. Would such rules for small operators comply with the statute?

8. Block Communications offers a viewability proposal essentially identical to ACA’s. They suggest a rule that operators be allowed to downconvert must carry digital signals into a format they can deliver to all subscribers; in their case, this would be analog, although in an all-digital system this would presumably be SD. Block proposes that “[i]f the station wanted more, it could elect retransmission consent and negotiate for it.” These proposals appear to seek reconsideration of the Commission’s long-standing requirement of HD carriage. Although petitions for reconsideration of that requirement remain pending, we seek comment on this approach generally. ACA argues that if an operator provided carriage on identical terms to broadcasters and cable programmers it would not be in violation of Section 614(b)(4)(A). Given our interpretation of the statute set out in the *Third Report and Order* above, do we have any flexibility to alter the requirements for small cable operators?

9. Finally, ACA’s last proposal is for must-carry broadcasters to bear the cost of downconversion. As NAB and MSTV have noted, this is a modest cost. Are the savings this would provide significant for small cable operators? Would the imposition of these costs on small broadcasters counteract the benefit to small business generally?

10. We also seek comment on the system characteristics that would be appropriate for relief; such as, number of subscribers, system capacity or something else. As discussed in the *Second FNPRM*, and in the Initial Regulatory Flexibility Analysis (“IRFA”) at Appendix B, there are at least four different approaches to measuring the size of a cable operator, and resolving this question is essential if the Commission is to consider

applying different rules for such operators.

11. Finally, we seek further proposals for means to minimize the impact on small cable operators, whether they be alternative rules, ameliorated timetables, or any other approaches that would conform to the requirements of the statute.

12. The Commission will complete an Order concerning these small cable systems within six months.

E. Other Issues

13. We welcome comment on any other matters relating to material degradation and viewability, and particularly the proper and sufficient application of the rules in this Order.

F. Third Further Notice of Proposed Rulemaking

1. Initial Regulatory Flexibility Analysis

14. As required by the Regulatory Flexibility Act of 1980 (“RFA”), the Commission has prepared an Initial Regulatory Flexibility Analysis (“IRFA”) relating to this *Third Further Notice of Proposed Rulemaking*. The IRFA is set forth in Appendix B of the Order.

2. Initial Paperwork Reduction Act Analysis

15. This *Third Further Notice of Proposed Rulemaking* has been analyzed with respect to the PRA and does not contain proposed information collection requirements. 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.

3. Ex Parte Rules

16. *Permit-But-Disclose*. This proceeding will be treated as a “permit-but-disclose” proceeding subject to the “permit-but-disclose” requirements under Section 1.1206(b) of the Commission’s Rules. *Ex parte* presentations are permissible if disclosed in accordance with Commission Rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation 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. Additional rules pertaining to

oral and written presentations are set forth in Section 1.1206(b).

4. Filing Requirements

17. *Comments and Replies.* Pursuant to Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before March 3, 2008, and reply comments on or before March 17, 2008 using: (1) The Commission's Electronic Comment Filing System ("ECFS"), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers 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, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- *Paper Filers:* 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, filers 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). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor 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, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

18. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.

19. *Accessibility Information.* To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: <http://www.fcc.gov>.

G. Additional Information

20. For more information on this *Third Report and Order and Third Further Notice of Proposed Rule Making*, please contact Lyle Elder, Lyle.Elder@fcc.gov, or Eloise Gore, Eloise.Gore@fcc.gov, of the Media Bureau, Policy Division, (202) 418-2120.

II. Ordering Clauses

21. *It is ordered* that, pursuant to the authority contained in Sections 4, 303, 614, and 615 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 303, 534, and 535, this Third Report and Order and Third Further Notice of Proposed Rule Making *is adopted* and the Commission's rules *are hereby amended* as set forth in Appendix C of the Order.

22. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Third Report and Order and Third Further Notice of Proposed Rule Making, including the Initial and Final Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

23. *It is further ordered* that the Commission *shall send* a copy of this Third Report and Order and Third Further Notice of Proposed Rule Making in a report to be sent to Congress and

the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 071211828-7557-01]

RIN 0648-AU22

Fisheries in the Western Pacific; Bottomfish and Seamount Groundfish Fisheries; Management Measures in the Main Hawaiian Islands

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would implement management measures for the vessel-based bottomfish fishery in the Main Hawaiian Islands, including requirements for non-commercial (recreational and subsistence) permits and data reporting, a closed season, annual total allowable catch limits, and non-commercial bag limits. The proposed action is intended to end the overfishing of bottomfish in the Hawaiian Archipelago.

DATES: Comments must be received on or before March 7, 2008.

ADDRESSES: Comments on the proposed rule, identified by 0648-AU22, may be sent to either of the following addresses:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal www.regulations.gov; or
- Mail: William L. Robinson, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd, Suite 1110, Honolulu, HI 96814-4700.

Instructions: All comments received are a part of the public record and will generally be posted to www.regulations.gov without change. All Personal Identifying Information (for example, name, address, etc.) submitted voluntarily by the commenter may be publicly accessible. Do not submit Confidential Business Information, or otherwise sensitive or protected