

carriage for each county within the station's local market if the satellite carrier provided notice to the station, pursuant to paragraph (d)(5)(i) of this section, that it intends to carry during the next election cycle, or has been carrying on the date notification was due, in the station's local market another affiliate of the same network as a significantly viewed signal pursuant to § 76.54.

(iii) A television broadcast station that elects mandatory carriage for one or more counties in its market and elects retransmission consent for one or more other counties in its market pursuant to paragraph (d)(5)(ii) of this section shall conduct a unified negotiation for the entire portion of its local market for which retransmission consent is elected.

(iv) A television broadcast station that receives a notification from a satellite carrier pursuant to paragraph (d)(5)(i) of this section with respect to an upcoming election cycle may choose either retransmission consent or mandatory carriage for any portion of the 3-year election cycle that is not covered by an existing retransmission consent agreement.

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 90

[WT Docket No. 96-86; FCC 05-9]

#### Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communication Requirements Through the Year 2010

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document the Commission takes certain actions intended to encourage the transition to narrowband technology in the 764-776 MHz and 794-806 MHz public safety bands (700 MHz Public Safety Band).

**DATES:** Effective May 27, 2005.

**FOR FURTHER INFORMATION CONTACT:** Technical Information: Brian Marenco, [Brian.Marenco@FCC.gov](mailto:Brian.Marenco@FCC.gov), Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418-0680, or TTY (202) 418-7233. Legal Information: Roberto Mussenden, Esq., [Roberto.Mussenden@FCC.gov](mailto:Roberto.Mussenden@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 Federal Communications Commission's *Fifth Memorandum Opinion and Order*, FCC 05-9, adopted January 5, 2005 and released on January 7, 2005. 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 [Brian.Millin@fcc.gov](mailto:Brian.Millin@fcc.gov).

1. In the *Fifth Memorandum Opinion and Order*, the Commission takes the following actions:

- defers the ban on the marketing, manufacture and importation of equipment solely capable of utilizing 12.5 kHz bandwidth when operating in the voice mode in the 700 MHz Public Safety Band (12.5 kHz equipment) from December 31, 2006 until December 31, 2014; and
- defers the prohibition on filing applications for new systems that operate utilizing 12.5 kHz voice channels from December 31, 2006 until December 31, 2014.

#### I. Procedural Matters

##### A. Paperwork Reduction Act Analysis

2. The order does not contain any new or modified information collection.

##### B. Regulatory Flexibility Act

3. A Supplemental Final Regulatory Flexibility Analysis with respect to the *Fifth Memorandum Opinion and Order* has been prepared and is set forth below.

##### C. Report to Congress

4. The Commission will send a copy of this *Fifth Memorandum Opinion and Order* 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).

##### D. Supplemental Final Regulatory Flexibility Analysis

5. In view of the fact that the Commission has adopted further rule amendments in the *Fifth Memorandum Opinion and Order*, the Commission has included this Supplemental Final

Regulatory Flexibility Analysis (SFRFA). This SFRFA conforms to the RFA. *Need for, and Objectives of the Fifth Memorandum Opinion and Order:*

6. The *Fifth Memorandum Opinion and Order* adopts rules to promote the transition to dual mode equipment and 6.25 kHz equipment in the 700 MHz Public Safety band operating in the General Use and State License channels. Specifically, we amend our rules to delay the ban on the marketing, manufacture, and importation of 12.5 kHz equipment until December 31, 2014. In addition, we amend our rules to delay until December 31, 2014, the cut-off for accepting applications for new systems operating in the General Use and State License channels that use 12.5 kHz equipment. These actions will effect a transition to a narrowband channel plan. The resulting gain in efficiency will ease congestion on the General Use and State License channels in these bands. Delaying this transition, however, will ease the economic burden on small businesses by allowing them to make this transition over a longer period of time.

*Summary of Significant Issues Raised by Public Comments in Response to the FRFA:*

7. No comments or reply comments were filed in direct response to the FRFA. The Commission has, however, reviewed the general comments that may impact small businesses. Much of the potential impact on small businesses arises from the mandatory migration to 6.25 kHz or dual mode technology beginning on December 31, 2014; the ban on marketing, importation and manufacture of 12.5 kHz equipment after December 31, 2014; and the freeze on new 12.5 kHz applications. The costs associated with replacement of current systems were cited in opposition to mandatory conversion proposals.

*Description and Estimate of the Number of Small Entities to Which the Rules Apply:*

8. 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 rules adopted. The RFA generally 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: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business

Administration (SBA). 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. Below, we further describe and estimate the number of small entity licensees and regulates that may be effected by the proposed rules, if adopted.

9. *Governmental Entities.* 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.

10. *Public Safety Radio Licensees.* As a general matter, Public Safety Radio Pool licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. The SBA rules contain a definition for cellular and other wireless telecommunications companies which encompass business entities engage in radiotelephone communications employing no more than 1,500 persons. There are a total of approximately 127,540 licensees within these services. With respect to local governments, in particular, since many governmental entities as well as private businesses comprise the licensees for these services, we include under public safety services, we include under public safety services the number of government entities affected.

11. *Wireless Communications Equipment Manufacturers.* The SBA has established a small business size standard for radio and television broadcasting and wireless communications equipment manufacturing. Under the standard, firms are considered small if they have 750 or fewer employees. Census Bureau data for 1997 indicates that, for that year, there were a total of 1,215 establishments in this category. Of those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The Commission estimates that the majority of wireless communications equipment manufacturers are small business.

*Description of Projected Reporting, Recordkeeping and Other Compliance Requirements:*

12. This *Fifth Memorandum Opinion and Order* adopts rules to promote the transition to dual mode equipment and 6.25 kHz equipment in the 700 MHz Public Safety band operating in the General Use and State License channels. Further, this *Fifth Memorandum Opinion and Order* amends our current rules to prohibit the marketing, importation or manufacture of 12.5 kHz-only equipment beginning on December 31, 2014. All equipment utilized in the 700 MHz Public Safety band on or after December 31, 2014 must utilize a maximum channel bandwidth of 6.25 kHz. These rules do not impose new reporting or recordkeeping requirements on licensees, but will require licensees to transition to new equipment. We have this transition as long as possible.

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

13. 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.

14. The Commission considered the economic burden on small businesses when it adopted the rules set forth in the *Fifth Memorandum Opinion and Order*. For instance, in consideration of the amortization and life-space of current equipment and the resources available to small entities, we amend our Rules to delay until December 31, 2014 the cut-off for accepting applications for new systems operating in the General Use and State License channels that use 12.5 kHz equipment. In addition we amend our rules to delay until December 31, 2014 the prohibition on the marketing, manufacture and importation of 12.5 kHz equipment.

15. Exemption from coverage of the rule changes for small businesses would frustrate the purpose of the rule, *i.e.*, migration to more efficient spectrum use, and facilitate continued inefficient use of spectrum.

16. *Report to Congress:* The Commission will send a copy of this *Fifth Memorandum Opinion and Order*,

including this SFRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Fifth Memorandum Opinion* and SFRFA (or summaries thereof) will also be published in the Federal Register. See 5 U.S.C. 604(b).

## II. Ordering Clauses

17. Pursuant to Sections 4(i), 303(f), 332, 337 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f), 332, 337 and 405 this *Fifth Memorandum Opinion and Order* is hereby adopted.

18. Pursuant to Sections 1, 4(i), 303(f) and (r), 332, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 303(f) and (r), 332, and 405 the Petition for Reconsideration filed by Motorola, Inc. on January 13, 2003, is granted to the extent described herein.

19. It is further order that the amendments of the Commission's Rules as set forth in Rule Changes are adopted May 27, 2005.

20. It is further ordered, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Fifth Memorandum Opinion and Order* including the Supplemental Final Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

### List of Subjects in 47 CFR Part 90

Communications.

Federal Communications Commission

Marlene H. Dortch,

Secretary.

### Rule Changes

#### PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 1. The authority citation for part 90 continues to read as follows:

**Authority:** Sections 4(i), 11, 303(g), 303(r), 332(c)(7), of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 2. Section 90.203 is amended by revising paragraphs (m) and (n) to read as follows:

#### § 90.203 Certification required.

\* \* \* \* \*

(m) Applications for part 90 certification received after December 31, 2014 will only be granted to transmitters designed to operate in the voice mode on channels designated in §§ 90.531.(b)(5) or 90.531(b)(6) that provide at least one voice path per 6.25 kHz of spectrum bandwidth.

(n) Transmitters designed to operate in the voice mode on channels designated in § 90.531(b)(5) or 90.531(b)(6) that do not provide at least one voice path per 6.25 kHz of spectrum bandwidth shall not be manufactured in, or imported into the United States after December 31, 2014. Marketing of these transmitters shall not be permitted after December 31, 2014.

■ 3. Section 90.535 is amended by revising paragraphs (d)(1) and (d)(2) to read as follows:

**§ 90.535 Modulation and spectrum usage efficiency requirements.**

\* \* \* \* \*

(d) \* \* \*

(1) With the exception of licensees designated in paragraph (d)(2) of this section, after December 31, 2014, licensees may only operate in voice mode in these channels at a voice efficiency of at least one voice path per 6.25 kHz of spectrum bandwidth.

(2) Licensees authorized to operate systems in the voice mode on these channels from applications filed on or before December 31, 2014, may continue operating in voice mode on these channels (including modification applications of such licenses granted after December 31, 2014, for expansion

or maintenance of such systems) at a voice efficiency of at least one voice path per 12.5 kHz of spectrum bandwidth until December 31, 2016.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

[Docket No. 050303056-5108-02; I.D. 020205F]

RIN 0648-AT07

**Atlantic Highly Migratory Species; Atlantic Commercial Shark Management Measures**

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

**ACTION:** Temporary rule; fishing season notification.

**SUMMARY:** This rule establishes the second and third trimester season quotas for large coastal sharks (LCS);

small coastal sharks (SCS); and pelagic, blue, and porbeagle sharks based on over- or underharvests from the 2004 second semi-annual season. In addition, this rule establishes the opening and closing dates for the LCS fishery based on adjustments to the trimester quotas. This action could affect all commercial fishermen in the Atlantic commercial shark fishery. This action is necessary to ensure that the landings quotas in the Atlantic commercial shark fishery represent the latest landings data.

**DATES:** This rule is effective May 1, 2005 through December 31, 2005. The Atlantic commercial shark fishing season opening and closing dates and quotas are provided in Table 1 under **SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** For copies of this rule, write to Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910. Copies are also available on the internet at <http://www.nmfs.noaa.gov/sfa/hms>.

**FOR FURTHER INFORMATION CONTACT:** Chris Rilling, Karyl Brewster-Geisz, or Mike Clark by phone: 301-713-2347 or by fax: 301-713-1917.

**SUPPLEMENTARY INFORMATION:**

**Opening and Closing Dates and Quotas**

TABLE 1—OPENING AND CLOSING DATES AND QUOTAS

Species Group	Region	Opening Date	Closing Date	Quota
<b>Second Trimester Season</b>				
Large Coastal Sharks	Gulf of Mexico	July 6, 2005	July 23, 2005 11:30 p.m. local time	147.8 mt dw (325,839 lb dw)
	South Atlantic		August 31, 2005 11:30 p.m. local time	182.0 mt dw (401,237 lb dw)
	North Atlantic	July 21, 2005		65.2 mt dw (143,739 lb dw)
Small Coastal Sharks	Gulf of Mexico	May 1, 2005	To be determined, as necessary <sup>1</sup>	30.5 mt dw (67,240 lb dw)
	South Atlantic			281.3 mt dw (620,153 lb dw)
	North Atlantic			23.0 mt dw (50,706 lb dw)
Blue sharks	No regional quotas	May 1, 2005	To be determined, as necessary <sup>1</sup>	91.0 mt dw (200,619 lb dw)
Porbeagle sharks				30.7 mt dw (67,681 lb dw)
Pelagic sharks other than blue or porbeagle				162.7 mt dw (358,688 lb dw)
<b>Third Trimester Season</b>				
Large Coastal Sharks	Gulf of Mexico	September 1, 2005	October 31, 2005 11:30 p.m. local time	167.7 mt dw (369,711 lb dw)