

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 02-318; RM-10184; FCC 02-281]

Airport Terminal Use Frequencies in the 450-470 MHz Band of the Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document grants the Petition for Rulemaking (Petition) filed by the Personal Communications Industry Association (PCIA), which seeks to initiate a proceeding to explore amending of the Commission's Rules. Specifically, the NPRM seeks comment on revising the power limits governing frequencies designated on a primary basis for "Airport Terminal Use" (ATU). The NPRM also seeks comment on what measures, if any, are necessary to safeguard the integrity of communications by public safety, railroad and utility entities (namely: water, energy and gas) as well as other licensed operations, such as Wireless Medical Telemetry Service (WMTS), that may be impacted by PCIA's proposed rule changes. The NPRM also seeks comment on class codes to recognize ATU operations.

DATES: Comments are due on or before December 23, 2002 and reply comments are due on or before January 6, 2003.

ADDRESSES: Federal Communications Commission 445 12th Street, SW., TW-A325, Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** for filing instructions.

FOR FURTHER INFORMATION CONTACT: John Evanoff, Esq., at (202) 418-0848, jevanoff@fcc.gov, or Thomas Eng, (202) 418-0019, teng@fcc.gov, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking*, FCC 02-281, adopted on October 4, 2002, and released on October 10, 2002. 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, Qualex International, 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 this Notice of Proposed Rulemaking (NPRM), we seek comment on revisions to the use of the Airport Terminal Use (ATU) frequencies in the 450-470 MHz Private Land Mobile Radio (PLMR) Industrial Business (I/B) Pool. We find that a rulemaking proceeding is warranted to allow consideration of the issues and proposals presented in the Personal Communications Industry Association's (PCIA) Petition for Rulemaking (Petition). Accordingly, we grant PCIA's Petition to initiate this proceeding.

2. Specifically, this NPRM seeks comment on revising § 90.35(c) of our Rules regarding the ATU frequencies to:

- Delete the 3-watt total output power (TPO) limit for transmitters operating on ATU mobile-only frequencies and adopt a general effective radiated power (ERP) standard.

- Convert the power limit for base transmitters operating on ATU base/mobile frequencies from 20-watts TPO to 100-watts ERP.

In addition, the NPRM seeks comment on whether the Universal Licensing System (ULS) should be modified to recognize ATU frequencies and the associated operational requirements, and if so, how.

3. We believe that revising the current power limits could enhance airport terminal communications and thereby further the public interest. We nonetheless are concerned that such rule changes may adversely impact aviation-related communications, public safety, railroad and utility (namely: energy, water and gas) communications and wireless medical telemetry service (WMTS) operations. We are also concerned that such rule changes may adversely impact the operations of non-ATU I/B entities that are co-channel licensees—on a secondary basis to ATU licensees—at sites located at least 10 miles from 242 airports for which the ATU frequencies are designated. Accordingly, in commencing this proceeding, we specifically urge interested parties to comment on the impact that any proposed rule changes would have on the operations of non-ATU licensees. We also seek comment on alternatives to PCIA's proposals.

I. Procedural Matters

A. Ex Parte Rule—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, if they are disclosed as provided in the Commission's Rules.

B. Initial Regulatory Flexibility Analysis

5. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth further. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in this NPRM, but they must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 603(a).

C. Initial Paperwork Reduction Analysis

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

D. Alternative Formats

7. Alternative formats (computer diskette, large print, audio cassette and Braille) are available from Brian Millin, Consumer and Governmental Affairs Bureau, at (202) 418-7426, TTY (202) 418-7365, or at bmillin@fcc.gov. This NPRM can also be downloaded at <http://wireless.fcc.gov/releases.html>.

E. Comment Dates

8. Pursuant to §§ 1.415 and 1.419 of our rules interested parties may file comments on or before December 23, 2002, and reply comments on or before January 6, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

9. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by

Internet e-mail. To obtain 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 appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

II. Initial Regulatory Flexibility Certification

10. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this 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 the NPRM provided in paragraph 23, *supra*. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

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

11. In this NPRM, we propose to amend the maximum output power for airport terminal use frequencies identified in 47 CFR 90.35(c)(48) to 100-watts maximum effective radiated power. We believe such modification would be in the public interest because it would enhance the efficient use of spectrum, permit greater efficiency in use of airport terminal communications, and facilitate Homeland Security measures at airports. In this NPRM we also propose to delete the maximum output power for airport use frequencies identified in 47 CFR 90.35(c)(11) and (68).

B. Legal Basis

12. Authority for the proposed rules included in this NPRM is contained in Sections 1, 4(i), 302, 303(f), and (r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 302, 303(f) and (r), and 332.

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

13. 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 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 SBA. Nationwide, as of 1992, there were approximately 275,801 small organizations. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

14. *Estimates for Private Land Mobile Radio (PLMR) Licensees.* PLMR 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 cellular and

telecommunications, which has the small business size standard of no more than 1,500 employees. 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.

15. *Equipment Manufacturers.* The SBA has established a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. Under this standard, business firms are considered small if they have 750 or fewer employees. Census data for 1997 indicate that, for that year, there were a total of 1,215 establishments in this category. Of those, there were 1150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The percentage of broadcast equipment manufacturers to others in this category is approximately 22%, so we estimate that the number of broadcast equipment manufacturers with employment under 500 was actually closer to 253, with an additional 8 establishments having employment of between 500 and 999.

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

16. The proposed rules will not entail reporting, recordkeeping, and or third-party consultation. These changes do not contain any new or modified form, information collection, and/or record keeping, labeling, disclosure, or record retention requirements and will not increase or decrease burden hours imposed on the public.

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

17. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(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 and reporting requirements under the rule for such 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 such small entities." The Commission invited public comment on alternative proposals to address the

problems identified by PCIA. Specifically, the Commission sought comment on measures to minimize the impact of granting PCIA's proposals on PLMR licensees, and on waivers of the existing power limits for ATU mobile stations, which would exempt, on a case-by-case basis, PLMR licensees from coverage of the specified rules. The proposed rule changes contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980.

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

18. None.

III. Ordering Clauses

19. Pursuant to sections 1, 4(i), 302, 303(f) and (r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 302, 303(f) and (r), 332, the Petition for Rulemaking filed by the Personal Communications Industry Association, Inc., on June 25,

2001, and supplemented on May 21, 2002, is *granted* to the extent indicated herein.

20. Pursuant to sections 1, 4(i), 302, 303(f) and (r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 302, 303(f) and (r), 332, *notice is hereby given* of the proposed regulatory changes described in this Notice of Proposed Rule Making, and that *comment is sought* on these proposals.

21. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rule Making, WT Docket No. 02-318, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601-612.

List of Subjects in 47 CFR Part 90

Communications equipment, Radio.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Rule Changes

Part 90 of Chapter 1 of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

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

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

2. In § 90.35, paragraph (b)(3) is amended by revising the entries for frequencies 460.650 through 460.89375 and 465.650 through 465.89375 and by revising paragraph (c)(48) to read as follows:

§ 90.35 Industrial business pool.

- * * * * *
- (b) * * *
- (3) * * *

Frequency or band	Class of station(s)	Limitations	Coordinator
460.650	do	48, 61, 62.	
460.65625	do	33, 48, 61, 62.	
460.6625	do	30, 48, 61, 62, 69.	
460.66875	do	33, 48, 61, 62.	
460.675	do	48, 61, 62.	
460.68125	do	33, 48, 61, 62.	
460.6875	do	30, 48, 61, 62, 69.	
460.69375	do	33, 48, 61, 62.	
460.700	do	48, 61, 62.	
460.70625	do	33, 48, 61, 62.	
460.7125	do	30, 48, 61, 62, 69.	
460.71875	do	33, 48, 61, 62.	
460.725	do	48, 61, 62.	
460.73125	do	33, 48, 61, 62.	
460.7375	do	30, 48, 61, 62, 69.	
460.74375	do	33, 48, 61, 62.	
460.750	do	48, 61, 62.	
460.75625	do	33, 48, 61, 62.	
460.7625	do	30, 48, 61, 62, 69.	
460.76875	do	33, 48, 61, 62.	
460.775	do	48, 61, 62.	
460.78125	do	33, 48, 61, 62.	
460.7875	do	30, 48, 61, 62, 69.	
460.79375	do	33, 48, 61, 62.	
460.800	do	48, 61, 62.	
460.80625	do	33, 48, 61, 62.	
460.8125	do	30, 48, 61, 62, 69.	
460.81875	do	33, 48, 61, 62.	
460.825	do	48, 61, 62.	
460.83125	do	33, 48, 61, 62.	
460.8375	do	30, 48, 61, 62, 69.	
460.84375	do	33, 48, 61, 62.	
460.850	do	48, 61, 62.	
460.85625	do	33, 48, 61, 62.	
460.8625	do	30, 48, 61, 62, 69.	
460.86875	do	33, 48, 61, 62.	
460.875	do	48, 61, 62.	
460.88125	do	33, 48, 61, 62.	
460.8875	do	30, 48, 61, 62, 69.	
460.89375	do	33, 48, 61, 62.	
465.650	do	61, 62.	
465.65625	do	33, 61, 62.	
465.6625	do	30, 61, 62, 69.	
465.66875	do	33, 61, 62.	

Frequency or band	Class of station(s)	Limitations	Coordinator
465.675	do	61, 62.	
465.68125	do	33, 61, 62.	
465.6875	do	30, 61, 62, 69.	
465.69375	do	33, 61, 62.	
465.700	do	61, 62.	
465.70625	do	33, 61, 62.	
465.7125	do	30, 61, 62, 69.	
465.71875	do	33, 61, 62.	
465.725	do	61, 62.	
465.73125	do	33, 61, 62.	
465.7375	do	30, 61, 62, 69.	
465.74375	do	33, 61, 62.	
465.750	do	61, 62.	
465.75625	do	33, 61, 62.	
465.7625	do	30, 61, 62, 69.	
465.76875	do	33, 61, 62.	
465.775	do	61, 62.	
465.78125	do	33, 61, 62.	
465.7875	do	30, 61, 62, 69.	
465.79375	do	33, 61, 62.	
465.800	do	61, 62.	
465.80625	do	33, 61, 62.	
465.8125	do	30, 61, 62, 69.	
465.81875	do	33, 61, 62.	
465.825	do	61, 62.	
465.83125	do	33, 61, 62.	
465.8375	do	30, 61, 62, 69.	
465.84375	do	33, 61, 62.	
465.850	do	61, 62.	
465.85625	do	33, 61, 62.	
465.8625	do	30, 61, 62, 69.	
465.86875	do	33, 61, 62.	
465.875	do	61, 62.	
465.88125	do	33, 61, 62.	
465.8875	do	30, 61, 62, 69.	
465.89375	do	33, 61, 62.	

* * * * *

(c) * * *
 (48) Except as noted in paragraph (c)(61) of this section, operation on this frequency is limited to a maximum of 100 watts effective radiated power in accordance with the maximum ERP and reference HAAT for a specific service area radius provisions of § 90.205 table 2.

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[FR Doc. 02-29437 Filed 11-20-02; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AH76

Endangered and Threatened Wildlife and Plants; Critical Habitat Designation for Scotts Valley Polygonum (*Polygonum hickmanii*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment periods; notice of

availability of draft economic analysis and final addendum.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft economic analysis and final addendum for the proposed designation of critical habitat for Scotts Valley polygonum (*Polygonum hickmanii*), a species restricted to the northern Scotts Valley area in Santa Cruz County, California. We are also reopening the comment periods for the proposal to list this species as endangered and on the proposal to designate critical habitat for this species to allow all interested parties to comment simultaneously on the proposed rules, draft economic analysis, and final addendum. The economic analysis shows a range of likely costs from the designation of the proposed critical habitat of between \$165,000 to \$565,000 over a 10-year period. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this extended comment period, and will be fully considered in the final rule.

DATES: We will accept comments until December 6, 2002. Comments must be

received by 5 p.m. on the closing date. Any comments that are received after the closing date may not be considered in the final decisions.

ADDRESSES: Written comments and information should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003. Written comments may also be sent by fax to 805-644-3958 or hand-delivered to our Ventura Fish and Wildlife Office at the above address. You may also send comments by electronic mail (e-mail) to fw1svpolygonum@r1.fws.gov.

You may view comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, by appointment, during normal business hours in the U.S. Fish and Wildlife Service's Ventura Fish and Wildlife Office at the above address. You may obtain copies of the proposed rule and draft economic analysis from the above address, by calling 805-644-1766, or from our Web site at <http://ventura.fws.gov/>.

FOR FURTHER INFORMATION CONTACT: Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, at the above