to reject Maritel's recommendation.[217]

54. The USCG recommended that we require VPC licensees to notify it in advance of any station relocation that will affect the licensee's VHF Channel 16 safety watch responsibility.[218] Maritel recommended that when a VPC licensee discontinues service, and such licensee is providing a watch under section 80.303 of the Commission's rules,[219] we should require the licensee to notify the Coast Guard thirty days in advance of such discontinuance.[220] The Commission tentatively concluded that adoption of these recommendation was unnecessary because VPC licensees already must notify the nearest district office of the Coast Guard thirty days prior to discontinuing the watch pursuant to the section 80.303 exemption,[221] and as soon as practicable when changes occur in the operation of a public coast station, including discontinuance, reduction or suspension of a VHF Channel 16 safety watch.[222] Nevertheless, the Commission proposed to amend section 80.302(a) to make explicit that the rule also requires notification to the Coast Guard as soon as practicable when a VPC station with a VHF Channel 16 safety watch responsibility is relocated.[223]

55. *Discussion*. We affirm the tentative determinations made in the *VPC 4th FNPRM* regarding Channel 16 watch responsibilities. We adhere to the view, echoed by the USCG,[224] that it is unnecessary to amend our rules to specify that a VPC licensee's Channel 16 safety watch requirement is triggered only after the licensee's construction requirement has expired or a licensee has actually constructed facilities in an area, and that it is inappropriate to specify that the watch requirement is triggered only after the licensee receives written notification from the Coast Guard.[225] We continue to believe that the concerns underlying Maritel's first proposal – that we mandate a watch requirement only after the licensee's construction requirement has passed or a licensee has actually constructed facilities – are adequately addressed by the existing rule clearly specifying that the watch requirement applies only during the station's hours of operation.[226] In addition, we believe maritime safety could be compromised unnecessarily if we permit a VPC licensee to avoid its Channel 16 watch requirement unless and until it receives written notification from the Coast Guard. We have imposed the watch requirement by rule on all coast stations, subject to the exemption codified in section 80.303(b). We see no purpose to be served by requiring the Coast Guard to in effect "remind" VPC licensees of their Commission-mandated watch responsibilities, and we also think it is the responsibility of the licensee, not the USCG, to determine whether the licensee is entitled to the exemption. This rationale is particularly true with respect to geographic area VPC licensees because they are not required to license each site individually,[227] so the USCG may not be immediately aware of a new facility in operation.

56. The USCG and Maritel both continue to support a rule amendment mandating that a VPC

[217] *Id.*

[218] *See id.* at 231, ¶ 8.

[219] 47 C.F.R. § 80.303.

[220] See *VPC 4th FNPRM*, 17 FCC Rcd at 231,¶ 8.

[221] 47 C.F.R. § 80.303(b).

[222] *VPC 4th FNPRM*, 17 FCC Rcd at 231-32 ¶ 8 (*citing* 47 C.F.R. § 80.302(a)).

[223] *Id.* at 232, ¶ 8.

[224] USCG Comments (PR 92-257) at 1.

[225] We observe that Maritel no longer presses these recommendations in its Comments or Reply Comments to the *VPC 4th FNPRM*.

[226] 47 C.F.R. § 80.303(a).

[227] 47 C.F.R. § 80.371(c)(4).

licensee notify the USCG prior to a station relocation that may affect a Channel 16 watch.[228] We continue to believe that section 80.302(a) of the Commission's rules already mandates such notice, because we believe a relocation affecting a Channel 16 watch necessarily constitutes a "change[] in the operation of a public coast station which include[s] discontinuance, reduction, or suspension" of the watch, and thus requires notice to the nearest coast guard district office "as soon as practicable." However, based on the joint concerns of the USCG and Maritel, we will amend section 80.302(a) to clarify that "relocation" is a change that triggers the notification requirement.

57. In addition, Maritel seeks clarification concerning the extent to which the watch requirement applies to VPC stations that serve units on land. Maritel seeks clarification of whether stations "near coastal areas," but designed to serve land stations rather than ship stations, are subject to the watch requirement.[229] Maritel notes[230] that section 80.303 predates the Commission's decisions to license VPC operations on a geographic area basis[231] and to permit VPC stations to provide service to units on land.[232] First, we note that the watch requirement does not apply to VPC stations along the coasts serving the open sea and the Great Lakes; the requirement applies only to stations serving inland waterways.[233] With respect to inland waterways, when the Commission adopted a geographic licensing framework, it noted that stations did not have to serve such waterways, "but if waterways are served, public coast stations' maritime obligations (*e.g.*, safety watch ...) shall apply."[234] Maritel has provided no reason why we should reconsider this decision.[235] Thus, in response to Maritel's query, we clarify that the watch requirement applies to any VPC station that has a navigable inland waterway within its service area, as determined in accordance with Subpart P of Part 80 of the Commission's rules.[236]

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[228] USCG Comments (PR 92-257) at 1-2; Maritel Comments (PR 92-257) at 3; Maritel Reply Comments (PR 92-257) at 3.

[229] Maritel Comments (PR 92-257) at 3. Maritel also suggests that we revise the requirement that stations serving units on land provide priority to marine-originating communications, 47 C.F.R. § 80.123(b), to exempt stations near coastal areas. *Id.* at 4; Maritel Reply Comments (PR 92-257) at 3. We believe that this proposal is beyond the scope of the issues framed in the *4th FNPRM*, which pertain to VPC stations' obligation to maintain a Channel 16 watch. We also note, however, that Maritel's suggestion is contrary to the Commission's intent when it adopted Section 80.123. *See VPC 2nd R&O*, 12 FCC Rcd at 16964, ¶ 25 (indicating that it is the Commission's intention to "require[e] public coast stations to give priority to maritime traffic, without regard to the number of land units being served"); *id.* at 16965, ¶ 26 (indicating that "[i]n order to preserve the core purpose of the internationally allocated marine radio spectrum," the requirements for public coast stations serving units on land "allow operational flexibility while ensuring that distress and safety communications from vessels at sea are given priority").

[230] Maritel Comments (PR 92-257) at 3.

[231] *VPC Third R&O*, 13 FCC Rcd at 19859-60, ¶ 10.

[232] *VPC Second R&O*, 12 FCC Rcd at 16965-66, ¶¶ 23-26; *see also* 47 C.F.R. § 80.123.

[233] *See* 47 C.F.R. § 303(a); *see also* Amendment of Part 81 of the Commission's rules to specify the circumstances under which Class III-B public coast stations may be exempted from the watch requirements on 156.8 MHz, *Report and Order*, PR Docket No. 79-68, 81 FCC 2d 340, 341, ¶ 5 (1980).

[234] *VPC Third R&O*, 13 FCC Rcd at 19871, ¶ 36.

[235] Even if we were inclined to lift the watch requirement for VPC stations that primarily but not exclusively serve land areas, we note that Maritel has not suggested any basis upon which to distinguish which stations are sufficiently near a waterway that the watch requirement should apply.

[236] 47 C.F.R. §§ 80.751-80.773. We note that, for purposes of demonstrating that a VPC station is exempt from the watch requirement because a government station maintains a Channel 16 safety watch over ninety-five percent of the VPC station's service area, *see* 47 C.F.R. § 80.303(b), the VPC licensee need only show ninety-five percent coverage of the waterway(s) or portion(s) thereof that it serves, and not ninety-five percent of the covered land area. We do not believe that the Commission's decision to permit service to units on land changed the standard for qualifying for the exemption. *See* 47 C.F.R. § 80.303(b) (1997) (referring to VPC station's "receiving service area,"

(continued....)

B. Frequency Assignments

1. Specification of 12.5 kHz Channels

58. *Background.* Although channelization of VPC spectrum is based on 25 kHz channels, the Commission permits VPC licensees to operate on 12.5 kHz offset frequencies if the licensee's station is authorized to operate on both 25 kHz frequencies adjacent to the offset frequency.[237] However, the Commission did not adopt technical rules to govern 12.5 kHz operation. Maritel requested that the Commission adopt such technical rules, and that it also include the 12.5 kHz offset channels in the VPC table of frequencies.[238] Maritel states that it would like to conduct narrowband operations, but is impeded from doing so by the absence of such technical regulations.[239] In the *4th FNPRM*, the Commission responded to this request by noting that it did not adopt technical rules for narrowband operations when it authorized 12.5 kHz offset operations because it wanted to provide manufacturers and licensees with maximum flexibility, provided that emissions are attenuated at the edge of the licensee's contiguous 25 kHz channels.[240] The Commission tentatively reaffirmed that decision, concluding that it should maintain the technical flexibility and should not adopt Maritel's recommended technical regulations.[241] The Commission invited comment on this issue, specifying that commenters who agree with Maritel's proposal should address whether any proposed technical requirements are consistent with international standards.[242]

59. The Commission did propose two rule changes, however. First, it proposed to amend section 80.213(d) of its rules[243] to permit VPC equipment to operate with a frequency deviation that does not exceed +/- 5 kHz.[244] The Commission proposed this amendment because the existing rule could be construed as requiring a frequency deviation of precisely +/- 5 kHz, which would not be compatible with 12.5 kHz narrowband operations.[245] Second, the Commission proposed to amend the rules to clarify that offset operations require Canadian coordination whenever operation on either adjoining 25 kHz channel would require Canadian coordination.[246]

60. *Discussion.* Based on the record evidence, we remain unpersuaded that it would serve the public interest to adopt technical rules for the VPC narrowband offset channels. Maritel claims that the absence of such technical rules, and the failure to list available offset frequency assignments in a table of

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(...continued from previous page)
which at that time could only include waterways; this language was removed when the Commission eliminated the requirement that qualified stations affirmatively apply for the exemption, *see VPC Third R&O*, 13 FCC Rcd at 19879, ¶ 57).

[237] *See* 47 C.F.R. § 80.371(c)(1)(iii).

[238] *See VPC 4th FNPRM*, 17 FCC Rcd at 232, ¶ 9.

[239] *See id.* In April 2001, the Bureau's Public Safety and Private Wireless Division granted Maritel's request for waiver of certain Part 80 rules to permit certification of 12.5 kHz offset radio equipment. *See* Maritel, Inc., Request for Waiver of Part 80 Regulations to Permit Use of 12.5 kHz Radio Equipment Operating in the 156-162 MHz Frequency Band, *Order*, 16 FCC Rcd 9294 (2001) (*Maritel Waiver Order*).

[240] *VPC 4th FNPRM*, 17 FCC Rcd at 233, ¶ 10.

[241] *Id.*

[242] *Id.* (*citing* ITU Radio Recommendation M.1084).

[243] 47 C.F.R. § 80.213(d).

[244] *VPC 4th FNPRM*, 17 FCC Rcd at 233, ¶ 11.

[245] *Id.*

[246] *Id.*

frequencies, is inconsistent with the Commission's approach to other services, in particular Part 90 private land mobile radio services, and "creates an uncomfortable level of uncertainty for manufacturers."[247] Maritel asserts that, notwithstanding the waiver granted by the Bureau to permit certification of 12.5 kHz equipment,[248] both manufacturers and licensees desire further technical guidance from the Commission in order to design equipment for and operate on the 12.5 kHz offset channels.[249] It is not self-evident, however, why either manufacturers or VPC licensees would benefit from the imposition of technical rules for which the Commission otherwise sees no need. We find significant that although Maritel represents that manufacturers desire such technical regulations, not a single manufacturer filed comments in support of Maritel's proposal. In addition, to the extent that manufacturers desire "technical guidance," there are avenues for them to obtain it other than through the imposition of otherwise unneeded regulations.[250] We continue to believe that we should provide flexibility to VPC manufacturers and licensees to the maximum possible extent, and we reaffirm our tentative conclusion in the *4th FNPRM* that establishing detailed technical rules for the VPC offset channels is unnecessary.

61. Maritel's interest in having the offset channels designated as assignable frequencies in a Part 80 table appears to stem, at least in part, from a concern with language in section 80.211 of the Commission's rules, which specifies the emission limits for VPC operations.[251] Maritel states that its operations will be governed by section 80.211(f) because it will employ an emission class that is not specified in section 80.211(a)-(d). Section 80.211(f) specifies the required attenuation of emissions for a given frequency based on the degree to which that frequency is "removed from the assigned frequency."[252] According to Maritel, the reference to "assigned" frequencies presumably refers only to those frequencies listed in section 80.371(c) of the Commission's rules.[253] Maritel therefore interprets the rule to mean that offset channels cannot be treated as assigned frequencies for purposes of the emission limits.[254] If this interpretation is the case, Maritel claims that it will be unable to comply with the emission limits when it operates on offset channels because "the mean power of an offset channel would be strongest at the point where it should be weakest from the 'assigned frequency.'"[255] Maritel concludes that, if the Commission determines not to add the offset channels to the table of frequencies, it should at least amend section 80.211(f) to require attenuation of emissions by reference to the "authorized" frequency, rather than the "assigned" frequency.[256] We believe we can address Maritel's concern without amending section 80.211(f) by clarifying, as we now do, that for purposes of section 80.211(f) of our rules, the term "assigned frequency" includes any offset frequency utilized by a VPC licensee in accord

[247] Maritel Comments (PR 92-257) at 5.

[248] *See Maritel Waiver Order*, note 239, *supra*.

[249] Maritel Comments (PR 92-257) at 5.

[250] Manufacturers can obtain advice from the Commission through, for example, informal staff contacts, petitions for declaratory ruling, and the review of equipment applications from other manufacturers. We note, moreover, that the *Maritel Waiver Order* specifies the conditions that must be met for the certification of equipment designed to operate on 12.5 kHz offset channels in the VPC frequency band. Finally, international standards may serve as a guide to manufacturers.

[251] 47 C.F.R. § 80.211.

[252] *Id.* § 80.211(f).

[253] *Id.* § 80.371(c).

[254] Maritel Comments (PR 92-257) at 6.

[255] *Id.*

[256] Maritel Comments (PR 92-257) at 7; Maritel Reply Comments (PR 92-257) at 2-3. In its Reply Comments, Maritel reiterates its recommendation that we amend Section 80.211(f) but does not mention its earlier proposal to list the offset frequencies in a Part 80 table and establish technical rules for them. Maritel Reply Comments (PR 92-257) at 2-3.

with section 80.371(c)(1)(iii) of our rules. Finally, and for the reasons stated in the *4th FNPRM*, we will adopt the proposals to specify that VPC operations must have a frequency deviation that does not exceed +/- 5 kHz (rather than a frequency deviation of precisely +/- 5 kHz), and to require Canadian coordination of offset operations whenever operation on either adjoining 25 kHz channel would require such coordination.[257]

2. Use of Additional VHF Channels

62. *Background.* In the *4th FNPRM*, the Commission requested comment on a Maritel proposal to reallocate nine channel pairs in the 156.0375-156.2375 MHz and 160.6375-160.8375 MHz bands[258] to VPC stations.[259] Three of the frequencies are allocated for Part 90 public safety use,[260] three others are allocated to Part 90 Industrial/Business use,[261] and the remaining twelve frequencies are adjacent to channels allocated for public safety or Industrial/Business use. Maritel contended that a reallocation of the channels to Part 80 is warranted because there are currently fewer channels available for VPC operations in the United States than there are in other countries.[262] Maritel also stated that the reallocation would have minimal impact on public safety licensees because there currently is light demand for the frequencies, and the Commission has provided such licensees with additional spectrum in higher frequency bands.[263] The Commission declined to adopt Maritel's recommended reallocation without first assessing the demand for this spectrum from Part 90 public safety eligibles, since VHF spectrum is popular for public safety communications due to its propagation characteristics.[264] It also noted that the frequency band 746-806 MHz, cited by Maritel as one of the bands to which some public safety operations will eventually migrate, remains encumbered by broadcast television licensees, who do not have to vacate this band until the end of the digital television transition period, December 31, 2006 at the earliest.[265] The Commission requested comment on Maritel's reallocation proposal, and asked whether public safety or maritime radio has a greater immediate need for the identified VHF spectrum.[266]

63. *Discussion.* Based on the present record, we are unable to conclude that there is little need for the identified frequencies by public safety entities, and we accordingly decline to reallocate the

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[257] The USCG and Maritel both support the proposal pertaining to frequency deviation, and the USCG supports the proposal pertaining to Canadian coordination, without further elaboration. USCG Comments (PR 92-257) at 2; Maritel Comments (PR 92-257) at 6; Maritel Reply Comments (PR 92-257) at 2.

[258] The targeted frequency pairs are 156.0375 MHz / 160.6375 MHz, 156.0625 MHz / 160.6625 MHz, 156.0875 MHz / 160.6875 MHz, 156.1125 MHz / 160.7125 MHz, 156.1375 MHz / 160.7375 MHz, 156.1625 MHz / 160. 7625 MHz, 156.1875 MHz / 160.7875 MHz, 156.2125 MHz / 160.8125 MHz, 156.2375 MHz / 160.8375 MHz.

[259] *VPC 4th FNPRM*, 17 FCC Rcd at 233-35, ¶¶ 12-14.

[260] These frequencies are: 156.0375 MHz, 156.1125 MHz, and 156.1875 MHz.

[261] These frequencies are: 160.6875 MHz, 160.7625 MHz, and 160.8375 MHz.

[262] *See id.* at 233-34, ¶ 12.

[263] *See id.* at 234, ¶ 13 (*citing* Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010, *First Report and Order and Third Notice of Proposed Rule Making*, WT Docket No. 96-86, 14 FCC Rcd 152 (1998) (*Public Safety First Report and Order*)). Maritel also requested that the Commission immediately freeze further licensing of this spectrum as a prelude to an auction of the spectrum for VPC applications. *See id.*

[264] *Id.* As noted in the *VPC 4th FNPRM*, none of Maritel's proposed channel pairs can be reallocated without affecting public safety because the mobile transmit frequency of each is either directly allocated to public safety or is adjacent to a frequency that is allocated to public safety. *Id.* at 234 n.50.

[265] *Id.* (*citing Public Safety First Report and Order*, 14 FCC Rcd at 159-161, ¶ 10).

[266] *Id.* at 163, ¶ 14.

frequencies to maritime use. Maritel acknowledges the public interest imperative of ensuring that public safety entities have adequate spectrum, particularly in the wake of the terrorist events of September 11, 2001, but reiterates its view that the proposed reallocation will "not have a meaningful impact on public safety entities."[267] Maritel notes that the nine channel pairs represent a small fraction of the total spectrum available for public safety in the 470-512 MHz and 800 MHz bands, and an even smaller fraction if one takes into account the additional spectrum that is being made available for public safety use in the 700 MHz[268] and 4.9 GHz[269] bands.[270] Maritel also states that, at present, public safety use of the channels is extremely light.[271] However, we have not been presented with any compelling information that causes us to change the Commission's earlier determination to allocate the spectrum to public safety in the first place. Accordingly, we do not believe it is appropriate to reallocate public safety spectrum to another use simply because the spectrum sought is a small percentage of the total spectrum allocated to public safety. This is especially so with respect to VHF spectrum, which has propagation characteristics that are highly valued by public safety entities.[272] Although Maritel places great weight on the fact that the spectrum is not heavily used by public safety entities at present, we believe it is premature to conclude that there is little public safety demand for these channels. As APCO notes, these are narrowband channels that were made available for licensing in the Commission's *Refarming Proceeding,*[273] and the adjacent channels are still used for wideband operations. These adjacent channel wideband operations deter or preclude use of the narrowband channels because of the threat of harmful interference they pose.[274] After these adjacent channel operations migrate to narrowband equipment, the channels identified by Maritel may be more utilized by public safety agencies.[275] We therefore conclude that Maritel has not clearly established that the proposed reallocation will have no adverse effect on public safety operations, and we accordingly decline to adopt its proposal. Notwithstanding our disposition of this issue, we are aware that maritime safety would benefit by the allocation of additional spectrum for Part 80 operations. The USCG observes that additional spectrum to accommodate existing and new maritime communications technologies generally must be allocated from the 156-162 MHz band in order to comport with international allocations, and contends that there is an existing shortage of VHF

[267] Maritel Comments (PR 92-257) at 7.

[268] *See, e.g.,* Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010, *Fourth Report and Order and Fifth Notice of Proposed Rule Making*, WT Docket No. 96-86, 16 FCC Rcd 2020 (2001).

[269] *See* The 4.9 GHz Band Transferred from Federal Government Use, *Second Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 00-32, 17 FCC Rcd 3955 (2002).

[270] Maritel Comments (PR 92-257) at 7-8.

[271] *Id.* at 9. Maritel also notes that many of the targeted channels are used for industrial and business purposes, and asserts that, in most cases, the frequency assignments that would be used for maritime purposes would not be on the same channel centers as those used by public safety entities, and that in those cases where mobile transit frequencies are operating on or adjacent to the identified frequencies, "modest frequency planning will ensure that no harmful co-channel interference ensues." *Id.* at 10.

[272] *VPC 4th FNPRM*, 17 FCC Rcd at 230, ¶ 4; *see also* APCO Reply Comments at 2-3.

[273] *See* Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, *Second Report and Order*, PR Docket No. 92-235, 12 FCC Rcd 14307 (1997).

[274] APCO Reply Comments at 2.

[275] *See id.* The Commission recently amended the Part 90 rules to establish specific timetables for migration of private land mobile radio operations to narrowband technology. *See* Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, *Second Report and Order and Second Further Notice of Proposed Rule Making*, WT Docket No. 99-87, 18 FCC Rcd 3034 (2003).

maritime channels that will only become worse with the deployment of new technologies.[276] We intend to continue to work with the USCG and the maritime community to address issues of spectrum scarcity.

3. Automatic Identification Systems

64. *Background.* Automatic Identification Systems (AIS) employ self-organizing time division multiple access techniques to provide a VHF maritime ship-to-ship/ship-to-shore maritime radio service in which vessels and designated shore stations broadcast a unique identifier, coupled with safety-related information on, for example, ship positions and intentions. AIS-transmitted information can be received by similarly equipped vessels and shore stations in order to improve collision avoidance and facilitate vessel tracking.[277] Section 80.371(c)(3) of the Commission's rules requires that each licensee of VHF Public Coast Service Areas 1-9 enter into an agreement with the Coast Guard to specify two channel pairs offset 12.5 kHz from the VHF band public correspondence channels, that will be used by the Coast Guard for AIS and related systems in support of PAWSS,[278] which will provide Vessel Traffic Services to facilitate the safe and efficient transit of vessel traffic.[279] On March 7, 2001, Maritel and the Coast Guard agreed that Channels 87A/87B (157.375 MHz/161.975 MHz) would be so designated for PAWSS in VHF Public Coast Service Areas 1-9.[280] In 2003, however, Maritel terminated its agreement with the Coast Guard.[281] Following the termination, Maritel filed an Emergency Petition for Declaratory Ruling requesting that the Commission clarify that shipborne AIS transmitters may not operate on Channels 87B and 88B or any other channel designated for VPC stations,[282] and the National Telecommunications and Information Administration (NTIA) filed a Petition for Rulemaking urging the Commission to work with NTIA to allocate Channels 87B and 88B for AIS use exclusively.[283] These two petitions remain pending before the Wireless Telecommunications Bureau, which issued a consolidated Public Notice requesting comment on both petitions.[284]

65. In the *4th FNPRM*, which was released before the agreement between the Coast Guard and Maritel was terminated and the Maritel and NTIA petitions were filed, the Commission requested comment on a proposal by Maritel that we amend section 80.371(c)(3) in order to provide VPC licensees and the Coast Guard with the option of specifying "non-offset" channel pairs (*i.e.*, the VPC frequency

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[276] USCG Comments (PR 92-257) at 2; *accord* Maritel Reply Comments (PR 92-257) at 1-2.

[277] *See GMDSS R&O* at 6765 ¶ 56; *VPC 4th FNPRM*, 17 FCC Rcd at 235 n.51.

[278] *See* note 27, *supra*.

[279] 47 C.F.R. § 80.371(c)(3); *see VPC Third Report and Order*, 13 FCC Rcd at 19875, ¶ 46.

[280] *See* Memorandum of Agreement Between United States Coast Guard and the Maritime VHF Public Coast Area Licensee at 2 (dated Mar. 7, 2001) (*USCG-Maritel MOA*). *See also* Wireless Telecommunications Bureau Announces the Selection of Two VHF Channel Pairs for the United States Coast Guard's Ports and Waterways Safety System, *Public Notice*, 16 FCC Rcd 7968 (2001) (*AIS Channel Selection PN*).

[281] *See* Wireless Telecommunications Bureau Seeks Comment on Maritel, Inc. Petition for Declaratory Ruling and National Telecommunications and Information Administration Petition for Rulemaking Regarding the Use of Maritime VHF Channels 87B and 88B, *Public Notice*, 18 FCC Rcd 23260 (WTB 2003).

[282] MariTel, Inc., Emergency Petition for Declaratory Ruling (filed Oct. 15, 2003).

[283] Letter, dated Oct. 24, from Frederick R. Wentland, Associate Administrator, Office of Spectrum Management, NTIA, to John B. Muleta, Chief, Wireless Telecommunications Bureau, FCC (RM-10821).

[284] *See* Wireless Telecommunications Bureau Seeks Comment on Maritel, Inc. Petition for Declaratory Ruling and National Telecommunications and Information Administration Petition for Rulemaking Regarding the Use of Maritime VHF Channels 87B and 88B, *Public Notice*, 18 FCC Rcd 23260 (WTB 2003). The Bureau has also requested comment on a related proposal by Maritel to serve as exclusive AIS frequency coordinator. *See* Wireless Telecommunications Bureau Seeks Comment on MariTEL, Inc. Proposal to Serve as Automatic Identification System (AIS) Frequency Coordinator, *Public Notice*, 18 FCC Rcd 24057 (WTB 2003).

pairs set forth in section 80.371(c)(1)(i)) for PAWSS.[285] Noting that its intent in authorizing the use of offset channels for this purpose was to maximize the parties' flexibility, the Commission agreed with Maritel that the parties should be able to specify non-offset channel pairs if mutually agreeable.[286] In addition, the Commission invited comment on a USCG request that rules be adopted to ensure that properly certified AIS equipment tested by an independent test facility is available to meet IMO and Coast Guard vessel carriage regulations.[287]

66. *Discussion.* In their comments to the *4th FNPRM*, both the USCG and Maritel support the proposed amendment of section 80.371(c)(3) to remove the limitation on the types of channels that may be designated for PAWSS support.[288] However, in light of the intervening developments – the termination of the MOA, the emerging dispute between Maritel and the NTIA/USCG with respect to providing spectrum for AIS, and the conflicting petitions filed by Maritel and the NTIA – we believe we should maintain section 80.371(c)(3) without change until we can address the larger issues that have been raised in the pending Maritel and NTIA petitions. The issues pertaining to the use of VPC and other spectrum for AIS will be reviewed more broadly in the context of the aforementioned Maritel and NTIA petitions, and we emphasize that nothing we do here is intended to prejudge or otherwise influence the resolution of those larger issues.

67. We do not believe, however, that domestic deployment of AIS needs to come to a standstill until final determinations are made regarding all of the issues raised in the pending Maritel and NTIA petitions. Accordingly, we will adopt rules for the certification of AIS equipment, as recommended by the USCG. The USCG again observes that SOLAS requires the installation of AIS on ships.[289] We note that the phase-in schedule for deployment of AIS began on July 1, 2002, and the IMO accelerated the schedule to require full implementation, *i.e.*, installation on all ships subject to SOLAS on international voyages, by December 31, 2004, and for ships not engaged on international voyages, by July 1, 2008.[290] The USCG further notes that AIS represents a significant enhancement of maritime safety and that its use could be expanded in service of Homeland Security initiatives. Further evincing the critical importance of AIS implementation, in November 2002, following the close of the pleading cycle in this proceeding, the U.S. Congress adopted the Maritime Transportation Security Act of 2002, which includes a statutory mandate for domestic deployment of AIS within a prescribed period of time.[291] In addition, no commenter in this proceeding has opposed this proposal.[292] Therefore, we will require applications for certification of AIS equipment to meet applicable international standards.[293] In addition, as we have done with 406-406.1 MHz EPIRBs, and as requested by the USCG,[294] we will require applicants for

[285] *VPC 4th FNPRM*, 17 FCC Rcd at 235, ¶ 16.

[286] *Id.*

[287] *Id.*

[288] USCG Comments (PR 92-257) at 3; Maritel Comments (PR 92-257) at 11.

[289] USCG Comments (PR 92-257) at 3.

[290] *See* Amendments to the International Convention for the Safety of Life at Sea, 1974, as amended, Chapter V, Regulation 19, "Carriage requirements for shipborne navigational systems and equipment," December 2002.

[291] *See* 46 U.S.C. § 70114; P.L. 107-295, § 102(e), 116 Stat. 2084 (Nov. 25, 2002).

[292] We note, however, that in light of the termination of the *USCG-Maritel MOA*, Maritel has requested that the Commission withdraw authorization of shipborne AIS equipment. *See* Letter dated July 30, 2003 from Russell H. Fox, counsel for Maritel, to D'wana R. Terry, Chief, Public Safety and Private Wireless Division. Like the related AIS issues raised by Maritel outside this docket, that request will be addressed in a separate proceeding.

[293] Applications for AIS equipment certification must meet the following standards: ITU-R M.1371-1, IMO Resolution MSC.74(69), IEC 61162-1, IEC 61162-100, and IEC 61993-2.

[294] USCG Comments (PR 92-257) at 3.

certification to submit the applicable test data and obtain a letter from the Coast Guard stating whether the device satisfies the applicable international requirements we incorporate by reference in this *Sixth Report and Order*.

C. Technical and Operational Matters

1. Emission Masks and Designators for Data Services

68. *Background.* The Commission proposed in the *4th FNPRM* to expand the data emissions permitted in the Maritime Radio Services to accommodate the full range of possible data services.[295] At Maritel's urging, it specifically proposed the adoption of a new emission mask modeled on the Part 90 emission mask,[296] and invited comment on this proposal.[297]

69. *Discussion.* We will generally adopt the proposed emission mask for Part 80, and permit the use of any emission mode so long as the applicable mask limits are satisfied. Both the USCG and Maritel support this proposal. The USCG asserts that emission masks are necessary for operation on 12.5 kHz channels.[298] We agree with Maritel that this proposal will allow VPC licensees to provide a full range of data services and will accommodate VPC licensees interested in providing land mobile radio services.[299] With one exception, discussed below, we will apply the emission mask contained in section 90.210 of the Commission's rules,[300] since our experience with that emission mask indicates that it strikes an appropriate balance between preventing harmful interference, on the one hand, and providing licensees with significant technical flexibility, on the other.

70. We will not require devices certified for AIS operation to conform to the Part 90 emission mask. AIS devices have the ability to operate on 25 kHz or 12.5 kHz channels. An internationally approved standard for AIS, IEC 61993-2, was published by the IEC in December 2001, at roughly the same time the *4th FNPRM* was released. In its current form, the emission mask in IEC 61993-2 is not as stringent as the one in section 90.210 of the Commission's rules. Due to the importance of AIS as a navigational and safety tool, and the international acceptance of IEC 61993-2 as an appropriate AIS technical standard, we do not believe it would serve the public interest to require AIS devices to comply with the section 90.210 emission mask

[295] *VPC 4th FNPRM*, 17 FCC Rcd at 236, ¶ 19.

[296] *See* 47 C.F.R. §§ 90.207, 90.210. The emission mask is the technical specification that limits the distribution of power of a radio transmitter as a function of frequency. The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, *First Report and Order and Third Notice of Proposed Rulemaking*, WT Docket No. 96-86, 14 FCC Rcd 152, 213 n.337 (1998). The emission mask is an important technical parameter that affects the efficient use of a frequency band by limiting emissions from one channel into adjacent channels. *See* 1998 Biennial Regulatory Review – 47 C.F.R. Part 90 – Private Land Mobile Radio Services, *Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 98-182, 15 FCC Rcd 16673, 16689, ¶ 33 (2000).

[297] *VPC 4th FNPRM*, 17 FCC Rcd at 236, ¶ 19.

[298] USCG Comments (PR 92-257) at 4.

[299] Maritel Comments (PR 92-257) at 11-12. *See also* Maritel Reply Comments (PR 92-257) at 3.

[300] 47 C.F.R. § 90.210

2. Station Identification

71. *Background.* Currently, all VPC stations must provide station identification[301] at the beginning and end of each radiotelephone communication with any other station, and once every fifteen minutes in between.[302] In the *4th FNPRM*, the Commission solicited comment on a request by Maritel to eliminate the station identification requirement for geographic area VPC licensees.[303] Noting that the Commission had previously eliminated or relaxed station identification requirements for other categories of CMRS providers in instances where there is a single licensee operating on a particular channel in a Commission-defined service area, Maritel argued that VPC licensees should receive similar treatment.[304] Maritel further argued that the Commission or other competent authority will always be able to assume that the use of a particular VPC channel will be by the geographic area licensee unless a site-specific licensee identifies itself, and that in the case of any coast station that utilizes DSC, the unique coast station identification will be transmitted automatically.[305] Finally, Maritel noted that the Commission had decided to forbear from enforcing the station identification requirements for the Automated Maritime Telecommunications System (AMTS) service, another Part 80 service.[306] The Commission sought comment on Maritel's request, and in particular asked for comment on whether there is any basis to distinguish geographic area VPC stations from AMTS stations and other CMRS providers for purposes of the station identification requirement.[307]

72. *Discussion.* We will eliminate the station identification requirement for geographic area VPC stations because we see little justification for requiring station identification of such stations when we do not require station identification of similarly situated CMRS providers, including AMTS stations. Maritel, the only commenter addressing this issue, repeats its arguments that station identification requirements are unnecessary for geographic area VPC stations because the identification data is readily obtainable from the public record, and that there is no basis to treat geographic area VPC stations differently from AMTS stations and those CMRS providers that have been relieved of the station identification requirement.[308] Although we believe the case for relieving geographic area VPC licensees of station identification requirements is not quite as strong as the case for relieving AMTS stations of such requirements, inasmuch as a consumer will *always* know which AMTS provider he or she is utilizing because of his or her contractual relationship with that provider,[309] we believe we can eliminate the station identification requirement for geographic area VPC stations for largely the same reasons as warranted elimination of the requirement for AMTS. Elimination of this requirement will not compromise the ability of the Commission or the USCG to identify transmissions from geographic area VPC stations, and should not engender confusion among the licensees' customers. Further, we do not

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[301] Identification generally is by call sign, but a VPC station may identify by either the approximate geographic location of the station or the area it serves when it is the only VPC station serving the location or there will be no conflict with the identification of any other station. 47 C.F.R. § 80.102(a), (e).

[302] 47 C.F.R. § 80.102(a). When public correspondence is exchanged with a ship or aircraft station, the intermediate identification may be deferred until the completion of the communications. *Id.*

[303] *VPC 4th FNPRM*, 17 FCC Rcd at 237, ¶ 20.

[304] *See id.*; *see also* Implementation of Sections 3(n) and 332 of the Communications Act, *Memorandum Opinion and Order on Reconsideration*, GN Docket No. 92-252, 15 FCC Rcd 6341, 6346-47, ¶¶ 13-14 (2000).

[305] *VPC 4th FNPRM*, 17 FCC Rcd at 237, ¶ 20.

[306] *Id.* (*citing* Regionet Wireless License, LLC, *Order*, 15 FCC Rcd 16119 (2000) (*Regionet Order*)).

[307] *Id.*

[308] Maritel Comments (PR 92-257) at 12-13.

[309] *See Regionet Order*, 15 FCC Rcd at 16121, ¶ 6.

believe that elimination of this requirement would otherwise have an adverse effect on maritime safety.[310] Accordingly, in keeping with the Commission's goal of eliminating requirements that no longer have a public interest basis, we will amend section 80.102(a) to relieve geographic area VPC stations of the need to provide station identification. Site-based VPC stations remain subject to the station identification requirement.

D. Miscellaneous Issues

1. Station Documents

73. *Background.* The Commission proposed in the *4th FNPRM* to allow VPC licensees to maintain required station documents and records in electronic form.[311] It noted that the purpose of the station log requirements is to maintain a steady record of equipment performance and the details of distress communications,[312] and agreed with Maritel that electronic record keeping may offer conveniences for both the VPC licensee and the Commission, while also improving the accuracy of the station's logs.[313] The Commission tentatively concluded that adoption of this proposal would facilitate access to the records by Commission staff, but requested comment as to whether it would present any problems for other federal agencies that sometimes inspect station logs, such as the Coast Guard and the NTSB.[314] The Commission also sought comment on whether any other entities, including state and local public safety organizations, rely on these records and, if so, whether these entities would find electronic records adequate.[315]

74. The Commission also proposed to relax the requirement in section 80.405(c) of its rules[316] that licensees post a current station authorization or a copy at the principal control point of each station.[317] Noting that Maritel had complained that this posting requirement is burdensome in its case because it has nine geographic area licenses, each of which can cover hundreds of transmitter sites, the Commission tentatively agreed with Maritel that it may be appropriate to limit the posting requirement for VPC licensees to a document identifying the licensee, where the license is maintained, and a telephone number of a representative of the licensee who may be contacted to answer any questions regarding the operation of the particular transmitter.[318]

75. *Discussion.* We agree with Maritel and the USCG that we should permit VPC licensees to maintain station records in electronic form.[319] We believe that electronic record keeping will eliminate an unnecessary paperwork burden on VPC licensees, facilitate access to what is often essential data by the

[310] We note that the USCG has not indicated any opposition to elimination of the station identification requirement.

[311] *VPC 4th FNPRM*, 17 FCC Rcd at 238, ¶ 22.

[312] *Id.*; *see* 47 C.F.R. § 80.409(c)(3), (7).

[313] *VPC 4th FNPRM*, 17 FCC Rcd at 238, ¶ 22.

[314] *Id.*

[315] *Id.*

[316] 47 C.F.R. § 80.405(c).

[317] *VPC 4th FNPRM*, 17 FCC Rcd at 239, ¶ 23.

[318] *Id.*

[319] Maritel Comments (PR 92-257) at 13; Maritel Reply Comments (PR 92-257) at 3-4; USCG Comments (PR 92-257) at 5.

Commission, the USCG, and the NTSB,[320] and minimize the risk of inadvertent data entry, particularly through the automatic logging capability of DSC-compatible systems. We note, moreover, that this action is consistent with our recent decision to allow automatic logging in the Aviation Radio Service.[321]

76. We will also relax the posting requirement for VPC stations. The purpose of the posting requirement is to provide a means for authorized representatives of the Coast Guard, the Commission, and foreign administrations to ensure that the station is using only authorized equipment.[322] Modifying this requirement for VPC licensees, as urged by Maritel,[323] will reduce the regulatory burden on VPC licensees without compromising the ability of government authorities to obtain the essential information underlying the posting requirement – identification and location of the license, and telephone number to contact the licensee's representative – at each station. In addition, this relaxation of the posting requirement is consistent with the posting requirements for cellular radio service and private land mobile radio licensees.[324]

2. Filing Documents

77. *Background.* We classify all public coast stations as CMRS providers.[325] Pursuant to section 10 of the Communications Act of 1934, as amended (Act),[326] the Commission has determined to forbear from enforcing the tariff filing obligations of section 203 of the Act[327] with respect to most domestic CMRS providers because the CMRS market is competitive.[328] The Commission has also exercised its authority under section 10 to forbear from enforcing section 214 of the Act[329] against CMRS providers insofar as it requires them to file an application and secure the Commission's advance approval before any discontinuance of service.[330] In the *4th FNPRM*, the Commission tentatively rejected a Maritel request to amend the Part 80 rules to clearly apply these forbearance decisions to VPC licensees.[331] Specifically, it tentatively declined to adopt Maritel's recommendation that the Commission remove both the requirement in section 80.95(a)(1) of the Commission's rules that VPC stations charge only tariffed

[320] Maritel represents that it has the capability to extend access to its electronic records, via its web site, to the Commission, the Coast Guard, and the NTSB, to facilitate speedy resolution of accident investigations. Maritel Comments (PR 92-257) at 13.

[321] *See* 47 C.F.R. § 87.109; *see also* Review of Part 87 of the Commission's Rules Concerning the Aviation Radio Service, *Report and Order*, WT Docket No. 01-289, 18 FCC Rcd 21432 (2003).

[322] *VPC Second R&O*, 12 FCC Rcd at 16979, ¶ 57.

[323] Maritel Comments (PR 92-257) at 13.

[324] *See* 47 C.F.R. §§ 22.303, 90.437.

[325] *See* Implementation of Sections 3(n) and 332 of the Communications Act – Regulatory Treatment of Mobile Services, *Second Report and Order*, GN Docket No. 93-252, 9 FCC Rcd 1411, 1448, ¶ 83 (1994) (*CMRS 2nd R&O*), *recon. dismissed in part and denied in part*, 15 FCC Rcd 5231 (2000); *see also* 47 C.F.R. §§ 20.9(a)(5), 80.3(f). Although all public coast stations are presumed to be CMRS providers, VPC geographic area licensees and applicants may seek authority to operate as private land mobile radio service providers if they make a showing sufficient to overcome the CMRS presumption. *See* 47 C.F.R. § 20.9(b).

[326] 47 U.S.C. § 160.

[327] *Id.* § 203.

[328] *CMRS 2nd R&O*, 9 FCC Rcd at 1478-79, ¶¶ 174-175.

[329] 47 U.S.C. § 214.

[330] *CMRS 2nd R&O*, 9 FCC Rcd at 1480-81, ¶ 182.

[331] *VPC 4th FNPRM*, 17 FCC Rcd at 240, ¶ 26.

rates,[332] and the requirement in section 80.471 of our rules that a public coast station not discontinue or impair service unless authorized to do so by the Commission.[333] The Commission reasoned that it generally does not revise its service rules to eliminate requirements from which it is forbearing.[334] The Commission further noted that "what Maritel recommends is already in effect," in that we no longer require VPC stations, by virtue of their classification as domestic CMRS providers,[335] to file tariffs or submit applications for discontinuance of service.[336] The Commission added that the Part 80 rules regarding discontinuance of service must remain in effect because the Commission has not extended forbearance from the discontinuance-of-service requirements to international CMRS providers, such as high seas public coast stations, but only to domestic CMRS providers.[337] Therefore, in lieu of proposing to adopt Maritel's recommendations to remove these regulatory provisions, the Commission proposed to simply add to sections 80.95 and 80.471 a cross-reference to the CMRS forbearance rule, section 20.15(b).[338]

78. *Discussion.* We will add to sections 80.95 and 80.471 of the Commission's rules a cross-reference to the forbearance rule. This revision will provide VPC licensees with additional notice that they are no longer subject to the tariff filing requirement or the discontinuance-of-service requirement. We decline to remove the subject rules for the reasons stated in the *4th FNPRM*. We note that Maritel now supports the approach the Commission is adopting.[339]

V. GMDSS SECOND FURTHER NOTICE OF PROPOSED RULE MAKING

A. Digital Selective Calling Equipment

79. Section 80.225(a) of the Commission's rules specifies that DSC equipment voluntarily installed in coast or ship stations must meet either the requirements of ITU-R Recommendation M.493-10 (including only equipment classes A, B, D and E) or RTCM Paper 56-95/SC101-STD.[340] Recommendation ITU-R M.493-11 was approved by ITU-R Working Party 8B and by Study Group 8 in December 2003. In addition, IEC 62238, describing certification requirements for a Class D (VHF) DSC radio, was adopted and published in March 2003. The USCG in its comments requested that once Recommendation ITU-R M.493-11 and IEC 62238 are adopted, all DSC equipment should meet Recommendation ITU-R M.493-11 and Class D DSC equipment should meet IEC 62238, in place of RTCM Paper 56-95/SC101-STD.[341] We note that the RTCM standard has not been updated and does contain some discrepancies and contradictions with the ITU standard, such as its requirement that MF/HF DSC radios include provisions for routine all-ships calling. Should reference to the RTCM standard be deleted in favor of the new Recommendation ITU-R M.493-11? IEC Standard 62238 includes a functional requirement possibly requiring dual receivers, to ensure a DSC call can be received while voice

[332] 47 C.F.R. § 80.95(a)(1).

[333] 47 C.F.R. § 80.471.

[334] *VPC 4th FNPRM*, 17 FCC Rcd at 240, ¶ 26.

[335] *See* 47 C.F.R. § 80.3(f).

[336] *VPC 4th FNPRM*, 17 FCC Rcd at 240, ¶ 26 (*citing* 47 C.F.R. § 20.15(b)(3), (c)).

[337] *See CMRS 2nd R&O*, 9 FCC Rcd at 1464, ¶ 126 & n.261 (indicating that the Commission had not proposed forbearance for international CMRS), 1481 n.369 (declining a request that it propose forbearance for international CMRS).

[338] *Id.*

[339] Maritel Comments (PR 92-257) at 14.

[340] 47 C.F.R. § 80.225(a).

[341] *See* USCG Comments dated 08/14/02 at 5.

traffic is being received on another channel. Should IEC 62238 be included in the requirement of Section 80.225(a) for Class D radios in place of or in addition to the RTCM standard, or would this IEC 62238 standard make it prohibitively expensive to comply with the rule? Can the IEC 62238 standard be met using methods not requiring dual receivers? We request comment on these questions.

B. INMARSAT Ship Earth Stations

80. Section 80.905 of the Commission's Rules permits ships operating more than 100 nautical miles from shore to carry certain INMARSAT ship earth stations in lieu of an SSB radio.[342] In the *GMDSS Second Report and Order*, we have revised section 80.905 to limit the ship earth stations authorized by that section to INMARSAT A (existing units only), B, C or M.[343] After the *GMDSS FNPRM* was issued, the IMO accepted the INMARSAT F-77 ship earth station as meeting GMDSS requirements, and the IEC published certification standard 61097-3 covering the INMARSAT F-77. We ask interested parties to consider whether section 80.905 should be further amended to include the INMARSAT F-77 in the list of ship earth stations that are permitted to be used in lieu of an SSB radio. Should any mobile satellite equipment meeting the IMO GMDSS requirements and the IEC certification requirements be included? Should any mobile satellite system meeting the Commission's requirements for enhanced 911 (E911) emergency calling and relevant IEC certification requirements be included?

C. Reserve Power Requirements for Small Passenger Vessels

81. Section 80.917 of the Commission's rules requires vessels of more than 100 gross tons to have a reserve power supply meeting certain minimum standards.[344] The NTSB has recommended that we amend section 80.917 to extend the reserve power requirement to small passenger vessels of 100 gross tons or less.[345] The NTSB states that imposing the reserve power supply requirement on all small passenger vessels will prevent accidents and save lives.[346] The impetus for this recommendation is the NTSB's investigation of a November 17, 2000 fire on board the small passenger vessel *Port Imperial Manhattan* in the Hudson River.[347] The fire broke out when the *Port Imperial Manhattan* was carrying eleven persons on an evening commuter run from Manhattan to Weehawken, New Jersey. The vessel's radio became inoperative when the fire burned through the electrical cables to the pilothouse.[348] The *Port Imperial Manhattan* was not outfitted with an emergency backup source of power, and was not required to have such reserve power under the Commission's rules because it weighed less than 100 gross tons.[349] Although passengers and crew were ultimately rescued without loss of life, and the burning vessel was towed to shore where the fire was extinguished by the New York Fire Department, the NTSB concluded that the vessel's inability to contact search and rescue personnel through VHF radiotelephone

[342] 47 C.F.R. § 80.905.

[343] *See* ¶ 38, *supra*.

[344] 47 C.F.R. § 80.917. Section 80.917 by its terms does not apply to any vessel the keel of which was laid on or before March 1, 1957. *See id.* § 80.917(a).

[345] Letter, dated July 3, 2002, from Marion C. Blakey, Chairman, NTSB, to Michael K. Powell, Chairman, FCC (*NTSB Recommendation*). The *NTSB Recommendation* and the Commission's response to the NTSB, Letter, dated October 23, 2002, from D'wana R. Terry, Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, to Marion C. Blakey, Chairman, NTSB, have been made part of this docket, and can be accessed through the Commission's Electronic Comment Filing System.

[346] *Id.* at 1.

[347] *Id.*

[348] *Id.* at 2.

[349] *Id.*

communication unnecessarily increased the risk to passengers and crew.[350] The NTSB notes that if the *Port Imperial Manhattan* had been equipped with a backup source of power, and thereby retained its communications capability, crewmembers would have been able to inform emergency response vessels of the seriousness of the situation and help coordinate the rescue operation.[351] The NTSB therefore recommends (as NTSB Recommendation M-02-17) that the Commission amend its rules to "[r]equire that small passenger vessels have VHF radiotelephone communications systems on board that can operate even when the vessel loses power."[352]

82. Accordingly, we now request comment on whether we should require that all small passenger vessels have VHF radiotelephone communications systems on board that can operate even when the vessel loses power. Proponents of such a requirement should indicate whether it is best accomplished through simply removing the tonnage limitation in section 80.917, or whether additional or alternative rule changes are required. We ask commenters to provide information on the costs to small vessel operators of complying with such a requirement, and whether the safety benefits to be derived therefrom outweigh the compliance costs. Commenters are also invited to recommend other means of addressing the safety needs of small vessel operators, crewmembers, and passengers, either as alternatives to the *NTSB Recommendation* or as supplementary measures.

D. Commercial Operator License Issues

83. Richard H. Weil (Weil) filed a petition for rulemaking on November 22, 1999, seeking an amendment of section 13.15(b) of the Commission's rules[353] to extend the license terms of GMDSS Radio Operator Licenses, GMDSS Radio Maintainer Licenses, GMDSS Operator/Maintainer Licenses, and Marine Radio Operator Permits.[354] Weil says that the terms of these authorizations should be extended to the lifetime of the holder.[355] He argues that it is arbitrary to provide five-year terms for these authorizations when General Radiotelephone Operator Licenses, Restricted Radiotelephone Operator Permits, and Restricted Radiotelephone Operator Permits-Limited Use have lifetime terms.[356] Weil further contends that no safety purpose is served by the renewal requirement, and that the requirement imposes a needless paperwork burden on the affected licensees and permittees.[357] We invite comment on Weil's proposal to provide a lifetime term for GMDSS Radio Operator's Licenses, GMDSS Radio Maintainer's Licenses, GMDSS Operator/Maintainer Licenses, and Marine Radio Operator Permits, and ask interested parties to consider whether such an extension of the license term, if adopted, should apply to existing licenses as well as new licenses.[358]

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[350] *Id.*

[351] *Id.*

[352] *Id.* at 3.

[353] 47 C.F.R. § 13.15(b).

[354] Richard H. Weil Petition for Rulemaking, RM-10647, filed Nov. 22, 1999 (*Weil Petition*). The Petition for Rulemaking was placed on public notice on February 14, 2003. Consumer & Governmental Affairs Bureau Reference Information Center – Petition for Rulemaking Filed, *Public Notice*, Report No. 2595 (rel. Feb. 14, 2003).

[355] *Weil Petition* at 1.

[356] *Id.* Mr. Weil notes that, under our current rules, a person upgrading from a Marine Radio Operator Permit to a General Radiotelephone Operator License does not have to file periodic renewal applications as a consequence of the upgrade, but if that person upgrades again, to a GMDSS Radio Maintainer's License, he or she must once again satisfy the renewal requirement. *Id.*

[357] *Id.*

[358] Mr. Weil proposes that the extended license term apply not only to licenses and permits issued after the proposed new rule would take effect, but also to licenses and permits issued prior to the effective date. *Id.*

84. As noted earlier,[359] in 2001 PSPWD granted a waiver of section 13.203(a)(5) of the Commission's rules[360] to permit Commercial Operator License Examination Managers (COLEMs) to use 100-question examinations for Element 7.[361] Earlier that year, PSPWD granted COLEMs a waiver of section 13.215 of the Commission's rules[362] to provide them with a six-month transition period before they were required to use the new question pool for Element 7.[363] The waiver was needed because section 13.215 provides that COLEMs must use only the most recent question pool made available to the public in selecting questions for an examination.[364] We can envision other situations in which it might be beneficial to provide a reasonable transition period before use of a new question pool becomes mandatory. Accordingly, we seek comment on whether we should amend section 13.215 by removing the requirement that COLEMs use only the most recent question pool. If we so amend the rule, we anticipate that the Bureau would announce a transition period for phasing in the use of any new question pool in the same public notice in which it announces the establishment and availability of that question pool. Finally, as a further measure to enhance flexibility in the commercial radio operator license examination process, and to obviate the need for waivers in the future, it may be beneficial to revise section 13.203(a) of the Commission's rules[365] by deleting the specification of the number of questions for each examination element. If we do not codify the number of questions for each examination element, the Bureau could specify the number of questions for a given examination element in a public notice.[366] We request comment on this approach.

E. Ship Security Alert System

85. On May 29, 2003, the IMO adopted Resolution MSC.147(77), Adoption of the Revised Performance Standards for a Ship Security Alert System, to provide a means for certain ships[367] to transmit a covert security alert to shore to indicate that the security of the ship is under threat or has been compromised. The Resolution was incorporated into SOLAS Chapter XI-2, Regulation 6 and goes into effect on July 1, 2004. The Resolution recommended only functional requirements for the Ship Security Alert System (SSAS). For example, the system should have two activation points known only to the user, the system shall operate on a radio system that does not require adjustments such as tuning the radio and shall not cause an alarm to be raised on board, and the system shall include a unique identifier indicating that the alert has not been generated as a GMDSS alert. The Resolution did not recommend technical performance standards for the SSAS, but recommended that it may use existing radio installations that are compliant with chapter IV of the SOLAS Convention, other general communications radio systems or a

[359] *See* ¶ 51 & note 202, *supra*.

[360] 47 C.F.R. § 13.203(a)(5).

[361] *NRE Waiver Order*.

[362] 47 C.F.R. § 13.215.

[363] Wireless Telecommunications Bureau Approves New Commercial Operator License Examination (COLE) Question Pool for Element 7 (Global Maritime Distress and Safety System (GMDSS) Radio Operating Procedures), *Public Notice*, 16 FCC Rcd 14466 (2001). It was the establishment of the new question pool, covering 100 key topics, that suggested the desirability of a 100-question test for Element 7.

[364] 47 C.F.R. § 13.215.

[365] *Id.* § 13.203(a).

[366] We would assume that the number of questions for an examination element would typically be established in the same public notice announcing a new question pool for that element.

[367] On new ships built after 1 July 2004; on all passenger ships not later than the first radio installation survey after 1 July 2004; on all tankers, gas carriers, bulk carriers, and cargo high speed ships over 500 gross tonnage, not later than the first radio installation survey after 1 July 2004; and on all other ships over 500 gross tonnage, not later than the first radio installation survey after 1 July 2006.

dedicated radio system. The equipment could include cellular phones in coastal areas and satellite services such as Inmarsat A, B, C, D, M, F-77 away from coastal areas, and possibly GMDSS VHF/MF/HF equipment in areas where there are coast stations for receiving addressed calls.[368] The Coast Guard will assure that vessels' SSAS meets SOLAS requirements during its inspection of vessels. We seek comment to assist us in formulating the rules to guide the industry in making communications equipment to meet the needs of the SSAS. For example, what requirements should be imposed for SSAS equipment, certification, testing, registration, technical performance, message content and format, and routing of ship security alerts? What requirements are appropriate for communications service providers that route alerts from ship security equipment?

F. Updated References to International Standards

86. One of the key goals of this proceeding is to keep the Part 80 rules up to date with respect to changes in the international standards to which reference is made in Part 80.[369] As noted, the Part 80 rules incorporate performance standards established by the IMO, the ITU, the IEC and other standards-setting organizations. We ask commenters to identify any such standards that have been revised or updated to a new version since the adoption of the *GMDSS R&O* on March 27, 2002, thus requiring a corresponding amendment of the Commission's rules. We specifically ask whether we should make the on-board frequencies listed in section 80.373(g) of the Commission's rules[370] available for narrowband operations in light of the narrowbanding of these frequencies by the ITU.[371]

G. 2002 Biennial Review

87. On November 8, 2002, Globe Wireless filed *ex parte* comments in the 2002 Biennial Regulatory Review proceeding proposing the elimination or revision of a number of part 80 rules.[372] On December 31, 2002, the Bureau issued a *2002 Biennial Regulatory Review Staff Report* providing recommendations as to whether specific rules should be retained, modified, or repealed.[373] The *Staff Report* recommended that the Commission address the Globe Wireless Comments in the context of the instant proceeding.[374] Accordingly, we hereby incorporate the Globe Wireless Comments into the record of this proceeding, and request comment on them.[375]

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[368] We understand that a number of providers already offer ship security alert systems. For example, Pole Star, Satamatic, and Transas each offer a unit that consists of an Inmarsat D transceiver with integrated GPS. Transas receives and manages the alerts in its security monitoring center, and takes action to notify and inform authorities. Another system, ShipLoc is operated by CLS, a subsidiary of the French Space Agency, and uses an Argos transmitter and GPS receiver which allows commercial ships to be tracked in near real-time and to inform authorities if there is a threat. COSPAS/SARSAT, a joint international satellite-based search and rescue system established by Canada, Russia, and the United States to locate emergency radio beacons transmitting on 121.5 MHz and 406 MHz, is also considering offering a service over the COSPAS/SARSAT system using the 406.0-406.1 MHz band.

[369] *See* ¶ 6, *supra*.

[370] 47 C.F.R. § 80.373(g).

[371] *See id.* § 2.106 n.5.287.

[372] Globe Wireless, Comments on: 476 [sic] CFR Chapter 1 – Possible Revision or Elimination of Rules (filed Nov. 8, 2002) (Globe Wireless Comments).

[373] Federal Communications Commission 2002 Biennial Regulatory Review, *Staff Report of the Wireless Telecommunications Bureau*, WT Docket No. 02-310, 18 FCC Rcd 4243 (2002) (*Staff Report*).

[374] *Id.*, 18 FCC Rcd at 4335.

[375] Globe Wireless recommends, *inter alia*, that the Commission delete section 80.141(c)(1)-(2), 47 C.F.R. § 80.141(c)(1)-(2), as obsolete; delete section 80.203(b)(3), 47 C.F.R. § 80.203(b)(3), to accommodate (continued....)

88. In addition, we note that "housekeeping" changes to part 80 rules other than those identified by Globe Wireless also may be warranted. For example, note 5 to section 80.207(d) of the Commission's Rules grandfathers certain transmitters manufactured prior to December 31, 1969.[376] We doubt that any of these transmitters are still in use, and we seek comment on this question and on whether the note can be deleted. Also with respect to section 80.207(d) and section 80.313, we believe the entries in the tables for the frequency band 1605-27500 kHz[377] should instead list 1615 kHz as the low end of the band, because the only maritime mobile operations permitted in the broadcast AM expanded band, 1605-1705 kHz, are those authorized pursuant to footnote US299 of the Table of Frequency Allocations, which does not encompass 1605-1615 kHz.[378] We propose to correct this error. Further, we note that the section 80.207(d) table specifies emissions for radionavigation operations in the frequency band 14.00-14.05 GHz. We recently proposed in another proceeding to remove the radionavigation allocation in this band,[379] and now we accordingly propose to remove the entry for 14.00-14.05 GHz in section 80.207(d). We invite comment on all of these proposals.

VI. REGULATORY MATTERS

A. Ex Parte Rules - Permit-But-Disclose Proceeding

89. 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.[380]

B. Regulatory Flexibility Act

90. As required by the Regulatory Flexibility Act (RFA),[381] the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the rules adopted in the *Second Report and Order* in WT Docket No. 00-48. The FRFA for the *Second Report and Order* in WT Docket No. 00-48 is contained in Appendix C. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the *Second Report and Order* in WT Docket No. 00-48, including the FRFA,

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(...continued from previous page)
programming of authorized channels through the use of remote computers; revise the list of emission classes in section 80.207, 47 C.F.R. § 80.207; delete rules pertaining to Morse code, 47 C.F.R. §§ 80.355, 80.357; revise section 80.363, 47 C.F.R. § 80.363, to make additional spectrum available for ship station facsimile transmissions; and reassess the demand for private communications frequencies, 47 C.F.R. § 80.373. We note that some of Globe Wireless's recommendations are addressed, or otherwise rendered moot, by actions already taken or proposed in this proceeding.

[376] *See* 47 C.F.R. § 80.207(d), n.5.

[377] Id., §§ 80.207(d), 80.313. There are three such entries in the section 80.207(d) table, one for ship station radiotelegraphy, one for ship station radiotelephony, and one for land station radiotelephony.

[378] See 47 C.F.R. § 2.106, n.US299 (providing that "[t]he 1615-1705 kHz band in Alaska is also allocated to the maritime mobile services and the Alaska fixed service on a secondary basis to Region 2 broadcast operations.").

[379] *See* Review of Part 87 of the Commission's Rules Concerning the Aviation Radio Service, *Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 01-289, 18 FCC Rcd 21432 ¶ 85 (2003) (proposing specifically to remove the reference to the 14000-14400 MHz band in 47 C.F.R. § 87.187(x) and to also remove from the Table of Frequency Allocations, 47 C.F.R. § 2.106, the allocation for radionavigation in the 14000-14200 MHz band).

[380] *See generally* 47 C.F.R. §§ 1.1202, 1.1203, 1.1206(a).

[381] 5 U.S.C. § 603.

to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the RFA.[382]

91. As required by the RFA,[383] the Commission has also prepared a FRFA of the rules adopted in the *Sixth Report and Order* in PR Docket No. 92-257. The FRFA for the *Sixth Report and Order* in PR Docket No. 92-257 is contained in Appendix D. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the *Sixth Report and Order* in PR Docket No. 92-257, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the RFA.[384]

92. As required by the RFA,[385] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the rules proposed or discussed in the *Second Further Notice of Proposed Rule Making* in WT Docket No. 00-48. The IRFA for the *Second Further Notice of Proposed Rule Making* in WT Docket No. 00-48 is contained in Appendix E. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the *Second Further Notice of Proposed Rule Making* in WT Docket No. 00-48, 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 *Second Further Notice of Proposed Rule Making* in WT Docket No. 00-48, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.[386]

C. Comment Dates

93. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before [90 days after Federal Register publication] and reply comments on or before [120 days after Federal Register publication]. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[387]

94. 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., S.W., Washington, D.C. 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

[382] *Id.* § 603(a).

[383] *Id.* § 603.

[384] *Id.* § 603(a).

[385] *Id.* § 603.

[386] *Id.* § 603(a).

[387] *See* Electronic Filing of Documents in Rulemaking Proceedings, *Report and Order,* GC Docket No. 97-113, 13 FCC Rcd 11322 (1998).

paper filings must be delivered to 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. 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.

95. 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., S.W., Room 4-A366, Washington, D.C. 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. 00-48), 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, Qualex International, Inc., 445 12th St., S.W., Room CY-B402, Washington, D.C. 20054.

D. Paperwork Reduction Act

96. This *Second Report and Order, Sixth Report and Order, and Second Further Notice of Proposed Rule Making* does not contain any new or modified information collection.

E. Further Information

97. For further information, contact Jeffrey Tobias, jeff.tobias@fcc.gov, or Ghassan Khalek, ghassan.khalek@fcc.gov, Wireless Telecommunications Bureau, (202) 418-0680, or TTY (202) 418-7233.

98. Alternative formats (computer diskette, large print, audiocassette and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426, TTY (202) 418-7365, or at bmillin@fcc.gov. This *Report and Order and Further Notice of Proposed Rule Making* can also be downloaded at: http://www.fcc.gov/.

F. Ordering Clauses

99. Accordingly, IT IS ORDERED that, pursuant to the authority of Sections 4(i), 303(r), and 332(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 332(a)(2), Parts 2, 13 and 80 of the Commission's Rules ARE AMENDED as set forth in the attached Appendix B, effective sixty days after publication in the Federal Register.

100. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r) and 403, this *Second Report and Order, Sixth Report and Order, and Second Further Notice of Proposed Rule Making* IS HEREBY ADOPTED, and NOTICE IS HEREBY GIVEN of the proposed regulatory changes described in the *Second Further Notice of Proposed of Rule Making* and contained in Appendix E.

101. IT IS FURTHER ORDERED that the Motion to Accept Late Filing filed by the GMDSS Task Force is GRANTED and the late-filed comments of the GMDSS Task Force and Dr. Schenk of America LLC are HEREBY ACCEPTED into the record in this proceeding.

102. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this *Second Report and Order, Sixth Report and Order, and Second Further Notice of Proposed Rule Making*, including the Final Regulatory Flexibility Analysis for the *Second Report and Order* in WT Docket No. 00-48, the Final Regulatory Analysis for the *Sixth Report and Order* in PR Docket No. 92-257, and the Initial Regulatory Flexibility Analysis for

the *Second Further Notice of Proposed Rule Making* in WT Docket No. 00-48, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary