

December 15, 1993; January 13, 1994; March 9, 1994; and March 21, 1995; July 22, 1996; and August 12, 1996; interim approval effective on November 29, 1996; interim approval expires November 30, 1998.

(c) *Pima County Department of Environmental Quality*: submitted on November 15, 1993 and amended on December 15, 1993; January 27, 1994; April 6, 1994; and April 8, 1994; August 14, 1995; July 22, 1996; and August 12, 1996; interim approval effective on November 29, 1996; interim approval expires November 30, 1998.

(d) *Pinal County Air Quality Control District*:

(1) submitted on November 15, 1993 and amended on August 16, 1994; August 15, 1995; July 22, 1996; and August 12, 1996; interim approval effective on November 29, 1996; interim approval expires November 30, 1998.

(2) revisions submitted on August 15, 1995; interim approval effective on December 30, 1996; interim approval expires November 30, 1998.

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BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 15 and 97

[ET Docket No. 94-32; FCC 96-390]

### Allocation of Spectrum Below 5 GHz Transferred From Federal Government Use

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission declines to adopt additional service rules or coordination procedures for the amateur service and Data-PCS devices or for the amateur service. The Commission also prohibits airborne use of all unlicensed devices in the 2390-2400 MHz band in order to protect space research conducted at the National Astronomy and Ionospheric Center Observatory (NAIC) at Arecibo, Puerto Rico. In addition, the Commission declines to combine the 2390-2400 MHz and 2400-2483.5 MHz bands for use by both Data-PCS and other unlicensed devices. It reaffirms that as long as the unlicensed device satisfies the technical standards of the band in which it is operating, the device would be permitted to transmit in either band. This action permits immediate use of the 2390-2400 MHz and 2402-2417 MHz bands by the amateur service, Data-PCS devices, and other unlicensed devices under existing rules. Finally the new and enhanced services and uses permitted by this action will create new jobs, foster

economic growth, and improve access to communications by industry and the American public.

**EFFECTIVE DATE:** November 29, 1996.

**FOR FURTHER INFORMATION CONTACT:** Sean White (202) 418-2453 and Tom Derenge (202) 418-2451, Office of Engineering and Technology.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Fourth Report and Order*, ET Docket 94-32, FCC 96-390, adopted September 20, 1996, and released October 18, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857-3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

#### Summary of the Report and Order

1. By this action, the Commission addresses issues raised in the *First Report and Order and Second Notice of Proposed Rule Making (First R&O and Second NPRM)*, 60 FR 13102, March 10, 1995, 10 FCC Rcd 4769 (1995) in this proceeding regarding sharing of the 2390-2400 MHz and 2402-2417 MHz bands by the Amateur Radio Service and unlicensed devices. On February 7, 1995, the Commission adopted the *First R&O and Second NPRM*. In that action, the Commission made the 2390-2400 MHz band available for use by unlicensed Data Personal Communications Services (Data-PCS) devices on a non-interference basis, provided for continued use of the 2402-2417 MHz band by other, non-Data-PCS, Part 15 devices, upgraded the allocation for both of these bands for use by the Amateur Radio Service from secondary to primary, and allocated the 4660-4685 MHz band for use by the Fixed and Mobile Services. Additionally, we extended the existing rules governing Data-PCS at 1910-1920 MHz to the 2390-2400 MHz band and decided that both the amateur service and non-Data-PCS Part 15 operations at 2402-2417 MHz would continue to be governed in accordance with currently applicable technical and operational rules.

2. In the *First R&O and Second NPRM*, we also requested comment on any rule changes that might be necessary for the amateur service and non-Data-PCS Part 15 devices to share the spectrum more efficiently. In addition, we stated that Data-PCS and amateur use of 2390-2400 MHz would generally be compatible and that it was

unnecessary to propose any formal standards for sharing between these services in this band. However, we requested comment on whether formal sharing requirements would be needed or whether formal coordination procedures should be developed for amateur/Data-PCS use.

3. We also proposed to prohibit airborne use of all unlicensed devices operating at 2390-2400 MHz in order to protect space research operations at 2380 MHz in the vicinity of the National Astronomy and Ionospheric Center Observatory (NAIC) at Arecibo, Puerto Rico. Noting that we were not proposing similarly to prohibit the terrestrial use of unlicensed devices in the vicinity of the NAIC, we sought comment on whether the proposed ban on airborne use would provide adequate protection to space research operations and, if not, what additional steps we should take to provide greater protection. In addition, we sought comment on whether the 2390-2400 MHz band and the superjacent 2400-2483.5 MHz band, where Part 15 operations are currently authorized, should be combined for use as a single, large Part 15 band.

4. In addition to commenting on these proposals, several commenters requested that we allocate the 2390-2400 MHz and 2402-2417 MHz bands to unlicensed devices on a primary basis. Currently, unlicensed devices have no allocation status, but are permitted to operate on a non-interference basis to other users of the bands.

5. In this *Fourth Report and Order (Fourth R&O)* the Commission declines to adopt additional service rules or coordination procedures for the amateur service and Data-PCS devices or for the amateur service and other Part 15 devices. We find that the existing technical rules governing use of these bands are adequate and that no additional rules are needed. We also prohibit airborne use of all unlicensed devices in the 2390-2400 MHz band in order to protect space research conducted at the NAIC. In addition, we decline to combine the 2390-2400 MHz and 2400-2483.5 MHz bands for use by both Data-PCS and other Part 15 devices. Instead, the item reaffirms that as long as the unlicensed device satisfies the technical standards of the band in which it is operating, the device would be permitted to transmit in either band. Finally, the Commission concludes that this is not the appropriate proceeding to address requests for a primary allocation for unlicensed devices in the 2390-2400 MHz and 2402-2417 MHz bands.

## Final Regulatory Flexibility Analysis

6. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *First Report and Order* and *Second Notice of Proposed Rule Making*, (*First R&O and Second NPRM*), ET Docket No. 94-32.<sup>1</sup> The Commission sought written public comments on proposals in the *First R&O and Second NPRM*, including the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Fourth Report and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Public Law 104-121, 110 Stat. 847 (1996).<sup>2</sup>

7. Need for and Objectives of the Rule: This action is taken in response to the Reconciliation Act,<sup>3</sup> which required the Secretary of Commerce to identify 200 megahertz of spectrum, currently allocated for use by Federal Government agencies, that could be transferred for private sector use, and in response to the ensuing Preliminary Spectrum Reallocation Report published by the Department of Commerce,<sup>4</sup> which identified such spectrum. The *First R&O and Second NPRM* in this proceeding allocated the 2390-2400 MHz band to the Amateur Radio Service and Data-PCS, the 2402-2417 MHz band to the Amateur Radio Service, and the 4660-4685 MHz band to the Fixed and Mobile Services. It also inquired as to whether we should prohibit aeronautical use of Data-PCS or other unlicensed devices to protect space research operations at the National Astronomy and Ionospheric Center (NAIC) at Arecibo, Puerto Rico, as well as whether we should allow Data-PCS devices to operate in the 2400-2483.5 MHz band where other unlicensed devices operate, and vice versa. The allocation of Data-PCS spectrum is intended to provide enhanced communication service to the American public, while also creating new jobs, fostering economic growth, and increasing access to communications for industry and the public. The upgrade to primary status of the amateur allocation in this spectrum will encourage amateur operators to use this spectrum. The Commission's adoption of rules to prohibit the use of Data-PCS devices in the 2390-2400

MHz band while airborne, is intended to protect space research operations at the NAIC.

8. Summary of Significant Issues Raised by Public Comments in Response to the IRFA: No comments directly responded to the IRFA. In general comments on the *First R&O and Second NPRM*, however, some commenters raised an issue that might affect small entities. Some commenters argued that merging the 2390-2400 MHz band with the superjacent 2400-2483.5 MHz band into a single, large band for non-Data-PCS devices would make the spectrum more useful to manufacturers and users of unlicensed spread spectrum equipment, some of whom may be small entities. Because Data-PCS devices are asynchronous devices and follow a special spectrum sharing etiquette, while other Part 15 unlicensed devices are typically isochronous and do not adhere to a spectrum sharing etiquette, the Commission determined that combining the bands presented a significant danger of delaying or hampering the growth of Data-PCS through interference from other unlicensed devices. Manufacturers and users of Data-PCS devices may also be small entities, and the Commission declined to combine the bands because of the potential for mutual harmful interference between Data-PCS devices and other unlicensed devices.

9. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply: The rule adopted in this *Fourth Report and Order* will apply to any small entity using Data-PCS devices while airborne in the continental United States. Because Data-PCS is as yet undeveloped, no meaningful estimate of the number or description of such small entities is possible. Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request an estimate of the number of small businesses that may be affected.

However, as Data-PCS service evolves, and until the Commission establishes a pertinent definition of small entities, the applicable definition will be under the Small Business Association (SBA) rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is expressed as one with \$11.0 million or less in annual receipts.<sup>5</sup> According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified. Of those,

approximately 775 reported annual receipts of \$11 million or less and qualify as small entities.<sup>6</sup>

10. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements: The rule adopted in this *Fourth Report and Order* imposes no reporting or recordkeeping requirements. The rule also requires no affirmative compliance action by any entity to which it applies. Rather, the rule operates as a prohibition on the use of Data-PCS devices in the 2390-2400 MHz band while airborne in the continental United States. We do not predict that any compliance costs, administrative or otherwise, will be imposed on entities subject to this rule.

11. Significant Alternatives and Steps Taken to Minimize the Economic Impact on a Substantial Number of Small Entities Consistent with the Stated Objectives: The Commission believes that this allocation of Data-PCS spectrum will facilitate the creation of new jobs and economic growth. At the suggestion of commenters, the Commission considered and rejected a complete ban on all use of unlicensed devices in the vicinity of the NAIC. The Commission rejected this alternative as excessively burdensome to small entities using Data-PCS, while of little benefit in protecting space research operations at the NAIC. The Commission also considered and agreed with a recommendation by Apple that manufacturers should not be held responsible for designing Data-PCS devices to cease operations while traveling in aircraft.<sup>7</sup> We believe that this would place an unnecessary burden on the manufacturer and we believe that it will be the responsibility of the user to control when and where the device is used. Data-PCS is a nascent service, and it is not possible to determine the impact this action will have on small businesses, because we have no data on the number of small businesses likely to use Data-PCS.

12. Report to Congress: The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this *Fourth Report and Order*, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A).

<sup>1</sup> See 10 FCC Rcd 4769 (1995).

<sup>2</sup> Subtitle II of the CWAAA is "The Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), codified at 5 U.S.C. 601 et seq.

<sup>3</sup> Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, 107 Stat 312 (enacted August 10, 1993).

<sup>4</sup> See Spectrum Reallocation Final Report, U.S. Department of Commerce, NTIA, Special Publication 95-32, February 1995.

<sup>5</sup> 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4899.

<sup>6</sup> U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 2D, Employment Size of Firms: 1992, SIC Code 4899 (issued May 1995).

<sup>7</sup> See, decision at para. 22.

## List of Subjects

## 47 CFR Part 15

Communications equipment, Radio.

## 47 CFR Part 97

Communications equipment, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

## Rule Changes

Parts 15 and 97 of Title 47 of the Code of Federal Regulation are amended as follows:

**PART 15—RADIO FREQUENCY DEVICES**

1. The authority citation for Part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307 and 544A.

2. Section 15.321 is amended by adding paragraph (g) to read as follows:

**§ 15.321 Specific requirements for asynchronous devices operating in the 1910–1920 MHz and 2390–2400 MHz bands.**

\* \* \* \* \*

(g) Operation of devices in the 2390–2400 MHz band from aircraft while airborne is prohibited, in order to protect space research operations at the National Astronomy and Ionospheric Center at Arecibo, Puerto Rico.

**PART 97—AMATEUR RADIO SERVICE**

1. The authority citation for Part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. Section 97.303(j)(2) is revised to read as follows:

**§ 97.303 Frequency sharing requirements.**

\* \* \* \* \*

(j) \* \* \*

(2) In the United States, the 2300–2310 MHz segment is allocated to the amateur service on a co-secondary basis with the Government fixed and mobile services. In this segment, the fixed and mobile services must not cause harmful interference to the amateur service. The 2390–2400 MHz and 2402–2417 MHz segments are allocated to the amateur service on a primary basis. No amateur station transmitting in the 2400–2450 MHz segment is protected from interference due to the operation of industrial, scientific, and medical devices on 2450 MHz.

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[FR Doc. 96–27818 Filed 10–29–96; 8:45 am]

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**47 CFR Part 73**

[MM Docket No. 95–28; RM–8593, RM–8696]

**Radio Broadcasting Services; Stamping Ground and Nicholasville, Kentucky**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Scott County Broadcasting, Inc., substitutes Channel 241A for Channel 256A at Stamping Ground, Kentucky, and modifies Station WKYI(FM)'s license accordingly (RM–8593). See 60 FR 12725, March 8, 1995. As requested, we also dismiss the counterproposal filed by Mortenson Broadcasting Company of Kentucky, L.L.C., requesting the allotment of Channel 240A at Nicholasville, Kentucky, as the community's second local FM transmission service (RM–8696). Channel 241A can be allotted to Stamping Ground in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.0 kilometers (7.5 miles) east to avoid short-spacings to the licensed sites of Station WRSL–FM, Channel 242C3, Stanford, Kentucky, and Station WKID(FM), Channel 240A, Vevay, Indiana. The coordinates for Channel 241A at Stamping Ground are North Latitude 38–17–43 and West Longitude 84–33–10. With this action, this proceeding is terminated.

**DATES:** Effective December 2, 1996.

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 95–28, adopted October 11, 1996, and released October 18, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 256A and adding Channel 241A at Stamping Ground.

Federal Communications Commission

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–27687 Filed 10–29–96; 8:45 am]

BILLING CODE 6712–01–P

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 285**

[I.D. 102196B]

**Atlantic Tuna Fisheries; Adjustments**

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

**ACTION:** Fishery reopening.

**SUMMARY:** NMFS has determined that the Atlantic bluefin tuna (ABT) General category quota, as adjusted, has not been reached. Therefore, NMFS reopens the General category fishery for large medium and giant ABT for all areas for one additional day. Closure of this one day fishery will be strictly enforced. Subsequent to this closure, the General category fishery for large medium and giant ABT for areas inside the New York Bight will remain open until the set-aside quota is reached. This action is being taken to extend scientific data collection on certain size classes of ABT while preventing overharvest of the adjusted subquotas for the affected fishing categories.

**EFFECTIVE DATE:** The General category fishery for large medium and giant ABT will open for all areas beginning Sunday, October 27, at 1 a.m. local time and close on Sunday, October 27, at 11:30 p.m. local time. The General category fishery for large medium and giant ABT for areas inside the New York Bight will remain open until further notice.

**FOR FURTHER INFORMATION CONTACT:** John Kelly, 301–713–2347, or Mark Murray-Brown, 508–281–9260.

**SUPPLEMENTARY INFORMATION:** Regulations implemented under the