

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Amendment of Parts 2 and 90 of the Commission's
Rules to Codify New Procedure for Non-Federal
Public Safety Entities to License Federal
Interoperability Channels

ORDER

Adopted: March 22, 2018

Released: March 22, 2018

By the Chief, Public Safety and Homeland Security Bureau; and the Chief, Office of Engineering and Technology

I. INTRODUCTION

1. By this Order, the Public Safety and Homeland Security Bureau (Bureau) and the Office of Engineering and Technology, on delegated authority, amend Parts 2 and 90 of the Commission's rules to conform with the streamlining modifications made by the National Telecommunications and Information Administration (NTIA) to the federal coordination process that enables the FCC to grant licenses to non-federal public safety entities for use of forty Federal Interoperability Channels.

II. BACKGROUND

2. NTIA has designated specific Federal Interoperability Channels for interoperability communications "among federal agencies and between federal agencies and non-federal entities with which federal agencies have a requirement to operate." Based on this designation, and subject to its coordination requirements, NTIA makes these channels available for FCC licensing to non-federal public safety entities for joint federal/non-federal operations.

3. The NTIA Manual enables federal agencies and non-federal entities to use mobile and portable radio units on available Federal Interoperability Channels on a shared basis under a new streamlined process. Under this process, the Statewide Interoperability Coordinator (SWIC) or a state appointed official in each state is responsible for coordinating access to the Federal Interoperability Channels by non-federal public safety entities. Each SWIC/official will sign an agreement with a federal user with a valid assignment. The NTIA Manual does not dictate the terms of these agreements,

1 See Appendix B, infra (listing the forty Federal Interoperability Channels).

2 See NTIA Manual of Regulations and Procedures for Federal Radio Frequency Management § 4.3.16, at 4-190-91 para. 5 under "Conditions For Use," para. 3 (Table 1) under "Law Enforcement Plans," and para. 4 (Table 2) under "Incident Response Plans" (May 2013 ed., rev. Sept. 2015) (NTIA Manual). The NTIA Manual is available on NTIA's website at www.ntia.doc.gov/osmhome/redbook/redbook.html.

3 See id. at 4-190 para. 5 under "Conditions For Use."

4 Id.

5 Id.

but as a practical matter, all forty of the Federal Interoperability Channels may not be available for non-federal use in every state or territory (e.g., along the borders with Canada and Mexico). Thus, an agreement may specify which Federal Interoperability Channels are available for use in the particular state or territory and establish the conditions for their use by non-federal public safety entities.

4. Under NTIA's revamped process, after a federal agency and the SWIC/official have signed an agreement for a given state, the federal agency no longer needs to coordinate separately with, or provide separate written certification to, each non-federal public safety entity in the state that seeks to use Federal Interoperability Channels. Similarly, a non-federal entity seeking to use Federal Interoperability Channels covered by the agreement only needs to obtain the written concurrence of the SWIC/official confirming that the proposed use of the specified channels conforms to the agreement. Moreover, because coordination is covered by the agreement, this streamlined process obviates the need for the Commission to submit the non-federal entity's application for coordination with NTIA and the Interdepartment Radio Advisory Committee (IRAC).<sup>6</sup>

5. The Commission's current rules outline procedures for non-federal public safety entities licensed by the FCC to be authorized to use channels assigned to federal users. Among other things, these procedures require the non-federal public safety entity to obtain a written certification from a federal agency confirming that the non-federal entity's access to federal frequencies was necessary for coordinating activities with the federal agency.<sup>7</sup> With that certification, the non-federal entity would then file an application with the Commission requesting authorization to operate on the federal frequencies, and the Commission would submit the application to NTIA for IRAC coordination.<sup>8</sup> The current rules do not reflect the aforementioned streamlined coordination procedures adopted by NTIA to make Federal Interoperability Channels available to non-federal public safety entities. Thus, even when the new NTIA procedures would be applicable, the Commission's rules would still require the non-federal public safety entity to obtain a written certification from a federal agency.

### III. DISCUSSION

6. NTIA's above-described streamlining modifications of its coordination process providing for a non-federal public safety entity to be licensed by the Commission to use the Federal Interoperability Channels have, in the context of these designated channels, rendered obsolete both (1) the Commission's requirement in Section 2.102(c)(4) that the non-federal public safety entity obtain written certification from a federal government agency before applying for FCC authorization; and (2) the Commission's Section 90.173(c) consultation provision (under which Commission staff refers such applications to NTIA for coordination with the IRAC's Frequency Assignment Subcommittee (FAS)).<sup>9</sup> Accordingly, we are adding new Section 90.25 to the Commission's rules to make these channels available to public safety applicants and are revising Sections 2.102(c)(4) and 90.173(c) to conform these FCC rules to the streamlined coordination process that NTIA now uses.<sup>10</sup> Specifically, new

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<sup>6</sup> *Id.*

<sup>7</sup> 47 CFR § 2.102(c)(4).

<sup>8</sup> 47 CFR §§ 2.102(c), 90.173(c). *See Federal Government Spectrum Available for Public Safety Interoperability Communications*, Public Notice, 16 FCC Rcd 13662 (WTB 2001) (*Federal Government Spectrum PN*) (announcing the pre-streamlining procedure).

<sup>9</sup> *See* 47 CFR §§ 2.102(c) and 90.173(c).

<sup>10</sup> *See infra* Appendix B (highlighting the availability of the channels under streamlined application procedures in new Section 90.25, adding new footnote US55 to the Table of Frequency Allocations, 47 CFR § 2.106, and setting forth amendments to 47 CFR §§ 2.102(c) and 90.173(c)). We note that the adoption of these rule changes falls within both the good cause and the procedural rule exceptions to the notice and public comment requirements of the Administrative Procedure Act (APA), 5 U.S.C. §§ 551 *et seq.* Under the APA's Section 553(b)(B), these requirements do not apply "when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. § 553(b)(B). The rule amendments at issue

(continued....)

Section 90.25 lists the Federal Interoperability Channels for which NTIA's streamlining modifications apply. Pursuant to that section, an applicant seeking to license mobile or portable radios on any Federal Interoperability Channel will include a copy of the SWIC/official's written concurrence with its application. Commission staff will process such applications without referring them to the NTIA for coordination with the IRAC's FAS. In revised Section 2.102(c)(4) we add a cross reference to Section 90.25 to provide an exception to the requirement that the Commission consult with a federal agency before granting applications for non-federal applicants to license the Federal Interoperability Channels. Also, we add new footnote US55 to the Allocation Table in Section 2.106 of the Commission's rules to reflect such use.

7. In making these conforming changes to our rules, we note that the new streamlined coordination process applies only to applicants seeking to license mobile and portable radio units on the Federal Interoperability Channels listed in new Section 90.25.<sup>11</sup> Applicants seeking to license base stations on these channels or proposing any use of Federal Interoperability Channels other than those listed in Appendix A must continue to provide written certification from a federal government agency with their applications,<sup>12</sup> and the Commission will continue to send such applications to NTIA for coordination with the IRAC's Frequency Assignment Subcommittee.

#### IV. PAPERWORK REDUCTION ACT

8. The requirement in new Section 90.25 that non-federal public safety agencies obtain written concurrence from the SWIC/official constitutes a new information collection subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review and public comment under Section 3507(d) of the PRA.

9. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198 (see 44 U.S.C. 3506(c)(4)), the Bureau will seek specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

#### V. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 303(c) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(c), and 332, this *Order* IS HEREBY ADOPTED.

11. IT IS FURTHER ORDERED that the rules and requirements adopted herein WILL BECOME EFFECTIVE thirty days from the date of publication in the Federal Register, except for new Section 90.25 that contains a new information collection requirement that requires review by the OMB

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here are designed solely to conform the FCC's rules to the streamlined coordination process that NTIA has put in place. As these changes to the FCC's rules merely reflect the modified coordination process that NTIA now requires, they are ministerial in nature, and solicitation by the FCC of public comment would serve no purpose and would cause needless administrative delay. Accordingly, we find, for good cause, that providing advance notice of and opportunity for public comment on the rule changes we adopt herein is unnecessary and contrary to the public interest. Moreover, these rule changes "do not themselves alter the rights or interests of parties" with respect to Commission action; they merely "alter the manner in which the parties present themselves or their viewpoints," and only with respect to demonstrating their compliance with the required NTIA coordination process. See *JEM Broadcasting Co. v. FCC*, 22 F.3d 320 (D.C. Cir. 1994). Accordingly, the action taken herein falls within the APA's exception for the promulgation or amendment of "rules of agency organization, procedure, or practice." 5 U.S.C. § 553(b)(A). Moreover, because such rules of "agency organization, procedure, or practice [do] not substantially affect the rights or obligations of non-agency parties," the provisions of the Congressional Review Act are also inapplicable here. See 5 U.S.C. § 804(3)(C).

<sup>11</sup> See NTIA Manual § 4.3.16, at 4-190 para. 6 under "Conditions For Use" (stating that "These channels are restricted to mobile (including portable) interoperability communications...").

<sup>12</sup> See 47 CFR § 2.102(c)(4).

under the PRA. OMB will assign the Commission a new OMB control number once it approves the new information collection. Section 90.25 WILL BECOME EFFECTIVE after OMB review and approval, on the effective date specified in a notice that the Commission will publish in the Federal Register announcing such approval and effective date.<sup>13</sup>

12. This action is taken under delegated authority pursuant to Section 155(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c) and Sections 0.31, 0.191, 0.241, and 0.392 of the Commission’s rules, 47 CFR §§ 0.31, 0.191, 0.241, and 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Lisa M. Fowlkes  
Chief  
Public Safety and Homeland Security Bureau

Julius P. Knapp  
Chief  
Office of Engineering and Technology

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<sup>13</sup> Non-federal licensees requiring access to the Federal Interoperability Channels before the effective date of the rules in Appendix B may request Special Temporary Authorization from the Commission. Any such STA request must demonstrate that the circumstances warrant such relief pursuant to Section 1.931(b)(2) of the Commission’s rules, and should be accompanied by a request for waiver under Section 1.925 of the rules. In meeting that waiver standard, we would expect the applicant to demonstrate that the requested use of federal channels has been adequately coordinated with the appropriate federal authorities.

## Appendix A

### Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2 and 90 as follows:

#### **PART 2— FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS**

1. The authority citation for Part 2 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Amend § 2.102 by revising paragraph (c) to read as follows:

#### **§2.102 Assignment of frequencies.**

\* \* \* \* \*

(c) Non-Federal stations may be authorized to use Federal frequencies in the bands above 25 MHz:

(1) If the Commission finds, after consultations with the appropriate Federal agency or agencies, that such use is necessary for coordination of Federal and non-Federal activities. Such operations must meet the following requirements:

(i) Non-Federal operation on Federal frequencies shall conform with the conditions agreed upon by the Commission and NTIA;

(ii) Such operations shall be in accordance with NTIA rules governing the service to which the frequencies involved are allocated;

(iii) Such operations shall not cause harmful interference to Federal stations and, should harmful interference result, that the interfering non-Federal operation shall immediately terminate; and

(iv) Non-Federal operation has been certified as necessary by the Federal agency involved and this certification has been furnished, in writing, to the non-Federal licensee with which communication is required; or

(2) Pursuant to the provisions of § 90.25 of this chapter, provided that such operations shall not cause harmful interference to Federal stations and, should harmful interference result, that the interfering non-Federal operation shall immediately terminate.

\* \* \* \* \*

3. In § 2.106, the Table of Frequency Allocations is amended as follows:

a. Pages 24 and 27 are revised.

b. In the list of United States (US) Footnotes, footnote US55 is added.

The revisions and additions read as follows:

#### **§ 2.106 Table of Frequency Allocations.**

\* \* \* \* \*

			157.1875-161.575	157.1875-157.45 MOBILE except aeronautical mobile US266 5.226 NG111	Maritime (80) Aviation (87) Private Land Mobile (90)
				157.45-161.575 FIXED LAND MOBILE NG28 NG111 NG112 5.226 NG6 NG70 NG124 NG148 NG155	Public Mobile (22) Remote Pickup (74D) Maritime (80) Private Land Mobile (90)
			161.575-161.625	161.575-161.625 MARITIME MOBILE 5.226 US52	Public Mobile (22) Maritime (80)
			161.625-161.9625	161.625-161.775 LAND MOBILE NG6 5.226	Public Mobile (22) Remote Pickup (74D) Low Power Auxiliary (74H)
				161.775-161.9625 MOBILE except aeronautical mobile US266 NG6 5.226	Maritime (80) Private Land Mobile (90)
5.226	5.226		US266		
161.9625-161.9875 FIXED MOBILE except aeronautical mobile Mobile-satellite (Earth-to-space) 5.228F 5.226 5.228A 5.228B	161.9625-161.9875 AERONAUTICAL MOBILE (OR) MARITIME MOBILE MOBILE-SATELLITE (Earth-to-space) 5.228C 5.228D	161.9625-161.9875 MARITIME MOBILE Aeronautical mobile (OR) 5.228E Mobile-satellite (Earth-to-space) 5.228F 5.226	161.9625-161.9875 AERONAUTICAL MOBILE (OR) (AIS 1) MARITIME MOBILE (AIS 1) MOBILE-SATELLITE (Earth-to-space) (AIS 1) 5.228C US52		Satellite Communications (25) Maritime (80)
161.9875-162.0125 FIXED MOBILE except aeronautical mobile 5.226 5.229	161.9875-162.0125 FIXED MOBILE 5.226		161.9875-162.0125	161.9875-162.0125 MOBILE except aeronautical mobile 5.226	Maritime (80)
162.0125-162.0375 FIXED MOBILE except aeronautical mobile Mobile-satellite (Earth-to-space) 5.228F 5.226 5.228A 5.228B 5.229	162.0125-162.0375 AERONAUTICAL MOBILE (OR) MARITIME MOBILE MOBILE-SATELLITE (Earth-to-space) 5.228C 5.228D	162.0125-162.0375 MARITIME MOBILE Aeronautical mobile (OR) 5.228E Mobile-satellite (Earth-to-space) 5.228F 5.226	162.0125-162.0375 AERONAUTICAL MOBILE (OR) (AIS 2) MARITIME MOBILE (AIS 2) MOBILE-SATELLITE (Earth-to-space) (AIS 2) 5.228C US52		Satellite Communications (25) Maritime (80)
162.0375-174 FIXED MOBILE except aeronautical mobile 5.226 5.229	162.0375-174 FIXED MOBILE 5.226 5.230 5.231 5.232		162.0375-173.2 FIXED MOBILE US8 US11 US13 US55 US73 US300 US312 G5 173.2-173.4 173.4-174 FIXED MOBILE G5	162.0375-173.2 US8 US11 US13 US55 US73 US300 US312 173.2-173.4 FIXED Land mobile 173.4-174	Remote Pickup (74D) Private Land Mobile (90)  Private Land Mobile (90)

International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
400.15-401 METEOROLOGICAL AIDS METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.208A 5.208B 5.209 SPACE RESEARCH (space-to-Earth) 5.263 Space operation (space-to-Earth)			400.15-401 METEOROLOGICAL AIDS (radiosonde) US70 METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to- Earth) US319 US320 US324 SPACE RESEARCH (space-to-Earth) 5.263 Space operation (space-to-Earth)	400.15-401 METEOROLOGICAL AIDS (radiosonde) US70 MOBILE-SATELLITE (space-to- Earth) US319 US320 US324 SPACE RESEARCH (space-to-Earth) 5.263 Space operation (space-to-Earth)	Satellite Communications (25)
5.262 5.264			5.264	5.264	
401-402 METEOROLOGICAL AIDS SPACE OPERATION (space-to-Earth) EARTH EXPLORATION-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) Fixed Mobile except aeronautical mobile			401-402 METEOROLOGICAL AIDS (radiosonde) US70 SPACE OPERATION (space-to-Earth) EARTH EXPLORATION- SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) US64 US384	401-402 METEOROLOGICAL AIDS (radiosonde) US70 SPACE OPERATION (space-to-Earth) Earth exploration-satellite (Earth-to-space) Meteorological-satellite (Earth-to-space) US64 US384	MedRadio (95I)
402-403 METEOROLOGICAL AIDS EARTH EXPLORATION-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) Fixed Mobile except aeronautical mobile			402-403 METEOROLOGICAL AIDS (radiosonde) US70 EARTH EXPLORATION- SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) US64 US384	402-403 METEOROLOGICAL AIDS (radiosonde) US70 Earth exploration-satellite (Earth-to-space) Meteorological-satellite (Earth-to-space) US64 US384	
403-406 METEOROLOGICAL AIDS Fixed Mobile except aeronautical mobile			403-406 METEOROLOGICAL AIDS (radiosonde) US70 US64 G6	403-406 METEOROLOGICAL AIDS (radiosonde) US70 US64	
406-406.1 MOBILE-SATELLITE (Earth-to-space) 5.266 5.267			406-406.1 MOBILE-SATELLITE (Earth-to-space) 5.266 5.267		Maritime (EPIRBs) (80V) Aviation (ELTs) (87F) Personal Radio (95)
406.1-410 FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY 5.149			406.1-410 FIXED MOBILE RADIO ASTRONOMY US74 US13 US55 US117 G5 G6	406.1-410 RADIO ASTRONOMY US74 US13 US55 US117	Private Land Mobile (90)
410-420 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (space-to-space) 5.268			410-420 FIXED MOBILE SPACE RESEARCH (space-to-space) 5.268 US13 US55 US64 G5	410-420 US13 US55 US64	Private Land Mobile (90) MedRadio (95I)

\* \* \* \* \*

**United States (US) Footnotes**

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US55 In the bands 162.0375-173.2 MHz and 406.1-420 MHz, the FCC may authorize public safety applicants to use the 40 Federal Interoperability Channels that are designated for joint federal/non-federal operations for law enforcement, public safety, emergency response and disaster response in Section 4.3.16 of the NTIA Manual, subject to the condition that that these non-Federal mobile (including portable) interoperability communications shall conform to the national plans specified therein, and in particular, shall not cause harmful interference to Federal stations. The procedure for authorizing such use is set forth in 47 CFR 90.25.

\* \* \* \* \*

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

4. The authority citation for Part 90 continues to read as follows:

AUTHORITY: Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7), and Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, 126 Stat. 156.

5. Add § 90.25 to read as follows:

**§ 90.25 Non-Federal Use of the Federal Interoperability Channels.**

The Commission may authorize non-Federal licensees to operate mobile and portable radio units on the frequencies listed below in Tables 1 and 2, provided the applicant includes with its application to the Commission, written concurrence from the Statewide Interoperability Coordinator (SWIC) or state appointed official stating that the application conforms to the agreement with a federal agency with a valid assignment from the National Telecommunications and Information Administration.

**Table 1 - Law Enforcement Plans (MHz)**

LE VHF Plan			LE UHF Plan		
Identifier	Mobile Transmit	Mobile Receive	Identifier	Mobile Transmit	Mobile Receive
LEA	167.0875 (S)	167.0875	LEB	414.0375 (S)	414.0375
LE1	162.0875	167.0875	LE10	418.9875	409.9875
LE2	162.2625	167.2500	LE11	419.1875	410.1875
LE3	162.8375	167.7500	LE12	419.6125	410.6125
LE4	163.2875	168.1125	LE13	414.0625 (S)	414.0625
LE5	163.4250	168.4625	LE14	414.3125 (S)	414.3125
LE6	167.2500 (S)	167.2500	LE15	414.3375 (S)	414.3375
LE7	167.7500 (S)	167.7500	LE16	409.9875 (S)	409.9875
LE8	168.1125 (S)	168.1125	LE17	410.1875 (S)	410.1875
LE9	168.4625 (S)	168.4625	LE18	410.6125 (S)	410.6125

(S) - Simplex



**Table 2 - Incident Response Plans (MHz)**

IR VHF Plan			IR UHF Plan		
Identifier	Mobile Transmit	Mobile Receive	Identifier	Mobile Transmit	Mobile Receive
NC1 Calling	164.7125	169.5375	NC2 Calling	419.2375	410.2375
IR1	165.2500	170.0125	IR10	419.4375	410.4375
IR2	165.9625	170.4125	IR11	419.6375	410.6375
IR3	166.5750	170.6875	IR12	419.8375	410.8375
IR4	167.3250	173.0375	IR13	413.1875 (S)	413.1875
IR5	169.5375 (S)	169.5375	IR14	413.2125 (S)	413.2125
IR6	170.0125 (S)	170.0125	IR15	410.2375 (S)	410.2375
IR7	170.4125 (S)	170.4125	IR16	410.4375 (S)	410.4375
IR8	170.6875 (S)	170.6875	IR17	410.6375 (S)	410.6375
IR9	173.0375 (S)	173.0375	IR18	410.8375 (S)	410.8375

(S) - Simplex

6. In § 90.173, revise paragraph (c) to read as follows:

**§ 90.173 Policies governing the assignment of frequencies.**

\* \* \* \* \*

(c) Frequencies assigned to Federal Government radio stations by the National Telecommunications and Information Administration may be authorized under the provisions set forth in § 2.102(c) of this chapter.