§ 1303.17 Time for hearing and decision.

(a) Any hearing of an appeal by a grantee from a notice of suspension, termination or denial of refunding must be commenced no later than 120 days from the date the grantee's appeal is received by the Departmental Appeals Board. The final decision in an appeal whether or not there is a hearing must be rendered not later than 60 days after the close of the proceedings, including submission of the briefs and oral argument, if allowed or required by the Departmental Appeals Board, and completion of final transcripts and any other applicable corrections to them.

(b) All hearings will be conducted expeditiously and without undue delay or postponement.

(c) The time periods established in paragraph (a) of this section may be extended if:

(1) The parties jointly request a stay to engage in settlement negotiations;

(2) Either party requests summary disposition; or

(3) The Departmental Appeals Board determines that the Board is unable to hold a hearing or render its decision within the specified time period for reasons beyond the control of either party or the Board.

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BILLING CODE 4184–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 90

[ET Docket No. 98–95; FCC 98–119]

Dedicated Short Range Communications of Intelligent Transportation Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to allocate 75 megahertz of spectrum for use by Dedicated Short Range Communications (''DSRC'') of Intelligent Transportation Systems (''ITS''). DSRC systems are being designed that require a short range, wireless link to transfer information between vehicles and roadside systems. ITS services are expected to improve traveler safety, decrease traffic congestion, and facilitate reduction of air pollution and conservation of fossil fuels. This action furthers the goals of the U.S. Congress, Department of Transportation and the ITS industry to improve the efficiency of the Nation's transportation infrastructure and to facilitate the growth of the ITS industry.

DATES: Comments are due September 14, 1998, reply comments are due October 13, 1998.

FOR FURTHER INFORMATION CONTACT: Tom Derenge, Office of Engineering and Technology, (202) 418–2451.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, ET Docket 98–95, FCC 98–119, adopted June 11, 1998, and released June 11, 1998 . 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, 1231 20th Street, N.W. Washington, D.C. 20036.

Summary of the Notice of Proposed Rule Making

1. On May 19, 1997, the Intelligent Transportation Society of America (''ITS America'') filed a Petition for Rulemaking (''Petition'') requesting that the Commission allocate 75 megahertz of spectrum in the 5.850–5.925 GHz band on a co-primary basis for DSRC-based ITS services. The Petition states that DSRC links are needed for eleven ITS user services and places DSRC needs into three categories: current DSRC applications; emerging DSRC applications; and future DSRC applications.

2. The 5.850–5.925 GHz band is allocated internationally on a primary basis for Fixed Services, Fixed Satellite Service (''FSS'') Earth-to-space links (''uplinks''), and Mobile Services. Additionally, in Region 2, this band is allocated on a secondary basis to the Amateur Radio Service and the Radiolocation Service. Finally, the 5.850–5.875 GHz segment is designated internationally for industrial, scientific and medical (''ISM'') applications. Domestically, the entire band is currently allocated on a co-primary basis for the Government's Radiolocation Service (i.e., for use by high-powered military radar systems) and for non-Government FSS uplink operations. ISM devices and unlicensed part 15 devices are also permitted to operate in the 5.850–5.875 GHz segment. Finally, the Amateur Radio Service has a secondary domestic allocation in the entire band.

3. We propose to allocate 75 megahertz of spectrum, at 5.850–5.925 GHz, to the Mobile Service and to designate its use for DSRC operations. We tentatively conclude that this significant amount of proposed spectrum would further the goals of the National ITS program and encourage the development of advanced technologies to increase the safety and efficiency of the national transportation infrastructure well into the future. Additionally, a 75 megahertz allocation should enable avoidance of occupied frequencies in areas where incumbent use is heavy and should be sufficient to meet the spectrum demands of future DSRC operations, such as Automated Highway Systems, which could require several dedicated wideband channels to ensure reliability. We request comment on whether this proposed allocation is excessive given that efficient spectrum use techniques exist and our goal of promoting spectrum efficiency. We welcome alternative suggestions for an allocation for DSRC.

4. We believe that spectrum sharing between FSS and DSRC operations may be possible. However, we seek comment on the likely future needs for this spectrum for FSS earth stations. In this regard, we note that given the much higher power of FSS operations and the relatively low power of DSRC operations, individual DSRC operations are unlikely to cause harmful interference to incumbent FSS satellite operations. We also do not expect that DSRC devices in the aggregate would negatively impact existing or future FSS operations, particularly given that there are several other potentially significant contributors to the overall noise level in this band, such as government radars and ISM devices. We request comment on this preliminary assessment. We also seek comment on what, if any, effects the widespread deployment of DSRC devices could have on future development of FSS operations in this band. In this regard, we observe that widespread deployment of mobile devices, including devices with potential public safety uses, could make it more difficult to coordinate new FSS operations. We also seek comment on whether there are any instances in which DSRC services might be unacceptably impaired by FSS operations. We seek comment on whether terrain shielding, directional antennas, RF fencing and other techniques can be employed by DSRC operators to avoid receiving or causing interference. Alternatively, should interference situations arise where the two services are not compatible in a specific area or over a range of frequencies, we request comment on the feasibility of relocating the FSS operations to other geographic areas or frequency bands using the principles outlined in the Emerging Technologies

rulemaking. That is, if the DSRC licensee needs spectrum used by an FSS licensee, the DSRC entity would be responsible for the expense of modifying the FSS uplink to another location or frequency and ensuring that the FSS entity is able to achieve comparable operations.

5. Unlicensed low power operations in the 5.850–5.875 GHz segment may be affected by this potential allocation. Although unlicensed devices have no allocation status and are not protected by our rules, we believe that the provision of hearing assistance devices to those with disabilities is a valuable service in the public interest. At present, any mobile part 15 hearing assistance device operating in the 5.850–5.875 GHz band could encounter interference problems from various higher powered incumbent operations such as Government radar operations, FSS and ISM operations. Therefore, we request comment on whether the 5.850–5.875 GHz segment is currently being used for hearing assistance device operations, the likelihood of any such future uses, and whether any measures can or should be taken to protect such uses.

6. We acknowledge that amateur operations are permitted to operate at up to 1.5 kW PEP output with high gain antennas which could interfere with DSRC receivers if operated on similar frequencies in the same geographic area. Nevertheless, amateur operations have access to 275 megahertz in the 5.650–5.925 GHz band and we believe any amateur use of the 5.9 GHz range could be engineered to avoid DSRC operations. Also, amateurs may be able to continue use of these frequencies in rural areas where DSRC applications may not be extensively deployed. We anticipate that any interference problems that may develop between amateur stations and DSRC operations could be resolved by changing the frequency of the amateur operation in order to protect primary status operations or by other engineering techniques, such as power reduction or directional antennas.

7. We tentatively conclude that DSRC-based ITS services can share spectrum with incumbent operations in this frequency range. We request comment on this issue and solicit further analysis of the spectrum sharing potential between DSRC-based operations and the incumbent use of the 5.850–5.925 GHz band.

8. We believe it is necessary to outline an order of responsibility in resolving interference problems, if they occur. Specifically, we note that DSRC operations are not likely to interfere with Government radar operations and ISM operations, but the reverse may not always be the case. We propose to require DSRC operations to accept interference generated by ISM operations in this range, as is generally the case in ISM bands. Additionally, we note that DSRC operations, Government radar operations and FSS Earth-to-space operations would operate on a co-primary basis in this frequency range. Therefore, we propose to place the responsibility for coordination equally on each of those operations through the Frequency Assignment Subcommittee of the Interdepartment Radio Advisory Committee. As is generally the case with co-primary services, any licensee initiating new or modified service in the band would be required to avoid interference to existing operations. Finally, secondary amateur operations would not be permitted to cause harmful interference to primary licensed operations in this frequency range. Nonetheless, to the extent that DSRC applications may operate on an unlicensed basis under part 15, they would be required to avoid causing interference to and cannot claim interference protection from all operations with secondary and primary allocation status. We request comment on this issue and encourage suggestions for alternative approaches.

9. As is always the case for FCC approved devices, we will require all DSRC equipment to comply with our RF safety guidelines. We believe this level of protection is appropriate and will not result in the generation of unsafe levels of RF energy. We request comment, on whether any specific aspects of our RF safety guidelines are inappropriate for the deployment of DSRC equipment.

10. We solicit comment and proposals for a channelization plan. We encourage commenters and standards setting organizations to consider and discuss the following factors in developing a DSRC channelization plan: optimization of spectrum use; use of informal standards to promote compatibility or interoperability of certain DSRC applications; flexible channel options for emerging services; diversity of DSRC services; and equipment affordability. For example, a proposed DSRC channelization plan could provide for a few wideband channels for certain purposes, such as backscatter automatic toll collection, and reserve a number of narrowband channels for active transponder DSRC services or other services with smaller data throughout requirements. We request comment on whether provision for different channel bandwidths for different data requirements or technologies would significantly effect the viability or cost of DSRC equipment. Further, we request comment specifically on whether to permit use of both passive and active DSRC devices and on whether and how reliance on informal DSRC technical standards, as opposed to Commission-adopted standards, may facilitate a smoother transition or integration among DSRC technologies.

Initial Regulatory Flexibility Certification, and Voluntary Initial Regulatory Flexibility Analysis (Voluntary IRFA)

11. The Regulatory Flexibility Act (''RFA''),[1] requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' [2] The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small government jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA'').

12. This *Notice of Proposed Rule Making* (''NPRM'') proposes to allocate the 5.850–5.925 GHz band to the Private Land Mobile Service (''PLMS'') for use by Dedicated Short Range Communications Services (''DSRCS'') in the provision of Intelligent Transportation Services (''ITS''). DSRCS communications are used for non-voice wireless transfer of data over short distances between roadside and mobile radio units, between mobile units, and between portable and mobile units to perform operations related to the improvement of traffic flow, traffic safety and other intelligent transportation service applications in a variety of public and commercial environments. This action is taken in response to a Petition for Rulemaking filed by the Intelligent Transportation Society of America (''ITS America''). While this *NPRM* does propose an allocation and some basic technical

[1] See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 et. seq., has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] 5 U.S.C. 605(b).

parameters, the issues of licensing, channelization, and other complex technical matters are being deferred to a later proceeding. Therefore, because this present action will not result in the provision of these operations, we certify that this action will not have a significant economic impact on a substantial number of small entities.

13. Despite the certification, we have performed a voluntary Initial Regulatory Flexibility Analysis (IRFA), below, to create a fuller record in this proceeding and to give more information to entities, small and not, that might be affected by our action. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM*. The Commission's Office of Public Affairs, Reference Operations Division, will send a copy of the *NPRM*, including this certification and voluntary analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

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

14. The objective of this action is to provide sufficient spectrum to permit the development of DSRCS technologies to improve the nation's transportation infrastructure and bolster the involvement of United States companies in this emerging industry.

B. Legal Basis

15. This action is taken pursuant to sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 157(a), 303(c), 303(f), 303(g), and 303(r).

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

16. The 5.85–5.925 GHz band is currently available to the U.S. Federal Government for Radiolocation purposes, Fixed Satellite Service licensees for international intercontinental links, amateur radio operators and by various entities using part 18 Industrial, Scientific and Medical (''ISM'') equipment and part 15 unlicensed device equipment. We note that there are only 45 FSS licenses issued for operation in 5.85–5.925 GHz band and most if not all are held by large corporations. Further, amateur radio operators and the Federal Government do not qualify as small entities. We also note that part 18 ISM devices are protected in this band, which only generate electromagnetic energy, are not used for communication purposes and therefore cannot receive interference or be impacted by this action. Finally, while part 15 unlicensed devices are permitted to operate in the 5.85–5.875 GHz portion, they do so on an unlicensed, unprotected basis. Further, the Commission has no means to determine the number of small entities that might use unlicensed part 15 equipment that operates in the band at issue. The *NPRM* discusses means by which the potential DSRCS would be able to share the spectrum with incumbent operations and requests comment on ways to ensure such spectrum sharing. Accordingly, we do not believe this action would have a negative impact on small entities that operate in the 5.85–5.925 GHz band, but nevertheless request comment on this assessment.

17. Regarding the Fixed Satellite Service licensees for international intercontinental links, the Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC).[3] This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[4] According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $9,999 million.[5] The Census report does not provide more precise data.

18. Regarding the future use of the 5.85–5.925 GHz band by DSRCS equipment, we believe it is too early to make an determination on such operations. A future rulemaking proceeding will propose further technical standards, licensing and service rules and a separate regulatory flexibility analysis will address all issues relevant to that proceeding.

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

19. We are proposing to allocate this spectrum for a new service. The licensing and technical regulations governing these operations will be addressed in a separate proceeding. Therefore, this proposed action does not create any reporting or compliance requirements.

[3] An exception is the Direct Broadcast Satellite (DBS) Service.

[4] 13 CFR 120.121, SIC code 4899.

[5] *1992 Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, SIC code 4899 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

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

20. The *NPRM* proposes basic technical rules such as power limits, unwanted emission limits and a frequency stability requirement. It also requests comment on whether operational standards should be adopted to facilitate nation-wide interoperability of DSRCS. The development of DSRCS operational standards could delay the initial deployment of such equipment, but could ultimately result in equal footing for all manufacturers, including small entities, in producing equipment that meets uniform standards. We request comment on further alternatives that might minimize the amount of economic impact on small entities.

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

21. None.

List of Subjects in 47 CFR Parts 2 and 90

Communications equipment, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–17314 Filed 6–29–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 061998C]

Fisheries of the Northeastern United States; Petition for Rulemaking for Rotational Opening of Georges Bank Closed Areas for Scallop Fishing

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

ACTION: Notice of receipt of petition for rulemaking; request for comments.

SUMMARY: NMFS announces receipt of, and requests public comment on, a petition for rulemaking requesting that sea scallop harvest be allowed on a rotational basis in areas of Georges Bank that are currently closed to all vessels capable of catching groundfish, including scallop vessels. David E. Frulla, of Brand, Lowell, and Ryan (Petitioner), has petitioned the Secretary of Commerce (Secretary), on behalf of