

■ 9. On page 50670, second column, the third line of paragraph (c)(2)(i), the language, “provided in paragraphs (c)(2)(ii) is corrected to read “provided in paragraph (c)(2)(ii) of this”.

■ 10. On page 50671, first column, the fifth line of paragraph (g), the language, “31, 2003, except that paragraphs (a)(2)” is corrected to read “31, 2003, except that paragraphs (a)(2),”.

**Martin V. Franks,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 90

[PS Docket No. 13-87; PS Docket No. 06-229, WT Docket No. 96-86, RM-11433 and RM-11577, FCC 16-111]

### Service Rules Governing Narrowband Operations in the 769-775/799-805 MHz Bands

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) seeks comment on proposals to amend the Commission’s rules to promote spectrum efficiency, interoperability, and flexibility in 700 MHz public safety narrowband operations (769-775/799-805 MHz). By this action, the Commission affords interested parties an opportunity to submit comments on these proposed rule changes.

**DATES:** Comments are due on or before October 26, 2016 and reply comments are due on or before November 10, 2016.

**FOR FURTHER INFORMATION CONTACT:** John Evanoff, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418-0848 or [john.evanoff@fcc.gov](mailto:john.evanoff@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Further Notice of Proposed Rulemaking (FNPRM) in PS Docket No. 13-87, FCC 16-111, released on August 22, 2016. The document is available for download at [http://fjallfoss.fcc.gov/edocs\\_public/](http://fjallfoss.fcc.gov/edocs_public/). The complete text of this document is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY-A257, Washington, DC 20554.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

In this FNPRM, the Commission seeks comment on a proposal to facilitate the use of Vehicular Repeater Systems (VRS) on 700 MHz narrowband General Use and State License channels. In particular, it seeks comment on whether to amend the 700 MHz narrowband trunking rule and asks for comment on additional rule changes that may be necessary to accommodate vehicular repeater systems’ operation on 700 MHz narrowband channels.

This FNPRM also seeks comment on the Department of Homeland Security’s (DHS) Project 25 Compliance Assessment Advisory Council (P25 CAP AP) list of 15 recommended feature sets and capabilities to facilitate interoperable communications between radios when operating in the conventional mode of P25 using the Common Air Interface (CAI) on the designated 700 MHz interoperability channels. The Commission seeks comment on whether to adopt all, some, or none, of the additional feature sets and capabilities recommended.

This FNPRM also seeks comment on a recommendation by Motorola Solutions, Inc. (Motorola) to clarify Sections 90.547 and 90.548 of the Commission’s rules that require that 700 MHz radios must be capable of being programmed to operate on the designated interoperability channels.

Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

• **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.

• **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All

filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

• **People with Disabilities:** To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Interested parties may view documents filed in this proceeding on the Commission’s Electronic Comment Filing System (ECFS) using the following steps: (1) Access ECFS at <http://www.fcc.gov/cgb/ecfs>. (2) In the introductory screen, click on “Search for Filed Comments.” (3) In the “Proceeding” box, enter the numerals in the docket number. (4) Click on the box marked “Retrieve Document List.” A link to each document is provided in the document list. The public may inspect and copy filings and comments during regular business hours at the FCC Reference Information Center, 445 12th Street SW., Room CY-A257, Washington, DC 20554. The public may also download this FNPRM from the Commission’s Web site at <http://www.fcc.gov/>.

This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with 47 CFR

1.1206(b). In proceedings governed by 47 CFR 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

## Procedural Matters

### A. Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended ("RFA"), the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on a substantial number of small entities that might result from adoption of the rules proposed in the FNPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the applicable deadlines for initial comments, or reply comments, as specified in the FNPRM.

### B. Need for, and Objectives of, the Proposed Rules

In the FNPRM, we seek comment on whether to amend the Commission's rules governing 700 MHz public safety narrowband spectrum at 769–775 MHz and 799–805 MHz. The rule changes we seek comment on are intended to promote flexible and efficient use of public safety narrowband spectrum in the 700 MHz band while reducing the regulatory burdens on licensees wherever possible. In order to achieve these objectives, we seek comment in the FNPRM on exempting low power vehicular repeater systems from the narrowband trunking requirements. Exempting low power vehicular repeaters systems from the trunking requirements would facilitate rapid deployment of low power vehicular repeater systems as well as reduce burdens on public safety entities. We seek comment on whether to clarify the rules concerning the requirement that 700 MHz radios be capable of being programmed to operate on the designated interoperability channels. Clarification would provide greater certainty to equipment manufacturers on the required performance of their equipment. We also seek comment on whether to adopt a list of recommended feature sets and capabilities in order to

ensure that radios operating in the conventional mode on the designated 700 MHz narrowband interoperability channels are in fact interoperable across vendors. Adopting such a list would promote certainty for public safety and manufacturers as well as promote competition in the public safety equipment market. We also seek comment on whether the Commission should instead informally encourage the agencies, funders and manufacturers to adopt voluntary best practices directed to improving interoperability, both technically and operationally.

### C. Legal Basis

The legal basis for any action that may be taken pursuant to this FNPRM is contained in Sections 1, 4(i), 303, 316, 332, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 303, 316, 332, and 337.

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

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

Public Safety Radio Licensees. As a general matter, Public Safety Radio licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. For the purpose of determining whether a Public Safety Radio licensee is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite).

The Wireless Telecommunications Carriers (except satellite) industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services. The appropriate size

standard under SBA rules for the category Wireless Telecommunications Carriers (except satellite) is that a business is small if it has 1,500 or fewer employees. Census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of fewer than 1000 employees. Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small.

The Commission does not require Public Safety Radio licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many Public Safety Radio licensees constitute small entities under this definition.

Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. The U.S. Census defines this industry as comprising "establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by the establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA has established a size standard for this industry which classifies any businesses in this industry as small if it has 750 or fewer employees. Census data for 2007 indicate that 939 such businesses operated in that year. Of that number, 912 businesses operated with fewer than 500 employees. Based on this data, we conclude that a majority of businesses in this industry are small by the SBA standard.

### E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

No rule proposed in the FNPRM will entail additional reporting, recordkeeping, and/or third-party consultation or other compliance requirement.

### F. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting

requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for small entities.”

The FNPRM seeks comment on a proposed change to the rules covering operation of public safety systems on narrowband spectrum in the 700 MHz band. Specifically, the FNPRM seeks comment on whether the proposed rule changes to section 90.537 of the Commission’s rules will promote efficient use of public safety narrowband spectrum in the band while reducing economic burdens on licensees. For the 700 MHz General Use and State License channels, section 90.537 provides that “[a]ll systems using six or more narrowband channels in the 769–775 MHz and 799–805 MHz frequency bands must be trunked systems, except for those described in paragraph (b) of this section.” In order to strike the proper balance between these two objectives, the FNPRM seeks comment, inter alia, on exempting low power vehicular repeaters from the 700 MHz narrowband trunking requirements. The FNPRM also seeks comment on maximizing interoperability by adopting a list of feature sets and capabilities in radios designed to operate in the conventional mode on the designated 700 MHz narrowband interoperability channels. Currently, the Commission’s rules do not specify feature sets or capabilities that will promote interoperability across vendors and between users. Thus, we seek comment on whether it would be beneficial to incorporate into our rule specific feature sets and capabilities for radios designed to operate on the 700 MHz narrowband interoperability channels.

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

None.

*H. Paperwork Reduction Act of 1995 Analysis*

This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business

Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

**Ordering Clauses**

Accordingly, *It is ordered* that, pursuant to Sections 1, 4(i), 303, 316, 332, 337, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303, 316, 332, 337, 405, this Further Notice of Proposed Rulemaking *is hereby adopted*.

*It is further ordered* that pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission’s rules, 1.415 and 1.419, interested parties may file comments on the NPRM on or before October 26, 2016, and reply comments on or before November 10, 2016.

*it is further ordered*, that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Further Notice of Proposed Rulemaking, including the the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 90**

Radio.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 90 as follows:

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

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

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

■ 2. Amend § 90.537 by revising paragraph (a) to read as follows:

**§ 90.537 Trunking requirement.**

(a) General use and State License channels. All systems using six or more narrowband channels in the 769–775 MHz and 799–805 MHz frequency bands must be trunked systems, except for low power vehicular repeaters (MO3) authorized on General Use and State License channels and those described in paragraph (b) of this section.

\* \* \* \* \*

■ 3. Amend § 90.548 by adding paragraph (d) to read as follows:

**§ 90.548 Interoperability Technical Standards.**

\* \* \* \* \*

(d) Mobile and portable transceivers must at a minimum include the following feature sets and capabilities while operating in the conventional mode in order to be validated for compliance with the Project 25 standards.

(1) A subscriber unit must be capable of issuing an emergency alarm in a conventional system conforming to the following standard: TIA 102.BAAD–A Conventional Procedures, Section 4.2.2., released February 2010.

(2) A subscriber unit must be capable of setting the emergency bit on all voice transmissions to notify units operating on the same channel that the user has declared an emergency situation conforming to the following standard: Project 25 Statement of Requirements, Section 2.1.2.25.1., released December 11, 2013.

(3) A subscriber unit must conform to the unit and accessory mil-spec requirements in accordance with the following standard: Project 25 Statement of Requirements, Sections 1.3.3 through 1.3.3.5., released December 11, 2013.

(4) A subscriber unit must be capable of issuing group calls in a conventional system in conformance with the following standard: Project 25 Statement of Requirements, Section 2.1.2.1., released December 11, 2013.

(5) A subscriber unit must be capable of issuing private calls in a conventional system in conformance with the following standard: Project 25 Statement of Requirements, Section 2.1.2.3., released December 11, 2013.

(6) The three Project 25 standard squelch modes must be supported in conformance with the following standard: Project 25 Statement of Requirements, Section 2.1.2.30, as effective on December 11, 2013.

(7) A subscriber unit must properly implement the special “Reserved” conventional network access code (NAC) and talkgroup in conformance with the following standard: TIA TSB–102.CABA, released October 2010.

(8) A subscriber unit must include “No Call” Talk Group (\$0000) and “All Call” Talk Group (\$FFFF) in conformance with the following standard: Project 25 Statement of Requirements, Section 2.1.2.34., released December 11, 2013.

(9) A subscriber unit must be able to transmit and receive the appropriate status symbols to indicate that a channel is busy in both direct and repeater mode in conformance with the following standard: TIA TSB–102.CABA, released October 2010.

(10) A subscriber units must be compatible with C4FM and CQPSK Modulation in conformance with the following standard: TIA TSB-102.CABA, released December 11, 2013.

(11) A fixed conventional repeater must be able to repeat the correct/matching network access code (NAC) for all subscriber call types (clear and encrypted) using the same output NAC in conformance with the following standard: TIA TSB-102.CABA, released December 11, 2013.

(12) A fixed conventional repeater must be able to repeat the correct/matching network access code (NAC) for all subscriber call types (clear and encrypted) using a different output NAC in conformance with the following standard: TIA TSB-102.CABA, released December 11, 2013.

(13) A fixed conventional repeater must be able to reject (no repeat) all input transmissions with incorrect network access code (NAC) in conformance with the following standard; TIA TSB-102.CABA, released December 11, 2013.

(14) A fixed conventional repeater must be able to support the correct status symbol indicating when an input channel is busy in conformance with the following standard: TIA TSB-102.CABA, released December 11, 2013.

(15) A fixed conventional repeater must be able to support the correct implementation of special reserved network access code (NAC) values \$293, \$F7E, and \$F7F in conformance with the following standard: TIA TSB-102.CABA, released December 11, 2013.

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## SURFACE TRANSPORTATION BOARD

### 49 CFR Parts 1201, 1242

[Docket No. EP 681]

#### Class I Railroad Accounting and Financial Reporting—Transportation of Hazardous Materials

**AGENCY:** Surface Transportation Board.

**ACTION:** Advance notice of proposed rulemaking, withdrawal.

**SUMMARY:** The Surface Transportation Board is withdrawing the advance notice of proposed rulemaking and discontinuing the EP 681 rulemaking proceeding which sought comment on whether and how it should update its accounting and financial reporting for Class I rail carriers to better capture the operating costs of transporting hazardous materials.

**DATES:** The advance notice of proposed rulemaking published on January 5, 2009 (74 FR 248) is withdrawn and the rulemaking proceeding is discontinued on September 22, 2016.

**FOR FURTHER INFORMATION CONTACT:**

Allison Davis at (202) 245-0378. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:** On January 5, 2009, in the above titled docket, the Board issued an Advance Notice of Proposed Rulemaking (ANPR) seeking public comment on whether and how it should update its accounting and financial reporting for Class I rail carriers and refine its Uniform Railroad Costing System (URCS) to better capture the operating costs of transporting hazardous materials. For the reasons stated below, we will discontinue this proceeding.

The Board uses URCS to determine a carrier's variable costs in a variety of regulatory proceedings. The URCS model determines, for each Class I railroad, what portion of each category of costs shown in that carrier's Annual Report to the Board (STB Form R-1) represents its system-average variable cost for that year, expressed as a unit cost. In the ANPR, the Board noted that there may be unique operating costs associated with the transportation of hazardous materials that URCS does not attribute to those movements. As an example, the Board suggested that the transportation of hazardous materials may require carriers to pay high insurance premiums, which would be spread across all traffic of the railroad rather than being attributed specifically to the transportation of the hazardous materials. Additionally, the Board noted that the Uniform System of Accounts (USOA)—the accounting standards which Class I carriers must use to prepare the financial statements that they submit to the Board—does not include a separate classification for hazardous material operations that would allow for an accounting of the assets used and costs incurred in providing such service.

The Board therefore sought comment on “whether and how it should improve its informational tools to better identify and attribute the costs of hazardous-material transportation movements,” including any revisions to the USOA and improvements to the analytic capabilities of URCS. *ANPR*, slip op. at 2. The Board specifically sought comment on several items, including how hazardous material operations and expenses could be reported in a

subschedule of the annual R-1 reports, a specific definition of what should constitute a movement of hazardous material for this purpose, whether that definition should be limited to movements of “Toxic Inhalation Hazards” or not, and the best operating statistic (such as car-miles, revenue ton-miles, or revenue tons of hazardous materials movements) for URCS to use to allocate specified hazardous material costs to individual movements. In response to the ANPR, the Board received comments from multiple stakeholders, as discussed below.<sup>1</sup>

DOT agrees that “additional data should be reported to [USOA] in order to identify and quantify these [hazardous material] costs, and that URCS should attribute these costs to hazmat traffic alone rather than to the entirety of a carrier's business.” (DOT Comment 2.)

AAR, BNSF, CP, and UP generally agree with the Board's stated goals in this proceeding. (AAR Comment 2; BNSF Comment 2, CP Comment 7, 9; UP Comment 7.) However, they also argue that changes to URCS would not sufficiently address the railroad industry's concerns with transporting hazardous material. BNSF and NSR underscore the risk of liability from a catastrophic accident (BNSF Comment 2; NSR Comment 2-3), while UP stresses the importance of fairly apportioning risk across all participants in the supply chain (UP Comment 2). The railroads argue that, even if the Board were to change URCS, they should also be allowed to present the unique costs of transporting hazardous materials in rate proceedings involving hazardous materials. (See AAR Comment 2; CP Comment 3-4, 9; NSR Comment 3; UP Comment 8-9.)

ACC, AECC, and Diversified CPC argue that the Board should not limit a review of URCS by any single issue or commodity, but should instead conduct a broader review of URCS. (ACC Comment 2; AECC Comment 2; Diversified CPC Comment 8.) ACC also argues that the proposed rulemaking would be arbitrary and ill-advised because, while some railroads have faced one-time costs from settlements of claims, the railroads have reported few

<sup>1</sup> The Board received comments from: The American Chemistry Council, the Chlorine Institute, The Fertilizer Institute, and the Edison Electric Institute (collectively, ACC); Arkansas Electric Cooperative Corporation (AECC); the Association of American Railroads (AAR); BNSF Railway Company (BNSF); Canadian Pacific Railway Company (CP); Diversified CPC International, Inc. (Diversified CPC); Norfolk Southern Railway Company (NSR); Union Pacific Railroad Company (UP); and the U.S. Department of Transportation (DOT).