

**PART 140—REIMBURSEMENT****Subpart E—Administrative Settlement Costs—Contract Claims**

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Authority: 23 U.S.C. sections 121.315; 49 CFR 1.48(b); and OMB Circular A-102, Attachment G, Standard 2 (h) and (i).

**Subpart E—Administrative Settlement Costs—Contract Claims****§ 140.501 Purpose.**

This regulation establishes the criteria for eligibility for reimbursement of administrative settlement costs in defense of contract claims on projects performed by a State under Federal-aid procedures.

**§ 140.503 Definition.**

Administrative settlement costs are costs related to the defense and settlement of contract claims including, but not limited to, salaries of a contracting officer or his/her authorized representative, attorneys, and/or members of State boards of arbitration, appeals boards, or similar tribunals, which are allocable to the findings and determinations of contract claims, but not including administrative or overhead costs.

**§ 140.505 Reimbursable costs.**

(a) Federal funds may participate in administrative settlement costs which are:

- (1) Incurred after notice of claim,
- (2) Properly supported,
- (3) Directly allocable to a specific Federal-aid or Federal project,
- (4) For employment of special counsel for review and defense of contract claims, when

- (i) Recommended by the State Attorney General or State Highway Agency (SHA) legal counsel and
- (ii) Approved in advance by the FHWA Division Administrator, with advice of FHWA Regional Counsel, and
- (5) For travel and transportation expenses, if in accord with established policy and practices.

(b) No reimbursement shall be made if it is determined by FHWA that there was negligence or wrongdoing of any

kind by SHA officials with respect to the claim.

**Subpart H—State Highway Agency Audit Expense—Third Party Contract Costs****§ 140.801 Purpose.**

This regulation establishes (a) the State Highway Agency's (SHA) responsibility for the audit of third party contract costs as defined in § 140.805(b) and (b) the reimbursement criteria for Federal participation in project-related audit expenses.

**§ 140.803 Policy.**

Audits are to be performed in accordance with generally accepted auditing standards (as modified by the Comptroller General of the United States) and applicable Federal laws and regulations. The SHA may use other State, local public agency, and Federal audit organizations as well as licensed or certified public accounting firms to augment their audit force.

**§ 140.805 Definitions.**

(a) *Audit.* The review and analysis of cost data, accounting systems, estimating methods, supporting documentation, and other related matters by professional auditors. The depth and extent of audit will vary with the particular circumstances; however, sufficient, competent, and relevant evidence must be obtained to afford a reasonable basis for the auditor's opinions, judgment, conclusions, and recommendations.

(b) *Contract costs.* Project-related costs incurred by railroads; utilities; consultants; governmental instrumentalities; universities; non-profit organizations; construction contractors (force account work); and organizations engaged in right-of-way studies, planning, research or related activities where the terms of a proposal or contract (including lump sum) necessitate an audit. Construction contracts (except force account work) are not included in this group.

**§ 140.807 Reimbursable costs.**

(a) Federal funds may be used to reimburse an SHA for the following types of project-related third party contract audit costs:

- (1) Salaries and wages paid to an SHA's personnel,
- (2) Fringe benefits directly applicable to such reimbursable salaries and wages, and
- (3) Travel and transportation expenses.

(b) Audit charges by licensed or certified public accounting firms are

reimbursable provided that the audit contract has been approved by the Federal Highway Administration (FHWA) Division Administrator.

(c) Expenses incurred under interagency audit service arrangements with other Federal agencies are reimbursable.

Issued on: October 4, 1979.

John S. Hassell, Jr.,  
Deputy Administrator.

[FR Doc. 79-31602 Filed 10-12-79; 8:45 am]

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**Coast Guard****33 CFR Part 117**

[CGD 78-140]

**Drawbridge Operation Regulations; Hackensack River, N.J.**

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

**SUMMARY:** At the request of Bergen County, N.J., and the New York, Susquehanna, and Western Railroad Co., the Coast Guard is changing the regulations governing the Court Street bridge, mile 16.2, and the railroad bridge, mile 16.3, Hackensack River, to provide that the swing span of the Court Street bridge need not open unless advance notice is given from midnight to 8 a.m., and the swing span of the railroad bridge need not open for the passage of vessels. This change is being made because there have been an average of less than one opening per day of the Court Street bridge and the railroad bridge has not opened for the past 10 years. This action will, for the Court Street bridge, relieve the bridge owner of the burden of having a person constantly available to open the draw from midnight to 8 a.m., and for the railroad bridge, relieve the bridge owner of the burden of maintaining the machinery and of having a person available to open the draw.

**EFFECTIVE DATE:** This amendment is effective on November 19, 1979.

**FOR FURTHER INFORMATION CONTACT:** Frank L. Teuton, Jr., Chief, Drawbridge Regulations Branch (G-WBR/73), Room 7300, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-0942).

**SUPPLEMENTARY INFORMATION:** On November 24, 1978, the Coast Guard published a proposed rule (43 FR 54957) concerning this amendment. The Commander, Third Coast Guard District, also published these proposals as a Public Notice dated January 16, 1979. Interested persons were given until

December 27, 1978 and February 16, 1979, respectively, to submit comments.

#### Drafting Information

The principal persons involved in drafting this rule are: Frank L. Teuton, Jr., Project Manager, Office of the Marine Environment and Systems, and Coleman Sachs, Project Attorney, Office of the Chief Counsel.

#### Discussion of Comments

Seven comments were received. Two had no objection to the proposal. Two objected to the proposed two-hour notice requirement from 8 a.m. to 12 midnight for the Court Street bridge. The bridge owner has stated that the draw would open on signal from 8 a.m. to 12 midnight and the two-hour notice provision, as proposed, is not contained in the final rule. Advance notice will only be required from midnight to 8 a.m. Two comments objected to any restriction on the Court Street bridge. In view of the fact that the Court Street bridge has been opened on an average of less than once a day from 1976 to the present the Coast Guard feels that the change adopted will adequately provide for the reasonable needs of navigation.

No objections were received to the proposal to close the railroad bridge at mile 16.3.

In consideration of the foregoing, Part 117 of Title 33 of the Code of Federal Regulations is amended by adding new paragraphs (1-d) and (1-e) immediately after subparagraph (1-c) of § 117.225(f) to read as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.225 Navigable waters in the State of New Jersey; bridges where constant attendance of draw tenders is not required.

(f) \* \* \*

(1-d) *Hackensack River*. The swing span of the Court Street bridge, mile 16.2, shall open on signal from 8 a.m. to midnight. From midnight to 8 a.m. the swing span shall open on signal if at least eight hours notice is given.

(1-e) *Hackensack River*. The swing span of the New York, Susquehanna, and Western railroad bridge, mile 16.3, need not open for the passage of vessels, and paragraphs (b) through (e) of this section shall not apply to this bridge.

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; [33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5)].

Dated: October 5, 1979.

J. B. Hayes, Jr.,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 79-31758 Filed 10-12-79; 8:45 am]

BILLING CODE 4910-14-M

#### 46 CFR Parts 154, 154a

[CGD 74-289]

#### Safety Standards for Self-Propelled Vessels Carrying Bulk Liquefied Gases; Special Interim Regulations for Issuance of Letters of Compliance to Barges and Existing Liquefied Gas Vessels; Correction

AGENCY: Coast Guard, DOT.

ACTION: Correction to final rule.

**SUMMARY:** In FR Doc. 79-13367 appearing at page 25986 in the Federal Register of May 3, 1979, make the following corrections:

1. On page 26012 first column in the paragraph beginning "Liquefied gas means . . .," the word "gauge" is deleted.

2. On page 26013 first column, in § 154.5(c) sub-paragraph designations "(i)" and "(ii)" are corrected to read "(1)" and "(2)."

3. On page 26016 second column, in § 154.230(h) the word "damaged" is corrected to read "damage."

4. On page 26030 third column, in § 154.801(c)(3) the word "relieving" is deleted.

5. On page 26031 second column, in § 154.804(a)(3)(ii) the word "designed" is corrected to read "design."

6. On page 26033 first column, in § 154.1110(h) the dimension "(7.9 ft)" is corrected to read "(8 ft)."

7. On page 26039 first column, § 154.1735(b)(2)(iii) is corrected to read "A safety relief valve set to relieve at 1.77 MPa gauge (256 psig) or less."

8. On page 26044 in the column entitled "Special Requirements", in the list for the cargo Ethylene Oxide, the special requirement "154.1870(a)" is corrected to read "154.1870(a),(b)."

#### FOR FURTHER INFORMATION CONTACT:

Dr. Anthony L. Rowek, Office of Merchant Marine Safety (G-MHM-1/TP14), Rm 1405, Department of Transportation, Transpoint Building, 2100 Second Street, SW., Washington, D.C., 20593 (202-426-1217).

(92 Stat. 1480 (Port and Tanker Safety Act of 1978 (46 U.S.C. 291a); 49 CFR 1.46(n)(4))

Dated: October 5, 1979.

W. D. Markle, Jr.,

Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 79-31759 Filed 10-12-79; 8:45 am]

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#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 90

[PR Docket No. 79-106; FCC 79-584]

#### Changing the Co-Channel Mileage Separation and Frequency Loading Standards for Conventional Land Mobile Radio Systems in the Bands 806-821 and 851-866 MHz

AGENCY: Federal Communications Commission.

**ACTION:** Denial of Petitions seeking release from a reserve allocation of additional frequencies for conventional land mobile radio systems in the bands 806-821 and 851-866 MHz.

**SUMMARY:** The Commission has denied: (1) a Petition filed by Motorola, Inc. for Partial Reconsideration of action taken by the Commission in its Notice of Proposed Rulemaking in Docket No. 79-106 (FCC 79-282, released May 23, 1979) which declined to release from a reserve allocation additional frequencies for use by conventional land mobile radio systems in the bands 806-821 and 851-866 MHz; and (2) a Petition filed by National Association of Business and Educational Radio, Inc. (RM-3403) seeking an Order releasing from a reserve allocation additional frequencies for use by conventional land mobile radio systems in the bands 806-821 and 851-866 MHz.

**DATE:** Non-Applicable.

**ADDRESSES:** Federal Communications Commission, Washington, D.C. 20554

**FOR FURTHER INFORMATION CONTACT:** Lewis H. Goldman, Private Radio Bureau (202) 632-6497.

In the Matter of Amendment of Sections 90.365 and 90.377 of the Commission's rules to change the co-channel mileage separation and frequency loading standards for conventional land mobile radio systems in the bands 806-821 and 851-866 MHz.

In the Matter of Petition for an Order for releasing additional channel pairs from the reserve pool in 800 MHz band.

#### Memorandum Opinion and Order

Adopted: September 25, 1979.

Released: October 10, 1979.

By the Commission: Commissioner Quello absent; Commissioner Washburn dissenting and issuing a statement.

1. The Commission has before it petitions filed by Motorola, Inc., (Motorola) and by the National Association of Business and Educational Radio, Inc. (NABER). Both petitions essentially ask the Commission to release from a pool of radio frequencies in reserve in the 806-821 and 851-866 MHz bands a number of channels for assignment to "conventional" land mobile radio systems<sup>1</sup> in the private land mobile radio services. Motorola's petition is for partial reconsideration in PR Docket No. 79-106,<sup>2</sup> NABER's petition is for rulemaking (RM-3403). Motorola seeks the release of 100 additional channels for conventional systems; NABER asks for 50.<sup>3</sup> The General Electric Company (GE) has filed an opposition to Motorola's petition. Some of the comments filed in PR Docket No. 79-106 also addressed this matter and have been considered.

2. Both petitions are directed to our May 3, 1979 action announced in the Notice of Proposed Rule Making in Docket No. 79-106,<sup>4</sup> where we declined to release additional frequencies for conventional 800-MHz systems,<sup>5</sup> and where we adopted a course of action designed to accommodate present applications for conventional systems on frequencies already allocated for that purpose, and on existing radio systems.<sup>6</sup>

<sup>1</sup>A conventional radio system is defined in our rules as a method of radio "... operation in which one or more radio frequency channels are assigned to mobile and base stations but are not employed as a trunked group." See Section 90.7 of the Commission's Rules. These are the kind of radio systems the Commission has been authorizing in the lower land mobile frequency bands. In the 800-MHz bands, one to five (5) frequency pairs may be assigned to a licensee for conventional system use. Section 90.367. Radio systems requiring more than 5 channels must be trunked.

<sup>2</sup>Amendment of Sections 90.365 and 90.377, Notice of Proposed Rule Making, PR Docket No. 79-106, FCC 79-282, 44 Fed. Reg. 31675 (June 1, 1979).

<sup>3</sup>While one of the petitions is for reconsideration and the other requests rule making, both seek essentially the same substantive relief and both have advanced substantially the same arguments in support of their request. Therefore, we have decided to consider them together.

<sup>4</sup>The Notice proposed the revision of the present co-channel mileage separation and frequency loading standards for conventional land mobile radio systems in the 806-821 and 851-866 MHz bands.

<sup>5</sup>Specifically, with regard to the petitioners' concerns, we stated: "... we reviewed very carefully the option of releasing additional channel pairs from the reserve pool, but have concluded that it would be unwise to do so now because the frequencies in reserve would better be used for the more efficient trunked systems." Notice of Proposed Rulemaking in Docket No. 79-106, 44 Fed. Reg. at 31676.

<sup>6</sup>The Commission in its Notice of Proposed Rulemaking said that: "[a] number of the 150

The petitioners have not directed their attention to the proposed revision of the co-channel mileage separation and frequency loading standards, which is the subject of the Docket, although in separate comments filed in the proceeding they addressed the proposed changes.<sup>7</sup>

3. Briefly, the petitioners argue that the Commission's decision not to release additional frequencies for conventional systems use is "... a major departure from the policies adopted in Docket 18262," *Motorola Petition* at p. 3, and "... contrary to the mandate established in Docket 18262 . . .", *NABER Petition* at p. 3; that such "departure" is not justified; that the program adopted by the Commission at its May 3, 1979 meeting for accommodating the requirements of applicants for conventional systems is not adequate; that the "failure" to release additional channels "... has . . . removed one of the options or choices of systems which were intended to be made available to users in the 800-

conventional channels already assigned, particularly those licensed to operators of Specialized Mobile Radio Systems (SMRS), have additional capacity, even under present frequency assignment standards. In addition, trunked systems which have been authorized and are or will shortly become operational in those areas may be able to accommodate some of the present applicants. Further, some applicants may be able to use channels below 800-MHz, especially if present eligibility restrictions are waived. Finally, in situations where none of the foregoing solutions would be possible or appropriate, the Commission has instructed the staff to consider and grant, upon a proper showing, waiver of the present minimum channel loading standards and other rule restrictions (in accordance with the proposals in this proceeding and subject to its outcome) so as to assign additional users on the present 800-MHz conventional frequencies. These alternatives will be brought to the attention of each of the present applicants by letter. In addition, operators of 800-MHz private radio systems with capacity available in each of the three urban areas will be sent a list of pending applications in the urban area where they operate. This notification procedure will bring the applicants for 800-MHz facilities and the entrepreneurs to each other's attention. With this program we expect to meet the immediate land mobile communications requirements in the three urban areas. However, we plan to watch the progress of this program closely and evaluate its result carefully." *Notice*, 44 Fed. Reg. at 31676.

<sup>7</sup>Motorola has requested partial reconsideration of the Notice of Proposed Rule Making only insofar as it fails to release frequencies from the reserve pool. GE argues that Motorola's petition is procedurally defective because, according to GE, in rule making proceedings reconsideration petitions may be filed only as to "final actions." Section 1.429 of the Rules. Although GE's challenge raises an arguable question, we think that the public interest would be served by considering the petition for reconsideration on the merits, and therefore, to the extent it is necessary, the relevant provisions of Section 1.429 are waived. This is especially appropriate where, as here, the Commission's action announced in its Notice of Proposed Rulemaking was a final action, not subject to further comment in the rulemaking proceeding.

MHz band . . ." *NABER Petition* at p. 4; and that the needs and requirements of the users for land mobile radio communications can only be fully satisfied by the release of the additional channel pairs they have requested.

4. We have considered carefully the petitions and GE's opposition, as well as the comments on this issue filed in PR Docket No. 79-106. In discussing the arguments advanced, we believe it would be appropriate and useful to review the relevant background leading to the Commission's May 3, 1979 decision, particularly those aspects of the Commission's decisions in Docket No. 18262 to which the petitioners refer and on which they have relied heavily for support of their positions.

5. In Docket No. 18262,<sup>8</sup> the Commission reallocated a total of 115 MHz of radio spectrum from the frequency bands between 806 and 947 MHz, primarily to accommodate the requirements for land mobile communications, both private and public. In its *Second Report and Order*, the Commission designated 40 MHz of that spectrum for the development and operation of a nationwide, broadband mobile radiotelephone system employing cellular technology.<sup>9</sup> In addition, the Commission allocated 30 MHz of spectrum for conventional and trunked systems in the private radio services. This 30 MHz of spectrum was divided into 600 two-frequency channels. Of these, 200 channels were designated for trunked systems, 100 channels for conventional systems, and the remaining 300 channels were placed in reserve. In the private radio services, the Commission continued to provide the various options previously available for obtaining radio service (such as individual radio systems for the licensee's exclusive use, sharing the use of a radio system under the various arrangements then available, etc.) and also offered further choices not previously available. The Commission, for example, adopted rules which provide for the authorization of entrepreneurs to establish base station facilities and make their use available to persons eligible in the Public Safety, Industrial, and Land Transportation Radio Services but without imposing

<sup>8</sup>The relevant decisions of the Commission are discussed in the following documents: *First Report and Order and Second Notice of Inquiry in Docket No. 18262*, 35 Fed. Reg. 8644 (June 4, 1970); *Land Mobile Radio Service, Second Report and Order in Docket 18262*, 46 F.C.C. 2d 752 (1974); *Land Mobile Service, Memorandum Opinion and Order in Docket No. 18262*, 51 F.C.C. 2d 945 (1975).

<sup>9</sup>For a description of a cellular system, see *Second Report and Order*, 46 F.C.C. 2d at 753-754 and *Memorandum Opinion and Order*, 51 F.C.C. 2d at 950-956.

common carrier type of regulation on such licensees.<sup>10</sup> The trunked system was the other important system option not previously available. Thus the range of options to eligibles in the private services was significantly enlarged.

6. Further, the regulatory structure followed by the Commission in the allocation of frequencies in the private radio service constituted a drastic departure from earlier approaches in other bands. Prior to Docket No. 18262, the Commission treated land mobile spectrum requirements from a service perspective, allocating spectrum blocks to each of the several radio service categories. In Docket No. 18262, we instead allocated by type of radio "system," and opened all of the available 30 MHz frequencies to all groups of users.

7. The "system" approach, followed not only in the private radio services but also in the common carrier service, was a new and fundamental policy change. It was intended to foster improved spectrum efficiency and high quality service. The cellular system, a sophisticated, high capacity land mobile system, was adopted for the common carrier radio service. It has the potential for serving a large number of users with quality service, and, through its potential for frequency re-use, improving spectrum efficiency.

The multi-channel trunked system provided for the private land mobile radio services is also a sophisticated facility which offers the user a high grade of service because it reduces the waiting time for a free channel as well as the incidence of a "busy" condition.<sup>11</sup>

<sup>10</sup>The radio systems authorized under this option are known as specialized mobile radio systems or SMRS. *Memorandum Opinion and Order*, 51 F.C.C. 2d at 947, Note 9.

<sup>11</sup>The Commission described trunked systems as follows: "The second class of system under consideration is the multi-channel trunked system. This system is similar in concept to so-called community repeaters widely employed in the private dispatch service today except that the users would have access to a number of channels instead of just one. Actual channel access is controlled by a central computer, which gives a user the first available channel or places the user in a waiting line (queue) to be served in turn. This technique provides the user a higher grade of service than is possible in comparably loaded non-trunked systems by reducing the amount of time he must wait for a channel and/or reducing the probability that his call will be blocked. Small scale trunked land mobile systems are presently being used to a limited degree by common carriers providing mobile telephone services in the 450 MHz band. The innovation lies in its intended application to vehicular fleet dispatching and the potential of using many more channels per system than is now possible. As proposed by both General Electric and Motorola, trunked dispatch systems would be suitable either for large single users, cooperative groups of users on a cost-shared basis or commercial operators providing service for hire. The nature of trunked systems makes them particularly suitable for

The final category of system provided for in the 800-MHz band is the basic conventional land mobile system. The conventional system is simpler and cheaper, but results in some loss of traffic efficiency as compared to the trunked and cellular systems. However, the Commission concluded that the conventional system can also be efficient in specific applications and has a definite place in the 800-MHz band along with the other two more sophisticated types of systems.<sup>12</sup> Finally, the Commission decided not to impose common carrier regulation in the private radio services. It determines that the limited entry concept inherent in common carrier regulation was inappropriate for the private radio services, and thus provided for free entry, with a reliance on competitive forces for the regulation of the private land mobile market.

8. There has been no departure from those basic policies. The same choices and options are still available to users of private radio communications. The competitive environment which—as the petitioners point out—the Commission sought to foster, continues to exist, and it has become even more vigorous than originally expected. Radio facilities in the private radio services are being made available free of common carrier type of regulations; this was one of the

... serving different types of users of the same group of channels without interference. With today's single-channel systems it is generally desirable to put similar types of users on the same channels in order to control interference. That approach, however, requires separate allocations of channels for the various classes of users which often leads to spectrum inefficiencies. In the trunked system, different types of users can be intermixed more readily as they operate essentially independently of each other, the computer assigning channels on demand. Once a user is assigned a channel, it is his exclusively for the duration of this call and no one else on the system can listen or interrupt during normal operation." *Second Report and Order*, 46 F.C.C. 2d 752 at 754.

<sup>12</sup>The Commission's description of these systems was: The final category of system proposed for the 900 MHz band is the basic conventional land mobile system in use today in the lower frequency bands. While these systems may also employ one or more channels, their distinguishing feature is manually controlled channel access as opposed to the computer control used in trunked systems. This makes the conventional system simpler and cheaper, but causes some loss of traffic efficiency resulting in either fewer mobiles per channel or lower service quality. The degree of such inefficiency depends largely upon the traffic characteristics of the users. Our analysis would indicate that for a significant segment of the land mobile requirement, particularly where short range, short message communications are involved, the conventional system can be as or more efficient than the trunked system. Therefore, considering its lower cost and greater operational simplicity, the conventional system, we feel, has a definite place in the 900 MHz band alongside the more sophisticated systems described above. *Second Report and Order*, 46 F.C.C. 2d at 754-755.

Commission's major goals in Docket No. 18262. The conventional system option is still available throughout the country, and even in the three largest urban areas (New York City, Chicago, and Los Angeles) where the conventional channels have all been assigned but not totally loaded, substantial additional requirements for conventional systems can be accommodated, particularly under the revised standards adopted in Docket No. 79-106.

9. We view our action not as a departure from the basis policies of Docket No. 18262, but as a necessary pause for the purpose of reviewing our licensing policies to determine whether the radio spectrum allocated in the private services is being used efficiently. Spectrum efficiency was one of the Commission's fundamental goals in Docket 18262 and it remains our goal. Our May 3, 1979 action must be viewed in the context of experience with licensing private radio systems since the conclusion of the proceedings in Docket No. 18262. By the end of 1978, before a single trunked system of the type envisaged by the Commission had become operational, or indeed even authorized, all of the 150 frequency pairs set aside for conventional systems [one quarter of the total of channels available in the private services at 800 MHz] had been assigned in the Los Angeles urbanized area. By mid-1979, these frequencies were also all assigned in the New York and Chicago areas. By May 3, 1979, we had issued 11,353 licenses for conventional systems and 18 licenses for trunked systems. It appears to us that if we had continued to release frequencies for conventional systems simply on demand, we might have "... allow[ed] one system [e.g., the conventional] to dominate the market, where the other [the trunked] might better serve the needs and requirements of [the] users ... ." a consequence the Commission had stated in Docket No. 18262 it wanted to avoid.<sup>13</sup>

10. The requirements for conventional systems have not been neglected. The original 100-channel allocation has been

<sup>13</sup>In Docket No. 18262, the Commission stated: "But, initially, as a matter of policy, we have decided not to authorize, in any one area or region, more than 100 25-kHz channel pairs for conventional use and 200 25-kHz channel pairs for trunked systems. The remaining 300 25-kHz frequency pairs will be temporarily reserved to give us an opportunity to study system development trends in the available spectrum. Further, we do not want to allow one type of system to dominate the market, where the other might better serve the needs and requirements of eligible users. Accordingly, as an interim safeguard, we will impose the restriction mentioned." *Second Report and Order*, 46 F.C.C. 2d at 754-755.

increased by 50%.<sup>14</sup> The Commission, when it allocated the additional channels for conventional use, stated that no more channels would be released for this purpose until the development and practicality of trunked systems for use in the land mobile services were studied and analyzed. The action we have taken in PR Docket No. 79-106 will make the conventional frequencies available to more users, particularly in the more congested urban center where the need for radio communications is greater and where we must see that the limited radio spectrum is used as efficiently as possible through spectrally efficient systems. Because of spectrum scarcity, some of the options for communications service in large urban areas may not always be as available as in lesser populated areas. It is here where we believe we must place more emphasis on spectrally efficient systems in order to accommodate present and future requirements.

11. Accordingly, we reject the petitioners' arguments that our determination not to release more frequencies for conventional systems at this time is a "departure" from or contrary to the "mandate" of the policies the Commission adopted in Docket No. 18262. On the contrary, we believe our decision to pause and to review is consistent with those policies and is dictated by our statutory obligation to assure that the radio spectrum is used efficiently and effectively in the public interest.

12. The petitioners also argue that the Commission was not justified in concluding that trunked systems are "more efficient," that this conclusion was based on erroneous information provided to the Commission by its staff, and that it is a supposition which cannot be supported by either the facts or prior Commission policy. It is true that we have had little experience with trunked radio systems, and therefore do not yet have empirical evidence with respect to their efficiency and effectiveness in the private services. Accordingly, definitive conclusions should not and will not be reached until we have had experience and have gathered empirical information. Our views with respect to the efficiency of trunked systems are based on the conclusions reached by the Commission in Docket No. 18262, where it decided to place "... reliance ..." on trunked systems for accommodating private land mobile communication

requirements,<sup>15</sup> and are supported by long experience in other communication fields. Neither evidence nor analysis has been offered questioning the Commission's conclusions in Docket No. 18262.<sup>16</sup> We therefore hold to our view with respect to the spectrum efficiency of trunked systems. It is emphasized that this is a tentative view which we will modify if our experience with trunked systems indicates the necessity. For the moment, however, we have no basis for changing the conclusion reached in Docket No. 18262 and we adhere to it.

13. It has also been argued that trunked systems are more expensive than conventional systems and are not suitable for all of the land mobile requirements. We recognize that trunking is a complex, sophisticated method of radio operation which may not be appropriate for all land mobile users. It is our view, however, that trunked systems are well suited for the bulk of communication requirements now accommodated by conventional systems. Those requirements are for voice communications covering relatively well defined areas of operation and involving users operating a small number (less than 10) mobile units. Larger users operating fleets of vehicles (such as police departments) can also benefit from trunked systems in terms of efficiency of operation, flexibility, and high quality service.

14. As for costs, we realize that the sophisticated and complex trunked systems are more expensive than conventional systems. Our information indicates that multi-channel mobile units for trunked systems now cost about 10% to 24% more (depending on the manufacturer) than comparable

<sup>15</sup> *Memorandum Opinion and Order*, 51 F.C.C. 2d at 989. Indeed, one of the benefits the Commission expected from the competitive environment it sought to establish was to: "Stimulate the development and production of the spectrally efficient communication systems, particularly 'trunked' systems, on which we have placed great reliance for improved efficiency in the use of the new spectrum. In 'trunked' systems, for example, a 'communication channel' can accommodate more users than in systems authorized in the past. Our loading standards are geared to this. While, for now, we have adopted conservative channel occupancy standards for 'trunked' systems, we expect that, in the future, a greater number of users can be accommodated. This is significant, because radio spectrum is limited; and we have an obligation to see to it that it is used as fully and effectively as possible."

<sup>16</sup> It has been claimed, however, that trunking could result in longer conversation and reduced circuit discipline. This claim is purely conjectural as there is no evidence to support it. Even assuming that conversations do tend to become longer in trunked systems, the matter can be dealt with by the use of timers, audio tones, and other simple technical means and, where appropriate, by rate differentials.

quality conventional mobile units from the same manufacturer. The cost differential should be reduced as the manufacture of trunked equipment progresses from the present stage, as technological developments are incorporated into the design and production of the radio equipment, and as competition increases.

15. Moreover, it is generally recognized that trunked systems offer a higher quality of service, less channel congestion, faster access to the system, simplified radio operation, significant privacy of communications and better reliability, among other benefits.<sup>17</sup> Accordingly, we expect that the additional costs of trunked systems will be outweighed by their significant advantages, and therefore, that higher costs will not substantially inhibit the development and use of these systems.

16. The petitioners argue that the release of additional channel pairs is needed to accommodate the current requirements of users as evinced by pending applications. They also contend that our interim program for accommodating pending applications on existing radio facilities or frequencies already allocated for conventional systems is inadequate.

17. We were certainly aware that not all of the applications pending at the time of our decision (May 3, 1979) would be accommodated on existing frequencies and facilities. We had hoped to at least meet the more urgent requirements of particular users and have met with significant success. For example, 40 of 97 of the applications from Los Angeles applicants then pending have been accommodated,<sup>18</sup> and 25 have been dismissed either at the request of the applicants or for other reasons. Fourteen of the 41 applications from Chicago have been granted and 14 others have been returned, dismissed, or withdrawn by the applicant. In the New York area, we have not been able to accommodate the seven applications submitted as of May 3, 1979. Since then, 38 new applications have been filed from applicants in the Los Angeles area. Of those 6 have been granted and 11 have been dismissed or withdrawn. Three additional applications have been

<sup>17</sup> For a description of the benefits of trunked systems for the private services, see S. Thro, "Trunking—A New System Configuration for Fleet Dispatch Communications," *Conference Record of the Twenty Ninth Annual Conference of the IEEE Vehicular Society* (March 1978).

<sup>18</sup> Among those granted is the application of Medivac, Inc., mentioned by Petitioner NABER.

<sup>14</sup> This was done by *Order*, FCC 78-584, adopted June 21, 1978.

added from Chicago, and two from New York, all of which are still pending.<sup>19</sup>

18. Since our May 3, 1979 action, we have authorized 16 5-channel, 6 10-channel and 3 20-channel trunked systems in the Los Angeles area with combined capacity of nearly 20,000 mobile units. In Chicago, we have authorized 14 5-channel, 3 10-channel, and 3 20-channel trunked systems which can accommodate over 15,000 such mobile units. In New York, 9 5-channel, 5 10-channel and 1 20-channel systems have been authorized with combined capacity for accommodating over 10,000 mobile units.

19. Further, in PR Docket No. 79-106, we have adopted revised co-channel mileage separation and frequency loading standards for conventional 800-MHz channels which will increase the capacity of those frequencies by 30% to 40%.<sup>20</sup> As a further measure, in PR Docket No. 79-191, we have proposed to allocate a total of 50 channels from the reserve pool (10 for conventional systems and 40 for trunked) for use exclusively by large, slow growth systems in the Public Safety services, and by some utilities.

20. We have considered the petitioners' requests for the release of additional frequencies in the light of the arguments presented and the information summarized in the preceding paragraphs. We conclude that it is neither necessary nor desirable to do so at this time. First, there is no need for additional 800-MHz frequencies for conventional radio systems in most parts of the country. The 150 conventional 800-MHz channels have all been assigned only in and near the New York, Chicago, and Los Angeles areas. These areas contain about 26 million people, which is about 12% of the total U.S. population (about 220 million people). Even in those areas there is considerable capacity for additional use, particularly under the revised frequency assignments standards. Furthermore, to the extent that there will be needs which cannot be accommodated on the

<sup>19</sup> The Los Angeles applications (those that were pending as of May 3, 1979, and those filed since then) involved a total of 2,266 mobile units. Of these, the granted applications account for 436, and the pending for 1,284 mobile units. The Chicago applications involved 1,445 mobiles. Of those, 350 have been granted, 316 dismissed and applications for a total 779 mobile units are pending. In New York, the pending applications involve a total of 269 mobile units. This information is from the Commission's files as of September 14, 1979.

<sup>20</sup> This will result as the loading standards will be raised, for example, from 70 to 90 mobile units in the business radio service, and by comparable increases in other services. The 30% to 40% figures were derived from actual computations of the capacity of existing channels under the proposed revised loading standards.

existing conventional channels in these three large cities, trunked systems with capacity to accommodate from 10,000 to almost 20,000 mobile units have now been authorized. We are regularly licensing new users of those trunked systems already authorized and in operation. Therefore, we see no need to allocate additional channels at this time.

21. Moreover, releasing additional channels for use in Los Angeles would make it difficult for us to provide frequency resources for the land mobile communication requirements in Southern California near the Mexican border, including the City of San Diego. No 800-MHz frequencies are available in San Diego and other locations near the border because the necessary coordination with the Mexican government has not been completed. We have assigned 350 800-MHz channels to users in Los Angeles, but unusual radio propagation conditions there raise serious questions as to whether these channels can be reused in the San Diego area. In effect, there are only 200 channels available for use in the San Diego area,<sup>21</sup> some of which may have to be shared with Mexican licensees. We therefore concluded that it is not desirable to release additional channels in the Los Angeles area before the conclusion of negotiations with the Mexican government, and before we determine how the needs for land mobile communications near the border can best be accommodated.

22. While we are not faced with the border problem in the New York and Chicago urbanized areas, we nevertheless believe that release of additional channels there would also be undesirable at this time, particularly since the existing frequencies and the facilities we have already authorized are adequate to accommodate current and near future requirements. A pause here also will give us the opportunity we need to determine how well trunked systems will meet the communications requirements in the private radio services and will allow us to make more informed judgments as to the spectrum efficiency of these systems. We should not lose the opportunity we now have to provide for the use of the remaining frequencies in a manner in which the communication requirements of a larger segment of the public can be met with improved quality of land mobile communications services.

<sup>21</sup> Only 200 channels will be available if we assume that the 350 channels now assigned in Los Angeles cannot be reused in San Diego, and if we exclude the 50 additional channels we have proposed to set aside for slow growth systems in PR Docket No. 79-191.

23. It should be pointed out that we are faced with spectrum scarcity. Nearly 400 of the 600 channels allocated in the private radio service at 800-MHz have already been assigned, and requests are being filed for the unallocated reserve bands between 821 and 947 MHz. It is therefore important that we consider spectrum conservation measures before all of the spectrum is exhausted.

24. For the foregoing reasons, we conclude that the above-described petitions filed by Motorola, Inc., and by the National Association of Business and Educational Radio, Inc., should be denied, and IT IS ORDERED, Pursuant to Sections 303 and 405 of the Communications Act of 1934, as amended, that those petitions are denied.

Federal Communications Commission,\*  
William J. Tricarico,  
Secretary.

**Dissenting Statement of Commissioner Abbott Washburn**

Re: Freeze of Conventional Land Mobile Radio Systems.

Last May I expressed my preference to take care of the backlog of applications by releasing 50 additional channels for conventional use. Today, some four and a half months later, that backlog still exists. Even with the revised loading standards adopted today, companies and government agencies in New York, Chicago and Los Angeles will still not be able to obtain conventional service. By the staff's admission:

"It is true that we have had little experience with trunked radio systems, and therefore do not yet have empirical evidence with respect to their efficiency and effectiveness in the private services. Accordingly, definitive conclusions should not and will not be reached until we have had experience and have gathered empirical information . . ."

In that regard I am glad that the Commissioners will continue to receive monthly reports from the Chief of the Private Radio Bureau and that in six months we will receive a comprehensive update on this entire question. In the meantime users must continue to wait for service.

National priorities for the 1980's place great emphasis on the conservation of gasoline and on increasing productivity in order to fight inflation. Mobile communications are ideally suited to contribute to both these objectives. It is my firm belief that there will be a continuing need for both conventional and trunked private systems as well as for common-carrier-provided mobile telephone service. It is only the individual customer, who is intimately familiar with the myriad of details in his own business and who is responsible for its success, who can make

\*See attached dissenting statement of Commissioner Abbott Washburn.

\*\*Today's Memorandum Opinion and Order in PR Docket 79-106, paragraph 12.

intelligent choices among the mobile communications offerings.

This philosophy permeated our Docket 18262 where, for the first time, we had available sufficient spectrum to make all these opportunities reality and to allow such a broad range of options to customers. It is time to stop wetnursing trunked systems at the expense of user choice. Today we should be utilizing some of these frequencies which are still held in reserve, in order to promote competition between the services. It is not a time to pause and prohibit. Therefore, I must dissent.

[FR Doc. 79-31740 Filed 10-12-79; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 49 CFR Part 301

#### Organization and Delegation of Powers and Duties of the Federal Highway Administration

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment modifies the Part 301.60 by removing certain limitations on the delegation of authority in the Motor Carrier Safety Program provided to Regional Administrators. It is an internal organizational matter within the Federal Highway Administration (FHWA) and has no substantive or procedural effect on any party outside the FHWA.

**EFFECTIVE DATE:** November 14, 1979.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Warren J. Vibbard, Administrative Program Coordinator, Office of Safety, 202-426-0748, or Mr. Gerald Tierney, Attorney, Office of the Chief Counsel, 202-426-0346, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The Federal Motor Carrier Safety Regulations (49 CFR Parts 386, 390-399) provide that enforcement actions may be taken to compel observance of the safety practices set forth, and that criminal prosecutions and civil penalties may be imposed on those violating the regulations. Title 49 CFR, Part 301, provides delegations of authority to various officials in FHWA to take certain enforcement actions. Previously Regional Administrators had authority to initiate, take action, and terminate civil forfeiture proceedings in cases in which claims for under \$25,000 in penalties were to be assessed. For claims above that amount, authority

was vested in the Associate Administrator for Safety and delegable to the Director, Bureau of Motor Carrier Safety. This amendment removes the \$25,000 limitation, and gives the Associate Administrator and Regional Administrator equal authority to proceed in civil forfeiture actions. It is expected this action will result in increased program effectiveness. Since this action effects only the internal authorities and organizations of the FHWA and contains no substantive changes, the notice and comment stages of rulemaking are unnecessary.

Accordingly, 49 CFR Part 301 is amended by revising § 301.60(d)(1)(iv), (d)(1)(v), (d)(2)(i) and (e)(5) as follows:

**§ 301.60 Delegations of authority relating to motor carrier safety.**

(d) \* \* \*

(1) \* \* \*

(iv) Initiate, compromise, suspend, and terminate proceedings commenced by notice of investigation pursuant to 49 CFR 386.11.

(v) Initiate, collect, compromise, suspend, and terminate civil forfeiture claims under 49 U.S.C. 11901(g) and issue consent orders with any settlement agreements.

(2) \* \* \*

(i) Initiate, collect, compromise, suspend, and terminate civil forfeiture claims under 49 U.S.C. 11901(g) and issue consent orders with any settlement agreements.

(e) \* \* \*

(5) Initiate, collect, compromise, suspend, and terminate civil forfeiture claims under 49 U.S.C. 11901(g) and issue consent orders with any settlement agreements.

**Note.**—The Federal Highway Administration has determined that this document does not contain a significant regulation according to the criteria established by the Department of Transportation pursuant to Executive Order 12044. The impact of this rule is so minimal that it does not warrant the preparation of a regulatory evaluation.

(49 U.S.C. sections 304, 1655; 49 CFR 1.48)

Issued on: October 2, 1979.

L. P. Lamm,  
Executive Director.

[FR Doc. 79-31590 Filed 10-12-79; 8:45 am]

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