



Federal Communications Commission
Washington, D.C. 20554

July 27, 2005

Captain Jack Fuechsel, USCG (ret.)
Director, National GMDSS Implementation Task Force
7425 Edgar Street
Springfield VA 22151

RE: Possible Revision or Elimination of Rules Under the Regulatory Flexibility Act, 5 U.S.C. § 610

Dear Captain Fuechsel:

Thank you for your comments on behalf of the National GMDSS Implementation Task Force (Task Force) regarding possible revision or elimination of rules under the Regulatory Flexibility Act of 1980, 5 U.S.C. § 610 (Section 610), which you filed with the Federal Communications Commission on November 14, 2002.¹ Section 610 requires the Commission to undertake a periodic review of rules that might have a significant economic impact on a substantial number of small entities.² Pursuant to this statutory mandate, on September 6, 2002, the Commission issued a *Public Notice* identifying rules that had reached a ten-year benchmark in calendar years 2000, 2001 or 2002, and that have, or might have, a significant economic impact on a substantial number of small entities.³ Among those identified for review, and on which the Commission received comment, were several rules in Part 80 (Stations in the Maritime Services), which generally lie within the subject matter expertise and administrative responsibility of the Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau.

Your comments focused on Sections 80.51, 80.203, 80.836, 80.1091, 80.1101, and 80.1103 of the Commission's Rules.⁴ Consistent with the requirements of Section 610, we have reviewed your comments and have evaluated the rules discussed therein in accord with the five factors set forth in Section 610 to determine which, if any, of the rules may be considered for modification or rescission in order to minimize any significant economic impact of such rules upon a substantial number of small entities.⁵

¹ National GMDSS Implementation Task Force Comments (filed Nov. 14, 2002_.

² See 5 U.S.C. § 610(a).

³ FCC Seeks Comment Regarding Possible Revision or Elimination of Rules Under the Regulatory Flexibility Act, 5 U.S.C. § 610, *Public Notice*, 17 FCC Rcd 16562 (2002), *corrected by erratum*, 17 FCC Rcd 16797 (2002) (*Public Notice*).

⁴ 47 C.F.R. §§ 80.51, 80.203, 80.836, 80.1091, 80.1101, and 80.1103.

⁵ Agencies must consider the following factors in evaluating rules pursuant to Section 610: (1) the continued need for the rule; (2) the nature of complaints or comments received concerning the rule from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. See 5 U.S.C. § 610(b).

By way of background, the Commission has open rulemaking proceedings aimed at ensuring that its Part 80 rules governing the Maritime Radio Services continue to promote maritime safety, maximize effective and efficient use of the spectrum available for maritime communications, accommodate technological innovation, avoid necessary regulatory burdens, and maintain consistency with international maritime standards to the extent consistent with the United States public interest. Based on our review of the information before us and as set forth below, we conclude that the Task Force's proposals are either more appropriately addressed in an open rulemaking proceeding or are now moot because of Commission action occurring after the filing of the subject Section 610 comments.

Section 80.51 – Ship earth station licensing. Among other things, Section 80.51 of the Commission's Rules refers to commissioning certificates issued by INMARSAT.⁶ The Task Force requests that the Commission revise Section 80.51 to remove those references, stating that the language is unnecessary because INMARSAT no longer issues commissioning certificates.⁷ Although Section 80.51 was not identified in the *Public Notice* as a rule subject to the Section 610 review process, we agree with the Task Force that the Commission should consider revising the rule consistent with its proposal. The language concerning INMARSAT commissioning appears to be obsolete, and retaining that language in the rule could engender confusion among earth station licensees, which likely includes small entities. Although Section 80.51 was revised as part of the 2002 *GMDSS Report and Order*,⁸ that revision did not address the concern raised by the Task Force. Accordingly, we will incorporate the Task Force's Section 610 Comments regarding proposed changes to Section 80.51 into this proceeding so that the Commission can consider taking further action on this proposal.

Section 80.203 – Authorization of transmitters for licensing. The Task Force requests that the Commission amend Section 80.203(g) of the Commission's Rules⁹ by removing language in the second sentence of that rule indicating that INMARSAT itself authorizes ship earth station transmitters intended for use in INMARSAT space segment.¹⁰ As its justification, the Task Force explains that while INMARSAT grants ship earth stations approval to access INMARSAT space segment, it no longer

⁶ 47 C.F.R. § 80.51. INMARSAT is a provider of aeronautical mobile satellite service and other mobile satellite services. It is the successor entity to the International Maritime Satellite Organization. The International Maritime Satellite Organization was owned and operated by a consortium comprised of the United States and foreign government post, telephone and telegraph administrations. Historically, INMARSAT issued commissioning certificates for equipment and peripherals that it had approved for operation with the INMARSAT system. INMARSAT was privatized pursuant to, *inter alia*, the Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. 106-180, 114 Stat. 48 (2000), and is now a publicly traded company incorporated and headquartered in the United Kingdom.

⁷ Task Force Comments at 2. The Task Force proposal, if adopted, would simply read, "A ship earth station authorized to operate in the INMARSAT space segment must display the Commission license."

⁸ See Amendment of Parts 13 and 80 of the Commission's Rules Concerning Maritime Communications, *Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 00-48, 17 FCC Rcd 6741, 6766 ¶ 60 (2002) (*GMDSS Report and Order*).

⁹ 47 C.F.R. § 80.203(g).

¹⁰ Task Force Comments at 2. The sentence in question now reads: "Such equipment must be verified in accordance with the technical requirements provided by INMARSAT and must be type approved by INMARSAT for use in the INMARSAT space segment." The Task Force suggests that the sentence be amended to read: "Such equipment must be verified in accordance with the technical requirements provided by INMARSAT and must be type approved for use in the INMARSAT space segment by a notified body designated by INMARSAT, Ltd."

conducts type approval and testing, which are now conducted independently by notified bodies.¹¹ While the current record does not persuade us that the current language in Section 80.203(g) has a significant economic impact on a substantial number of small entities, we appreciate the Task Force's concern. Accordingly, similar to our response to the Task Force's recommendation regarding Section 80.51, incorporation of its Section 610 Comments in the record of the WT Docket No. 00-48 rulemaking will provide the Commission an opportunity to address this issue in the future.

Section 80.1103 – Equipment authorization. Section 80.1103 of the Commission's Rules sets forth the procedures for obtaining authorization of GMDSS equipment.¹² The Task Force proposes that the Commission revise Section 80.1103(c) to reflect that INMARSAT does not currently test proposed equipment or issue equipment type approval certification.¹³ Instead, this approval and testing are conducted independently by other bodies.¹⁴ The Task Force also proposed that the Commission revise Section 80.203(g) of its rules to the same end. Again, we believe that incorporation of the Task Force's Section 610 Comments in the ongoing rulemaking proceeding addressing the Commission's Part 80 rules is the appropriate vehicle for addressing this proceeding.

Section 80.836 – General exemptions. The Task Force recommends that the Commission amend Section 80.836 of the Commission's Rules to eliminate the requirement that certain vessels carry a satellite ship earth station that can provide telex as well as voice service, observing that without such a change the rule would effectively and unnecessarily preclude the use of an INMARSAT Fleet F-77 earth station.¹⁵ In the *GMDSS Report and Order*, Section 80.836 was removed in its entirety, as were most other rules that had been included in Subpart Q of Part 80.¹⁶ Accordingly, this Task Force proposal is moot.¹⁷

¹¹ *Id.*

¹² 47 C.F.R. § 80.1103.

¹³ Task Force Comments at 3.

¹⁴ *Id.*

¹⁵ *Id.* at 2. The INMARSAT Fleet F-77 earth station does not have telex capabilities.

¹⁶ See *GMDSS Report and Order*, 17 FCC Rcd at 6759 ¶ 42; see also *id.* at 6823.

¹⁷ We also observe that the Commission has not endorsed use of INMARSAT F-77, as the Task Force seems to suggest. In the GMDSS rulemaking proceeding, the Commission has invited comment on whether INMARSAT F-77 should be included in the list of ship earth stations that are permitted to be used in lieu of a single sideband radio under 47 C.F.R. § 80.905. See Amendment of Parts 13 and 80 of the Commission's Rules Concerning Maritime Communications, *Second Report and Order*, *Sixth Report and Order*, and *Second Further Notice of Proposed Rule Making*, WT Docket No. 00-48, 19 FCC Rcd 3120, 3160 ¶ 80 (2004) (*GMDSS Second Report and Order*).

Section 80.1091 – Ship radio equipment – Sea areas A1, A2, and A3. Section 80.1091(a)(1)(i) of the Commission’s Rules imposes on specified vessels a requirement to carry an INMARSAT ship earth station capable of transmitting and receiving distress and safety communications using direct-printing telegraphy.¹⁸ The Task Force proposes that the Commission revise this rule to specify that the earth station be capable of transmitting and receiving distress and safety data communications.¹⁹ This change, the Task Force explains, would accommodate the use of the INMARSAT Fleet F-77 earth station, which does not have, nor is required by the International Maritime Organization (IMO) to have, telex capability.²⁰ We believe that this matter is more appropriately raised in the context of the ongoing GMDSS rulemaking, WT Docket No. 00-48, as opposed to the Section 610 review proceeding. In this regard, we note that the Commission has requested comment in the proceeding on the suitability of using the INMARSAT Fleet F-77 earth station in lieu of other equipment that is currently required.²¹ Hence, we do not believe that any further action regarding the Task Force proposal to amend Section 80.1091(a)(1)(i) is warranted at this time.

Section 80.1101 – Performance standards. Section 80.1101 of the Commission’s Rules incorporates by reference into Part 80²² various performance standards established by international standards-setting organizations, such as the IMO, the International Electrotechnical Commission, and the International Radio Consultative Committee.²³ The Task Force proposed revisions to Section 80.1101 to add or update various technical standards.²⁴ From its inception, a key purpose of the GMDSS rulemaking has been to ensure that the Commission’s Rules are appropriately updated to reflect the most recent standards adopted by international bodies.²⁵ Moreover, in the *Second Further Notice of Proposed Rule Making* in the GMDSS rulemaking, released on February 12, 2004, the Commission expressly invited commenters to identify standards that have been revised or updated since the Commission last amended the Part 80 Rules for this purpose.²⁶ Further, we note that the Commission already has incorporated into

¹⁸ 47 C.F.R. § 80.1091(a)(1)(i). A ship earth station is a mobile earth station in the maritime mobile-satellite service located on board a ship. *See* 47 C.F.R. § 80.5. An INMARSAT ship earth station is specifically designed to operate in conjunction with the INMARSAT satellite system. Narrow-band direct-printing is a form of telegraphy used for the transmission and receipt of data communications, including safety-related communications, in the maritime mobile radio service. *See* 47 C.F.R. § 80.219.

¹⁹ Task Force Comments at 2.

²⁰ *Id.* at 3.

²¹ *See GMDSS Second Report and Order*, 19 FCC Rcd at 3160 ¶ 80. In the GMDSS rulemaking proceeding, the Commission has specifically requested comment on whether 47 C.F.R. § 80.905 should be amended to include the INMARSAT Fleet F-77 as one of the types of ship earth stations authorized to be used in lieu of an SSB radio by vessels traveling more than 100 nautical miles from shore. Accordingly, it would be premature to endorse this Task Force proposal to revise Section 80.1091(a)(1)(i) prior to a Commission ruling as to whether the INMARSAT Fleet F-77 ship earth station offers safety features sufficient to justify its use in lieu of an SSB radio on the high seas.

²² 47 C.F.R. Part 80.

²³ 47 C.F.R. § 80.1101.

²⁴ Task Force Comments at 3.

²⁵ *See, e.g.,* Amendment of Parts 13 and 80 of the Commission’s Rules Concerning Maritime Communications, *Notice of Proposed Making and Memorandum Opinion and Order*, WT Docket No. 00-48, 15 FCC Rcd 5942, 5944 ¶ 2 (2000).

²⁶ *See GMDSS Second Report and Order*, 19 FCC Rcd at 3164 ¶ 86.

Section 80.1101 many of the updated standards that the Task Force mentions in its comments in this proceeding, and to that extent its proposals are moot.²⁷ Accordingly, we believe that the GMDSS rulemaking proceeding, WT Docket No. 00-48, is a more appropriate vehicle for further updating the standards in Section 80.1101 as proposed by the Task Force.

Our actions taken herein are without prejudice to the filing of petitions for rulemaking pertaining to these matters.²⁸ This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

Sincerely,

Scot Stone, Deputy Chief
Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau

²⁷ See, e.g., *GMDSS Report and Order*, 17 FCC Rcd at 6836-39 (Appendix B); *GMDSS Second Report and Order*, 19 FCC Rcd at 3189-90 (Appendix B).

²⁸ See 47 C.F.R. § 1.401.