

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

In the Matter of
U.S. Coast Guard Request for Waiver to Permit
Use of Class D VHF Digital Selective Calling
Equipment in Lieu of Class A Equipment
WT Docket No. 16-162

ORDER

Adopted: August 18, 2016

Released: August 19, 2016

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

I. SUMMARY

1. We have before us a request filed by the United States Coast Guard (Coast Guard) for a waiver to permit certain passenger-carrying vessels to carry Class D VHF Digital Selective Calling (DSC) equipment in lieu of Class A equipment. For the reasons set forth below, we grant the request.

II. BACKGROUND

2. DSC is an internationally approved system for automatically contacting vessels which allows mariners to instantly send an automatically formatted distress alert to rescue authorities anywhere in the world and to initiate or receive distress, urgency, safety, and routine radiotelephone calls to or from any similarly equipped vessel or shore station without requiring either party to be near a radio loudspeaker. The Commission's rules require that certain passenger-carrying vessels—specifically, vessels licensed or certificated to carry more than twelve passengers navigating in the open sea (commonly referred to as passenger ships) and vessels that transport more than six passengers for hire while being navigated on the open sea or any adjacent tidewater of the United States (commonly referred to as small passenger vessels)—to carry certain radio equipment, including VHF radiotelephone equipment that includes DSC capability.

1 See Class A VHF-DSC Radio Carriage Requirement Blanket Waiver Request for Coast Guard Inspected Passenger Vessels (filed Mar. 18, 2016) (Request).

2 Amendment of Parts 13 and 80 of the Commission's Rules Concerning Maritime Communications, Fourth Report and Order and Second Memorandum Opinion and Order, 25 FCC Rcd 7781, 7782, n.4 (2010).

3 47 CFR § 80.1085(a).

4 See 47 U.S.C. § 153(46)(B).

5 47 CFR § 80.905(a)(1).

6 Subpart S of the Commission's rules, which includes 47 CFR § 80.901, often is described as governing vessels carrying between seven and twelve passengers for hire. We note, however, that vessels carrying more than twelve passengers that are not subject to Subpart W (which includes 47 CFR § 80.1085(a)) because they sail only in tidedwaters adjacent to the open sea but not in the open sea, also are subject to Subpart S.

7 Until recently, most small passenger vessels were exempt from the VHF-DSC requirement, because the Commission's rules provide that the requirement takes effect one year after Coast Guard notification to the Commission that shore-based Sea Area A1 coverage (Sea Area A1 is an area within the radiotelephone coverage of at least one VHF coast station in which continuous DSC alerting is available, see 47 CFR § 80.1069(a)(1)) has been

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3. Only Class A VHF-DSC equipment meets the Commission's VHF-DSC carriage requirement.<sup>8</sup> Class A equipment is intended for large, ocean-going ships to meet the Global Maritime Distress and Safety System (GMDSS) requirements;<sup>9</sup> Class A VHF-DSC radios meet the GMDSS requirements for all ships. Also available, however, is Class D equipment. Class D VHF-DSC radios are less costly, but are not in conformance with all GMDSS requirements for VHF installations. Class D radios do, however, provide minimum capability for VHF-DSC distress, urgency, and safety communications, as well as routing calling and reception.<sup>10</sup> Ship station licensees currently may request individual exemptions to permit use of a Class D VHF-DSC radio in lieu of a Class A radio.<sup>11</sup>

4. On March 18, 2016, the Coast Guard requested a blanket waiver to permit all passenger ships and small passenger vessels that sail only on domestic voyages, *i.e.*, excluding those sailing on international voyages, to use Class D equipment to satisfy the VHF-DSC carriage requirement, provided that the radio contains integral Global Positioning System (GPS) capabilities or is connected to an electronic position-fixing device. It states that both Class A and Class D radios have the same basic capabilities to send an automatically formatted distress alert to rescue authorities instantly, and to initiate or receive distress, urgency, safety and routine radiotelephone calls to or from any similarly equipped vessel or shore station;<sup>12</sup> and both are sufficient for the Coast Guard's GMDSS-compatible Rescue 21 Distress System.<sup>13</sup>

5. On May 19, 2016, the Wireless Telecommunications Bureau released a Public Notice requesting comment on the Coast Guard petition.<sup>14</sup> Approximately 40 comments were filed, all supporting

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established. 47 C.F.R. § 80.905(a)(1), (3), (4). On January 20, 2015, the Coast Guard notified the Commission that it had declared Sea Area A1 within twenty nautical miles seaward of the territorial baseline along the East, West, and Gulf coasts of the United States, excluding Alaska, and including Hawaii, Puerto Rico, Guam, the Virgin Islands of the United States, and the Northern Mariana Islands of Saipan, Tinian, and Rota. *See Declaration of Sea Area A1*, 80 Fed. Reg. 2722, 2723 (2015) (*Sea Area A1 Declaration*). Consequently, small passenger vessels operating in those waters were required to upgrade to VHF-DSC equipment no later than January 20, 2016. *Fishing Vessels and Small Passenger Vessels in Certain Areas Must Upgrade to VHF Digital Selective Calling Equipment by January 20, 2016*, Public Notice, 30 FCC Rcd 3680, 3680 (WTB MD 2015). Coast Guard Marine Inspectors are issuing notices to small passenger vessels that do not meet the VHF-DSC carriage requirement, allowing the vessels to sail for six to nine months while the deficiency is corrected. *See U.S. Coast Guard Marine Safety and Information Bulletin 15-15 (Rev 1), VHF-DSC Radio Equipment Installation Requirement for Small Passenger and Commercial Fishing Vessels* (Mar. 30, 2016), viewable at [https://www.uscg.mil/msib/docs/015\\_15\\_3-30-2016.pdf](https://www.uscg.mil/msib/docs/015_15_3-30-2016.pdf).

<sup>8</sup> See 47 CFR § 80.1101(c)(2)(ii).

<sup>9</sup> *Amendment of the maritime rules concerning the use of digital selective calling equipment*, Report and Order, 4 FCC Rcd 2030, 2030, para. 5 (1989).

<sup>10</sup> Recommendation ITU-R M.493-14, Digital selective calling system for use in the maritime mobile service, at Annex 2 (09/2015).

<sup>11</sup> *See Wireless Telecommunications Bureau Provides Additional Guidance Regarding January 20, 2016 Deadline for Fishing Vessels and Small Passenger Vessels to Carry VHF Digital Selective Calling Equipment*, Public Notice, 31 FCC Rcd 218, 219 (WTB MD 2016).

<sup>12</sup> *See Request* at 1-2.

<sup>13</sup> *See Petition* at 2. Rescue 21 is the Coast Guard's advanced command, control, and direction-finding communications system that was created to better locate mariners in distress. It is comprised of strategically placed VHF coast stations that provide a continuous watch on DSC Channel 70 for receiving and responding to digital distress signals. *See Sea Area A1 Declaration*, 80 Fed. Reg. at 2733.

<sup>14</sup> *Wireless Telecommunications Bureau Seeks Comment on U.S. Coast Guard Request For Waiver to Permit Use of Class D VHF Digital Selective Calling Equipment in Lieu of Class A Equipment*, Public Notice, 31 FCC Rcd 5271 (WTB MD 2016). Comment also was sought on whether waiver relief should be extended to fishing vessels, *see id.* at 5273, which, like small passenger vessels, were until recently exempt from the VHF-DSC requirement, *see* 47

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the request.

### III. DISCUSSION

6. Section 1.925 of the Commission's rules provides that we may grant a waiver if (a) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and grant of the requested waiver would be in the public interest; or (b) in light of unique or unusual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.<sup>15</sup> For the reasons set forth below, we conclude that grant of the requested waiver is warranted under both prongs of the waiver standard.

7. The purpose of the VHF-DSC carriage requirement for passenger ships and small passenger vessels is to “promote maritime safety by including these vessels in the common GMDSS distress and safety system, benefiting not only the[ir] operators, crew and passengers ... but all GMDSS participating vessels.”<sup>16</sup> The Coast Guard and the commenters agree that Class A and Class D radios provide an equivalent level of safety and are compatible with the GMDSS. Therefore, we conclude that requiring carriage of Class A VHF-DSC equipment to the exclusion of Class D equipment would not serve the rules’ purpose.

8. We also conclude that continuing to require vessels to request individual exemptions to permit use of a Class D VHF-DSC radio in lieu of a Class A radio imposes an undue administrative and financial burden. A number of commenters state that, as small businesses, it is a financial burden to install Class A equipment or to alternatively apply and pay the fee for an individual waiver to use a Class D radio, especially if the business operates multiple vessels.

9. Therefore, we will permit the installation and use of Class D VHF-DSC radio equipment in lieu of Class A equipment by passenger ships and small passenger vessels subject to Subparts W and S, respectively, of Part 80 of our rules, provided that a) the vessel does not make international voyages, and b) the radio contains integral GPS capabilities or is connected to an electronic position-fixing device.

### IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to sections 4(i) and 303(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(i), and section 1.925 of the Commission's Rules, 47 CFR 1.925, that the Class A VHF-DSC Radio Carriage Requirement Blanket Waiver Request for Coast Guard Inspected Passenger Vessels filed by the United States Coast Guard on March 18, 2016, IS GRANTED.

11. 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.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone  
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CFR § 80.1071(c). No commenter addressed this issue, so we take no action at this time regarding the VHF-DSC carriage requirement for fishing vessels.

<sup>15</sup> 47 CFR § 1.925(b)(3); *see also* *WAIT Radio v FCC*, 418 F. 2d 1153, 1159 (D.C. Cir. 1969).

<sup>16</sup> *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, 19 FCC Rcd 3120, 3138, para. 33 (2004).