Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected
	Approximately 115 feet upstream from 11th street.	+5436	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

City of Rio Rancho

Maps are available for inspection at 3900 Southern Blvd, Rio Rancho, NM 87124.

Brown County, South Dakota, and Incorporated Areas
Docket No.: FEMA–B–7473

4th Street Drainageway	Approximately 400 feet downstream of Sixth Street.	+1,295	City of Groton.
	Approximately 200 feet downstream of Sixth Street.	+1,296	
	Approximately 300 feet upstream of 13th Avenue/Highway 12.	+1,302	

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

City of Groton

Maps are available for inspection at City Hall, 204 North Main Street, Groton, South Dakota 57445.

(Catalog of Federal Domestic Assistance No. 97.022, Flood Insurance.)

Dated: September 21, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E7–19681 Filed 10–4–07; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 02–55; FCC 07–167]

Improving Public Safety Communications in the 800 MHz Band; Petitions for Waiver of Bethlehem, Pennsylvania and Reading, PA; Petitions for Waiver of Rockdale County, Newton County, City of Covington, Walton County, and Spalding County, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule; clarification.

SUMMARY: In the *Third Memorandum Opinion and Order,* the Federal Communications Commission finds that Sprint Corporation (Sprint) has not met the December 26, 2006, eighteen-month benchmark for clearing Channel 1–120 incumbents as required by the 800 MHz rebanding process. In that connection, the Commission denies the portion of Sprint's Petition for Reconsideration that sought ''clarification'' of the eighteen-month benchmark. The Commission also establishes additional benchmarks to ensure timely clearing of the Channel 1–120 band by all incumbent licensees, including Sprint itself. The Commission also requires Sprint to provide monthly reports on its channel-clearing efforts. In addition, the Commission clarifies the 30-month rebanding benchmark, which requires all 800 MHz licensees that must reband to have ''commenced'' reconfiguration of their systems by December 26, 2007. Finally, the Commission grants several petitions by NPSPAC licensees to extend their rebanding deadline until after incumbent analog broadcasters operating in their area on TV Channel 69 have vacated the spectrum as part of the DTV transition.

DATES: Effective September 12, 2007.

FOR FURTHER INFORMATION CONTACT: Roberto Mussenden, Policy Division, Public Safety and Homeland Security Bureau, at (202) 418–1428 or *Roberto.Mussenden@fcc.gov;* John Evanoff, Policy Division, Public Safety and Homeland Security Bureau, at (202) 418–0848 or *John Evanoff@fcc.gov.*

SUPPLEMENTARY INFORMATION: This summary of the Commission's Third Memorandum Opinion and Order in WT Docket No. 02–55, adopted on September 11, 2007, and released on September 12, 2007. The full text of this document is available for public inspection on the Commission's Internet site at *http://www.fcc.gov.* It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 488–5300; fax (202) 488–5563; e-mail *FCC@BCPIWEB.COM.*

Background

1. In the 800 MHz Report and Order, 69 FR 67823 (November 22, 2004), the Commission ordered the rebanding of the 800 MHz band to resolve interference between commercial and public safety systems in the band. In that Order, the Commission required Sprint to complete retuning of Channel 1–120 licensees (i.e., licensees operating in the 806–809/851–854 MHz band) in twenty NPSPAC regions within eighteen months of the start of the 36-month rebanding period. In the 800 MHz

Supplemental Order, 70 FR 6758, February 8, 2005, the Commission modified this benchmark to require Sprint to relocate all Channel 1–120 incumbents other than Sprint and SouthernLINC in ''the first twenty NPSPAC Regions the Transition Administrator has scheduled for band reconfiguration.'' The Commission also required Sprint to have initiated retuning negotiations with all NPSPAC licensees in the same twenty regions by the eighteen-month benchmark date.

Discussion

A. Eighteen Month Benchmark

1. Petition for Reconsideration

2. *Petition for Reconsideration.* The Commission denied the portion of Sprint's Petition for Reconsideration that sought ''clarification'' of the eighteen-month benchmark. In a Petition for Reconsideration filed in January 2006, Sprint requested that the Commission ''clarify'' the nature of the eighteen-month rebanding benchmark. Because the Commission found that Sprint's request was more appropriately characterized as a Petition for Reconsideration, the Commission concluded that Sprint's request was time-barred. Even if the Commission considered Sprint's request on the merits, the Commission continued to believe that the eighteen-month benchmark as defined in the *800 MHz Supplemental Order* should be retained.

2. Sprint's Compliance With the Eighteen Month Benchmark

3. *Eighteen Month Benchmark Compliance.* The Commission found that Sprint has not met the December 26, 2006, eighteen-month benchmark for clearing Channel 1–120 incumbents as required by the 800 MHz rebanding process. On January 26, 2007, Sprint filed a report with the Public Safety and Homeland Security Bureau on the status of 800 MHz band reconfiguration and the steps Sprint had taken to meet the eighteen-month benchmark. In its report, Sprint stated that as of the December 26, 2006, benchmark date, it had completed clearing and relocation of all Channel 1–120 incumbents, other than Sprint and SouthernLINC, in 26 of 55 NPSPAC regions, including seven Wave 1 regions, sixteen Wave 2 regions, two Wave 3 regions, and one Wave 4 region. On March 6, 2007, the Bureau requested that the TA certify that Sprint had completed the rebanding activities described in the Sprint Report. On March 20, 2007, the TA filed its certification of Sprint's performance. The Commission concluded that Sprint has not met the first element of the eighteen-month benchmark because as of the benchmark date, Sprint had not fully cleared Channel 1–120 incumbents in all fifteen Wave 1 regions. With regard to the second element of the eighteen-month benchmark, the Commission concluded that Sprint has met this element of the eighteen-month benchmark.

4. In the *800 MHz Report and Order,* the Commission stated that if Sprint failed to meet the eighteen-month benchmark ''for reasons that [Sprint], with the exercise of due diligence could reasonably have avoided, the Commission may consider and exercise any appropriate enforcement action within its authority, including assessment of monetary forfeitures or, if warranted, license revocation.'' While the Commission deferred consideration of monetary forfeitures and license revocation at this time, the Commission concluded that it is in the public interest to adopt additional benchmarks to ensure that Sprint supports continued progress in rebanding and a smooth transition for critical public safety communications systems. Establishing such benchmarks will also provide important guidance to all stakeholders and will enhance the Commission's ability to monitor and enforce progress as rebanding moves into its later stages.

B. Additional Benchmarks

5. The Commission established additional benchmarks to ensure timely clearing of the Channel 1–120 band by all incumbent licensees, including Sprint itself. First, with limited exceptions noted below, we require Sprint to complete relocation of all non-Sprint, non-SouthernLINC Channel 1–120 incumbents in all regions in Waves 1 through 3, and in the non-border regions of Wave 4, by December 26, 2007. The Commission excluded from this benchmark those Stage 1 licensees that also have NPSPAC facilities and that have elected to relocate both their Channel 1–120 and NPSPAC facilities in Stage 2. The Commission will also not require Sprint to complete Stage 1 clearing in Puerto Rico by the benchmark date, because the Puerto Rico band plan is currently being revised. Finally, as discussed below, beginning on October 1, 2007, the Commission will require Sprint to provide a monthly update on its progress toward completing Channel 1–120 clearing.

6. Second, the Commission also imposed benchmarks with respect to the clearing of Channel 1–120 spectrum used by Sprint and SouthernLINC. These benchmarks are essential to clear the Channel 1–120 spectrum for timely relocation by NPSPAC, and to eliminate any incentive for Sprint to delay rebanding in order to continue using 800 MHz spectrum designated for public safety as part of its own network. First, FRAs between Sprint and relocating NPSPAC licensees must provide for timely clearing of the necessary spectrum by Sprint to facilitate NPSPAC relocation. The *800 MHz Report and Order* requires Sprint to cease using Channel 1–120 channels to accommodate NPSPAC relocation. To ensure that this clearing process occurs in a timely manner, in any case in which a NPSPAC licensee requests access to spectrum in the new NPSPAC band because it requires the spectrum for testing purposes or to commence operations, Sprint must clear the necessary channels within 90 days of the request. For any request made on or after January 1, 2008, Sprint must clear the necessary spectrum within 60 days of the request.

7. The Commission recognized that imposing this requirement will require Sprint to implement channel swaps and other adjustments to its own network, which could have an impact both on Sprint's network capacity and on other NPSPAC licensees in the area. The Commission emphasized that the spectrum requirements of NPSPAC licensees take precedence over Sprint network capacity issues, and that Sprint is responsible for ensuring that other NPSPAC licensees do not experience harmful interference as a result of Sprint's own network modifications. The Commission noted that Sprint has had ample opportunity to plan for these contingencies and that the Commission has also established mechanisms that enable Sprint to prepare for and mitigate spectrum shortfalls it may experience in accommodating rebanding by other licensees, e.g., by providing access to 900 MHz spectrum and crediting Sprint for the cost of constructing additional cell sites to increase capacity.

8. The Commission also affirmed that the Commission's orders require Sprint to vacate the entire Channel 1–120 band, other than in Wave 4 border areas, by the end of the 36-month transition period on June 26, 2008. The *800 MHz Report and Order* stated that ''we require Nextel to vacate all of its spectrum holdings below 817 MHz/862 MHz'' as part of the transition process. This also requires Sprint to clear all of SouthernLINC's Channel 1–120 holdings by June 26, 2008, and provide for SouthernLINC's relocation to comparable spectrum. The Commission emphasized that Sprint must clear its Channel 1–120 holdings by the June 2008 deadline regardless of whether all

NPSPAC licensees in a given region are prepared to relocate within that time frame. In that connection, the Commission disagreed with Sprint's contention that requiring it to vacate spectrum by June 2008 ''would seriously harm public safety'' and ''squander scarce spectrum resources.''

9. Nevertheless, in the event that the Commission were to grant any NPSPAC licensee a waiver allowing it to relocate to the new NPSPAC band after June 26, 2008, the Commission stated that it will allow Sprint to petition to remain temporarily on the Channel 1–120 channels that it would otherwise have to vacate to accommodate the NPSPAC system. In any such petition, Sprint must demonstrate that public safety will not be adversely affected by the extension, that it has no reasonable alternative, and that the extension is otherwise in the public interest. Any extension granted to Sprint under this procedure will require Sprint to relinquish the channels on 60 days notice by the NPSPAC licensee as described in paragraph 23 above. The Commission also emphasized that Sprint may not under any circumstances remain on any Channel 1–120 channel once the corresponding channel in the 821–824/866–869 MHz band becomes available to it. For example, if a channel in the 821–824/866–869 MHz band is currently unoccupied by a NPSPAC licensee, and the channel becomes available to Sprint after June 26, 2008, Sprint may not continue to use the corresponding Channel 1–120 channel, even though the channel is not needed to accommodate a relocating NPSPAC licensee.

10. The Commission also affirmed that Sprint must vacate all of its remaining spectrum in the interleaved portion of the 800 MHz band, as well as the Expansion Band and Guard Band, by June 26, 2008, except in Wave 4 border areas, regardless of any other rebanding contingency. Sprint has already vacated some spectrum in these portions of the band to accommodate relocation of Stage 1 licensees from Channels 1–120. Prior to June 26, 2008, Sprint may continue to use its spectrum in the interleaved, Guard, and Expansion Bands to the extent it is not needed for relocation of other licensees. However, Sprint must clear this remaining spectrum by the end of the transition on June 26, 2008 because the channels that Sprint vacates will revert to the Commission for re-licensing, and public safety will have exclusive access to the vacated interleaved channels for a three-year period after rebanding is completed in each region.

11. To assist in monitoring and enforcing each of the band-clearing conditions imposed on Sprint, as set forth above, the Commission required that beginning on October 1, 2007, Sprint file monthly reports with the TA and PSHSB on its clearing of the Channel 1–120 spectrum. These reports are intended to provide specific, verifiable information to allow us to monitor Sprint's progress and determine whether it is in compliance with each of the benchmarks and conditions of this order, as well as with other applicable provisions of the 800 MHz rebanding rules. Specifically, Sprint must include the following information in each monthly report with respect to clearing of Channels 1–120. This information must be provided separately for each NPSPAC region:

(1) The number of non-Sprint, non-SouthernLINC licensees that have been cleared from Channels 1–120, and the number that remain to be cleared;

(2) For each region in which SouthernLINC operates, the number of SouthernLINC channels in the Channel 1–120 band that have been cleared, and the number that remain to be cleared;

(3) The number of Channel 1–120 channels that are being used by Sprint in its own network, and the number of Channel 1–120 channels that Sprint has vacated; and

(4) The identity of each NPSPAC licensee that has requested that Sprint vacate Channel 1–120 channels, the date of the licensee's request, the number of channels that Sprint has been asked to vacate, and the date proposed by the licensee for Sprint to vacate the specified channels.

12. These monthly reports by Sprint will assist the Commission in monitoring Sprint's compliance with its Stage 1 implementation obligations, but will also provide important information relevant to the progress of Stage 2 rebanding of NPSPAC licensees. This reporting requirement is imposed as a separate condition on Sprint's licenses as modified in the Commission's orders in this proceeding. To the extent that Sprint fails to satisfy this reporting requirement, the Commission may consider any appropriate enforcement action within its authority, including but not limited to revocation of Sprint's modified licenses. Sprint also remains subject to all prior requirements and license conditions adopted in this proceeding.

C. 30-Month Benchmark

13. The Commission clarified the 30-month rebanding benchmark, which requires all 800 MHz licensees that must reband to have ''commenced'' reconfiguration of their systems by December 26, 2007. The *800 MHz Report and Order* established a 30-month benchmark for the 800 MHz rebanding process. Specifically, the Commission required that all 800 MHz systems ''must have commenced reconfiguration within 30 months of the Commission Public Notice announcing the start date of reconfiguration in first NPSPAC region.'' Under the rebanding schedule, this 30-month date falls on December 26, 2007. To ensure that all parties take the necessary steps to meet this benchmark, the Commission provided the following guidance.

14. First, in a companion Public Notice released on September 12, 2007, the Commission adopted new timelines for non-border area NPSPAC licensees to complete planning and FRA negotiations and to begin rebanding implementation. Licensees who are in compliance with these timelines as of December 26, 2007 will be deemed to be in compliance with the 30-month benchmark. The Commission will apply the benchmark to all Wave 1–3 licensees and to all Wave 4 licensees that have received frequency assignments from the TA as of September 12, 2007, the release date of this order. However, the Commission will not apply this benchmark to Wave 4 licensees that have not received frequency assignments because their systems are in border regions affected by ongoing negotiations with Canada and Mexico. The Commission, however, will establish an appropriate implementation benchmark for Wave 4 licensees at a later date. Finally, the Commission directed the TA to submit a report to the Public Safety and Homeland Security Bureau by January 15, 2008 regarding whether the 30-month benchmark as defined above has been met. The TA report should certify whether all covered licensees have complied with the timelines set forth in the Public Notice, and identify all cases in which the timelines have not been met.

D. Rebanding in Markets With Channel 69 Incumbents

15. The Commission granted several petitions by NPSPAC licensees to extend their rebanding deadline until after incumbent analog broadcasters operating in their area on TV Channel 69 have vacated the spectrum as part of the DTV transition. Two NPSPAC licensees in eastern Pennsylvania and four NPSPAC licensees in the Atlanta, Georgia area have filed requests for extension of the June 26, 2008 rebanding deadline based on their proximity to incumbent full power analog TV broadcasters WFMZ–TV and

WUPA, operating on Channel 69 (800–806 MHz) in Allentown, Pennsylvania and Atlanta, respectively. These NPSPAC licensees (collectively, Petitioners) expressed concern that if they retune to the new NPSPAC band (806–809 MHz) before the February 17, 2009 DTV transition date, they will receive out-of-band emission (OOBE) interference on their new NPSPAC channels from the Allentown and Atlanta Channel 69 incumbents. The Commission granted Petitioners' requests in part and will allow them to delay the commencement of their infrastructure retune until March 1, 2009. However, the Commission directed Petitioners to proceed with (and Sprint to pay for) planning and other preparatory rebanding activity (e.g., replacement and reprogramming of mobiles) that can occur prior to the DTV transition date.

16. Finally, the Commission delegated authority to the Public Safety and Homeland Security Bureau to consider future requests by 800 MHz licensees to extend the 36-month deadline as it applies to the rebanding of their particular systems. The Commission directed the Bureau to subject such extension requests to a high level of scrutiny. Licensees submitting requests to the Bureau will be expected to demonstrate that they have worked diligently and in good faith to complete rebanding expeditiously, and that the amount of additional time requested is no more than is reasonably necessary to complete the rebanding process.

Ordering Clauses

17. Accordingly, *it is ordered* that, pursuant to sections 4(i), 303(f), 309, 316, 332, 337 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f), 309, 316, 332, 337 and 405, this Third Memorandum Opinion and Order is hereby adopted.

18. *It is further ordered* that the Petition for Reconsideration filed by Sprint Nextel Corporation, on January 27, 2006 is dismissed to the extent described herein.

19. *It is further ordered* that, as a condition of its 800 MHz and 1.9 GHz modified licenses, Sprint Corporation shall comply with the benchmarks and reporting requirements set forth herein.

20. *It is further ordered* that the 800 MHz Transition Administrator, on January 15, 2008, shall submit a report on the progress of band reconfiguration to the extent described herein.

21. *It is further ordered* pursuant to the authority of section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and sections 1.925 of the Commission's Rules, 47 CFR 1.925 that the Requests for Waiver submitted by the Cities of Bethlehem and Reading, Pennsylvania, and Covington, Georgia, and the Counties of Rockdale, Newton, Walton, and Spalding, Georgia, in the above-captioned proceeding are granted to the extent described herein.

22. This document does not contain new or modified information collection requirements 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).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–19641 Filed 10–4–07; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

RIN 1018–AV10

Migratory Bird Permits; Removal of Migratory Birds From Buildings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, change the regulations governing migratory bird permitting. We amend 50 CFR part 21 to allow removal of migratory birds (other than federally listed threatened or endangered species, bald eagles, and golden eagles) from inside buildings in which the birds may pose a threat to themselves, to public health and safety, or to commercial interests.

DATES: This rule is effective on November 5, 2007.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, at the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4501 North Fairfax Drive, Room 4091, Arlington, Virginia 22203–1610.

FOR FURTHER INFORMATION CONTACT: George T. Allen, Wildlife Biologist, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703–358–1825.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service is the Federal agency delegated the primary responsibility for managing migratory birds. The delegation is authorized by the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Soviet Union (Russia). Raptors (birds of prey) are afforded Federal protection by the 1972 amendment to the Convention for the Protection of Migratory Birds and Game Animals, February 7, 1936, United States-Mexico, as amended; the Convention between the United States and Japan for the Protection of Migratory Birds in Danger of Extinction and Their Environment, September 19, 1974; and the Convention Between the United States of America and the Union of Soviet Socialist Republics (Russia) Concerning the Conservation of Migratory Birds and Their Environment, November 26, 1976. A list of migratory bird species protected by the MBTA can be found at 50 CFR 10.13.

To simplify removal of migratory birds from buildings in which their presence may be a threat to the birds, to public health and safety, or to commercial interests, we will allow the removal of any migratory bird, except a threatened or endangered species, a bald eagle, or a golden eagle, from the inside of any building in which a bird might be trapped, without requiring a migratory bird permit to do so. The bird must be captured using a humane method and, in most cases, immediately released to the wild. This regulation does not allow removal of birds or nests from the outside of buildings without a permit. Removal of active nests from inside buildings must be conducted by a federally permitted migratory bird rehabilitator.

This regulatory addition will facilitate removal of birds from buildings, which would otherwise require a migratory bird permit. Our changes are detailed below in the Regulation Promulgation section of this document.

What Comments on the Proposed Rule Did We Receive?

We received six sets of comments on the proposed rule. The comments raised relatively few issues, which we discuss here.

Issue: One commenter believed that the rule should include bird nests.

Response: Removal or destruction of nests of most species of birds when the nests are not in use is allowed. With this regulations change, an active nest may