

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MB Docket No. 08-132, adopted January 26, 2009, and released January 29, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-478-3160 or via e-mail <http://www.BCPIWEB.com>. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any 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). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

#### List of Subjects in 47 CFR Part 73

Television, Television broadcasting.  
 ■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

#### § 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under New Mexico, is amended by adding DTV channel 12 and removing DTV channel 20 at Clovis.

Federal Communications Commission.

**Clay C. Pendarvis,**  
*Associate Chief, Video Division, Media Bureau.*

[FR Doc. E9-2572 Filed 2-5-09; 8:45 am]

**BILLING CODE 6712-01-P**

#### FEDERAL COMMUNICATIONS COMMISSION

##### 47 CFR Part 90

[WT Docket No. 02-55; FCC 08-276]

##### Improving Public Safety

##### Communications in the 800 MHz Band; County of Chester, PA and Sprint Nextel Corporation; City of Chesapeake, VA and Sprint Nextel Corporation

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** On December 23, 2008, the Commission addressed the June 25, 2008 request by Sprint Nextel Corporation (Sprint) to defer the 800 MHz rebanding financial "true-up" process until after rebanding is completed. The Commission concluded that the true-up should be deferred until additional progress in rebanding has occurred, and therefore postponed the true-up date from December 26, 2008 to July 1, 2009. The Commission also directed the 800 MHz Transition Administrator (TA) to file a report by May 1, 2009, with its recommendation on whether the true-up should be conducted on July 1, 2009 or postponed to a later date.

**DATES:** Effective February 6, 2009.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Joy Ragsdale, Policy Division, Public Safety and Homeland Security Bureau, (202) 418-0838; John Evanoff, Policy Division, Public Safety and Homeland Security Bureau.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Fourth Memorandum Opinion and Order*, FCC 08-276, released on December 23, 2008. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (800)

378-3160 or (202) 863-2893, facsimile (202) 863-2898, or via e-mail at <http://www.bcpweb.com>. It is also available on the Commission's Web site at <http://www.fcc.gov>.

In the *800 MHz Report and Order*, 69 FR 67823, November 22, 2004, the Commission ordered rebanding of the 800 MHz band to resolve interference between commercial and public safety systems in the band. The Commission required that band reconfiguration in non-border regions be completed in 36 months. The Commission further ordered the TA to perform a financial reconciliation or "true-up" six months after the 36-month transition period ended, *i.e.*, 42 months after the start of rebanding. The purpose of the true-up is to assess Sprint's total creditable rebanding costs for both 800 MHz rebanding and relocating of Broadcast Auxiliary Service (BAS) licensees in the 1.9 GHz band, and to compare these costs to the value of the 1.9 GHz spectrum that the Commission awarded to Sprint. If the value of the 1.9 GHz spectrum exceeds Sprint's creditable costs, Sprint must pay the difference to the U.S. Treasury as an "anti-windfall" payment. The 36-month rebanding period established by the *800 MHz Report and Order* expired on June 26, 2008. Accordingly, under the currently applicable timetable, the true-up must occur no later than six months after that date, or by December 26, 2008.

On December 23, 2008, the Commission addressed the June 25, 2008 request by Sprint Nextel Corporation (Sprint) to defer the 800 MHz rebanding financial "true-up" process until after rebanding is completed. The Commission concluded that the true-up should be deferred until additional progress in rebanding has occurred, and therefore postponed the true-up date from December 26, 2008 to July 1, 2009. The Commission also directed the 800 MHz Transition Administrator (TA) to file a report by May 1, 2009, with its recommendation on whether the true-up should be conducted on July 1, 2009 or postponed to a later date.

The Commission also addressed several pending petitions for reconsideration or review of prior rebanding orders and public notices. First, the Commission denied two petitions that seek reconsideration of its decision in the *Second Memorandum Opinion and Order*, 72 FR 39756, July 20, 2007, in this proceeding requiring parties to bear their own costs in rebanding-related litigation before the Commission. Second, the Commission exercised its discretion to treat two pending petitions for de novo review

filed by Sprint against Chesapeake, Virginia, and Chester County, Pennsylvania, as applications for review for purposes of resolving questions of law, and the Commission allowed the parties to file oppositions and replies as provided under the Commission's application for review procedures. Third, the Commission denied a petition for reconsideration that alleges that the Commission's *Public Notice* released on September 12, 2007, 72 FR 55208, September 28, 2007, to expedite the rebanding process imposed unreasonable new regulatory burdens on 800 MHz licensees. Finally, the Commission delegated authority to the Public Safety and Homeland Security Bureau (PSHSB or Bureau) to develop a rebanding plan for the U.S. Virgin Islands based on a proposal submitted by the TA.

## Procedural Matters

### A. Final Regulatory Flexibility Analysis

The Final Regulatory Flexibility Analysis required by section 604 of the Regulatory Flexibility Act, 5 U.S.C. 604, is included in Appendix A of the *Fourth Memorandum Opinion and Order*.

### B. Final Paperwork Reduction Act of 1995 Analysis

The *Fourth Memorandum Opinion and Order* 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 burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198.

## Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria

established by the Small Business Administration (SBA). Consistent with what we describe below, we certify that the actions in this *Fourth Memorandum Opinion and Order* will not have a significant economic impact on a substantial number of small entities.

Because the Commission's decision is limited to reporting requirements applicable to Sprint and the TA and affects no other entity, and because the Commission's decision concerning Sprint merely extends the status quo, the Commission certifies that its decision will not have a significant economic impact on a substantial number of small entities. All other issues do not raise regulatory flexibility issues because the Commission's actions deny petitions for reconsideration, defer action on certain petitions for de novo review and afford certain parties an opportunity to file oppositions and replies as provided under our application for review procedures, or internally delegate authority, and therefore do not raise any regulatory flexibility issues. The Commission will send a copy of the *Fourth Memorandum Opinion and Order*, including a copy of this Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA, and will be published in the **Federal Register**. Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E9–2568 Filed 2–5–09; 8:45 am]

**BILLING CODE 6712–01–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 216

[Docket No. 0808041027–9041–02]

**RIN 0648–AX08**

### Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Space Vehicle and Test Flight Activities from Vandenberg Air Force Base (VAFB), California

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS, upon application from the U.S. Air Force (USAF), is issuing regulations to govern the unintentional taking of marine mammals, by harassment, incidental to launching

space launch vehicles, intercontinental ballistic and small missiles, and aircraft and helicopter operations at VAFB for the period February 2009 through February 2014. The USAF's activities are considered military readiness activities pursuant to the Marine Mammal Protection Act (MMPA), as amended by the National Defense Authorization Act of 2004 (NDAA). These regulations, which allow for the issuance of “Letters of Authorization” (LOAs) for the incidental take of marine mammals during the described activities and specified time frames, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking.

**DATES:** Effective February 7, 2009, through February 7, 2014.

**ADDRESSES:** A copy of the USAF's application, which contains a list of references used in this document, and NMFS' Final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) may be obtained by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resource, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, by telephoning the contact listed under **FOR FURTHER INFORMATION CONTACT**, or on the Internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>.

Documents cited in this final rule may also be viewed, by appointment, during regular business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:**

Candace Nachman, Office of Protected Resources, NMFS, (301) 713–2289, ext. 156, or Monica DeAngelis, Southwest Regional Office, NMFS, (562) 980–3232.

**SUPPLEMENTARY INFORMATION:**

#### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings may be granted if NMFS finds that the taking will have a negligible impact on