

that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 8, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

Dated: May, 25, 2011.

**Dennis J. McLerran**,  
*Regional Administrator, Region 10.*

40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

■ 1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart N—Idaho**

■ 2. In § 52.670(c), the table in paragraph (c) is amended:

- a. By revising entries 006 and 007.
- b. By revising entry 651.
- c. By adding entries 665 through 668.

**§ 52.670 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

**EPA-APPROVED IDAHO REGULATIONS**

State citation	Title/subject	State effective date	EPA approval date	Explanations
<b>Idaho Administrative Procedures Act (IDAPA) 58.01.01—Rules for the Control of Air Pollution in Idaho</b>				
* .....	* .....	* .....	* .....	* .....
006 .....	General Definitions	3/30/07 4/11/06, 7/1/02, 4/5/00, 3/20/97, 5/1/94.	6/9/11 [Insert page number where the document begins].	Except Section 006.55(b) (re: state air toxics in definition of "modification").
007 .....	Definitions for the Purposes of Sections 200 through 225 and 400 through 461.	3/30/07, 4/11/06, 4/5/00, 6/30/95, 5/1/95, 5/1/94.	6/9/11 [Insert page number where the document begins].	
* .....	* .....	* .....	* .....	* .....
651 .....	General Rules .....	3/30/07, 5/1/94 .....	6/9/11 [Insert page number where the document begins].	
665 .....	Regional Haze Rules.	3/30/07 .....	6/9/11 [Insert page number where the document begins].	
666 .....	Reasonable Progress Goals.	3/30/07 .....	6/9/11 [Insert page number where the document begins].	
667 .....	Long-Term Strategy for Regional Haze.	3/30/07 .....	6/9/11 [Insert page number where the document begins].	
668 .....	BART Requirement for Regional Haze.	3/30/07 .....	6/9/11 [Insert page number where the document begins].	
* .....	* .....	* .....	* .....	* .....

[FR Doc. 2011-14204 Filed 6-8-11; 8:45 am]  
BILLING CODE 6560-50-P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 2, 80 and 90**

[WT Docket No. 04-344; FCC 11-80]

**Maritime Communications**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission or FCC) denies a petition for reconsideration of the period in which inland VPCSA incumbents must vacate Channel 87B, and declines to extend this period generally to non-AIS operations because such an extension would undermine the primary goal of this proceeding. Further, the Commission determines that rechannelizing the VPC frequency band

in order to facilitate more efficient spectrum usage is beyond the scope of this rulemaking proceeding.

**DATES:** Effective July 11, 2011.

**FOR FURTHER INFORMATION CONTACT:**

Jeffrey Tobias, *Jeff.Tobias@FCC.gov*, Wireless Telecommunications Bureau, (202) 418-1617, or TTY (202) 418-7233.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's *Memorandum Opinion and Order (MO&O)* in WT Docket No. 04-344, FCC 11-80, adopted on May 24, 2011, and released on May 26, 2011. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by sending an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or by calling the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

1. AIS, which is used to monitor and track maritime traffic for purposes of both navigational safety and homeland security, is a global maritime navigation safety communications system through which marine vessels automatically transmit navigational data to appropriately equipped shore stations, other ships, and aircraft. The International Telecommunication Union has designated VHF maritime Channel 87B for AIS use in international waters. In the *Report and Order*, published at 71 FR 60067, October 12, 2006, in this proceeding, the Commission designated Channel 87B for exclusive AIS use only in the nine maritime VPCSA's. Because the majority of the commenters favored designating Channel 87B for exclusive AIS use nationwide, the Commission invited comment in the *Further Notice of Proposed Rule Making (Further NPRM)*, published at 71 FR 60102, October 12, 2006, on whether to extend the AIS designation to the thirty-three inland VPCSA's. In the *Second Report and Order*, published at 74 FR 5117, September 29, 2009, the Commission concluded that it would serve the public interest to designate Channel 87B for exclusive AIS use on a nationwide basis. The Commission required inland VPCSA licensees to vacate Channel 87B within two years after the effective date of the redesignation of Channel 87B.

2. Two duplex VPC channels had been set aside for public safety interoperability in each inland VPCSA. Specifically, Channel 25 (157.250/161.850 MHz) was set aside in each inland VPCSA, and either Channel 84 (157.225/161.825 MHz) or Channel 85 (157.275/161.875 MHz) was also set aside in each inland VPCSA. The Commission determined in the *Second Report and Order* that it was appropriate to redesignate Channels 84 and 85 for use by inland VPC licensees. PacifiCorp, among other commenters, specifically requested this additional VPC spectrum. The Commission grandfathered the public safety incumbents on Channels 84 and 85 for fifteen years following the effective date of the redesignation of Channel 87B. The Commission recognized that, with the inland VPCSA licensees having to vacate Channel 87B within two years while the public safety incumbents could remain on Channels 84 and 85 for fifteen years, there would be a period during which some inland VPCSA incumbents would have to protect incumbent public safety operations on Channel 84 or 85.

3. PacifiCorp argues that allowing public safety incumbents to remain on Channels 84 and 85 for up to fifteen years while mandating that inland VPCSA licensees migrate to those channels within two years significantly undermines the ability of certain geographic area licensees on VPC Channel 87, such as PacifiCorp, to make a seamless transition to replacement Channels 84 and 85. It requests that the Commission extend the grandfathering period for inland VPCSA licensees to remain on Channel 87B to six months after the public safety incumbent(s) in that VPCSA vacate Channel 84 or 85. In the alternative, PacifiCorp requests that affected inland VPCSA licensees be given the right to apply for an unlicensed exclusive-use channel in the VHF band, such as a part 22 VHF channel, to use until six months after Channel 84 or 85 is vacated.

4. The Commission declines to extend the grandfathering period for inland VPCSA licensees to remain on Channel 87B. The paramount goal of this proceeding is to ensure that AIS is deployed widely, quickly, reliably, and cost-effectively, and in a manner that will maximize its capabilities. In the *Second Report and Order*, moreover, the Commission concluded that there are compelling safety and national security reasons to designate Channel 87B for AIS on a nationwide basis. Permitting the continued use of Channel 87B for non-AIS communications, the Commission stated, would compromise

the integrity of the domestic, and by extension the global, AIS network. The Commission continues to believe that permitting inland VPCSA incumbents to remain on Channel 87B for an extended period would impede the rapid, interference-free implementation of the domestic AIS network, and thus undermine the primary goal of this proceeding. In addition, the Commission does not believe that the record substantiates the claim that inland VPCSA licensees in general are unduly burdened by the requirement to migrate to Channel 84 or 85 within two years while protecting any co-channel public safety incumbents for up to fifteen years. In most of the part of the country that is divided into inland VPCSA's, there are no public safety incumbents on Channel 84 or 85. No other inland VPCSA incumbent has sought reconsideration of the grandfathering provisions adopted in the *Second Report and Order*, and even PacifiCorp confines its discussion to the situation in Wyoming. The Commission's rules permit PacifiCorp to request a waiver, and argue why its circumstances satisfy the applicable waiver standard. The Commission therefore finds that PacifiCorp has not demonstrated a need to revisit the grandfathering provisions adopted in the *Second Report and Order*.

5. PacifiCorp also asserts that, even where Channels 84 and 85 are not encumbered by public safety incumbents, the designation of those channels as VPC spectrum does not fully offset inland VPCSA licensees' loss of Channel 87B. VPC channels are 25 kilohertz wide, but, under § 80.371(c)(1)(iii) of the Commission's rules, VPC licensees may also operate on 12.5 kHz offset frequencies in areas where the licensee is authorized on both frequencies adjacent to the offset frequency, and in areas where the licensee on the other side of the offset frequency consents to the licensee's use of the adjacent offset frequency. Thus, an inland VPCSA incumbent licensed on Channels 27 (157.350/161.950 MHz), 87 (157.375/161.975 MHz), and 28 (157.400/162.000 MHz) can operate on the interstitial channel between Channels 27 and 87 and the interstitial channel between Channels 87 and 28. After the licensee replaces Channel 87B with Channel 84 or 85, however, it loses those two interstitial channels and gains only one interstitial channel (*i.e.*, either the interstitial channel between Channels 24 and 84 or the interstitial channel between Channels 85 and 26), because Channels 84 and 85 both are adjacent to Channel 25, which remains

designated for public safety interoperability. Consequently, PacifiCorp argues, requiring an inland VPCSA incumbent to relocate from Channel 87B to Channel 84 or 85 will result in a net loss to the incumbent of at least one 12.5 kHz interstitial channel.

6. To address both this particular issue and what PacifiCorp views more broadly as the current inefficient use of the VPC spectrum, PacifiCorp recommends that the Commission revise the channel plan for the inland VPCSA. Specifically, PacifiCorp proposes that the Commission split the 25 kHz VPC channels into adjacent 12.5 kHz channels, and permit inland VPC licensees to use two 12.5 kHz channels with channel centers offset 6.25 kHz from the center frequency of each existing 25 kHz channel. In the alternative, PacifiCorp suggests that the Commission retain the existing VPC band plan, but shift the twenty-five kilohertz of spectrum that is designated for public safety interoperability in order to make an additional interstitial channel available for VPC use. Such action, PacifiCorp says, will allow for more intensive use of VPC spectrum by avoiding the stranding of spectrum where a licensee chooses to deploy more spectrally-efficient 12.5 kHz equipment but does not control both of the adjacent 25 kHz channels.

7. The Commission concludes that PacifiCorp's proposals to modify the VPC channel plan are beyond the scope of this rulemaking proceeding. The *Further NPRM* did not seek comment on them, and they are not a logical outgrowth of any proposals that the *Further NPRM* did make. In the *Further NPRM*, the Commission did not invite comment on modifying either the VPC channel plan or the public safety interoperability set-aside (except for redesignating one channel for VPC use), and did not suggest that it might change the rules with respect to any channels other than Channels 84, 85, and 87. Nor did any commenter raise the possibility. The Commission sees no reason to depart here from its well-established policy of not considering matters that are first raised on reconsideration, absent extenuating circumstances. This policy serves the same goals of procedural regularity, administrative efficiency, and fundamental fairness that underlie Section 405 of the Communications Act of 1934, as amended, and the notice-and-comment rulemaking requirements of the Administrative Procedure Act (APA).

8. PacifiCorp argues that its proposed alternative channel plans are a natural and logical outgrowth of actions already

contemplated and taken by the Commission, and would merely complete the prior efforts by the Commission to 'restore the operating capacity' of inland VPCSA licensees. The Commission disagrees. In determining whether an agency's adopted rule can be deemed a logical outgrowth of a proposed rule, the focus of the inquiry is on whether the purposes underlying the APA notice-and-comment requirements have been served. In furtherance of this inquiry, the agency should consider whether a new round of notice and comment would provide the first opportunity for interested parties to offer comments that could persuade the agency to modify its rule, and whether the final rule could have been anticipated by persons with knowledge of the proposed rule. The Commission concludes that interested parties who potentially may have objected to, or wished to comment on, the rule changes now proposed by PacifiCorp did not have meaningful notice that such rule changes might be adopted, and could not have anticipated that, in this proceeding focused on domestic implementation of AIS, the Commission might broadly revise the VPC channel plan. The primary objective of the rulemaking proceeding is to ensure that the United States can take full advantage of the navigational safety and homeland security benefits of AIS, but PacifiCorp's proposals address matters regarding the VPC frequency band that are at best ancillary to this objective. Nothing in the *Further NPRM* suggested that the Commission might consider such action. The Commission therefore holds that it would not be reasonable to construe the *Further NPRM* as providing notice that the Commission might adopt special measures, which had not yet been identified, if necessary to ensure that inland VPCSA licensees could fully duplicate their prior operations, and that PacifiCorp's proposed alternative channel plans are too remote from anything discussed or suggested in either the *Further NPRM* or the comments to be deemed a "logical outgrowth." The Commission therefore denies PacifiCorp's petition insofar as it asks the Commission to adopt one of PacifiCorp's alternative VPC channel plans.

9. Having determined to affirm its decisions regarding the grandfathering provisions adopted in the *Second Report and Order*, the Commission amends § 80.371(c)(1)(i) of its rules to more precisely conform it to those decisions. As noted above, the Commission grandfathered two site-

based licensees operating on Channel 87B in inland VPCSA for fifteen years. Site-based Channel 87B licensees in the *maritime* VPCSA are grandfathered only until their current license terms expire. But note three to § 80.371(c)(1)(i) of the Commission's rules was not amended to reflect the Commission's decision in the *Second Report and Order* to provide a different grandfathering period for the site-based licensees operating on Channel 87B in the *inland* VPCSA, and thus incorrectly provides, without qualification, that no site-based authorization to use Channel 87B will be renewed. As the Commission has explained, while accurate prior to the adoption of the *Second Report and Order*, that statement is now accurate only with regard to the Channel 87B site-based incumbents in the *maritime* VPCSA. The Commission therefore amends note three to reflect that Channel 87B site-based incumbents in inland VPCSA have been grandfathered for fifteen years, irrespective of their remaining license term.

10. Finally, the Commission also corrects a typographical error in § 2.106 of its rules, note US228, and § 90.20(g)(2)(ii) of its rules, which state that incumbent site-based Channel 87B licensees in the inland VPCSA are grandfathered until March 4, 2024, rather than March 2, 2024 (fifteen years after the effective date of the rule amendments adopted in the *Second Report and Order*. (Note US228 was codified as note US399 in the *Second Report and Order*, but was later renumbered.)

## I. Procedural Matters

### A. Paperwork Reduction Act Analysis

11. This document does not contain proposed information collection(s) 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).

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

13. Accordingly, pursuant to section 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. 405(a), and § 1.429 of the Commission's rules, 47 CFR 1.429, that the petition for

reconsideration filed by PacifiCorp on March 2, 2009, *is denied*.

14. Pursuant to the authority of sections 4(i), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 403, that parts 2 and 80 of the Commission's rules *are amended* as set forth below, effective July 11, 2011.

15. The proceeding WT Docket No. 04-344 *is hereby terminated*.

**List of Subjects in 47 CFR Parts 2, 80 and 90**

Communications equipment, Radio. Federal Communications Commission. **Marlene H. Dortch**, Secretary.

**Final Rules**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 80 and 90 as follows:

**PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS**

■ 1. The authority citation for part 2 continues to read as follows:

**Authority:** 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106 is amended by revising footnote US228 to the Table of Frequency Allocations to read as follows:

**§ 2.106 Table of Frequency Allocations.**

**UNITED STATES (US) NOTES**

\* \* \* \* \*

US228 The use of the bands 161.9625-161.9875 MHz (AIS 1 with center frequency 161.975 MHz) and 162.0125-162.0375 MHz (AIS 2 with center frequency 162.025 MHz) by the maritime mobile service is restricted to Automatic Identification Systems (AIS), except that non-Federal stations in the band 161.9625-161.9875 MHz may continue to operate on a primary basis according to the following schedule:

(a) In VHF Public Coast Service Areas (VPCSA) 1-9, site-based stations licensed prior to November 13, 2006 may continue to operate until expiration of the license term for licenses in active status as of November 13, 2006;

(b) In VPCSA 10-42, site-based stations licensed prior to March 2, 2009 may continue to operate until March 2, 2024; and

(c) In VPCSA 10-42, geographical stations licensed prior to March 2, 2009 may continue to operate until March 2, 2011. See 47 CFR 80.371(c)(1)(ii) for the

definitions of VPCSA and geographic license.

\* \* \* \* \*

**PART 80—STATIONS IN THE MARITIME SERVICES**

■ 3. The authority citation for part 80 continues to read as follows:

**Authority:** Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

■ 4. Section 80.371 is amended by revising footnote 3 to the table in paragraph (c)(1)(i) to read as follows:

**§ 80.371 Public correspondence frequencies.**

\* \* \* \* \*

(c)(1)(i) \* \* \*  
<sup>3</sup>The frequency 161.975 MHz is available only for Automatic Identification System communications. No license authorizing a site-based VHF Public Coast Station or a Private Land Mobile Radio Station to operate on the frequency 161.975 MHz in VHF Public Coast Service Areas (VPCSA) 1-9 will be renewed unless the license is or has been modified to remove frequency 161.975 MHz as an authorized frequency. In VPCSA 10-42, site-based stations licensed to operate on frequency 161.975 MHz prior to March 2, 2009 may continue to operate on a co-primary basis on that frequency until March 2, 2024. Licenses authorizing geographic stations to operate on frequency 161.975 MHz will be modified on March 2, 2011 to replace the frequency with either frequency pair 157.225/161.825 MHz (VPCSA 10-15, 23-30, 33-34, 36-39, and 41-42) or frequency pair 157.275/161.875 MHz (VPCSA 16-22, 31-32, 35, and 40), unless an application to so modify the license is granted before that date.

\* \* \* \* \*

**PART 90—PRIVATE LAND MOBILE RADIO SERVICES**

■ 5. The authority citation for part 90 continues to read as follows:

**Authority:** Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 6. Section 90.20 is amended by revising paragraph (g)(2)(ii) to read as follows:

**§ Public Safety Pool.**

\* \* \* \* \*

(g) \* \* \*

(2) \* \* \*

(ii) The channel pairs 157.225 MHz/161.825 MHz and 157.275 MHz/161.875 MHz were formerly allocated and assigned under this section as public safety interoperability channels but were reallocated for assignment as VHF public coast station channels under § 80.371(c) of this chapter. Public safety operations licensed on these channels as of March 2, 2009 or licensed pursuant to an application filed prior to September 19, 2008, may remain authorized to operate on the channels on a primary basis until March 2, 2024.

\* \* \* \* \*

[FR Doc. 2011-14314 Filed 6-8-11; 8:45 am]

**BILLING CODE 6712-01-P**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

[MB Docket No. 11-29; RM-11622, DA 11-949]

**Television Broadcasting Services; Nashville, TN**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission grants a petition for rulemaking filed by NewsChannel 5 Network, LLC ("NewsChannel 5"), the licensee of WTVF(TV), requesting the substitution of channel 25 for channel 5 at Nashville. According to NewsChannel 5, after WTVF(TV) transitioned from its pre-transition digital channel 56 to its post-transition digital channel 5, thousands of calls were received from viewers that could no longer view the station's digital signal.

**DATES:** This rule is effective July 11, 2011.

**FOR FURTHER INFORMATION CONTACT:**

Joyce L. Bernstein, [joyce.bernstein@fcc.gov](mailto:joyce.bernstein@fcc.gov), Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MB Docket No. 11-29, adopted May 23, 2011, and released May 25, 2011. 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://fjallfoss.fcc.gov/ecfs/>). This document may be purchased from the Commission's duplicating contractor,