

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

§ 73.202 [Amended]

■ 2. Amend § 73.202(b) Table of FM Allotments as follows:

- a. Add Newark, under Maryland, Channel 235A.
- b. Add Arlington, under Oregon, Channel 295C2.
- c. Add Rocksprings, under Texas, Channel 291A.
- d. Add Chincoteague, under Virginia, Channel 233A.
- e. Add Baggs, under Wyoming, Channel 277A.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket Nos. 05-62 and 02-55; FCC 13-85]

Improving Public Safety Communications in the 800 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) modifies the freeze on new authorizations in the Business and Industrial Land Transportation (B/ILT) Pool in the 896-901 MHz/935-940 MHz band (900 MHz B/ILT Band) to allow a qualified entity to file an application for a new authorization in any given National Public Safety Planning Advisory Committee (NPSPAC) region before Sprint Nextel's 800 MHz rebanding efforts are complete in that region. This action will allow qualified applicants to gain access to 900 MHz B/ILT spectrum without unnecessary delay, and promote spectrum efficiency, by allowing access to spectrum that may otherwise be unused during the 800 MHz rebanding process.

DATES: Effective August 16, 2013.

FOR FURTHER INFORMATION CONTACT: Joyce Jones, Mobility Division, Wireless Telecommunications Bureau, joyce.jones@fcc.gov, (202) 418-1327, TTY (202) 418-7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order on Reconsideration*, in WT Docket Nos. 05-62 and 02-55, FCC 13-85, adopted June 21, 2013, and released on June 24, 2013. The complete text of this document may be downloaded from the FCC Web site (<http://www.fcc.gov>) at http://transition.fcc.gov/Daily_Releases/

Daily_Business/2013/db0625/FCC-13-85A1.pdf. This document and all related Commission documents are also available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW., Washington, DC 20554. A copy of the complete text may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY-B402, Washington, DC 20554. Alternative formats are available to persons with disabilities by sending an email to FCC504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

Synopsis of the Report and Order

1. In this document, the Commission grants, in accordance with the terms set forth in the *Order on Reconsideration*, the unopposed joint request for clarification or limited reconsideration filed by the Enterprise Wireless Alliance (EWA) and Sprint Nextel Corporation (Sprint Nextel) (collectively, "Petitioners") with respect to one aspect of the *Report and Order*, 73 FR 67794, November 17, 2008, in this proceeding, to allow a qualified entity to file an application for a new authorization in any given National Public Safety Planning Advisory Committee (NPSPAC) region before Sprint Nextel's 800 MHz rebanding efforts are complete in that region.

Background

2. The 900 MHz B/ILT Pool channels are licensed for the private internal communication needs of site-by-site licensees engaged in a variety of endeavors, from commercial (e.g., land transportation, manufacturing, energy) to non-commercial (e.g., clerical, educational, philanthropic, medical). In 2004, the Commission launched its 800 MHz rebanding initiative through the 800 MHz R&O. *See Report and Order (800 MHz R&O)*, 69 FR 67823, November 22, 2004; *Supplemental Report and Order on Reconsideration (800 MHz Supplemental R&O)*, 70 FR 6758, February 8, 2005. Shortly thereafter, the Wireless Telecommunications Bureau (Bureau) issued a *Public Notice*, freezing acceptance of applications for new 900 MHz B/ILT licenses until further notice (a freeze that has remained in place continuously since then). *See Public Notice*, 19 FCC Rcd 18277 (2004).

3. In 2005, the Commission affirmed the freeze, in light of the fundamental changes it was proposing in the service areas and channel blocks for future licenses in the 900 MHz B/ILT service.

See Notice of Proposed Rulemaking and Memorandum Opinion and Order, 70 FR 13143, March 18, 2005.

4. In 2008, the Commission declined to adopt the proposed changes and found that a wholesale freeze on applications for new 900 MHz B/ILT authorizations was no longer necessary. The Commission lifted the freeze in each NPSPAC region six months after rebanding was completed in that particular NPSPAC region, concluding that such an approach best balanced the demands for 900 MHz B/ILT spectrum, including the ongoing needs of Sprint Nextel for access to this spectrum to support its rebanding efforts. *See Report and Order*, 73 FR 67794, November 17, 2008.

5. *Discussion.* The Commission concludes that linking the lifting of the freeze to Sprint Nextel's concurrence—rather than to the completion of rebanding in a given NPSPAC region—is a more appropriately tailored approach for protecting the integrity of the rebanding process. The Commission finds that implementing this change will maximize effective use of this spectrum by permitting the initiation of new B/ILT service without unnecessary delay. While the Commission originally found that the delay was necessary as a component of the flexibility that Sprint Nextel required in order to fulfill its rebanding obligations, it finds that with Sprint Nextel's concurrence, the delay is no longer necessary. In addition, since the Commission launched its rebanding initiative in 2004, rebanding has only recently been completed in 11 out of 55 NPSPAC regions. Further, during this time, the Commission received 29 requests for waiver of the freeze. The Petitioners' requested relief would likely supplant the need for such filings and the associated paperwork burdens and adjudication costs. Accordingly, the Commission concludes that the public interest would be best served by lifting the freeze in NPSPAC regions that are still undergoing the rebanding process, or that are still within the six-month period after completion thereof, for any application for new 900 MHz B/ILT service that includes written concurrence from Sprint Nextel. Thus, the Commission clarifies that its relief extends regardless of the status of rebanding in a particular NPSPAC region, so long as the application includes such concurrence.

6. In all other respects, the Commission retains the policy adopted in the *Report and Order* that the freeze will be lifted in a NPSPAC region six months after rebanding is complete in that particular NPSPAC region. The Commission's action does not affect any

of the other conditions of lifting the freeze noted in the *Report and Order*.

I. Procedural Matters

A. Paperwork Reduction Act Analysis

7. The *Order on Reconsideration* 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).

B. Congressional Review Act

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

C. Final Regulatory Flexibility Analysis

9. In the *Report and Order*, the Commission determined that the rules adopted there would not, under the Regulatory Flexibility Act of 1980, as amended (RFA),¹ have a “significant economic impact on a substantial number of small entities.”² The rules adopted generally inured to the benefit of small businesses, in that they minimized the expense of resolution of interference complaints and allowed all entities, including small businesses, to apply, once again, for unencumbered 900 MHz B/ILT spectrum. *See Report and Order*, 73 FR 67794, November 17, 2008. We received no petitions for reconsideration of that Final Regulatory Flexibility determination. In this present *Order on Reconsideration*, the Commission promulgates no additional final rules, and our present action, therefore, does not alter our previous determination under the RFA.

II. Ordering Clauses

10. Pursuant to sections 1, 4(i), 303, 309, 316, 332, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303, 309, 316, 332, and 405, the *Order on Reconsideration* is hereby adopted. The *Order on Reconsideration* shall become effective August 16, 2013.

11. The Commission shall send a copy of the *Order on Reconsideration* in a

report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

12. The Joint Request for Clarification or, in the Alternative, for Limited Reconsideration filed jointly by the Enterprise Wireless Alliance and Sprint Nextel Corporation on December 17, 2008, is hereby granted, under the conditions set forth in this *Order on Reconsideration*.

13. The freeze placed on applications for new 900 MHz Business/Industrial Land Transportation licenses by *Public Notice*, September 17, 2004, is hereby modified, under the conditions set forth in this *Order on Reconsideration*.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2013–17058 Filed 7–16–13; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R3–ES–2012–0087; FXES1113090000C3–123–FF09E30000]

RIN 1018–AY45

Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of Topeka Shiner (*Notropis topeka*) in Northern Missouri

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), jointly with the Missouri Department of Conservation and the Nature Conservancy, will reestablish the Topeka shiner (*Notropis topeka*), a federally endangered fish. We will reestablish the Topeka shiner under section 10(j) of the Endangered Species Act of 1973, as amended (Act), and classify the reestablished population as a nonessential experimental population (NEP) within portions of the species’ historical range in Adair, Gentry, Harrison, Putnam, Sullivan, and Worth Counties, Missouri. This final rule provides a plan for establishing the NEP and provides for allowable legal incidental taking of the Topeka shiner within the defined NEP area. The best available data indicate that reintroduction of Topeka shiner to portions of the species’ historical range in Adair, Gentry, Harrison, Putnam,

Sullivan, and Worth Counties, Missouri, is biologically feasible and will promote the conservation of the species.

DATES: This rule becomes effective August 16, 2013.

ADDRESSES: This final rule, along with the public comments, and the Environmental Action Statement for Categorical Exclusion are available on the Internet at <http://www.regulations.gov>, Docket No. FWS–R3–ES–2012–0087. Comments and materials received, as well as supporting documentation used in the preparation of this rule, will be available for public inspection, by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Ecological Services Field Office, 101 Park DeVillie Dr.; Suite A, Columbia, MO 65203; telephone: 573–234–2132; facsimile: 573–234–2181. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Services (FIRS) at 800–877–8339.

FOR FURTHER INFORMATION CONTACT:

Amy Salveter, Field Supervisor, telephone: 573–234–2132; facsimile: 573–234–2181. Direct all questions or requests for additional information to: Topeka Shiner Questions, U.S. Fish and Wildlife Service, Ecological Services Field Office, 101 Park DeVillie Dr.; Suite A, Columbia, MO 65203. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Services (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Statutory and Regulatory Framework

The Topeka shiner was listed as endangered throughout its range on December 15, 1998 (63 FR 69008), and critical habitat was designated in Iowa, Minnesota, and Nebraska on July 27, 2004 (69 FR 44736), under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The Act provides that species listed as endangered are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the Act, among other things, prohibits the take of endangered wildlife. “Take” is defined by the Act as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitat. It mandates that all Federal agencies use their existing authorities to further the

¹ The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

² 5 U.S.C. 605(b).