

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

- In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

- This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. 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 23, 2022. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 15, 2022.

**Meghan A. McCollister,**  
*Regional Administrator, Region 7.*

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as set forth below:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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

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

**Subpart AA—Missouri**

■ 2. In § 52.1320, the table in paragraph (c) is amended by revising the entry “10-6.050” to read as follows:

**§ 52.1320 Identification of plan.**

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

**EPA-APPROVED MISSOURI REGULATIONS**

Missouri citation	Title	State effective date	EPA approval date	Explanation
<b>Missouri Department of Natural Resources</b>				
* * * * *				
<b>Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri</b>				
* * * * *				
10-6.050	Start-Up, Shutdown, and Malfunction Conditions.	1/30/2020	6/24/2022 [insert <b>Federal Register</b> citation].	
* * * * *				

\* \* \* \* \*  
[FR Doc. 2022-13314 Filed 6-23-22; 8:45 am]

**BILLING CODE 6560-50-P**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 73 and 74**

[**MB Docket No. 15-146, GN Docket No. 12-268; FCC 22-33; FR ID 91601**]

**Preservation of One Vacant Channel in the UHF Television Band for Use by White Spaces Devices and Wireless Microphones**

**AGENCY:** Federal Communications Commission.

**ACTION:** Denial of petitions for reconsideration.

**SUMMARY:** In this document, the Federal Communications Commission (Commission or FCC) adopts an Order on Reconsideration (Order), that denies the Petitions for Reconsideration filed by Sennheiser Electronic Corporation and Shure Incorporated and affirms its conclusions and reasoning to close the vacant channel proceeding. The Commission’s Order denies petitioners’ requests for reconsideration and reversal

of the Commission's 2020 Report and Order, that declined to adopt proposals of a 2015 Notice of Proposed Rulemaking, and affirms closure of the vacant channel proceeding.

**DATES:** The petitions for reconsideration were denied effective May 11, 2022.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact Michael Scurato (202-418-2083; [Michael.Scurato@fcc.gov](mailto:Michael.Scurato@fcc.gov)).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's document, Order on Reconsideration, MB Docket No. 15-146, GN Docket No. 12-268; FCC 22-35, adopted and released on May 11, 2022. The full text of this document can be accessed online via the Commission's Electronic Comment Filing System (ECFS) at: <https://apps.fcc.gov/ecfs> and is available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat via ECFS and at <https://www.fcc.gov/document/fcc-affirms-closure-vacant-channel-proceeding>. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty). The Commission will not send a Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5 U.S.C. 801(a)(1)(A), because no rules are being adopted by the Commission.

### Synopsis

In this Order on Reconsideration, the Commission denies the Petitions for Reconsideration filed by Sennheiser Electronic Corporation (Sennheiser) and Shure Incorporated (Shure) (collectively, Petitioners) requesting reconsideration and reversal of a Commission Report and Order, 86 FR 9297 (Feb. 12, 2021), 35 FCC Rcd 14272 (2020) (*Termination Order*) that declined to adopt rules proposed in a 2015 Notice of Proposed Rulemaking, 80 FR 38158 (July 2, 2015), 30 FCC Rcd 6711 (2015) (*2015 NPRM*), to preserve a vacant channel in the television (TV) bands for use by white space devices and wireless microphones and terminated the proceeding.

As the Commission held in the *Termination Order*, it finds that adoption of the rules proposed in the *2015 NPRM* would not strike the most reasonable balance that would best serve the public interest. The Commission makes this determination in light of other actions taken by the Commission since the *2015 NPRM* that

will support wireless microphone users and the burdens that the proposal would impose on broadcasters. The Commission also reaffirms the conclusions it reached in the *Termination Order* that the steps the Commission has taken in other proceedings since the *2015 NPRM* provide a better alternative for addressing the needs of wireless microphone providers than through efforts to preserve a vacant channel in light of the burdens the vacant channel proposal would impose on broadcasters. Because it agrees that the totality of these circumstances support the findings in the *Termination Order*, the Commission rejects the Petitioners' claim that its action was arbitrary and capricious.

The Commission recognizes the Petitioners' preference for UHF TV band spectrum to the alternatives adopted to assist the wireless microphone operations, but does not find sufficient grounds to reconsider the Commission's conclusion not to pursue the *2015 NPRM*. The Commission notes that the *Termination Order* does not find that the other proceedings to support spectrum access for wireless microphones are a perfect substitute for the UHF TV band spectrum. The Commission also notes that its decision not to pursue the *2015 NPRM* did not lessen the spectrum access that wireless microphones currently enjoy in the TV band and indeed the Commission has continued to find ways, and additional spectrum, to accommodate wireless microphones in the future outside of the crowded TV bands. Furthermore, technical issues raised by Petitioners and commenters related to the differences between spectrum in the TV band and other bands have been considered in other dockets, the Commission explains. Moreover, although not necessary to support the Commission's decision to terminate this proceeding, the Commission also notes that it continues to explore these issues in pending proceedings.

In weighing those needs, the Commission further affirms that it reasonably concluded that the *2015* vacant channel proposal would impose undue burdens on the broadcast users of the TV band. The Commission finds that it adequately weighed the needs of all spectrum users, and supported its decision not to pursue the proposals in the *2015 NPRM* for several reasons, including changed circumstances since *2015* and the alternate initiatives taken by the Commission since *2015*.

The Commission also agrees with its prior decision that the proposal would impose undue burdens on broadcasters

“both in congested areas where a vacant channel may not be available in the television band and in less congested areas where more spectrum is available such that analysis is not warranted.” As the National Association of Broadcasters (NAB) and a number of individual broadcasters noted in their *2015* comments, the Commission explains that adoption of the proposed rules would serve to freeze full power stations in place and hamstring their ability to expand or innovate to better serve their viewers. And the proposal would require “novel engineering studies” that “would be expensive and time-consuming, particularly for smaller broadcasters” where “the cost of conducting such studies is likely to be multiples of current engineering design costs.” Significantly, television stations would bear the administrative burden of studying and proving the availability of channels for other users in order to receive approval of an application that is otherwise grantable in the public interest. The Commission concludes it properly decided “not [to] deviate from previous Commission decisions that use of the TV bands by primary and secondary broadcast users have priority over wireless microphones and white space devices.” Further, although Petitioners' opine that the adoption of the *2015* proposals would not hinder the development of ATSC 3.0 (the TV transmission standard developed by the Advanced Television Systems Committee) service by broadcasters, including new and innovative uses of broadcast spectrum that the ATSC 3.0 standard enables, the Commission explains that it believes that it properly balanced concerns raised in the record that the proposed rules would hamstring the ability of broadcasters to innovate. Petitioners' support of a scheme that would forgo the nationwide solution proposed by the Commission and sought by proponents of the *2015 NPRM* would not ameliorate cost and regulatory compliance burdens for licensed broadcasters, the Commission concludes.

The Commission acknowledges Shure's assertion that the *2015 NPRM* was an integral part of a multi-proceeding effort to support wireless microphones and that it was contemplated that the Incentive Auction would result in changed circumstances. The Commission does not, however, believe these factors mandate reconsideration. As described herein, the Commission continues to balance and support various spectrum users' needs in multiple proceedings balancing all the facts and circumstances and

concludes that the actions taken in other proceedings to make spectrum available for wireless microphones have achieved the balance sought in the *Incentive Auction Report and Order*, 79 FR 48441 (Aug. 15, 2014), 29 FCC Rcd 6567 (2014), while also addressing the needs of licensed broadcast stations displaced by the Incentive Auction. For the same reason, the Commission does not believe that Sennheiser's insistence that the Commission pursue the 2015 NPRM's proposals in addition to the other proceedings supporting wireless microphones mandates reconsideration.

While the focus of the 2015 NPRM was on a nationwide vacant channel solution, Petitioners contend that a non-nationwide solution would also benefit wireless microphones and thus the inability to achieve a nationwide solution does not justify termination of the proceeding. The Commission disagrees. A non-nationwide vacant channel solution would necessarily provide fewer benefits than the proposal as originally conceived without diminishing any of the burdens on broadcasters, especially in rural areas without adequate multichannel video programming distributor (MVPD) and broadband service alternatives, and if anything would therefore further support the Commission's balance of the needs of the various spectrum users.

The Commission also rejects Shure's unsupported argument that the Commission erred by unanimously adopting the *Termination Order* during the "lame duck" transition period after the national presidential election, which resulted in a change of the party with control over administrative agencies. Shure's argument is unavailing because it lacks any legal support and, in any event, is now moot because the Commission rejects the Petitions on the merits.

Market analyses provided by Shure and Sennheiser purporting to indicate vacant channel availability in major designated market areas (DMAs) does not support reconsideration, according to the Commission. Neither submission alters the Commission's conclusion in the *Termination Order* that TVStudy software reveals that there are numerous major metropolitan areas in the United States that have no vacant, 6 MHz channels. In its petition, Shure describes an "independent preliminary analysis of channel availability" that it conducted using a tool that it developed to "calculate[] vacant channel availability after drawing information from the FCC TV database." Using the tool, Shure compiled a list of channels it claims are vacant in the top 10 DMAs. But the "preliminary analysis" is

flawed, the Commission finds. For example, channels listed as available in multiple markets, including the two listed for Houston, two for Dallas, two for Los Angeles, and one for Chicago, do not qualify as vacant channels because they are adjacent to land mobile. Others, including the remaining channels listed for Dallas, Los Angeles, and Chicago also do not qualify as vacant channels because they are identified in LPTV or Class A construction permits or licenses. Similarly, Sennheiser's ex parte purportedly "update[d] the Commission on new developments" to offer a data analysis. On the basis of that analysis, it asserts that, with the exception of Phoenix, Arizona, "in almost every major DMA in the United States, there is a vacant channel that could be designated for wireless microphones." This analysis is also unconvincing, the Commission concludes. First, by identifying Phoenix as a market that lacks a vacant channel, the ex parte concedes that the Commission was correct in its assertion in the *Termination Order* that a nationwide vacant channel solution in the TV band as proposed in the 2015 NPRM is no longer possible. Furthermore, the analysis described in the ex parte is flawed for several reasons, and therefore it does not undermine the assertion in the *Termination Order* that numerous major metropolitan areas have no vacant 6 MHz channels. First, the analysis is inaccurate in stating that certain channels are available. For example, the ex parte assertion that channel 16 in Salt Lake City is available overlooks a displacement construction permit issued for that channel. Second, the analysis incorrectly assumes that the identification of an available channel in a specific location demonstrates that the channel could be preserved across an entire DMA. Again, the example of channel 16 in Salt Lake City is illustrative, as the Salt Lake City DMA includes the entire state of Utah and portions of neighboring states. Within that DMA a number of TV translators occupy channel 16, which would disqualify the channel as vacant throughout the entire DMA. Third, some of the channels that the ex parte identifies as available in large markets, such as New York and Los Angeles, could not be deemed vacant for the purposes of the 2015 NPRM proposals because those channels have land mobile reservations on adjacent channels. Finally, the ex parte analysis was performed using a third-party tool found on an internet web page that utilizes standards that are not consistent

with Commission rules to protect TV operations from wireless microphones, which in many cases will overstate channel availability as compared to what was proposed in the 2015 NPRM and is not a reliable method for evaluating the Vacant Channel proposal.

In summary, and consistent with the public interest analysis in the *Termination Order*, while the Commission recognizes the important benefits provided by wireless microphones in the TV bands, it finds that other actions that the Commission has taken to support these users subsequent to issuance of the 2015 NPRM provide a better alternative for addressing their needs than through efforts to preserve a vacant channel in light of the burdens the vacant channel proposal would impose on broadcasters. The Commission agrees with the conclusion in the *Termination Order* that it can no longer say that the 2015 NPRM's proposals "will not significantly burden broadcast applicants." In light of changed circumstances, the Commission concludes that it should not deviate from previous Commission decisions that use of the TV bands by primary and secondary broadcast users have priority over wireless microphones and white space devices. The Commission believes that preserving robust over-the-air broadcast television service remains an important spectrum allocation priority, especially to rural areas without adequate MVPD and broadband service alternatives. The Commission continues to recognize the promise of next generation ATSC 3.0 service by over-the-air television broadcasters to expand the universe of potential uses of broadcast spectrum capacity for new and innovative services in ways that will complement the nation's burgeoning 5G networks and usher in a new wave of innovation and opportunity. Having restructured the TV band, the Commission finds that to now adopt a requirement that primary and/or secondary television stations protect spectrum availability for wireless microphones in the smaller, more densely packed television band, would not serve the public interest. Therefore, the Commission finds that, on balance, seeking to preserve a vacant channel at this time, considering all of the actions that the Commission has taken since 2015 to promote wireless microphones interests, are outweighed by the burdens of the proposals on broadcasters.

The Commission therefore affirms the its decision in the *Termination Order* to decline to adopt the proposals of the 2015 NPRM and to terminate this docket, and disagrees with Petitioners

that the Commission's rejection of the 2015 NPRM warrants reconsideration.

For the reasons stated above, the Commission denies the Petitions filed by Sennheiser and Shure requesting reconsideration and reversal of the *Termination Order* and declines to adopt rules proposed in the 2015 NPRM to preserve a vacant channel for use wireless microphones use.

Accordingly, *it is ordered* that, pursuant to sections 1, 4(i), 4(j), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), 405 and § 1.429 of the Commission's rules, 47 CFR 1.429, the captioned Petitions for Reconsideration *are denied*, for the reasons discussed herein.

*It is further ordered* that, should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 15–146 *shall be terminated* and the docket closed.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

[FR Doc. 2022–13249 Filed 6–23–22; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 424

[Docket No. FWS–HQ–ES–2020–0047, FF09E23000 FXES1111090FEDR 223; Docket No. 220613–0133]

RIN 1018–BE69; 0648–BJ44

#### Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat

**AGENCY:** U.S. Fish and Wildlife Service, Interior; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (hereafter collectively referred to as the “Services” or “we”), rescind the final rule titled “Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat” that was published on December 16, 2020, and became effective on January 15,

2021. This rescission removes the regulatory definition of “habitat” established by that rule.

**DATES:** This final rule is effective July 25, 2022.

**ADDRESSES:** Public comments and materials received, as well as supporting documentation used in the preparation of this final regulation, are available online at <https://www.regulations.gov> in Docket No. FWS–HQ–ES–2020–0047.

**FOR FURTHER INFORMATION CONTACT:**

Angela Somma, National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, telephone 301–427–8403; or Bridget Fahey, U.S. Fish and Wildlife Service, Division of Conservation and Classification, 5275 Leesburg Pike, Falls Church, VA 22041–3803, telephone 703–358–2171.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:**

**Background**

On January 20, 2021, the President issued Executive Order (E.O.) 13990, which, in section 2, required all executive departments and agencies to review Federal regulations and actions taken between January 20, 2017, and January 20, 2021. In support of E.O. 13990, a “Fact Sheet” was issued that set forth a non-exhaustive list of specific agency actions that agencies are required to review to determine consistency with the policy considerations articulated in section 1 of the E.O. (See [www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/](http://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/)). Among the agency actions listed on the Fact Sheet was our December 16, 2020, final rule promulgating a regulatory definition for the term “habitat” (85 FR 81411) under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.* (hereafter, “the Act”). Following our review of this rule (the “habitat definition rule”), we determined it was unclear and confusing and inconsistent with the conservation purposes of the Act, and we subsequently published a proposed rule to rescind it (86 FR 59353, October 27, 2021). We solicited public comments on the proposed rule through November 26, 2021. In response to several requests, we extended the

deadline for submission of public comments to December 13, 2021 (86 FR 67013, November 24, 2021).

The December 2020 final rule defined “habitat” as follows: For the purposes of designating critical habitat only, habitat is the abiotic and biotic setting that currently or periodically contains the resources and conditions necessary to support one or more life processes of a species. The definition itself indicates that it applies only in the context of designating “critical habitat,” which is defined in section 3(5)(A) of the Act as specific areas within the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protections; and as specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

The two types of critical habitat described in this statutory definition are often referred to as “occupied” and “unoccupied” critical habitat, respectively, and for simplicity, we use those shorthand terms within this document. The Secretaries (of Commerce and the Interior) designate critical habitat for threatened and endangered species on the basis of the best scientific data available and after taking into consideration various impacts of the designation (16 U.S.C. 1533(b)(2)). Once critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to destroy or adversely modify that habitat (16 U.S.C. 1536(a)(2)). Critical habitat requirements do not apply to actions on private land that do not involve the authorization or funding of a Federal agency.

On January 14, 2021, one day before the rule took effect, seven environmental groups challenged it, filing suit against the Services in Federal district court in Hawaii. Shortly thereafter on January 19, 2021, 19 States similarly filed suit challenging the habitat definition rule in the Northern District of California. Parties in both cases have agreed to long-term stipulated stays in the litigation as this rulemaking proceeds.

Following consideration of all public comments received in response to our proposed rule to rescind the habitat definition, and for reasons outlined both