Dated: September 29, 2004.

David I. Maurstad,

Acting Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–22679 Filed 10–7–04; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket Nos. 04–53 and 02–278; FCC 04–194]

Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003; Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On September 16, 2004 (69 FR 55765), the Commission published final rules in the **Federal Register** to implement the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN–SPAM Act). These rules apply to the sending of commercial messages to addresses referencing an Internet domain name associated with wireless subscriber messaging services. This document corrects the subpart heading and adds the authority citation for the Commission's rules.

DATES: Effective October 8, 2004.

FOR FURTHER INFORMATION CONTACT: Ruth Yodaiken, of the Consumer & Governmental Affairs Bureau at (202) 418–2512 (voice), (202) 418–0416 (TTY), or e-mail *Ruth.Yodaiken@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document amending part 64 in the **Federal Register** on September 16, 2004, (69 FR 55765). This document corrects the ''Rule Changes'' section of the **Federal Register** summary as it appeared. In rule FR Doc. 04–20901 published on September 16, 2004 (69 FR 55765) make the following corrections:

PART 64—[CORRECTED]

■ 1. On page 55779, in the second column, amendatory instruction no. 2, Subpart heading BB is corrected to read as follows:

Subpart BB—Restrictions on Unwanted Mobile Service Commercial Messages

■ 2. On page 55779, in the second column the authority citation for Subpart BB is added to read as follows:

Authority: 15 U.S.C. 7701–7713, Public Law 108–187, 117 Stat. 2699.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–22495 Filed 10–7–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02–278; FCC 04–204]

Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the rules implementing the Telephone Consumer Protection Act (TCPA) to establish a limited safe harbor period from the prohibition on placing autodialed or prerecorded message calls to wireless numbers that have been recently ported from wireline to wireless service. This document also amends our existing safe harbor rules for the national do-not-call registry so that telemarketers are required to access the do-not-call list no more than 31 days prior to making a telemarketing call.

DATES: Effective November 8, 2004, except the amendment to 47 CFR 64.1200(c)(2)(i)(D) of the Commission's rules, which contains information collection requirements under the Paperwork Reduction Act (PRA) that are not effective until approved by the Office of Management and Budget. Written comments by the public on the new or modified information collections are due November 8, 2004. The Commission will publish a document in the **Federal Register** announcing the effective date for that section.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Office of the Secretary, a copy of any comments on the Paperwork Reduction Act (PRA) information collection requirements contained herein should be submitted to Leslie Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov,* and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *Kristy_L._LaLonde@omb.eop.gov* or by fax to 202–395–5167.

FOR FURTHER INFORMATION CONTACT: Erica McMahon or Richard Smith, Consumer Policy Division, Consumer & Governmental Affairs Bureau, (202) 418–2512. For additional information concerning the PRA information collection requirements contained in this document, contact Les Smith at 202–418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order,* CG Docket No. 02–278, FCC 04–204, adopted August 25, 2004, and released September 21, 2004. The *Order* contains new or modified information collection requirements subject to the PRA of 1995, Public Law 104–13. These will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. The *Order* addresses issues arising from *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991,* Further Notice of Proposed Rulemaking, (*2004 TCPA Further Notice*), CG Docket No. 02–278, FCC 04–52, 19 FCC Rcd 5056, March 19, 2004; published at 69 FR 16873, March 31, 2004. Copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, Room CY–A257, 445 12th Street, SW., Washington, DC 20054. The complete text of this decision may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. at its Web site: *http://www.bcpiweb.com* or call 1–800–378–3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). The *Order* can also be downloaded in Word and Portable Document Format (PDF) at *http://www.fcc.gov/cgb/policy.*

Paperwork Reduction Act

This *Order* contains new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this *Order* as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. Public and agency comments are due November 8, 2004. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), in this document, we have assessed the effects of amending the safe harbor provisions for the national do-not-call registry to require telemarketers to access the registry every 31 days, and find that there may be an increased administrative burden on businesses with fewer than 25 employees. However, since this action is consistent with the Federal Trade Commission's recent rule change, we believe small businesses subject to the jurisdiction of both agencies will also benefit from consistent requirements. In addition, the national do-not-call registry allows telemarketers that have already downloaded the entire database to request only those changes to their previous list, which should substantially alleviate any burdens imposed on businesses with fewer than 25 employees to update their call lists on a more frequent basis.

Synopsis

The Commission establishes a limited safe harbor period in which persons will not be liable for placing autodialed or artificial or prerecorded message calls to numbers recently ported from wireline to wireless service. As discussed in greater detail below, we conclude that callers will not be considered in violation of 47 CFR 64.1200(a)(1)(iii) for autodialed or artificial or prerecorded message calls placed to a wireless number that has been ported from a wireline service within the previous 15 days, provided the number is not already on the national do-not-call registry or caller's company-specific do-not-call list. The 15-day safe harbor period will run from the time the port has been completed and the number appears in Neustar's ''Intermodal Ported TN Identification Service'' as a wireless number. We believe this safe harbor will provide a reasonable opportunity for persons, including small businesses, to identify numbers that have been ported from wireline to wireless service and, therefore, allow callers to comply with our rules.

Given the limited duration of this safe harbor period and the fact that consumers may continue to avail themselves of the national and company-specific do-not-call lists, we do not believe that this action will unduly infringe consumer privacy interests, which is consistent with congressional intent. We emphasize that the safe harbor provision created herein in no way obviates the need for telemarketers to abide by any of the Commission's other telemarketing rules including honoring the requirements of the national and company-specific do-not-call lists. In addition, this safe harbor provision will not excuse any willful violation of the ban on using autodialers or prerecorded messages to call wireless numbers. Thus, even within the 15-day safe harbor period, persons will be considered in violation of this prohibition if they knowingly place an autodialed or prerecorded message call to a wireless number absent an emergency or the prior express consent of the called party. We also note that this safe harbor will extend only to voice calls, not to text messages which are sent specifically to numbers associated with wireless devices.

We note that one commenter contends that the Commission lacks the statutory authority to adopt a safe harbor. However, the record is clear that it is impossible for telemarketers to identify immediately those numbers that have been ported from a wireline service to a wireless service provider. Commenters maintain that, absent a limited safe harbor period, telemarketers simply cannot comply with the statute. The safe harbor is not an ''exemption'' from the requirements on calls to wireless numbers; it is instead a time period necessary to allow callers to come into compliance with the rules. Otherwise, the statute would ''demand the impossible.'' Even if telemarketers had immediate access to such information (which they do not), several commenters note that some period of time still is necessary to update marketing lists to suppress calls to recently ported wireless numbers. Therefore, we believe this limited safe harbor period is necessary to allow callers to comply with this statutory provision.

We decline to adopt a safe harbor period that extends beyond 15 days as suggested by several commenters. Although we acknowledge that a 30 or 31-day period would be consistent with the requirements to update additions to the national and company specific lists, and therefore create some administrative efficiencies, we believe such considerations are offset by the potential costs and privacy concerns to wireless subscribers that may be charged for receiving telephone solicitations during this extended period. We agree that the duration of any such safe harbor period should be limited to the extent that it is technologically reasonable for marketers to obtain the appropriate data to comply with our rules. The information provided in this proceeding indicates that a 15-day safe harbor period is a sufficient period of time to ensure that this information will be both available to the industry and can be disseminated to callers in order to comply with our rules. For example, Neustar recently made available a service that will provide data on numbers ported from wireline to wireless service on a daily basis. In addition, although not publicly available, Call Compliance describes a system that it contends will block telephone calls to wireless numbers, including those that have just been ported from wireline to wireless service.

We also decline to extend our safe harbor provision to any call made erroneously or inadvertently to a wireless number regardless of whether that number has been recently ported from wireline service as suggested by the Direct Marketing Association (DMA). We note that the Commission considered and declined to adopt a similar proposal in the *2003 TCPA Order*(68 FR 44144, July 25, 2003). We believe that adoption of this proposal is overly broad, unnecessary, and contrary to the intent of Congress. As explained, the safe harbor we adopt here is for a limited purpose. Conversely, the DMA's proposal would establish a safe harbor provision for autodialed or prerecorded calls to any wireless number in a manner equivalent to the safe harbor adopted in the context of the national do-not-call rules. As the Commission noted in the *2003 TCPA Order,* Congress found that automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live solicitation calls. In section 227(b)(1)(A), Congress enacted a strict prohibition on such calls to emergency numbers, health care facilities, and wireless numbers absent the prior express consent of the called party. Such calls were determined by Congress to threaten public safety and inappropriately shift marketing costs from sellers to consumers. The Commission has noted that wireless customers are often charged for incoming calls. Coupled with the fact that autodialers can dial thousands of numbers in a short period of time, such

calls can be particularly costly to wireless subscribers.

We believe the limited safe harbor provision that we have adopted herein will substantially alleviate the concerns expressed by the DMA andNewspaper Association of America (NAA) regarding calls made to wireless numbers. Those concerns derive largely from the recent implementation of intermodal Local Number Portability (LNP) and not from difficulties in otherwise complying with the TCPA's restrictions on autodialed or prerecorded message calls to wireless numbers. In the *2003 TCPA Order* released just a few months prior to the implementation of LNP, the record in that proceeding indicated that telemarketing to wireless phones was not a significant problem due to the successful efforts of industry to comply with our rules. For example, the DMA has created the ''Wireless TelephoneSuppression Service'' that provides a list of approximately 280 million numbers that are currently used or have been set aside for CMRS carriers. We have no reason to believe that the circumstances regarding calls to wireless numbers have otherwise changed since the Commission reviewed this issue in 2003. To the extent that intermodal LNP has been introduced, we believe the steps taken herein are sufficient to allow callers to comply with our rules while maintaining the privacy interests and cost protections afforded to wireless consumers by the TCPA. We therefore deny requests for a more expansive safe harbor from the prohibition on autodialed or prerecorded messages to wireless numbers than that adopted herein.

Finally, we decline to establish a sunset date for this safe harbor provision. We agree with several commenters that the issues associated with real-time access to numbers ported from wireline to wireless service will be ongoing for the foreseeable future. We anticipate, however, that technologies will continue to improve over time to make such information more readily available and, therefore we may revisit this issue at a later date.

National Do-Not-Call Registry

Consistent with the recent decision of the FTC, we amend our existing safe harbor rule for telemarketers that must comply with the national do-not-call registry to require such telemarketers to access the national do-not-call list and purge registered numbers from their call lists no more than 31 days prior to making a telemarketing call. We believe that this amendment will benefit consumer privacy interests by reducing from three months to 31 days the maximum period in which telemarketers must update their database of numbers registered on the national do-not-call list in order to qualify for the safe harbor protections. We also conclude that this action is consistent with the intent of Congress. As noted above, in the Appropriations Act, Congress directed the FTC to amend its corresponding safe harbor rule in a similar manner. Although the Appropriations Act does not specifically require this Commission to take action, the Do-Not-Call Implementation Act directs the Commission to consult and coordinate with the FTC to ''maximize consistency'' with the rules promulgated by the FTC. As the Commission noted in the *2004 Further Notice* (69 FR 16873, March 31, 2004), absent action to amend our safe harbor rule as it applies to the national database, many telemarketers will face inconsistent standards because the FTC's jurisdiction extends only to certain entities, while our jurisdiction extends to all telemarketers. This would result in substantial confusion for consumers and potentially hinder state and federal regulatory efforts to monitor and enforce the national do-not-call rules.

We decline to establish a ''grace period'' advocated by a few commenters that would require telemarketers to obtain the information from the national do-not-call list every 30 or 31 days, but would not require them to stop calling consumers for some additional period of time. In so concluding, we agree with the FTC's determination that there is no support for this suggested approach in the Appropriations Act. In fact, the legislative history suggests that the sole purpose of shortening the requirement to purge the do-not-call list is to reduce, to one month, the amount of time consumers must wait to see a reduction in unwanted telephone solicitations. Although the Appropriations Act does not specifically require action by this Commission, for all the reasons discussed above, we believe that our actions should be consistent with those of the FTC and the intent of Congress.

We recognize that more frequent updates of the national registry may impose some additional administrative burdens on businesses, including small businesses. We believe, however, that the enhanced consumer privacy protections created by this requirement, taken in conjunction with the regulatory benefits to state and federal governments in establishing consistent requirements on all telemarketers, outweigh any such administrative burdens. We also note that the national do-not-call registry includes a feature whereby businesses that have already downloaded the entire database may thereafter request only a list of changes to their previous list (newly added and removed numbers), rather than downloading the entire database of approximately 60 million numbers every 31 days. This option should substantially alleviate any burdens imposed on businesses that may result from more frequent update requirements. In addition, at the request of National Automobile Dealers Association (NADA), we clarify that small sellers or telemarketers that register and pay the annual fee to use the national do-not-call database are not required to either conduct an initial or subsequent download of the entire database if they use only the single number lookup feature to screen their outgoing telephone solicitations. The FTC reached a similar conclusion noting that this decision constitutes no change from the existing rule.

We agree with several commenters that it may take some time for telemarketers and small businesses to implement procedures to access the national registry on a more frequent basis than previously required under our rules. In addition, the FTC has indicated that some additional time is required to enable the FTC and the vendor that operates the national do-not-call registry to implement modifications to the registry systems anticipated by the increase in usage resulting from this rule amendment. Therefore, consistent with the FTC's determination, we establish January 1, 2005, as the effective date of this rule amendment. We emphasize that nothing we do herein otherwise effects the safe harbor requirements, as set forth in 47 CFR 64.1200(c)(2)(i), for violations of the national do-not-call rules. Thus, while sellers and telemarketers are not required to conduct a physical download of the entire registry to be in compliance with the rules, they must nevertheless maintain and record a list of telephone numbers obtained using the single number lookup feature that the seller may not contact and document the process, in order to benefit from the safe harbor provision.

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (2004 TCPA Further Notice)* (69 FR 16873, March 31, 2004) released by the Commission on March 19, 2004. The

Commission sought written public comments on the proposals contained in the *2004 TCPA Further Notice,* including comments on the IRFA. None of the comments filed in this proceeding were specifically identified as comments addressing the IRFA; however, comments that address the impact of the proposed rules and policies on small entities are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Order

The TCPA was enacted to address certain telemarketing practices, including calls to wireless telephone numbers, which Congress found to be an invasion of consumer privacy and even a risk to public safety. The TCPA specifically prohibits calls using an autodialer or artificial or prerecorded message ''to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other common carrier service, or any service for which the called party is charged.'' In addition, the TCPA required the Commission to ''initiate a rulemaking proceeding concerning the need to protect residential telephone subscribers' privacy rights'' and to consider several methods to accommodate telephone subscribers who do not wish to receive unsolicited advertisements.

In 2003, the Commission released a *Report and Order (2003 TCPA Order)* revising the TCPA rules to respond to changes in the marketplace for telemarketing. Specifically, we established in conjunction with the FTC a national do-not-call registry for consumers who wish to avoid unwanted telemarketing calls. The national do-not-call registry supplements long-standing company-specific rules which require companies to maintain lists of consumers who have directed the company not to contact them. In addition, we determined that the TCPA prohibits any call using an automatic telephone dialing system or an artificial or prerecorded message to any wireless telephone number. We concluded that this encompasses both voice calls and text calls to wireless numbers including, for example, Short Message Service calls. We acknowledged in the *2003 TCPA Order* that, beginning in November of 2003, numbers previously used for wireline service could be ported to wireless service providers and that telemarketers will need to take the steps necessary to identify these numbers. Intermodal local number portability (LNP) went into effect November, 2003. We now modify the Commission's rules to establish a limited safe harbor period in which persons will not be liable for placing autodialed or artificial or prerecorded message calls to numbers ported from wireline to wireless service within the previous 15 days.

The *2003 TCPA Order* also required that telemarketers use the national do-not-call registry maintained by the FTC to identify consumers who have requested not to receive telemarketing calls. In order to avail themselves of the safe harbor for telemarketers, a telemarketer was required to update or ''scrub'' its call list against the national do-not-call registry every 90 days. Recently the FTC amended its safe-harbor provision to require telemarketers to scrub their call lists every 31 days. We now modify the Commission's rules to parallel changes to the FTC's rules. With this amendment, all telemarketers are required to scrub their lists against the national do-not-call registry every 31 days in order to avail themselves of that safe harbor.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

There were no comments raised that specifically addressed the proposed rules and policies presented in the IRFA. Nonetheless, the agency considered the potential impact of the rules proposed in the IRFA on small entities and attempted, to the extent possible, to reduce the economic impact of the rules enacted herein on such entities. Comments to the *2004 Further Notice* fell into two categories. The first category includes those comments on the safe harbor provision for calls to wireless numbers; the second category includes comments regarding the safe harbor provision for the national do-not-call list.

Two comments were filed that specifically mentioned small businesses—Montalvan and the National Automobile Dealers Association (NADA). Montalvan commented on the unreasonableness of asking small businesses to scrub lists on a monthly basis. NADA filed comments urging the Commission not to adopt the proposed amendment requiring businesses to download the do-not-call list monthly instead of quarterly. NADA claims that any benefit to maintaining consistency between the FTC and the Commission is outweighed by the burden on small businesses caused by the scrubbing of call lists three times more often. In addition, NADA seeks clarification that the use of the single number lookup feature constitutes compliance with the requirement that businesses check the do-not-call list every 31 days. Lastly, NADA argues that small businesses need ''adequate time to comply with the monthly download requirement.'' And, NADA seeks an effective date no earlier than January 1, 2005 or six months after publication in the **Federal Register**, whichever is later.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. 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. Under the Small Business Act, ''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 SBA.

The Commission's rules on telephone solicitation and the use of autodialers and artificial or prerecorded messages apply to a wide range of entities, including all entities that use the telephone to advertise. That is, our action affects any entity that uses an autodialer or prerecorded message to make telephone calls and the myriad of businesses throughout the nation that use telemarketing to advertise their goods or services. For instance, funeral homes, mortgage brokers, automobile dealers, newspapers, and telecommunications companies could all be affected. Thus, we expect that the rules adopted in this proceeding could have a significant economic impact on a substantial number of small entities.

Small Businesses. Nationwide, there are a total of 22.4 million small businesses, according to SBA data.

Small Organizations. As of 1992, nationwide there were approximately 275,801 small organizations [not-for-profit].

Telemarketers. Again, we note that our action affects an exhaustive list of business types. We will mention with particularity the intermediary groups that engage in this activity. SBA has determined that ''telemarketing bureaus'' with $6 million or less in annual receipts qualify as small businesses. For 1997, there were 1,727 firms in the ''telemarketing bureau'' category, total, which operated for the

entire year. Of this total, 1,536 reported annual receipts of less than $5 million, and an additional 77 reported receipts of $5 million to $9,999,999. Therefore, the majority of such firms can be considered to be small businesses.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

The revision to the safe harbor rules that require telemarketers to update their lists monthly instead of quarterly, carries no additional compliance costs for accessing the national do-not-call registry, because once a telemarketer has paid its fee to the FTC the telemarketer may access the list as often as it wants, up to once a day. There may, however, be an increase in costs associated with scrubbing the telemarketer's call list more frequently. Increased costs might be caused by a decrease in staff efficiency because staff will be required to scrub the call list monthly instead of quarterly or by increased payments to a third party for ''scrubbing'' services. We note in the *Order,* however, that the national do-not-call registry includes a feature whereby businesses that have already downloaded the entire database may thereafter request only a list of changes to their previous list (containing newly added and removed numbers), rather than downloading the entire database of approximately 60 million numbers every 31 days. This feature should substantially alleviate any burdens imposed on small businesses that may result from more frequent update requirements by minimizing for small businesses the cost of updating the list each time they must do so. In addition, at the request of NADA, we clarify that small sellers or telemarketers that register and pay the annual fee to use the national do-not-call database are not required to either conduct an initial or subsequent download of the entire database if they use only the single number lookup feature to screen their outgoing telephone solicitations. In conclusion, we believe that the enhanced consumer privacy protections derived from reducing from three months to 31 days the maximum period in which telemarketers must update their call lists using the do-not-call list, taken in conjunction with the regulatory benefits to state and federal governments and consumers in establishing consistent requirements for all telemarketers, outweigh the administrative burdens associated with this increase in compliance requirements.

Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

First, the TCPA specifically prohibits calls using an autodialer or artificial or prerecorded message to any wireless telephone number. With the advent of intermodal number portability it became important for companies engaged in telemarketing to track ported numbers in order to ensure continued compliance with the TCPA. The Commission is now adopting a limited safe harbor for autodialed and prerecorded message calls to wireless numbers that were ported within 15 days from a wireline service to a wireless service provider. It is our belief that this 15-day safe harbor period will provide a reasonable opportunity for small businesses to identify numbers that have been ported and to comply with the rules. In addition, we believe that the creation of this safe harbor will not have a significant economic impact on any small businesses, only a benefit.

One alternative we considered was not to adopt a safe harbor. That alternative could make compliance with the TCPA's prohibition almost impossible for small businesses using autodialers and prerecorded messages. The majority of commenters support the adoption of a safe harbor, although most request a minimum of 30 days. In our view, 30 days places too much of a burden on consumers, who may be subjected to calls to their wireless phones for which they must pay for up to a month's time. This is an inappropriate shifting of the costs of advertising from businesses, including small businesses, to wireless subscribers. We believe that the creation of a limited safe harbor period of 15 days balances the needs of small businesses against the needs of wireless customers. Furthermore, we do not believe that consumer privacy interests will be negatively impacted by our decision, in part because consumers may continue to avail themselves of the national and company-specific do-not-call lists.

Second, as indicated in Section D of the FRFA, the Commission has modified the TCPA safe-harbor provision. This modification requires that telemarketers scrub their lists on a monthly, rather than a quarterly basis. One alternative considered by the Commission was to leave the safe harbor unchanged. The advantage to such an alternative was that there would have been no increased burden on small businesses. Businesses would continue to download numbers from the national do-not-call registry and scrub their own call lists of those numbers every three months. The disadvantage in maintaining the status quo would have been that the FTC and Commission rules would be inconsistent, contrary to Congress' directive in the Do-Not-Call Implementation Act. Small businesses subject to the jurisdiction of both agencies would have been faced with this inconsistency. We believe that it is easier and less burdensome for small businesses if the two agencies have consistent requirements.

Several commenters stated that it may take some time for telemarketers and small businesses to implement procedures before they can access the national registry on a monthly basis. In addition, the FTC has indicated that some additional time is required to enable the FTC and the vendor that operates the national do-not-call registry to implement modifications to the registry systems anticipated by the increase in usage resulting from this rule amendment. For both these reasons, we establish January 1, 2005, as the effective date of this rule amendment. This additional period will provide telemarketers and small businesses more time to modify their procedures to accommodate these changes.

Report to Congress

The Commission will send a copy of the *Order,* including the Final

Regulatory Flexibility Analysis (FRFA), in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Order,* including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses

Accordingly, pursuant to the authority contained in Sections 1–4, 227, and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. 151–

154, 227 and 303(r); and 47 CFR 64.1200 of the Commission's rules, and the Do-Not-Call Implementation Act, Public Law Number 108–10, 117 Statute 557, the *Order* in CG Docket No. 02–278 IS ADOPTED, and Part 64 of the Commission's rules, 47 CFR 64.1200 is amended as set forth in the Final Rules. As discussed herein, the amended rule at 47 CFR 64.1200(c)(2)(i)(D) will become effective January 1, 2005.

The *Petition for Declaratory Ruling* filed by the Direct Marketing Association and Newspaper Association of America on January 29, 2004, *is denied* to the extent discussed herein. The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254 (k); secs. 403 (b)(2) (B), (C), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254 (k) unless otherwise noted.

* * * * *

■ 2. Section 64.1200 is amended by adding paragraph (a)(1)(iv) and revising paragraph(c)(2)(i)(D) and adding a note to paragraph (c)(2)(i)(D) to read as follows:

§ 64.1200 Delivery restrictions.

(a) * * *

(1) * * *

(iv) A person will not be liable for violating the prohibition in paragraph (a)(1)(iii) when the call is placed to a wireless number that has been ported from wireline service and such call is a voice call; not knowingly made to a wireless number; and made within 15 days of the porting of the number from wireline to wireless service, provided the number is not already on the national do-not-call registry or caller's company-specific do-not-call list.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(D) *Accessing the national do-not-call database.* It uses a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than 31 days prior to the date any call is made, and maintains records documenting this process.

Note to paragraph (c)(2)(i)(D): The requirement in paragraph 64.1200(c)(2)(i)(D) for persons or entities to employ a version of the national do-not-call registry obtained from the administrator no more than 31 days prior to the date any call is made is effective January 1, 2005. Until January 1, 2005, persons or entities must continue to employ a version of the registry obtained from the administrator of the registry no more than three months prior to the date any call is made.

* * * * *

[FR Doc. 04–22755 Filed 10–7–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–3057: MB Docket No. 03–190; RM–10738]

Radio Broadcasting Services; Athens and Doraville, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to petition for rule making filed by CXR Holdings, Inc. and Cox Radio, Inc. this document reallots Channel 238C1 from Athens to Doraville, Georgia, and modifies the Station WBTS license to specify Doraville as the community of license. *See* 68 FR 54879, September 19, 2003. The reference coordinates for the Channel 238C1 allotment at Doraville, Georgia, are 34–07–32 and 83–51–32. Station WBTS was granted a license to specify operation on Channel 238C1 in lieu of Channel 238C at Athens, Georgia. *See* BLH–20011016AAF. The FM Table of Allotments does not reflect this change. With this action, the proceeding is terminated.

DATES: Effective November 18, 2004.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Report and Order* in MB Docket No. 03–190 adopted September 23, 2004, and released September 27, 2004. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals ll, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision 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, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of the *Report and Order* in this proceeding in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C.801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of the Code of Federal Regulations is amended 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 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 238C at Athens, and adding Doraville, Channel 238C1.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–22751 Filed 10–7–04; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–04–19284]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition for reconsideration.

SUMMARY: The agency denies Porsche's petition for reconsideration of the agency's May 5, 2003 final rule expanding the limited line manufacturer