

health care program has imposed a longer period of exclusion under its own authorities.

**§ 402.306 Denial of request for reinstatement.**

(a) If a request for reinstatement is denied, the initiating agency provides written notice to the excluded person. Within 30 days of the date of this notice, the excluded person may submit to the initiating agency:

(1) Documentary evidence and a written argument challenging the reinstatement denial; or

(2) A written request to present written evidence or oral argument to an official of the initiating agency.

(b) If a written request as described in paragraph (a)(2) of this section is received timely by the initiating agency, the initiating agency, within 15 days of receipt of the excluded person's request, initiates communication with the excluded person to establish a time and place for the requested meeting.

(c) After evaluating any additional evidence submitted by the excluded person (or at the end of the 30-day period described in paragraph (a) of this section, if no documentary evidence or written request is submitted), the initiating agency sends written notice to the excluded person either confirming the denial, or approving the reinstatement in the manner set forth in § 402.304. If the initiating agency elects to uphold its denial decision, the written notice also indicates that a subsequent request for reinstatement will not be considered until at least 1 year after the date of the written denial notice.

(d) The decision to deny reinstatement is not subject to administrative review.

**§ 402.308 Waivers of exclusions.**

(a) *Basis.* Section 1128(c)(3)(B) of the Act specifies that in the case of an exclusion from participation in the Medicare program based upon section 1128(a)(1), (a)(3), or (a)(4) of the Act, the individual may request that CMS present, on his or her behalf, a request to the OIG for a waiver of the exclusion.

(b) *Definitions.* For purposes of this section:

*Excluded person* has the same meaning as a "person" as defined in § 402.3 who meets for the purposes of this subpart, the definition of the term "exclusion" in § 402.3.

*Hardship* for purposes of this section means something that negatively affects Medicare beneficiaries and results from the imposition of an exclusion because the excluded person is the sole community physician or sole source of

essential specialized services in the Medicare community.

*Sole community physician* has the same meaning as that term is defined § 1001.2 of this title.

*Sole source of essential specialized services in the community* has the same meaning as that term defined by the § 1001.2 of this title.

(c) *General rule.* If CMS determines that a hardship as defined in paragraph (b)(2) of this section results from exclusion of an affected person from the Medicare program, CMS may consider and may make a request to the Inspector General for waiver of the Medicare exclusion.

(d) *Submission and content of a waiver of exclusion request.* An excluded person must submit a request for waiver of exclusion in writing to CMS that includes the following:

(1) A copy of the exclusion notice from the OIG.

(2) A statement requesting that CMS present a waiver of exclusion request to the OIG on his or her behalf.

(3) A statement that he or she is the sole community physician or sole source of essential specialized services in the community.

(4) Documentation to support the statement in paragraph (d)(3) of this section.

(e) *Processing of waiver of exclusion requests.* CMS processes a request for a waiver of exclusion as follows:

(1) Notifies the submitter that the waiver of exclusion request has been received.

(2) Reviews and validates all submitted documents.

(3) During its analysis, CMS may require additional, specific information, and authorization to obtain information from private health insurers, peer review organizations (including, but not limited to, Quality Improvement Organizations), and others as necessary to determine validity.

(4) Makes a determination regarding whether or not to submit the waiver of exclusion request to the OIG based on review and validation of the submitted documents.

(5) If CMS elects to submit the waiver of exclusion request to the OIG, CMS copies the excluded person on the request.

(6) If CMS denies the request, then CMS notifies the excluded person of the decision and specifies the reason(s) for the decision.

(f) *Administrative or judicial review.* A determination rendered under paragraph (e)(4) of this section is not subject to administrative or judicial review.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 14, 2006.

**Leslie V. Norwalk,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

Approved: March 26 2007.

**Michael O. Leavitt,**

*Secretary.*

**Editorial Note:** This document was received at the Office of the Federal Register on July 9, 2007.

[FR Doc. E7-13535 Filed 7-19-07; 8:45 am]

**BILLING CODE 4120-01-P**

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 0 and 90**

[WT Docket No. 02-55, ET Docket No. 00-258; ET Docket No. 95-18; RM-9498; RM-10024—FCC 07-102]

**Improving Public Safety Communications in the 800 MHz Band, et al.**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule, clarification.

**SUMMARY:** In the Second Memorandum Opinion and Order, the Commission affirms and clarifies various rules governing the 800 MHz band reconfiguration process designed to improve public safety communications. The Second Memorandum Opinion and Order addresses various petitions for reconsideration and clarification asking the Commission to revisit certain decisions in the 800 MHz band reconfiguration proceeding.

**DATES:** Effective August 20, 2007.

**FOR FURTHER INFORMATION CONTACT:** John Evanoff, Public Safety and Homeland Security Bureau, (202) 418-0848, or via the Internet at [John.Evanoff@fcc.gov](mailto:John.Evanoff@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This document summarizes the Second Memorandum Opinion and Order in WT Docket No. 02-55, adopted on May 24, 2007, and released on May 30, 2007. The full text of this document is available for public inspection on the Commission's Internet site at <http://www.fcc.gov>. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's

duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY-B402, Washington, DC 20554; telephone (202) 488-5300; fax (202) 488-5563; e-mail [FCC@BCPIWEB.COM](mailto:FCC@BCPIWEB.COM).

### Background

1. In the 800 MHz Report and Order, 69 FR 67823, November 22, 2004, the Commission adopted technical and procedural measures to address the ongoing and growing problem of interference to public safety communications in the 800 MHz band. Specifically, the Commission addressed the ongoing interference problem over the short-term by adopting technical standards defining unacceptable interference in the 800 MHz band and detailing responsibility for interference abatement. The Commission further determined that solving the interference problem for the long-term necessitated reconfiguring the 800 MHz band to separate generally incompatible technologies whose current proximity to each other is the identified root cause of unacceptable interference. Accordingly, the Commission adopted a new band plan for the 800 MHz band and established a transition mechanism for licensees in the band to relocate to their new spectrum assignments. The Commission subsequently issued a Supplemental Order and Order on Reconsideration, 70 FR 6758, February 8, 2005, making certain clarifications of, and changes to, the provisions of the 800 MHz Report and Order and its accompanying interference mitigation and band reconfiguration rules. In October 2005, the Commission released a Memorandum Opinion and Order (800 MHz MO&O), 70 FR 76704, December 28, 2005, making certain further changes and clarifications to the 800 MHz interference mitigation and band reconfiguration rules. In this Order, we address various petitions for reconsideration and clarification of the Commission's 800 MHz MO&O, previously unaddressed portions of a petition for reconsideration of the 800 MHz Report and Order and a petition for partial waiver of the rebanding rules, as well as several petitions dealing with clearing of the 1.9 GHz Broadcast Auxiliary Services (BAS) band, including a joint petition for declaratory ruling and several petitions for clarification or reconsideration.

### Discussion

2. The Second Memorandum Opinion and Order affirms the eligibility criteria for relocating licensees to the enhanced specialized mobile radio (ESMR) band. In addition to affirming the eligibility

criteria for relocation to the ESMR band, the order released today also clarifies the costs that Sprint Nextel Corp. (Sprint) must pay to relocate non-ESMR licensees relocating to the ESMR band.

3. The Commission also denied petitions seeking to require Sprint Nextel to pay licensees' post-mediation litigation costs. The order also clarifies procedures that are to be used if there is a shortfall of spectrum in the ESMR band and outlines steps for a revised band plan and timetable for the Puerto Rico market. It also addresses rebanding for Guam, the Northern Mariana Islands, American Samoa, and the Gulf of Mexico and clarifies the 800 MHz application freeze's impact on modification applications. The order also defines limits on Sprint Nextel operations that are near public safety channels before the transition is completed. The order also denied a petition filed by Mobile Relay Associates seeking a partial waiver of the rebanding rules to allow it to relocate to the ESMR band. The order also denies a petition filed by Charles Guskey as repetitive and untimely.

4. The order also partially grants petitions asking the FCC to require Sprint Nextel to relocate broadcast auxiliary service (BAS) facilities associated to translator TV stations or operated by full-power TV stations on a short-term basis. The Commission said it will permit, but not require, the carrier to pay and claim credit for such costs. The order also delegates to the Public Safety and Homeland Security Bureau the authority to adopt rules for the Canadian and Mexican border regions once spectrum-sharing agreements between the U.S. and those countries are finalized.

### Final Regulatory Flexibility Certification

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

established by the Small Business Administration (SBA). In sum, we certify that the rule changes and actions in this Second Memorandum Opinion and Order will not have a significant economic impact on a substantial number of small entities.

6. *ESMR Band Eligibility.* In this proceeding the Commission divided the 800 MHz band into a cellular portion (ESMR band) and non-cellular portion to create spectral separation between incompatible technologies. Section 90.614 provides that the cellular portion would be reserved for licensees that operate cellular high density systems. Several parties sought reconsideration of the eligibility and operating requirements applicable to the cellular band arguing that these requirements are overly restrictive. In the 800 MHz Memorandum Opinion and Order, we clarified eligibility of licensees to relocate to the ESMR band to include low-density cellular operations and deferred consideration of a petition for reconsideration filed by Richard M. Duncan seeking to permit site-based Specialized Mobile Radio (SMR) licensees to relocate to the ESMR band. Sprint Nextel Corporation sought reconsideration of the provisions of the 800 MHz MO&O that clarified and expanded the rights of certain licensees other than Sprint and SouthernLINC to relocate to the ESMR band. After careful analysis, we find no reason to upset the Commission's balancing of interests that led to the revised eligibility criteria for the ESMR band contained in the 800 MHz MO&O. Those criteria are designed to eliminate potential interference between incompatible technologies and to provide ESMR licensees flexibility in managing their systems. Here, we affirm the eligibility criteria established in the 800 MHz MO&O for relocation to the ESMR band and are taking no action with respect to any entity. Therefore, we certify that our decision to deny the Sprint and Duncan petitions will not have a significant economic impact on a substantial number of small entities.

7. *ESMR Band Plan.* In some Southeastern markets where both Southern LINC and Sprint offer ESMR service, insufficient spectrum exists in the 816-824/861-869 MHz band segment to accommodate existing ESMR systems. To accommodate Sprint and SouthernLINC, the Commission created an expanded ESMR band in the Southeast. Sprint sought clarification that the 800 MHz Report and Order "adopted two remedies in the event there is insufficient spectrum in the ESMR segment to accommodate all eligible licensees in a market: (1) Expanding the ESMR segment and, in

the event a channel shortfall remained (2) distributing the available channels on a pro rata basis among licensees.” Although we agree with Sprint that the Commission has the discretion to apportion ESMR spectrum, we find no support for Sprint’s contention that licensees themselves have similar discretion. We also clarify that under limited circumstances, the Commission may apportion the ESMR band pro rata to licensees eligible to operate there. Because our decision merely clarifies pre-existing rules applicable to the ESMR Band, we have adopted no new rule and have taken no other action that affects any entity. Therefore, we certify that our decision will not have a significant economic impact on a substantial number of small entities.

8. *Puerto Rico*. The Puerto Rico market presents a unique situation that is distinct from other markets. Sprint holds considerably less spectrum in Puerto Rico than it does elsewhere, and there are several other licensees who have acquired significant EA license holdings in Puerto Rico at auction and seek to operate as ESMRs. In addition, Puerto Rico has numerous site-based incumbents that will need to be relocated to the non-ESMR block. Thus, an alternative band plan is appropriate here. Accordingly we provide the 800 MHz Transition Administrator (TA) with specific criteria and direct the TA to propose an alternative band plan within 60 days of the release of this order, including, if necessary, a pro rata distribution of ESMR spectrum. At this time, we have no basis for anticipating that any future decision by the TA in either proposing an alternative band plan or proposing a pro rata distribution would adversely affect any small entities. Accordingly, at this time, we certify that our decision will not have a significant economic impact on a substantial number of small entities.

9. Furthermore, to the extent that any action taken in the future might impose an adverse economic impact in Puerto Rico, that impact will be borne by Sprint because Sprint must pay the costs of 800 MHz band reconfiguration. Under Small Business Administration criteria, Sprint is a large entity. Further, there is no evidence in the record that non-Sprint licensees in the Puerto Rico market, including small wireless cellular, public safety, governmental entities or other wireless entities, would suffer adverse economic consequences.

10. *Guam, the Northern Mariana Islands, American Samoa, and the Gulf of Mexico*. Sprint asks that we reconsider the Commission’s decision in the 800 MHz MO&O to require band reconfiguration in areas that have no

associated NPSPEC region. These areas include American Samoa, Guam, the Northern Mariana Islands, and the Gulf of Mexico. Because there are no public safety entities in the Gulf of Mexico and Sprint does not hold spectrum rights in the Gulf of Mexico, we see no risk in the Gulf of the type of interference to public safety systems that would require rebanding. However, we deny Sprint’s request as it relates to Guam, the Northern Mariana Islands, and American Samoa. We believe that funding band reconfiguration in these markets does not pose an inequitable burden on Sprint. We take this position because Sprint alone will bear the cost of band reconfiguration in Guam, the Northern Mariana Islands, and American Samoa. Therefore, we certify that this action will not have a significant economic impact on a substantial number of small entities.

11. *Application Freeze*. In the 800 MHz Report and Order, the Commission imposed a freeze on the acceptance of 800 MHz applications in order to maintain a stable spectral landscape during the band relocation process. The Commission stated, however, that de minimis modifications to a currently authorized system are not subject to the application freeze so long as the modifications are necessary to effectuate band reconfiguration. Sprint requests that we broaden this exception to the freeze to “permit certain license modifications \* \* \* provided they do not materially diminish public safety’s spectral or operational expectancies.” While Sprint fails to define “spectral or operational expectancies” we agree that some flexibility may be appropriate. In this connection, we clarify that licensees may seek a waiver of the application freeze. Because grant of such a waiver would provide benefits to public safety service providers and to the public through improved public safety communications, we believe that only benefits will result. Therefore, we certify that this action will not have a significant economic impact on a substantial number of small entities.

12. *Post-litigation costs*. Under the 800 MHz Report and Order, Sprint is required to pay the costs of mediation to resolve disputes associated with a frequency reconfiguration agreement. The Wireless Telecommunications Bureau issued a public notice that stated: “Licensees that enter mediation with Sprint Nextel are entitled to reimbursement of ‘reasonable, prudent and necessary costs and expenses’ associated with reaching a mediated frequency reconfiguration agreement. However, licensees who fail to reach a mediated agreement must bear their

own costs associated [with] all further administrative or judicial appeals of band reconfiguration issues, including de novo review \* \* \* and appeal of any such review before an A[dministrative] L[aw] J[udge].” Some parties have filed petitions for reconsideration suggesting that the Commission require Sprint to pay opposing parties’ litigation costs when they seek *de novo* review before the Commission of issues that have not been resolved by negotiation or TA-sponsored mediation. We deny those petitions. Under the Commission’s orders in this proceeding, Sprint must pay all licensees’ reasonable costs of negotiation and TA-sponsored mediation, regardless of outcome. This ensures that licensees can take full advantage of these mechanisms at no cost to themselves, while at the same time encouraging resolution of issues by negotiated agreement and mediation rather than litigation. However, requiring Sprint to pay its opponents’ litigation costs before the Commission and beyond would increase the likelihood of litigation and add cost and delay to the rebanding process. Moreover, the Commission lacks statutory authority to award such costs in cases that come before it. While parties that pursue administrative or judicial appeals may incur some cost, such cost would be undertaken voluntarily. Further, there is no evidence in the record that a substantial number of parties will pursue such legal challenges. Therefore, we certify that this action will not have a significant economic impact on a substantial number of small entities.

13. *NPSPEC Band Operational Restrictions*. The Tri-State Radio Planning Committee, FCC Region 8 (Region 8) asks us to impose operational restrictions on Sprint in two distinct situations: (1) When a NPSPEC licensee has moved one or more of its channels to the new NPSPEC frequencies and Sprint has not yet completely vacated the former General Category channels and (2) when Sprint wishes to commence operations in the ESMR band, but has not fully cleared the ESMR band of NPSPEC incumbents. Region 8 is concerned that these situations, though temporary, could create the risk of harmful interference through the interleaving of incompatible technologies that was the genesis of this proceeding. To address this risk, Region 8 requests that: (a) We require Sprint to cease current operation on any channel 1–120 frequency within 25 kHz of relocated NPSPEC stations within 88 kilometers (km), and (b) Sprint not be allowed to begin operations on any

former NPSPAC channel within 88 kilometers of the site of any current NPSPAC station which has not been relocated to the new NPSPAC frequencies. Region 8 asks that we maintain these limitations in place until the entire NPSPAC band has been relocated and all relocated licensees have finalized the relocation process. Given that NPSPAC communications primarily involve the safety of life and property and because interference with these communications could have tragic results, we agree with Region 8's concerns. Because these operational restrictions apply only to Sprint, a large entity, we certify that this action will not have a significant economic impact on a substantial number of small entities.

14. *Charles Guskey Petition.* Charles Guskey, a principal of Preferred Communications, contends that the 800 MHz MO&O failed to adequately address his prior petition for reconsideration of the 800 MHz Supplemental Order. Guskey contends that: (1) The Commission undervalued the 1.9 GHz spectrum by at least a billion dollars, giving Nextel a windfall; (2) Preferred be allowed to relocate its General Category EA channels (encumbered or not) to clean spectrum in the ESMR band; and (3) Puerto Rico needs to be treated as a unique market, and Preferred awarded the 1.9 GHz spectrum in Puerto Rico in exchange for relocating public safety systems in that market. Because we dismiss the Petition as repetitive and untimely, we certify that this action will not have a significant economic impact on a substantial number of small entities.

15. *Broadcast Auxiliary Service Facilities.* We partially grant petitions to require Sprint to relocate BAS facilities associated with translator television stations or operated by full-power television stations on a short-term basis by permitting, but not requiring, Sprint to pay and claim credit for the costs incurred in relocating these BAS facilities. Some parties have filed petitions for reconsideration and clarification urging the Commission to require Sprint to relocate secondary BAS translator facilities. We instead permit, but not require, Sprint to relocate such facilities and to receive credit for such relocations at the "true-up," consistent with Commission precedent regarding other secondary BAS stations. Because secondary BAS operations can be displaced at any time by primary operations, under well-established Commission policy the licensees of such facilities are not eligible for mandatory relocation reimbursement. Further, our narrow

decision to permit Sprint to pay for relocation of secondary BAS facilities associated with translator and LPTV stations and short-term BAS facilities operating under section 74.24 is limited to the facts present here and may not be construed in other contexts as a revision of Commission rules and policies affecting stations operating pursuant to secondary authorizations. Also, allowing Sprint to pay for relocation of these secondary BAS facilities does not in any way alter Mobile Satellite Service licensees' obligations concerning the relocation of BAS incumbents with primary authorizations. Therefore, because our decision to permit such relocation affects only Sprint, a large entity, we certify that our decision to provide Sprint flexibility in managing BAS relocation will not have a significant economic impact on a substantial number of small entities.

16. *Southeast Band Plan.* In the 800 MHz MO&O, the Commission updated Sections 90.617(a), (b) and (d) to reflect the distribution of channels between the various categories in the SouthernLINC/Sprint markets located in the Southeastern part of the United States. Specifically, the Commission modified the band plan for the SouthernLINC/Sprint markets to reflect a reduced Expansion Band of one-half megahertz for those locations within a seventy mile radius of Atlanta, Georgia. As a result of this change, there are now two different band plans for the SouthernLINC/Sprint markets—one band plan for locations outside the seventy mile radius and one band plan for locations within a seventy mile radius of Atlanta, Georgia. The Commission inadvertently omitted this rule change. In this Second Memorandum Opinion and Order, the Commission on its own motion revises Section 90.617(g) and (h) to add a reference to vacated spectrum in the Atlanta market. This rule change is necessary to identify the particular spectrum that will be available for public safety and critical infrastructure industry use within a 70-mile radius of Atlanta and the spectrum that will be available outside that radius. We also remove all language from Section 90.617 which indicates that the agreement between SouthernLINC and Sprint still needs to be approved by the Wireless Telecommunications Bureau. Responsibility over the 800 MHz band reconfiguration proceeding has been delegated to the Public Safety and Homeland Security Bureau. Because these rule changes are procedural in nature and are intended to correct an inadvertent omission and reflect organizational changes, we certify that

these changes will not have a significant economic impact on a substantial number of small entities.

17. *Band Plan.* On our own motion, we modify section 90.203(i)—pertaining to equipment certification—to reflect the location of the NPSPAC band after band reconfiguration. We also correct the base frequency for one of the frequencies listed in the table in section 90.613. The Commission inadvertently failed to update these sections in the 800 MHz Report and Order. Therefore, we correct these inadvertent omissions and certify that these changes will not have a significant economic impact on a substantial number of small entities.

18. *Border Area.* Finally, on our own motion, we address implementation of 800 MHz band plan rules for the Canadian and Mexican border regions. We delegate specific authority to the Public Safety and Homeland Security Bureau to propose and adopt new 800 MHz band plan rules for U.S. primary spectrum in the Canadian and Mexican border regions once the relevant agreements with Canada and Mexico are finalized. This is similar to authority that has been previously delegated to the Wireless Telecommunications Bureau. We amend therefore Section 0.392(e) of our rules to provide the Chief of the Public Safety and Homeland Security Bureau with the same delegated authority. Thus this rule change is purely procedural in nature and therefore we certify that these changes will not have a significant economic impact on a substantial number of small entities. Therefore, we certify that the requirements of the Second Memorandum Opinion and Order will not have a significant economic impact on a substantial number of small entities.

#### **Paperwork Reduction Act Analysis**

19. This document 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).

#### **Report to Congress**

20. The Commission will send a copy of this Report and Order, Second Memorandum Opinion and Order in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act. In addition, the Second Memorandum

Opinion and Order and this final certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

**Report to Small Business Administration**

21. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Second Memorandum Opinion and Order including the Regulatory Flexibility Certification and to the Chief Counsel for Advocacy of the Small Business Administration.

**Ordering Clauses**

22. Accordingly, *It is ordered* that, pursuant to Sections 4(i), 303(f), 332, 337 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f), 332, 337 and 405, this Second Memorandum Opinion and Order is hereby adopted.

23. *It is further ordered* that, pursuant to Sections 1, 4(i), 303(f) and (r), 332, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 303(f) and (r), 332, and 405, the Request for Clarification of Communications & Industrial Electronics, Inc., North Sight Communications, Inc. and Ragan Communications, Inc. on January 27, 2006 is granted to the extent described herein and denied in all other respects.

24. *It is further ordered* that the Petition for Reconsideration of Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, filed by Richard W. Duncan d/b/a Anderson Communications, filed Dec. 22, 2004 is denied to the extent described herein.

25. *It is further ordered* that the Petition for Reconsideration filed by Charles D. Guskey on January 27, 2006, the Petition for Partial Reconsideration and Clarification filed by the Safety and Frequency Equity Competition Coalition on January 27, 2006; and the Petition for Reconsideration filed by Schwaninger & Associates are dismissed.

26. *It is further ordered* that the Petition for Clarification filed by Chair of the NPSPAC Region 8 Regional Planning Committee on March 3, 2006 is granted.

*It is further ordered* that the Petition for Reconsideration filed by Sprint Nextel Corporation, on January 27, 2006 is granted in part, denied in part, dismissed in part and deferred in part to the extent described herein.

27. *It is further ordered* that the Petitions for Clarification and/or Reconsideration filed by the Mohave County Board of Supervisors, the Association for Maximum Service Television, Fox Television Stations Inc.,

KTVK Inc., Multimedia Holdings Corporation, Meredith Corporation, and Scripps Howard Broadcasting Company on January 27, 2006 are granted in part and denied in part to the extent described herein.

28. *It is further ordered* that the Petition for Clarification filed by Fox Television Stations Inc. and Gray Television Licensee Inc. on March 20, 2007 Is granted in part and denied in part to the extent described herein.

29. *It is further ordered* pursuant to the authority of Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and sections 1.925 of the Commission's Rules, 47 CFR 1.925 that the Request for Waiver submitted by Mobile Relay Associates in the above-captioned proceeding on January 24, 2006 is denied.

30. *It is further ordered* that the amendments of the Commission's Rules as set forth in Appendix B are adopted, effective August 24, 2007.

31. *It Is Further Ordered* that the Final Regulatory Flexibility Analysis, required by Section 604 of the Regulatory Flexibility Act, 5 U.S.C. 604, and as set forth herein is adopted.

**List of Subjects**

*47 CFR Part 0*

Commission organization.

*47 CFR Part 90*

Communications.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

**Rule Changes**

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0 and 90 as follows:

**PART 0—COMMISSION ORGANIZATION**

■ 1. The authority citation for part 0 continues to read as follows:

**Authority:** Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

■ 2. Section 0.392(e) is revised to read as follows:

**§ 0.392 Authority delegated.**

\* \* \* \* \*

(e) The Chief, Public Safety and Homeland Security Bureau shall not have authority to issue notices of proposed rulemaking, notices of inquiry, or reports or orders arising from either of the foregoing except such orders involving ministerial conforming amendments to rule parts, or orders

conforming any of the applicable rules to formally adopted international conventions or agreements where novel questions of fact, law, or policy are not involved.

\* \* \* \* \*

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

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

**Authority:** 4(i), 11, 303(g), 303(r), and 302(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 4. Section 90.203(i) is revised to read as follows.

**§ 90.203 Certification required.**

\* \* \* \* \*

(i) Equipment certificated after February 16, 1988 and marketed for public safety operation in the 806–809/851–854 MHz bands must have the capability to be programmed for operation on the mutual aid channels as designated in § 90.617(a)(1) of the rules.

\* \* \* \* \*

■ 5. The frequency table in § 90.613 is amended by revising the entry for channel 169 listed in Table of 806–824/851–869 MHz Channel Designations as follows.

**§ 90.613 Frequencies available.**

\* \* \* \* \*

	Channel No.	Base frequency (MHz)
*	*	*
169	.....	.2250
*	*	*

\* \* \* \* \*

■ 6. Section 90.617 is amended by revising the undesignated introductory text and paragraphs (g) and (h) to read as follows:

**§ 90.617 Frequencies in the 809.75–824/854.750–869 MHz, and 896–901/935–940 MHz bands available for trunked, conventional, or cellular system use in non-border areas.**

The following channels will be available at locations farther than 110 km (68.4 miles) from the U.S./Mexico border and 140 km (87 miles) from the U.S./Canadian border (“non-border areas”).

\* \* \* \* \*

(g) In a given NPSPAC region, channels below 471 listed in Tables 2 and 4B which are vacated by licensees relocating to channels 551–830 and

which remain vacant after band reconfiguration will be available as indicated in § 90.617(g)(1 through 3). The only exception will be for the counties listed in § 90.614(c). At locations greater than 113 km (70 mi) from the center city coordinates of Atlanta, GA within the counties listed in § 90.614(c), the channels listed in Tables 2A and 4C which are vacated by licensees relocating to channels 411–830 and which remain vacant after band reconfiguration will be available as indicated in § 90.617(g)(1 through 3). At locations within 113 km (70 mi) of the center city coordinates of Atlanta, GA, the channels listed in Tables 2B and 4D which are vacated by licensees relocating to channels 411–830 and which remain vacant after band reconfiguration will be available as follows:

(1) Only to eligible applicants in the Public Safety Category until three years after the release of a public notice announcing the completion of band reconfiguration in that region;

(2) Only to eligible applicants in the Public Safety or Critical Infrastructure Industry Categories from three to five years after the release of a public notice announcing the completion of band reconfiguration in that region;

(3) Five years after the release of a public notice announcing the completion of band reconfiguration in that region, these channels revert back to their original pool categories.

(h) In a given 800 MHz NPSPAC region—except for the counties listed in § 90.614(c)—channels below 471 listed in Tables 2 and 4B which are vacated by a licensee relocating to channels 511–550 and remain vacant after band reconfiguration will be available as follows:

(1) Only to eligible applicants in the Public Safety Category until three years after the release of a public notice

announcing the completion of band reconfiguration in that region;

(2) Only to eligible applicants in the Public Safety or Critical Infrastructure Industry Categories from three to five years after the release of a public notice announcing the completion of band reconfiguration in that region;

(3) Five years after the release of a public notice announcing the completion of band reconfiguration in that region, these channels revert back to their original pool categories.

\* \* \* \* \*

[FR Doc. E7–14099 Filed 7–19–07; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF ENERGY

### 48 CFR Part 970

[Docket No. E7–10037]

RIN 1991–AB67

#### Acquisition Regulation: Implementation of DOE's Cooperative Audit Strategy for Its Management and Operating Contracts; Correction

**AGENCY:** Office of Procurement and Assistance Management, Department of Energy.

**ACTION:** Correcting amendments.

**SUMMARY:** This document corrects a final rule (FR document E7–10037), which was published in the **Federal Register** of Thursday, May 24, 2007 (72 FR 29077), regarding the Acquisition Regulation: Implementation of DOE's Cooperative Audit Strategy for Its Management and Operating Contracts. This correction revises the date of the clause at 48 CFR 970.5203–1.

**DATES:** *Effective date:* July 20, 2007.

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## SUPPLEMENTARY INFORMATION:

### Background

The Department of Energy (DOE) in the final regulation that is the subject of this correction amended its Acquisition Regulation (DEAR) by making minor amendments to existing contractor internal audit requirements, through the use of the Cooperative Audit Strategy.

### Need for Correction

This correction revises the date of the clause at 48 CFR 970.5203–1.

### List of Subjects in 48 CFR Part 970

Government procurement.

■ Accordingly, 48 CFR part 970 is corrected by making the following correcting amendment:

### PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

■ 1. The authority citation for part 970 continues to read as follows:

**Authority:** 42 U.S.C. 2201, 2282a, 2282b, 2282c; 42 U.S.C. 7101 *et seq.*; 41 U.S.C. 418b; 50 U.S.C. 2401 *et seq.*

#### 970.5203–1 [Corrected]

■ 2. Section 970.5203–1 is amended by revising the date of the clause to read “(JUNE 2007)”.

Issued in Washington, DC, on July 16, 2007.

**Edward R. Simpson,**

*Director, Office of Procurement and Assistance Management, Department of Energy.*

**David O. Boyd,**

*Director, Office of Acquisition and Supply Management, National Nuclear Security Administration.*

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