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]

BILLING CODE 6712–01–P

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

exemption from the advanced air bag phase-in requirements published on May 12, 2000, and amended January 6, 2003. In the petition for reconsideration, Porsche requested that NHTSA reconsider its position that advanced credits are not available to manufacturers taking advantage of the exemption. The agency is denying the petition because it does not believe manufacturers who can advance vehicle production sufficiently to use credits need the relief provided by the limited line manufacturer exception, and that further relief for limited line manufacturers is not merited.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. Louis Molino, Office of Crashworthiness Standards, NVS–112, telephone (202) 366–2264, facsimile (202) 493–2739.

For legal issues, you may call Mr. Christopher M. Calamita of the NHTSA Office of the Chief Counsel, NCC–112, telephone (202) 366–2992, facsimile (202) 366–3820.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On May 12, 2000, we published in the **Federal Register** (65 FR 30680) a rule to require advanced air bags. (Docket No. NHTSA 00–7013; Notice 1.) The rule amended Standard No. 208, *Occupant Crash Protection,* to require that future air bags be designed so that, compared to air bags then installed in production vehicles, they create less risk of serious air bag-induced injuries and provide improved frontal crash protection for all occupants, by means that include advanced air bag technology. The rule is being phased in during two stages. During the first phase-in, from September 1, 2003, through August 31, 2006, increasing percentages of motor vehicles are required to meet requirements for minimizing air bag risks.

As initially adopted, the rule would have required that the majority of vehicle manufacturers meet the following phase-in requirements: 9/1/03 through 8/31/04—35 percent; 9/1/04 through 8/31/05—65 percent; 9/1/05 through 9/1/06—100 percent, with manufacturers allowed to use credits for early compliance. Effective September 1, 2006, all vehicles thereafter manufactured must comply with the advanced air bag technologies; credits for early compliance are not permitted. On January 31, 2003, NHTSA published a final rule that adjusted the first year of the phase-in to 20 percent (68 FR 4961).

On May 5, 2003 NHTSA published another final rule that expanded the limited line manufacturer exception to the first advanced air bag phase-in schedule (68 FR 23614). We decided to amend the definition of a limited line manufacturer for purposes of the first phase-in only, to a manufacturer that produces three or fewer carlines, as that term is defined in 49 CFR 583.4, for sale or distribution in the United States. We also decided to exclude a limited line manufacturer from the first two years of the first phase-in, with full compliance required in the third year. Without this relief, a limited line manufacturer, then defined as a manufacturer that produces two or fewer lines, would have been required to achieve 100% compliance by the second year of the phase-in, a point at which other manufacturers need only certify 65% of their fleet. NHTSA reiterated that no credits for early compliance were allowed. NHTSA stated its belief that such additional relief was not justified, since a limited line manufacturer that was able to take advantage of early credits could design its product plans to meet the relaxed phase-in requirements and should not be able to take advantage of one element of a compliance system it has opted not to pursue.

Porsche submitted a petition for reconsideration of the May 5, 2003 final rule, asking NHTSA to reconsider its position on early credits for limited line manufacturers opting out of the phase-in schedule. In its petition, Porsche stated that without advanced credits it would be prohibited from selling a small number of highly specialized ''niche'' vehicles in the United States from September 1, 2005, through August 31, 2006. It went on to claim that it could not simply advance production of those vehicles intended for the U.S. market to some time prior to September 1, 2005, in order to certify those vehicles to the older air bag requirements and then sell the vehicles after that date because the manufacturing process is so specialized as to preclude stockpiling of a portion of the fleet for future sales.

Porsche based its petition on four arguments, three of which were based on a mistaken belief that NHTSA had changed its position on advanced credits for limited line manufacturers in the May 5, 2003 final rule. First, Porsche stated that eliminating credits would remove its niche vehicles from the marketplace, while allowing larger manufacturers to continue production of their niche vehicles, without modification, until September 1, 2006. Second, it averred that NHTSA based it's decision to eliminate credits on an assumption, first articulated in the May 5, 2003 final rule (*i.e.,* that credits were not needed by limited line manufacturers because such manufacturers that were able to generate credits by producing compliant vehicles could likely meet the phase-in schedule), which is based on incorrect assumptions, *i.e.,* that a manufacturer of three or fewer carlines would be able to fully meet a 20–65–100% phase-in schedule if it was able to certify one or more of its carlines as advanced air bag compliant prior to September 1, 2005. Third, Porsche claimed that NHTSA had failed to provide notice before eliminating advanced credits. Finally, Porsche argued that not allowing advanced credits was directly contrary to the mandate in the Transportation Equity Act (TEA–21, 112 Stat. 466, June 9, 1998) that credits be allowed for those manufacturers exceeding the phase-in requirements of an advanced air bag final rule. For the reasons discussed below, NHTSA rejects each of Porsche's arguments.

As an initial matter, NHTSA believes it is beneficial to explain its position on limited line manufacturers, phase-ins, and advanced credits related to phase-ins. S14.1(a) and S14.3(a) of FMVSS No. 208 each specify a general phase-in schedule for vehicles certified to the standard's advanced air bag requirements: the first for vehicles manufactured prior to September 1, 2006, and the second for vehicles manufactured between September 1, 2007, and August 31, 2010. As noted in Porsche's petition for reconsideration, § 7103 of TEA–21 directed NHTSA to adopt a phase-in schedule that commenced no later than September 1, 2003, and that resulted in every vehicle subject to the advanced air bag requirements and manufactured on or after September 1, 2006 being certified to those requirements.

At its discretion, NHTSA decided to bifurcate the advanced air bag requirements and to establish a phase-in schedule for each of the two sets of requirements. NHTSA excluded three types of vehicle manufacturers from each of the two phase-ins because it recognized that these types of manufacturers faced certain hardships not faced by the larger manufacturers. Under the May 12, 2000 final rule, manufacturers of vehicles built in two or more stages and small volume manufacturers are not required to certify any of their vehicles to the advanced air bag requirements before the final effective date of those requirements, i.e., September 1, 2006 (S14.1 (c) and (d)) and September 1, 2010 (S14.3(c) and (d)). NHTSA recognized that these

manufacturers, because of their very small size, possess virtually no bargaining power with air bag suppliers, who the agency expected would be primarily engaged in satisfying the needs of larger manufacturers.

In addition, a manufacturer falling within the definition of a ''limited line manufacturer'' may decide to opt out of the general phase-in requirement as long as one hundred percent of the vehicles it makes for the U.S. market are certified as compliant with the applicable advanced air bag requirements by a specified date, i.e., September 1, 2005 (as amended by the May 5, 2003 final rule) and September 1, 2008 (S14.1(b) and S14.3(b), respectively). This provision was created because NHTSA believed it was unreasonable to expect limited line manufacturers to certify a greater percentage of their fleet to the advanced air bag requirements than was required of manufacturers of more carlines. NHTSA's analysis was based on the presumption that a limited line manufacturer would certify an entire vehicle line to the advanced air bag requirements, creating a compliance burden of half of their carlines in the first year of the phase-in. This would likely represent much more than 35% of their production. Larger manufacturers would have borne a first year compliance burden of 35% under the May 12, 2000 final rule.

No alternative phase-in schedule was adopted for any manufacturers falling within one of these three groups. Rather, each manufacturer type was exempted from the phase-in requirements adopted by NHTSA and mandated generally by TEA–21. As specified by the regulatory text of S14.1(a) and S14.3(a), only those manufacturers that comply with the phase-in requirements are entitled to advanced credits.[1]

Porsche's assertion that the agency has changed its position on advanced credits without notice and contrary to congressional intent is incorrect. The language in TEA–21 regarding advanced credits is directly linked to the phase-in also mandated by TEA–21. It does not specify that advanced credits must be provided for those manufacturers excluded from the phase-in requirements. Additionally, the explanation of the limited line manufacturer exception provided in the preamble of both the NPRM and the final rule never discussed the possibility of advanced credits and noted that under the exception, full compliance would be required for these manufacturers before it was required for those manufacturers meeting the more stringent phase-in requirements.

Although the regulatory text has always provided that advanced credits are only available to manufacturers meeting the advanced air bag phase-in requirements, the issue of the relationship between the limited line manufacturer and advanced credits was fully addressed for the first time in the May 5, 2003 final rule. In the original NPRM proposing the new advanced air bag requirements, NHTSA stated that the exemption from the phase-in schedule was limited to manufacturers of two or fewer carlines because larger manufacturers could theoretically exempt themselves from the entire first year of the phase-in. The agency then went on to note ''[h]owever, the agency doubts that any full-line vehicle manufacturers would want to take advantage of the alternative, given the need to achieve full compliance by September 1, 2003.'' (63 FR 49958, 49978; September 18, 1998). All portions of the industry were on notice, as early as 1998, that parties choosing to use the limited line manufacturer alternative would not be entitled to the panoply of discretion provided to larger manufacturers. Rather, in exchange for not having to produce any compliant vehicles during the first year of the phase-in, full compliance would be required effective the first day of the second year of the phase-in. In the May 12, 2000 final rule, NHTSA reiterated that the limited carline exception relieved those manufacturers choosing to take advantage of it from the first year of the phase-in, but that *full compliance* would be required as of September 1, 2004, one year after the commencement of the phase-in. Never did the agency discuss the possibility that advanced or carryover credits would be available for these manufacturers.

We have decided against expanding the advanced credit provisions because we continue to believe that such relief is unnecessary and would unduly favor limited line manufacturers. We note that limited line manufacturers have already been given substantial relief under both the May 12, 2000 final rule and the May 5, 2003 amendment to that rule. While manufacturers of more than three carlines are allowed to use advanced credits to reach 100% compliance in the third year of the phase-in, they must also meet the 20% and 65% phase-in requirements during the first two years, a burden from which limited line manufacturers have been relieved.

Advanced credits are not designed to allow manufacturers to manipulate the phase-in schedule and, ultimately, the number of compliant vehicles on the road prior to September 1, 2006. Rather, NHTSA acknowledges that there could be some problem vehicles for which early sensing or deployment technology is ill-suited. Rather than force a strict phase-in schedule where no recognition of these vehicles would be allowed anywhere in the phase-in, the final rule allows manufacturers to accommodate these vehicles as long as they meet the underlying phase-in requirements.

If NHTSA were to grant Porsche's petition and allow advanced credits for manufacturers using the limited line exception, it would provide these manufacturers with extended relief neither justified by their circumstances nor contemplated by the provision for advanced credits. For example, a limited line manufacturer could have chosen to certify one of its carlines as advanced air bag compliant as early as the first year of the phase-in. For a limited line manufacturer excluded from the phase-in, this compliant line would generate advanced credits each of the three years prior to the 100 percent compliance date, without any of the credits having to be used prior to that date. Assuming that carline represented slightly more than one-third of its total sales in the United States, the manufacturer could then delay all other vehicle changes necessary to certify the rest of its fleet to the advanced air bag requirements until September 1, 2006. Those manufacturers subject to the phase-in, however, could not adopt such an approach because they would have to rely on advanced credits each year of the phase-in. It is likely that manufacturers subject to the phase-in would have insufficient credits left over from the first year of the phase-in to meet the requirements established by NHTSA for the second year of the phase-in.

Alternatively, a limited line manufacturer could choose to produce no advanced air bag-compliant vehicles during the first year of the phase-in, but could choose to certify two (or even one and a half) of its carlines during the second year of the phase-in, and meet all of its certification responsibilities. As with the first option, this approach

[1] Section 7103(5) of TEA–21 states: ''To encourage early compliance, the Secretary is directed to include in the notice of proposed rulemaking required by paragraph (1) means by which manufacturers may earn credits fro future compliance. Credits, on a one-vehicle for one-vehicle basis, may be earned for vehicles certified as being in full compliance under section 30115 of title 29, United States Code, with the rule required by paragraph (2) which are either—

(A) So certified in advance of the phase-in period; or

(B) In excess of the percentage requirements during the phase-in period.

NHTSA does not believe this provision requires the agency to allow advance credits for manufacturers exempted from the mandated phase-in requirements.

would not be available to other manufacturers who must be able to certify a full 20% of their fleet in the first year of the phase-in and a full 65% in the second year. NHTSA finds these two alternatives unacceptable in that they provide a level of relief so at odds with the relief given to other manufacturers as to be patently unfair.

Finally, a limited line manufacturer could choose to certify none of its fleet to the advanced air bag requirements until a couple of months before September 1, 2005, an approach that would result in very small numbers of advanced air bag-compliant vehicles being introduced earlier than currently required under the limited line manufacturer exception. This alternative would not result in significant numbers of compliant vehicles being introduced onto U.S. roads ahead of schedule, the only rationale for granting the relief requested by Porsche. Any one of these three scenarios (and doubtless others as well) would be permissible were NHTSA to grant Porsche's petition.

As a practical matter, we believe granting Porsche's petition is unlikely to generate a sizeable number of vehicles that are certified to the advanced air bag requirements on U.S. roads in advance of FMVSS No. 208's requirements.[2] Given the criteria for determining whether a particular vehicle falls within a given carline, it is unlikely that many manufacturers of any size would be able to qualify for the exemption. Second, the manufacturer would need to manufacture more than 5,000 vehicles per year for the U.S. market. If its production numbers were lower than that, it could simply wait to certify any vehicles to the advanced air bag requirements until September 1, 2006. In its petition for reconsideration, Porsche indicated that it does not plan on introducing large numbers of advanced air bag-compliant vehicles into the U.S. prior to September 1, 2005. Rather, it appears that it would merely introduce production of such vehicles only to the extent necessary to receive an advanced credit for approximately 500, custom-made vehicles. As such, the total number of vehicles likely to be introduced in advance of September 1, 2005, is quite small, and appears to be no more than a few months of production.

As to Porsche's assertion that NHTSA's position on advanced credits will unfairly remove Porsche's niche vehicles from the U.S. market for one year while allowing larger manufacturers to use advanced credits for their niche vehicles, NHTSA notes that the limited line manufacturer exception already affords Porsche significantly more relief than is given to larger manufacturers. Additionally, the decision to use the limited line manufacturer exception, rather than the more stringent phase-in schedule with advanced credits, was a business decision left solely within Porsche's discretion. NHTSA finds that affording Porsche further relief is not merited.

Accordingly, the petition for reconsideration is denied.

Authority: 49 U.S.C. 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued: October 4, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–22749 Filed 10–7–04; 8:45 am]

BILLING CODE 4910–59–P

[2] The arguable need for such credits is very limited; it appears that only Porsche is likely to be affected by our decision not to expand the availability of advanced credits, and then only if it can show that it manufactures no more than three carlines for the U.S. market.