

to West Palm Beach, the principal community of its SMSA, and would conform to the population criterion employed in the design of the original Table of Assignments (1963) for a city of its size (population 56,208). Intermixture of a Class A channel with Class C channels in the same community appears justified here, since no additional Class C channel is available. We are also of the opinion that the requests for a first Class A channel to each of Riviera Beach (population 13,046) and Jupiter (population 1,058) have merit and that the assignments should be provided. Although Jupiter has a 1960 population of only 1,058, we note that it is outside of the West Palm Beach Urbanized Area and that the proposed assignment would not deprive any other community of equal or greater size from obtaining a first FM assignment. We further note that each of the assignments under consideration here, if adopted, would become available for applications specifying North Palm Beach (population 2,684) or Lake Park (population 3,589) under the "10-mile" provision of § 73.203(b). Finally, based on the evidence provided in this proceeding, it does not appear that any community not presently having an FM assignment, or warranting special consideration, would be precluded from a channel if the proposed assignments were made. Because of the spacing requirements, none of the proposed assignments could be assigned to Lake Worth, the second largest city in the SMSA and presently without an FM channel. There were no comments filed in opposition to any of the changes being considered here.

6. In view of the foregoing, we conclude that adoption of the proposed changes outlined in paragraph 2, above, would serve the public interest. We are therefore adopting the assignment of Channel 221A to West Palm Beach, Channel 232A to Riviera Beach, Channel 244A to Jupiter, and substituting channel 292A for 221A at Clewiston, all in Florida. It is to be noted that any application filed for Channel 221A at West Palm Beach will require a site near the northern city boundary in order to meet the minimum spacing requirements of the rules.

7. Authority for the adoption of the amendments adopted herein is contained in sections 4(i), 303, and 307(b) of the Communications Act of 1934, as amended.

8. In accordance with the foregoing determinations: *It is ordered*, That effective June 22, 1970, § 73.202 of the Commission's rules, the FM Table of Assignments, is amended to read, insofar as the communities named below are concerned, as follows:

| City                 | Channel No.    |
|----------------------|----------------|
| Florida:             |                |
| Clewiston.....       | 292A           |
| Jupiter.....         | 244A           |
| Riviera Beach.....   | 232A           |
| West Palm Beach..... | 221A, 283, 300 |

9. *It is further ordered*, That this proceeding is terminated.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

Adopted: May 13, 1970.

Released: May 15, 1970.

FEDERAL COMMUNICATIONS  
COMMISSION,  
[SEAL] BEN F. WAPLE,  
Secretary.

[F.R. Doc. 70-6210; Filed, May 19, 1970;  
8:48 a.m.]

[Docket No. 18601; FCC 70-514]

## PART 73—RADIO BROADCAST SERVICES

### Broadcast of Telephone Conversations

*Report and order.* 1. On July 9, 1969, the Commission adopted a notice of proposed rule making, 34 F.R. 11984, in which it requested comments on the following proposed rule:

Before recording a telephone conversation for broadcast or broadcasting a telephone conversation simultaneously with its occurrence, a licensee shall inform any party to the call, not aware of the facts, of the licensee's intention to broadcast the conversation.

2. The Commission issued the notice of proposed rule making to clarify the notice requirements for licensees in the event they intend to broadcast telephone conversations. Before the Carterfone decision (Carter v. A.T. & T. Co., 13 FCC 2d 420 (1968)), a "beep tone" was involved and served in most instances to alert a party to a telephone conversation with a broadcast station employee that his call was being recorded and that the station might intend to broadcast the conversation. Under Carterfone, broadcast stations may interconnect their broadcast facilities to exchange and toll telephones, and thus may broadcast live, two-way conversations without the use of the "beep tone" warning which is used when telephone calls are recorded.

3. Timely comments were filed by Karl F. Anuta, Donald E. Pearson, and the Columbia Broadcasting System, Inc. (CBS). Mr. Anuta agrees with the proposed rule but states that it does not go far enough in that it lacks provisions for enforcement or determining, in the case of complaints, whether the advance notice had or had not been given, and thus nothing to prevent "harrassing complaints" on the one hand or "unscrupulous broadcasting" on the other. He would require that the notice of intent to broadcast be recorded by the licensee and retained for 90 days, and that any complaints would have to be made within that period (and served on the licensee) in order to be considered. Mr. Pearson also agrees with the rule as far as it goes, but would also require, without any provision for exception, that the consent of the other party be secured before any broadcast.

4. CBS is in general agreement with the proposed rule, but believes that the rule is too narrowly drawn, making the requirement turn on actual "awareness" and foreclosing any presumption of knowledge from the circumstances of the call, in situations where the party should

be aware of the likelihood of broadcast, whether or not it can be established that he actually was. The "open mike" shows referred to in the notice are mentioned as such situations, and also cases where reporters or other station personnel phone in a news story or where persons call a generally advertised station phone number to give news items, community calendar or "bulletin board" material, etc. It is stated that in such cases the parties do not presume the conversation to be private and "consent by implication" to the broadcast then or later, CBS requests that the notice need not be given where the other party "is aware or should be aware that the conversation or part of it may be broadcast."

5. The Commission has considered these comments, and believes that the rule in the exact form proposed would present some uncertainties and problems in enforcement, and also that there are some situations (although not necessarily all of those mentioned by CBS) where awareness and therefore implied consent may be presumed from the surrounding circumstances without the need for factual inquiry into whether or not there was awareness in fact. These include "open mike" shows and conversations between employees at the station and station reporters, including part-time "stringers". Accordingly, the rule adopted herein provides for omission of notice where the other party is aware or may be presumed to be aware from the circumstances of the call, that his conversation may be broadcast, the latter obtaining only where the other party is associated with the station or originates the call and it is obviously in connection with a program, such as an "open mike" show, on which phone conversations are customarily broadcast. Considering the high importance of notifying persons before their phone calls are made publicly available, this is as far beyond actual awareness as we believe it appropriate to go.<sup>1</sup>

6. With the exception thus narrowly limited, we believe that it is unnecessary to adopt the explicit consent requirement suggested by Mr. Pearson, since under these limited circumstances it may be presumed that consent is implied even if not specifically given. We also believe Mr. Anuta's suggestion to be unnecessary and unduly burdensome, since it would involve a recording and retention procedure in many cases where it is obvious that the other party is aware and no question will, in all probability, ever arise, such as the situations mentioned above. The problems in this area have not been numerous or serious enough to warrant such a requirement.

7. Authority for the amendment set forth below is contained in sections 4(i) and (j), and 303(r) of the Communications Act of 1934, as amended.

<sup>1</sup> Thus, it does not appear that the "bulletin board" type of arrangement referred to by CBS would always be one where the station customarily puts the calling party on the air. If it is not, in our view, specific notice should be required.

8. In view of the foregoing: *It is ordered*, Effective June 22, 1970, that new §§ 73.126, 73.296, 73.592, and 73.664 are added to Part 73 of the Commission's rules, as set forth below.

9. *It is further ordered*, That this proceeding is terminated.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Adopted: May 13, 1970.

Released: May 15, 1970.

FEDERAL COMMUNICATIONS  
COMMISSION,  
[SEAL] BEN F. WAPLE,  
Secretary.

In Part 73 of the Commission's rules, new §§ 73.126, 73.296, 73.592, 73.664, and 73.1206 are added in Subparts A, B, C, D, and H, respectively, to read as follows:

§ 73.126 Broadcast of telephone conversations.

See § 73.1206, which is applicable to all standard broadcast stations.

§ 73.296 Broadcast of telephone conversations.

See § 73.1206, which is applicable to all FM broadcast stations.

§ 73.592 Broadcast of telephone conversations.

See § 73.1206, which is applicable to all noncommercial educational FM stations.

§ 73.664 Broadcast of telephone conversations.

See § 73.1206, which is applicable to all television broadcast stations.

§ 73.1206 Broadcast of telephone conversations.

Before recording a telephone conversation for broadcast, or broadcasting such a conversation simultaneously with its occurrence, a licensee shall inform any party to the call of the licensee's intention to broadcast the conversation, except where such party is aware, or may be presumed to be aware from the circumstances of the conversation, that it is being or likely will be broadcast. Such awareness is presumed to exist only when the other party to the call is associated with the station (such as an employee or part-time reporter), or where the other party originates the call and it is obvious that it is in connection with a program in which the station customarily broadcasts telephone conversations.

[F.R. Doc. 70-6211; Filed, May 19, 1970; 8:48 a.m.]

## Title 49—TRANSPORTATION

### Subtitle A—Office of the Secretary of Transportation

[OST Docket No. 25; Amdt. 71-9]

#### PART 71—STANDARD TIME ZONE BOUNDARIES

##### Relocation of Central-Mountain Standard Time Zone Boundary in Texas

The purpose of this amendment to Part 71 of Title 49 of the Code of Fed-

eral Regulations is to change the existing boundary line between the mountain time zone and the central time zone as it applies to the State of Texas.

On April 17, 1970, the Department of Transportation published in the FEDERAL REGISTER a notice of proposed rule making (35 F.R. 6280) requesting comments on a proposal to relocate the boundary line between the central time zone and the mountain time zone so as to place El Paso and Hudspeth Counties of Texas in the mountain time zone. The proposal was based on written requests from the County Commissioners Courts of El Paso and Hudspeth Counties requesting that their respective counties be placed in the mountain time zone.

The Act of March 4, 1921, chapter 173 (15 U.S.C. 265; 41 Stat. 1446) placed all of the State of Texas in the central time zone. Except for the segment of the central-mountain time zone boundary that the 1921 Act placed on the western boundary of Texas and Oklahoma and a segment of the mountain-Pacific time zone boundary in Idaho covered by the Act of March 3, 1923 (15 U.S.C. 264), other time zone boundaries can be relocated through administrative proceedings conducted by the Department of Transportation.

El Paso and Hudspeth Counties have, for many years, informally observed mountain time despite having been placed by law in the central zone. Although the Department of Transportation was petitioned by the Governor of Texas and civic and commercial activities in the area to place the area in the mountain time zone, the 1921 law precluded any administrative relocation of the time zone boundary in Texas until Public Law 91-228 (84 Stat. 119) was enacted on April 10, 1970. The new law provides:

That notwithstanding the first section of the Act of March 4, 1921 (15 U.S.C. 265), the Secretary of Transportation may, upon the written request of the County Commissioners Court of El Paso County, Texas, change the boundary line between the central standard time zone and the mountain standard time zone, so as to place El Paso County in the mountain time zone, in the manner prescribed in section 1 of the Act of March 19, 1918, as amended (15 U.S.C. 261), and section 5 of the Act of April 13, 1966 (15 U.S.C. 266). In the same manner, the Secretary of Transportation may also place Hudspeth County, Texas, in the mountain standard time zone, if the Hudspeth County Commissioners Court so requests in writing and if El Paso County is to be placed in that time zone.

It was pointed out in the notice of proposed rule making that El Paso and Hudspeth Counties are located approximately 1,000 miles west of the 90th meridian, which is the prime meridian for solar time in the central zone. All of El Paso County and nearly all of Hudspeth County are west of the 105th meridian, the prime meridian for solar time in the mountain zone. If they were placed in the mountain zone, they would observe a time more consonant with the position of the sun. In fact, El Paso, under mountain time, would be only 5 minutes off true sun time, whereas under central time it is off 1 hour and 5 minutes.

Interested persons were given a 14-day period within which to comment in writing on the proposal. A public hearing was held on April 24, 1970, in El Paso by a representative of the Department of Transportation during which interested persons had an opportunity to comment on the proposal either orally or in writing or both.

Among those appearing at the public hearing in support of mountain time were the U.S. Representative for the district, the county judges of both counties, a representative of the mayor of the city of El Paso, and representatives of the El Paso business, newspaper, and educational communities. Only one person testified in favor of central time.

Over 90 percent of the written comments received by the Department, before and after the hearing, favored mountain time.

The Atchison, Topeka, and Santa Fe Railroad, under an operating exception contained in § 71.6(f) (1) of Title 49, Code of Federal Regulations, conducts operations on its line of railroad between the Texas-New Mexico State line (near Anthony, Tex.) and the city of El Paso on mountain time. Relocation of the time zone boundary will make this operating exception unnecessary. However, in order to maintain the city of El Paso as the time change point for the several lines of railroad that connect there, operating exceptions are required to allow operations of the Southern Pacific and the Texas and Pacific Railroads between the city of El Paso and the east line of Hudspeth County to be conducted on central time.

Because of the relocation of the mountain-central time zone boundary in Kearny County, Kans., on March 8, 1970 (35 F.R. 2667), it is necessary to adjust the descriptive language in the operating exception granted to the Atchison, Topeka, and Santa Fe authorizing it to carry mountain time east of the time zone boundary to the change points in Scott City and Dodge City, Kans.

In consideration of the foregoing, paragraphs (e) and (f) (1) and (2) of § 71.6 of Title 49 of the Code of Federal Regulations are amended, effective at 2 a.m. on Sunday, May 17, 1970, to read as follows:

§ 71.6 Boundary line between central and mountain zones.

(e) *Oklahoma-Texas-New Mexico.* From the intersections of the Kansas-Colorado boundary with the northern boundary of the State of Oklahoma westerly along the Colorado-Oklahoma boundary to the northwest corner of the State of Oklahoma; thence southerly along the west boundary of the State of Oklahoma and the west boundary of the State of Texas to the southeast corner of the State of New Mexico; thence westerly along the Texas-New Mexico boundary to the east line of Hudspeth County, Tex.; thence southerly along the east line of Hudspeth County, Tex., to the boundary line between the United States and Mexico.

(f) *Operating exceptions—(1) Lines east of boundary excepted from central*

zone. Those portions of the following lines of railroad, located east of the zone boundary line described in this section, are, for operating purposes only, excepted from the U.S. standard central time zone and included within the U.S. standard mountain time zone:

| Railroad                       | From—                                                     | To—                                      |
|--------------------------------|-----------------------------------------------------------|------------------------------------------|
| Atchison, Topeka, & Santa Fe.  | East line of T. 24 S., R. 36 W., Kearny County, Kans.     | Scott City and Dodge City, Kans.         |
| Do.                            | Kansas-Colorado State line.                               | Salanta, Kans.                           |
| Do.                            | Colorado-Oklahoma State line.                             | Dodge City, Kans., via Boise City, Okla. |
| Chicago, Burlington, & Quincy. | East line of Hooker County, Nebr.                         | Ravenna, Nebr.                           |
| Do.                            | East line of Perkins County, Nebr.                        | Holdrege, Nebr.                          |
| Do.                            | East line of Chase County, Nebr.                          | McCook, Nebr.                            |
| Do.                            | East line of Dundy County, Nebr.                          | Do.                                      |
| Chicago & Northwestern.        | West line of T. 34 N., R. 30 W., Cherry County, Nebr.     | Long Pine, Nebr.                         |
| Great Northern.                | Montana-North Dakota State line.                          | Williston, N. Dak.                       |
| Do.                            | Yellowstone River, N. Dak.                                | Waterford City, N. Dak.                  |
| Northern Pacific.              | East line of T. 138 N., R. 83 W., Morton County, N. Dak.  | Mandan, N. Dak.                          |
| Do.                            | North line of T. 140 N., R. 81 W., Morton County, N. Dak. | Do.                                      |
| Do.                            | South line of T. 139 N., R. 81 W., Morton County, N. Dak. | Do.                                      |
| Union Pacific.                 | East line of Keith County, Nebr.                          | North Platte, Nebr.                      |
| Do.                            | East line of Wallace County, Kans.                        | Ellis, Kans.                             |

(2) Lines west of boundary included in central zone. Those portions of the following lines of railroad located west of the zone boundary line described in this section are, for operating purposes only, excepted from the U.S. standard mountain time zone and included within the U.S. standard central time zone:

| Railroad                        | From—                                               | To—                |
|---------------------------------|-----------------------------------------------------|--------------------|
| Atchison, Topeka, & Santa Fe.   | Texas-New Mexico State line (Near Texico, N. Mex.). | Clovis, N. Mex.    |
| Chicago, Rock Island & Pacific. | Texas-New Mexico State line.                        | Tucumcari, N. Mex. |
| Do.                             | West line of Thomas County, Kans.                   | Goodland, Kans.    |
| Missouri.                       | West line of Wichita County, Kans.                  | Pueblo, Colo.      |
| Soo Line.                       | Montana-North Dakota State line.                    | Whitetail, Mont.   |
| Southern Pacific.               | East line of Hudspeth County, Tex.                  | El Paso, Tex.      |
| Texas & Pacific.                | Do.                                                 | Do.                |

In consideration of the requests by El Paso County and Hudspeth County officials for early adoption of the proposed relocation and in view of the magnitude of support for mountain time, I find that good cause exists for making this amendment effective in less than 30 days.

This amendment does not concern adherence to or exemption from advanced (daylight saving) time. The Uniform Time Act of 1966 requires observance of advanced time within each established time zone from the last Sunday in April to the last Sunday in October, but permits any State to exempt itself, by law, from observing advanced time within that State. The Department has no administrative authority with respect to this requirement.

(Act of Mar. 19, 1918, as amended by the Uniform Time Act of 1966 (15 U.S.C. 260-267); sec. 6(e)(5), Department of Transportation Act (49 U.S.C. 1655(e)(5)))

Issued in Washington, D.C., on May 12, 1970.

JOHN A. VOLPE,  
Secretary of Transportation.

[P.R. Doc. 70-6193; Filed, May 19, 1970; 8:47 a.m.]

## Title 50—WILDLIFE AND FISHERIES

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

### PART 33—SPORT FISHING

#### Necedah National Wildlife Refuge, Wis.

The following special regulation is effective on date of publication in the FEDERAL REGISTER.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

#### WISCONSIN

##### NECEDAH NATIONAL WILDLIFE REFUGE

Sport fishing on the Necedah National Wildlife Refuge, Wis., is permitted only on the Sprague-Mather Pool. The open area, approximately 2,000 acres is delineated on a map available at the refuge headquarters and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, Federal Building, Fort Snelling, Twin Cities, Minn. 55111. Sport fishing shall be in accordance with all applicable State regulations subject to the following conditions:

(1) Fishing permitted June 1, 1970, through September 30, 1970.

(2) The use of boats without motors is permitted.

The provisions of this special regulation supplement the regulations which

govern fishing on wildlife areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through September 30, 1970.

DAVID J. BROWN,  
Refuge Manager, Necedah National Wildlife Refuge, Necedah, Wis.

MAY 11, 1970.

[P.R. Doc. 70-6228; Filed, May 19, 1970; 8:50 a.m.]

## Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

### SUBCHAPTER B—FOOD AND FOOD PRODUCTS

#### PART 121—FOOD ADDITIVES

Subpart C—Food Additives Permitted in Feed and Drinking Water of Animals or for the Treatment of Food-Producing Animals

#### SUBCHAPTER C—DRUGS

#### PART 135e—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

#### PART 135g—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

#### Monensin and 3-Nitro-4-Hydroxyphenylarsonic Acid

The Commissioner of Food and Drugs has evaluated new animal drug applications (38-878V, 41-500V) filed by Elanco Products Co., Division of Eli Lilly & Co., Indianapolis, Ind. 46206, regarding the use of monensin alone and with 3-nitro-4-hydroxyphenylarsonic acid in the feed of broiler chickens for prevention of coccidiosis caused by specified organisms, for growth promotion and feed efficiency, and for improved pigmentation. The applications are approved.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i)), in accordance with § 3.517 (21 CFR 3.517), and under authority delegated to the Commissioner (21 CFR 2.120), Parts 121, 135e, and 135g are amended as follows:

1. Section 121.262(c) is amended by adding to table 1 a new item, as follows:

§ 121.262 3-Nitro-4-hydroxyphenylarsonic acid.

(c) . . .