

H. Indications of interest through a circulation of preliminary prospectuses.

In case directors have any doubt as to whether a proposed offering would come within the first exception in section 23, serious consideration should be given to seeking either shareholder approval or a Commission order.

2. All rights offerings.

Directors have an obligation to make a good faith determination that the offering would result in a net benefit to existing shareholders.¹¹ In making that determination with respect to rights offerings, including transferable rights offerings, directors should consider:

A. The size of any current and proposed discount;¹²

B. The extent of any dilution, which should normally be minimal, for non-participating shareholders;

C. The basis of the offering, (i.e., the number of rights needed to purchase one share);

D. The size of the offering in relation to the number of shares outstanding;

E. The use to be made of the proceeds from the offering and the return to shareholders therefrom;¹³

F. Whether a market will exist for any transferable rights; and

G. The compensation to any underwriter.

It should be emphasized that the foregoing are only certain suggested considerations and that there can be no mechanical substitute for a good faith and detailed inquiry on the part of directors which considers all relevant factors in determinations of this type.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

SEPTEMBER 15, 1977.

[FR Doc.77-27479 Filed 9-20-77; 8:45 am]

Title 25—Indians

CHAPTER I—BUREAU OF INDIAN AFFAIRS
DEPARTMENT OF THE INTERIOR

SUBCHAPTER W—MISCELLANEOUS
ACTIVITIES

PART 258—KLAMATH RIVER FISHING

Fishing Regulations

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Correction of final rule.

SUMMARY: This rulemaking is to insert the phrase "per day" which was inadvertently omitted from part 258 of Subchapter W, Chapter I of Title 25 of the

¹¹ The expected benefits to the company and to all shareholders should clearly outweigh any potential dilutive effects from the offering.

¹² As noted above, although a larger discount would make the offering more attractive, it would result in a greater asset dilution for nonsubscribers.

¹³ In the Division's view, in order for directors to justifiably expect that an offering would ultimately result in a net benefit to existing shareholders there must be a specific use intended for the funds.

Code of Federal Regulations, that appears on page 40904 in the issue of August 12, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Scott McElroy, Acting Assistant Solicitor, Division of Indian Affairs, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 202-343-6967.

SUPPLEMENTARY INFORMATION: Beginning on page 40904 of the August 12, 1977, FEDERAL REGISTER (42 FR 40904-5) there was published a notice of final rulemaking. The phrase "per day" was inadvertently omitted from § 258.5. Section 258.5 is corrected to read.

§ 258.5 Prohibited fishing.

The catching for the purposes of sale of more than (5) anadromous fish per day is prohibited. No limit is established on the catching of fish for purposes other than sale.

RAYMOND V. BUTLER,
Acting Deputy Commissioner.

[FR Doc.77-27424 Filed 9-20-77; 8:45 am]

Title 32—National Defense

CHAPTER I—OFFICE OF THE SECRETARY
OF DEFENSE

PART 289—AVAILABILITY TO THE PUBLIC
OF DEPARTMENT OF DEFENSE DIRECTIVES,
INSTRUCTIONS, CHANGES
THERE TO, AND INDICES

AGENCY: Office of the Secretary of Defense.

ACTION: Final rule.

SUMMARY: This rule updates DoD procedures for obtaining: (a) DoD Directives; (b) DoD Instructions; (c) DoD Directives and Instructions; and (d) the DoD Directives System Quarterly Index of Final Opinions, Statements of Policy, and Administrative Staff Manuals and Instructions which Affect the Public. It covers minor revisions in content, limitations in number of copies supplied, and address code.

EFFECTIVE DATE: September 21, 1977.

FOR FURTHER INFORMATION CONTACT:

Ms. Margarete Weber, Directives Branch, Office of the Deputy Assistant Secretary of Defense, The Pentagon, Washington, D.C. 20301, telephone 697-4111.

SUPPLEMENTARY INFORMATION: On August 16, 1967, there was published in the FEDERAL REGISTER (32 FR 11780) a final rule adoption, effective September 1, 1967, which announced a subscription service for DoD Directives, Instructions, and Changes thereto. Two subsequent amendments were published on December 27, 1968 (33 FR 19815) and on November 25, 1970 (35 FR 18047). This rule incorporates all changes. Accordingly, a revised Part 289 is being published as follows:

Sec.

289.1 Subscription service.

289.2 Ordering individual copies.

AUTHORITY: The provisions of this Part 289 issued under 10 U.S.C. 133; 31 U.S.C. 483a.

§ 289.1 Subscription service.

(a) DoD Directives, Instructions, and Changes to DoD Directives and Instructions published in the Check List portion of the DoD Directives System Quarterly Index (except those marked as not releasable to the public) are available on a subscription basis, with automatic mailing upon payment of fees (see § 289.1 (b)).

(1) The DoD Directives, Instructions and Changes thereto are published under the following subject groups:

- 1000—Manpower, Personnel, and Reserve.
- 2000—International Programs.
- 3000—Planning and Readiness.
- 4000—Logistics and Resources Management.
- 5000—General Administration.
- 6000—Health and Medical.
- 7000—Comptrollership.

DoD Directives System Quarterly Index of DoD Issuances and Quarterly Index of Final Opinions, Statements of Policy, and Administrative Staff Manuals and Instructions which Affect the Public.

(2) The subscription will entitle the subscriber to receive automatically one copy of each new and revised issuance published under the subject groups desired, for the subscription period.

(3) Subscriptions will be accepted for one or more subject groups.

(b) An annual service charge of \$6 for the DoD Issuances published under each subject group will apply without regard to the number of documents which may be issued within the group. This fee is to defray administrative expense for screening and distributing DoD Issuances.

(1) Orders may be forwarded at any time to the Director, Navy Publications and Printing Service, Eastern Division, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111, in any form, accompanied by a certified bank check or postal money order payable to the Treasurer of the United States.

(2) Subscription service pertains only to the release of new and revised DoD Directives and Instructions; Changes; and Indices.

§ 289.2 Ordering individual copies.

(a) In addition to the subscription service on new and revised DoD Issuances outlined in § 289.1, individual copies of any other DoD Directive, Instruction, and Change listed in the Check List portion of the DoD Directives System Quarterly Index (except those marked not releasable to the public) will continue to be made available on an "as ordered" basis, without charge to the requester.

(b) This service is provided to the public and Federal Agencies other than the Department of Defense by the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120, Attention: Code 301. Issuances will be limited to one copy of each DoD Issuance per customer, and the number of indi-

vidual items requested must be limited to five (5) or less.

MAURICE W. ROCHE,
Director, Correspondence and
Directives, Office of the As-
sistant Secretary of Defense
(Comptroller).

SEPTEMBER 16, 1977.

[FR Doc. 77-27395 Filed 9-20-77; 8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL
PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[PRL 792-6]

PART 52—APPROVAL AND PROMULGA-
TION OF IMPLEMENTATION PLANS

California Plan Revision: Tulare County Air
Pollution Control District (APCD)

AGENCY: Environmental Protection
Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protec-
tion Agency (EPA) takes final action to
approve and, where appropriate, disap-
prove or take no action on changes to
the Tulare County portion of the Cali-
fornia State Implementation Plan (SIP)
submitted by the Governor's designee.
The intended effect of this action is to
update rules and regulations and to cor-
rect certain deficiencies in the SIP.

EFFECTIVE DATE: October 21, 1977.

**FOR FURTHER INFORMATION CON-
TACT:**

Frank M. Covington, Director, Air and
Hazardous Materials Division, Envi-
ronmental Protection Agency, 100 Cali-
fornia Street, San Francisco, Calif.
94111. Attn: David R. Souten, 415-
556-7288.

SUPPLEMENTARY INFORMATION:
On June 14, 1977, in 42 FR 30399, EPA
published a notice of proposed rulemak-
ing for revisions to the Tulare County
Air Pollution Control District's rules
and regulations submitted on Novem-
ber 10, 1976 by the California Air Re-
sources Board for inclusion in the Cali-
fornia SIP.

Rules concerning malfunction, emer-
gency episodes, variances, new source
review, in-stack monitoring, and organic
solvent usage have been submitted; how-
ever, no action is being taken on these
rules at this time and they will be acted
on in separate FEDERAL REGISTER notices.

The changes contained in this sub-
mittal and being acted on by this notice,
include the following: procedural
changes which update California Health
and Safety Code citations are made in
several rules; a definition of air con-
taminant is added; the procedures for
handling confidential information are
modified; the procedures for making air
pollution records available to the public
are modified; a procedural change is
made with regard to authority to arrest
and issue notices to appear; prohibition

of rule circumvention activities is speci-
fied; a requirement is made that a source
be subject to the most stringent emis-
sion limits when more than one applies;
changes are made to particulate emission
rate-process weight requirements; the
restrictions on emitting particulate mat-
ter from incinerator operations are
changed; exemptions from rule limita-
tions are made for certain scavenger
plant operations; obsolete emission limi-
tations for NOx emissions from fuel
burning equipment are deleted; addi-
tional burning operations are added to
those operations classified as agricul-
tural burning; and clarifying language
is added to the rule controlling the
emissions from orchard heaters. A list
of the rules initially considered for this
notice was published as part of the notice
of proposed rulemaking and can be found
in 42 FR 30399 (June 14, 1977). The pro-
posed rulemaking provided 30 days for
public comments. No comments were
received.

It is the purpose of this final rulemak-
ing to approve all of the changes con-
tained in the November 10, 1976, sub-
mittal for Tulare County and to
incorporate them into the California
SIP, with the exception of those rules not
being acted upon, and the rules discussed
below.

Rule 407.3 Scavenger Plants, is identi-
cal to the rule previously disapproved
by EPA. This rule specifies that a permit
to operate may be granted for a scaven-
ger plant, even though such a plant may
not be in compliance with an applicable
emission limitation. Since no control
strategy demonstration is made to show
that this allowance will not interfere
with the attainment and maintenance of
National Ambient Air Quality Standards,
and will not contradict other Clean Air
Act requirements, this rule is disap-
proved.

Paragraph e., of Rule 402 Exceptions,
is disapproved because it exempts "other
equipment in agricultural operations"
from the visible emission prohibitions
imposed by rule 401. "Other equipment"
is not defined, and it is therefore not
clear what operations this exemption is
intended to cover. Since this provision
might permit sources otherwise regulated
to violate applicable emission limitations,
it should be disapproved. In addition, this
exemption is not justified by a control
strategy analysis which demonstrates
that it will not violate section 110 of the
Clean Air Act by interfering with the
attainment or maintenance of National
Ambient Air Quality Standards.

Paragraph b. of rule 407.1 Disposal
Of Solid Or Liquid Waste is disapproved
because it allows a relaxation of the par-
ticulate matter concentration limits for
certain incineration operations, without
an accompanying analysis to show that
this relaxation will not interfere with the
attainment and maintenance of National
Ambient Air Quality Standards.

Rule 420 Exceptions is a nuisance
rule and is not appropriate for inclusion
in the SIP because it is not specifically
directed at the attainment and mainte-

nance of the National Ambient Air Qual-
ity Standards. Therefore, EPA is taking
no action on this rule.

Rule 422 concerning Standards of Per-
formance for New Stationary Sources
(NSPS) and rule 423 concerning Nat-
ional Emission Standards for Hazardous
Air Pollutants (NESHAPS) have also
been submitted. These rules implement
sections 111 and 112 of the Clean Air
Act, and are not appropriate for inclu-
sion in a State Implementation Plan un-
der section 110 of the Act. Therefore,
these regulations will be neither ap-
proved nor disapproved by EPA as part
of an applicable implementation plan.
They will, however, be reviewed in de-
termining whether to delegate authority
to the County to implement and enforce
the NSPS and NESHAPS under the ap-
propriate provisions of sections 111 and
112. Announcement of such delegation
will appear in a separate FEDERAL REG-
ISTER notice.

The California Air Resources Board
has certified that the public hearing re-
quirements of 40 CFR 51.4 have been
satisfied.

Pursuant to section 110 of the Clean
Air Act as amended, and 40 CFR Part 51,
the Administrator is required to approve
or disapprove the regulations as State
Implementation Plan revisions.

(Sections 110 and 301(a) of the Clean Air
Act, as amended, (42 U.S.C. §§ 1857c-5 and
1857g(a)))

Dated: September 15, 1977.

DOUGLAS M. COSTLE,
Administrator.

Subpart F of Part 52 of Chapter 1,
Title 40 of the Code of Federal Regula-
tions is amended as follows:

Subpart F—California

1. Section 52.220, paragraph (c) (35)
(vi) is amended as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * * * *

(35) * * * * *

(vi) Tulare County APCD.

(A) Rules 102, 103, 103.1, 104, 105, 110,
112, 115, 305, (402 paragraphs a. through
e. and g.), 405, 407.1, 407.3, 409, 417.1,
421.

* * * * *

2. Section 52.226(b) (9) (i) is amended
as follows:

§ 52.226 Control strategy and regula-
tions: Particulate matter, San Joaquin
Valley Intrastate Region.

* * * * *

(b) * * * * *

(9) Tulare County APCD.

(i) Paragraph b. of rule 407.1.

* * * * *

3. Section 52.231(a) (2) (ii) is amended
as follows:

§ 52.231 Regulations: Sulfur oxides;
San Joaquin Valley Intrastate Re-
gion.

(a) * * * * *

(2) * * * * *

(ii) Rule 407.3, Scavenger Plants, submitted on November 10, 1976, is disapproved; and rule 407, Sulfur Compounds, submitted on June 30, 1972, and previously approved in 40 CFR 52.223 is retained and will continue to remain in effect for sulfur scavenger plants and other sulfur compound emitting sources.

4. Section 52.273(2)(3)(ii) is amended as follows:

§ 52.273 Open burning.

- (a) * * *
- (3) * * *
- (ii) Tulare County APCD.
- (A) Paragraph e. of rule 402.

[FR Doc. 77-27485 Filed 9-20-77; 8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 21119; RM-2731]

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Station in Gillette, Wyoming; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and Order.

SUMMARY: This action assigns two Class C FM channels to Gillette, Wyoming, and deletes the Class A channel presently assigned there. The permittee of the Class A channel is authorized to operate on one of the newly assigned Class C channels. This action was initiated by a petition filed by Gillette Broadcasting Company.

EFFECTIVE DATE: October 26, 1977.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Gillette, Wyoming); Docket No. 21119, RM-2731. (42 FR 29027, June 7, 1977.)

Adopted: September 12, 1977.

Released: September 15, 1977.

1. The Commission here considers the Notice of Proposed Rule Making, adopted February 11, 1977 (42 FR 10858), proposing the assignment of Class C Channels 245 and 264 to Gillette, Wyoming, deletion of Channel 228A therefrom and modification of an existing permit on Channel 228A to specify Channel 245. Supporting comments were filed by Gillette Broadcasting Company ("petitioner"). Opposing comments were filed by Midland Broadcasting Company of Wyoming ("Midland"), permittee of FM

Station KOLL(FM) (Channel 228A)¹ Gillette, Wyoming.

2. Gillette (pop. 7,194)², seat of Campbell County (pop. 12,957) is located about midway between the Black Hills, 105 kilometers (65 miles) to the east, and the Big Horns, 96 kilometers (60 miles) to the west. It is presently served by AM Station KIML (full-time), licensed to petitioner, and FM Station KOLL (Channel 228A). Gillette is the eighth largest city in Wyoming. Petitioner states the area is rich in oil, natural gas, uranium and coal and quotes a United States Bureau of Mines estimate that 12.1 billion tons of sulphur coal is found in Campbell County, which contains 87 percent of the strippable coal reserves in the State's Powder River Basin. It also notes that from 1960 to 1974, petroleum production increased by almost 500 percent.

3. We are told that a study, which was prepared for the city of Gillette with state and federal funding, shows that by 1980 the population of Gillette is expected to have grown to 26,600 persons, an increase of 82.3 percent, and the population of Campbell County will have grown from 20,260 persons to 54,700 persons, an increase of 165.3 percent.

4. In opposing comments, Midland contends that petitioner has failed to demonstrate a need for additional service. Midland does not question petitioner's population analysis up through 1970. It agrees that Gillette has been experiencing an influx in population for the past four years and that there has been noticeable growth in small communities at some distance from Gillette, but close enough for daily commuting. Midland argues that these small towns may have a need for their own broadcast services. It contends that the projected population and financial growth in Gillette is predicated entirely on growth of the energy industry and such growth is contingent upon a number of unpredictable factors: strip mining legislation which must be concluded by Congress, intra-continental sluce pipe, envisioned as a transportation alternative, and railroads that cannot in the near future meet the large scale expansion of service necessary to transport the projected coal extractions. Midland states that the most recently available studies indicate that the nation's railroads, the primary movers of coal, are in serious financial difficulty and that the plant and equipment renovations necessary to meet an increased demand cannot be met, even under optimum conditions, in less than 5-7 years. Thus, Midland argues, petitioner offers data concerning available energy resources but fails to address the transportation and other production inhibiting factors.

5. Midland asserts that the two full-time local broadcast facilities, coupled

¹ Midland was granted authority on May 4, 1976, to commence program tests.

² Population figures are taken from the 1970 U.S. Census.

with additionally available media services, amply serve Gillette's communications needs. It argues that petitioner's proposal is primarily motivated by competitive, not public service needs, because any licensee with two stations in the market can achieve, by shared usage of facilities and staff, economies which are unavailable to a single station licensee. Midland contends that a need for service to all of Campbell County from the Gillette site has not been demonstrated. It points out that much of the northern portion of the county will be served by the recent initiation of service by KROE-FM, Sheridan, and that Casper's two AM, one Class C FM and one TV stations provide service to much of the southern portion of Campbell County.

6. Midland argues that the proposed allocation of two Class C channels to Gillette, although one is suggested for use by Midland, poses a strong threat of the loss of existing service. It states it is still a permittee and has been providing service for a year to Gillette, but as a new facility it is undergoing the usual adjustment problems encountered in attempting to establish a viable service to the community. It estimates that to make the changes necessary to construct a Class C FM facility meeting the Commission's minimum service requirements requires an expenditure in excess of \$36,000 which does not include miscellaneous costs, nor the cost of litigation. Midland asserts that Gillette now receives maximum diversity from two separately owned and programmed broadcast facilities. It contends that petitioner has not met the burden of requiring the modification of an existing authorization. It further argues that where adequate service and lack of immediate need for additional service has been demonstrated, a proposal for additional service must be rejected.

7. Midland also states that should the Commission adopt the proposed change, equitable and public interest considerations require that special relief be granted to nullify the allegedly potential disruptive effects of immediate implementation of the proposal. Midland estimates that it may take at least three years for it to achieve viability in the community and the Commission should therefore grant it a three-year stay of the time necessary to implement a channel change. It also argues that the petitioner will achieve a substantial competitive edge against Midland's vulnerable facility by obtaining a second broadcast station in the community, the Commission should also invoke a three-year stay on the implementation of the proposed additional channel assignment. It contends that such a stay is warranted because the population does not justify assignment of three full-time aural facilities to Gillette at this time and because potential competitive impact resulting from the assignment of a second FM station at this time could result in loss of an existing service to the ultimate detriment of the public interest.

8. After carefully considering all the comments submitted by the parties, we believe the addition of two Class C channels (Channels 245 and 264) and the deletion of the existing Class A frequency (Channel 228A), at Gillette, Wyoming, would best serve the public interest. Even though Gillette, as a community, would not in itself normally merit Class C assignments, we have decided that they are nevertheless warranted. By allowing the operation of Class C stations at Gillette one of our most important priorities is satisfied, i.e., provision of a first FM service to as much of the population of the United States as possible.³ Here, assignment of either of the two Class C channels would provide a first FM service to 2,611 persons in an area of 8,250 square kilometers (3,188 square miles) and a second FM service to 7,958 persons in an area of 1,710 square kilometers (660 square miles). First nighttime aural service would also be provided to 2,611 persons and second nighttime service to 381 persons. The second Class C assignment would offer a second FM service to this first FM service area and a second nighttime aural service to the first nighttime aural service area. A Class A channel could not offer these advantages. In addition, the second Class C channel should be assigned to replace the existing Class A assignment to avoid the intermixture of classes of channels which would otherwise result. See *Mitchell, S.D.*, 62 F.C.C. 2d 70 (1976). Moreover, this action clearly protects Midland's position which otherwise would involve attempting to compete with a Class C station. It is only through assignment of these two Class C channels (which have technical coverage capability superior to Class A channels) that service to unserved and underserved areas would be provided.

9. As stated in the Notice, assignment of Channel 245 would result in preclusion to eight communities of over 2,000 population. Of the eight, two have an unused Class C assignment. Each of the remaining six communities have at least three Class C channels available for assignment. Assignment of Channel 264 would cause preclusion to ten communities of over 2,000 population. Of the ten, four have an unused Class A assignment, one has two unused Class A assignments, and one has one unused Class C assignment. The remaining four communities have at least two Class A and three Class C channels available for assignment to each community.

10. We are persuaded by Midland's argument that it could take at least some time for a newly established station to achieve viability in the community and that it should be granted a three-year stay necessary to implement a channel change, in addition to obtain-

³ *Anamosa and Iowa City, Iowa*, 46 F.C.C. 2d 520 (1974); *Further Notice of Proposed Rule Making* in Docket No. 14185, FCC 62-867 (1962).

ing reimbursement for expenditures incurred during the changeover. Since Midland failed unconditionally to consent to the proposed modification of its permit in the Order to Show Cause, we shall, in accordance with *Transcontinent Television Corp. v. F.C.C.*, 308 F. 2d 339 (D.C. Cir. 1962), make the modification in its license required by the amendment to the FM Table of Assignments deleting Channel 228A from and assigning Channel 245 to Gillette, Wyoming, effective upon its license expiration date, October 1, 1977.

11. Our usual policy with regard to reimbursement is to order a party which benefits from a new assignment requiring modification to change frequency of an existing license to bear the reasonable costs involved in the change. In the present case, it is clear that each of the parties obtaining a Class C at Gillette will benefit by the assignments made herein. It is not only Midland which would receive a benefit. So would the party obtaining the other channel, a channel we would not ordinarily assign because of the resulting intermixture. By assigning the second Class C channel and deleting the existing Class A channel, it becomes necessary for the existing Class A permittee to switch its operating frequency in order to continue operating its station. Its benefit is the opportunity to obtain greater facilities, and it should bear these costs. The channel change is another matter. We do not believe that full reimbursement should be ordered. Rather than direct the benefitting party to bear the costs of two new Class C facilities, we favor a limited form of reimbursement. That amount would include only the costs of the changes involved in converting only the operating frequency from 93.5 MHz (Channel 228A) to 96.9 MHz (Channel 245). As set forth in *Circeville, Ohio*, 8 F.C.C. 2d 159 (1967), the appropriate costs making up the "reasonable" reimbursement figures are generally left to the good faith judgment of the parties eventually involved, subject to Commission approval in the event of disagreement. In this case, however, we believe that the costs of increasing the power and antenna height to conform to the minimum requirements of a Class C operation would not be reimbursed. See *Mitchell, S. D.*, *supra*.

12. In all fairness, it would not be proper to place Midland in a position of having to convert to a more costly operation during its initial phase of operation. Imposing these substantial expenses upon it could diminish the quality of its service to the community. Midland would be permitted to operate on Channel 245 with its present low power Class A facilities for the present time, but we would expect the conversion to minimum Class C facilities to take place by the renewal date of October 1, 1980.

13. Midland urges the Commission to invoke a three-year stay on the implementation of the other Class C channel

(Channel 264) arguing that this licensee would be able to achieve a substantial competitive edge against Midland by earlier initiation of service and through obtaining a second broadcast station. Midland's showing is inadequate to indicate that any such step should be taken in a rule making context. As with the related issue of economic impact, it has been the long-established Commission policy that such issues should be raised at the application stage. As for the modification of Midland's permit from a Class A to a Class C channel, one other point should be mentioned. Since no other person has, during the course of this proceeding, expressed an interest in applying for the Class C channel, we are, under the authority of Cheyenne, Wyoming, 62 F.C.C. 2d 63 (1976), authorizing the modification of Station KOLL's permit pursuant to Section 316(a) of the Communications Act of 1934, as amended.

14. In view of the foregoing, and pursuant to authority contained in Section 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, it is ordered, That effective October 26, 1977, the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, is amended to read as follows for the city listed below:

City	Channel No.
Gillette, Wyo.....	245, 264

15. It is further ordered, That effective October 1, 1977, and pursuant to authority contained in Section 316 of the Communications Act of 1934, as amended, the construction permit of FM Station KOLL, Gillette, Wyoming, is modified to specify operation on Channel 245 and Midland shall amend its license application to specify this channel. In addition:

(a) At least 30 days before operating on Channel 245, Midland shall submit to the Commission the technical information normally required of an applicant for a construction permit on Channel 245.

(b) At least 10 days prior to commencing operation on Channel 245, Midland shall submit the measurement data required of an applicant for an FM broadcast station license; and

(c) Midland shall commence operation on Channel 245 only with prior Commission authorization.

16. It is further ordered, That this proceeding is terminated.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; 47 U.S.C. 154, 155, 303.)

FEDERAL COMMUNICATIONS
COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 77-27396 Filed 9-20-77; 8:45 am]

¹ Effective 3 a.m. local time October 1, 1977 (concurrently with the expiration date for Wyoming stations) or such earlier date as FM Station KOLL may, upon its request, cease operation on Channel 228A at Gillette.