

(2) The amount payable by the carrier for a visit will be determined as follows:

(i) If the deductible has been fully incurred by the beneficiary prior to the visit, 80 percent of the all-inclusive rate will be paid.

(ii) If the deductible has not been fully incurred by the beneficiary prior to the visit, payment will be made to the clinic only if the clinic's reasonable customary charge for the services furnished exceeds the amount necessary to satisfy the beneficiary's deductible. The amount necessary to satisfy the deductible will be subtracted from the all-inclusive rate, and 80 percent of the remainder, if any, will be paid to the clinic.

(3) In order to receive payment, the payment procedures established in accordance with § 405.250-2 shall be followed.

(Sections 1102, 1833, 1861(aa), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395L, 1395hh, and 1395x(aa))

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance.)

Dated: February 8, 1980.

Leonard D. Schaeffer,
Administrator, Health Care Financing
Administration.

Approved: February 21, 1980.

Nathan J. Stark,

Acting Secretary.

[FR Doc. 80-6154 Filed 2-27-80; 8:45 am]

BILLING CODE 4110-35-M

Office of the Inspector General

42 CFR Part 455

State Medicaid Fraud Control Units

AGENCY: Office of the Inspector General, DHEW.

ACTION: Final rules.

SUMMARY: These technical amendments delete from 42 CFR Part 455, Subpart D, language that unnecessarily duplicates, or conflicts with, department-wide regulations contained in 45 CFR Part 74, "Administration of Grants".

EFFECTIVE DATE: These technical amendments are effective on February 28, 1980.

FOR FURTHER INFORMATION CONTACT: B. Frederic Williams, Jr., Division of State Fraud Control, Office of the Inspector General, Department of Health, Education, and Welfare, Room 5439 330 Independence Avenue, S.W., Washington, D.C. 20201 (202) 472-3222.

SUPPLEMENTARY INFORMATION: In accordance with the Department's project to standardize and simplify grants administration, the Office of the

Inspector General amends 42 CFR Part 455, Subpart D, by eliminating regulations that unnecessarily duplicate or conflict with the department-wide regulations on grants administration in 45 CFR Part 74. Because these amendments impose no new requirements on grantees, notice of proposed rulemaking, opportunity for public participation, and delay in effective date under the Administrative Procedure Act (5 U.S.C. 553) are waived. 42 CFR Part 455, Subpart D is amended as follows:

§ 455.300 [Amended]

1. Section 455.300(i)(2) is deleted, and section 455.300(i) is renumbered by deleting "Reporting Requirements—(1)" and redesignating subparagraphs (i) through (viii) thereof as paragraphs (1) through (8), respectively.

§ 455.400 [Amended]

2. Section 455.400(i)(7), as redesignated above, is amended by deleting ", by major budget category".

§ 455.300 [Amended]

3. Section 455.300(i)(6), as redesignated above, is amended by striking "paragraphs (i)(1)(i) through (v)" and substituting therefor "paragraphs (i)(1) through (5)".

4. Section 455.300(j)(1) is amended to read as follows:

* * * * *

(j) * * *

(1) *Rate of FFP.* Subject to the limitation of this paragraph, the Secretary will reimburse each State by an amount equal to 90 percent of the costs incurred by a certified unit which are attributable to carrying out its functions and responsibilities under this section.

* * * * *

§ 455.300 [Amended]

5. Section 455.300(j)(2) is amended by deleting "Basis and Period of Payment," and by deleting subparagraphs (i) and (ii) and redesignating subparagraph (iii) as subparagraph (2).

§ 455.300 [Amended]

6. Section 455.300(j)(3) is amended by striking the phrase "The amount paid during" and substituting therefor "FFP for".

§ 455.300 [Amended]

7. Section 455.300 is amended by adding after paragraph (j) the following new paragraph (k):

* * * * *

(k) *Other applicable HEW regulations.* Except as otherwise provided in this subpart, the following

regulations from 45 CFR Subtitle A apply to grants under this subpart:

Subpart C of Part 16—Department Grant Appeals Process—Special Provisions Applicable To Reconsideration of Disallowances (note that this applies only to disallowance determinations and not to any other determinations, e.g., over certification or recertification)

Part 74—Administration of Grants

Part 75—Informal Grant Appeals Procedures

Part 80—Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health, Education, and Welfare: Effectuation of Title VI of the Civil Rights Act of 1964

Part 81—Practice and Procedure for Hearings Under 45 CFR Part 80

Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting From Federal Financial Assistance

Dated: January 22, 1980.

Richard B. Lowe,

Acting Inspector General.

Approved: February 21, 1980.

Nathan J. Stark,

Acting Secretary.

[FR Doc. 80-6155 Filed 2-27-80; 8:45 am]

BILLING CODE 4110-12-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 401

[CGD 79-138]

Great Lakes Pilotage Regulations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its regulations governing the pilotage of vessels on the Great Lakes. These amendments increase the basic pilotage rates by five percent in the three Great Lakes pilotage districts, broaden one of the factors that is used to determine the charge for pilotage services, and increase the interest charge on past due accounts for pilotage service by one half percent. These changes are made in order to increase pilot compensation and cover the increased operating expenses, including pilot training costs, of the Great Lakes pilot associations.

EFFECTIVE DATE: April 1, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Hartke (C-MVP-4), Room 1314, Department of Transportation, Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C. 20593, (202) 755-8683.

SUPPLEMENTARY INFORMATION: On January 7, 1980, the Coast Guard published a proposed rule (45 FR 1432) concerning this amendment. Interested persons were given until February 21, 1980, to submit comments. No comments were received and the proposed rule is being adopted without change.

Drafting Information

The principal persons involved in drafting this rule are: John J. Hartke, Project Manager, Office of Merchant Marine Safety, and Coleman Sachs, Project Attorney, Office of the Chief Counsel.

This rule has been reviewed and determined to be non-significant under the Department of Transportation's Regulatory Policies and Procedures published on February 26, 1979 (44 FR 11034). A final evaluation has been prepared and included in the public docket. This may be obtained from the Marine Safety Council (G-CMC/24), Coast Guard Headquarters, Washington, D.C. 20593, (202) 755-4901.

In consideration of the foregoing, Part 401 of Title 46 of the Code of Federal Regulations is amended as follows:

PART 401—GREAT LAKES PILOTAGE REGULATIONS

1. Section 401.400(b) is revised to read as follows:

§ 401.400 Calculation of pilotage units and determination of weighting factor.

* * * * *

(a) * * *

(b) Weighting factor table:

Range of pilotage units:	Weighting factor
0 to 99.....	0.85
100 to 129.....	1.00
130 to 159.....	1.15
160 to 189.....	1.30
190 and over.....	1.45

* * * * *

2. Section 401.405 is revised to read as follows:

§ 401.405 Basic rates and charges on designated waters.

Except as provided under § 401.420, the following basic rates shall be payable for all services and assignments performed by U.S. Registered Pilots in the areas described in § 401.300.

(a) District 1:

(1) For passage through the District or any part thereof, \$6.58 for each statute mile, plus \$87 for each lock transited, but with a minimum basic rate of \$192 and a maximum basic rate for a through trip of \$843.

(2) For a movage in any harbor, \$289.

(b) District 2:

(1) Southeast Shoal to Toledo or any point on Lake Erie west of Southeast shoal, \$426.

(2) Between points on Lake Erie west of Southeast Shoal, \$252.

(3) Southeast Shoal to Port Huron Change Point or any point on the St. Clair River when pilots are not changed at Detroit Pilot Boat, \$741.

(4) Southeast Shoal to Detroit/Windsor or any point on the Detroit River, \$426.

(5) Southeast Shoal to Detroit Pilot Boat, \$309.

(6) Toledo or any point on Lake Erie west of Southeast Shoal and Port Huron Change Point, when pilots are not changed at Detroit Pilot Boat, \$859.

(7) Toledo or any point on Lake Erie west of Southeast Shoal and Detroit/Windsor or any point on the Detroit River, \$553.

(8) Toledo or any point on Lake Erie west of Southeast Shoal and the Detroit Pilot Boat, \$426.

(9) Detroit/Windsor or any point on the Detroit River and between points on the Detroit River, \$252.

(10) Detroit/Windsor or any point on the Detroit River to Port Huron Change Point or any point on the St. Clair River, \$559.

(11) Detroit Pilot Boat to any point on the St. Clair River, \$559.

(12) Detroit Pilot Boat to Port Huron Change Point, \$434.

(13) Between points on the St. Clair River, \$252.

(14) Port Huron Change Point to any point on the St. Clair River, \$309.

(c) District 3:

(1) Between the southerly limit of the District and the northerly limit of the District or the Algoma Steel Corporation Wharf at Sault Ste. Marie, Ontario, \$767.

(2) Between the southerly limit of the District and Sault Ste. Marie, Ontario or any point in Sault Ste. Marie, Ontario other than the Algoma Steel Corporation Wharf, \$644.

(3) Between the northerly limit of the District and Sault Ste. Marie, Ontario, including the Algoma Steel Corporation Wharf, or Sault Ste. Marie, Michigan, \$289.

(4) For a movage in any harbor, \$289.

3. Section 401.410(a) is revised to read as follows:

§ 401.410 Basic rates and charges on undesignated waters.

(a) Except as provided under § 401.420 and subject to paragraph (b) of this section, the basic rates for each 6 hour period or part thereof that a U.S. pilot is on board in the undesignated waters shall be:

(1) In Lake Ontario, \$153

(2) In Lake Erie, \$201.

(3) In Lakes Huron, Michigan and Superior, \$153 plus \$147 for each time a U.S. pilot performs the docking or undocking of the ship.

* * * * *

4. Section 401.420 is revised to read as follows:

§ 401.420 Cancellation, delay or interruption in rendition of services.

(a) When, in designated or undesignated waters, the passage of a ship is interrupted for the purpose of loading or discharging cargo or for any reason and the services of a U.S. pilot are retained during the interruption or when a U.S. pilot is detained on board a ship after the end of an assignment for the convenience of the ship, the ship shall pay an additional charge calculated on a basic rate of \$24 for each hour or part of an hour during which each interruption lasts with a maximum basic rate of \$384 for each 24 hour period during which the interruption continues. However, there is no charge for any interruption caused by ice, weather, or traffic, except during the period beginning the 1st of December and ending on the 8th of the following April. Additionally, no charge shall be made for any interruption if the total interruption ends during the 6 hour period for which a charge has been made under § 401.410.

(b) When, in designated or undesignated waters, the departure or movage of a ship for which a U.S. pilot has been ordered is delayed for the convenience of the ship for more than one hour after a U.S. pilot reports for duty at the designated boarding point or after the time for which the pilot is ordered, whichever is later, the ship shall pay an additional charge calculated on a basic rate of \$24 for each hour or part of an hour after the first hour of the delay, with a maximum basic rate of \$384 for each 24 hour period of the delay.

(c) When, in designated or undesignated waters, a U.S. pilot reports for duty as ordered and the order is cancelled, the ship shall pay:

(1) A cancellation charge calculated on a basic rate of \$145.

(2) If the cancellation is more than one hour after a U.S. pilot reports for duty at the designated boarding point or after the time for which the pilot is ordered, whichever is the later, a further charge calculated on a basic rate of \$24 for each hour or part of an hour after the first hour, with a maximum basic rate of \$384 for each 24 hour period.

5. Section 401.427 is revised to read as follows:

§ 401.427 Charge on past due accounts.

A charge of two percent (2%) per month shall be paid on the opening monthly balance on accounts remaining unpaid over thirty (30) days after the billing date.

6. Section 401.428 is revised to read as follows:

§ 401.428 Basic rates and charges for carrying a U.S. pilot beyond normal change point.

If a U.S. pilot is carried beyond his or her normal change point or is unable to board at his or her normal boarding place, a U.S. pilot shall be paid at the rate of \$147 per day or part thereof, plus reasonable travel expenses to or from his or her base. These charges are not applicable if the ship utilizes the services of the U.S. pilot beyond his or her normal change point and the ship is billed for those services. The change points to which this section applies are designated in § 401.450.

(46 U.S.C. 216c, 49 U.S.C. 1655(a)(4), 49 CFR 1.46(a))

Dated: February 25, 1980.

Henry H. Bell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 80-6262 Filed 2-27-80; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 0**

[FCC 79-883]

Reorganization of the Broadcast Bureau

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Broadcast Bureau was reorganized on December 31, 1979. This amendment changes the Commission's rules to reflect the reorganization.

EFFECTIVE DATE: March 3, 1980.

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

FOR FURTHER INFORMATION CONTACT: Joseph Hall, Office of the Executive Director, 632-7513.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of Part 0 of the Commission's rules to reflect a reorganization of the Broadcast Bureau.

Order

Adopted: November 6, 1979.

Released: February 22, 1980.

1. Effective December 31, 1979, the Broadcast Bureau was reorganized. This

reorganization requires amendments to §§ 0.71 and 0.72 of the Commission's rules and regulations and deletion of §§ 0.73, 0.74, 0.75, 0.76, 0.77, 0.78, 0.79, 0.80, and 0.81.

2. To promote operational efficiency, the Commission approved the restructuring of the Broadcast Facilities Division into the AM, FM, TV, and Auxiliary Services Branches while abolishing the Technical and Allocations and the Educational Broadcasting Branches and shifting their functions to the Policy and Rules Division. The Policy and Rules Division was restructured by placing the Technical and Allocations Branch function and the Engineering Branch function under the new Technical and International Branch. The Educational Broadcasting Branch function was shifted to the Policy Analysis Branch within the Division. The Office of Network Study was abolished and its functions were shifted to the Legal Branch of the Policy and Rules Division. An Equal Employment Opportunity Branch was established in the Renewal and Transfer Division. Part 0 of the rules and regulations is being amended to reflect these changes.

3. The amendments adopted herein pertain to agency organization. The prior notice procedure and effective date provisions of Section 4 of the Administrative Procedure Act, 5 U.S.C. 553, are, therefore, inapplicable. Authority for the amendments adopted herein is contained in Section 4(i) and 5(b) of the Communications Act of 1934, as amended.

4. In view of the foregoing, it is ordered, effective March 3, 1980, that Part 0 of the rules and regulations is amended as set forth in the Appendix below.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is hereby amended as indicated below.

1. Section 0.71 is amended to read:

§ 0.71 Functions of the Bureau.

The Broadcast Bureau develops, recommends and administers policies and programs for the regulation of all radio and television broadcast industry services. Advises and recommends to the Commission, or acts for the Commission under delegated authority, in matters pertaining to the regulation and development of radio and television

services. The Broadcast Bureau has the following duties and responsibilities:

(a) Process applications for authorizations in radio and television services.

(b) Administer U.S. responsibilities under international agreements and treaty obligations pertaining to broadcasting.

(c) Process applications for renewal of AM, FM and television licenses and for assignment or transfer of ownership interests in such licenses.

(d) Participate in hearing before the Administrative Law Judges, the Review Board and the Commission.

(e) Plan and develop proposed rule makings and conduct comprehensive studies and analyses (legal, engineering, social and economic) of various petitions for policy or rule changes submitted by industry or the public.

(f) Conduct studies and compile data relating to radio and television network operations necessary for the Commission to develop and maintain an adequate regulatory program.

(g) Investigate complaints and answer general inquiries from the public and handle political broadcasting and fairness doctrine complaints.

2. Section 0.72 is amended to read:

§ 0.72 Units of the Bureau

The Broadcast Bureau is comprised of the following units:

- (a) Office of the Bureau Chief
- (b) Broadcast Facilities Division
- (c) Renewal and Transfer Division
- (d) Policy and Rules Division
- (e) Hearing Division
- (f) License Division
- (g) Complaints and Compliance Division

§ 0.73 through 0.81 [Deleted]

3. Sections 0.73, 0.74, 0.75, 0.76, 0.77, 0.78, 0.79, 0.80 and 0.81 are deleted.

[FR Doc. 80-6257 Filed 2-27-80; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 78-25; RM-2920]

FM Broadcast Stations in Lewiston, Idaho, and Clarkston, Washington; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and Order

SUMMARY: This action assigns Class C Channel 295 at Lewiston, Idaho, as a second FM channel assignment. A proposal to modify the license of the existing Class A licensee at Lewiston to

a different Class C channel could not be implemented because of a prohibited signal overlap that would result. Another Lewiston assignment, Channel 231, is reassigned to Clarkston, Washington, to reflect its use there.

EFFECTIVE DATE: March 31, 1980.

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

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

[BC Docket No. 78-25 RM-2920]

REPORT AND ORDER (Proceeding Terminated)

Adopted: February 13, 1980.

Released: February 21, 1980.

By the Chief, Policy and Rules Division.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations, (Lewiston, Idaho, and Clarkston, Washington ¹).

1. By *Notice of Proposed Rule Making and Order to Show Cause*, 43 Fed. Reg. 4076, the Commission proposed the assignment of Class C FM Channel 295 and the replacement of existing Class A FM Channel 244 with Class C FM Channel 243 at Lewiston, Idaho. The changes were proposed in a response to a petition submitted by KRLC, Inc., presently the licensee of fulltime AM Station KRLC in Lewiston. As the proposal would require the licensee presently using Channel 244A, 4K Radio, Inc., (KOZE-FM), to substantially improve its facilities in order to avoid intermixture of Classes A and C channels, the *Notice* solicited comment from KOZE-FM on its willingness to undertake such modification.² General comments on the appropriateness of the proposal were also requested.

2. The *Notice* pointed out that a community of 26,068 (1970 Census) generally would not qualify for three Class C FM assignments under the Commission's population guidelines³.

¹ This community has been added to the caption.

² The *Notice* compared the instant situation with one recently considered in *Mitchell, South Dakota*, 62 FCC 2d 70 (1976). There, the Commission decided to replace a Class A assignment with a Class C channel in order to avoid intermixture as well as to extend service to underserved areas. The Class A license was modified to specify operation on one of the two Class C assignments, and the incumbent was reimbursed by the petitioner for the costs of the frequency shift (though not for the necessary improvement in its facilities). A similar approach in Lewiston would necessitate modification of KOZE-FM's license to specify one of the two new Class C channels assigned to Lewiston, and KOZE-FM was hence asked to show cause why such a modification should not be required.

³ Channel 231 is also assigned to Lewiston but is used at Clarkston, Washington, two miles away under the 15-mile rule, Section 73.203(b).

but considered that the present use of Lewiston's existing Class C channel at Clarkston, Washington, and the substantial second FM service to be provided by the proposed facility on Channel 295 (12,600 persons over 8,400 square kilometers) mitigated the implications of the usual application of our population criteria.⁴ Petitioner was asked to provide data on the extent of the second nighttime aural service that could be provided.

3. As to the specific measures necessary to accomplish the proposed assignments, KOZE-FM has challenged their appropriateness in its comments although waiving its right to a hearing. The licensee, 4K, asserts that (a) it cannot operate a Class C channel in Lewiston in compliance with the Commission's multiple ownership rule prohibiting specific signal overlaps between commonly-owned stations (47 C.F.R. 73.240(a)(2))⁵; (b) a higher-power Class C facility at Lewiston, even if economically viable itself, would have an adverse effect on the lower-power facilities now operating in northern Idaho; and (c) intermixture could as well be avoided by adding a second Class A assignment to Lewiston, in keeping with the asserted pattern of northern Idaho stations which operate on Class A channels at lower power levels. 4K concludes that it desires to continue operations on Channel 244A.

4. Petitioner, in reply comments, states that KOZE-FM elected to activate the Class A rather than an available Class C channel when initiating operations in 1961, and the latter channel occupied by KCLK-FM in Clarkston, Washington, has operated successfully ever since. Petitioner states that the Clarkston station has prepared to apply for operation at increased height and power.⁶ Regarding northern Idaho

⁴ It should also be noted that 1976 estimates of Lewiston's population by that city's Planning Department put the 1980 population at 37,020 and project the 1985 population at 44,160.

⁵ The specific conflict lies in a signal overlap between KOZE-FM and KLER(AM), Orofino, which would arise if the FM facility were improved to Class C standards.

⁶ Clarkston Broadcasters, licensee of KCLK-FM, submitted a statement on April 24, 1978, confirming its intent to apply for height and power changes expected to substantially increase its coverage of areas near Clarkston with little or no present FM service. Clarkston contends that restricting the Lewiston area stations to Class A facilities would deprive that community of otherwise available FM service and suggests that 4K's logic would support reduction of power used by AM stations in Lewiston to the levels of other AM stations in northern Idaho. (4K Radio asked that Clarkston's statement be rejected as untimely, but this request is moot as the deadline for reply comments was subsequently extended to May 19 at 4K's request, affording it an opportunity to address Clarkston's comments.)

broadcast facilities generally, petitioner asserts that the Class A operations in the area are partially dominated by the Spokane "umbrella," and that some northern markets might raise multiple ownership problems for 4K, were it to consider higher powered FM facilities. In any event, petitioner states that Lewiston can appropriately be compared to southern Idaho, where several Class C assignments already exist.

5. 4K Radio, in reply, asserts that improvement of the Clarkston facility to maximum height and power will reduce KRLC(FM)'s areas of expected service gains to third aural nighttime status, and that no first aural service will occur in daytime due to existing (but unspecified) AM services. It also notes in this regard that Channel 239 at Walla Walla, Washington, may also diminish expected service gains. 4K asserts that if instead a second Class A facility were authorized at Lewiston, petitioner's service population estimates would be affected (but 4K provides no revised estimates). 4K reiterates its belief that if we take into account existing or possible Class A facilities, adequate service is provided to Lewiston, and points out that until recent changes in the multiple ownership rules it could have petitioned for a rule change and license modification, and in fact corresponded with the Commission on these matters.

6. Petitioner KRLC responded to 4K's reply comments with the Commission's permission.⁷ It states that of eight FM channels asserted by 4K to serve the proposed coverage area of Channel 295, one is already a Class C, two are reserved for educational use and three of the remaining five are licensed to or applied for by 4K.⁸ Finally, petitioner properly points out that the existing concentration of media control in Lewiston was noted in an earlier Commission denial of 4K's request to increase operating power at its AM station, KLER (Orofino). The application was dismissed because it conflicted with the Commission's multiple ownership rules. *4K Radio, Inc.*, 56 FCC 2d 42 (1975).

⁷ Petitioner submitted a request for permission to file an additional pleading in order to address objections raised by 4K in its reply comments. We have accepted this pleading because petitioner would be the only party that would be prejudiced by a delay and the information was important to a resolution of the proceeding.

⁸ As noted by petitioner, Commission files indicate 4K's applications for FM facilities in Orofino and Grangeville were filed a week after its comments in this proceeding—comments which had cited these facilities as obviating the need for a Class C channel in Lewiston.

7. *Discussion.* As noted, 4K's other holdings clearly preclude its operation of a Class C channel in Lewiston. Because 4K has asserted both its desire to continue its Class A operation and the acceptable extent of coverage possible with such a facility, we believe intermixture should be tolerated in this instance. Moreover, we can see no public interest to be served by the denial of the petitioner's request for a Class C assignment to Lewiston, other than preservation of 4K's economic interest and a pattern of spectrum usage which is unnecessarily inefficient. Avoidance of intermixture, while important, is a lesser priority than the provision of first or second aural service. See *Fayetteville, Arkansas*, Docket 19879, *Second Report and Order*, 43 Fed. Reg. 36104, released August 15, 1978. Here it has been shown that a substantial second nighttime aural service will be provided to 11,738 persons in an area of 7,930 square kilometers (3,060 square miles). The contrast between the two components of the public interest is the more compelling where, as here, intermixture could only be avoided by diminishing its regionally concentrated holdings. We believe that the basis for making the assignment—second nighttime aural service gains from a second FM station in a community steadily approaching the 50,000 population criterion—is further supported by a proper concern for diversity in an area marked by one entity's broad, albeit permissible, holdings.

8. We have also amended the Table of Assignments to reflect the usage of Channel 231 at Clarkston, Washington. Canadian concurrence has been obtained for the assignment herein.

9. Therefore, it is ordered, That, effective March 31, 1980, Section 73.202(b) of the Commission's Rules, the FM Table of Assignments, is amended to read, insofar as the communities named are concerned, as follows:

City	Channel No.
Lewiston, Idaho.....	244A, 295
Clarkston, Washington.....	231

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

11. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632-7792. (Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307.)

Federal Communications Commission.

Henry L. Baumann,
Chief, Policy and Rules Division, Broadcast Bureau.

(FR Doc. 80-6248 Filed 2-27-80; 8:45 am)

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 79-73; Rm-3203]

Television Broadcast Station in San Jose, California; Changes made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and Order.

SUMMARY: Action taken herein assigns UHF television Channel 65 to San Jose, California, in response to a petition filed by Donald B. Thompson. This assignment would provide for a fourth local commercial station at San Jose.

EFFECTIVE DATE: March 31, 1980.

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

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

REPORT AND ORDER: Proceeding Terminated

Adopted: February 13, 1980;

Released: February 21, 1980.

By the Chief, Policy and Rules Division: 1. The Commission has before it the *Notice of Proposed Rule Making*, 44 FR 21050, released April 5, 1979, proposing the assignment of UHF television Channel 65 to San Jose, California. Comments in support have been received from Donald B. Thompson, the petitioner ("petitioner"). Comments and an alternative proposal were filed by Family Stations, Inc. ("Family"), applicant for a construction permit on UHF television Channel 64, Stockton, California. Oppositions were submitted by National Group Television, Inc. ("National"), permittee of television Station KSTS (Channel 48), San Jose, and by Continental Urban Television Corp. ("Continental"), licensee of television Station KGSC-TV (Channel 36), San Jose. Reply comments were received from petitioner, Continental and the Association of Maximum Service Telecasters ("AMST").¹

¹ AMST requested permission to file reply comments to address the alternative proposal from Family. AMST had not filed comments to the *Notice*. Since the reply comments were timely filed, we have accepted the pleading for consideration herein.

2. The *Notice* proposed to assign Channel 65 to San Jose as the fourth commercial television assignment, provided a transmitter site restriction of 25 kilometers (16 miles) south of San Jose was adhered to. The restriction was necessary to meet the mileage separation requirements to the sites specified in pending applications for Channel 64 at Stockton, California, and for Channel 66 at Vallejo, California.

3. San Jose (pop. 445,779),² seat of Santa Clara County (pop. 1,066,174), is located approximately 60 kilometers (40 miles) southwest of San Francisco. San Jose presently has three commercial and one noncommercial educational stations—KNTV (Channel 11); KGSC-TV (Channel 36); KSTS (Channel 48) (construction permit); and KTEH (Channel *54).

4. In opposition Continental contends that San Jose residents are well served by local and nearby television stations and that due to the preclusive impact of this assignment, it would be more beneficial to deny the request. In particular, Continental notes that there are fifteen commercial and four noncommercial television stations which provide at least a Grade B service to San Jose. Continental provides Arbitron ratings to demonstrate the level of viewership of these nonlocal stations and to indicate that the San Jose market is provided special service. The fact that San Jose is part of the San Francisco-Oakland-San Jose market, as defined by the Commission in § 76.51 of the Rules, indicates to Continental that the San Jose stations actually compete in this market. As to preclusive impact, Continental argues that two presently unserved communities—Santa Cruz and Watsonville—would be foreclosed from obtaining a television assignment. Both Santa Cruz and Watsonville are said to be growing communities with a 1977 Census Bureau population of 37,710 and 18,724, respectively, and which receive few outside television signals.

5. National, while emphasizing that it does not object to competition, ostensibly opposes the request for the Channel 65 assignment on the basis that San Jose would have difficulty supporting still another television station. For itself, it stated that it was unsuccessful in obtaining a network affiliation and now seeks to operate a subscription television station.

6. Family notes that the Commission's proposed site restriction for the San Jose assignment (25 kilometers (16 miles) south of San Jose) would still be one

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