within 30 days of receipt of such notice. In those instances where there are issues of fact, a hearing under applicable Rules of Practice will be provided to the establishment owner or operator to resolve the conflict. The Administrator's termination of approval shall remain in effect pending the final determination of the proceeding.

(6) If approval of the partial quality control program under the NELS inspection system has been terminated in accordance with the provisions of this section, an application and request for approval of the same or modified quality control program will not be evaluated by the Administrator for at least 2 months from the termination date. In order for the Department to provide the Federal inspection required under the Act, an establishment whose quality control program has been terminated will be allowed to continue operating under the traditional or modified traditional inspection system, provided all requirements of the Act and regulations thereunder are met.

Done at Washington, D.C., on January 9, 1984.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 84-1723 Filed 1-19-84; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Consideration of Amendments to the Pennsylvania Permanent Program Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Reopening of public comment period.

SUMMARY: OSM is reopening the period for review and comment on certain amendments submitted by the Commonwealth of Pennsylvania to its program for the regulation of surface coal mining and reclamation in the State. The amendments relate to (1) citizen complaint procedures, (2) inspection frequency, (3) enforcement procedures, and (4) the civil penalty program. OSM is reopening the comment period to allow the public sufficient time to consider and comment on the proposed amendments.

DATES: Written comments, data or other relevant information must be received on or before 4:00 p.m. February 6, 1984 to be considered.

ADDRESS: Comments should be sent or hand-delivered to: Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining, 101 South 2nd Street, Harrisburg, Pennsylvania 17101.

FOR FURTHER INFORMATION CONTACT: Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining, 101 South 2nd Street, Harrisburg, Pennsylvania 17101; Telephone: (717) 782-4036.

SUPPLEMENTARY INFORMATION: On September 7, 1982, OSM received, pursuant to the 30 CFR 732.17 State program amendment procedures, revised inspection and enforcement policy statements. On October 14, 1983, OSM published a notice in the **Federal Register** announcing receipt of the amendments to the Pennsylvania program and inviting public comment thereon (48 FR 46817-46819). The public comment period ended November 14, 1983. The public hearing scheduled for November 3, 1983, was not held because no one expressed a desire to present testimony.

On January 17, 1984, OSM received additional material from Pennsylvania responding to issues raised on December 15, 1983, by OSM in a meeting with the Department of Environmental Resources regarding the Pennsylvania amendments. This material consists of an explanatory letter, a new policy statement pertaining to citizen complaint procedures, and revised policy statements pertaining to inspections, enforcement, and civil penalties.

OSM is reopening the comment period for an additional 15 days to allow the public sufficient time to review and comment on the above Pennsylvania amendments. Written comments should be specific, pertain only to the issues proposed in this rulemaking and include explanations of why the commenter believes or does not believe that the proposed amendment includes the same or similar procedural requirements as provided in 30 CFR Parts 842, 843 and 845.

This announcement is made in keeping with OSM's commitment to public participation as a vital component in fulfilling the purposes of the Surface Mining Control and Reclamation Act of 1977.

Dated: January 17, 1984.

William B. Schmidt,

Assistant Director, Program Operations and Inspection.

[FR Doc. 84-1686 Filed 1-19-84; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42043; TSH-FRL 2477-8]

1,2-Dichloropropane; Proposed Test Rule

Correction

In FR Doc. 84-326 beginning on page 899 in the issue of Friday, January 6, 1984, in the heading, the OPTS number should have appeared as set forth above.

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84-19; RM-4564; FCC 84-10]

Repeal of the "Regional Concentration of Control" Provisions of the Commission's Multiple Ownership Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to repeal or relax the Commission's regional concentration of control provisions of §§ 73.35(b)(1), 73.240(a)(2), 73.636(a)(2) of the Rules. These sections prohibit any party from directly or indirectly owning, operating, or controlling three commercial AM, FM, or television stations where any two stations are within 100 miles of the third, and where there is primary service contour overlap between any of the stations. This rule making is being instituted because the existing rule has produced inconsistent and anomalous results in the cases and may be imposing substantial costs on both the public and the broadcasting industry. Moreover, the significant growth in media outlets in recent years strongly suggests a need to reevaluate the assumptions underlying regional concentration restraints in general.

DATES: Comments are due by February 21, 1984 and replies by March 7, 1984.

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

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Mass Media Bureau, (202) 632-7792.

List of Subjects in 47 CFR Part 73

Radio and television broadcasting.

Notice of Proposed Rule Making

In the matter of repeal of the "Regional Concentration of Control" Provisions of the Commission's multiple ownership rules (MM Docket No. 84-19, RM-4564).

Adopted: January 12, 1984.

Released: January 17, 1984.

By the Commission: Commissioner Rivera dissenting and issuing a statement.

Introduction

1. Before the Commission is a petition for rule making filed by the National Association of Broadcasters ("NAB"), seeking repeal of the "regional concentration of control" provisions of §§ 73.35(b)(1), 73.240(a)(2), and 73.636(a)(2) of the Commission's Rules.[1] These sections, which are identical, prohibit any party from directly or indirectly owning, operating, or controlling three commercial AM, FM, or television stations where any two stations are located within 100 miles of the third, and where there is primary service contour overlap between any of the stations.[2] The rule provides for two exceptions. First, AM-FM combinations may be considered as one station if their communities of license meet certain geographical criteria. Second, applications raising regional concentration issues based on contour overlaps involving UHF television stations are treated on a case-by-case basis.[3]

2. Based upon our review of the petition, the comments filed in response thereto and our own experience in administering the rule, we believe that the commencement of a rule making proceeding is warranted to determine whether the existing regional concentration provisions should be repealed. We are particularly concerned that our regional ownership rules inadequately reflect the significant changes in the telecommunications marketplace that have occurred in recent years.

Background

3. The three-station regional concentration of control rule is the Commission's most recent multiple ownership provision. In the past, as the Commission developed fixed limits on the number of stations that a party could control on a national basis, there was a belief by the Commission that the common ownership, operation, or control of a smaller number of stations in close proximity to one another or in a small geographic area may precipitate a concentration of control contary to the public interest.[4] Accordingly, when the Commission adopted its "seven station rule" limiting common ownership, operation, or control to no more than 7 AM, 7 FM, and 7 television stations (of which only 5 may be VHF), the Commission also set forth specific factors for determining, on a case-by-case basis, whether a particular regional ownership pattern would constitute an undue concentration of control. Specifically, §§ 73.35(b), 73.240(a)(2), and 73.636(a)(2) of the Rules provided that:

> In determining whether there is such a concentration of control, consideration will be given to the facts of each case with particular reference to such factors as the size, extent and location of areas served, the number of people served, classes of stations involved, and the extent of other competitive service to the areas in question.[5]

The authority to make these case-by-case determinations was delegated to the Chief of the Broadcast Bureau, except for cases involving the "acquisition of a third broadcast station within 100 miles of a presently owned station," which were referred to the Commission, *en banc*, for consideration. *See Order*, 43 FCC 2d 638, 639 (1973).

4. This case-by-case approach proved to be burdensome to applicants who found themselves conducting extensive media surveys to disprove the possibility that grant of an application would result in a regional concentration of control contrary to the public interest. It also led to a lack of predictability because, even though most applications raising regional concentration issues were granted, applicants were nevertheless unsure as to the significance of each of the factors weighed by the Commission. *See, e.g., Clarksburg Publishing Company v. FCC*, 225 F. 2d 511 (D.C. Cir. 1955); *Wichita-Hutchinson Co., Inc.*, 17 R.R. 2d 1235 (1969); and *Forum Communications Co.*, 34 R.R. 2d 1163 (1975).[6] As a result, the Commission decided, upon its own motion, to issue a *Notice of Proposed Rule Making* in Docket No. 20548, 54 FCC 2d 331 (1975), looking toward the establishment of a "fixed" regional concentration standard in lieu of the case-by-case approach. The *Notice* proposed as its primary option to prohibit the acquisition of a fifth commonly owned broadcast facility within any single state.

5. After reviewing the comments in Docket No. 20548, the Commission abandoned its proposed limitation of four stations per state because it was clearly shown that such a rule would be inequitable in the larger states while not actually preventing the development of regional concentrations of control in "cluster areas" between states. *First Report and Order* in Docket No. 20548, 63 FCC 2d 824, 827-28 (1977). Instead, the Commission adopted the present rule prohibiting the acquisition of a station or the modification of facilities if this would result in the common ownership of three broadcast stations where any two are within 100 miles of the third, and where there is primary service contour overlap between any of the stations. The Commission based this rule upon a review of all recent applications where concentration of control issues were raised by the staff and referred to the Commission, *en banc*, for determination. This review revealed that "the probability that a concentration of control will result where there is no overlap of the primary service contours of the commonly owned stations is too unlikely to require

[1] Public notice of the petition was given August 19, 1983, Report No. 1421, Mimeo No. 6028. Eight parties filed comments in response to this notice and are listed in Appendix A. No reply comments were filed.

[2] The term "primary service contour" refers to the predicted or measured 0.5 mV/m contour for AM stations, the predicted 1.0 mV/m contour for FM stations, and the predicted Grade B contour for TV stations, computed in accordance with §§ 73.183, 73.186, 73.313, and 73.684 of the Commission's Rules.

[3] *See* Note 11 to §§ 73.35, 73.240, and 73.636 of the Commission's Rules. The full text of the rule, as applied to each broadcast service, is attached as Appendix B.

[4] For example, in 1941, the Commission adopted § 4.226 of the Rules permitting the common ownership of a maximum of three "experimental television stations. However, the rule also stated that "no person . . . shall directly or indirectly, own, operate, or control more than one television station except upon a showing . . . that such ownership, operation, or control would not result in the concentration of control of television broadcasting facilities in a manner inconsistent with public interest, convenience, or necessity. . . ." 6 FR 2282, 2284-85 (1941).

[5] *Report and Order* in Docket No. 8967, 18 FCC 288, 296-297 (1953).

[6] For example, the presence of a substantial number of other media services was a significant factor in the *Forum* case in which the Commission granted an application for a construction permit for a satellite television station in Pierre, South Dakota, even though the grant resulted in the common ownership of a fifth VHF television station and a seventh broadcast station in a contiguous two state area. However, in the *Wichita-Hutchinson* case, the Commission denied an application for the transfer of control of a VHF television station in Hutchinson, Kansas, which would have resulted in the transferee's controlling four television stations in a three state area, as well as newspaper interests in one of these states, even though there were two other VHF television stations and 25 AM and FM stations serving the Wichita-Hutchinson market.

extensive showings from applicants in such cases." [7] Accordingly, the Commission decided that, generally, it would not raise regional concentration issues unless both the "overlap" and "distance" factors were present. However, the Commission reserved the right to request concentration showings "where specific allegations of fact coming to the Commission's attention, or other substantial and material questions of fact noticed by the Commission, raise the possibility that a grant of an application would create a concentration of control and be inconsistent with the public interest." [8]

6. The Commission subsequently modified the *First Report and Order* in Docket No. 20548 to provide for ad hoc consideration of regional concentration issues involving UHF television stations and to clarify its single market AM-FM combination exception to the rule. *See Memorandum Opinion and Order* in Docket No. 20548, 67 FCC 2d 54, 57–58 (1977). A petition for partial reconsideration or clarification of the *Memorandum Opinion and Order*, filed by Great Trails Broadcasting Corporation, is still pending, along with responsive pleadings filed by Group One Broadcasting Co. and Lares Broadcasting Corporation. To the extent still relevant, these pleadings are incorporated and will be considered in this proceedings.[9]

NAB's Petition

7. NAB believes that the existing regional concentration rule is arbitrary and that subsequent developments in the telecommunications marketplace have rendered it obsolete. Specifically, NAB contends that the rule has been applied mechanically without regard to the diversity of voices or programming in any given region, with the adverse effect of precluding station acquisitions and improvements in facilities that would otherwise serve the public interest. For example, it notes that in the recent case of *Tri-State Broadcasting, Inc.*, 52 R.R. 2d 1013 (1982), the Commission strictly applied the rule to block the transfer of control of a radio station without regard to the *de minimis* nature of the contour overlap involved. Generally, NAB suggests that "a review of the current rule might well disclose that in the vast majority of cases there is no more danger of concentration of control inimical to the public interest where there is overlap than where there is not." [10]

8. NAB also asserts that the remedy is not to return to the burdensome case-by-case approach but rather to determine, in the context of a rule making, whether any regional concentration restraints are necessary in light of the increasing competition within the telecommunications marketplace. In this regard, NAB points out that by 1977, the year in which the current rule was adopted, there were 8,505 authorized radio stations (4,536 AM and 3,969 FM) and 1,029 television stations, but that as of January 1, 1983, there were 9,798 radio stations (4,828 AM and 4,970 FM) and 1,276 television stations.[11] NAB states that this represents increases of 15.2% and 24.0% in the number of radio and television stations, respectively, over the past six years. NAB believes that this dramatic increase in the number of broadcast voices is merely one of the new developments that has rendered the rule unnecessary. Equally significant, according to NAB, is the growth and authorization of new non-broadcast media delivery systems. For example, NAB notes that, in 1977, there were 3,832 cable television systems serving 11,900,000 subscribers, and that, in 1982, there were almost 1,000 more systems serving approximately 21,000,000 subscribers.[12] Additionally, NAB states that:

> [In] 1983, there are . . . at least 99 multipoint distribution services with 564,655 subscribers; 206 operating low power television stations and at least 8,500 pending applications for new ones; [and] eight entities authorized to begin providing Direct Broadcast Satellite Service * * *.[13]

As a result of these significant developments, NAB believes that regional concentration limitations are no longer necessary to promote competition and diversity of voices and program sources because these goals are already being accomplished by the marketplace.

9. NAB also contends that repeal of the regional concentration rule would result in several public interest benefits. NAB believes that it would enable broadcasters in marginal economic situations, such as in rural areas, to benefit from the economies of scale of limited multiple ownership and, thus, could result in the activation of some unused channels and frequencies currently considered as too great an economic risk. Additionally, NAB believes that the Commission would be freed of the burden of adjudicating requests for waiver and could utilize its resources in other more important areas. Moreover, repeal of the rule would, according to NAB, have the beneficial effect of promoting diversity of voices and competition by removing a restriction that only applies to commercial broadcasters and not to other media competitors. Finally, NAB asserts that repeal of the rule could benefit new, smaller-scale entrants to the broadcast industry and could result in increased minority ownership of broadcast stations.

10. NAB does not contend "that there might never be legitimate concerns about undue regional concentration." It does argue, however, that regulatory intervention is not required to redress such situations. Rather, it believes that the Commission should "leave what regulation proved to be necessary to the antitrust laws and to the marketplace itself, the natural regulator of program diversity and operation in the public interest." NAB Petition at 10.

Comments

11. With one exception, the commenting parties support NAB's petition seeking repeal of the three-station regional concentration rule. Generally, these parties reiterate NAB's arguments that the arbitrary application of the rule has prevented station acquisitions and improvements in facilities, and that changes in the

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[7] *First Report and Order* in Docket No. 20548, 63 FCC 2d 824, 828 (1977).

[8] *Id.*

[9] Great Trails argues that commonly owned AM and FM stations should be considered in the same "market" and counted as one station for purposes of the regional concentration rule based on the contour encompassment standards used in the Commission's "one-to-a-market" rules rather than on the "15 mile/urbanized area" criteria adopted in the *Memorandum Opinion and Order*. Great Trails also contends that the Commission should permit reasonable improvements of facilities by stations that are "grandfathered" under the rule. In this latter regard, we note that Congress recently amended Section 310 of the Communications Act to permit facilities improvements by such "grandfathered" stations and that this aspect of Great Trails' request would appear therefore to be moot. *See* Act of December 8, 1983, Pub. L. 98–214, § 7. It should be emphasized that this amendment is intended to permit changes in transmitter location, antenna height, or power but not changes in frequency or class of station. Moreover, the Committee stated in its report that "this section addresses an exception to existing Commission rules and does not express any intent with respect to the ability of the Commission to revise or modify these rules." H.R. Rep. No. 98–356, 98th Cong., 1st Sess. (1983) at 19.

[10] NAB Petition for Rule Making at 5.

[11] NAB's source for these statistics is the *Broadcasting/Cablecasting Yearbook*, 1983 edition, at B–384. As of November 30, 1983, Commission records show 10,112 authorized radio stations (4,891 AM and 5,221 FM) and 1,407 authorized TV stations.

[12] For figures about cable television, NAB relies upon *Television Factbook*, 1981–82 edition, at 83–a. The 1982–83 edition of the *Television Factbook* indicates that there were 25 million cable subscribers and 5,800 systems as of January 1, 1983. *Id.* at 1560.

[13] NAB Petition for Rule Making at 7. NAB bases these figures upon its own publication, *Profile: Broadcasting 1983*, as well as upon FCC sources.

telecommunications marketplace have rendered the rule unnecessary. With respect to the arbitrariness of the rule, there is a clear consensus that the rule is applied without regard to diversity of programming or concerns about oligopolistic control of the media which prompted promulgation of the rule in the first place. As examples of this, Great Trails Broadcasting Corporation ("Great Trails") points out that in the case of *Radio Soo, Inc.*, 50 R.R. 2d 373 (1981), the acquisition of a second AM-FM combination within a 60 mile area was permitted, and in *Millard V. Oakley*, 45 R.R. 2d 661 (1979), a construction permit was granted for a third AM station within 100 miles of two other stations, resulting in the common ownership of five radio stations in eastern Tennessee. Great Trails believes that it is anomalous to permit such ownership situations because of a lack of primary service contour overlap but to prohibit, by strict application of the rule, other concentrations of ownership merely because of the existence of *de minimis* overlap. Great Trails also agrees that the rule has the adverse effect of preventing improvement in stations' facilities and that this is unfair to many FM licensees who must, according to the Commission's recent *Report and Order* in BC Docket No. 80-90, maximize facilities or ultimately lose their protected status as Class B or C stations.[14]

12. Other commenting parties (Viacom International, Inc., and Beasley Broadcasting Corporation) emphasize that, even if there existed well-founded concerns over oligopolistic control of the broadcast media, other sections of the Commission's multiple ownership rules, such as the "duopoly" and "one-to-a-market" provisions, are more appropriate for dealing with such concerns.[15] In any event, all of the parties supporting NAB's petition agree that the current diversity in the telecommunications marketplace has outstripped the need for the rule. Viacom and the National Radio Broadcasters Association ("NRBA") buttress NAB's showing in this regard by noting that 30,000 applications were recently filed for systems in the new multichannel multipoint distribution service, which will ultimately provide further competition and diversity of voices. Finally, several commenting parties note that, due to the dramatic changes in the marketplace, the Commission has recently refused to adopt multiple ownership rules for cable television, low power television and direct broadcast satellite services.

13. Citizens Communications Center ("Citizens") opposes NAB's petition, alleging that NAB has not set forth any factual or legal basis for repeal of the rule. Specifically, Citizens contends that NAB has not shown that any changes in current network practices and ownership patterns have occurred that would warrant the commencement of a rule making proceeding. Citizens further believes that NAB's objection to the rule on the basis of its "arbitrariness" is misplaced. In this regard, Citizens asserts that practically all regulations relying upon objective standards, such as the instant rule, are arbitrary to some extent, but that this does not undermine the basic rationality of the rule. Cases marginally violative of the rule can always be addressed through appropriate waiver procedures. Moreover, Citizens questions whether there actually is sufficient diversity in the telecommunications marketplace to warrant repeal of the rule. It asserts that, as long as there are more prospective applicants than there are frequencies, the Commission should retain the rule in order to promote competition and the diversity of voices.

Discussion

14. After reviewing NAB's petition and the comments filed in connection with it, we believe that a rule making proceeding to reexamine our current regional ownership limitations is clearly warranted. First, the existing rule does not appear to have produced rational results. Second, the rule may be imposing significant costs on both the public and the broadcast industry. Finally, dramatic changes in the telecommunications marketplace, particularly the availability of many new broadcast and nonbroadcast outlets, may have obviated the need for any rule in this area, or at least may warrant substantial relaxation of the present restrictions.

15. *The 100-Mile Rule.* To begin with, our experience in administering the current rule leads us to the conclusion that it is arbitrary. In particular, the rule's rigid "minimum distance" and "contour overlap" criteria have not proved effective in accurately or consistently identifying circumstances in which undue concentration of control may occur and may actually have prevented consideration of factors plainly relevant to such determinations, such as the level of competing service. This has produced quite anomalous results in the cases. For example, in *WFGL, Incorporated*, 68 FCC 2d 892 (1982), an application to assign an AM-FM combination was dismissed even though the proposed assignee had shown that the community in question was separated from other commonly-owned stations by extensive mountainous terrain and numerous competing broadcast stations, thus offsetting any potential for concentration of control of the media. Similarly, in *Tri-State Broadcasting, Inc.*, 52 R.R. 2d 1013 (1982), the acquisition of an AM station was prevented without regard to the *de minimis* nature of the contour overlap involved (4% of the coverage area of the other two stations) and despite the fact that the overlap actually predated the adoption of the rule. Moreover, the inflexible requirements of the rule compelled this result notwithstanding a showing that the closest commonly owned station was 85 miles distant and was separated by the much larger market of Ft. Wayne, Indiana, that had numerous and more dominant broadcast outlets.[16]

16. Other cases, of similar potential concern but technically outside the scope of the rule, have been treated quite differently. For example, in *Millard V. Oakley*, 45 R.R. 2d 661 (1979), a construction permit was granted for a third AM station within 100 miles of two other stations, resulting in common ownership of five radio stations in eastern Tennessee. Despite the geographic proximity of the stations involved, the rule was not triggered because measurements revealed that there was no primary service contour overlap. In resolving an informal objection based on concentration concerns, the Commission determined that, regardless of the operation of the "fixed" rule, no concentration of control was likely because "the cities involved are quite small . . . [and] there is no indication that the cities' broadcast facilities compete with each other for

[14] *See Report and Order* in BC Docket No. 80-90, 53 R.R. 2d 1550 (1983).

[15] The "duopoly" rule prohibits the common ownership, operation, or control of two broadcast stations in the same service whose relevant contours overlap. The "one-to-a-market" rule prohibits ownership, operation, or control of more than one AM-FM combination, or one television station, or one daily newspaper in a market. However, overlap situations involving UHF television stations are considered on a case-by-case basis. These rules are found in §§ 73.35(a), 73.240(a)(1), and 73.636(a)(1) of the Commission's Rules.

[16] It should be noted that both the *WFGL* and *Tri-State* cases involved requests for waiver of the "fixed" regional concentration rule. In such cases, the Commission had held that an applicant for waiver would have to show more than the presence of factors which under the former case-by-case approach, would have justified an exception. *See also, Piedmont Service Corporation*, 68 FCC 2d 992 (1978) and *Robeson Broadcasting Corporation*, 52 R.R. 2d 1412 (1982).

advertising revenue."[17] Additionally, the Commission noted that there was no evidence of anticompetitive behavior by the applicant.

17. Similarly, in the recent case of *Acadian Television Corporation*, 51 R.R. 2d 743 (1982), an assignee was permitted to acquire a VHF television station in Lafayette, Louisiana, even though it already controlled a clear channel AM facility and FM and VHF broadcast stations in New Orleans. Although there was primary service contour overlap of the television stations, the rule did not apply because the stations were located approximately 125 miles apart. Because a petition to deny had been filed raising concentration questions, the Commission substantively addressed the issue, concluding that the presence of numerous other broadcast outlets, as well as the lack of any evidence of unfair business practices, militated against the possibility of an undue concentration of control. It is particularly striking here that, in finding no danger of concentration, the Commission explicitly relied on factors such as the presence of numerous other broadcast stations, while this very consideration was deemed unpersuasive in cases within the ambit of the rule, such as *Tri-State Broadcasting, Inc., supra*.

18. In our view, the anomalous results illustrated by the above cases call into serious question the continued advisability of our current approach to regional concentration of control issues. Our doubts in this regard are reinforced by our concern that the stringency and strict application of the existing rule may be imposing unwarranted, and possibly counterproductive, costs on both the public and the broadcast industry. In this connection, the rule may have prohibited the acquisition of stations which could have resulted in enhanced program service in given markets. Similarly, in cases such as *Piedmont Service Corporation*, 68 FCC 2d 992 (1978), the rule has precluded the improvement of existing facilities that may have provided a first daytime or nighttime broadcast service in certain areas.

19. Moreover, it has been suggested that the rule restricts various economies of scale inherent in the multiple ownership of stations that, were they available, might actually contribute to diversification of viewpoints.[18] For example, permitting increased multiple ownership on a regional basis could afford a broadcaster access to larger audiences and advertising bases that might justify incurring the costs of providing additional programing to the public. Regional networking, with the cost benefits such arrangements could provide in terms of program development and distribution, also might be facilitated. Additionally, certain organizational and operational efficiencies may accrue from greater multiple ownership. The resources saved by such efficiencies could then be turned to expanding programing or activating unused allocations that might be viewed as too great an economic risk absent the benefits of multiple ownership. We invite interested parties to address our analysis of the existing regional concentration of control provisions and request that they specifically review the benefits and detriments of the current rule.

20. *Marketplace Developments.* Beyond the specific difficulties surrounding the existing regional concentration rule, we believe that the significant growth in media outlets in recent years clearly constitutes a substantial change in circumstances that strongly suggests a need to reevaluate our assumptions in setting regional ownership constraints, including whether such constraints, in any form, are still necessary.[19] In adopting regional ownership limitations, we were concerned with avoiding undue ownership concentration of the media within a given area. Specifically, the Commission sought through its ownership restrictions to enhance the diversity of viewpoints available to the public and to preserve economic competition in the broadcast media.[20] However, as the number of competing voices in the marketplace rises, the potential influence of any given combination of commonly owned outlets is diluted and our concern with the impact of such combinations on diversity and levels of competition declines accordingly.

21. The increase in the number and variety of media voices in telecommunications markets is well documented and substantial. Specifically, we note that the number of authorized radio and television stations has increased by 18.9% and 36.7%, respectively, since the "fixed" regional concentration rule was adopted six years ago. Moreover, these figures are likely to increase due to several Commission actions in the allocation of radio and television frequencies. For example, in Docket No. 20642, we permitted the shared use of Class I-A clear channel frequencies, which may ultimately result in the addition of more than 100 new AM stations.[21] Similarly, our recent action in BC Docket No. 80-90 could create approximately 500 new FM stations.[22] We also have granted over 300 construction permits, with some 11,000 additional applications still pending, in the new low power television service.

22. It is also true, as NAB points out, that the broadcast industry faces additional competition from the expansion or authorization of new media delivery systems, which have the potential of promoting even greater diversity of ownership and viewpoints. As noted earlier, the growth in the cable industry has been quite significant, with cable subscribers totalling approximately 25 million as of January 1, 1983.[23] Moreover, Commission records reveal that, as of September 9, 1983, approximately 16,500 applications were filed for systems in the newly authorized multichannel multipoint distribution service.[24] Additionally, eight entities have been authorized to provide direct broadcast satellite ("DBS") service, with each operator capable of providing two or ten channels of programing to all television households in the United States. Although these companies might not commence DBS service until 1986, at least one entity is already providing "satellite-to-home" television

[17] *Millard V. Oakley*, 45 R.R. 2d 661, 664 (1979).

[18] *See, e.g.*, A. Parkman, *An Economic Analysis of the FCC's Multiple Ownership Rules*, 31 Admin. L. Rev. 205, 217–221 (1979). *See also Notice of Proposed Rule Making* in Gen. Docket No. 83-1009, 48 FR 49438, published October 25, 1983, at para. 38.

[19] In recognition of these dynamic changes, we already have instituted rule making proceedings looking toward revision of the national multiple ownership rules ("seven station" rule) and repeal of the network/cable cross-ownership prohibition. *Notice of Proposed Rule Making* in Gen. Docket No. 83-1009, 48 FR 49438, published October 25, 1983; *Notice of Proposed Rule Making* in CT Docket No. 82-434, 47 FR 39212, published September 7, 1982. Similarly, these marketplace changes largely motivated our recent deregulation of the commercial radio service and our pending proposal to deregulate the commercial television service. *Report and Order* in BC Docket No. 79-219, 84 FCC 2d 968 (1981), *recon. granted in part* 87 FCC 2d 797 (1981), *aff'd. in part and remanded in part sub non. Office of Communication of the United Church of Christ* v. *FCC*, 707 F.2d 1413 (D.C. Cir. 1983); *Notice of Proposed Rule Making* in MM Docket No. 83-670, 48 FR 37239, published August 17, 1983.

[20] *See First Report and Order* in Docket No. 20548, 63 FCC 2d 824, 827 (1977). *See also First Report and Order* in Docket No. 18110, 22 FCC 2d 306, 307 (1970).

[21] *Report and Order* in Docket No. 20642, 78 FCC 2d 1345 (1980), *recon. denied*, 48 R.R. 2d 1077 (1980), *aff'd sub nom. Loyola University v. FCC*, 670 F.2d 1222 (D.C. Cir. 1982).

[22] *Supra* note 14.

[23] *Supra* note 12.

[24] FCC Public Notice, Mimeo No. 327, October 24, 1983.

programing to subscribers by use of the fixed satellite band.[25] Further competition can be expected from satellite master antenna systems, conventional multipoint distribution systems and subscription television stations in certain markets, and other distribution services. Accordingly, we request comments concerning the impact of this continuing growth of both broadcast and nonbroadcast outlets on the diversity of voices and levels of competition in modern telecommunications market and whether changes in this regard warrant elimination or substantial relaxation of our regional concentration requirements.[26]

23. Given this significant increase in the number of media outlets, as well as the arbitrary results and clear costs associated with the regional ownership provisions, our initial judgment is that the rule should be repealed. However, to the extent that commenting parties recommend relaxation rather than elimination of the rule, they should explicitly address the question of how the rule should be changed and what effect the proposed changes are expected to have. We also solicit information concerning the effect of our Commission ownership constraints, such as the "duopoly" and "one-to-a-market" rules, on the continued need for regional concentration of control provisions. Similarly, we seek comments on whether and to what extent non-Commission restrictions on concentration of control such as the antitrust laws, should affect our decision. In this connection, we specifically request comment on NAB's suggestion that the antitrust laws and the marketplace itself are better suited to redressing any concentration concerns that might arise if there are still situations where the general growth in media outlets has not yet produced adequately competitive or diverse markets.

24. Commenters are also invited to address the nature and extent of the costs imposed by regional ownership limitations, particularly those which may be adversely affecting our diversity and competition goals. In this connection, we specifically direct the attention of commenting parties to the possible economies of scale which may be lost by continued application of regional ownership constraints and the effect these "opportunity costs" might have on impeding the expansion of diversity and competition. Similarly, parties should address the impact of such constraints in preventing the expansion of existing facilities, thus frustrating the extension of new service.

Administrative Matters

25. Accordingly, it is ordered, that the Petition for Rule Making (RM–4564) filed by the National Association of Broadcasters is granted.

26. This action is taken pursuant to the authority contained in Sections 4(i) and (j), 303 and 313 of the Communications Act of 1934, as amended.

27. Pursuant to procedures set out in § 1.415 of the Commission's Rules, interested parties may file comments on or before February 21, 1984, and reply comments on or before March 7, 1984. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

28. In accordance with the provisions of § 1.419 of the Rules, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting 1 copy. All timely comments will be considered, regardless of the number of copies submitted. In any event, all comments must contain reference to the appropriate docket number (MM Docket No. 84–19). All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its Headquarters, 1919 "M" Street NW., Washington, D.C. 20554. For general information on how to file comments, please contact the FCC Consumer Assistance and Small Business Division at (202) 632–7000.

29. As required by Section 603 of the Regulatory Flexibility Act, the FCC has prepared an initial regulatory flexibility analysis ("IRFA") of the expected impact on small entities of the proposals advanced herein. The IRFA is set forth in Appendix "C". Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of this *Notice*, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration, as required by Section 603(a) of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 50 U.S.C. 601 *et seq.*, (1981)).

30. For purposes of this nonrestricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time a Public Notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments and formal oral arguments) addressing the merits of a pending proceeding and containing matters not fully covered in any previously filed written comments for the proceeding. Any person who submits a written *ex parte* presentation must submit a copy of that presentation to the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation must prepare a written summary of it which must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. *See generally*, § 1.231 of the Commission's Rules.

31. For further information regarding this proceeding, contact Andrew J. Rhodes, Mass Media Bureau, (202) 632–7792.

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[25] *See GTE Satellite Corporation*, 90 FCC 1009 (1982), *recon. denied*, *FCC 83-271, released June 23, 1983*. *See also Satellite Business System*, FCC 83–403, released November 2, 1983.

[26] Various methodologies have been suggested concerning the means we might use to gauge levels of diversity and competition for purposes of reevaluating our ownership rules. *See, e.g., Notice of Proposed Rule Making* in Gen. Docket No. 83–1009, 48 FR 49438, published October 25, 1983; and *Notice of Proposed Rule Making* in CT Docket No. 82–434, 47 FR 39212, published September 7, 1982. *See also* J. D. Levy and F.O. Setzer, *Measurement of Concentration in Home Video Markets*, FCC Office of Plans and Policy, December 23, 1982. Parties are invited to consider the suitability of these approaches, as well as others, in the context of our regional concentration proposals.

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix A

List of Commenters

American Broadcasting Companies, Inc., Beasley Broadcasting Corporation, Citizens Communications Center, Great Trails Broadcasting Corporation, Knight Quality Stations, National Radio Broadcasters Association, Viacom International, Inc.

Joint Statement of: Forward Communications Corporation, Group One Broadcasting Company, May Broadcasting Company, Ralph C. Wilson Industries, Inc., Wilson Communications, Inc., WKRG–TV, Inc.

Appendix B

The "Three-Station Regional Concentration Rule"

Sections 73.35(b) (1) and (2) [AM], 73.240(a) (2) and (3) [FM], and 73.636(a) (2) and (3) [TV] of the Commission's Rules provide:

"No license for an AM [FM] [television] broadcast station shall be granted to any party (including all parties under common control) if such party, or any stockholder, officer or director of such party, directly or indirectly owns, operates, controls, or has any interest in, or is an officer or director of any other AM [FM] [television] broadcast station if the grant of such license would result in a concentration of control of AM [FM] [television] broadcasting in a manner inconsistent with the public interest, convenience or necessity. The Commission, however, will in any event consider that there would be such a concentration of control contrary to the public interest, convenience or necessity for any party or any of its stockholders, officers or directors to have a direct or indirect interest in, or be stockholders, officers or directors of . . . three broadcast stations in one or several services, where any two are within 100 miles of the third (measured city to city), if there is primary contour overlap of any of the stations."

"The reference points which shall be used for city-to-city measurements are those listed in the Index to the *National Atlas of the United States of America,* United States Department of the Interior, Geological Survey, Washington, D.C., 1970. (Future editions will supersede). In the case of any community of license which is not referenced by the National Atlas, such as a newly established community, the point of reference shall be the main post office until such town is referenced. The National Atlas is available for reference at most public libraries and at the FCC in Washington."

Note 11: For the purposes of the three station regional concentration provision of this section, (a) an application raising a regional concentration of control issue which involves overlap of or by one or more UHF television stations will be treated on a case-by-case basis, consistent with the precedents of UHF determinations made under the one-to-a-market proscriptions of this section, and (b) AM and FM broadcast stations licensed to communities which are within 15 miles (city reference point to reference point) and/or within the same urbanized area (as mapped by the U.S. Bureau of the Census), will be considered as a combination and counted as one station."

Appendix C

Initial Regulatory Flexibility Analysis

I. *Reason for Action.* Based on its experience in administering the regional concentration of control rule, the Commission believes that a rule making proceeding is warranted to determine the extent of problems associated with the present rule, as well as whether there is still a need for any type of regional ownership restraints. Specifically, the rule is arbitrary and does not appear to have produced rational results in the cases. Additionally, it may actually work against enhancing diversity of viewpoints and increasing levels of competition by imposing unnecessary costs on the broadcast industry. Moreover, the significant changes in the telecommunications marketplace, particularly the availability of many new broadcast and non-broadcast voices, raises the question of whether the marketplace itself is achieving the goals of the rule.

II. *Objectives.* The Commission seeks to review the benefits and detriments of the present regional concentration of control rule, with particular attention to the question of whether the instant rule has been effective in achieving its goals. Further, the Commission seeks to determine whether the increased levels of competition and diversity of viewpoints within telecommunications markets warrant repeal or substantial relaxation of our regional concentration requirements.

III. *Legal Basis.* The action taken by the *Notice* is authorized by Sections 4 (i) and (j), 303 and 313 of the Communications Act of 1934, as amended.

IV. *Description, Potential Impact and Number of Small Entities Affected.* Adoption of the proposals set forth in this *Notice* would permit increased multiple ownership of commercial AM, FM and television stations on a regional basis. Under the present rule, the common ownership, operation, or control of a third AM, FM or television station is prohibited if such station is located within 100 miles of two other stations and there is primary service contour overlap between any of the stations. A substantial number of existing broadcast stations potentially subject to this rule are small entities. However, the impact of either repeal or relaxation of the rule on those stations owned by small entities is not known. In any event, the Commission believes that several benefits to all broadcasters, including small entities, may flow from this proposal. For example, repeal or relaxation of the rule may permit broadcasters to realize certain economies of scale which, in turn, may result in greater efficiency and increased programming.

V. *Recording, Record Keeping and Other Compliance Requirements.* The proposed repeal or relaxation of the rule would eliminate the need for broadcasters, including small entities, to file for waiver of the rule. It is estimated that approximately 712 long-form broadcast applications raise regional concentration issues each year.

VI. *Federal Rules which Overlap, Duplicate or Conflict with this Rule.* None.

VII. *Any Significant Alternatives Minimizing Impact on Small Entities and Consistent with the Stated Objective.* None other than those advanced in the *Notice.*

Dissenting Statement of Commissioner Henry M. Rivera

Re: Notice of Proposed Rulemaking Regarding Repeal of the Regional Concentration of Control Rules

I dissent to the issuance of this NPRM because it portends considerable further erosion [1] of the FCC's longstanding and meritorious broadcast ownership diversification objectives without substantial countervailing public interest benefits.[2] Had the NPRM

[1] *See generally Notice of Proposed Rulemaking,* FCC 83-440, —— FCC 2d ——, 48 FR 49438, 49453–55 (Oct. 25, 1983) (Dissenting Statement of Commissioner Henry M. Rivera).

[2] For example, the Notice's suggestion that without the rule broadcasters are likely to produce more programming is speculative at best. The argument that if the rule is repealed existing broadcasters may activate unused allocations is similarly unpersuasive as a justification for repealing the rule. There is no dearth of applicants for radio and television authorizations and, thus, no inducement is needed on this score.

seriously analyzed alternatives to the current rules short of repeal, I could have agreed in principal with its issuance.[3] However, the Notice makes plain that the outcome of this proceeding is almost certainly the elimination of the regional concentration rules. That being the case, I cannot endorse it. Perhaps the commenting parties will persuade me that the FCC's prior commitment to maximizing diffusion of broadcast ownership will not be seriously compromised if these rules are repealed, but I remain to be convinced.

[FR Doc. 84-1691 Filed 1-19-84; 8:45 am]
BILLING CODE 6712-01-M

[3] While a persuasive case for outright repeal has not been made, few rules cannot be improved by periodic reexamination, and these are probably no exception.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Findings on Pending Petitions and Description of Progress on Listing Actions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of findings on pending petitions and description of progress on listing actions.

SUMMARY: The Service announces its findings on pending petitions to revise the lists of endangered and threatened plant and animal species. Provisions of the Endangered Species Act Amendments of 1982 (Amendments) required that these findings be made within one year of the effective date of the Amendments. This notice also includes a summary of the Service's progress in revising the lists since passage of the Amendments.

DATE: The findings described in this notice were made on October 13, 1983. The description of the Service's progress in revising the lists is current as of that same date.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240; (703/235-2771).

SUPPLEMENTARY INFORMATION: Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended in 1982 (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the lists of endangered and threatened wildlife and plants that contains substantial scientific or commercial information, findings be made within 12 months of the date of receipt of the petition. Provisions at Section 2(b)(1) of the Amendments require that petitions pending on the date of enactment of the Amendments (hereafter called pending petitions) be treated as having been filed on that date. Findings (hereafter called 12-month findings) on these petitions were therefore made on October 13, 1983. This notice reports these findings and describes the Service's progress in revising the lists of endangered and threatened wildlife and plants during the year following the enactment of the Amendments.

Findings

The petitioned actions that are the subjects of this notice are those for which a previous determination had been made that the petition contained substantial scientific or commercial information indicating that the petitioned action may be warranted. Some of these determinations were made and announced in the **Federal Register** before the enactment of the Amendments. The remainder of these determinations were announced in the **Federal Register** on February 15, 1983 (48 FR 6752-6753).

Subsequent to the February 15, 1983, **Federal Register** notice, the Service has determined that the petition for designation of critical habitat for the Higgins' eye pearly mussel is not a petition requiring published findings under the Act. The petition review provision in Section 4(b)(3)(D) of the Act applies to petitions to revise existing critical habitat, not to petitions to designate critical habitat in the first instance (see proposed Section 4 regulations, 48 FR 36062 (August 8, 1983) proposed to be codified at 50 CFR 424.14(d)). Although further published findings under the Act on this particular petition are therefore unnecessary, it has nevertheless been considered as a general petition for rule under the Administrative Procedure Act (5 U.S.C. 553). The Service has determined that such designation would be inappropriate in this case, and has so informed the petitioner.

Section 4(b)(3)(B) of the Act requires that the Service make one of the following 12-month findings on each petition containing substantial information: (i) The petitioned action is not warranted; (ii) the petitioned action is warranted and the petitioned action will be proposed promptly; or (iii) the petitioned action is warranted but precluded by other efforts to revise the lists, and expeditious progress is being made in listing and delisting species.

Petitioned actions found to be warranted ((ii) above) will be the subjects of proposals that will be published soon or have already been published in the **Federal Register.** Findings of "not warranted" and "warranted but precluded" ((i) and (iii) above, respectively) for pending petitions are reported here.

The Service's 12-month findings of "not warranted" or "warranted but precluded" on pending petitions on animal taxa are given in Table 1. Petitioned actions that are found to be not warranted are indicated by the word "No" in the "Warranted?" column opposite the name of the affected species. Species that are the subjects of petitioned actions that are found to be warranted but precluded are designated with either "Yes"or "Yes*" in the "Warranted?" column. ("Yes" and "Yes*" correspond to categories 1 and 2, respectively, in the general animal notices of review. The general notice for vertebrate animals was published on December 30, 1982 (47 FR 58454-58460), and can be consulted on the definitions of these category designations. The general notice on invertebrate animals is currently being prepared.)

In the case of the petitions for the bobcat *(Lynx rufus)* and the river otter *(Lutra canadensis)*, reported as "not warranted," the Service has considered available information and existing regulatory mechanisms (such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora) and believes that listing action under Section 4(a) of the Act is not warranted at this time. An additional finding of "warranted but precluded" is made herein in the case of 58 foreign bird species for which listing was petitioned in 1980 by Dr. Warren B. King, Chairman, United States Section, International Council for Bird Preservation. The Service published a notice of review for these species on May 12, 1981 (46 FR 26464). Readers should refer to that notice for the names of the species involved. Publication of a proposal to list these species is planned during the present fiscal year (ending September 30, 1984).

TABLE 1.—12 MONTH FINDINGS ON PENDING PETITIONS ON ANIMAL SPECIES.

Species	Petitioner	Date	Status review	Warranted
Muscular sponge, *Anheteromeyenia biceps*	Ronald M. Cowden	June 17, 1974	Apr. 22, 1975 (40 FR 17764)	No.
Carolina sponge, *Corvomeyenia carolinensis*	do	do	do	Yes.*
Oklawaha sponge, *Dosilia palmeri*	do	do	do	Yes.*
Kissimmee sponge, *Ephydatia subtilis*	do	do	do	Yes.*
Pennsylvania sponge, *Heteromeyenia longistylis*	do	do	do	Yes.*
Oneida sponge, *Spongilla heterosclerifa*	do	do	do	Yes.*
Spongy sponge, *Spongilla sponginosa*	do	do	do	No.
Central Missouri cave amphipod, *Allocrangonyx hubrichti*	National Speleological Society	Sept. 9, 1974	Apr. 28, 1975 (40 FR 18476)	Yes.*
Oklahoma cave amphipod, *Allocrangonyx pellucidus*	do	do	do	Yes.*
Kansas well amphipod, *Bactrurus hubrichti*	do	do	do	No.
Anomalous spring amphipod, *Crangonyx anomalus*	do	do	do	No.
Appalachian Valley cave amphipod, *Crangonyx antennatus*	do	do	do	No.
Pennsylvania cave amphipod, *Crangonyx dearolfi*	do	do	do	Yes.*
Hobb's cave amphipod, *Crangonyx hobbsi*	do	do	do	Yes.*
Minor cave amphipod amphipod, *Crangonyx minor*	do	do	do	No.
Packard's cave amphipod, *Crangonyx packardi*	do	do	do	No.
Illinois cave amphipod, *Gammarus acherondytes*	do	do	do	Yes.*
Bousfield's amphipod, *Gammarus bousfieldi*	do	do	do	Yes.*
Noel's amphipod, *Gammarus desperatus*	do	do	do	Yes.*
Diminutive amphipod, *Gammarus hyalleloides*	do	do	do	Yes.*
Pecos amphipod, *Gammarus pecos*	do	do	do	Yes.*
Allegheny cave amphipod, *Stygobromus* (= *Stygonectes*) *alleghen-iensis.*	do	do	do	No.
Tidewater interstitial amphipod, *Stygobromus* (= *Apocrangonyx*) *araeus.*	do	do	do	Yes.*
Arizona cave amphipod, *Stygobromus arizonensis*	J. Holsinger	July 12, 1974	do	Yes.*
Balcones cave amphipod, *Stygobromus* (= *Stygonectes*) *balconis*	National Speleological Society	Sept. 9, 1974	do	Yes.*
Barr's cave amphipod, *Stygobromus* (= *Stygonectes*) *barri*	do	do	do	Yes.*
Bifurcated cave amphipod, *Stygobromus* (= *Stygonectes*) *bifurcatus*	do	do	do	Yes.*
Bowman's cave amphipod, *Stygobromus* (= *Stygonectes*) *bowmani*	do	do	do	Yes.*
Clanton's cave amphipod, *Stygobromus* (= *Stygonectes*) *clantoni*	do	do	do	Yes.*
Burnsville Cove cave amphipod, *Stygobromus* (= *Stygonectes*) *con-radi.*	do	do	do	Yes.*
Cooper's cave amphipod, *Stygobromus* (= *Stygonectes*) *cooperi*	do	do	do	Yes.*
Cascade Cave amphipod, *Stygobromus* (= *Stygonectes*) *dejectus*	do	do	do	Yes.*
Elevated spring amphipod, *Stygobromus* (= *Stygonectes*) *elatus*	do	do	do	Yes.*
Greenbriar Cave amphipod, *Stygobromus* (= *Stygonectes*) *emargin-atus.*	do	do	do	Yes.*
Ephemeral cave amphipod, *Stygobromus* (= *Apocrangonyx*) *ephe-merus.*	do	do	do	Yes.*
Central Kentucky cave amphipod, *Stygobromus exilis*	do	do	do	No.
Ezell's Cave amphipod, *Stygobromus* (= *Stygonectes*) *flagellatus*	do	do	do	Yes.*
Shenandoah Valley cave amphipod, *Stygobromus* (= *Stygonectes*) *gracilipes.*	do	do	do	No.
Grady's cave amphipod, *Stygobromus gradi*	J. Holsinger	July 12, 1974	do	Yes.*
Devil's Sinkhole amphipod, *Stygobromus* (= *Stygonectes*) *hadenoe-cus.*	National Speleological Society	Sept. 9, 1974	do	Yes.*
Hara's cave amphipod, *Stygobromus harai*	J. Holsinger	July 12, 1974	do	Yes.*
Amphipod (no common name), *Stygobromus heteropodus*	National Speleological Society	Aug. 9, 1974	do	Yes.*
Malheur Cave amphipod, *Stygobromus hubbsi*	J. Holsinger	July 12, 1974	do	Yes.*
Tidewater amphipod, *Stygobromus* (= *Stygonectes*) *indentatus*	National Speleological Society	Sept. 9, 1974	do	Yes.*
Iowa amphipod, *Stygobromus iowae*	do	do	do	No.
Long-legged cave amphipod, *Stygobromus* (= *Stygonectes*) *lon-gipes.*	do	do	do	Yes.*
Rubious cave amphipod, *Stygobromus* (= *Apocrangonyx*) *Lucifugus*	do	do	do	No.
Mackenzie's cave amphipod, *Stygobromus mackenziei*	J. Holsinger	July 12, 1974	do	Yes.*
Southwestern Virginia cave amphipod, *Stygobromus mackini*	National Speleological Society	Sept. 9, 1974	do	No.
Mountain cave amphipod, *Stygobromus* (= *Stygonectes*) *montanus*	do	do	do	Yes.*
Morrison's cave amphipod, *Stygobromus* (= *Stygonectes*) *morrisoni*	do	do	do	Yes.*
Bath County cave amphipod, *Stygobromus* (= *Stygonectes*) *mundus*	do	do	do	Yes.*
Norton's cave amphipod, *Stygobromus* (= *Apocrangonyx*) *nortoni*	do	do	do	Yes.*
Onondaga cave amphipod, *Stygobromus onondagaensis*	do	do	do	Yes.*
Oregon cave amphipod, *Stygobromus oregonensis*	J. Holsinger	July 12, 1974	do	No.
Ozark cave amphipod, *Stygobromus* (= *Stygonectes*) *ozarkensis*	National Speleological Society	Sept. 9, 1974	do	Yes.*
Minute cave amphipod, *Stygobromus* (= *Apocrangonyx*) *parvus*	do	do	do	Yes.*
Peck's cave amphipod, *Stygobromus* (= *Stygonectes*) *pecki*	do	do	do	Yes.*
Pizzini's cave amphipod, *Stygobromus* (= *Stygonectes*) *pizzinii*	do	do	do	Yes.*
Wisconsin well amphipod, Stygobromus putealis	do	do	do	Yes.*
Reddell's cave amphipod, *Stygobromus* (= *Stygonectes*) *reddelli*	do	do	do	Yes.*
Alabama well amphipod, *Stygobromus smithi*	do	do	do	Yes.*
Spring cave amphipod, *Stygobromus* (= *Stygonectes*) *spinatus*	do	do	do	Yes.*
Stellmack's cave amphipod, *Stygobromus* (= *Stygonectes*) *stell-macki.*	do	do	do	Yes.*
Subtle cave amphipod, *Stygobromus* (= *Apocrangonyx*) *subtilis*	do	do	do	Yes.*
Potomac groundwater amphipod, *Stygobromus* (= *Stygonectes*) *tenuis potomacus.*	do	do	do	No.
Wengerors' cave amphipod, *Stygobromus wengerorum*	J. Holsinger	July 12, 1974	do	Yes.*
Palm Springs cave crayfish, *Procambarus acherontis*	National Speleological Society	Sept 9, 1974	do	Yes.*
Texas cave shrimp, *Palaemonetes antrorum*	do	do	do	Yes.*
Squirrel Chimney cave shrimp, *Palaemonetes cummingi*	do	do	do	Yes.*
Alabama cave shrimp, *Palaemonias alabamae*	do	do	do	Yes.*
Columbia River tiger beetle, *Cicindela columbica*	Gary Shook	Dec. 15, 1979	Mar. 3, 1980 (45 FR 13786)	Yes.*
Wilbur Springs shore bug, *Saldula usingeri*	A. Andrade, Friends of Wilbur	Mar. 7, 1979	July 25, 1979 (44 FR 43709)	No.
Uncompaghre fritillary butterfly, *Boloria acrocnema*	Lawrence F. Gall	Nov. 5, 1979	Feb. 6, 1980 (45 FR 8029)	Yes.*
Florida atala butterfly, *Eumaeus atala florida*	Jo Brewer	Oct. 23, 1974	Mar. 20, 1975 (40 FR 12691)	No.
Bay checkerspot butterfly, *Euphydryas editha bayensis*	Bruce A. Wilcox, Dennis D. Murphy, and Paul R. Ehrlich.	Oct. 21, 1980	Feb. 13, 1981 (46 FR 43709)	Yes.*
Mitchell's woodsatyr butterfly, *Neonympha* (*Euptychia*) *mitchellii*	R. Charles	Nov. 19, 1974	Mar. 20, 1975 (40 FR 17757)	No.
Atossa fritillary butterfly, *Speyeria adiaste atossa*	Jo Brewer	Oct. 23, 1974	Mar. 20, 1975 (40 FR 17757)	No.
Weist's sphinx moth, *Euproserpinus weisti*	Karolis Bagdonas	Jan 26, 1981	June 26, 1981 (46 FR 33063)	Yes.*
San Francisco tree lupine moth, *Grapholitha edwardsiana*	Richard A. Arnold and Jerry A. Powell	Dec. 12, 1982	Feb. 15, 1980 (48 FR 6752)	Yes.*
Bliss Rapids snail, Hydrobiidae (species and genus undescribed)	Peter A. Bowler	Feb. 07, 1980	Apr. 23, 1980 (45 FR 27723)	Yes.*

TABLE 1.—12 MONTH FINDINGS ON PENDING PETITIONS ON ANIMAL SPECIES.—Continued

Species	Petitioner	Date	Status review	Warranted
Snake River physa snail, *Physa* sp.	do	do	do	Yes.*
Ozark cavefish, *Amblyopsis rosea*	Missouri Department of Conservation	July 23, 1982	Dec. 30, 1982 (47 FR 58454)	Yes.*
Niangua darter, *Etheostoma nianguae*	Ozarks Endangered Species Task Force	Dec. 10, 1980	Apr. 19, 1981 (46 FR 21208)	Yes.*
Shoshone sculpin, *Cottus greenei*	P.A. Bowler	Dec. 13, 1979	Mar. 26, 1980 (45 FR 19853)	Yes.*
Bonneville cutthroat trout, *Salmo clarki utah*	P.G. Sanchez, Desert Fishes Council	Oct. 23, 1979	Mar. 26, 1980 (45 FR 19857)	Yes.*
Marianas crow, *Corvus kubaryi*	Internat. Counc. Bird Preservation	Nov. 24, 1980	May 12, 1981 (46 FR 26464)	Yes.*
Marianas fruit dove, *Ptilinopus roseicapillus*	do	do	do	Yes.*
Rufous-fronted fantail, *Rhipidura rufifrons uraniae*	Paul M. Calvo, Governor of Guam	Dec. 23, 1981	Dec. 30, 1982 (47 FR 58454)	Yes.*
Marianas gallinule, *Gallinula chloropus guami*	Internat. Counc. Bird Preservation	Nov. 24 1980	May 12, 1981 (46 FR 26464)	Yes.*
Tule white-fronted goose, *Anser albifrons elgasi*	do	do	do	No.
Puerto Rican sharp-shinned hawk, *Accipiter striatus venator*	do	do	do	Yes.*
Puerto Rican broad-winged hawk, *Buteo platypterus brunnescens*	do	do	do	Yes.*
Guam Micronesian kingfisher, *Halcyon cinnomomina cinnomomina*	do	do	do	Yes.*
Truk monarch, *Metabolus rugensis*	do	do	do	Yes.*
Ponape short-eared owl, *Asio flameus ponapensis*	Internat. Counc. Bird Preservation	Nov. 24, 1980	May 12, 1981 (46 FR 26464)	Yes.*
Virgin Islands screech owl, *Otus nudipes newtoni*	do	do	do	Yes.*
Palau blue-faced parrotfinch, *Erythrura trichroa pelewensis*	do	do	do	Yes.*
Palau Nicobar pigeon, *Caloenas nicobarica pelewensis*	do	do	do	Yes.*
Radak Micronesian pigeon, *Ducula oceanica raatakensis*	do	do	do	Yes.*
Truk Micronesian pigeon, *Ducula oceanica teraoki*	do	do	do	Yes.*
Guam rail, *Rallus oustoni*	do	do	do	Yes.*
Amak song sparrow, *Melospiza conspicillata rotensis*	do	do	do	Yes.*
Interior least tern, *Sterna albifrons athalasso*	Oklahoma Ornithological Society	Nov. 17, 1975	Dec. 30, 1982 (47 FR 58454)	Yes.*
Arizona Bell's *vireo Verio bellii arizonae*	James M. Graves	Nov. 8, 1979	Feb. 6 1980 (45 FR 8030)	No.
Least Bell's vireo, *Vireo bellii pusillus*	do	do	do	Yes.*
Truk greater white-eye, *Rukia ruki*	Internat. Counc. Bird Preservation	Nov. 24 1980	May 12, 1981 (46 FR 26464)	Yes.*
Rota bridled white-eye, *Zosterops conspicillata rotensis*	do	do	do	Yes.*
Palau white-breasted woodswallow, *Artamus leucorhynchus pelewensis.*	do	do	do	Yes.*
Bobcat, *Lynx rufus*	Defenders of Wildlife	Jan. 20, 1977	July 13, 1977 (42 FR 35996)	No.
Woodland caribou, *Rangifer tarandus montanus*	Jan Strobeck, C.E. Knoder, W.D. Carrier and J. M. Conley.	Oct. 24, 1982	Feb. 09, 1981 (46 FR 11567)	Yes.*
Marten, *Martes americana americana*	Sierra Club	June 25, 1975	Aug. 25, 1976 (41 FR 35855)	No.
Choctawhatchee beach mouse, *Peromyscus polionotus allophrys*	S. R. Humphrey	June 16, 1982	Oct. 6, 1982 (47 FR 44125)	Yes.*
Alabama beach mouse, *Peromyscus polionotus ammobates*	D. C. Holliman	Nov. 2, 1982	Dec. 30, 1982 (47 FR 58454)	Yes.*
Perdido Key beach mouse, *Peromyscus polionotus trissyllepsis*	S. R. Humphrey	June 16, 1982	Oct. 6, 1982 (47 FR 44125)	Yes.*
River otter, *Lutra canadensis*	Fund for Animals	Apr. 11, 1977	July 28, 1977 (42 FR 38395)	No.
Silver rice rat, *Oryzomys argentatus*	Center for Action on Endangered Species.	Apr. 12, 1980	July 14, 1980 (45 FR 47365)	Yes.*

"Not warranted" and "warranted but precluded" findings for pending plant petitions are announced in this notice by categories; their application to individual taxa is published in a supplementary plant notice of review in the November 28, 1983, **Federal Register** (48 FR 53640–53670). The plant notice category number opposite the name of each taxon that is the subject of a pending petition indicates the Service's finding on that taxon. Findings of "not warranted" on the petitioned action are hereby reported by the designation of subcategories 3A, 3B, or 3C for such taxa. Findings of "warranted but precluded" are hereby reported by the designation of category 1, 1*, 1**, 2, or 2* for such subject taxa. The complete definitions of these category numbers are described in the supplement to the 1980 general plant notice (45 FR 82479).

Section 4(b)(3)(C)(i) of the Act requires that a petition found to be warranted but precluded be treated as an accepted petition newly submitted on the date of the finding. A finding on such a petition must then be made again within 12 months of the date of the first 12-month finding.

Progress in Revision of the Lists

Section 4(b)(3)(B)(iii) of the Act states that petitioned actions may be found to be warranted but precluded by other listing actions when it is also found that the Service is making expeditious progress in revising the lists. The Service's progress in revising the lists since October 13, 1982, the effective date of the Amendments, is described in this section of the present notice. The described activities preclude immediate action on the "warranted but precluded" petitioned actions.

Section 4(g) of the Amendments requires the Service to establish agency guidelines so that revisions of the lists may take place efficiently and effectively. The Service accordingly established listing priority guidelines in a notice published in the **Federal Register** (48 FR 43098–43105) on September 21, 1983. The Service has further complied with Section 4 by proposing (48 FR 36062–36069; published August 8, 1983) to revise listing procedures to comply with the Amendments. A final rule establishing these procedures is now being prepared for publication in the **Federal Register**.

The Service's progress in revising the lists during the 12-month period following the effective date of the Amendments is represented by the publication in the **Federal Register** of final listing actions on 28 species, proposed listing actions on 83 species, and emergency listings on 8 species. The number of species affected by each type of listing action published during this period is presented in Table 2.

TABLE 2—LISTING ACTIONS DURING THE 1-YEAR PERIOD FOLLOWING THE EFFECTIVE DATE OF THE ENDANGERED SPECIES ACT AMENDMENTS OF 1982

Type of action	Number of species affected
Final endangered status with critical habitat	6
Emergency endangered status with critical habitat	2
Emergency endangered status	3
Final endangered status	6
Final threatened status	12
Proposed change from threatened to endangered status	1
Proposed endangered status with critical habitat	12
Proposed threatened status with critical habitat	3
Proposed endangered status	45
Proposed threatened status	14
Final change from endangered and threatened to threatened by similarity of appearance	1
Proposed change from endangered to threatened status	2
Final removal from lists	3
Proposed removal from lists	6

As of October 13, 1983, the Service's Washington Office of Endangered Species was also reviewing documents that would propose or make final listing actions on 95 species. The type of action and numbers of affected species are given in Table 3.

TABLE 3.—POSSIBLE LISTING ACTIONS FOR WHICH THE SERVICE WAS REVIEWING DRAFT DOCUMENTS ON OCTOBER 13, 1983

Type of action	Number of species affected
Final endangered status	3
Final threatened status with critical habitat	2
Final threatened status	1
Proposed endangered status with critical habitat	58
Proposed threatened status with critical habitat	13
Proposed endangered status	5
Proposed threatened status	3
Proposed change from threatened to threatened by similarity of appearance	1
Final removal from lists	1
Proposed removal from lists	6
Final designation of critical habitat	2

The Service has also identified 173 species for which listing documents are to be developed during the fiscal year beginning October 1, 1983. The numbers of species affected and types of listing actions are given in Table 4. The Service anticipates that listing actions in addition to these will be identified during the fiscal year.

TABLE 4.—POSSIBLE LISTING ACTIONS FOR WHICH THE SERVICE EXPECTS TO DEVELOP DRAFT LISTING DOCUMENTS DURING THE FISCAL YEAR BEGINNING OCTOBER 1, 1983

Type of action	Number of species affected
Final endangered status with critical habitat	14
Final endangered status	20
Final threatened status with critical habitat	2
Final threatened status	5
Proposed endangered status with critical habitat	13
Proposed threatened status with critical habitat	5
Proposed endangered status	82
Proposed threatened status	4
Proposed change from endangered to threatened status	15
Final removal from lists	1
Proposed removal from lists	12

The Service has also funded status surveys for 29 species during the 12-month period following passage of the Amendments. These surveys are designed to gather any additional data needed to make a determination on whether the subject species are eligible for protection under the Act.

The general plant and animal notices of review are important tools for gathering data on species that are candidates for listing and informing interested parties of the Service's general views on the status of present and past candidate species. A general notice on vertebrate animals was published on December 30, 1982 (47 FR 58454–58460). A supplemental general notice on plants was published on November 28, 1983 (48 FR 53640–53670). The Service will soon publish the first general notice of review on invertebrate animals.

Provisions of the Amendments that address the handling of petitions have made it necessary for the Service to implement extensive new procedures for conforming to deadlines and making findings on petitions. These internal procedures have been developed during the 12 months since the effective date of the Amendments and have been set down by the Service in an interim document entitled *Petition Management Guidelines*, which is available from the Service on request (see "**FOR FURTHER INFORMATION CONTACT:**" above).

Author

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List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

(Pub. L. 93–205, 87 Stat. 884; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*))

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G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

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