issues will be addressed gradually in the scheduled review of all existing regulations.

Drafting Information

The principal persons involved in drafting this document are Eugene Holler, Project Manager, Office of Merchant Marine Safety, and Michael N. Mervin, Project Counsel, Office of the Chief Counsel.

Regulatory Evaluation

This final rule is considered to be non-major under Executive Order 12291 and non-significant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. This rulemaking merely corrects the citations and references to Title 46 U.S.C. There is no change to current Coast Guard regulations or procedures.

Regulatory Flexibility Evaluation

Since the impact of this final rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects

46 CFR Part 110

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 111

Vessels.

46 CFR Part 112

Vessels.

46 CFR Part 113

Communications equipment, Fire prevention, Vessels.

In consideration of the foregoing, the Coast Guard hereby amends Subchapter J of Chapter I of Title 46 Code of Federal Regulations as set forth below.

PART 110—GENERAL PROVISIONS

1. The authority citation following the table of contents is revised to read as follows:

Authority: 46 U.S.C. 2104; 2113; 3301; 3306; 3318; 3703; 4104; 49 CFR 1.46 (b) and (n).

2. Section 110.15–1(b)(15) is amended by removing the words "Title 52 of the Revised Statutes as amended" and inserting in their place "Title 46 U.S.C."

PART 111—ELECTRIC SYSTEMS—GENERAL REQUIREMENTS

3. The authority citation following the table of contents is revised to read as follows:

Authority: 46 U.S.C. 2104; 2113; 3301; 3306; 3318; 3703; 4104; 49 CFR 1.46 (b) and (n).

PART 112—EMERGENCY LIGHTING AND POWER SYSTEMS

4. The authority citation following the table of contents is revised to read as follows:

Authority: 46 U.S.C. 2104; 2113; 3301; 3306; 3318; 3703; 4104; 49 CFR 1.46 (b) and (n).

PART 113—COMMUNICATION AND ALARM SYSTEMS AND EQUIPMENT

5. The authority citation following the table of contents is revised to read as follows:

Authority: 46 U.S.C. 2104; 2113; 3301; 3306; 3318; 3703; 4104; 49 CFR 1.46 (b) and (n).

Dated: April 23, 1984.

Clyde T. Lusk, Jr.,

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

[FR Doc. 84–11277 Filed 4–26–84; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 83–540]

Amendment of the Commission's Rules to Reflect a Reorganization of the Office of General Counsel

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Office of General Counsel has restructured its Administrative Law Division and renamed it the Legal Counsel Division. Additionally, the Legal Counsel Division assumes the legislative support functions previously assigned to a specialized staff which reported directly to the General Counsel. These actions were taken to promote operational efficiency by increasing the flexibility of the General Counsel in responding to fluctuations in workload, thus assuring better utilization of staff.

EFFECTIVE DATE: November 30, 1983.

FOR FURTHER INFORMATION CONTACT: Richard D. Goodfriend, (202) 632–7513.

SUPPLEMENTARY INFORMATION: CFR Index terms—Organization and functions (government agencies).

This document was never published in the **Federal Register**. The effective date of November 30, 1983 is correct and not a typographical error.

Order

In the matter of Amendment of Part 0 of the Commission's Rules to reflect a reorganization of the Office of General Counsel.

Adopted: November 16, 1983.

Released: December 2, 1983.

By the Commission.

1. The Commission has under consideration proposed changes in the organization of the Office of General Counsel. Implementation of the proposed changes would require amendment to § 0.42 of the Commission's Rules and Regulations.

2. To promote operational efficiency, the Commission is hereby approving the internal restructuring of the Administrative Law Division, to be renamed the Legal Counsel Division, within the Office of General Counsel. The Legal Counsel Division will retain all present functions of the Administrative Law Division and will be divided into three branches, Mass Media, Common Carrier-Private Radio, and Administrative Law, all of which will have specific program area responsibilities. Additionally, the Legal Counsel Division will assume the legislative support functions presently assigned to a specialized staff unit reporting directly to the General Counsel. These changes are necessary to increase the flexibility of the General Counsel in responding to fluctuations in workload and assure greater utilization of staff and available resources. Part 0 of the Rules and Regulations, which describes the organization of the Commission, is being amended to reflect these changes.

3. The amendments adopted herein pertain to agency organization. The prior public notice and comment procedures 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 sections 4(i) and 5(b) of the Communications Act of 1934, as amended.

4. In view of the foregoing, it is ordered, effective November 30, 1983, that Part 0 of the Rules and Regulations is amended as set forth in the Appendix hereto.

Federal Communications Commission.
William Tricarico,
Secretary.

Appendix

PART 0—[AMENDED]

Part 0 of Chapter 1 of Title 47 of the Code of Federal Regulations is hereby amended as indicated below.

Section 0.42 is revised to read:

§ 0.42 Units in the Office.

The Office of General Counsel is structured into the following units:

(a) Immediate Office of the General Counsel.
(b) Litigation Division.
(c) Legal Counsel Division.
(d) Adjudication Division.

[FR Doc. 84-11354 Filed 4-26-84 8:45 am]
BILLING CODE 6712-01-M

47 CFR Parts 2 and 73

[Docket No. 21323; RM-2836; FCC 84-116]

The Use of Subcarrier Frequencies in the Aural Baseband of Television Transmitters

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends Parts 2 and 73 of the Commission's Rules to allow expanded use of subcarriers in the aural baseband of television stations; including, but not limited to, Stereophonic Sound Transmission, additional audio program channels, private radio and common carrier activities.

This action will allow television broadcasters: (1) To more fully utilize an existing commercial resource available on their television aural transmitters, and (2) provide increased services to the public.

DATES: Effective May 7, 1984.

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

FOR FURTHER INFORMATION CONTACT: Ralph A. Haller, Mass Media Bureau, (202) 632-9660.

List of Subjects

47 CFR Part 2

Communications equipment.

47 CFR Part 73

Radio broadcast.

Second Report and Order

In the matter of the use of subcarrier frequencies in the aural baseband of television transmitters; Docket No. 21323, RM-2836.

Adopted: March 29, 1984.
Released: April 23, 1984.

By the Commission. Commissioner Rivera dissenting in part; Commissioner Patrick concurring in part.

Introduction

1. The Commission has under consideration a *Further Notice of Proposed Rule Making (Further Notice)* adopted on July 28, 1983, and the comments and reply comments filed in response thereto, concerning a proposal to further expand the permissible uses of the television aural baseband. In this phase of the proceeding we consider the terms under which the television aural baseband may be used for television stereophonic sound, second language programing and any other broadcast or non-broadcast uses.

Background

2. This proceeding was initiated in 1977 in response to a petition filed by Boston Broadcasters, Inc. (BBI) that requested amendment of Part 73 of the Commission's Rules to allow TV station licensees to use a TV aural baseband subcarrier for cueing and coordinating electronic news-gathering crews in the field. As a result, a *Notice of Inquiry* was adopted on July 1, 1977, in which the Commission noted that other uses, such as TV stereophonic sound, bilingual programing and augmented audio for the blind could be equally worthwhile. The comments submitted in response to the *Notice of Inquiry* were enthusiastic about using the TV aural baseband for certains operational purposes. Accordingly, on November 20, 1979, the Commission adopted a *Notice of Proposed Rule Making* which proposed to allow limited use of the TV aural baseband for electronic news gathering (ENG) and coordination and TV transmitter telemetry functions. The proposed rules were adopted on June 30, 1981; but, the Commission deferred action on a request made in the comments that the maximum aural carrier deviation be increased above the current limit of +/−25 kHz, thus holding the proceeding open.

3. In the meantime, the Electronic Industries Association (EIA), under the auspices of its Broadcast Television Systems Committee (BTSC), formed a Multichannel Sound Subcommittee (MSS) to ascertain the practicality of various program-related uses of the TV aural baseband and to develop appropriate technical standards for consideration by the FCC. EIA's considerations included a stereophonic sound channel, a second audio program (SAP) channel, and other multi-purpose subcarrier channels. In December 1983, EIA's efforts culminated in the selection of one of three competing multichannel television sound (MTS) transmission system, and one of three competing audio compandoring systems (for noise reduction). The industry selected the MTS transmission system developed by Zenith, Inc. and the audio compandoring system developed by dbx, Inc. In its comments in this proceeding, the EIA refers to the combination of these systems as the BTSC system.

4. For the past several years, the Commission has received an increasing number of inquiries from the public concerning the future availability of TV stereophonic sound. This interest likely has been stimulated by recent marketing of video disc and cassette equipment capable of reproducing stereophonic sound from pre-recorded video records and tapes. Accordingly, in response to the interest, the Commission adopted a *Further Notice of Proposed Rule Making* (*Further Notice*) on July 28, 1983, directed to this issue.[1] However, the scope of the *Further Notice* was not confined to the MTS issue alone. Using its action in the FM subcarrier proceeding (BC Docket 82-536) as a precedent, the Commission proposed to allow the TV aural baseband to be used for virtually any broadcast or non-broadcast purpose, subject to appropriate regulatory classification of such use.[2]

Issues

5. The *Further Notice* presented a number of issues for comment. The issues included:

1. Should the Commission adopt a single MTS standard, specifically the BTSC system recommended by industry, or adopt general technical standards relating to TV aural subcarrier use? Further, to what extent should MTS standards and equipment lead to reception of the aural portions of subscription television (STV) signals by the non-paying public?

2. Should public broadcasters be permitted to provide commercial services on subcarriers?

3. Should MTS signals be included under the "must carry" provisions applicable to cable TV operations?

4. What is the appropriate regulatory classification and treatment of non-MTS

[1] 48 FR 37475, published August 18, 1983.

[2] See the *First Report and Order* in BC Docket No. 82-536 (Amendment of Parts 2 and 73 of the Commission's Rules concerning use of subsidiary communications authorizations), adopted April 7, 1983, under reconsideration. This proceeding opened up the aural baseband of FM stations to virtually unlimited use, subject to certain regulatory classification.

uses of the TV aural baseband, and should there be federal preemption for common carrier use?

5. Should the Fairness Doctrine and the "reasonable access" provisions of Sections 312(a) and 315 of the Communications Act apply to subcarriers, i.e. content regulation of subcarriers?

Each of these issues will be developed individually.

Issue 1: MTS Technical Standards

6. In paragraph 22 of the *Further Notice*, the Commission expressed its belief that aural subcarrier use should be governed only by the technical rules necessary to ensure the integrity of the primary visual and aural services and to preclude interference to other licensees. We solicited comments on this marketplace approach and on any other approaches to system implementation which commenters believe may have merit.

7. Many commenters were critical of the Commission's marketplace approach. They perceived a failure of the marketplace to select a stereophonic AM transmission system after several years' trial of general technical standards. Other commenters noted the years of study invested in the MTS by EIA and compared the present circumstances to those existing at the time a similar consensus was reached for FM stereophonic broadcasting. Generally, many commenters held the view that there would be no benefit in adopting general technical standards for MTS, and such action would likely result in marketplace uncertainties and inaction. They felt this could result in a delay in implementation of MTS services. They also believed that specific system standards are needed to ensure TV receiver compatibility and thereby protect the public's investment in emerging MTS technology.

8. Cable television interests generally conceded the need for specific system standards but expressed unhappiness with all three MTS systems considered by EIA because of the increased aural bandwidth requirements. Blonder-Tongue, Inc., a manufacturer of subscription TV encoding systems, indicated that receivers designed for the BTSC system could decode the aural portion of subscription television (STV) signals. Grumman Aerospace, Inc. and Time Period Modulation, Inc. offered no specific objection to adoption of the BTSC system, but urged that the rules be left open with regard to implementation of their digital MTS transmission methods in the video baseband. Duncan Laboratories and Rocktron Corporation argued that their audio compandoring systems are superior to the dbx, Inc. system and called for additional study and evaluation of their systems. Likewise, Alpha-Omega, Inc. alleged the superiority of its MTS encoding system. Telesonics, Inc., a competitor with Zenith in the EIA evaluation process, opposed adoption of a specific standard, contending procedural impropriety in EIA's submitting its BTSC system for adoption during the reply comment period. Thus, Telesonics urged a continuation of the proceeding.

9. Unlike the case with AM stereo, the industry, through EIA, has presented the Commission with a specific proposal for adoption of a single system of multichannel television sound. This effort by industry is laudable and deserves favorable attention. Nevertheless, several commenters expressed the belief that technology has and will continue to advance beyond the BTSC proposal. Further, we believe that technology should not be restrained by earlier choices by manufacturers, for example, STV encoding techniques. After careful consideration of the comments, we have chosen an approach that protects the investments of television receiver owners who purchase units designed for BTSC reception, provides limited continued STV security because of pilot tone activation of BTSC type receivers, but which does not impede the opportunity for marketplace advances in technology.

10. The BTSC system proposes a pilot subcarrier at 15,734 Hz. The pilot allows receivers to recognize that transmissions are in stereo and to switch into the stereophonic reception mode. Without the presence of a pilot, receivers should revert to traditional monophonic reception, i.e., reception of the baseband between 50 and 15,000 Hz. Therefore, allowing only the BTSC system to use 15,734 Hz as the pilot subcarrier frequency will: (1) protect BTSC type receivers from falsely detecting other MTS formats, and (2) permit other MTS system to be used on the air, based on marketplace demands.

11. In the *Further Notice*,[3] it was proposed that a pilot subcarrier be permitted between 15 kHz and 120 kHz to allow for receiver switching to the stereophonic mode. In keeping with the desire to prevent false decoding of a non-BTSC system by a BTSC type receiver, we are amending that range to between 16 kHz and 120 kHz. Only those systems that fully comply with the BTSC system for stereophonic transmission may use 15,734 Hz as the pilot subcarrier frequency. No other MTS system may provide for subcarriers or continuous energy at 15,734 Hz +/− 20 Hz that modulates the aural transmitter more than +/− 0.125 kHz. The 40 Hz "window" will, we believe, provide adequate protection for state-of-the-art tone detection circuitry in receivers. The specific requirements for an MTS system to use 15,734 Hz as the pilot subcarrier frequency are contained in the Office of Science and Technology bulletin number OST 60; however, existing STV systems that have been approved by the FCC to use 15,734 Hz as a pilot may continue to do so.

12. In the *Further Notice* we proposed limiting the aural baseband to 120 kHz.[4] Nothing in the record convinces us that a greater bandwidth would be required or desired, especially considering the potential for interference with the video service with a wider aural bandwidth. Therefore, 40 dB attenuation of any aural signal component will be required above 120 kHz.

13. Monophonic compatibility basically means that the L+R information must be transmitted in the baseband that is now used for monophonic aural signals (main channel). Today's Rules address specifically the band between 50 and 15,000 Hz. It then follows that the L+R stereophonic information should appear in this same part of the aural baseband and should modulate the aural transmitter in a manner similar to traditional monophonic audio. Additionally, use of MTS signals should not appreciably degrade the above defined aural baseband. We proposed in the *Further Notice* to limit crosstalk of any MTS subcarrier, except the stereophonic difference channel, to −60 dB.[5] The proposed difference channel crosstalk into the main channel was −40 dB. EIA agrees with those values. However, we feel that the marketplace can more appropriately strike a balance between listeners' needs and crosstalk limits, therefore we are not adopting specific standards. Additionally, the more generic question of deregulation of quality standards will be addressed again in General Docket 83-114.

14. EIA suggests that rather than continuing the concept of modulation percentage, it would be more appropriate to reference kilohertz deviation of the aural transmitter. Such a suggestion has merit, especially considering our desire to assure that the L+R, or monophonic compatibility channel, deviation remains at +/− 25 kHz for maximum monophonic compatibility. In the *Further Notice* it

[3] See *Further Notice* at para. 31

[4] See *Further Notice* at para. 31.

[5] See *Further Notice* at para. 30.

was anticipated that MTS services would cause deviation in excess of traditional monophonic audio signals. An additional 50 kHz deviation will be allowed for MTS services, to be allocated according to the needs of the specific system. This will permit a total of +/− 75 kHz deviation in the MTS mode. Any MTS system that provides the stereophonic difference information by "piggy-backing" on the visual carrier will be permitted 50 kHz additional deviation for auxiliary aural subcarriers, for a total deviation of 75 kHz.

15. The question of separation between the left and right channels is very much a quality of service question. The same holds true for harmonic distortion limits and audio amplitude response curves. We believe a strong marketplace incentive exists to maximize the quality of service and the Rules need not set detailed specifications. Again, looking at monophonic compatibility as the major goal, we would expect only that a stereophonic transmission system meet the audio performance standards currently in the Rules for the L=R, or equivalent monophonic, mode. It does, however, seem that for a station to claim to be providing stereophonic service, there should be some minimum level of left channel and right channel separation. We proposed 30 dB in the *Further Notice*.[6] That now appears too restrictive, based on EIA comments, and others. Therefore, we are again deferring to the marketplace for the decision on the appropriate level.

Issue 2: Public Broadcasters' Use of Subcarriers

16. The record supports our initial proposition in the *Further Notice* that public broadcasters should be permitted, at their own discretion, to offer subcarrier services on either a commercial or non-commercial basis.[7] We therefore find it in the public interest to allow public broadcasters full access to the potential commercial ventures offered by subcarrier services to help increase revenues in such stations.

Issue 3: Mandatory Carriage on Cable Television

17. In general, broadcast interests believe that the Commission should require cable systems to carry multichannel sound transmissions. ABC, for example, states that if the TV aural subcarrier is used for the provision of stereophonic sound and second-language soundtracks, cable television systems should be required to carry such signals. The Television Licensees, in their comments, state that cable television systems should be required to carry TV aural subcarriers insofar as they are utilized to provide stereophonic sound and it is technically feasible for cable systems to do so. A number of commenters state that mandatory carriage should apply to multichannel sound transmissions just as it applies to the color subcarrier.

18. MST, NBC and PBS, among others, support mandatory carriage of all aural subcarrier signals by cable systems. MST believes that permitting cable operators to "strip" aural subcarriers could slow or stall the development of subcarrier services, and could discourage manufacturers from investing in the production of needed equipment. Further, MST states that without mandatory carriage requirements, cable operators would be able to suppress competition with their non-broadcast subcarrier services and unfairly attract subscribers to their own multichannel sound pay services.

19. A number of broadcast parties state that mandatory carriage of multichannel sound services will not cause technical difficulties for cable systems. In this regard, MST points to studies made by EIA. MST asserts that based on EIA's tests, the vast majority of cable systems can carry multichannel sound services without degrading present service or causing inter-channel interference. The Television Licensees state that cable systems that encounter technical problems in retransmitting the TV subcarrier signal should be allowed to delete the TV aural baseband transmissions upon the submission of a statement of the technical difficulties, together with information that establishes that there is no reasonable method of avoiding interference. MST generally supports such an approach but states that even in these situations, there is a need to balance cable's market power. MST states that cable systems incapable of retransmitting aural subcarriers on the main television channel should be required to provide multichannel sound services via vacant FM radio channels or through other means if they provide such services for their non-broadcast or pay services.

20. The NAB, in its comments, states that carriage of multichannel sound services by most cable systems is automatic, imposes no burden on cable systems and requires no affirmative steps by cable operators. The NAB states that the EIA tests have shown that no major technical problems exist for the carriage of multichannel sound by cable systems. The NAB notes that cable headend equipment may have to be "adjusted, modified, redesigned or replaced," to provide acceptable stereophonic performance, but that these adjustments are relatively minor and do not involve substantial costs. The NAB believes, therefore, that a cable operator's decision to strip multichannel sound signals would be to eliminate competition rather than to preserve the technical integrity of its signals. The NAB does recognize that set-top converters now in use by some cable systems are technically incompatible with multichannel sound services. However, NAB states that these converters were designed, manufactured and installed at a time when multichannel sound system development was well known. Therefore, according to the NAB, these affected cable systems should not be protected (except perhaps for certain transition procedures) or allowed to strip multichannel sound signals. In its reply comments, the NAB reiterates its earlier arguments and points out that the inability to pass multichannel sound signals presents a far different question from that of actively stripping multichannel sound from the broadcast signal. In summary, the NAB states that an anti-stripping structure should be imposed immediately on cable systems capable of passing multichannel sound signals and on systems otherwise providing stereo or SAP for any programming.

21. Comments from cable parties generally opposed any mandatory subchannel signal carriage requirements. NCTA, in its comments, states that the cable industry is committed to "offering high quality, state-of-the-art service to the public." NCTA further states that the cable industry will likely provide multichannel sound where it is technologically feasible but that the decision to carry multichannel sound should be left to the cable operators. In this regard, Heritage Communications, Inc. (Heritage), states that if the demand for multichannel services exists in a cable system's service areas, the service will be provided by the system notwithstanding the absence of a requirement to do so. If, on the other hand, the demand does not exist, Heritage believes that cable systems should not be obligated to carry undesired services, especially when this might require the elimination of desired services. Gill and Televents, in their comments, also oppose must carry rules but state that many cable operators will devise ways of delivering stereo sound to their subscribers.

[6] See *Further Notice* at para. 26.

[7] See *Further Notice* at para. 15.

22. NCTA indicates that it has performed extensive tests on the effects of multichannel sound on cable television that demonstrate that while some cable systems may be able to carry multichannel sound without serious degradation to the signal or any deleterious effects on other cable services, numerous other cable systems will encounter substantial and unacceptable interference.

23. Gill and Televents, in their comments, state that cable systems should not be required to retransmit multichannel TV sound in light of existing cable equipment limitations and because of certain copyright problems attendant with any must carry requirement. With regard to existing cable equipment, Gill and Televents cite problems associated with headend equipment, set-top converters and descrambling equipment. Moreover, if cable carriage of multichannel sound services is required by the Commission, Gill and Televents believe that a system's inability to carry these services might result in technical copyright infringement under the Copyright Revision Act of 1976. In their reply comments, Gill and Televents note that none of the comments filed in this proceeding contained technical studies indicating that cable systems will be able to deliver multichannel sound services with off-air quality. Gill and Televents state that cable will therefore be placed at a competitive disadvantage.

24. Many of the comments filed by cable parties also stated that the policies underlying existing must carry rules do not apply to multichannel sound services. American Television and Communications Corporation (ATC), for example, states that the current must carry requirements were established out of concern for the local television station's competitive position vis-a-vis other services on cable systems and to ensure that broadcast stations retain their capability to serve as a source of locally oriented programming. Similarly, Cox Cable Communications, Inc. (Cox), in its reply comments, stated that the must carry rules were established to assure that local broadcast stations are not denied access to the audience they are licensed to serve. ATC, Cox and others state that mandatory carriage of multichannel sound services is not required since the cable subscriber will not be deprived of any regular or locally oriented program, and the broadcast station will maintain its full access to its audience.

25. In the *Further Notice*, we stated that, in general, TV aural subcarrier services will be considered ancillary services and regulated as such under Part 73 of the Commission's rules.[8] We also noted that there are a variety of possible uses for the aural baseband and that the public's desire for certain services may vary from market to market and from licensee to licensee.[9] We further noted that initially the amount of TV programs with stereophonic sound may be limited; that stereophonic sound may not be suitable for many TV programs and that stereophonic subchannels could be used for other purposes.[10] Accordingly, we proposed in the *Further Notice* and are now adopting an open market approach that would permit broadcast licensees to fully exercise their own discretion in selecting which TV audio subchannel services to offer.

26. We find nothing in the record of this proceeding to make us alter our initial finding that TV aural subcarrier transmissions unrelated to program content should be considered an ancillary broadcast service; such transmissions do not warrant the protective regulation accorded to primary broadcast services.[11] In regard to program related services such as stereophonic and SAP services, we are unwilling immediately to impose rigid technical obligations without further support for a finding that such obligations would service the overall public interest.

27. While we are declining to impose mandatory signal carriage of these aural subcarrier transmissions at this time, we are conscious of the arguments raised by some parties regarding the need for such regulation,[12] and we wish to gather additional factual information on this issue. Accordingly, we will keep this docket open and shortly will issue a neutral Notice of Proposed Rulemaking to explore further this matter.

Issue 4: Preemption of Common Carrier Regulation

28. In the *Further Notice*, the Commission proposed that "in the event a broadcaster elects to offer services of either a common carrier or private carrier nature over its TV subcarrier facilities, then appropriate common carrier or private carrier regulation would apply."[13] Several parties filed comments opposing the imposition of common carrier regulation. ABC, for example, believes that expanded utilization of the TV aural baseband should be left to the competitive marketplace and not inhibited by unnecessary common carrier regulations. NBC, in its comments, encouraged the Commission to take a deregulatory approach and classify the subcarrier services as "hybrid" services subject to minimal regulation. Alternatively, NBC stated that the Commission has the authority to preempt state regulation.

29. Several parties argue that the Commission should preempt state entry regulations governing radio common carrier services offered on the aural baseband of broadcast television stations. Comments filed by Reach, Inc., document that the majority of states have entry regulations that are either restrictive or exclusionary. Reach believes that such state regulations thwart Commission policies promoting the efficient use of the spectrum. Further, Reach states that the public will likely suffer from these overly restrictive or exclusionary entry regulations, as they would not have the benefit of competitive pricing and service. The NAB contends that parties seeking to operate paging services on the aural baseband in the absence of preemption of entry regulations would find it costly and perhaps prohibitive to attempt a state-by-state process.

30. The issue of preemption of state entry regulations in this proceeding parallels the issue of preemption in the FM subchannel proceeding, BC Docket No. 82-536. This matter is currently under reconsideration by the Commission. Accordingly, due to the similarities of these two proceedings regarding preemption, the matter will be determined by the final decision in BC Docket No. 82-536.

Issue 5: Content Regulation of TV Aural Subchannels

31. In the *Further Notice*, we invited comment on the applicability of the Fairness Doctrine and the "reasonable access" provisions of Sections 312(a)(7) and 315 of the Communications Act to TV aural subcarrier operations.[14] Our

[8] See *Further Notice* at para. 17.

[9] See *Further Notice* at para. 17.

[10] See *Further Notice* at para. 13.

[11] See the *Report and Order* authorizing broadcast television stations to operate teletext services, BC Docket 81-741, 48 FR 27054.

[12] We note that the National Association of Broadcasters and the Association of Maximum Service Telecasters on March 19, submitted a pleading styled as a "Motion to Accept NAB and MST Middle Ground Proposal." The upcoming Notice of Proposed Rulemaking will permit the Commission an opportunity to examine adequately this late-filed proposal.

[13] See *Further Notice* at para. 17.

[14] Section 312(a)(7) pertains to access to broadcast facilities by ferderal candidates and Section 315 deals with equal opportunities for candidates for elective office.

preliminary view on this matter was that the application of these requirements is neither legally compelled nor desirable as a matter of policy.

32. Parties responding to this issue generally concur with our initial finding. ABC, for example, states that the imposition of political broadcasting and Fairness Doctrine requirements would be both unnecessary and unwise. Similarly, NBC states that it would be inconsistent to saddle a secondary service with such obligations. Both ABC and NBC, among others, point to the many diverse uses of the TV aural baseband and the Commission's decision not to impose these requirements on teletext services.

33. After consideration of the record in this proceeding, we concur with our initial finding that the application of the Fairness Doctrine and the political broadcasting requirements of Sections 312(a)(7) and 315 of the Communications Act is neither legally compelled nor desirable as a matter of policy. Our conclusion in this regard rests primarily on the determinations made regarding the regulatory classification of FM subcarriers and teletext services.[15] We believe that the statutory requirements of reasonable access and equal opportunity are adequately satisfied by permitting federal candidates access and opportunity on the licensee's regular broadcast operation and does not require access to ancillary services.

34. We are also persuaded that the likelihood of licensees' embarking upon these types of endeavors will be substantially affected by our determination to apply, or not to apply, traditional broadcast policies like "reasonable access" and the Fairness Doctrine. We have no desire to block from the outset full development of this promising new service by the unreflective application of requirements that appear unnecessary and are not legally required. We believe that such a course of action would be inconsistent with our statutory responsibilities to promulgate policies that encourage, not frustrate, the development of new communications services.[16] Accordingly, we believe that the public interest is better served by not subjecting TV aural subcarrier services to the Fairness Doctrine and the requirements of sections 312(a)(7) and 315 of the Communications Act.

[15] See, *WFTL, Inc.*, 45 FCC 2d 1152, 1153-54 (1974); *Greater Washington Educational Telecommunications Assn., Inc.*, 49 FCC 2d 848 (1974); *see also, Memorandum Opinion and Order*, Docket No. 19671, released June 23, 1983, n. 29; and *Report and Order*, Docket 81-741, released May 20, 1983.

[16] See 47 U.S.C. 151 and 303.

Regulatory Flexibility Final Analysis

35. I. *Reason for Action*–A substantial portion of the TV aural baseband is currently unused. Removal of certain Commission rules limiting subcarrier operations to specific uses will result in the expanded utilization of the aural baseband, and should thereby increase spectrum efficiency.

II. *The Objective*—The rules adopted herein will fully expand the services permissible on TV subcarriers by removing present limitations.

III. *Legal Basis*—The action is in furtherance of section 303 of the Communications Act of 1934, as amended, which charges the Commission to explore new and improved uses of radio.

IV. *Description, potential impact and number of small entities affected*—The rules herein adopted amend existing rules that restrict the use of TV aural baseband subcarriers. The new rules are expected to have a beneficial effect by fostering the use of the aural baseband for new communications services. In general, the rules will encourage cost competitive alternatives for a variety of services currently prohibited from the TV aural baseband. Services that were too prohibitive in cost may now become economically feasible. The new rules also reduce the pressure and crowding on other scarce spectrum by making available an alternative communication system.

A substantial number of small businesses may be affected. Those that would be affected in a positive way include small commercial TV stations (through increased revenues) and businesses supplying previously precluded competitive services and equipment. Small businesses that may be negatively affected, through loss of income to new competitors, include commercial and nonprofit businesses that currently provide services on FM subcarriers or by other transmission methods. The degree of negative impact in this category is unknown because present subcarrier use is minimal. In general, the positive factors in this action appear to outweigh the negative factors in the new opportunities for commercial ventures will be provided.

V. *Recording, record-keeping and other compliance requirements.*—None.

VI. *Federal rules which overlap, duplicate or conflict with this rule.*—None.

VII. *Any significant alternative minimizing the impact on small entities and consistent with the stated objective.*—None.

Actions

36. The Secretary shall cause a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 50 U.S.C. *et seq.*).

37. Accordingly, it is ordered, pursuant to the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, that Parts 2 and 73 of the Commission's Rules and Regulations are Amended as set forth in the attached Appendix A, effective upon adoption pursuant to Section 5 U.S.C. s/s 553(d)(i).

38. It is further ordered, that the question of Preemption of local common carrier regulation shall be determined by the final decision in BC Docket No. 82-536.

39. For further information on this matter, contact Ralph A. Haller, Mass Media Bureau, at (202) 632-9660, or Bruce Franca, Mass Media Bureau, at (202) 632-6302.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

I. Title 47 CFR Parts 2 and 73 of the Federal Communications Commission's Rules and Regulations are amended as follows:

PART 2—[AMENDED]

1. Section 2.106, the Table of Frequency Allocations is amended by adding reference to note "NG128" in the table column 5 for the frequency bands 54-72, 76-88, 174-216, 470-608 and 614-806 MHz and revising the text of note NG128 as follows:

§ 2.106 Table of frequency allocations.

United States Table		FCC use designators	
Government allocation MHz	Non-Government allocation MHz	Rule Part(s)	Special-use frequencies
(4)	(5)	(6)	(7)
• •	• •	• • • •	
54.0-72.0	54.0-72.0		

United States Table		FCC use designators	
Government allocation MHz	Non-Government allocation MHz	Rule Part(s)	Special-use frequencies
(4)	(5)	(6)	(7)
	BROADCASTING	RADIO BROADCAST (TV)(73)	
		Auxiliary Broadcasting (74)	
	NG128		
* *	*	* * * *	*
76.0–88.0	76.0–88.0		
	BROADCASTING	RADIO BROADCAST (TV)(73)	
		Auxiliary Broadcasting (74)	
	NG128 NG129		
* *	*	* * * *	*
174–216	174–216		
	BROADCASTING	RADIO BROADCAST (TV)(73)	
		Auxiliary Broadcasting (74)	
	NG115 NG128		
* *	*	* * * *	*
470–512	470–512		
	BROADCASTING	RADIO BROADCAST (TV)(73)	
	LAND MOBILE	DOMESTIC PUBLIC LAND MOBILE (22)	
		PRIVATE LAND MOBILE (90)	
		Auxiliary Broadcasting (74)	
	NG66 NG114 NG127 NG128.		
* *	*	* * * *	*
512–608	512–608		
	BROADCASTING	RADIO BROADCAST (TV)(73)	
		Auxiliary Broadcasting (74)	
	NG128		
* *	*	* * * *	*
614–806	614–806		
	BROADCASTING	RADIO BROADCAST (TV)(73)	
		Auxiliary Broadcasting (74)	
	NG30 NG43 NG128.		

* * * * *

NG128 In the band 535–1605 kHz, AM broadcast licensees or permittees may use their AM carrier on a secondary basis to transmit signals intended for utility load management. In the band 88–108 MHz, FM broadcast licensees or permittees are permitted to use subcarriers on a secondary basis to transmit signals for both broadcast and non-broadcast purposes. In the bands 54–72, 76–88, 174–216 and 740–890 MHz, TV broadcast licensees or permittees are permitted to use subcarriers on a secondary basis for both broadcast and non-broadcast purposes.

* * * * *

2. Section 2.977 is amended by revising paragraphs (c) (3) and (4) to read as follows:

§ 2.977 Changes in notified equipment.

* * * * *

(c) * * *

(3) The addition of TV broadcast subcarrier generators to a notified TV broadcast transmitter or the addition of FM broadcast subcarrier generators to a notified FM broadcast transmitter, provided the transmitter exciter is designed for subcarrier operation without mechanical or electrical alternations to the exciter or other transmitter circuits.

(4) The addition of TV broadcast stereophonic generators to a notified TV broadcast transmitter or the addition of FM broadcast stereophonic generators to a notified FM broadcast transmitter, provided the transmitter exciter is designed for stereophonic sound operation without mechanical or electrical alternations to the exciter or other transmitter circuits.

3. Section 2.989 is amended by revising paragraph (e)(6) and adding a new paragraph (e)(7) to read as follows:

§ 2.989 Measurement required: Occupied Bandwidth.

* * * * *

(e) * * *

(6) Television broadcast monaural transmitters—when modulated 85% by a 15 kHz input signal.

(7) Television broadcast stereophonic sound transmitters—when the transmitter is modulated with a 15 kHz input signal to the main channel and the stereophonic subchannel, any pilot subcarrier(s) and any unmodulated auxiliary subcarrier(s) which may be provided. The signals to the main channel and the stereophonic subchannel must be representative of the system being tested and when combined with any pilot subcarrier(s) or other auxiliary subcarriers shall result in 85% deviation of the maximum specified aural carrier deviation.

* * * * *

4. Section 2.1001 is amended by revising paragraphs (i) and (j) to read as follows:

§ 2.1001 Changes in type accepted equipment.

* * * * *

(i) The addition of TV broadcast subcarrier generators to a type accepted TV broadcast transmitter or the addition of FM broadcast subcarrier generators to a type accepted FM broadcast transmitter, provided the transmitter exciter is designed for subcarrier operation without mechanical or electrical alternations to the exciter or other transmitter circuits.

(j) The addition of TV broadcast stereophonic generators to a type accepted TV broadcast transmitter or the addition of FM broadcast stereophonic generators to a type accepted FM broadcast transmitter, provided the transmitter exciter is designed for stereophonic sound operation without mechanical or electrical alternations to the exciter or other transmitter circuits.

* * * * *

PART 73—[AMENDED]

5. A new § 73.665 is added to read as follows:

§ 73.665 Use of TV aural baseband subcarriers.

Licensees of TV broadcast stations may transmit, without further authorization from the FCC, subcarriers and signals within the composite baseband for the following purposes:

(a) Stereophonic (biphonic, quadraphonic, etc.) sound programs under the provisions of §§ 73.667 and 73.669.

(b) Transmission of signals relating to the operation of TV stations, such as relaying broadcast materials to other stations, remote cueing and order messages, and control and telemetry signals for the transmitting system.

(c) Transmission of pilot or control signals to enhance the station's program service such as (but not restricted to) activation of noise reduction decoders in receivers, for any other receiver control purpose, or for program alerting and program identification.

(d) Subsidiary communications services.

6. A new § 73.667 is added to read as follows:

§ 73.667 TV subsidiary communications services.

(a) Subsidiary communication services are those transmitted within the TV aural baseband signal, but do not include services which enhance the main program broadcast service or exclusively relate to station operations (see §§ 73.655 (a), (b), and (c)). Subsidiary communications include, but are not limited to, services such as functional music, specialized foreign

language programs, radio reading services, utility load management, market and financial data and news, paging and calling, traffic control signal switching, and point-to-point of multipoint messages.

(b) TV subsidiary communications services that are common carrier or private radio in nature are subject to common carrier or private radio regulation. Licensees operating such services are required to apply to the FCC for the appropriate authorization and to comply with all policies and rules applicable to the service. Responsibility for making the initial determinations of whether a particular activity requires separate authority rests with the TV station licensee or permittee. Initial determinations by licensees or permittees are subject to FCC examination and may be reviewed at the FCC's discretion.

(c) Subsidiary communications services are of a secondary nature under the authority of the TV station authorization, and the authority to provide such communications services may not be retained or transferred in any manner separate from the station's authorization. The grant or renewal of a TV station permit or license is not furthered or promoted by proposed or past subsidiary communications services. The permittee or licensee must establish that the broadcast operation is in the public interest wholly apart from the subsidiary communications services provided.

(d) The station identification, delayed recording, and sponsor identification announcement required by §§ 73.1201, 73.1208, and 73.1212 are not applicable to leased communications services transmitted via services that are not of a general broadcast nature.

(e) The licensee or permittee must retain control over all material transmitted in a broadcast mode via the station's facilities, with the right to reject any material that it deems inappropriate or undesirable.

7. A new § 73.669 is added to read as follows:

§ 73.669 TV stereophonic aural and multiplex subcarrier operation.

(a) A TV broadcast station may without specific authority from the FCC, transmit multichannel aural programs upon installation of multichannel sound equipment. Prior to commencement of multichannel broadcasting, the equipment shall be measured in accordance with § 73.1690(e).

(b) Multiplex subcarriers may be used by a TV station pursuant to the provisions of § 73.665 and may be transmitted on a secondary, non-interference basis to broadcast programming without specific authority from the FCC. Transmissions must be conducted in accordance with the technical standards given in § 73.682(c).

(c) In all arrangements entered into with outside parties affecting non-common carrier subcarrier operation, the licensee or permittee must retain control over all material transmitted over the station's facilities, with the right to reject any material which is deemed inappropriate or undesirable. Subchannel leasing arrangements must be kept in writing at the station and made available to the FCC upon request.

8. Section 73.677(b) is revised to read as follows:

§ 73.677 TV remote control authorizations.

* * * * *

(b) TV stations may, without specific authority from the FCC, use an aural subcarrier frequency for remote control telemetry in accordance with the technical provisions of § 73.682(c).

9. Section 73.681 is amended by alphabetically adding definitions of "BTSC," "Baseband," "Main channel," "Multichannel Television Sound (MTS)," and "Pilot subcarrier," to read as follows:

§ 73.681 Definitions.

* * * * *

BTSC. Broadcast Television systems committee recommendation for multichannel television sound transmission and audio processing as defined in FCC Bulletin OST 60.

Baseband. Aural transmitter input signals between 0 and 120 kHz.

* * * * *

Main channel. The band of frequencies from 50 to 15,000 Hertz which frequency modulate the main aural carrier.

* * * * *

Multichannel Television Sound (MTS). Any system of aural transmission that utilizes aural baseband operation between 15 kHz and 120 kHz to convey information or that encodes digital information in the viedo portion of the television that is intended to be decoded as audio information.

* * * * *

Pilot subcarrier. A subcarrier used in the reception of TV stereophonic aural or other subchannel broadcasts.

* * * * *

10. Section 73.682 is amended by removing paragraph (a)(23) and designating it [reserved] and by adding a new paragraph (c) to read as follows:

§ 73.682 TV transmission standards.

* * * * *

(c) TV multiplex subcarrier/stereophonic aural transmission standards.

(1) The modulating signal for the main channel shall consist of the sum of the stereophonic (biphonic, quadraphonic, etc.) input signals.

(2) The instantaneous frequency of the baseband stereophonic subcarrier must at all times be within the range 15 kHz to 120 kHz. Either amplitude or frequency modulation of the stereophonic subcarrier may be used.

(3) One or more pilot subcarriers between 16 kHz and 120 kHz may be used to switch a TV receiver between the stereophonic and monophonic reception modes or to activate a stereophonic audio indicator light, and one or more subcarriers between 15 kHz and 120 kHz may be used for any other authorized purpose; except that stations employing the BTSC system of stereophonic sound transmission and audio processing may transmit a pilot subcarrier at 15,734 Hz, ± 2 Hz. Other methods of multiplex subcarrier or stereophonic aural transmission systems must limit energy at 15,734 Hz, ± 20 Hz, to no more than ± 0.125 kHz aural carrier deviation.

(4) Aural baseband information above 120 kHz must be attenuated 40 dB referenced to 25 kHz main channel deviation of the aural carrier.

(5) For required transmitter performance, all of the requirements of § 73.687(b) shall apply to the main channel, with the transmitter in the multiplex subcarrier or stereophonic aural mode.

(6) For electrical performance standards of the transmitter, the requirements of § 73.687(b) apply to the main channel.

(7) Multiplex subcarrier or stereophonic aural transmission systems must be capable of producing and must not exceed ± 25 kHz main channel deviation of the aural carrier.

(8) The arithmetic sum of baseband signals between 15 kHz and 120 kHz must not exceed ± 50 kHz deviation of the aural carrier.

(9) Total modulation of the aural carrier must not exced ± 75 kHz.

11. Section 73.1570 is amended by adding paragraph (b)(3)(i) to read as follows:

§ 73.1570 Modulation levels; AM, FM, and TV aural.

* * * * *

(b)* * *

(3) * * *

(i) Stations transmitting aural multiplex subcarriers for authorized services (see § 73.655) may increase the modulation deviation to the limits specified in § 73.682(c).

* * * * *

12. Section 73.1690 is amended by revising paragraph (e) introductory text, and paragraph (e)(5), and by removing paragraph (e)(7), to read as follows:

§ 73.1690 Modification of transmission systems.

* * * * *

(e) The following changes in transmission system equipment may be made without prior notification to or authorization from the FCC. Equipment performance measurements must be made within 10 days after completing the modifications for paragraphs (e) (1), (3), (4), and (5) of this section.

* * * * *

(5) Installation or replacement of a stereophonic or subcarrier generator of an FM or TV transmitter with one that has been demonstrated to be both electrically and mechanically compatible with the type accepted or notified transmitter.

* * * * *

13. The alphabetical index of Part 73 is amended by the following additions:

(1) Under "Stereophonic sound broadcasting":
TV 73.669.
(2) Under "Stereophonic sound transmission standards":
TV 73.682.
(3) Under "Subcarriers, multiplex, use of":
TV 73.665.
(4) Under "Subsidiary Communications Services (SCA)":
TV 73.667.
(5) Under "Communications Services, Subsidiary":
TV 73.667.
(6) Under "Multiplex subsidiary, Use of":
TV 73.862.

Appendix B

List of Commenters and Reply Commenters

Alpha-Omega Engineering, Inc.
American Broadcasting Companies, Inc. (ABC)
American Foundation for the Blind
American TV and Communications Corporation (ATC)
Association of Independent Television Stations, Inc.
Association of Maximum Service Telecasters, Inc. (AMST)
Bell Telephone Operating Companies
Blonder-Tongue Laboratories
CBS, Inc.
Cox Cable Communications
DBX Incorporated
Duncan Laboratories
Electronics Industries Association
Gill Industries and Televents, Inc.
Grumman Aerospace
Harris Corporation
Heritage Communications, Inc.
National Association of Broadcasters (NAB)
National Association of Public Television Stations
National Broadcasting Company (NBC)
National Cable Television Association, Inc. (NCTA)
New Jersey Library for the Blind and Handicapped
Pacific Telephone and Telegraph Company and Bell Telephone Company of Nevada
Public Broadcasting Service
RCA Corporation
Reach Electronics, Inc.
Reading Broadcasting, Inc.
Rocktron Corporation
Strasburg Telephone Company
Telease, Inc.
Telelocator Network of America
Telesonics Systems, Inc.
Televents, Inc.
Television Licensees (combined comments of several licensees)
Time Period Modulation and Cable TV Supply Company
WESL Inc.
Zenith Radio Corporation

[FR Doc. 84-11348 Filed 4-26-84; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 61

[CC Docket No. 79-246; FCC 84-147]

Private Line Rate Structure and Volume Discount Practices

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action adopts five guidelines for the private line rate structures of American Telephone & Telegraph Co. and the special access rate structures of the exchange telephone carriers. Also, the Commission adopts findings favoring greater carrier flexibility regarding volume discounts for private line and special access services. This action is taken to expedite tariff review, decrease the carriers' burden of cost justification, increase competition, and help carriers meet customers' demands for new and innovative services.

EFFECTIVE DATE: April 27, 1984.

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

FOR FURTHER INFORMATION CONTACT: Warren Lavey, Common Carrier Bureau, (202) 632-6910.

List of Subjects in 47 CFR Part 61

Communications common carriers, Tariffs.

Report and Order (Proceeding Terminated)

In the matter of private line rate structure and volume discount practices; CC Docket No. 79-246.

Adopted: April 11, 1984.
Released: April 24, 1984.

By the Commission: Commissioner Quello concurring and issuing a statement.

I. Introduction

1. This proceeding was designed to promote effective regulation and increase opportunities for deregulation by restructuring private line tariffs. Notice of Inquiry and Proposed Rulemaking, 74 FCC 2d 226 (1979) (*Notice*). The *Notice* proposed five guidelines for tariffs to help us effectively determine whether terms and charges are just, reasonable, and nondiscriminatory.[1] We seek to avoid having two similarly-situated customers who demand the same service from the same carrier (such as ten, full-time, voice-grade private lines between points A and B) charged different rates, i.e., unlawful discrimination. 47 U.S.C. 202. Rate regulation is aided by the ability to make in-kind comparisons (comparing like rate elements in different tariffs). In addition, restructuring tariffs according to the proposed guidelines can help customers choose the most advantageous service options and facilitate competition. We adopt the proposed guidelines in this Order and further explain their application. The *Notice* also initiated an inquiry into volume-based rate discounts. We adopt findings and guidelines for volume discounts in this Order.

2. The *Notice* proposed the following guidelines: (1) Rate structures for the same or comparable services should be integrated; (2) rate structures for the same or comparable services should be consistent with one another; (3) rate elements should be selected to reflect market demand, pricing convenience for the carrier and customers, and cost

[1] *See* 47 U.S.C. 201-202; AT&T: Private Line Services, 61 FCC 2d 587 (1976), *recon.*, 64 FCC 2d 971 (1977), *further recon.*, 67 FCC 2d 1441 (1978), *off'd in part sub nom.* Aeronautical Radio, Inc. v. Federal Communications Commission, 642 F. 2d 1221 (D.C. Cir. 1980), *cert. denied*, 451 U.S. 920 (1981). Without adequate justification, a carrier may not charge different rates or impose different terms and conditions for like (functionally equivalent) services. Western Union International, Inc. v. Federal Communications Commission, 568 F. 2d 1012 (2d Cir. 1977), *cert. denied*, 436 U.S. 944 (1978); American Trucking Associations v. Federal Communications Commission, 377 F. 2d 121 (D.C. Cir. 1966), *cert. denied*, 386 U.S. 943 (1967).