longer in length. In addition to being measured under the 1969 Tonnage Convention vessel owners will be allowed to have their vessels measured for a regulatory tonnage under the Standard System of Measurement. However, measurement regulations implementing this legislation are not yet in place.

The Coast Guard was recently asked by the owner of a number of vessles whether the tonnages and dimensions yielded by the 1969 Tonnage Convention could be endorsed on their vessels' Certificates of Documentation. The vessel owner pointed out that, on an international basis, applicability of many regulations and fees is based not on the tonnage and dimensions shown on a measurement certificate, but on the dimensions and tonnages shown on the vessel's documentation certificate. In accordance with this notice, the Coast Guard will recognize and allow use of either the 1969 Tonnage Convention or the Standard System of Measurement in determining a vessel's dimensions and tonnages for Certificate of Documentation endorsement purposes.

By allowing endorsement of a vessel's dimensions and tonnages under either system of measurement on the Certificate of Documentation, vessel owners will have greater flexibility and certainty in determining their vessel's expenses and operating requirements. This notice is being published so that as many vessel owners as possible may take advantage of this practice.

The current regulations (46 CFR Subpart 67.11) require that the tonnage and dimensions of a vessel be determined for initial documentation, whenever there is a change in the tonnage or dimensions of a documented vessel, or when the tonnage or dimensions of a vessel returning to documentation have changed since the vessel's last documentation. Upon the occurrence of one of these events (at the time of application for documentation) a vessel owner will be given an opportunity to elect which tonnage measurement system dimensions and tonnages shall be endorsed. Where a vessel is currently documented and the owner elects to have the 1969 Tonnage Convention values endorsed, the Certificate of Documentation should be surrendered at the vessel's home port with a request for issuance of a new Certificate of Documentation. In either case, the owner will need to submit the appropriate measurment certificate issued by the proper authority.

Date: August 19, 1987.

P.C. Lauridsen,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 87-19343 Filed 8-21-87; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. 1

[FCC 87-266]

Syracuse Peace Council v. Television Station WTVH, Syracuse, NY; Fairness Doctrine

AGENCY: Federal Communications Commission.

ACTION: Adjudication ruling.

SUMMARY: By this action, the Federal Communications Commission determined that the enforcement of the set of obligations known as the "fairness doctrine" violated the First Amendment rights of broadcasters and, therefore, was no longer in the public interest.

EFFECTIVE DATE: August 7, 1987.

ADDRESS: 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Richard J. Bozzelli, Special Assistant to the General Counsel, (202) 632-7020.

SUPPLEMENTARY INFORMATION:

The Federal Communications Commission ruled on August 4, 1987, that the set of obligations known as the "fairness doctrine" violated the First Amendment rights of broadcasters. It determined that enforcement of the doctrine "chilled" the speech of broadcasters and could no longer be considered "narrowly tailored to achieve a substantial government interest." It, therefore, vacated a 1984 Order in which it had determined that the Meredith Corporation, licensee of station WTVH(TV), Syracuse, NY, had violated the doctrine.

The Commission specifically noted that its ruling did not apply to "equal access" and "equal time" requirements imposed by the Communications Act. It also found that nothing in its decision will limit the ability to license stations and regulate them in the public interest.

The agency's action came in response to a January 1987 remand order of the U.S. Court of Appeals for the District of Columbia Circuit. *Meredith Corp.* v. *FCC*, 809 F.2d 863 (D.C. Cir. 1987). The court ruled that the Commission, in enforcing the doctrine against Meredith, had acted arbitrarily and capriciously in not responding to the licensee's arguments that the doctrine violated its First Amendment rights. The court instructed the Commission to resolve that issue.

In its action on August 4, 1987, the FCC determined that, although the doctrine was adopted to promote robust discussion of controversial issues, the enforcement of the doctrine has actually had the net effect of reducing, rather than enhancing, the discussion of controversial issues of public importance and, therefore, violated the constitutional principles announced by the Supreme Court in *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367 (1969). Consequently, while the doctrine was intended to enhance First Amendment principles, the FCC determined that, in fact, it had the exact opposite result.

It also concluded that the doctrine resulted in "excessive and unnecessary government intervention into the editorial processes of broadcast journalists," thereby violating the constitutional standard announced in a 1984 Supreme Court ruling in *FCC* v. *League of Women Voters of California*, 468 U.S. 364 (1984), that the regulation of broadcasters' speech be narrowly tailored to achieve a substantial government interest.

In reaching these determinations, the Commission relied on the record developed in this case from comments received after the Court of Appeals' remand and in its *1985 Fairness Report*, 102 FCC 2d 145 (1985), a comprehensive study of the administration and effects of the doctrine on broadcast journalists.

In the *1985 Fairness Report*, the FCC concluded that the doctrine no longer serves its intended purpose and, therefore, no longer furthers the public interest. It also found the constitutionality of the doctrine suspect. Because of intense congressional interest and some doubt as to whether the doctrine had been codified, however, the Commission did not act except to certify the record to Congress and terminate the proceeding.

The Syracuse Peace Council filed a complaint with the FCC alleging that Meredith had violated the doctrine in 1982 by broadcasting editorial advertisements over WTVH favoring the construction of a local nuclear power plant without presenting opposing points of view. The FCC found that Meredith had violated the doctrine. *Syracuse Peace Council* v. *Television Station WTVH, Syracuse, New York*, 99 FCC 2d 1389 (1984). Meredith argued that the doctrine violated its First Amendment right and, therefore, the FCC's enforcement of the doctrine was

unconstitutional. The Commission declined to consider Meredith's constitutional challenge, citing its decision in the *1985 Fairness Report* that this question was better dealt with by Congress and the courts. *Syracuse Peace Council* v. *Television Station WTVH, Syracuse, New York*, 59 RR 2d 179 (1985).

On review, the appellate court, while affirming the Commission's determination that the station had, in fact, violated the doctrine, ordered the agency to consider Meredith's constitutional arguments in its defense. The court ruled that the only way for the Commission to avoid that issue was if it determined that the doctrine was no longer in the public interest.

In its action on August 4, 1987, the Commission determined that it could not avoid the constitutional arguments raised by Meredith, because the constitutional and policy issues regarding the doctrine were "inextricably intertwined." It further ruled that there was nothing unique about its enforcement of the doctrine against WTVH that would justify a conclusion that the doctrine was unconstitutional only as applied in this case. Rather, the FCC stated that "the doctrine's infirmity of impermissibly chilling and reducing the discussion of controversial issues of public importance is not an infirmity resulting from the enforcement of the doctrine in this case or in particular markets, but is an infirmity that goes to the very heart of the enforcement of the fairness doctrine as a general matter."

The FCC found that in order to administer and enforce the doctrine, it is necessarily required to intervene in the editorial process and second-guess the judgment of broadcasters. Sanctions for noncompliance range from requiring the broadcaster to air contrasting viewpoints, to requiring the broadcaster to give free air time in certain circumstances, to revoking a license in the extreme case.

Citing the dramatic growth in the number and types of information outlets since the Supreme Court's 1969 *Red Lion* decision, the Commission also urged the Court to reconsider the First Amendment standards applicable to the broadcast media as announced in that case. The Court suggested in *League of Women Voters v. FCC* that it might revisit this standard if presented with an appropriate signal from Congress or the Commission.

The FCC argued that the scarcity rationale on which the *Red Lion* decision was based does not justify the current difference in First Amendment treatment between the print and broadcast media. Instead, the Commission urged the Court to apply a traditional First Amendment analysis to broadcasters.

Specifically, the Commission determined that there is no longer scarcity in the number of broadcast media outlets available to the public that could justify a difference in treatment between the printed and electronic press. In fact, the Commission noted that the number of broadcast outlets is far in excess of the number of daily newspapers.

It also determined that the notion of spectrum scarcity could not justify the difference in First Amendment treatment between the two media, because, as the Court of Appeals noted in *TRAC v. FCC*, all goods are scarce, and such a universal fact cannot be used to justify content regulation in one context and not another.

Furthermore, the FCC said that the fact that government allocates the spectrum through licensing does not justify its regulation of the content of broadcasters' speech. The Commission said that, because of the large number of broadcast licenses acquired through the purchase and transfer of stations on the open market, the relevant barrier to entry in both the broadcast and print markets is economic.

Arguing that a First Amendment analysis should not focus on the physical difference between the broadcast and print media, but on their functional similarities, the agency urged the Supreme Court to apply the same First Amendment principles now applicable to the printed press to the electronic press. It stated that the two media play a similar role in a free, democratic society and that the First Amendment "gives the people the right to receive ideas that are unfettered by government interference."

The FCC concluded: "This is the method set forth in our Constitution for maximizing the public interest; and furthering the public interest is likewise our mandate under the Communications Act."

Copies of the Commission's Memorandum Opinion and Order (FCC 87–266, released August 6, 1987) in this case may be obtained from International Transcription Service, (202) 857–3800. The Memorandum Opinion and Order will also be published in the Federal Communications Commission Record.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–19257 Filed 8–21–87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 1

[CC Docket No. 86–212]

Attachment of Cable Television Hardware to Utility Poles

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: This action disposes of a Notice of Proposed Rulemaking which was issued to examine the issues raised in *Alabama Power* v. *FCC*, 773 F.2d 362 (1985) 51 FR 21774, June 16, 1986. The rulemaking examined the questions raised by the court since they affected the method traditionally used to determine the operating expenses and capital costs of poles in the Commission's maximum rate formula. This Report and Order modifies the method for calculating pole attachment rates and adopts amendments to the procedural rules for filing pole attachment complaints. This action is taken as a result of the examination of the issues addressed in the Notice of Proposed Rulemaking.

EFFECTIVE DATE: The effective date of this rule is contingent upon OMB approval of any new or modified information collection requirement. The effective date will be announced in the **Federal Register** at a later date.

FOR FURTHER INFORMATION CONTACT: Lenworth Smith or Margaret Wood, tele: 202–632–4887.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in CC Docket 86–212, Adopted June 10, 1987, and Released July 23, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. The Commission has modified the method for calculating pole attachment rates. In adopting a formula that results in a rate approaching the statutory maximum just and reasonable rate, the Commission adopted a different non-pole-related appurtenance ratio for electric companies and telephone companies, the ratio of total administrative and general expenses to

total plant investment to determine the administrative expenses component of the carrying charges, and the use of normalized taxes for the tax component of the carrying charges. The Commission also adopted amendments to the procedural rules for filing pole attachment complaints.

2. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the adopted policy and rule changes will not have a significant economic impact on a substantial number of small entities because they will continue to utilize a formula which relies on publicly available data and no additional recording or recordkeeping will be required by the items adopted in the Report and Order.

3. The decisions contained in the Report and Order have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Ordering Clauses

4. Accordingly, it is ordered that, pursuant to sections 4(i), 4(j), 201–205, 218, 220, 403, and 404 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 201–205, 218, 220, 403 and 404, the policies and requirements set forth herein are adopted.

5. It is further ordered that, pursuant to the authority contained in sections 4(i) and 224 of the Communications Act, 47 U.S.C. 154(i), 224, Subpart J of Part 1 of the Commission's Rules and Regulations are amended, as set forth below.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Rule Changes

Subpart J of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

1. The authority citation from Part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. In § 1.1402, paragraphs (d) and (e) are revised to read as follows:

§ 1.1402. Definitions.

* * * * *

(d) The term "complaint" means a filing by a cable television system operator, a cable television system association, a utility, or an association of utilities alleging that a rate, term, or condition for a pole attachment is not just and reasonable.

(e) The term "complainant" means a cable television system operator, a cable television system association, a utility, or an association of utilities who files a complaint.

3. In § 1.1404, paragraphs (a), (d) (1) and (2), (g) (2), (4), (5), (9) and (10), (h) and (i) are revised to read as follows:

§ 1.1404 Complaint.

(a) The complaint shall contain the name and address of the complainant, name and address of the respondent, and shall contain a verification (in the form in § 1.721(b)), signed by the complainant or officer thereof if complainant is a corporation, showing complainant's direct interest in the matter complained of. Counsel for the complainant may sign the complaint. Complainants may join together to file a joint complaint. Complaints filed by associations shall specifically identify each utility or cable television company who is a party to the complaint and shall be accompanied by a document from each identified member certifying that the complaint is being filed on its behalf.

* * * * *

(d) * * *

(1) A statement that the utility uses or controls poles, ducts, or conduits used or designated, in whole or in part, for wire communication; and

(2) A statement that the cable television operator currently has attachments on the poles.

* * * * *

(g) * * *

(2) The investment in crossarms and other items which do not reflect the cost of owning and maintaining poles, if available;

* * * * *

(4) The depreciation reserve from the investment in crossarms and other items which do not reflect the cost of owning and maintaining poles, if available;

(5) The total number of poles: (i) Owned; and (ii) controlled or used by the utility.

If any of these poles are jointly owned, the complaint shall specify the number of such jointly owned poles and the percentage of each joint pole or the number of equivalent poles owned by the subject utility;

* * * * *

(9) The annual carrying charges attributable to the cost of owning a pole. These charges may be expressed as a percentage of the net pole investment. With its pleading, the utility shall file a copy of the latest decision of the state regulatory body or state court which determines the treatment of accumulated deferred taxes if it is at issue in the proceeding and shall note the section which specifically determines the treatment and amount of accumulated deferred taxes.

(10) The rate of return authorized for the utility for intrastate service. With its pleading, the utility shall file a copy of the latest decision of the state regulatory body or state court which establishes this authorized rate of return if the rate of return is at issue in the proceeding and shall note the section which specifically establishes this authorized rate and whether the decision is subject to further proceedings before the state regulatory body or a court;

* * * * *

(h) If any of the information required in (g) of this section is not provided to the cable television operator by the utility upon reasonable request, the cable television operator shall include a statement indicating the steps taken to obtain information from the utility, including the dates of all requests. No complaint filed by a cable television operator shall be dismissed where the utility has failed to provide the information in (g) of this section after such reasonable request. A utility should supply a cable television system operator the information required in paragraph (g) of this section, along with the supporting pages from its FERC Form 1, FCC Form M, or other report to a regulatory body, within 30 days of the request by the cable operator. (The cable operator, in turn, shall submit these pages with its complaint). If the utility did not supply these pages to the cable operator in response to the information request, it shall supply this information in its response to the complaint.

(i) The complaint shall include a brief summary of all steps taken to resolve the problem prior to filing. If no such steps were taken, the complaint shall state the reason(s) why it believed such steps were fruitless.

* * * * *

4. In § 1.1409, paragraph (b) is revised to read as follows:

§ 1.1409 Commission consideration of the complaint.

* * * * *

(b) The complainant shall have the burden of establishing a prima facie case that the rate, term, or condition is not just and reasonable. If, however, a utility argues that the proposed rate is lower than its incremental costs, the

utility has the burden of establishing that such rate is below the statutory minimum just and reasonable rate.

* * * * *

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-19277 Filed 8-21-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-138; RM-5204, RM-5379, and RM-5481]

Radio Broadcasting Services; Brooksville, Homosassa, and Ocala, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 225C2 for Channel 224A at Ocala, Florida, and modifies the Class A license for Station WMFQ(FM) to specify the Class C2 channel, in response to a counterproposal filed by the licensee, Greater Ocala Broadcasting Corp. A site restriction 5.8 miles southeast is imposed on Channel 225C2 at Ocala. The request of Radio Development Laboratories to allot Channel 225A to Brooksville, Florida, as proposed by the *Notice* is denied. Additionally, a counterproposal filed by Central Radio Communications, Inc. proposing to allot Channel 225A to Homosassa, Florida, is dismissed at the request of the petitioner. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 2, 1987.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-138, adopted July 24, 1987, and released August 18, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under Florida, by removing Channel 224A and adding Channel 225C2 for Ocala.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-19275 Filed 8-21-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-309; RM-4959]

Radio Broadcasting Services; Manhattan and Ogden, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 284C2 to Manhattan, Kansas as that community's second FM channel at the request of William Gaines, et al. It denies the request of Manhattan Broadcasting Company to substitute Channel 284C2 for Channel 269A and to modify the license of Station KMKF, Manhattan, Kansas. It also reallocates Channel 280A from Manhattan, Kansas to Ogden, Kansas to reflect its actual usage in that community. With this action this proceeding is terminated.

EFFECTIVE DATE: October 2, 1987. The window period for filing applications will open on October 5, 1987, and close on November 4, 1987.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85-309, adopted July 27, 1987, and released August 18, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding the entry of Channel 284C2 to Manhattan, Kansas; removing the entry of Channel 280A to Manhattan, Kansas; and adding the entry of Channel 280A to Ogden, Kansas.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-19274 Filed 8-21-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-357; RM-5418]

Radio Broadcasting Services; Ankeny, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 223C2 for Channel 292A at Ankeny, Iowa and modifies the license of Station KJJY(FM), Ankeny to specify the new channel at the request of Fuller-Jeffrey Broadcasting Corporation of Greater Des Moines. Channel 292A is retained at Ankeny, Iowa in response to an expression of interest filed by Harold A. Jahnke. With this action, this proceeding is terminated.

DATES: Modification effective October 2, 1987; The window period for filing applications for Channel 292A will open on October 5, 1987, and close on November 4, 1987.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-357, adopted July 27, 1987, and released August 18, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.