

§917.16 Required regulatory program amendments.

* * * * *

(j) By October 1, 1993, Kentucky shall submit either proposed amendments or a schedule for the submission of proposed amendments to OSM to revise the following provisions of the Kentucky Revised Statutes in the manner described:

(1) That portion of the new section of Chapter 350 added by section 1 of Senate Bill 318 as enacted by the Kentucky General Assembly during the 1992 regular session, to delete the phrase "except as may be ordered by the hearing officer" in section 1(3) of the enacted bill; and

(2) The definition of *person* in KRS 350.010(9), to include all entities encompassed by the corresponding definition in 30 CFR 700.5.

(k) By October 1, 1993, Kentucky shall submit to OSM either proposed amendments or a schedule for the submission of proposed amendments to Kentucky Administrative Regulations to require that the assessment conference officer's report mentioned in 405 KAR 7:092 section 4(5) be served in a manner consistent with 405 KAR 7:091 section 5, and to specify that the time allowed under 405 KAR 7:092 section 6(1)(b) to file a petition for administrative review of the proposed penalty set forth in the conference officer's report does not begin to run until service is obtained in this manner.

[FR Doc. 93-18854 Filed 8-5-93; 8:45 am]

BILLING CODE 4310-05-M

POSTAL SERVICE**39 CFR Part 111****Implementation of Delivery Point Barcode Requirement for Letter-Size Mail**

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule adopts on a permanent basis the temporary changes to the standards for automation rate letter-size mailings that were made effective March 21, 1993, requiring a delivery point barcode on all letter-size mail for which a barcoded discount is claimed, and making conforming changes to the standards for ZIP+4 numeric discounts.

EFFECTIVE DATE: August 11, 1993

FOR FURTHER INFORMATION CONTACT: Mrs. Lynn Martin (202) 268-5176.

SUPPLEMENTARY INFORMATION: On November 9, 1992, pursuant to 39

U.S.C. 3623, the Postal Service filed with the Postal Rate Commission a Request for a Recommended Decision on Pre-barcoded Letter Mail Requirements, PRC Docket No. MC93-2, requesting that the Domestic Mail Classification Schedule (DMCS) be changed to re-define prebarcoded letter-size mail as mail "which bears a barcode as prescribed by the Postal Service." The Postal Rate Commission published a notice in the *Federal Register* on November 20, 1992 (57 FR 54866) describing the request and offering interested parties an opportunity to intervene.

On February 18, 1993, the Postal Service published a proposed rule setting forth the amendments to the prebarcoding standards in the Domestic Mail Manual (DMM) that would be needed to implement the requested classification change, as well as conforming changes to the standards for numeric ZIP+4 rates for letter mail (58 FR 8921).

On March 5, 1993, the Postal Service published notice that the DMCS change it had requested would be placed into effect on a temporary basis, pursuant to 39 U.S.C. 3641(e) and as authorized by the Board of Governors of the Postal Service in Resolution No. 93-3 (March 1, 1993). The temporary change took effect at 12:01 a.m. on March 21, 1993 (58 FR 12605).

Pursuant to the authority granted by the temporary classification change, the Postal Service published a final rule on March 12, 1993, setting forth DMM regulations implementing the temporary DMCS change (58 FR 13551). As proposed in the February 18 proposed rule, the final rule amended the prebarcoding standards in the DMM to require a delivery point barcode on all letter-size mail for which a barcoded discount is claimed, and made conforming changes to the standards for ZIP+4 numeric discounts. These DMM changes also took effect on March 21, 1993.

On June 30, 1993, the Postal Service published a notice concerning the restructuring and revision of the DMM, effective with DMM Issue 46, July 1, 1993 (58 FR 34887). The notice included detailed cross-reference tables. DMM Issue 46 made no substantive changes to the prebarcoding and related standards that had taken effect on March 21. The standards for letter-size automation-rate mailings appear in Modules R (Rates and Fees), P (Postage Payment), E (Eligibility), A (Addressing), C (Characteristics and Content), M (Mail Preparation and Sortation), and L (Labeling Lists) in the restructured DMM.

On August 2, 1993, the Governors of the Postal Service, pursuant to their authority under 39 U.S.C. 3625, approved the Recommended Decision of the Postal Rate Commission in Docket No. MC93-2 to amend the DMCS to re-define pre-barcoded letter-size mail as mail which bears a barcode "representing not more than 11 digits (not including "correction" digits) as prescribed by the Postal Service." The Board of Governors of the Postal Service, pursuant to their authority under 39 U.S.C. 3625(f), determined to implement the DMCS changes approved by the Governors effective at 12:01 a.m. on August 11, 1993 (Resolution No. 93-9). A notice of those DMCS changes is published elsewhere in this issue.

In accordance with these permanent DMCS changes, this final rule continues on a permanent basis the amendments to the Domestic Mail Manual that were published in the March 12 final rule and took effect on March 21, 1993. Since this final rule makes no changes to the existing standards, those amendments are not reprinted here. The standards that were changed by the March 12 final rule now appear in sections R100, R200, R300, P000, P100, P200, P300, P700, R100, E200, E300, A000, A800, A950, C800, M000, and M800 of the restructured DMM. For more detailed information on the location of these standards, see the cross-reference tables at 58 FR 34887-900.

These permanent changes to the Domestic Mail Manual will take effect at 12:01 a.m. on August 11, 1993. The Postal Service believes that mailers have adequate notice of the permanent standards, since no change in existing standards is made.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

Under the authority of the Postal Reorganization Act, the temporary changes to the Domestic Mail Manual promulgated on March 12, 1993 at 58 FR 13551-55 are hereby adopted on a permanent basis.

Stanley F. Mires,
Chief Counsel, Legislative.

[FR Doc. 93-18839 Filed 8-5-93; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Parts 21 and 76**

[MM Docket No. 92-264, FCC 93-332]

Broadcast Services; Cable Television Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Report and Order segment of this Report and Order/ Further Notice of Proposed Rule Making adopts regulations interpreting and implementing the anti-trafficking and cross-ownership provisions of the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act). Specifically, this Report and Order finds that section 617 anti-trafficking restrictions apply only to assignment and transfers of control of cable systems, defines such transactions, and establishes certification requirements and procedures for resolutions of anti-trafficking disputes concerning certification, applicability, and exemptions. It also adopts a blanket anti-trafficking waiver for small cable systems. This Report and Order establishes a standardized transfer approval form for use in requesting transfers of cable systems held for three years or more, and procedures for approval of such requests by local franchising authorities. Finally, this decision amends the Commission's rules to implement the cable/Multichannel Multipoint Distribution Service (MMDS), and the cable/satellite master antenna television service (SMATV) cross-ownership restrictions mandated by the 1992 Cable Act. These actions are taken in order to comply with the mandate of the 1992 Cable Act. The Further Notice of proposed Rule Making segment of this decision may be found elsewhere in this Federal Register.

EFFECTIVE DATE: This action is effective September 7, 1993, except for 47 CFR 76.502(i), which becomes effective November 4, 1993.

FOR FURTHER INFORMATION CONTACT: Jacqueline Chorney, Mass Media Bureau (202) 632-6990.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Report and Order segment of the Commission's Report and Order and Further Notice of Proposed Rule Making in MM Docket No. 92-264, FCC 93-332, adopted June 24, 1993, and released July 23, 1993. The complete text of this Report and Order and Further Notice of Proposed

Rule Making is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Synopsis of the Report and Order

1. Through this decision, the Commission adopts regulations interpreting and implementing the anti-trafficking and cross-ownership provisions of the 1992 Cable Act. The Notice of Proposed Rule Making and Notice of Inquiry (Notice) initiating this proceeding was published at 58 FR 3523, January 11, 1993.

2. Section 13 of the 1992 Cable Act mandates a cable anti-trafficking rule, which, with certain exceptions, prohibits cable operators from selling or otherwise transferring ownership in a cable system within three years following the acquisition or initial construction of the system by the operator. Section 11(a) of the 1992 Cable Act modifies section 613(a) of the Communications Act to prohibit the common ownership of a cable system and an MMDS license, or a cable system and an SMATV, separate and apart from any franchised cable service, within any portion of the franchise area served by that cable operator's system. The anti-trafficking and cross-ownership provisions of the 1992 Cable Act contain no specific effective date and thus, pursuant to section 28 of the 1992 Cable Act, became effective on December 4, 1992.

3. Briefly, this Report and Order: (1) Concludes that the section 617 anti-trafficking restriction applies only to assignments and transfers of control of cable systems; (2) finds that such transactions will be defined generally, by reference to the Commission's broadcast assignment and transfer of control standards used to implement section 310(d) the Communications Act; (3) clarifies that the Commission will rely on local franchise authorities to monitor and exercise primary enforcement responsibility under the anti-trafficking rule; (4) requires that cable operators seeking to assign or transfer control of a cable system must certify compliance with the anti-trafficking rule to the local franchise authority at the time local transfer approval is sought; (5) finds that disputes regarding the validity of such anti-trafficking certifications, the applicability of the anti-trafficking rule to a particular transaction, or eligibility

for one of the rule's exemptions will be handled by the Commission pursuant to the § 76.7 special relief procedures; (6) determines that the statute provides the Commission with authority to waive the three-year holding period in the public interest and directs the Commission to grant such waivers in cases of default, foreclosure and financial distress; (7) adopts a blanket anti-trafficking waiver for small systems, serving 1000 or fewer subscribers; (8) establishes a standardized transfer approval form for use in requesting transfers of cable systems owned for three years or more, and procedures for approval of such requests by local franchising authorities, and (9) amends the Commission's rules to implement the cable/MMDS, and the cable/SMATV cross-ownership restrictions mandated by the 1992 Cable Act.

I. Anti-Trafficking Restriction

4. As indicated above, a new section 617 of the Communications Act provides, with certain exceptions, that "no cable operator may sell or otherwise transfer ownership in a cable system within a 36-month period following either the acquisition or initial construction of such system by such operator." Where a transaction involving a multiple system transfer provides for the subsequent transfer of one or more such acquired systems to a third party, the subsequent transfer will be considered part of the original transaction for purposes of determining compliance with the three-year holding period.

5. Section 617(c) of the Communications Act creates several exceptions under the anti-trafficking rule, including: (1) Transfers which are not subject to Federal income tax liability; (2) sales required by operation of law or any act of any Federal agency, any State or political subdivision thereof, or any franchising authority; and (3) any sale, assignment or transfer to one or more purchasers, assignees or transferees controlled by, controlling, or under common control with the seller, assignor or transferor. Moreover, the Commission is given broad authority to grant waivers under the anti-trafficking rule, consistent with the public interest. However, where local transfer approval is required, the Commission may not waive the three-year holding requirement unless the franchise authority has approved such transfer. Section 617(d) directs the Commission to grant anti-trafficking waivers to permit appropriate transfers in cases of default, foreclosure, or other financial distress.

Transfer of Ownership

6. It is not clear from the statutory language whether the anti-trafficking provision applies to all transfers of ownership in a cable system which effect changes in the identity of the cable operator or whether the rule applies to transfers of ownership of a cable system by a cable operator, so that only transfers of ownership which constitute transfers of control of a cable system would be subject to the rule. Given the uncertainty regarding the intended application of the anti-trafficking rule, the Commission seeks to adopt an ownership standard that will accomplish the House Report's stated objective of preventing profiteering transactions and other transfers that may affect cable rates or service, without inhibiting investment in the cable industry or disrupting legitimate cable transactions.

7. The Commission believes that the anti-trafficking provision of the 1992 Cable Act was aimed at deterring the acquisition of cable systems by individuals interested only in speculating or exploiting ownership in cable systems for short term gain through quick resale, and was not meant to prohibit all transactions in which a cable system is sold at a profit. Consequently, the Commission determines that the anti-trafficking rule will apply only to transfers of control of cable systems. The Commission further concludes that its current broadcast assignment and transfer or control standards developed to implement section 310(d) of the Communications Act are appropriate to accomplish these objectives and so will be effective in implementing the cable anti-trafficking restriction.

8. Involuntary or *pro forma* transfers of control are exempt from the cable anti-trafficking rule under the statutory exceptions provided in section 617(c) of the Communications Act. Transfers of purely management interests will also be exempt from the cable anti-trafficking rule as the statutory language addresses only transfers of "ownership" interests in a cable system. Consequently, the Commission will apply the three-year holding period only to assignments and transfers involving substantial changes in ownership that constitute transfers of control. The procedures that currently govern the need for Commission approval in connection with assignments and transfers of control of CARS licenses can be used as reference for determining when the anti-trafficking rule will be applicable to a particular transfer. Thus, if a transfer of ownership in a cable system does not

result in a change in the identity of the franchisee, or in the holder of a controlling interest in the cable operator, the transfer will not be subject to the three-year holding period. For this purpose, an assignment occurs when a franchise is transferred from one entity to another. A transfer of control occurs when the franchisee remains the same, but the owner or holder of a controlling interest in the franchise changes. Assignments are generally associated with asset sales, and transfers of control are generally associated with stock sales. There are no significant differences between assignments and transfers of control for purposes of the Commission's rules.

9. The Commission briefly describes how it determines the types of transfers of ownership interests that constitute transfers of control requiring Commission approval under the broadcast rules. These same issues and determinations will apply to determinations of transfers of control of cable systems subject to the anti-trafficking rule. Transfers of control are easily identifiable in the vast majority of cases. Typically, the buyer will acquire *de jure* control or "legal control," by acquiring a majority (51% or more) of the licensee's voting stock, or partnership interests, or effect a change in the general partner. Such transfers would be considered transfers of control under our broadcast rules and thus, in the cable context would be subject to the anti-trafficking rule, provided they are substantial and voluntary and do not qualify for any of the statutory exceptions.

10. The more difficult questions regarding determinations of transfers of control involve transfers of *de facto* or "actual control." *De facto* control exists when a holder of a minority interest in a corporation is in actual control. Thus, some transfers of a minority interest in a cable system may constitute a transfer of control subject to the anti-trafficking rule. In the broadcast context, we have said that determinations of *de facto* control are governed by the demonstration of power to dominate management of corporate affairs. In this context the Commission has defined transfers of control in broad terms as "any act which vests in a new entity or individual the right to determine the manner or means of operating the license and determining the policy that licensee will pursue." This definition encompasses every form of control, actual or legal, direct or indirect, negative or positive.

11. Since the size of a person's equity ownership interest is relevant but not determinative to issues of control, the

Commission ascertains issues of *de facto* control on a case-by-case basis by looking at all relevant factors. Commission decisions have generally focused on the ability of a person or entity to control a licensee's finances, personnel practices, and programming decisions. Transfers of *de facto* control have been established where non-controlling stockholders exercise substantial management or financial control over a licensee. The Commission notes, however, that sales of minority interests in corporate licensees occur routinely, particularly in publicly traded companies. Such sales, unless they result in the acquisition or loss of control, do not require Commission approval.

12. As indicated above, in all but a few cases transfers of control will be clearly established by transfers of a majority or controlling ownership interest. Where transfers of ownership do not affect the entity holding a controlling interest in the franchisee, the three-year holding period is inapplicable. In unusual cases, where doubt exists about the applicability of the anti-trafficking rule, cable operators seeking to transfer an ownership interest in a cable system should consult with their local franchise authority. Reference should also be made to whether or not the cable operator is required to file an application for Commission approval to transfer a CARS license in connection with such transfer. Where Commission approval is required to transfer a CARS license, the transfer will also be subject to the three-year holding requirement. If franchise authorities and cable operators are unable to determine the applicability of the anti-trafficking rule to a particular transfer, either party may request a declaratory ruling from the Commission.

Procedures for Monitoring Compliance

13. The Report and Order concludes that local authorities are best able to monitor compliance with the anti-trafficking rule, as local authorities are knowledgeable about individual cable operators and franchise agreements and so are better positioned than the Commission to evaluate the effects of a proposed transfer on cable rates and service. Moreover, local anti-trafficking enforcement should not delay or add significantly to the administrative burden associated with most cable system transfers. Thus, cable operators seeking to assign or transfer ownership in a cable system must certify to the local franchise authority that the subject transfer complies with the anti-trafficking rule, that the transferor is seeking or has obtained a waiver from

the Commission, or that the transfer is otherwise exempt from the anti-trafficking rule. Such certification must be submitted to the local franchise authority at the time a cable operator submits a request for transfer approval.

14. If local transfer approval is not otherwise required by the franchise agreement, the anti-trafficking certification must be submitted to the local franchise authority no later than 30 days in advance of the closing date of the proposed transaction. All such certifications must contain a complete description of the transaction and the nature of the interest being transferred, the date on which such interest was acquired, and the effective date of the proposed transfer. Certifications claiming exemption from the anti-trafficking rule should also describe the nature of the transaction and identify the applicable exemption accompanied by a statement of the facts giving rise to the claimed exemption. Receipt by the local franchise authority of the appropriate certification will create a presumption of compliance with the anti-trafficking provision. Franchise authorities may request additional information reasonably necessary to determine the validity of a certification in cases where the franchise authority has reason to doubt the accuracy of a certification.

15. Franchise authorities questioning the accuracy of an anti-trafficking certification must notify the cable operator within 30 days of the filing of such certification, or such certification shall be deemed accepted. The 30-day review period will not be tolled by requests for additional information by the franchise authority, unless the cable operator fails to provide complete and accurate responses to such requests within 10 days of the date of such request. The 30-day limitation on franchise authority consideration of an anti-trafficking certification in no way affects the time allowed for franchise authority consideration of the transfer request itself.

16. For systems held for three years or more the anti-trafficking certification is incorporated into the FCC standardized transfer approval Form discussed below. For such systems, the 30-day period for consideration of the anti-trafficking certification will in no way affect the running of the 120-day statutory period for consideration of such transfer requests. Local decisions regarding the accuracy of a certification, eligibility for one of the exemptions, and questions regarding whether a transaction is subject to the holding period are appealable to the FCC pursuant to the special relief procedures set forth in

§ 76.7 of the Commission's rules. The Report and Order further concludes that Commission resolution of anti-trafficking disputes is necessary to ensure prompt and consistent determinations regarding the application of the three-year holding period to a particular transaction.

17. Local franchise authorities shall notify the Commission if the facts ultimately reveal a willful violation of the anti-trafficking rule. The Commission will then determine the application of appropriate sanctions, according to the procedures set forth in § 76.9 of Commission rules. Determinations by the Commission regarding appropriate remedies will not limit, in any respect, the remedies available to local franchise authorities under the terms of the franchise agreement or local law.

Calculation of Three-Year Holding Period

18. The Commission ascertains that for initially constructed systems, the holding period will be measured from the date on which service is activated to the system's first subscriber. For acquired systems, the holding period will commence on the effective date of the closing of the transaction in which the system was acquired. In the case of sales in stages or installment transactions, the holding period will begin on the effective date of the transaction which results in the transferee or assignee acquiring a control of the cable system. The three-year holding period will be measured from the date of acquisition or initial construction through the proposed effective date of the closing of the transaction transferring ownership of the cable system. While a transfer or sale agreement may be executed prior to the completion of the three-year holding period, consummation of the transfer may not take place until after the expiration of the holding period.

MSO Transfers

19. The Commission does not believe that Congress meant for the anti-trafficking rule to impede MSO transactions. Because system operators frequently build out their systems into adjacent communities or acquire nearby cable systems, a separate holding period may not be appropriate for each such franchise. Common ownership of cable systems creates operating efficiencies and allows cable operators to expand cable service to previously unserved areas. Nonetheless, to preserve the objectives underlying the anti-trafficking rule, a substantial number of the MSO's subscribers must have been

served by cable systems owned by the MSO for at least three years.

20. In this regard, the Commission will entertain requests to waive the anti-trafficking restriction in cases involving MSO transfers. The Commission will look favorably upon such waiver applications where two-thirds or more of the MSO's subscribers are served by systems owned for three years or more. Where an MSO transfers several systems in a single transaction, the Commission will look favorably upon waiver requests if two-thirds of the subscribers of the systems being transferred are served by systems held for three years or more.

Subsequent Transfers Required by the Terms of the Sale

21. Section 617(b) of the Communications Act provides that in the case of multiple system transfers, "if the terms of the sale require the buyer subsequently to transfer ownership of one or more of the systems to one or more third parties, such transfers shall be considered part of the original transaction." The Commission believes that this provision does not require that a subsequent transfer be explicitly mentioned in the original transfer or sale agreement. Accordingly, the Commission interprets the "terms of the sale" requirement to include all agreements in connection with the original sale or transfer including the sale or transfer agreement, letters of intent, financing agreements, security agreements or other contemporaneous arrangements or agreements in connection with the original transfer.

22. A request for local transfer approval for such subsequent transfer must be filed within 90 days of the effective date of the closing of the original transaction. In addition, the effective date of the closing of the subsequent transaction must be no more than 90 days following the grant of transfer approval by the local franchise authority. If local transfer approval is not required pursuant to the terms of the franchise, then we require that the subsequent transfer be completed within 180 days from the closing of the original transaction. Under this provision, a subsequent transfer that is considered part of the original transaction will not require application of a separate three-year holding requirement.

Exceptions

23. The 1992 Cable Act provides for three exceptions to the anti-trafficking rule contained in section 617(c). First, section 617(c)(1) exempts from the three-year holding period all transfers of

ownership in a cable system which are not subject to Federal income tax liability. The Commission determines that Congress sought to exempt all transactions which qualify as "tax exempt" under the Federal Income Tax Code ("Code"). For this purpose, "tax exempt" transactions include all transactions in which there is no cognizable gain or loss under the Code. Certifications claiming an anti-trafficking exemption under any of the exemptions listed in section 617(c), accompanied by an explanation of the basis for the claimed exemption, shall be sufficient to establish a presumption of compliance. However, local authorities may request additional information reasonably necessary to establish eligibility under the claimed exemption.

24. The second exception sales required by operation of law, or by act of any Federal agency or any State or political subdivision thereof, or any franchising authority. The Commission finds that this provision exempts from the three-year holding period involuntary transfers required by any law, order, act or decree of any Federal, State or local authority, including franchise authorities, executors, receivers, guardians and trustees. The Commission further finds that such involuntary transfers to effect bankruptcy, divorce or probate proceedings would be encompassed in the statutory language and are therefore, appropriately exempted under this provision. In addition, transfers involving municipally-owned cable systems are exempt under this provision.

25. The third exception under the 1992 Cable Act exempts any sale, assignment or transfer to one or more purchasers, assignees or transferees controlled by, controlling, or under common control with the seller, assignor or transferor. The Commission concludes that this provision was intended to exempt the type or *pro forma* transfers defined in § 73.3540(f) of the Commission's Rules, which establishes "short form" approval for *pro forma* transfer only if such transfers do not result in any substantial change in ownership or control between affiliated entities. Furthermore, the legislative history of the 1992 Cable Act indicates that "common control" as used in section 617(c) was meant to include transfers between affiliated entities, regardless of whether such affiliation is by virtue of common "stock ownership, other equity or debt ownership, or management control." Thus, transfers between subsidiaries owned or controlled by the same parent

corporation are exempt from the anti-trafficking rule, as are transfers between limited partners and 50% joint venturers. In addition, debt for equity exchanges between affiliated entities, in connection with refinancings and reorganizations, will be exempt from the three-year holding requirement.

Waivers

26. Section 617(d) gives the Commission broad discretion to grant waivers in the public interest. However, the 1992 Cable Act prohibits the Commission from granting waivers unless local franchise authority approval has been obtained, if such approval is required. Except with respect to transfers of MSOs and small systems, the Commission declines to establish specific waiver criteria applicable to public interest waivers. Instead public interest waiver requests will be considered on a case-by-case basis. Waiver requests must be filed pursuant to the special relief procedures established in § 76.7 of the Commission's rules. Although in most cases local approval is required prior to the consummation of a transfer, the Commission may grant waivers in appropriate cases prior to the grant of such approval so long as the waiver is conditioned upon the grant of such local transfer approval. Commission waivers issued in advance of local transfer approval will not become effective unless such approval is ultimately obtained and will in no way affect the discretion of local franchise authorities to decide such transfer requests.

27. The 1992 Cable Act directs the Commission to grant waivers in cases of default, foreclosure and other financial distress. Such waiver requests should be filed pursuant to the special relief procedures established in § 76.7 of the Commission's rules. In cases of default, waiver applicants must establish an affirmative factual showing, supported by affidavits of a person or persons having personal knowledge that the cable operator is in default, other than a technical default, under the terms of a credit or loan agreement pursuant to which the cable operator is primarily liable. Waiver applicants should provide the Commission with copies of default notices or other documentation establishing the creditor's acknowledgment of such default. In cases of foreclosure, waiver applicants must establish an affirmative factual showing, supported by affidavits, that a foreclosure action has been initiated with respect to property affecting the ability of the cable operator to maintain cable service. Copies of foreclosure notices or other documentation

establishing that a foreclosure action has been initiated should be submitted as evidence of such foreclosure. A cable operator may establish an affirmative showing of financial distress by submitting evidence, supported by affidavits, of the existence of financial distress. Indicia of such financial distress may include, but shall not be limited to, evidence of a net operating loss or insufficient capital to maintain operations. Audited financial statements including statements of cash flow or balance sheets should also be submitted to establish such financial distress.

120-day Limitation on Franchise Authority Consideration or Transfer Requests

28. Under the 1992 Cable Act, franchise authorities must approve or deny transfer requests involving systems owned for three years or more within 120 days, or such requests shall be deemed granted. Thus, the Commission establishes a standardized transfer approval form setting forth the informational requirements which must be satisfied in order to commence the running of the 120-day period. The 120-day limitation and the Commission's informational requirements only apply to transfer of systems owned for three years or more, and only where local transfer approval is required under the franchise. The information solicited on the Commission's form is limited to the information necessary to establish the legal, technical and financial qualifications of the proposed transferee and any information required by the franchise or applicable local law. A copy of the FCC Cable Transfer Form is attached as Appendix B of the full text of this Report and Order/Further Notice of Proposed Rule Making.

29. Franchise authorities may request such additional information as is reasonably necessary to determine the qualifications of the proposed transferee. However, such requests for additional information will not toll or extend the 120-day period unless the cable operator and franchise authority otherwise agree. Cable operators must promptly respond to such requests by completely and accurately submitting all information reasonably requested by the franchise authority.

Blanket Waiver for Small System Operators

30. The Report and Order next adopts a blanket anti-trafficking waiver for small cable systems. Small systems are defined for this purpose as any cable system serving 1000 subscribers or less. The small system waiver is contingent upon, and in no way affects local

franchise authority consideration of such transfer requests, where such transfer approval is required. However, the Commission believes the small system waiver is appropriate for several reasons. First, it comports with the 1992 Cable Act's mandate that the Commission develop appropriate cable regulations which place minimal administrative burden on small systems. Also, to the extent that the anti-trafficking rule may inhibit further investment in the development of small systems serving sparsely populated rural areas, the blanket waiver satisfies Congress' expressed desire to encourage the provision of cable service to such unserved rural areas. Finally, the blanket waiver will eliminate a significant number of waiver requests, while affecting only a small percent (approximately 3.6%) of total cable subscribers. However, if the Commission receives complaints with respect to trafficking abuses by small system operators, the small system waiver may be revoked in individual cases.

II. Cross-Ownership Restrictions

31. The 1992 Cable Act amends section 613(a) of the Communications Act, to add a cable/MMDS and a cable/SMATV cross-ownership restriction. The cross-ownership provision addresses Congress' concern that common ownership of different means of video distribution may reduce competition and limit the diversity of voices available to the public. Section 613 of the 1992 Cable Act also authorizes the Commission to waive the statutory cross-ownership requirements to the extent necessary to "ensure all significant portions of a franchise area are able to obtain video programming." Section 613 further directs the Commission to waive all cable/MMDS and cable/SMATV cross-ownership interests existing as of the effective date of the 1992 Cable Act, December 4, 1992.

32. When the Commission adopted the existing cable/MMDS cross-ownership rule, it specifically grandfathered all cable/MMDS cross-ownership interests that existed as of February 8, 1990, and thus no additional cable/MMDS combinations shall be waived pursuant to the 1992 Cable Act. By contrast, all cable/SMATV cross-ownership interests existing as of December 4, 1992, shall be waived under the 1992 Cable Act.

Cable/MMDS Cross-Ownership Restriction

33. As stated above, section 613(a)(2) of the Communications Act prohibits a

cable operator from holding an MMDS license in any portion of the franchise area served by that cable operator's cable system. The Commission is authorized, however, to waive the cross-ownership prohibition to ensure that all significant portions of the franchise area are able to obtain video programming. The Report and Order concludes that the cable/MMDS restriction contained in § 21.912 of the Commission's rules (47 CFR 21.912) with certain additions and modifications, effectively implements the statutory cable/MMDS provision.

34. In adopting regulations to implement the statutory cable/MMDS cross-ownership restriction the Commission also adopts an attribution standard that is consistent with the standards adopted by the Commission in the video dialtone context. (See Second Report, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking in CC Docket No. 87-266, 57 FR 41106 (September 9, 1992.) Thus, in assessing cross-ownership, a cable operator will be considered to have an attributable interest in an MMDS licensee if he or she holds five percent or more of the stock of such licensee, regardless of whether such stock is voting or non-voting. The Commission does not adopt a single majority shareholder exception, and all officer and director positions and general partnership interests will be attributable, as will limited partnership interests of five percent or greater regardless of insulation. Finally, the Commission retains the § 21.912(b) prohibition against cable operators leasing MMDS capacity where there is system overlap. Nevertheless, consistent with the statutory cross-ownership restriction, § 21.912(b) of the Commission's rules is modified to apply only where the MMDS protected service area and the cable operator's actual service area overlap.

35. Overbuild Exception. Section 21.912 of the Commission rules contains an overbuild exception, which provides that the cable/MMDS cross-ownership provision is inapplicable if the cable operator is not the sole provider of cable service in the franchise area. No similar statutory exception was created under section 613 of the 1992 Cable Act. Since the § 21.912 overbuild exception appears to conflict with the statutory cable/MMDS cross-ownership ban, and Congress did not specifically provide for such an exception, this exception is eliminated. The Commission notes however, that nothing in our interpretation of section 613 would prevent an MMDS licensee from obtaining a cable franchise which

overlapped with the licensee's protected services area, provided there was no overlap between the licensee's MMDS protected service and the cable systems' service area.

36. Rural Exception. Section 21.912(d)(1) of the Commission's rules establishes a limited rural exception allowing cable operators to obtain an MMDS license to provide service to otherwise unserved rural communities. No similar exception is established under the 1992 Cable Act. Significantly the Commission interprets section 613(a) such that cable/MMDS cross-ownership is permitted in the unserved portions of the franchise area, provided there is no overlap with the MMDS protected service area. Although section 613 allows increased cross-ownership in the unserved portions of the franchise area, several commenters argue that it is essential for the Commission to retain the rural exception in implementing the statutory cross-ownership restriction. Because the Commission is authorized under the 1992 Cable Act to waive the statutory cross-ownership restriction to the extent necessary to ensure all significant portions of a franchise area are able to obtain video programming, such cases will be handled by waiver requests filed pursuant to the special relief procedures set forth in § 76.7.

37. Therefore, the Commission will consider such waivers filed by cable operators subject to the same procedural safeguards established under § 21.912(d)(1) of the existing rules. Cable operators seeking to provide service to rural areas will be granted a waiver of the cross ownership restrictions only if no other MMDS operator desires to provide such service. Cable operators seeking such a waiver, should submit a waiver request and file an application for an MMDS license. Applications for MMDS licenses filed by cable operators will be placed on public notice. Only if no wireless cable applicant responds to the notice with a timely filed application, will the Commission grant a waiver awarding a cable operator an MMDS license.

38. Local Programming Exception. Section 21.912(e) of the Commission's rules contains an exception to the cross-ownership restriction, which allows cable operators to use one MMDS channel in a protected service area to provide locally-produced programming to cable headends. Several commenters argue that the Commission should retain the local programming exception in implementing the statutory cross-ownership restriction. The Report and Order concludes that the local programming exception is consistent with the statutory cross-ownership

restriction and is therefore maintained as it applies to the leasing of MMDS channels.

Cable/SMATV Cross-Ownership Restriction

39. As discussed above, the 1992 Cable Act also mandates a cable/SMATV cross-ownership restriction. The Report and Order determines that while the § 21.912 cable/MMDS regulations contained in the Commission's rules address the same concerns as the cable/SMATV cross-ownership restriction. As detailed in the full text of the Commission's decision, our rules implementing the statutory cable/SMATV cross-ownership restriction prohibit a cable operator from acquiring an attributable ownership interest in a separate SMATV operator providing service within the cable operator's actual service area. Separate SMATV operators are defined as providers of SMATV service within the cable operator's service area, which were not owned, operated or controlled by the cable operator as of the effective date of the 1992 Cable Act. In implementing the cable/SMATV cross-ownership restriction, the Commission employs the same attribution criteria adopted in connection with cable/MMDS cross-ownership restriction above. The attribution rules in this context generally attribute all stock interests of five percent or more, whether such stock is voting or nonvoting. In addition, all officer and director positions and general partnership interests shall be attributable, as will limited partnership interests of five percent or greater, regardless of insulation.

40. Finally, as described above, the 1992 Cable Act only prevents cable/SMATV cross-ownership in those areas of the cable operator's franchise that are served by the cable operator's cable system. Thus, if a cable operator has not wired its entire franchise area, the cross-ownership ban does not prevent the cable operator from building or acquiring a stand-alone SMATV system. However, the Commission concludes that such cable-owned SMATV systems must be operated in accordance with the terms of the cable franchise agreement. In order to protect the competitive opportunities of independent SMATV operators, it is essential that the Commission limit the ability of cable operators to use SMATV technology in their franchise area to provide programming services other than the franchised cable service.

41. In addition, consistent with congressional intent, the Commission's regulations do not prevent the common

ownership of an SMATV system that itself qualifies as a cable system under section 602(7)(B) of the Communications Act, and a separate stand-alone SMATV system that is within the same service area. The Commission also does not consider an SMATV system that qualifies as a cable system to be subject to the statutory cable/MMDS cross-ownership restriction. Since Congress intended section 613 to encourage competition for traditional cable systems, it would be contrary to the statutory objective to prevent the common ownership of more than one SMATV system in a franchise area simply because one of the SMATV systems crosses a public right of way.

Enforcement

42. As indicated in the Notice, it is not necessary at this time to establish additional reporting requirements in connection with the MMDS or SMATV cross-ownership restrictions. The Commission's existing rules at 47 CFR 21.921(c) require applicants for MMDS licenses to show that no portion of the facility's protected service area will overlap with the cable franchise area of an affiliated cable operator. This rule is amended to require that applicants show that the protected service area will not overlap with any portion of the franchise area actually served by an affiliated cable operator's cable system. However, the Commission will not adopt specific reporting requirements at this time for cable/SMATV cross-ownership. Instead, the Commission will enforce these cross-ownership rules on a complaint basis. Complaints regarding cross-ownership violations should be filed with the Commission pursuant to the procedures set forth in § 76.9. of the rules.

Final Regulatory Flexibility Analysis

43. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that this decision will have an impact on small cable systems. As detailed in the full text of the Report and Order/Further Notice of Proposed Rule Making, the Commission has attempted, wherever possible within the statutory constraints, to interpret the language of the 1992 Cable Act and to fashion the implementing regulations to minimize the additional burden placed on small operators. For example, the Commission has provided a blanket waiver of the anti-trafficking rule for systems serving 1000 subscribers or less, as well as exceptions in cases of default, foreclosure and financial distress. The full text of the Commission's final regulatory flexibility analysis may be found in Appendix C of the Report and

Order/Further Notice of Proposed Rule Making.

Ordering Clauses

44. Accordingly, it is ordered, That pursuant to the authority contained sections 2(a), 4 (i), and (j) and 303 of the Communications Act of 1934, as amended, and the Cable Television Protection and Competition Act of 1992, Pub. L. No. 102-385, part 21 of the Commissions rules, 47 CFR part 21, and part 76 of the Commission's rules, 47 CFR part 76, are amended as set forth in below, and will become effective 30 days after their publication in the *Federal Register*, (except 47 CFR 76.502 (i) which will become effective 90 days after publication in the *Federal Register*).

List of Subjects

47 CFR Part 21

Cable television/multipoint distribution service cross ownership, Television.

47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,
Acting Secretary.

Amendatory Text

Parts 21 and 76 of title 47 of the Code of Federal Regulations are amended to read as follows:

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

1. The authority citation for part 21 continues to read as follows:

Authority: Secs. 1, 2, 4, 201-205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 410, 602; 48 Stat. as amended, 1064, 1066, 1070-1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201-205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552.

2. Section 21.912 is amended by revising paragraphs (a), (b) and (c), and the Notes following paragraph (c), by removing paragraph (d), redesignating paragraphs (e) through (g) as (d) through (f), and by revising the first sentence of newly designated paragraph (f) to read as follows:

§21.912 Cable television company eligibility requirements.

(a) Notwithstanding the provisions of § 21.900 of this part, initial or modified authorizations for stations in the 2150-2162 MHz and 2596-2680 MHz frequency bands may not be granted to a cable operator if a portion of the Multipoint Distribution Service (MDS) station's protected services area

is within the portion of the franchise area actually served by the cable operator's cable system. No cable operator may acquire such authorization either directly, or indirectly through an affiliate owned, operated, or controlled by or under common control with a cable operator.

(b) No licensee of a station in this service may lease transmission time or capacity to a cable operator either directly, or indirectly through an affiliate owned, operated, controlled by, or under common control with a cable operator, if a portion of the Multipoint Distribution Service (MDS) station's protected services area is within the portion of the franchise area actually served by the cable operator's cable system.

(c) Applications for new stations, station modifications, assignments or transfers of control by cable operators of stations in the 2150-2162 MHz and 2596-2680 MHz frequency bands shall include a showing that no portion of the protected service area of the MDS station is within the portion of the franchise area actually served by the cable operator's cable system, or of any entity indirectly affiliated, owned, operated, controlled by, or under common control with the cable operator.

Note 1: (A) In applying the provisions of this section an attributable ownership interest shall be defined by reference to the definitions contained in the notes to § 76.501, provided however, that:

(i) The single majority shareholder provisions of Note 2(b) to § 76.501 and the limited partner insulation provisions of Note 2(g) to § 76.501 shall not apply; and

(ii) The provisions of Note 2(a) to § 76.501 regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

(B) The term "area served by a cable system" means any area actually passed by the cable operator's cable system and which can be connected for a standard connection fee.

(C) As used in this section "cable operator" shall have the same definition as in § 76.5.

Note 2: The Commission will entertain requests to waive the restrictions in paragraph (a) of this section where necessary to ensure that all significant portions of the franchise area are able to obtain multichannel video service. Such waiver requests should be filed in accordance with special relief procedures set forth in § 76.7

* * * * *

(f) Interested persons may file a petition to deny an application filed pursuant to paragraph (d) of this section within 30 days after the Commission gives public notice that the application or petition has been filed. * * *

* * * * *

PART 76—CABLE TELEVISION SERVICE

3. The authority citation for part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 542, 543, 552, as amended 106 Stat. 1460.

4. The heading of subpart J is revised to read as follows:

Subpart J—Ownership of Cable Systems

5. Section 76.501 is amended by adding paragraphs (d), and (e) to read as follows:

§ 76.501 Cross-ownership.

* * * * *

(d) No cable operator shall offer satellite master antenna television service ("SMATV") separate and apart from any franchised cable service in any portion of the franchise area served by that cable operator's cable system, either directly, or indirectly through an affiliate owned, operated, controlled, or under common control with the cable system operator.

(e)(1) A cable operator may offer SMATV service within the portion of the franchise area served by the cable operator's cable system only if the cable operator's SMATV system was owned, operated, controlled by or under common control with the cable operator as of December 4, 1992, or was constructed by the cable operator, and provided that such SMATV service is offered in accordance with the terms and conditions of the cable franchise agreement.

(2) A cable operator may either directly, or indirectly through an affiliate owned, operated, controlled by, or under common control with the cable operator offer SMATV service in the unserved portions of the franchise area, regardless of whether the cable operator acquires or constructs the SMATV system, provided such SMATV service is offered in accordance with the terms and conditions of the cable franchise agreement.

(i) In applying the provisions of paragraphs (d) and (e) an attributable ownership interest shall be defined by reference to the definitions contained in the notes to § 76.501, provided however, that:

(A) The single majority shareholder provisions of Note 2(b) and the limited partner insulation provisions of Note 2(g) shall not apply; and

(B) The provisions of Note 2(a) regarding five (5) percent interests shall

include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

(ii) The term *area served by a cable system* shall mean any area actually passed by a cable system and which can be connected for a standard connection fee.

(iii) The Commission will entertain requests to waive the restrictions in paragraphs (d) and (e) of this section where necessary to ensure that all significant portions of the franchise area are able to obtain multichannel video service. Such waiver requests should be filed in accordance with the special relief procedures set forth in § 76.7.

6. Section 76.502 is added to subpart J to read as follows:

§ 76.502 Three-year holding requirement.

(a) Except as otherwise provided in this section no cable operator may sell, assign, or otherwise transfer controlling ownership of a cable system within a three-year period following either the acquisition or initial construction of such cable system by such cable operator.

(b) A transfer of ownership in a cable system that does not affect the identity of the cable franchisee or the holder of a controlling interest in the cable system shall not be subject to the three-year holding requirement.

(c) For initially constructed cable systems the three-year holding period shall be measured from the date on which service is activated to the system's first subscriber. The holding period for acquired systems shall be measured from the effective date of the closing of the transaction in which control of the cable system was acquired through the proposed effective date of the closing of the transaction assigning or transferring control of such cable system.

(d) Cable operators seeking to assign or transfer control of a cable system are required to certify to the local franchise authority that the proposed assignment or transfer of control of such cable system will not violate the three-year holding requirement. Such certification shall be submitted to the franchise authority at the time a cable operator submits a request for transfer approval to the local franchise authority. If local transfer approval is not required by the terms of the franchise agreement, certification of compliance with the three-year holding requirement must be submitted to the franchise authority no later than 30 days in advance of the proposed closing date of the transfer or assignment.

(1) Receipt by the local franchise authority of a certification containing a

description of the transaction and indicating that the cable system has been owned for three years, or that the transferor has obtained or is seeking a waiver from the Commission, or that the transaction is otherwise exempt under this section, shall create a presumption that the proposed assignment or transfer of the cable system will comply with the three-year holding requirement.

(2) Franchise authorities questioning the accuracy of a certification filed pursuant to this section must notify the cable operator within thirty (30) days of the filing of such certification, or such certification shall be deemed accepted, unless the cable operator has failed to provide any additional information reasonably requested by the franchise authority within 10 days of such request.

(e) If an assignment or transfer of control involves multiple systems and the terms of the transaction require the buyer to subsequently transfer or assign one or more such systems to one or more third parties, such subsequent transfers shall be considered part of the original transaction for purposes of measuring the three-year holding period.

(1) In order to qualify as part of the original transaction, a request for approval of the subsequent transfer must be filed with the local franchise authority within 90 days of the closing date of the original transfer and the date of the closing of the subsequent transaction must be no later than 90 days following the grant of transfer approval by the local franchise authority.

(2) If local transfer approval is not required by the terms of the cable franchise agreement, then a subsequent transfer must be completed within 180 days of the date of the closing of the original transfer in order to qualify as part of the original transaction.

(f) Paragraph (a) of this section shall not apply to:

(1) Any assignment or transfer of control of a cable system which is not subject to Federal income tax liability under the Federal Income Tax Code;

(2) Any assignment or transfer of control of a cable system required by operation of law or by any act, order or decree of any Federal agency, any State or political subdivision thereof or any franchising authority;

(3) Any assignment or transfer of control to one or more purchasers, assignees or transferees controlled by, controlling, or under common control with, the seller, assignor or transferor.

(g) The Commission will consider requests for waivers from the three-year

holding requirement, consistent with the public interest, and will grant waivers in appropriate cases of default, foreclosure and financial distress. Waiver requests under this section should be filed in accordance with the special relief procedures set forth in § 76.7. Commission waivers will not become effective, however, unless local franchise authority approval of a transfer is obtained if such approval is required by the terms of the franchise agreement.

(1) The Commission will look favorably upon waiver requests involving multiple system operators or transfers of multiple systems if at least two-thirds of the subscribers of the systems being transferred are served by systems owned by the cable operator for three-years or more.

(2) Conditioned upon receipt of local franchise authority transfer approval, where such approval is required by the terms of the franchise agreement or applicable state or local law, transfers of cable systems serving less than 1000 subscribers shall be subject to a blanket Commission waiver.

(h) Cable operators may seek Commission review of franchise authority decisions regarding the application of the three-year holding period to a particular transaction pursuant to the special relief procedures set forth in § 76.7.

(i) Cable system operators seeking to assign or transfer a cable system after three-years must submit a copy of FCC (Form 394) to the local franchise authority if franchise authority approval of the transfer is required by the terms of the franchise agreement.

(1) A franchise authority shall have 120 days from the date of submission of a completed FCC (Form 345), together with all exhibits, and any additional information required by the terms of the franchise agreement, or applicable state or local law to act upon such transfer request.

(2) If the franchise authority fails to act upon such transfer request within 120 days, such request shall be deemed granted unless the franchise authority and the requesting party otherwise agree to an extension of time.

[FR Doc. 93-18652 Filed 8-5-93; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 93-64; RM-8195]

Radio Broadcasting Services; Corning, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 264C1 for Channel 264B at Corning, California, and modifies the license of Station KCEZ(FM) to specify operation on the higher powered channel, as requested by Phoenix Broadcasting, Inc. See 58 FR 16809, March 31, 1993. Coordinates for Channel 264C1 at Corning are 40-15-31 and 122-05-20. With this action, the proceeding is terminated.

EFFECTIVE DATE: September 13, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93-64, adopted July 14, 1993, and released August 2, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 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, Inc., (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 under California, is amended by removing Channel 264B and adding Channel 264C1 at Corning

Federal Communications Commission.

Michael C. Rugar,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-18787 Filed 8-5-93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 74

[MM Docket No. 88-140; FCC 93-338]

Radio Broadcast Service; FM Translator Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: Before the Commission are petitions for reconsideration of the

Report and Order adopted in this proceeding, which amended the rules governing the FM translator service. By this Memorandum Opinion and Order, the Commission affirms and further clarifies the FM translator rules, including the revised standards for ownership and financial support of translators; the definition of "major change" in translator coverage areas; maximum power output; and interference criteria for translators. The Commission also adopts minor amendments in the grandfathering criteria and the technical aspects of local program origination.

EFFECTIVE DATE: September 7, 1993.

FOR FURTHER INFORMATION CONTACT:

Alan Schneider, Mass Media Bureau, (202) 634-6307.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order in MM Docket No. 88-140 adopted June 28, 1993, and released July 28, 1993. The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Synopsis of Memorandum Opinion and Order

1. On November 8, 1990, the Commission adopted a Report and Order (Report), 55 FR 50690 (December 10, 1990), amending the rules governing the FM translator service. The Commission's action restructured the FM translator rules consistent with the intended purpose of providing supplementary service to areas in which direct reception of FM radio broadcast stations is unsatisfactory due to distance or intervening terrain barriers. Before the Commission are petitions for reconsideration filed by the National Association of Broadcasters (NAB), John S. La Tour (La Tour), the National Translator Association (NTA), Klimek Communications Corp. (Klimek), Ed Crook (Crook), and Doyle Brewer (Brewer).¹ By this Memorandum Opinion and Order, we affirm and further clarify the FM translator rules, including the revised standards for: Ownership and financial support of translators; the definition of "major

change" in translator coverage areas; maximum power output; and interference criteria for translators. We also adopt minor amendments in the grandfathering criteria and the technical aspects of local program origination.

2. In the Report, we tightened or clarified several rules after concluding that the proper role for FM translators remains as a secondary service supplementing the service of FM radio broadcast stations. We also modified several rules so that translators could better serve the public. The rule changes sought to ensure that the translator service does not adversely affect the operation of FM radio broadcast stations. First, the coverage contour of a translator providing fill-in service was defined to coincide with the coverage contour of the primary station for the respective station classes. With respect to service issues, we determined that an FM translator may not be licensed to a commercial FM broadcast station if the translator's coverage contour goes beyond the primary station's coverage contour. In "white area" situations, beyond the protected contour of any full-time aural service, we indicated that we would be favorably disposed toward requests for waivers of our rules to permit commercial primary station ownership. Similarly, we determined that commercial primary stations could financially support fill-in translators both before and after the translator commences operation. We also concluded that commercial FM broadcast stations may not provide financial support beyond technical assistance to "other area" FM translators; however, we indicated that we will favorably view waiver requests to allow financial support for translators in "white areas." Noncommercial educational FM (NCE-FM) translators are exempt from these ownership and financial support restrictions.

3. With respect to other service issues, we permitted all translators to use one or more announcements not to exceed a total of 30 seconds per hour in order to acknowledge and solicit funds for operating expenses. We allowed commercial fill-in translators to use any terrestrial means to obtain the primary station signals, with a favorable disposition toward waiver requests for similar permission entertained for "white area" translators. We clarified that licensees may operate multiple FM translators upon showing "need" as determined on technical grounds by the quality of signal received from the intended primary station or any operating translator. We also adopted procedures to resolve mutually exclusive applications. We defined a

"major change" for FM translators as any change in output frequency (output channel), or any change or increase (but not decrease) in geographic area that increases the 1 mV/m coverage area by more than 10 percent of the previously authorized 1 mV/m coverage contour. We continued to exempt FM translators from our multiple ownership rules, and also to prohibit AM-FM cross-service translating.

4. Regarding technical issues, we decided to allow all FM translators to operate on any of the 80 commercial channels with the 20 reserved noncommercial educational channels remaining available for NCE-FM translator use. We adopted a maximum ERP standard of 250 watts at low antenna heights (HAAT), and stated that additional antenna height must be traded for reduced power, implemented by new criteria that limit permissible coverage distance. We indicated that we would be favorably disposed toward waiving this rule to permit higher power (up to 250 watts ERP at any HAAT) if applicants demonstrate that the service to a greater distance reaches only a "white area." In order to apply the waiver standard to NCE-FM translators, we decided to construe any area that is not served by a full-service noncommercial educational radio station as a "white area." We clarified the standards for antennas and adopted our proposed prohibited overlap criteria for predicted interference to FM and TV Channel 6 stations. We concluded that existing stations must comply with the new service rules within three years of the effective date of these new rules, and stated that we would entertain waiver requests where service to the public would be unduly lost as a result of compliance. We also "grandfathered" existing translators that do not comply with the new technical rules unless interference problems occur or the licensee of a grandfathered translator seeks to modify its facilities.

5. In the Report, we found that any enhancements to FM service are most efficiently provided by full-service broadcast stations. The prior rules allowed certain uses by FM translators that contributed to the potential for abuse and to the possible detriment of the FM radio broadcast service. We conclude that the new ownership and financial support limitations adopted in the Report will best serve the public interest by promoting incentives for primary station development.

6. The FM translator service is designed to function on a secondary basis in order to supplement the service provided by FM radio broadcast stations. While we have defined

¹Dan Hendrix and FM Technology Associates, Inc. filed petitions for reconsideration after the 30-day statutory deadline. See 47 U.S.C. 405. 48 CFR 1.106(f). Therefore, the issues raised by these parties are not considered in this proceeding.

"adequately served" and "underserved" areas differently in other Commission regulatory contexts, our definition of "white areas" for the purposes of FM translators is more relevant to the FM translator service's role of filling gaps caused by distance and terrain barriers. The full-service broadcast station concept of an "underserved" area considers a greater number of stations because such stations are our preferred means of achieving broad distribution of radio service. Furthermore, the definition of "underserved" is one used to determine which of several competing proposals for stations would, on a comparative basis, better serve the public interest. Therefore, that definition has little direct relevance to the relationship between full-service and translator service. In addition, the number of entities necessary for establishing effective competition for cable services, is irrelevant to the standard applied in the aural medium. Therefore, we continue to believe that commercial primary stations should be able to own FM translators beyond the station's predicted 1 mV/m coverage contour only if the translator serves a "white area." Independent parties, of course, are permitted to establish FM translators to serve any area as desired.

Service Issues

7. The new ownership rules allow commercial FM broadcast stations to own a translator only when the translator's coverage area is entirely within the primary station's coverage contour. The rules do not allow ownership of "other area" FM translators by any entity "interested in or connected with" the licensee of a primary station. We stated that we would view favorably waiver requests to permit commercial primary station ownership of translators providing "other-area" coverage for "white areas."

8. We conclude that the record does not support that a "white-area" exception to our ownership rule would substantially improve public service in comparison to a waiver process. We find that the waiver process more appropriately addresses the unique needs of "white areas" by permitting the Commission to engage in thorough oversight of situations where primary stations continue to own "other area" FM translators. Therefore, where a licensee establishes that service is indeed unavailable in the absence of a translator, we will be favorably disposed toward requests for waivers of this rule to address these unique circumstances. We also wish to clarify that we will be especially reluctant to grant a request for authorization "other-area" translator

unless the party requesting the authorization states affirmatively that the translator is not sought as part of a reciprocal arrangement with another primary station, whereby the primary stations seek translator authorizations in order to rebroadcast each other's signals. Such arrangements would present substantial potential for abuse and would undermine our new service rules.

9. Under the new financial support rules, fill-in translators may be supported financially by the primary station before and after beginning operations. However, "other area" translators cannot receive support, either direct or indirect, from commercial primary stations or interested parties at any time except for technical assistance. The Commission will favorably consider waiver requests for commercial FM primary station support of other area translators serving "white areas."

10. We affirm our decision to prohibit a commercial primary station from providing direct or indirect financial support to any FM translators serving "other areas," both before and after they commence operation, except for technical assistance. Also, we will maintain a favorable disposition toward requests for waivers of this rule to permit a commercial primary station to support any translator providing service to "white areas." We continue to believe that the revised financial support rule is necessary to ensure that translators owned by a commercial station seeking to increase its coverage are used only to provide FM service to areas and populations that are unable to receive satisfactory FM signals due to distance or intervening terrain barriers.

11. In the Report, the Commission dismissed arguments favoring only limited constraints upon financial support for FM translators. As noted in the Report, we believed that an expanded translator service could provide disincentives for the establishment of boardcast stations, relative to translator facilities, since translators have no local service obligations and generally operate at significantly lower cost. Therefore, we affirm our prior determination that the new rules will help ensure that FM translators remain limited to a supplementary role so as not to discourage full-service radio broadcast station development of additional formats and service to the public.

12. We also reject the proposal for a \$200 per month limit on acceptable financial support combined with reporting requirements. This would create a substantial burden for both licensees and the Commission due to

the additional oversight and review necessitated by such filings. In response to the concern that listeners may not contribute funds despite benefiting from the translator's service, we emphasize that the new rules provide for waivers of the "grandfathering" period upon a showing by the licensee that the public would lose service as a result of compliance with the rules. Given that many of the potential abuses by translators would arguably occur by primary stations providing support in the form of "indirect services", we conclude that the public is better served by the limitations established in the new rules. In addition, we reiterate that communities seeking additional service and formats will have the opportunity to fund FM translator service under the new rule through their independent charitable support.

13. We stated in the Report that "technical assistance" by primary stations will be excepted from the indirect financial support proscription. We affirm this decision and clarify that "technical support" refers to actual services provided by the primary station's technical staff or compensation for the time and services provided by independent engineering personnel. Such support does not include the supply of equipment or direct funding for the translator's discretionary use. We also reiterate that technical assistance by the primary station should occur after the issuance of the translator's construction permit or license in order to meet expenses incurred by installing, repairing, or making adjustments to equipment. We continue to believe that these maintenance expenses may become prohibitive given the limited financial resources of many FM translators, and that limited technical assistance by the primary station will enable translators to continue to provide valuable service to the public.

14. The new fundraising rules permit FM translators to air one or more fundraising announcements or advertisements per hour totalling 30 seconds in length. We reaffirm the rule limiting on-air fundraising activities by FM translators to 30 seconds of announcements within an hour. We continue to believe that the 30-second period is an adequate opportunity for FM translators to acknowledge contributions as well as to solicit funds from their listeners as necessary. We also affirm our decision in the Report that the solicitations or announcements may be split during the hour. We continue to believe that it is unnecessarily restrictive to regulate how translators should allocate their 30

seconds of announcements within an hour.

15. We deny the request that announcements should be restricted in form to "enhanced underwriting" messages. In order to encourage donations from independent sources, translators must be able to provide some information about their contributors. We find it unnecessary to limit the content of these brief announcements. Also, while the new rules no longer require FM translator licensees to operate non-profit facilities, the record before us does not indicate that translators will be able to earn substantial profits. In addition, we find that the scenario under which a primary station's advertisers could be enticed to provide financial support to a translator in return for reduced advertising rates—would violate the "indirect support" prohibition.

16. In the Report, the Commission retained its limitation on local program origination to 30 seconds per hour for fundraising and acknowledgement of contributions. Emergency warnings of danger are limited in time and frequency to that necessary to protect life and property. Translators owned by parties other than the primary station must obtain written consent for the rebroadcast of the FM radio broadcast station signals.² We also retained the rule that prohibits the retransmission on translators of signals other than those emanating from FM full-service or translator stations.

17. We reaffirm the rules prohibiting program origination by all translators, commercial and NCE-FM, with the exception of acknowledgements or solicitations of financial support as well as emergency warnings of danger. In the Report, we emphasized that the proper role of FM translators is to provide secondary service to areas where direct reception of signals from FM Broadcast stations is unsatisfactory due to distance or intervening terrain obstructions. We remain committed to providing FM radio broadcast service in a manner that promotes program diversity while enhancing the incentives for efficient full-service broadcast station development. Therefore, we intend to maintain the existing programming authority distinctions between FM broadcast stations and translator services.

18. We note that the rules concerning the permissible sources of input channels for FM translators are not intended to restrict programming content. Rather, where there is sufficient community interest, the rules permit

translators to rebroadcast any programming broadcast by a primary FM station, thereby affording translators an opportunity to import programming formats otherwise unavailable. Thus, rebroadcasts of the aural portion of a TV or cable signal would be permitted if such a signal were first rebroadcast by a full-service FM station, but not solely by a translator. Once again, we believe that it is necessary to distinguish between the services provided by low cost translators and FM radio broadcast stations due to our preference to provide service through more efficient radio broadcast stations.

19. The Report provides that fill-in translators of commercial primary stations may now use any terrestrial delivery means to obtain the signal from the primary station. "Other-area" translators, however, may only use off-air delivery, although we indicated that we will favorably consider waiver requests to permit signal delivery by any terrestrial means for translators serving "white areas." We believe that any further extension of signal delivery alternatives for "other area" translators would be inconsistent with the secondary role of FM translators in the commercial context. The Report extended permission for fill-in translators to use alternative signal delivery on the grounds that other terrestrial means would conceivably be necessary to circumvent the terrain or other barriers that prevent otherwise expected over-the-air delivery of an FM signal to the translator. As for "other-area" translators, however, there is no similar expectation, especially at large distances, such as 70 to 80 miles from the station. We continue to believe that, to the extent that translator service is desirable beyond a station's predicted service contour, the over-the-air signal will generally be suitable for rebroadcast, although certain white-area situations may warrant a waiver to permit alternative signal delivery methods. Moreover, we believe that the signal delivery provisions in the Report will eliminate disincentives for service by full-service radio broadcast stations in instances where sufficient community interest exists for additional services, but where the existence of "other area" translators financed by primary stations would work to limit the economic viability of such stations. Furthermore, we do not believe that allowing alternative signal delivery for "other area" NCE translators owned by their primary stations requires that we do the same for commercial translators. We have long recognized that NCE-FM and commercial licensees participate in

fundamentally different broadcast services. Therefore, we continue to believe that we are not required to apply the same standards for signal delivery to NCE-FM and commercial licensees.

20. A "major change" is defined in the Report as occurring due to any change in output frequency (output channel), or any change or increase (but not decrease) in 1 MV/m coverage area of more than 10 percent of the previously authorized coverage contour. We continue to believe that our definition for "major change" appropriately covers those changes in technical parameters and coverage areas that are significant. The standard also allows licensees sufficient flexibility to make minor technical and facility changes that cause negligible changes in signal patterns. In addition, we believe that changes in coverage areas in excess of 10% could have significant public interest implications. For example, FM translators have an obligation to protect audiences beyond the defined service areas of full service FM stations, and such information is not available in an FM translator application itself. The greater the change in the translator's coverage area, the higher the risk that the audience of a full service station will be affected. Accordingly, changes in coverage area in excess of 10% are appropriately considered "major changes."

21. We also reject the request to include a change in input channel or primary station as a major change criterion. A change in the input channel does not alter a translator's technical parameters because the coverage area, output channel, and potential for creating interference remain identical. While a change in the output frequency is a significant technical change, the input channel is essentially a programming content decision that is not significant with respect to the public interest. Furthermore, to the extent that a translator changes its primary station in a manner that does not clearly comply with our rules, we note that the matter is more appropriately a question for our enforcement function rather than the application process.

Technical Issues

22. As decided in the Report, an FM translator's maximum power output will be limited to 250 watts ERP. In addition, the coverage contour of fill-in translators may not go beyond the coverage contour of the primary station. "Other-area" translators will be restricted to power and height combinations that yield a distance to the translator's coverage contour that does not exceed 7 km in Zone I-A and east

² 47 CFR 74.1284(b), 47 U.S.C. 325(a).

of the Mississippi River, and 13 km elsewhere. The Commission will be favorably disposed toward waiving this rule to permit higher power up to 250 watts at any antenna height if the service to a greater distance reaches only a "white area."³

23. The Commission's new maximum power limits recognized that translators must deliver broadcast signals to small and distant service areas with the minimum necessary power. However, we observed that many translators were already constructed more than 16 km from the area of service and utilized power output in excess of 250 watts. As a result, the 250 watt maximum ERP standard and the grandfathering provisions will promote the fundamental purpose of FM translators while also accommodating most existing authorized facilities. Although we originally proposed a 1 kW ERP limit with a distance to the coverage contour not to exceed 16 km, we observed that most licensees are already in compliance with the lower adopted power standard as well as the 7 km and 13 km distances to coverage contours. For these reasons, the Commission affirms its decision not to expand the maximum power limits so as not to contradict the intended purpose of the FM translator service. We continue to believe that service similar to large or high-power translator stations should be provided by full-service stations. Nonetheless, we emphasize that existing facilities that are not in compliance with the new maximum power standards are grandfathered until actual interference occurs or licensees propose to make changes in their facilities.

24. In the Report, we adopted a contour overlap method for predicting interference with translator applicants permitted to show that interference will in fact not occur. We will grant an application if an objecting party provides convincing evidence that the proposed translator station would be likely to interfere with the reception of a regularly received, off-the-air existing service, even if there is no predicted overlap. This revised method for predicting interference incorporates greater processing flexibility through population and terrain exceptions. Complaints of actual interference must be resolved by the FM translator.

³ For NCE-FM translator applications, white areas are defined as "any area that is not served by a full-service public radio station." See 5 FCC Rcd 7227 (1990). By using the term "public radio," we did not intend to exclude from the relevant stations those noncommercial stations not affiliated with the National Public Radio or American Public Radio networks.

25. We reject the suggestion to require applicants to include exhibits demonstrating compliance with our interference limits because it would create an unnecessary burden on applicants. We find that the proposal is unnecessary because we will continue to perform interference studies to determine whether applicants comply with the new rules. We also recognize that due to their limited financial and technical means, many FM translator licensees may require the flexibility of determining compliance with the interference rules without detailed analyses as part of their applications. Due to the secondary nature of the service, we reiterate that FM translator licensees must adjust their operations following instances of actual interference.

Other Matters

26. Licensees authorized prior to June 1, 1991⁴ may continue to operate without conforming with the new technical rules, provided that no actual interference occurs and the translator does not propose to modify its facilities. If actual interference develops or the translator seeks to modify its facilities, translators must satisfy the new technical standards concerning interference protection for FM broadcast and TV channel 6 stations, as well as the new power limitations. With respect to the service rules, compliance by existing FM translators will be required in three years, and requests for waivers will be considered if licensees show that the public would unduly lose service as a result of compliance with the new rules.

27. In adopting the Report's three-year grandfathering provision for compliance with the service rules, we emphasized the limited resources of many FM translator licensees and the burden that could result if we were to require accelerated compliance with the new financial support standard. We therefore deny the request to reduce the grandfathering period for the service rules based upon our desire to promote an orderly transition to the new rules and to avoid an unnecessary disruption

⁴ The amended rules governing the FM translator service became effective on June 1, 1991. See Order, 47 FR 23024 (May 22, 1991). Applications pending as of June 1, 1991 can be granted only under the terms of the new service and technical requirements and must be amended to conform with the new rules. See Report, 5 FCC Rcd 7233 (1991). We allowed pending applicants 60 days to file amendments demonstrating compliance with the new rules. We now believe, however, that this 60-day period was too restrictive, and we will allow pending applicants to file conforming amendments upon notification by the processing staff. Applicants must use a revised FCC Form 349.

of service to the public. We also conclude that an indefinite grandfathering period would undermine the effectiveness of the new rules in returning the FM translator service to its original secondary role. Instead, we continue to believe that the Report's provision for extended waivers will adequately prevent the public from unduly losing service in unique circumstances.

28. We wish to clarify that the "other-area" translators that are temporarily "grandfathered" with respect to the ownership and financial support provisions of the new rules will not be required to comply with the new service rules for the remainder of the three-year period if the translator changes its primary station. We believe that a change in the primary station will reflect the preferences of local audiences in the community without altering the technical aspects of a translator's operation, and should ensure that translators constructed based on expectations formed under our prior rules will have sufficient time to adjust their operations.

29. We also amend the grandfathering provision concerning the technical rules by specifying that FM translators authorized prior to the effective date of the rules must comply with the full scope of the technical requirements when they implement a "major change" modification or if they cause interference. Such FM translators seeking "minor changes" may continue to operate without complying with the technical rules provided that they satisfy the standards for actual interference. We have affirmed that translators proposing modifications that would not change or increase the 1 mV/m coverage area by more than 10 percent are not subject to the "major change" review process. Similarly, we believe that it would be unduly onerous to require compliance with all the technical rules in instances where modifications do not significantly increase the translator's coverage area.⁵

30. We are amending § 74.1204(g) of our rules to state standards for the treatment of FM translators based on ERP, so that they are consistent with the minimum permissible power level for Class A FM stations, and the treatment of other secondary FM services.⁶

⁵ In this regard, we also correct the text of the Report, which states in paragraph 142 that FM translators causing interference or proposing to modify facilities must comply with only the predicted interference standards in § 74.1204, rather than §§ 74.1204, 74.1205, and 74.1235 of the rules.

⁶ See Order, FCC 91-317, 6 FCC Rcd 6060 (1991) 56 FR 56169, November 1, 1991, reconsideration pending.

Translators operating with less than 100 watts ERP will be treated as Class D stations and will not be subject to IF separation requirements. We believe that adjusting this requirement to this extent, given the totality of the safeguards adopted in this proceeding, is consistent with our fundamental concern with preventing interference, and we emphasize that the secondary nature of the FM translator service will require correction of any actual interference.

31. The Report adopted a contour protection method for protecting existing translator licensees against potential interference. In order to implement this approach, we are entering the technical parameters of each FM translator station into the Commission's data base. We have found that many licensees and permittees have inadequate information currently on file for our use. Accordingly, we are requesting by letter that such licensees furnish data necessary to implement the Report. In order to ensure that a licensee's failure to provide the requested information does not unduly hamper the functioning of our licensing process, we are, on our own motion, amending § 74.1235 to establish specific mileage contours consistent with a translator station's power for those licensees that fail to submit the requested data. We note that this procedure is similar to that followed in updating our data bases for low-power television and TV translators, and we believe that it will enable us to effectively implement changes in our rules that affect existing translator licensees. We also do not believe that public comment would serve a useful purpose because this action is a minor and noncontroversial process to facilitate our efforts to gather information. However, we recognize that licensees may fail to submit the requested data and later conclude that the hypothetical values applied for their facility are unacceptable. In such instances, licensees may submit corrected figures for our use in protecting translators against potential interference.

32. In the Report, we adopted contour overlap standards to protect TV Channel 6 operations from FM translator operations. These standards were generally consistent with the NCE-FM broadcast station rules. However, Section 73.525(a) of the NCE-FM broadcast station rules permits NCE-FM broadcast applicants whose stations would potentially affect TV Channel 6 broadcast operations to file written agreements with each relevant TV Channel 6 broadcast station concurring

with the proposed facilities. The new rule for translators lacked such a provision but we find no reason to omit a similar provision from the translator rules. On our own motion, we will add a provision to Section 74.1205 of the rules to indicate that we will accept FM translator applications that are accompanied by written agreements with all relevant TV Channel 6 broadcast station licensees or permittees.

Final Regulatory Flexibility Analysis

33. Pursuant to the Regulatory Flexibility Act of 1980, the Commission included a final analysis in the Report detailing (i) the need for and purpose of the rules, (ii) the summary of issues raised by public comment in response to the initial regulatory flexibility analysis, Commission assessment, and changes made as a result, and (iii) significant alternatives considered and rejected. No substitute changes have occurred pertaining to the final analysis as a result of the petitions for reconsideration.

34. The Secretary shall send a copy of the Memorandum Opinion and Order, including Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. section 601 et seq. (1981)).

Ordering Clause

35. Accordingly, it is ordered that the Petitions for Reconsideration filed by the National Association of Broadcasters, the National Translator Association, Ed Crook, Klimek Communications Corporation; John S. La Tour, J and J Broadcasting, and Power du Pree Broadcasting Corporation; and Doyle Brewer are denied.

36. It is further ordered that pursuant to the authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, part 74 of the Commission's rules and regulations are amended as set forth below, effective September 7, 1993.

List of Subjects in 47 CFR Part 74

Radio broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Title 47 CFR part 74 is amended as follows:

PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTION SERVICES

1. The authority citation for part 74 continues to read as follows:

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

2. Section 74.1204 is amended by revising paragraphs (g) and (j) to read as follows:

§ 74.1204 Protection of FM broadcast stations and FM translators.

* * * * *

(g) An application for an FM translator or an FM booster station that is 53 or 54 channels removed from an FM radio broadcast station will not be accepted for filing if it fails to meet the required separation distances set out in § 73.207 of this chapter. For purposes of determining compliance with § 73.207 of this chapter, translator stations will be treated as Class A stations and booster stations will be treated the same as their FM radio broadcast station equivalents. FM radio broadcast station equivalents will be determined in accordance with §§ 73.210 and 73.211 of this chapter, based on the booster station's ERP and HAAT. Provided, however, that FM translator stations and booster stations operating with less than 100 watts ERP will be treated as class D stations and will not be subject to intermediate frequency separation requirements.

* * * * *

(j) FM translator stations authorized prior to June 1, 1991 with facilities that do not comply with the predicted interference protection provisions of this section, may continue to operate, provided that operation is in conformance with § 74.1203 regarding actual interference. Applications for major changes in FM translator stations must specify facilities that comply with provisions of this section.

3. Section 74.1205 is amended by adding an introductory paragraph and revising paragraph (d) to read as follows:

§ 74.1205 Protection of channel 6 TV broadcast stations.

The provisions of this section apply to all applications for construction permits for new or modified facilities for a noncommercial educational FM translator station on Channels 201-220, unless the application is accompanied by a written agreement between the NCE-FM translator applicant and each affected TV Channel 6 broadcast station licensee or permittee concurring with

the proposed NCE-FM translator facility.

(d) FM translator stations authorized prior to June 1, 1991 with facilities that do not comply with the predicted interference protection provisions of this section, may continue to operate, provided that operation is in conformance with § 74.1203 regarding actual interference. Applications for major changes in FM translator stations must specify facilities that comply with the provisions of this section.

4. Section 74.1231 is amended by revising paragraph (f) to read as follows:

§ 74.1231 Purpose and permissible service

(f) A locally generated radio frequency signal similar to that of an FM broadcast station and modulated with aural information may be connected to the input terminals of an FM translator for the purpose of transmitting voice announcements. The radio frequency signals shall be on the same channel as the normally used off-the-air signal being rebroadcast. Connection of the locally generated signals shall be made by any automatic means when transmitting originations concerning financial support. The connections for emergency transmissions may be made manually. The apparatus used to generate the local signal that is used to modulate the FM translator must be capable of producing an aural signal which will provide acceptable reception on FM receivers designed for the transmission standards employed by FM broadcast stations.

5. Section 74.1232 is amended by adding two sentences to paragraph (d) and adding three sentences to paragraph (e) and accompanying Note to paragraph (e) to read as follows:

§ 74.1232 Eligibility and licensing requirements.

(d) * * * An FM translator station in operation prior to June 1, 1991, which is owned by a commercial FM radio broadcast station and whose coverage contour extends beyond the protected contour of the primary station, may continue to be owned by a commercial FM radio broadcast station until June 1, 1994. Thereafter, any such FM translator station must be owned by independent parties.

(e) * * * Such an FM translator station may, however, receive technical assistance from the primary station to the extent of installing or repairing equipment or making adjustments to equipment to assure compliance with

the terms of the translator station's construction permit and license. FM translator stations in operation prior to June 1, 1991 may continue to receive contributions or support from a commercial FM radio broadcast station for the operation and maintenance of the translator station until June 1, 1994. Thereafter, any such FM translator station shall be subject to the prohibitions on support contained in this section.

Note: "Technical assistance" refers to actual services provided by the primary station's technical staff or compensation for the time and services provided by independent engineering personnel. Conversely, such support must not include the supply of equipment or direct funding for the translator's discretionary use. "Technical assistance" must occur after the issuance of the translator's construction permit or license in order to meet expenses incurred by installing, repairing, or making adjustments to equipment.

6. Section 74.1235 is amended by adding a note to paragraph (i) and revising paragraph (j) to read as follows:

§ 74.1235 Power limitations and antenna systems.

(i) * * *

Note: Existing licensees and permittees that do not furnish data sufficient to calculate the contours in conformance with § 74.1204 will be assigned protected contours having the following radii:

Up to 10 watts—1 mile (1.6 km) from transmitter site.

Up to 100 watts—2 miles (3.2 km) from transmitter site.

Up to 250 watts—4 miles (6.5 km) from transmitter site.

(j) FM translator stations authorized prior to June 1, 1991, with facilities that do not comply with the ERP limitation of paragraph (a) or (b) of this section, as appropriate, may continue to operate, provided that operation is in conformance with § 74.1203 regarding interference. Applications for major changes in FM translator stations must specify facilities that comply with paragraph (a) or (b) of this section, as appropriate.

7. Section 74.1237 is amended by revising paragraph (d) to read as follows:

§ 74.1237 Antenna location.

(d) The transmitting antenna of an FM booster station shall be located within the protected contour of its primary station, subject to Note, § 74.1231 (h). The transmitting antenna of a commonly owned commercial FM translator station shall be located within

the protected contour of its commercial primary FM station.

[FR Doc. 93-18776 Filed 8-5-93; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1019 and 1102

[Ex Parte No. 515 (A)]

Regulations Governing Conduct of Interstate Commerce Commission Employees

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Interstate Commerce Commission (ICC) is reissuing these regulations, which were previously part of the ICC's Canons of Conduct (Canons) for Members and employees. These regulations, which cover matters not included in the Standards of Ethical Conduct for Employees of the Executive Branch (standards) issued by the Office of Government Ethics (OGE), are intended as guidance for ICC Members and employees.

EFFECTIVE DATE: These regulations are effective August 6, 1993.

FOR FURTHER INFORMATION CONTACT: Clyde J. Hart, Jr., Designated Agency Ethics Official, (202) 927-6317. (TDD for hearing impaired: (202) 927-5721.)

SUPPLEMENTARY INFORMATION: On August 7, 1992, OGE published new standards of ethical conduct for employees of the executive branch (codified at 5 CFR part 2635) which became effective on February 3, 1993. The ICC Canons in subparts B and C of 49 CFR part 1000 have been superseded by those standards and by the new executive branch financial disclosure regulations. (They have been repealed in a separate rule.) However, an agency may retain regulations previously contained in its ethics rules, which are not within the ambit of the OGE standards. 5 CFR 2635.105(c)(3).

The ICC, therefore, has established a new part 1019 of title 49 of the Code of Federal Regulations that will contain those Canons that the ICC intends to continue in effect, as follows: Section 1019.1 contains a cross reference to the OGE standards in 5 CFR part 2635, the Commission's supplemental ethics rules in 5 CFR part 5001 and the financial disclosure regulations in 5 CFR part 2634.

Section 1019.2 covers the administration of the Commission's ethics program and references the recent