

**47 CFR Part 73**

[MM Docket No. 90-139; RM-7149 and 7484]

**Radio Broadcasting Services; Oshkosh, Winneconne and Townsend, Wisconsin and Menominee, Michigan****AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 280C3 for Channel 280A at Oshkosh, Wisconsin, modifies the license for Station WMGV(FM) and changes the community of license from Oshkosh to Winneconne, Wisconsin, substitutes Channel 279C3 for Channel 280A at Menominee, Michigan, and modifies the license for Station WHYB to specify operation on the higher class channel, in response to a petition filed by Value Radio Corp and CJL Broadcasting, Inc. See 55 FR 11412, March 28, 1990. The coordinates for Channel 280C3, Winneconne, are 44-15-09 and 88-44-48. Canadian concurrence has been obtained for Channel 279C3 at Menominee at coordinates 45-06-21 and 87-46-43. The counterproposal filed by Independence Broadcasting Wisconsin Corp. requesting allotment of Channel 278C3 to Townsend, Wisconsin, has been withdrawn. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** April 7, 1995.**FOR FURTHER INFORMATION CONTACT:**

Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order*, MM Docket No. 90-139, adopted February 10, 1995, and released February 21, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW, Suite 140, Washington, D.C. 20037, (202) 857-3800.

## List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

**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 Wisconsin, is amended by removing Channel 280A, Oshkosh, and by adding Winneconne, Channel 280C3.

3. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 280A and adding Channel 279C3, Menominee.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95-4694 Filed 2-24-95; 8:45 am]

BILLING CODE 6712-01-F

**47 CFR Part 76**

[MM Docket 92-266; FCC 95-43]

**Cable Television Act of 1992—Rate Regulation****AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

**SUMMARY:** On its own motion, the Federal Communication Commission (the "Commission") has adopted a Ninth Order on Reconsideration in order to allow small cable operators and low-price systems that have been provided with transition relief to adjust their transition rates to reflect increases in inflation. Between April 1, 1995 and August 31, 1995, cable operators that have been afforded transition relief may adjust their rates to reflect the net of a 5.21% inflation adjustment, minus any inflation adjustments they have already received. In the future, all transition relief systems may join other operators by making inflation adjustments on an annual basis, no earlier than October 1, of each year and no later than August 31 of the following year to reflect the final GNP-PI through June 30 of the applicable year.

**EFFECTIVE DATE:** April 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** Paul D'Ari, Cable Services Bureau (202) 416-0800.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Ninth Order on Reconsideration in MM Docket No. 92-266, FCC 95-43, adopted February 3, 1995 and released February 6, 1995.

The complete text of this Ninth Order on Reconsideration 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 Services, Inc. ("ITS, Inc.") at (202) 857-

3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Synopsis of the Ninth Order on Reconsideration

**A. Background**

In the Report and Order and Further Notice of Proposed Rulemaking in MM Docket No. 92-266 ("Rate Order"), 58 FR 29736 (May 21, 1993), the Commission developed a benchmark formula for the purpose of establishing initial rates for regulated services. Under the benchmark approach, regulated cable systems were required to calculate an applicable benchmark, an estimate of the rate that a cable system with similar characteristics, but subject to effective competition, would be permitted to charge. Cable systems whose rates exceeded the applicable benchmark were generally required to reduce their rates either to the benchmark or by 10%, whichever reduction was less. This 10% "competitive differential" represented the average difference that the Commission determined existed between the rates of competitive and noncompetitive systems.

In the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking ("Second Reconsideration Order"), 59 FR 17943 (April 15, 1994), the Commission refined the econometric model, recalculated the competitive differential, and concluded that a competitive differential of 17% more accurately estimates the difference between effectively competitive and noncompetitive cable rates. Accordingly, the Commission required most systems with rates above the benchmark to either reduce their regulated rates to a level that represented their September 30, 1992 regulated revenues, reduced by 17% (mitigated by annual inflation increases, changes in external costs and changes in the number of programming channels) or to submit a cost-of-service showing supporting higher rates.

The Commission granted two classes of cable operators transition relief, by not requiring them to implement the full 17% reduction rate. The first category of systems that were provided with transition relief is systems owned by "small operators," defined as operators serving 15,000 or fewer subscribers and not affiliated with a larger operator. Systems owned by small operators were not required to reduce rates by 17%. Rather these operators were allowed to use the permitted rate charged on March 31, 1994 to establish initial restructured rates, and adjust accordingly to reflect

external costs until the Commission completed its study of prices and costs experienced by small operators.

The second category of systems that were provided with transition relief is systems that charge relatively low prices for regulated services. Low-price systems are defined as systems (1) whose March 31, 1994 rates were below the benchmark rate, or (2) whose March 31, 1994 rates were above their March 31, 1994 benchmark rates, but whose March 31, 1994 full reduction rates are below their March 31, 1994 benchmark rates as determined under FCC Form 1200. During the transition period, systems whose March 31, 1994 rates were below the benchmark rate had their rates capped at March 31, 1994 levels. Systems whose March 31, 1994 rates were above the benchmark, but whose full reduction rates were below the benchmark were only required to reduce their rates to, but not below, the benchmark.

The Commission stated that it would not require small cable operators and low-price systems that were provided with transition relief to make full competitive rate reductions until the Commission collected and analyzed data about such operators' prices and costs, and determined whether the competitive rate reduction was appropriate.

Systems entitled to transition relief have been permitted to increase their rates to reflect increases in external costs and a per channel adjustment when increasing the number of channels. The Commission decided not to allow such systems, however, to increase their transition rates to reflect increases in inflation until the transition rate equals their full reduction rate. The Commission determined that because the full reduction rate rises with inflation, as well as with changes in external costs and channel changes, a transition rate system's hypothetical full reduction rate may eventually exceed the transition rate. The Commission decided, therefore, that if a system's transition rate and the full reduction rate became equal, that system would be entitled to take advantage of inflation adjustments.

The Commission also stated that after it has determined whether it should require transition relief operators to reduce their rates in accordance with an appropriate competitive differential, those systems will be entitled to an aggregate inflation adjustment equal to the GNP-PI inflation adjustments for the period beginning October 1, 1992 through the most recent June 30. For those systems that have already received some inflation adjustment, because their

hypothetical full reduction rate exceeded their transition rate, the Commission stated that the system will receive the net of the aggregate inflation adjustment minus any inflation adjustment already received. The Commission found that such systems will be eligible for additional inflation adjustments on an annual basis, but no earlier than September 30 of each year to reflect the final GNP-PI through June 30 of the applicable year.

#### *B. Discussion*

On its own motion, the Commission found that low-price systems and small operators that have been provided with transition relief should no longer be prevented from adjusting their rates to reflect changes in inflation. In the Second Order on Reconsideration, 59 FR 17943 (April 15, 1994), the Commission decided to defer implementing the inflation adjustment for transition relief systems because it was not yet requiring them to reduce their rates by the competitive differential. The Commission decided that it would provide transition relief systems with the opportunity to make inflation adjustments after it developed a better picture of the price/cost profiles of these systems and determined the appropriate competitive differential for such systems. In making the decision, the Commission stated that it expected to complete the collection of cost/price data within nine months.

Because the Commission has not yet completed the collection of this data and nearly ten months have passed since the Commission released the Second Order on Reconsideration, the Commission finds that it would be unfair to further delay implementation of inflation adjustments for transition relief systems. The Commission is concerned that a further delay in permitting transition relief systems to make inflation adjustments could be particularly burdensome on small operators because many small operators may not have the financial resources to withstand the impact of not being able to make inflation adjustments.

The Commission also finds that low-price systems should not be required to experience any further delays in implementing inflation adjustments. In the Second Order on Reconsideration, the Commission found that because their prices are significantly lower than those charged by most noncompetitive systems, low price systems may face unusual demand, costs or other influences that were not captured in the Commission's analysis. A further delay in allowing low-price systems to make inflation adjustments may, therefore,

impose a substantial burden upon those operators.

Accordingly, between April 1, 1995 and August 31, 1995, cable operators that have been afforded transition relief may adjust their rates to reflect the net of a 5.21% inflation adjustment, minus any inflation adjustments they have already received. This adjustment accounts for the 3% inflation that regulated cable operators were permitted to recover for the September 30, 1992 to September 30, 1993 period, and the 2.15% inflation factor that operators were permitted to recover between October 1, 1994 and August 31, 1995 for the October 1, 1993 to June 30, 1994 period.

With one exception, however, transition relief systems will not receive the full 5.21% inflation adjustment because, under the old rules, they received an inflation adjustment from September 30, 1992 to the date they were subject to regulation for the purpose of establishing their initial rates prior to May 15, 1994. The exception is for most low price systems that had their March 31, 1994 rates above the benchmark, but their full reduction rate below the benchmark. When these systems set their rates for the period after May 15, 1994, they lost the inflation adjustment they received prior to May 15, 1994, because they were required to reduce their rates to the benchmark. Therefore, they will be permitted to adjust their rates to reflect the full 5.21% inflation factor. If, however, their actual post-May 15, 1994 rate reduction was less than their earlier inflation adjustment, they will be permitted to receive the 5.21% inflation adjustment minus the difference between their inflation adjustment and their actual post-May 15, 1994 rate reduction.

The Commission determined in the Second Order on Reconsideration that, because the full reduction rate rises with inflation, a transition rate system's hypothetical full reduction rate may eventually exceed the transition rate. The Commission decided that a transition rate system will be entitled to take an inflation adjustment once the hypothetical full reduction rate and transition rate become equal. Therefore, those transition relief systems that have already received this inflation adjustment, because their hypothetical full reduction rate exceeded their transition rate, will only be allowed to receive the net of the aggregate inflation adjustment minus any inflation adjustment already received.

With the inflation adjustment they received prior to May 15, 1994 and the inflation adjustment the Commission is

granting them now, transition relief systems will be able to adjust their rates to reflect the same inflation adjustment that the Commission has granted all other operators. Moreover, in the future, all transition relief systems may join other cable operators in making inflation adjustments on an annual basis, no earlier than October 1 of each year and no later than August 31 of the following year to reflect the final GNP-PI through June 30 of the applicable year.

**Administrative Matters**

*Regulatory Flexibility Act Analysis*

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, the Commission's final analysis with respect to the Ninth Order on Reconsideration is as follows:

Need and purpose of this action. The Commission, in compliance with section 3 of the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. 543 (1992), pertaining to rate regulation, adopts revised rules and procedures intended to ensure that cable services are offered at reasonable rates with minimum regulatory and administrative burdens on cable entities.

Summary of issues raised by the public in response to the Initial Regulatory Flexibility Analysis. There were no comments submitted in response to the Initial Regulatory Flexibility Analysis. The Chief Counsel for Advocacy of the United States Small Business Administration (SBA) filed comments in the original rulemaking order. The Commission addressed the concerns raised by the Office of Advocacy in the Report and Order and Further Notice of Proposed Rulemaking.

Significant alternatives considered and rejected. In the course of this proceeding, petitioners representing cable interests and franchising authorities submitted several alternatives aimed at minimizing administrative burdens. The Commission has attempted to accommodate the concerns expressed by these parties. In this order, the Commission is providing relief to small systems and low-price systems by permitting them to adjust their transition rates with an inflation adjustment.

**Paperwork Reduction Act**

The requirements adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and are found to impose a new information collection requirement on the public. Implementation of the new requirement

will be subject to approval by the Office of Management and Budget.

**Ordering Clauses**

Accordingly, it is ordered that, pursuant to sections 4(i), 4(j), 303(r), 612, 622(c) and 623 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 532, 542(c) and 543, the rules, requirements and policies discussed in this Ninth Order on Reconsideration, are adopted and part 76 of the Commission's rules, 47 CFR part 76, is amended as set forth below.

It is further ordered that the Secretary shall send a copy of this Order to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. 601 et seq. (1981).

It is further ordered that the requirements and regulations established in this decision shall become effective on April 1, 1995.

**List of Subjects in 47 CFR Part 76**

Cable television.

Federal Communications Commission.  
William F. Caton,  
*Acting Secretary.*

Title 47, Part 76 of the Code of Federal Regulations is amended as follows:

**PART 76—CABLE TELEVISION SERVICE**

1. 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, 535, 542, 543, 552 as amended, 106 Stat. 1460.

2. Section 76.922 is amended by revising paragraph (d)(2) to read as follows:

**§ 76.922 Rates for the basic service tier and cable programming service tiers.**

\* \* \* \* \*

(d) \* \* \*

(2) *Inflation Adjustments.* The residual component of a system's permitted charge may be adjusted annually for inflation. The annual inflation adjustment shall be based on inflation occurring from June 30 of the previous year to June 30 of the year in which the inflation adjustment is made, except that the first annual inflation adjustment shall cover inflation from September 30, 1993 until June 30 of the year in which the inflation adjustment is made. The adjustment may be made after September 30, but no later than

August 31, of the next calendar year. Adjustments shall be based on changes in the Gross National Product Price Index as published by the Bureau of Economic Analysis of the United States Department of Commerce. Cable systems that establish a transition rate pursuant to paragraph (b)(4) of this section may not begin adjusting rates on account of inflation before April 1, 1995. Between April 1, 1995 and August 31, 1995 cable systems that established a transition rate may adjust their rates to reflect the net of a 5.21% inflation adjustment minus any inflation adjustments they have already received. Low price systems that had their March 31, 1994 rates above the benchmark, but their full reduction rate below the benchmark will be permitted to adjust their rates to reflect the full 5.21% inflation factor unless the rate reduction was less than the inflation adjustment received on an FCC Form 393 for rates established prior to May 15, 1994. If the rate reduction established by a low price system that reduced its rate to the benchmark was less than the inflation adjustment received on an FCC Form 393, the system will be permitted to receive the 5.21% inflation adjustment minus the difference between the rate reduction and the inflation adjustment the system made on its FCC Form 393. Cable systems that established a transition rate may make future inflation adjustments on an annual basis with all other cable operators, no earlier than October 1 of each year and no later than August 31 of the following year to reflect the final GNP-PI through June 30 of the applicable year.

\* \* \* \* \*

[FR Doc. 95-4554 Filed 2-24-95; 8:45 am]

BILLING CODE 6712-01-M

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 642**

[Docket No. 940710-4292; I.D. 022195E]

**Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure of a Commercial Fishery**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure of a commercial fishery for king mackerel.

**SUMMARY:** NMFS closes the commercial hook-and-line fishery for king mackerel