

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 1**

[ET Docket No. 94-32; FCC 95-454]

In-Flight Phone Corporation's Pioneer's Preference Request**AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

SUMMARY: By this *Third Report and Order (Third R&O)*, the Commission denies In-Flight Phone Corporation's (In-Flight's) request for a pioneer's preference in the General Wireless Communications Service (GWCS) at 4660-4685 MHz. The Commission finds that the GWCS service rules are not a reasonable outgrowth of In-Flight's ground-to-air programming service proposal, that In-Flight failed to demonstrate the technical feasibility of its proposal in the 4660-4685 MHz band, and that In-Flight's proposed ground-to-air programming service is not sufficiently innovative to warrant a preference in any band. This action is intended to affirm the Commission's policy of awarding pioneer's preferences only for innovations of some significance.

EFFECTIVE DATE: December 15, 1995.

FOR FURTHER INFORMATION CONTACT: Tom Derenge, (202) 418-2451 or Rodney Small, (202) 418-2452, Office of Engineering and Technology, Federal Communications Commission, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third R&O* adopted November 1, 1995, and released December 5, 1995. This action will not add to or decrease the public reporting burden. The full text of the Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Third R&O

1. In-Flight originally filed its pioneer's preference request in the narrowband Personal Communications Services proceeding, ET Docket No. 92-100. It sought a preference in the 901-902 MHz and 940-941 MHz bands for a live ground-to-air audio news, information, and entertainment

programming service for airline passengers. However, because the rules adopted in Docket 92-100 were not related to In-Flight's proposal, no action was taken on its pioneer's preference request.

2. In February 1995, the Commission adopted a *First Report and Order and Second Notice of Proposed Rulemaking* in Docket 94-32, 60 FR 13102 (March 10, 1995), reallocating 50 megahertz of Federal Government spectrum at 2390-2400, 2402-2417, and 4660-4685 MHz to non-Government use; and proposing that the 4660-4685 MHz band be used by the General Wireless Communications Service (GWCS).

3. In March 1995, In-Flight filed a Petition for Declaratory Ruling, requesting that its pending pioneer's preference request be considered in the GWCS. In-Flight also stated that it would provide video, as well as audio, services as a GWCS licensee. The Petition was placed on Public Notice on April 28, 1995; however, no comments were filed on the Public Notice.

4. On June 8, 1995, in response to the Commission's *Third Report and Order* in the pioneer's preference review proceeding, ET Docket No. 93-266, 60 Fed. Reg. 32116 (June 20, 1995), In-Flight filed a Supplement to its pioneer's preference request. In its Supplement, In-Flight argued that it was not likely to recover its investment in developing what it now referred to as its "aircraft audio and video programming service" unless it received a pioneer's preference, and also requested that its preference request be placed on public notice. On June 16, 1995, In-Flight's preference request, including the Supplement, was placed on Public Notice and assigned file number PP-88 in Docket 94-32.

5. On July 3, 1995, Claircom Licensee Corporation filed an opposition to PP-88, in which it stated that In-Flight's programming service is not innovative. On July 13, 1995, In-Flight filed a reply to Claircom's opposition. On July 31, 1995, the Commission adopted a *Second Report and Order* in Docket 94-32, 60 Fed. Reg. 40712 (August 9, 1995), allocating the 4660-4685 MHz band for the GWCS and adopting service rules.

6. In the *Third R&O*, the Commission found that—inconsistent with the pioneer's preference rules—the GWCS service rules are not a reasonable outgrowth of In-Flight's ground-to-air programming service proposal. Additionally, the Commission found that In-Flight failed to demonstrate the technical feasibility of its proposal in the 4660-4685 MHz band. The Commission stated that In-Flight's technical achievements in developing

and testing equipment in the 901-902 MHz and 940-941 MHz bands are not directly relevant to the 4660-4685 MHz band, due to differences in propagation. Finally, the Commission found that In-Flight's proposed ground-to-air programming service is not sufficiently innovative to warrant a preference in any band. The Commission concluded that In-Flight did not demonstrate that its technological developments are innovative given the state-of-the-art technologies used in providing 800 MHz air-ground radiotelephone service.

7. Accordingly, *it is ordered*, That the pioneer's preference request (PP-88) filed by In-Flight Phone Corporation in this proceeding is denied. *It is further ordered*, That the request for pioneer's preference filed by In-Flight Phone Corporation in ET Docket No. 92-100 is *dismissed as moot*. *It is further ordered*, That the petition for declaratory ruling filed by In-Flight Phone Corporation is granted in part and denied in part.

List of Subjects in 47 CFR Part 1

Pioneer's preference, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95-30550 Filed 12-14-95; 8:45 am]

BILLING CODE 6712-01-P**47 CFR Part 73**

[MM Docket No. 88-40; RM-6035, RM-6349, RM-6350]

Radio Broadcasting Services; Jacksonville, Pine Knoll Shores, and Harkers Island, NC**AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

SUMMARY: This document grants a Petition for Reconsideration filed by Down East Radio to the extent of deleting Channel 272A from Pine Knoll Shores, North Carolina. See 57 FR 19809, May 8, 1992. With this action, the proceeding is terminated.

EFFECTIVE DATE: January 22, 1996.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 776-1654.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MM Docket No. 88-40, adopted November 9, 1995, and released December 8, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC 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, 1919 M Street, NW., Room 246, 2100 M Street NW., Suite 140, Washington, DC 20037.

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: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by removing Pine Knoll Shores, Channel 272A.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95-30515 Filed 12-14-95; 8:45 am]

BILLING CODE 6712-01-F

47 CFR Part 73

[MM Docket No. 95-123; RM-8669]

Radio Broadcasting Services; Winona, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of OARA, Inc., allots Channel 274A to Winona, Texas, as the community's first local aural transmission service. See 60 FR 38785, July 28, 1995. Channel 274A can be allotted to Winona, Texas, in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 274A at Winona are 32-29-22 and 95-10-01. With this action, this proceeding is terminated.

DATES: Effective January 22, 1996. The window period for filing applications will open on January 22, 1996, and close on February 22, 1996.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95-123,

adopted November 27, 1995, and released December 7, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC 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 contractor, ITS, 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 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: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Winona, Channel 274A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95-30513 Filed 12-14-95; 8:45 am]

BILLING CODE 6712-01-F

47 CFR Part 73

[MM Docket No. 95-124; RM-8573]

Radio Broadcasting Services; Atlantic, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Wireless Communications Corp., allots Channel 239C3 to Atlantic, Iowa, as the community's first local FM service. See 60 FR 39308, August 2, 1995. Channel 239C3 can be allotted to Atlantic in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 41-24-00 North Latitude and 95-00-54 West Longitude. With this action, this proceeding is terminated.

DATES: Effective January 22, 1996. The window period for filing applications will open on January 22, 1996, and close on February 22, 1996.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95-124, adopted November 14, 1995, and released December 8, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC 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 contractor, 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 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: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by adding Atlantic, Channel 239C3.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95-30514 Filed 12-14-95; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 930932-3314; I.D. 120795B]

Summer Flounder Fishery; Commercial Quota Transfer from Maryland to New York

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

ACTION: Commercial quota transfer.

SUMMARY: NMFS announces that the State of Maryland is making two transfers totaling 50,000 lb (22,680 kg) of commercial summer flounder quota to the State of New York. NMFS adjusted the quotas and announces the revised commercial quota for each state involved.

EFFECTIVE DATE: December 12, 1995.