PART 114—[REMOVED]

3. Part 114 is removed.

PART 117—[AMENDED]

4. The authority citation for part 117 continues to read as follows:

Authority: Secs. 311 and 501(a), Federal Water Pollution Control Act (33 U.S. C. 1251 et seq.), (''the Act'') and E.O. 11735 superseded by E.O. 12777 56 FR 54757.

§ 117.22 [Removed]

5. Section 117.22 is removed.

[FR Doc. 96–5710 Filed 3–8–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–433; RM–5994 and RM–6181]

Radio Broadcasting Services; Barnesboro, Brookville, Indiana, Johnsonburg, Punxsutawney, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Strattan Broadcasting, licensee of Station WMKX(FM), Channel 240A, Brookville, Pennsylvania, grants Strattan's rule making petition (RM–5994) seeking the upgrade of its Class A channel in Brookville on non-adjacent Channel 288B1. *See Notice of Proposed Rule Making,* 52 FR 39254 (October 21, 1987). The Commission dismisses the counterproposal (RM–6181) of Renda Radio, Inc., licensee of Station WPXZ-FM, Channel 288A, Punxsutawney, Pennsylvania. The Commission also allots Channel 277B1 as an alternative equivalent channel at Brookville, as requested by Strattan in its comments. To accommodate these allotments to Brookville, we also order four channel substitutions: Channel 281A in lieu of Channel 288A at Punxsutawney, Pennsylvania, and the modification of the authorization of Station WPXZ-FM accordingly; Channel 263A in lieu of Channel 277A at Johnsonburg, Pennsylvania; Channel 223A in lieu of Channel 276A at Indiana, Pennsylvania; and Channel 228A for Channel 223A at Barnesboro, Pennsylvania. *See* Supplemental Information, *infra*.

DATES: Effective April 18, 1996. The window period for filing applications will open on April 18, 1996 and close on May 20, 1996.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 87–433, adopted February 16, 1996 and released March 4, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

The Commission orders modification of the licenses of Station WMKX(FM), Brookville, to specify operation on Channel 288B1; of Station WPXZ-FM, Punxsutawney, to specify operation on Channel 281A; and of Station WQMU, Indiana, to specify operation on Channel 223A. Channel 288B1 can be allotted to Brookville in compliance with the Commission's spacing requirements at coordinates North Latitude 41–09–36 and West Longitude 79–04–54. Channel 277B1 can also be allotted to Brookville in compliance with the Commission's spacing requirements at coordinates North Latitude 41–02–12 and West Longitude 79–06–06. Channel 263A can be allotted to Johnsonburg in compliance with the Commission's spacing requirements at either a site located at coordinates North Latitude 41–29–24 and West Longtitude 78–40–36. With this action, the proceeding is terminated.

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, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Pennsylvania, is amended by adding Channel 288B1 and Channel 277B1 and removing Channel 240A at Brookville; by adding Channel 281A and removing Channel 288A at Punxsutawney; by adding Channel 263A and removing Channel 277A at Johnsonburg; adding Channel 223A and removing Channel 276A at Indiana; and by adding Channel 228A and removing Channel 223A at Barnesboro.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 96–5429 Filed 3–8–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 76

[CS Docket No. 96–40; FCC 96–84]

Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Interim rule.

SUMMARY: This Order establishes interim rules to implement Section 641 of the Communications Act, including establishing the hours of the day when a significant number of children are likely to view sexually explicit adult programming or other indecent programming on any channel of the service of a multichannel video programming distributor primarily dedicated to sexually-oriented programming if such programming is not fully blocked or fully scrambled. Section 505 of the Telecommunications Act directs the Commission to establish these hours. In this Order, the Commission determines that the hours of 6 a.m. to 10 p.m. are the hours when such programming may not be shown if not fully scrambled or fully blocked.

EFFECTIVE DATE: March 11, 1996.

FOR FURTHER INFORMATION, CONTACT: Meryl S. Icove, Cable Services Bureau, (202) 416–0800.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Order in CS Docket No. 96–40, FCC 96–84, adopted March 4, 1996 and released March 5, 1996. The complete text of this 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 Services, Inc. (''ITS Inc.'') at (202) 587–3800, 2100 M Street, NW., Suite 140, Washington, DC 20017.

Synopsis of Order

1. On February 8, 1996, the Telecommunications Act of 1996 (''1996 Act''), Pub. L. No. 104–104, 110 Stat. 56 (1996), was enacted. Section 505 of the 1996 Act amends the Communications Act by adding a new Section 641, entitled ''Scrambling of Sexually Explicit Adult Video Service

Programming.'' Section 641(a) requires that multichannel video programming distributors (''MVPDs'') fully scramble or fully block sexually explicit adult programming or other indecent programming on any channel of its service primarily dedicated to sexually-oriented programming so that a nonsubscriber does not receive such programming. Section 641(b) provides that, until the MVPD fully scrambles such programming, it may not provide such programming during the hours of the day when a significant number of children are likely to view such programming. Section 641(b) further requires that the Commission determine those hours. Section 641(c) also provides a definition of ''scramble:'' ''to rearrange the content of the signal of the programming so that the programming cannot be viewed or heard in an understandable manner.'' These provisions take effect 30 days after the date of enactment of the 1996 Act, i.e., March 9, 1996. In this Order the Commission adopts a rule incorporating Section 641(a). The Commission also establishes an interim rule implementing Section 641(b), providing that the programming described in subsection (a) may not be provided between the hours of 6 a.m. and 10 p.m. if not fully scrambled or fully blocked. The NPRM adopted with this Order on March 4, 1996, requests comment on whether the interim rule should be adopted as a final rule. Finally, the NPRM requests comment on other issues regarding implementation and enforcement of these rules.

2. We herein establish a rule incorporating the self-effectuating language of Section 641(a). We are adding this rule without providing prior public notice and comment because the rule simply incorporates a provision of the 1996 Act. The Commission's action involves no discretion. Accordingly, notice and comment would serve no purpose and is thus unnecessary, and this action falls within the ''good cause'' exception of the Administrative Procedure Act (''APA''). See 5 U.S.C. 553(b)(B).

3. We establish an interim rule implementing Section 641(b) regarding the hours during which MVPDs may not provide sexually explicit adult programming or other indecent programming on any channel primarily dedicated to sexually-oriented programming if it is not fully scrambled or fully blocked. We find that good cause exists to establish an interim rule without notice and comment because Section 641 takes effect 30 days after enactment of the 1996 Act, making it impracticable to engage in notice and comment procedures.

4. This interim rule is based on a closely analogous, existing Commission rule. The Commission's current rule regarding broadcast indecency prohibits the licensee of a radio or television broadcast station from broadcasting between 6 a.m. and 10 p.m. any material which is indecent. 47 CFR 73.3999. This rule is based on an extensive administrative record and judicial review of the regulation of indecent programming. The United States Court of Appeals for the District of Columbia Circuit upheld a 10 p.m. to 6 a.m. safe harbor in *Action for Children's Television* v. *FCC*, and the United States Supreme Court denied certiorari. 58 F.3d 654 (D.C. Cir. 1995) (en banc), *cert. denied*, 64 USLW 3465 (Jan. 8, 1996). We are aware of no relevant differences here that would justify a different interim rule. Accordingly, based upon that closely related proceeding, we adopt an interim rule requiring that, until an MVPD complies with the scrambling/blocking requirement in new Section 641(a), the MVPD may not provide sexually explicit adult programming or other programming that is indecent on any channel of its service primarily dedicated to sexually-oriented programming between the hours of 6 a.m. and 10 p.m.

5. We define ''indecent'' programming here on an interim basis the same as in other video programming contexts: any programming that describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards for the cable or other MVPD medium. *See Infinity Broadcasting Corporation of Pennsylvania*, 2 FCC Rcd 2705 (1987); 47 CFR §§ 76.701(g). We believe it is clear that the term ''sexually explicit adult programming'' in Section 641(a) is merely a subset of the term ''programming that is indecent.'' To the extent that this language could be viewed as ambiguous, we interpret it to include only indecent programming. As to the applicability of Section 641(a) only to channels ''primarily dedicated to sexually-oriented programming,'' we believe the statute is clear regarding what channels Section 641(a) applies to, but unless and until we adopt a definition of that term we will rely on the good faith judgment of MVPDs regarding its definition. We note that Section 641 only requires that MVPDs fully scramble or otherwise fully block the video and audio portion of channels primarily dedicated to sexually-oriented programming ''[i]n providing sexually explicit adult programming or other programming that is indecent.'' Thus, we interpret the provision as not requiring the scrambling of programming that is not indecent even if provided on a channel primarily dedicated to sexually-oriented programming.

6. To the extent that compliance with Section 641 conflicts with any Commission rules requiring cable operators to give advance written notice to subscribers or local franchising authorities of certain changes in their service, those rules are waived. See 47 CFR §§ 76.309(c)(3)(i)(B), 76.964. To the extent that compliance with Section 641 conflicts with any state or local notice requirements, those requirements are preempted by Section 641 itself, which requires that MVPDs make the programming changes within 30 days of the Section's enactment. Cable operators should, however, give notice as soon as is reasonably practicable. We understand that in some instances such notice may not be given until after the change has been made.

Ordering Clauses

7. It is ordered that, pursuant to Sections 4(i) and 641 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and Section 505 of the Telecommunications Act of 1996, that the Commission's rules ARE AMENDED as set forth below. These rules are effective upon publication in the Federal Register. We find good cause for making these rules effective upon publication in the Federal Register because Section 641 becomes effective 30 days after enactment of the Telecommunications Act of 1996.

8. It is further ordered that 47 CFR 76.309(c)(3)(i)(B) IS WAIVED to the extent indicated herein.

9. It is further ordered that 47 CFR § 76.964 IS WAIVED to the extent indicated herein.

Lists of Subjects in 47 CFR Part 76

Cable television.

Amendatory Text

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

PART 76—[AMENDED]

1. The authority citation of 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. A new § 76.227 is added to Subpart G to read as follows:

§ 76.227 Blocking of indecent sexually-oriented programming channels.

(a) In providing sexually explicit adult programming or other programming that is indecent on any channel of its service primarily dedicated to sexually-oriented programming, a multichannel video programming distributor shall fully scramble or otherwise fully block the video and audio portion of such channel so that one not a subscriber to such channel or programming does not receive it.

(b) Until a multichannel video programming distributor complies with the requirement set forth in paragraph (a) of this section, the multichannel video programming distributor shall not provide the programming referred to in paragraph (a) of this section between the hours of 6 a.m. and 10 p.m.

(c) Scramble means to rearrange the content of the signal of the programming so that the programming cannot be viewed or heard in an understandable manner.

(d) Sexually explicit adult programming or other programming that is indecent means any programming that describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards for the cable or other multichannel video programming distribution medium.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–5869 Filed 3–8–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 671

[Docket 93–A]

RIN 2132–AA49

Temporary Local Match Waiver; Removal

AGENCY: Federal Transit Administration, DOT.

ACTION: Final Rule.

SUMMARY: Because the supporting statutory authority has expired, the Federal Transit Administration (FTA) is removing the Temporary Local Match Waiver for sections 9 and 18 from the Code of Federal Regulations. FTA made this determination as part of the President's ''reinventing government'' initiative.

EFFECTIVE DATE: March 11, 1996.

FOR FURTHER INFORMATION CONTACT: Nancy Zaczek, Attorney-Advisor, Office of the Chief Counsel, (202) 366–4011.

SUPPLEMENTARY INFORMATION:

Introduction

On August 11, 1993, FTA published an Interim Final Rule announcing a temporary change in how it finances capital projects for certain FTA-funded programs, specifically allowing for a ''waiver'' of the local match requirements under two FTA-funded programs. 58 FR 42690. The underlying statutory authority for that policy change has expired, thus prompting FTA to remove 49 CFR 671 from the Code of Federal Regulations. The Federal Highway Administration (FHWA) published a final rule on February 2, 1993 at 58 FR 6713, subsequently codified at 23 CFR 140, waiving the State matching requirements to fund certain kinds of construction projects under the Federal-aid highway program. Because FTA and FHWA were authorized by the same statute to waive the local or State matching requirements, FTA and FHWA adopted similar approaches to implementing the temporary waiver program.

The Temporary Waiver Program

As explained in the interim final rule, under section 9 of the Federal Transit Act, as amended (FT Act) now codified at 49 U.S.C. § 5336 and called ''urbanized area formula program,'' and under section 18 of the FT Act, now codified at 49 U.S.C. § 5311 and called ''non-urbanized area formula program,'' FTA and a recipient of its funds share the costs of financing local mass transit capital projects. Specifically, FTA pays eighty percent of a capital project's eligible costs (the Federal share), and a recipient pays the remaining twenty percent (the local match or local share). To ensure the sufficiency of local financing for a project, 49 U.S.C. § 5307 requires a recipient to certify that it can pay its share of the project's cost. A similar requirement applies to grants made under FTA's ''non-urbanized area formula program.''

During fiscal years 1992 and 1993, however, an alternative approach to these Federal and local share requirements was available. Specifically, the Dire Emergency Supplemental Appropriations Act, 1992, P.L. 102–302, and the Department of Transportation Appropriations Act, 1993, P.L. 102–388, (the Acts) permitted FTA, under limited circumstances, to waive in fiscal years 1992 and 1993 part or all of the local share required for capital projects under 49 U.S.C. §§ 5311 and 5336, thereby increasing the proportion of Federal money used to pay for a project, which Part 671 called the ''increased Federal share.'' In short, in fiscal years 1992 and 1993 a recipient could have funded a project's costs using only Federal money.

The rule specified the circumstances under which FTA would grant a waiver, described the application process, and detailed procedures for the repayment of the ''increased Federal share.'' The waiver applied only to funds obligated by FTA and drawn down by the recipient before October 1, 1993.

Analysis of the Comment

FTA received only one comment to the interim final rule. That comment, from a State Department of Transportation (DOT), raised concerns about how the ''increased Federal share'' would be repaid by a recipient. The ''increased Federal share'' equals the amount of the local share waived by FTA.

The rule specified that recipients must repay the ''increased Federal share'' before March 31, 1994. Should a recipient fail to meet this deadline, the rule provided that FTA would deduct fifty percent of the amount waived in fiscal year 1995 and fifty percent in fiscal year 1996 from the recipient's apportionment. If, however, the funds were transferred from the Surface Transportation Program or the Congestion Mitigation and Air Quality program to formula programs for urbanized or non-urbanized areas and the recipient did not repay those funds before March 31, 1994, the Federal Highway Administration (FHWA) would deduct fifty percent of the amount waived from the originating apportionment under the appropriate highway program in FY 1995 and the remaining portion in FY 1996.

The State DOT objected to the latter alternative and recommended that State DOTs be given a formal role in approving any waiver requested by a recipient, and that any waiver of the local share for a transit project be repaid from a recipient's transit apportionment regardless of the original source of the funding.

This State DOT was the only commenter who raised this particular concern and therefore FTA concluded that virtually all FTA recipients and State DOTs did not see this particular repayment provision as burdensome or objectionable. Moreover, the Acts did not give State DOTs a role in approving waiver requests. Consequently, FTA did not change this particular provision.