

the Commission's rules. Moreover, even if RTC could establish with certainty that rural carriers would lose exemptions as a result of the Commission's rules, its contention that LECs would be irreparably harmed is speculative. First, economic harm that results from loss of customers to competitors does not constitute irreparable harm. Second, the Commission stated in the *First Report and Order* that requesting carriers must compensate the incumbent LEC for the costs of services, interconnection, or unbundled elements that the incumbent provides upon request, and RTC has not shown why, in light of such compensation, it would suffer irreparable harm from complying with the requirements of section 251(c). Nor has RTC demonstrated that any harm a rural LEC arguably might suffer would be substantial.

13. RTC also asserts that, because the Commission has placed the burden of proof on rural carriers that seek to retain exemptions from section 251(c), they will incur costs that they would not otherwise bear. For example, RTC contends that rural LECs will need to bear costs of hiring attorneys, cost consultants, and economists. If the Commission's rule is overturned by the court, RTC argues, rural LECs will have suffered irreparable harm by incurring these costs. NCTA and MCI contend that RTC has provided no evidence that, absent our rules, it would not bear similar or identical costs to respond to *bona fide* requests for interconnection, services or network elements. We find no basis for concluding that rural carriers will bear costs as a result of our rules that they would not otherwise bear. Moreover, courts have held that "[m]ere litigation expense, even substantial and unrecoverable cost, does not constitute irreparable injury."

14. RTC further argues that the rule requiring the filing of interconnection agreements that predate the 1996 Act will irreparably harm rural LECs and their customers by "threaten[ing] higher rates, more toll calls, or both, for the affected rural customers." This argument is speculative, because it assumes without substantiation that existing agreements will have to be renegotiated, and that the resulting terms will be significantly less favorable to affected rural LECs. As the District of Columbia Circuit has noted, in evaluating a petitioner's allegations of irreparable harm, "[b]are allegations of what is likely to occur are of no value" because the critical issue is "whether the harm will *in fact* occur." RTC provides no evidence to support its allegation that higher rates for

customers will in fact occur if § 51.303 of the Commission's rules is not stayed.

15. Because, as discussed above, RTC has failed to demonstrate that any rural telephone company would suffer irreparable harm due to the application of § 51.303 or 51.405 of our rules, we need not address RTC's remaining arguments concerning the other three parts of the test governing a motion for stay. Nevertheless, we take this opportunity to clarify certain aspects of § 51.405(c) of our rules that RTC challenges in its petition for stay. Section 51.405(c) states:

In order to justify continued exemption under section 251(f)(1) of the Act once a bona fide request has been made, an incumbent LEC must offer evidence that the application of the requirements of section 251(c) of the Act would be likely to cause undue economic burden beyond the economic burden that is typically associated with efficient competitive entry.

RTC erroneously contends that the Commission's rules implementing § 251(f)(1) improperly ignore two of the three statutory criteria that a state commission must consider in determining whether to remove a rural incumbent LEC's exemption from the requirements of § 251(c) of the Act. RTC's argument is not based on any affirmative statement in our rules that state commissions may disregard evidence of technical infeasibility or harm to universal service in deciding whether to remove an exemption. Rather, RTC incorrectly infers from the fact that our rules address only one of the statutory criteria for evaluating such issues that we intended for state commissions to ignore the other two criteria. In § 51.405(c) of our rules, we interpreted the meaning of the statutory term "unduly" as it modifies "economically burdensome," because we found that this phrase is susceptible to differing interpretations. We did not find it necessary to adopt rules that addressed the meaning of "technical feasibility" or "universal service." That decision, however, does not in any way affect a state's responsibility to consider all three of the factors set forth in § 251(f)(1)(A). We similarly interpreted the phrase "unduly economically burdensome" in adopting 47 CFR 51.405(d), and did not thereby intend to limit LECs' rights to seek suspensions or modifications by other means provided in § 251(f)(2).

V. Ordering Clause

16. Accordingly, it is ordered that the motion for stay filed by the Rural Telephone Coalition is dismissed to the extent that it seeks a stay of 47 CFR 51.809, and otherwise is Denied.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 97-50 Filed 1-3-97; 8:45 am]
BILLING CODE 6712-01-P

47 CFR Part 73

[MM Docket No. 93-28, RM-8172, RM-8299]

FM Broadcasting Services; Whitley City, KY, Colonial Heights, Morristown and Tazewell, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Chief, Policy and Rules Division granted the petition for reconsideration, filed by Murray Communications, of the *Report and Order* in this proceeding, 59 FR 60077, published November 22, 1994, by rejecting the rule making proposal (RM-8172) granted by the *Report and Order*, and, instead, granting the counterproposal (RM-8299), substituting Channel 240C2 for 290A at Colonial Heights, Tennessee, Channel 290A for Channel 231A at Tazewell, Tennessee, Channel 231A for Channel 240A at Morristown, Tennessee, and Channel 252A for Channel 290A at Whitley City, Kentucky. The *Report and Order* denied Murray's counterproposal, RM-8299, to upgrade Channel 290A at Colonial Heights, Tennessee by substituting Channel 240C2, but granted its initial proposal, RM-8172, to effect an upgrade to Channel 240C3. With this action, the proceeding is terminated.

EFFECTIVE DATE: February 3, 1997.

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

SUPPLEMENTARY INFORMATION: The following channels can be allotted in compliance with the Commission's minimum distance separation requirements:

Channel 240C2 to Colonial Heights at Station WLJQ(FM)'s existing transmitter site, restricted to 16.7 kilometers (10.4 miles) northwest of the community at coordinates 36-35-35 North Latitude and West Longitude 82-37-16, and, to accommodate that allotment, Station WAey(FM), Channel 240A, Princeton, West Virginia, can be relocated to a new transmitter site at coordinates North Latitude 37-25-00 and West Longitude 81-02-00 in compliance with the minimum distance separation requirements; Channel 290A at Tazewell at Station WCTU(FM)'s existing site at coordinates 36-27-32 and West Longitude 83-35-07; Channel

231A to Morristown at Station WMXX(FM)'s existing site at coordinates North Latitude 36-13-40 and West Longitude 83-19-58; and Channel 252A to Whitley City at Station WHAY(FM)'s existing site at North Latitude 36-44-39 and West Longitude 84-28-37.

This is a summary of the Commission's *Memorandum Opinion and Order*, MM Docket No. 93-28, adopted December 13, 1996 and released December 20, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in 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.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for Part 73 reads 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 Tennessee, is amended by removing Channel 290C3 at Colonial Heights and adding Channel 240C2; by removing Channel 231A at Tazewell and adding Channel 290A; and by removing Channel 240A at Morristown and adding Channel 231A.

3. Section 73.202(b), the Table of FM Allotments, under Kentucky, is amended by removing Channel 290A at Whitley City and adding Channel 252A.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97-171 Filed 1-3-97; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AD11

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Three Wetland Species Found in Southern Arizona and Northern Sonora, Mexico

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines endangered status for the Canelo Hills ladies-tresses (*Spiranthes delitescens*), the Huachuca water umbel (*Lilaeopsis schaffneriana* ssp. *recurva*), and the Sonora tiger salamander (*Ambystoma tigrinum stebbinsi*) pursuant to the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). These species occur in a limited number of wetland habitats in southern Arizona and northern Sonora, Mexico. They are threatened by one or more of the following—collecting, disease, predation, competition with nonnative species, and degradation and destruction of habitat resulting from livestock overgrazing, water diversions, dredging, and groundwater pumping. All three taxa also are threatened with extirpations or extinction from naturally occurring climatic and other environmental events, such as catastrophic floods and drought, a threat that is exacerbated by habitat alteration and small numbers of populations or individuals. This rule implements Federal protection provided by the Act for these three taxa.

EFFECTIVE DATE: February 5, 1997.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021, telephone (602/640-2720), or facsimile (602/640-2730).

FOR FURTHER INFORMATION CONTACT: Jim Rorabaugh or Angie Brooks (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

Cienegas in southern Arizona and northern Sonora, Mexico, are typically mid-elevation wetland communities often surrounded by relatively arid environments. These communities are usually associated with perennial

springs and stream headwaters, have permanently or seasonally saturated highly organic soils, and have a low probability of flooding or scouring (Hendrickson and Minckley 1984). Cienegas support diverse assemblages of animals and plants, including many species of limited distribution, such as the three taxa addressed in this final rule (Hendrickson and Minckley 1984, Lowe 1985, Ohmart and Anderson 1982, Minckley and Brown 1982). Although *Spiranthes delitescens* (*Spiranthes*), *Lilaeopsis schaffneriana* ssp. *recurva* (*Lilaeopsis*), and the Sonora tiger salamander typically occupy different microhabitats, they all occur or once occurred in cienegas. *Lilaeopsis* is also found along streams and rivers and occurs at mid-elevations, from 1,148–2,133 meters (m) (3,500–6,500 feet (ft)). The Sonora tiger salamander occurs mostly in cattle tanks and impounded cienegas, but presumably was associated primarily with natural cienegas and other wetlands prior to human settlement.

Cienegas, perennial streams, and rivers in the desert southwest are extremely rare. The Arizona Game and Fish Department (AGFD)(1993) recently estimated that riparian vegetation associated with perennial streams comprises about 0.4 percent of the total land area of Arizona, with present riparian areas being remnants of what once existed. The State of Arizona (1990) estimated that up to 90 percent of the riparian habitat along Arizona's major desert watercourses has been lost, degraded, or altered. *Spiranthes*, *Lilaeopsis*, and the Sonora tiger salamander occupy small portions of these rare habitats.

Spiranthes is a slender, erect, terrestrial orchid that, when in flower, reaches approximately 50 centimeters (cm) (20 inches (in.)) tall. Five to 10, linear-lanceolate, grass-like leaves, 18 cm (7.1 in.) long and 1.5 cm (0.6 in.) wide, grow basally on the stem. The fleshy, swollen roots are approximately 5 mm (0.2 in.) in diameter. The top of the flower stalk contains up to 40 small white flowers arranged in a spiral. This species is presumed to be perennial, but mature plants rarely flower in consecutive years and, in some years, have no visible above ground structures (McClaran and Sundt 1992, Newman 1991).

Martin first collected *Spiranthes delitescens* in 1968 at a site in Santa Cruz County, Arizona (Sheviak 1990). This specimen was initially identified as *Spiranthes graminea*, a related Mexican species. Sheviak (1990) found that the *Spiranthes* specimens in Arizona, previously thought to be *S.*