

4. A court will have overstepped its authority under section 332 if, in determining damages, it does enter into a regulatory type of analysis that purports to determine the reasonableness of a prior rate or it sets a prospective charge for services. Thus, while the Commission concludes that section 332 does not generally preempt damage awards based on state contract or consumer protection laws, this is not to say that such awards can never amount to rate or entry regulation. Nor does the Commission conclude that a damage award in the WCA litigation or any other specific case would or would not be consistent with section 332(c)(3). The Commission believes that the question of whether a specific damage award or a specific grant of injunctive relief constitutes rate or entry regulation prohibited by section 332 (c)(3) would depend on all facts and circumstances of the case.

Ordering Clauses

5. Pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i) and 154 (j), section 5(d) of the Administrative Procedure Act, 5 U.S.C. 554(e), and § 1.2 of the Commission's Rules, 47 CFR 1.2, the Petition for Declaratory Ruling filed by Wireless Consumer Alliance, Inc. is granted in part, as indicated in the full text of this MO&O, and otherwise is denied.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00-1694; MM Docket No. 99-362; RM-9730]

Radio Broadcasting Services; Canton and Morristown, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Radio Power, Inc., licensee of Station WVLF, Canton, NY, and Waters Communications, Inc., licensee of Station WNCQ-FM, Morristown, NY, substitutes Channel 275C3 for Channel 244A at Canton, NY, and modifies the license of Station WVLF to specify operation on the higher powered channel and substitutes Channel 244C3 for Channel 275A at Morristown, NY, and modifies the license of Station WNCQ-FM to specify operation on the higher powered channel. These allotments will provide each community with wide coverage area FM channels. See 65 FR 270, January 4, 2000. Channel 275C3 can be allotted to Canton in compliance with the Commission's minimum distance separation requirements, with respect to all domestic allotments, with a site restriction of 12 kilometers (7.4 miles) north, at coordinates 44-41-51 NL; 75-07-35 WL, to accommodate Radio Power's requested site. Channel 275C3 at Canton is short-spaced to Channel 276A at Valleyfield, Quebec, Canada. Channel 244C3 can be allotted to Morristown in compliance with the Commission's minimum distance separation requirements, with respect to all domestic allotments, with a site restriction of 12 kilometers (7.4 miles) east, at coordinates 44-36-00 NL; 75-30-00 WL, to accommodate Waters desired transmitter site. See Supplementary Information.

DATES: Effective September 11, 2000.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

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. 99-362, adopted July 19, 2000, and released July 28, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

Channel 244C3 at Morristown is short-spaced to Channel 243A at Buckingham, Quebec, and Channel 244C1 at Pembroke, Ontario, Canada. Canadian concurrence in these allotments, as specially negotiated short-spaced allotments, has been requested since both communities are located within 320 kilometers (200 miles) of the U.S.-Canadian border, but has not yet been received. However, rather than delay any further the opportunity of the licensees of Stations WVLF and WNCQ-FM to file applications specifying operation on the higher powered channels at Canton and Morristown, respectively, we will allot Channel 275C3 to Canton and Channel 244C3 to Morristown. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Canadian Government, the construction permit will include the following condition: "Operation with the facilities specified herein is subject to modification, suspension, or termination without the right to hearing, if found by the Commission to be necessary in order to conform to the Canada-United States FM Broadcast Agreement or if objected to by Industry Canada." In 1987, Channel 244A, Canton, NY was added to the community, 52 FR 39783 (October 23, 1987), but inadvertently removed from the **Federal Register** in 1988, 53 FR 19913 (June 1, 1988).

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, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Channel 275C3 at Canton and removing Channel 275A and adding Channel 244C3 at Morristown.

Federal Communications Commission.

John A. Karousos,

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

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