

available for video programming on all satellites licensed to the provider during the previous year. DBS providers may use this reserved capacity for any purpose until such time as it is used for noncommercial educational or informational programming.

(2) *Qualified programmer.* For purposes of these rules, a qualified programmer is:

(i) A noncommercial educational broadcast station as defined in section 397(6) of the Communications Act of 1934, as amended,

(ii) A public telecommunications entity as defined in section 397(12) of the Communications Act of 1934, as amended,

(iii) An accredited nonprofit educational institution or a governmental organization engaged in the formal education of enrolled students (A publicly supported educational institution must be accredited by the appropriate state department of education; a privately controlled educational institution must be accredited by the appropriate state department of education or the recognized regional and national accrediting organizations), or

(iv) A nonprofit organization whose purposes are educational and include providing educational and instructional television material to such accredited institutions and governmental organizations.

(v) Other noncommercial entities with an educational mission.

(3) *Editorial control.* (i) A DBS operator will be required to make capacity available only to qualified programmers and may select among such programmers when demand exceeds the capacity of their reserved channels.

(ii) A DBS operator may not require the programmers it selects to include particular programming on its channels.

(iii) A DBS operator may not alter or censor the content of the programming provided by the qualified programmer using the channels reserved pursuant to this section.

(4) *Non-commercial channel limitation.* A DBS operator cannot initially select a qualified programmer to fill more than one of its reserved channels except that, after all qualified entities that have sought access have been offered access on at least one channel, a provider may allocate additional channels to qualified programmers without having to make additional efforts to secure other qualified programmers.

(5) *Rates, terms and conditions.* (i) In making the required reserved capacity available, DBS providers cannot charge

rates that exceed costs that are directly related to making the capacity available to qualified programmers. Direct costs include only the cost of transmitting the signal to the uplink facility and uplinking the signal to the satellite.

(ii) Rates for capacity reserved under paragraph (a) of this section shall not exceed 50 percent of the direct costs as defined in this section.

(iii) Nothing in this section shall be construed to prohibit DBS providers from negotiating rates with qualified programmers that are less than 50 percent of direct costs or from paying qualified programmers for the use of their programming.

(iv) DBS providers shall reserve discrete channels and offer these to qualifying programmers at consistent times to fulfill the reservation requirement described in these rules.

(6) *Public file.* (i) Each DBS provider shall keep and permit public inspection of a complete and orderly record of:

(A) Quarterly measurements of channel capacity and yearly average calculations on which it bases its four percent reservation, as well as its response to any capacity changes;

(B) A record of entities to whom noncommercial capacity is being provided, the amount of capacity being provided to each entity, the conditions under which it is being provided and the rates, if any, being paid by the entity;

(C) A record of entities that have requested capacity, disposition of those requests and reasons for the disposition; and

(D) A record of all requests for political advertising time and the disposition of those requests.

(ii) All records required by this paragraph shall be placed in a file available to the public as soon as possible and shall be retained for a period of two years.

(7) *Effective date.* DBS providers are required to make channel capacity available pursuant to this section upon the effective date. Programming provided pursuant to this rule must be available to the public no later than six months after the effective date.

#### **PART 100—[REMOVED]**

11. Remove part 100.

[FR Doc. 02-19888 Filed 8-6-02; 8:45 am]

**BILLING CODE 6712-01-P**

## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Part 73**

[MM Docket 01-276; FCC 02-209]

#### **Table of Allotments To Delete Noncommercial Reservation on Channel \*16, 482-488 MHz, Pittsburgh, PA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission has before it a petition filed by WQED Pittsburgh ("QED"), licensee of noncommercial educational television stations WQED(TV), Channel \*13 and WQEX(TV), Channel \*16 in Pittsburgh, wherein it requests that the Commission dereserve Channel \*16 and permit QED to sell the station to ShootingStar, a commercial entity. The Commission grants QED's request and permits QED to sell WQEX(TV) and use the proceeds to improve its financial condition, construct DTV facilities for its remaining station, and fund a permanent programming endowment.

**DATES:** Effective September 6, 2002.

**FOR FURTHER INFORMATION CONTACT:** Joyce Bernstein (202) 418-1600, Video Division, Media Bureau.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order Amendment of the Television Table of Allotments to Delete Noncommercial Reservation on Channel \*16, 482-488 MHz, Pittsburgh, Pennsylvania* ("Report and Order"), MM Docket, 01-276, FCC 02-209, adopted July 11, 2002 and released July 18, 2002. The full text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Room, Room CY-A257, Portals II, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, Vistrionix, Inc.

#### **Synopsis of Report and Order**

The *Report and Order* finds that QED remains in financial distress, that it has taken dramatic steps to improve its financial condition, including reducing its workforce by half and selling available assets, and that QED and its auditors both conclude that the sale of WQEX(TV) as a commercial station is crucial to QED's financial recovery. The *Report and Order* also concludes that the Pittsburgh area can no longer support both WQED(TV) and WQEX(TV), given its population decline, and the downward trend in

contributions to QED. On balancing the needs and abilities of QED, given its financial condition and the community from which it derives support, the Commission finds that the continued use of the second channel is no longer necessary to meet the educational, instructional and cultural needs of the Pittsburgh community, especially since upon dereservation and sale of WQEX(TV), and initiation of digital service, QED will be able to substantially increase the amount of free over-the-air educational service.

The *Report and Order* concludes that QED's circumstances are highly unique and that the public interest would be served by waiving the Commission's policy disfavoring dereservation. The *Report and Order* also concludes that the record supports waiver of the policy requiring that newly dereserved channels be made available for competing applications.

#### Procedural Matters

The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceeds to amend the TV and DTV Table of Allotments, §§ 73.606 and 73.622(b). See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504, and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

#### Ordering Clauses

The Commission further finds that unique public interest considerations and benefits support a waiver of the policy set forth in the Sixth Report and Order requiring that newly dereserved channels be made available for competing applications.

*It is further ordered*, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the authorization of WQED Pittsburgh for station WQEX(TV) *is modified* to specify operation on Channel 16 in lieu of Channel \*16.

#### List of Subjects 47 CFR Part 73

Digital television broadcasting, Television.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

### PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

#### § 73.606 [Amended]

2. Section 73.606, the Table of TV Allotments under Pennsylvania is amended by removing Channel \*16 at Pittsburgh and adding in its place Channel 16 at Pittsburgh.

#### § 73.622 [Amended]

3. Section 73.622(b), the Table of Digital Television Allotments under Pennsylvania is amended by removing Channel \*26 at Pittsburgh and adding in its place Channel 26 at Pittsburgh.

[FR Doc. 02-20071 Filed 8-6-02; 12:45 pm]

**BILLING CODE 6712-01-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

**RIN 1018-A118**

#### Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Carson Wandering Skipper

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), determine the Carson wandering skipper (*Pseudocopaeodes eunus obscurus*) to be endangered under the Endangered Species Act of 1973, as amended (Act). The Carson wandering skipper is currently known from only two populations, one in Washoe County, Nevada, and one in Lassen County, California. The subspecies is found in grassland habitats on alkaline substrates.

Extinction could occur from naturally occurring events or other threats due to the small, isolated nature of the known populations of the Carson wandering skipper. These threats include habitat destruction, degradation, and fragmentation due to urban and residential development, wetland habitat modification, agricultural practices (such as excessive livestock grazing), gas and geothermal development, and nonnative plant invasion. Other threats include collecting, livestock trampling, water exportation projects, road construction,

recreation, pesticide drift, and inadequate regulatory mechanisms. We find these threats constitute immediate and significant threats to the Carson wandering skipper. This rule implements Federal protection provided by the Act for the subspecies.

**DATES:** This rule becomes effective on August 7, 2002.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, NV 89502.

**FOR FURTHER INFORMATION CONTACT:** Robert D. Williams, Field Supervisor, Nevada Fish and Wildlife Office (see **ADDRESSES** section) (telephone 775/861-6300; facsimile 775/861-6301), or Wayne White, Field Supervisor, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W-2605, Sacramento, CA 95825-1846 (telephone 916/414-6000; facsimile 916/414-6712).

#### SUPPLEMENTARY INFORMATION:

##### Background

The genus *Pseudocopaeodes* in the family Hesperidae and subfamily Hesperinae (grass skippers) contains only one species, *Pseudocopaeodes eunus*. Members of Hesperidae are called skippers because of their powerful flight. While their flight may be faster than butterflies, they seldom fly far and few species migrate (Scott 1986).

The species *Pseudocopaeodes eunus* is thought to consist of five subspecies. The Carson wandering skipper (*P. e. obscurus*) is locally distributed in grassland habitats on alkaline substrates in eastern California and western Nevada. *P. e. eunus* is located in western desert areas of southern California; *P. e. alinea* is found in eastern desert areas of southern California and in southern Nevada; and *P. e. flavus* is found in western and central Nevada (Brussard 2000). In 1998, what is believed to be an undescribed fifth subspecies of *P. eunus* was found in Mono County, California. George Austin of the Nevada State Museum and Historical Society in Las Vegas is working to formally describe this fifth subspecies (Brussard 2000). Except for the Carson wandering skipper, the subspecies of *P. eunus* do not have universally accepted common names.

The Carson wandering skipper was collected in 1965 by Peter Herlan, Nevada State Museum, at a location north of U.S. Highway 50, Carson City, Nevada. It was first described by George Austin and John Emmel (1998), based