40 CFR Part 81

Environmental protection, Air pollution control.

Authority: 42 U.S.C. 7401 *et seq.*

John Wise,

Acting Regional Administrator, Region IX.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart D—Arizona

2. Section 52.120 is amended by revising paragraph (c)(96)(i)(A)*(1)* to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(i) * * *

(A) * * *

(96) * * *

(*1*) House Bill 2254, Section 1: ARS 41–3009.01 (amended); Section 2: 49–541.01 (amended); Section 3: 49–542 (amended); Section 4: 49–545 (amended); Section 5: 49–557 (amended); Section 6: 49–573 (amended); Section 7: 41–803 (amended) and Section 8: 41–401.01 (amended), adopted on May 18, 1999.

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PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart C—Arizona

2. In § 81.303 the table for ''Arizona-Carbon Monoxide'' is amended by revising the entry for ''Tucson area: Pima County (part)'' to read as follows:

§ 81.303 Arizona

* * * * *

Designated Area	Arizona—Carbon Monoxide Designation		Classification	
	Date	Type Attainment	Date	Type
* * *	*	*	*	*
Tucson Area:	September 20, 2000.			
Pima County (part):				
Township and Ranges as follows: T11–12S, R12–14E; T13–15S, R11–16E; and T16S, R12–16e Gila and Salt River Baseline and Meridian excluding portions of the Saguaro National Monument and the Coronado National Forest.				
* * *	*	*	*	*

[FR Doc. 00–21079 Filed 8–18–00; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[WT Docket No. 99–263; FCC 00–292]

Availability of Monetary Damages for State Law Claims Against CMRS Providers

AGENCY: Federal Communications Commission.

ACTION: Interpretation.

SUMMARY: In this document, the Commission responds to a Petition for Declaratory Ruling, and finds that certain portions of the Communications Act do not generally preempt the award of monetary damages against Commercial Mobile Radio Service Providers by state courts based on state consumer protection, tort, or contract claims. The action is taken to respond to the Petition and to clarify this issue.

FOR FURTHER INFORMATION CONTACT: Mary Woytek or Susan Kimmel, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Memorandum Opinion and Order (MO&O) in WT Docket No. 99–263, FCC 00–292, adopted August 3, 2000, and released August 14, 2000. The complete text of this MO&O is available for inspection and copying during normal business hours at the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY–B400, 445 12th Street, SW., Washington, DC.

Synopsis of the Memorandum Opinion and Order

1. In this Memorandum Opinion and Order (MO&O), the Commission responds to a Petition for Declaratory Ruling, filed on July 16, 1999, by Wireless Consumers Alliance, Inc. (WCA Petition). The WCA Petition concerns whether the provisions of the Communications Act of 1934, as amended, serve to preempt state courts from awarding monetary relief against Commercial Mobile Radio Service (CMRS) providers: (a) for violating state consumer protection laws prohibiting false advertising and other fraudulent business practices, or (b) in the context of contractual disputes and tort actions adjudicated under state contract and tort laws. In addition, the issue regarding damage awards raised in a Petition for Declaratory Ruling filed by Southwest Bell Mobile Systems is incorporated into the Commission's response to the WCA Petition. (FCC 99–365, 14 FCC Rcd 19898, 1999.)

2. The Commission finds that section 332(c)(3)(A) does not generally preempt the award of monetary damages by state courts based on state consumer protection, tort, or contract claims. The Commission notes, however, that whether a specific damage calculation is prohibited by section 332 will depend on the specific details of the award and the facts and circumstances of a particular case.

3. Specifically, the Commission concludes that award of damages to customers damaged by a CMRS provider's breach of contract or fraud violation would not normally require a state court to prescribe, set or fix wireless rates. A consideration of the price originally charged, for the purposes of determining the extent of harm or injury involved, is not necessarily an inquiry into the reasonableness of the original price and therefore is permissible.

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.

[FR Doc. 00–21135 Filed 8–18–00; 8:45 am]

BILLING CODE 6712–01–P

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).