

telephone companies' wires even though the cable operator was affiliated with the telephone company in violation of the rules by virtue of their joint interest in the contractor that was to build the cable system. The court acknowledged that the project "presents a number of advantages that might justify a good cause waiver." However, it held that the Commission had "failed \* \* \* to explain why any of these advantages require [the contractor's] participation as [the telephone companies'] contractor." In this case, in contrast, in light of the decisions holding Section 613(b) unconstitutional, it is necessary to waive Section 613(b) to allow affiliates of telephone companies to provide video programming in order to render the statute constitutional. The Ninth Circuit recognized that a waiver might be warranted in these circumstances in *GTE California, Inc. v. FCC*, 39 F.3d 940 (1994), a case that (unlike *NCTA v. FCC*) involved a constitutional challenge to Section 613(b). The Ninth Circuit stated in that case, in response to the argument that Section 613(b) is unconstitutional, that "GTECA did not present the constitutional issue to the Commission at a point in this proceeding where it could have tried to obviate the constitutional question by granting discretionary relief, such as a permanent waiver." As that statement recognizes, a waiver is warranted to implement what the Ninth Circuit in *US West* termed our "more speech-friendly plan" and hence avoid a serious constitutional issue.

17. *Conclusion.* Accordingly, it is ordered that Section 613(b)(4) of the Communications Act is interpreted to authorize waivers permitting telephone companies to provide video programming directly to subscribers in their telephone service area pursuant to the rules we will adopt in this docket or related rulemaking proceedings.

#### List of Subjects in 47 CFR Part 63

Ownership rules, Telephone.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 95-14833 Filed 6-16-95; 8:45 am]

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#### 47 CFR Part 73

[MM Docket No. 92-196; RM-8041]

#### Radio Broadcasting Services; Tallassee and Tuskegee, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** This document reallocates Channel 260A from Tuskegee to Tallassee, Alabama, and modifies the license of WACQ, Incorporated for Station WACQ-FM, as requested, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. The allotment of Channel 260A to Tallassee will provide a first local FM service to the community without depriving Tuskegee of local aural transmission service. See 57 FR 44354, September 25, 1992. Coordinates used for Channel 260A at Tallassee, Alabama, are 32-26-30 and 85-47-45. With this action, the proceeding is terminated.

**EFFECTIVE DATE:** July 28, 1995.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MM Docket No. 92-196, adopted June 6, 1995, and released June 13, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, located at 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

#### 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, as amended.

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 260A at Tuskegee, and by adding Tallassee, Channel 260A.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 95-14835 Filed 6-16-95; 8:45 am]

BILLING CODE 6712-01-F

#### 47 CFR Part 73

[MM Docket No. 91-129; RM-7664]

#### Radio Broadcasting Services; Lake Havasu City, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** This document allots FM Channel 244C2 to Lake Havasu City, Arizona, as that community's fourth local FM service, in response to a petition for rulemaking filed on behalf of Bridge Broadcasting. See 56 FR 21465, May 9, 1991. Coordinates used for Channel 244C2 at Lake Havasu City are 34-29-02 and 114-19-18. Lake Havasu City is located within 320 kilometers (199 miles) of the United States-Mexico border and therefore, concurrence of the Mexican government to this proposal was obtained. With this action, the proceeding is terminated. **DATES:** Effective July 28, 1995. The window period for filing applications on Channel 244C2 at Lake Havasu City, Arizona, will open on July 28, 1995, and close on August 28, 1995.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process for Channel 244C2 at Lake Havasu City, Arizona, should be addressed to the Audio Services Division, FM Branch, (202) 418-2700.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MM Docket No. 91-129, adopted June 5, 1995, and released June 13, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, located at 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of the 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, as amended.