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For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

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

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 98-034 Filed 1-2-98; 8:45 am]

BILLING CODE 6712-01-P

### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[MM Docket No. 97-245; RM-9202]

#### Radio Broadcasting Services; St. Marys, WV

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Seven Ranges Radio Company, Inc., proposing the allotment of Channel 287A St. Marys, West Virginia, as the community second local FM transmission service. Channel 287A can be allotted to St. Marys in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.8 kilometers (6.7 miles) southeast to avoid a short-spacing to the licensed site of Station WZNW(FM), Channel 288B1, Bethlehem, West Virginia. The coordinates for Channel 387A at St. Marys are North Latitude 39-18-03 and West Longitude 81-15-19. Since St. Marys is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested.

**DATES:** Comments must be filed on or before February 9, 1998, and reply comments on or before February 24, 1998.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Thomas P. Taggart, Esq., P.O. Box 374, St. Marys, West Virginia 26170 (Counsel for Petitioner).

#### FOR FURTHER INFORMATION CONTACT:

Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97-245, adopted December 10, 1997, and released December 19, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC 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 contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

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

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 98-84 Filed 1-2-98; 8:45 am]

BILLING CODE 6712-01-P

### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[MM Docket No. 97-246; RM-9205]

#### Radio Broadcasting Services; Walla Walla, WA, and Hermiston, OR

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Mark Jacky Broadcasting proposing the substitution of Channel 256C2 for Channel 256C3 at Walla Walla, Washington, and the modification of Station KUJ-FM's construction permit accordingly. To accommodate the upgrade, petitioner also requests the

substitution of Channel 258A for Channel 257A at Hermiston, Oregon, and the modification of Station KQFM(FM)s license accordingly. Channel 256C2 can be substituted at Walla Walla in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioner's requested site. The coordinates for Channel 256C2 at Walla Walla are North Latitude 45-59-38 and West Longitude 118-10-47. Additionally, Channel 258A can be substituted at Hermiston in compliance with the Commission's minimum distance separation requirements at Station KQFM(FM)'s presently authorized site. The coordinates for Channel 258A at Hermiston are North Latitude 45-51-57 and West Longitude 119-18-45.

**DATES:** Comments must be filed on or before February 9, 1998, and reply comments on or before February 24, 1998.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Robert Lewis Thompson, Esq., Taylor, Thiemann & Aitken, L.C., 908 King Street, Suite 300, Alexandria, Virginia 22314 (Counsel for Petitioner).

#### FOR FURTHER INFORMATION CONTACT:

Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97-246, adopted December 10, 1997, and released December 19, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC 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 contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

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

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 98-139 Filed 1-2-98; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 232

[FRA Docket No. PB-9, Notice No. 8]

RIN 2130-AB22

#### Two-Way End-of-Train Telemetry Devices and Certain Passenger Train Operations

**AGENCY:** Federal Railroad Administration (FRA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** FRA proposes to revise the regulations regarding the use and design of two-way end-of-train telemetry devices (two-way EOTs) to specifically address certain passenger train operations where multiple units of freight-type equipment, material handling cars, or express cars are part of a passenger train's consist. Trains of this nature are currently being operated by the National Railroad Passenger Corporation (Amtrak), and swift action is necessary to clarify and address the applicability of the two-way EOT requirements to these types of operations.

**DATES:** Written comments regarding this proposal must be filed no later than January 20, 1998. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

**ADDRESSES:** Written comments should identify the docket number and the notice number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Stop 10, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:**

James Wilson, Motive Power and Equipment Division, Office of Safety, RRS-14, FRA, 400 Seventh Street, SW., Stop 25, Washington, DC 20590 (telephone 202-632-3367), or Thomas Herrmann, Trial Attorney, Office of the Chief Counsel, RCC-12, FRA, 400 Seventh Street, SW., Stop 10,

Washington, DC 20590 (telephone 202-632-3178).

#### SUPPLEMENTARY INFORMATION:

##### Background

On January 2, 1997, FRA published a final rule amending the regulations governing train and locomotive power braking systems at 49 CFR part 232 to add provisions pertaining to the use and design of two-way end-of-train telemetry devices (two-way EOTs). See 62 FR 278. The purpose of the revisions was to improve the safety of railroad operations by requiring the use of two-way EOTs on a variety of freight trains pursuant to 1992 legislation, and by establishing minimum performance and operational standards related to the use and design of the devices. See Pub. L. No. 102-365 (September 3, 1992); 49 U.S.C. 20141. In this document, FRA proposes to revise the regulations on two-way EOTs to specifically address certain passenger train operations where numerous freight-type cars, material handling cars, or express cars are part of a train's consist. Trains of this nature are currently being operated by the National Railroad Passenger Corporation (Amtrak), and prompt action is necessary to clarify and address the applicability of two-way EOT requirements to these types of operations.

The current regulations regarding two-way EOTs provide an exception from the requirements for "passenger trains with emergency brakes." See 49 CFR 232.23(e)(9). The language used in this exception was extracted in total from the statutory exception contained in the statutory provisions mandating that FRA develop regulations addressing the use and operation of two-way EOTs or similar technology. See 49 U.S.C. 20141(c)(2). A review of the legislative history reveals that there was no discussion by Congress as to the precise meaning of the phrase "passenger trains with emergency brakes." Consequently, FRA is required to effectuate Congress' intent based on the precise language used in that and the other express exceptions and based on the overall intent of the statutory mandate. See 49 U.S.C. 20141(c)(1)-(c)(5). Furthermore, any exception contained in a specific statutory mandate should be narrowly construed. See *Chesapeake & Ohio Ry. v. United States*, 248 F. 85 (6th Cir. 1918) *cert. den.*, 248 U.S. 580; *DRG R.R. v. United States*, 249 F. 822 (8th Cir. 1918); *United States v. ATSF Ry.*, 156 F.2d 457 (9th Cir. 1946).

The intent of the statutory provisions related to two-way EOTs was to ensure that trains operating at a speed over 30

mph or in heavy grade territory were equipped with the technology to effectuate an emergency application of the train's brakes starting from both the front and rear of the train. The specific exceptions contained in the statute were aimed at trains (i) that do not operate within the express parameters or (ii) that are equipped or operated in a fashion that provides the ability to effectuate an emergency brake application that commences at the rear of the train without the use of a two-way EOT. See 49 U.S.C. 20141(c)(1)-(c)(5). Based on the intent of the statute and based upon a consistent and narrow construction of the specific language used by Congress in the express exceptions, FRA believes it is clear that Congress did not intend the phrase "passenger trains with emergency brakes" to constitute a blanket exception for all passenger trains. If that was Congress' intent, it would not have added the qualifying phrase "with emergency brakes." In FRA's view, this language limits the specific statutory exception to passenger trains equipped with a separate emergency brake valve in each car throughout the train and, thus, to passenger trains possessing the ability to effectuate an emergency application of the train's brakes from the rear of the train. Therefore, passenger trains that include RoadRailers®, auto racks, express cars, or other similar vehicles that are designed to carry freight that are placed at the rear of the train, that are not equipped with emergency brake valves, would not fall within the specific statutory or regulatory exception as they are incapable of effectuating an emergency brake application that commences at the rear of the train. Further, FRA does not believe that Congress envisioned freight-type equipment being hauled at the rear of passenger trains when the specific exception was included in the statute.

FRA believes that Congress intended to except only those trains traditionally considered to be passenger trains, which would include passenger trains containing baggage and mail cars as these have consistently been considered passenger equipment with emergency brakes. However, passenger trains which operate with numerous inaccessible baggage or mail cars attached to the rear of the train that lack any ability to effectuate an emergency brake application from the rear of the train and would, in FRA's view, fall outside the specific statutory and regulatory exception for "passenger trains with emergency brakes."

Subsequent to the issuance of the final rule and the period permitted for the submission of petitions for