FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–7; RM–8732, RM–8845 and MM Docket No. 96–12; RM–8741]

Radio Broadcasting Services; Banks, Redmond, Sunriver,Corvallis and The Dalles, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of LifeTalk Broadcasting Association, allots Channel *268C3 to The Dalles, Oregon, as the community's first local noncommercial educational FM channel. *See* 61 FR 6336, February 20, 1996. Channel 268C3 can be allotted to The Dalles in compliance with the Commission's minimum distance separation requirements with a site restriction of 20.3 kilometers (12.6 miles) east, at coordinates 45–34–00 NL; 120–55–00 WL, because it does not require the use of more than conventional facilities to provide the entire community with a city-grade 70 dBu signal. At the request of American Radio Systems License Corp. and Combined Communications, Inc., the Commission substitutes Channel 298C1 for Channel 298C2 at Banks, Oregon, modifies the license of Station KBBT-FM to specify operation on the higher powered channel, substitutes Channel 269C2 for Channel 298C2 at Redmond, Oregon, and modifies the license of Station KLRR to specify the alternate Class C2 channel. *See* 61 FR 4950, February 9, 1996. Channel 298C1 can be allotted to Banks at Station KBBT-FM's licensed transmitter site, 45–31–22 NL; 122–45-07 WL. Channel 269C2 can be allotted to Redmond at Station KLRR's licensed transmitter site, 44–04–41 NL; 121–19–57 WL. At the request of Hurricane Broadcasting, Inc., Channel 224C2 is allotted to Sunriver, Oregon, without the imposition of a site restriction, at coordinates 43-52-00 NL; 121–30–00. These allotments were found to better serve the public interest than the conflicting one-step upgrade application of Madgekal Broadcasting, Inc., licensee of Station KFLY, to substitute Channel 268C for Channel 268C2 at Corvallis, Oregon, and modify the station's license accordingly. The settlement agreement submitted by American Radio Systems/Combined Communications and Madgekal Broadcasting, Inc., is not approved. With this action, this proceeding is terminated.

DATES: Effective May 18, 1998. A filing window for Channel 224C2 at Sunriver, Oregon, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order. However, since the allotment of Channel *268C3 at The Dalles, Oregon, has been reserved for noncommercial educational use, applications for Channel *268C3 at The Dalles may be filed and will be processed in accordance with the cut-off procedures for noncommercial educational FM applications.

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 Nos. 96–7 and 96–12, adopted March 25, 1998 and released April 3, 1998. 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 Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

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, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Channel 298C1at Banks, adding Channel 269C2 at Redmond, adding Sunriver, Channel 224C2, and adding Channel *268C3 at The Dalles.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–10133 Filed 4–20–98; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1039

[STB Ex Parte No. 561]

Rail General Exemption Authority—Nonferrous Recyclables

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board) is exempting from regulation 29 nonferrous recyclable commodity groups, because their regulation is unnecessary under the exemption statute.

EFFECTIVE DATE: These rules are effective May 21, 1998.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking served May 5, 1997, and published in the **Federal Register** on May 16, 1997 (62 FR 27003) (*'97 NPR*), we sought comments on whether to exempt from regulatory oversight rail transportation of 29 nonferrous recyclable commodity groups listed at the end of this document. Comments were filed by the Association of American Railroads (AAR), the American Forest and Paper Association (AF&PA), the Institute of Scrap Recycling Industries, Inc. (ISRI), and Joseph C. Szabo, for and on behalf of United Transportation Union-Illinois Legislative Board (UTU–IL). Replies were filed by the AAR and UTU–IL.

Based on the record, we conclude that the proposed exemption is warranted.

Background

In *Rail General Exemption Authority—Exemption of Nonferrous Recyclables and Railroad Rates on Recyclable Commodities*, Ex Parte No. 346 (Sub-No. 36), served August 23, 1994, and published in the **Federal Register** on August 24, 1994 (59 FR 43529) (*'94 NPR*), the Interstate Commerce Commission proposed to exempt, from all regulation except the special maximum rate cap of former 49 U.S.C. 10731(e),[1] the rail transportation of 28 nonferrous recyclable commodity groups. The *'94 NPR* was issued in response to an April 1994 petition filed

[1] Former section 10731(e) provided that ''[n]otwithstanding any other provision of this subtitle or any other law,'' including the agency's exemption authority, rates for the transportation of nonferrous recyclable or recycled materials had to be set at or below levels that would permit the rail industry to recover its fully allocated costs.

by the AAR, various individual railroads, and ISRI.

Petitioners argued that, by freeing carriers from regulatory requirements, an exemption would ''reduc[e] administrative costs and increas[e] railroad ratemaking flexibility.'' Before the rulemaking was concluded, however, the ICC Termination Act of 1995 (ICCTA) repealed the special recyclables rate cap provision of former section 10731(e).

With the repeal of former section 10731(e), there was no need to consider only a partial exemption. Thus, we instituted this proceeding[2] and solicited comments on a full exemption for 29 recyclable commodity groups.[3] We also observed that, in *Removal of Obsolete Recyclables Regulations*, 1 S.T.B. 7 (1996), in which we had repealed the regulations at former 49 CFR 1145 designed to implement former 49 U.S.C. 10731(e), we had inadvertently removed from the Code of Federal Regulations the list of 11 of the 29 recyclables under consideration here (at 49 CFR 1145.9) that previously had been partially exempted from regulation. We explained that, during the pendency of this proceeding, these commodity groups would be exempt from all regulation except the maximum rate provisions of 49 U.S.C. 10701 *et seq.*

Positions of the Parties

The AAR contends that the market for transportation of recyclables is highly competitive and characterized by declining rates, shrinking market shares, and low revenue-to-variable cost (r/vc) percentages. It notes that, based on revenues per ton-mile (r/tm), there has been a long-term decline in average recyclable rail rates. On average, r/tm in current dollars has fallen from 3.9 cents in 1981 to 3.1 cents in 1995. AAR also computes the 1995 market share for 18 of the recyclable commodity groups under consideration here.[4] With one exception,[5] the railroads' market share for those commodity groups ranged from 0.7% to 25.1%. Finally, AAR points out that the 1995 composite r/vc percentages for the 29 recyclable commodity groups was 98.9%, well below the 180% level at which our jurisdiction to evaluate the reasonableness of rail rates begins.

ISRI, which had joined in the 1994 petition to partially exempt recyclables from regulation, filed separate comments in response to the *'97 NPR*. ISRI notes that ICCTA's elimination of the tariff filing requirements and reduction of rail contract regulation relieve carriers of most pre-ICCTA regulatory burdens. Although it does not oppose the exemption, ISRI expresses concern that the ongoing restructuring of the rail industry may, in the future, require the Board to reconsider the exemption and to resume regulatory oversight to protect shippers and receivers of nonferrous recyclables.

UTU–IL opposes the exemption, arguing that it would be harmful both to the public interest and to railroad employees. It contends that deregulation would allow carriers not to compete for business, and that there is no evidence that regulation has unduly restricted the movement of nonferrous recyclables. It also submits that the value of this proceeding is questionable because of the significant changes brought about by the ICCTA.

AF&PA limited its comments to the issue of exempting scrap paper. It supports a total exemption for that commodity.

Discussion and Conclusions

Section 10502 requires that an exemption be granted when (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101 (RTP) and (2) either (a) the transaction or service is of limited scope, or (b) application of the provision in whole or in part is not needed to protect shippers from an abuse of market power. We find that regulation of rail transportation of the 29 commodity groups under consideration is not necessary to advance the RTP or to protect shippers from abuse of market power, and we accordingly grant the exemption.[6] In reaching this conclusion, we have considered the provisions of the RTP that bear on the appropriateness of this exemption.[7] See *Illinois Commerce Com'n* v. *ICC*, 787 F.2d 616, 627 (D.C. Cir. 1986).

The transportation of nonferrous recyclables is very competitive, as evidenced by the overall r/vc percentage of 98.9 in 1995, the decline in r/tm from 3.9 cents in 1981 to 3.1 cents in 1995, and the general decline in rail market shares. The record also indicates that motor carriers play a significant role in the transportation of these commodity groups. Generally, motor carriers possess advantages of access and speed, and they have become more cost effective as motor trailer capacities have grown. Under these circumstances, we find no evidence that rail carriers possess sufficient market power to abuse shippers and, indeed, must operate efficiently to compete for this traffic. Thus, current transportation of these commodity groups is consistent with 49 U.S.C. 10101 (1), (4), (5) and (9), which favor reliance on competition in the marketplace and encourage efficiency in rail operations.

Furthermore, because of the highly competitive nature of the recyclables transportation market and the overall low level of rates, regulation is not needed to carry out the policy of section 10101(6) (protecting shippers from unreasonable rates). Indeed, we do not have jurisdiction to evaluate the reasonableness of a rate that results in a revenue-variable cost percentage of less than 180.[8] Moreover, these same factors suggest that recyclables moving by rail are being effectively transported and that regulation is not necessary to carry out the policy of section 10101(14) (energy conservation). Finally, given this evidence of a heavily competitive environment, we find that the goal of section 10101(2) of minimizing regulatory control over rail transportation is best met by granting the exemption.

We note that ISRI, while not opposing the exemption, has asked us to ''be receptive to petitions to revoke the exemption.'' Under 49 U.S.C. 10502(d), the Board can revoke an exemption if it finds that application of a statutory provision is necessary to carry out the RTP. As has been our practice, we will carefully consider any revocation request. The main effect of our

[2] In a decision served May 5, 1997, and published in the **Federal Register** on May 16, 1997 (62 FR 27002), the Ex Parte No. 346 (Sub-No. 36) proceeding was discontinued and the comments filed in that proceeding were incorporated into the record of this proceeding.

[3] As discussed in detail in the *'97 NPR* at 4–5, in proposing to exempt 29 commodity groups, we retained 26 of the 28 commodity groups included in the *'94 NPR*, expanded two commodity groups to a broader Standard Transportation Commodity Code (STCC) classification (STCCs 20511 and 41115), and added a 29th commodity (STCC 40241 scrap paper).

[4] Total tonnage figures used to compute market shares were not available for the other 11 commodity groups.

[5] Based on a limited sample, the railroads appeared to have a 91.9% market share for tin scrap. However, AAR notes that tin scrap was sparsely sampled in the 1995 waybill, with only seven waybills representing 280 expanded carloads, and therefore the market share calculation could be inaccurate. In any event, the 1995 r/vc percentage for tin scrap is only 106.4%. Furthermore, all of the tin scrap traffic sampled moved less than 600 miles, a length of haul where movements are generally vulnerable to truck competition. V.S. Posey at 11–12.

[6] Because we are satisfied that the continued regulation of the transportation of these 29 commodity groups is not necessary to carry out the RTP or to protect shippers from abuse of market power, we need not determine whether the transportation of these commodity groups is of limited scope.

[7] Sections 10101 (1), (2), (4), (5), (6), (9), and (14) are the RTP provisions that are particularly relevant to our analysis here.

[8] 49 U.S.C. 10707.

exemption is to suspend our jurisdiction to examine the reasonableness of a rate, jurisdiction we believe is unnecessary given the overall low level of rates. However, a particular shipper paying a rate that is more than 180% of the railroad's variable costs that believes that its rate is unreasonable may file a petition for revocation of the exemption and a rate complaint simultaneously. If we conclude that the carrier is market dominant, we will revoke the exemption as it relates to the complaining shipper's movements and evaluate the reasonableness of the rate.

UTU–IL was the only party opposing the exemption. Without offering any explanation or support for that assertion, UTU–IL baldly asserts that the exemption will allow railroads not to compete for business. We do not expect the railroads to discourage movement of this traffic. Indeed, UTU–IL acknowledges that rail movements of nonferrous recyclables increased substantially during the 1992–95 period when revenue per ton declined from $24.64 to $22.92.[9]

Finally, we reject UTU–IL's remaining arguments. The nonparticipation of Huron Valley and Star (which responded in opposition to the *'94 NPR*) in this rulemaking suggests that shipper opposition has lessened. We have examined Huron Valley's and Star's comments filed in response to the *'94 NPR* and have found that the concerns raised there have been mooted by the passage of the ICCTA or do not demonstrate that regulation is needed to protect shippers from the abuse of market power by the railroads.[10] UTU–IL, moreover, does not specify how the exemption would be harmful to the public interest or railroad employees. Under these circumstances, and given the fact that, consistent with 49 U.S.C. 10502, regulation is not needed to carry out the RTP or to protect shippers from abuse of market power, the record supports exempting the 29 commodity groups.

Our final rules are shown at the end of this document.[11]

Environmental and Energy Considerations

We conclude that granting this exemption will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 605(b), we conclude that this exemption will not have a significant economic impact on a substantial number of small entities. No new regulatory requirements are imposed, directly or indirectly, on such entities. The impact, if any, will be to reduce the amount of paperwork and regulation. This exemption is based, at least in part, on a finding that regulation of this transportation is not necessary to protect shippers (including small shippers) from abuse of market power. See 49 U.S.C. 10502. Such a finding indicates that a substantial number of small entities will not be significantly affected by a lifting of regulation.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Decided: April 10, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, Title 49, Chapter X, Part 1039 of the Code of Federal Regulations is amended as follows:

PART 1039—EXEMPTIONS

1. The authority citation for Part 1039 continues to read as follows:

Authority: 5 U.S.C. 553; and 49 U.S.C. 10502.

2. In § 1039.11, paragraph (a) is amended by adding the following entries in numerical order to the table and by revising the first sentence to the text following the table to read as follows:

§ 1039.11 Miscellaneous commodities exemptions.

(a) * * *

STCC No.	STCC tariff	Commodity
*	*	* * * * *
20511	6001–X, eff., 1–1–96	Bread or other bakery products exc. biscuits, crackers, pretzels or other dry bakery products. See 20521–20529.
22941	do.	Textile waste, garnetted, processed, or recovered or recovered fibres or flock exc. packing or wiping cloths or rags. See 22994.
22973	do.	Textile fibres, laps, noils, nubs, roving, sliver or slubs, prepared for spinning, combed or converted.
22994	do.	Packing or wiping cloths or rags (processed textile wastes).
24293	do.	Shavings or sawdust.
30311	do.	Reclaimed rubber.
3229924	do.	Cullet (broken glass).
33312	do.	Copper matte, speiss, flue dust, or residues, etc.
33322	do.	Lead matte, speiss, flue dust, dross, slag, skimmings, etc.
33332	do.	Zinc dross, residues, ashes, etc.

[9] UTU–IL contends that r/tm does not measure rail rates because rail rates taper downward with distance and that average length of haul for all rail traffic rose from 615.8 miles in 1980 to 842.6 miles in 1995. UTU–IL's argument is misplaced because the average length of haul for nonferrous recyclables declined from 1992 to 1995 while the r/tm also declined from 3.9 cents in 1981 to 3.1 cents in 1995. UTU–IL's argument that the average length of haul increased from 1980 to 1995 is based on *all* rail traffic, rather than on only nonferrous recyclables.

[10] In their 1994 comments, both Star and Huron Valley argued that, because of the special status accorded recyclables under former section 10731, an exemption should not be issued. These arguments are now moot. Further, both parties contended that they lacked effective competitive alternatives and that continued regulation was needed to protect them from an abuse of market power. However, Star's comments indicated that its recyclable commodity group (municipal solid waste) moved at rates that produce revenue-variable cost percentages below 180. Likewise, the rates Huron Valley had been assessed for moving its automobile shredder residue produced r/vc percentages below 180. *Huron Valley Steel Co.* v. *CSX Transp., Inc.*, No. 40385 (ICC served Oct. 6, 1992). While former section 10731 limited recyclables rates to levels significantly less than 180% of variable cost, the current statute precludes a finding of an abuse of market power for traffic moving at r/vc percentages below the 180% level.

[11] In addition to adding the 29 commodity groups to the list of exempted commodity groups in 49 CFR 1039.11(a), we have revised the first sentence of paragraph (a) to eliminate specific reference to recyclables because there is no longer any prohibition to a full exemption for these commodity groups. Furthermore, we have eliminated as unnecessary the language that suggests that a commodity group cannot qualify for more than one exemption. We see no reason why a commodity group could not qualify for more than one exemption. However, we have retained the language that the exemption is not applicable to any movement where a finding of market dominance previously has been made.

STCC No.	STCC tariff	Commodity
33342	do.	Aluminum residues, etc.
33398	do.	Misc. nonferrous metal residues, including solder babbitt or type metal residues.
40112	do.	Ashes.
40212	do.	Brass, bronze, copper or alloy scrap, tailings, or wastes.
40213	do.	Lead, zinc, or alloy scrap, tailings or wastes.
40214	do.	Aluminum or alloy scrap, tailings or wastes.
4021960	do.	Tin scrap, consisting of scraps or pieces of metallic tin, clippings, drippings, shavings, turnings, or old worn-out block tin pipe having value for remelting purposes only.
40221	do.	Textile waste, scrap or sweepings.
40231	do.	Wood scrap or waste.
40241	do.	Paper waste or scrap.
40251	do.	Chemical or petroleum waste, including spent.
40261	do.	Rubber or plastic scrap or waste.
4029114	do.	Municipal garbage waste, solid, digested and ground, other than sewage waste or fertilizer.
4029176	do.	Automobile shredder residue.
4111434	do.	Bags, old, burlap, gunny, istle (ixtle), jute, or sisal, NEC.
41115	do.	Articles, used, returned for repair or reconditioning.
42111	do.	Nonrevenue movement of containers, bags, barrels, bottles, boxes, crates, cores, drums, kegs, reels, tubes, or carriers, NEC, empty, returning in reverse of route used in loaded movement, and so certified.
42112	do.	Nonrevenue movement of shipping devices, consisting of blocking, bolsters, cradles, pallets, racks, skids, etc., empty, returning in reverse of route used in loaded movement, and so certified.
42311	do.	Revenue movement of containers, bags, barrels, bottles, boxes, crates, cores, drums, kegs, reels, tubes, or carriers, NEC., empty, returning in reverse of route used in loaded movement and so certified.

Excluded from this exemption are any movements for which a finding of market dominance has been made.

* * * * *

[FR Doc. 98–10526 Filed 4–20–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208297-8054-02; I.D. 041498B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in the Eastern Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of pollock in the Eastern Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of pollock in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the amount of the 1998 total allowable catch (TAC) of pollock in this area has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 18, 1998, until 2400 hrs, A.l.t., December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson 907-486-6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The amount of the 1998 TAC of pollock in the Eastern Regulatory Area of the GOA was established as 5,580 metric tons by the Final 1998 Harvest Specifications of Groundfish for the GOA (63 FR 12027, March 12, 1998). See § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the amount of the 1998 TAC for pollock in the Eastern Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that further catches of pollock in the Eastern Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the amount of the 1998 TAC for pollock in the Eastern Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. The fleet has taken the amount of the 1998 TAC for pollock in the Eastern Regulatory Area of the GOA. Further delay would only result in overharvest and disrupt the FMP's objective of not exceeding the TAC throughout the year. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 15, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–10517 Filed 4–20–98; 8:45 am]

BILLING CODE 3510–22–F