BC
FCC 81-584
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.293 and Section 2.106 of the Commission's Rules Concerning Use of the Subsidiary Communications Authorization for Utility Load Management	)	BC Docket No. 81-352

REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 17, 1981 ;Released: January 8, 1982
By the Commission:

Introduction

1. On May 21, 1981, the Commission adopted a Notice of Proposed Rule Making (NPRM) proposing an amendment to its FM Subsidiary Communication Authorization (SCA) rule. The amendment proposed permitting a specific energy conserving technique, utility load management, to be used on the FM subcarrier signal of commercial FM radio stations. The authorization would be effected by exempting such use from the "non-broadcast" prohibition contained in the Commission's SCA rules (Section 73.293). This authorization would allow utilities to use SCA signals as an additional means to alleviate peak period energy demands and to make possible other energy conserving measures. The Commission felt that authorizing load management use of SCA's was clearly in the public interest. Our tentative view has been strongly confirmed by the comments received. Therefore, the Commission is adopting the proposal with this Report and Order. 1/

2. The Commission proposed this rule change because it felt that energy conservation is of critical importance to our nation. Great amounts of effort and funds are being expended toward its attainment. Managing utility loads has been given strong Congressional endorsement in the Public Utilities Regulatory Policies Act of 1978 (PURPA), and a number of states require positive utility action in its use. Load management aids materially in conserving energy by causing it to be used more efficiently. Its use also helps to damp rising energy prices by: (1) encouraging customers to shift their energy demands to off-peak periods; (2) eliminating the capital costs of generating plants that are required solely to meet such peak demand; and (3)

1/ In conjunction with this action, the Commission is also considering approval of a related energy conserving proposal in the form of a Notice of Proposed Rule Making to authorize AM licensees to use their AM carriers for utility load management purposes.

reducing the higher fuel and operating costs associated with bringing standby equipment into use during periods of peak energy demand.

3. There are three known ways that an FM SCA subcarrier signal, "piggy-backed" on the main channel signal, could be used for utility load management purposes. It can be used: (1) to turn off certain users' equipment that consumes a particular fuel; 2/ (2) to transfer users from one type of equipment to another in order to redistribute fuel demand from one fuel to another; and (3) to implement time-of-day metering. Switching the metering of a particular fuel during periods of higher fuel demand allows the charging of higher rates to reflect the increased operating cost conditions during those periods. 3/ The present "non-broadcast" limitations on SCA use were developed in 1960 in the Commission's Report and Order, Docket No. 12517 [19 RR 1619 (1960)]. Their basis was the fear that availability of such uses would: (1) tend to block future development of the infant FM stereophonic broadcasting service; (2) cause serious competitive hardship to Domestic Public Radio Services licensees; and (3) amount to a de facto reallocation of broadcast frequencies. In the Notice in the present proceeding, the Commission stated its firm belief that these reasons were either no longer relevant in today's environment or were strongly overshadowed by the beneficial effects this permission would have on the national welfare. In soliciting comments on its proposal, the Commission also requested comments on any impact that possible future additions to permissible SCA uses might have on the complexity of administration of the Table of Frequency Allocations.

II. The Comments

4. Despite the limited scope of this amendment, the Commission received more than 80 comments and 11 reply comments covering a wide spectrum of opinion. The predominant views expressed by these comments can be classified into five basic groupings.

A. More than 50 commenters unqualifiedly favored the action. These were mainly utilities and energy related organizations, both private and government, who represent a substantial number of consumers. 4/

2/ The potential saving here could be substantial simply in terms of the largely untapped 93 million residential units -- primarily water heaters and air conditioners -- capable of being remotely controlled by agreement between the utility and user.

3/ This price pressure serves as an effective means of discouraging energy demand of a less important nature during heavy use periods or during severe shortage periods.

4/ This group of commenters included utilities serving about 16 million customers, utility trade associations whose membership included about 4000 electric and gas utilities, and eight state regulatory energy commissions representing the views of states containing about one-third of the U.S. population.

B. Some commenters wanted to broaden the proceeding to permit: (a) the specific inclusion of AM carrier use for load management purposes; or (b) complete deregulation of FM SCA and AM carrier use to permit licensees to exercise complete freedom in their use as long as such use was consistent with primary broadcast responsibilities. The eight comments and six reply comments received in this group were mainly from broadcasting organizations and equipment producers.

C. A few commenters wanted the inclusion of public broadcasting FM SCA's in the proceeding with their compensation either: (1) on a cost-reimbursable basis in conformity with present rules; or (2) on a for-profit basis just as commercial FM stations are allowed. The four commenters were all public broadcasting organizations.

D. One commenter, a common carrier, felt that the authorization should be subject to common carrier rule treatment.

E. Finally, some commenters wanted the Commission either not to authorize the use of SCA's for such a purpose, or, at least, to relegate it to a secondary position relative to broadcast-type activities. The 16 comments of this type were predominantly from nonprofit radio reading service (RRS) groups currently using SCA's to broadcast to sight-impaired people, and from MUZAK, a commercial firm that uses FM SCA's for background music.

5. In the first group, the need for utility load management was perhaps best summarized by the California Energy Commission in citing evidence from previous load management experiments. They stated that, because of conservation efforts and the downward effect of price increases on consumer energy demand, utilities are faced with a declining average demand relative to peak demand. Nevertheless, it is the peak demand they must plan to serve since that is the maximum they might have to provide. To do so, they must have surplus generation capability, the cost of which is paid for by the consumer. Their comments go on to state that it typically costs a utility less than $30.00 a year to shift a kw of peak load compared to over $100.00 to produce it with a gas turbine. As the demand for electricity increases during a peak period less efficient peaking plants are brought into service. These inefficient plants use as much as 4500 Btu/kwh more energy than base plants and ordinarily use petroleum distillate fuels. Thus, they comment, direct utility control of customer energy load, by decreasing the level of peak demands, allows more efficient use of generating systems.

6. The most common need expressed in the comments as a critical component to effective load management was the need for many communication alternatives to meet the diversified situations and cost capabilities of utilities. This argument and the importance of FM SCA availability as a cost effective solution can be lucidly demonstrated by drawing from the statements of various commenters. For example, Vedette Energy Research, Inc. stated:

> "Despite the demonstrated and proven benefits to the nation generally and the consumer individually, despite the Federal mandate, the state imperatives and the utilities' own desire to realize the relief capable through ULM [utility load management]

> there has been no widespread introduction of ULM across the nation.... [a principal underlying reason is] lack of a reliable cost-effective delivery technology. Indeed, operators of many of the ULM experimental projects or small scale permanent installations confirm that the single major weakness in such systems is the communications link whose function it is to deliver the command from the utility to the load or end user."

Joseph Blackburn of H. Zinder Associates stated:

> "No single direct load management technique can be optimal for all electric utility systems. Each individual utility must tailor a load management program to fit the utility's specific needs, taking into consideration the utility's operating characteristics, demographic profile and regulatory climate. Every utility system needs to have a full range of telecommunication options available to it in making economic evaluations between alternative direct control techniques...." Enactment of this rule amendment will promote an increase in telecommunications options available for load management and "foster the development of equal opportunities in the selection of a load management technique best suited to the particular requirement of all utilities, regardless of their size, location or type of ownership."

7. The potential users of the SCA technology, users to which such a system would be available, are substantial. Any utility whose customers come within the broadcast range of an FM station would be a potential user. In its comments, the American Public Power Association (APPA) estimated that at least fifty percent of its more than 1700 public power system members, containing eighty percent of the customers served by its members, would have access to FM SCA use. 5/

8. Many utilities appear to be at an important decision point with reference to load management techniques. The National Rural Electric Cooperative Association asserted that its members had projects for the next decade in the planning stages, 6/ and Entec Consulting stated: "Since the utility industry is just beginning the demonstration/implementation of load management, it is important that the reliable, cost-effective systems are demonstrated and implemented. Unless the Commission acts positively now, the reliable cost-effective FM subcarrier systems will never be a serious consideration and many proposed load management systems will not be implemented for lack of a proper carrier system." The Burlington Electric Department, for example, is currently investigating numerous strategies but is very cost constrained due to its limited size. "Should transmission service become available to use through a contract to 'rent' a small portion of the FM

5/ APPA's estimate was developed by using four representative states of its membership (Minnesota, Ohio, Nebraska and California).

6/ The National Rural Electric Cooperative Association claims that its nearly one thousand nonprofit rural electric system members have been leaders in load management. They serve nine million rural member/customers in 46 states or ten percent of the nation's customers.

band from commercial operators, the feasibility of our load management project would be virtually guaranteed." 7/

9. Comments were received from two FM SCA equipment system developers 8/ emphasizing the technical sophistication and bandwidth efficiency of techniques available that would permit the use of SCA for utility load management without interfering with present SCA users. As stated by Vedette, its transmission could "simultaneously occupy the same subcarrier being used for such things as background music, physican's medical programs, radio reading services for the blind and other aural SCA programs, without any deleterious effects on those programs, the main channel programming or ULM system functions."

10. The second group, while agreeing with utility load management use of SCA, rejected the present proposal as too limited in scope and urged the further expansion of the docket. Two commenters, 9/ urged expansion of the proceeding to encompass AM load management radio techniques as well. They urged the Commission to include and authorize in this docket an AM carrier technique developed by Altran Electronics, Inc. In its comments, Altran stated that such AM technical ability had been tested and is now available. 10/ Altran claimed that its AM system offers a number of advantages which should promptly be made available. They urge the Commission to approve both systems at the same time "so that the two technologies may compete together in the market place." 11/ The other commenters in this group predominantly urged that the docket be expanded to allow all uses of FM SCA and AM carriers consistent with licensees primary broadcast responsibilities. General Electric's statement appears to capture the general viewpoint of these commenters when it asked the Commission "to recognize, as a matter of policy, the variety of ways in which the broadcast carrier may be utilized. The Commission should expeditiously broaden this proceeding to consider at one time the removal of regulatory restraints on the licensee's

7/ Vermont's largest municipal utility.

8/ These were Vedette Energy Research, Inc. and the Blaupunkt Division of Robert Bosch Sales Corporation. Blaupunkt stated that a station employing its SCA technique "does not have to reduce its main or subchannel modulations to accomodate these signals."

9/ CBS, Inc. and Altran Electronics, Inc.

10/ For the report of this test see: Broadcast Radio System for Distribution Communications, Electric Power Research Institute ("EPRI"), EPRI EL-1868, Project 1535-1, Final Report, June 1981.

11/ As noted in Footnote 1 and discussed in the next section of this proceeding, the Commission has decided to take positive action on this request by initiating a separate proceeding.

authority to provide any such services over either its FM subcarrier or AM carrier." 12/ The reply comments received in this group urged the Commission, should it decide not to authorize the AM carrier use in this action, to conduct an expedited proceeding on its behalf.

11. The third group recommended that the Commission expand this procedure to include the SCA's of public broadcasting FM stations, as well, because the energy-efficiency reasons given in support of commercial FM SCA's were equally applicable to public broadasting FM stations. Such expansion would permit the more than 1100 public radio stations to assist in energy conservation efforts with the use of their SCA's, adding to the benefits of the proposal by making SCA utility load management available in more remote areas where commercial stations are not present, and offering an additional source of needed revenue to these stations. 13/ However, the commenters took different stands with reference to the remunerative aspects for public broacasters. NPR's proposal was to maintain a strictly noncommercial stance in keeping with present rules [Section 73.593(a)]. CPB and other commenters urged that this service be permitted to be sold or leased at the going market rate. In urging a for-profit basis, CPB stated that in so doing, "the Commission, in this proceeding, can serve the public's interest in a financially healthy non-commercial educational FM broadcast service, competition in the rendering of a new service to the public, and in the conservation of energy resources and the reduction of overhead in business . . . ."

12. The fourth category consists of only one commenter, Microband Corporation of America, a licensed common carrier in the Multipoint Distribution Service (MDS). While supporting the goals sought in the proceeding, this commenter called upon the Commission to subject such SCA uses that are in competition with common carriers to "equivalent regulatory treatment" to prevent unfair competition as a result of differing Commission requirements.

13. The last group of commenters opposed the proposed action altogether. They preferred outright rejection of the proposal, or if necessary, approval only if such "nonbroadcast" SCA use were made subject to definite limitations that would assure priorities to current and potential broadcast-type uses of SCA and/or guarantee their full protection. It would appear that the strongest opposition to the Commission's proposal is from the major present users of FM SCA's. In summary, the basis for this opposition by RRS and MUZAK is their fear that approval of SCA for load management use will increase competition and the price of SCA rentals (already on the rise because

12/ General Electric also states: "Clearly the time has come to explore on a broader scale the numerous and varied benefical uses to the public which would be made of the FM SCA ... as well as the AM carrier."

13/ NPR felt the Commission's Notice was ambiguous as to whether the proposed change would apply to public FM stations due to an inadvertent use in the Flexibility Act portion of the proposal of the total number of FM stations rather than just the number of commercial stations.

of increased competition from new broadcast-type users). They fear that allowing a new user, such as load management, will force RRS and small MUZAK franchisees, both with limited funds, to bid against "monopoly" utility companies which they assert could easily outbid them and, thereby, endanger their very existence. They feel it also would ultimately result in a reallocation of broadcast frequencies to non-broadcast use.

14. RRS states that SCA facilities are currently the only practical means of providing radio reading services and, they assert, squeezing them off SCA's could jeopardize a "vitally needed service to the handicapped population of the nation." 14/ This, they declare, is contrary to the public interest. They conclude that "The courts have found that the public interest standard includes consideration of the needs of the blind and handicapped....[and] that the Commission has an obligation to consider the needs of the handicapped under the rubric of the public interest." 15/ Various options were offered by the RRS commenters which would allay their concerns. The preferred option was outright rejection of the present proposal. However, should the Commission decide to proceed, the following other options were offered to accommodate utilities but assure relatively unimpaired functioning of RRS's operations.

> (1) A priority for broadcast-type uses of SCA could be given before their use for utility load management would be allowed; or the utility could be required to ensure continuation of RRS while fulfilling its own need.
>
> (2) Use of SCA's for utility load management purposes could be restricted to subaudible or superaudible tones or to short transmissions of only a few seconds duration to minimize interference with RRS programming. 16/

MUZAK, in its comments and again in its reply comments, set forth its preferred rule alternatives in a somewhat different order than RRS, positing as follows: Outright rejection of this FM SCA proposal; deferral of this action as an inadequate "piecemeal approach" until completion of a comprehensive study on SCA's; and, lastly, should the Commission still decide to authorize SCA's to be used for load management purposes, require a "double

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14/ Association of Radio Reading Services comment.

15/ From Chicagoland Radio Information Service comment. The court case referred to was Gottfried v FCC (D.C. Cir. April 17, 1981) (49 RR 2d 449).

16/ Washington Ear, Inc., one of the commenters who proposed option 2, saw very positive possibilities in this option, stating that if "power companies are restricted in their uses of SCA channels, the additional income they could provide, particularly to public radio stations, could help to finance the availability of SCA facilities for other groups who are performing socially desirable functions for their communities, but which are only able to pay very modest fees for the use of a subcarrier channel."

accommodation" by confining that function to subaudible tones to protect existing and potential broadcast SCA services.

III. Discussion

15. A number of comments questioned the Commission's "piecemeal approach" in treating utility load management separately from a large, general study of FM SCA uses. The Commission recognizes the importance and impact of FM SCA's generally and its decision to separate the load management aspect from other possible uses has been a deliberate one. From its initial study of the SCA area, the Commission concluded that the load management use of SCA's would be an important and relatively clear-cut rule change that warranted swift treatment since it was clearly in the public interest. It offers substantial national energy conservation and cost reduction opportunities and is anticipated to have little if any negative effects since it is possible to transmit a load management signal on a very narrow band which would permit sharing of the SCA band with other users. Since a general rule making considering all FM SCA uses would require a substantially larger amount of time to resolve, it would result in an unnecessary postponement of this simple and straightfoward, yet highly important, aspect.

16. First, we consider those requests to expand this proceeding to include certain specific additions; namely, authorization of utility load management use by modulating an AM station's carrier, and allowing public broadcasting FM stations to get such authorization. With reference to adding AM to the proceeding, the Commission is persuaded by the evidence supplied by the various commenters that the addition of the AM carrier method should be considered since it appears to offer a worthwhile expansion of the choices utilities are seeking in their energy conservation efforts. Its treatment, however, is outside the scope of this Notice and would require issuance of another expanded Notice. Therefore, rather than delay the present proceeding by expanding it to include this AM carrier method, the Commission is opening an expedited separate proceeding proposing AM carrier authorization for load management purposes.

17. The Commission also agrees with the view expressed by public broadcasting commenters that the same energy-saving case advanced for commercial FM SCA use for utility load management is applicable to public broadcaster's FM SCA's as well. However, recent Congressional changes in the Public Broadcasting Amendment Act of 1981 as to permissible activities of public broadcasting raise questions of interpretation with reference to the Commission's current rules. We are now considering this impact as well as other possible actions that would relate to public broadcasting activities. Because of this and to avoid delay of the present proceeding, the Commission has decided against issuing a new Notice encompassing public broadcasters. Instead, we will treat public broadcasting separately regarding this authorization.

18. The Commission also rejects the view of Microband Corporation of America that SCA use for load management, because it is similar to services provided by common carriers, should have the same regulatory requirement as imposed on common carriers. The Commission agrees with the statement in a number of reply comments that the Microband comment misunderstands the nature

of this rulemaking, that its "proposal to impose title II [Common Carrier] regulation on SCA uses fails to recognize that the title III [Broadcasting] licensing issues in this docket stand separate and apart from any title II regulatory questions that may arise in the context of specific, individual SCA applications." 17/ We do recognize that determining what activities constitute common carriage is often difficult and we are reviewing this complex matter in other Commission proceedings. 18/

19. Finally, we consider the concerns of those generally opposed to allowing this non-broadcast use of FM SCA's. These concerns seem basically rooted not so much in the fact that non-broadcast users would be allowed to participate as in the fact that the new users would represent additional competition for the existing SCA capacity. Although there will likely be some impact on existing users, this effect may not be particularly great. Two factors operate to reduce the expected impact of the new authorization. First, the narrow band capability of the techniques available for load management use of SCA's permits the simultaneous use of many SCA's for load management signals and aural use with no apparent detrimental effects. Secondly, it seems that economic incentives are generally present both to utilities and FM stations to mutually share the SCA spectrum. 19/

20. The utility company demand for an SCA is based on its economical use. The comments indicate that utilities are very interested in managing their loads because of the cost saving it offers them. It follows then that they will be interested in the specific FM SCA approach only if it provides load management at a lower cost than other techniques. Therefore, it seems reasonable to expect utilities to act in a rational manner and seek to share SCA's with other users in many cases in order to minimize their cost. This is particularly true since a majority of the utility companies are small and, as stated in their comments, are faced with strong cost constraints themselves. On the SCA supply side, commercial FM stations would have the same economic incentives to increase their net revenue from SCA's by establishing policies that make such sharing worthwhile.

21. We believe the arguments against granting this authorization by RRS and MUZAK are not valid. The evidence in this docket has made clear that dual use of the SCA by utility load managers and aural users is available and

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17/ From American Broadcasting Companies, Inc. reply comment.

18/ See Futher Notice of Proposed Rule Making, Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations therefor, 84 FCC 2d 445 (1981); and Notice of Proposed Rule Making, BC Docket No. 81-792, 46 Fed. Reg. 60024, published Dec. 8, 1981.

19/ While the sharing of subcarrier use may be the general effect of these factors, we do not wish to exclude load management from SCA broadband use. Situations may arise where broadband use might be best suited for utility load management. The ability to transmit at higher data rates or to accomplish a variety of related load management purposes in concert on an SCA may be required by new technologies or by the variety of existing needs of the large number of utilites in current operation.

practical and there is a strong economic incentive for sharing where possible, as discussed above. In fact, a reduction in SCA cost per user (or smaller increases) may result from this expanded use of SCA's due to (1) the spreading of SCA prevailing rental rates over two users, (2) the possible reduction in the cost of SCA receivers from any resulting economies of volume production to meet load management demands, and (3) the possible opening up of additional SCA's not presently being used.

22. A substantial number of FM stations do not currently operate SCA's. The additional financial incentive offered by utilities may well entice them to do so, making additional SCA's available to other users as well. In addition to SCA's available under current rules, the FM Quadraphonic Broadcasting proceeding [Docket No. 21310] proposes to expand subcarrier capability by permitting subcarriers on the FM baseband up to and including 99 KHz (from 75 KHz currently). Also, some of the TV stereo systems now being tested would add the possibility of substantially increasing the number of SCA's. As an example of the possible effect such expansion may have on RRS services, the Commission has already received one request for an experimental authorization to use the subcarrier of a TV aural FM transmitter to provide expanded reading service for the visual handicapped.

23. Failing outright rejection of the Notice, RRS and MUZAK wanted load management uses to be secondary to those of a traditional broadcast nature. Such a priority system could: (a) be one in which broadcast-type uses of SCA's would have first choice before an SCA would be made available for load management; (b) specifically establish a priority for RRS and other noncommerical or non-profit users; (c) restrict load management techniques to the use of subaudible tones to assure non-interference with broadcast-type users; or (d) grant the authorization but require Commission review of individual RRS endangering situations.

24. In the case of for-profit users of SCA's, like MUZAK, there would seem to be no reason why the Commission should protect such users from the normal forces of competition, since they do not differ from any other business venture. SCA's are used because they offer a least-cost opportunity for profit. As with the users of any resource, if one party values it more highly than another, it will be bid over to that use. Since we do not wish to unnecessarily interfere with such normal business practices, the Commission does not adopt a priority system for broadcast-type users.

25. In the case of RRS, the Commission recognizes the value of the service to the audience which it serves and applauds its effort on behalf of the sight-impaired. At this point, the Commission has no requirement that its licensees engage in special services of this type and, indeed, would be in a difficult position if it attempted to determine the relative social value of providing reading service for the blind at the possible cost of higher utility bills for the poor. Moreover, the serious problem facing RRS groups is the rising cost of SCA rentals that are already a fact of life because of the increased recognition of the value of an SCA by new broadcast-type users such as stock, commodity, agricultural, and business information services. This is a fact clearly acknowledged by RRS commenters. This trend can be expected to continue. Therefore, RRS is simply faced with a situation common to most organizations today, namely, the rising cost of the resources they require relative to their income. A priority system might assure that an SCA would be

available to broadcast-type users but there is no assurance it would continue to be at a price the RRS can afford.

26. The American Foundation for the Blind noted that 110 SCA's are in use for RRS purposes, 95 on public broadcasting stations and only 15 on commercial stations. To assure guaranteed protection to these 15 RRS users on commercial stations, the Commission is asked to restrict load management use on all 3300 commercial FM stations to subaudible use only. Such guaranteed protection for the 0.5 percent usage of commercial FM stations by RRS would impose an unreasonable penalty on those stations. Such a restriction clearly seems uncalled for and contrary to the public interest.

27. In light of the above, the Commission does not feel that the various requests to restrict SCA use to guarantee protection of aural SCA users is warranted in this rule making. The Commission does not believe it should impose more stringent rules than the situation demands and, thereby, foreclose the flexibility of the parties to handle the great variety of possible situations which may arise in a manner most suitable to the circumstances. The Commission would rather let market incentives, by acting on SCA users to minimize cost and on FM station licensees to maximize revenues, decide what is best for a particular situation. In sum, we do not wish to circumscribe the normally healthy market forces at work nor limit the degree of freedom of choice available unless we are assured the results would otherwise be contrary to the public interest. The Commission is confident that the change being made by this proceeding will not have that contrary effect.

28. With reference to the Commission's additional request in the Notice, few comments were received on the implications that future expanded alterations might have on the administration of the Table of Frequency Allocations. Those few, in turn, all felt the impact would be relatively unimportant compared with the public good obtained.

29. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final regulatory flexibility analysis finds as follows:

I. Need for and Purpose of the Rule.

The Commission has concluded that the national energy conservation effort in the U.S. could be enhanced by permitting the use of FM SCA subcarrier signals as an additional utility load management technique. This use, currently prohibited because it is a "non-broadcast" type use, would be exempted by this rule change, thereby opening another choice available to utilities in their energy conservation efforts.

II. Summary of issues raised by public comment in response to the initial regulatory flexibility analysis, Commission assessment, and changes made as a result.

A. Issues raised

1. Two present SCA user groups containing small entities feared that the addition of utility load management use of commercial FM SCA would increase competition, raise the price of SCA rentals, force them to bid against "monopoly" utilities who could outbid them and endanger their existence unless they were guaranteed protection of their SCA use. 20/

B. Assessment

1. The Commission concluded that these fears were not warranted with reference to the effects of this limited rule change because the evidence clearly showed that (a) the simultaneous transmission of both aural and utility load management signals without deleterious effects were feasible and practical, and (b) economic incentives were present for both utilities and FM licensees to put the SCA to dual use which might actually work to the economic benefit of these present users through rental price sharing and expansion of SCA use by FM stations.

C. Changes made as a result of such comments: None.

III. Significant alternatives considered and rejected.

1. Change the present rule to authorize utility load management use by guaranteeing protection of aural users through a priority system or through restriction of such use to the subaudible portion of the SCA. This was rejected because the Commission felt it was unjustified by the situation and could be costly to other small organizations. It would unnecessarily foreclose the flexibility of utilities and FM stations (most of which are small) throughout the country to make arrangements most suitable to their particular situation, irrespective of whether aural SCA demand was present in their area.

30. Authority for adoption of the rules herein is contained in Sections 2,4(i) and 303 of the Communications Act of 1934, as amended.

31. Accordingly, IT IS ORDERED, that Section 73.293 and Section 2.106 of the Commission's Rules ARE AMENDED as set forth in the attached Appendix. 21/ The amendments will become effective February 16, 1982.

20/ These were not-for-profit Radio Reading Services for the Sight Handicapped, and for-profit MUZAK on behalf of its small functional music franchisees.

21/ Stations with Subsidiary Communications Authorization that wish to add utility load management use may do so by following the proceedures set forth in Sections 73.293 (b) and (d) of the Commission's Rules. The Commission is currently reviewing form 318, the application form for the SCA.

32. IT IS FURTHER ORDERED, that this proceeding IS TERMINATED.

33. For further information concerning this proceeding, contact Norman Plotkin, Broadcast Bureau, (202) 632-6302.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
Secretary

Attachment: Appendix

APPENDIX

Parts 2 and 73 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

1. In Section 2.106, the National Table of Frequency Allocations is revised by adding footnote designator NG128 in column 7 in the band 88-108 MHz, and in the list of footnotes which follow the Table.

§2.106 Table of Frequency Allocations

United States		Federal Communications Commission		
Band (MHz)	Allocation	Band (MHz)	Services	Class of Station
5	6	7	8	9
*	*	*	*	*
88-108	NG	88-108	BROADCASTING	FM Broadcasting
(US23)		(NG21)		(NG2)
(US93)		(NG128)		
*	*	*	*	*

NG128 In the band 88-108 MHz, FM broadcast licensees or permitees may be granted a Subsidiary Communications Authorization (SCA) to transmit signals intended for utility load management.

* * * * *

2. Section 73.293, Subsidiary Communications Authorizations, is revised by adding the following subsection (a)(3):

§73.293 Subsidiary Communications Authorizations

(a) An FM broadcast licensee or permittee may apply for a Subsidiary Communications Authorization (SCA) to provide limited types of subsidiary services on multiplex basis. Permissible uses fall within one or more of the following categories:

(1) * * *

(2) * * *

(3) Transmission of signals intended for utility load management.

* * * * *