merely the Bureau's implementation and clarification of the existing Commission rule requiring that contributions be based on end-user telecommunications revenues. Because Line 48 is not a new substantive rule, the Bureau neither exceeded its delegated authority nor violated the notice and comment requirements of the APA. Accordingly, we reject the parties' procedural claims.

B. Substantiative Arguments Regarding the Inclusion of Carrier-Imposed Universal Service Charges in the Contribution Base

6. The parties argue that including carrier-imposed universal service charges in the contribution base creates a circular formula that drives up the contribution base, causing increased contributions, which result in higher carrier-imposed universal service charges that further drive up the contribution base. Thus, the parties claim that the inclusion of carrier-imposed universal service charges in the contribution base disserves the public interest because it results in an upwardly spiraling ''vicious cycle'' of perpetual increases in carrier contributions to the universal service support mechanisms. For example, PCIA supplies the following descriptions of this alleged effect:

> [I]f a carrier receives $100 in revenues for flat-rated services from an end-user over a given period, and assuming a 10 percent contribution rate, the carrier's contribution would be $10. If the carrier passes the $10 through to the customer, the revenues received from the customer (in the next comparable period) would increase to $110. If the $10 pass through is considered ''end user telecommunications revenues,'' the contribution would increase to $11, as an assessment would be included on the recovery of contributions from the customer.

Metrocall and Blooston provide similar examples. Upon closer examination, however, the inclusion of carrier-imposed universal service charges in the contribution base does not have the effect claimed by the parties.

7. In each of their examples, the parties assume that, all other things being equal, the contribution factor remains constant as the contribution base increases. This assumption, however, is mathematically impossible. The contribution factor is the ratio of total universal service program costs to the contribution base. Stated as a mathematical equation, the contribution factor can be described as follows:

$$\text{Contribution Factor} = \frac{\text{Total Program Costs}}{\text{Contribution Base}}$$

The total program costs and the contribution base are independent variables in this equation. The contribution factor, on the other hand, is the dependent variable, i.e., the contribution factor is dependent on the amount of the total program costs and the contribution base. Because the contribution base is the denominator in this equation, the contribution factor is inversely proportional to the contribution base. In other words, as the contribution base increases, all other things being equal,the contribution factor must decrease.

8. As demonstrated by the exhibit, all other things being equal, when carrier-imposed universal service charges are included in the contribution base, the contribution base increases, the contribution factor decreases in proportion to the increase in the contribution base, and the amount of each carrier's contribution remains constant. Therefore, the parties' ''vicious cycle'' argument is unfounded. Moreover, if carrier-imposed universal service charges were *not* included in the contribution base, there would be a competitive imbalance in the Commission's contribution methodology. All other things being equal, a carrier that chose to recover its contributions by increasing its rates would have an increased individual contribution base and an increased contribution. A carrier that chose to recover its contributions by imposing a line-item charge would not have an increased individual contribution base or an increased contribution. Such a result would put carriers choosing to raise their rates at a disadvantage compared to carriers choosing to impose a line-item charge, would render illusory the ''choice'' of recovery methods, and would violate the universal service principle of competitive neutrality. Accordingly, for all of the foregoing reasons, we reject the parties' claims that carrier-imposed universal service charges should be excluded from the contribution base.

III. Ordering Clauses

9. The authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), 403, and 405 of the Communications Act of 1934, as amended, and section 1.429 of the Commission's rules, Twenty-First Order on Reconsideration in CC Docket No. 96–45 and the Memorandum Opinion and order in CC Docket Nos. 96–45, 97–21, and 98–171 are adopted.

10. The authority contained in sections 4(i) and 405 of the Communications Act of 1934, as amended, and section 1.429 of the Commission's rules, the Petition for Partial Reconsideration and Clarification filed by the Personal Communications Industry Association on July 17, 1997 is denied to the extent stated.

11. The authority contained in sections 4(i) and 405 of the Communications Act of 1934, as amended, and section 1.106 of the Commission's rules, the Petition for Reconsideration filed by the Personal Communications Industry Association on August 31, 1998 is denied.

12. The authority contained in sections 4(i) and 405 of the Communications Act of 1934, as amended, and section 1.106 of the Commission's rules, the Petition for Reconsideration filed by Metrocall, Inc. on August 31, 1998 is denied.

List of Subjects in 47 CFR Part 54

Universal service.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–11101 Filed 5–3–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[FCC 00–130; MM Docket No. 98–175; RM–9364]

Television Broadcasting Services; Digital Television Broadcasting Services; Buffalo, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In a *Memorandum Opinion and Order,* the Commission denies the Application for Review filed by Coalition for Noncommercial Media (''CNM''), and affirms the Mass Media Bureau's *Report and Order* 64 FR 45893 (August 23, 1999). The Bureau's action had granted the noncommercial educational channel reservation swap for Channels 17 and *23 in Buffalo, New York and related digital channels requested by licensee Western New York Public Broadcasting Association. That *Report and Order* also had denied oppositions filed by Grant Television, Inc., licensee of WNYO–TV, Buffalo, New York, WKBW–TV Licensee, Inc., licensee of Station WKBW–TV, Buffalo, New York, Kevin Smardz, President of Southtowns Christian Center, Lakeview, New York, and CNM.

DATES: Effective July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order,* MM Docket No. 98–175, adopted April 6, 2000, and released April 19, 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.

Summary of Memorandum Opinion and Order

Before us is an Application for Review of the *Report and Order* which amended the Television Table of Allotments for Buffalo, New York at the request of Western New York Public Broadcasting Association (''WNYPBA''), licensee of Stations WNED–TV, Channel 17, and WNEQ–TV, Channel *23, Buffalo, New York, to reflect Channel 17 as reserved for noncommercial educational use, and Channel 23 as nonreserved, and related changes to the DTV Table of Allotments. Coalition for Noncommercial Media (''CNM''), a group of Buffalo-Area citizens and WNED/WNEQ–TV viewers filed this Application for Review, alleging that the Mass Media Bureau erred in making these amendments.

Background

The *Report and Order* granting the change of reservation considered and rejected arguments opposing WNYPBA's request by Grant Television, Inc. licensee of WNYO–TV, Buffalo, New York, WKBW–TV Licensee, Inc., licensee of Station WKBW–TV, Buffalo, New York, Kevin Smardz, President of Southtowns Christian Center, Lakeview, New York, and CNM. The *Report and Order* also denied CNM's counterproposal requesting that the Commission amend the TV Table of Allotments to reserve all unreserved channels being used for noncommercial operation on the grounds that it was not mutually exclusive with the WNYPBA proposal.

The *Report and Order* held (1) that the exchange of reservation would serve the public interest, and (2) that it could be effectuated under the Commission's existing rules and policies. The Bureau noted the transaction would serve the public interest because there would be no diminution in noncommercial educational service in Buffalo and that such service would actually expand because Station WNED–TV, clearly the more powerful and broad reaching of the two stations would be on a reserved channel. It also noted that WNYPBA could sell Station WNED–TV, arguably the more valuable and marketable station, on unreserved Channel 17 as a commercial entity at any time, but that it had foregone this opportunity in order to retain noncommercial educational service on Station WNED–TV on Channel *17.

The Bureau also pointed out that under the Commission's rules allowing intraband channel swaps between commercial and noncommercial stations, WNYPBA, after selling Station WNED–TV, could have then swapped channels with WNED–TV's new licensee and reached the same result as its proposed reservation exchange, and that avoiding this two-stage filing would also serve the public interest.

The Bureau also addressed CNM's ''counterproposal,'' which had two aspects: One requesting that we reserve Channel 17 at Buffalo, and one requesting that we reserve all unreserved channels of stations which were being operated noncommercially. The Bureau considered CNM's counterproposal as not appropriately filed in this proceeding because CNM's request to reserve all unreserved channels of stations being operated as noncommercial stations was not mutually exclusive with WNYPBA's proposal at Buffalo.

Application for Review

CNM argues again that the Bureau should have denied WNYPBA's request for the channel reservation swap. CNM goes on to argue that the Bureau failed to consider its ''counterproposal.'' It then repeats all of the arguments it made in its comments before the Bureau. CNM's Petition for Emergency Relief, supported by CIPB, requests that the Commission stay the effect of the *Report and Order,* and prevent WNYPBA from converting Station WNEQ–TV (or WNED–TV) to commercial operation until the resolution of its proposal to reserve Channel 17 in this matter.

Discussion

As a preliminary matter, we will note that CNM's Petition for Emergency Relief is moot and will be dismissed. Furthermore, we will not address CNM's repeated arguments against the reservation swap. The Bureau properly addressed CNM's arguments in the *Report and Order* and we will not disturb its decision. However, we will address CNM's argument that the Bureau overlooked the first aspect of CNM's ''counterproposal,'' to reserve Channel 17 at Buffalo. CNM argues that pursuant to the holding of *Ashbacker* v. *F.C.C.* (''*Ashbacker*''), the Bureau erred when it failed specifically to address its disposal of CNM's ''counterproposal'' requesting the reservation of Channel 17 at Buffalo on a comparative basis with the proposal filed by WNYPBA.

While the Bureau may have omitted mention of its specific disposal of CNM's ''counterproposal'' to reserve Channel 17 at Buffalo, any error this involved was harmless. First, a third party may not petition for a change in another station's authorization, particularly if the licensee has disavowed an interest in the particular proposed change. In addition, contrary to CNM's argument, the Bureau correctly held that the rule of *Ashbacker* does not apply to channel exchanges because the channels are occupied. Finally, although the two proposals may have been mutually exclusive as a matter of common usage because they could not co-exist, they were not mutually exclusive within the strict interpretation of that phrase as a term of art applied to broadcast channel allotments, which presumes a short-spacing between two channels.

We also note that the Bureau correctly held that the second aspect of CNM's ''counterproposal,'' to reserve all unreserved channels of stations operating as noncommercial educational stations was not appropriately filed in this matter. The Bureau was constrained to limit its decision to the merits of the issues as they applied to the instant parties. The issue of reserving all unreserved channels on which licensees operate noncommercially is a matter appropriately raised as a general rulemaking, not as an issue to be resolved in an adjudicatory proceeding such as this.

Finally, CNM repeats an argument made to the Bureau that allowing this transaction could spark a ''flood'' of requests by other public broadcasters seeking to sell their ''second channel'' public television stations. CNM claims that the Bureau's answer to this argument mischaracterized the number of noncommercial stations operating on unreserved frequencies. CNM is incorrect. The Bureau correctly referred to the number of communities in which a pair of *co-owned* (rather than *independently owned*) noncommercial stations is operating with one station on an unreserved channel.

List of Subjects in 47 CFR Part 73

Television broadcasting, Digital television broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–11099 Filed 5–3–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD67

Endangered and Threatened Wildlife and Plants; Reclassification of Yacare Caiman in South America From Endangered to Threatened, and the Listing of Two Other Caiman Species as Threatened by Reason of Similarity of Appearance

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is reclassifying the yacare caiman (*Caiman yacare;* also known as *Caiman crocodilus yacare*) from its present endangered status to threatened status under the Endangered Species Act because the current endangered listing does not correctly reflect the present status of this species. The Service also is listing the common caiman (*Caiman crocodilus crocodilus*) and the brown caiman (*Caiman crocodilus fuscus*) as threatened by reason of similarity of appearance.

Caiman yacare is native to Argentina, Brazil, Paraguay, and Bolivia. *Caiman crocodilus crocodilus* and *C. c. fuscus* occur in Mexico and Central and South America. All three taxa are listed in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which allows for international commercial trade in these species. Listing the two taxa as threatened by reason of similarity of appearance will assist in protecting the yacare caiman by facilitating wildlife inspections of shipments at the ports of entry and detection of illegal shipments.

A special rule for these three caiman populations allows U.S. commerce in their skins, other parts, and products from individual countries of origin and countries of re-export if certain conditions are satisfied by those countries prior to exportation to the United States. These conditions largely pertain to the implementation of a CITES Universal Tagging System Resolution for crocodilian skins (adopted at the ninth meeting of the Conference of the Parties) as well as provisions intended to support sustainable management of wild populations of the above three caiman species/subspecies. In the case where tagged caiman skins and other parts are exported to another country, usually for tanning and manufacturing purposes, and the processed skins and finished products are exported to the United States, the rule prohibits importation or re-exportation of such skins, parts, and products if we determine that either the country of origin or re-export is engaging in practices that are detrimental to the conservation of caiman populations.

The purpose of this rule is threefold. First, the rule accurately reflects the conservation status of the yacare caiman. Second, we wish to promote the conservation of the yacare caiman by ensuring proper management of the commercially harvested caiman species in the range countries and, through implementation of trade controls (as described in the CITES Universal Tagging System Resolution), to reduce commingling of caiman specimens. Third, downlisting of *C. yacare* to threatened reconciles listings of the species in the Act and CITES.

EFFECTIVE DATE: This final rule is effective on June 5, 2000.

ADDRESSES: The complete file for this rule is available for public inspection by appointment, from 8:00 a.m. to 4:30 p.m., Monday through Friday, at the Office of Scientific Authority, 4401 N. Fairfax Dr., Room 750, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Javier Alvarez, Office of Scientific Authority, U.S. Fish and Wildlife Service, Mail Stop ARLSQ–750, Washington, DC 20240 (phone: 703–358–1708; fax: 703–358–2276; e-mail: r9osa@fws.gov).

SUPPLEMENTARY INFORMATION:

Note: Portions of the original proposed rule were re-written to conform to the new Federal policy on the use of ''plain English'' in Federal documents. However, the original intent of the text remains the same. Text in the proposed rule has also been amended in this final rule in response to comments submitted by the public (see ''Comments Received'' below) and to coincide with the CITES Universal Tagging System Resolution.

Background

The yacare caiman was listed as endangered throughout its entire range under the predecessor of the Endangered Species Act (Act) of 1973 on June 2, 1970 (35 FR 8495). (At the time of the original listing, Peru was incorrectly listed as one of the range countries, whereas Paraguay was excluded. In this final rule, we correct that situation.) On July 1, 1975, it was also placed in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora—CITES (42 FR 10465). (The species has never been listed in CITES Appendix I, which prohibits international trade in the species if such activity is conducted for primarily commercial purposes and/or determined to be detrimental to the survival of the species.) The endangered listing under the Act prohibited imports and re-exports of the species into/from the United States. However, the Appendix II listing allows for regulated commercial trade elsewhere in the world, based on certain findings. As a result, a substantial U.S. law enforcement problem has occurred because of the different listing status under the Act and under CITES. Imports and re-exports of yacare caiman into/from the United States without an ESA permit are prohibited under the Act, including shipments originating from countries of origin with valid CITES export documents. However, imports and re-exports of products from the common and brown caimans are legal, when accompanied by appropriate CITES documents. Since products manufactured from the yacare caiman, common caiman, and the brown caiman are often indistinguishable as to species from which they are made, products from the prohibited yacare caiman are often commingled with products from non-prohibited taxa among commercial shipments into the United States. The unauthorized entry of prohibited yacare caiman products constitutes a violation of the Act, and if the yacare is legally protected in individual range countries, then Lacey Act violations may also have occurred.

Until relatively recently, Argentina, Bolivia, Brazil, and Paraguay prohibited the export of caiman products (Brazaitis in comments on the October 29, 1990, Federal Register notice [55 FR 43389]). However, CITES Notification to the Parties No. 781, issued on March 10, 1994, indicated that Brazil's CITES Management Authority had registered 75 ranching operations for producing skins of *C. c. crocodilus* and *C. yacare*. These ranching operations were established under provisions of Article 6 B of Brazilian Wildlife Law No. 5.197, of November 3, 1967. *Caiman yacare* from these Brazilian ranches were being legally traded in the international